



प्रधानआयुक्तकाकार्यालय, सीमाशुल्क, अहमदाबाद
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निबन्धितपावतीडाकद्वारा / By SPEED POST A.D.

फा. सं./F. No.: GEN/ADJ/COMM/303/2025-TECH

DIN- 20260371MN000000FAE4

आदेशकीतारीख/Date of Order :27.03.2026

जारीकरनेकीतारीख/Date of Issue :27.03.2026

द्वारापारित :- शिव कुमार शर्मा, प्रधान आयुक्त
Passed by :- Shiv Kumar Sharma, Principal Commissioner

मूलआदेशसंख्या :

Order-In-Original No: AHM-CUSTM-000-PR.COMMR-56-2025-26 dated 27.03.2026 in the case of **M/s Thermax Limited**, Plot No. Z-96/C, Dahej SEZ - II, Dahej, Tal. Vagra, District Bharuch, Gujarat 392130

- जिसव्यक्ति(यों) कोयहप्रतिभेजीजातीहै, उसेव्यक्तिगतप्रयोगकेलिएनिःशुल्कप्रदानकीजातीहै।
- This copy is granted free of charge for private use of the person(s) to whom it is sent.
- इसआदेशसेअसंतुष्टकोईभीव्यक्तिइसआदेशकीप्राप्तिसेतीनमाहकेभीतरसीमाशुल्क, उत्पादशुल्क एवं सेवाकर अपीलीयन्यायाधिकरण, अहमदाबादपीठकोइसआदेशकेविरुद्धअपीलकरसकताहै।अपीलसहायकरजिस्ट्रार, सीमाशुल्क, उत्पादशुल्कएवंसेवाकरअपीलीयन्यायाधिकरण, दूसरीमंज़िल, बहुमालीभवन, गिरिधरनगरपुलकेबाजुमे, गिरिधरनगर, असारवा, अहमदाबाद-380 004 कोसम्बोधितहोनीचाहिए।
- Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, Ahmedabad - 380004.

3. उक्त अपील प्रारूप सं. सी.ए.3 में दाखिल की जानी चाहिए। उस पर सीमा शुल्क (अपील) नियमावली, 1982 के नियम 3 के उपनियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियों में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए)। अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियों में अग्रेषित किए जाने चाहिए।
3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.
4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएंगी (उनमें से कम से कम एक प्रमाणित प्रति होगी)
4. The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)
5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं कि सी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षक अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।
5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.
6. केंद्रीय सीमा शुल्क अधिनियम, 1962 की धारा 129 एके उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीय कृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।
6. The prescribed fee under the provisions of Section 129A of the Customs Act, 1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.
7. इस आदेश के विरुद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवा कर अपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुर्माना का विवाद है अथवा जुर्माना जहां सिर्फ जुर्माना के बारे में विवाद है उसका भुक्तान करके अपील की जा सकती है।
7. An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute".
8. न्यायालय शुल्क अधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर उपयुक्त न्यायालय शुल्क टिकट लगा होना चाहिए।
8. The copy of this order attached therein should bear an appropriate court fee stamp as prescribed under the Court Fees Act, 1870.

Sub: Show Cause Notice No. F.No.GEN/ADJ/COMM/303/2025-TECH dated 29.05.2025 issued by the Principal Commissioner, Customs, Ahmedabad to M/s Thermax Limited, Plot No. Z-96/C, Dahej SEZ - II, Dahej, Tal. Vagra, District Bharuch, Gujarat 392130

Brief facts of the case:

M/s. THERMAX LIMITED, Plot No. Z/96-C, Dahej SEZ-II, Taluka- Vagra, District- Bharuch, and Gujarat-392130, (hereinafter referred to as the "Noticee" for the sake of brevity are engaged in manufacture of taxable goods viz. Active Pharmaceutical Ingredients, Damascenone Total, Ester Beta C16 etc.). The Noticee have been granted permission to set up manufacturing unit and carry-on commercial production in Dahej SEZ vide Letter of Approval No. DAHEJSEZ/II/01/2014-15/208, dated 16.07.2014 (as amended & extended time to time), in terms of Rule 19(4) of the SEZ Rules, 2006. The Noticee have executed Bond-Cum Legal Undertaking in Form-H regarding their obligations for proper utilization and accounting of goods including capital goods, spares, raw materials, components and consumables including fuels, imported or procured duty free and regarding achievement of positive Net Foreign Exchange earnings in terms of provisions of Rule 22(i) of the SEZ Rules, 2006.

2. Whereas, it is alleged that on 03.06.2020, a blast and fire incident happened at the factory premises of M/s. Yashashvi Rasayan Pvt. Ltd. situated at Plot No. Z/96-E, Dahej SEZ-II, Dahej, Taluka- Vagra, District- Bharuch, Gujarat-392130 and a unit adjacent to M/s. Yashashvi Rasayan Private Limited, namely M/s. Milan Laboratories situated at Plot No. Z/96-A reported to the office of Specified Officer, Multi-Product SEZ, Dahej (hereinafter referred to as the "Specified Officer"), vide their letter dated 02.07.2020 that due to fire incident occurred on 03.06.2020 at the premises of M/s. Yashashvi Rasayan Pvt. Ltd., they also incurred huge losses. On the basis of their letter, letters to other units were also written asking for the losses faced due to said fire incident.

2.1 Subsequently, the Specified Officer, vide letter dated 17.02.2022 asked the Noticee about the cause of blast and extent of damage but the noticee had failed to submit the required details. Further, the Specified Officer vide letter dated 04.04.2022, 28.07.2022, 11.10.2022, 20.04.2023, 19.05.2023, 28.06.2023, 10.08.2023 again reminded the noticee to provide details regarding the extent of damage.

2.2 Whereas, it is alleged that the noticee vide their letter dated 22.02.2024 informed that the insurance company had processed the claims and provided annexures of insurance material duty summary. The summary of details is provided as below:

Category	Claim Amount by insurer (Figures in Rs.)
Plant and Machinery + Bldg.	6,47,60,438/-
Work in Progress (WIP) material loss	5,45,919/- [WIP Material Loss- 3,70,907/-+ Incineration Cost= 1,75,012/-
Loss Minimization expense	5,92,250/-

Removal of Debris	9,31,783/-
Total	6,68,30,390/-

2.3 However, it is alleged that, as per detailed insurance material duty summary found enclosed with the said letter, the total loss incurred in the fire incident was assessed to **Rs.6,77,11,561/-**, the break-up of which is as under:-

Category	Claim Amount by insurer (Figures in Rs.)
Plant and Machinery.	6,65,69,261/-
Work in Progress (WIP) material loss	5,50,050/-
Loss Minimization expense	5,92,250/-
Total	6,77,11,561/-

2.4 Whereas, it is alleged that a difference was observed between both the submissions of the notices and the Specified officer vide letter dated 23.02.2024 has called for the procurement documents to ascertain the value of particular goods damaged in the fire incident to determine the proper classification for calculation of actual duty liability. But in absence of any response, a reminder dated 22.04.2024 was issued for the said submissions.

2.5 Whereas it is alleged that the noticee failed to submit the information and documents sought vide letter dated 23.02.2024 followed by the reminder. However, the noticee vide their letter dated 10.05.2024 submitted that the Work-in-progress stock (as submitted earlier) which got damaged in the incident, includes DVB-63% (Di Vinyl Benzene), an imported material. The noticee also submitted copy of invoice and bill of entry for the imported DVB and mentioned that total 726 kg of DVB was damaged in the incident. Further the noticee vide their letter dated 27.06.2024 submitted that duty amounting to Rs.29,776/- along with interest of Rs.14,476/- is discharged i.r.o. damaged 726 kg of DVB imported material. But as per duty liability worked out by the office of Specified Officer, the applicable duty liability on 726 kg of DVB amounts to Rs.40,651.78/- instead of 29,776/-.

2.6 Whereas it is alleged that the Specified Officer vide letter dated 01.10.2024 again requested the noticee to provide surveyor report as well as clarification regarding insurance material summary submitted to this office to ascertain the quantification of the duty. A reminder was also issued to the noticee vide letter dated 24.10.2024 in absence of any proper response.

2.7 Whereas it is alleged that the noticee vide letter dated 02.12.2024 has submitted the Surveyor Report No.BM/0901/2021 dated 03.09.2020 along-with details of raw material and Work in Progress (WIP) material damages. Whereas, the

noticee vide above submission has also confirmed that there was no damage to the finished goods during the fire incident.

2.7.1 Whereas, on scrutiny of the surveyor report, it was found that the noticee had submitted insurance claim bill amounting to Rs.6,82,08,925/- on a contrary the calculation of assessed loss submitted to this office amounts to Rs.6,77,11,561/- and on differential of Rs.4,97,364/-, the noticee vide their email dated 09.05.2025 informed that the difference of Rs.4,97,364/- was due to cold storage container procured by the noticee on rental basis.

2.8 Whereas, in reply to letter dated 07.03.2025 of the Authorized Officer, SEZ, the Noticee vide letter dated 10.03.2025 clarified that the WIP Material Loss may be considered as Rs.4,50,181/- instead of Rs.3,70,907/- reported earlier by them.

3. DUTY CALCULATIONS:

3.1 Whereas, it is alleged that the Noticee has produced the details of the destroyed goods vide their letter dated 22.02.2024, 02.12.2024 and 10.03.2025 based on their submission to the insurance company & its surveyor report which has been considered for the purpose of computation of Customs duty liability as no such procurement documents have been submitted by the noticee in spite of several reminders. Whereas, the amount of Work in progress Material Loss of Rs.4,50,181/- reported by the noticee is adjusted for calculation errors to arrive at the figures Rs.4,55,210/-. Further, out of the figures of assessed loss amounting to Rs.6,77,11,560/-, reported by the insurance surveyor in his report dated 03.09.2020, only items having customs duty ramifications have been taken into account for determining customs duty liability. The duty portion on Civil Structures have not been taken into account. Accordingly, the figures in respect of Plant & Machinery works out to Rs.6,32,65,940/-. Therefore, the details regarding value and duty foregone/payable are summarized herein below:

(Amount in Rs.)

Particulars	Assessable Value	BCD@ applicable rate	SW cess on BCD @ applicable rate	IGST@ applicable rate	Total Duty Foregone/Payable /Recoverable
Plant & Machinery (Annexure A)	6,32,65,940	28,32,320	2,83,232	1,19,42,025	1,50,57,577
Work in Progress(WIP) (Annexure B)	4,55,210	23,374	2,337	86,565	1,12,276
Total	6,37,21,150	28,55,694	2,85,569	1,20,28,590	1,51,69,853

3.2 Whereas, the total value of goods destroyed in the fire incident comes to Rs.6,37,21,150/-on which duty involved thereon comes to Rs.1,51,69,853/- as detailed in Annexure to the above mentioned Show Cause notice.

4.LEGAL PROVISIONS& CONTRAVENTIONS

4.1 From the above facts, it is alleged that the goods viz. Plant & Machinery, and semi-finished, destroyed in the fire incident in the factory premises of the noticee, had not been utilized for the authorized operations, as envisaged in the LOA issued to the noticee. Further, it also alleged that noticee had failed to account for the goods so destroyed in the fire in the manner provided in the SEZ Act and the rules made thereunder. The relevant provisions are reproduced as under:

4.1.1 Section 7 of SEZ Act, 2005 provides that;

7. Any goods or services exported out of, or imported into, or procured from the Domestic Tariff Area by, -

(i) a Unit in a Special Economic Zone; or

(ii) a Developer;

shall, subject to such terms, conditions and limitations, as may be prescribed, be exempt from the payment of taxes, duties or cess under all enactments specified in the First Schedule.

4.1.2 Section-26 of SEZ Act, 2005 provides that;

"26. Exemptions, drawbacks and concessions to every Developer and entrepreneur

1. Subject to the provisions of sub-section (2), every Developer and the entrepreneur shall be entitled to the following exemptions, drawbacks and concessions, namely:-

a. exemption from any duty of customs, under the Customs Act, 1962 (52 of 1962) or the Customs Tariff Act, 1975 (51 of 1975) or any other law for the time being in force, on goods imported into, or services provided in, a Special Economic Zone or a Unit, to carry on the authorized operations by the Developer or entrepreneur;

c. exemption from any duty of excise, under the Central Excise Act, 1944 (1 of 1944) or the Central Excise Tariff Act, 1985 (5 of 1986) or any other law for the time being in force, on goods brought from Domestic Tariff Area to a

Special Economic Zone or Unit, to carry on the authorized operations by the Developer or entrepreneur;”

2. The Central Government may prescribe, the manner in which, and, the terms and conditions subject to which, the exemptions, concessions, draw back or other benefits shall be granted to the Developer or entrepreneur under sub-section (1).

4.2 In terms of Section 26(1) of the SEZ Act, 2005 read with Rule 27 of the SEZ Rules, 2006, an SEZ unit is allowed to import Raw materials, Capital Goods from abroad or procure from domestic tariff area without payment of applicable duties/taxes. Further, such exemptions from duties and Taxes on inputs procured from domestic area or imported, are subject to provisions of Section 26(2) of the SEZ Act, 2005 and terms and conditions, as imposed vide Rule 22 of SEZ Rules, 2005, which *inter alia* required that “the Unit shall execute a Bond-cum-Legal Undertaking in Form H, with regard to its obligations regarding proper utilization and account of goods, including capital goods, spares, raw materials, components and consumables including fuels, imported or procured duty free and regarding achievement of positive net foreign exchange earnings.”

Provided that the Bond-cum-Legal undertaking executed by the Unit or the Developer including Co-Developer shall cover one or more of the following activities, namely: -

(a)

(b) the authorized operations, as applicable to Unit or Developer;

(c)

*.....
.....*

(2) Every Unit and Developer shall maintain proper accounts, financial year wise, and such accounts which should clearly indicate in value terms the goods imported or procured from Domestic Tariff Area, consumption or utilization of goods, production of goods, including by-products, waste or scrap or remnants, disposal of goods manufactured or produced, by way of exports, sales or supplies in the domestic tariff area or transfer to Special Economic Zone or Export Oriented Unit or Electronic Hardware Technology Park or Software Technology Park Units or Bio-technology Park Unit, as the case may be, and balance in stock:

4.2.1 Rule 25 of the SEZ Rules, 2005 specifies that “Where an entrepreneur or Developer does not utilize the goods or services on which exemptions, drawbacks,

cess and concessions have been availed for the authorized operations or unable to duly account for the same, the entrepreneur or the Developer, as the case may be, shall refund an amount equal to the benefits of exemptions, drawback, cess and concessions availed without prejudice to any other action under the relevant provisions of the Customs Act, 1962, the Customs Tariff Act, 1975, the Central Excise Act, 1944, the Central Excise Tariff Act, 1985, the Central Sales Tax Act, 1956, the Foreign Trade (Development and Regulation) Act, 1992 and the Finance Act, 1994 (in respect of service tax) and the enactments specified in the First Schedule to the Act, as the case may be: Provided that if there is a failure to achieve positive net foreign exchange earning, by a Unit, such entrepreneur shall be liable for penal action under the provisions of Foreign Trade (Development and Regulation) Act, 1992 and the rules made there under."

4.2.2 Rule 27 of SEZ Rules, 2006 specifies that

27. Import and Procurement-

(1) A Unit or Developer may import or procure from the Domestic Tariff Area without payment of duty, taxes or cess or procure from Domestic Tariff Area after availing export entitlements or procure from other Units in the same or other Special Economic Zone or from Export Oriented Unit or Software Technology Park unit or Electronic Hardware Technology Park Unit or Bio-technology Park Unit, all types of goods, including capital goods (new or second hand), raw materials, semi-finished goods, (including semi-finished Jewelry) component, consumables, spares goods and materials for making capital goods required for authorized operations except prohibited items under the Import Trade Control (Harmonized System) Classifications of Export and Import Items:

4.2.3 Rule 34 of the SEZ Rules, 2006 provides that-

"The goods admitted into a Special Economic Zone shall be used by the Unit or the Developer only for carrying out the authorized operations but if the goods admitted are utilized for purposes other than for the authorized operations or if the Unit or Developer fails to account for the goods as provided under these rules, duty shall be chargeable on such goods as if these goods have been cleared for home consumption

Provided that in case a Unit is unable to utilize the goods imported or procured from Domestic Tariff Area, it may export the goods or sell the same to other Unit or to an Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-technology Park Unit, without payment of duty, or dispose off the same in the Domestic Tariff Area on

payment of applicable duties on the basis of an import license submitted by the Domestic Tariff Area buyer, wherever applicable.*

4.2.4 Rule 47 of the SEZ Rules, 2006 provides that -

***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:-

(a) Domestic Tariff Area sale under sub-rule (1), of goods manufactured by a Unit shall be on submission of import licence, as applicable to the import of similar goods into India, under the provisions of the Foreign Trade Policy:

.....

.....

(4) Valuation and assessment of the goods cleared into Domestic Tariff Area shall be made in accordance with Customs Act and rules made thereunder."

4.3 From the provisions of the SEZ Act and Rules discussed above, it is alleged that the exemptions from the payment of taxes, duties or cess under all enactments specified in the First Schedule are available to any/all goods or services supplied or provided to the SEZ Developer or SEZ Unit only if such goods/services are meant to carry on/are utilized in the Authorized Operations by the Developer or Unit in the SEZ and subject to such terms, conditions and limitations, as may be prescribed. Whereas, in the instant case, it is alleged that the goods got damaged/destroyed and were not utilized for the intended purpose (authorized operations and export), for which they were procured duty-free.

4.3.1 Whereas, it is alleged that the noticee has also procured duty-free goods indigenously by availing the benefit of tax exemptions and in terms of provisions of Rule 34 of the SEZ Rules, 2006, but as in this case, if the goods procured for their SEZ Unit are not utilized for purposes of authorized operations or if the Unit or Developer fails to account for the goods as provided under Rule 22 of SEZ Rules, 2006, the duty shall be chargeable on such goods as if these goods have been cleared for home consumption. Further, as per Rule 47(4) of the SEZ Rules, 2006, valuation and assessment of the goods cleared/provided into Domestic Tariff Area shall be made in accordance with the Customs Act and Rules made thereunder.

4.3.2 Whereas, it is alleged that in the instant case, being an SEZ unit, the noticee were legally bound to follow the provisions of Rule 22, 25, 27 & 34 of the SEZ Rules, 2006 in respect of the goods procured duty-free under the provisions of Section 7 and 26 of the SEZ Act, 2005. It appears that the noticee has failed to utilize the aforesaid goods in their unit for authorized operations and failed to follow the procedure prescribed in Rule 22(2) and Rule 34 of the SEZ Rules, 2006. As the goods procured duty-free were damaged/destroyed in the fire incidents and have neither been utilized in 'Authorized Operations' nor have been accounted for in the manner prescribed in Rule 22(2), resulting in contravention of the aforesaid provisions of the SEZ Act, 2005 and SEZ Rules, 2006. It, therefore, appears that the noticee is liable to pay an amount equal to duty forgone on the aforesaid goods damaged/destroyed in the fire incidents, which comes to Rs.1,51,69,853/- along with interest at a rate as specified in the Notification of the Government of India, Ministry of Finance (Department of Revenue) issued under Section 28AA of the Customs Act, 1962, on the said duty, from the date of duty-free Import/Procurement of the said goods till the date of payment of such duty.

4.3.3 Whereas, Section 112(b) (ii) of Customs Act, 1962 reads as under:

Penalty for improper importation of goods, etc

Any person, -

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or

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

i. in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding the value of the goods or five thousand rupees], whichever is the greater;

ii. in the case of dutiable goods, other than prohibited goods, subject to the provisions of section *ibid*, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher. Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the

proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined:]

4.3.4 Whereas, in the instant case, it is alleged the noticee failed to report the occurrence of loss to the Customs authorities. The matter came to light only when another unit adjacent to M/s. Yashasvi Rasayan Private Limited reported the losses suffered by them to the Specified Officer. Acting on the information, the Specified Officer suo-moto took cognizance of the matter and asked the noticee to report losses suffered by them due to the fire incident. Moreover, there appears deliberate attempt on the part of noticee to procrastinate the submission of requisite details for computation of Customs Duty Liability as multiple reminders were issued to them for submission of said information. The noticee were aware that as per the provisions of SEZ Act and Rules they were liable to make good the duty forgone on the goods destroyed in the fire incident. Despite having knowledge of occurrence of loss and its implications under the SEZ Act and Rules, the noticee never came forward to discharge the applicable Customs Duty liabilities on the same. It is further alleged that no amount had been paid by the noticee towards the said liabilities. Thus, the act of non-reporting of material facts to Customs Authorities and undue delay in submission of requisite information is alleged as deliberate act on the part of noticee to willfully suppress material facts from the concerned authorities with intent to evade government revenue. Had the fact regarding suffering of loss by the noticee not come to the knowledge of Customs Authorities, the same would have gone un-noticed causing substantial revenue loss to the Government Exchequer. Thus, it is alleged that the duties of Customs amounting to Rs.1,51,69,853/- not paid is required to be recovered by invoking extended period of limitation under Section 28(4) of the Customs Act, 1962 along with interest at appropriate rate as applicable under Section 28AA of the Customs Act, 1962.

4.3.5 In light of the facts and circumstances discussed in the foregoing paras, it is alleged that in the instant case, imported/indigenous duty-free goods procured by the noticee have not been utilized for the authorized operations. Since the goods imported/ procured indigenously duty free, valued at Rs.6,37,21,150/- involving Customs Duties of Rs.1,51,69,853/- were not utilized in the authorized operations and were not accounted for in the manner prescribed in the SEZ Act, 2005 and SEZ Rules, 2006, it is alleged that the noticee is liable to pay an amount of Rs.1,51,69,853/- (as detailed in Annexure-A to the Show Cause Notice), equal to the duty leviable on such goods, under Section 26 of the SEZ Act, 2005 and Section 28(4) of the Customs Act, 1962, read with Rule 22, Rule 25, Rule 27, Rule 34 and Rule 47 of the SEZ Rules, 2006, and Section 26 of the SEZ Act, 2005. It is further alleged that the noticee is also liable to pay interest at a rate as notified by Government of India, Ministry of Finance

(Department of Revenue,) under Section 28AA of the Customs Act, 1962, on the said duty from the date of duty-free import of the said goods till the date of payment of such duty. It also alleged that the imported/indigenous Semi-Finished Goods & Plant and Machinery were not used for intended purpose for which the exemption from payment of duty was claimed and availed and therefore, the noticee liable for penalty under Section 112(b)(ii) of the Customs Act, 1962.

4.3.6 Whereas, the noticee had, in terms of Rule 22 of the SEZ Rules, 2006 executed Bond cum-Legal undertaking, whereby they had undertaken to properly utilize and account for the goods procured duty-free. It is alleged from the discussions herein above that the noticee had contravened the provisions of the said Bond-cum-Legal undertaking, thereby making themselves liable for payment of applicable duties on the said goods, as the same were not utilized for authorized operations and were not accounted for in terms of SEZ Rules, 2006.

4.3.7 It is alleged that being an SEZ Unit, the noticee were under statutory obligations laid down under various Notifications/Circulars and LUT etc., which were required to be fulfilled by them. Since, the noticee, failed to fulfil such statutory obligations and violated the foregoing provisions, they have rendered themselves liable for payment of Customs Duty on such goods along with Interest and consequential Penalty under the relevant provisions of the Customs Act, 1962. Further, the failure to pay such Duty, Interest and Penalty by them, render the Bond-cum -Legal Undertaking executed by them, liable to be enforced/invoked.

4.3.8 In the foregoing paras, it is alleged that the noticee had contravened the following provisions:

(a) Conditions of the Bond-cum Legal-Undertaking in Form H executed by them from time to time, in as much as they failed to observe all the provisions of Customs Act, 1962, IGST Act, 2017, Central Excise Act, 1944 and the Rules and Regulations made thereunder in respect of procurement of goods.

(b) Section 7 and Section 26 of SEZ Act, 2005. in as much as the said Noticee did not Comply with the prescribed terms and conditions of the SEZ Act, 2005 which allowed them to avail exemption from payment of duties and/or cess.

(c) Provisions contained in Rule 22, 25, 27 of SEZ Rules, 2006 read with Rule 34 & 47 of the SEZ, Rules, 2006, which provides for exemption from duty on goods imported into, or services provided in a Special Economic

Zone or a Unit, to carry on the authorized operations by the Developer or entrepreneur, by failing to utilize such goods and/or services to carry on the authorized operations.

4.3.9 In view of the above, Show Cause Notice No. GEN/ADJ/COMM/303/2025-Tech dated 29.05.2025 was issued to M/s. THERMAX LIMITED, Plot No, Z/96-C, Dahej SEZ-II, Taluka- Vagra, District- Bharuch, Gujarat-392130 calling upon to show cause to the Principal Commissioner of Customs, Ahmedabad as to why:-

- (i) the duties of Customs amounting to Rs.1,51,69,853/- (Rupees One Crore, Fifty-One Lakh, Sixty-Nine Thousand, Eight Hundred and Fifty-Three only) equal to duty leviable/foregone on the goods destroyed in the fire incident, should not be demanded and recovered from the noticee by invoking extended period of limitation under Section 28(4) of the Customs Act, 1962, read with Section 26 of the SEZ, Act,2005 and Rules 22, 25, 34 and 47 of the SEZ Rules, 2006;
- (ii) Interest at the appropriate rate on the total duty demanded at Sr. No.(i) above should not be demanded and recovered from them under Section 28AA of the Customs Act, 1962,
- (iii) Penalty should not be imposed upon them under Section 112 (b)(ii) of the Customs Act, 1962;
- (iv) Bond-Cum Legal Undertaking in Form H furnished by the Noticee should not be enforced towards the above liabilities.

DEFENCE SUBMISSION:

5.0 The noticee vide their e-mail dated 07.08.2025 submitted written submission wherein they interalia stated as under:

- A.** At the outset, the Noticee submits that the impugned SCN is incorrect both on facts and law. Therefore, the proceedings initiated by the impugned SCN are bad in law and are liable to be dropped on this ground itself and on the following submissions which are made without prejudice to each other.
- B.** The department does not have the jurisdiction to issue the impugned SCN in this matter.
 - 1. The impugned SCN has been issued by the Department under Rule 47(5) of the SEZ Rules. In this regards it is submitted that the jurisdictional Commissioner of Customs has the only power to issue notice in case of clearance of the goods from SEZ unit into the DTA.

2. The Rule 47 of the SEZ Rules, provides for condition relating to sale in the DTA. The relevant extract of Rule 47 is reproduced below for sake of ready reference:

RULE 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: (a) Domestic Tariff Area sale under sub-rule (1), of goods manufactured by a Unit shall be on submission of import licence, as applicable to the import of similar goods into India, under the provisions of the Foreign Trade Policy:

.....

(4) **Valuation and assessment of goods cleared into Domestic Tariff Area shall be made in accordance with Customs Act and rules made thereunder.**

(5) **Refund, Demand, Adjudication, Review and Reply 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.** "

...Emphasis Supplied

3. From the above, it is understood that Rule 47 deals with selling of goods from the SEZ Unit to DTA. However, this Rule does not deal with recovery of duty (if any) when goods are destroyed by fire within the SEZ. Therefore, issuance of impugned SCN for alleging differential duty demand on account of fire incident at the SEZ unit is without jurisdiction and completely incorrect.

No provision of Customs Act has been violated

4. Without prejudice to the above submission, the Noticee submits that Rule 47(5) merely provides that demand for matters relating to authorized operations under the SEZ Act transactions, and goods and services related thereto, shall be made by the Jurisdictional Customs Authorities in accordance with the relevant provisions contained in the Customs Act.

5. From the above provision it is apparent that jurisdictional customs officer can initiate proceedings in accordance with the relevant provisions of the Customs Act. In the facts of the present case, the provisions of Section 28/28AA and Section 112 of Customs Act have been invoked for recovery of duty forgone on account of goods being destroyed by fire.
6. The Noticee submits that the above provisions do not apply to the facts of the present case as Section 28 of the Customs Act provides for recovery of short payment/non-payment of duty of customs leviable under the Customs Act. Further, Section 28AA deals with recovery of interest on short payment/non-payment of duty leviable under the Customs Act. Likewise, Section 112 provides for imposition of penalty on account of improper importation of goods into India.
7. The Noticee submits that no provisions are applicable in the present case. Therefore, issuance of the impugned SCN for recovery of duty, interest and penalty under Customs Act is *ex facie* erroneous and is without jurisdiction. Had the provision under the SEZ Act/Rules be worded in a manner that the provisions of Customs Act are being borrowed *mutatis mutandis* for recovery under SEZ Act, then the jurisdictional customs officer would have had jurisdiction to initiate recovery for contraventions of the SEZ Act. Reference can be made to similar borrowing provisions such as Section 110 of Finance Act, 2018 which deals with levy of Social Welfare Surcharge: -

"(5) The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to assessment, non-levy, short-levy, refunds, exemptions, interest, replies, offences and penalties shall, as far as may be, apply in relation to the levy and collection of the Social Welfare Surcharge on imported goods as they apply in relation to the levy and collection of duties of customs on such goods under the Customs Act, 1962 (52 of 1962) or the rules or the regulations, as the case may be."

...Emphasis Supplied

8. Thus, by Application of Rule 47(5), the Noticee submits that the provisions of the Customs Act cannot be treated as the machinery provision to initiate recovery of duty in case of any contravention of the SEZ Act or the Rules made thereunder.
9. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of *Eternit Everest Limited v UOI - 1997 (89) ELT 28* which held that a mere provision which creates a liability or obligation to

pay duty is not sufficient. The statute must further provide for machinery provision for adjudication by a specified authority in cases where such liability is disputed and a machinery provision for recovery in case of non-payment. **There can be no recovery of tax except by authority of law.**

10. Without prejudice to the above, it is submitted that any recovery of tax, i.e., levy and collection of tax can only be by means of authority of law as prescriber under Article 265 of the Constitution. However, the Noticee submits that in the present case, Rule 47(5) seeks to authorize the Jurisdiction Customs Authority to "*Refund, Demand, Adjudication, Review and Reply with regard to matters relating to authorised operations under Special Economic Zones Act, 2005, transactions, and goods and services related thereto*" in accordance with Customs Act.
11. In the present case, the SEZ Act does not provide for any machinery provision authorizing the Jurisdictional Customs Authorities with regard to matters relating to authorized operations. In such circumstances, the proposal to collect the same through the application of Rule 47(5) is against settled position of law that tax must be collected in accordance with "authority of law".
12. Reliance in this regard is placed on the Hon'ble Supreme Court's decision in *State of West Bengal v. Subodh Gopal Bose* [AIR 1954 SC 92] wherein the Court in as early as 1954, held that the executive cannot, on its own authority, levy or collect any tax. Similarly, in *Ujjam Bai v. State of Uttar Pradesh* [AIR 1962 SC 1621], a Seven-Judge bench of the Hon'ble Supreme Court reaffirmed the decision in *Moopil Nair v. State of Kerala* [1961 3 S.C.R. 77] and held that a tax cannot be levied or collected by a mere executive fiat.
13. In *Jindal Stainless Ltd. v. State of Haryana* [(2017) 12 SCC 1], a Nine-Judge Bench of the Hon'ble Supreme Court has held that the power to tax is a sovereign power which is legislative in character and re-affirmed the position that there can be no levy or collection by exercise of executive power. Thus, the Hon'ble Supreme Court has, on numerous occasions, held that any levy and collection of tax must be by way of a valid law enacted by the legislature. Thus, tax can be collected by a Rule or any other delegated legislation.
14. Therefore, in light of the above submission it is submitted that alleged demand of duty in the present case is erroneous and is liable to be dropped.

No substantive provision for recovery of interest or penalty

15. Without prejudice, it is also essential to refer to the decision of the Hon'ble Bombay High Court in *Mahindra & Mahindra Limited v. Union of India* in W.P. No. 1848 of 2009. Vide the said Show Cause Notice, the Hon'ble High Court has held that interest and penalty being a substantial levy the same can be charged and collected only when the statute specifically provides for the same.
16. In *India Carbon Ltd. v. State of Assam*, [(1997) 6 SCC 479], the Apex Court was examining whether the provisions of the CST Act authorized imposition of interest for delayed payment of Central sales tax. The relevant provision, as it existed during that time is extracted below: -

"9(2) Subject to the other provisions of this Act and the rules made thereunder, the authorities for the time being empowered to assess, re-assess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India, assess, re-assess, collect and enforce payment of tax, including any penalty, payable by a dealer under this Act as if the tax or penalty payable by such a dealer under this Act is a tax or penalty payable under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, reference, refunds, rebates, penalties charging or payment of interest, compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly."

...Emphasis Supplied

17. After examining this provision in detail, the Hon'ble Court held that the provision relating to interest in the latter part of Section 9(2) can be employed by the States' sales tax authorities only if the Central Act makes a substantive provision for the levy and charge of interest on Central sales tax.

Now, the words "charging or payment or interest" in Section 9(2) occur in what may be called the latter part thereof. Section 9(2) authorises the sales tax authorities of a State to assess, reassess, collect and enforce

payment of the Central sales tax payable by a dealer as if it was payable under the State Act; this is the first part of Section 9(2). By the second part thereof, these authorities are empowered to exercise the powers they have under the State Act and the provisions of the State Act, including provisions relating to charging and payment of interest, apply accordingly. Having regard to what has been said in the case of Khemka & Co., it must be held that the substantive law that the States' sales tax authorities must apply is the Central Act. In such application, for procedural purposes alone, the provisions of the State Act are available. The provision relating to interest in the latter part of Section 9(2) can be employed by the States' sales tax authorities only if the Central Act makes a substantive provision for the levy and charge of interest on Central sales tax and only to that extent. There being no substantive provision in the Central Act requiring the payment of interest on Central sales tax the States' sales tax authorities cannot, for the purpose of collecting and enforcing payment of Central sales tax, charge interest thereon.

...Emphasis Supplied

18. The principle which one can infer from above decision is that unless the law clearly provides for a provision for recovery, no interest can be recovered.
19. 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.
20. Therefore, applying the ratio of the above judgments to the facts of the present case, since Rule 47(5) does not provide for levy of interest or penalty, it is submitted that the said Rule cannot be applied in the present case for issuing of impugned SCN relating to recovery of penalties and interest.
21. The impugned SCN has also been issued invoking the provisions of Section 28 of the Customs Act and also by invoking the bond executed in terms of Rule 22 of the SEZ Rules. In this regard, it is submitted that the operation of a SEZ unit is concerned the duty liability can be recovered on a unit, if the goods admitted are not utilised for authorised operations by enforcing the bond. Therefore, the only process by which a duty demand can be

raised is by invoking the bond not by invoking Section 28 of the Customs Act.

22. Further, the Noticee in Ground D has mentioned in detail as to why the goods will amount to use in authorised operations. Thus, there is no case for invoking the bond in present case also.
23. Therefore, issuing of impugned SCN by invoking the provisions of Section 28 of Customs Act, *ibid* is without any jurisdiction and hence impugned SCN deserves to be dropped on this ground alone.

C. No duty can be demanded as there is no machinery provision to demand the same

1. The Noticee submits that Section 30 of the SEZ Act, provides for recovery of duty, in cases when the goods including the goods admitted into the SEZ, when they are removed from the SEZ.
2. Rule 34 provides for recovery of duty in cases where the goods are not used to carry out authorised operations or utilised in other than authorised operations. In such circumstances this Rules provides for recovery by deeming that such offending goods have been removed from the SEZ.
3. In other words, a removal or a deemed removal is a principal requirement for levy of duty on goods admitted into the SEZ. In the instant case, there has been no removal of goods or even deemed removal as the goods got destroyed due to the fire incidents.
4. In pursuance of the same, Rule 34 of the SEZ Rules provides for the utilization of goods in the SEZ unit. The relevant extract of the Rule 34 of the SEZ Rules is reproduced below:
 - a. *The goods admitted into a Special Economic Zone shall be used by the Unit or the Developer only for carrying out the authorized operations but if the goods admitted are utilized for purposes other than for the authorized operations or if the Unit or Developer fails to account for the goods as provided under these rules, duty shall be chargeable on such goods as if these goods have been cleared for home consumption:*
 - b. *Provided that in case a Unit is unable to utilize the goods imported or procured from Domestic Tariff Area, it may export the goods or sell the same to other Unit or to an Export Oriented Unit or Electronics Technology Park Unit or Software Technology Park Unit or Bio-technology Park Unit, without payment of duty, or dispose off the*

same in the Domestic Tariff Area on payment of applicable duties on the basis of an import licence submitted by the Domestic Tariff Area buyer, wherever applicable'

Emphasis Supplied

5. It is submitted that the goods have been used in authorised operations i.e., in manufacture of the finished goods, as the subject goods have been destroyed in the fire incidents at the SEZ unit of the Noticee. Hence, it is clear that the goods are used in the authorized operations.
 6. Further, Rule 34 provides that '*goods admitted are utilized for purposes other than for the authorized operations*', which implies that the goods have to be utilised for activities other than usage in Authorised Operations. It is not the case that the goods in the instant case have been utilised in any other activity or for any purposes other than Authorised Operations. Mere destruction of goods due to fire cannot be a reason to declare that goods have been used for purposes other than Authorised Operations. Hence, there has been no violation of Rule 34 of the SEZ Rules, 2006.
 7. Therefore, in the absence of a machinery provision for demanding duty under the SEZ Act, 2005 for goods used for authorised operations and not removed from the SEZ, the alleged demand of duty is clearly unauthorized and the impugned SCN deserves to be dropped on this ground alone.
- D. The subject good have been used for authorized operations. Therefore, alleged demand of duty is incorrect.**
- D.1 The impugned SCN, has alleged that the subject goods were not utilised in authorized operations and were not accounted for in manner prescribed under the Section 26 of the SEZ Act, read with Rule 22, Rule 25, Rule 27, Rule 34, Rule 47 of the SEZ Rules, therefore Noticee is liable to pay of Rs. 1,51,69,853/-.
 - D.2 In this regard, it is submitted that the subject goods are utilized for the authorized operations and the Noticee has not violated any provision of the SEZ Act or Rules.
 - D.3 As per Rule 25 'Consequences of non-utilization of goods or services' of the SEZ Rules. The relevant extract of Rule 25 is reproduced below for sake of ready reference:

"Where an entrepreneur or Developer does not utilize the goods or services on which exemptions, drawbacks, cess and concessions have been availed for the authorized operations or unable to duly account for the same, the entrepreneur or the Developer, as the case may be, shall

refund an amount equal to the benefits of exemptions, drawback, cess and concessions availed without prejudice to any other action under the relevant provisions of the Customs Act, 1962, the Customs Tariff Act, 1975, the Central Excise Act, 1944, the Central Excise Tariff Act, 1985, the Central Goods and Services Tax Act, 2017 (12 of 2017), Integrated Goods and Services Tax Act, 2017 (13 of 2017), State Goods and Services Tax Acts, Union Territory Goods and Services Tax Act, 2017 (14 of 2017) and the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992) and the enactments specified in the First Schedule to the Act, as the case may be:

Provided that if there is a failure to achieve positive net foreign exchange earning, by a Unit, or stipulated Value addition, such entrepreneur shall also be liable for penal action under the provisions of Foreign Trade (Development and Regulation) Act, 1992 and the rules made there under."

...Emphasis Supplied

- D.4 From the above, it can be understood that the developer who does not utilize the good or service for the authorized operations of the benefit claimed under Customs Act, Central Excise Tariff Act, 1985, etc. the benefit claimed shall be refund equal to the benefits of exemptions, drawback, cess and concessions availed in the respective Acts.
- D.5 The term 'utilise' refers to the usage of goods in authorised operations. According to Oxford Dictionary Tenth Edition 'Utilise' has been defined as 'make practical and effective use of'. As per the definition of the term utilize, it is clear that it has to be used in something effectively.
- D.6 It is submitted that there are mainly two types of goods that got destroyed during the fire incident at the manufacturing unit of the of the Noticee. They were the raw material, semi-finished goods and plant & machinery. The consolidated value of the goods destroyed is 10.95/- lakhs.
- i) Raw Material and semi-finished goods (value of goods - Rs. 4,55,210/-)**
- D.7 In the present case, the authorized operations of the Noticee in terms of the LOA is to undertake manufacturing of ion exchange resins, oil filed chemicals, polymer dry beads, etc. and when the raw materials were procured by the Noticee, they are employed or earmarked to be used in the manufacturing process.

- D.8 However, due to fire incident, the goods were not able to be physically utilized in the manufacturing process as they got destroyed. Thus, the same does not imply that the goods have not been utilised in Authorised Operations.
- D.9 Without prejudice to above, the majority of the raw material destroyed during the fire incident were procured from the DTA. The list of raw material and semi-finished goods destroyed during the fire incident are listed below:

Sr. No.	Raw Material	Indigenous/ Imported Goods	Assessable value of Raw Material
1.	PVA POLY VINYL ALCOHOL-GH 17 R/EQUIV	Indigenous	1,701
2.	STYRENE MONOMER	Indigenous	2,15,328
3.	BPO- BENZYL PEROXIDES STD	Indigenous	428
4.	SALT SOLUTION (4% GEL)	Indigenous	2,744
5.	Salt Solution (13% MP	Indigenous	11,425
6.	DVB-63%	Imported	1,46,572
7.	HEC-HYDROXY ETHYL CELLULOSE	Indigenous	6,257
8.	CALCIUM CHLORIDE-FUSED	Indigenous	1,649
9.	ISO BUTYL ALCOHOL	Indigenous	68,745
10.	SODIUM LIGNOSULPHONATE	Indigenous	361
Total			4,55,210

- D.10 Without prejudice to the above, it is submitted that the payment made by the Noticee vide challan dated 12.06.2024 (attached as Annexure-9) during the enquiry initiated by Department was made without any requirement under any law for the time being in force. As the goods is utilized in the authorized operations, therefore the payment made by the Noticee is liable to be refunded.

ii) Plant and Machinery (value as per the insurance report - Rs. 6,32,65,940/-)

- D.11 It is submitted that the goods have not been utilised for any other purpose other than authorised operations. The final product cannot be manufactured without the presence of the capital goods aiding in their manufacture.
- D.12 The Noticee submits that the plant and machinery got destroyed in the SEZ premises substantiate the submission that the goods were being used for the Authorized Operations.
- D.13 Hence, the impugned SCN alleging the subject goods have not been utilized in "authorized operation" is completely incorrect.
- D.14 It is relevant to note that the Noticee has procured all the plant and machinery from the DTA for utilizing in the Authorized Operations. The list of Plant and Machinery destroyed during the fire incident is attached as Annexure-17.
- D.15 Further it is submitted that the Noticee have put to use, all the plant and machinery for utilizing in the Authorized Operations in the year 2017.
- D.16 Hence, the impugned SCN alleging the subject goods have not been utilized for "authorized operation" is completely incorrect.
- D.17 Further, the impugned SCN, has alleged that various other provisions of the SEZ Rules have been violated/failed to be adhered to by the Noticee. In this regard, the Noticee submits that none of the provisions have been violated. The list of provisions alleged to have been violated according to the Department along with the Noticee rebuttal for the same is tabulated below:

RELEVANT PROVISIONS IN THE SEZ RULES		
	<i>Provision</i>	<i>Rebuttal</i>
Rule 22- Terms and conditions for availing exemptions,	(1) Grant of exemption, drawbacks and concession to the entrepreneur or Developer shall be subject to the following conditions,	1. The Noticee submits that all the requirements under Rule 22 have been fulfilled. 2. The Noticee has executed a

<p>drawbacks and concessions to every Developer and entrepreneur for authorized operations</p>	<p>namely: -</p> <p>(i) the Unit shall execute a Bond cum-Legal Undertaking in Form H, with regard to its obligations regarding proper utilization and accountal of goods, including capital goods, spares, raw materials, components and consumables including fuels, imported or procured duty rate and regarding achievement of positive net foreign exchange earning;</p> <p>(ii) ...;</p> <p>(iii) ...</p> <p>Provided that the Bond-cum-Legal Undertaking executed by the Unit or the Developer including Co-developer shall cover one or more of the following activities, namely:-</p> <p>(a)The movement of goods between port of import or export and the Special Economic Zone;</p> <p>(b) the authorized operations, as applicable to Unit or Developer;</p> <p>(c) temporary removal of goods or goods manufactured in Unit for the purposes of repairs or testing or calibration or display or processing or sub-contracting of production process or production or other</p>	<p>Bond-cum-Legal Undertaking in Form H and the same is an undisputed fact. The authorised operations as per the Bond is for the manufacture of taxable goods viz. ION exchange resins, oil filed chemicals, polymer dry beads, etc. Hence, the raw material and capital goods imported by the Noticee for the purpose of manufacturing of authorized operations. However, the subject goods got destroyed due to fire incident.</p> <p>3. Further destruction of goods due to fire incident is beyond the control of Noticee. Thus, Notice is not liable to pay duty on the reason that the goods have not been used for authorized operations.</p> <p>4. The Bond-cum Legal Undertaking covers the said authorised operations and hence there has been no violation of Rule 22 of the SEZ Rules, 2006.</p>
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	<p>temporary removals into Domestic Tariff Area without payment of duty,'</p> <p>(d) re-import of exported goods.</p> <p>(iv)The procedure for execution of Bond-cum-Legal Undertaking shall be as under:-</p> <p>(a) ..; to..(g)...</p>	
Rule 27 - Import and Procurement.	<p>(1) A Unit or Developer may import or procure from the Domestic Tariff Area without payment of duty, taxes or cess or procure from Domestic Tariff Area after availing export entitlements or procure from other Units in the same or other Special Economic Zone or from Export Oriented Unit or Software Technology Park unit or Electronic Hardware Technology Park Unit or Biotechnology Park Unit, all types of goods, including capital goods (new or second hand), raw materials, goods, (including semifinished Jewellery) component, consumables, spares goods and materials for making capital goods required for authorized operations except prohibited items under the Import Trade Control (Harmonized System) Classifications of Export and Import items:</p>	<p>The Noticee submits that there has been no violation of Rule 27 of the SEZ Rules, 2006 as the goods have been imported for the purposes of authorised operations and the requirements under the said Rule have been fulfilled.</p>

<p>Rule 34 - Utilization of goods.</p>	<p>The goods admitted into a Special Economic Zone shall be used by the Unit or the Developer only for carrying out the authorized operations but if the goods admitted are utilized for purposes other than for the authorized operations or if the Unit or Developer fails to account for the goods as provided under these rules, duty shall be chargeable on such goods as if these goods have been cleared for home consumption:</p> <p>Provided that in case a Unit is unable to utilize the goods imported or procured from Domestic Tariff Area, it may export the goods or sell the same to other Unit or to an Export Oriented Unit or Electronics Technology Park Unit or Software Technology Park Unit or Biotechnology Park Unit, without payment of duty, or dispose off the same in the Domestic Tariff Area on payment of applicable duties on the basis of an import licence submitted by the Domestic Tariff Area buyer, wherever applicable</p>	<ol style="list-style-type: none"> 1. The Noticee submits that the goods have been used only for the purposes of authorized Operations as it is evident from the fact that semi-finished goods and capital goods were put to use in the manufacturing operations. 2. Unfortunately, the goods got destroyed by fire as a result of which, the goods could not be used in the manufacture of the final product. 3. Hence, the usage of goods for purposes other than Authorised Operations does not arise in the instant case as the goods are not available for usage. 4. It is also submitted that the Noticee has kept proper records in respect of the goods destroyed and the same has been submitted to both the Specified Officer as well as the Insurance Company. Hence it cannot be said that the Noticee has failed to account for the subject goods.
<p>Rule 47 - Sales in Domestic Tariff Area.</p>	<p>(1) A Unit may sell goods and services including rejects or wastes or scraps or remnants or broken</p>	<p>The valuation and the assessment of goods cleared into the domestic area shall be made according to the</p>

	<p>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: (a) Domestic Tariff Area sale under sub-rule (l), of goods manufactured by a Unit shall be on submission of import licence, as applicable to the import of similar goods into India, under the provisions of the Foreign Trade Policy:</p> <p>.....</p> <p>.....</p> <p>(4) Valuation and assessment of</p> <p>goods cleared into Domestic Tariff Area shall be made in accordance with Customs Act and rules made thereunder."</p>	<p>Customs Act and rules. Therefore, it is submitted that the provisions of</p> <p>Customs Act and rules apply to</p> <p>SEZ units. The Noticee has not sold the imported/ domestically sourced goods in DTA and therefore, the said rule is not applicable.</p>
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D.18 As per Rule 34 of the SEZ Rules, 2006, the goods were procured for use in authorized operations and accounted for. The capital goods had been used in authorized operations, until the goods got destroyed due to fire incident.

D.19 Further, in this regard, reliance is placed on case of Satguru Polyfab Pvt, Ltd. v. CC, Kandla [2011 (267) ELT 273 (CESTAT-Ahmedabad), where in the jurisdictional Tribunal on the facts and circumstances which were similar to the facts and circumstances of the Noticee case has held that the accidental of fire resulting in destruction of goods, cannot be said that it amounts to use of goods for unauthorized operations since the expression

used clearly means a deliberate utilization or misuse of the goods procured duty free for unauthorized operations. Relevant portion of the case is reproduced below:

"In this case it cannot be said that goods were utilized for purposes other than authorized operations since the expression used clearly means a deliberate utilization or misuse of the goods procured duty free for unauthorized operations. When there is an accidental fire resulting in destruction of goods, it cannot be said that it amounts to use of goods for unauthorized operations. Similarly the second term namely failure to account for also cannot be applied since the shortage has been accounted for by fire accident and no evidence has been brought out by Revenue to show that goods have been procured or released elsewhere. Therefore there is no contravention of provisions of Rule 8 at all and this is the rule which authorizes Revenue to demand duty.

We also find considerable force in the argument advanced by the learned advocate and his reliance upon the decision of the Hon'ble Supreme Court. In this case SEZ is a fiction created and in that fiction if there is contravention of provisions of SEZ Rules, the fiction itself provides for taking action. Once the action to the SEZ units or the loss of goods by fire is not covered by Rule 8 of SEZ Rules 2003, the deemed fiction of SEZ being a foreign territory comes into picture. As already considered earlier, duty becomes payable only when the goods are cleared into DTA or failure in terms of provisions of Rule 8 of SEZ Rules 2003. Once the event is not covered by these provisions at all, we have to hold that goods are still in foreign territory which is the status of SEZ and it is a deemed fictional status. As observed by Hon'ble Supreme Court, the fiction has to be given full effect to unless there is a valid reason supported by law to do otherwise. Therefore the goods which have been destroyed have to be held to have been destroyed in the deemed foreign territory and if that is so no customs duty can be demanded."

...Emphasis Supplied

- D.20 The case of the Satguru Polycab (Supra) has also been referred by the CESTAT Ahmedabad in the following cases:
- i) Yashashvi Rasayan Pvt Ltd Vs. Commissioner of Customs - 2024 (9) TMI 1501 - CESTAT Ahmedabad
 - ii) PI Industries Ltd. Vs. Principal Commissioner of Customs - 2024 (6) TMI 203 - CESTAT Ahmedabad

iii) ONGC Petro Additions Ltd. Vs C.C.Ahmedabad - 2023 (12) TMI 530 - CESTAT Ahmedabad

iv) M/s. Jindal International Vs. CC Kandla - 2012 (6) TMI 255 - CESTAT Ahmedabad

D.21 Further reliance is placed on Arhant Studes Ltd. v. Commissioner of C. Ex., Ghaziabad [2016 (332) E.L.T. 827 (Tri. - Del.)] where it was held as under:

"Further, we find the Original Authority has confirmed the demand of excise duty on the said destroyed final products. Though the excise liability arises at the time of manufacture the payment of duty is at the time of clearance. There could be no clearance of destroyed products. As the destruction has been an admitted fact there could be no duty liability on the goods which are not cleared. Considering the above factual and legal position, we are not able to agree with the reasoning given by the Original Authority and we find the Show Cause Notice unsustainable. Accordingly, we dropped the impugned Show Cause Notice and allow the reply with consequential relief, if any."

...Emphasis Supplied

D.22 It is relevant to note that in case of Yashashvi Rasayan (supra) which is on the same fire incident occurred on 03.06.2020 in the manufacturing unit, located adjacent to the Noticee. In the said case as well, the Hon'ble Ahmedabad CESTAT has followed the view taken in the decision of the Satguru Polycab (Supra) and set aside the demand.

D.23 Therefore, the impugned SCN alleging the goods have not been utilized in 'authorized operations' is incorrect and against the settled principle on the similar facts and circumstances earlier held by the Tribunal Ahmedabad.

D.24 Further the Department in the impugned SCN has nowhere alleged that the Noticee has failed to account for the goods and hence, it is submitted that the proper accounts in respect of the goods have been maintained and hence duty is not chargeable on the goods as though having been cleared for home consumption.

D.25 In pursuance of the same, it is also submitted that Rule 39 of the SEZ Rules permits destruction of goods by a unit without payment of duty after advance intimation to the specified officer of goods including capital goods, which are procured from the DTA or goods imported or goods

- manufactured or produced by the Unit including waste or scrap or remnants within the SEZ.
- D.26 It is to be noted that in such a case, even if the permit is taken by the specified officer, the imported goods are not used for authorized operations. However, this is not considered as violation of SEZ Act and the rules therein.
- D.27 In the instant case, the imported inputs procured were at the WIP stage and plant & machinery was already put to use. Therefore, the allegation that the subject goods were not used for authorised is factually and legally incorrect. Assuming without accepting, if it is assumed that the subject goods were not used for authorised operations, then also duty cannot be demanded. Without prejudice, it is further submitted that the subject goods got destroyed due to fire incident which was beyond the control of the Noticee and due to such destruction, the same could not be used for authorized operations.
- D.28 The impugned SCN has held that non-utilization of goods due to destruction caused by the fire a violation of SEZ Act and Rules therein because the goods were not used for authorized Operations.
- D.29 It is submitted that merely because the incident of fire was something that could not have been apprehended and no permission for destruction of imported goods was sought by the Noticee, does not make the Noticee liable for contravention of the SEZ Act and rules therein.
- D.30 It is pertinent to note in both the cases, the imported goods are not utilized for carrying the authorized operations as destruction of the same has taken place. Further, the said goods are also not removed in DTA. Therefore, merely because the destruction was caused due to an incident beyond the control of the Noticee does not make them liable for violation of the provisions of the SEZ Act and rules therein especially when the statute itself provides a provision for destruction without payment of duty.
- D.31 Had the Noticee wanted to destroy the goods themselves, they would have done so in terms of Rule 39 of the SEZ Rules, 2006, however this was an accident beyond the control of Noticee and hence they should not be alleged liable for violation of the Act.
- D.32 Hence, it is submitted that, the Noticee had bonafide intent to use the goods in authorised operations, however, the same could not be done due to an fire incident.

D.33 Therefore, it is submitted that, the Noticee had use the subject goods in authorised operations, hence impugned SCN is liable to be dropped on this ground alone.

E. THE ISSUE ALREADY STANDS DEICDED IN THE CASE OF YASHASHVI RASAYAN PRIVATE LIMITED 2024 (9) TMI 1501-CESTAT AHMEDABAD

- 1) It is submitted that the issue of the present case relating to same fire incident dated 03.06.2020, which is already adjudicated in the case of Yashashvi Rasayan Private Limited (Supra) (hereinafter referred to as "M/s. Yashashvi Rasayan").
- 2) The manufacturing unit of M/s. Yashashvi Rasayan is located in Dahej, SEZ for production of diet chlorophenol, diet campa, etc. The two blast and fire incidents took place at factory premises of the M/s.YashashviRasayan on 03.06.2020 and 22.08.2020 wherein the imported goods and indigenously procured goods under the SEZ Act and SEZ Rules were destroyed.
- 3) The Customs Authority held that the goods produced were not used by the M/s. Yashashvi Rasayan for authorized operations. Therefore, the demand of custom duty along with interest, redemption fine and penalty was confirmed.
- 4) However, the M/s. Yashashvi Rasayan filed the appeal against the Order before the CESTAT Ahmedabad, wherein the Hon'ble Tribunal held in cases of any destruction in the SEZ, the SEZ unit is entitled for the remission of duty in terms of Section 23 of Custom Act. Therefore, the Order was set aside and appeal was allowed by way of remand to the adjudicating authority. The relevant extract of the case is reproduced below for ready reference.

a. "4. We have carefully considered the submission made by both sides and perused the records. We find that this Tribunal has taken a consistent view that in case of any destruction due to natural cause in the SEZ, the SEZ unit is entitled for the remission of duty in terms of Section 23 of Customs Act, 1962. Therefore, as of now there is no dispute on the legal issue that the SEZ unit is eligible for the remission of the customs duty in case the goods is destroyed in the SEZ unit. However, the appellant have not opted for the remission of duty by filing appropriate application before the competent authority. Therefore, for this limited purpose, the matter needs to be remanded

to the Adjudicating Authority. Liberty is granted to the appellant to file an appropriate application in terms of Section 23 of the Customs Act, 1962 and rules made thereunder, if any, along with all the relevant documents for seeking remission of duty which shall be disposed of by the competent authority in accordance with law.

- 5) Accordingly, the impugned order is set aside. Appeal is allowed by way of remand to the adjudicating authority for passing a fresh order after observance of principles of natural justice".

a. ...Emphasis Supplied

- 6) It is relevant to note that M/s. Yashashvi Rasayan is the entity located adjacent to the Noticee. A fire and blast incident occurred at the premises of M/s. Yashashvi Rasayan on 03.06.2020 due to which only the manufacturing unit of the Noticee caught the fire. Consequently, due to the fire the plant & machinery and raw material in the manufacturing unit of the Noticee were destroyed.
- 7) Further, as the matter on the similar issue and same incident has already been adjudicated by the jurisdictional Ahmedabad Tribunal. Therefore, in view of the same, no demand is sustainable in the present case and issuance of impugned SCN is incorrect & liable to be dropped on this ground alone.
- 8) Without prejudice to above, the jurisdictional Ahmedabad Tribunal in the case of M/s. Yashashvi Rasayan has remanded the matter for the remission of duty in accordance to Section 23 of the Customs Act. In view of the same the Noticee shall be allowed to file the application for remission of duty.

F. No offence has been alleged nor has it been established

- i) The Noticee submits that Notification No. S.O. 2665(E), dated 05.08.2016 was issued under Section 21 of the SEZ Act, notifying certain offences under the Customs Act, which would be deemed to be offences under the SEZ Act also.
- ii) The Notification No. S.O.2665(E), dated 05.08.2016 is extracted below:
- iii) *In exercise of the powers conferred by sub-section (1) of section 21 of the Special Economic Zones Act, 2005 (28 of 2005) (hereinafter referred as the Act), the Central Government hereby, notifies the offences contained in the under-mentioned sections of the Customs Act, 1962 (52 of 1962), the Central*

Excise Act, 1944 (1 of 1944) and the Finance Act, 1944 (32 of 1944) as offences under the Act:-

The Customs Act, 1962	
1.	Section 28, 28AA and 28AAA
2.	Section 74 and 75
3.	Section 111
4.	Section 113
5.	Section 115
6.	Section 124
7.	Section 135
8.	Section 104
The Central Excise Act, 1944	
9.	Section 9
10.	Section 9AA
11.	Section 11, 11A and 11AA
The Finance Act, 1944	
12.	Section 73, 73A, 73B and 75
13.	Section 76
14.	Section 89
15.	Section 91

...Emphasis Supplied

- iv. It is not the case of the Department that any offence as notified under the said Notification has been committed by the Noticee. In any case loss of the materials admitted into the SEZ while being used for purposes of carrying out authorised operations is not an offence under the Customs Act and therefore cannot be an offence under the SEZ Act also.
- v. The Department has failed to prove that the destruction of goods by fire incident will fall under any of the above-mentioned notified offences. Hence, it is clear that no offence has been committed either under the Customs Act or under the SEZ Act.
- vi. Further there is no allegation that the impugned goods were utilized for any purpose other than the authorised operations. Therefore, the impugned SCN suffers from a serious lack of jurisdiction and it is liable to be dropped.

G. The noticee is eligible for remission under section 23 of the customs act, 1962

- (1) Without prejudice to the above submissions made above, the Noticee submits that they are eligible for remission of duty under Section 23 of the Customs Act, as the subject goods have not been cleared for home consumption. As already stated above, the goods in the instant case got destroyed when they were in the SEZ Unit and therefore cannot be said to have been cleared for home consumption.
- (2) As per Section 53(1) of the SEZ Act, provides that an SEZ territory shall be deemed to be a territory outside the Customs territory of India for transit of goods without payment of duty. The relevant portion of Section 53 is extracted below for reference:

A Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorized operations.

(2) A Special Economic Zone shall, with effect from such date as Central Government may notify, be deemed to be a port, inland container depot, land station and land customs stations, as the case may be, under section 7 of the Customs Act, 1962:

...Emphasis Supplied

- (3) In terms of Rule 53(2) a SEZ is deemed to be a customs territory under Section 7 of the Customs Act. In other words, when any goods, including the goods admitted into a SEZ, remain inside the SEZ, they are deemed to be in a customs territory. It is only when such goods are removed from the SEZ they could be deemed to be removed for home consumption in terms of Section 30 of the SEZ Act. Thus, when the goods are not removed from the SEZ, it cannot be said that the goods have been cleared for home consumption.
- (4) Reliance in this regard on the case of SatguruPolyfab Pvt (Supra) wherein the Ahmedabad Tribunal has held that the goods destroyed in the SEZ unit is deemed to be destroyed in the foreign territory and no customs duty can be demanded on the same. The relevant extract is reproduced below:
- "We also find considerable force in the argument advanced by the learned advocate and his reliance upon the decision of the Hon'ble Supreme Court. In this case SEZ is a fiction created and in that fiction if there is contravention of provisions of SEZ Rules, the fiction itself provides for taking action. Once the action to the SEZ units or the loss of*

goods by fire is not covered by Rule 8 of SEZ Rules 2003, the deemed fiction of SEZ being a foreign territory comes into picture. As already considered earlier, duty becomes payable only when the goods are cleared into DTA or failure in terms of provisions of Rule 8 of SEZ Rules 2003. Once the event is not covered by these provisions at all, we have to hold that goods are still in foreign territory which is the status of SEZ and it is a deemed fictional status. As observed by Hon'ble Supreme Court, the fiction has to be given full effect to unless there is a valid reason supported by law to do otherwise. Therefore the goods which have been destroyed have to be held to have been destroyed in the deemed foreign territory and if that is so no customs duty can be demanded."

...Emphasis Supplied

- (5) Similar view was taken by the Hon'ble Tribunal in the case of Yashashvi Rasayan (supra) wherein it was held that in case of destruction due to natural cause in the SEZ, the SEZ unit is entitled for the remission of duty in terms of Section 23 of Customs Act. The Relevant extract of the judgment is reproduced below:

"4. We have carefully considered the submission made by both sides and perused the records. We find that this Tribunal has taken a consistent view that in case of any destruction due to natural cause in the SEZ, the SEZ unit is entitled for the remission of duty in terms of Section 23 of Customs Act, 1962. Therefore, as of now there is no dispute on the legal issue that the SEZ unit is eligible for the remission of the customs duty in case the goods is destroyed in the SEZ unit. However, the appellant have not opted for the remission of duty by filing appropriate application before the competent authority. Therefore, for this limited purpose, the matter needs to be remanded to the Adjudicating Authority. Liberty is granted to the appellant to file an appropriate application in terms of Section 23 of the Customs Act, 1962 and rules made thereunder, if any, along with all the relevant documents for seeking remission of duty which shall be disposed of by the competent authority in accordance with law"

...Emphasis Supplied

- (6) Rule 48 of the SEZ Rules provides that on sale of goods into DTA, bill of entry for home consumption is required to be filed. This would automatically imply that when goods are present in the SEZ, they have not been cleared for home consumption.
- (7) Reliance is placed on *Techtextil v. Commissioner of Central Excise, Indore 2017 (355) E.L.T. 442 (Tri. - Del.)* where it was held that when there is no foul play on the part of the assessee and necessary precautions have been taken, remission claim cannot be disallowed. The Relevant para is extracted below:

"We have perused the records of the case. We find that the District Fire Officer, Pithampur, has certified, vide his certificate dated 13-3-2010 that adequate firefighting equipment and provisions of sufficient water was available with the Noticee and sufficient efforts were made to put off the fire by the company. Accordingly, the fire department has certified that there is no foul play and that the fire has due to reasons beyond the control of the Noticee. This establishes the fact that the fire was nothing but an unfortunate accident."

...Emphasis Supplied

- (8) Further reliance is placed on the following decisions:
- (a) Commissioner of Customs, Bangalore v. Next Fashion Creators Pvt. Ltd. [2012 (280) E.L.T. 374 (Kar.)]
 - (b) Commissioner of Central Excise, Chennai-III, v. Joy Foam Pvt. Ltd. [2015 (322) E.L.T. 209 (Mad.)]
- (9) In view of the above submission, the Noticee is duly entitled to remission benefit in the present case. Therefore, impugned SCN is liable to be dropped on this ground alone.

H. The impugned scn is time barred as the extended period of limitation is not invocable in the present case, therefore impugned scn is liable to be dropped.

- (1) The impugned SCN has been issued by invoking extended period of limitation in terms of Section 28(4) of the Customs Act, for the alleging demand of duty of Rs. 1,51,69,853/- on the subject goods destroyed during the fire incident.
- (2) In this regard, it is humbly submitted that extended period of limitation can only be invoked in case of non-payment or short payment of duty or erroneously refunded duty, when such non-payment of duty or refund of duty is on account of fraud, wilful misstatement or suppression of facts with the intention to evade tax. In this regard, attention is drawn to the provisions of Section 28(1) of the Act, where Show Cause Notice for recovery of duty not paid or short paid or erroneously refunded with regards to the goods imported, can be issued only within two years from the date on which the proper officer makes an order for the clearance of said subject goods. Relevant extract of Section 28 (1) and Section 28(4) of the Act is reproduced below for reference:

"28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.

- a. *Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any wilful mis-statement or suppression of facts-*
 1. *the proper officer shall, within two years from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice;*
- b. *Provided that before issuing notice, the proper officer shall hold pre-notice consultation with the person chargeable with duty or interest in such manner as may be prescribed;*
- c. *Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-*
 1. *collusion; or*
 2. *any wilful mis-statement; or*
 3. *suppression of facts,*
- d. *by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice."*

...Emphasis Supplied

- (3) It is further submitted, that the extended period of limitation can be invoked only if the non-payment or short payment of tax is on account of fraud, collusion, suppression of facts, willful misstatement with an intention to evade duty. In all other cases, customs duty can be demanded only for the limited time period of 2 years from the relevant date.

- (4) In the present case, the date of fire incident in the Noticee premises was on 03.06.2020 whereas the impugned SCN was received on 30.05.2025. Therefore, it can be observed that the said period is time barred as the impugned SCN was issued after expiry of period of more than two years from the date of the subject goods destroyed in fire incident.
- (5) It is submitted that in the present case there was no collusion or any wilful mis-statement or suppression of facts, as the conduct of the Noticee was totally *bona fide*. The Noticee neither had any intention to evade payment of duty, nor had any knowledge of the duty liability on the subject goods. It shows that the Noticee had no ill intention of evading the duty and that they disclosed all the information best to their knowledge. Further, it is submitted that the Noticee cannot be said to have the intention to evade duty as the Department was able to ascertain the proposed demand on the basis of the calculations and documents submitted by the Noticee himself.
- (6) Further, the Noticee has been co-operative and has provided all the details, as asked by the Department. Therefore, there is no question of wilful suppression of facts.
- (7) The impugned SCN has alleged that the Noticee has intentionally delayed or not provided the information and hence, extended period of limitation is invokable. In this regard, it is submitted that the Noticee has responded to each and every requirement of the Department. Right from the first letter, the employees of the Noticee were interacting with the Specified Officer. Further, even though the same information was asked for multiple times, the Noticee submitted the same. Also, insurance claim was filed and FIR was registered by the Noticee immediately on the occurrence of the event. Therefore, the fact that the Department was not aware about the information for it issue, the impugned SCN is incorrect.
- (8) Without prejudice to above, it is also submitted that delay in furnishing of information cannot be the basis to allege suppression or misstatement. Since, all the information including the claim filed with the insurance company was available with the Department, there was no reason why the Department could not have determined the proposed duty demand and issued the impugned SCN.
- (9) The proviso to Section 11A of Central Excise Act, 1944 and Section 28(4) of the Act are *pari materia* and therefore, the judicial precedence in respect

of proviso to Section 11A of Central Excise Act, 1944 would equally be applicable in respect of Section 28(4) of the Customs Act.

- (10) Reliance is placed on the judgement of Hon'ble Supreme Court in the case of Dye Chemical v. CCE, Bombay [1995 (75) E.L.T. 721 (S.C.)], wherein the Apex Court held that the 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 misstatement and suppression is qualified by the preceding word "willful". Therefore, it is not correct to say that there can be suppression or misstatement of fact, which is not willful and yet constitutes permissible ground for invoking the proviso to Section 11A. The relevant extract of the decision is reproduced below:

- a. *"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 "mis-statement 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 mis-statement of fact, which is not wilful and yet constitutes a permissible ground for. The purpose of the proviso to Section 11A. Mis-statement or suppression of fact must be wilful."*

..Emphasis Supplied

- (11) Further, the Hon'ble Supreme Court, in the case of Pushpam Pharmaceuticals Company v. Collector of Central Excise, Bombay [1995 (78) E.L.T. 401 S.C.], 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 wilful to evade payment of duty. The relevant extract of the decision is reproduced below:

- a. *"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."

...Emphasis Supplied

- (12) Reliance is also placed on the decision of the Hon'ble Supreme Court in the case of Continental Foundation JT Venture v Commr of C.Ex. Chandigarh-I [2007 (216) ELT 177 (SC)] wherein it was held that mere omission to give correct information cannot be said to be suppression unless it is established that the same is deliberate to stop the payment. The relevant extract of the judgement is reproduced below:

- a. "10. The expression "suppression" has been used in the proviso to Section 11A of the Act accompanied by very strong words as 'fraud' or "collusion" and, therefore, has to be construed strictly. Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty. Suppression means failure to disclose full information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. When the Revenue invokes the extended period of limitation under Section 11A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a willful misstatement. The latter implies making of an incorrect statement with the knowledge that the statement was not correct."

- (13) Therefore, the impugned SCN alleging the demand of differential duty by invoking the provisions of Section 28(4) of the Customs Act is incorrect as there is no wilful misstatement or suppression of facts by the Noticee.

- a. Without prejudice, the Noticee was and still is under the bona fide belief that no duty is payable since the subject goods were destroyed in the fire incident. There was no intention to evade payment of duty

- (14) The impugned SCN has proposed to demand duty along with interest and penalty on the finding that the Noticee has failed to report the losses

suffered during the fire incident and undue delay in submission of requisite information appear deliberate act on the part of the Noticee to wilfully suppress material facts from the concerned authorities with intent to evade government revenue. Thus, the customs duty is recoverable from Noticee by invoking extended period of limitation.

(15) In this regard, it is submitted that the Noticee was and still is under the *bona fide* belief that no duty is payable since the subject goods were destroyed in the fire incident. In the above grounds, the Noticee has given detailed reasons and has also cited various decisions of judicial and quasi-judicial forums in support of its arguments. The Noticee had no intention to evade payment of duty and always acted in a *bona fide* manner, in as much as everything was on record and nothing was done without any record or complying with the legal provisions, wherever the same was required.

(16) Further, it is submitted that where the Noticee believes that the correctness of a legal position, and if there is scope for such belief, such as decisions of judicial forums, then it cannot be said that there has been a suppression of facts, or contravention of the provisions and rules with intent to evade payment of duty. In this regard, Noticee places reliance on the following case laws in support of its contention that extended period of limitation is not invocable in such a scenario:

Cosmic Dye Chemical v. CCE, Bombay, 1995 (75) E.L.T. 721 (S.C.)

Padmini Products v. CCE, 1989 (43) E.L.T. 195 (S.C.)

Vinect Electrical Industries Pvt. Ltd. v. CCE & C, BBSR-II, 2001 (136) E.L.T. 784 (Tri. - Kolkata), as maintained by the Hon'ble Supreme Court in 2002 (144) E.L.T. A292 (S.C.)

Pee Jay Apparels (P) Ltd. v. CCE 2001 (135) ELT 842 (Tri. - Del.)

CCE, Meerut v. Rishabh Velveleen (P) Ltd., 1999 (114) E.L.T. 839 (Tri.).

(17) It is pertinent to note that the Department in para 4.7 of the impugned SCN has alleged that the Noticee was aware of the provisions of SEZ Act and Rules, it never came forward to discharge the applicable customs duties on the same. Further till date, no amount has been paid by the Noticee towards the said liabilities.

(18) In this regard, it is submitted that all relevant documents and clarifications as & when requested by the Department have been submitted. Further, the Noticee has made the payment vide Challan dated 12.06.2024, the same has also been intimated to the Specified Officer vide letter dated 27.06.2024 and also recognized by the Department at para

2.5 of the impugned SCN. Therefore, the Department allegation of no payment of duty is complete incorrect.

(19) In light of the above, it is submitted that extended period of limitation is not invocable in the present case as there was not any wilful mis-statement or suppression of facts in the present case.

a. No Bond-cum-Legal Undertaking can be invoked in present case.

(20) The impugned SCN has proposed to invoke the Bond-cum-Legal undertaking for the contravention of provision of the Bond-cum-Legal Undertaking.

(21) In this regard, it is submitted that the Department has authority to invoke the Bond-cum Legal Undertaking under Section 143 of the Customs Act. However, the Department in the impugned SCN has not mentioned the provision of the Section 143. Therefore, invocation of bond under Customs Act, without invocation of Section 143 is incorrect and alleged demand is liable to be dropped on this ground alone.

(22) Without prejudice to above, it submitted that the Section 143 of the Customs Act, provides for power of custom authority in case of execution of bonds in certain cases. The Section 143 is reproduced below for ready reference:

a. *"SECTION 143. Power to allow import or export on execution of bonds in certain cases. — (1) Where this Act or any other law requires anything to be done before a person can import or export any goods or clear any goods from the control of officers of customs and the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] is satisfied that having regard to the circumstances of the case, such thing cannot be done before such import, export or clearance without detriment to that person, the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] may, notwithstanding anything contained in this Act or such other law, grant leave for such import, export or clearance on the person executing a bond in such amount, with such surety or security and subject to such conditions as the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] approves, for the doing of that thing within such time after the import, export or clearance as may be specified in the bond.*

b. *(2) If the thing is done within the time specified in the bond, the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] shall cancel the bond as discharged in full and shall, on*

demand, deliver it, so cancelled, to the person who has executed or who is entitled to receive it; and in such a case that person shall not be liable to any penalty provided in this Act or, as the case may be, in such other law for the contravention of the provisions thereof relating to the doing of that thing.

- c. (3) *If the thing is not done within the time specified in the bond, the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] shall, without prejudice to any other action that may be taken under this Act or any other law for the time being in force, be entitled to proceed upon the bond in accordance with law."*

...Emphasis Supplied

(23) From a bare reading of the provision, it is understood that the Assistant/Deputy Commissioner is bound to act in accordance with law. In other words, the design and architecture of Section 143(3) of the Customs Act, 1962 is such, that Section 143(3) has no independent application, and that the phrase 'in accordance with law' connotes the enforcement of a bond in tandem with another provision of law. Therefore, upon invocation of a bond under Section 143(3) of the Customs Act, 1962, the method of recovery must be in accordance with mechanism provided under the Customs Act, 1962 (i.e., Section 28 of the Customs Act, 1962) or the appropriate legislation.

(24) In this regards, Noticee reliance on the decision of the Hon'ble CESTAT, Hyderabad, in the case of Surana Telecom & Power Vs CC - 2019 (370) ELT 1412, whereby the Hon'ble CESTAT has categorically stated the mechanisms available to the Customs Department for enforcement of a bond under Section 143(3) of the Customs Act, 1962. Relevant portion of the judgement is reproduced below:

- a. *To summarise, in all cases, where a bond is executed under the Customs Act, Rules or Regulations and the person executing the bond violates the conditions of the bond, the following options are available to the department:*
1. *A demand under Section 28 by the officer who can raise a demand.*
 2. *Enforcement of the Bond executed under Section 143 through appropriate legal action such as a civil suit;*
 3. *Recovering the amount under Section 142(2) if the Bond that is signed has such a clause incorporated in it.*
- b. *However, the impugned order sought to recover the amount under Rule 8 of the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 which is not a*

mechanism for demand of duty. Therefore, the impugned order needs to be set aside on that ground alone.

...Emphasis Supplied

- (25) From the above, it is evident that there are broadly three mechanisms available to the Customs Department for enforcement of a bond under the Customs Act, 1962; (a) a demand under Section 28 by the officer who can raise a demand or; (b) enforcement of the Bond executed under Section 143 through appropriate legal action such as a civil suit or; (c) recovering the amount under Section 142(2) if the Bond that is signed has such a clause incorporated in it.
- (26) In the present case, the Department has neither undertaken the mechanisms provided under Section 142 of the Customs Act, 1962 nor has filed a civil suit been filed to enforce the bonds. Further, none of the bond(s) issued against refer Section 142 or Section 143 of the Customs Act, 1962.
- (27) Therefore, the mechanism adopted by the Department by issuance of impugned SCN for recovering of duty forgone under Section 28 of the Customs Act, 1962. In other words, the mechanism chosen by the Customs Department in the present case, from the legal recourses available, is to issue an impugned SCN under Section 28 of the Customs Act, 1962.
- (28) Once the duty demand has been made under Section 28 of the Customs Act, the period of limitation prescribed under the section therein automatically applies to the present case.
- (29) Further it is submitted that even when a bond is executed, the demand would still fall under Section 28 of the Customs Act, 1962 as held by the decision of Hon'ble CESTAT, Mumbai in C.C.Ex, Pune Vs. Emcure Pharmaccuticals - 2014 (307) ELT 180 (Tri. - Mumbai) which is also affirmed by the Hon'ble Bombay High Court in 2016 (342) ELT 172 (Bombay High Court). Applying this ratio and analogy, the Noticee submit that present demand is also incorrect and liable to be dropped.
- (30) As discussed in the above para-alleged demand that there is no mis-declaration and suppression of facts by the Noticee from the Department, thus alleged demand can be issued under the Section 28(2) only in the present case. Therefore, invocation of the Bond-cum Legal Undertaking in

accordance to Section 28(2) is time barred. Hence, Bond cum Legal Undertaking cannot be invoked in the present case.

- (31) In view of the above, it is submitted that the impugned SCN is time barred and liable to be dropped.

I. Demand of interest is not sustainable when duty is not payable:

- (1) The impugned SCN has also proposed to demand interest at the applicable rate under Section 28AA of the Customs Act. The relevant extract of Section 28AA of the Customs Act is extracted below:

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

b. ...Emphasis Supplied

- (2) In this regard, it has been explained in the above submissions that the demand of duty is not maintainable. As there is no liability to pay the duty, the Noticee is not liable to pay interest on the same. Reliance in this regard is placed on:

- i. Commissioner of C. Ex. & S.T., LTU, Bangalore v. Bill Forge Pvt. Ltd., 2012 (279) E.L.T. 209 (Kar.)
- ii. In Re: Victor Pushin Cords Pvt. Limited, 2013 (297) E.L.T. 312 (Commissioner Appeals).

- (3) Further, it is a cardinal principle of law that when the principal demand is not justified, there is no liability to pay ancillary demands. Therefore, it is submitted that the Noticee is not liable to pay interest as proposed in the impugned SCN.

- (4) The Hon'ble Supreme Court of India in case of Prathibha Processors vs. Union of India [1996 (88) E.L.T. 12 (S.C.)], has held that when the principal amount (duty) is not payable due to exemption, there is no occasion or basis to levy any interest, either. Relevant portions from the judgment is extracted below for a ready reference:

a. *"The "interest" payable under Section 61(2) of the Act is a mere "accessory" of the principal and if the principal is not recoverable/payable, so is the interest on it. This is a basic principle*

based on common sense and also flowing from the language of Section 61(2) of the Act. The principal amount herein is the amount of duty payable on clearance of goods. When such principal amount is nil because of the exemption, a fortiori, interest payable is also nil. In other words, we are clear in our mind that the interest is necessarily linked to the duty payable."

b. ...Emphasis Supplied

- (5) Without prejudice, the Noticee submits that since there is no charging provision for levy of interest under the SEZ Act or the Rules made thereunder, as elucidated in Ground B above, hence no interest can be recovered from the Noticee.
- (6) In view of the above, it is submitted that the impugned SCN proposing to demand interest is bad in law and liable to be dropped.

J. No penalty can be imposed on the noticee under section 112(b)(ii) of the customs act

- (1) The impugned SCN has proposed to impose penalty under section 112(b)(ii) of the Customs Act. In this regard, it is submitted that the same is unsustainable and incorrect.
- (2) At the outset, it is submitted that penalty under Section 112 of the Customs Act is linked to confiscation under Section 111 of the Customs Act, i.e., where the goods are liable to confiscation under Section 111, only then penalty can be imposed under Section 112 *ibid*. The subject goods are destroyed during the fire incident and the Department has not invoked the provision of the sections 111 of the Customs Act. Therefore, there is no case for invoking Section 112 to impose penalty on the Noticee.
- (3) As per the said Section 112(b)(ii) of the Customs Act, 1962, a person would be liable to pay penalty in situations which are enumerated in the sub-sections. For the sake of convenience, Section 112(b)(ii) is reproduced below:
- a. *'SECTION 112. Penalty for improper importation of goods, etc. - Any person, -*
- b.
- (4) *who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable,*

- a. ...
- b. (ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:
- c. Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty five per cent. of the penalty so determined;

...Emphasis Supplied

- (5) On the bare reading of aforesaid section, it is clear that the penalty under the said Section would be imposed only any person carrying, removing or selling etc with any goods which he has reason to believe are liable to confiscation falls under any of the sub-section of Section 111. However, as appropriately demonstrated in the submissions made above, there arises no case for confiscation subject goods as the same have been destroyed during the fire incident. Also, the Department has not invoked the provision of Section 111. Therefore, there is also no case for invoking Section 112 to impose penalty on the Noticee.
- (6) Further, it is submitted the impugned SCN does not specify the exact act or omission on part of the Noticee, as to how penalty is imposable on the Noticee. The Department has merely reproduced the provision of the Section 112(b)(ii). Therefore, no penalty under section 112(b)(ii) is imposable.
- (7) Without prejudice, the Noticee submits that since there is no charging provision for levy of penalty under the SEZ Act or the Rules made thereunder, as elucidated in Ground B above, no penalty can be recovered from the Noticee.
- (8) Further it is submitted that, no penalty can be imposed where duty demand is not sustainable. Reliance in this regard, is placed on the case of *Collector of Central Excise vs. H.M.M. Limited*, [1995 (76) ELT 497 (SC)], the Hon'ble Supreme Court has held that the question of penalty would arise only if the Department is able to sustain the demand. Similarly, in the case of *Commissioner of Central Excise, Aurangabad vs Balakrishna Industries*, [2006 (201) ELT 325 (SC)] the Hon'ble Supreme Court has held that penalty is not imposable when differential duty is not payable. In view of the above

submissions, it is humbly submitted that penalty is not imposable as the demand itself is not sustainable.

- a. Penalty cannot be imposed on the Noticee as there was no intention to evade duty:

- (9) Without prejudice to the above submissions, it is submitted that in terms of various decisions of the Hon'ble Supreme Court and various other High Courts, and Tribunals, penalty cannot be imposed on the assessee in absence of mens rea on part of the assessee. It is a settled law that when an assessee is under a bona fide belief that a particular exemption is available, penalty cannot be imposed on the assessee, if ultimately it is found that the exemption is not available.

In view of the above submissions, the Noticee submits that the imposition of penalty in the present case is incorrect and liable to be dropped.

- K.** Without prejudice to above, the alleged demand of duty is incorrect, therefore it is liable to be re-quantified.

- (1) The Department at Annexure-A of the impugned SCN has proposed to demand the BCD amounting to Rs.28,32,320/-, SWS amounting to Rs.2,83,232/- and IGST amounting to Rs.1,19,42,025/- on the Plant and Machinery destroyed during the fire incident.
- (2) In this regard, it is submitted that the BCD and SWS can only be demanded on the imported goods, however in the present case all the Plant & Machinery were procured from the DTA. Therefore, proposed demand of BCD and SWS on the indigenous goods is incorrect and duty demand of BCD amounting to Rs.28,32,320/- and SWS amounting to Rs.2,83,232/- is liable to be recomputed and according dropped.
- (3) The Department at Annexure-B of the impugned SCN has computed the demand for all the raw materials and semi-finished goods destroyed during

the fire incident. The Annexure-B is reproduced below for ready reference:

ANNEXURE-B wrt Show Cause Notice to M/s. Thermax Limited N-17.

S. No.	Description of goods	HSN CODE	Value	BCD RATE	SWS RATE	BCD	SWS	IGST	TOTAL DUTY
1	PHENOLIC ALCOHOL	29029000	176	7.50%	10%	13.20	17.60	18.14	48.94
2	TYRE MACHINES	84229000	25527.81	7.50%	10%	1914.59	2552.78	2642.84	6970.21
3	SPG MACHINES PERFORMERS LTD	84162200	48	7.50%	10%	3.60	4.80	5.04	13.44
4	SALT SOLUTION (1% pH)	28032000	274	5.00%	0%	13.70	0	14.17	13.70
5	SILICON SOLUTION (12% AM)	28032000	2302	5.00%	0%	115.10	0	119.58	115.10
6	DYE - DYE	28242000	24071.14	7.50%	10%	1805.34	2407.11	2497.82	6610.27
7	HEXAMETHYLENE DIAMINE	29142000	437	7.50%	10%	32.78	43.70	45.43	121.91
8	CALCIUM OXIDE - FUSIBLE	28272000	314.2	7.50%	10%	23.57	31.42	32.57	87.56
9	ETHYLENE ALCOHOL	29051400	4676.7	7.50%	10%	350.75	467.67	482.75	1281.17
10	SODIUM LIGNOSULFONATE	28040010	31	7.50%	10%	2.33	3.10	3.23	8.66
			4,55,287/-			35,394/-	4,55,287/-	4,68,681/-	1,24,262/-

- (4) In this regard, it is submitted that the BCD and SWS can only be imposed on the imported goods, however in the present case the raw material listed in Sr. No. 1-5 and 7-10 were procured from the DTA. Therefore, imposing of BCD and SWS on the indigenous goods is incorrect and duty demand of BCD and SWS on the products listed in Sr. No. 1-5 and 7-10 liable to recomputed.

a. Duty on Plant and Machinery should be computed at depreciated value.

- (5) Without prejudice to above, it is submitted that according to Rule 49(1) of the SEZ Rules, the SEZ unit on removal of the capital goods to DTA, the duty shall be levied on such goods at the depreciated value on the rate applicable on the date of removal. The relevant extract of the Rule 49(1) is reproduced below for ready reference:

"49. (1) A Unit may remove capital goods to Domestic Tariff Area after use in Special Economic Zone on payment of duty or Integrated Goods and Services Tax as under:-

- (a) *duty shall be levied on such goods on the depreciated value thereof and at the rate in force on the date of removal of the goods;*
- (b) *depreciation in value shall be allowed for the period from the date of commencement of production or where such capital goods have been received in the Unit after such commencement of production from the date such goods have been put to use for production till the date of presentation of Bill of Entry for home consumption;*
- (c) *depreciation shall be allowed in straight line method as specified below, namely-*
- (d) *for computer and computer peripherals for every quarter in the first year at the rate of ten per cent. for every quarter in the second year at the rate of eight per cent. for every quarter in the third year at the rate of five per cent. for every*

quarter in the fourth and fifth year at the rate of one per cent.;

- (e) for capital goods other than computer and computer peripherals for every quarter in the first year at the rate of four per cent. for every quarter in the second year at the rate of three per cent. for every quarter in the third year at the rate of three per cent. for every quarter in the fourth and fifth year at the rate of two and half per cent. and thereafter for every quarter at the rate of two per cent.

*Explanation.- For the purpose of computing depreciation for any part of a quarter, the rate applicable to such quarter in full shall be considered;**

...Emphasis Supplied

- (6) From the above, it can be understood that the duty will be levied at depreciated value of capital goods for removal to the DTA, in accordance with the process prescribed in the sub-rule 49(1)(c) of the SEZ Rules.
- (7) In the present case, the Noticee has put to use the capital goods i.e. Plant and Machinery before the fire. Therefore in lieu of the same, the depreciation on the Plant and Machinery is liable to be excluded from the total value of Plant and Machinery while computation of duty liability and hence, the alleged demand is liable to be recomputed.
- (8) In view of the above submission, the impugned SCN to this extend is incorrect and liable to be recomputed.
- L. The Noticee craves leave to add, alter, amend and/or rescind any of the above submissions at the time of, before or after the personal hearing.
- M. The Noticee craves leave to refer and rely upon any case law and/or judgment, as and when produced.

PRAYER

In view of the above, it is respectfully prayed that the Ld. Principal Commissioner Ahmedabad Customs may be pleased to-

- a. Drop the proceeding initiated vide Show Cause Notice bearing F.No. GEN/ADJ/COMM/303/2025-Techdated 29.05.2025 [DIN-20250571MN0000000E3D].
- b. drop the demand of Rs.1,51,69,853/- along with interest and penalty and consequential relief;

- c. Allow the refund of duty paid vide Challan No. DSEZ/DTA/413/24-25 dated 12.06.2024.
- d. grant an opportunity of personal hearing; and
- e. Pass such order or orders as may be deemed fit and proper in the facts and submission of the present case.

Record of Personal Hearing:

Opportunity of Personal Hearing was granted to the noticee M/s. Thermax Ltd in compliance with the principles of natural justice in terms of Section 122A of Customs Act, 1962. The Personal Hearing in the matter was fixed on 19.01.2026 at 11:30 A.M. Shri Shankar Rochlani, Chartered Accountant of M/s. Lakshmikumaran & Sridharan, Attorneys appeared for personal hearing online and produced an authority letter dated 14.01.2026 endorsed in their favor by M/s. Thermax Ltd. to represent the instant matter. Shri Shankar Rochlani, Chartered Accountant reiterated their written submission dated 07.08.2025. The Noticee further, through mail dated 13.03.2026 informed this office that they have nothing more to add apart from the submissions already made and thereby requested to decide the case on the basis of the submissions made from time to time.

Discussion and Finding:

6. I have gone through the Show Cause Notice dated 29.05.2025, written submission dated 07.08.2025, E mail dated 13.03.2026 and record of personal hearing held on 19.01.2026 and all the documents available on record.
7. The issues to be decided before me in this case are as under:
 - (i) Whether the noticee is liable to pay duties of Customs amounting to Rs,1,51,69,853/- equal to the duty forgone on the goods burnt/destroyed in the fire under Section 28 (4) of the Customs Act, 1962 alongwith interest under Section 28AA of the Customs Act, 1962 read with the provision of SEZ Act,2003 & SEZ Rules,2006?
 - (ii) Whether noticee is liable for penalty under Section 112 (b) (ii) of the Customs Act, 1962
 - (iii) Whether the Bond-Cum Legal Undertaking in Form H furnished by the Noticee is enforceable towards the above liabilities?
8. I find that the Noticee is an SEZ unit at Dahej SEZ. The Noticee has been granted permission to set up manufacturing unit and carry-on commercial production in Dahej SEZ vide Letter of Approval No. DAHEJ-SEZ/II/01/2014-15/208, dated 16.07.2014 as amended & extended time to time, in terms of Rule 19(4) of SEZ Rules,

2006, for undertaking Authorized Operations. I find that a blast and fire incident happened on 03.06.2020 at the factory premises of M/s. Yashasvi Rasayan Pvt. Ltd. situated nearby the noticee, at Plot No. Z/96-E, Dahej SEZ-II, Dahej, Taluka- Vagra, District- Bharuch, Gujarat-392130 and a unit adjacent to M/s. Yashasvi Rasayan Pvt. Ltd namely M/s. Milan Laboratories situated at Plot No. Z/96 on 03.06.2020, which were intimated to the Specified Officer, Dahej Multi-Product SEZ, vide letter dated 02.07.2020. On the basis of said blast and fire incident reported by the aforesaid unit to specified officer vide letter dated 02.07.2020, the Specified Officer issued letters to other units asking for the losses faced due to said fire incident. Accordingly, Specified Officer vide his letter dated 17.02.2022 and the reminder letters dated 04.04.2022, 28.07.2022, 11.10.2022, 20.04.2023, 19.05.2023, 28.06.2023 and 10.08.2023 requested the noticee M/s. Thermax Limited, Plot No. Z/96-C, Dahej SEZ-II, Taluka- Vagra, District- Bharuch, and Gujarat-392130 to report the cause of blast and provide the details regarding the extent of damages/ losses in the prescribed format.

8.1 The noticee vide letter 22.02.2024 submitted that the insurance company had processed the claim and provided the annexures of insurance material duty summary item wise breakup of goods destroyed in the fire incident as per which the estimated loss claimed by the noticee was to the tune of Rs.6,68,30,390/-. However, as per detailed insurance material duty summary found enclosed with the said letter dated 22.02.2024, the total loss incurred in the fire incident was assessed to Rs.6,77,11,561/-. As there was substantial differences in estimated loss value of both submission of Noticee, the Specified Officer, vide letter dated 23.02.2024 sought the procurement document in order to ascertain the value of particular goods damaged in the fire incident. The said noticee submitted reply on 10.05.2024 along with the designated Bill of Entries and invoice for the import of Di-Vinyl Benzene-63% (DVB). Further, the Specified officer, SEZ, Dahej vide letter dated 01.10.2024 called for Insurance Surveyor report. Accordingly, the Surveyor's report bearing No.BM/0901/2021 dated 03.09.2020 was submitted by the noticee on 02.12.2024 along with details of raw material and Work in progress (WIP) material damage and further submitted that no damage was caused to finished goods during the fire incident. On scrutiny of the Surveyor report, it is found that noticee had submitted the Insurance claim Bill amounting to Rs.6,82,08,925/- on contrary the calculation of assessed loss that submitted to this office amount to Rs.6,77,11,561/-, the difference of Rs.4,97,364/- is reported to be due to the Cold Storage container procured by the noticee on rental basis.

8.2 I find that for the duty computation, the details of the destroyed goods submitted by the Noticee to the insurance company and its surveyor report has been considered as no such procurement documents have been submitted by the noticee in spite of several reminders. The amount of Work in progress Material Loss of Rs. 4,50,181/- reported by the Noticee is adjusted for calculation errors to arrive at figures of assessed loss amounting to Rs.6,77,11,560/-, reported by the insurance surveyor in his report dated 03.09.2020, only items having customs duty ramifications have been

taken into account for determining customs duty liability. The duty portion on Civil Structures has not been taken into account. Accordingly, the value in respect of Plant & Machinery works out to Rs.6,32,65,940/- and values of Work in Progress works out to Rs. 4,55,210/-. Thus total assessable value is arrived at Rs. 6,37,21,150/- for computation of the Customs Duty which comes to Rs.1,51,69,853/-. Thus, the said duties of Customs amounting to Rs.1,51,69,853/- were forgone on the goods while importing them into SEZ unit for authorized operations and the same has been demanded on account of non-utilization of the said goods for Authorized Operations and failure to account for the said goods as prescribed under Rule 34 and Rule 22 of the SEZ Rules, 2006, respectively.

9. Whether the noticee is liable to pay duties of Customs amounting to Rs.1,51,69,853/- equal to the duty forgone on the goods burnt/destroyed in the fire under Section 28 (4) of the Customs Act, 1962 alongwith interest under Section 28AA of the Customs Act, 1962 read with the provision of SEZ Act,2003 & SEZ Rules,2006?

9.1 I find it worth to refer the relevant provisions of SEZ Act, 2005 and Rules, 2006 applicable in this case to understand the legal position before proceeding further, which are reproduced as under:

(i) As per Section 7 of SEZ Act, 2005, any goods or services exported out of, or imported into, or procured from the Domestic Tariff Area by a unit in a SEZ shall be exempt from the payment of taxes, duties or cess under all enactments specified in the First Schedule.

(ii) Rule 22 of the SEZ Rules, 2006 specifies the terms and conditions for availing exemptions. As per sub rule (2) of Rule 22 every unit and Developer shall maintain proper accounts, financial year-wise, and such accounts which should clearly indicate in value terms the goods imported or procured from Domestic Tariff Area, consumption or utilization of goods, production of goods, including by-products, waste or scrap or remnants, disposal of goods manufactured or produced, by way of exports, sales or supplies in the domestic tariff area or transfer to Special Economic Zone or Expon Oriented Unit or Electronic Hardware Technology Park or Software Technology Park Units or Biotechnology Park Unit, as the case may be, and balance in stock.

(iii) Rule 25 of SEZ Rules, 2006 specifies that where an entrepreneur or Developer does not utilize the goods or services on which exemptions, drawbacks, cess and concessions have been availed for the authorized operations or unable to duly account for the same, the entrepreneur or the Developer, as the case may be, shall refund an amount equal to the benefits of exemptions, drawback, cess and concessions availed.

(iv) As per Section 26 of SEZ Act, 2005, exemption from any duty of customs under the Customs Act, 1962 (52 of 1962) or the Customs Tariff Act, 1975 (51 of 1975) on

goods imported into, or services provided in, a SEZ or a Unit and any duty of excise, under the Central Excise Act, 1944 or the Central Excise Tariff Act, 1985 (5 of 1986) or any other law for the time being in force, is granted on goods brought from Domestic Tariff Area to a SEZ or Unit, to carry on the authorized operation by the developer or entrepreneur subject to observance to procedure prescribed in the section.

(v) Rule 27 of SEZ Rules, 2006 specifies that the unit may import or procure from Domestic Tariff Area without payment of duty, taxes or cess, all types of goods required for authorized operations except prohibited items.

(vi) Rule 34 of SEZ Rules, 2006 specifies that the goods admitted in SEZ shall be used by the unit for carrying out the authorized operations.

(vii) Rule 47 of SEZ Rules, 2006 specifies that a Unit may sell goods and services, 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 thereunder. "

9.2 It is pertinent to mention that SEZ units have been granted special privileges such as exemption from Duty of Customs on imported goods, exemption from Central Excise Duty on goods which are brought into SEZ from DTA, exemption from Service Tax on the services received by them, etc. The rationale to advance such privileges is forthcoming from the provisions of Section 5 of the SEZ Act, 2005 which reads as under:

The Central Government, while notifying any area as a Special Economic Zone or an additional area to be included in the Special Economic Zone and discharging its functions under this Act, shall be guided by the following, namely:

- (a) generation of additional economic activity;
- (b) promotion of exports of goods and services;
- (c) promotion of investment from domestic and foreign sources;
- (d) creation of employment opportunities;
- (e) development of infrastructure facilities; and
- (f) maintenance of sovereignty and integrity of India, the security of the State and friendly relations with foreign States.

The above provisions clearly indicate that one of the objectives behind the SEZ scheme is promotion of exports of goods and services. Thus, export of goods or

services by utilizing the Duty-free goods/ services procured either from indigenous or overseas market becomes an integral part of the obligation cast upon the SEZ in lieu of the exemptions granted to them. It is a well-accepted principle that privileges walk hand-in-hand with obligations/ responsibilities. This phenomenon is well-explained by the 'two sided coin' principle. As each coin has two sides, obligation/ responsibility is the other side of accrued privilege. In the event that the obligation cast upon the SEZ unit is not fulfilled, the entire rationale behind grant of exemptions is defeated.

9.3 The exemption of Duty of Customs has been granted to SEZ unit in terms of the provisions of Section 26 of the SEZ Act, 2005. The relevant text of which reads as under:

SECTION 26-

(1) Subject to the provisions of sub-section (2), every Developer and the entrepreneur shall be entitled to the following exemptions, drawbacks and concessions, namely:-

(a) exemption from any duty of customs, under the Customs Act, 1962 (52 of 1962) or the Customs Tariff Act, 1975 (51 of 1975) or any other law for the time being in force, on goods imported into, or services provided in, a Special Economic Zone or a Unit, to carry on the authorised operations by the Developer or entrepreneur

Further Rule 25 of the SEZ Rules, 2006 mandates refund of benefit of exemption/ concession availed on imported goods, if the goods are not put to use in authorized operations, as given below-

Rule 25 of SEZ Rules, 2006

Where an entrepreneur or Developer does not utilize the goods or services on which exemptions, drawbacks, cess and concessions have been availed for the authorized operations or unable to duly account for the same, the entrepreneur or the Developer, as the case may be, shall refund an amount equal to the benefits of exemptions, drawback, cess and concessions availed without prejudice to any other action under the relevant provisions of the Customs Act, 1962, the Customs Tariff Act, 1975, the Central Excise Act, 1944, the Central Excise Tariff Act, 1985, the Central Sales Tax Act, 1956, the Foreign Trade (Development and Regulation) Act, 1992 and the Finance Act, 1994 (in respect of service tax) and the enactments specified in the First Schedule to the Act, as the case may be: Provided that if there is a failure to achieve positive net foreign exchange earning, by a Unit, such entrepreneur shall be liable for penal action under the provisions of Foreign Trade (Development and Regulation) Act, 1992 and the rules made there under.

On conjoint reading of the above provisions of the Section 26 of the SEZ Act, 2005 and Rule 25 of the SEZ Rules, 2006 it is evident that the exemption has been granted subject to the condition that the imported goods are put to use or utilized in carrying out the 'Authorised Operations'. In the instant case, the goods under consideration have not been used or put to use for such 'Authorised Operations' i.e. manufacture of taxable goods as listed in the LOA, in as much as the goods have been destroyed. In such circumstances, the exemption availed by the Noticee is required to be paid back in terms of the Rule 25 of the SEZ Rules. In other words, the exemption in respect of the goods under consideration has to be relinquished which in turn implies that the duty, which was foregone at the material time, has to be demanded in terms of the provisions of Section 28(4) of the Customs Act, 1962.

Further, the argument of the noticee that the demand of duty is not tenable as, the goods lost in fire does not amount to utilizing the goods for purposes other than authorized operations as clearly, the provisions of Rule 25 mandates that if the SEZ unit does not utilize the goods on which exemption has been availed, the SEZ unit shall refund the amount equal to the benefit of exemption availed on such goods. The provisions of Rule 25 clearly mandate refund in cases where goods are not utilized unlike Rule 34 of SEZ Rules, 2006 wherein the situation of utilizing duty free goods for unauthorized operations is provided. Clearly both the Rules (Rule 25 and Rule 34) operate in different situations.

Thus, I find that the Customs Duty amounting to Rs,1,51,69,853/- is required to be demanded and recovered from the Noticee in terms of the provisions of Section 28(4) of the Customs Act, 1962 read with the relevant provisions of SEZ Act and the rules made thereunder alongwith interest in terms of the provisions of Section 28AA of the Customs Act, 1962.

9.4. I find that the noticee has claimed that subject goods have been used for authorised operation and therefore alleged demand of duty is incorrect and have relied on the some case laws and further claimed that the noticee is eligible for remission of duty under Section 23 of the Customs Act, 1962.

9.4.1 I find that the claim of subject goods have been used for authorised operation is not tenable as it is beyond doubt that subject goods is destroyed in fire incident and as per the LOP, the authorized operation of the noticee was to manufacture taxable goods viz. Active Pharmaceutical Ingredients, Damascenone Total, Ester Beta C16 etc.) and had it been used in manufacturing process, it would have been considered as used for 'authorized operation'. Further, I rely on the ratio of final Order No. 51936/2025 dated 07.11.2025 in Customs Appeal No. 51089/2020 filed by M/s. Ajanta Soya Limited, Alwar wherein it has been interalia held as under:

"18. What is evident from the above is that in view of the specific Explanation in the Central Excise (Removal of Goods at Concessional a Rate of Duty for Manufacture of Excisable Goods) Rules 2001, the Karnataka High Court held that the goods lost or

destroyed must be treated as having been used. The dispute in this case is relating to the exemption from the input duty under the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016. We do not find any Explanation similar to the Explanation in the Central Excise Rules, which were the subject matter of dispute before the Karnataka High Court. Therefore, this judgment cannot come to aid of the appellant in this case.

19. The other judgments and orders relied on by the learned counsel pertain to the Central Excise.

20. In view of the above, we find that the appellant was liable to pay customs duty on the 230.77 M.T. of Crude Palm Oil which was imported by it but which was not used in the manufacture of final products specified in the Notification No. 12/2012-CUS in view of the fire accident."

9.4.2 Further, I find that the said noticee has heavily relied on the decision of Hon'ble CESTAT, Ahmedabad rendered in case of Yashashvi Rasayan Private Limited reported in 2024 (9) TMI 1501-CESTAT Ahmedabad and stated that the issue already stand decided and further have claimed the remission of duty under Section 23 of the Customs Act, 1962. I find it worth to re-produce the relevant para of the said order which is as under :

"4. We have carefully considered the submission made by both sides and perused the records. We find that this Tribunal has taken a consistent view that in case of any **destruction due to natural cause in the SEZ**, the SEZ unit is entitled for the remission of duty in terms of Section 23 of Customs Act, 1962. Therefore, as of now there is no dispute on the legal issue that the SEZ unit is eligible for the remission of the customs duty in case the goods is destroyed in the SEZ unit. However, the appellant have not opted for the remission of duty by filing appropriate application before the competent authority. Therefore, for this limited purpose, the matter needs to be remanded to the Adjudicating Authority. Liberty is granted to the appellant to file an appropriate application in terms of Section 23 of the Customs Act, 1962 and rules made thereunder , if any, along with all the relevant documents for seeking remission of duty which shall be disposed of by the competent authority in accordance with law."

I find that the said noticee during the submission of reply to the Show Cause Notice have also submitted the copy of the FIR in respect of Yashashvi Rasayan Private Limited. On perusal of the said FIR mainly at Para 12, it is revealed that the fire incident was occurred due to negligence and it was not of natural cause. Therefore, the ratio of said decision cannot be relied on in the present case.

9.4.3 Further, I find it proper to reproduce Section 13 and Section 23 of the Customs Act, 1962.

Section 13: Duty on pilfered goods.—If any imported goods are pilfered after the unloading thereof and before the proper officer has made an order for clearance for

home consumption or deposit in a warehouse, the importer shall not be liable to pay the duty leviable on such goods except where such goods are restored to the importer after pilferage.

Section 23: Remission of duty on lost, destroyed or abandoned goods.—

(1) [Without prejudice to the provisions of section 13, where it is shown] to the satisfaction of the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] that any imported goods have been lost [otherwise than as a result of pilferage] or destroyed, at any time before clearance for home consumption, the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] shall remit the duty on such goods.

[(2) The owner of any imported goods may, at any time before an order for clearance of goods for home consumption under section 47 or an order for permitting the deposit of goods in a warehouse under section 60 has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon;] 5 [Provided that the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.]"

Clearly the provisions of Section 23 talks about remission of duty on lost, destroyed or abandoned goods before such goods are cleared for home consumption.

9.4.4 As far as goods imported and destroyed in SEZ are concerned, they are to be dealt in accordance with the provisions of SEZ Act, 2005 and rules made there under. SEZ Act, 2005 and SEZ Rules, 2006 have clearly provided for importation of various sections of the Customs Act, 1962 in order to make them applicable to units operating in SEZ. Certain provisions of the SEZ Act, 2005 and SEZ Rules, 2006 are reproduced here for better appreciation of the facts

(i) Section 30. Domestic clearance by Units.—

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 anti-dumping, countervailing and safeguard duties under the Customs Tariff Act, 1975 (51 of 1975), where applicable, as leviable on such goods when imported; and

(b) 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.

(ii) Rule 47 of SEZ rules, 2006-

- (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.
- (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.]

Clearly the above mentioned provisions of SEZ Act, 2005 and SEZ Rules, 2006 provide for assessment, valuation, levy of Custom duty, demand, refund and appeal in respect of authorized operations.

9.4.5 Further, the Ministry of Commerce and Industry vide Notification S.O. 2665(E) issued in exercise of power under Section 21 (1) of the SEZ act, 2005, has notified, interalia, the offences contained in Sections 28, 28AA, 111, 124 of the Customs Act, 1962 as the offences in the SEZ Act, 2005. **However, there is no such provision for remission of duty on lost goods in the SEZ Act, 2005 as provided in Section 23 of the Customs Act, 1962.** SEZ Act is a separate legislation and does not specifically import section 23 of the Customs Act, 1962 as there are other parallel provisions within the SEZ Act which allow assessment, valuation, refund etc. under Customs Act, 1962.

9.4.6 According to Supreme Court precedent, the principle is that if a law does not explicitly provide for something, it cannot be executed or enforced. In this regard, I rely on the decision of Union of India v. Kamalshri Finance Corporation Ltd. " (1991), where the Supreme Court of India held that if a particular provision or specific provision is not explicitly provided under the Customs Act, the authorities cannot enforce penalties or take actions that are not supported by clear legislative backing. Clearly, Section 23 of the Customs Act, 1962 doesn't provide for remission of duties of Customs on goods lost/ destroyed which were imported duty free into SEZ for the purpose of authorized operations. Further, there is no provision either in SEZ Act, 2005 or SEZ Rules, 2006 for remission of duties of Customs.

9.4.7 I find that the noticee has relied upon decisions of the Hon'ble CESTAT, Ahmedabad in the matter of Satguru Polyfab Pvt. Ltd. V/ s. CC, Kandla reported in 2011 (267) ELT 273 (Tri.-Ahmd.) and M/S. Jindal International Vs. CC, Kandia 2012 (6) TMI 255 CESTAT, Ahmedabad and PI Industries Vs. Principal Commissioner of Customs 2024 (6) TMI 203 CESTAT Ahmedabad and ONGC Petro Additions Ltd Vs.

C.C. Ahmedabad 2023 (12) TMI(530) CESTAT Ahmedabad and have claimed remission of duty under Section 23 of the Customs Act, 1962.

I find that the said decisions had examined the provisions of SEZ Rules, 2003 which were notified vide Notification No. 52/2003-Cus (N.T) issued in exercise of the powers conferred by sub-section (1) of Section 156 read with Chapter X A of the Customs Act, 1962. Further, Section 76B of the Customs Act, 1962 allowed applicability of all the provisions of other chapters of the Act (Customs Act, 1962) to the special economic zones. Therefore, the remission was allowed under Section 23. However, with the enactment of SEZ Act, 2005 and SEZ Rules, 2006, the provisions of Section 76B were omitted.

Further, it is pertinent to note that the Hon'ble Tribunal had examined the provision of Rule 8 of the SEZ Rules, 2003 to hold that there was no unauthorized use of duty free imported goods. However, it is crucial to note that Rule 25 of SEZ Rules, 2006 entrust the onus on SEZ unit to refund the exemption availed on duty free goods if the same are not utilized. The SEZ Rules, 2003 had no such provisions for refund of amount of exemption availed on duty free goods. Thus ratio of both the judgments of Hon'ble Tribunal are clearly inapplicable in the instant case. Further, the case law of PI Industries, cannot be relied as the order has been issued on different set of facts. Further judgment of the Hon'ble Tribunal in the case of ONGC Petro Additions Ltd Vs CC, cannot be relied on as the provisions of Rule 25 of SEZ, Rules, 2006 have not been taken into consideration while deciding the issue of remission of duty of Customs and therefore, I am of the view that the ratio of the judgment of the Hon 'ble CESTAT in the case of ONGC Petro Additions Ltd. Vs. CC-2023 (12) TMI 530 is not applicable in the instant case.

In view of the above discussion and findings, I find that said noticee is not eligible for the remission of duties of customs under the provisions of SEZ Act, 2005 and rules made thereunder.

9.5 I find that the noticee argued that there are no substantive provisions for recovery of interest or penalty and relied on the decision of Hon'ble Mumbai High Court rendered in the case of Mahindra & Mahindra Limited vs. Union of India in W.p. No. 1848 of 2009. I find that the said argument is not tenable as the Show Cause Notice is issued on 29.05.2025 and vide the Finance Act, 2024 under Amendment vide Section 106, Section 3 of the Customs Tariff Act amended and sub para (12) of the Section 3 of the Customs Tariff Act,1975 substituted with the following amendment.

"(12) The provisions of the Customs Act, 1962 (52 of 1962) and all rules and regulations made thereunder, including but not limited to those relating to the date for determination of rate of duty, assessment, non-levy, short-levy, refunds, exemptions, interest, recovery, appeals, offences and penalties shall, as far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to duties

leviable under that Act or all rules or regulations made thereunder, as the case may be."

9.5.1 Further, to negate the said argument, I rely on the ratio of decision of Hon'ble Supreme Court which dismissed Civil Appeal filed by Atul Kaushik (Oracle India Ltd) on 11-3-2016 reported in *Oracle India Pvt. Ltd. v. Commissioner - 2016 (339) E.L.T. A136 (S.C.)*.

9.5.2 Hon'ble Supreme Court on 11-3-2016 dismissed Civil Appeal filed by Atul Kaushik (Oracle India Ltd) reported in *Oracle India Pvt. Ltd. v. Commissioner - 2016 (339) E.L.T. A136 (S.C.)* against the CESTAT Final Order Nos. A/52353-52355/2015-CU(DB) dated 29-7-2015 as reported in 2015 (330) E.L.T. 417(Tri.-Del.)(Atul Kaushik v. Commissioner) holding that " We see no reason to interfere with the impugned order passed by Customs, Excise & Service Tax Appellate Tribunal". Relevant Para of the decision of Final Order Nos. A/52353-52355/2015-CU(DB) dated 29-7-2015 of CESTAT reported in 2015 (330) E.L.T. 417 (Tri.-Del.) (Atul Kaushik v. Commissioner) is re-produced as under:

"16. The appellants have also contended that penalty, interest and confiscation cannot be invoked in respect of evasion of countervailing duty (levied under Section 3 of the Customs Tariff Act, 1975) on the ground that the provisions relating to these aspects have not been borrowed into Section 3 of the Customs Tariff Act, 1975. In support of the principle that the penalty cannot be levied in the absence of penalty provision having been borrowed in a particular enactment, the appellants cited the judgments in the case of Khemka & Co. (supra) and Pioneer Silk Mills Pvt. Ltd. (supra). We are in agreement with this proposition and therefore we refrain from discussing the said judgments. The appellants also cited the judgment in the case of Supreme Woollen Mills Ltd. (supra), Silkone International (supra) and several others to advance the proposition that penalty provisions of Customs Act were not applicable to the cases of non-payment of anti-dumping duty and that the same principle is applicable with regard to leviability of interest [India Carbon Ltd. (supra) and V.V.S. Sugar (supra)]. We have perused these judgments. Many of them dealt with Anti-dumping duty/Special Additional Duty (SAD) leviable under various sections (but not Section 3) of Customs Tariff Act, 1975 and in those sections of the Customs Tariff Act, 1975 or in the said Act itself, during the relevant period, there was no provision to apply to the Anti-dumping duty/SAD the provisions of Customs Act, 1962 and the rules and regulations made thereunder including those relating to interest, penalty, confiscation. In the case of Pioneer Silk Mills (supra), the duty involved was the one levied under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 and its Section 3(3) only borrowed the provisions relating to levy and collection from the Central Excise Act, 1944 and in view of that it was held that the provisions relating to confiscation and penalty could not be applied with regard to the duties collected under the said Act of 1957. None of these judgments actually deal with the CVD levied under Section 3 of the Customs Tariff Act,

1975. The impugned countervailing duty was levied under Section 3 of Customs Tariff Act, 1975. Sub-section (8) of Section 3 of the said Act even during the relevant period stipulated as under :-

"S. 3(8) The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties shall, so far as may be, apply to the duty chargeable under this section as they apply in relation to the duties leviable under that Act."

It is evident from Section 3(8) of the Customs Tariff Act, 1975 quoted above that all the provisions of Customs Act, 1962 and the rules and regulations made thereunder have been clearly borrowed into the said Section 3 to apply to the impugned CVD and so it is obvious that provisions relating to fine, penalty and interest contained in Customs Act, 1962 are expressly made applicable with regard to the impugned countervailing duty. We must, however, fairly mention that in case of Torrent Pharma Ltd. v. CCE, Surat, CESTAT set aside penalty for evasion of Anti-dumping duty, CVD and SAD (para 16 of the judgment) on the ground that penal provisions of Customs Act, 1962 had not been borrowed in the respective sections of Customs Tariff Act, 1975 under which these duties were levied, but this decision of CESTAT regarding CVD suffered from a fatal internal contraction inasmuch as CESTAT itself in para 14 of the said judgment had expressly taken note of the fact that vide Section 3(8) of the Customs Tariff Act, 1975, the provisions of Customs Act, 1962 and the rules and regulations made thereunder had been made applicable to CVD charged (under Section 3 of Customs Tariff Act, 1975). In the light of this analysis, we hold that this contention of the appellant is legally not sustainable."

Thus, the said order of Tribunal has been affirmed by the Hon'ble Supreme Court whereas Special Leave Petition in case of Mahindra & Mahindra Ltd bearing Diary No. 18824/2023 has been dismissed by Hon'ble Supreme Court holding that "No merit found in the Special Leave Petition". Whereas, the Hon'ble Supreme Court has dismissed the **Civil Appeal** filed by Oracle India Pvt. Ltd (Atul Kaushik) against the CESTAT Final Order Nos. A/52353-52355/2015-CU(DB) dated 29-7-2015.

In the case of **Workmen of Cochin Port Trust Vs. Board of Trustees of the Cochin Port Trust and Another 1978 AIR 1283**, the Hon'ble Three Judges Bench held as under:

"The effect of non-speaking order of dismissal without anything more indicating the grounds or reasons of its dismissal must by necessary implication be taken to have decided that it was not a fit case where special leave should be granted. It may be due to several reasons. It may be one or more. It may also be that the merits of the award were taken into consideration and this Court felt that it did not require any interference. But since the order is not a speaking order it is difficult to accept the argument that it

must be deemed to have necessarily decided implicitly all the questions in relation to the merits of the award."

The dismissal of special leave petition by the Supreme Court by a non-speaking order of dismissal where no reasons were given does not constitute *res judicata*. All that can be said to have been decided by the Court is that it was not a fit case where special leave should be granted."

9.5.3 Further, Hon'ble Gujarat High Court in the case of Commissioner v. Ashok Fashion Ltd. reported in 2002 (141) E.L.T. 606 (Guj.) has held as under:

"9.1 Chapter VI of the Central Excise Act, relates to 'Adjudication of Confiscation and Penalties'. Under Section 33, it is provided that, where by the rules made under this Act, anything is liable to confiscation or any person is liable to a penalty, such confiscation or penalty may be adjudged by the authorities mentioned therein. Section 34A lays down that, no confiscation made or penalty imposed under the provisions of the Act or of any rule made thereunder shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of the Act or under any other law. Section 37(2)(ib) of the Central Excise Act empowers the Central Government, *inter alia*, to make such rules as may, "provide for the assessment and collection of duties of excise, the authorities by whom functions under this Act are to be discharged, the issue of notices requiring payment, the manner in which the duties shall be payable, and the recovery of duty not paid".

9.2 If excisable goods are deposited in or removed from any specified place in contravention of Rule 9(1) of the Central Excise Rules, the producer or manufacturer is made liable to pay penalty which may exceed up to Rs. 2,000.00 and the goods would be liable to confiscation over and above the liability to pay the duty. Then there are provisions imposing penalty for misdeclarations as laid down in Rules 92E(iv), 96M(iii) 96S(iv), 96ZL(iii). Rule 173Q provides for 'confiscation and penalty' in respect of the excisable goods notified under Rule 173A(1) of Chapter VII-A of the Rules, and Chapter XXII of the Excise Rules deals with penalties and confiscations. Accordingly, the acts and omissions covered by Rules 173Q and 209 entail confiscation of goods and imposition of a penalty to the extent prescribed thereunder. There are also provisions of penalty under Rule 209A and for general penalty, in Rule 210.

9.3 It will thus be seen that penalty provisions are an integral part of assessment and collection of duties of which the necessary adjuncts are confiscation and penalty without which the imposition of taxes will lack teeth and become ineffective. If power to impose penalty for violation of the obligation to pay additional duty of excise is excluded in respect of the goods enumerated in the First Schedule of the Additional Duties Act, then these taxation provisions would be reduced to a donation drive in respect of these very items for which duty of excise is also imposed under the Central

Excise Act, 1944 and the Rules made thereunder and violation of which would entail both confiscation and penalty.

10. *The provisions of penalties are devised to ensure that the excise regulations are enforced and the recovery of excise dues is secured. The process of collection of revenue involves enacting methods of collection. The procedure of assessment and collection are intertwined with confiscation and penalty, once violation of excise regulations is established, as contemplated by the Rules imposing penalties. The object of the provisions to impose heavy penalties is to ensure that the revenue is protected against procrastination, carelessness or deceit which if practised on a large scale, would make collection of the taxes a difficult task.*

11. *For the above reasons, it is clear to us that all the provisions of the Central Excise Act, 1944 and the Rules made thereunder, including the provisions relating to confiscation and imposition of penalty contained therein, are applicable to the levy and collection of the additional duty of excise under Section 3(1) of the Additional Duties of Excise Act, 1957 in the same manner as they already apply in relation to the levy and collection of such goods under the Central Excise Act, 1944 and Rules framed thereunder.*

12. *We accordingly hold that the provisions relating to confiscation and imposition of penalty contained in the Central Excise Act, 1944 and the Rules thereunder are applicable to man-made fabrics which are liable to additional duty of excise under the First Schedule of Section 3(1) of the Additional Duties of Excise Act and are 'excisable goods' mentioned in Schedule to the Central Excise Tariff Act, 1985, by virtue of incorporation by reference under Section 3(3) of the Additional Duties Act, of all the provisions contained in the Central Excise Act, 1944 Rules made thereunder."*

9.5.4 Further, I find that decision of Mahindra and Mahindra Ltd relied on by the importer is distinguished by the Principal Bench of Hon'ble Delhi Tribunal in the case of Poddar Pigments Ltd. Vs. Commissioner of Central Excise & CGST, Jaipur reported in 2024 (25) CENTAX 194 (Tri. Delhi) and Mayur Uniquoters Ltd. v. Commissioner reported in 2024 (390) E.L.T. 207 (Tri. - Del.).

9.5.5 Further, I find that decision of Mahindra and Mahindra Ltd is not applicable to the present case as period covered in the said decision was November'2004 to January'2007 and the present case pertains to June'2020 and Show Cause Notice was issued on 29.05.2025 and at the time of issuance of the Show Cause Notice, provision for interest and penalty were already enforced. Further, in the instant case, Customs duty comprising BCD, IGST and SW Cess has been demanded under Section 28 (4) of the Customs Act, 1962 as well as by enforcement of Bond-Cum-Legal Undertaking under Section 143 of the Customs Act, 1962. In this case, the noticee has executed Bond-Cum-Legal Undertaking in Form-H regarding their obligation for proper

utilization and accounting of goods including capital goods, spares, raw material, components and consumables including fuels, imported or procured duty free and for achievement of positive Net Foreign Exchange Earning in terms of provisions of Rule 22 (i) of SEZ Rules, 2026 before the proper officer binding himself to pay duty alongwith interest in case the importer fails to comply with the condition of Bond-Cum-Legal Undertaking. As the said noticee failed to fulfil the condition of the bond, so he is liable to pay duty along with interest in terms of the conditions of the Bond-Cum-Legal Undertaking as specified under Section 143 of the Customs Act, 1962.

9.6 The Noticee has contended that the Show Cause Notice is time barred as the extended period of limitation is not invocable in the present case. In the present case, Show Cause Notice is issued under Section 28(4) of the Customs, Act, 1962. I find that in the instant case, a blast and fire incident happened on 03.06.2020 at the factory premises of M/s. Yashasvi Rasayan Pvt. Ltd. situated nearby the noticee, at Plot No. Z/96-E, Dahej SEZ-II, Dahej, Taluka- Vagra, District- Bharuch, Gujarat-392130 and a unit adjacent to M/s. Yashasvi Rasayan Pvt. Ltd namely M/s. Milan Laboratories situated at Plot No. Z/96 on 03.06.2020, which were duly intimated to the Specified Officer, Dahej Multi-Product SEZ, vide letter dated 02.07.2020. On the basis of said blast and fire incident reported by the aforesaid unit to specified officer vide letter dated 02.07.2020, the Specified Officer issued letters to other units asking for if any losses faced due to said fire incident. Accordingly, Specified Officer vide his letter dated 17.02.2022 and the reminder letters dated 04.04.2022, 28.07.2022, 11.10.2022, 20.04.2023, 19.05.2023, 28.06.2023 and 10.08.2023 requested the noticee M/s. Thermax Limited, Plot No. Z/96-C, Dahej SEZ-II, Taluka- Vagra, District- Bharuch, and Gujarat-392130 to report the cause of blast and provide the details regarding the extent of damages losses in the prescribed format. Despite having knowledge of occurrence of loss and its implications under the SEZ Act and Rules, the noticee never came forward to discharge the applicable Customs Duty liabilities on the destroyed goods. Thus, the act of non-reporting of material facts to Customs Authorities and undue delay in submission of requisite information appeared deliberate act on the part of noticee to willfully suppress material facts from the concerned authorities with intent to evade government revenue. Had the fact regarding suffering of loss by the noticee not come to the knowledge of Customs Authorities, the same would have gone un-noticed causing substantial revenue loss to the Govt. Exchequer.

9.6.1 I rely on the ratio of decision of Hon'ble Gujarat High Court rendered in case of Commissioner v. Neminath Fabrics Pvt. Ltd. Reported in 2010 (256) E.L.T. 369 (Guj.) wherein it has been held interalia as under:

"12. The Proviso under the said sub-section stipulates that in case of such non levy, etc. of duty which is by reason of fraud, collusion, or any mis-statement or suppression of

facts, or contravention of any provisions of the Act or the rules made thereunder, the provisions of sub-section (1) of Section 11A of the Act shall have effect as if the words "one year" have been substituted by the words "five years".

13. *The Explanation which follows stipulates that where service of notice has been stayed by an order of a Court, the period of such stay shall be excluded from computing the aforesaid period of one year or five years, as the case may be.*

14. *Thus the scheme that unfolds is that in case of non levy where there is no fraud, collusion, etc., it is open to the Central Excise Officer to issue a show cause notice for recovery of duty of excise which has not been levied, etc. The show cause notice for recovery has to be served within one year from the relevant date. However, where fraud, collusion, etc., stands established the period within which the show cause notice has to be served stands enlarged by substitution of the words "one year" by the words "five years". In other words the show cause notice for recovery of such duty of excise not levied etc., can be served within five years from the relevant date.*

15. *To put it differently, the proviso merely provides for a situation whereunder the provisions of sub-section (1) are recast by the legislature itself extending the period within which the show cause notice for recovery of duty of excise not levied etc. gets enlarged. This position becomes clear when one reads the Explanation in the said sub-section which only says that the period stated as to service of notice shall be excluded in computing the aforesaid period of "one year" or "five years" as the case may be.*

16. *The termini from which the period of "one year" or "five years" has to be computed is the relevant date which has been defined in sub-section (3)(ii) of Section 11A of the Act. A plain reading of the said definition shows that the concept of knowledge by the departmental authority is entirely absent. Hence, if one imports such concept in sub-section (1) of Section 11A of the Act or the proviso thereunder it would tantamount to rewriting the statutory provision and no canon of interpretation permits such an exercise by any Court. If it is not open to the superior court to either add or substitute words in a statute such right cannot be available to a statutory Tribunal.*

17. *The proviso cannot be read to mean that because there is knowledge the suppression which stands established disappears. Similarly the concept of reasonable period of limitation which is sought to be read into the provision by some of the orders of the Tribunal also cannot be permitted in law when the statute itself has provided for a fixed period of limitation. It is equally well settled that it is not open to the Court while reading a provision to either rewrite the period of limitation or curtail the prescribed period of limitation.*

18. *The Proviso comes into play only when suppression etc. is established or stands admitted. It would differ from a case where fraud, etc. are merely alleged and are disputed by an assessee. Hence, by no stretch of imagination the concept of knowledge*

can be read into the provisions because that would tantamount to rendering the defined term "relevant date" nugatory and such an interpretation is not permissible.

19. *The language employed in the proviso to sub-section (1) of Section 11A, is, clear and unambiguous and makes it abundantly clear that moment there is non-levy or short levy etc. of central excise duty with intention to evade payment of duty for any of the reasons specified thereunder, the proviso would come into operation and the period of limitation would stand extended from one year to five years. This is the only requirement of the provision. Once it is found that the ingredients of the proviso are satisfied, all that has to be seen as to what is the relevant date and as to whether the show cause notice has been served within a period of five years therefrom.*

20. *Thus, what has been prescribed under the statute is that upon the reasons stipulated under the proviso being satisfied, the period of limitation for service of show cause notice under sub-section (1) of Section 11A, stands extended to five years from the relevant date. The period cannot by reason of any decision of a Court or even by subordinate legislation be either curtailed or enhanced. In the present case as well as in the decisions on which reliance has been placed by the learned advocate for the respondent, the Tribunal has introduced a novel concept of date of knowledge and has imported into the proviso a new period of limitation of six months from the date of knowledge. The reasoning appears to be that once knowledge has been acquired by the department there is no suppression and as such the ordinary statutory period of limitation prescribed under sub-section (1) of Section 11A would be applicable. However such reasoning appears to be fallacious inasmuch as once the suppression is admitted, merely because the department acquires knowledge of the irregularities the suppression would not be obliterated."*

10. Whether the said noticee is liable for penalty under Section 114A of the Customs Act, 1962?

10.1 In the present case, Show Cause Notice is issued under Section 28(4) of the Customs, Act, 1962. I find that in the instant case, a blast and fire incident happened on 03.06.2020 at the factory premises of M/s. Yashasvi Rasayan Pvt. Ltd. situated nearby the noticee, at Plot No. Z/96-E, Dahej SEZ-II, Dahej, Taluka- Vagra, District- Bharuch, Gujarat-392130 and a unit adjacent to M/s. Yashasvi Rasayan Pvt. Ltd namely M/s. Milan Laboratories situated at Plot No. Z/96 on 03.06.2020, which were intimated to the Specified Officer, Dahej Multi-Product SEZ, vide letter dated 02.07.2020. On the basis of said blast and fire incident reported by the aforesaid unit to specified officer vide letter dated 02.07.2020, the Specified Officer issued letters to other units asking for if any losses was faced due to said fire incident. Accordingly, Specified Officer vide his letter dated 17.02.2022 and the reminder letters dated 04.04.2022, 28.07.2022, 11.10.2022, 20.04.2023, 19.05.2023, 28.06.2023 and 10.08.2023 requested the noticee M/s. Thermax Limited, Plot No. Z/96-C, Dahej SEZ-II, Taluka- Vagra, District- Bharuch, and Gujarat-392130 to report the cause of blast

and provide the details regarding the extent of damages/ losses in the prescribed format. Despite having knowledge of occurrence of loss and its implications under the SEZ Act and Rules, the noticee never came forward to discharge the applicable Customs Duty liabilities on the destroyed goods. Thus, the act of non-reporting of material facts to Customs Authorities and undue delay in submission of requisite information appeared deliberate act on the part of noticee to willfully suppress material facts from the concerned authorities with intent to evade government revenue. Had the fact regarding suffering of loss by the noticee not come to the knowledge of Customs Authorities, the same would have gone un-noticed causing substantial revenue loss to the Govt. Exchequer.

I find that demand of differential Customs Duty amounting to Rs.1,51,69,853/- has been made under Section 28(4) of the Customs Act, 1962, which provides for demand of Duty not levied or short levied by reason of collusion or wilful mis-statement or suppression of facts. Hence as a naturally corollary, penalty is imposable on noticee under Section 114A of the Customs Act, which provides for penalty equal to Duty plus interest in cases where the Duty has not been levied or has been short levied or the interest has not been charged or paid or has been part paid or the Duty or interest has been erroneously refunded by reason of collusion or any wilful mis statement or suppression of facts. In the instant case, the ingredient of suppression of facts by said noticee has been clearly established as discussed in foregoing paras and hence, I find that this is a fit case for imposition of quantum of penalty equal to the amount of Duty plus interest in terms of Section 114A of the Customs Act, 1962.

10.2. I find that in present case, at the time of issuance of the Show Cause Notice dated 29.05.2025, the facts suppressed by the said noticee to evade the payment of Customs Duty have been clearly spelled out at Para 4.7 in the Show Cause Notice and accordingly Customs duty has been demanded under Section 28 (4) of the Customs Act, 1962. Hence as a naturally corollary, penalty is imposable on noticee under Section 114A of the Customs Act, which provides for penalty equal to Duty plus interest in cases where the Duty has not been levied or has been short levied or the interest has not been charged or paid or has been part paid or the Duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts. However, while proposing penalty inadvertently it was mentioned as Section 112 (b) (ii) of the Customs Act, 1962 instead of Section 114 A of the Customs Act, 1962. I find that it is time and again settled by the various judicial forum that wrong mention of section does not vitiate the proceedings. I rely on the ratio of decision of Hon'ble Supreme Court in the case of Collector v. Pradyumna Steel Ltd. Reported in 1996 (82) E.L.T. 441 (S.C.) wherein it has been held interalia as under:

"3. It is settled that mere mention of a wrong provision of law when the power exercised is available even though under a different provision, is by itself not

sufficient to invalidate the exercise of that power. Thus, there is a clear error apparent on the face of the Tribunal's order dated 23-6-1987. Rejection of the application for rectification by the Tribunal was, therefore, contrary to law."

Further, the aforesaid decision of Hon'ble Supreme Court was relied on by the Hon'ble Chennai Tribunal in the case of Maruti Suzuki India Ltd. Vs. Commissioner of Service Tax, Delhi reported in (2024) 22 Centax 112 (Tri.-Chan) wherein it has been held interalia as under:

"20.1. We also find that Hon'ble Apex Court held in the case of Pradyumna Steel Ltd. (supra) that mere mention of wrong provision of law, when the power exercised is available even though under a different provision is by itself not sufficient to invalidate the exercise of that power. We find that the show-cause notice was issued alleging that the appellants have not paid the service tax for the various services received by them from their overseas dealers/ distributors and that such services fall under "Business Auxiliary Service". We find that the show-cause notice mentions at Para 7 that the appellants are incurred an expense on account of advertisement for sale promotion which appear to be covered under BAS. Thus, it is seen that in the instant case, the purport of the show-cause notice is to put the appellants on notice that they have received services from their foreign dealers and have not discharged due service tax under the BAS. Though, the specific sub-clauses have not been enumerated, the intent of the notice has been made clear and therefore, in view of the judgment of the Hon'ble High Court cited above, we find that the proceedings are not vitiated. In view of the same, we find that judgments cited by the appellant are not applicable in the particular facts of the case."

Further, I rely on the ratio of decision of Hon'ble Kolkatta Tribunal rendered in the case of Fortune Impex Vs. Commissioner of Customs, Kolkata reported in 2001 (138) E.L.T. 556 (Tri. - Kolkata) and affirmed by the Hon'ble Supreme Court reported in 2004 (167) E.L.T. A134 (S.C.)] wherein it has been held interalia as under:

"14. We find no substance in the plea of the learned Advocate that there was no mis-declaration since the goods were not goods meant for export which is evident from the fact that the value of goods was only Rs. 80,000/- as against Rs. 29,88,500/- declared by them. It is immaterial and irrelevant that the goods were not shipped and G.R. Form was not negotiated. If the contention of the learned Advocate is accepted there cannot be any offence in respect of goods entered for export as in case of violation of any provisions of law, the goods would not be shipped. We find that provisions of Section 18(1) of FERA was specifically mentioned in the show cause notice and non-mention of specific Section of the Customs Act would not vitiate the proceedings as the allegations and charges against all the Appellants have been detailed in the show cause notice in clear terms and it cannot be claimed that they did not have sufficient notice to represent against those allegations. The submissions made by the learned Advocate for not relying

upon the decision of the Larger Bench in the case of *Om Prakash Bhatia*, 2001 (127) E.L.T. 81 (T-LB) = 2000 (41) RLT 871 is of no avail as this Bench cannot question the correctness of the decision. Judicial propriety demands that the decision of the Larger Bench should be followed by all the Division/Single Bench of the Appellate Tribunal. The Supreme Court in the case of *Bharat Petroleum Corporation v. Mumbai Shramik Sangh*, 2001 (3) SCALE 531 has emphasised that "the decision of a Constitution Bench binds a Bench of two judges of this Court and that judicial discipline obliges them to follow it, regardless of their doubts about its correctness." The Larger Bench of the Tribunal, after considering the decisions in *Shilpi Exports*, held that over-invoicing of goods for exportation was an offence under the Customs Act, 1962. The Larger Bench also distinguished the decision in *Shilpi Exports* by observing that the charge of over-valuation was not proved, the goods were not under a claim for drawback and the exporter had realised the full export value and the Supreme Court dismissed the appeal without touching the legal issue as the matter was decided on the basis of the facts of that case. Accordingly, we hold that the impugned goods are liable for confiscation and penalty is imposable on the Appellant Nos. 1 to 3. The penalty is also imposable on Shri Y.K. Gandhi as he was the Senior Executive of M/s. Fortune Impex and he was looking after the export of the goods. We are also of the view that redemption fine of Rs. 80,000/- is not on higher side and the penalty imposed on the Appellant Nos. 1 to 3 is also not on the higher side. We, therefore, uphold this part of the impugned order. However, penalty on Shri Y.K. Gandhi, being an employee, is reduced to Rs. 25,000/-."

Further, I rely on the ratio of decision of Hon'ble Delhi High Court rendered in the case of *AVI Steel Traders v. Commissioner* reported in 2010 (260) E.L.T. 43 (Del.) wherein it has been held interalia as under:

"6. In the instant appeal, we are concerned in this appeal only with the imposition of penalty under Rule 25 of the Rules. The appellant challenged this penalty by filing the appeal before the Commissioner (Appeals) raising the contention that as Rule 25 of the Rules was not invoked in the show cause notice no penalty could be imposed under this provision. This contention was rejected by the Commissioner (A) in the following terms :

"6. So far as imposition of penalty of Rs. 1,00,000/- under Rule 25 of the Central Excise Rules, 2002 is concerned, there is no doubt that the appellants had contravened the provisions of Central Excise Law and had rendered themselves liable to penal action. The show cause notice specifically allege that the appellants had contravened the provisions of Rule 11 of the Central Excise Rules, 2002 and the Adjudicating Authority in para 9.6 of the impugned Order-in-Original has also held that the appellants had violated the provisions of Rule 11 of the Rules *ibid* with an ulterior motive of passing on the Cenvat credit in respect of the entire quantity of 132.395 MTs of goods, found short. Though I agree that in the show cause notice, rule 25 of the Rules *ibid* has not been specifically invoked, but the show cause clearly mentioned the allegation and charges against the appellants under Central Excise Rules, 2002. The Adjudicating Authority in para 909 of the Order-in-Original has rightly held that non-mentioning or wrong

mentioning of a rule, will not vitiate the present proceedings in view of the case laws discussed therein. Besides, there are number of judgments where the various Hon'ble courts have held that non-mentioning or mere wrong mention of provisions of law in the show cause notice, does not vitiate the proceedings if the allegations and charges against the assessee (appellants) are mentioned in clear terms in the show cause notice. In this regard, the Hon'ble CESTAT in the case of Commissioner of Central Excise, Chandigarh v. Dabur India Ltd. - 2004 (178) E.L.T. 819 (Tri. - Delhi) has held that "Mere wrong mention of provisions of law did not vitiate show cause notice when all allegations are contained in the show cause notice." Further the Hon'ble CESTAT in the case of Standard Industries Ltd. v. Commissioner of C. Ex. Mumbai - 2003 (158) E.L.T. 623 has held that "non mention of Rule in show cause notice not fatal if the facts lead to understanding of the same". Similar views were taken by the Hon'ble Supreme Court in the case of Fortune Impex v. Commissioner - 2004 (167) E.L.T. A 134 (S.C.), wherein the Hon'ble Apex Court has held that "non-mentioning of particular Section of Customs Act 1962 would not vitiate the proceedings when allegations and charges against all the appellants were mentioned in clear terms in the show cause notice." Therefore, in view of the above settled proposition of law, the non-mentioning of the provisions of law in the impugned show cause notice, had not vitiated the present proceedings and the Adjudicating Authority has rightly held the appellants liable to penal action under Rule 25 of the Central Excise Rules, 2002. It will not be out of place to mention here that in respect of Invoices Nos. 1 to 10 issued by the appellants during the period 22-4-2002 to 14-5-2002, the investigations made by the Central Excise Authorities at the appellants' end, had revealed that in number of cases the appellants had made only paper transaction just to pass on the Cenvat credit to the buyers without actually supplying the goods physically. For example, the investigations in respect of Invoice No. 6 dated 30-4-2002 had revealed that the vehicle No. HNU-1813 mentioned on the said invoice, was found to be a Moped, on which the appellants had shown to carry a load of 13 tonnes of excisable goods. Similarly the vehicle No. HR-37A-3694 mentioned in invoice No. 4 dated 29-4-2002 was found a HTV Bus as reported by the Transport office, Ambala and the owner of the bus in his statement dated 11-2-2004 had denied of ever having used his bus for transporting the goods from the appellants' premises to the buyers' premises at Rohtak. Though investigation in respect of the invoices issued by the appellants as mentioned in the Order-in-Original, are not the part of the present proceedings as the Central Excise authorities had not concluded the said investigations at their logic end in as much as the investigations on the part of the buyers' end, were never carried out, but the above modus operandi adopted by the appellants unequivocally, leaves no doubt that the appellants had indulged themselves only in paper transactions with the ulterior motive to pass on the Cenvat credit to the buyers without selling/delivering the excisable goods with the alleged invoices. Therefore, I do not see any reason to interfere with the Order-in-Original so far as the imposition of penalty under Rule 25 of the Rules, is concerned and to that extent, I uphold the Order-in-Original."

7. Not satisfied with the aforesaid decision, the appellant moved to Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal'). The Tribunal affirmed the order of the Commissioner (Appeal) and giving the same reasoning and rejected the contention of the appellant in the following manner :

"6. I have carefully gone through the submissions from both sides and perused the record. As a registered dealer, their obligation to account for the duty paid goods received by them and in respect of which they are entitled to pass on credit is well settled. Accounting does not merely mean accounting in RG-23D but accounting the disposal of the goods as specifically permitted under the Rules. It is strange that while the applicant's record showed such huge quantity of more than 1.3 lakhs kgs. Of inputs, yet no trace of such inputs were found on the date of visit of the officers. One of the explanations offered for the shortage of the inputs was that the goods were sold without bills which a dealer is allowed registration. The provision of Rule 11 of the Central Excise Rules relating to issue of invoice is clearly applicable in terms of Rule 11(7) to the first stage dealer as well as second stage dealer. The failure of the appellant in not issuing invoices for goods sold by them clearly stands admitted. The ingredient of the offence clearly stands disclosed in the show cause notice and subsequently in the orders of the lower authorities. Mere non-mention of the Rule or non-mention of sub-rule cannot act as a prejudice as long as the nature of violation has been disclosed to the assessee. Under these circumstances, the submission of the learned Consultant that Rule 25 has not been invoked in the show cause notice and therefore, no penalty can be imposed does not merit acceptable. The decision of the Hon'ble Supreme Court in Amrit Foods does not apply to the facts of the present case. Similarly, the decision on the case of M.H. Steel Corpn., Ashish Gupta cited supra are of no help to them as the facts of the present case are clearly different from the facts of those cases. It is a clear case of registered dealer admittedly failing in their obligation in accounting the goods received by them. As already observed, accounting does not merely mean accounting in RG-23D but accounting the disposal of the goods as permitted under the Rules. As there is a clear violation on the part of the noticed that stock as per book was 1,32,395 kgs. Of various inputs like alloy steel ingots, alloy steel bars, rods, SS flats but no stock whatsoever was available. The appellants claimed that parts of the goods have been stolen but admitted that no complaint was filed in connection with the alleged theft with the police. They further admitted that the rest of the goods have been sold without bills in the grey market on receipt of cash. The credit of Rs. 3,92,449/- attributable to the above inputs was lying intact and was not passed on. In pursuance of the show cause notice issued, the original authority imposed a penalty of Rs. 1 lakh under Rule 25 of Central Excise Rules, 2002 and Rs. 1 lakh under Rule 13(1) of Cenvat Credit Rules, 2002. On appeal, the Commissioner (Appeals) partly allowed the appeal by setting aside the penalty imposed under Rule 13 of erstwhile Cenvat Credit Rules, 2002 while upholding the penalty imposed under Rule 25 of the Central Excise Rules, 2002."

10. It is in this context, we have to examine the matter. In the show cause notice, as pointed above, not only the allegations are made in detail as to how the appellant

removed the goods from its factory without invoice but it is also specifically mentioned that by the aforesaid act, the appellant had contravened the provisions of Rule 11 of the Rules. Thus, the appellant was put on clear notice as to what kind of violation it had made. The penalty is a consequence thereof and, therefore, non-mentioning of Rule 25 of the Rules was mere inadvertent omission."

In view of the above, I find that the said noticee is liable for penalty under Section 114A of the Customs Act, 1962 and not under Section 112 (b) (ii) of Customs Act, 1962 as it is inadvertently proposed in Show Cause Notice.

11. Whether the Bond-Cum Legal Undertaking in Form H furnished by the Noticee should not be enforced towards the above liabilities?

I find that the Noticee, in terms of Rule 22 of the SEZ Rules, 2006 had executed Bond cum-Legal Undertaking in Form H, whereby they had undertaken for proper utilization and accountal of goods procured Duty-free and to pay duty, interest, penalty etc. in case of violation of any of the conditions mentioned therein. I find that by not ensuring proper safeguard of the goods imported/ procured Duty free, the Noticee has breached the said Bond-cum-Legal Undertaking and made themselves liable for payment of applicable duties on goods, which were burnt/ destroyed in the fire incident and hence, the same were not utilized for Authorized Operations and were not accounted for in terms of the SEZ Rules, 2006. Therefore, I find that the Noticee is liable to pay an amount equal to Duty foregone on the aforesaid goods burnt/ destroyed in the fire incident along with interest in terms of the provisions of Section 28AA of the Customs Act, 1962 from the date of duty free import/ procurement of the said goods till the date of payment of such duty. In view of the above, I find that dues such as duty, interest and penalty etc. is recoverable by enforcing the Bond executed by them. And plea of the noticee that no Bond-Cum Legal Undertaking can be invoked in the present case is not tenable.

12. In view of above discussion and findings, I pass the following order:

ORDER

(i) I confirm the demand of Customs Duty of Rs.1,51,69,853/- (Rupees One Crore, Fifty One Lakh, Sixty Nine Thousand, Eight Hundred and Fifty-Three Only) on the goods destroyed in the fire incident and order to recover the same from them under Section 28(4) of the Customs Act, 1962, read with Section 26 of the SEZ, Act, 2005 and Rule 25 of the SEZ Rules, 2006.


(ii) I order the Noticee M/s. Thermax Limited, Plot No. Z-96/C, Dahej SEZ - II, Dahej, Tal. Vagra, District Bharuch, Gujarat 392130 to pay Interest at the appropriate rate, on the total duty confirmed at Sr. No.12 (i) above, under Section 28AA of the Customs Act, 1962

(iii) I impose penalty of Rs.1,51,69,853/- (Rupees One Crore, Fifty One Lakh, Sixty Nine Thousand, Eight Hundred and Fifty-Three Only) plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed above on M/s. Thermax Limited, Plot No. Z-96/C, Dahej SEZ - II, Dahej, Tal. Vagra, District Bharuch, Gujarat 392130 under Section 114A of the Customs Act, 1962. However, I give an option, under proviso to Section 114A of the Customs Act, 1962, to the Noticee, to pay 25% of the amount of total penalty imposed, subject to the payment of total duty amount and interest confirmed and the amount of 25% of penalty imposed within 30 days of receipt of this order.

(iv) I order to enforce Bond-Cum Legal Undertaking in Form-H furnished by the M/s. Thermax Limited, Plot No. Z-96/C, Dahej SEZ - II, Dahej, Tal. Vagra, District Bharuch, Gujarat 392130 to recover duty, interest & penalty from the said Noticee.

13. This order is issued without prejudice to any other action that may be taken under the provisions of the Customs Act, 1962 and Rules/Regulations framed thereunder or any other law for the time being in force in the Republic of India.

14. The Show Cause Notice bearing F.No. GEN/ADJ/COMM/303/2025-TECH dated 29.05.2025 is disposed of in above terms.


27.03.2026
(Shiv Kumar Sharma)
Principal Commissioner,
Customs Ahmedabad.

F.No. GEN/ADJ/COMM/303/2025-TECH

DIN: 20260371MN000000FAE4

BY SPEED POST / E-MAIL / HAND DELIVERY / THROUGH NOTICE BOARD

To,

M/S. THERMAX LIMITED.,

Plot No. Z-96/C, Dahej SEZ - II, Dahej, Tal.

Vagra, District Bharuch, Gujarat 392130

Copy to:-

1. The Additional Commissioner, Chief Commissioner Office, Customs, Ahmedabad Zone (Kind Attention: RRA Section).
2. The Specified Officer, Dahej SEZ, Dahej.
3. The System In-Charge, Customs HQ, Ahmedabad for uploading on the official website i.e. <http://www.gujaratcustoms.gov.in>.
4. The Assistant Commissioner (Task Force), Customs HQ, Ahmedabad
5. Guard File/Office copy.