

3020

	<b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT&amp; SPL ECONOMIC ZONE, MUNDRA-370421</b> <b>Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62</b>	
File No.	:	GEN/ADJ/COMM/96/2024-Adjn-O/o Pr Commr-Cus – Mundra
Order-in-Original No.	:	MUN-CUSTM-000-COM-017-24-25
Passed by	:	K. Engineer Pr. Commissioner of Customs, Customs House, AP & SEZ, Mundra.
Date of order and Date of issue	:	15.07.2024 15.07.2024
SCN No. & Date	:	Show Cause Notice waived as per Importer request
Noticee(s) / Party / Importer	:	M/s Graziano Transmissioni India Pvt. Ltd., Survey No. 279, Raisoni Industrial Park, Hinjewadi Phase-II Mann, Taluka Mulshi, Pune, Maharashtra-411057
<b>DIN</b>	:	<b>20240771MO000000A0F9</b>

1. यह अपील आदेश संबंधित को निःशुल्क 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 (1)6 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129 A (1) के अंतर्गत प्रपत्र सीए-3 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, 2<sup>nd</sup> 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, 2<sup>nd</sup> 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 1000/- रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो -/5000 रूपये 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/- रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बैंच आहरितट्रिब्यूनल 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<sup>o</sup> 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 ड्यूटी/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. 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.

7. इस आदेश के विरुद्ध अपील हेतु जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ 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.

**ORDER UNDER SECTION 28(6) OF THE CUSTOMS ACT, 1962**

**BRIEF FACT OF THE CASE**

An intelligence received by the officers of the Directorate of Revenue Intelligence, Delhi Zonal Unit (hereinafter referred to as the "DRI"), indicated that M/s Graziano Transmission India Private Limited (IEC-0597059217) (hereinafter referred to as 'M/s. Graziano' also) having address at Survey No. 279, Raisoni Industrial Park, Hinjewadi Phase-II Mann, Taluka Mulsi, Pune, Maharashtra-411057 was engaged in the business of the manufacture and sale of parts of Light Vehicle and Commercial Vehicle. The intelligence further indicated that M/s Graziano is engaged in the import of Differential Housing/Casings (Automotive parts) having the description "3DU DIFF HOUSING (PARTS FOR AUTOMOTIVE CAR & FOR CAPTIVE CONSUMPTION)" under Customs Tariff Heading 87089900 and availing the benefit of concessional rate of duty (5%) by applying Sl. No. 896 of Notification No. 152/2009-Customs dated 31.12.2009. Further, from the perusal of Sl. No. 896 of the said notification, it is evident that the said benefit is only available to CTH 87089900 i.e. (Other goods) of Heading 8708 of Customs Tariff i.e. **Parts and Accessories of the Motor Vehicles of Heading 8701 to 8705** whereas as per classification under Heading 8708, Differential Housing is correctly classifiable under CTH 87085000 of the First Schedule to the Customs Tariff Act, 1975 (hereinafter referred to as CTA) which attracts merit rate of duty (15%) and no benefit of exemption is available under Notification No. 152/2009-Customs dated 31.12.2009.

2. Accordingly, an investigation was initiated by the DRI against the importer and simultaneous searches were conducted by the Officers of the DRI, Delhi Zonal Unit in association with Ahmedabad Zonal Unit, Noida Regional Unit & Pune Regional Unit at the office-cum-factory premises of the importer at Noida, Sanand (Ahmedabad) & Pune and the office premises of the Customs broker in Gurugram on 08.09.2022. The search proceedings on the following premise, carried out in the presence of independent witnesses were duly recorded under respective panchnamas dated 08.09.2020. The details are as under:

**Table-I**

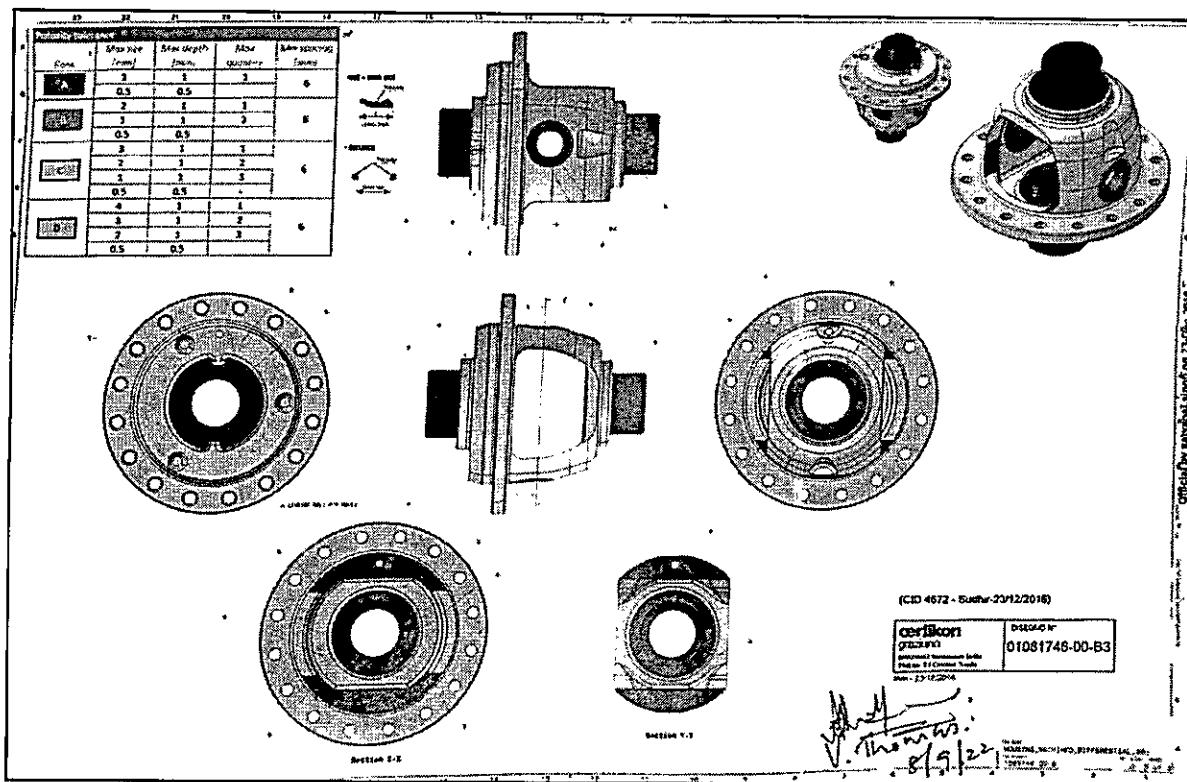
Sl. No.	Premises	Description of Premises
1.	Panchnama drew at Survey No. 279, Raisoni Industrial Park, Hinjawadi Phase II Mann, Taluka Mulsi, Pune, Maharashtra-411057.	Corporate cum Registered Office
2.	Panchnama drew at Plot No. SM-47, Industrial Estate, GIDC, Sanand, Ahmadabad, Gujarat-382110.	Office cum Factory Premises
3.	Panchnama drew at Plot No. 14, Udyog Kendra, Greater Noida, Gautam Budha Nagar, Uttar Pradesh-201304.	Office cum Factory Premises
4.	Panchnama drew at M/s INEXT Global Logistics & Supply Chain Pvt. Ltd. I-Next Tower, 599, Udyog Vihar, Phase-V, Gurugram, Haryana.	Custom Broker Office Premises

3. During the course of investigation Statements of the following persons of M/s. GRAZIANO were recorded under Section 108 of Customs Act, 1962.

- Statement of Shri Chander Parkash, Commodity Manager of GRAZIANO was recorded under Section 108 of the Customs Act, 1962 on 08.09.2022.

- Statement of Shri Sandeep Raina, Deputy General Manager (Sales) of GRAZIANO, recorded on 08.09.2022.
- Statement of Shri Vinumon Thomas, Assistant General Manager (Manufacturing Engineering) of GRAZIANO on 08.09.2022.
- Statement of Shri Mohit Tiwary, Senior Executive (Finance) of GRAZIANO, on 08.09.2022.
- Statement of Shri Anup Kumar Goyal, CFO of GRAZIANO on 08.09.2022.

4. M/s. GRAZIANO has imported 3DU Diff Housing having part number 01081746-00-B3 number which is basically a casing that houses the differential of a motor vehicle. The differential housing also known as the differential case is a component of the drivetrain system which is responsible for enclosing and supporting the differential gears and bearings. The differential housing is typically a sturdy, metal enclosure that is part of the axle assembly. Its main function is to house the differential gears and provide a mounting point for the axle shafts. The axle shafts extend from the differential housing to the wheels, transferring power from the differential to the wheels. The differential itself is a set of gears that allows the wheels to rotate at different speeds when the vehicle is turning. It distributes torque between the two wheels, enabling smooth and controlled handling. The differential gears are housed within the differential housing, which protects them from contaminants and provides support. Further, in order to understand "3DU Diff Housing", the drawing and pictures of the said goods are reproduced below:



(Drawing of 3DU Diff Housing, Part Number 01081746-00-B3)

5. From the various statements of officials of GRAZIANO which were recorded during the investigation, it had been corroborated that the imported part i.e. 3DU Diff Housing (Part Number 01081746-00-B3) was DIFF Case, also known as differential housing and is the part of the differential assembly used as the part of the axle or drive unit/drive line for electric vehicle. Further, on going through the official website of the supplier of Graziano i.e M/s Yeong HWA Metal Co Lt, Korea, it is apparent that the said goods were called as DIFF Case and the said is part of axle and the same is established from their website and for better understanding the image of their website is as below:

YEONG HWA METAL CO., LTD

Our Company Our Product Quality Certifications Process

Axe

Total 3 (1 page) Product Name Search

Engine Axle Brakes Transmission Parts

Product Name: Wheel Hub  
Material: Ductile Cast Iron  
Weight: 3-30kg  
Car manufacturers:

Product Name: Diff Case  
Material: Ductile Cast Iron  
Weight: 2-10kg  
Car manufacturers:

Other 14.02 Casting which holds wheel, brake and steering components and connects to the engine drive shafts.

• Casting which control the power and speed via the gearbox to the rear wheels of a rear wheel drive car. Also enable acceleration of vehicle speeds during cornering or rough road driving.

*Seen and understood.  
M. [Signature] V. [Signature] 2/9/22*

Differential Housing / Casings for differential are parts of axles and as per the heading 8708 of Chapter 87 of the CTA and explanatory notes to the Harmonized Commodity Description and Coding System (Harmonized System) of CTH 8708, "Differential Housing (Part of Axles-Automotive Components)" are having specific CTH 87085000 and are correctly classifiable under CTH 87085000 wherein merit rate of duty is 15% and there is no exemption under the Notification No. 152/2009 dated 31.12.2009. The importer have mis-classified the goods under CTH 87089900 to claim undue benefit under Sl. No. 896 of Notification No. 152/2009 dated 31.12.2009 as the benefit is not available under CTH 87085000 against said Notification. Consequently, it emerged that M/s. Graziano has evaded duty aggregating to Rs. 4,32,85,061/- . **The details of calculation of short payment of duty is as under:-**

S. No	Name of Port	Assessable Value	Duty Paid (BCD (@5%, SWS @10% & IGST @28%) (Rs.)	Duty Payable (BCD @15%, SWS @10% & IGST @28%) (Rs.)	Differential Duty (Rs.)
1	Mundra Sea Port	307422318	107720781	151005837	43285061

6. M/s Graziano Transmission India Private Limited vide letter dated 23.01.2024, informed the investigating agency that that they have paid the differential duty, applicable interest and 15% Penalty, and requested for the closure of the case under Section 28(6) of the Customs Act, 1962, without the issuance of a Show Cause Notice.

7. After completion of investigation, the DRI Delhi Zonal Unit, Delhi vide letter dated 16.02.2024 forwarded an Investigation report under Section 110AA of the Customs Act, 1962 for closure of the case under the Section 28(6) of the Customs Act, 1962.

## **WAIVER OF SHOW CASUE NOTICE AND PERSONAL HEARING**

8. The request of M/s. Graziano for waiver of Show Cause Notice in the present case was examined and request of M/s. Graziano for waiver from show cause notice was considered in light of Hon'ble Apex Court order in case of Commissioner of Customs vs. Virgo Steel [2002 (141) E.L.T. 598 (S.C.)], wherein it was held that-

(i) *"If we consider the mandatory requirement of issuance of notice under Section 28 of the Act, it will be seen that the requirement is provided by the Statue solely for the benefit of the individual concerned, therefore, he can waive that right. In other words, this section casts a duty on the Officer to issue notice to the person concerned of the proposed action to be taken. This is not in the nature of a public notice nor any person other than the person against whom the proceedings are initiated has any right for such a notice. Thus, this right of notice being personal to the person concerned, the same can be waived by that person".*

8.1 After considering the request of importer for waiver from the show cause notice, a letter dated 08.03.2024 and 06.06.2024 was issued to them regarding waiver of personal hearing in the case, however they did not respond. *Audi alteram partem*, is an important principle of natural justice that dictates to hear the other side before passing any order. Therefore, personal hearing in the matter was fixed on 25.06.2024 at 03:00PM.

### **IMPORTER'S SUBMISSION**

9. The importer vide letter dated 25.06.2024 submitted as under: -

- The investigation initiated concerned the HSN classification of "3DU Differential Housing" adopted by them. The disputed customs duty along with applicable interest and penalty has been duly paid.
- In this regard, we are in receipt of letter mentioned at S. No. (1) hereinabove whereby your good office has requested us to submit a letter seeking waiver of personal hearing in the adjudicating proceedings.
- Today, we have further received letter mentioned at S. No. (ii) hereinabove whereby personal hearing before your good self has been fixed for 3pm on 25.06.2024.
- Given that the demand has been duly satisfied and has been duly acknowledged in your captioned letter, we seek to conclude the adjudication proceedings expeditiously and without issuance of any further notices. Therefore, we respectfully request a waiver of the personal hearing.
- In aforesaid backdrop, we request that the adjudication proceedings be finalized at the earliest convenience.

### **DISCUSSION AND FINDINGS**

10. I have carefully gone through the Show Cause Notice, the relied upon documents, legal provisions and the records available before me. The issue involved in the present case is of misclassification of goods and wrong availment of benefit of notification No. 152/2009-Customs dated 31.12.2009 thereon. M/s Graziano has imported Differential Housing / Casings (Automotive parts) having the description "3DU DIFF HOUSING (PARTS FOR AUTOMOTIVE CAR & FOR CAPTIVE CONSUMPTION)" under Customs Tariff Item 87089900 and availing the benefit of concessional rate of duty (5%) by applying Sl. No. 896 of Notification No. 152/2009-Customs dated 31.12.2009 however the said goods was rightly classifiable under the Customs Tariff Item 87085000.

11. At this stage, it will be helpful for me to take references of heading 8708 of Chapter 87 of the CTA and relevant Explanatory Notes to the Harmonized Commodity Description and Coding System (Harmonized System) of CTH 8708, issued by World Customs Organization for better understanding of classification of the impugned goods i.e Differential Housing (Part of Axles- Automotive Components),.

➤ **The Heading 8708 of the Customs Tariff Act, 1975 stipulates as under:-**

8708		PARTS AND ACCESSORIES OF THE MOTOR VEHICLES OF HEADINGS 8701 TO 8705
8708 10	-	Bumpers and parts thereof
8708 10 10	---	For tractors
8708 10 90	---	Other
	-	Other parts and accessories of bodies (including cabs)
8708 21 00	--	Safety seat belts
8708 29 00	--	Other
8708 30 00	-	Brakes and servo-brakes; parts thereof
8708 40 00	-	Gear boxes and parts thereof
8708 50 00	-	Drive-axles with different, whether or not provided with other transmission components, non-driving axles; parts thereof
8708 70 00	-	Road wheels and parts and accessories thereof
8708 80 00	-	Suspension systems and parts thereof (including shock-absorbers)
	-	Other parts and accessories
8708 91 00	--	Radiators and parts thereof
8708 92 00	--	Silencers (mufflers) and exhaust pipes; parts thereof
8708 93 00	--	Clutches and parts thereof
8708 94 00	--	Steering wheels, steering columns and steering boxes; parts thereof
87089500	--	Safety airbags with inflator system; parts thereof
<b>87089900</b>	<b>--</b>	<b>Other</b>

➤ **Relevant Explanatory Notes of CTH 8708- Parts and accessories of the motor vehicles of heading 8701 to 8705;**

87.08 - Parts and accessories of the motor vehicles of headings 87.01 to 87.05.

8708.10 - Bumpers and parts thereof

- Other parts and accessories of bodies (including cabs) :

8708.21 - Safety seat belts

8708.22 - Front windscreens (windshields), rear windows and other windows specified in Subheading Note 1 to this Chapter.

8708.29 - Other

8708.30 - Brakes and servo-brakes; parts thereof

8708.40 - Gear boxes and parts thereof

8708.50 - Drive-axles with differential, whether or not provided with other transmission components, and non-driving axles; parts thereof

➤ The relevant portion of explanatory notes to heading 8708 states as under:-

*This heading covers parts and accessories of the motor vehicles of heading 8701 to 8705 provided the parts and accessories fulfil both the following conditions;*

*(i) They must be identifiable as being suitable for use solely or principally with the above-mentioned vehicles;*

*And (ii) They must not be excluded by the provisions of the Notes to Section XVII.*

➤ Further, relevant portion of Notes to Section XVII are reproduced below;

1.- This Section does not cover articles of heading 95.03 or 95.08, or bobsleighs, toboggans or the like of heading 95.06.

2.- The expressions "parts" and "parts and accessories" do not apply to the following articles, whether or not they are identifiable as for the goods of this Section :

(a) Joints, washers or the like of any material (classified according to their constituent material or in heading 84.84) or other articles of vulcanised rubber other than hard rubber (heading 40.16);

(b) Parts of general use, as defined in Note 2 to Section XV, of base metal (Section XV), or similar goods of plastics (Chapter 39);

(c) Articles of Chapter 82 (tools);

(d) Articles of heading 83.06;

(e) Machines or apparatus of headings 84.01 to 84.79, or parts thereof, other than the radiators for the articles of this Section; articles of heading 84.81 or 84.82 or, provided they constitute integral parts of engines or motors, articles of heading 84.83;

(f) Electrical machinery or equipment (Chapter 85);

(g) Articles of Chapter 90;

(h) Articles of Chapter 91;

(i) Arms (Chapter 93);

(j) Lamps or lighting fittings of heading 94.05; or

(k) Brushes of a kind used as parts of vehicles (heading 96.03).

3.- References in Chapters 86 to 88 to "parts" or "accessories" do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part or accessory.

**11.1** I observe that the Classification of any product under Customs Tariff is governed by the principles contained in Rule 1 to Rule 6 of General Rules for the Interpretation (GIR). Rule 1, *inter alia*, provides that "for legal purposes, classification shall be determined according to the terms of the headings and any

*relative Section or Chapter Notes*". From the above provisions of heading 8708 of Chapter 87 of the CTA and explanatory notes to the Harmonized Commodity Description and Coding System (Harmonized System) of CTH 8708, I find that the goods "Differential Housing (Part of Axles-Automotive Components)" are having specific CTH 87085000 and are correctly classifiable under CTH 87085000. I further find that benefit under Notification No. 152/2009 dated 31.12.2009 is not available to the goods which fall under the CTH 87085000. Thus, I hold that the importer has wrongly availed the benefit of Notification No. 152/2009 dated 31.12.2009 and benefit availed by the import under the notification no. 152/2009-Cus dated 31.12.2009 is liable to be denied .

**Applicability of Section 28(4) of Customs Act, 1962.**

12. I find that evidences in the form of email conversation between Shri Prakash Chander, Commodity Manager of Graziano (email: [chander.prakash@dana.com](mailto:chander.prakash@dana.com)) having recipients as Mr. Karthik Selvan, Mr. Kamlesh Soni, Mr. HY Hong & Mr. Rajesh Aggarwal and overseas supplier clearly establishes that M/s. Graziano was completely aware of the fact that their imported good i.e. 3DU Diff Housing (Part Number 01081746-00-B3) is a Diff Housing and correctly classifiable under CTH 87085000 and the same was confirmed from their overseas supplier vide email mentioned. Further, Graziano was aware about the fact that CTH 87085000 doesn't have preferential tariff rate under CEPA and they have deliberately misclassified 3D Diff Housing under CTH 87089900 in order to avail the benefit of exemption is available under Notification No. 152/2009-Customs dated 31.12.2009.

12.1. After introduction of self-assessment, it is obligatory on the part of importer to declare correct CTI of the impugned goods in bill of entry. The importer has wilfully mis-stated the facts by way of declaring wrong CTI. Thus, I don't find any flaw in invoking section 28(4) of the Customs Act, 1962 in the present case.

**Conclusion of proceedings under Section 28(6)(i) of Customs Act, 1962.**

13. I find further that the during the course of investigation the importer has paid the entire duty amount along with interest and penalty@15% and vide letter dated 23.01.2024, they have requested for the closure of the case under Section 28(6) of the Customs Act, 1962, without the issuance of a Show Cause Notice

The details of the payment made by the importer is as under: -

S.No	Port	TR-6 Challan/Dated	Amount (In Rs.)	Remarks
1	Custom House Mundra	1519 dated 06.10.2022	4,32,85,056	Differential Customs Duty
		7414 dated 13.02.2024	100	
2		1520 dated 06.10.2022	67,61,073	Interest
		7414 dated 13.02.2024	100	

3		6299 dated 02.01.2024	64,92,758	Penalty
		7414 dated 13.02.2024	100	
Total			5,65,39,187	

**13.1** I have examined the request of importer for closure of the case under Section 28(6) of the Customs Act, 1962. I find that Section 28(6) of Customs Act, 1962 provides that "*the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or subsection (4), shall, without prejudice to the provisions of sections 135, 135A and 140 be deemed to be conclusive*". The relevant provision of section 28(6) is produced hereunder for sake of clarity: -

*"(6) Where the importer or the exporter or the agent or the employee of the importer or the exporter, as the case may be, has paid duty with interest and penalty under sub-section (5), the proper officer shall determine the amount of duty or interest and on determination, if the proper officer is of the opinion—*

*(i) that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or subsection (4), shall, without prejudice to the provisions of sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein; or*

*(ii) that the duty with interest and penalty that has been paid falls short of the amount actually payable, then the proper officer shall proceed to issue the notice as provided for in clause (a) of sub-section (1) in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of one year shall be computed from the date of receipt of information under sub-section (5)"*

**13.2** The importer has paid the entire duty amount along with applicable interest and penalty prescribed under Section 28(5) of Customs Act, 1962 during the investigation. I find the matter is deemed to be conclusive under Section 28(6) of the Customs Act, 1962 in respect of M/s. Graziano Transmissioni India Private Limited without prejudice to the provisions of Section 135, 135A and 140 of the Customs Act, 1962. I hold so.

**14.** In view of above discussion and findings, I pass the following order: -

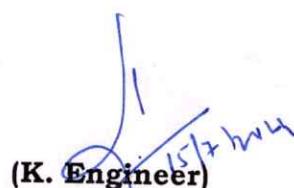
: ORDER:

- (i) I reject the declared classification of the subject goods i.e. "3DU DIFF HOUSING" under CTI 87089900 and order to re-classify the same under Customs Tariff Heading No.87085000 of the First Schedule to the Customs Tariff Act, 1975 with consequential duty.

- (ii) I deny the benefit of exemption availed by M/s. Graziano Transmissioni India Private Limited under Notification No. 152/2009-Customs dated 31.12.2009.
- (iii) I determine differential duty payable at Rs. 4,32,85,061/- under Section 28(8) read with Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA ibid.
- (iv) I order to appropriate the payment made by the importer towards duty of Rs. 4,32,85,156/-, interest of Rs.67,61,173/- and penalty of Rs. 64,92,858/- under the provisions of Section 28(5) of customs Act, 1962.
- (v) I hold that in terms of provisions under Section 28(6)i) of the Customs Act, 1962, the proceedings in respect of M/s Graziano Transmission India Private Limited (IEC-0597059217) shall be deemed to be conclusive without prejudice to the provisions of Section 135,135A and 140 of the Customs Act, 1962.

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.

O/C

  
(K. Engineer)

Pr. Commissioner of Customs  
Custom House, Mundra.

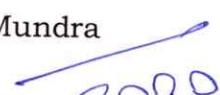
DIN:- 20240771MO000000A0F9

Date:-15.07.2024

F.No. GEN/ADJ/COMM/96/2024-Adjn-O/o Pr Commr-Cus – Mundra

To

By Speed Post/E-mail

  
3020

1. M/s Graziano Transmissioni India Private Limited (IEC-0597059217),  
Survey No. 279, Raisoni Industrial Park,  
Hinjewadi Phase-II Mann, Taluka Mulshi,  
Pune, Maharashtra-411057

**Copy for information and further necessary action / information/ record to:**

- a. The Chief Commissioner of Customs, CCO, Ahmedabad.
- b. Additional Director, DRI(DZU), CGO Complex, Lodhi Road, New Delhi.
- c. The Deputy/Assistant Commissioner (Legal/Prosecution), Customs House, Mundra
- d. The Deputy/Assistant Commissioner (Recovery/TRC), Customs House, Mundra.
- e. The Deputy/Assistant Commissioner (EDI), Customs House, Mundra.
- f. Notice Board
- g. Guard File