

	OFFICE OF THE COMMISSIONER CUSTOM HOUSE, KANDLA NEAR BALAJI TEMPLE, NEW KANDLA Phone : 02836-271468/469 Fax: 02836-271467
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DIN-20240571ML000000DBFE

A	File No.	GEN/ADJ/COMM/265/2023-Adjn-O/o Commr-Cus-Kandla
B	Order-in-Original No.	KND-CUSTM-000-COM-04-2024-25
C	Passed by	M. Ram Mohan Rao, Commissioner of Customs, Custom House, Kandla.
D	Date of Order	16.05.2024
E	Date of Issue	16.05.2024
F	SCN No. & Date	GEN/ADJ/COMM/265/2023-Adjn-O/o Commr-Cus-Kandla dated 30.05.2023
G	Noticee / Party / Importer / Exporter	M/s. Halliburton Offshore Services Inc, Rathori Avenue, Near Hotel Marvar Palace, Jaisalmer Road, NH15, Barmer, Rajasthan-344001

1. This Order - in - Original is granted to the concerned free of charge.
2. Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench,

2nd Floor, Bahumali Bhavan Asarwa,

Nr. Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad - 380004

3. Appeal shall be filed within three months from the date of communication of this order.

4. Appeal should be accompanied by a fee of Rs.1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs. 10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

5. The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.

7. While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules, 1982 should be adhered to in all respects.

8. An appeal against this order shall lie before the Appellate Authority on payment of 7.5% of the duty demanded wise duty or duty and penalty are in dispute, or penalty wise penalty alone is in dispute.

BRIEF FACTS OF THE CASE-

M/s.Halliburton Offshore Services Inc(IEC code **0398007497**), having its address at Rathori Avenue, Near Hotel Marvar Palace, Jaisalmer Road, NH15, Barmer, Rajasthan-344001(hereinafter referred to as '**M/s. HOSI**' or 'the importer') were engaged in import of "**Oil Well Chemical: SARALINE 185V**"(hereinafter referred to as 'the said goods'). The importer has imported the above said goods at Kandla Port and cleared the same through the Customs Broker, M/s. BabajiShivram Clearing & Carriers Pvt. Ltd.

2. During the course of Post Audit Clearance, it was noticed that M/s.Halliburton Offshore Services Inc, had filed the following BoEs for the import of "**Oil Well Chemical: SARALINE 185V**", classifying the same, under Customs Tariff item **38249900**, availing full exemption of Basic Customs Duty and resultant SWS and concessional exemption of IGST @ 5% up to 17.07.2022 and @12% thereafter, under Sr. No. 404 of Notification No. 50/2017-CUS dated 30.06.2017,as amended vide Notification No. 02/2022-CUS dated 01.02.2022 and Notification No. 40/2022-CUS dated 13.07.2022, during the period from 02.02.2022 to 30.08.02022, as detailed, as under:-

Table-I

Sr.No.	BoE	Dated	Description	CTH	Qty	Value	Duty paid			
							BCD	SWS	IGST	total
1	8432819	26/04/2022	Supply of Oil Well Chemical: SARALINE 185V	38249900	484.916	66793623	0	0	3339681	3339681
2	8432362	26/04/2022	Supply of Oil Well Chemical: SARALINE 185V	38249900	495.444	68243804	0	0	3412190	3412190
3	9026669	8/6/2022	Supply of Oil Well Chemical: SARALINE 185V	38249900	494.987	69437960	0	0	3471898	3471898
4	9026800	8/6/2022	Supply of Oil Well Chemical: SARALINE 185V	38249900	389.802	54682394	0	0	2734120	2734120
5	2227830	30/8/2022	Supply of Oil Well Chemical: SARALINE 185V	38249900	494.550	71207080	0	0	8544850	8544850
6	2227738	30/08/2022	Supply of Oil Well Chemical: SARALINE 185V	38249900	482.310	69444705	0	0	8333365	8333365
			Total		2842.009	399809565	0	0	29836103	29836103

3. The Notification No. 50/2017-CUS dated 30.06.2017, as amended vide Notification No. 02/2022-CUS dated 01.02.2022, during the period from 02.02.2022 to 17.07.02022, is reproduced below:-

OIO No. KND-CUSTM-000-COM-04-2024-25 dated 16.05.2024
DIN-20240571ML000000DBFE

“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) and sub-section (12) of section 3, of Customs Tariff Act, 1975 (51 of 1975), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2012 - Customs, dated the 17th March, 2017 published in the Gazette of India, Extraordinary, Part H, Section 3, Sub-section (i), vide number G.S.R. 185 (E) dated the 17th March, 2017, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below or column (3) of the said Table read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the said Customs Tariff Act, as are specified in the corresponding entry in column (2) of the said Table, when imported into India,- (a) from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the standard rate specified in the corresponding entry in column (4) of the said Table; and (b) from so much of integrated tax leviable thereon under sub-section (7) of section 3 of said Customs Tariff Act, read with section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) as is in excess of the amount calculated at the rate specified in the corresponding entry in column (5) of the said Table, subject to any of the conditions, specified in the Annexure to this notification, the condition number of which is mentioned in the corresponding entry in column (6) of the said Table:

TABLE

S. No.	Chapter or Heading or sub— heading or tariff item	Description of goods	Standard rate	Integrated Goods and Services Tax	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)

OIO No. KND-CUSTM-000-COM-04-2024-25 dated 16.05.2024
DIN-20240571ML000000DBFE

404.	27, 31, 38, 39, 73, 82, 84, 85, 87, 89 or 90.	<p>Goods specified in column (3) of List 33 when imported by a specified person, in relation with petroleum operations or coal bed methane operations undertaken under:</p> <ul style="list-style-type: none"> (a) petroleum exploration licenses or mining leases (b) the New Exploration Licensing Policy (c) the Marginal Field Policy (MFP) (d) the Coal Bed Methane Policy (e) the Hydrocarbon Exploration Licensing Policy (HELP) or Open Acreage Licensing Policy (OALP) <p>Explanation. - For the purposes of this notification, a specified person is a licensee, lessee, contractor or subcontractor, as defined below:-</p> <ul style="list-style-type: none"> (i) 'licensee' means a person authorised to prospect for mineral oils (which include petroleum and natural gas) in pursuance of a petroleum exploration license granted under the Petroleum and Natural Gas Rules, 1959 made under the provisions of the Oilfields (Regulation and Development) Act, 1948 (53 of 1948) (ii) 'lessee' means a person authorised to mine oils (which include petroleum and natural gas) in pursuance of a petroleum mining lease granted under the Petroleum and Natural Gas Rules, 1959 made under the provisions of the Oilfields (Regulation and Development) Act, 1948 (53 of 1948) (iii) 'contractor' means a company (Indian or foreign) or a consortium of companies with which the Central Government has entered into an agreement in connection with petroleum operations (consisting of 	Nil	5%	48
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	<p>prospecting for or extraction or production of mineral oils) to be undertaken by such company or consortium</p> <p>(iv) 'sub-contractor' means a person engaged by licensee/lessee or contractor for the purpose of conducting petroleum operations on behalf of such licensee/lessee or contractor, as the case maybe.</p>		
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ANNEXURE

Condition No.	Condition
48.	<p>If, -</p> <p>(a) the importer is a licensee or lessee or contractor, he shall produce to the concerned Assistant Commissioner of Customs or the Deputy Commissioner of Customs, as the case may be, a document evidencing that he falls in the category of a specified person and give an undertaking to pay duty, fine or penalty that becomes payable, if any of the Conditions of this notification are not complied with;</p> <p>(b) the importer is a sub-contractor, he produces to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, at the time of importation, a certificate issued by a senior official who is authorised by the Board of Directors to issue such a certificate, of the concerned licensee or lessee or contractor certifying that the goods are intended for specified purpose along with an undertaking from such licensee or lessee or contractor and the subcontractor, as the case may be, liable to pay duty, fine or penalty that becomes payable, if any of the Conditions of this notification are not complied with;</p> <p>(c) the importer or any specified person (transferor), seeks to transfer the goods to any other specified person (transferee),</p> <p>(i) the transferor shall give an intimation to the concerned Assistant Commissioner of Customs or the Deputy Commissioner of Customs, as the case may be, about such transfer and get himself discharged in respect of the goods so transferred;</p> <p>(ii) the transferee shall give an undertaking to comply with the Conditions of this notification, as if he is the importer of these goods. (iii) where the transferee is a sub-contractor, the lessee or the lesser or the licensee or the contractor of such sub-contractor, as the case maybe, shall also give an additional undertaking to make himself liable to pay duty, fine or penalty in case the sub-contractor fails to comply with the Conditions of this notification;</p> <p>(d) the goods so imported are sought to be disposed after their use in unserviceable form or as scrap, the importer or the transferee, as the case may be, shall dispose of these goods, through MSTC, or any other</p>

	<p>Government agency, notified by the Central Government for this purpose, by paying a duty at the rate of 7.5% of the transaction value of such goods.</p> <p>Explanation.- For the purposes of this Condition, goods imported on or before the 1 st day of February, 2022, claiming concessional rate of duty, either under this Condition or any preceding exemption for such goods, are to be disposed off on or after 2nd day of February, 2022, may be disposed off in accordance with clause (d) of this Condition.</p>
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List 33 (See S. No. 404 of the Table)

S. No	Heading/ TariffItem	Description
(1)	(2)	(3)
1.
2.
3.
14.	2710 3811 3824 3905 31042000	Oilfield chemicals namely Potassium Formate, Hollow Glass Sphere Grade-IV, Aqueous Film Forming Foam 6% US Mil., Glutaraldehyde, HydroxymethylPhosphoniumSulphate, Ammonium Persulphate, Demulsifier Low Temperature, Potassium Chloride, Partially Hydrolysed Poly Acrylamide, Xanthum Gum polymer and Oil and Gas wells specific Cement Additives and Cesium Formate.
15.	73, 84, 85, 87, 89 and 90	Spares and accessories for the parts specified at S. No. 3, 4, 7, 8, 9, 10, 11 and 13.

4. Further, vide Notification No. 40/2022-CUS dated 13.07.2022, effective from 18.07.2022, the relevant portion of the Notification No. 50/2017-CUS dated 30.06.2017, as amended vide Notification No. 02/2022-CUS dated 01.02.2022 was further amended so as to substitute the entry “**12%**” for the entry in column (5), against S. No. 404 of the TABLE under Notification No. 50/2017-CUS dated 30.06.2017.

5. Whereas, before the enactment of Notification No. 02/2022 dated 01.02.2022 w.e.f. 02.02.2022, Notification No. 50/2017-CUS dated 30.06.2017 was in force. The relevant portion of the Notification 50/2017 dated 30.06.2017 is reproduced below:

S. No.	Chapter or Heading	Description of goods	Standard rate	Integrated Goods and Services	Condition No.

or sub— heading or tariff item		(3)	Tax		
(1)	(2)		(4)	(5)	(6)
404.	84 or any other Chapter	Goods specified in List 33 required in connection with: <ul style="list-style-type: none"> (a) petroleum operations undertaken under petroleum exploration licenses or mining leases, granted by the Government of India the New Exploration Licensing Policy or any State Government to the Oil and Natural Gas Corporation or Oil India Limited on nomination basis (b) petroleum operations undertaken under specified contracts (c) petroleum operations undertaken under specified contracts under the New Exploration Licensing Policy (d) petroleum operations undertaken under specified contracts under the Marginal Field Policy (MFP) (e) coal bed methane operations undertaken under specified contracts under the Coal Bed Methane Policy 	Nil	5%	48

Respective List 33 (See S. No. 404 of the Table) incorporated in the Notification No. 50/2017:

(1).....

(2).....

.....

(8) **All types of oil field chemicals** or coal bed methane chemicals including synthetic products used in petroleum or coal bed methane operations, oil well cement and cement additives, required for drilling, production and transportation of oil or gas.

6. Earlier the importer had imported the similar type of goods declaring as **“Oil Well Chemical: SARALINE 185V” under CTH 38249900** and availed benefit of exemption notification 50/2017 dated 30.06.2017, wherein “All types of oil field chemical” was mentioned in the List 33, respective list for Sr. No. 404 of the Table of the Notification dated 30.06.2017. However, the importer even after the enactment of Notification 02/2022 dated 01.02.2022 w.e.f. 02.02.2022, continued to avail the benefit of exemption for which they were not entitled as the entry “All types of oil field chemicals” was removed and the

following items were specifically inserted. The relevant portion of the List 33 is as under:

Oilfield chemicals namely Potassium Formate, Hollow Glass Sphere Grade-IV, Aqueous Film Forming Foam 6% US Mil., Glutaraldehyde, HydroxymethylPhosphoniumSulphate, Ammonium Persulphate, Demulsifier Low Temperature, Potassium Chloride, Partially Hydrolysed Poly Acrylamide, Xanthum Gum polymer and Oil and Gas wells specific Cement Additives and Cesium Formate.

7. The importer even after having specific list of the goods which are entitled for benefit of exemption, continued the prevailing practice with an intent to evade Custom Duties in lieu of availing exemption for which they were ineligible. Therefore, it appeared that the importer had wrongly availed exemption under Sr. No. 404 of the TABLE under Notification No. 50/2017-CUS dated 30.06.2017 (as amended) by way of wrongly claiming ineligible exemption in the Bills of entries filed under Section 46 of the Customs Act, 1962. The imported goods namely '**SARALINE 185V**' did not find place in Column (3) of LIST 33, as stipulated under Sr. No. 404 of the Notification No. 50/2017-CUS dated 30.06.2017 (as amended).

8. Further, the imported failed to satisfy the following conditions for availing exemption as mentioned in the Notification No. 50/2017-CUS dated 30.06.2017 as amended:

- that whether they were specified person, as stipulated under Sr. No. 404 of the Notification No. 50/2017-CUS dated 30.06.2017 (as amended).
- that whether the goods had been imported in relation with operations as stipulated under Sr. No. 404 of the Notification No. 50/2017-CUS dated 30.06.2017 (as amended).
- the conditions specified (Condition No. 48) in the Annexure to the Notification No. 50/2017-CUS dated 30.06.2017 (as amended), the condition number of which is mentioned in the corresponding entry in column (6) of the said TABLE under the Notification No. 50/2017-CUS dated 30.06.2017 (as amended).

9. The importer was asked to submit the documentary proof which could establish that the conditions prescribed under Notification No. 50/2017 dated 30.06.2017 as amended had been fulfilled by them in order to avail the benefit of exemption, however, they had failed to produce the same.

10. As per Section 12 of the Customs Act, 1962 read with Section 2 of the Customs Tariff Act, 1975 and the First Schedule thereunder read with entry at sr. no. 250A of the TABLE under notification no. 50/2017-CUS dated 30.06.2017 (as amended), the said tariff item, as classified by the importer under Customs Tariff item **38249900**, attracted **Basic Customs Duty @ 7.5%** ad valorem. Further, as per Section 12 of the Customs Act, 1962 read with sub-section (7) of Section 3 of the Customs Tariff Act, 1975 and read with entry at sr. no. 97 of the SCHEDULE III under notification no. 1/2017-Integrated Tax (Rate) dated 28.06.2017 (as amended), the said tariff item, as classified by the importer under Customs Tariff item **38249900**, further attracted **Integrated GST @ 18%** ad valorem. As per Section 12 of the Customs Act, 1962 read with Section 110 of the Finance Act, 2018, read with notification no. 13/2018-CUS dated 02.02.2018 (as amended), the said tariff item, as classified by the importer under Customs Tariff item **38249900**, also attracted **Social Welfare Surcharge @10% of Basic Customs Duty**. Accordingly, the importer was required to pay duties of customs as under:-

Table-II

Sr.No.	BoE	Dated	Duty payable (Amt in Rs.)			
			<u>BCD@7.5%</u>	<u>SWS@.75%</u>	<u>IGST@18%</u>	total duty
1	8432819	26/04/2022	5009522	500952	13014737	18525211
2	8432362	26/04/2022	5118285	511829	13297305	18927419
3	9026669	8/6/2022	5207847	520785	13529987	19258618
4	9026800	8/6/2022	4101180	410118	10654864	15166162
5	2227830	30/8/2022	5340531	534053	13874700	19749284
6	2227738	30/08/2022	5208353	520835	13531301	19260489
			29985717	2998572	77902894	110887183

11. By way of wrongly claiming ineligible exemption in the Bills of entries, the importer had paid duties of customs as detailed as under:-

Table-III

Sr.No.	BoE	Dated	Duty paid			
			BCD	SWS	IGST	total
1	8432819	26/04/2022	0	0	3339681	3339681
2	8432362	26/04/2022	0	0	3412190	3412190
3	9026669	8/6/2022	0	0	3471898	3471898
4	9026800	8/6/2022	0	0	2734120	2734120
5	2227830	30/8/2022	0	0	8544850	8544850
6	2227738	30/08/2022	0	0	8333365	8333365
			0	0	29836103	29836103

12. It appeared that by way of wrongly claiming ineligible exemption in the Bills of entries filed under Section 46 of the Customs Act, 1962, the importer had short-paid duties of customs, amounting to **Rs.8,10,51,080/- (BCD**

Rs.2,99,85,717/-+SWS Rs.29,98,572/-+IGST Rs.4,80,66,791/-), detailed as under:-

Table-IV

Sr.No.	BoE	Dated	Duty difference			Total duty liability
			BCD	SWS	IGST	
1	8432819	26/04/2022	5009522	500952	9675056	15185530
2	8432362	26/04/2022	5118285	511829	9885115	15515229
3	9026669	8/6/2022	5207847	520785	10058089	15786720
4	9026800	8/6/2022	4101180	410118	7920745	12432042
5	2227830	30/8/2022	5340531	534053	5329850	11204434
6	2227738	30/08/2022	5208353	520835	5197936	10927124
			29985717	2998572	48066791	81051080

13. A letter F.No. GEN/ADT/PCA/295/2022-PCA dated 30.11.2022 was issued by the Assistant Commissioner (PCA), Custom House Kandla asking the importer i.e. M/s. Halliburton Offshore Services Inc, Barmer, Rajasthan for payment of differential duty of Rs. 1,09,27,124/- along with interest and penalty (**RUD-1**) with respect to goods imported vide BE No. 2227738 dated 30.08.2022. In response to the said letter, the importer vide their letter dated 07.12.2022 (**RUD-2**) submitted that “imported Oil Well Chemical SARALINE 185V” were covered under Serial No. 14 (column 1), HSN #3824 (column 2) & description column (3) – Glutaraldehyde of List 33 (Sr. No. 404 of Table) Condition no. 48 covered under Customs Notification No. 02/2022-Customs dated 01.02.2022. Based on these details M/s. Vedanta Limited issued duty exemption certificate vide their document no. VED/IMP/22/RJ/18314/1188 dated 28.07.2022 to use these chemical Petroleum operations at Block No. RJ-ON-90/1, Barmer, Rajasthan. Upon receipt of valid duty exemption certificate from M/s. Vedanta Ltd., we filed & cleared this shipment vide BE No. 2227738 dated 30.08.2022.”

13.1 Further a letter F.No. GEN/ADT/PCA/295/2022-PCA dated 14.12.2022 issued by the Assistant Commissioner (PCA), Custom House Kandla asking the importer M/s. Halliburton Offshore Services Inc, Barmer, Rajasthan for payment of differential duty of Rs. 1,51,85,530/- along with interest and penalty (**RUD-3**) with respect to goods imported vide BE No. 8432819 dated 26.04.2022. In response to the said letter, the importer vide their letter dated 19.12.2022 (**RUD-4**) submitted that “imported Oil Well Chemical “SARALINE 185V” are covered under Serial No. 14 (column 1), HSN #3824 (column 2) & description column (3) – Glutaraldehyde of List 33 (Sr. No. 404 of Table) Condition no. 48 covered under Customs Notification No. 02/2022-Customs

dated 01.02.2022. Based on these details M/s. Vedanta Limited issued duty exemption certificate vide their document no. VED/IMP/22/RJ/17393/0413 dated 11.04.2022 to use these chemical Petroleum operations at Block No. RJ-ON-90/1, Barmer, Rajasthan. Upon receipt of valid duty exemption certificate from M/s. Vedanta Ltd., we filed & cleared this shipment vide BE No. 8432819 dated 26.04.2022.”

13.2 Further a letter F.No. GEN/ADT/PCA/295/2022-PCA dated 26.12.2022 issued by the Assistant Commissioner (PCA), Custom House Kandla asking the importer M/s. Halliburton Offshore Services Inc, Barmer, Rajasthan for payment of differential duty of Rs. 5,49,38,425/- along with interest and penalty (**RUD-5**) with respect to goods imported vide BE No. 8432362 dated 26.04.2022, 9026669 dated 08.06.2022, 9026800 dated 08.06.2022 and 2227830 dated 30.08.2022. In response to the said letter, the importer vide their letter dated 26.12.2022 (**RUD-6**) submitted that “imported Oil Well Chemical “SARALINE 185V” are covered under Serial No. 14 (column 1), HSN #3824 (column 2) & description column (3) – Glutaraldehyde of List 33 (Sr. No. 404 of Table) Condition no. 48 covered under Customs Notification No. 02/2022-Customs dated 01.02.2022. Based on these details M/s. Vedanta Limited issued duty exemption certificate vide their document no. VED/IMP/22/RJ/17395/0415 dated 11.04.2022, VED/IMP/22/RJ/17797/0775 dated 25.05.2022, VED/IMP/22/RJ/17806/0780 dated 26.05.2022 and VED/IMP/22/RJ/18355/1227 dated 01.08.2022 to use these chemical Petroleum operations at Block No. RJ-ON-90/1, Barmer, Rajasthan. Upon receipt of valid duty exemption certificate from M/s. Vedanta Ltd., we filed & cleared this shipment vide BE No. 8432819 dated 26.04.2022.”

Pre Notice Consultation:

14. The importer M/s. Halliburton Offshore Services Inc, Barmer, Rajasthan were invited for pre SCN consultation in the matter, by the Additional Commissioner, Custom House Kandla, which was scheduled on 16.03.2023 for appearing before the Commissioner of Customs, Custom House Kandla(**RUD-7**).

14.1 In response to pre notice consultation letter, Shri Jitendra Bagwe, representative of M/s. Halliburton Offshore Services Inc, Barmer vide e-mail dated 07.03.2023 (**RUD-8**) submitted that goods SARALINE 185V did not fit into any description of goods given under list 33 but the HSN code of SARALINE 185V falls in the HSN code list of LIST 33. Based on this recent

information received directly from the manufacturer, it was requested to customs department for considering this item in duty exemption list. Vedanta already submitted letter to Ministry for further clarification.

14.2 Shri Jitendra Bagwe, Logistics Supervisor, M/s. Halliburton Offshore Services Inc, Barmer attended the pre notice consultation on 16.03.2023, wherein he submitted that they had already replied on 07.03.2023 and submitted that goods SARALINE 185V did not fit into any description of goods given under list 33 but the HSN code of SARALINE 185V falls in the HSN code list of LIST 33. As the end user M/s. Vedanta Limited had already submitted letter to Ministry of Finance and Ministry of Petroleum and Natural Gas for further clarification for which no documentary evidence had been provided by M/s. Vedanta.

14.2.1 He further submitted that he had requested the end user M/s. Vedanta Limited to provide clarification in respect of the said goods, not appearing in the said List 33 of the subject exemption Notification. He requested for 15 days time to submit further clarification / documentary evidence on the issue. Considering his request, extension till 30.03.2023 was granted to him, failing which SCN would be issued. However, no such documents were produced by them.

15. M/s. Halliburton Offshore Services Inc, Barmer vide their letter dated 27.03.2023 (**RUD-9**) received by this office on 10.04.2023 submitted copy of challan no. 507 dated 28.03.2023 (**RUD-10**) for duty payment of Rs. 8,10,51,080/- along with interest of Rs. 96,13,677/- stating that they had made payment **under protest** in respect of above mentioned 06 Bills of Entry as under impression that they were availing the exemption benefit correctly.

16. As per sub-section (4) and (4A) of Section 46 of the Customs Act, 1962, 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 ensure the the accuracy and completeness of the information given therein. However, by way of wrongly claiming ineligible exemption in the Bills of entries filed under Section 46 of the Customs Act, 1962, the importer has indulged in evasion of duties of customs, amounting to Rs. 8,10,51,080/- (BCD Rs. 2,99,85,717/- + SWS Rs. 29,98,572/- + IGST Rs.4,80,66,791/-), as discussed above.

17. Thus, the importer had contravend the provisions of Section 12 of the Customs Act, 1962 read with Section 2 and 3(7) of the Customs Tariff Act,

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1975 and Section 110 of the Finance Act, 2018 and the provisions of Section 46 of the Customs Act, 1962 and Notification No. 50/2017-CUS dated 30.06.2017 (as amended) and evaded payment of duties of customs amounting to Rs.8,10,51,080/-, which appeared liable to be recovered under section 28 of the Customs Act, 1962 along with interest as stipulated under section 28AA of the Customs Act, 1962. The importer had availed exemption under notification no. 50/2017-Cus dated 30.06.2017, as amended, by wrongly claiming without fulfilling the conditions stipulated therein, as discussed hereinabove. Therefore, it appeared that the importer has rendered themselves liable for penalty under Section 117 of the Customs Act, 1962.

18. Further the importer had evaded payment of duties of customs amounting to Rs.8,10,51,080/-, as discussed above, by way of wrongly claiming ineligible exemption in the Bills of entries filed under Section 46 of the Customs Act, 1962, thus resorting to wilfulmis-statement and suppression of facts in order to get ineligible exemption benefit, the importer appeared liable for penalty under Section 114A of the Customs Act, 1962.

19. Therefore, M/s. Halliburton Offshore Services Inc. (IEC code 0398007497), having its address at Rathori Avenue, Near Hotel Marvar Palace, Jaisalmer Road, NH15, Barmer, Rajasthan-344001 were called upon to show cause in writing to the Commissioner of Customs, Customs House Kandla, Kutch, having his office at First Floor, New Custom House, Near Balaji Temple, New Kandla, within thirty days from the receipt of this notice, as to why:-

(i) The customs duties totally amounting to Rs. 8,10,51,080/- (BCD Rs.2,99,85,717/- + SWS Rs.29,98,572/- + IGST Rs.4,80,66,791/-) (Rupees Eight Crore, Ten lakh, Fifty One Thousand and Eighty only), should not be demanded and recovered from them in terms of Section 28(4) of the Customs Act, 1962 along with applicable interest in terms of Section 28AA of the Customs Act, 1962.

(ii) The Customs duty totally amounting to Rs. 8,10,51,080/- (including BCD 7.5%, SWS 10% and IGST 18%) along with interest amounting to Rs. 96,13,677/-, paid under protest vide challan no. 507 dated 28.03.2023 should not be appropriated against the duty and interest as demanded at para (i) above.

(iii) Penalty should not be imposed on them under Section 114A of the Customs Act, 1962.

(iv) Penalty should not be imposed on them under Section 117 of the Customs Act, 1962.

DEFENCE SUBMISSION-

20. The noticee in their submissions dated 01.09.2023 and 22.03.2024, interalia, submitted that-

- (i) The Noticee is a foreign company, incorporated under the laws of Ceyman Islands and has a project office in India situated at 6th floor, Unit No. 603 and 604, Satellite Gazebo, Guru hargovindji Road, Chakala, Andheri East, Mumbai-400093, Maharashtra, India. They are registered with Customs Authorities vide IEC code-0398007497.
- (ii) They are engaged in the business of providing products and services for oil drilling, formation evaluation, completion, production and reservoir consulting services (hereinafter referred to as '**petroleum operations**').
- (iii) They have entered into various contracts with Vedanta Ltd., ("the Contractor") for the provision of Integrated well construction services and integrated field plan execution services to support the petroleum operations of the Contractor at oil block situated at Barmer, Rajasthan. Similarly, they have entered into a contract with the Contractor for provision of Integrated Drilling services for Ravva oil field situated at an offshore area Krishna Godavari basin in Andhra Pradesh.
- (iv) In terms of the services provided under the aforesaid contracts, the noticee is required to provide an oilfield chemical (Saraline 185V) to support the drilling activity in petroleum operations of the Contractor.
- (v) They have further submitted that the Contractor is a public limited company registered in India and engaged in the business of exploration and production of crude oil and natural gas. The contractor has entered into Production Sharing Contract (PSC) with the Government of India alongwith other consortium partners including Oil and Natural Gas Corporation, for carrying out the petroleum operations.

Exemption on Import of Oilfield Chemicals (Saraline 185V)

- (vi) The noticee for the period April 2022 to August 2022 imported oilfield Chemical (Saraline 185V) classifiable under Tariff Item 38249900 and filed various self assessed Bills of Entry whereby the Noticee claimed the exmeption benefit of Nil rate of Basic Customs duty (BCD) and concessional rate of IGST (5%/12%) in terms of Sr.No. 404 of the Notification No. 50/2017-Cus dated 30.06.2017 as amended by Notification No. 02/2022-Cus dated 01.02.2022.
- (vii) They had complied with the conditions provided under Sr.No. 404 of the exemption Notification and accordingly furnished- (i) Certificate issued by the Contractor to the effect that import of oilfield chemical (Saraline 185V) is for use in the petroleum operations of the Contractor and (ii) an undertaking

for payment of duty, fine or penalty that becomes payable, if any of the conditions specified under the Exemption Notification is not complied with. (Annexure-D).

Scheme of the Exemption Notification

- (viii) Pursuant to the Clause 17 of PSC (Production sharing Contract) that specifically exempts Customs duty (without any sunset clause) on import of material and supplies etc. for their use in petroleum operations, the Government of India from time to time has issued notifications under Section 25 of the Customs Act to exempt various material and supplies which are used in petroleum operations.
- (ix) With the advent of GST regime, the Government of India had issued Noti. No. 50/2017-Cus dated 30.06.2017 to interalia exempts BCD and grant concessional rate of IGST on import of oilfield chemicals required in connection with petroleum operations undertaken under the specified contracts such as the PSC.
- (x) On 01.02.2022, the Government of India vide Notification No. 02/2022-Cus dated 01.02.2022 has amended the Exemption Notification whereby Sr.No. 404 alongwithlist 33 (specifying the list of goods eligible for exemption) appended to Sr.No. 404 was amended. List 33 was pruned to specify the HSN Code alongwith description of goods corresponding to such HSN codes. Pursuant to such amendment, it appears that although all the oilfield chemicals in relation to the petroleum operations are not specifically mentioned in the exemption Notification, ***however, it appears that illustrative list has been mentioned by use of the term 'namely' as opposed to the unamended provision which read as*** – all types of oil field chemicals required for drilling, production and transportation of oil or gas.
- (xi) Due to change in the coverage of oilfield chemicals under the exemption Notification, the noticee submitted that the Contractor had filed various representations before Ministry of Petroleum and Natural gas and Director General of Hydrocarbon interalia seeking clarification on coverage of various chemicals used by them in its petroleum operations. However, no formal clarification had been received till date. Annexure-E.
- (xii) They paid the differential duty alongwith interest under protest.
- (xiii) The SCN is issued with a pre-mediated mind and needs to be set aside.
- (xiv) The Department has mechanically invoked Section 28(4) of the Customs Act, 1962 without any tangible material that could provide any basis to prove that the noticee had evaded the payment of duty by reason of fraud or any willful-mistatement or suppression of facts. Accordingly, demand of Customs duty cant be raised.
- (xv) They have complied with all the conditions specified in Sr.No. 404 of the subject Notification.

Personal hearing-

21. ShriArchit Gupta, Shri Rahul Khuaran and Shri Jitendra Bagwe appeared for personal hearing on behalf of M/s. Halliburton offshore services Inc.

During the course of personal hearing, they narrated the facts of the case and also cited case laws as per the submission. The goods imported by them i.e. Saraline 185V was drilling based fluids ans oil field chemical which covered all the eligibility of availing the benefit under Noti. No. 50/2017-Cus dated 30.06.2017 and the contention of the department that Saraline 185V is not specifically mentioned in the Noti. No. 50/2017 is incorrect. They have further submitted that there was no suppression in the instant case and hence invocation of Section 28(4) and imposition of penalty under Section 114A is not correct. They further submitted that the whole case was subject to law of interpretation and denial of the exemption of their product on the ground alone that it was not specifically mentioned in the List 33 of the notification no. 50/2017 dated 30.06.2017.

Discussion and Findings-

22. I have carefully gone through the case records, show cause notice, written submission and oral submission made during the course of personal hearing.

23. The issues to be decided before me are-

(i) whether the imported goods i.e. SARALINE 185V were exempted from Basic Customs duty as per the Notification No. 50/2017-Cus dated 30.06.2017 as amended for the period 02.02.2022 to 30.08.2022?

(ii) whether the importer is liable to pay duties of Customs amounting to Rs.8,10,51,080/- (BCD Rs.2,99,85,717/-+SWS Rs.29,98,572/-+IGST Rs.4,80,66,791/-) under the provisions of Section 28(4) of the Customs Act, 1962 alongwith interest under Section 28AA of the Customs Act, 1962 by invoking extended period?

(iii) Whether penalties under Sections 114A and 117 of the Customs Act, 1962 are imposable on the importer?

24. M/s. Halliburton Offshore Services Inc having IEC code 0398007497, were engaged in import of “Oil Well Chemical: SARALINE 185V”. They imported the above said goods at Kandla Port.

25. I find that during the course of Post Audit Clearance, it was noticed that M/s.Halliburton Offshore Services Inc, had filed the following BoEs for the import of “**Oil Well Chemical: SARALINE 185V**”, classifying the same, under Customs Tariff item 38249900, availing full exemption of Basic Customs Duty and resultant SWS and concessional exemption of IGST @ 5% up to 17.07.2022 and @12% thereafter, under Sr. No. 404 of Notification No. 50/2017-Cus dated 30.06.2017,as amended vide Notification No. 02/2022-CUS dated 01.02.2022 and Notification No. 40/2022-CUS dated 13.07.2022, during the period from 02.02.2022 to 30.08.02022, as detailed, as under:-

Table-V

Sr.No.	BoE	Dated	Description	CTH	Qty	Value	Duty paid			
							BCD	SWS	IGST	total
1	8432819	26/04/2022	Supply of Oil Well Chemical: SARALINE 185V	38249900	484.916	66793623	0	0	3339681	3339681
2	8432362	26/04/2022	Supply of Oil Well Chemical: SARALINE 185V	38249900	495.444	68243804	0	0	3412190	3412190
3	9026669	8/6/2022	Supply of Oil Well Chemical: SARALINE 185V	38249900	494.987	69437960	0	0	3471898	3471898
4	9026800	8/6/2022	Supply of Oil Well Chemical: SARALINE 185V	38249900	389.802	54682394	0	0	2734120	2734120
5	2227830	30/8/2022	Supply of Oil Well Chemical: SARALINE 185V	38249900	494.550	71207080	0	0	8544850	8544850
6	2227738	30/08/2022	Supply of Oil Well Chemical: SARALINE 185V	38249900	482.310	69444705	0	0	8333365	8333365
			Total		2842.009	399809565	0	0	29836103	29836103

26. Before proceeding further, it is pertinent to examine the exemptions provided by Notification No. 50/2017-Cus dated 30.06.2017 during the relevant period.

27. The Notification No. 50/2017-Cus dated 30.06.2017, as amended vide Notification No. 02/2022-CUS dated 01.02.2022, during the period from **02.02.2022 to 17.07.02022**, is reproduced below:-

“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) and sub-section (12) of section 3, of Customs Tariff Act, 1975 (51 of 1975), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2012 -Customs, dated the 17" March, 2017 published in the Gazette of India,*

Extraordinary, Part H, Section 3, Sub-section (i), vide number G.S.R. 185 (E) dated the 17th March, 2017, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, **hereby exempts the goods of the description specified in column (3) of the Table below or column (3) of the said Table read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the said Customs Tariff Act, as are specified in the corresponding entry in column (2) of the said Table, when imported into India**,- (a) from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the standard rate specified in the corresponding entry in column (4) of the said Table; and (b) from so much of integrated tax leviable thereon under sub-section (7) of section 3 of said Customs Tariff Act, read with section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) as is in excess of the amount calculated at the rate specified in the corresponding entry in column (5) of the said Table, subject to any of the conditions, specified in the Annexure to this notification, the condition number of which is mentioned in the corresponding entry in column (6) of the said Table:

TABLE-VI

S. No.	Chapter or Heading or sub—heading or tariff item	Description of goods	Standard rate	Integrated Goods and Services Tax	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
404.	27, 31, 38, 39, 73, 82, 84, 85, 87, 89 or 90.	Goods specified in column (3) of List 33 when imported by a specified person , in relation with petroleum operations or coal bed methane operations undertaken under: (f) petroleum exploration licenses or mining leases (g) the New Exploration Licensing Policy (h) the Marginal Field Policy (MFP) (i) the Coal Bed Methane Policy (j) the Hydrocarbon Exploration Licensing Policy (HELP) or Open Acreage Licensing Policy (OALP) Explanation. — For the purposes of this notification, a specified person is a licensee, lessee, contractor or subcontractor, as defined below:- (v) 'licensee' means a person authorised to prospect for mineral oils (which include petroleum and	Nil	5%	48

OIO No. KND-CUSTM-000-COM-04-2024-25 dated 16.05.2024
DIN-20240571ML000000DBFE

	<p>natural gas) in pursuance of a petroleum exploration license granted under the Petroleum and Natural Gas Rules, 1959 made under the provisions of the Oilfields (Regulation and Development) Act, 1948 (53 of 1948)</p> <p>(vi) 'lessee' means a person authorised to mine oils (which include petroleum and natural gas) in pursuance of a petroleum mining lease granted under the Petroleum and Natural Gas Rules, 1959 made under the provisions of the Oilfields (Regulation and Development) Act, 1948 (53 of 1948)</p> <p>(vii) 'contractor' means a company (Indian or foreign) or a consortium of companies with which the Central Government has entered into an agreement in connection with petroleum operations (consisting of prospecting for or extraction or production of mineral oils) to be undertaken by such company or consortium</p> <p>(viii) 'sub-contractor' means a person engaged by licensee/lessee or contractor for the purpose of conducting petroleum operations on behalf of such licensee/lessee or contractor, as the case maybe.</p>		
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ANNEXURE

TABLE-VII

Condition No.	Condition
48.	<p>If, -</p> <p>(a) the importer is a licensee or lessee or contractor, he shall produce to the</p>

**OIO No. KND-CUSTM-000-COM-04-2024-25 dated 16.05.2024
DIN-20240571ML000000DBFE**

	<p>concerned Assistant Commissioner of Customs or the Deputy Commissioner of Customs, as the case may be, a document evidencing that he falls in the category of a specified person and give an undertaking to pay duty, fine or penalty that becomes payable, if any of the Conditions of this notification are not complied with;</p> <p>(b) the importer is a sub-contractor, he produces to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, at the time of importation, a certificate issued by a senior official who is authorised by the Board of Directors to issue such a certificate, of the concerned licensee or lessee or contractor certifying that the goods are intended for specified purpose along with an undertaking from such licensee or lessee or contractor and the subcontractor, as the case may be, liable to pay duty, fine or penalty that becomes payable, if any of the Conditions of this notification are not complied with;</p> <p>(c) the importer or any specified person (transferor), seeks to transfer the goods to any other specified person (transferee),-</p> <p>(i) the transferor shall give an intimation to the concerned Assistant Commissioner of Customs or the Deputy Commissioner of Customs, as the case may be, about such transfer and get himself discharged in respect of the goods so transferred;</p> <p>(ii) the transferee shall give an undertaking to comply with the Conditions of this notification, as if he is the importer of these goods. (iii) where the transferee is a sub-contractor, the lessee or the lesser or the licensee or the contractor of such sub-contractor, as the case maybe, shall also give an additional undertaking to make himself liable to pay duty, fine or penalty in case the sub-contractor fails to comply with the Conditions of this notification;</p> <p>(d) the goods so imported are sought to be disposed after their use in unserviceable form or as scrap, the importer or the transferee, as the case may be, shall dispose of these goods, through MSTC, or any other Government agency, notified by the Central Government for this purpose, by paying a duty at the rate of 7.5% of the transaction value of such goods.</p> <p>Explanation:- For the purposes of this Condition, goods imported on or before the 1 st day of February, 2022, claiming concessional rate of duty, either under this Condition or any preceding exemption for such goods, are to be disposed off on or after 2nd day of February, 2022, may be disposed off in accordance with clause (d) of this Condition.</p>
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List 33 (See S. No. 404 of the Table)

TABLE-VIII

S. No	Heading/ TariffItem	Description

(1)	(2)	(3)
1..
2..
3..
14.	2710 3811 3824 3905 31042000	Oilfield chemicals namely Potassium Formate, Hollow Glass Sphere Grade-IV, Aqueous Film Forming Foam 6% US Mil., Glutaraldehyde, Hydroxy methyl Phosphonium Sulphate, Ammonium Persulphate, Demulsifier Low Temperature, Potassium Chloride, Partially Hydrolysed Poly Acrylamide, Xanthum Gum polymer and Oil and Gas wells specific Cement Additives and Cesium Formate.
15.	73, 84, 85, 87, 89 and 90	Spares and accessories for the parts specified at S. No. 3, 4, 7, 8, 9, 10, 11 and 13.

28. Further, vide Notification No. 40/2022-CUS dated 13.07.2022, effective from 18.07.2022, the relevant portion of the Notification No. 50/2017-CUS dated 30.06.2017, as amended vide Notification No. 02/2022-CUS dated 01.02.2022 was further amended so as to substitute the entry “12%” for the entry in column (5), against S. No. 404 of the TABLE under Notification No. 50/2017-CUS dated 30.06.2017.

29. Before the enactment of Notification No. 02/2022 dated 01.02.2022 w.e.f. 02.02.2022, Notification No. 50/2017-CUs dated 30.06.2017 was in force. The relevant portion of the Notification 50/2017 dated 30.06.2017 is reproduced below:

TABLE-IX

S. No.	Chapter or Heading or sub-heading	Description of goods	Standard rate	Integrated Goods and Services Tax	Condition No.

	or tariff item				
(1)	(2)	(3)	(4)	(5)	(6)
404.	84 or any other Chapter	Goods specified in List 33 required in connection with: (f) petroleum operations undertaken under petroleum exploration licenses or mining leases, granted by the Government of India/the New Exploration Licensing Policy or any State Government to the Oil and Natural Gas Corporation or Oil India Limited on nomination basis (g) petroleum operations undertaken under specified contracts (h) petroleum operations undertaken under specified contracts under the New Exploration Licensing Policy (i) petroleum operations undertaken under specified contracts under the Marginal Field Policy (MFP) (j) coal bed methane operations undertaken under specified contracts under the Coal Bed Methane Policy	Nil	5%	48

Respective List 33 (See S. No. 404 of the Table) incorporated in the Notification No. 50/2017:

(1).....

(2).....

.....

(8) **All types of oil field chemicals** or coal bed methane chemicals including synthetic products used in petroleum or coal bed methane operations, oil well cement and cement additives, required for drilling, production and transportation of oil or gas.

30. I find that, earlier the importer had imported the similar type of goods declaring as "Oil Well Chemical: SARALINE 185V" under CTH 38249900, and availed benefit of exemption notification 50/2017 dated 30.06.2017, wherein "**All types of oil field chemicals**" was mentioned in the List 33, respective list for Sr. No. 404 of the Table of the Notification dated 30.06.2017.

However, the importer even after the enactment of Notification 02/2022 dated 01.02.2022 w.e.f. 02.02.2022, continued to avail the benefit of exemption for which they were not entitled as the entry "All types of oil field chemicals"

was removed and the following items were specifically inserted. The relevant portion of the List 33 is as under:

“Oilfield chemicals namely Potassium Formate, Hollow Glass Sphere Grade-IV, Aqueous Film Forming Foam 6% US Mil., Glutaraldehyde, Hydroxy methyl Phosphonium Sulphate, Ammonium Persulphate, Demulsifier Low Temperature, Potassium Chloride, Partially Hydrolysed Poly Acrylamide, Xanthum Gum polymer and Oil and Gas wells specific Cement Additives and Cesium Formate.”

31. It is evident that the Notification No. 02/2022-Cus dated 01.02.2022 amended the Notificatio No. 50/2017-Cus dated 30.06.2017 and substituted the description of goods, as given below, provided in List 33 appended to Sr. no. 404 of the table provided in Notification No. 50/2017-Cus dated 30.06.2017-

“All types of oil field chemicals or coal bed methane chemicals including synthetic products used in petroleum or coal bed methane operations, oil well cement and cement additives, required for drilling, production and transportation of oil or gas.”

with

“Oilfield chemicals namely Potassium Formate, Hollow Glass Sphere Grade-IV, Aqueous Film Forming Foam 6% US Mil., Glutaraldehyde, Hydroxymethyl PhosphoniumSulphate, Ammonium Persulphate, Demulsifier Low Temperature, Potassium Chloride, Partially Hydrolysed Poly Acrylamide, Xanthum Gum polymer and Oil and Gas wells specific Cement Additives and Cesium Formate.”

32. On perusal of the amendment carried out by the Notification No. 02/2022-Cus dated 01.02.2022, it is crystal clear that *all types of oilfield chemicals* were included in the list 33 of Sr.No. 404 of the Notification No. 50/2017-Cus dated 30.06.2017 for the period 30.06.2017 to 31.01.2022. Thereafter, w.e.f 01.02.2022, only certain and specifically included oilfield chemicals were included in the list 33 as given below -

Potassium Formate, Hollow Glass Sphere Grade-IV, Aqueous Film Forming Foam 6% US Mil., Glutaraldehyde, HydroxymethylPhosphoniumSulphate, Ammonium Persulphate, Demulsifier Low Temperature, Potassium Chloride, Partially Hydrolysed Poly Acrylamide, Xanthum Gum polymer

33. I find that the importer has argued in their submission that the term ‘namely’ has made the list illustrative in nature and not exhaustive.

34. In order to understand the meaning of word ‘namely’ I refer the judgement of Hon’ble High Court of Andhra in the matter of Balaji General

Stores vs Deputy Commissioner Of Commercial dated 19 December, 1986
[1987]65STC108(AP)-

3. Under clause (a) of sub-section (2) of section 5, in respect of the goods mentioned in the First

Schedule to the Act, sales tax is leviable at the rates and only at the point of the sale as specified in the Schedule. Item 36 of the First Schedule, which is relevant for our purpose, as it stood prior to its amendment by the A.P. General Sales Tax (Second Amendment) Act, 1976, reads as follows :

"Cosmetics and toilet preparations, namely, face powders, talcum powders, hair lotions, creams and pomades."

4. That entry was in force upto 30th August, 1976. We are concerned in these writ petitions only

with the entry 36 as it stood prior to 1st September, 1976 which is relevant for the assessment year 1975-76. It was amended by the Amendment Act 49 of 1976 with effect from 1st September, 1976 and the amended entry No. 36 is as under:

"Cosmetics and toilet preparations, **namely**, face powders, talcum powders, hair tonics, hair oils, hair lotions, face creams and snows, pomades, depilatories, tooth-powders, tooth-pastes and tooth-brushes."

5. That entry was further amended with effect from 20th September, 1983 by Ordinance No. 19 of 1983, which was later replaced by Act No. 11 of 1984 in the following terms :

"Cosmetics and toilet preparations, **including** face powders, talcum powders, hair tonics, hair oils, hair lotions, face creams and snows, pomades, depilatories, tooth-powders, tooth-pastes and tooth-brushes."

6. Once again that entry underwent an amendment with effect from 1st July, 1985, effected by the

A.P. General Sales Tax (Amendment) Act 18 of 1985. So, as at present, entry 36 is as follows :

"Cosmetics and toilet preparations, **including** scents, perfumes, face powders, talcum powders, hair tonics, hair oils, hair lotions, face creams and snows, pomades, depilatories, tooth-powders, tooth-pastes and tooth-brushes."

7. On the basis of the word "namely" used in the entry 36, the absence of the words "tooth-paste"

and "tooth-brushes" in that entry prior to 1st September, 1976, from which date tooth-paste and tooth brushes were included in entry 36 and the subsequent amendments of that entry in the years 1983 and 1985 by which the word "namely" was replaced by the word "including", it was submitted by the learned counsel for the petitioners that prior to 1st September, 1976, the goods "tooth-pastes" and "tooth-brushes" were not covered by entry 36 and as such they were subject to tax not as scheduled goods but as general goods. On the other hand it was urged by the learned Government Pleader that the articles "tooth-pastes" and "tooth-brushes" were covered by the general expression "cosmetics and toilet preparations" mentioned in entry 36 and non-enumeration of those goods in the entry was not of any significance. According to the learned Government Pleader the subsequent including of the commodities "tooth-pastes" and "tooth-brushes" with effect from 1st September, 1976 in the entry was by way of abundantia cautela and was merely intended to be clarificatory.

8. So, the short but interesting question that requires to be answered is whether prior to 1st September, 1976 the goods "tooth-paste" and "tooth-brushes" were liable to tax as general goods or as scheduled goods covered by entry 36. The general expression "cosmetics and toilet preparations" used in entry 36 is not defined in the Act. **That general expression is followed by the word "namely" which in turn is followed by certain enumerated goods.** We have to ascertain the meaning of the word "namely" in the context in which it is used. Where that word restricts the scope and ambit of the general expression "cosmetics and toilet preparations" only to the enumerated items mentioned in the entry or it is merely illustrative, is the crucial point for consideration. *The meaning of the word "namely" is given in the Webster's Third New International Dictionary as "that is to say: towit, specifically, especially, expressly. In Stroud's Judicial Dictionary (Fourth Edition)*

"namely" means "by name" or "that is to say". It is stated that the word "namely" indicates "what is included in the previous term" in contradistinction to the word "including" which imports "addition, i.e., indicates something not included". Explaining the meaning of the words "namely" it is stated in Venkatramaiya's Law Lexicon, 2nd Edition, 1983 that "it is restrictive in the sense that the general expression which precedes the word 'namely' is confined to the itemised expressions that follow the word 'namely'. Consequently the meaning of the word 'namely' can only be restrictive and can be neither illustrative nor expansive."

9. In *Commissioner of Income-tax v. Arasan Fertilisers (P.) Limited* a Division Bench of the Madras High Court construed the word "namely" occurring in item 13 of the Fifth Schedule to the Income-tax Act, 1961 which reads as under:

"(13) Fertilisers, namely, ammonium sulphate, ammonium sulphate nitrate (doublesalt), ammonium nitrate, calcium ammonium nitrate (nitrolime stone), ammoniumchloride, super phosphate, urea and complex fertilisers of synthetic origin containing both nitrogen and phosphorus, such as ammonium phosphates, ammonium sulphatephosphate and ammonium nitro phosphate." and held "that by the use of the word 'namely' in item 13, the legislature has restricted the application to those enumerated items and since the bonemeal manufactured by the assessee is not one of those enumerated items, the assessee is not entitled to the rebate claimed."

10. Following that decision, another Division Bench of that court reiterated in a case arising under the provisions of the Tamil Nadu General Sales Tax Act, 1959 that the meaning of the word "namely" can only be restrictive and can be neither illustrative nor expansive. The learned Judges emphasized that "there can be no doubt about the meaning of the word 'namely', that is, it is restrictive in the sense that the general expression which precedes the word "namely" is confined to the itemized expressions that follow the words 'namely'". (*vide State of Tamil Nadu v. Kasiraja Nadar [1981] 47 STC 337*.

11. We have already referred to some of the dictionaries in which the meaning of the word "namely" has been given as "that is to say". That expression is used in section 14 of the Central Sales Tax Act, 1956. The Supreme Court explained the meaning of the expression "that is to say" in *State of Tamil Nadu v. Pyare Lal Malhotra* a case arising under the Central Sales Tax Act, 1956. The learned Judges referred to the meaning of that expression given in Stroud's Judicial Dictionary and observed:

"..... the expression "that is to say" is employed to make clear and fix the meaning of what is to be explained or defined. Such words are not used, as a rule, to amplify a meaning while removing a possible doubt for which purpose the word 'includes' is generally employed But, in the context of single point sales tax, subject to special conditions when imposed on separate categories of specified goods, the expression was apparently meant to exhaustively enumerate the kinds of goods on a given list. The purpose of an enumeration in a statute dealing with sales tax at a single point in a series of sales would, very naturally, be to indicate the types of goods each of which would constitute a separate class for a series of sale. Otherwise, the listing itself loses all meaning and would be without any purpose behind it."

35. I also rely on the judgement of Chemicals And Fibres India Limited vs Union Of India And Others on 25 June, 1982 [1982(1)BOMCR677, 1982(10)ELT917(BOM)] to broadly understand the meaning of word 'namely'-

17. The learned Counsel for the petitioners has, at the outset, contended that Item 15A(1), as it stood at the relevant time, only applies to materials which are either (i) artificial or synthetic resins, or (2) plastic materials, because, according to the learned Counsel in Item 15A(1) *the words used immediately preceding clause (i) are "the following namely" and reference was made to a decision of the Madras High Court in State of Tamil Nadu v. Kasiraja Nadar, 47 Sales Tax Cases 337, in which a Division Bench of the Madras High Court has observed that the meaning of the word 'namely' used in a notification is restrictive in the sense that the general expression which precedes the word 'namely' is confined to the itemised expressions that follow the word 'namely' and its meaning can be neither illustrative nor expansive.*

18. Now, there can hardly be any dispute that clauses (i), (ii) and (iii) which follow the words "the following, namely" in Item 15A restrict the scope of the general descriptive words "Artificial or synthetic resins and plastic materials in any form, whether solid, liquid or pasty, or as powder, granules or flakes or in the form of moulding powders." The effect of the words the "following, namely" is that in order that a particular product should fall within Item 15A, it should not only be an artificial or synthetic resin or plastic material, but that product must be such that it also falls under clauses (i), (ii) and (iii) in Item 15A.

36. In view of the above judgements, it is imperative that the argument of the importer that the term 'namely' makes the list illustrative and not exhaustive has no substance.

37. In this regard, I find that the importer has argued that the term 'namely' is neither defined in Customs Act, 1962 nor under the Exemption Notification, therefore, they have relied on the following judgements in order to put forth the point that the term 'namely' makes the list illustrative and not exhaustive-

- (i) State of Bombay Vs Bombay Education society and Anr [AIR 1954 SC 561]
- (ii) Vee Nissan EkelectronicsVs. Commissioner of Central Excise, Mumbai [2004] (164) E.L.T.3 [SC]
- (iii) Commissioner of Sales tax VsBishramTiwari [(1971) 28 STC 485
- (iv) Alembic Glass Industries v. Collector of Central Excise, Baroda [1997 (94) E.L.T. 337 (Tribunal)]
- (v) Reckit Benckiser (India) Ltd v State of Kerala [2011] (270) E.L.T 25(Ker)

38. In this regard, I go through the said judgements one by one in order to understand their applicability on the instant matter.

38.1 State of Bombay Vs Bombay Education society and Anr [AIR 1954 SC 561]-

"Ordinarily the word "namely" imports enumeration of what is comprised in the preceding clause. In other words it ordinarily serves the purpose of equating what follows with the clause described before."

On going through the same, it is clear that the importer has erred in interpreting the meaning of word namely as the judgement cited above itself states that the word namely imports "enumeration", which means *the action of mentioning a number of things one by one, of what is comprised in the preceding clause.*

38.2 Vee Nissan Electronics Vs. Commissioner of Central Excise, Mumbai [2004] (164) E.L.T.3 [SC]-

The relevant extract of the Order is reproduced below-

“2. The question is whether the said system falls under old Tariff Item 33F or the residuary item. The old Tariff Item 33F reads as follows :-

“*Tariff Item 33F - Musical Systems.*

33F *Musical Systems commercially known as stereo or hi-fi systems, namely -*

(1) *Stereo or hi-fi amplifiers*

(2) *Speakers and speaker systems housed in acoustically designed enclosures which are ordinarily used as attachments with stereos or hi-fi systems, or with radios (including transistor sets), turners, radiograms, gramophones (including record players) and tape recorders or players (including cassette recorders or players) having in-built stereo devices.”*

3. Thus any musical system which is commercially known as a “Stereo or hi-fi system” falls within this tariff item. Undeniably the system of the appellants is commercially known as a “Stereo or hi-fi system”. The use of the word ‘namely’ in the tariff item does not mean that only the items specified thereafter fall under the definition of the term “musical system”. **The term ‘namely’ only clarifies that even those items would constitute a musical system.**

4. All authorities have held that the system manufactured by the appellants falls under old Tariff Item 33F”

It is pertinent to note here that the Hon’ble Supreme Court in the said judgement has provided the meaning in the context of classification of goods under Tariff item 33F wherein “stereo or hi-fi amplifiers” are given. The description “stereo or hi-fi amplifiers” is an illustrative term which is broad in sense and is a general expression. However, in the instant case, the description of goods provided in List 33 (of Sr.No. 404 of the Notification No. 50/2017-Cus dated 30.06.2017 as amended, is very specific, as given below, and doesn’t include SARALINE 185V-

Potassium Formate, Hollow Glass Sphere Grade-IV, Aqueous Film Forming Foam 6% US Mil., Glutaraldehyde, HydroxymethylPhosphoniumSulphate, Ammonium Persulphate, Demulsifier Low Temperature, Potassium Chloride, Partially Hydrolysed Poly Acrylamide, Xanthum Gum polymer

I find that there is no ambiguity in the instant matter as the list of goods given above is explicit and requires no interpretation.

38.2.1 In this regard, I rely on the judgement of Hon’ble Supreme court of India in the matter of M/s. COMMISSIONER, CUSTOMS CENTRAL EXCISEAND SERVICE TAX, PATNA Vs. M/S SHAPOORJI PALLONJI AND COMPANY PVT. LTD. & ORSCIVIL APPEAL NO. 3991/2023 dated 13.10.2023 wherein the Apex court held that-

"This, for the simple reason, that there exists no ambiguity insofar as the interpretation of clause 2(s) is concerned. We are endorsed in our opinion by the Latin maxim *quoties in verbis nulla est ambiguitas, ibi nulla expositio contra verba expressa fienda est*, which means that when there is no ambiguity in the words, then no exposition contrary to the words is to be made. It is, therefore, clear as a sunny day that there arises only one plausible construction of clause 2(s) which is the one the Patna High Court adopted, and which we are inclined to uphold."

"Keeping the above-said ratio in mind, an interpretation of the relevant provision resulting in the expanded scope of its operation cannot in itself be sufficient to attribute ambiguity to the provision"

38.3 **Commissioner of Sales tax Vs Bishram Tiwari [(1971) 28 STC 485**

"It is thus clear that the word 'namely' has got no fixed meaning. Depending upon the context, it may mean the things which have been named or it may mean "for example" or "such as" or atleast."

Clearly the principle laid out in the above judgement, I find that the said judgement has held that the meaning of the word "namely" shall be context specific. In the instant case, it is clear that the description of goods in List 33 mentioned in the Notification, is very specific and categorical to the goods it strives to include for the exemption, as given below-

Potassium Formate, Hollow Glass Sphere Grade-IV, Aqueous Film Forming Foam 6% US Mil., Glutaraldehyde, Hydroxymethyl Phosphonium Sulphate, Ammonium Persulphate, Demulsifier Low Temperature, Potassium Chloride, Partially Hydrolysed Poly Acrylamide, Xanthum Gum polymer

38.4 **Alembic Glass Industries v. Collector of Central Excise, Baroda [1997 (94) E.L.T. 337 (Tribunal)]**

"On going through the facts and circumstances and on perusal of the records, we find that the notification refers to Tableware of glass (other than those of lead crystal), the following namely. The word 'namely' has to be understood in the context that it is only illustrative and not exhaustive. It is a case of the department that since mug as such has not been mentioned in the notification, benefit of notification can not be extended. We find that as per Sl.No. 2 of the Table 'cup' is exempted. In the Oxford dictionary the item cup has been defined as drinking vessel usually with one side only. Similarly the mug has been defined as drinking vessel usually cylindrical with or without handle. Further, Random House Dictionary of the English language defines the term 'mug' as drinking cup, usually cylindrical in shape having one handle and a similar substance as earthenware. In view of the dictionary meaning, it is clear that mug and cup

accepted as such in the English language and with this view and particular in view of the fact the term 'namely' appeared in the table as illustrative and not exhaustive."

I find that the above judgements referred are specific to the facts of the case wherein the Notification exempted the cup and the tribunal held that mug and cup were to be exempted as both had the same definition. However in the instant case the Notification No. 50/2017-Cus dated 30.06.2017 as amended is very specific in exemption only certain Oilfield chemicals as discussed in the foregoing paras and not SARALINE 185V. I find that the language of the Notification is very clear and creates no ambiguity whatsoever.

In this regard I rely on the judgement dated 07.12.1966 of the nine judge bench of the Hon'ble Supreme Court of India in the matter of Superintendent & Legal Remembrancer, State of West Bengal vs. Corporation of Calcutta, 1967 AIR 997, wherein the Apex court stated that where the language of a statute is clear, the words are in themselves precise and unambiguous, and a literal reading does not lead to absurd construction, the necessity for employing rules of interpretation disappears and reaches its vanishing point.

38.5 Similarly, the judgement of Reckit Benckiser (India) Ltd v State of Kerala [2011] referred by the importer doesn't come to their rescue.

39. The importer has submitted that the said contractor had made various representations before the Ministry of Petroleum and Natural gas and Director General of Hydrocarbon interalia seeking clarification on coverage of various chemicals used by them in its petroleum operations. However, no formal clarification had been received till then.

39.1 In this regard, this office vide email dated 12.04.2024 had requested them to inform this office, if any clarification in the matter has been received by them or the Contractor, from the said Ministries/Department as on date. However, no reply has been received from them in the matter.

39.2 In view of the above discussion and findings, I find that the goods viz. SARALINE 185V imported by them were not eligible for exemption from the duties of Customs as provided under Notification No. 50/2017-Cus dated 30.06.2017.

40. As per Section 12 of the Customs Act, 1962 read with Section 2 of the Customs Tariff Act, 1975 and the First Schedule thereunder read with entry at

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sr. no. 250A of the TABLE under notification no. 50/2017-CUS dated 30.06.2017 (as amended), the said tariff item, as classified by the importer under Customs Tariff item **38249900**, attracted **Basic Customs Duty @ 7.5%** ad valorem. Further, as per Section 12 of the Customs Act, 1962 read with sub-section (7) of Section 3 of the Customs Tariff Act, 1975 and read with entry at sr. no. 97 of the SCHEDULE III under notification no. 1/2017-Integrated Tax (Rate) dated 28.06.2017 (as amended), the said tariff item, as classified by the importer under Customs Tariff item **38249900**, further attracted **Integrated GST @ 18%** ad valorem. As per Section 12 of the Customs Act, 1962 read with Section 110 of the Finance Act, 2018, read with notification no. 13/2018-CUS dated 02.02.2018 (as amended), the said tariff item, as classified by the importer under Customs Tariff item **38249900**, also attracted **Social Welfare Surcharge @10% of Basic Customs Duty**. Accordingly, the importer was required to pay duties of customs as under:-

TABLE-X

Sr.No.	BoE	Dated	Duty payable (Amt in Rs.)			
			<u>BCD@7.5%</u>	<u>SWS@.75%</u>	<u>IGST@18%</u>	total duty
1	8432819	26/04/2022	5009522	500952	13014737	18525211
2	8432362	26/04/2022	5118285	511829	13297305	18927419
3	9026669	8/6/2022	5207847	520785	13529987	19258618
4	9026800	8/6/2022	4101180	410118	10654864	15166162
5	2227830	30/8/2022	5340531	534053	13874700	19749284
6	2227738	30/08/2022	5208353	520835	13531301	19260489
			29985717	2998572	77902894	110887183

41. By way of wrongly claiming ineligible exemption in the Bills of entries, the importer had paid duties of customs as detailed as under:-

TABLE-XI

Sr.No.	BoE	Dated	Duty paid			
			BCD	SWS	IGST	total
1	8432819	26/04/2022	0	0	3339681	3339681
2	8432362	26/04/2022	0	0	3412190	3412190
3	9026669	8/6/2022	0	0	3471898	3471898
4	9026800	8/6/2022	0	0	2734120	2734120
5	2227830	30/8/2022	0	0	8544850	8544850
6	2227738	30/08/2022	0	0	8333365	8333365
			0	0	29836103	29836103

42. I find that by way of wrongly claiming ineligible exemption in the Bills of entries filed under Section 46 of the Customs Act, 1962, the importer had short-paid duties of customs, amounting to **Rs.8,10,51,080/- (BCD**

Rs.2,99,85,717/-+SWS Rs.29,98,572/-+IGST Rs.4,80,66,791/-), detailed as under:-

Table-XII

Sr.No.	BoE	Dated	Duty difference			Total duty liability
			BCD	SWS	IGST	
1	8432819	26/04/2022	5009522	500952	9675056	15185530
2	8432362	26/04/2022	5118285	511829	9885115	15515229
3	9026669	8/6/2022	5207847	520785	10058089	15786720
4	9026800	8/6/2022	4101180	410118	7920745	12432042
5	2227830	30/8/2022	5340531	534053	5329850	11204434
6	2227738	30/08/2022	5208353	520835	5197936	10927124
			29985717	2998572	48066791	81051080

43. Therefore, in view of the above, I hold that the importer is liable to pay Duties of Customs amounting to Rs. 8,10,51,080/- under the provisions of Section 28 of the Customs Act, 1962.

44. It is apparent that they are not eligible for the exemption provided under the Notification No. 50/2017-Cus dated 30.06.2017 as amended for the relevant period. It is also an admitted fact that the Noticee while importing such goods while availing the benefit of exemption had the knowledge that they were not eligible for such exemption and yet they went on to import such goods availing full benefit of exemption. This was a deliberate act on part of the importer.

45. It is also a fact on record that the Noticee did not inform the Customs Authority about the fact of not eligible for exemption granted under the said Notification. However, the Noticee did not hesitate to suppress the fact by taking advantage of the prevalent law of self-assessment in force, which was introduced as a part of trade facilitation, went on to avail the inadmissible benefit of such exemption. Amount of Customs Duty attributable to such benefit availed in the form of exemption of BCD, SWS and IGST, is therefore, recoverable from them under Section 28(4) of the Customs Act, 1962 by invoking extended period of limitation.

Therefore, M/s. Halliburton Offshore services Inc, is liable to pay Customs duties amounting to **Rs. 8,10,51,080/-** under Section 28(4) of the Customs Act, 1962.

46. Regarding demand of interest, I find that interest is compensatory in nature, which is imposed on the importer who has withheld the payment of any

tax or duty and such liability arises automatically by operation of law. Under the Customs Act, 1962, the liability for payment of interest arises in view of the provisions of Section 28AA of the Customs Act, 1962. Interest is always accessory to the demand of duty as held in case of Pratibha Processors Vs. UOI-1996 (88) ELT 12(SC). Hence, I hold that the amount of Custom duty demanded and confirmed in this order are recoverable from the importer together with interest at appropriate rate in terms of Section 28AA of the Act, *ibid*.

47.0 Confiscation of goods under Section 111 and redemption fine under Section 125:-

47.1 With regard to confiscation of goods having assessable value of Rs. 39,98,09,565/- imported through Kandla Port under the provisions of Section 111(m) and 111(o) of the Customs Act, 1962, I find that as per sub-section (4) and (4A) of Section 46 of the Customs Act, 1962, the importer, while presenting a bill of entry should make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall ensure the the accuracy and completeness of the information given therein. However, by way of wrongly claiming ineligible exemption in the Bills of entries filed under Section 46 of the Customs Act, 1962, the importer has clearly indulged in evasion of duties of customs, amounting to Rs. 8,10,51,080/- (BCD Rs.2,99,85,717/-+SWS Rs.29,98,572/-+IGST Rs.4,80,66,791/-), as discussed above.

47.2. Further, the importer had contravend the provisions of Section 12 of the Customs Act, 1962 read with Section 2 and 3(7) of the Customs Tariff Act, 1975 and Section 110 of the Finance Act, 2018 and the provisions of Section 46 of the Customs Act, 1962 and Notification No. 50/2017-CUS dated 30.06.2017 (as amended) and evaded payment of duties of customs amounting to Rs.8,10,51,080/-, which is liable to be recovered under section 28 of the Customs Act, 1962 along with interest as stipulated under section 28AA of the Customs Act, 1962. The importer has wrongly availed exemption under notification no. 50/2017-Cus dated 30.06.2017, as amended, as discussed hereinabove. Therefore, the imported goods are liable for confiscation under the provisions of Section 111(m) and 111(o) of the Customs Act, 1962.

47.3 Redemption fine under Section 125 of the Customs Act, 1962:-

In the instant case, the goods were neither seized nor released provisionally. Therefore, the goods are not physically available for confiscation. However, the provisions of Section 125(1) and Judgement of Hon'ble High Court of Madras in the matter of M/s. Visteon Automotive Systems Vs the Customs, 2017, as discussed below, don't necessitate the requirement of physical availability of goods for confiscation.

47.3.1 **Section 125** of the Customs Act, 1962 provides for an option to pay fine in lieu of confiscation. Relevant paras of Section 125 are reproduced hereunder:-

"Section 125: Option to pay fine in lieu of confiscation:--

(1) **Whenever confiscation of any goods is authorized 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 under 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** 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 sub-section (1), shall, in addition, be liable to any duty and charges, payable in respect of such goods."

47.3.2 It is apparent from the sub-section (1) of Section 125 that whenever confiscation of goods is authorized by this Act, the officer adjudging it shall in the case of goods other than prohibited goods give an option to pay fine in lieu of confiscation. The pre-requisite for making an offer of fine under Section 125 of the Act is pursuant to the finding that the goods are liable to be confiscated. In other words, if there is no authorisation for confiscation of such goods, the question of making an offer by the proper officer to pay the "redemption fine", would not arise. Therefore, the basic premise upon which the citadel of Section 125 of the Act rests is that the goods in question are liable to be confiscated under the Act. It is clear that the goods, amounting to assessable value of Rs. 39,98,09,565/- imported through Kandla Port, are liable to confiscation under the provision of Section 111(m) and 111(o) of the Customs Act, 1962 as discussed above, therefore the imposition of fine under Section 125 in lieu of confiscation is sustainable even though the goods are not available for confiscation.

47.3.3 In this regard, I rely on the **Judgement of Hon'ble High Court of Madras in the case of M/s. Visteon Automotive Systems vs the Customs, 2017**, wherein the Hon'ble Court in Para 23 categorically held that the physical availability of goods doesn't have any significance for imposition of redemption fine under Section 125, which is reproduced as under:-

"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)"

47.3.4 Further, the above judgement has been relied upon by the Hon'ble High Court of Gujarat in the matter of SYNERGY FERTICHEM PVT. LTD. Versus STATE OF GUJARAT {2020 (33) G.S.T.L. 513 (Guj.)}. The relevant Paras of the said judgement are reproduced hereinbelow:-

"174. The per-requisite for making an offer of fine under Section 130 of the Act is pursuant to the finding that the goods are liable to be confiscated. In other words, if there is no authorisation for confiscation of such goods, the question of making an offer by the proper officer to pay the "redemption fine", would not arise. Therefore, the basic premise upon which the citadel of Section 130 of the Act rests is that the goods in question are liable to be confiscated under the Act. It, therefore, follows that what is sought to be offered to be redeemed, are the goods, but not the improper conduct of the owner to transport the goods in contravention of the provisions of the Act or the Rules. We must also bare in mind that the owner of the goods is liable to pay penalty under Section 122 of the Act. The fine contemplated is for redeeming the goods, whereas the owner of the goods is penalized under Section 122 for doing or omitting to do any act which rendered such goods liable to be confiscated under Section 130 of the Act. 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.***

176. We may also refer to and rely upon a Supreme Court decision in the case of M.G. Abrol v. M/s. Shantilal Chhotalal & Co, AIR 1965 SC 197, wherein the Supreme Court dealt with the very same issue and held as under;

“Another contention raised for the respondent is that the Additional Collector could not confiscate the goods after they had left the country and that therefore his order of confiscation of the scrap which according to him was not steel skull scrap was bad in law. The affidavit filed by the Additional Collector, appellant No. 1, mentions the circumstances in which the scrap exported by respondent was allowed to leave the country. It was allowed to leave the country after the Collector had formally seized it and after the agents of the shipping company had undertaken not to release the documents in respect of the cargo to its consignees. This undertaking meant that the cargo would remain under the control of the customs authorities as seized cargo till further orders from the Additional Collector releasing the cargo and making it available to the consignees by the delivery of the necessary documents to them. The documents were allowed to be delivered to them on the application of the respondents praying for the passing on of the necessary documents to the purchasers of the goods in Japan and on the respondents giving a bank guarantee that the full f.o.b. value to be released from the said parch would be paid to the customs authorities towards penalty or fine in lieu of confiscation that might be imposed upon the respondents by the adjudicating authority. The customs authorities had seized the goods when they were within their jurisdiction. It is immaterial where the seized goods be kept. In the circumstances of the case, the seized goods remained on the ship and were carried to Japan. The seizure was lifted by the Additional Collector only when the respondents requested and gave bank guarantee. “The effect of the guarantee was that in case the Additional Collector adjudicated that part of the goods exported was not in accordance with the licence and had to be confiscated, the respondents, would, in lieu of confiscation of the goods, pay the fine equivalent to the of the bank guarantee. Section 183 of the Act provides that whenever confiscation is authorised by the Act the Officer adjudging it would give the owner of the goods option to pay in lieu of confiscation such fine as the officer thinks fit. This option was extended to the respondent at the stage before the goods were released from seizure. The formal order of confiscation had to be passed after the necessary enquiry and therefore when passed in the present case after the goods had actually

left this country cannot be said to be an order which could not be passed by the Customs Authorities. I, therefore, do not agree with this contention."

In view of the above discussion, case laws and provisions of Section 125 of the Custom Act, 1962, I find it apt to impose fine in lieu of confiscation under section 125(1) of the Custom Act.

48. Penalties under Section 114A and 117 of the Customs Act, 1962.

48.1 With regard to the penalty under Section 114A of the Customs Act, 1962, I find that as the goods imported by M/s. Halliburton Offshore services Inc. by wrongly claiming the benefit of the Notification No. 50/2017-Cus, have already been held liable for confiscation. Further, they have not paid the Custom duties amounting to Rs.8,10,51,080/- by way of suppression of facts, therefore, I hold them liable for penalty under section 114A of the Finance Act, 1962 also.

48.2 With regard to the penalty under Section 117 of the Customs Act, 1962, I find that the importer had contravend the provisions of Section 12 of the Customs Act, 1962 read with Section 2 and 3(7) of the Customs Tariff Act, 1975 and Section 110 of the Finance Act, 2018 and the provisions of Section 46 of the Customs Act, 1962 and Notification No. 50/2017-CUS dated 30.06.2017 (as amended) and evaded payment of duties of customs amounting to Rs.8,10,51,080/-, which is liable to be recovered under section 28 of the Customs Act, 1962 along with interest as stipulated under section 28AA of the Customs Act, 1962. The importer had availed exemption under notification no. 50/2017-CUS dated 30.06.2017, as amended, by wrongly claiming without fulfilling the conditions stipulated therein, as discussed hereinabove. Therefore, the importer has rendered themselves liable for penalty under Section 117 of the Customs Act, 1962.

49. In view of the above discussion and findings, I hereby pass the following order-

(i) I confirm and order to recover Customs duty amounting to Rs.8,10,51,080/- (BCD Rs.2,99,85,717/- +SWS Rs.29,98,572/- +IGST Rs.4,80,66,791/-) (Rupees Eight Crore Ten lakh Fifty One Thousand and Eighty only) under Section 28(4) of the Customs Act, 1962.

I order to appropriate the amount of Rs. 8,10,51,080/- paid by the importer vide Challan No. 507 dated 28.03.2023.

(ii) I order to recover interest at the applicable rate on the amount of Customs duty of Rs.8,10,51,080/- under Section 28AA of the Customs Act, 1962.

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I order to appropriate the amount of Rs. 96,13,677/- paid as interest vide Challan No. 507 dated 28.03.2023.

(iii) I order to confiscate Subject goods having quantity of 2842.009 MTs and having assessable value of Rs. 39,98,09,565/-, imported through Kandla Port under Section 111(m) and 111(o) of the Customs Act, 1962 for wrongly availing benefit of Notification No. 50/2017-Customs dated 30.06.2017, as amended by Notification No. 02/2022-Customs dated 01.02.2022.

As regards the goods not physically available for confiscation, I impose redemption fine of Rs. 1,00,00,000/- (Rupees One Crore only) in lieu of confiscation under Section 125 of the Customs Act, 1962.

(iv) I impose penalty equal to duty confirmed at (i) above plus interest thereon, under Section 114A of the Customs Act, 1962. If the duty and interest as confirmed above is paid within 30 days of communication of this order, the amount of penalty imposed would be 25% of the duty and interest as per the first proviso to Section 114A ibid subject to the condition that the amount of penalty so determined is also paid within said period of 30 days.

(v) I impose penalty of Rs. 4,00,000/- (Rupees Four Lakhs only) upon the importer under Section 117 of the Customs Act, 1962.

50. This order is issued without prejudice to any other action that may be taken against the importer or any other person under the Customs Act, 1962 or any other law for the time being in force.

(M. Ram Mohan Rao),
Commissioner,
Custom House, Kandla

F.No.GEN/ADJ/COMM/265/2023-Adjn-O/o Commr-Cus-Kandla

By Speed Post/ email

To,

M/s. Halliburton Offshore Services Inc

Rathori Avenue, Near Hotel Marvar Palace,

Jaisalmer Road, NH15, Barmer, Rajasthan-344001

**OIO No. KND-CUSTM-000-COM-04-2024-25 dated 16.05.2024
DIN-20240571ML000000DBFE**

Copy to:-

1. The Chief Commissioner, Customs Zone, Ahmedabad for the purpose of Review
2. The Superintendent (TRC/EDI), Custom House Kandla, for further necessary action.
3. Guard File