

1838 & 1839

	<p>कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा, सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS: CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421. PHONE : 02838-271426/271423 FAX :02838- 271425 Email: adj-mundra@gov.in</p>	
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DIN: 20240571MO0000224607

SHOW CAUSE NOTICE**(ISSUED UNDER SECTION 28(4) OF THE CUSTOMS ACT, 1962)**

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. Mundra Solar PV Limited** (IEC-0815006926) (hereinafter referred to as '**the importer**' or "**M/s. MSPVL**"), registered address at "Adani House, Near Mithakhali Six Road, Navrangpura, Ahmedabad, Gujrat-380009 and corporate office at Adani Corporate House, Shantigram, Near Vaishno Devi Circle, S G Highway, Khodiyar, Ahmedabad-382421, were availing ineligible exemption of Customs duty under **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) [**RUD No. 1**] while importing **aluminium frame for solar, PV Junction Box and Aluminium Paste to be used for manufacturing of solar panels/modules**. They were also availing the ineligible exemption under **Sr. No. 18**, List A of Notification No. 25/1999-Customs dated 28.02.1999 [**RUD No. 2**] while importing **aluminium frame for solar to be used for manufacturing of solar panels/modules**. The importer was also found to be engaged in misdeclaration of the imported goods namely "**Aluminium Paste**" under CTH 76169990 instead of its correct CTH 32129030 in order to avail ineligible Customs duty exemption under **Sr. No. 18**, List A of Notification No. 25/1999 dated 28.02.1999.

2. The exemption 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 amended 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.

2.1 The relevant entries of the Notification No. 24/2005-Cus prior to amendment by Notification No. 15/2022-Customs dated 01.02.2022 are appended as under: -

Notification No. 24/2005 - Customs dated 1st March 2005

o/c

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 exempts the following goods, falling under the heading, sub-heading or tariff-item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and specified in column (2) of the Table below, when imported into India, from the whole of the duty of customs leviable thereon under the said First Schedule, namely:-

No.	Heading, sub-heading or tariff item	Description
1	2	3
23.	8541	All goods
39	Any Chapter except Chapter 74	All goods [except solar tempered glass or solar tempered (anti-reflective coated) glass] for the manufacture of goods covered by S. Nos. 1 to 38 above, provided that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017

2.2 The relevant entries of Notification No. 15/2022-Customs dated 01.02.2022, through which, the amendments in Notification No. 24/2005-Cus were affected from 01.04.2022: -

Notification No. 15/2022-Customs; New Delhi, the 1st 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 for 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 1 st March, 2005, vide number G.S.R. 122(E), dated the 1 st March, 2005	In the said notification, in the TABLE, - i. against Sr. No.13S, in column (3), after the item (j), the following item shall be inserted with effect from the 1 st day of April 2022, namely: - "(k) Wrist wearable devices (commonly known as smart watches)"; ii. for Sr. No. 23 and the entries relating thereto, the following Sr. No. and entries shall be substituted with effect from the 1 st day of April 2022, namely: -

		"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.";
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2.3 The subject goods **aluminium frame for solar, PV Junction Box and Aluminium Paste** (for manufacturing of solar modules) do not appear to be used for the manufacturing of goods covered under Sr. No.1 to 38 of the said notification because the exemption for the said goods were withdrawn by substituting **Sr. No. 23** of the subject notification vide Notification No. 15/2022 dated 01.02.2022. Therefore, it appears that the exemption under Sr. No. 39 of Notification No. 24/2005-Customs dated 01.03.2005 as amended, were not available to the importer and hence the subject goods appear liable to applicable Basic Customs Duty, SWS, and IGST.

3. On further analysis, it also appears that the imported items **aluminium frame for solar** (for manufacturing of solar panels/modules) were also not eligible for the Customs duty exemption under Sr. No. 18, List-A of Notification No. 25/1999-Customs dated 28.02.1999 as these goods are neither specified in column no. (3) nor falling under the chapter or heading or sub-heading or tariff items specified in the corresponding column (2) of the table provided under the said notification.

3.1 The relevant entries of the Notification No. 25/1999-Customs dated 28.02.1999 are appended as under: -

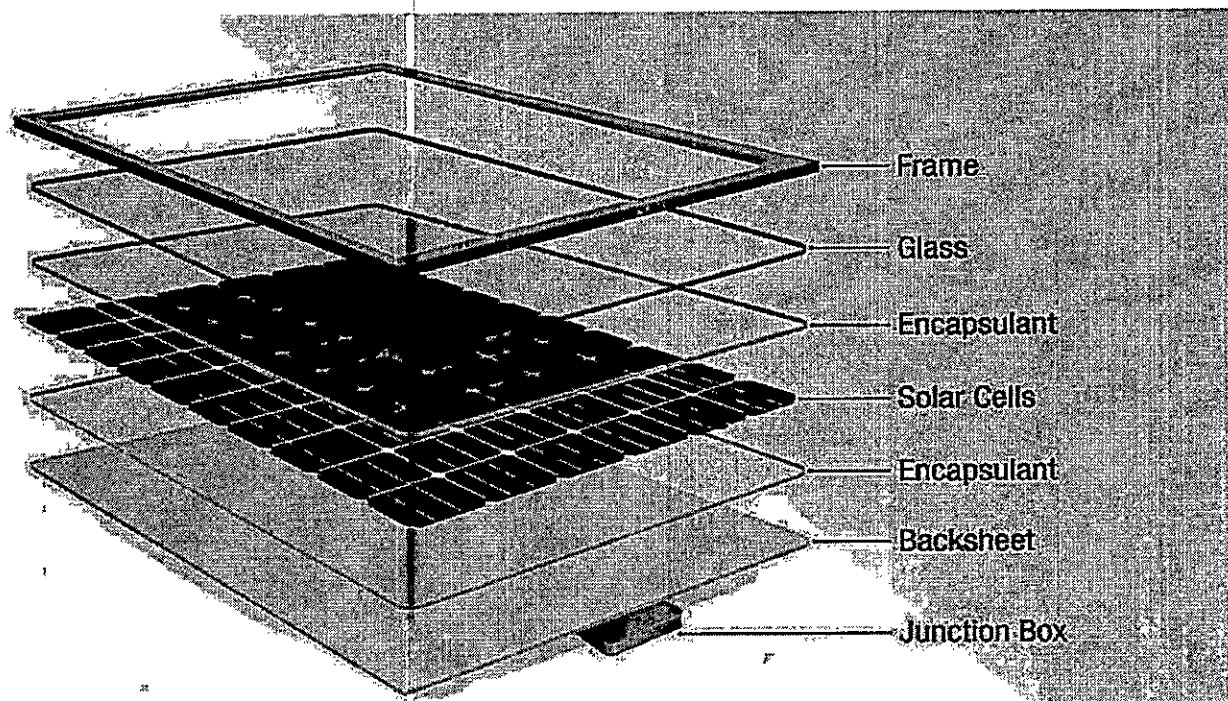
Notification No. 25/1999-Cus dated 28.02.1999- Serial number 18 (List-A):

S No	Heading, sub-heading, or tariff item	Description of imported goods	Description of finished goods
(1)	(2)	(3)	(4)
..
	28,38,39,70,74,76	Aluminium paste; ethylene vinyl acetate sheets (EVA); primer for EVA; crane glass; tedlar coated aluminium sheet; phosphorous oxychloride; halo carbon (CF4)/ freon gas; tinned copper interconnect; toughened glass with low iron content and transmissivity of min. 90% and above; multilayered sheets with Tedlar base; Fluro polymer resin; ultra-high purity (UHP) silane in UHP nitrogen; UHP silane; diborane in UHP silane; MOCVD grade phosphine in UHP silane; silver sputtering target; high purity tin tetrachloride; nitrogen trifluoride of 99 % purity and above.	Solar Cells/ Modules.
..

Hence, it appears that these imported goods do not fulfil the conditions required to be eligible for exemption under Sr. No. 18 (List A) of the Notification No. 25/1999-Customs dated 28.02.1999. Therefore, the subject imported items appear liable to applicable Basic Customs Duty, SWS, and IGST.

4. The importer had also misclassified "Aluminium Paste" under CTH 76169990, instead of its correct classification under CTH 32129030, in order to avail of the ineligible Customs duty exemption benefits under Sr. No. 18, List A of Notification No. 25/1999; whereas the same were classified under CTH 32129030 in commercial invoices supplied by the foreign supplier.

5. In order to better appreciate the issue, the 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>: -



6. Accordingly, an investigation was initiated and following summons were issued to M/s. MSPVL to furnish the relevant records and tender statement. However, none appeared before the Senior Intelligence Officer, DRI, Jaipur.

TABLE - I

Particular of document	Date of issuance	Date of appearance	Remarks	Remarks
Summons-I	10.06.2022	17.06.2022	Did not appear. Response received vide letter dated 16.06.2022 and requested 3 weeks' time to submit documents called for or to appear.	RUD No. 3
Summons-II	27.06.2022	06.07.2022	Did not appear. Response received vide letter dated 05.07.2022 and requested 2 weeks' time.	RUD No. 4

Summons-III	08.07.2022	19.07.2022	Did not appear. Response received vide letter dated 18.07.2022 requesting 10 days' time to submit documents called for or to appear.	RUD No. 5
Summons-IV	25.07.2022	01.08.2022	Did not appear. The importer vide letter dated 05.08.2022 had reported that they had paid differential duty along with applicable interest and requested not to issue show cause notice and to close the file.	RUD No. 6

7. Whereas, M/s. MSPVL vide letter dated 01.08.2022 [**RUD No. 7**], received on 17.08.2022, inter alia, submitted that: -

- they had availed of the benefits of Customs duty exemption under Notification No 24/2005-Cus dated 01.03.2005 (inadvertently mentioned as 2015) as amended up to 01.02.2022, which was in force providing exemption from BCD on solar cells, solar modules and all other goods (except for goods falling under chapter 74- i.e., Glass) imported into India and used for manufacturing of solar cells and solar modules;
- they were importing raw materials viz. Junction Box, Aluminium Paste and Aluminium Frame etc. for the purpose of manufacturing of solar cells and solar modules. Vide Notification No. 15/2022 dated 01.02.2022, Sr. No. 23 of Notification No. 24/2005- dated 01.03.2015 was amended, whereby exemptions were withdrawn and Customs duty was levied on import of the subject goods w.e.f 01.04.2022;
- Notification No. 24/2005 providing exemption, was available at the ICEGATE online portal even after 01.04.2022, therefore they cleared the goods by availing of the benefits of Notification No. 24/2005 while filing BoEs under bonafide belief, since the notification was then available on the online portal;
- Notification No. 25/1999 dated 28.02.1999 provided an exemption from payment of Customs duty on Aluminium paste. Thus, MSPVL under bonafide belief that since there was no separate entry for Aluminium Frame, they had cleared both Aluminium Frame and Aluminium Paste classifying under the same CTH 76169990 and availed of the benefits under Notification 25/1999;
- on receipt of the summons, they had taken up the matter with their advocate and paid the differential duty along with applicable interest;
- they had requested not to issue a show cause notice and to close the file.

8. Non-appearance/ Non-cooperation of M/s. MSPVL during the investigation and action taken by DRI, Jaipur: During investigation, M/s. MSPVL were summoned as detailed in para 6, but they did not respond to any of the summons and never appeared before the Senior Intelligence Officer, DRI, Jaipur to tender their statements. Accordingly, a complaint was filed under Sections 174 and 175 of the IPC read with Section 108 of the Customs Act, 1962 before the competent court viz. the Court of Metropolitan Magistrate No. 11, Jaipur Metropolitan I on 05.04.2023 [RUD No. 8].

SUMMARY OF THE INVESTIGATION

Non-payment of the applicable Customs duties by wrong availment of the 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 goods namely "Aluminium frame for solar, PV Junction Box and Aluminium Paste"

9. Whereas, it appears that M/s. MSPVL had imported **aluminium frame for solar, PV Junction Box and Aluminium Paste** (for solar panels/modules) by wrongly availing of the exemption benefits under Sr. No. 39 of the 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), wherein the exemption provided to the subject goods were withdrawn by substituting Sr. No. 23 as *"goods other than Photovoltaic cells whether or not assembled in modules or made up into panels"*. Therefore, it appears that the benefits of Sr. No. 39 are not available for the imported goods namely **"aluminium frame for solar, PV Junction Box and Aluminium Paste"** from 01.04.2022. From the submission of the importer, it appears that the importer was fully aware of the said notification and the same was in the public domain too, however, they wilfully misstated the serial number of the said notification, with an intent to evade payment of Customs duty. The importer's stand that the said notification was available on the online portal, and therefore they had erroneously availed of the benefits of said notification, appears to be an afterthought; and in no way it absolves them from their responsibilities. Thus, it appears that the importer had wilfully evaded the applicable Customs duties on **'aluminium frame for solar, PV Junction Box and Aluminium Paste'** imported vide Bills of Entry as detailed in **Annexure-A** to this notice.

9.1 Accordingly, it appears that the importer had evaded customs duties aggregating to **Rs. 52,24,274/-** as detailed in **Annexure-A**, the abstract of which is tabulated below: -

TABLE - II

Sr. No.	Custom House Code	Description of goods	Notification Availed	Assessable Value (Rs.)	Differential customs Duty Payable (Rs.)	Remarks
1.	INMUN1	ALUMINUM FRAME FOR SOLAR SIZE - LONG 1998X35MM, OPT, AL.SLV CORNER: PREPRESSED, PRECRIMPED, FLANGE THICKNESS: 1.3MM	24/2005	2,43,21,114	31,56,881	Annexure-A

		and ALUMINUM FRAME FOR SOLAR SIZE - SHORT 1010X35MM, OPT, AL.SLV PRE FITTED CORNER: PREPRESSED, PRECRIMPED, FLANGE THICKNES				
2.	INMUN1	PV JUNCTION BOX, MODEL: PV-JB06X (X=A:1500V), 1500V, IP68 WITH 1.2MTR- CO02 CONNECTOR	24/2005	1,26,88,500	16,46,967	
3.	INMUN1	ALUMINUM PASTE (RX8252H10)	24/2005	32,39,028	4,20,426	
		TOTAL		Rs.4,02,48,642	Rs.52,24,274	

Non-payment of the applicable Customs duties by wrong availment of the benefit of Sr. No. 18(List A) of Notification No. 25/1999 on the import of goods namely "Aluminium Frame for Solar"

10. Whereas, it also appears that the importer had wrongly availed of the benefits of Sr. No. 18 (List A) of Notification No. 25/1999 on the import of goods namely "**Aluminium Frame for Solar**", as the same was not specified at the Sr. No. 18 (List A) of the subject notification. The details of such Bills of Entry are mentioned in Annexure-B to this notice. In the submission made by the importer, they had mentioned that they had wrongly availed of the exemption benefits under Notification No. 25/1999-Customs on the imported item **Aluminium Frame for Solar**, as the said item was never mentioned in the subject notification, thus, it appears that the importer was fully aware of the said notification, which was in the public domain too, however, the importer had intentionally filed the Bills of Entry listed in **Annexure-B** by claiming the ineligible exemption of Notification No. 25/1999-Customs.

10.1 The Sr. No. 18 (List A) of Notification No. 25/1999 dated 28.02.1999 provides for exemption from customs duty in respect of following goods viz.,

"Aluminium paste; ethylene vinyl acetate sheets (EVA); primer for EVA; Crane glass; tedlar coated aluminium sheet; phosphorous oxychloride; halo carbon (CF4)/Freon gas; tinned copper interconnect; toughened glass with low iron content and transmissivity of min. 90% and above; multilayered sheets with Tedlar base; fluoro polymer resin; ultra-high purity (UHP) silane in UHP nitrogen; UHP silane; diborane in UHP silane,' MOCVD grade phosphine in UHP silane; silver sputtering target; high purity tin tetrachloride; nitrogen trifluoride of 99% purity and above".

10.2. It can be seen that only specific items are covered/ mentioned in Serial No. 18 (List A) of Notification No. 25/1999-Customs and there is only one entry with the word '**Aluminium**', namely "**Aluminium Paste**". By no stretch of imagination, "**Aluminium Paste**" and "**Aluminium Frame**" can be construed as one and the same thing. Thus, it appears that the importer had wilfully misstated that their goods were covered under the said exemption benefits with intent to evade applicable Basic Customs Duty (BCD), SWS, and IGST on the imported goods as detailed in **Annexure-B** to this notice.

10.3. Accordingly, it appears that the importer had evaded customs duties aggregating to **Rs. 3,52,39,516 /-** as detailed in Annexure-B, the abstract of which is tabulated below:

TABLE - III

Sr. No.	Custom House Code	Description of Goods	of	Notification claimed	Assessable Value (Rs.)	Differential Duty Payable (Rs.)	Remarks
1.	INMUN 1	ALUMINIUM FRAME FOR SIZE-LONG 1998X35MM OPT,AL,, SLV,CORNER:PRE PRESSED, PRECRIMPED,FLANGE THICKNESS:1.3M M(18792 PCS and ALUMINIUM FRAME FOR SIZE-SHORT 1010X35MM OPT,AL,,SLV,PRE FITTED CORNER:PREPRESSED, PRECRIMPED,FLANGE THICKNESS:1.3		25/1999	27,14,90,881	3,52,39,516	Annexure-B
		Total			27,14,90,881	3,52,39,516	

Misclassification of imported goods namely Aluminium Paste and non-payment of applicable Customs duties by wrong availment of the exemption benefits under Sr. No. 18A of Notification No.25/1999-Customs

11. Whereas, it appears that M/s. MSPVL had imported "**Aluminium Paste**" by classifying the same under CTH 76169990 and by availing of the exemption benefits under Sr. No. 18A of Notification No.25/1999-Customs dated 28.02.1999. However, the classification of the subject item under CTH 76169990 does not appear appropriate as discussed in succeeding paras.

11.1 On examination of data from the e Sanchit portal, the subject item was found classified as mentioned in the below table in commercial invoices supplied by the foreign supplier.

TABLE - IV

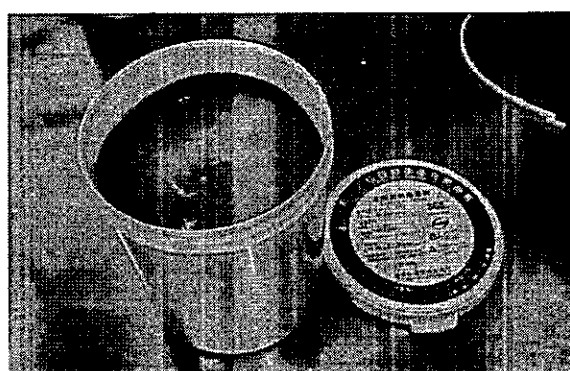
[Description in commercial invoice]

Commercial Invoice No	Date of invoice	Connected BOE No./ Date	Item Description	Quantity	CTH
2022061501 [RUD No. 9]	15.06.2022	9644802/ 20.07.2022	Aluminium Paste (RX8252H10)	2520	32129030
2022053101 [RUD No. 10]	31.05.2022	9413122/ 05.07.2022	Aluminium Paste (RX8252H10)	7200	32129030
2022022601 [RUD No. 11]	26.02.2022	8139460/ 04.04.2022	Aluminium Paste (RX8252H10)	7200	32129030
2022041501 [RUD No. 12]	15.04.2022	8685076/ 14.05.2022	Al Paste (RX8252H10)	14400	32129030

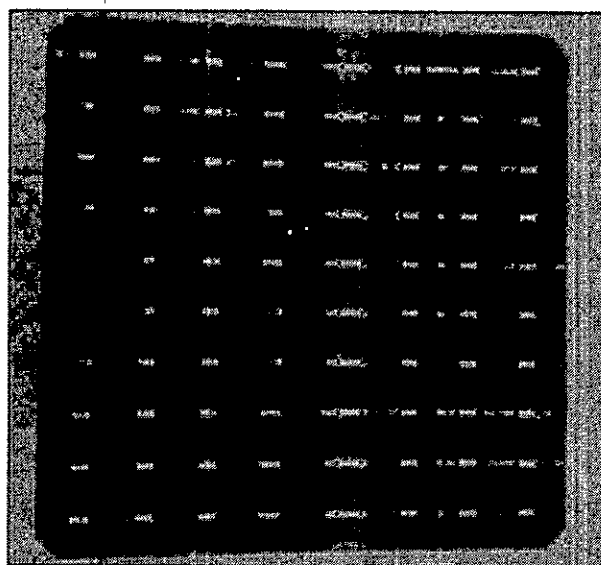
11.1.2 In view of the above, it appears that M/s. MSPVL had changed the declaration of the imported goods by changing the CTH from the one provided by their overseas suppliers in commercial invoices. The suppliers had classified the imported items under HS code 32, while the importer classified the same under CTH 7616, which does not appear appropriate. The importer could not provide any cogent reason for such an act of commission that has resulted in availing of the ineligible exemption. Therefore, it appears that M/s. MSPVL had misclassified the same with intent to avail undue benefits of Customs duty exemption under Sr. No. 18, List-A of Notification No. 25/1999 dated 28.02.1999.

11.2 Classification of imported Aluminium Paste:

The aluminium paste which contains aluminium powder (70% to 85%), organic binders and thinner, is used in the manufacture of solar cells. It is painted/ printed on the front and back of silicon wafers to make metallic contacts on the positive and negative sides of the solar cell. The aluminium layer provides a back surface field and makes a connection with other devices while connecting in series through the soldering process. It is a mixture of solvent and aluminium pigments.



(Aluminium Paste)



(a solar cell having white lines printed/painted with aluminium paste)

11.2.2 Impugned goods (imported aluminium paste) merits classification under CTH 3212: -

- The classification of goods is governed by the principles of “General Rules for the Interpretation of the Schedule (GRI)”.
- As per Rule 1 of GRI, the classification shall be determined according to the terms of the headings of tariff schedule and any relative Section or Chapter Notes.

GENERAL RULES FOR THE INTERPRETATION OF THE HARMONIZED SYSTEM

Classification of goods in the Nomenclature shall be governed by the following principles:

1. *The titles of sections, chapters and sub-chapters are provided for ease of reference only; for legal purposes, **classification shall be determined according to the terms of the headings of tariff schedule and any relative section or chapter notes.....***
- As per Rule 3(a) of GRI “the heading which provides the most specific description shall be preferred to headings providing a more general description”. There is a specific entry for Aluminium Paste under CTH 32129030.

Rule 3(a) of GRI: -

3. *(a) **The heading which provides the most specific description shall be preferred to headings providing a more general description.***

- Tariff Heading 3212:

3212 *Pigments (Including Metallic Powders and Flakes) Dispersed In Non-Aqueous Media, In Liquid Or Paste Form, Of A Kind Used In The Manufacture Of Paints (Including Enamels); Stamping Foils; Dyes And Other Colouring Matter Put Up In Forms Or Packings For Retail Sale*

3212 10 00 - *Stamping foils*

3212 90 - *Other:*

3212 90 10 -- *Pigments in linseed oil, white spirit, spirit of kg. turpentine, varnish and other paints or enamel media not elsewhere specified or included*

3212 90 20 -- *Dyes and other colouring matter put up in forms or packings for retail sale*

3212 90 30 -- Aluminium paste

3212 90 90 -- *Other*

- Moreover, as per US Customs cross ruling 857411 dated 19.11.1990, it was held that "the applicable subheading for the Aluminium Paste would be 321290". **(RUD No. 13).**
- Further, as per US Customs cross ruling NY 859491 dated 01.03.1991, it was held that the applicable subheading for the Aluminium Paste would be 321290. **(RUD No. 14).**
- Further, the aluminium paste does not fulfil the mandatory condition prescribed in **Note 8 (b) to the Section XV**, which is reproduced as under:

"8. In this section, the following expressions have the meanings hereby assigned to them:

(b) Powders Products of which 90 % or more by weight passes through a sieve having a mesh aperture of 1 mm."

- The chapter note of chapter 32 nowhere excludes the Aluminium Paste used in the manufacture of solar cells.
- Thus, in view of the above-stated facts, it appears that the Aluminium Paste is correctly classifiable under CTH 32129030.

11.2.3 Rejection of classification under CTH 7616

The CTH 7616 is reproduced below:

7616 OTHER ARTICLES OF ALUMINIUM

7616 10 00 - *Nails, tacks, staples (other than those of heading 8305), screws, bolts, nuts, screw hooks, rivets, cotters, cotter-pins, washers and similar articles*

- *Other:*

7616 91 00 -- *Cloth, grill, netting and fencing, of aluminium wire*

7616 99 -- *Other:*

7616 99 10 -- *Expanded metal of aluminium and aluminium alloys*

7616 99 20 -- *Chains kg.*

7616 99 30 -- *Bobbins*

7616 99 90 -- *Other*

76169990 *HG Aluminium art ware*

EN 76.16 states, in pertinent part: "This heading covers all articles of Aluminium other than those covered by the preceding headings of this chapter, or by note 1 to section XV, or articles specified or included in chapter 82 or 83, **or more specifically covered elsewhere in the Nomenclature.**"

It appears that the impugned goods are specifically covered under Tariff Item 3212 9030, and therefore are excluded from the purview of CTH 7616.

11.2.4 Apparent intent behind misclassification

- As detailed above, the exemption under Sr. No. 18, List-A of Notification No. 25/1999 is not applicable to goods covered under Chapter 32 of the Customs Tariff Act. Because of omissions and commissions discussed supra, the importer appears to have wrongly classified the subject item under chapter 76 to avail of the undue exemption benefits of the subject notification.
- For the sake of clarity and at the cost of repetition, the relevant entries of the Notification No. 25/1999 dated 28.02.1999 are appended as under: -

Notification No. 25/1999 dated 28.02.1999- Serial number 18A:

S No	Heading, sub-heading or tariff item	Description of imported goods	Description of finished goods
(1)	(2)	(3)	(4)
..
18	28,38,39,70,74,76	Aluminium paste, ethylene vinyl acetate sheets (EVA); primer for EVA; crane glass; tedlar coated aluminium sheet; phosphorous oxychloride; halo carbon (CF4)/ freon gas; tinned copper interconnect; toughened glass with low iron content and transmittivity of min. 90% and above; multilayered sheets with tedlar base; fluoro polymer resin; ultra high purity (UHP) silane in UHP nitrogen; UHP silane; diborane in UHP silane; MOCVD grade phosphine in UHP silane; silver sputtering target; high purity tin tetrachloride; nitrogen trifluoride of 99 % purity and above.	Solar Cells/Modules.
..

The chapter or heading or sub-heading of the subject items (CTH 32) is not specified in the corresponding column (2) of the table, hence, does not fulfil the conditions to be eligible for exemption benefits under Sr. No. 18 (List A) of Notification No. 25/1999, therefore they are liable to Basic Customs Duty, SWS and IGST thereof.

- Duty structure under CTH 7616 and 3212 is tabulated below:

CTH	Exemption benefits	BCD	SWS (of BCD)	IGST
7616	25/1999	0	0	18%
3212	Nil	10%	10%	18%

- It is apparent that applicable duties on goods classifiable under CTH 3212 is more than the goods under CTH 7616. The action of the importer to misclassify the goods under CTH 7616, has therefore, financial implications.
- Accordingly, it appears that the importer had **wilfully** evaded the applicable Customs duties on the of '**Aluminium Paste**' imported vide Bills of Entry as detailed in attached **Annexure-C** to this notice.

11.3 By non-payment of the applicable Customs duties, the importer had evaded customs duties aggregating to **Rs.17,68,674/-** as detailed in **Annexure-C**, the abstract of which is tabulated below:

TABLE - V

Sr. No.	Custom House Code	Description of goods	Notification Availed	Assessable Value (Rs.)	Differential customs Duty Payable (Rs.)	Remarks
1.	INAMD4	ALUMINUM PASTE (RX8401E) (FREE OF COST)	25/1999	26,49,186	3,43,864	Annexure-C
2.	INNSA1	ALUMINUM PASTE (RX8252H10)	25/1999	11,87,953	1,54,196	
3.	INMUN1	SUPPLY OF ALUMINUM PASTE (RX8252H10)	25/1999	97,89,012	12,70,614	
		TOTAL		1,36,26,151	17,68,674	

Obligation under Self-assessment and reasons for raising duty demand invoking extended period:

12. 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 amendments 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 centre, 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 has 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. 8th 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 applied in respect of the imported goods while presenting the Bill of Entry. 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 has completely failed in fulfilling their responsibility by not paying applicable Customs duties 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 benefits of exemption notifications [Notification No.24/2005-Customs dated 01.03.2005 as amended vide Notification No. 15/2022-Cus, Notification No.-25/1998 and Notification No. 25/1999] and thereby evading payment of the applicable Customs Duty.

12.1 The omissions and commissions of the importer appear to suggest that the ineligible exemption of notifications was availed of by mis-stating and suppressing the facts in the Bills of Entry for financial benefits by willfully evading the applicable Customs duties. Some of the illustrations are as below:

- In respect of import of **"Aluminium Paste"** the importer had changed the declaration of the imported goods by changing the CTH from the one provided by their overseas suppliers in commercial invoices. The suppliers had classified the imported items under HS code 32, whereas the importer classified the same under CTH 7616, which does not appear appropriate. The importer could not provide any cogent reason for such an act of commission that has resulted in availing of the ineligible exemption. Therefore, it appears that M/s. MSPVL had misclassified the same with intent to avail the undue benefits of Customs duty exemption under Sr. No. 18, List-A of Notification No. 25/1999 dated 28.02.1999.
- At serial No. 18 (List A) of Notification No. 25/1999-Customs, there is only one entry with the word **'Aluminium'**, namely **"Aluminium Paste"** for which exemption from customs duty is provided. However, the importer has availed of the exemption benefits of the said entry on import of **"Aluminium Frame"**. By no stretch of imagination, **"Aluminium Paste"** and **"Aluminium Frame"** can be construed as one and the same thing. The importer could not provide any justification for the same.
- The importer had not only claimed ineligible benefits of Notification No 24/2005 on import of Aluminium Frame but also switched claim under another exemption Notification 25/1999, post amendments in Notification No.24/2005.
- As detailed in para 6 supra, during investigations, the importer was summoned multiple times, but they did not respond to any of the summons and never appeared before the Senior Intelligence Officer, DRI, Jaipur to tender their statements. The non-cooperation in investigations stems from their wilful omission and commission resulting in evasion of customs duty and loss to exchequer.

13. The relevant provisions of law relating to the import of goods in general, the policy and rules relating to the liability of the goods to confiscation, and the persons concerned to penalty for improper importation under the provisions of Customs Act, 1962 and other relevant laws for the time being in force, are summarized as under: -

13.1 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 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 112- Penalty for improper importation of goods, etc.—Any person,—

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111 shall be liable,—

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:

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 goods³⁹[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.

20.2 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 licence or importing or exporting any goods.

Confiscation of imported goods, the role played, and imposition of penalty on the importer: -

14. From the facts and pieces of evidence discussed in paras supra, it appears that the importer had willingly and knowingly evaded the applicable Customs duties by wrongly availing of the exemption benefits of 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) and benefits of Sr. No. 18 (List-A) of Notification-25/1999. These facts have also been accepted by the importer in their written submissions. Moreover, from their submissions, it appears that the importer was fully aware of the said notifications and the same were in the public domain too. It had been also observed that after the amendments made in Notification No. 24/2005, the importer had started and switched to avail the exemption benefits under Notification No. 25/1999, on import of **Aluminium Frame** for solar w.e.f. 14.04.2022. Therefore, it appears that the importer was well aware of the amendments made in Notification No. 24/2005 but with intend to evade payment of applicable customs duty, they started claiming exemption under other Notification, though not eligible. In addition, the importer had intentionally and deliberately misclassified

Aluminium Paste to avail of the ineligible benefits of the subject notifications. Thereby, it appears that despite being fully aware of the subject notifications, the importer had wrongly availed of the exemptions benefits on goods imported by them vide Bills of Entry as listed in **Annexures-A to C**. Thus, it appears that the importer has wilfully evaded the applicable Customs duties on the goods imported vide Bills of Entry as detailed in attached **Annexures-A to C**.

Wrong availment of exemption benefits under Sr. No. 39 of Not. No. 24/2005 on import of aluminium frame for solar, PV Junction Box and Aluminium Paste: -

14.1 The exemption benefits provided under Notification No. 24/2005-Customs were withdrawn for the imported goods to be used in the manufacturing of solar modules/panels vide Notification No. 15/2022-Customs dated 01.02.2022 (w.e.f. 01.04.2022). It appears that the importer was fully aware of the said notification and its amendment, however, the importer had wrongly availed of the exemption benefits on the **aluminium frame for solar, PV Junction Box and Aluminium Paste** post amendments in Notification No. 24/2005 vide Bills of Entry listed in Annexure A. Thus, it appears that the importer has wilfully evaded the applicable Customs duties on the goods imported vide Bills of Entry as detailed in Annexure A. Thus, by the above acts and commission, the importer has 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 has 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 was done to evade the payment of applicable Basic Customs Duty and this has resulted in short-payment of other Customs levies viz. Social Welfare Cess and IGST as BCD form part of the value for computation of these duties. **This act of wilful misstatement of the applicability of amended Notification No.-24/2005-Customs by M/s. Mundra Solar PV Limited has rendered imported goods as mentioned in column 6 of Annexures A, valued at Rs.4,02,48,642/-, liable to confiscation as per the provisions of Section 111(m) of the Customs Act, 1962.**

Wrong availment of exemption benefits under Sr. No. 18 (List A) of Not. No. 25/1999 on import of Aluminium Frame and misclassification of Aluminium Paste to avail of the exemption benefits of the subject notification

14.2. Further, it appears that M/s. Mundra Solar Energy Limited has imported goods by wrong availment of the benefits under Sr. No. 18 (List A) of Notification No.25/1999 on the import of goods namely aluminium frame for solar as the same were not specified in Sr. No. 18, List-A of the subject notification. It has been further noticed that M/s. Mundra Solar PV Limited has also misclassified their imported goods namely **Paste Back Aluminium or Aluminium Paste or Paste back Aluminium under CTH 761619990 with an intent to avail of the undue benefits of Customs duty exemption** under Sr. No. 18 (List A) of Notification No.-25/1999. The copies of commercial invoices of the overseas suppliers were found to contain the HS code of the imported items as 32, whereas, the importer had willfully and intentionally misclassified the same under CTH 76169990 while filing BoEs, in order to avail of the exemption benefits available for Chapter 76 under Sr. No. 18 (List A) of Notification No. 25/1999 on the subject imported items. Further, from the scrutiny of the import

data, it is noticed that the importer has also imported the subject goods without availing of the benefits under Sr. No. 18 A of Notification-25/1999 in other Bills of Entry. 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 had deliberately and intentionally not paid the Basic Customs Duty (BCD) on the subject goods imported vide Bills of Entry listed in Annexures B and C. Thus, it appears that the importer has wilfully evaded the applicable Basic Customs Duty (BCD), SWS, and IGST thereof on the goods imported vide Bills of Entry as detailed in the respective annexures. Thus, by the above acts and commission, the importer has 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 has taken wrong benefits of the Notification No. 25/1999-Customs dated 28.02.1999 while filing the Bills of Entry at the time of the importation of the subject goods. The same was done to evade the payment of applicable Basic Customs Duty and this has resulted in short-payment of other Customs levies viz. Social Welfare Cess and IGST as BCD form part of the value for computation of these duties. **These acts of M/s Mundra Solar PV Limited have rendered imported goods as mentioned in column 6 of Annexures B and C, valued at Rs. 28,51,17,032/-, liable to confiscation as per the provisions of Section 111(m) of the Customs Act, 1962.**

15. M/s Mundra Solar PV Limited was engaged in the import of various goods used in the manufacturing of solar modules/panels. The importer was aware of the correct end use of the imported goods; however, the importer had wrongly availed of the undue benefits of Sr. No. 18 (List A) of Notification No. 25/1999 and Sr. No. 39 of Notification No.-24/2005 by adopting wrong practices including making false declarations for such imports to evade payment of appropriate Customs duty. The importer had deliberately misstated the serial numbers of the subject notifications to escape from detection by customs authorities. Thus, from the facts and evidence discussed above, it appears that the importer has resorted to a wilful misstatement of serial numbers of Notification Nos. 25/1999 and 24/2005 as amended with an ulterior motive of evading payment of the applicable duties on the imported goods. Further, the importer has wilfully and intentionally mis-declared and misclassified some items by manipulating details made by their suppliers in commercial invoices, in order to avail of the undue benefits of the subject notifications. Hence, Section 28(4) of the Customs Act, 1962 for demand of duty is applicable in the instant case as discussed already in paras supra. The details of the goods imported by M/s. Mundra Solar PV Limited by wilful misstatement of serial numbers of Notification Nos. 24/2005-Customs as amended and 25/1999 are mentioned in Annexures-A to C along with the calculation of the respective customs duty evaded. The differential Customs duty aggregating to **Rs.4,22,32,464/-** leviable on the imported goods and cleared under Bills of Entry mentioned in Annexures-A to C and not paid by M/s. Mundra Solar PV Limited is, therefore, 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.

15.1. The details of Annexures-A to C are tabulated as under:

TABLE-VI

Annexure	Name of the imported goods	Notification availed/ issue involved	AV of the imported goods in INR	Differential Customs duty in INR
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Annexure-A	Aluminium frame or solar aluminium frame	24/2005	2,43,21,114	31,56,881
	PV Junction Box	24/2005	1,26,88,500	16,46,967
	Aluminium Paste	24/2005	32,39,028	4,20,426
		Total	4,02,48,642	52,24,274
Annexure-B	Aluminium Frame	25/1999	27,14,90,881	3,52,39,516
Annexure-C	Aluminium Paste	25/1999	1,36,26,151	17,68,674
Grand Total			32,53,65,674	4,22,32,464

16. For the above acts, M/s. Mundra Solar PV Limited appeared to have rendered themselves liable to penalty under Section 114A and/or 112 of the Customs Act, 1962. Further, the importer has knowingly and wilfully made declarations that were false and incorrect in material particular, in the transaction of business for the purposes of the Customs Act, 1962, and therefore, M/s. Mundra Solar PV Limited have also rendered themselves liable to penalty under Section 114AA of the Customs Act, 1962.

Voluntary payments made during the investigation:

17. During the investigation, M/s Mundra Solar PV Limited has made a payment of **Rs. 3,97,50,982/- (Rupees three crore ninety-seven lakhs fifty thousand nine hundred and eighty-two only)** towards differential duty (BCD+SWS+IGST) and **Rs. 13,96,079/- (Rupees thirteen lakhs ninety-six thousand and seventy nine only)** as interest. 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 and copies of the challans received have been detailed in **Annexure-D** attached to this show cause notice. The copies of challans have been enclosed as **[RUD No. 15]**.

18. It is pertinent to mention that in terms of the provisions of Section 110AA of the Customs Act, 1962 read with Notification No. 28/2022-Customs (N.T.) dated 31.03.2022, the officers of Customs have been appointed as the proper officer for the purpose of exercising of powers under Section 28, Section 28AAA or Chapter X of the Customs Act, 1962 with jurisdiction over the whole of India with all the powers under the said Act. Further, in the case of multiple jurisdictions, the show cause notice is to be issued by the proper officer of jurisdiction having the highest amount of duty. The instant case involves the import of goods from multiple ports viz INMUN1 (Mundra seaport), INNSA1 (Nhava Sheva) and INAMD4 (Ahmedabad ICD), wherein total customs duty and IGST not paid/ short paid has come to **Rs. 4,22,32,464/-** out of which the differential Customs duty for a single port viz. Mundra Port (INMUN1) has been worked out to Rs. 4,17,34,404/-, which is the highest amongst all ports at which imports have taken place. Therefore, the Principal Commissioner/Commissioner of Customs, Mundra Port is the show cause notice issuing authority as well as adjudicating authority in terms of Section 110AA of the Customs Act, 1962 read with Notification No. 28/2022-Customs (N.T.) dated 31.03.2022, issued by CBIC.

19. Now, therefore, **M/s. Mundra Solar PV Limited** (IEC-0815006926) having registered office at Adani Corporate House, Shantigram, Near Vaishno Devi Circle, S G Highway, Khodiyar, Ahmedabad-382421 and Survey No 180/P, APSEZ, Village-Tunda, Mundra, Gujarat-370435, is hereby called upon to show cause in writing to **the Commissioner of Customs**, Mundra, having their address at 5B, Port User Building, Mundra Port, Mundra, Kutch, Gujrat-370421 within 30 (Thirty) days from the receipt of this notice, as to why:-

- (i) The benefits of **Notification No. 24/2005-Customs dated 01.03.2005-as amended**, availed by them on import of "**aluminium frame or solar aluminium frame, PV Junction Box and Aluminium Paste**" under Bills of Entry as listed in Annexure-A should not be disallowed;
- (ii) The benefits of **Notification No. 25/1999 dated 28.02.1999, as amended**, availed by them on import of Aluminium Frame under Bills of Entry as listed in Annexure-B should not be disallowed;
- (iii) The classification of the imported goods namely Paste Back Aluminium or Aluminium Paste or Paste back Aluminium under CTH 76169990 under Bills of Entry detailed in Annexure-C, should not rejected and the imported goods should be classified under CTH 32129030;
- (iv) The benefits of **Notification No. 25/1999 dated 28.02.1999-as amended**, availed by them on import of Paste Back Aluminium or Aluminium Paste or Paste back Aluminium, under Bills of Entry as listed in Annexure-C should not be disallowed;
- (v) The differential amount of Customs duty aggregating to **Rs.4,22,32,464/- (Rupees Four Crores Twenty Two Lakhs Thirty Two Thousand Four Hundred and Sixty-Four only)** as detailed in Annexures- A to C to this notice leviable on the imported goods covered under Bills of Entry as listed in **Annexures- A to C to this show cause notice**, 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;
- (vi) **Rs. 3,97,50,982/- (Rupees Three Crore Ninety Seven Lakhs Fifty Thousand Nine Hundred and Eighty Two Only)** and **Rs.13,96,079/- (Rupees Thirteen Lakhs Ninety-Six Thousand and Seventy Nine Only)** 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 (v) above;
- (viii) The subject goods totally valued at **Rs. 32,53,65,674/-** imported vide Bills of Entry as listed Annexures- A to C should not be held liable to confiscation as per provisions of Section 111(m) of the Customs Act, 1962.
- (ix) Penalty should not be imposed on them under Section 114A and/or 112 of the Customs Act, 1962;
- (x) Penalty should not be imposed on them under Section 114AA of the Customs Act, 1962, for the reasons discussed above.

20. The noticees may submit their written reply to this Show Cause Notice to the adjudication authority within 30 days of the receipt of this show cause notice. The above noticees are further advised to indicate in their written submission whether they desire to be heard in person before the case is adjudicated. If no mention is made of this in the written submission, it would be presumed that they do not desire to be heard in person. They are also required to produce at the time of showing cause all evidence on which they intend to rely in support of their defence.

21. The noticees should note that, if no cause is shown by them against the action proposed to be taken within 30 days from the date of receipt of this show cause notice or if they do not appear before the adjudicating authority i.e. to the Principal Commissioner/Commissioner of Customs, Mundra, having their address at 5B, Port User Building, Mundra Port, Mundra, Kutch, Gujrat-370421 when the case is posted for hearing, the case will be decided *ex-parte* on the basis of the material evidence available on record.

22. This notice is issued without prejudice to any other action that may be taken against all of them or any other person(s) under the provisions of the Customs Act, 1962 or any other law for the time being in force.

23. This show cause notice is being issued on the basis of evidence available on record and relied upon documents as discussed in the aforementioned paragraphs.

24. The department reserves the right to add, alter, amend, modify or supplement this notice at any time on the basis of any evidence, or material facts related to the import of goods under investigation and any other importer by the said exporter, which may come to the notice of the department after issuance of this notice and prior to the adjudication of the case.

25. The list of documents relied upon for the issuance of this notice is attached as Annexure-R to this notice. All the relied-upon documents are enclosed herewith.

26. The Noticees also have an option to avail provisions of Chapter XIVA Settlement of Cases of the Customs Act, 1962 to settle their case through the Settlement Commission by filing an application if desired and eligible.

Encl: Annexures-A to D, R and Copies of RUD's.

o/c

(K. Engineer)

Principal Commissioner of Customs,
Custom House, Mundra.

Date: 30.05.2024.

DIN-20240571MO0000224607

F.No. GEN/ADJ/COMM/769/2023-Adjn-O/o Pr Commr-Cus-Mundra

BY Speed Post A.D / E-mail

To, (The Noticee):-

- M/s. Mundra Solar PV Limited** (IEC-0815006926),
registered address at "Adani House, Near Mithakhali Six Road, Navrangpura,
Ahmedabad, Gujrat-380009; and
corporate office at Adani Corporate House, Shantigram, Near Vaishno Devi
Circle, S G Highway, Khodiyar, Ahmedabad-382421, Email:
kalpesh.dave@adani.com

1838 4 1839

Copy to:-

1. The Additional Director, Directorate of Revenue Intelligence, Plot No. S-10, Bhawani Singh Lane, Bhawani Singh Road, C-Scheme, Jaipur-302005, (Email: ad-dri-rj@nic.in / drijru@gmail.com).
2. The Deputy/ Asstt. Commissioner (EDI), Custom House, Mundra.
3. The Deputy/ Assistant Commissioner of Customs, (Legal/ Prosecution), Custom House, Mundra.
4. The Notice Board.
5. Guard File.

Annexure - R

List of Relied Upon Documents

Sr. No.	RUD No.	Description
1.	1.	Copy 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).
2.	2.	Copy of Notification No. 25/1999-Customs dated 28.02.1999.
3.	3.	Copy of Summons dated 10.06.2022 issued under Section 108 of the Customs Act, 1962 to M/s. Mundra Solar PV Ltd. and copy of letter dated 16.06.2022 of M/s. MSPVL.
4.	4.	Copy of Summons dated 27.06.2022 issued under Section 108 of the Customs Act, 1962 to M/s. Mundra Solar PV Ltd. and copy of letter dated 05.07.2022 of M/s. MSPVL.
5.	5.	Copy of Summons dated 08.07.2022 issued under Section 108 of the Customs Act, 1962 to M/s. Mundra Solar PV Ltd. and copy of letter dated 18.07.2022 of M/s. MSPVL.
6.	6.	Copy of Summons dated 25.07.2022 issued under Section 108 of the Customs Act, 1962 to M/s. Mundra Solar PV Ltd. and copy of letter dated 05.08.2022 of M/s. MSPVL.
7.	7.	Copy of letter dated 01.08.2022 of M/s. Mundra Solar PV Ltd.
8.	8.	Copy of Complaint dated 05.04.2023 filed under Sections 174 and 175 of the IPC read with Section 108 of the Customs Act, 1962 against M/s. Mundra Solar PV Limited in Economic Offence Court, Jaipur.
9.	9.	Copy of Invoice No. 2022061501 dated 15.06.2022.
10.	10.	Copy of Invoice No. 2022053101 dated 31.05.2022.
11.	11.	Copy of Invoice No. 2022022601 dated 26.02.2022.
12.	12.	Copy of Invoice No. 2022041501 dated 15.04.2022.
13.	13.	Copy of US Customs cross ruling 857411 dated 19.11.1990.
14.	14.	Copy of US Customs cross ruling NY 859491 dated 01.03.1991.
15.	15.	Copies of Challans evidencing payment of differential Customs duty & Interest by M/s. Mundra Solar PV Limited.


 रवि दत्त
 आन्वयना अधिकारी


 PRASAD KUMAR MANDHANT
 SENIOR INTELLIGENCE OFFICER

Appendix A Calculation of differential customs duty on imported items namely Aluminium Frame for Solar Aluminium Panel and Junction Box by availing benefits of localisation exemption notification no. 24/2005.

Annexure-A Declaration of differential customs duty on imported items namely, Aluminium Frame for Solar Aluminium Panel and Junction Box by availing benefit of available exemption notifications no. 24/2005.																								
Sl No	Name of the Consignee House	B E No.	B E Date	Name of the Importer	Item Description	CTU	Quantity	UQC	Unit Price	Item Assessable Value	BCD Slab No. claimed	BCD Nil If No.	Duty payable (in Rs.)				Duty actually paid (in Rs.)				Differential customs duty payable (in Rs.)			
													BCD	SWS	IGST	Total	BCD	SWS	IGST	Total	BCD	SWS	IGST	Total
1	MANUNI	8123171	02.04.2022	Munda Solar PV Ltd.	ALUMINIUM FRAME FOR SOLAR SIZE - LONG 1010X35MM, OPT. AL-SILV CORNER, PREPRESSED, PRECUTTED FLANGE THICKNESS 1.5MM	76169990	18792	PCS	3.23	339024.09	242005	22	539024.09	53902.41	1076020.13	146996.63	0	0	0	0	539024.09	53902.41	109726.73	699653
2	MANUNI	8123171	02.04.2022	Munda Solar PV Ltd.	ALUMINIUM FRAME FOR SOLAR SIZE - SHORT 1010X35MM, OPT. AL-SILV CORNER, PREPRESSED, PRECUTTED FLANGE THICKNESS 1.5MM	76169990	18792	PCS	1.88	321679.7	242005	38	271679.70	27167.97	339016.34	161663.22	0	0	0	0	271679.70	27167.97	33792.51	332840
3	MANUNI	8123171	02.04.2022	Munda Solar PV Ltd.	ALUMINIUM FRAME FOR SOLAR SIZE - SHORT 1010X35MM, OPT. AL-SILV PREPRESSED, PRECUTTED FLANGE THICKNESS 1.5MM	76169990	17884	PCS	1.88	543384.1	242005	39	543384.1	54338.41	1083632.09	168137.44	0	0	0	0	543384.1	54338.41	107385.19	705281
4	MANUNI	8123171	02.04.2022	Munda Solar PV Ltd.	ALUMINIUM FRAME FOR SOLAR SIZE - SHORT 1010X35MM, OPT. AL-SILV PREPRESSED, PRECUTTED FLANGE THICKNESS 1.5MM	76169990	17884	PCS	1.88	543384.1	242005	39	543384.1	54338.41	1083632.09	168137.44	0	0	0	0	543384.1	54338.41	107385.19	705281
TOTAL						179932				4028662			4028661.179	402866.179	8041678.63	12469029.23	0	0	0	0	4028661.179	402866.179	796921296	5231774

12/04/2022

सर्वेक्षण अधिकारी
आपूर्ति-आवधिकारी

PRAMOD KUMAR MANDAMT
SENIOR INTELLIGENCE OFFICER


PRABHU KUMAR BANDANAT
SENIOR INTELLIGENCE OFFICER

Sl No	Name of the House	B.E. No.	B.E. Date	Name of the Importer	Item Description	CTH#	Quantity	UoC	Unit Price	Item's Assessed Value	BOD No.	BOD Date	Item Particular (in Rs.)				Item's Actual paid (in Rs.)				Differential amount due payable (in Rs.)			
													BOD	SVS	ICST	Total	BOD	SVS	ICST	Total	BOD	SVS	ICST	Total
1	MANONI	8489107	30/04/2022	Manoja Solar PV Limited	SUPPLY OF SOLAR ALUMINIUM FRAME LONG SIZE OPT. AL. SILVER CORNER PREPRESSED, PRECOMPRESSED, THICKNESS 1.5MM	76169900	18792	PCS	31241	580764.45	184	18/4	580764.45	580764.45	0	0	0	580764.45	580764.45	0	0	0	580764.45	
2	MANONI	8489107	30/04/2022	Manoja Solar PV Limited	SUPPLY OF SOLAR ALUMINIUM FRAME LONG SIZE OPT. AL. SILVER CORNER PREPRESSED, PRECOMPRESSED, THICKNESS 1.5MM	76169900	18792	PCS	1.88	273659.36	184	18/4	273659.36	273659.36	0	0	0	273659.36	273659.36	0	0	0	273659.36	
3	MANONI	8489107	30/04/2022	Manoja Solar PV Limited	SUPPLY OF SOLAR ALUMINIUM FRAME LONG SIZE OPT. AL. SILVER CORNER PREPRESSED, PRECOMPRESSED, THICKNESS 1.5MM	76169900	37584	PCS	31241	1073368.08	184	18/4	1073368.08	1073368.08	0	0	0	1073368.08	1073368.08	0	0	0	1073368.08	
4	MANONI	8489107	30/04/2022	Manoja Solar PV Limited	SUPPLY OF SOLAR ALUMINIUM FRAME LONG SIZE OPT. AL. SILVER CORNER PREPRESSED, PRECOMPRESSED, THICKNESS 1.5MM	76169900	37584	PCS	2.00	696075.7	184	18/4	696075.7	696075.7	0	0	0	696075.7	696075.7	0	0	0	696075.7	
5	MANONI	8489107	30/04/2022	Manoja Solar PV Limited	SUPPLY OF SOLAR ALUMINIUM FRAME LONG SIZE OPT. AL. SILVER CORNER PREPRESSED, PRECOMPRESSED, THICKNESS 1.5MM	76169900	37584	PCS	4.05	1087332.08	184	18/4	1087332.08	1087332.08	0	0	0	1087332.08	1087332.08	0	0	0	1087332.08	
6	MANONI	8489107	30/04/2022	Manoja Solar PV Limited	SUPPLY OF SOLAR ALUMINIUM FRAME LONG SIZE OPT. AL. SILVER CORNER PREPRESSED, PRECOMPRESSED, THICKNESS 1.5MM	76169900	37584	PCS	2.12	634767.47	184	18/4	634767.47	634767.47	0	0	0	634767.47	634767.47	0	0	0	634767.47	
7	MANONI	8489107	30/04/2022	Manoja Solar PV Limited	SUPPLY OF SOLAR ALUMINIUM FRAME LONG SIZE OPT. AL. SILVER CORNER PREPRESSED, PRECOMPRESSED, THICKNESS 1.5MM	76169900	37584	PCS	3.08	1646821.52	184	18/4	1646821.52	1646821.52	0	0	0	1646821.52	1646821.52	0	0	0	1646821.52	
8	MANONI	8489107	30/04/2022	Manoja Solar PV Limited	SUPPLY OF SOLAR ALUMINIUM FRAME LONG SIZE OPT. AL. SILVER CORNER PREPRESSED, PRECOMPRESSED, THICKNESS 1.5MM	76169900	37584	PCS	2.12	948713.68	184	18/4	948713.68	948713.68	0	0	0	948713.68	948713.68	0	0	0	948713.68	
9	MANONI	8489107	30/04/2022	Manoja Solar PV Limited	SUPPLY OF SOLAR ALUMINIUM FRAME LONG SIZE OPT. AL. SILVER CORNER PREPRESSED, PRECOMPRESSED, THICKNESS 1.5MM	76169900	37584	PCS	3.01	1044993.11	184	18/4	1044993.11	1044993.11	0	0	0	1044993.11	1044993.11	0	0	0	1044993.11	
10	MANONI	8489107	30/04/2022	Manoja Solar PV Limited	SUPPLY OF SOLAR ALUMINIUM FRAME LONG SIZE OPT. AL. SILVER CORNER PREPRESSED, PRECOMPRESSED, THICKNESS 1.5MM	76169900	37584	PCS	2.00	603230.65	184	18/4	603230.65	603230.65	0	0	0	603230.65	603230.65	0	0	0	603230.65	


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Annexure-C. Calculation of differential customs duty on imported item namely Aluminium Paste by availing benefits of freightable exemption notifications no. 25/1999.																									
Sl. No.	Name of the Customs House	H.E. No.	H.E. Date	Name of the Importer	Item Description	CTH Declared	Proper CTH	Quantity	UQC	Unit Price	Item Assesable Value	BCD No. claimed	BCD No. Sc. No.	Duty payable (in Rs.)				Duty actually paid (in Rs.)				Differential customs duty payable (in Rs.)			
														BCD	SWS	IGST	Total	BCD	SWS	IGST	Total	BCD	SWS	IGST	Total
1	INMUNDI	4166647	13/01/2023	Mundia Supply Pvt. Ltd.	ALUMINIUM PASTE (R&S 4015) (FREE OF COST)	76169990	32129030	1916	KGS	1223	23649186	025/0999	18A	266919	26692	329307	820718	0	0	276854	276854	266919	26692	329307	343864
2	INMUNDI	8685076	19/03/2022	Mundia Supply Pvt. Ltd.	SUPPLY OF ALUMINIUM PASTE (R&S 231110)	76169990	32129030	14400	KGS	58	8435216	025/0999	18A	266922	266922	1283756	1993630	0	0	1138339	1138339	843522	266922	127417	332291
3	INMUNDI	9313122	05/07/2023	Mundia Supply Pvt. Ltd.	ALUMINIUM PASTE (R&S 231110)	76169990	32129030	7200	KGS	59	3333796	025/0999	18A	333380	33338	670088	1039006	0	0	603653	603653	333380	33338	68405	433231
4	INNSATI	9648802	20/07/2022	Mundia Supply Pvt. Ltd.	ALUMINIUM PASTE (R&S 231110)	76169990	32129030	72500	KGS	59	1187953	025/0999	18A	3118795	11880	2273653	368028	0	0	213812	213812	118795	11880	223521	154196
					TOTAL						1362616			1362616	1362616	2722508	4221382	0	0	2452707.31	2452707.31	1362616	1362616	269797.7	1768674


 प्रसाद कुमार वादनाय
 SENIOR INTELLIGENCE OFFICER

PRASAD KUMAR WADNANI
 SENIOR INTELLIGENCE OFFICER

Annexure - D (Details of payments made by M/s. Mundra Solar Pvt Ltd. during investigation by DRI Jaipur)								
Sr. No.	Challan No.	Challan Date	Amount paid in Rs. as BCD	Amount paid in Rs. as SWS	Amount paid in Rs. as ADD	Amount paid in Rs. as IGST	Amount paid in Rs. as Interest	Total amount paid in Rs.
1	1034	29.07.2022	1621408	162141	0	321039	102059	2206647
2	1032	29.07.2022	810704	81070	0	160519	51030	1103324
3	1031	29.07.2022	323903	32390	0	64133	20043	440469
4	1030	29.07.2022	1268850	126885	0	251232	78513	1725481
5	1029	29.07.2022	810703	81070	0	160519	45840	1098133
6	1028	29.07.2022	813339	81334	0	161041	39915	1095630
7	1027	29.07.2022	1732604	173260	0	343056	85028	2333948
8	1026	29.07.2022	866302	86630	0	171528	42052	1166512
9	1025	29.07.2022	1626679	162668	0	322082	78962	2190392
10	1024	29.07.2022	813339	81334	0	161041	39047	1094762
11	1023	29.07.2022	1681771	168177	0	332991	77151	2260091
12	1022	29.07.2022	1730358	173036	0	342611	71996	2318001
13	1021	29.07.2022	2595537	259554	0	513916	106609	3475617
14	1020	29.07.2022	1679591	167959	0	332559	68988	2249098
15	1019	29.07.2022	865179	86518	0	171305	35537	1158540
16	1018	29.07.2022	2595537	259554	0	513916	105224	3474232
17	1017	29.07.2022	1679591	167959	0	332559	68092	2248202
18	1016	29.07.2022	289585	28958	0	57338	11740	387621
19	1015	29.07.2022	1730358	173036	0	342611	70150	2316155
20	1014	29.07.2022	2519387	251939	0	498839	102137	3372302
21	1033	29.07.2022	2570069	257007	0	508874	95966	3431916
Total			30624794	3062479	0	6063709	1396079	41147073


 श्री वीर
 सीनियर इंटेलिजेंस ऑफिसर


 PRANOD KUMAR LUNDHANT
 SENIOR INTELLIGENCE OFFICER