सीमाशुल्क(अपील) आयुक्तकाकार्यालय,

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS),अहमदाबाद AHMEDABAD,

चौथी मंज़िल 4th Floor, हडकोभवनHUDCO Bhavan, ईश्वर भुवन रोड़ IshwarBhuvan Road,

नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009

दूरभाषक्रमांक Tel. No. 079-26589281

DIN - 20250671MN000000CB4B

क	फ़ाइलसंख्या FILE NO.	S/49-161/CUS/JMN/2023-24
ख	अपीलआदेशसंख्या ORDER-IN-APPEAL NO. (सीमाशुल्कअधिनियम, 1962 कीधारा 128ककेअंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	JMN-CUSTM-000-APP-024-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	16.06.2025
ङ	उदभूतअपीलआदेशकीसं. वदिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	13/AC/RNS/GPPL/2023-24 dated 02.01.2024
च	अपीलआदेशजारीकरनेकीदिनांक ORDER-IN-APPEAL ISSUED ON:	16.06.2025
छ	अपीलकर्ताकानामवपता NAME AND ADDRESS OF THE APPELLANT:	M/s Ajanta Manufacturing Pvt. Ltd., Orpat Nagar, 8-A National Highway, Near Surajbari Bridge, Vandhia, Samakhiyali, Kachchh, Gujarat - 370150

1.	यहप्रतिउसव्यक्तिकेनिजीउपयोगकेलिएमुफ्तमेंदीजातीहैजिनकेनामयहजारीकियागयाहै.

	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्कअधिनियम 1962 कीधारा 129 डीडी (1) (यथासंशोधित) केअधीननिम्नलिखितश्रेणियोंकेमामलोंकेसम्बन्धमेंकोईव्यक्तिइसआदेशसेअपनेकोआहतमहसूसकरताहोतोइसआदेशकीप्राप्तिकीतारीखसे 3 महीनेकेअंदरअपरसचिव/संयुक्तसचिव (आवेदनसंशोधन), वित्तमंत्रालय, (राजस्वविभाग) संसदमार्ग,नईदिल्लीकोपुनरीक्षणआवेदनप्रस्तुतकरसकतेहै.
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखितसम्बन्धितआदेश/Order relating to :
(क)	बैगेज़केरूपमेंआयातितकोईमाल.
(a)	any goods imported on baggage.
(ख)	भारतमेंआयातकरनेहेतुकिसीवाहनमेंलादागयालेकिनभारतमेंउनकेगन्तव्यस्थानपरउतारेनगएमालयाउसगन्तव्यस्थानपरउतारेजानेकेलिएअपेक्षितमालउतारेनजानेपरयाउसगन्तव्यस्थानपरउतारेगएमालकीमात्रामेंअपेक्षितमालसेकमीहो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्कअधिनियम, 1962 केअध्यायX तथाउसकेअधीनबनाएगएनियमोंकेतहतशुल्कवापसीकीअदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षणआवेदनपत्रसंगतनियमावलीमेंविनिर्दिष्टप्रारूपमेंप्रस्तुतकरनाहोगाजिसकेअन्तर्गतउसकीजांचकीजाएगी औरउसकेसाथनिम्नलिखितकागजातसंलग्नहोनेचाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्टफीएक्ट,1870केमदसं. 6 अनुसूची 1 केअधीननिर्धारितकिएगएअनुसारइसआदेशकी 4 प्रतियां,जिसकीएकप्रतिमेंपचासपैसेकीन्यायालयशुल्कटिकटलगाहोनाचाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्धदस्तावेज़ोंकेअलावासाथमूलआदेशकी 4 प्रतियां,यदिहो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षणकेलिएआवेदनकी 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षणआवेदनदायरकरनेकेलिएसीमाशुल्कअधिनियम, 1962 (यथासंशोधित) मेंनिर्धारितफीसजोअन्यरसीद,फीस,दण्ड,जब्तीऔरविविधमदोंकेशीर्षकेअधीनआताहैमेंरु. 200/- (रूपएदोसौमात्र)यारु.1000/-(रूपएएकहज़ारमात्र),जैसाभीमामलाहो,सेसम्बन्धितभुगतानकेप्रमाणिकचलानटी.आर.6 कीदोप्रतियां. यदिशुल्क,मांगागयाब्याज,लगायागयादंडकीराशिऔररूपएएकलाखयाउससेकमहोतोऐसेफीसकेरूपमेंरु.200/- औरयदिएकलाखसेअधिकहोतोफीसकेरूपमेंरु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मदसं. 2 केअधीनसूचितमामलोंकेअलावाअन्यमामलोंकेसम्बंन्धमेंयदिकोईव्यक्तिइसआदेशसेआहतमहसूसकरताहोतोवेसीमाशुल्कअधिनियम 1962 कीधारा 129 ए (1) केअधीनफॉर्मसी.ए.-3 मेंसीमाशुल्क,केन्द्रीयउत्पादशुल्कऔरसेवाकरअपीलअधिकरणकेसमक्षनिम्नलिखितपतेपरअपीलकरसकतेहैं
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address

	सीमाशुल्क, केंद्रीयउत्पादशुल्कवसेवाकरअपीलियअधिकरण,पश्चिमीक्षेत्रीयपीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरीमंज़िल,बहुमालीभवन,निकटगिरधरनगरपुल,असारवा,अहमदाबाद-380016	2nd Floor, BahumaliBhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	**सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए (6) केअधीन,सीमाशुल्कअधिनियम, 1962 कीधारा 129 ए(1)केअधीनअपीलकेसाथनिम्नलिखितशुल्कसंलग्नहोनेचाहिए-**	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	**अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएयाउससेकमहोतोएकहज़ाररुपए.**	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	**अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपाँचलाखरूपएसेअधिकहोलेकिनरुपयेपचासलाखसेअधिकनहोतो;पांचहज़ाररुपए**	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	**अपीलसेसम्बन्धितमामलेमेंजहांकिसीसीमाशुल्कअधिकारीद्वारामांगागयाशुल्कऔरव्याजतथालगायागयादंडकीरकमपचासलाखरूपएसेअधिकहोतो;दसहज़ाररुपए.**	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इसआदेशकेविरुद्धअधिकरणकेसामने,मांगेगएशुल्कके 10% अदाकरनेपर,जहांशुल्कयाशुल्कएवंदंडविवादमेंहैं,यादंडके 10%अदाकरनेपर,जहांकेवलदंडविवादमेंहै,अपीलरखाजाएगा।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	**उक्तअधिनियमकीधारा 129 (ए) केअन्तर्गतअपीलप्राधिकरणकेसमक्षदायरप्रत्येकआवेदनपत्र- (क) रोकआदेशकेलिएयागलतियोंकोसुधारनेकेलिएयाकिसीअन्यप्रयोजनकेलिएकिएगएअपील : - अथवा (ख) अपीलयाआवेदनपत्रकाप्रत्यावर्तनकेलिएदायरआवेदनकेसाथरुपयेपाँचसौकाशुल्कभीसंलग्नहोनेचाहिए.**	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	

M/s Ajanta Manufacturing Pvt. Ltd., Orpat Nagar, 8-A National Highway, Near Surajbari Bridge, Vandhia, Samakhiyali, Kachchh, Gujarat – 370150 (hereinafter referred to as "the appellant") have filed the present appeal in terms of Section 128 of the Customs Act, 1962 against Order-In-Original (OIO)No. 13/AC/RNS/GPPL/2023-24 dated 02.01.2024 (hereinafter referred to as "the impugned order") issued by the Assistant Commissioner, Customs House, Pipavav (hereinafter referred to as "the adjudicating authority").

2. Briefly stated,facts of the case are that the appellant having IEC No. 2403006009 had imported goods by classifying the same under Customs Tariff Heading No. 7020 00 90 of the First Schedule to Customs Tariff Act, 1975 vide the Bill of Entry No-7636674 dated-14.08.2018. Description of the goods imported is as follows:

(i) Micro crystal unpolished glass 1 white & Golden Design-1802 with printing, Parts of induction Cooker; &

(ii) Micro crystal unpolished glass 4 Blue & 3 white ring -1802-with printing, Parts of induction Cooker (hereinafter referred to as the imported goods)

2.1 During the analysis of the Bill of Entry No-7636674 dated-14.08.2018 it is noticed that the goods which are mentioned at sr. No. 96 & 97 in the subject Bill of Entry are classified under CTH 7020 00 90 paid IGST @ 12% as per Sr. No. 179 of Schedule-II of the IGST Notification 01/2017. Whereas since 15.11.2017 IGST Notification 01/2017 has been amended vide Notification No. 43/2017- Integrated Tax (Rate), and entry S. No. 195A has been inserted for chapter heading 7020, therefore, the chapter heading 7020 attracts two sets of IGST rates, i.e. 12% under Sr.No.179 of Schedule-II and 18% under Sr.No.195A of Schedule-III, respectively. Both these entries are reproduced as below::

Sr. No. 179 of Schedule II of Notification No. 01/2017 Integrated Tax (Rate) dated 28.06.2017 as amended:

179	7020	Globes for lamps and lanterns, Founts for kerosene wick lamps, Glass chimneys for lamps and lanterns	12%

Sr. No. 195A of Schedule III of Notification No. 01/2017 Integrated Tax (Rate) dated 28.06.2017 as amended:

195A	7020	Other articles of glass (other than Globes for lamps and lanterns, Founts for kerosene wick lamps, Glass chimneys for lamps and lanterns]	18%

From above tables, it appears that Sr.No. 195A of Schedule-III excludes such descriptions of goods, which are covered by entry 179 of Schedule-II. Therefore, goods other than the goods covered by entry 179 of Schedule-11 attracts IGST rate @ 18%. The appellant imported Micro crystal unpolished glass and declared it as a part of induction cooker. However, Sr. No. 179 of Schedule-II covers only the following goods;

Sr. No.	Description of Goods
1	Globes for lamps and lanterns
2	Founts for kerosene wick lamps
3	Glass chimneys for lamps and lanterns

It appeared that Micro crystal unpolished glass part of induction cooker is not specifically mentioned in it. The imported goods i.e. Micro crystal unpolished glass part of induction cooker are other than the goods specified against Entry 179 of Schedule-II, therefore, the same are covered under Sr.No. 195A of Schedule-III and attracts IGST@18%. The appellant had paid inadmissible lower IGST of i.e. @ 12% under Entry 179 of Schedule-II for the imported goods which resulted in short-payment of IGST amounting to Rs. 82,849/-.

2.2 Therefore, the appellant was duly communicated the observations vide letter dated 07.04.2022 and reminder dated 26.09.2022 & 26.05.2023 and requested them to pay the differential IGST along with applicable interest and in response of the letter, no reply has been received from the appellant. Therefore, Show Cause Notice F.No:-VIII/48-19/AR26/21-22/GPPL/22-23/873 dated 16.08.2023 issued to the appellant demanding Customs Duty of Rs 82,849/- under Section 28(4) of the Customs Act, 1962 read with Section 5 of IGST Act, 2017, interest under Section 28AA of the Customs Act, 1962 read with Section 50 of CGST Act, 2017 and penalty under Section 114A of the Customs Act, 1962.

2.3 The adjudicating authority, vide impugned order dated 02.01.2024, has ordered to recover the IGST amounting to Rs. 82,849/- on the goods imported and cleared by the appellant, under Section 28(4) of the Customs Act, 1962. He also ordered to recover the interest at an appropriate rate under Section 28AA of the Customs Act, 1962 and imposed a penalty of Rs 82,849/- under Section 114A of the Customs Act, 1962.

3. Being aggrieved with the impugned order, dated 02.01.2024, the appellant have filed the present appeal and mainly contended that;

- The appellant respectfully submits that a higher amount of IGST, if has been discharged on the imported items the same was admissible as ITC to the importer, hence and therefore, there was no loss to the exchequer. The SCN & Order in Original has neither listed down the reason for invoking Sec 28(4) nor made any specific reason for the same, but only mentioned in casual way that appellant have deliberately mentioned alleged wrong heading to pay lesser IGST. In fact, except a causal statement is made nothing available in the SCN & Order to invoke the extended period of 5 years in the Notice.
- It is well settled that Notice can be served for a period of five years in case of collusion, suppression of facts or willful misstatement, if assesses is not guilty of suppression of facts, collusion or willful misstatement of facts, extended period of limitation cannot be invoked as held in the case of CC vs MMK Jewellers (2008)225 ELT3(SC). Further Honorable Supreme Court in Rainbow Industries V CCE 1994(74)ELT39SC) have held that in order for the extended period to apply, two ingredients must be present, willful suppression, mis-declaration etc., and the intention to evade duty. Same view has been taken in the case Tamilnadu Housing Board v CCE 1995 Suppl(1) SCC50. In this case it was held that power to extend period from one year to 5 years are exceptional power and hence have to be construed strictly. There is no mention of intentional suppression or misstatement by the appellant with an intent to evade payment of duty. It is humbly submitted that payment of IGST under a particular entry No. or Sr No/heading instead of alleged Sr. no. is not non-disclosure of facts & cannot be equated with a mala-fide intention of evasion of duty. The appellant was under bona-fide belief that its IGST rate was correct and further the items imported by the appellant were being used in the process of manufacture, and eligible for ITC under GST even if higher rate is paid. There was neither any evasion of tax nor any

intention of a wrong doing on the part of the appellant. The appellant also relied upon the following case laws:

(i) Merchantile and Industrial Dev. Co. Ltd. vs. CCE, Ahmedabad 2014(313) ELT 553 (Tri.-Ahmd)

(ii) Sunanda Industries Ltd. vs. Commissioner of C. Ex., Ahmedabad- II 2009 (245) ELT 861 (Tri. Ahmd)

- The appellant, therefore, respectfully submits that the entire demand is time barred as extended period of limitation cannot be invoked under Sec 28(4) of Customs Act, 1962 and on this ground alone, the impugned Order deserves to be quashed and set aside.
- The SCN is not issued within the stipulated time hence time barred, Without prejudice to the aforesaid, the appellant state and submit that, even otherwise, the demand is ex-facie untenable, unsustainable, without jurisdiction and illegal inter alia since it is ex facie barred by limitation and no such demand can be raised when the Bills of Entry have been assessed and no show cause notice has been issued under the provisions of Section 28(1) of the Customs Act, 1962. In this case, the Bills of Entry was correctly assessed at the relevant time by the proper officer and thereafter, no show cause notice has been issued by the proper officer within the period of limitation as prescribed in Section 28(1) of the Customs Act, 1962. Therefore, not only the demand notice ex facie illegal since the demand of IGST is sought to be made beyond the period of limitation as mandated by Section 28(1) hence barred by limitation. The learned Assistant Commissioner refer to the Honble Supreme Court Order for granting relief for filing Appeal etc during Covid period, but the same is not available under Customs Act.
- The appellant submits that the payment of additional IGST, as demanded in SCN and confirmed in the impugned Order is available as ITC to the appellant, the demand is revenue neutral. To support their contention, the appellant relied on the following judgments:

(i) Atul Ltd V CCE (2009)237ELT287(CESTAT),

(ii) PP Patel & Co. V CCE(2009)236ELT320 (CESTAT)

(iii) Crompton Greaves Ltd. vs. Commr. of C. Ex., Mumbai-III 2008 (230) ELT 488 (Tri. Mum)

(iv) Vickers Systems International Ltd. vs. Commissioner of C. Ex., Pune- I -2008 (229) ELT 298(Tri.-Mum)

(v) PSL Holdings Ltd. vs. Commissioner of Central Excise, Rajkot 2003 (156) ELT 602 (Tri. Mum)

(vi) Commissioner of C. Ex. &CusVadodara vs. Narmada Chematur Pharmaceuticals Ltd. E.L.T. 2005 (179) 276 (SC)

- Penalty under Section 114A of Customs Act, 1962, provides for mandatory penalty in case of suppression of facts, willful misstatement etc., If extended period of limitation is not available, penalty under Sec 114A is not imposable, as held in Pahva Chemicals v CCE2005(189) ELT 257(SC). In the present case the conduct of the appellant is totally bonafide and nothing suppressed or miss declared by the Appellants. There is no any willful misstatement in the present case as goods were correctly classified and correct custom duty paid as already stated in earlier paras, the Demand is time barred as issued beyond normal period of limitation. Hence penalty under sec 114A cannot be imposed in the present case.
- Without prejudice to the above, it is submitted that the conduct of Appellant was totally bonafide. Appellant neither had any intention to evade payment of IGST. In the absence of any malafide on the part of Appellant, no penalty is imposable. In the case of Hindustan Steel Ltd. Vs. State of Orissa(1978 (2) ELT (J159) (SC)), Hon'ble Supreme Court held that no penalty should be imposed for technical or venial breach of legal provisions or where the breach flows from the bonafide belief. It is submitted that the conduct of Appellants in the present case was totally bonafide and therefore no penalty is imposable. In CCE, Visakhapatnam v. Smithline Beecham Consumer Health Care Ltd. reported in 2004 (167) E.L.T. 225 (Tri.-Bang.), wherein it was held that mere claiming wrong classification is no offence.
- In the present case order have not elaborated at which of the various act of commissions or omissions stated in the provisions of sec 114A have been committed by the Appellants, mere mention in the SCN and relying on that is not sufficient, hence provisions cannot be invoked mere based on assumption or presumptions. In view of above, it is submitted that the penalty is not imposable in the present case under Sec 114A.
- Without prejudice to the submissions in the foregoing paragraphs, it is submitted that the case involves interpretations of the two Sr No. of IGST schedule under which IGST was leviable under 12% & 18%, as mentioned in SCN. No dispute regarding description of items and its classification under CTH, it is nowhere mentioned that GST on items imported is applicable @18%. By interpretations of various headings of IGST Notifications applicable, inference is

drawn regarding applicable rate of 18% as mentioned in Order itself. As already submitted, Appellants acted in bona-fide belief. It has been held by the Hon'ble Customs, Excise & Service Tax Appellate Tribunal in a large number of cases that no penalty is imposable in cases involving interpretation of the statutory provisions. Some of these cases are as under:

(i) Auro Textile v. Commissioner of Central Excise, Chandigarh (2010 (253) ELT 35 (Tri.-Del.)];

(ii) Hindustan Lever Ltd. v. Commissioner of Central Excise, Lucknow (2010 (250) ELT 251 (Tri-Del.)];

(iii) Prem Fabricators v. Commissioner of Central Excise, Ahmedabad-II [2010 (250) ELT 260 (Tri.-Ahmd.)];

(iv) Whiteline Chemicals v. Commissioner of Central Excise, Surat (2009 (229) ELT 95 (Tri.-Ahmd.));

(v) Delphi Automotive Systems v. Commissioner of Central Excise, Noida (2004 (163) ELT 47 (Tri.-Del.)].

- In view of the above, it is respectfully submitted that no penalty ought to be imposed upon Appellants and the Order is liable to be set aside.

4. Shri Kirit Mehta, Import Manager, appeared for personal hearing on 06.06.2025. He reiterated the submission made at the time of filing appeal.

5. I have gone through the appeal memorandum filed by the appellant, the impugned order and documents on record. The issue to be decided in present appeal is whether the impugned order passed by the adjudicating authority demanding differential IGST along with interest and penalty under Section 114A of the Customs Act, 1962, in the facts and circumstances of the case, is legal and proper or otherwise.

5.1 It is observed that the appellant having IEC No. 2403006009 had imported certain goods as detailed above by classifying the same under Customs Tariff Heading No. 70200090 of the First Schedule to the Customs Tariff Act, 1975 and filed Bill of Entry for clearance of the same. During the analysis of the above mentioned Bills of Entry, it is observed that the appellant had claimed the benefit of Sr. No. 179 of Schedule-II of the IGST Notification 01/2017 and cleared the goods after payment of IGST @ 12%. It is observed that Notification No. 01/2017 Integrated Tax (Rate) dated 28.06.2017 has been amended vide Notification No. 43/2017-Integration Tax (Rate) dated 14.11.2017 wherein Chapter Heading 7020 attracts two different set of IGST rates i.e. 12% under Sr. No. 179 of Schedule-II and 18% under Sr. No. 195A of schedule-III, respectively. The department was of the view that the goods imported by the appellant falls

under Sr. No. 195A of schedule-III attracting IGST @ 18%. Thus it appeared that the appellant has paid duty @12% instead of paying @18% which resulted in short payment of duty amounting to Rs 82,849/-. Therefore, Show Cause Notice F.No:-VIII/48-19/AR26/21-22/GPPL/22-23/873 dated 16.08.2023 issued to the appellant demanding Customs Duty of Rs 82,849/- under Section 28(4) of the Customs Act, 1962 read with Section 5 of IGST Act, 2017, interest under Section 28AA of the Customs Act, 1962 read with Section 50 of CGST Act, 2017 and penalty under Section 114A of the Customs Act, 1962. The Show Cause Notice dated 16.08.2023 was confirmed vide the impugned order.

5.2 It is observed that the appellant has in the grounds of appeal mainly contended that the Show Cause Notice is time barred as extended period cannot be invoked in absence of willful suppression, mis-declaration etc., and the intention to evade duty. Before starting discussion on this issue, the text of the relevant provisions Section 28 of the Customs Act, 1962, is reproduced below (underline supplied):

"SECTION 28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. *— (1) Where any [duty has not been levied or not paid or has been short-levied or short-paid] or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any wilful mis-statement or suppression of facts,—*

(a) the proper officer shall, within [two years] from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied [or paid] or which has been 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;

*[**Provided** that before issuing notice, the proper officer shall hold pre-notice consultation with the person chargeable with duty or interest in such manner as may be prescribed;]*

... ...

(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, by reason of, —

(a) collusion; or
(b) any wilful mis-statement; 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.

... ...

(8) The proper officer shall, after allowing the concerned person an opportunity of being heard and after considering the representation, if any, made by such person, determine the amount of duty or interest due from such person not being in excess of the amount specified in the notice.

(9) The proper officer shall determine the amount of duty or interest under sub-section (8),—

(a) within six months from the date of notice, [***] in respect of cases falling under clause (a) of sub-section (1);

(b) within one year from the date of notice, [***] in respect of cases falling under sub-section (4):

*[**Provided** that where the proper officer fails to so determine within the specified period, any officer senior in rank to the proper officer may, having regard to the circumstances under which the proper officer was prevented from determining the amount of duty or interest under sub-section (8), extend the period specified in clause (a) to a further period of six months and the period specified in clause (b) to a further period of one year:*

***Provided further** that where the proper officer fails to determine within such extended period, such proceeding shall be deemed to have concluded as if no notice had been issued.]*

(9A) Notwithstanding anything contained in sub-section (9), where the proper officer is unable to determine the amount of duty or interest under sub-section (8) for the reason that—

(a) an appeal in a similar matter of the same person or any other person is pending before the Appellate Tribunal or the High Court or the Supreme Court; or

(b) an interim order of stay has been issued by the Appellate Tribunal or the High Court or the Supreme Court; or

(c) the Board has, in a similar matter, issued specific direction or order to keep such matter pending; or

(d) the Settlement Commission has admitted an application made by the person concerned,

the proper officer shall inform the person concerned the reason for non-determination of the amount of duty or interest under sub-section (8) and in such case, the time specified in sub-section (9) shall apply not from the date of notice, but from the date when such reason ceases to exist.

... ...

(10B) A notice issued under sub-section (4) shall be deemed to have been issued under sub-section (1), if such notice demanding duty is held not sustainable in any proceedings under this Act, including at any stage of appeal, for the reason that the charges of collusion or any wilful misstatement or suppression of facts to evade duty has not been established against the person to whom such notice was issued and the amount of duty and the interest thereon shall be computed accordingly.

... ...

Explanation 1. - For the purpose of this section, "relevant date" means -

(a) in a case where duty is not levied or not paid or short-levied or short-paid or interest is not charged, the date on which the proper makes an order for clearance of goods;

... ... "

5.3 From the above-mentioned statutory provisions, it is very clear that for issuing SCN under Section 28(4) of the Customs Act, 1962, there should be "collusion" or "wilful mis-statement" or "suppression facts" on part of the appellant. In the present case, there is no charge of any "collusion" on part of the appellant. Neither any Statement has been recorded nor any investigation has been conducted before invoking extended period of limitation. In the Show Cause Notice dated 16.08.2023, there is bald allegation in Para 15 that "*Whereas, it appears that the importer has willingly and deliberately has taken the benefit of inadmissible lower IGST of i.e. @12 under Sr.No. II-179for the imported goods which are covered under Sr. No. 195A of Schedule- III and attracts IGST@18%. This culminated into short-payment of IGST amounting to Rs.82,849/- as calculated in annexure-A of this Show Cause Notice. However, the importer has never disclosed the same to the department at any point that they have availed the benefit of inadmissible lower IGST of i.e. @12 under Sr.No. II-179 for the imported goods under the aforesaid bill of entry. The same has been comes to the notice only during the analysis of the bill of entry. On being*

pointed out, the same to the importer vide letter dated 07.04.2022 and reminder dated 26.09.2022 & 26.05.2023 to pay the differential IGST along with applicable interest no response from the importer has been received. This shows the malafide intention of the importer not to paying the differential amount of IGST payable by them.." It is not mentioned in the notice that how the importer has made willful mis-statement and which facts have been suppressed and the same has been confirmed in mechanical manner in the impugned order without recording any logical finding of collusion or wilful mis-statement or suppression facts on part of the appellant. .

5.4 In this regard, I am of the view that merely claiming benefit of wrong Serial Number of any Notification does not amount to suppression of facts and willful mis-statement, so far as description and other particulars of goods are correctly declared. In this regard, I rely upon the following case law (gist):

1998 (101) E.L.T. 549 (S.C.)
IN THE SUPREME COURT OF INDIA
NORTHERN PLASTIC LTD.
Versus
COLLECTOR OF CUSTOMS & CENTRAL EXCISE
Civil Appeal No. 4196 of 1989 with C.A. No. 3325 of 1990, decided on 14-7-1998

... ...

Exemption - Description of goods given correctly and fully in bill of entry/classification declaration - Laying claim to some exemption, whether admissible or not, is a matter of belief of assessee and does not amount to mis-declaration - Sections 25(1) and 111(m) of Customs Act, 1962 - Section 5A(1) of Central Excise Act, 1944 - Rules 173B and 173Q of Central Excise Rules, 1944.

2020 (371) E.L.T. 324 (Tri. - Mumbai)
IN THE CESTAT, WEST ZONAL BENCH, MUMBAI
SIRTHAI SUPERWARE INDIA LTD.
Versus
COMMR. OF CUSTOMS, NHAVA SHEVA-III
Final Order No. A/86791/2019-WZB, dated 10-10-2019 in Appeal No. C/85603/2017

... ...

Demand - Limitation - Extended period - Misdeclaration of facts - By giving correct description on the documents relating to import clearance, burden of making correct declaration on the Bill of Entry discharged by appellants - Any error in classification or exemption claimed on Bill of Entry cannot be misdeclaration with the intention to evade payment of duty - Extended period of limitation not invocable - Demand which falls within the normal period of limitation only needs to be upheld - Matter remanded back to Commissioner for re-determination and re-quantification of demand which can be made by denying the exemption under Notification No. 46/2011-

Cus. to the appellants within the normal period as provided by Section 28(1) of Customs Act, 1962. *[paras 5.5, 5.1]*

Confiscation and penalty - Customs - Fact that the goods correspond to declaration in respect of the description and value is sufficient to take the imported goods away from the application of Sections 111(m) and 111(o) of Customs Act, 1962 - Confiscation of goods and imposition of penalty under Section 112(a) ibid cannot be sustained - Appellant not having made any mis-declaration with intent to evade payment of duty, penalty not imposable under Section 114A of Customs Act, 1962. *[paras 4.9, 4.10]*

(2023) 4 Centax 73 (Tri.-Del)

IN THE CESTAT, TRIBUNALPRINCIPAL BENCH, NEW DELHI

MIDAS FERTCHEM IMPEX PVT. LTD.

Versus

PRINCIPAL COMMISSIONER OF CUSTOMS, ACC (IMPORT), NEW DELHI

Final Order Nos. 50027-50031 of 2023 in Appeal Nos. C/52239/2021 with C/52240-52243/2021, decided on 13-1-2023

... ...

Self-assessment - Scope of - There is no separate mechanism - It is also a form of assessment - As importer is not expert in assessment and can make mistakes, there is provision for reassessment by officer - Although Bill of Entry requires importer to make true declaration and confirm its contents as true and correct, columns for classification, exemption notifications claimed and valuation are matters of self-assessment and are not matters of fact - Claim of wrong classification, ineligible exemption or valuation not fully as per law, or wrong self-assessment by importer will not amount to mis-declaration, mis-statement or suppression - Section 17 of Customs Act, 1962. [para 50]

... ...

2019 (366) E.L.T. 318 (Tri. - Hyd.)

IN THE CESTAT, REGIONAL BENCH, HYDERABAD

[COURT NO. I]

LEWEK ALTAIR SHIPPING PVT. LTD.

Versus

COMMISSIONER OF CUS., VIJAYAWADA

Final Order Nos. A/30053-30056/2019, dated 9-1-2019 in Appeal Nos. C/30608-30609/2017, C/30230 & 30234/2016

... ...

Confiscation and penalty - Misdescription of goods - Mention of wrong tariff or claiming benefit of an ineligible exemption notification cannot form the basis for confiscation of goods under Section 111(m) of Customs Act, 1962 - Therefore, confiscations and redemption fines set aside - Consequently no penalties imposable under Section 112(a) of Customs Act, 1962. *[para 7]*

Penalty under Section 114AA of Customs Act, 1962 - Claiming an incorrect classification or the benefit of an ineligible exemption notification not amounts to making a false or incorrect statement, it being not an incorrect description of goods or their value but only a claim made by assessee - Thus, even if the appellant makes a wrong classification or claims ineligible

exemption, he will not be liable to penalty under Section 114AA of Customs Act, 1962. *[para 7]*

5.5 Further, I find that the Civil Appeal Diary No. 19639 of 2019 filed by Commissioner of Customs, Vijayawada against the above-mentioned Order of Hon'ble CESTAT has been dismissed by the Hon'ble Supreme Court on 05.07.2019 by holding that there is no legal infirmity in the impugned judgment and order warranting Supreme Court's interference under Section 130E(b) of the Customs Act, 1962. *[Commissioner v. Lewek Altair Shipping Pvt. Ltd. - 2019 (367) E.L.T. A328 (S.C.)]*.

5.6 On the issue of sustainability of invoking extended period of limitation, I also refer the following case law:

5.7 I rely upon the Order passed by the Hon'ble Supreme Court in the case of *Pushpam Pharmaceuticals Company Vs. Collector of C.Ex., Bombay [1995 (78) ELT 401 (SC)]*. Para 4 of the same is as follows (underline supplied):

"4. *Section 11A empowers the Department to re-open proceedings if the levy has been short-levied or not levied within six months from the relevant date. But the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts. The meaning of the word both in law and even otherwise is well known. In normal understanding it is not different that what is explained in various dictionaries unless of course the context in which it has been used indicates otherwise. A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or wilful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression.*

5. *In the result this appeal succeeds and is allowed. The matter is remitted back to the Authority for determining the turnover of the assessee in respect of only that period which is within six months from the date of issue of show cause notice."*

5.8 I also rely upon the Judgment of the Hon'ble Supreme Court in the case of *Collector of Central Excise Vs. Chemphar Drugs & Liniments [1989 (40) ELT 276 (SC)]*. Relevant portion of the same is as under (underline supplied):

*"**8.** Aggrieved thereby, the revenue has come up in appeal to this Court. In our opinion, the order of the Tribunal must be sustained. In order to make the demand for duty sustainable beyond a period of six months and up to a period of 5 years in view of the proviso to sub-section 11A of the Act, it has to be established that the duty of excise has not been levied or paid or short-levied or short-paid, or erroneously refunded by reasons of either fraud or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Act or Rules made thereunder, with intent to evade payment of duty. Something positive other than mere inaction or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information when the manufacturer knew otherwise, is required before it is saddled with any liability, before the period of six months. Whether in a particular set of facts and circumstances there was any fraud or collusion or wilful misstatement or suppression or contravention of any provision of any Act, is a question of fact depending upon the facts and circumstances of a particular case. The Tribunal came to the conclusion that the facts referred to hereinbefore do not warrant any inference of fraud. The assessee declared the goods on the basis of their belief of the interpretation of the provisions of the law that the exempted goods were not required to be included and these did not include the value of the exempted goods which they manufactured at the relevant time. The Tribunal found that the explanation was plausible, and also noted that the Department had full knowledge of the facts about manufacture of all the goods manufactured by the respondent when the declaration was filed by the respondent. The respondent did not include the value of the product other than those falling under Tariff Item 14E manufactured by the respondent and this was in the knowledge, according to the Tribunal, of the authorities. These findings of the Tribunal have not been challenged before us or before the Tribunal itself as being based on no evidence.*

***9.** In that view of the matter and in view of the requirements of Section 11A of the Act, the claim had to be limited for a period of six months as the Tribunal did. We are, therefore, of the opinion that the Tribunal was right in its conclusion. The appeal therefore fails and is accordingly dismissed."*

5.9 By relying upon the above Judgment, the Hon'ble Supreme Court in another case of *Padmini Products Vs. Collector of C.Ex. [1989 (43) ELT 195 (SC)]* has held to the effect that extended period of 5 years is not applicable for mere failure or negligence of the manufacturer to take out licence or pay duty when there was scope for doubt that the goods were not dutiable.

5.10 The above-mentioned three case law, though related to Central Excise cases, are squarely applicable to Customs cases also inasmuch the

wordings of erstwhile Proviso to Section 11A(1) of the Central Excise Act, 1944, and Section 28(4) of the Customs Act, 1962, are similar.

5.11 On Customs side, I find that the jurisdictional CESTAT, Ahmedabad, in the case of *Hindustan Unilever Ltd. Vs. Commissioner of Customs, Mundra [(2023) 12 Centax 171 (Tri-Ahmd)]*, has observed and held as follows (underline supplied):

***"4.4** We also find that no conduct or intent of the Appellant is found to be malafide as they submitted all the information and also the information required during assessment. Hence the demand raised for the period 26-11-2013 to 4-8-2015 covered under 106 Bill of Entry out of 886 are barred by limitation and considered to be assessed finally. The goods were not found to be different than declared and the value was based on transfer pricing and hence provisions of Section 111 (m) is also not applicable. The remaining BEs were cleared by the customs after verification and scrutiny of goods and import documents and hence the same also do not come under the purview of Section 111 (m)."*

Against the above-mentioned Final Order in the case of *Hindustan Unilever Ltd.* (supra), the Commissioner of Customs, Mundra, had filed a Civil Appeal Diary No. 32747 of 2023. Vide Order 22.09.2023, reported as *Commissioner of Customs, Mundra Vs. Hindustan Unilever Ltd. [(2023) 12 Centax 172 (SC)]*. Hon'ble Supreme Court has dismissed the said Civil Appeal by observing that they are not inclined to interfere with the order impugned in that appeal.

5.12 The other case law relied upon by the appellant, as mentioned hereinabove, in support of their contention that extended period of limitation for issuance of SCN is not invocable in this case, are also squarely applicable.

5.13 In the case on hand, the appellant has declared the goods as mentioned in the Bills of Entry and there is no dispute about description of the impugned goods. If at the time of import, Customs Department was of the view that the benefit of 12% IGST was not available to the impugned goods, the Bills of Entry could have been re-assessed under the provisions of Section 17(4) of the Customs Act, 1962, as amended w.e.f. 08.04.2011, which are as under:

"(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."

5.14 In view of the above statutory provisions, it is evident that the proper officer was duly empowered to re-assess the duty under Section 17(4) of the Customs Act, 1962. If such re-assessment was not undertaken, the Department had the option to initiate proceedings by issuing a Show Cause Notice within the normal limitation period of two years, as prescribed under Section 28(1) of the Act. The mere fact that the short-payment of IGST was discovered after the expiry of this period does not, in itself, warrant the invocation of the extended limitation period on the grounds of willful misstatement or misdeclaration. Such allegations must be substantiated by credible and cogent evidence, and cannot be invoked solely to circumvent the statutory limitation

5.15 In the present case, the appellant has duly declared and submitted all requisite information for the purpose of assessment. There is no allegation or evidence to suggest that any of the information provided was false, fabricated, or misleading. The description of the goods was accurately stated in the Bills of Entry and was fully known and accessible to both parties at the time of assessment.

5.16 In view of the above discussion and findings, I am of the considered view that when description and other particulars of imported goods are correct, merely claiming benefit of wrong entry of any Notification, extended period of limitation cannot be invoked on the ground of mis-declaration of wrong serial number of Notification.

5.17 In view of the above position, I am of the view that invocation of provisions of Section 28(4) for demand of Customs duty is not sustainable in the present case. Under this situation, I hold that the impugned order confirming demand of duty against the appellant is required to be set aside on the ground of limitation, as prescribed under Section 28 of the Customs Act, 1962. Further, as the demand of duty itself is not sustainable, the order towards imposition of interest and penalty is also not sustainable.

6. In view of the above, I allow the appeal filed by the appellant and set aside the impugned order, with consequential relief, if any, in accordance with law.

(Amit Gupta)
Commissioner (Appeals)
Customs, Ahmedabad.

सत्यापित/ATTESTED
अधीक्षक/SUPERINTENDENT
सीमा शुल्क (अपील), अहमदाबाद
CUSTOMS (APPEALS), AHMEDABAD

By Registered Post A.D.

F.Nos. S/49-161/CUS/JMN/2023-24/1455 Dated –16.06.2025

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   Orpat Nagar, 8-A National Highway,
   Near Surajbari Bridge, Vandhia,
   Samakhiyali, Kachchh, Gujarat – 370150,

Copy to:

1. The Chief Commissioner of Customs Gujarat, Customs House, Ahmedabad.
2. The Principal Commissioner of Customs, Customs, Jamnagar.
3. The Assistant/Deputy Commissioner of Customs, Customs House, Pipavav.
4. Guard File.