सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

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

चौथी मंज़िल **4th Floor,** हडको भवन **HUDCO Bhawan,** ईश्वर भुवन रोड़ **Ishwar Bhuvan Road**
नवरंगपुरा **Navrangpura,** अहमदाबाद **Ahmedabad – 380 009**
दूरभाष क्रमांक **Tel. No. 079-26589281**

DIN - 20260271MN00004934EC

क	फ़ाइल संख्या FILE NO.	S/49-345/CUS/MUN/2024-25
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	MUN-CUSTM-000-APP-882-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	26.02.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original no. MCH/ADC/AKM/165/2024-25 dated 21.10.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	26.02.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. GHCL Ltd. Opp. Punjabi Hall, Nr. Bus stand Navranpura, Ahmedabad-380009

1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम **1962** की धारा **129** डी डी **(1)** (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से **3** महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते है.
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज़ के रूप में आयातित कोई माल.
(a)	any goods exported
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट,1870 के मद सं.**6** अनुसूची **1** के अधीन निर्धारित किए गए अनुसार इस आदेश की **4** प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेज़ों के अलावा साथ मूल आदेश की **4** प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की **4** प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, **1962** (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस,दण्ड,जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. **200/-**(रूपए दो सौ मात्र)या रु.**1000/-**(रूपए एक हज़ार मात्र), जैसा भी मामला हो, से सम्ब न्धित भुगतान के प्रमाणिक चलान टी.आर.**6** की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.**200/-** और यदि एक लाख से अधिक हो तो फीस के रूप में रु.**1000/-**
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the

	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.	
4.	मद सं. **2** के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बंन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम **1962** की धारा **129** ए **(1)** के अधीन फॉर्म सी.ए.**-3** में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, **1962** की धारा **129** ए **(6)** के अधीन, सीमाशुल्क अधिनियम, **1962** की धारा **129** ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रुपए.	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए.	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा ।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	उक्त अधिनियम की धारा **129** (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	

कार्यालय आयुक्त (अपील), सीमा शुल्क, अहमदाबाद.

ORDER-IN-APPEAL

Appeal has been filed by M/s. GHCL Ltd., Opp. Punjabi Hall, Nr. Bus stand, Navranpura, Ahmedabad-380009, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/ADC/AKM/165/2024-25 dated 21.10.2024 (hereinafter referred to as 'the impugned order') issued by the Additional Commissioner, Custom, Mundra Commissionerate (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, are that the appellant had filed the Bill of Entry No. 5423540 dated 24.10.2019 for the clearance of goods declared as SODIUM TRIPOLYPHOSPHATE (INDUSTRIAL GRADE) under CTH 28353100 having assessable value of Rs. 37,20,319/- through their CB M/s. Shivam Sea Trans Private Limited. Data was analysed in respect of Import under Chapter 28 for the period 01.07.2017 to 31.12.2020, with regard to payment of lower IGST @ 5% by declaring serial nos. 166, 167, 168, 169, 170, 171 and 172 of Schedule I of Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 was carried out by the NCTC, Mumbai.

2.1 The appellant had filed the Bill of Entry No. 5423540 dated 24.10.2019 for home clearance of the goods viz. "SODIUM TRIPOLYPHOSPHATE (INDUSTRIAL GRADE)" under CTH 28353100 of the first schedule of the Customs Tariff Act, 1975. The appellant discharged the tax of IGST @ 5% in terms of Serial No. 166 of Schedule-I of IGST Notification 01/2017-IGST(Rate). It appeared that IGST rate @ 5% is applicable to a few specified items of Chapter 28, primarily radioactive substances, nuclear fuel, heavy water and compressed air. From the notification, it appeared that the product "SODIUM TRIPOLYPHOSPHATE (INDUSTRIAL GRADE)" does not figure in Schedule-I of IGST Notification No. 01/2017- Integrated Tax (Rate). Therefore, IGST @ 5% was not applicable to "SODIUM TRIPOLYPHOSPHATE (INDUSTRIAL GRADE)" as claimed by the appellant.

2.2 Furthermore, from Schedule II of IGST Rate in respect of Chapter 28, it was noticed that the aforementioned goods do not figure in this Schedule also. It, therefore, appeared that these goods i.e. SODIUM TRIPOLYPHOSPHATE (INDUSTRIAL GRADE) (not expressly falling under Schedules I & II), actually merit levy of IGST at the rates specified in Schedule-III of Notification No. 01/2007 Integrated Tax (Rate). In view of the above, it

appeared that the appellant had wrongly claimed the Serial No. 166 of Schedule-I of IGST Notification 01/2017- IGST(Rate) instead of Serial No. 39 of Schedule-III of Notification No. 01/2007 Integrated Tax (Rate) with an intention of paying a lower rate of IGST @5% instead of 18%. Accordingly, the differential IGST had been worked out to Rs. 5,23,542/-.

2.4 Thereafter, a Show cause notice was issued to M/s. GHCL Limited, to show cause to the Additional Commissioner of Customs, Mundra, as to why:-

(i) The goods having assessable value of Rs. 37,20,319/-covered under Bill of Entry No. 5423540 dated 24.10.2019 as detailed in above table, should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962;

(ii) the Serial No. 166 of Schedule-I of IGST Notification 01/2017- IGST(Rate) on the goods should not be denied and the same should not be re-assessed at correct rate of IGST @18% under Sr. No. 39 of Schedule III of IGST Notification No. 01/2017;

(iii) The differential duty worked out to Rs. 5,23,542/- should not be recovered under Section 28 (4) of the Customs Act, 1962 along with applicable interest thereon as per Section 28AA of the Customs Act, 1962, as applicable.

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

2.8 Consequently, the adjudicating authority passed the following order with regard to Appellant:

(1) He rejected the IGST rate claimed under Schedule I-Sr. No. 166 of IGST levy Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 for the subject goods and re-classified the IGST rate under Schedule III - Sr. No. 39 of said notification.

(ii) He confirmed the demand of differential duty of Rs. 5,23,542/- under Section 28 (8) readwith Section 28(4) along with applicable interest under Section 28AA of the Customs Act, 1962.

(iii) He held that the goods valued at Rs. 37,20,319/- imported under Bills of Entry No. 5423540 dated 24.10.2019 liable for confiscation under Section 111(m) of the Customs Act, 1962. As the goods stand redeemed/cleared, he imposed redemption fine of Rs. 3,72,032 under Section 125(1) of the Customs Act, 1962 in lieu of confiscation.

(iv) He imposed penalty Rs. 5,23,542/- (Rs. Five Lakhs Twenty Three Thousand Five Hundred Forty Two Only) on the Importer under Section 114A of Customs Act, 1962. He further ordered that the Appellant may avail the benefit of reduced penalty in terms of first proviso of Section 114A provided the benefit of reduced penalty would be available only if the amount of reduced penalty so determined has also been paid within the period of thirty days along with duty so confirmed and applicable interest thereon.

(v) Since, the Appellant had made payment of Rs. 6,85,370/- through Challan No. 1765 dated 08.12.2021; he ordered to appropriate the same towards the dues payable by the appellant.

SUBMISSIONS OF THE APPELLANT:

3. Being aggrieved with the impugned order, the Appellant has filed the present appeal against the order passed by the Additional Commissioner, Custom, Mundra Commissionerate on the following grounds :-

3.1 The Appellant contend that the demand is barred by limitation because the Show Cause Notice (SCN) was issued four years after the relevant period of October 2019, exceeding the standard two-year limit under Section 28(1) of the Customs Act. They argue that the five-year extended period under Section 28(4) can only be invoked if there is evidence of collusion, wilful misstatement, or suppression of facts with the intent to evade duty. The Appellants assert that all relevant details were correctly provided in the Bills of Entry, and mere non-payment or a difference in interpretation does not constitute deliberate deception or mala fide intention. Furthermore, they highlight that the extended period should not apply to cases involving complex interpretations of statutory provisions and industry-wide practices.

3.2 The Appellants argue that no penalty should be imposed under Section 114A of the Customs Act because there was no "mens rea" or intentional act of defiance of the law. They maintain that the legal requirements for imposing a penalty under Section 114A are the same as those for invoking the extended period of limitation under Section 28. Since they claim there was no wilful misstatement or suppression, they argue the penalty is unsustainable. Relying on judicial precedents, they state that penalties should not be imposed for technical or venial breaches where the assessee acted under a bona fide belief regarding classification or notification benefits.

3.3 The appeal challenges the proposal to confiscate the goods under Section 111(m) and the subsequent imposition of a redemption fine under Section 125. The Appellants submit that there was no mis-declaration of "value" or material particulars, as the descriptions used were consistent with the supplier's invoices. They also argue that a redemption fine is not imposable because the goods are not physically available for confiscation and were never seized. They cite various High Court and Supreme Court rulings to support the position that the concept of a redemption fine arises only when goods are available to be redeemed.

3.4 The Appellants contest the recovery of interest under Section 28AA, arguing that prior to August 16, 2024, the Customs Tariff Act, 1975 did not have a substantive provision to levy interest on Integrated Goods and Services Tax (IGST). They point out that Section 3(12) was only amended recently to borrow interest provisions from the Customs Act, and this amendment cannot be applied retrospectively to their 2019 imports. Citing the Mahindra and Mahindra case, they assert that in the absence of explicit statutory authority, interest on additional duties like IGST cannot be charged. Consequently, they claim they are eligible for a refund of ₹1,61,828, which was paid in excess of the differential duty and was effectively an unauthorized interest payment.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 27.01.2026 following the principles of natural justice wherein Ms. Raksha Bhandari, Advocate , appeared for the hearing in virtual mode and she re-iterated the submissions made at the time of filing the appeal.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner, Custom, Mundra Commissionerate and the defense put forth by the Appellant in their appeal.

5.1 The Revenue has invoked Section 28(4) on the ground that the Appellant "willfully" claimed a lower rate of IGST. However, the records show that the description of the goods "Sodium Tripolyphosphate" was correctly declared in the Bill of Entry and the Invoice. The only error was the selection of the Serial

Number of the IGST notification. The Hon'ble Supreme Court in **Uniworth Textiles Ltd. vs. Commissioner of Central Excise, Raipur [2013 (288) E.L.T. 161** (S.C.)] held that:

> *"The conclusion that mere non-payment of duties is equivalent to collusion or willful misstatement or suppression of facts is, in our opinion, untenable."*

5.2 In the present case, the Appellant declared the correct description and CTH. The claim of a specific Serial Number of a notification is an interpretation of law. A difference of opinion between the department and the assessee on the applicability of a notification does not constitute suppression. This view is fortified by the decision in Northern Plastic Ltd. vs. Collector of Customs & Central Excise [1998 (101) E.L.T. 549 (S.C.)], where the Apex Court held that claiming a benefit of a notification, even if found ineligible later, cannot be termed as misdeclaration when all material facts regarding the nature of goods are disclosed.

5.3 Furthermore, the Appellant's conduct in paying the entire amount immediately upon being informed by the PCA (Consultative Letter) on 29.09.2021—nearly two years before the SCN was even issued—demonstrates clear bona fides. Therefore, I find that the essential ingredients of Section 28(4) are missing. The SCN issued on 27.10.2023 for a Bill of Entry dated 24.10.2019 is clearly barred by limitation.

5.4 The Appellant has contested the levy of interest on the differential IGST, arguing that during the period of dispute (October 2019), there was no substantive legal provision enabling the collection of interest on IGST under the Customs Tariff Act, 1975. IGST on imported goods is levied under Section 3(7) of the Customs Tariff Act (CTA), 1975. The machinery for the assessment, collection, and enforcement of duties levied under Section 3 is provided by Section 3(12) of the CTA. During the relevant period in 2019, Section 3(12) stated:

> *"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."*

5.5 It is a well-settled principle of fiscal jurisprudence that interest is a substantive levy and cannot be charged unless the statute specifically provides

for it. The unamended Section 3(12) above borrowed provisions relating to "drawbacks, refunds and exemptions," but significantly omitted any reference to "interest" or "penalties."

5.6 The Hon'ble Bombay High Court in **Mahindra and Mahindra Limited vs. Union of India [2022 (10) TMI 212**] examined a pari materia provision. The Court held that:

- Taxing statutes must be interpreted strictly.
- In the absence of an explicit provision in the Customs Tariff Act to levy interest on additional duties (CVD/SAD), the general machinery provisions of the Customs Act (Section 28AA) cannot be automatically read into it.
- Interest is not a mere procedural adjunct but a substantive liability.

5.7 This judgment was subsequently affirmed by the Hon'ble Supreme Court. Since IGST under Section 3(7) is of the same character as the additional duties discussed in Mahindra & Mahindra, the same ratio applies with full force to the present case.

5.8 Recognizing this legal gap, the Legislature amended Section 3(12) of the CTA via Section 106 of the Finance (No. 2) Act, 2024 (effective from 16.08.2024). The amended section now explicitly includes "interest, recovery, appeals, offences and penalties." The very fact that an amendment was necessary to include the word "interest" confirms that, prior to August 2024, the power to levy interest on Section 3 duties did not exist. This amendment is prospective and cannot validate interest demands for 2019. The jurisdictional Ahmedabad Tribunal, in **Chiripal Polyfilms Ltd. vs. CC-Customs Ahmedabad [2024 (9) TMI 940-CESTAT AHMEDABAD]** and **Sakar Industries Pvt. Ltd. vs. CC Ahmedabad [2024 (10) TMI 1141-CESTAT AHMEDABAD**], has consistently set aside interest on IGST, holding that machinery provisions for recovery do not automatically empower the levy of interest in the absence of a substantive charging provision in the CTA.

5.9 I find that since the import took place in 2019, the unamended Section 3(12) applies. As there was no substantive provision for interest on IGST at that time, the demand under Section 28AA is illegal and without jurisdiction. The Appellant is entitled to the refund of ₹ 1,61,828/-, which was mistakenly paid as interest under a bona fide belief or administrative pressure during the Consultative Letter stage.

5.10 The Appellant has challenged the imposition of a redemption fine of ₹ 3,72,032/- under Section 125 of the Customs Act, 1962, on the grounds that the goods were cleared for home consumption and were neither seized nor available for physical confiscation at the time of adjudication. Section 125 provides for an "option to pay fine in lieu of confiscation." This section is an enabling provision that allows the owner of the goods to pay a fine to save the goods from the state taking possession. The very terminology "in lieu of confiscation" presupposes that the goods are physically available for the state to seize. If the goods have already been cleared, consumed, or are otherwise out of the department's reach, the question of offering an "option" to redeem them does not arise.

5.11 The Adjudicating Authority relied on the Madras High Court decision in **Visteon Automotive Systems India Pvt. Ltd. vs. CESTAT 2018 (9) G.S.T.L. 142 (Mad.)**, which held that physical availability is not a prerequisite for redemption fine. However, I find that the Visteon case dealt with a specific situation of absolute smuggling where no Bill of Entry was filed. In contrast, the present case involves a formal import through a Bill of Entry where the goods were cleared following normal Customs procedures. More importantly, the jurisdictional high court and the Apex Court have taken a contrary view that is binding on this forum. The Hon'ble Bombay High Court in **Commissioner of Customs vs. Finesse Creations Inc 2009 (248) E.L.T. 122 (Bom.)** categorically held:

> *"If the goods are not available, there is no question of redemption of the goods... The fine is in the nature of computation to the state for the wrong done... Once goods cannot be redeemed, no fine can be imposed."*

This judgment was affirmed by the Hon'ble Supreme Court 2010 (255) E.L.T. A120 (S.C.).

5.12 In the present case, the goods were cleared for home consumption in October 2019, the investigation began nearly two years later in September 2021, no seizure was effected under Section 110 of the Customs Act, 1962. The Appellant did not execute any bond that created a legal fiction of the goods being under Customs control. A redemption fine can be sustained if the goods are cleared under a provisional release bond, as the bond serves as a substitute for the goods. However, in the absence of such a bond, the department loses the power to impose a fine once the goods are out of their custody.

5.13 I find that the adjudicating authority erred in relying on the Visteon judgment while ignoring the binding precedents of the Bombay High Court and the Supreme Court in Finesse Creations. Since the goods were cleared under a regular Bill of Entry and were not available for confiscation, the imposition of a redemption fine is legally flawed. Consequently, the fine of ₹ 3,72,032/- is hereby set aside.

5.14 The Adjudicating Authority has imposed a mandatory penalty of ₹ 5,23,542/- under Section 114A of the Customs Act, 1962, on the grounds of "willful misstatement" and "suppression of facts." I find that the imposition of this penalty is legally unsustainable on both statutory and evidentiary grounds. A crucial aspect of this case is the sequence of events regarding the payment of duty.

- 29.09.2021: Consultative Letter issued by PCA Mundra.
- 08.12.2021: Appellant paid the entire differential duty and interest (₹ 6,85,370/-) via TR-6 Challan.
- 27.10.2023: Show Cause Notice (SCN) issued by the Department.

5.15 Section 28(1)(b) of the Customs Act, 1962, provides that a person chargeable with duty may pay the amount on the basis of their own ascertainment or the duty ascertained by the proper officer before the service of notice. Further, Section 28(2) mandates:

> *"The proper officer shall not serve any notice... in respect of the amount so paid..."*

5.16 In the present case, since the Appellant had already discharged the entire duty liability nearly two years prior to the issuance of the SCN, the Department was statutorily prohibited from issuing the SCN in the first place, except in cases of collusion or willful suppression. As decided in above paragraphs of this order, the ingredients of Section 28(4) (willful suppression) are not established. Consequently, when the invocation of Section 28(4) fails, the mandatory penalty under Section 114A, which is inextricably linked to Section 28(4), must also fail.

5.17 Penalty under Section 114A is not a mere consequence of short-payment; it requires a "conscious and deliberate wrong doing." The Hon'ble Supreme Court in **Hindustan Steel Ltd. vs. State of Orissa 1978 (2) E.L.T. J159** (S.C.) held:

"An order imposing penalty... will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest... Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act"

5.18 The error in this case—selecting Sr. No. 166 (IGST 5%) instead of Sr. No. 39 (IGST 18%) for Sodium Tripolyphosphate—is a matter of interpretational error in the newly introduced GST regime. The Appellant did not hide the identity of the goods. In **Akbar Badruddin Jiwani vs. Collector of Customs 1990 (47) E.L.T. 161 (S.C.)**, it was held that where an importer acts on a bona fide belief, no penalty is warranted. The Appellant's immediate payment upon being pointed out by the PCA confirms their bona fide intent to comply, rather than evade.

5.19 I find that the Appellant's act of paying the duty immediately upon intimation and long before the SCN was issued brings the case within the protective ambit of Section 28(2). Furthermore, the lack of evidence regarding any "intent to evade" makes the invocation of Section 114A legally invalid. Therefore, the penalty of ₹ 5,23,542/- is hereby quashed.

5.20 Upon a detailed review of the statutory provisions and the catena of judicial precedents cited above, I conclude that the Adjudicating Authority has fundamentally erred in its application of both law and fact. The primary premise for invoking the extended period of limitation—willful suppression—has been found to be entirely absent, as the Appellant maintained full transparency in their declarations and displayed exemplary compliance by settling the differential duty long before the formal notice was issued. Furthermore, the confirmation of interest on IGST and the imposition of a redemption fine on non-existent goods stand as legal anomalies that run contrary to the specific unamended provisions of the Customs Tariff Act and binding High Court rulings. The Department's insistence on a mandatory penalty in what is clearly a case of interpretive difference in a nascent tax regime is both disproportionate and legally unsustainable. By discharging their liabilities voluntarily and promptly upon intimation, the Appellant has acted in good faith, thereby entitling them to the statutory protections against punitive measures. Consequently, the balance of justice heavily weighs in favor of the Appellant, necessitating the setting aside of the impugned order in its entirety.

5.21. In exercise of the powers conferred under Section 128A of the Customs Act, 1962, I pass the following order:

i. The Order-in-Original No. MCH/ADC/AKM/165/2024-25 dated 21.10.2024 is hereby set aside.

ii. The demand for differential IGST is dropped on the grounds of limitation. However, since the Appellant has already paid the duty and has not contested the merits of the classification, the amount of ₹ 5,23,542/- remains appropriated.

iii. The demand for interest, redemption fine, and penalty is hereby quashed.

iv. The Appellant is eligible for the refund of ₹ 1,61,828/- (paid as interest) and any other amounts paid towards fine or penalty, in accordance with the law.

6. The appeal filed by M/s. GHCL Limited is allowed.

(AMIT GUPTA)
Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-345/CUS/MUN/2024-25 Date:26.02.2026

By Speed post /E-Mail

To,
M/s. GHCL Limited,
Opp. Punjabi Hall, Near Bus Stand,
Navrangpura, Ahmedabad, Gujarat-380009

Copy to:
1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House ,Mundra.
3. The Additional Commissioner of Customs, Custom House, Mundra.
4. Guard File.