आयुक्त, सीमा शुल्क का कार्यालय,
OFFICE OF THE COMMISSIONER OF CUSTOMS
न्यू कस्टम हाउस, बालाजी मंदिर के पास, न्यू कांडला 370210
NEW CUSTOMS HOUSE, NEAR BALAJI TEMPLE, NEW KANDLA-370210
दूरभाष**Phone No. 02836-270222** फ़ैक्स**Fax No 02836-271467**
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DIN-20260271ML00008378D6

A	File No.	GEN/GEN/ADJ/COMM/253/2023-Adjn-O/oCommr-Cus-Kandla
B	Order-in-Original No.	KDL-CUSTM-000-COM-31-2025-26
C	Passed by	Nitin Saini, Commissioner of Customs, Customs House Kandla,
D	Date of Order	16/02/2026
E	Date of Issue	16/02/2026
F	SCN No. & Date	GEN/ADJ/COMM/253/2023-Adjn-O/oCommr-Cus-Kandla dated 18.02.2025
G	Noticee / Party / Importer / Exporter	M/s. GKN Enterprises, is situated at Plot No. 54, Sector-I, Phase-I, Kandla Special Economic Zone, Gandhidham, Kutch

1. This Order-in-Original is granted to the concerned free of charge.

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

Customs Excise &ServiceTaxAppellateTribunal, West Zonal Bench,

2ndFloor, BahumaliBhavanAsarwa,

Nr.Girdhar Nagar Bridge,GirdharNagar,Ahmedabad-380004

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

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

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

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

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

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

BRIEF FACTS OF THE CASE:-

M/s. GKN Enterprises (hereinafter referred to as **'SEZ unit'**), is situated at Plot No. 54, Sector-I, Phase-I, Kandla Special Economic Zone, Gandhidham, Kutch. Letter of Approval (LoA) dated 18.05.2015 was granted to them vide F.No. KASEZ/IA/04/2015-16 by the Development Commissioner, Kandla SEZ under Section 15(9) of the Special Economic Zones Act, 2005 read with Rule 18 of the Special Economic Zones Rules, 2006 to operate as an SEZ unit to carry out authorized operations of manufacturing and trading activity. Further, the Unit Approval Committee (UAC), after due deliberations, has approved the requests of the said SEZ unit for inclusion of additional items in their trading and manufacturing activity and accordingly, amendments in the original LoA have been made from time to time.

2.During the test check of records of O/o the Specified Officer, KASEZ for the period F.Y. 2019-21 and subsequently for the period F.Y. 2021-22 by O/o PDAC, Ahmedabad, the Sr. Audit Officer (CRA-I) noticed short levy of duty due to misclassification of goods. The audit observations, as communicated vide LAR 14/2021-22 (for the period 2019-21)and LAR 14/2022-23 (for the period 2021-22) are as detailed below:

2.1. As per Chapter Note of Chapter 29, Toluene (methylbenzene) (C6H5CH3) is a benzene derivative in which one atom of hydrogen has been replaced by a methyl group. Obtained by distilling light coal tar oil, or by cyclisation of acyclic hydrocarbons. Colorless, mobile, refractive, inflammable liquid, with an aromatic odour similar to that of benzene. To fall in this heading, toluene must have a purity of 95% or more by weight.

2.2. Customs Tariff Heading (CTH) 38140010 covers "Organic composite solvents and thinners not elsewhere specified or included; Prepared paint or varnish removers" and attracts 30.98% Customs duty (BCD-10%, SWS 10%, IGST 18%). Whereas, CTH 29023000 includes "toluene" and attracts 21.245% Customs duty (BCD-2.5%, SWS 10%, IGST 18%).

2.3. The SEZ Unit had cleared/removed goods described as "Paint Solvent N80 (Toluene/ Toluene based) - manufactured goods" into Domestic Tariff Area (DTA) classifying it under CTH 29023000 and short paid the applicable duty.

2.4. CTH 29023000 covers Toluene only while the said goods (cleared into DTA) were having description as "Paint Solvent N80 (Toluene/ Toluene

based)"; accordingly, merited classification under CTH 38140010 attracting Customs duty of 30.98%.

2.5. In some DTA clearances made by the said SEZ Unit during the aforesaid period, it had correctly classified the same goods (viz. Paint Solvent N80) under CTH 38140010. The details of some of such clearances by the said SEZ unit have also been communicated in the subject LAR 14/2021-22.

2.6. The said SEZ unit was granted LoA for authorized operations i.e., to manufacture "Paint Solvents" and not for "Toluene". The manufacture and clearance of "Toluene", even if assumed to be done by the said SEZ unit correctly, appears to fall under the ambit of "unauthorized activity" and accordingly duty benefits availed on procurement/import of such raw materials etc. for such unauthorized manufacturing of "Toluene (CTH 29023000)" appears to be recoverable under penal proceedings. As the unit is engaged in manufacturing of "Paint Solvents (Toluene based)" and not "Toluene", classifying the "Paint Solvents" under CTH 29023000 which covers toluene only, was incorrect.

3. The details of the Bills of Entry via which the said SEZ Unit M/s GKN Enterprises had cleared goods "Paint Solvent (Toluene)" into DTA under CTH 29023000 resulting in short payment of applicable Customs duty on account of misclassification, as communicated by the Audit team, are detailed in the below-mentioned Annexures:

- **LAR 14/2021-22 (for the period 2019-21)** – Annexure B to SCN
  It is to inform that the B/E at Sr. No. 330 in the statement to LAR 14/2021-22 is excluded from this Annexure (Annexure B to the SCN) as it belongs to a different SEZ unit and not to M/s GKN Enterprises.
- **LAR 14/2022-23 (for the period 2021-22)** – Annexure C to SCN

4. Based on the audit observations and scrutiny of data of DTA clearance of goods declared as "Paint Solvent (Toluene/ Toluene Based) - CTH 29023000" as retrieved from NSDL SEZ Online for the period from F.Y. 2019-20 to F.Y. 2023-24, it is observed that in addition to the DTA clearances covered in Annexure B & C, the said SEZ Unit had filed 65 Bills of Entry (detailed in Annexure-D to this Notice) and subsequently paid the duty. As the Out of Charge is not provided in SEZ Online, to ascertain the current status of goods mentioned in Annexure-D, to forward the audit objection and to request the SEZ Unit to pay the applicable Customs duty along with interest, letters had been issued to the said SEZ Unit. In response, the said SEZ Unit vide their letter dated 09.05.2024 informed that all the goods under said 65 Bills of Entry have been cleared into DTA after obtaining Manual Out of Charge and the Out of Charge is pending to be updated in SEZ Online system.

4.1. Further, during the scrutiny of data of DTA clearance of goods declared as "Paint Solvent (Toluene/ Toluene Based) - CTH 29023000" as retrieved from NSDL SEZ Online for the period from F.Y. 2019-20 to F.Y. 2023-24, it is observed that in addition to the DTA clearances covered in Annexure B, C & D, the said SEZ Unit had cleared goods declared as "Paint Solvent (Toluene)" misclassifying the same under CTH 29023000 under 02 Bills of Entry and thereby short paid duty. The details of the same are listed in Annexure E to this Notice.

4.2. Based on the above, all the DTA clearances of goods declared as "Paint Solvent (Toluene/ Toluene Based) - CTH 29023000" made by the SEZ Unit for the period during F.Y. 2019-2024, i.e., all the clearances covered under Annexures B, C, D & E, are tabulated in Annexure A to this Notice.

4.3. During the scrutiny of data of DTA clearance of goods declared as "Paint Solvent (Toluene/ Toluene Based) - CTH 29023000" as retrieved from NSDL SEZ Online for the period from F.Y. 2019-20 to F.Y. 2023-24, it is observed that the SEZ Unit has supplied the subject goods to their own units in DTA having same IEC and/or PAN as that of the said SEZ Unit.

5. In response to the audit observations and above-mentioned points, the unit vide their letter dated 11.10.2021, inter alia, submitted that:

- they are manufacturing 'Paint Solvent N80 (Toluene/ Toluene based)' and classifying the same under CTH 29023000 for DTA clearances.
- the product manufactured by them has the chemical character and properties of the product Toluene pertaining to CTH 29023000 as the principal input is Toluene and even after certain process, the characteristics of the final product remain same as Toluene.
- the chapter heading 38140010 pertains to the goods 'Organic composite solvents and thinners not elsewhere specified or included, prepared paint or varnish removers'. Since the chemical characteristics of their final product are similar to characteristics of Toluene and the same is already specifically specified under CTH 2902, therefore the goods cannot be reclassified under the heading which is to be used for those goods not elsewhere specified or included.
- With reference to some of the DTA clearances where the goods 'Paint Solvent N80' was classified under CTH 38140010, they submitted that as per market demand they have to mix certain other solvent chemical in their final product for which reason the final product does not have characteristics like Toluene. That they have not used the phrase 'Toluene' in such clearances. Since the mixed final product gets denatured by mixing of other solvents, therefore for the purpose of DTA clearance of those final products, they have classified the goods under CTH 38140010.

- that there is a difference in chemical characteristics and properties between the product 'Paint Solvent N80 (Toluene/ Toluene based)' classified under CTH 29023000 and 'Paint Solvent N80' classified under 38140010.
- that they have obtained all the necessary permissions for manufacture of those goods which have been manufactured and cleared by them.

5.1. Further, the unit vide their letter dated 27.05.2024, inter alia, submitted that:

- M/s GKN Enterprises was authorized and approved by the Development Commissioner for manufacturing of finished goods falling under ITC HS: 2902 3000.
- the audit objection that the subject goods - Paint Solvent N80 (Toluene) are misclassified under CTH: 2902 3000 whereas they are actually classifiable under CTH: 3814 0010 is inappropriate.
- The subject good Paint Solvent N80 (Toluene) is manufactured/obtained by distilling light coal tar oil/by cyclisation of acyclic hydrocarbons. The finished good has physical properties like colourless, mobile, refractive, inflammable liquid with an aromatic odour similar to that of benzene.
- all the goods manufactured by the unit are cleared into DTA only after the in-house analysis and quality check of the finished product through lab tests at our unit.
- As per the test reports, the goods having the purity of 95% or more by weight of Toluene are classified under CTH: 2902 3000. In case, as per the test report, the toluene component in the finished goods does not meet the purity of 95% then the subject goods are classified under 3814 0010 and goods are described as Paint Solvent N80 (Toluene)-based.
- the approved raw material "Toluene-2902 3000" after distillation is converted into finished good Paint Solvent N80 (Toluene) and upon the analysis/testing of the finished good based on the purity of Toluene component in the finished goods, the goods are classified into ITC HS: 2902 3000/3814 0010 whichever is applicable.
- the manufactured goods as described in the relevant Bill of Entry (DTA) as mentioned in Audit observations are rightly classified under ITC HS: 2902 3000 as per test analysis report.
- requested to consider the above submissions and to close the audit observation.

6. In view of the above discussions, it appears that the said SEZ Unit had cleared/removed goods declared as "Paint Solvent N80 (Toluene/ Toluene based)" into DTA by means of misclassifying the same under CTH 29023000 which attracts Customs duty at an effective rate of 21.245% (BCD-2.5%, SWS 10%, IGST 18%) instead of appropriately classifying

under CTH 38140010 and discharging the Customs duty at the effective rate of 30.98% (BCD-10%, SWS 10%, IGST 18%). Therefore, it appears that the subject misclassification has resulted in evasion of Customs duty of Rs. 19,61,10,601/- (Nineteen Crores Sixty One Lakhs Ten Thousands and Six Hundred and One only) (as detailed in Annexure-A to this Show Cause Notice).

7. The following are the legal provisions, which are in general applicable in the present case. The list given herein is indicative and not exhaustive, as the context of legal provisions may otherwise require reference of other legal provisions, reference of which are also to be invited, as and when required:

7.1. The Customs Act, 1962:
7.1.1. Section 46 of the Customs Act, 1962
7.1.2. Section 2(39) of the Customs Act, 1962
7.1.3. Section 111(m) of the Customs Act, 1962
7.1.4. Section 112 of the Customs Act, 1962
7.1.5. Section 114A of the Customs Act, 1962
7.1.6. Section 114AA of the Customs Act, 1962
7.1.7. Section 124 of the Customs Act, 1962

7.2. SEZ Act, 2005 and SEZ Rules, 2006
7.2.1. Section 30 of the SEZ Act, 2005
7.2.2. Section 15(9) of the SEZ Act, 2005
7.2.3. Rule 18 of the SEZ Rules, 2006
7.2.4. Rule 47 of the SEZ Rules, 2006
7.2.5. Rule 48 of the SEZ Rules, 2006

7.3. Foreign Trade (Development and Regulation) Act, 1992
7.3.1. Section 12 of the FTDR Act, 1992

7.4. Foreign Trade (Regulation) Rules, 1993
7.4.1. Rule 11 of the FTR, 1993
7.4.2. Rule 14 of the FTR, 1993
7.4.3. Rule 15(3)(a) of the FTR, 1993
7.4.4. Rule 17 of the FTR, 1993

8. Section 17 of the Customs Act, 1962 provides for self-assessment of duty on imported and export goods by the importer or exporter himself by filing a Bill of Entry or Shipping Bill, as the case may be. Under self-assessment, the importer or exporter has to ensure correct classification, applicable rate of duty, value and exemption notifications, if any, in respect of imported or export goods while presenting Bill of Entry or Shipping Bill respectively. Further, Rule 75 of the SEZ Rules, 2006 also provides that unless and otherwise specified in these rules all inward or outward movements of the goods into or from SEZ by the Unit/Developer

shall be based on self-declaration made by the Unit/Developer. While clearing subject goods to Domestic Tariff Area, the said SEZ Unit and the DTA buyers were bound for true and correct declaration and assessment. As the said SEZ unit was engaged in business of manufacturing and trading of the subject goods, they were fully aware of specifications, characteristics, nature and description of the goods cleared by them in DTA. However, it appears the SEZ Unit and the DTA buyers deliberately/willfully suppressed/misstated specifications, characteristics, nature and description of the goods and wrongly declared the classification of the said product/goods under CTH 29023000 with an intention to evade payment of applicable Customs Duty. By deliberately/willfully suppressing/misstating the material facts of nature, specifications, characteristics and description of the subject goods, the said SEZ unit and the DTA buyers wrongly classified the subject goods resulting in evasion of Customs duty totally amounting to Rs. 19,61,10,601/- (Rupees Nineteen crore sixty one lakh ten thousand six hundred and one only), as detailed in Annexure-A to this notice. In view of the foregoing facts, it is the fit case for invoking the extended period for demand of duty under Section 28(4) of the Customs Act, 1962.

9. The said unit and the DTA buyers did not disclose the material facts relating to the actual specifications, characteristics, nature and description of the subject goods cleared into DTA. The above discussed facts reveal that while clearing the subject goods i.e., "Paint Solvent N80 (TOLUENE/ TOLUENE Based)" to various DTA buyers, the said SEZ Unit and the DTA buyers misclassified the subject goods totally valued at Rs. 201,44,89,960/- (Rupees two hundred and one crore forty four lakh eighty nine thousand nine hundred and sixty only) as detailed in Annexure-A to this notice, by deliberately misstating the material facts relating to classification/specifications and characteristics of the same. They misclassified the subject goods with an intention to evade the payment of appropriate duty on the same during clearance to DTA. For the said acts of omissions and commissions the goods mentioned in Annexure-A to this notice, totally valued at Rs. 201,44,89,960/- (Rupees two hundred and one crore forty four lakh eighty nine thousand nine hundred and sixty only), are liable to confiscation under section 111(m) of the Customs Act, 1962, though the same are not physically available. For the act of willfully misstating the material facts and misclassification, the said SEZ unit and the DTA clients have rendered themselves liable to penalty under section 112 of the Customs Act, 1962. By the act of knowingly evading Customs duty by willfully misstating the material facts and misclassifying subject goods, the SEZ unit and the DTA clients have also rendered themselves liable to penalty under section 114A of the Customs Act, 1962. Since the said SEZ unit has prepared and used documents showing false information about the subject goods, this act on their part has rendered themselves liable to penalty under section 114AA of the Customs Act, 1962.

10. Charging Paras:

10.1. Therefore, the SEZ Unit, namely, M/s. GKN Enterprises, Plot No. 54,Sector-I, Phase-I, Kandla Special Economic Zone, Gandhidham (Noticee No. 1) is hereby called upon to Show Cause to the Commissioner of Customs having hisoffice situated at Customs House, Near Balaji temple, Kandla, District Kutch within 30 days from the receipt of this notice as to why:

(a) The classification of goods declared under Customs Tariff Item 29023000 of Customs Tariff Act, 1975 in the Bills of Entry appearing in Annexure-A to this notice should not be rejected and goods detailed in Annexure-A to this Notice should not be re-classified under the Customs Tariff Item 38140010 of the Customs Tariff Act, 1975;

(b) The goods mentioned in Annexure-A to this notice, totally valued at Rs.201,44,89,960/-(Rupees Two Hundred One Crore Forty Four Lakh Eighty Nine Thousand Nine Hundred and Sixty Only), should not be held liable for confiscation under section 111(m) of the Customs Act,1962, though the same are not physically available;

(c) Penalty under section 112 of the Customs Act, 1962 should not be imposed on them for reasons discussed above.

(d) Penalty under section 114AA of the Customs Act, 1962 should not be imposed on them for reasons discussed above.

(e) Bond-cum-Legal Undertaking in Form-H furnished by the said SEZ Unit should not be enforced towards the liabilities arising out of subject goods removed from said SEZ Unit to DTA as detailed in Annexure-A.

10.2. Therefore, the DTA client, namely, M/s. GKN Enterprises (IEC-3513006233), Flat No.206, 12/B, Square Apartment, Plot No.313, Gandhidham (Noticee No. 2), are hereby called upon to Show Cause to the Commissioner of Customs having his office situated at Customs House, Near Balaji temple, Kandla, District Kutch within 30 days from the receipt of this notice as to why:

(a) The classification of goods declared under Customs Tariff Item 29023000 of Customs Tariff Act, 1975 in the Bills of Entry appearing in Annexure-A to this notice should not be rejected and goods detailed in Annexure-A to this Notice should not be re-classified under the Customs Tariff Item 38140010 of the Customs Tariff Act, 1975;

(b) The goods mentioned in Annexure-A to this notice, totally valued at Rs. 201,44,89,960/-(Rupees Two Hundred One Crore Forty Four Lakh Eighty Nine Thousand Nine Hundred and Sixty Only), should not be held liable for confiscation under section 111(m) of the Customs Act,1962, though the same are not physically available;

(c) The Customs duty totally amounting to Rs. 19,61,10,601/- (Rupees Nineteen Crore Sixty One Lakh Ten Thousand Six Hundred and one only) on the goods as detailed in Annexure-A to this notice should not be demanded and recovered from them under Section 28(4) of the Customs Act,1962 along with interest thereon under section 28AA ibid;

(d) Penalties under section 112 and 114A of the Customs Act, 1962 should not be imposed on them for reasons discussed above.

11. Personal Hearing and written submission:-

11.1. The noticee submitted their written reply vide letter dated 07.01.2026 through their advocate Shri Ashwani Kumar Prabhakar and Shri N Seenivasan, Prop. GKN Enterprises. Hereinafter referred as "notice" interalia submitted as under.

11.2. That, the said Show cause Notice, vide Para 10.1, they have been called upon to Show cause to your good-self within 30 days from the receipt of this notice as to why:

a. the classification of goods declared under Customs Tariff Item 29023000 of Customs Tariff Act, 1975 in the Bills of Entry appearing in Annexure-A to this notice should not be rejected and goods detailed in Annexure-A should not be re-classified under the Customs Tariff Item 38140010 of the Customs Tariff Act, 1975;
b. the goods totally valued at Rs.201,44,89,960/- should not be held liable for confiscation under Section 111(m) of the Customs Act,1962, though the same are not physically available;
c. penalty under section 112 of the Customs Act, 1962 should not be imposed on them;
d. penalty under Section 114AA of the Customs Act, 1962 should not be imposed on them;
e. Bond-cum-Legal Undertaking in Form-H furnished by them (SEZ Unit) should not be enforced towards the liabilities arising out of subject goods removed from said SEZ Unit to DTA as detailed in Annexure-A.

11.3. That, Again vide Para 10.2, their DTA Unit has been called upon to Show cause to your good-self within 30 days from the receipt of this notice as to why:

a. the classification of goods declared under Customs Tariff Item 29023000 of Customs Tariff Act, 1975 in the Bills of Entry appearing in Annexure-A to this notice should not be rejected and goods detailed in Annexure-A to the Notice should not be re-classified under the Customs Tariff Item 38140010 of the Customs Tariff Act, 1975;
b. the goods mentioned in Annexure-A to the notice, totally valued at

Rs.201,44,89,960/- should not be held liable for confiscation under Section 111(m) of the Customs Act,1962, though the same are not physically available;

c. the Customs duty totally amounting to Rs.19,61,10,601/- on the goods as detailed in Annexure-A should not be demanded and recovered from us under Section 28(4) of the Customs Act,1962 along with interest thereon under Section 28AA;
d. penalties under Section 112 and 114A of the Customs Act, 1962 should not be imposed on them;
e. penalty under section 114AA of the Customs Act, 1962 should not be imposed on them.

11.4. That, the basis for the issue of the said Show cause notice is on the allegation that they have removed the goods totally amounting to Rs. 201,44,89,960/- described as Paint Solvent N80 (Toluene/Toluene based) to the Domestic Tariff Area (DTA) classifying it under CTH 29023000 and paid the Customs duty @21.245% instead of classifying it under CTH 38140010 by paying Customs duty @ 30.98%. As a result, they have short paid the applicable Customs duty amounting to Rs.19,61,10,601/- for the period 2019 to 2024 as per Annexure-A to the said Show cause Notice.

11.5. That, at the outset, they deny the allegations levelled against us. they have neither mis-classified the goods nor short paid any Customs duty. Therefore, the basis for the issue of the said Show cause notice proposing to confiscate the goods amounting to Rs.201,44,89,960/- and demanding the short payment of Customs of Rs.19,61,10,601/- and imposing penalty under Section 112, 114A and 114AA of the Customs Act, 1962 are totally unsustainable.

11.6. That, in response to the audit observations made by the Specified Officer, KASEZ for the period 2019-21 & 2021-22, they, vide our letter dated 11/10/2021, inter-alia, submitted that; they are manufacturing 'Paint Solvent N80 (Tolene/ Toluene based)' and classifying the same under CTH 29023000 for DTA clearances; the product manufactured by them having the chemical character and properties of the product Toluene pertaining to CTH 29023000 as the principle input is Toluene and even after certain process, the characteristics of the final product remain same as Toluene; the CTH 38140010 pertains to the goods 'Organic Composite solvents and thinners not elsewhere specified or included, prepared paint or varnish removers'.

11.7. That, since the chemical characteristics of their final product are similar to characteristics of the Toluene and same is already specifically specified under CTH 2902, the said goods cannot be reclassified under the different heading which is to be used for those goods not elsewhere specified or included. With reference to some of the DTA clearances where the goods 'Paint Solvent N80' was classified under CTH 38140010, they submitted that as per market demand, they have to mix certain other solvent chemical in their final product for which reason the final product does not have characteristics like Toluene. Therefore, they have not used

the phrase 'Toluene' in such clearances. Since the mixed final product get denatured by mixing of other solvents therefore for the purpose of DTA clearance of those final products, theyhave classified the goods under CTH 38140010. There is a difference in chemical characteristics and properties between the product 'Paint Solvent N80 (Toluene/ Toluene based)' classified under CTH 29023000 and 'Paint Solvent N80' classified under 38140010.

11.8.That, vide their letter dtd. 27/05/2024, they, inter-alia, submitted that they were authorized SEZ Unit approved by the Development Commissioner for manufacturing of finished goods falling under ITC HS Code 2902 3000; that the audit objection stated that the subject goods Paint Solvent N80(Toluene) are mis-classified under CTH 29023000, whereas it is actually classifiable under CTH 38140010 is in-appropriate because the subject goods viz. Paint Solvent N80 (Toluene) is manufactured/ obtained by distilling light coal tar oil/ by cyclisation of acyclic hydrocarbons; that the finished goods has physical properties like colourless, mobile, refractive, inflammable liquid with an aromatic odour similar to that of benzene; that all the goods manufactured by them are cleared into DTA only after the in-house analysis and quality check of the finished product through lab test at our unit; that as per the test reports, the goods having the purity of 95% or more by weight of Toluene are classified under CTH: 2902 3000. In case, as per the test report, the toluene component in the finished goods doesn't meet the purity of 95% then the subject goods are classified under 3814 0010 and goods are described as Paint Solvent N80(Toluene) – based that the approved raw-material "Toluene-2902 3000" after distillation is converted into finished goods Paint Solvent N80 (Toluene) and upon the analysis/testing of the finished goods based on the purity of Toluene component, the same are classified into ITC HS Code 2902 3000/ 3814 0010 whichever applicable; that the manufactured goods as described in the relevant Bill of Entry (DTA) as mentioned in Audit observations are rightly classified under ITC HS Code 2902 3000 as per test analysis report.

11.9. That, vide their letter dated 6/02/2025, inter-alia, submitted that no additional submissions are to be made by our DTA unit viz., M/s. GKN Enterprises, Flat No.206, 12/B, Square Apartment, Plot No.313, Gandhidham and the submission made by them viz. Kandla SEZ Unit may kindly be taken on record and considered as inclusive of the submissions from the DTA unit also.

11.10. That, even after submitting above 3 letters i.e. 11/10/2021, 27/5/2024 & 6/2/2025 against the audit observations explaining that they have correctly classified the product in question, the Department still alleged that they have cleared/ removed goods by declaring as "Paint Solvent N80 (Toluene/ Toluene based)" into DTA and by means of mis-classifying the same under CTH 29023000, they have paid Customs duty at an effective rate of 21.245% (BCD-2.5%, SWS 10%, IGST 18%) instead of appropriately classifying under CTH 38140010 and discharging the Customs duty at the effective rate of 30.98% (BCD-10%, SWS 10%, IGST 18%). Because of this, it has been further alleged that there has been

evasion of Custom duty of Rs. 19,61,10,601/-.

11.11. That, the goods in question viz. Paint Solvent N80 (Toluene) is manufactured/ obtained by distilling light coal tar oil/ by cyclisation of acyclic hydrocarbons. The finished goods has physical properties like colourless, mobile, refractive, inflammable liquid with an aromatic odour similar to that of benzene. The goods manufactured by them are cleared into DTA only after the in-house analysis and quality check through lab test at our unit. As per the test reports, the goods having the purity of 95% or more by weight of Toluene are correctly classified under CTH 29023000 of the Customs Tariff. It is further submitted that in case, as per the test report, the toluene component in the finished goods doesn't meet the purity of 95%, then the subject goods are classified under 3814 0010. Based on the approved raw-material "Toluene classifiable under CTH 2902 3000" after distillation, it is converted into finished goods Paint Solvent N80 (Toluene) and upon the analysis/testing of the finished goods, based on the purity of Toluene component, the same are classified under ITC HS Code 2902 3000 or 3814 0010 whichever applicable. Accordingly, the observation of the Audit has also rightly classified under ITC HS Code 2902 3000 as per test analysis report.

11.12. That, from the foregoing submissions, they submit that they have rightly classified our finished products under CTH 29023000 and correctly paid the Customs duty. Therefore, the allegations levelled against are without any basis and not sustainable in law. Hence, the goods cleared by them not liable to confiscation and no differential duty is demandable from them under Section 28(4) of the Customs Act, 1962. Since goods are not at all liable for confiscation and hence payment of differential duty does not arise, they are also not liable to pay any interest or penalty is imposable on them under any of the Customs Act, 1962.

11.13. That the detailed submissions made below on following aspects may please ne taken on record :-

Sr. No.	**Submissions**	**Issue**
1	**MERITS**	**The subject goods are classifiable under CTI 2902**
2	**MERITS**	**The subject goods are not classifiable under CTI3824**
3	**JURISDICTION**	**SCN invoked extended period without jurisdiction**
4	**JURISDICTION**	**IGST CANNOT BE RECOVERED UNDER SECTION 30 OF THE SEZ ACT, 2005 SINCE IT IS NOT A DUTY OF CUSTOMS**
5	**JURISDICTION**	**THE SEZ ACT AND RULES DO NOT PROVIDE FOR MECHANISM TO COLLECT DUTY CHARGEABLE ON GOODS REMOVED FROM SEZ TO DTA**
6	**JURISDICTION**	**THE SEZ ACT AND RULES DO NOT PROVIDE FOR**

		LEVY OF INTEREST AND PENALTY ON THE DUTIES CHARGED UNDER SECTION 30 OF THE SEZ ACT

11.14. Submissions on MERITS: The subject goods are classifiable under CTI 2902

11.14.1. It is submitted that Without prejudice, that goods cleared under Section 30 of SEZ Act have been correctly classified under CTI 29023000. The description of goods has been declared in BEs as " Paint Solvent N80(TOULENE BASED)". The Custom tariff act provides the rules for the interpretation of the first schedule, i.e. GRI, including the Section Notes and Chapter Notes and the General Explanatory Notes of the first schedule. The official interpretation of the HSN is provided in the Explanatory Notes published by the World Customs Organisation (hereinafter "Explanatory Notes"). Therefore, these Explanatory Notes form the foundation for interpreting the HSN. Given their importance for classification, it is apposite to understand how they can be used when addressing questions of classification under the First Schedule of the Act, 1975. Classification of goods in this Schedule shall be governed by the following principles enshrined in GRI. Relevant extracts reproduced below : -

"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 and any relative Section or Chapter Notes*** *and, provided such headings or Notes do not otherwise require, according to the following provisions:*

*2(a) ***(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance.* ***The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.***

3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) the heading which provides the ***most specific description*** *shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of*

the goods.
(b) mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component ***which gives them their essential character****, insofar as this criterion is applicable.*
*(c) when goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.******"*

11.14.2. That, the tariff entry in the present case is reproduced below:-

Tariff Item		**Description**	**Unit**	**Rate of Duty**
(1)		**(2)**	**(3)**	**(4)**
		I. — HYDROCARBONS AND THEIR HALOGENATED, SULPHONATED, NITRATED OR NITROSATED DERIVATIVES		
2901		ACYCLIC HYDROCARBONS		
2902		**CYCLIC HYDROCARBONS**		
	-	**Cyclanes, cyclenes and cycloterpenes :**		
2902 30 00	**-**	**Toluene**	**kg.**	**--%**

11.14.3. That from the above, it is clear that there is a specific entry for Toluene. Further, please note that HSN EN pertaining to Toulene has been reproduced below : -
"Toluene (methylbenzene) (CHsCHs). A benzene derivative in which one atom of hydrogen has been replaced by a methyl group. Obtained by distilling light coal tar oil, or by cyclisation of acyclic hydrocarbons. Colourless, mobile, refractive, inflammable liquid, with an aromatic odour similar to that of benzene. ***To fall in this heading, toluene must have a purity of 95 % or more by weight****. Toluene of lower purity is excluded (heading 27.07)."*

11.14.4. That the submissions made by Noticee in response to communication of said Audit Para. The product manufactured by them has the chemical character and properties of the product "TOULENE" pertaining to CTI 29023000 as the principle input as Toulene. Since the chemical characteristics of said products cleared into DTA is similar to the TOULENE specifically covered in HSN 29023000, the same don't merit classification under CTI 3814. Reply explained way back in 2021 that product "paint solvent" is different from "Paint solvent(Toluene/**toluene**

based)". Even in May 2024, they informed Custom authorities that clearances have been given after examination and manual OOC by Custom officers. they replied that goods are having purity of 95% or more by weight. Otherwise also, all documents on the basis of which goods have been cleared were approved by assessment /OOC officers. It is prayed that revenue seeks to order reassessment without any legally admissible test reports in respect of goods which has already been cleared by Customs. Classification needs to be determined according to the terms of the headings and any relative Section or Chapter Notes. Specific entry for Toulene covers the cleared goods as per Rule 1 of GIR. As per Rule 2(b), The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected in the heading which provides the **most specific description** rather than headings providing a more general description. Goods have essential characteristics of Toluene only and specific mention of qualifier "TOULENE/TOULENE BASED" in each of the Bills of Entry is testimony to the said fact. The same was our Bonafide belief and same has never been objected by Customs.

11.15. Submissions on MERITS: The subject goods are not classifiable under CTI3824

11.15.1. It is further submitted that the tariff entry in the present case is reproduced below:-

3814	**ORGANIC COMPOSITE SOLVENTS AND THINNERS, NOT ELSEWHERE SPECIFIED OR INCLUDED; PREPARED PAINT OR VARNISH REMOVERS**
3814 00	**- Organic composite solvents and thinners, not elsewhere specified or included; prepared paint or varnish removers :**
	- - Organic composite solvents and thinners, not elsewhere specified or included:
	- -

11.15.2. That as per HSN EN, CH 3814 covers Organic composite solvents and thinners, not elsewhere specified or included; prepared paint or varnish removers. The heading covers organic solvents and thinners (whether or not containing 70 % or more by weight of petroleum oil **provided that they are not separate chemically defined compounds and are not covered by a more specific heading**. They are more or less volatile liquids which are used, inter alia, in the preparation of varnishes and paints or as degreasing preparations for machinery parts, etc.
Examples of the products classified in this heading are:
(1) **Mixtures of acetone, methyl acetate and methanol, and mixtures of ethyl acetate, butyl alcohol and toluene**.
(2) **Degreasing preparations for machinery parts, etc., consisting of a mixture of :**
(i) white spirit with trichloroethylene; or(ii) petroleum spirit with chlorinated products and xylene.
The heading also covers paint or varnish removers consisting of the above

mixtures with the addition of small quantities of **paraffin wax (to retard evaporation of the solvents), emulsifiers, gelling agents, etc.**
The heading **does not cover:**
(a) Separate chemically defined solvent or thinning compounds (Chapter 29 generally) and products of complex constitution used as solvents or thinners but covered by more specific headings of the Nomenclature, e.g, solvent naphtha (heading 27.07), white spirit (heading 27.10, gum, wood of sulphate turpentine (heading 38.05); wood tar oils (heading 38.07, inorganic composite solvents (generally heading 38.24).(b) Solvents for removing nail varnishes, put up for retail sale (heading 33.04).

11.15.3 That, in view of above clear and unambiguous HSN Explanatory Notes , it is evident that the goods cleared by them don't fall under CTI 3814. The heading specifically **excludes separate chemically defined solvent or thinning compounds (Chapter 29 generally).** Heading specifically provides that they are **not separate chemically defined compounds** and are **not covered by a more specific heading**. Goods in question are **not mixtures** of acetone, methyl acetate and methanol, and mixtures of ethyl acetate, butyl alcohol and toluene. Goods in question are **not Degreasing preparations** for machinery parts, etc., consisting of a mixture of white spirit with trichloroethylene; or petroleum spirit with chlorinated products and xylene. Neither allegation nor evidences like test reports/end use reports etc to such effect is relied upon in SCN for impugned proceedings.

11.16. Extended Period of Limitation is not invokable

11.16.1. It is submitted that in the present case, the entire demand of differential duty is in the extended period. Each of the Bills of Entry were assessed and examined by Authorized Officers posted in SEZ. In most of the Bills of Entry, manual OOC has been given for each part consignments. The Department has sought to invoke the extended period of limitation on the classification issue wherein each item was examined by authorized officers. Not in one, but in all instances, BEs were examined and clearance under Section 30 of SEZ Act read with SEZ Rules was accorded by Custom Officers. A copy of examination reports is available on SEZ_Online System. There is no question/query raised by Custom Officer on classification issue. Therefore, it is evident that the department was aware of the subject goods cleared from SEZ to DTA Unit. Hence, the allegation that the Unit allegedly suppressed the nature of the goods with intent to evade duty is without any basis. When all facts were within the knowledge of the Department and infact are available on SEZ_Online Portal, it cannot be said the Unit has suppressed material fact from Customs. Even, the Audit objection is based on records available on SEZ_Online system and their interpretation to it.

11.16.2. That, when 2 views are possible, the extended period is not invokable. In this regard, it is pertinent to refer to the decision of the Tribunal in **M/s Secure Meters Ltd. Versus Principal Commissioner of Customs (Imports), New Delhi** (Vice-Versa)CUSTOMS APPEAL NO. 51041 OF 2020 with CUSTOMS APPEAL NO. 51137 OF 2020, Order No. FINAL

ORDER NO. 50093-50094/2025 dated January 28, 2025. The relevant portion has been extracted below: -

"43. The importer is required under section 17 to self-assess duty which, he would naturally do, according to his understanding. The importer is nowhere required to anticipate how the proper officer may think and what classification he may find correct. It is impossible for anyone to predict what view someone else may take. To say that the importer had resorted to 'wilful and deliberate suppression of facts' because he classified goods as he thought fit and failed to anticipate what view the department may take later is simply outrageous and cannot be sustained."

11.16.3. That Suppression or misstatement must be willful to invoke the provisions of Section 28(4). As stated by a three Judge Bench of the Hon'ble Supreme Court in Cosmic Dye Chemical Vs Collector of Central Excise [(1995) 6 SCC 117], that:

"Now so far as fraud and collusion are concerned, it is evident that the requisite intent, i.e., intent to evade duty is built into these very words. So far as misstatement or suppression of facts are concerned, they are clearly qualified by the word "wilful" preceding the words "misstatement or suppression of facts" which means with intent to evade duty. The next set of words "contravention of any of the provisions of this Act or rules" are again qualified by the immediately following words "with intent to evade payment of duty". ***It is, therefore, not correct to say that there can be a suppression or misstatement of fact, which is not wilful and yet constitute a permissible ground for the purpose of the proviso to Section 11-A. Misstatement or suppression of fact must be wilful."***

11.16.4. That, in **Anand Nishikawa Co. Ltd. Vs. Commissioner of Central Excise, Meerut[(2005) 7 SCC 749]**, while again referring to the observations made in Pushpam Pharmaceuticals Company (supra), this Court clarified the requirements of the proviso to Section 11- A, as follows:-

"26…This Court in the case of Pushpam Pharmaceuticals Company v. Collector of Central Excise, Bombay (supra), while dealing with the meaning of the expression "suppression of facts" in proviso to Section 11A of the Act held that the term must be construed strictly, ***it does not mean any omission and the act must be deliberate and willful to evade payment of duty.*** *The Court, further, held :-*
'In taxation, it ("suppression of facts") can have only one meaning that ***the correct information was not disclosed deliberately to escape 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.'***

27. It is submitted that relying on the aforesaid observations of this Court in the case of Pushpam Pharmaceutical Co. v. Collector of Central Excise, Bombay [1995 Suppl. (3) SCC 462], we find that "suppression of facts" can have only one meaning that the correct information was not disclosed

deliberately to evade payment of duty. When facts were known to both the parties, the omission by one to do what he might have done and not that he must have done, would not render it suppression. It is settled law that mere failure to declare does not amount to willful suppression. There must be some positive act from the side of the assessee to find willful suppression. Therefore, in view of our findings made herein above that there was no deliberate intention on the part of the appellant not to disclose the correct information or to evade payment of duty, it was not open to the Central Excise Officer to proceed to recover duties in the manner indicated in the proviso to Section 11A of the Act."

11.16.5. It is submitted that **M/s. UNIWORTH TEXTILES LTD. Versus COMMISSIONER OF CENTRAL EXCISE. RAIPUR2013 (288) E.L.T. 161 (SC)** Court has observed that:

*"12.****We are not convinced by the reasoning of the Tribunal. The conclusion that mere non-payment of duties is equivalent to collusion or willful misstatement or suppression of facts is, in our opinion, untenable. If that were to be true, we fail to understand which form of non-payment would amount to ordinary default? Construing mere non-payment as any of the three categories contemplated by the proviso would leave no situation for which, a limitation period of six months may apply. In our opinion, the main body of the Section, in fact, contemplates ordinary default in payment of duties and leaves cases of collusion or willful misstatement or suppression of facts, a smaller, specific and more serious niche, to the proviso. Therefore, something more must be shown to construe the acts of the appellant as fit for the applicability of the proviso. "*

11.16.6. That, Apex Court, in **Pushpam Pharmaceuticals Company Vs. Collector of Central Excise, Bombay[1995 Supp(3) SCC 462**], while interpreting the proviso of an analogous provision in Section 11A of The Central Excise Act, 1944, which is parimateria to the proviso to Section 28 discussed above, made the following observations:

"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."

11.16.7. That, in **Sarabhai M. Chemicals vs. Commissioner of Central Excise, Vadodara [(2005) 2 SCC 168]**, a three- judge bench of this Court, while referring to the observations extracted above, echoed the following views:

"23. Now coming to the question of limitation, at the outset, we wish to clarify that there are two concepts which are required to be kept in mind for the purposes of deciding this case. Reopening of approvals/assessments is different from raising of demand in relation to the extended period of limitation. Under section 11A(1) of the Central Excise Act, 1944, a proper officer can reopen the approvals/assessments in cases of escapement of duty on account of non- levy, non-payment, short-levy, short- payment or erroneous refund, subject to it being done within one year from the relevant date. On the other hand, the demand for duty in relation to extended period is mentioned in the proviso to section 11A(1). Under that proviso, in cases where excise duty has not been levied or paid or has been short- levied or short-paid or erroneously refunded on account of fraud, collusion or wilful mis-statement or suppression of facts, or in contravention of any provision of the Act or Rules with the intent to evade payment of duty, demand can be made within five years from the relevant date. In the present case, we are concerned with the proviso to section 11A(1).
24. In the case of Cosmic Dye Chemical v. Collector of Central Excise, Bombay (1995) 6 SCC 117, this Court held that intention to evade duty must be proved for invoking the proviso to section 11A(1) for extended period of limitation. It has been further held that intent to evade duty is built into the expression "fraud and collusion" but mis- statement and suppression is qualified by the preceding word "wilful".
Therefore, it is not correct to say that there can be suppression or misstatement of fact, which is not wilful and yet constitutes a permissible ground for invoking the proviso to section 11A.
25. In case of Pushpam Pharmaceuticals Company v. C.C.E. [1995 (78) ELT 401(SC)], this Court has held that the extended period of five years under the proviso to section 11A(1) is not applicable just for any omission on the part of the assessee, unless it is a deliberate attempt 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 constitute suppression of fact."

11.16.8. That, in fact, the Act contemplates a positive action which betrays a negative intention of willful default. The same was held by Easland Combines, Coimbatore Vs. The Collector of Central Excise, Coimbatore[(2003) 3 SCC 410] wherein this Court held:-

"31. It is settled law that for invoking the extended period of limitation duty should not have been paid, short levied or short paid or erroneously refunded because of either fraud, collusion, wilful misstatement, suppression of facts or contravention of any provision or rules. ***This Court has held that these ingredients postulate a positive act and, therefore, mere failure to pay duty and/or take out a licence which***

is not due to any fraud, collusion or willful misstatement or suppression of fact or contravention of any provision is not sufficient to attract the extended period of limitation."

11.16.9. That, Supreme Court in the case of the Associated Cement Companies Ltd. vs. Commissioner of Customs [(2001) 4 SCC 593, at page 619] in the following words: -

"53…Our attention was drawn to the cases of CCE v. Chemphar Drugs and Liniments (1989) 2 SCC 127, Cosmic Dye Chemical v. CCE (1995) 6 SCC 117, Padmini Products v. CCE (1989) 4 SCC 275, T.N. Housing Board v. CCE 1995 Supp (1) SCC 50 and CCE v. H. M. M. Ltd. (supra). In all these cases the Court was concerned with the applicability of the proviso to Section 11-A of the Central Excise Act which, like in the case of the Customs Act, contemplated the increase in the period of limitation for issuing a show-cause notice in the case of non-levy or short-levy to five years from a normal period of six months...
54. While interpreting the said provision in each of the aforesaid cases, it was observed by this Court that for proviso to Section 11-A to be invoked, the intention to evade payment of duty must be shown.
This has been clearly brought out in Cosmic Dye Chemical case where the Tribunal had held that so far as fraud, suppression or misstatement of facts was concerned the question of intent was immaterial. While disagreeing with the aforesaid interpretation this Court at p. 119 observed as follows: (SCC para 6)
'6. Now so far as fraud and collusion are concerned, it is evident that the requisite intent, i.e., intent to evade duty is built into these very words. So far as misstatement or suppression of facts are concerned, they are clearly qualified by the word 'wilful' preceding the words 'misstatement or suppression of facts' which means with intent to evade duty. The next set of words 'contravention of any of the provisions of this Act or Rules' are again qualified by the immediately following words 'with intent to evade payment of duty'. It is, therefore, not correct to say that there can be a suppression or misstatement of fact, which is not wilful and yet constitutes a permissible ground for the purpose of the proviso to Section 11- A. Misstatement or suppression of fact must be wilful.'
The aforesaid observations show that the words "with intent to evade payment of duty" were of utmost relevance while construing the earlier expression regarding the misstatement or suppression of facts contained in the proviso. Reading the proviso as a whole the Court held that intent to evade duty was essentially before the proviso could be invoked.
55. ***Though it was sought to be contended that Section 28 of the Customs Act is in pari-materia with Section 11-A of the Excise Act, we find there is one material difference in the language of the two provisions and that is the words "with intent to evade payment of duty" occurring in proviso to Section 11-A of the Excise Act which are missing in Section 28(1) of the Customs Act and the proviso in particular...***
56. ***The proviso to Section 28 can inter alia be invoked when any duty has not been levied or has been short-levied by reason of collusion or any wilful misstatement or suppression of facts by the***

importer or the exporter, his agent or employee. Even if both the expressions "misstatement" and "suppression of facts" are to be qualified by the word "wilful", as was done in the Cosmic Dye Chemical case while construing the proviso to Section 11-A, the making of such a wilful misstatement or suppression of facts would attract the provisions of Section 28 of the Customs Act. In each of these appeals it will have to be seen as a fact whether there has been a non-levy or short-levy and whether that has been by reason of collusion or any wilful misstatement or suppression of facts by the importer or his agent or employee."
[Emphasis supplied]

11.16.10. That, Apex Court in AbanLoyd Chiles Offshore Limited and Ors. Vs. Commissioner of Customs, Maharashtra[(2006) 6 SCC 482] observed:-

"21. This Court while interpreting Section 11-A of the Central Excise Act in Collector of Central Excise v. H.M.M. Ltd. (supra) has observed that in order to attract the proviso to Section 11-A(1) it must be shown that the excise duty escaped by reason of fraud, collusion or willful misstatement of suppression of fact with intent to evade the payment of duty. It has been observed:
'...Therefore, in order to attract the proviso to Section 11- A(1) it must be alleged in the show-cause notice that the duty of excise had not been levied or paid by reason of fraud, collusion or willful misstatement or suppression of fact on the part of the assessee or by reason of contravention of any of the provisions of the Act or of the Rules made thereunder with intent to evade payment of duties by such person or his agent. There is no such averment to be found in the show cause notice. There is no averment that the duty of excise had been intentionally evaded or that fraud or collusion had been practiced or that the assessee was guilty of wilful misstatement or suppression of fact. In the absence of any such averments in the show-cause notice it is difficult to understand how the Revenue could sustain the notice under the proviso to Section 11- A(1) of the Act.'
It was held that the show cause notice must put the assessee to notice which of the various omissions or commissions stated in the proviso is committed to extend the period from six months to five years. That unless the assessee is put to notice the assessee would have no opportunity to meet the case of the Department. It was held:

There is considerable force in this contention. If the department proposes to invoke the proviso to Section 11-A(1), the show-cause notice must put the assessee to notice which of the various commissions or omissions stated in the proviso is committed to extend the period from six months to 5 years. Unless the assessee is put to notice, the assessee would have no opportunity to meet the case of the department. The defaults enumerated in the proviso to the said sub-section are more than one and if the Excise Department places reliance on the proviso it must be specifically stated in the

show-cause notice which is the allegation against the assessee falling within the four corners of the said proviso....”
(Emphasis supplied)

11.16.11. It is submitted that, Hence, on account of the fact that the burden of proof of proving mala fide conduct under the proviso to Section 28 of the Act lies with the Revenue; that in furtherance of the same, no specific averments find a mention in the show cause notice which is a mandatory requirement for commencement of action under the said proviso; and that nothing on record displays a willful default on the part of the Noticee, it is submitted that the extended period of limitation under the said provision could not be invoked against the Noticee. All along the Noticee has furnished replies to Customs and requested to close the Para.

11.16.12. That, in Lewek Altair Shipping Pvt. Ltd. Versus CC, Vijayawada 2019 (366) E.L.T. 318 (Tri. - Hyd.), Tribunal noted that claiming an incorrect classification or the benefit of an ineligible exemption notification does not amount to making a false or incorrect statement because it is not an incorrect description of the goods or their value but only a claim made by the assessee. The said order was affirmed by Supreme Court reported in 2019 (367) E.L.T. A328 (SC).

11.16.13. That, in **NORTHERN PLASTIC LTD. Versus COLLECTOR OF CUSTOMS & CENTRAL EXCISE 1998 (101) E.L.T. 549 (SC)**, SC observed that -
*“*******while dealing with such a claim in respect of payment of customs duty we have already observed that the declaration was in the nature of a claim made on the basis of the belief entertained by the appellant and therefore, cannot be said to be a misdeclaration as contemplated by Section 111(m) of the Customs Act. As the appellant had given full and correct particulars as regards the nature and size of the goods, it is difficult to believe that it had referred to the wrong exemption notification with any dishonest intention of evading proper payment of countervailing duty.”*Goods in present case have been assessed and cleared by Customs and therefore, invocation of extended period is not permissible.

11.16.14. That, in the case of **M/s Midas FertchemImpex Pvt Ltd Versus Principal Commissioner of Customs, Air Cargo Complex (Import)** New Delhi2023 (384) E.L.T. 397 (Tri. - Del.), Principal Bench held that ;-

“ 50. In practice, the importer makes an entry under section 46 and also self-assesses duty under section 17(1) by filing the Bill of Entry. There is no separate mechanism to self-assess duty. The columns pertaining to classification, valuation, rate of duty and exemption notifications which determine the duty liability are part of the Bill of Entry which is also an entry under section 46. Thus, although the Bill of Entry requires the importer to make a true declaration and further to confirm that the contents of the Bill of Entry are true and correct, the columns pertaining to classification, exemption notifications claimed and, in some cases, even the valuation are matters of self-assessment and are not matters of fact. Self-assessment is

also a form of assessment but the importer is not an expert in assessment of duty and can make mistakes and it is for this reason; there is a provision for re-assessment of duty by the officer. Simply because the importer claimed a wrong classification or claimed an ineligible exemption notification or in some cases, has not done the valuation fully as per the law, it cannot be said that the importer mis-declared. As far as the description of the goods, quantity, etc. are concerned, the importer is bound to state the truth in the Bill of Entry. Thus, simply claiming a wrong classification or an ineligible exemption notification is not a mis-statement. Assessment, including self-assessment is a matter of considered judgment and remedies are available against them. While self-assessment may be modified by through re-assessment by the proper officer, both self-assessment and the assessment by the proper officer can be assailed in an appeal before the Commissioner (Appeals) or reviewed through an SCN under section 28. Therefore, any wrong classification or claim of an ineligible notification or wrong self-assessment of duty by an importer will not amount to mis-statement or suppression."

11.16.15. It is submitted that, based on the above referred decisions of Apex Courts, it can be said that to invoke extended period under Section 28(4) of the Customs Act, it has to be proved that there was a conscious or intentional act of collusion, willful misstatement or suppression of fact, on the part of Noticee. The intention or deliberate attempt, on the part of Importer, to evade duty has to be proved beyond reasonable doubt to justify the invocation of Section 28(4) of the Act. In this regard, it is submitted that in the present case, the Impugned Notice has failed to demonstrate any conscious or intentional act of collusion, willful misstatement or suppression of fact on the part of the Noticee. Therefore, said Notice is not sustainable and needs to quashed accordingly.

11.16.16. That, notwithstanding the above, Noticee was under Bonafide belief that the goods cleared into DTA are classifiable under HSN 29 only. Each of the goods were verified and cleared by Customs and no query was raised on classification issue. They have responded to queries and requested to drop the audit para. Issue relates to the interpretation of HSN and composition of cleared goods in absence of adverse test reports for said goods. The same is purely related to interpretation of complex provisions of law and is purely legal in nature. It is settled law that the extended period can not be invoked when the case involves an interpretational issue.

11.16.17. That, that SCN alleges deliberate/willful suppression/mis-statement about material particulars at Para 8 and goes on to state that Noticee has misclassified the subject goods with an intention to evade duty. However, they have not placed in relied upon documents to buttress the case for invoking extended period. It's a case of SCN arising out test check of records by Audit party. All documents on the basis of which goods were assessed and cleared were before Customs. Each items were examined by Customs. Even Part consignments and manual OOC were given by Customs. No document has been placed to demonstrate MENSREA or suppression as far as clearances made under Section 30 of

SEZ Act. Invocation of extended period in such case is legally not permissible.

11.16.18. That, the **issue of limitation is a jurisdictional issue** The show cause notice is otherwise without jurisdiction since the same is hit by limitation. The show cause notice suffers from an incurable infirmity. **It is trite law that an authority cannot confer on itself to do a particular thing by wrongly assuming the existence of certain set of facts, existence whereof is a sine qua non for exercise of jurisdiction by such authority. An authority cannot assume jurisdiction to do a particular thing by erroneously deciding a point of fact or law**. There cannot be dispute that the question of limitation is a question of jurisdiction and the Commissioner has no authority and/or jurisdiction to issue notice after the period of limitation prescribed in the Customs Act. It is submitted that the Honourable High Court of Allahabad, in Commr of Cus, C.Ex&S.Tax v. Monsanto Manufacturer Pvt Ltd, 2014 (35) STR 177 (All), has held as under:

"20. Though in the appeal by the assessee several questions of law have been framed, the following question has been pressed at the hearing :

"Whether the Tribunal having held that proceedings were barred by limitation and proceedings were liable to be quashed on the ground of limitation, the Tribunal committed an illegality in deciding the question on merits. Hence is the finding of Tribunal on merits liable to be set aside?"

21. The appeal is admitted on the following question of law and is by consent taken up for final hearing.

22. The Tribunal came to the conclusion that the demand by the Revenue was beyond the period of limitation of one year prescribed under Section 73(1) of the Finance Act, 1994 and that the period of five years could not have been invoked. That part of the judgment of the Tribunal has been confirmed in the companion appeal. Once that be the position and the Tribunal having come to the conclusion that the extended period of limitation could not have been validly applied, the Tribunal, in our view, acted outside its jurisdiction in entering upon the merits of the dispute on whether the demand for duty should be confirmed. Once it is held that the demand is time barred, there would be no occasion for the Tribunal to enquire into the merits of the issues raised by the Revenue.

23. In State Bank of India v. B.S. Agricultural Industries (I)- (2009) 5 SCC 121, the Supreme Court dealt with a situation where the consumer forum had held that the complaint was barred by limitation but had nonetheless proceeded to decide the issue on merits. Holding that this would amount to an illegality, the Supreme Court observed :

"12. As a matter of law, the consumer forum must deal with the complaint on merits only if the complaint has been filed within two years from the date of accrual of cause of action and if beyond the said period, the sufficient

cause has been shown and delay condoned for the reasons recorded in writing. In other words, it is the duty of the consumer forum to take notice of Section 24A and give effect to it. If the complaint is barred by time and yet, the consumer forum decides the complaint on merits, the forum would be committing an illegality and, therefore, the aggrieved party would be entitled to have such order set aside."

24. Consequently, since the Tribunal was justified, as we have held, in coming to the conclusion that the demand was time barred, there was no occasion for the Tribunal to enter upon the merits of the dispute. We, accordingly, answer the question of law as framed by the assessee in the affirmative and in favour of the assessee.

25. The appeal by the assessee shall stand disposed of in the aforesaid terms."

11.16.19. It is submitted that the Honourable Supreme Court in **Commissioner of Customs, Mumbai v B.V. Jewels, 2004 (172) ELT 3 (SC)**, has observed that " If, in reality, the CEGAT found that the action taken by the departmental authorities was beyond the period of limitation, it could have disposed of the appeals before it only on that ground without examining the merits". This decision of the Apex Court in B.V. Jewels ibid has been followed in Commr of Service Tax, Mumbai IV v. Rochem Separations (I) P Ltd, 2019 (366) ELT 103 (Bom). It is also seen that the Madrs High Court in E.T.A General Pvt Ltd v Additional Commissioner of C.Ex, Chennai, 2016 (44) STR 409 (Mad) has held as under:

"11. In Commissioner of Customs, Central Excise & Service Tax v. M/s. Monsanto Manufacturer Pvt. Ltd., reported in 2014-TIOL550-HC-ALL-ST, while declaring the demand as beyond the period of one year, the Tribunal, entered into the merits of the appeal filed by the assessee and passed an adverse order. Before the Allahabad High Court, one of the substantial questions of law raised by the assessee, was when the Tribunal having held that proceedings were barred by limitation, has committed any illegality in deciding the question on merits. Whether the finding of the Tribunal on merits, is liable to be set aside?"

12. While addressing the above said substantial question of law, decision of the Hon'ble Supreme Court in State Bank of India v. B.S. Agricultural Industries reported in (2009) 5 SCC 121, has been pressed into service, wherein, the Hon'ble Supreme Court had an occasion to deal with a situation, where the consumer forum held that the complaint was barred by limitation, but nonetheless had proceeded to decide the issue on merits. Dealing with the issue, which is similar to the case on hand, at Paragraph 12, the Hon'ble Supreme Court in State Bank of India's case (cited supra), held as follows :-

"12. As a matter of law, the consumer forum must deal with the complaint on merits only if the complaint has been filed within two years from the date of accrual of cause of action and if beyond the said period, the sufficient cause has been shown and delay condoned for the reasons recorded in

writing. In other words, it is the duty of the consumer forum to take notice of Section 24A and give effect to it. If the complaint is barred by time and yet, the consumer forum decides the complaint on merits, the forum would be committing an illegality and, therefore, the aggrieved party would be entitled to have such order set aside." Applying the ratio of the Supreme Court in State Bank of India v. B.S. Agricultural Industries reported in (2009) 5 SCC 121, the Allahabad High Court in Commissioner of Customs, Central Excise & Service Tax v. M/s. Monsanto Manufacturer Pvt. Ltd., reported in 2014-TIOL-550-HC-ALL-ST, answered the question of law in favour of the assessee.

13. Judgment of the Supreme in State Bank of India's case (cited supra), followed in Commissioner of Customs's case (cited supra), squarely applies to the facts on hand, wherein, CESTAT, Madras, while dismissing the appeal as time-barred, has entered into the merits of the case and dismissed the same, on merits. In the words of the Hon'ble Supreme Court, that would be an illegality.

14. Though Mr. A.P. Srinivas, learned counsel appearing for the Revenue submitted that the correctness of the order impugned before us, can be decided in an appeal before the CESTAT and prayed to sustain the order, dated 15-2-2016 in W.P. No. 5501 of 2016, in the light of the above discussion and the decision in State Bank of India's case (cited supra), we are not inclined to accept the said contention. When the Hon'ble Supreme Court has described the manner of disposal of an appeal, as illegality, the same can be corrected by this Court, in exercise of the powers under Article 226 of the Constitution of India and no useful purpose would be served in relegating the appellants to approach the alternative remedy. Courts have held that a writ petition is maintainable, when the act committed is per se illegal, and contrary to the statute.

15. In the light of the above discussion and decisions, we are inclined to interfere with the order of the Writ Court as well as the Order-in-Appeal No. 349/2015 (STA-II), dated 30-11-2015, passed by the Commissioner of Service Tax (Appeals-II) and the same are set aside."

Given our submissions that the demand is wholly barred by limitation for the reasons stated above, adhering to judicial discipline and respectfully following the binding judicial precedents of the Honourable Apex Court and High Courts cited supra, it is prayed that the learned Commissioner must refrain from delving into the merits of the matter and rendering a finding on merits and may even hold that SCN has been issued without jurisdiction by erroneously invoked extended period.

11.17. IGST CANNOT BE RECOVERED UNDER SECTION 30 OF THE SEZ ACT, 2005 SINCE IT IS NOT A DUTY OF CUSTOMS

11.17.1. That, the Impugned SCN invokes Section 28 of Customs Act in the charging para(without referring to Section 30 of the SEZ Act,2005 which happens to be the charging section) for demanding differential duty

on goods cleared from SEZ to Domestic Tariff Area ("DTA") .In this regard, it is submitted that Section 30 of SEZ Act only provides for levy of 'duties of customs' including anti-dumping, countervailing and safeguard duties under the Customs Tariff Act, 1975 on goods removed from SEZ to DTA. It does not provide for levy of integrated tax on the goods removed from SEZ-DTA. Therefore, the Impugned SCN inasmuch as it has relied upon Section 28 of Customs Act even if read with Section 30 of the SEZ Act, to demand integrated tax on goods removed from SEZ to DTA, is without merit and deserves to be set aside. In support of the submission **that 'duty of customs' is distinct from 'integrated tax'**, the Noticee places reliance on the decision of the Hon'ble Andhra Pradesh High Court in **Maithan Alloys Limited v. Union of India and Ors., [2024 (1) TMI 305- ANDHRA PRADESH HIGH COURT**]. In Maithan Alloys (Supra), the Court, inter alia, was examining the question of whether goods imported into an SEZ would be exempt from payment of compensation cess under Section 26 of the SEZ Act, in the absence of any Notification issued under the Goods and Services Tax (Compensation to States) Act, 2017. After considering the provisions of the SEZ Act, the Court held that only the word "duty" is used in Section 26 of the SEZ Act and not the word "cess". Accordingly, the Court held that under Section 26(1)(a), what is exempted is only duty of customs and not any cess much-less the GST Compensation Cess. Relevant portions of the decision are extracted hereinbelow for reference:

"27. Keeping the aforesaid distinction in view, when Section 26 of SEZ Act is perused, it is discernible that the word "duty" alone is used in the said section but not the word "cess". More prominently U/s 26(1)(a), on which much reliance is placed by the petitioners, what is exempted is only duty of customs but not any cessmuchless the GST Compensation Cess. Therefore, it is difficult to accept the contention that the exemption of duty of customs under the Customs Act, 1962 or the Customs Tariff Act, 1975 or any other law on import of goods encompasses the Compensation Cess also merely because its rate of tariff is mentioned in Section 3(9) of Customs Tariff Act, 1975. In our considered view, such argument is of no avail to the petitioners.

28. It should be noted that in Section 7 the words "tax, duty and cess" are specifically and distinctly used and stated that any goods or services exported or imported or procured from the DTA by a SEZ unit or developer shall subject to such terms and conditions and limitations be exempt from payment of taxes, duties or cess under all enactments specified in the First Schedule. The sine qua non for application of Section 7 is that in order to get exemption, the enactment which imposes tax, duty or cess shall be mentioned in the First Schedule. Therefore, from the said section two things are clear. Firstly, the Goods and Services Tax (Compensation to States) Act, 2017 is not mentioned in the First Schedule of the Act and secondly, the words "tax, duty and cess" are differently mentioned. However, in Section 26(1)(a) the phrase "duty of customs" alone is mentioned. In section 2(15) of the Customs Act, 1962 the term 'duty' is defined which means a duty of customs leviable under the said Act. It is true that in SEZ Act, 2005 the term 'duty' is not defined. However, in Section 2(zd) of the said Act it was explained that the words and expressions which were used but not defined in the said Act but defined in other Acts including the Customs Act, 1962

shall have the meaning respectively assigned to them in those Acts. Therefore, a conjunctive study of Section 26(1)(a), 2(zd) of SEZ Act, 2005 and Section 2(15) of Customs Act, 1962 would pellucidly tell us that the phrase 'duty of customs' used in Section 26(1)(a) of SEZ Act only refers to duty leviable under Customs Act, 1962 but the said phrase does not include cess under GST Compensation Act. The decision in Flextronics Technologies (India)'s case (supra 3) has no application as the said case deals with anti-dumping duty but not the GST Compensation Cess."

11.17.2. That, as evident from the above, the Court held that 'duty of customs' includes only duty leviable under Customs Act, 1962 and not Compensation cess levied under the Goods and Services Tax (Compensation to States) Act, 2017. Accordingly, the Court held that goods imported into an SEZ would not be exempt from compensation cess levied under the Goods and Services Tax (Compensation to States) Act, 2017.

11.17.3. That, Similarly, in the present case, IGST is levied under Section 5 of the IGST Act, 2017 read with Section 3(7) of the Customs Tariff Act. It is not levied under Section 12 of the Customs Act, 1962. Therefore, it cannot be viewed as 'duty of customs' for the purposes of Section 30 of the SEZ Act, 2005 in view of the decision in Maithan Alloys (Supra). Resultantly, the Impugned SCN demanding differential IGST on goods from SEZ to DTA on the strength of Section 30 of the SEZ Act, is illegal and deserves to be set aside.

11.17.4. It is further submitted that, in **Interglobe Aviation Limited v. Commissioner of Customs, New Delhi, [2020 (11) TMI 151-CESTAT NEW DELHI]**, the issue before the Hon'ble Tribunal was whether the expression 'duty of customs' in Sl. No. 2 of Notification No. 45/2017-Cus. dated 30.06.2017 would also include IGST. More specifically, the question before the Hon'ble Tribunal was whether the importer was required to pay only BCD on the cost of repairs carried out on the re-imported goods (on account of the usage of the expression 'duty of customs' in the Notification) or if the importer would also be required to pay IGST on the re-imported goods. Relevant portion of the Notification is extracted below: "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 goods falling within any Chapter of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and specified in column (2) of the Table below when reimported into India, from so much of the duty of customs leviable thereon which is specified in the said First Schedule, and the integrated tax, compensation cessleviable thereon respectively under sub-section (7) and (9) of section 3 of the said Customs Tariff Act, as is in excess of the amount indicated in the corresponding entry in column (3) of the said Table. Table SI. No. Description of goods Conditions Conditions 1 Xxxxxxxxxx 2. Goods, other than those falling under Sl. No. 1 exported for repairs abroad Duty of customs which would be leviable if the value of re-imported goods after repairs were made up of the fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred for not), insurance and freight charges, both ways.

11.17.5. That, the Hon'ble Tribunal observed that the expressions "duty of customs, integrated tax and compensation cess" were mentioned in the main body of the Exemption Notification and therefore, the Government was conscious of the distinction between the three. Accordingly, the Tribunal held that the absence of mention of integrated tax and compensation cess in column (3) under Serial No. 2 of the Exemption Notification would mean that only the basic customs duty on the fair cost of repair charges, freight and insurance charges are payable and integrated tax and compensation cess are wholly exempted. Relevant portion of the decision is extracted below: "48. The inevitable conclusion that follows from the aforesaid discussion is that the absence of mention of integrated tax and compensation cess in column (3) under Serial No. 2 of the Exemption Notification would mean that only the basic customs duty on the fair cost of repair charges, freight and insurance charges are payable and integrated taxx and compensation cess are wholly exempted." A.9. The said decision has been **affirmed by the Hon'ble Supreme Court vide Order dated 14.07.2025 in Civil Appeal Diary No(s). 6685/2025**.

11.17.6. That, in the present case, Section 30 of the SEZ Act only provides for levy of 'duty of customs'. As submitted above, **IGST has been held to be not in the nature of 'duty of customs'**. Therefore, the demand of differential IGST on goods cleared from SEZ to DTA vide the impugned proceedings must be set aside as being without jurisdiction since no demand towards IGST can be raised under Section 30 of the SEZ Act read with the provisions of Customs Act.

11.18. THE SEZ ACT AND RULES DO NOT PROVIDE FOR MECHANISM TO COLLECT DUTY CHARGEABLE ON GOODS REMOVED FROM SEZ TO DTA

11.18.1. It is further submitted that as submitted above, Section 30 of the SEZ Act, 2005 is the charging section for levy of customs duty on goods removed from SEZ to DTA. Though Section 30 provides for levy of duty of customs, it does not provide for the manner in which the duty is to be collected. The SEZ Act does not also borrow the provisions of the Customs Act, 1962 in this regard. As per Article 265 of the Constitution of India 'No tax shall be levied or collected except by authority of law'. Thus, it is submitted that once there is no mechanism for collection and recovery of duties under the SEZ Act, any recovery proceeds initiated for non-payment of duties levied under Section 30 will be non-est and without authority of law. Rule 47 of the SEZ Rules deals with sales in DTA. Rule 47(1) states that a Unit may sell goods and services in the Domestic Tariff Area on payment of Customs duties under Section 30. Rule 47(4) states that valuation and assessment of the goods cleared into Domestic Tariff Area shall be made in accordance with Customs Act and rules made thereunder. Further, Rule 47(5) of the SEZ Rules states that refund, demand, adjudication, review and appeal with regard to matters relating to authorised operations under Special Economic Zones Act, 2005, transactions, and goods and services related thereto, shall be made by the jurisdictional Customs and Central Excise Authorities in accordance with

the relevant provisions contained in the Customs Act, 1962 and the rules made there under or the notifications issued there under. The relevant portion of the provision is extracted below for ease of reference:

Sales in Domestic Tariff Area. 5) Refund, Demand, Adjudication, Review and Appeal with regard to matters relating to authorised operations under Special Economic Zones Act, 2005, transactions, and goods and services related thereto, shall be made by the Jurisdictional Customs and Central Excise Authorities in accordance with the relevant provisions contained in the Customs Act, 1962, the Central Excise Act, 1944, and the Finance Act, 1994 and the rules made there under or the notifications issued there under.

11.18.2. It is submitted that Rule 47(5) only confers powers to the jurisdictional Customs and Central Excise Authorities for matters concerning sales in Domestic Tariff Area concerning refund, demand, adjudication, review and appeal with regard to matters relating to the authorised operations. It **does not provide for recovery or recovery** of duties not levied or not paid or shortlevied or short-paid, in the manner set out in Section 28 or 142 of the Customs Act, 1962

11.18.3. In view of the same, it is submitted that Rule 47(5) of the SEZ Rules does not confer any substantive power to recover duties on account of short levy or non-levy. Since the provisions of Section 28/Section 142 of the Customs Act have not been made applicable to levy of customs duties removed from SEZ to DTA, either by way of incorporation or reference, the Impugned SCN demanding differential duty and IGST must be set aside.

11.19. THE SEZ ACT AND RULES DO NOT PROVIDE FOR LEVY OF INTEREST AND PENALTY ON THE DUTIES CHARGED UNDER SECTION 30 OF THE SEZ ACT

11.19.1. I submits that in the present case, interest, confiscation and penalty has been imposed in relation to demand of duty under Section 30 of the SEZ Act. However, it is submitted that the SEZ Act does not provide for levy of interest, penalty or confiscation of goods. Further, while Rule 47 (5) of the SEZ Rules borrows certain provisions of the Customs Act is so far as 'refund, demand, adjudication, review and appeal', the provisions relating to interest, confiscation, penalties and offences have not been borrowed. Therefore, the proposals towards interest, penalty and confiscation in the Impugned SCN on the goods removed from SEZ to DTA must be set aside as being without merit and jurisdiction. Detailed submissions in this regard are made hereinbelow.

11.19.2. That, a similar question relating to confiscation and penalty under Rule 9(2) and Rule 173Q of the Central Excise Rules, 1944, for non-payment of the additional duty in terms of the Additional Duties of Excise (Goods of Special Importance) Act, 1957, by taking recourse to the provisions of the Central Excise Rules, 1944, came up for consideration before the Hon'ble High Court of Delhi in the case of Pioneer Silk Mills Pvt. Ltd. vs. UOI, 1995 (80) ELT 507 (Del. (maintained and approved by

Supreme Court).The Revenue sought to invoke the provisions of the Central Excise Rules, 1944, relying on the provisions of Section 3(3) of the Additional Duties of Excise (Goods of Special Importance) Act, 1957. C.4 Relying inter alia, on the order in Khemka& Co. (Agencies) Pvt. Ltd. v. State of Maharashtra, [(1975) 2 SCC 22J, the Hon'ble High Court of Delhi upheld the contention that there was no provision in the Additional Duties of Excise Act which created a charge in the nature of penalty and that the term "levy and collection" in Section 3(3) of the Additional Duties Act has a restricted meaning in view of the use of the words "including those relating to refund and exemptions from duty",otherwise these words were rather unnecessary. The Hon'ble High Court also rejected the contention of the Revenue that since Chapter II of the Central Excises Act deals with levy and collection of duty, and this Chapter also contains provisions for offences and penalties, all sections under that Chapter would be applicable. This judgment of the Hon'ble High Court of Delhi was approved by the Hon'ble Supreme Court in 2002 (145) ELT A74 (SC).

11.19.3. That, In Collector of C.Ex. Ahmedabad v. Orient Fabrics, 2003 (158) E.L.T 545, the Tribunal relied on the decision of the Hon'ble constitutional bench in Khemka Co.(supra) and observed that provisions relating to confiscation and penalty in Central Excise Act, 1944 cannot be resorted to for non-payment of additional duties in terms of Additional Duties of Excise (Goods of Special Importance) Act, 1957 since Additional Duty Act created liability for additional duty of Excise, but created no liability for any penalty or confiscation proceedings. In the case reported in COLLECTOR OF C. EX., AHMEDABAD Versus ORIENT FABRICS PVT. LTD. - 2003 (11) TMI 75 - Supreme Court the Hon'ble Supreme Court has also referred to an amendment made in year 1994 by inserting the expression "offences and penalties" in Section 3 (3) of the Additional Duties Act and held that such amendment was required to remedy the defect contained in the unamended provisions. **In absence of specific insertion of words like offences, penalties and interest, such levies could not be assumed and such additional tax cannot be charged**. In case of Birla Cement Works & JK. Synthetics Ltd. Versus Commercial Taxes Officer and State of Rajasthan - 1994 (5) TMI 233 - Supreme Court the Hon'ble Apex Court has held that interest can be levied and charged on delayed payment of tax only if the statute that levies and charges the tax makes a substantive provision in this behalf.

11.19.4. That, reliance is also placed on the case of Bajaj Health & Nutrition Pvt. Ltd. vs. CC, Chennai, 2004 (166) ELT 189, wherein the Hon'ble Tribunal, set aside the interest and penalty on evasion of anti-dumping duties on the reasoning that the provisions of Customs Act relating to non-levy, short-levy, and refunds were borrowed only for the purpose of chargeability to anti-dumping duty under Sec. 9A(8) of the CTA and the provisions of the Customs Act relating to confiscation, penalty and interest were not borrowed.

11.19.5. That, Reliance is also placed on the judgement of the Hon'ble Ahmedabad Tribunal in the case of Essar Projects v. CC 2018 (4) TMI 169 - CESTAT AHMEDABAD wherein it was held that under the SEZ Act and

the Rules made thereunder, there is no substantive provision for charging interest. Relevant portion is extracted below:

"10. Analyzing the above provisions, particularly Sec. 30 of the SEZ Act, it is clear that on clearance/removal of the goods from the SEZ to DTA, the Applicable duties of Customs as levied under the CTA,1975 are required to be paid and the rate of duty and tariff valuation, any applicable would be the rate as in force on the date of its removal or payment of duty as the case may be. No where under the said provision there is any mention of the payment of interest on clearance of the goods from SEZ to DTA.

11. Thus, under the SEZ Act and the Rules made thereunder, there is no substantive provision for charging interest. I find that the interest on the customs duty determined and paid in accordance with Section 30 of SEZ Act,2005 has been demanded and confirmed under Section 47 of the Customs Act, 1962. 12. On a plain reading of the aforesaid Provision, it is clear that in the event, the bill of entry is returned to the importer after assessment by the proper officer, the duty shall be required to be paid and in the event he fails to pay the duty within the specified period then interest would be leviable on the amount of duty for the delayed period. In the present case, it is not in dispute that the bill of entry was filed on 23.10.2007 and after assessment, within five days, i.e. on 24.10.2007, the duty was paid. Thus, there was no delay in discharging the duty after assessment under Section 47 of the Customs Act, 1962. The Revenue s attempt to levy interest from the date of initial import by the SEZ developer i.e. as on 13.02.2007 is not supported by the Provisions contained either under the SEZ Act or Rules made thereunder nor under the Customs Act, 1962. Therefore, in my opinion, interest cannot be levied for the period 13.02.2007 to 23.10.2007. Consequently, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law ."

11.19.6. That, the Hon'ble Bombay High Court in Mahindra & Mahindra Ltd. v. Union of India [2022 (10) TMI 212 - BOMBAY HIGH COURT] considered the issue of levy of interest and penalty in relation to amounts payable as duty other than basic customs duty i.e., additional duty of customs or special additional duty of customs levied under Section 3 of Customs Tariff Act, 1975 ("CTA"), by resorting to Section 3(6) of CTA which is the borrowing provision. The Hon'ble Court in the said case held that in the absence of specific provisions for levying of interest or penalty due to delayed payment of tax, the same cannot be levied/charged unless the statute makes a substantive provision in this behalf. C.9 The Court has laid down the said position after considering the provisions of section 3(6) of the CTA. This decision of the Hon'ble Bombay High Court has been affirmed by the Hon'ble Apex Court in Union of India Vs Mahindra and Mahindra Ltd, [2023 (8) TMI 135 - SC ORDERJ. Further, the Review Petition filed by the Department has also been dismissed vide order dated 09.01.2024 in Review Petition (Civil) Diary No. 41195/2023. C.10 The decision in Mahindra & Mahindra (Supra) has been followed in the decisions below: Acer India Private Ltd, vs. CC [2024 (1) TMI 147 - CESTAT CHENNAI] Acer India (Pvt.) Ltd. v. CC [2024 (5) TMI 478 - CESTAT CHENNAIJ Flextronics Technology India Pvt. Ltd. v. CC [2025

(3) TMI 695 - CESTAT CHENNAI] M/S. Philips India Limited V. Commissioner of Customs, Import, Air Cargo Mumbai [2025 (7) TMI 1414 – CESTAT MUMBAI] affirmed by Supreme Court in COMMISSIONER OF CUSTOMS (IMPORT) Versus M/s PHILIPS INDIA LTD2025 (7) TMI 1473 - SC Order. Recently, the afore-stated position has also been affirmed by the Hon'ble Bombay High Court in A.R. Sulphonates Pvt. Ltd. v. UOI [2025 (4) TMI 578 - BOMBAY HIGH COURT]. The decision in A.R. Sulphonates Pvt. Ltd. v. UOI [2025 (4) TMI 578 - BOMBAY HIGH COURT] (Supra) has been followed in the decisions below: M/s. Suryadev Alloys and Power (P) Ltd. Versus Principal Commissioner of Customs (Audit), Chennai 2025 (8) TMI 1356 - CESTAT CHENNAI

11.19.7. That, substantive statutory provisions for confiscation, levy of interest, fine, penalties, recovery etc are conspicuously absent. Absence of clear provisions clearly contradicts principles laid down by highest Court in the case of **Chief Commissioner of Central Goods and Service Tax &Ors. Versus M/s Safari Retreats Private Ltd. &Ors. - 2024 (10) TMI 286 - Supreme Court**, namely, a taxing statute must be read as it is with no additions and no subtractions on the grounds of legislative intendment or otherwise. If the language of a taxing provision is plain, the consequence of giving effect to it may lead to some absurd result is not a factor to be considered when interpreting the provisions. It is for the legislature to step in and remove the absurdity. While dealing with a taxing provision, the principle of strict interpretation should be applied; If two interpretations of a statutory provision are possible, the Court ordinarily would interpret the provision in favour of a taxpayer and against the revenue. A taxing provision cannot be interpreted on any presumption or assumption. A taxing statute has to be interpreted in the light of what is clearly expressed. The Court cannot imply anything which is not expressed. Moreover, the Court cannot import provisions in the statute to supply any deficiency. There is nothing unjust in the taxpayer escaping if the letter of the law fails to catch him on account of the legislature's failure to express itself clearly. If literal interpretation is manifestly unjust, which produces a result not intended by the legislature, only in such a case can the Court modify the language. When a word used in a taxing statute is to be construed and has not been specifically defined, it should not be interpreted in accordance with its definition in another statute that does not deal with a cognate subject.

11.19.8. That, In view of the above decisions, it is submitted that the confiscation of goods and the demand of interest and penalty on the goods removed from SEZ to DTA is illegal and without authority of law. The Impugned SCN deserves to be set aside on this ground itself.

11.20. That, In view of the submissions made herein above, the Show cause Notice issued without any basis and legally untenable and hence the proceedings proposed in the Show cause notice required to be dropped and they pray accordingly.

11.21. That they would also request you to kindly give then an opportunity of personal hearing in **virtual mode** before any final decision

is taken in the matter. For fixing the virtual hearing, our email ID **is admin@kpslegals.com**

11.22. Shri Ashwani Kumar Prabhakar, Advocated & authorized representative of the noticee attended the personal hearing and during the course of Personal hearing he reiterated the submission dated 07.1.2026 and submitted that they have rightly classified the product under HSN-29023000 for the Paint Solvent N80(Toluene/Toluene based) having purity of more than 95%. Further, he submitted that the Audit was done in 2021 and SCN was issued in 2025 under Section 28(4) of the Customs Act, 1962 invoking the provision of extended period which is also not justifiable. He further requested to drop the proceedings initiated in the SCN against the above

DISCUSSION AND FINDINGS

12. I have carefully considered the SCN, the oral and written submissions of the Noticee, and the relevant legal provisions. The issues to be decided are:

I. Whether the impugned goods "Paint Solvent N80" mentioned in Annexure “A” of the SCN are classifiable under CTH 29023000 (Toluene) or CTH 38140010 (Organic Composite Solvents);
II. Whether the extended period of limitation is invokable;
III. Whether Customs Duty short paid by the DTA unit along with applicable Interest are demandable in the facts of the present case;
IV. Whether the goods already cleared by the Noticee is liable for confiscation under Section 111 (m) of the Customs Act, 1962;
V. Whether, penalty under Section 112, 114A and 114AA is imposable upon both the SEZ and DTA unit;
VI. Whether, Bond-cum-legal Undertaking in Form-H furnished by the said SEZ Unit is liable to be enforced towards the liabilities arising out of subject goods removed from the SEZ Unit to DTA unit as detailed in Annexure-A of the SCN.

13. Now, as per the facts of the case, written and oral submission made by the Noticee and relevant legal provisions, I am going to decide the case and its issues one by one.

14. <u>Whether the impugned goods "Paint Solvent N80" mentioned in</u>

Annexure “A” of the SCN are classifiable under CTH 29023000 (Toluene) or CTH 38140010 (Organic Composite Solvents):-

14.1 The first and foremost important issue in the instant case is whether the goods i.e. “Paint Solvent N80 (Toluene/Toluene based) cleared by the SEZ Unit to its DTA Unit merits classification under CTH 29023000 or 38140010 or otherwise.

14.2 In this regard, the Noticee contends that their product i.e. “Paint Solvent N80 (Toluene/Toluene based) is "Toluene" because it allegedly has a purity of 95% or more. I find this submission legally and factually untenable for the following reasons:

14.3 Chapter 29 of the Customs Tariff Act covers "Separate chemically defined organic compounds". Chapter Note 1(a) to Chapter 29 explicitly states that the headings of this Chapter apply only to separate chemically defined organic compounds, whether or not containing impurities. Conversely, CTH 3814 covers *"Organic composite solvents and thinners, not elsewhere specified or included"*. The Noticee has marketed, declared, and described the goods as **"Paint Solvent N80"**in both types of Bills of Entry whether classifying the same under 38140010 (Paint Solvent N80) or 29023000 {Paint Solvent (Toluene based)}. The suffix "N80" and the description "Paint Solvent" denote a commercial preparation designed for a specific use (solvent/thinner), rather than a pure chemical substance traded for general synthesis.

14.4 It is a settled principle of classification that goods are to be assessed as they are presented to the market. The Noticee's own description "Paint Solvent N80 (Toluene Based)" admits that the product is "Based" on Toluene. A product "based" on Toluene is distinct from "Toluene" simpliciter. Further, N80 is a solvent blend where toluene is a major component, but it may have a purity of less than 95%, generally between 75% to 90%. Further, the rest 10% to 25 % is often comprised of other hydrocarbon solvents like Xylene or Ethylbenzene to balance the evaporation rate and solvency.If the goods were indeed pure Toluene (chemically defined), there would be no commercial rationale to label them as "Paint Solvent N80". The use of a trade name/grade implies the presence of other constituents or a specific formulation to suit the paint industry, taking it out of Chapter 29 and into Chapter 38 as a "preparation".

14.5 The Noticee argues that under GRI 3(a), "Toluene" (2902) is

more specific than "Solvents" (3814). This argument is flawed. GRI1 takes precedence, which requires classification according to terms of headings and Section/Chapter Notes. Since the product is a "Solvent preparation" (indicated by the nomenclature N80), it is excluded from Chapter 29 by virtue of it being a mixture/preparation. Therefore, CTH 2902 is not a valid competing heading. The specific heading for such preparations is CTH 3814.

1 4 . 6 Further, I do not find any merit in the contention of the Noticee that they are authorized SEZ Unit approved by the Development Commissioner for the manufacturing of finished goods falling under ITC HS code 29023000. In this regard, I find that vide Letter of Approval No.04/2015-16 dated 18-05-2015, Noticee No. 1 i.e. the SEZ Unit was granted permission for carrying out manufacturing of Pipe Adhesive (ITC HS- 39042210) and trading activity of 46 items listed in Annexure-I. Out of the 46 items, one product is Toluene which is mentioned at Sr. No. 43 of the Annexure-I to the LOA. Further, I find that vide broad banding permission of the existing LOA dated 14/17.10/2019, broad banding of manufacturing activity of one item viz. Paint Solvent N80 (HSN Code 3814 0010) was granted to the SEZ Unit. Thus, the Noticee was not authorized to carry out manufacturing of goods falling under ITC HS code 29023000 though the Noticee was allowed to manufacture Paint Solvent N80 falling under HSN 3814 0010.

14.7 The Noticee themselves admits that for some clearances, they have classified the sameproduct under CTH 3814 but only when purity was low. However, they failed to produce batch-wise test reports for the impugned clearances proving 95% purity *at the time of import/clearance* to DTA. As such, the assessment must be based on the description "Paint Solvent", which falls squarely under CTH 3814 and not on the basis because purity was low.

14.8 In view of above, it is held that the goods i.e. Paint Solvent N80 (Toluene based) cleared by the SEZ Unit to DTA Unit mentioned in Annexure-A of the Show Cause Notice are correctly classifiable under **CTH 3814 0010**.

15.<u>Whether the extended period of limitation is invokable</u>

15.1 The Noticee argues that the demand is time-barred and that the Department was aware of the facts due to the 2021 Audit. Further,

they argued that they had filed the DTA Bills of Entry alongwith all the relevant documents, in respect of goods for taking out from SEZ and were allowed to be taken out from SEZ after approval by the Assessment/OOC Officer. Accordingly, the extended period is not invokable in the instant case. They further argued that the assessment has attained finality and same cannot be reversed without an order passed by higher authority by way of appeal or review.

15.2 In this regard, I find that Under Section 17 of the Customs Act, 1962, the importer (here, the DTA buyer/SEZ unit acting as importer) is trusted to self-assess correctly. In the foregoing paras, I have already held that the goods i.e. Paint Solvent N80 (Toluene based) mentioned in Annexure-A of the SCN is clearly classifiable under CTH 38140010 instead of CTH 2902 3000. This fact clearly indicates that the Noticee have mis-declared their manufactured and cleared product to its DTA Unit under 2902 despite knowing the product was a "Paint Solvent" preparation in order to get duty benefit as the goods falling under CTH 2902 3000 attracts lower duty structure of @ 21.245% Customs duty (BCD-2.5%, SWS 10%, IGST 18%), vis-à-vis goods falling under CTH 3814 0010 which attract duty structure of 30.98% Customs duty (BCD-10%, SWS 10%, IGST 18%). Further, the Noticee deliberately mis-declared their goods under 2902 3000 while filing their DTA Bills of Entry in order to avoid higher Custom Duty payment by their DTA Unit. This mis-declaration on the Bill of Entry (B/E) constitutes a "Willful Misstatement".

15.3 Further, the Noticee argues that since Audit pointed it out in 2021, there is no suppression. This reasoning is circular. The suppression *existed* resulting in the Audit objection. The fact that an Audit team detected the irregularity later does not absolve the Noticee of the suppression committed *at the time of filing the B/Es*. *Reliance is placed on:****Commissioner of Customs vs. Candid Enterprises [2001 (130) ELT 404 (SC)]****,* where the Hon'ble Supreme Court held that discovery of fraud/suppression at a later stage does not cure the initial vice of suppression.

15.4 The Noticee knowingly described goods as "Toluene" under CTH2902 to avail a lower duty rate, while trading them as "Paint Solvents". This positive act of mis-classification with intent to evade duty justifies the extended period. The citation of ***Secure Meters Ltd. vs Commissioner of Customs, New Delhi, 2015 (319) E.L.T. 565 (S.C.)*** is distinguishable. In that case, the issue was a bona fide dispute of interpretation wherein

Hon'ble Superme Court had held that specific classification takes precedence over general classification for parts. Here, the Noticee obtained an LoA for "Paint Solvent N80 falling under CTH 3814 0030" but cleared it as "Paint Solvent N80 (Toluene) falling under CTH 2902 3000" to manipulate duty liability. This indicates *mens rea*.

15.5 Further, the Noticee themselves have placed reliance on the Apex court judgment held in the matter of **Pushpam Pharmaceuticals Company Vs. Collector of Central Excise, Bombay[1995 Supp(3) SCC 462**], wherein the apex court have ordered that the act must be deliberate and with an intent to evade tax evasion or escape from payment of Duty. In the instant case, the Noticee had wrongly classified their manufactured goods with the sole intent to pay lower Customs Duty. Section 28 of the Customs Act, 1962 provides a statutory mechanism for recovery of duties not levied or short-levied due to mis-declaration, mis-classification or suppression of facts. An assessment based on incomplete or incorrect declaration does not acquire immunity merely because goods were cleared. Once it is established that duty was short-paid on account of suppression or mis-statement, the Department is fully empowered to invoke Section 28. Hence, the reliance placed on finality of assessment does not hold merits.

15.6 I further find that the Department has satisfactorily discharged the burden of proof. The proposed classification and allegation of intent to evade duty has been discussed under the foregoing paras. Notice have failed to produce any documentary evidence (i.e. test report etc.) at the time of import to ascertain the nature of the polymer and its purity from which the imported material was made. Thus, the burden shifts to the importer to rebut the same with cogent evidence, which has not been done in the present case.

15.7 Accordingly, I hold that the extended period of limitation under Section 28(4) has rightly been invoked.

16. <u>Whether Customs Duty short paid by the DTA unit along with applicable Interest are demandable in the facts of the present case:-</u>

16.1 The Noticee contends that IGST is not a "Duty of Customs" under Section 30 of the SEZ Act, citing *Maithan Alloys*.

16.2 Section 30 of the SEZ Act levies "duties of customs" on goods removed to DTA "at the rate in force... under the Customs Tariff Act,

1975". For the sake of reference, the relevant portion of Section 30 of the SEZ Act, 2005 is reproduced hereunder:-

> *Section 30. Subject to the conditions specified in the rules made by the Central Government in this behalf:-*
>
> *(a) any goods removed from a Special Economic Zone to the Domestic Tariff Area shall be chargeable to duties of customs including antidumping, countervailing and safeguard duties* ***under the Customs Tariff Act, 1975****, where applicable, as leviable on such goods when imported; and*
>
> *(b) the rate of duty and tariff valuation, if any, applicable to goods removed from a Special Economic Zone shall be at the rate and tariff valuation in force as on the date of such removal, and where such date is not ascertainable, on the date of payment of duty.*

Further, Chapter V of the SEZ Rules, 2006 prescribes conditions subject to which goods may be removed from a special economic zone to the domestic tariff area. In this Chapter Rule 47 of the SEZ Rule, 2006 stipulates Sales by an SEZ unit to DTA Unit. The relevant portion of Rule 47 is as below:-

> ***47. Sales in Domestic Tariff Area:-***
>
> *(1) A Unit may sell goods and services including rejects or wastes or scraps or remnants or broken diamonds or by products arising during the manufacturing process or in connection therewith, in the Domestic Tariff Area on payment of Customs duties under section 30, subject to the following conditions, namely. –*
>
> ---
>
> *(4) Valuation and assessment of the goods cleared into Domestic Tariff Area shall be made in accordance with Customs Act and rules made there under.*

Further, Rule 48 of the SEZ Rule, 2006 prescribes procedure for Sale in Domestic Tariff Area (DTA). For the sake of reference it is reproduced hereunder:-

> ***48. Procedure for Sale in Domestic Tariff Area.****{*
>
> *(1) Domestic Tariff Area buyer shall file Bill of Entry for home consumption giving therein complete description of the goods and/or services namely, make and model number and serial number and specification along with invoice and packing list with the Authorised*

Officers:

Provided that the Bill of Entry for home consumption may also be filed by a Unit on the basis of authorization from a Domestic Tariff Area buyer.

(2) Valuation of the goods and/or services cleared into Domestic Tariff Area shall be determined in accordance with provisions of Customs Act and rules made thereunder as applicable to goods when imported into India:

Further, Integrated Goods and Services Tax (IGST) is levied on imports under **Section 3(7) of the Customs Tariff Act, 1975**. For the sake of reference, the relevant portion of Section 3(7) of the Customs Tariff Act, 1975 is reproduced hereunder:-

Section 3. Levy of additional duty equal to excise duty, sales tax, local taxes and other charges. –

(1) – (6)

(7) Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty percent as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (8) 9 [or sub-section (8A), as the case may be]

Therefore, from the conjoint reading of Section (30) of the SEZ Act, 2005, Rule 47 & 48 of the SEZ Rules, 2006 and Section 3(7) of the Customs Act, 1975, it is clear that IGST is intrinsically part of the "duties of customs" leviable under the Customs Tariff Act, 1975.

16.3 The *Maithan Alloys* judgment dealt specifically with the *exemption* from "Compensation Cess" under Section 26 of the SEZ Act (exemptions for SEZ units). It did not strike down the *levy* of IGST on DTA clearances under Section 30. For DTA clearances, the transaction is treated as an "import" into India. Under Section 3(7) of the CTA, any article imported into India is liable to IGST. The Noticee's interpretation would lead to an absurdity where DTA clearances from SEZ are free of IGST, placing them at an advantage over direct imports, which is contrary to the legislative intent of the SEZ Act.

16.4 Now, if the goods merits classification under 3814 0010, what would be the rate of duty. In this regard, on referring the Customs Tariff

Heading, I find that the goods falling under CTH 3814 0010 attract duty structure of 10% Basic Customs Duty, 10% SWS and 18% IGST, total @ 30.980%.However the goods falling under CTH 2902 3000 attract duty structure of 2.5% Basic Customs Duty, 10% SWS and 18% IGST, total @ 21.245%. Thus, differential Customs duty amounting to **Rs.19,61,10,601/-,** short paid by the Noticee No. 2 i.e. M/s GKN Enterprises (DTA unit), with an intent to evade Customs Duty,is liable to be demanded from them under Section 28(4) of the Customs Act, 1962.

17. Whether the goods already cleared by the Noticee is liable for confiscation under Section 111 (m) of the Customs Act, 1962:-

17.1 As discussed earlier, it is clear that the importer had wrongly declared their manufactured goods i.e. Paint Solvent N80 (Toluene/Toluene based) classifying the same under CTH 2902 3000 (attracting Customs Duty @ 21.245%) instead of its actual CTH 3814 0010 (attracting Customs Duty @ 30.98%), while filing DTA Bills of Entry with the sole intent to evade/short payment of Customs Duty. Accordingly, the cleared goods as mentioned in Annexure- A of the SCN squarely attracts the provisions of Section 111(m) of the Customs Act, 1962, rendering the goods liable for confiscation.

17.2 As the impugned goods are found to be liable for confiscation under Section 111 of the Customs Act, 1962, I find that it is necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation.I find that, in the present case, the subject goods are not physically available for confiscation at this stage. The goods have already been cleared and are no longer under the control of Customs. Therefore, physical confiscation of the goods is not feasible. However, I note that the Hon'ble CESTAT, Ahmedabad, in the case of *M/s. Van Oord India Pvt. Ltd. vs. Commissioner of Customs, Ahmedabad* [Customs Appeal No. 10679 of 2024-DB], has held that redemption fine can be imposed even when the goods are not physically available for confiscation. Further, this points were already settled in case of Judgment dated 11.08.2017 of Hon'ble High Court of Madras in ***C.M.A. No. 2857 of 2011 in the case of Visteon Automotive Systems India Ltd. Vs. CESTAT, Chennai [2018 (9) G.S.T.L. 142 (Mad.)]***. Para 23 of the said Judgment is as follows:

"The penalty directed against the importer under Section 112 *and the fine payable under* Section125 *operate in two different fields. The fine under* Section 125 *is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of* Section 125*, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of* Section 125*, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of* Section 125*, "Whenever confiscation of any goods is authorised by this Act ....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under* Section 111 *of the Act. When once power of authorisation for confiscation of goods gets traced to the said* Section 111 *of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from* Section 111 *only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under* Section 125 *of the Act."*

17.3 I further find that the above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad), has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.) and the same has not been challenged by any of the parties concerned. Hence, from the above discussion and relying on the above judgements. I find that goods are liable for confiscation and redemption fine can be imposed. I note that the case involves mis-classification due to wrongly classifying their manufactured product with the sole intent to evade/short payment of Customs Duty. I find it appropriate to maintain proportionality between the gravity of offence and the extent of revenue implication. Considering the nature of the violation and the principle that redemption fine should not be excessive, the ends of justice would be met if the redemption fine is restricted to approx. 50% of the differential duty.

18. Whether, penalties under Section 112, 114A and 114AA are imposable upon both the SEZ and DTA unit:-

18.1 Penalty upon GKN Enterprises, SEZ Unit (Noticee No. 1):-

18.1.1 In the foregoing paras, I have already held that due to mis-classification of the goods with the intent to short pay/evade Customs Duty amounting to Rs.19,61,10,601/-, the goods, as mentioned in Annexure-A of the SCN, are liable for confiscation under Section 111 (m) of the Customs Act, 1962. Further, Noticee No. 1, on behalf of their DTA Unit, filed the DTA Bills of Entry for clearance of the same by misclassifying it under CTH 2902 0010 instead of CTH 3814 3000 with the intention to evade payment of Customs Duty amounting to Rs.19,61,10,601/-, thereby they are liable for penalty under Section 112 (a) (ii) of the Customs Act, 1962.

18.1.2. In the foregoing paras, I have held that the Noticee (1 & 2) have deliberately and intentionally, with complete knowledge of the Customs Act, 1962, SEZ Act, 2005 and rules made thereunder, mis-declared their manufactured item. Further, it is a fact that GKN Enterprises, SEZ Unit (Noticee No.1) and GKN Enterprises, DTA Unit (Unit No. 2) are two verticals of the same proprietor. Accordingly, the evasion of Customs Duty benefits the proprietor of M/s GKN Enterprises. Further, this mis-declaration using false/wrong CTH resulted into short payment of Customs Duty, making the Noticee No. 1 liable for penalty under Section 114AA of the Customs Act, 1962.

18.2 Penalty upon GKN Enterprises, DTA Unit (Noticee No. 2):-

18.2.1 In the foregoing paras, I have already held that due to mis-classification of the goods, Noticee No. 2 have short paid/evaded Customs Duty amounting to Rs.19,61,10,601/-; accordingly, penalty under Section 114Aand 114AA of the Customs Duty is liable to be imposed upon Noticee No. 2.

18.2.2 I refrain from imposing penalty under Section 112 as I have already imposed penalty under Section 114A of the Customs Act, 1962 and under this section it has explicitly been mentioned that when a penalty is being imposed under this section, no penalty under section 112 or 114 shall be levied.

19. Since the SEZ Unit (Noticee No. 1) failed to ensure the correct duty payment by the DTA Client, the Bond-cum-Legal Undertaking in Form-H furnished by them is to be enforced towards the duty and other liabilities arising out of the subject goods.

20. I pass the following order:-

ORDER

20.1. In respect of the SEZ Unit, namely, M/s. GKN Enterprises, Plot No. 54, Sector-I, Phase-I, Kandla Special Economic Zone, Gandhidham (Noticee No. 1):-

I. I reject the classification of the impugned goods i.e. "Paint Solvent N80 (Toluene/Toluene Based)"under CTH 2902 30 00 as declared in the Bills of Entry appearing in Annexure-A to the Show Cause Notice and **order** to re-classify the same " under **CTH 3814 00 10** of the Customs Tariff Act, 1975.

II. The goods totally valued at Rs.201,44,89,960/- are held liable for confiscation under Section 111(m) of the Customs Act, 1962 however the redemption fine is imposed upon owner of the goods i.e. Noticee No. 2 under Section 125(1) of the Customs Act, 1962, in lieu of confiscation.

III. I impose penalty of Rs.1,00,00,000/- (Rupees One Crore Only) under Section 112 (a) (ii) of the Customs Act, 1962.

IV. I impose penalty of Rs.50,00,000/- (Rupees Fifty Lakh Only) under Section 114AA of the Customs Act, 1962.

V. I order to enforce the Bond-cum-Legal Undertaking executed by NoticeeNo.1 in Form H for recovery of the liabilities arising out of the subject goods removed from the SEZ Unit to DTA Unit as detailed in Annexure-A of the SCN.

20.2. In respect of the DTA Unit, namely, M/s. GKN Enterprises (IEC-3513006233), Flat No.206, 12/B, Square Apartment, Plot No.313, Gandhidham (Noticee No. 2):-

I. I reject the classification of the impugned goods i.e. "Paint Solvent N80 (Toluene/Toluene Based)"under CTH 2902 30 00 as declared in the Bills of Entry appearing in Annexure-A to the Show Cause Notice andorder to re-classify the same " under **CTH 3814 00 10** of the Customs Tariff Act, 1975.

II. The goods totally valued at Rs.201,44,89,960/- are held liable for confiscation under Section 111(m) of the Customs Act, 1962. I impose redemption fine of Rs.9,80,00,000/- (Rupees Nine Crore Eighty Lakh only) under Section 125(1) of the Customs Act, 1962, in lieu of confiscation.

III. I order to demand and recover Customs Duty of**Rs.19,61,10,601/-**

(Rupees Nineteen Crore Sixty-One Lakh Ten Thousand Six Hundred and One Only) short paid by the Noticee No. 2 on the goods as detailed in Annexure-A of the SCN under Section 28(4) of the Customs Act, 1962 read with Section 30 of the SEZ Act, 2005alongwith applicable interest arising under Section 28AA of the Customs Act, 1962.

IV. I impose penalty of **Rs.19,61,10,601/-** (Rupees Nineteen Crore Sixty-One Lakh Ten Thousand Six Hundred and One Only) under Section 114A of the Customs Act, 1962. However, in case the Noticee No.2 pays the duty along with interest within 30 days of the communication of the order, the amount of penalty payable shall be reduced to 25% of the penalty amount, as per provisions of Section 114A of the Customs Act, 1962.

V. I refrain from imposing penalty under Section 112 of the Customs Act, 1962 for the reason as detailed in para 18.2.2 supra.

VI. I impose penalty of Rs.50,00,000/- (Rupees Fifty Lakh Only) under Section 114AA of the Customs Act, 1962.

21. This Order-in-Original is issued without prejudice to any other action that may be taken against the M/s GKN Enterprises (Noticee No. 1 & 2) under the Customs Act, 1962 or any other law for the time being in force.

Digitally signed by
Nitin Saini
Date: 16-02-2026
16:48:39

(Nitin Saini)
Commissioner of Customs
Custom House, Kandla.

F. No- GEN/ADJ/COMM/253/2025-Adjn-O/o Commr-Cus-Kandla
DIN- 20260271ML00008378D6

By Speed Post/Courier/Email

To:

1. M/s GKN Enterprisec(IEC-351006233)
   Plot No. 54, Sector-I, Phase-I,
   Kandla Special Economic Zone,
   Gandhidham, Kutch.

2. M/s GKN Enterprisec(IEC-351006233)
   Flat No. 206, 12/B, Square Apartment,
   Plot no. 313, Gandhidham, Kutch-370201.

Copy to:-

1. The Development Commissioner, Kandla Special Economic Zone,Gandhidham, Kutch.
2. The Chief Commissioner Customs Zone, Ahmedabad (RRA)
3. The Deputy Commissioner, KASEZ, Gandhidham.
4. The Superintendent (EDI), Kandla for uploading the SCN on the website of Kandla Customs
5. The Superintendent (Disposal/Recovery/Legal), Custom House Kandla.
6. Guard file.