

	<p>अपर आयुक्त, सीमाशुल्क का कार्यालय  <b>OFFICE OF THE ADDITIONAL COMMISSIONER          OF CUSTOMS</b>          एयर कार्गो काम्प्लेक्स, पुराना हवाईअड्डा,  <b>अहमदाबाद:380003</b>  <b>AIR CARGO COMPLEX, OLD AIRPORT, AHMEDABAD :          380003</b></p>
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### PREAMBLE

A	फाइलसंख्या/ File No.	:	GEN/ADJ/ADC/1253/2024-ACC-AHMD-CUS-COMMRTE-AHMEDABAD
	SCN	:	GEN/ADJ/ADC/1253/2024-ACC-AHMD-CUS-COMMRTE-AHMEDABAD dated 14.08.2024
B	मूलआदेशसंख्या/ Order- in - Original No.	:	173/ADC/ACC/OIO/Uratom/24-25
C	द्वारापारित/ Passed by	:	Arun Richard, Commissioner (In-Situ)
D	आदेशतिथि/ Date of Order	:	04.03.2025
E	जारीकरनेकीतारीख/ Date of Issue	:	04.03.2025
F	नामऔरपता/ Name and Address of Noticees	:	M/s. Uratom Solar (India) Pvt. Ltd., S No. 752, P1, N.H.27, Near Chordi Village, Gondal-360311
G	DIN No.	:	<b>20250371MN000099359F</b>

1. This is granted free of charge for the use of person to whom it is issued
2. Any person deeming himself aggrieved by this order may appeal against the order to the Commissioner of Custom (Appeals), 4<sup>th</sup> Floor, HUDCO Building, Ishwar Bhuvan Road, Navrangpura, Ahmedabad – 380009 within sixty (60) days from the date of receipt of the order.

(3) The appeal should bear a Court Fee stamp of Rupees Two only (Rs. 2.00), and it must be accompanied by

- i. A copy of the appeal and
- ii. This copy or any copy of this order will must bear a Court fee Stamp of Rupees Two only (Rs. 2.00/-)

(4) Any person desirous of appealing against this order shall deposit 7.5% (subject to maximum of Rs. 10 crores) of duty demanded, in case where duty or penalty levied, where such penalty is in dispute and produce proof of such payment along with the appeal, failing which the appeal is liable to be rejected for non-compliance of the provisions of Section 129 of the Customs Act, 1962.

**Brief Facts of the Case:**

A specific intelligence was developed by the Directorate of Revenue Intelligence, Regional Unit, Jaipur (hereinafter referred to as 'the DRI, Jaipur') indicating that M/s. Uratom Solar (India) Pvt. Ltd., (IEC-2413002421) (hereinafter referred to as 'the importer' ) having registered address at S No. 752, P1, N.H.27, Near Chordi Village, Gondal-360311, have been availing the benefits of exemption of Customs duty under Notification No. 24/2005-Cus dated 01.03.2005- as amended vide Notification No. 15/2022- Cus, dated 01.02.2022 (w.e.f. 01.04.2022) [**RUD No.1**] while importing goods i.e. solar cells and solar glass to be used in the manufacturing of Solar Photovoltaic Module/Panels.

2. The exemption benefits provided under **Sr. No. 39** of Notification No. 24/2005-Customs dated 01.03.2005 as amended vide Notification No. 15/2022-Cus dated 01.02.2022 (w.e.f. 01.04.2022) are applicable, subject to the condition that the goods imported shall be used for the manufacture of goods covered under Sr. No. 1 to 38 of the subject notification, provided that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. However, vide Notification No. 15/2022-Customs dated 01.02.2022, **Sr. No 23** of Notification No.-24/2005 was substituted and the Photovoltaic Cells whether or not assembled in Modules or made up into panels were excluded from the exemption provided under the subject notification. The relevant entries of the Notification No.24/2005-as amended by Notification No. 15/2022-Customs dated 01.02.2022 are appended as under: -

*Notification No. 15/2022-Customs*

*New Delhi, the 1<sup>st</sup> February, 2022*

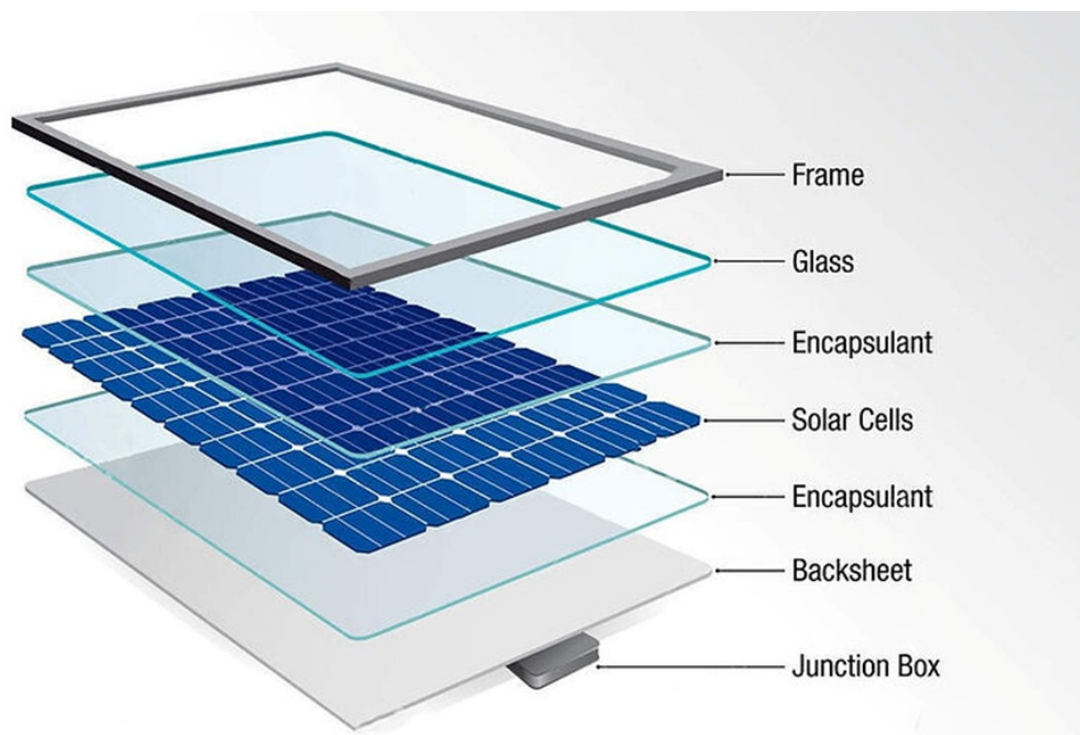
*G.S.R. ....(E). -In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes*

further amendments in the following notifications of the Government of India in the Ministry of Finance (Department of Revenue), specified in column (2) of the Table below to the extent specified in the corresponding entry in column (3) of the said Table, namely:

Sl. No.	Notification number and Date	Amendments						
(1)	(2)	(3)						
2.	Notification No. 24/2005-Customs, dated the 1st March, 2005, vide number G.S.R. 122(E), dated the 1 <sup>st</sup> March, 2005	<p>In the said notification, in the TABLE, -</p> <p>i. against Sr. No.13S, in column (3), after item (j), the following item shall be inserted with effect from the 1st day of April, 2022, namely: -“(k) Wrist wearable devices (commonly known as smart watches)”;</p> <p>ii. for Sr. No. 23 and the entries relating thereto, the following Sr. No. and entries shall be substituted with effect from the 1st day of April, 2022, namely: -</p> <table border="1"> <tr> <td>“23.</td><td>8541 (except 8541 42 00 or 8541 43 00)</td><td>All goods other than Photovoltaic cells whether or not assembled in modules or made up into panels.”;</td></tr> </table> <p>iii. after Sr.No.38, the following Sr. No. and entries shall be inserted with effect from the 1st day of April, 2022, namely:</p> <table border="1"> <tr> <td>“38A.</td><td>8541 42 00 or 8541 43 00</td><td>All goods for use solely and exclusively with goods covered under S. Nos. 1 to 38.”.</td></tr> </table>	“23.	8541 (except 8541 42 00 or 8541 43 00)	All goods other than Photovoltaic cells whether or not assembled in modules or made up into panels.”;	“38A.	8541 42 00 or 8541 43 00	All goods for use solely and exclusively with goods covered under S. Nos. 1 to 38.”.
“23.	8541 (except 8541 42 00 or 8541 43 00)	All goods other than Photovoltaic cells whether or not assembled in modules or made up into panels.”;						
“38A.	8541 42 00 or 8541 43 00	All goods for use solely and exclusively with goods covered under S. Nos. 1 to 38.”.						

The subject solar cells and solar glass (for manufacturing of solar modules) do not appear to be used for the manufacture of goods covered under Sr. No.1 to 38 of the said notification, therefore, it appeared that the benefits of exemption under Notification No. 24/2005-Customs dated 01.03.2005-as amended, were not available to the importer and hence it appears that the subject goods are liable to Basic Customs Duty, SWS, and IGST thereof.

3. Structure of a solar panel/module is shown below, as per information available on <https://www.scientificworldinfo.com/2021/10/best-materials-for-solar-modules-and-eva.html>: -



4. On examination of the import data of M/s. Uratom Solar (India) Pvt. Ltd, it was observed that they had not paid the BCD and were availing the benefits of exemption of Customs duty payment under Notification No. 24/2005-Cus. - S.No. 39, against goods i.e., Solar Cells and Solar Glass (for manufacturing Solar Modules/Panels) imported after 01.04.2022. Therefore, summons dated 06.09.2022 to appear on 15.09.2022 (**RUD-2**) and summons dated 23.09.2022 to appear on 30.09.2022 (**RUD-3**) were issued to M/s. Uratom Solar (India) Pvt. Ltd to tender statement and to submit copies of Bills of Entry from 01.04.2022 onwards wherein the benefits of Sr. No. 39 of the Notification No.24/2005-Customs have been availed by them. M/s Uratom Solar (India) Pvt. Ltd vide their letter dated 24.09.2022 (**RUD-4**) informed that they are the manufacturer of Solar PV Module falling under Sr. No. 23 of Notification No. 24/2005-Cus.; that, for the manufacture of Solar Module, Solar Cells (HSN 85414200) are basic raw materials; that, therefore they had availed of the benefit of Sr. No. 39 of Notification No. 24/2005-Cus; that, while importing the second time, the Customs Officer raised a query regarding duty exemption and due to the urgency of material, they had paid the duty under protest and submitted the letter for the same while paying the duty.
5. Further, in compliance with the summons issued vide DIN No.202209DDZ4000000F64D, dated 23.09.2022 Shri Hardik Dharaiya S/o Sh.

Jitendra bhai, Chief Financial Officer, M/s. Uratom Solar (India) Pvt. Ltd., appeared on 03.10.2022 to tender statement. His statement was recorded under Section 108 of the Customs Act, 1962 on 03.10.2022 (**RUD-5**), wherein, he *interalia*, stated that: –

- M/s. Uratom Solar (India) Pvt. Ltd. is engaged in the manufacturing of solar products like solar water heaters, solar water pumping, solar PV Modules, and solar inverters.
- He is responsible for completing document-related procedures like submission of invoices, packing lists, COO, and BLs to CHA. For the classification of any import items, he decides the classification and exemption eligibility and intimate the same to CHA through email, on the basis of the same the CHA prepares the checklist and gets approval from him. After approval from his side, the Bill of Entry is filed by CHA.
- After going through Notification No. 24/2005-Customs dated 01.03.2005 and amendment Notification No. 15/2022 dated 01.02.2022, he stated that the amendments have been made in the Sr. No. 23 of Notification No. 24/2005-Customs and the exemption benefits given to the import of photovoltaic cells and modules have been withdrawn with effect from 01.04.2022 vide Notification No. 15/2022-Customs dated 01.02.2022 and a separate serial 38A has been inserted for the tariff heading 85414200 or 85414300 having the description of goods as “*All goods for use solely and exclusively with goods covered under S.No. 1 to 38*”.
- On being asked whether M/s Uratom Solar (India) Pvt. Ltd. had availed of the benefits of Notification No. 24/2005-Customs dated 01.03.2005 and amendment Notification No. 15/2022 dated 01.02.2022, he stated that they had availed of the benefits of Sr. No. 39 of the subject notification (as amended), due to mistake and lack of clarity on this issue. Initially, they had availed of the exemption benefits on BoE No. 8732158 dated 18.05.2022, after that on the next BoE 9426688 dated 06.07.2022, a query was raised by the Customs officer regarding the wrong availment of Notification No. 24/2005, as the material was required urgently, therefore they had paid the duty under protest without availing the exemption on the said BoE 9426688 dated 06.07.2022 (he submitted the letter dated 08.07.2022 under his dated signature), that on the next shipment vide BoE No. 2634727 dated 27.09.2022, they had further availed of the exemption benefits of the said notification.
- On being asked about the eligibility of items i.e., Solar Cell & Solar Glass related to solar panel manufacturing being imported by M/s. Uratom Solar (India) Pvt. Ltd., for exemption under Sr. No. 39 of the Notification No. 24/2005-Cus. as amended, he stated that these import items were basically used in the manufacturing of Solar Photovoltaic Module, for which they were under the impression that this was under exemption category, however as discussed above, he found that their import items were not under exemption category as the exemption benefits under Solar Photovoltaic Modules were withdrawn vide

amendment Notification No. 15/2022-Cus. dated 01.02.2022. They filed the Bill of Entry under the exemption benefits due to a lack of clarity on this issue without any intention of evasion of duty. As they then got clarity on this issue, they admitted the duty liability and after due analysis, they would pay the applicable differential Customs duty along with applicable interest within one week time.

### **Summary of the Investigation**

#### **Non-payment of applicable Customs Duties by wrong availment of benefits under Notification No. 24/2005-Customs dated 01.03.2005 as amended vide Notification No. 15/2022-Customs dated 01.02.2022 (w.e.f. 01.04.2022) with respect to the import of solar cells and solar glass.**

6. Whereas, it appears that M/s. Uratom Solar (India) Pvt. Ltd. had imported solar cell and solar glass (For Solar Panels) by wrongly availing of the exemption benefits provided under Notification No.24/2005-Customs dated 01.03.2005 as amended vide Notification No. 15/2022-Cus dated 01.02.2022 (w.e.f. 01.04.2022). The same has also been admitted by Shri Hardik Dharaiya, Chief Financial Officer, M/s. Uratom Solar (India) Pvt. Ltd. in his statement dated 03.10.2022 recorded under Section 108 of the Customs Act, 1962. The importer had imported solar cells vide BoE No. 8732158 dated 18.05.2022 by availing of the undue benefits of Sr. No. 39 of Notification No. 24/20005. Further, it also appears that a query was raised by the Customs officer when the importer imported these goods under another BoE No.9426688 dated 06.07.2022 by wrong availment of the benefit of the above-said notification and the importer had made the payment of applicable duty under protest. However, thereafter, the importer had again availed undue benefits on the next shipment imported vide BoE No. 2634727 dated 27.09.2022. Further, it is pertinent to mention here that even after the query was raised by the Customs officer regarding the wrong availment of duty exemption and duty was paid by the importer subsequent to the query in respect of the said BoE, the importer could have made the payment of applicable Customs duty on the prior BoE No.8732158 dated 18.05.2022, but the same was not done by the importer. Furthermore, the importer also continued to avail of the undue benefits of the subject notification on the next shipment imported vide BoE No. 2634727 dated 27.09.2022. Thus, it appears that the importer was fully aware of the said notification and the same was in the public domain too, however, the importer appears to have wrongly availed of the benefits on 'Solar Cell and Solar Glass' imported by them vide Bills of Entry listed in Annexure-A attached to the notice.

6.1 The importer has imported 'Solar Cell' at Air Cargo, Ahmedabad (INAMD4) by filing 01 Bill of Entry and 'Solar Glass' at Mundra Port (INMUN1) by filing 01 Bill of Entry, as detailed in Annexure-A attached with this show cause notice. It appears that the importer has not paid applicable customs

duties (Basic Customs Duty and differential IGST), the importer had evaded customs duties aggregating to Rs. 11,62,045/- (Rupees Eleven Lakh Sixty-Two Thousand and Forty-Five Only) as detailed in the attached Annexure-A. The details of the differential customs duties payable by the importer are as under: -

<b>Sr. No.</b>	<b>Custom House Code</b>	<b>Bill of Entry No. and Date</b>	<b>Description of goods</b>	<b>Assessable Value (Rs.)</b>	<b>Differential Duty Payable (Rs.)</b>
<b>1.</b>	INAMD4	8732158 dtd. 18.05.2022	Solar Cell	7,56,631/-	2,45,527/-
<b>2.</b>	INAMD4	9426688 dtd. 06.07.2022	Mono Perc Solar Cell	21,39,545/-	6,94,282/-
<b>3.</b>	INMUN1	2634727 dtd. 27.09.2022	Solar Glass	11,41,427/-	2,22,236/-
		<b>TOTAL</b>		<b>40,37,603/-</b>	<b>11,62,045/-</b>

7. The importer had subscribed to a declaration as to the truthfulness of the contents of the Bills of Entry in terms of Section 46(4) of the Customs Act, 1962 in all their import consignments. Further, consequent upon the amendment to Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-Assessment' has been introduced in Customs. Section 17 of the Customs Act, 1962 effective from 08.04.2011, provides for self-assessment of duty on imported goods by the importer by filing a Bill of Entry, in the electronic form. Section 46 of the Customs Act, 1962 makes it mandatory for the importer to make an entry for the imported goods by presenting a Bill of Entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulation, 2018 (issued under Section 157 read with Section 46 of the Customs Act, 1962), the Bill of Entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service center, a Bill of Entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under the scheme of self-assessment, it is the importer who had to doubly ensure that he declares the correct description of the imported goods, their correct classification, the applicable rate of duty, value, and benefit of exemption notification claimed, if any, in respect of the imported goods while presenting the Bill of Entry. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 8<sup>th</sup> April 2011, it is the added and enhanced responsibility of the importer to declare the correct description, value, notification, etc. and to correctly determine and pay the duty applies in respect of the imported goods.

Further, the meaning and definition of assessment has been substituted by Finance Act, 2018 dated 29.03.2018, which states that “assessment” means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable with reference to the tariff classification of the imported goods, value of imported goods, exemption or concession of duty, tax, cess or any other sum consequent upon any notification issued in respect of imported goods, quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of imported goods, origin of imported goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods and any other specific factor which affects the duty, tax, cess or any other sum payable on imported goods and includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil, as determined in accordance with the provisions of the Customs Tariff Act. Thus, in the self-assessment regime, the onus is on the importer to correctly mention the applicable notifications and pay applicable duties, however, in the instant case, the importer had completely failed in fulfilling their responsibility by not paying applicable Basic Customs Duty and the importer has failed to maintain the accuracy and completeness of the details filed in the respective Bills of Entry for import of subject goods by wrong availment of exemption notification[ Notification No.24/2005-Customs dated 01.03.2005 as amended vide Notification No. 15/2022-Cus and Notification No.-50/2017] and thereby evading payment of Customs duty.

**8.** The relevant provisions of law under the provisions of Customs Act, 1962 and other relevant laws for the time being in force, are summarized as under: -

### **8.1 Provisions of Customs Act, 1962**

#### **Section 17- Assessment of duty.**

1. *An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.*
2. *The proper officer may verify the 12 [the entries made under section 46 or section 50 and the self-assessment of goods referred to in the sub-section and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.*

*[Provided that the selection of cases for verification shall primarily be based on risk evaluation through appropriate selection criteria.]*



(3) For [the purposes of verification] under sub-section (2), the proper officer may require the importer, exporter, or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce the such document or furnish such information.]

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter 16[\*\*\*] and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re- assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

*Explanation – For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of section 17 as it stood immediately before the date on which such assent is received.*

**Section 28(4) of the Customs Act, 1962:**

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(4) Where any duty has not been levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, because of,-

- (a) collusion; or
- (b) any wilful misstatement; or
- (c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

**Section 28AA of the Customs Act, 1962:**

*[28AA. Interest on delayed payment of duty— (1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty by the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.*

*(2) Interest at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of a such erroneous refund, as the case may be, up to the date of payment of such duty.*

*(3) Notwithstanding anything contained in sub-section (1), no interest shall be payable where, —*

*(a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A; and*

*(b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.]*

**Section 46- Entry of goods on importation:**

*(1) The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed:*

*Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in any other manner:*

*Provided further that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this subsection, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.*

(2) *Save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.*

(3) *The importer shall present the bill of entry under sub-section (1) before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrive at a customs station at which such goods are to be cleared for home consumption or warehousing:*

*Provided that a bill of entry may be presented at any time not exceeding thirty days before the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India:*

*Provided further that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed.*

(4) *The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of the such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.*

(4A) *The importer who presents a bill of entry shall ensure the following, namely:*

—

- (a) *the accuracy and completeness of the information given therein;*
- (b) *the authenticity and validity of any document supporting it; and*
- (c) *compliance with the restriction or prohibition, if any, relating to the goods under this Act or any other law for the time being in force.*

(5) *If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit the substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa.*

**Section 110AA. Action subsequent to inquiry, investigation or audit or any other specified purpose. -**

*Where in pursuance of any proceeding, in accordance with Chapter XIIA or this Chapter, if an officer of customs has reasons to believe that—*

- (a) *any duty has been short-levied, not levied, short-paid or not paid in a case where an assessment has already been made;*

- (b) any duty has been erroneously refunded;*  
*(c) any drawback has been erroneously allowed; or*  
*(d) any interest has been short-levied, not levied, short-paid or not paid, or erroneously refunded,*  
*then a such officer of customs shall, after causing inquiry, investigation, or as the case may be, audit, transfer the relevant documents, along with a report in writing—*  
*(i) to the proper officer having jurisdiction, as assigned under section 5 in respect of assessment of such duty, or to the officer who allowed such refund or drawback; or*  
*(ii) in case of multiple jurisdictions, to an officer of customs to whom such matter is assigned by the Board, in the exercise of the powers conferred under section 5,*

*and thereupon, power exercisable under sections 28, 28AAA or Chapter X, shall be exercised by the such proper officer or by an officer to whom the proper officer is subordinate in accordance with sub-section (2) of section 5]*

**Section 111 – Confiscation of improperly imported goods, etc.**-*The following goods brought from a place outside India shall be liable to confiscation-*

*(m) any goods which do not correspond in respect of value or any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment, referred to in the proviso to sub-section (1) of Section 54.*

**Section 114A. Penalty for short-levy or non-levy of duty in certain cases.**

*-Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been partly paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful misstatement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:*

**Section 114AA. Penalty for use of false and incorrect material.** – *“If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.”*

**Section 125. Option to pay the fine in lieu of confiscation.** - *(1) Whenever*

*confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods<sup>39</sup>[or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit:*

*[Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, [no such fine shall be imposed]:*

*Provided further that], without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.*

*(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in subsection (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.*

*(3) Where any fine imposed under sub-section (1), is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.*

## **8.2 The Foreign Trade (Development and Regulation) Act, 1992**

**Section 11: Contravention of provision of this Act, rules, orders and exports and import policy:** - *(1) No export or import shall be made by any person except by the provisions of this Act, the rules and orders made thereunder and the export and import policy for the time being in force.*

*(2) Where any person makes or abets or attempts to make any export or import in contravention of any provision of this Act or any rules or orders made thereunder or the export and import policy, he shall be liable to a penalty not exceeding one thousand rupees or five times the value of the goods in respect of which any contravention is made or attempted to be made, whichever is more.*

*(3) Where any person, on a notice to him by the Adjudicating Authority, admits any contravention, the Adjudicating Authority may, in such class or classes of cases and such manner as may be prescribed, determine, by way of settlement, an amount to be paid by that person.*

(4) A penalty imposed under this Act may, if it is not paid, be recovered as an arrear of land revenue, and the Importer-exporter Code Number of the person concerned, may, on failure to pay the penalty by him, be suspended by the Adjudicating Authority till the penalty is paid.

(5) Where any contravention of any provision of this Act or any rules or orders made thereunder or the export and import policy has been, is being, or is attempted to be, made, the goods together with any package, covering or receptacle and any conveyances shall, subject to such requirements and conditions as may be prescribed, be liable to confiscation by the Adjudicating Authority.

(6) The goods or the conveyance confiscated under sub-section (5) may be released by the Adjudicating Authority, in such manner and subject to such conditions as may be prescribed, on payment by the person concerned of the redemption charges equivalent to the market value of the goods or conveyance, as the case may be.

### **Foreign Trade (Regulation) Rules, 1993**

#### **Rule 14: Prohibition regarding making, and signing of any declaration, statement or documents**

(1) No person shall make, sign or use or cause to be made, signed or used any declaration, statement or document for the purposes of obtaining a license or importing any goods knowing or having reason to believe that such declaration, statement or document is false in any material particular.

(2) No person shall employ any corrupt or fraudulent practice for the purposes of obtaining any license or importing or exporting any goods.

#### **The demand of Customs Duty (BCD) not paid by reason of wilful misstatement of facts, Confiscation of imported goods, the role played, and imposition of penalty on the importer: -**

9. From the facts and pieces of evidence discussed in paras supra, it appears that the subject goods were imported by M/s Uratom Solar (India) Pvt. Ltd. and the importer had willingly and intentionally evaded the Basic Customs Duty by wrongly availing of the exemption benefits provided under Sr. No. 39 of Notification No.24/2005-Customs dated 01.03.2005, as amended vide Notification No. 15/2022-Cus dated 01.02.2022 (w.e.f. 01.04.2022). The said facts had also been accepted by Shri Hardik Dharaiya, Chief Financial Officer, M/s. Uratom Solar (India) Pvt. Ltd. in his statement dated 03.10.2022. Moreover, from his statement, it appears that the importer was fully aware of

the said notifications and the same was in the public domain too. It also appears that the importer was aware of the correct usage of the imported goods at the time of its importation and was aware of the amended notification. Even then, it appears that with intent to evade payment of applicable duties of Customs, the importer appears to have wrongly claimed/ taken benefits of Sr. No. 39 of the Notification No. 24/2005-Customs, as amended in the Bills of Entry filed by them. It appears that the importer had imported Solar Cells vide BoE No. 8732158 dated 18.05.2022 by availing the undue benefits of Notification No. 24/20005. Further, it also appears that a query was raised by the Customs officer when the importer imported these goods vide another BoE No.9426688 dated 06.07.2022 by wrongly availing the benefit of the above-said notification and the importer had made the payment of applicable duty under protest. But, thereafter, the importer had availed of the undue benefits on the next shipment imported vide BoE No. 2634727 dated 27.09.2022 by wrong availment of a particular serial no of Notification No. 24/2005. Here, it is pertinent to mention that even after the query was raised by the Customs officer regarding the wrong availment of duty exemption and duty was paid by the importer subsequent to the query in respect of the BoE No. 9426688 dated 06.07.2022, the importer could have made the payment of applicable Customs duty on the prior BoE No. 8732158 dated 18.05.2022, but the same was not done by the importer. Furthermore, it appears that the importer also continued to avail of the undue benefits of the subject notification on the next consignment imported vide BoE No. 2634727 dated 27.09.2022. Thus, it appears that the despite being fully aware of the subject notification, the importer had wilfully mis-stated that their goods '**solar cells**' and "**solar glass**" were covered under the subject notification, and appears wrongly availed of the exemption benefits on goods imported by them vide Bills of Entry listed in **Annexure-A** and it appears with the malafide intention to evade the Customs duty.

**10.** Thus, by the above acts and commission, the importer appear to have contravened the provisions of Section 46 and Section 111(m) of the Customs Act, 1962, and Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 read with Rule 14 of the Foreign Trade (Regulation) Rules 1993, in as much as the importer appears to have taken wrong benefits of the Notification No.-24/2005 as amended while filing the Bills of Entry at the time of the importation of the subject imported goods. The same appears to be done to evade the payment of applicable Basic Customs Duty, which appears to have resulted in short-payment of other Customs levies viz. Social Welfare Cess and IGST as BCD forms part of the value for computation of these duties. It appears that this act of wilful mis- statement of serial number 39 of the Notification No.-24/2005-Customs as amended, by M/s Uratom Solar (India) Pvt. Ltd. had rendered subject imported goods as described in column 6 of the attached

Annexure-A valued at Rs. 40,37,603/-, liable to confiscation as per the provisions of Section 111(m) of the Customs Act, 1962.

**11.** M/s Uratom Solar (India) Pvt. Ltd. was engaged in the import of various goods used in the manufacturing of solar modules. The importer was aware of the correct end use of the imported goods, however, despite being fully aware of the correct end use of the imported goods, the importer appears to have wrongly availed of the benefits of serial no. 39 of the notification no.-24/2005 as amended and appears by adopting wrong practices including making false declarations for such imports to evade payment of appropriate customs duties. The importer appears to have deliberately mis-declared the serial numbers of the aforementioned amended notification to escape from detection by customs authorities. Thus, from the facts and evidence discussed above, it appears that the importer resorted to a willful mis-statement of serial number 39 of Notification No.-24/2005 as amended with an ulterior motive of evading payment of the applicable duty on the imported goods. Hence, Section 28(4) of the Customs Act, 1962 appears applicable in the instant case for demand of duty. The details of the goods imported by M/s Uratom Solar (India) Pvt. Ltd. as it appears by willful mis- statement of the said serial number of Notification No.-24/2005 as amended are enclosed in Annexure-A along with the calculation of the Customs duties evaded. The differential Customs duty aggregating to Rs. 11,62,045/- (Rupees Eleven Lakh Sixty-Two Thousand and Forty-Five Only) leviable on the imported goods and cleared under Bills of Entry mentioned in Annexure -A and not paid by M/s Uratom Solar (India) Pvt. Ltd. is, therefore, appears liable to be demanded and recovered from them as per provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.

**12.** For the above acts and commissions, appears that M/s Uratom Solar (India) Pvt. Ltd. had rendered themselves liable to penalty under Section 114A and/or 112 of the Customs Act, 1962. The importer appears to have knowingly and wilfully made declarations that were false and incorrect in material particular and appears to have wilfully wrongly mentioned the subject notification in the Bills of Entry, in the transaction of business for the purposes of the Customs Act, 1962, and therefore, the importer appears to have rendered themselves liable to penalty under Section 114AA of the Customs Act, 1962.

**Voluntary payments made during the investigation:**

**13.** During the investigation, M/s Uratom Solar (India) Pvt. Ltd. had made a payment of Rs. 4,86,654/- (Rupees Four Lakhs Eighty-Six Thousand Six Hundred Fifty-Four Rupees only) towards differential duty (BCD+SWS+IGST) and interest in respect of Bills of Entry No. 8732158 dated 18.05.2022 and



2634727 dated 27.09.2022 and had made payment of Rs. 6,94,282/- under protest at the time of assessment of Bill of Entry No. 9426688 dated 06.07.2022. Therefore, the payment made by the importer is required to be appropriated against the demand of differential duty and interest. The details of payments made are as under: -

Sr. No.	Challan details	Bill of Entry No. & Date	BCD+SWS+ Diff. IGST (Rs.)	Interest (Rs.)	Total Payment (Rs.)	Remarks
1	Challan dated 12.10.2022	8732158 dated 18.05.2022	2,45,528/-	15,236/-	2,60,764/-	(RUD-6)
2	Challan dated 07.11.2022	2634727 dated 27.09.2022	2,22,236/-	3654/-	2,25,890/-	(RUD-7)
3	Challan no. 20399994891	9426688 dated 06.07.2022	6,94,282/-	-----	6,94,282/-	As mentioned in BE
		<b>Total</b>	<b>11,62,045/-</b>	<b>18,890/-</b>	<b>11,80,935/-</b>	

**14.** Now, therefore, M/s. Uratom Solar (India) Pvt. Ltd. (IEC-2413002421) having registered address: S No. 752, P1, N.H.27, Near Chordi Village, Gondal-360311 is hereby called upon to show cause in writing to the Additional Commissioner of Customs, Air Cargo Complex, Ahmedabad Old Airport, within 30 (Thirty) days from the receipt of this notice, as to why:-

- the differential amount of Customs duty aggregating to Rs. 11,62,045/- (Rupees Eleven Lakh Sixty-Two Thousand and Forty-Five Only) as detailed in Annexure- A to this Notice leviable on the imported goods covered under Bills of Entry as listed in column no. 03 of Annexure-A, should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962;
- As payment of duty in respect of Bill of entry No. 9426688 dated 06.07.2022 had been paid under protest, the protest made by the importer should not be vacated.
- Rs.11,62,045/- (Duty) and Rs 18,890/- (Interest) paid/deposited by the importer during the course of the investigation should not be adjusted and appropriated against differential duty and interest respectively demanded from them at sub-para (i) above;
- Imported goods totally valued at Rs. 40,37,603/- imported vide Bills of Entry as listed in Annexure- A should not be held liable to confiscation as per provisions of Section 111(m) of the Customs Act, 1962.
- Penalty should not be imposed on them under Section 112 and/or 114A of the Customs Act, 1962, for the reasons discussed above.
- Penalty should not be imposed on them under Section 114AA of the Customs

Act, 1962, for the reasons discussed above.

### **Defence Submissions**

15.1 Importer has not submitted any written submission in reply.

### **Personal Hearing:**

15.2 Shri Hardik Jitendrabhai Dharaiya, Chief Financial Officer of M/s. Uratom Solar (India) Pvt. Ltd., appeared in virtual hearing before the Additional Commissioner of Customs, Ahmedabad on 28.01.2025. They submitted that they had already paid differential duty of Rs. 11,62,045/- alongwith interest of Rs. 18,890/- (Total Rs. 11,80,935/-) through various challans and requested to take a lenient view in the subject matter, as they are not aware that exemption notification was not applicable to the subject goods at the time of import.

### **Discussion and Findings:**

16. I have carefully studied the case records. I find that the said Importer imported subject goods i.e. Solar Cells and Solar Glass to be used in the manufacturing of solar Photovoltaic Module. I find that the importer had availed custom duty exemption benefit of Sr. No. 39 of Notification No. 24/2005-Customs dated 01.03.2005 as amended vide Notification No. 15/2022-Customs dated 01.02.2022 (w.e.f. 2022), wherein the subject exemption benefit vide said Notification is subject to the condition that the goods imported shall be used for the manufacture of goods covered under Sr. No. 1 to 38 of the subject notification, provided that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. Further, I note that vide Notification No. 15/2022-Customs dated 01.02.2022, Sr. No 23 of Notification No.-24/2005 was substituted and *the Photovoltaic Cells whether or not assembled in Modules or made up into panels* were excluded from the exemption as detailed in the description of goods at column (3) of the subject notification.

**17. Whether the exemption benefit of Sr. No. 39 of Notification No. 24/2005-Customs dated 01.03.2005-as amended vide Notification No. 15/2022- Customs dated 01.02.2022 (w.e.f. 01.04.2022), availed for clearance of imported goods, is available to the Importer?**

- i. I find that the noticee is engaged in manufacturing of Solar Photovoltaic Module/Panels and that the notice imported 'Solar Cells and Solar Glass' vide subject bills of entry, availing exemption of BCD as per Sr. No. 39 of Notification No. 24/2005-Customs dated 01.03.2005. The relevant excerpts of the Notification No. 15/2022-Customs dated 01.02.2022, is as follows:
-

<b>Sl. No.</b>	<b>Notification number and Date</b>	<b>Amendments</b>						
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>						
2.	<b>Notification No. 24/2005-Customs,</b> dated the 1 <sup>st</sup> March, 2005, vide number G.S.R. 122(E), dated the 1 <sup>st</sup> March, 2005	<p>In the said notification, in the TABLE, -</p> <p>iv. against Sr. No. 13S, in column (3), after item (j), the following item shall be inserted with effect from the 1<sup>st</sup> day of April, 2022, namely: -“(k) Wrist wearable devices (commonly known as smart watches)”;</p> <p>v. for Sr. No. 23 and the entries relating thereto, the following Sr. No. and entries shall be substituted with effect from the 1<sup>st</sup> day of April, 2022, namely: -</p> <table border="1"> <tr> <td>“23.</td><td>8541 (except 8541 42 00 or 8541 43 00)</td><td>All goods <b>other than Photovoltaic cells whether or not assembled in modules or made up into panels.</b>”;</td></tr> </table> <p>vi. after Sr.No.38, the following Sr. No. and entries shall be inserted with effect from the 1<sup>st</sup> day of April, 2022, namely:</p> <table border="1"> <tr> <td>“38A.</td><td>8541 42 00 or 8541 43 00</td><td>All goods for use solely and exclusively with goods covered under S. Nos. 1 to 38.”.</td></tr> </table>	“23.	8541 (except 8541 42 00 or 8541 43 00)	All goods <b>other than Photovoltaic cells whether or not assembled in modules or made up into panels.</b> ”;	“38A.	8541 42 00 or 8541 43 00	All goods for use solely and exclusively with goods covered under S. Nos. 1 to 38.”.
“23.	8541 (except 8541 42 00 or 8541 43 00)	All goods <b>other than Photovoltaic cells whether or not assembled in modules or made up into panels.</b> ”;						
“38A.	8541 42 00 or 8541 43 00	All goods for use solely and exclusively with goods covered under S. Nos. 1 to 38.”.						

- ii. The wordings of the subject exemption Notification is clear and precise and ‘photovoltaic cells whether or not assembled in modules or made up in panels’ are excluded from the description of the goods as described at column (3) of the subject Notification. Thereby, I hold that the subject exemption availed by the importer vide the subject Notification declared in the subject bills of entry is ineligible. I note that Shri Hardik Dharaiya, Chief Financial Officer of the Noticee vide his statement recorded under Section 108 of the Custom Act on 03.10.2022 stated that due to lack of clarity on this issue they filed bill of entry under the exemption benefits.

- iii. Shri Hardik Dharaiya , Chief Financial Officer of the Noticee, in the statement recorded under Section 108 of the Custom Act, stated that the importer had availed of the benefits of Sr. No. 39 of the subject notification (as amended) due to mistake and lack of clarity on this issue and that the subject imports were basically used in the manufacturing of Solar Photovoltaic Module, for which they were under the impression that this was under exemption category, however he found that their import items were not under exemption category as the exemption benefits under Solar Photovoltaic Modules were withdrawn vide amendment Notification No. 15/2022-Cus. dated 01.02.2022; that they filed the Bill of Entry under the exemption benefits due to a lack of clarity on this issue without any intention of evasion of duty and admitted the duty liability and after due analysis, they would pay the applicable differential Customs duty along with applicable interest within one week time. Further, it is on record that with respect to BoE 9426688 dated 06.07.2022, a query was raised by the Customs officer regarding the wrong availment of Notification No. 24/2005, wherein the importer had paid the duty under protest without availing the exemption and that on the next shipment vide BoE No. 2634727 dated 27.09.2022, the importer had availed of the custom duty exemption benefits vide the said notification. Thus, it is on record that the importer was aware of the said notification and the same was in the public domain too, however, the importer had wrongly availed the custom duty exemption benefit on the subject import goods namely 'Solar Cell and Solar Glass' imported by them vide Bills of Entry listed in Annexure-A to the SCN.
- iv. I note that as per the summary of the investigation in the subject Show Cause Notice dated 14.08.2024, a query was raised by the Customs officer when the importer imported these goods vide BoE No. 9426688 dated 06.07.2022 by availing of the benefit of the above-said notification and the importer had made the payment of applicable duty under protest; however thereafter, the importer had again availed exemption benefit on the next shipment imported vide BoE No. 2634727 dated 27.09.2022. Thus, I hold that the importer was aware of the ineligibility of said exemption notification benefit on the subject import goods and willingly wrongly availed of the custom duty exemption benefit on 'Solar Cell and Solar Glass' imported by them vide Bills of Entry listed in Annexure-A attached to the notice and I hold that there is wilful misstatement of facts by the importer in subject matter and misdeclaration of the subject exemption notification in the subject bills of entry. At this juncture, I find it apt to refer the decision of **Hon'ble CESTAT, Mumbai Branch in case of M/s Ameer Electronics Vs Commissioner of Customs, Mumbai** reported in 2014 (303) E.L.T. 115 (Tri. - Mumbai), wherein the Hon'ble Tribunal held that *the admitted facts need not be proved* as held by the Hon'ble High Court of Madras in the case of *Govindasamy Raghupathy* - 1998 (98) E.L.T. 50 (Mad).
- v. I note that the importer made payment of Rs. 4,86,654/- (Rupees Four Lakhs Eighty-Six Thousand Six Hundred Fifty-Four Rupees only) towards differential duty (BCD+SWS+IGST) and interest in respect of Bills of Entry No. 8732158 dated 18.05.2022 and 2634727 dated 27.09.2022 and had made payment of Rs. 6,94,282/- under protest at the time of assessment of Bill of Entry No. 9426688 dated 06.07.2022.

**18. Whether the differential Customs Duty of Rs. 11,62,045/- (Rupees**

**Eleven Lakh, Sixty-Two Thousand, Forty-Five only) is liable to be demanded and recovered under Section 28(4) of the Customs Act, 1962, along with applicable interest in terms of Section 28AA of the Customs Act, 1962;**

- i. I hold that the importer was not eligible for the custom duty exemption benefit of Sr. No. 39 of Notification No. 24/2005-Cus dated 01.03.2005 for import of subject goods namely "Solar Cells and Solar Glass". I find no ambiguity in the wording of the subject Notification regarding the eligibility issue of customs exemption vide Sr. No. 39 of Notification No. 24/2005-Cus dated 01.03.2005. From the facts on record and the statement of Shri Hardik Dharaiya, Chief Financial Officer of the Noticee vide his statement recorded under Section 108 of the Custom Act on 03.10.2022, the admitted facts reveals that the noticee has knowingly and deliberately availed the ineligible benefit of exemption Notification No. 24/2005-Cus dated 01.03.2005 on import of subject goods namely Solar Cells and Solar Glass. I hold that the importer was aware of the ineligibility of said exemption notification benefit on the subject import goods and willingly wrongly availed of the custom duty exemption benefit on 'Solar Cell and Solar Glass' imported by them vide Bills of Entry listed in Annexure-A attached to the notice and I hold that there is wilful misstatement of facts by the importer in subject matter and misdeclaration of the subject exemption notification in the subject bills of entry. I hold that with the introduction of self-assessment by amendment to Section 17, w.e.f. 8<sup>th</sup> April 2011, it is the responsibility of the importer to declare the correct exemption Notification, if any applicable, in the subject bills of entry in order to correctly determine and pay the duty applicable in respect of the imported goods. In the instant case, the importer despite being aware that they were not eligible to claim the benefit of Sr. No. 39 of Notification No. 24/2005-Cus dated 01.03.2005 for import of "Solar Cells and Solar Glass", mis-declared by incorporating the ineligible Exemption notification particulars in the subject bills of entry with malafide intention to evade payment of customs duty at the appropriate rate. This constitutes a willful mis-declaration and suppression of facts with an intent to evade duty, thereby attracting the invocation of the extended period of limitation under Section 28(4) of the Customs Act, 1962.
- ii. I hold that the total differential Duty amounting to Rs. 11,62,045/- is liable to be recoverable from Importer under the provisions of Section 28(4) of the Customs Act, 1962 by invoking the extended period of limitation as provided vide Section 28(4) of the Custom Act. Section 28AA of the Customs Act, 1962, provides that where a person is liable to pay duty in accordance with the provisions of Section 28, such person shall, in addition to the duty, be liable to pay interest at the applicable rate. Vide Section 28AA of the Custom Act, I hold that the interest payment is statutory, mandatory and automatic on the confirmed duties.

**19. Whether subject goods totally valued at Rs. 40,37,603/- imported vide Bills of Entry as listed in Annexure- A should not be held liable to confiscation as per provisions of Section 111(m) of the Customs Act, 1962;**

(i). Section 111 (m) of the Customs Act, 1962 provides that any goods which do not correspond in respect of value or any other particular with the entry made under this Act **shall** be liable to confiscation. In subject, the importer mis-declared particulars in the subject bills of entry by incorporating the ineligible Exemption notification particulars and consequentially thereby self-assessment to duties was wrongly assessed. The importer resorted to wrong availment of subject exemption notification benefit and I hold that the provisions of Section 111(m) of the Customs Act, 1962 are attracted in subject matter and the subject goods are rendered liable to confiscation under Sections 111(m) of the Customs Act, 1962. Further, the aforementioned goods are not physically available for confiscation, and in such cases, redemption fine is imposable in light of the judgment in the case of **M/s. Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad) wherein the Hon'ble High Court of Madras** has observed as follows:

*The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act ....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).*

ii. Hon'ble High Court of Gujarat by relying on this judgment, in the case of

**Synergy Fertichem Ltd. Vs. Union of India, reported in 2020 (33) G.S.T.L. 513 (Guj.),** has held interalia as follows:-

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**174.** ..... In the aforesaid context, we may refer to and rely upon a decision of the Madras High Court in the case of *M/s. Visteon Automotive Systems v. The Customs, Excise & Service Tax Appellate Tribunal, C.M.A. No. 2857 of 2011, decided on 11th August, 2017 [2018 (9) G.S.T.L. 142 (Mad.)]*, wherein the following has been observed in Para-23;

“23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, “Whenever confiscation of any goods is authorised by this Act....”, brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).“

175. We would like to follow the dictum as laid down by the Madras High Court in Para-23, referred to above.”

**20 . Whether Importer is liable for penalty under Section 114A of the Customs Act, 1962?**

**As per the provisions of Section 114A of the Custom Act,** where the

duty has not been levied or has been short-levied or the interest has not been charged or paid or has been partly paid by reason of collusion or any wilful misstatement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined. The Importer has deliberately and knowingly indulged in wilful suppression of facts in subject matter and has wilfully and wrongly availed the ineligible benefit of Notification No. 24/2005-Cus dated 01.03.2005, which was not available to them with an intention to evade the Customs Duty liability. Thereby, I hold that the importer had rendered itself liable to penalty under Section 114A of the Customs Act, 1962.

**21. Whether Importer is liable for penalty under Section 112 of the Customs Act, 1962:**

I find that fifth proviso to Section 114A of the Custom Act stipulates that where any penalty has been levied under this section, no penalty shall be levied under Section 112 or Section 114. Thereby, I refrain from imposing penalty under Section 112 of the Customs Act, 1962.

**22. Whether Importer is liable for penalty under Section 114AA of the Customs Act, 1962?**

- i. The provisions of Section 114AA of the Customs Act stipulates that if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, that person shall be liable to a penalty under Section 114AA of the Custom Act. As discussed in the foregoing para that the importer was aware of the ineligibility of said exemption notification benefit on the subject import goods and willingly availed the ineligible custom duty exemption benefit on Solar Cell and Solar Glass imported vide subject Bills of Entry listed in Annexure-A to the SCN and I hold that there is wilful misstatement of facts by the importer in subject matter and misdeclaration of the subject exemption notification in the subject bills of entry. I hold that the importer despite knowing the ineligibility of subject exemption notification in subject matter, the importer had knowingly and intentionally made, signed and used the declaration in subject bills of entry and presented them to the Customs Authorities which were found incorrect in as much as the exemption Notification was not available to the imported goods. Therefore, I hold that the Importer has rendered itself liable to penalty under Section 114AA of the Customs Act, 1962.
- ii. Further, I rely on the decision of Principal Bench, New Delhi in case of **Principal Commissioner of Customs, New Delhi (import) Vs. Global Technologies & Research (2023)4 Centax 123 (Tri. Delhi)** wherein it has been held: *"Since the importer had made false declarations in the Bill of Entry, penalty was also correctly imposed under Section 114AA by the original authority"*.

**23.** In conspectus of aforementioned Discussion and findings, I pass the order:



**:ORDER:**

- a. I order to confirm the demand of differential Customs Duty of **Rs. 11,62,045/- (Rupees Eleven Lakh, Sixty-Two Thousand, Forty-Five Only)** under Section 28(4) of the Customs Act, 1962 read with Section 28(8) of the Custom Act. I order to appropriate the amount of Rs. 11,62,045/- paid by the importer vide various challans as mentioned in para 13, towards the confirmed duty liability. I order to vacate the protest made by the importer for payment of duty in respect of Bill of entry No. 9426688 dated 06.07.2022.
- b. I order to confirm the demand of interest on the confirmed demand of Customs Duty, confirmed at para 23 (a) above and order to appropriate the amount of Rs. 18,890/- paid by the importer vide various challans as mentioned in para 13, towards the applicable interest in terms of Section 28AA of the Customs Act, 1962.
- c. I order to hold the subject goods valued at Rs. 40,37,603/- (Rupees Forty Lakh, Thirty-Seven Thousand, Six Hundred and Three only) liable to confiscation under the provisions of Section 111(m) of the Customs Act, 1962 and order to **impose redemption fine of Rs 5,00,000/- (Rupees Five lakh only)** in lieu of confiscation under Section 125 of the Customs Act, 1962.
- d. I impose a penalty of **Rs. 11,62,045/- (Rupees Eleven Lakh, Sixty-Two Thousand, Forty-Five Only)** on importer **plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962** payable on the Duty demanded and confirmed at 25 (b) above under Section 114A of the Customs Act, 1962. However, in view of the first and second proviso to Section 114A of the Customs Act, 1962, if the amount of Customs Duty confirmed and interest thereon is paid within a period of thirty days from the date of the communication of this Order, the penalty shall be twenty five percent of the Duty and Interest, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days.
- e. I order to impose a penalty of **Rs. 11,62,045/- (Rupees Eleven Lakh, Sixty-Two Thousand, Forty-Five Only)** on Importer under Section 114AA of the Customs Act, 1962.
- f. I refrain from imposing penalty on Importer under Section 112 of the Customs Act, 1962.

**(Arun Richard)**  
Commissioner (in-Situ)

DIN 20250371MN000099359F

F. No. GEN/ADJ/ADC/1253/2024-ACC-AHMD-CUS-COMMRTE-AHMEDABAD

Date: 04.03.2025

By Speed Post/ By E-mail/ By Hand Delivery/ Through Notice Board:

To,

(1) M/s. Uratom Solar (India) Pvt. Ltd. (IEC-2413002421), S No. 752, P1, N.H.27, Near Chordi Village, Gondal-360311.

Copy:

1. The Principal Commissioner of Customs, Ahmedabad.
2. The Additional Director, Directorate of Revenue Intelligence (RU), Jaipur
3. The Assistant Commissioner of Customs, Air Cargo Complex, Ahmedabad.
4. The Deputy Commissioner of Customs (Task Force), Ahmedabad.
5. The System In-Charge, Customs, HQ, Ahmedabad for uploading on the official web-site.