	सीमा शुल्क के आयुक्त का कार्यालय **सीमा शुल्क सदन, मुंद्रा, कच्छ, गुजरात** **OFFICE OF THE PR. COMMISSIONER OF CUSTOMS** **CUSTOMS HOUSE, MUNDRA, KUTCH, GUJARAT** **Phone No.02838-271165/66/67/68** **FAX.No.02838-271169/62, Email-adj-mundra@gov.in**
A. File No.	GEN/ADJ/COMM/646/2025-Adjn-O/oPr. Commr-Cus-Mundra
B. Order-in-Original No.	MUN-CUSTM-000-COM-23-26-27
C. Passed by	Nitin Saini, Commissioner of Customs, Customs House, AP & SEZ, Mundra.
D. Date of order and Date of issue:	08.09.2026 08.09.2026
E. SCN No. & Date	24/2025-26/COMM/N.S./ADJN/MCH dated 31.10.2025
F. Importer	M/s Novanext Energies Pvt.Ltd.

1. यहअपीलआदेश संबन्धित को नि:शुल्क प्रदान किया जाता है।
   This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

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

   "केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004"

   "Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004."

3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।
   Appeal shall be filed within three months from the date of communication of this order.

4. उक्त अपील के साथ -/ 1000रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंचआहरितट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

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

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदसं°-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

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

6. अपील ज्ञापन के साथ ड्यूटि/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.

7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

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

8. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

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.

BRIEF FACTS OF THE CASE:-

M/s. Novanext Energies Pvt. Ltd. (IEC: AAHCN9295Q), hereinafter referred to as "the importer, " "Novanext, " or "the noticee " for brevity, having its registered office at Shed No. C-2/334, GIDC Shanker Tekri Udhyognagar, Jamnagar — 361004, had imported certain goods under various Bills of Entry. In the said import transactions, the importer had availed the benefit of exemption under Serial No. 237 of Notification No. 50/2017-Customs, dated 30.06.2017. The complete particulars of the relevant Bills of Entry are annexed hereto and form Annexure—A to this Notice.

2. On the basis of specific intelligence received, it appeared that the importer had availed the exemption benefit under Sr. No. 237 of Notification No. 50/2017-Customs, dated 30.06.2017, without fulfilling the mandatory Condition No. 22 prescribed under the said notification. As per the provisions of the notification, an importer seeking to claim the benefit of exemption under the said serial number is required to comply with both Condition No. 9 and Condition No. 22 thereof. It appeared that the importer, in the present case, had failed to satisfy these conditions. Accordingly, a formal inquiry was initiated against the noticee to verify and ascertain the actual compliance position in respect of the conditions stipulated under the above-mentioned notification.

3. Serial No. 237 of Notification No. 50/2017-Customs, dated 30.06.2017, grants exemption from the payment of Basic Customs Duty (BCD) on certain specified goods, subject to fulfillment of Condition No. 9 and Condition No. 22 of the notification. As per Condition No. 22(a) of the said notification, it is mandatory, in all cases, that the importer furnishes a recommendation certificate issued by an officer not below the rank of Deputy Secretary to the Government of India in the Ministry of Electronics and Information Technology (MeitY), recommending the grant of such exemption. However, during scrutiny of the import documents, it was revealed that the importer had failed to produce the mandatory recommendation certificate from MeitY at the time of importation. In the absence of such a certificate, the importer did not satisfy the essential condition prescribed under the notification. Therefore, it prima facie appears that the benefit of exemption claimed under Sr. No. 237 of Notification No. 50/2017-Customs, dated 30.06.2017, was not legally admissible to the importer.

4. During the course of investigation, the statement of Shri Shabbir Makati, S/o Shri Saifuddin Makati, Managing Director of M/S. Novanext Energies Pvt. Ltd., was recorded under Section 108 of the Customs Act, 1962, on 12.02.2025, wherein he inter-alia stated that:-

- Novanext is engaged in manufacture of Backsheet used in manufacture of Solar Photovoltaic Modules;

- They had taken the benefit of entry no. 237 of the Notification No. 50/2017-Customs dated 30.06.2017. As per the said notification, exemption is available from payment of prescribed goods used in the manufacture of EVA (Ethylene Vinyl Acetate) sheets or backsheet, which are used in the manufacture of solar photovoltaic cells or modules. They are engaged in manufacture of PET based backsheet and supply the same to solar module manufacturers. Accordingly, they have taken benefit of entry no. 237 of the Notification No. 50/2017-Customs dated 30.06.2017;

- It was unintentionally wrongly believed that condition no. 22 was not applicable to them. Hence, Novanext had not furnished certificate as stipulated in condition no. 22 of Notification No. 50/2017-Customs dated 30.06.2017, at the time of import, in respect of goods imported vide bills of entry no. 8085213 and 8092710 dated 30.01.2025 and BE no. 8112725 dated 31.01.2025. However, they have applied to MeitY for the certificate as required under condition no. 22 Notification No. 50/2017-Customs dated 30.06.2017;

- They had always followed all the other requirements for availing benefit of entry no. 237 of the Notification No. 50/2017-Customs dated 30.06.2017 reaffirming their intent to adhere to all the regulatory requirement;

- Novanext had availed benefit of entry no. 237 of the Notification No. 50/2017Customs dated 30.062017, prior to filing of Bills of Entry nos. 8085213, 8092710 and 8112725. He would provide the same;

- Novanext did not furnish certificate as stipulated in condition no. 22 of Notification No. 50/2017-Customs dated 30.06.2017, at the time of import, in respect of earlier bills of entry.

5. It is pertinent to examine Sr. No. 237 of Notification No. 50/2017-Customs, dated 30.06.2017, along with Condition No. 9 and Condition No. 22 prescribed therein. For ease of reference, the relevant conditions are reproduced below:-

Entry No. 237 of Notification No. 50/2017-Customs, dated the 30th June, 2017, reads as follows:-

Sr. No.	Chapter or Headin or sub— heading or tariff item	Description of goods	Standard rate	IGST	Conditi on No
(1)	(2)	(3)	4)	(5)	6)
237	3208, 3815, 3901, or 3920	The following goods for use in the manufacture of EVA (Ethylene Vinyl Acetate) sheets or backsheet, which are used in the manufacture of solar photovoltaic cells or modules, namely: - (i) EVA resin, (ii) EVA masterbatch; (iii) Poly ethylene terephthalate (PET) film; (iv) Poly vinylfluoride (PVF); (v) Poly vinyl di - fluoride (PVDF); (vi) Adhesive resin; and (vii) Adhesive hardner	Nil		9 and 22

9. If the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022.

22. If, the importer at the time of import,-

(a) furnishes in all cases a certificate to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, from an officer not below the rank of a Deputy Secretary to the Government of India in the Ministry of Electronics and Information

Technology (MeitY) recommending the grant of the exemption and the said officer certifies that the goods are required for the specified purpose.

6. Condition No. 22 of Notification No. 50/2017-Customs, dated 30.06.2017, unequivocally stipulates that, in all cases, a certificate issued by an officer not below the rank of Deputy Secretary to the Government of India in the Ministry of Electronics and Information Technology (MeitY) recommending the grant of exemption is mandatory. This certificate must specifically confirm that the imported goods are intended for the specified purpose, and the same is required to be submitted to the Deputy Commissioner of Customs or Assistant Commissioner of Customs concerned. Compliance with this condition is a mandatory prerequisite for availing the benefit of exemption under Serial No. 237 of the said notification. During the course of investigation, the Director of the importer firm, Shri Shabbir Makati, in his voluntary statement dated 12.02.2025, categorically admitted that the requisite certificate from MeitY had not been furnished to the Customs authorities. In view of this admission, it is evident that the importer failed to fulfill the mandatory condition prescribed under Condition No. 22 of Notification No. 50/2017-Customs. Consequently, the importer is not eligible to avail the benefit of exemption claimed under Serial No. 237 of the said notification.

7. In light of the foregoing facts, it therefore appears that the importer has wrongly availed the benefit of exemption under Serial No. 237 of Notification No. 50/2017Customs, dated 30.06.2017, and thereby evaded payment of the applicable Basic Customs Duty (BCD) on the goods imported. Accordingly, the importer appears liable to pay Customs Duty amounting to Rs. 3,78,366,362 (BCD of Rs.2,91,49,740 + SWS of Rs. 29,14,974/- + IGST of Rs. 57,71,648/-) as detailed in Annexure-B to this notice. Summary of the same is given in Table-A below:-

<u>Table-A</u>

Assessable Value	BCD Rate %	BCD Rs.	SWS Rs.	IGST	Total Duty
26,33,72,903	10/15	2,91,49,740	29, 14,974	57,71,648	3,78,36,362

8. LEGAL PROVISIONS

Legal provisions applicable in this case under the Customs Act 1962 are as follows:

8.1. Entry No. 237 of Notification No. 50/2017-Customs, dated the 30th June, 2017, reads as follows:-

Sr. No.	Chapter Heading or sub— heading or tariff item	Description of goods	Standard rate	IGST	Condition No
(1)	(2)	(3)	4	(5)	(6)
237	3208, 3815, 3901, or 3920	The fòllowing goods for use in the manufacture of EVA (Ethylene Vinyl Acetate) sheets or backsheet, which are used in the manufacture of solar photovoltaic cells or modules, namely: - (i) EVA resin, (ii) EVA masterbatch; (iii) Poly ethylene terephthalate (PET)fi1m; (iv) Poly vinylfluoride (PVF); (v) Poly vinyl di - fluoride (PVDF); (vi) Adhesive resin; and (vii) Adhesive hardner	Nil		9 and 22

8.2. Condition no. 9 and 22 of Notification No. 50/2017-Customs, dated the 30th June, 2017 read as follows:-

9. If the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022.

22. (If, the importer at the time of import,-

(a) furnishes in all cases a certificate to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, .from an officer not below the rank of a Deputy Secretary to the Government of India in the Ministry of Electronics and Information Technology (MeitY) recommending the grant of' the exemption and the said officer certifies that the goods are required for the specified purpose.

8.3. Section 46 : Entry of goods on importation ..

(4) The importer while presenting a bill of entry stall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, (if any, and such other documents relating to the imported goods as may be prescribed.

(44) The importer who presents a BE shall ensure the following :

a. *accuracy and completeness of the information given therein;*

b. *the authenticity and validity of any document supporting it; and*

c. *compliance with restriction or prohibition, if any, relating to the goods under this act or under any other law for the time being in force.*

8.4. Section 111: Confiscation of improperly imported goods, etc. _

The following goods brought from a place outside India shall be liable for confiscation:

(m) any goods which do not correspond in pespect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (l) of section 54;

(o) any goods exempted, subject to any condition, fmm duty or any prohibition ih respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

8.5. Section 112: Penalty for improper importation of goods, etc.

Any person, —

(å) 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, to a penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is the greater;

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value there of to a penalty not exceeding the diffèrence between the declared value and the value thereof or five thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difjèrence between the declared value and the value thereof or five thousand rupees], whichever is the highest.

8.6. SECTION 114AA:- Penalty for use of false and incorrect material. —

If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular; in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods. '

8.7. SECTION 125: Option to payfine in lieu of confiscation.

(l) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation where of is prohibated under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit:

Provided that where the proceedings are deemed to be concluded under the pmviso to sub-section (2) of section 28 or under clause (i) Qf sub-sectioñ (6) of that section in respect of the goods which are not prohibated or restricted, 3 [no such fine shall be imposed]:

Provided further that, without prejudice to the provisions of the proviso to subsection (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) *Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.]*

(3) *Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.*

9. Contraventions of the provisions of the law.

From the discussion in para supra, it appears that the importer has contravened following provisions of the Customs Act, 1962 and Rules made thereunder:

i. Section 25 of the Customs Act, 1962, read with Sr. No. 237 of the Notification No. 50 /2017 dated 30.06.2017 in as much as the importer has failed to comply with the condition no. 22 stipulated in the notification for availing exemption benefits.

ii. Section 17 and Section 46 of the Customs Act, 1962 in as much as they failed to assess their duty liability and accordingly failed to file Bill of Entry for imported consignment correctly.

10. Outcome of The Investigation:

10.1. The entry at Serial No. 237 of Notification No. 50/2017-Customs, dated 30.06.2017, grants exemption from payment of Basic Customs Duty (BCD) on goods specified therein, which are intended to be used in the manufacture of solar photovoltaic cells or modules. The said exemption is subject to fulfillment of Condition No. 9 and Condition No. 22 prescribed under the notification. As per Condition No. 22, in all such cases, a certificate from an officer not below the rank of Deputy Secretary to the Government of India in the Ministry of Electronics and Information Technology (MeitY), recommending the grant of the exemption, is required. The certificate must confirm that the imported goods are intended for the specified purpose, and it is to be submitted to the jurisdictional Deputy Commissioner of Customs or Assistant Commissioner of Customs. In the present case, it has been ascertained that the importer failed to furnish the requisite certificate from MeitY at the time of importation.

Accordingly, it appears that the importer did not comply with one of the essential preconditions for availing the exemption under the said entry.

10.2. It is a well-established legal position that when an exemption notification prescribes certain specific conditions for availing a benefit, strict compliance with those conditions is mandatory. The exemption can be lawfully claimed only upon fulfillment of all such stipulated requirements. In the instant case, the importer has failed to satisfy Condition No. 22 of Notification No. 50/2017-Customs, dated 30.06.2017, which is an essential requirement for availing exemption under Serial No. 237. Consequently, it appears that the importer has wrongly availed the benefit of exemption from payment of Basic Customs Duty (BCD) under the said notification without fulfilling the mandatory condition, and is therefore not entitled to the said exemption.

10.3. With the introduction of the system of self-assessment under the Finance Act, 2011, the responsibility squarely lies on the importer to make a true, complete, and correct declaration in the Bill of Entry and to ensure payment of the correct amount of Customs duty as per law. In light of the findings discussed in the preceding paragraphs, it is evident that the importer has wrongly availed exemption under Serial No. 237 of Notification No. 50/2017-Customs, dated 30.06.2017, without compliance with the prescribed conditions. Consequently, the importer appears to have evaded Customs Duty amounting to Rs. 3,78,36,362/- comprising BCD of Rs. 2,91,49,740/-, SWS of Rs. 29,14,974/- and IGST of Rs. 57,71,648/-, as detailed in Table-A annexed to this notice.

10.4. Further, it appears that the importer has claimed inadmissible exemption benefits and thereby contravened the provisions of Sections 17 and 46 of the Customs Act, 1962, relating to self-assessment and filing of correct declarations at the time of import. These acts of omission and commission render the goods, valued at Rs. 26,33,72,903/-, liable to confiscation under the provisions of Sections 111(m) and 111(O) of the Customs Act, 1962.Accordingly, the importer also appears to be liable for penal action under the provisions of Section 112(a)(ii) of the Customs Act, 1962, for their role in the said contravention.

10.5. Additionally, since the importer has availed inadmissible exemption benefits and, by way of willful misstatement, suppression of facts, or collusion, has attempted to short pay Customs duty, they also appear to be liable for penalty under the provisions of Section 114AA of the Customs Act, 1962

11. Accordingly, M/S. Novanext Energies Pvt. Ltd. (IEC: AAHCN9295Q), having its registered office at Shed No. C2/334, GIDC Shanker Tekri Udhyognagar, Jamnagar — 361004, were called upon to show cause, within thirty (30) days from the date of receipt of the notice, as to why:-

(i) The exemption claimed by them under Sr. No. 237 of the Notification No. 50/2017-Customs dated 30.06.2017 should not be denied and rejected in respect of Bills of Entry as detailed in Annexure-A to this Show Cause Notice owing to failure to comply with the condition no. 22 stipulated in the said notification;

(ii) Differential duty of Rs. **3,78,36,362** /- (BCD Rs. 2,91,49,740/- + SWS Rs. 29, 14,974/-+IGST Rs. 57,71,648/-), as calculated in Annexure-B to the notice, should not be demanded and recovered from them under section 28(1) of the Customs Act, 1962.

(iii) The imported goods having declared value as Rs. 26,33,72,903/- of the consignments covered under Bills of Entry as detailed in Annexure-A to this notice, though not available physically, should not be held liable for confiscation under Section 111(m) and Section 111(o) of Customs Act, 1962;

(iv) Interest at appropriate rates should not be levied and recovered from them under Section 28AA of the Customs Act, 1962;

(v) Penalty should not be imposed upon them under the provisions of Section 112(a) and/or 114A of the Customs Act, 1962.

11.1 It is observed that the Show Cause Notice dated 31.10.2025 could not be adjudicated within the period stipulated under Section 28(9)(a) of the Customs Act, 1962. Accordingly, the Chief Commissioner of Customs, in exercise of the powers vested under the said section, extended the period for adjudication by a further six months, thereby extending the time limit up to 30.10.2026.

WRITTEN SUBMISSION:-

12. M/s Novanext Energies Pvt.Ltd. in their submission dated 19.04.2026, interalia submitted that-

12.1 That the impugned proceedings have been initiated without duly appreciating and taking into account the statutory amendments introduced vide Notification No. 2/2021-Customs dated 01.02.2021, whereby a significant change was effected in column (6) against Sl. No. 237 of Notification No. 50/2017-Customs dated 30.06.2017. By virtue of the said amendment, the earlier entry was substituted with “9 and 22”, thereby materially altering the conditions governing the availability of exemption and introducing an additional layer of statutory compliance.

12.2 The noticee has submitted that the aforesaid amendment has brought about a substantial and far-reaching transformation in the scheme of exemption under Sl. No. 237. Prior to the amendment, the exemption was conditional only upon fulfilment of Condition No. 22, which required the importer to furnish, at the time of import, an essentiality certificate issued by an officer not below the rank of Deputy Secretary in the Ministry of Electronics and Information Technology (MeitY), certifying the intended specified use of the imported goods. However, post amendment, the exemption became subject to dual conditions, namely Condition No. 9 and Condition No. 22. In particular, Condition No. 9 mandates strict adherence to the procedure prescribed under the Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022, thereby introducing a comprehensive procedural regime governing import, monitoring, and end-use verification. The noticee has thus submitted that the insertion of Condition No. 9 has resulted in a paradigm shift in the exemption framework, making procedural compliance under the IGCR Rules, 2022 an essential and indispensable requirement.

12.3 The noticee has further submitted that in the context of the amended statutory framework, Rule 2 of the IGCR Rules, 2022 assumes critical importance, as it clearly stipulates that the said rules shall apply wherever an exemption notification requires observance of such rules and where the benefit is contingent upon the specified end use of imported goods. It is submitted that, by operation of Condition No. 9, the applicability of the IGCR Rules, 2022 to the present case is mandatory and not discretionary. The noticee has also submitted that even the impugned notice, in para 10.1, acknowledges that the exemption under Sl. No. 237 pertains to goods intended for use in the manufacture of solar photovoltaic cells or modules and is expressly subject to fulfilment of Conditions No. 9 and 22.

12.4 The noticee has submitted that in view of the amended legal position applicable to the relevant period of import, any action for denial of exemption or recovery of duty could have been validly undertaken only in accordance with the procedure prescribed under the IGCR Rules, 2022. It is further submitted that the statutory mechanism governing both the grant of exemption and the recovery of duty, in cases of non-compliance, is specifically codified under Rule 5 and Rule 11 of the said Rules.

12.5 The noticee has submitted that as per Rule 5(1), an importer intending to avail the benefit of exemption is required to declare the Importer Identification Number (IIN), details of continuity bond, and other prescribed particulars at the time of filing the Bill of Entry. Further, Rule 5(2) casts a statutory obligation upon the jurisdictional Deputy/Assistant Commissioner at the port of import to allow the benefit of exemption upon satisfaction of such compliance. With regard to recovery, Rule 11 provides that in the event of non-compliance or short payment of duty, the jurisdictional Deputy/Assistant Commissioner having control over the premises where the imported goods are put to use is empowered to initiate recovery proceedings, including invocation of bonds. The noticee has thus submitted that the scheme of the IGCR Rules clearly vests exclusive jurisdiction for recovery of duty with the authority having jurisdiction over the place of end use.

12.6 The noticee has submitted that in the present case, the impugned notice has not been issued by the authority prescribed under Rule 11 of the IGCR Rules, 2022, and therefore suffers from inherent lack of jurisdiction, rendering the entire proceedings legally untenable and void.

12.7 The noticee has submitted that the jurisdictional authority, namely the Deputy/Assistant Commissioner of Customs, Jamnagar Division, has already examined the matter and recorded satisfaction regarding fulfilment of the prescribed end-use conditions. It is further submitted that the said authority, vide letter dated 11.12.2024, directed release of the bank guarantees furnished by the noticee, thereby conclusively establishing that the imported goods had been duly utilized for the specified purpose. In such circumstances, it is submitted that there remains no legal basis to demand duty, particularly in the absence of any allegation that the goods were diverted or misused. Despite such acknowledged compliance and discharge of bonds and guarantees, the impugned proceedings seek to deny exemption solely on the ground of non-production of the essentiality certificate at the time of import.

12.8 The noticee has submitted that, without prejudice to the above, the noticee subsequently approached the competent authority in MeitY and furnished complete documentation, including statutory records, production details, and certification from a Chartered Accountant demonstrating end-use compliance. Upon due consideration, the competent authority issued an Office Memorandum dated 13.03.2025 recommending a considerate view in light of the compliance demonstrated. It is further submitted that such subsequent issuance of certificate/clarification constitutes sufficient compliance with Condition No. 22. In support, reliance is placed on Deccan Aviation Pvt. Ltd. v. CCE, wherein it has been held that subsequent production of an essentiality certificate is to be accepted as fulfilment of exemption conditions.

12.9 The noticee has submitted that certain consignments were physically examined and assessed by the Customs authorities prior to clearance, and therefore, the assessments attained finality. Reliance is placed on the decision of the Hon'ble Supreme Court in ITC Ltd. v. Commissioner of Central Excise, wherein it has been held that assessment includes both self-assessment and departmental assessment, and any challenge thereto must be made through the statutory appellate mechanism. It is submitted that in the absence of any challenge to the assessment orders, demand of duty is not permissible. Further reliance is placed on the decisions in Asha Enterprises; Hijaz Kuroda Gloves Company Pvt. Ltd.; SJS International; Sova Solar Limited; Shri Rumen Ray;

Décor India; Rajiv Saha; United Sales Agency; Alcove Construction; B. M. Jain; and Bimal P. Shah.

12.10 The noticee has submitted that in view of the foregoing facts and legal position, all conditions for availing exemption stand duly fulfilled and, therefore, the demand of duty under Section 28(1) and interest under Section 28AA of the Customs Act, 1962 is not sustainable. It is further submitted that in the absence of any allegation or evidence of suppression of facts, wilful misstatement, or collusion, penalty under Section 114A is not imposable; and in terms of the proviso thereto, penalty under Sections 112 or 114 is also not attracted.

12.11 The noticee has submitted that there has been no misdeclaration of any material particulars, and the goods were duly examined and cleared by the Customs authorities at the time of import. Accordingly, confiscation under Sections 111(m) and 111(o) is not attracted, and consequently, no penalty under Section 112 is leviable. It is further submitted that, in any event, as the goods are no longer available for confiscation, imposition of redemption fine is not legally permissible, in view of the settled position of law laid down in Shiv Kripa Ispat Pvt. Ltd. v. CCE and Finesse Creations Ltd., as affirmed by the Hon'ble Supreme Court.

12.12 The noticee has submitted that, in light of the detailed submissions made hereinabove, the proceedings initiated against the noticee are liable to be dropped in toto. It is further submitted that the noticee reserves the right to add to, amend, alter, modify, or withdraw any of the submissions made herein, as may be considered necessary in the interest of justice.

RECORD OF PERSONAL HEARING:

13. Shri Vikas Mehta, consultant, appeared through virtual mode before me on behalf of the noticee on 20.04.2026 and reiterated their submission made vide letter dated 19.04.2026.

DISCUSSION AND FINDINGS:-

14. I have carefully gone through the Show Cause Notice, the relied upon documents, the written submissions filed by M/s. Novanext Energies Pvt. Ltd., the records of personal hearing, and all materials available on record. The issues arising for determination in the present proceedings are:-

(1) Whether the certificate prescribed under Condition No. 22 of Notification No. 50/2017-Customs, dated 30.06.2017, furnished by the noticee subsequent to the issuance of the Show Cause Notice, can be regarded as fulfilment of the said condition, notwithstanding that the noticee claims to have complied with Condition No. 9 of the said notification relating to the prescribed end-use procedure, and whether, in such circumstances, the exemption under Serial No. 237 of the said notification is admissible to the noticee;

(2) whether differential duty of Rs. 3,78,36,362 /- (BCD Rs. 2,91,49,740/- + SWS Rs. 29,14,974/-+IGST Rs. 57,71,648/-) is recoverable under Section 28 of the Customs Act, 1962; and

(3) whether confiscation under section 111(m) and section111(o) of the Customs Act,1962, are imposable.

(4) Whether Interest under Section 28AA of the Customs Act,1962, are leviable and;

(5) Whether Penalty under Section 112(a) and/or 114A of the Customs Act,1962, are imposable.

15. On perusal of the records, it is observed that the noticee had imported goods, namely PET Film, PVDF Film, Adhesive Resin and Adhesive Hardener etc., falling under Chapter Headings 3208 and 3920, for use in the manufacture of backsheet employed in the manufacture of Solar Photovoltaic Modules, and had claimed exemption under Serial No. 237 of Notification No. 50/2017-Customs, dated 30.06.2017. As per the said notification, an importer seeking to avail exemption under Serial No. 237 is required to fulfil both Condition No. 9 and Condition No. 22 thereof. Condition No. 9 requires the importer to follow the procedure prescribed under the Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022, whereas Condition No. 22 mandates that, at the time of import, the importer furnish a certificate from an officer not below the rank of Deputy Secretary to the Government of India in the Ministry of Electronics and Information Technology (MeitY), recommending the grant of exemption and certifying that the goods are required for the specified purpose. On a perusal of the Show Cause Notice, I find that the case against the noticee has been made out solely on the ground of non-fulfilment of Condition No. 22, namely non-production of the requisite MeitY recommendation certificate at the time of import. There is no allegation whatsoever in the Show Cause Notice regarding any violation of the procedure prescribed under the IGCR Rules, 2022, which procedure is referrable to Condition No. 9. The scope of the present proceedings is therefore confined strictly to the question of compliance, or otherwise, with Condition No. 22 alone.

16. In view of the above, the contention raised by the noticee regarding lack of jurisdiction, premised on Rule 11 of the IGCR Rules, 2022, is misconceived and devoid of merit. The said contention proceeds on the assumption that the present demand has been raised for non-compliance with the procedure prescribed under the IGCR Rules, 2022, and that consequently, only the jurisdictional Deputy/Assistant Commissioner having control over the premises where the imported goods are put to use is competent to initiate recovery, in terms of Rule 11 read with Rule 5 thereof. This assumption is factually incorrect, inasmuch as the Show Cause Notice does not allege, at any stage, contravention of Condition No. 9 or of any procedure under the IGCR Rules, 2022. The demand has been raised exclusively on account of non-fulfilment of Condition No. 22, which is a condition independent of, and distinct from, the IGCR Rules, 2022, and which required the noticee to furnish the prescribed MeitY certificate to the proper officer at the time of import. Since the alleged non-compliance does not fall within the ambit of the IGCR Rules, 2022, the jurisdictional bar sought to be placed on the strength of Rule 11 thereof does not arise for consideration. The Show Cause Notice has been issued by the undersigned, being the proper officer having jurisdiction over the Bills of Entry filed and assessed at this port, under Section 28(1) of the Customs Act, 1962, and the proceedings are accordingly maintainable. The objection as to jurisdiction is, therefore, rejected.

17. In the present case, Serial No. 237 of the Notification grants concessional treatment to specified goods intended for use in the manufacture of Solar Photovoltaic Cells/Modules, a sector consistently promoted as part of national policy for development of renewable energy and domestic manufacturing capability. The exemption is thus promotional and incentive-oriented in character. The relevant entry and the conditions governing it are reproduced below for ready reference:-

17.1 Entry No. 237 of Notification No. 50/2017-Customs, dated the 30th June, 2017, reads as follows:-

Sr. No.	Chapter Heading or sub—heading or tariff item	Description of goods	Standard rate	IGST	Condition No.
(1)	(2)	(3)	4	(5)	(6)
237	3208, 3815, 3901, or 3920	The following goods for use in the manufacture of EVA (Ethylene Vinyl Acetate) sheets or backsheet, which are used in the manufacture of solar photovoltaic cells or modules, namely: - (i) EVA resin,(ii) EVA masterbatch; (iii)Poly ethylene terephthalate (PET)film; (iv) Poly vinylfluoride (PVF); (v)Poly vinyl di -fluoride (PVDF); (vi)Adhesive resin; and (vii) Adhesive hardener	Nil		9 and 22

17.2 Condition no. 9 and 22 of Notification No. 50/2017-Customs, dated the 30th June, 2017 read as follows:-

9. If the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022.

22. If, the importer at the time of import,-

(a) furnishes in all cases a certificate to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, from an officer not below the rank of a Deputy Secretary to the Government of India in the Ministry of Electronics and Information

Technology (MeitY) recommending the grant of the exemption and the said officer certifies that the goods are required for the specified purpose.

Discussion on Condition no 22 in respect of Sr.No.237 of Notification No.50/2017 –Customs dated 30.06.2017.

18. I have carefully examined the statutory provisions governing the dispute, particularly Serial No. 237 of Notification No. 50/2017-Customs dated 30.06.2017 read with Condition No. 22 appended thereto.

19. Condition No. 22 mandates production of the requisite certificate from the competent authority at the time of importation. In this regard, I find that the noticee subsequently approached the Ministry of Electronics and Information Technology (MeitY), furnishing before it, inter alia, a Chartered Accountant Certificate issued by M/s. Sarvesh Gohil & Associates, Jamnagar. The said certificate, based on examination of books of accounts, purchase records, production registers, stock statements and sales invoices, certifies that the noticee is engaged in manufacture of solar panel backsheets used in photovoltaic solar modules; that the imported raw materials, namely PET Film, PVDF Film, Adhesive Resin and Adhesive Hardener, were utilized exclusively in the manufacture of such backsheets during the relevant period; that the finished goods were supplied predominantly to manufacturers of solar modules; and that the negligible quantity routed through traders or distributors was also ultimately meant for use in solar modules, the said backsheets having no significant alternate industrial use. On consideration of the said certificate and other supporting documents furnished by the noticee, the competent authority, namely Scientist-D, IPHW Division, Ministry of Electronics and Information Technology, issued an Office Memorandum dated 13.03.2026, which has been placed on record by the noticee. The said Office Memorandum records that the noticee is engaged in the manufacture of solar panel backsheet and that the subject imported goods were raw materials required for such manufacturing activity. It is further noted therein that the Bank Guarantee furnished by the noticee had already been released by the Customs authorities, thereby indicating departmental satisfaction regarding fulfilment of the prescribed end-use conditions, and the Ministry has accordingly requested the Customs authorities to take an appropriate and considerate view in light of the factual position and supporting documents submitted by the noticee. I find that the purpose of requiring a certificate under Condition No. 22 is essentially to ensure that exemption is extended only to eligible goods imported for the specified end-use; once the nodal Ministry itself, upon independent examination of contemporaneous accounting and commercial records including the aforesaid Chartered Accountant Certificate, has acknowledged the eligibility, bona fides and manufacturing activity of the noticee, the substantive object underlying the said condition stands effectively fulfilled. The copy of the Office Memorandum issued by the Ministry of electronics and Information Technology, IPHW Division, New Delhi is reproduced below:

No: W/8/2025-IPHW
Government of India
Ministry of Electronics and Information Technology
IPHW Division
****

Electronics Niketan
6 CGO Complex, Lodhi Road
New Delhi-110003
Dated : 13.03.2025

OFFICE MEMORANDUM

Subject: Request for issuance of CCDC certificate to M/s Novanext Energies for past imports-reg

Reference is invited to this Ministry's Office Memorandum of even number dated 13.01.2026 on the above subject, addressed to the Customs authorities, requesting them to take a considerate view on the request of M/s Novanext Energies Private Limited.

2. M/s Novanext Energies Private Limited has stated that it is a new MSME company engaged in the manufacturing of Solar Panel Back sheets, which are used as a component in photovoltaic solar modules. The firm has further submitted that:

a) Since July 23, they have been importing PET, PVDF & Coating adhesives as raw materials paying, regular dues and manufactured Solar Panel Backsheets and supplied only to solar module manufacturers.

b) They came to know that to promote the "Make in India" movement, Government allows Import of goods at concessional rate of duty for raw materials to manufacture Solar Panel Backsheets which would be supplied to Solar Panel Manufacturers.

c) It has complied with all procedural and substantive requirements under the Customs (Import of Goods at Concessional Rate of Duty) Rules, including execution of bond, furnishing of bank guarantee, maintenance of prescribed records, filing of returns, and end-use verification.

d) The bank guarantee furnished by the firm was released by the Customs authorities, indicating satisfactory compliance with end-use conditions.

e) Customs officers at Jamnagar port has not demanded any other certificate at the time of import.

f) Non-submission of CCDC was unintentional and arose due to lack of awareness of the requirement at the relevant time, and that no such requirement was flagged by the Customs authorities at the time of clearance.

g) Upon becoming aware of the CCDC requirement in February 2025, the firm has since been regularly applying for and obtaining the requisite CCDC from MeitY, and the first such certificate was granted in February 2025.

3. Subsequent to the issuance of the earlier OM dated 13.01.2026 , M/s Novanext Energies Private Limited submitted a formal request for reconsideration, along with a Chartered Accountant Certificate issued by M/s Sarvesh Gohil & Associates, Chartered Accountants, Jamnagar, certifying

the following in respect of the period November 2023 to February 2025, based on documentary evidence, books of accounts, production records and sales records of the firm:

(a) The company is engaged in the manufacture of Solar Panel Back sheets, which are used as a component in photovoltaic solar modules.

(b) For manufacturing of the above product, the company imports PET Film, PVDF Film and coating adhesives as key raw materials.

(c) During the period November 2023 to February 2025, the imported raw materials were used solely for the manufacture of Solar Panel Back sheets at the manufacturing facility.

(d) The Solar Panel Back sheets manufactured during the above period were supplied primarily to solar module manufacturers.

(e) A very small quantity, representing less than 0.2% of the total production, was sold through traders/distributors, with a clarification at the time of such dealings that these quantities would also ultimately be supplied to solar module manufacturers. The CA Certificate further states that solar back sheets have no alternative industrial use other than as a component in photovoltaic solar modules.

(f) The details of imports, consumption of raw materials, production quantities and sales invoices are true and correct as per the books of accounts, production records and sales records maintained by the company.

4.. In view of the above, it is noted that the exemption under Sl. No. 237 of Customs Notification No. 50/2017-Customs, as amended from time to time, is governed and administered under the Customs law framework. Accordingly, the Customs authorities are requested to take an appropriate and considerate view on the request of M/s Novanext Energies Private Limited, keeping in view the submissions and documents furnished by the firm, including the Chartered Accountant Certificate for the period November 2023 to February 2025.

5. This issues with the approval of the competent authority.

Saurabh

Digitally signed by Saurabh Ranjan
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Date: 2026.03.13 18:04:25 +05'30'

(Saurabh Ranjan)

Scientist D

Tel:011-24301229

Email:Saurabh.r@gov.in

Copy to:

1. The Commissioner of Customs / Additional Commissioner of Customs (concerned jurisdiction) — for information and necessary action.

2. M/s Novanext Energies Private Limited — for information.

3. Guard File.

20. I also observe that an exemption notification is required to be interpreted in accordance with its plain language, the scheme of the notification, and the legislative purpose sought to be achieved. While the conditions attached to an exemption entry are required to be complied with, it is equally necessary to distinguish between substantive requirements which go to the root of eligibility — such as the actual and intended use of the imported goods for the specified purpose — and procedural or evidentiary requirements intended to regulate implementation, monitoring, and administrative verification of such use. Where the essential eligibility criteria stand fulfilled and the intended end-use of the imported goods stands duly established on record, the purpose of notification should not be defeated on a technical ground, provided revenue interest is not prejudiced, which brings us to fulfilment of condition no. 9.

Discussion on Condition No. 09 in respect of Sr.No.237 of Notification No.50/2017 –Customs dated 30.06.2017.

21. Having discussed the fulfilment of condition no. 22, it becomes imperative to discuss the aspect of fulfillment of Condition No. 9 of the said notification, which pertains to compliance with the procedure prescribed under the IGCR Rules, 2022. The said Rules are intended to facilitate imports at concessional or nil rate of duty where imported goods are required for specified industrial use or end-use, while simultaneously safeguarding revenue interests. For this purpose, the Rules prescribe procedural requirements such as prior intimation/registration, execution of bond, furnishing of bank guarantee wherever applicable, maintenance of accounts regarding receipt and consumption of imported goods, filing of returns and making records available for verification by the proper officer. Thus, the Rules create a regulatory mechanism for monitoring end-use and to achieve purpose of the exemption notification.

22. From the records, I find that the goods imported by the notice are specialized industrial inputs used in the manufacture of solar panel backsheet, which is an essential component of photovoltaic solar modules. The noticee has furnished production records, consumption details and process explanations demonstrating that PET Film provides structural and insulation support, PVDF Film provides weather resistance and UV protection, and adhesives are used in lamination and bonding of multilayer backsheet structures. The very nature of these imported goods, coupled with the manufacturing records, establishes a direct nexus between the imports and the declared end-use.

23. I further observe that the noticee had entered the IGCR framework in a transparent and lawful manner by executing the requisite bond and furnishing bank guarantee before the jurisdictional authorities. These safeguards are specifically designed to secure the interests of revenue till verification of end-use is completed. Therefore, the essential procedural framework contemplated under the Rules stood substantially complied with.

24. It is also noted that the jurisdictional Deputy Commissioner of Customs, Division Jamnagar, vide letters dated 11.12.2024 and 27.01.2026, requested HDFC Bank, Jamnagar, to release the bank guarantees furnished by the noticee under the IGCR framework, stating that the intended purpose had been fulfilled. Since such bank guarantees are taken to secure compliance with end-use conditions under the IGCR Rules, the said communication indicates that the end-use obligation stood duly fulfilled.

25. In order to further verify the correctness of the aforesaid position, a reference was made to the Assistant Commissioner, Customs Division, Jamangar calling for copies of the returns filed by the noticee under the IGCR Rules, 2022, and seeking confirmation as to whether any discrepancy or violation had been noticed therein. In response, the Assistant Commissioner, Customs Division, Jamnagar, vide letter F. No. GEN/TECH/Misc/2025/2023-O/o DC/AC-Div-JAMN-Cus-Prev-Jamnagar dated 17.07.2026, has furnished copies of the IGCR Monthly Returns/Statements filed by the noticee for the period October-2023 to January-2025, and has categorically stated that no proceedings or action have been initiated against the noticee for non-compliance with the provisions of the IGCR Rules, 2022, and that no discrepancy or violation had been noticed in the returns filed by the importer, as per the records available with that office. This confirmation from the jurisdictional Range/Division office, being the authority entrusted with monitoring end-use compliance under the IGCR Rules, 2022, confirms the position that the procedural requirements under Condition No. 9 stood duly complied with by the noticee.

26. Lastly, it is a settled legal position that when the substantive conditions for claiming an exemption are fulfilled, procedural requirements relating to the manner or timing of submission of documents should be viewed reasonably. The purpose of requiring such certificate was to verify that the imported goods are meant for the specified use and that the importer is an eligible claimant. Once this purpose is fulfilled through communication from the nodal Ministry itself as well as Customs formation tasked with monitoring of end use, the technical lapse can not override the substantive eligibility of the importer. In this regard, the ratio laid down by the Hon'ble Supreme Court in Mangalore Chemicals & Fertilizers Ltd. v. Deputy Commissioner 1991 (55) E.L.T. 437 (S.C.), MANGALORE CHEMICALS & FERTILIZERS LTD. versus DEPUTY COMMISSIONER is squarely applicable, wherein it was held that substantive benefits cannot be denied for technical or procedural infractions when the essential conditions stand fulfilled. Relevant Para 11 of the judgement is reproduced below:-

> "**11.** We have given our careful consideration to these submissions. We are afraid the stand of the Revenue suffers from certain basic fallacies, besides being wholly technical. In Kedarnath's case, the question for consideration was whether the requirement of the declaration under the proviso to Sec. 5(2)(a)(ii) of the Bengal Finance (Sales-tax) Act, 1941, could be established by evidence aliunde. The Court said that the intention of the Legislature was to grant exemption only upon the satisfaction of the substantive condition of the provision and the condition in the proviso was held to be of substance embodying considerations of policy. Shri Narasimhamurthy would say the position in the present case was no different. He says that the notification of 11th August, 1975 was statutory in character and the condition as to 'prior permission' for adjustment stipulated therein must also be held to be statutory. Such a condition must, says Counsel, be equated with the requirement of production of the declaration form in Kedarnath's case and thus understood the same consequences should ensue for the non-compliance. Shri Narasimhamurthy says that there was no way out of this situation and no adjustment was permissible, whatever be the other remedies of the appellant. There is a fallacy in the emphasis of this argument. *The consequence which Shri Narasimhamurthy suggests should flow from the non-compliance would, indeed, be the result if the condition was a substantive one and one fundamental to the policy underlying the exemption. Its stringency and mandatory nature must be justified by the purpose intended to be served. The mere fact that it is statutory does not matter one way or the other. There*

are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some others may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve.

In Kedarnath's case itself this Court pointed out that the stringency of the provisions and the mandatory character imparted to them were matters of important policy. The Court observed :

> ".....The object of S. 5(2)(a)(ii) of the Act and the rules made thereunder is self-evident. While they are obviously intended to give exemption to a dealer in respect of sales to registered dealers of specified classes of goods, it seeks also to prevent fraud and collusion in an attempt to evade tax. In the nature of things, in view of innumerable transactions that may be entered into between dealers, it will wellnigh be impossible for the taxing authorities to ascertain in each case whether a dealer has sold the specified goods to another for the purposes mentioned in the section. *Therefore, presumably to achieve the two fold object, namely, prevention of fraud and facilitating administrative efficiency, the exemption given is made subject to a condition that the person claiming the exemption shall furnish a declaration form in the manner prescribed under the section. The liberal construction suggested will facilitate the commission of fraud and introduce administrative inconveniences, both of which the provisions of the said clause seek to avoid.".*

(Emphasis Supplied)

[See: (1965) 3 SCR 626 at 630]

Such is not the scope or intendment of the provisions concerned here. The main exemption is under the 1969 notification. The subsequent notification which contains condition of prior-permission clearly envisages a procedure to give effect to the exemption. A distinction between the provisions of statute which are of substantive character and were built-in with certain specific objectives of policy on the one hand and those which are merely procedural and technical in their nature on the other must be kept clearly distinguished. What we have here is a pure technicality. Clause 3 of the notification leaves no discretion to the Deputy Commissioner to refuse the permission if the conditions are satisfied. The words are that he "will grant". There is no dispute that appellant had satisfied these conditions. Yet the permission was withheld - not for any valid and substantial reason but owing to certain extraneous things concerning some inter-departmental issues. Appellant had nothing to do with those issues. Appellant is now told "we are sorry. We should have given you the permission. But now that the period is over, nothing can be done". The answer to this is in the words of Lord Denning: "Now I know that a public authority cannot be estopped from doing its public duty, but I do think it can be estopped from relying on a technicality and this is a technicality" [See *Wells* v*. Minister of Housing and Local Government:* 1967 (1) WLR 1000 at 1007].

Francis Bennion in his "Statutory Interpretation", 1984 edition, says at page 683 :

> "**Unnecessary technicality:** Modern Courts seek to cut down technicalities attendant upon a statutory procedure where these cannot be shown to be necessary to the fulfilment of the purposes of the legislation."

27. Further, it is noted that the Hon'ble Tribunal in the matter of COMMR. OF CUS., BANGALORE Versus DECCAN AVIATION PVT. LTD.2006 (205) E.L.T. 617 (Tri. - Bang.) has held that-

*"**3.** On a careful consideration, we find that the Commissioner has examined all the matters in detail and has noted that the appellants are eligible for the benefit of the exemption. The certificate had not been produced at the time of clearance and subsequently, production of clearance certificate along with the refund application has to be upheld to be justifiable cause. We find that in an identical situation, this bench in the case of Transformers and Electricals Kerala Ltd. v. CC, Cochin reported in 2005 (188) E.L.T. 60 has accepted the certificate produced latter along with the refund application and upheld the claim of refund. This bench in the case of CCE v. Integra Micro Systems (P) Ltd. reported in 2005 (180) E.L.T. 174 has held that the delayed production of certificate and production of certificate along with application for refund claim, the benefit is sustainable. The non-production of certificate has been held to be a procedural violation. The Tribunal has relied on a number of judgments including the Apex Court judgments rendered in the case of Dunlop (supra), Kasinka Trading v. Union of India reported in 1994 (74) E.L.T. 782 (S.C.). The judgment relied by the DR in the case of Priya Blue Industries Ltd. v. CC reported in 2004 (172) E.L.T. 145 (S.C.) and that of Sun Export Corporation v. CC, Bombay reported in 1997 (93) E.L.T. 641 (S.C.) has been clearly distinguished in para 6 of the said judgments. The Tribunal has noted that the assessments are not being reopened but only the claim has been considered in light of production of certificate which satisfies the terms of the Notification. The Apex Court in the case of CC (Import) v. Tullow India Operations Ltd. reported in 2005 (189) E.L.T. 401 (S.C.) = 2005 (71) R.L.T. 207 has noted that the production of necessary essentiality certificate from DG of Hydro Carbon is subsequently required to be accepted and it must be treated that importers had fulfilled the condition to obtain the benefit of exemption. In view of these judgments, we do not find any merit in the Revenue's case and same is rejected."*

28. In this regard, reliance is also placed on the judgment of the Hon'ble Supreme Court in Commissioner of Customs v. Tullow India Operations Ltd., 2005 (189) E.L.T. 401 (S.C.) wherein it was held that the requirement of production of an essentiality certificate at the time of import cannot be construed in a rigid or mechanical manner, particularly where such certificate depends upon issuance by another public authority and is not entirely within the control of the importer. The Hon'ble Court observed that non-production of such certificate at the initial stage would not, by itself, disentitle the importer from claiming exemption for all times to come, especially when the substantive conditions of eligibility stand fulfilled. It was further held that the essentiality certificate is in the nature of evidentiary proof of eligibility and that once the competent authority certifies the intended use, the benefit of exemption cannot be denied merely on account of delay in its production. The Court also emphasized that while eligibility conditions are to be construed strictly, procedural or ancillary conditions may receive a liberal interpretation so as to advance the object of the exemption and avoid undue hardship.

*"**30.** The conditions referred to in sub-section (1) of Section 25 as regard time when such certificate is to be produced would, thus, mean those which were within the control and power of the importer. If it is not within the power and control of the importer and depends upon the acts of other public functionaries, non-compliance of such condition, subject to just exception cannot be held to be a condition precedent which would disable it from obtaining the benefit therefrom for all times to come.*

………

***36.** The principles as regard construction of an exemption notification are no longer res integra; whereas the eligibility clause in relation to an exemption notification is given strict meaning wherefor the notification has to be interpreted in terms of its language, once an assessee satisfies the eligibility clause, the exemption clause therein may be construed liberally. An eligibility criteria, therefore, deserves a strict construction, although construction of a condition thereof may be given a liberal meaning*."

29. In view of the foregoing discussion, the findings recorded above and the case laws referred to hereinabove, I hold that the requirement of Condition No. 22 of Notification No. 50/2017-Customs stands satisfied in spirit in the facts and circumstances of the present case more particularly because the imported goods' end use as per condition no. 9 has been fully met as per the law. Consequently, the benefit of exemption under Serial No. 237 of the said notification is rightly admissible to M/s. Novanext Energies Pvt. Ltd., and consequently, no differential duty is recoverable from the noticee under Section 28(1) of the Customs Act, 1962.

30. Interest under Section 28AA is consequential and arises only where a valid demand of duty is confirmed and recoverable. Having held above that the exemption claimed by the noticee is admissible and that no differential duty is recoverable under Section 28(1), the question of levy of interest under Section 28AA does not arise.

31. Confiscation under the Customs Act, 1962 is attracted only where the imported goods are found to have been improperly imported, mis-declared, or cleared in contravention of the conditions governing an exemption, resulting in a violation of law or evasion of duty. In the present case, the substantive requirement of intended end-use stands conclusively established, compliance with Condition No. 9 read with the IGCR Rules, 2022 stands fulfilled, and the requirement of Condition No. 22 stands effectively satisfied through subsequent certification by the competent authority and independent verification by the jurisdictional Customs authorities, as recorded above. There is no material on record to suggest diversion, misutilization, suppression of facts, or mala fide intent on the part of the noticee. Once the exemption itself is held admissible and no contravention of the notification or the Act survives, the very basis for invoking Sections 111(m) and 111(o) ceases to exist. Accordingly, I hold that the goods covered under the Bills of Entry detailed in Annexure-A are not liable to confiscation under Sections 111(m) and 111(o) of the Customs Act, 1962.

32. Since the proposal for confiscation itself is not sustainable, the consequential penalty under Section 112(a) of the Customs Act, 1962 also does not survive. It is a settled position that such penalty is contingent upon the goods being liable to confiscation, which is not the case here. Further, penalty under Section 114A is attracted only in cases involving fraud, collusion, wilful misstatement or suppression of facts with intent to evade duty. In the present case, the Show Cause Notice does not bring on record any material to establish such ingredients. On the contrary, the noticee had effected imports through duly declared Bills of Entry, maintained statutory records, complied with end-use verification under the IGCR framework, and subsequently obtained communication from the Ministry of Electronics and Information Technology supporting its claim. These facts clearly negate any element of mala fide intent or deliberate suppression. Accordingly, penalty under Section 114A is also not imposable.

33. In view of the discussion and findings supra, I hereby pass the following order:

-:ORDER:-

I hereby drop the proceedings initiated vide Show Cause Notice No. 24/2025-26/COMM/N.S./ADJN/MCH dated 31.10.2025 against M/s Novanext Energies Pvt.Ltd.(IEC: AAHCN9295Q).

34. This OIO is issued without prejudice to any other action that may be taken against the claimant under the provisions of the Customs Act, 1962 or rules made there under or under any other law for the time being in force.

Digitally signed by
Nitin Saini
Date: 08-09-2026
17:52:32

(Nitin Saini)
Commissioner of Customs,
Custom House, Mundra

To,

M/S Novanext Energies Private Limited,

Shed No. C-2/334 GIDC, Shanker Tekri,
Udhyognagar Jamnagar - 361004

Copy to:-

i. The Chief Commissioner of Customs, Customs House, Ahmedabad.

ii. The Joint Commissioner (SIIB), C.H., Mundra.

iii. The Deputy/Assistant Commissioner, (EDI/TRC/Legal), CH Mundra