



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद
सीमा शुल्क भवन, आल इंडीया रेडियो के बाजू में, नवरंगपुरा, अहमदाबाद 380009
दूर भाष (079) 2754 46 30 फैक्स (079) 2754 23 43

OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, AHMEDABAD
CUSTOMS HOUSE, NEAR ALL INDIA RADIO, NAVRANGPURA, AHMEDABAD 380009
PHONE : (079) 2754 46 30 FAX (079) 2754 23 43

निबन्धित पावती डाक द्वारा / By **SPEED POST A.D.**

फा. सं./ F. No.: **VIII/10-41/Commr./O&A/2022-23**

DIN- 20240871MN000055955D

आदेश की तारीख/Date of Order :08.08.2024
करने की तारीख/Date of Issue :08.08.2024

द्वारा पारित/Passed by:-

शिव कुमार शर्मा, प्रधान आयुक्त
Shiv Kumar Sharma, Principal Commissioner

मूल आदेश संख्या :

- Order-In-Original No: AHM-CUSTM-000-PR.COMMR-39-2024-25 dated 08.08.2024 in the case of M/s. MG Motor India Private Limited** having registered office at 10th Floor, Milestone Experion Centre, Sector-15, Part-II, Gurgaon, Haryana- 122 001
- जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।
- This copy is granted free of charge for private use of the person(s) to whom it is sent.
- इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, दुसरी मंजिल, बहुमाली भवन, गिरिधर नगर पुल के बाजू में, गिरिधर नगर, असारवा, अहमदाबाद-380 004 को सम्बोधित होनी चाहिए।
- Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, Ahmedabad – 380004.
- उक्त अपील प्रारूप सं. सी.ए.3 में दाखिल की जानी चाहिए। उसपर सीमा शुल्क (अपील) नियमावली, 1982 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ

संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए)। अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियों में अग्रेषित किए जाने चाहिए।

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

Sub: Show Cause Notice VIII/10-41/Commr./O&A/2022-23 dated 11.09.2023 issued by the Commissioner of Customs, Ahmedabad to M/s. MG Motor India Private Limited (IEC-AAKCM8110E) (hereinafter referred to as 'the Importer') having registered office at 10th Floor, Milestone Experion Centre, Sector-15, Part-II, Gurgaon, Haryana- 122 001.

Brief facts of the case:

M/s. MG Motor India Private Limited (IEC-AAKCM8110E) (hereinafter referred to as 'the Importer') having registered office at 10th Floor, Milestone Experion Centre, Sector-15, Part-II, Gurgaon, Haryana- 122 001 and manufacturing plant at GIDC, Industrial Estate, Halol District- Panchmahal, Gujarat-389350 are engaged in the import of various goods (automobile parts) (hereinafter referred to as "imported goods") used in the manufacturing of passenger vehicles (cars).

2. An intelligence developed by the officers of the Directorate of Revenue Intelligence, Jaipur Regional Unit (hereinafter referred to as "the DRI") indicated that M/s. MG Motor India Private Limited was wrongly availing the benefit of Serial No. 485A, 490, 494A, 516C and 581B of Notification No.50/2017-Customs dated 30.06.2017. Vide Notification No. 21/2021-Customs dated 31.03.2021 some amendments were made in the principal Notification No. 50/2017-Customs in the entries at serial no. 448G, 448H, 485A, 490, 494A, 516C and 581B wherein the exemption available under these entries was withdrawn for the goods which were suitable for use in motor vehicles, motor cars and motor cycles. More specifically, the exemption available under these entries was withdrawn for the goods suitable for use in:-

- i. Motor vehicles falling under heading 8702 or 8704;
- ii. Motor cars falling under heading 8703; or
- iii. Motor cycles falling under heading 8711";

After amendments made vide Notification No.21/2021-Customs dated 31.03.2021, the relevant entries of the Notification No.50/2017- Customs read as under:-

S. No.	Chapter or Heading or sub-heading or tariff item	Description of goods	Standard rate	Integrated Goods and Services Tax	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
448G	8414 40	All goods other than those suitable for use in – (i) motor vehicles falling under heading 8702 or 8704; (ii) motor cars falling under heading 8703; or (iii) motor cycles falling under heading 8711	7.5%	-	-
448H	8414 80 (except 8414 80 11)	All goods other than those suitable for use in – (i) motor vehicles falling under heading 8702 or 8704; (ii) motor cars falling under heading 8703; or (iii) motor cycles falling under heading 8711	7.5%	-	-
485A	850110/20 850131/32/33/34, 850140, 850151/52/53, 850171/72	All goods other than those suitable for use in – (i) motor vehicles falling under heading 8702 or 8704; (ii) motor cars falling under heading 8703; or (iii) motor cycles falling under heading 8711	10%	-	-
490	8537	All goods other than those suitable for use in – (i) motor vehicles falling under heading 8702 or 8704; (ii) motor cars falling under heading 8703; or (iii) motor cycles falling under heading 8711	7.5%	-	-
494A	9032 89	All goods other than those suitable for use in – (i) motor vehicles falling under heading 8702 or 8704; (ii) motor cars falling under heading 8703; or (iii) motor cycles falling under heading 8711	7.5%	-	-
516C	8536 41 00, 8536 49 00	All goods other than those suitable for use in – (i) motor vehicles falling under heading 8702 or 8704; (ii) motor cars falling under heading 8703; or	10%	-	-

		(iii) motor cycles falling under heading 8711			
581B	9031 80 00	All goods other than those suitable for use in – (i) motor vehicles falling under heading 8702 or 8704; (ii) motor cars falling under heading 8703; or (iii) motor cycles falling under heading 8711	7.5%	-	-

3. The intelligence suggested that M/s. MG Motor India Private Limited had wrongly availed benefits of serial no. . 448G, 448H, 485A, 490, 494A, 516C and 581B of Notification No.50/2017-Customs even after above stated amendments were made vide Notification No.21/2021-Customs dated 31.03.2021. Therefore, summonses dated 06.10.2022, 13.10.2022, 01.11.2022, 15.11.2022 and 24.11.2022 were issued to M/s. MG Motor India Private Limited to tender statement and to submit details of Bills on Entry on which they had wrongly availed benefit of Serial no. 448G, 448H, 485A, 490, 494A, 516C and 581B of Notification No.50/2017-Customs as amended by Notification No. 21/2021-Customs dated 31.03.2021.

4. M/s. MG Motor India Private Limited had not responded to various summonses as detailed above issued to them, however in response to summons dated 24.11.2022, Shri Mukesh Soni, Assistant General Manager-Finance, M/s. MG Motor India Private Limited appeared on 01.12.2022 for tendering his statement. His statement was recorded under section 108 of the Customs Act, 1962 on 01.12.2022 wherein he interalia, stated that –

- M/s MG Motor India Private Limited is a subsidiary company of M/s. SAIC (Shanghai Automobile Industries Corporation) located in Shanghai, China.
- He was appraised about the fact that summons dated 06.10.2022 to appear on 13.10.2022, summons dated 13.10.2022 to appear on 28.10.2022, summons dated 01.11.2022 to appear on 10.11.2022 and summons dated 15.11.2022 to appear on 23.11.2022 had been issued to M/s. MG Motor India Private Limited before the summons dated 24.11.2022 and on being asked why they had not honored these summonses, he stated that it was their mistake not to remain present on the appointed day as per above stated summonses, however as gathering and assessing the data & documents pertaining to the instant issue was a time taking process, so they were not able to come for tendering the statement.
- He looked after work related to customs (import & export) of M/s. MG Motor India Private Limited.
- M/s MG Motor India Private Limited had imported automobile parts for manufacturing of passenger vehicles namely Hector, ZS EV, Gloster and Astor;
- On being asked about the procedure followed on import of any item/part by M/s. MG Motor India Private Limited, he stated that they received import documents from their overseas suppliers i.e. its own group companies. Then, they sent these documents to their CHA and instructed them to prepare check list. Once the check list was prepared by the CHA, it was sent by the CHA to them for verification. Then, M/s. MG Motor India Private Limited after verifying the check list, instructed the CHA to file Bills of Entry. Thereafter, copy of the Bills of Entry were received by them from the CHA for payment of Duty. After payment of Duty, CHAs used to get the out of charge and on receipt of OOC, they used to transport the goods from CFS to the production premises of M/s.MG Motor India Private Limited.
- In M/s MG Motor India Private Limited, he (MukeshSoni) along with his team was responsible for the compliance of the Customs Notifications issued by the Government of India.

- After going through the Notification No. 21/2021-Customs dated 31.03.2021, he placed his dated signature on each page of the copy of the said Notification and stated that vide this Notification amendments had been made at the Sr.No. 448G, 448H, 485A, 490, 494A, 516C and 581B of the Notification No. 50/2017-Customs and through these amendments benefits given to the import of automobile parts used in manufacturing of the motor vehicles were withdrawn with effect from 01.04.2021.
- They were engaged in manufacturing of passenger vehicles (cars), as such all the goods imported by them by availing benefits of Sr.No. 485A, 490, 494A, 516C and 581B of the Notification No.50/2017-Customs were used in the manufacturing of cars.
- M/s. MG Motor India Private Limited had taken benefit under Sr.No. 485A, 490, 494A, 516C and 581B of the Notification No.50/2017-Customs as amended by Notification No.21/2021-Customs dated 31.03.2021 till 23rd September, 2022, as by mistake they missed the application of the amended Notification.
- He stated that they accepted their mistake and were ready to pay differential Duty along with interest.
- He submitted copies of Bills of Entry filed by M/s. MG Motor India Private Limited wherein they had taken benefit under Sr.No.485A, 490, 494A, 516C and 581B of the Notification No.50/2017-Customs.
- He agreed that it was the responsibility of the Importer to correctly mention the exemption Notification, correct rate of Duty leviable on the imported goods.
- He accepted that wrong availment of exemption Notification in the Bills of Entry filed by them had resulted in evasion of Customs Duty; that this had happened inadvertently due to oversight.
- He had carefully gone through the differential Duty calculation sheet shown to him regarding import of automobile parts by M/s. MG Motor India Private Limited by wrongly availing the benefits of Sr. No. 485A, 490, 494A, 516C and 581B of the Notification no. 50/2017-Customs even after its amendment vide Notification No. 21/2021-Customs dated 31.3.2021 and after going through it, he agreed with the liability of the differential Duty amounting to Rs. 1,57,30,212/- payable as calculated in the said sheet and put his dated signature on all the 9 pages (total 332 entries) of this sheet in token of its correctness.
- He agreed to pay the differential Duty within 30 days and stated that they had already got the approval from their Finance Director, however till date they have not made any payment.

Wrong availment of benefit of Notification No. 50/2017-Customs as amended by Notification No. 21/2021-Customs dated 31.03.2021

5. From the above stated facts, it is evident that the amendments made in serial No. 448G, 448H, 485A, 490, 494A, 516C and 581B of Notification No. 50/2017-Customs vide Notification No. 21/2021-Customs dated 31.03.2021 were in the public domain and the Importer was fully aware about the amended Notification. Further, the Importer being AEO T1 certificate holder was fully responsible for the compliance regarding the amended Notification as per CBIC Circular No.33/2016 dated 22.07.2016. The amendments were made effective from 01.04.2021, however the

Importer continued availing the benefits up to 23.09.2022, thereby showing that they had resorted to the wrong availment of benefits of Sr.No. 485A, 490, 494A, 516C and 581B of the Notification No.50/2017-Customs even after amendments made vide Notification No.21/2021-Customs dated 31.03.2021, in order to evade payment of applicable Customs Duty.

6. The investigation in the matter had revealed that M/s. MG Motor India Private Limited had imported various parts (as detailed in column no. 5 of the attached Annexure-A) by availing benefits of Sr.No. 485A, 490, 494A, 516C and 581B of Notification No.50/2017-Customs which were used by them in manufacturing of motor vehicles i.e. passenger vehicles (cars). The Importer had imported these parts/goods at seven different ports i.e.(i) ICD Dashrath, Vadodara (INBRC6) (ii) Air Cargo Complex, Mumbai (INBOM4) (iii) ICD Umergaon (INSAJ6) (iv) JNCH, Nhava Sheva (INNSA1) (v) Hazira Port (INHZA1) (vi) Air Cargo Complex, New Delhi (INDEL4) and (vii) ICD Garhi Harsaru (INGHR6), during the period from 01.04.2021 to 23.09.2022. During this period, the importer had filed total 87 Bills of Entry as detailed in Annexure-A attached with this Show Cause Notice at the above stated Customs Ports for the import of these parts/goods having total assessable value of **Rs. 16,79,90,193/- (Rupees Sixteen Crore, Seventy Nine Lakh, Ninety Thousand, One Hundred and Ninety Three only)** by intentionally and wrongly availing benefits of Serial No. 485A, 490, 494A, 516C and 581B of Notification No. 50/2017-Customs as amended by Notification No.21/2021-Customs dated 31.03.2021. Shri Mukesh Soni, Assistant General Manager-Finance of M/s. MG Motor India Private Limited in his statement dated 01.12.2022 had accepted that they had availed benefits of Sr. No. 485A, 490, 494A, 516C and 581B of the Notification No.50/2017-Customs as amended by Notification No.21/2021-Customs dated 31.03.2021 and that all the goods imported by them by availing benefits of 485A, 490, 494A, 516C and 581B of the Notification No.50/2017-Customs were used in the manufacturing of cars. By wrong availment of the subject Notification, the Importer had evaded Customs Duty aggregating to **Rs.1,57,30,212/- (Rs. One Crore, Fifty Seven Lakh, Thirty Thousand, Two Hundred and Twelve only)**. The port wise abstract of the imports made by wrong availment of benefits of Sr.No. 485A, 490, 494A, 516C and 581B of Notification No.50/2017-Customs by the Importer and differential Duty payable is as under: -

Table-I

Sr. no.	Name of Port/Customs Location	Total Assessable value (Rs.)	Total Duty Payable (Rs.)	Total Duty Already Paid (Rs.)	Differential Duty Payable (Rs.)	Annexure of Diff. Duty Calculation
1	ICD Dashrath, Vadodara (INBRC6)	73078794	27382624	20848733	6533891	Sr. no. 1 to 145 of Annexure-A
2	Air Cargo Complex, Mumbai (INBOM4)	39030579	14624758	10825131	3799627	Sr. no. 146 to 167 of Annexure-A
3	ICD Umergaon (INSAJ6)	20995255	7866922	5823034	2043888	Sr. no. 168 to 207 of Annexure-A
4	JNCH, NhavaSheva (INNSA1)	19168253	7182344	5356902	1825442	Sr. no. 208 to 304 of Annexure-A
5	Hazira Port (INHZA1)	11632035	4358524	3227682	1130842	Sr. no. 305 to 321 of Annexure-A
6	Air Cargo Complex, New Delhi (INDEL4)	4022991	1507415	1116957	390458	Sr. no. 322 to 330 of Annexure-A
7	ICD Garhi Harsaru (INGHR6)	62286	23338	17275	6064	Sr. no. 331 to 332 of Annexure-A

	Total	16,79,90,193	6,29,45,925	4,72,15,713	1,57,30,212	
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7. The Importer had subscribed to a declaration as to the truthfulness of the contents of the Bills of Entry in terms of Section 46(4) of the Customs Act, 1962 in all their import consignments. Further, consequent upon the amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-Assessment' has been introduced in Customs. Section 17 of the Customs Act, 1962 effective from 08.04.2011, provides for self-assessment of Duty on imported goods by the Importer by filing a Bill of Entry, in the electronic form. Section 46 of the Customs Act, 1962 makes it mandatory for the Importer to make entry for the imported goods by presenting a Bill of Entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulation, 2018 (issued under Section 157 read with Section 46 of the Customs Act, 1962), the Bill of Entry shall be deemed to have been filed and self-assessment of Duty completed when, after entry of the electronic declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a Bill of Entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under the scheme of self-assessment, it is the Importer who has to doubly ensure that he declares the correct description of the imported goods, its correct classification, applicable rate of Duty, value and benefit of exemption Notification claimed, if any, in respect of the imported goods while presenting the Bill of Entry. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 8th April, 2011, it is the added and enhanced responsibility of the Importer to declare the correct description, value, Notification etc. and to correctly determine and pay the Duty applicable in respect of the imported goods. Further, the meaning and definition of assessment has been substituted by Finance Act, 2018 dated 29.03.2018, which states that "assessment" means determination of the Dutiability of any goods and the amount of Duty, tax, cess or any other sum so payable with reference to the Tariff classification of the imported goods, value of imported goods, exemption or concession of Duty, tax, cess or any other sum consequent upon any Notification issued in respect of imported goods, quantity, weight, volume, measurement or other specifics where such Duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of imported goods, origin of imported goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of Duty, tax, cess or any other sum is affected by the origin of such goods and any other specific factor which affects the Duty, tax, cess or any other sum payable on imported goods and includes provisional assessment, self-assessment, re-assessment and any assessment in which the Duty assessed is nil, as determined in accordance with the provisions of the Customs Tariff Act. Thus, in the self assessment regime the onus is on the Importer to correctly avail the benefits of the exemption Notification, however, in the instant case, the Importer had completely failed in fulfilling his responsibility by taking wrong benefits of the Notification and the Importer has failed to maintain the accuracy and completeness of the details filed in the respective Bills of Entry for import of various parts used in the manufacturing of passenger vehicles (cars) and had wrongly availed benefits of Sr.No. 485A, 490, 494A, 516C and 581B of Notification No.50/2017-Customs as amended by Notification No. 21/2021-Customs dated 31.03.2021.

8. The relevant provisions of law relating to import of goods in general, the policy and rules relating to the liability of the goods to confiscation and the persons concerned to penalty for improper importation under the provisions of the Customs Act, 1962 and other relevant laws for the time being in force, are summarized as under:-

8.1 Provisions of the Customs Act, 1962

Section 17- Assessment of duty.

- (1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.
- (2) The proper officer may verify the [the entries made under section 46 or section 50 and the self- assessment of goods referred to in sub-section and for this purpose, examine or test any imported goods or export goods or such part there of as may be necessary.

[Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.]

(3) For [the purposes of verification] under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.]

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self- assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter 16[***] and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re- assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

Explanation – For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of section 17 as it stood immediately before the date on which such assent is received.

Section 28(4) of the Customs Act, 1962:

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(4) Where any duty has not been levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-

- (a) collusion; or
- (b) any wilful mis-statement; or
- (c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

Section 28AA of the Customs Act, 1962:

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

(2) Interest at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

(3) Notwithstanding anything contained in sub-section (1), no interest shall be payable where,—

(a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A; and

(b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.]

Section 46- Entry of goods on importation:

(1) The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed :

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in any other manner:

Provided further that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

(2) Save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

(3) The importer shall present the bill of entry under sub-section (1) before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing:

Provided that a bill of entry may be presented at any time not exceeding thirty days prior to the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India:

Provided further that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed.

(4) The importer while presenting a bill of entry shall 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.

(4A) The importer who presents a bill of entry shall ensure the following, namely:—

(a) the accuracy and completeness of the information given therein;

- (b) the authenticity and validity of any document supporting it; and
- (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.
- (5) If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa.

Section 110AA. Action subsequent to inquiry, investigation or audit or any other specified purpose.-

Where in pursuance of any proceeding, in accordance with Chapter XIIA or this Chapter, if an officer of customs has reasons to believe that—

- (a) any duty has been short-levied, not levied, short-paid or not paid in a case where assessment has already been made;
- (b) any duty has been erroneously refunded;
- (c) any drawback has been erroneously allowed; or
- (d) any interest has been short-levied, not levied, short-paid or not paid, or erroneously refunded,

then such officer of customs shall, after causing inquiry, investigation, or as the case may be, audit, transfer the relevant documents, along with a report in writing—

- (i) to the proper officer having jurisdiction, as assigned under section 5 in respect of assessment of such duty, or to the officer who allowed such refund or drawback; or
 - (ii) in case of multiple jurisdictions, to an officer of customs to whom such matter is assigned by the Board, in exercise of the powers conferred under section 5,
- and thereupon, power exercisable under sections 28, 28AAA or Chapter X, shall be exercised by such proper officer or by an officer to whom the proper officer is subordinate in accordance with sub-section (2) of section 5]

Section 111 – Confiscation of improperly imported goods, etc.-The following goods brought from a place outside India shall be liable to confiscation-

- (m) any goods which do not correspond in respect 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 transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of Section 54.

Section 114A. Penalty for short-levy or non-levy of duty in certain cases. -Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:

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.”

Section 125. Option to pay fine in lieu of confiscation. - (1) Whenever confiscation of any goods is authorized by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited 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 goods³⁹[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 proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, [no such fine shall be imposed]:

Provided further that] , without prejudice to the provisions of the proviso to sub-section (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 any 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.

8.2 The Foreign Trade (Development and Regulation) Act, 1992

Section 11: Contravention of provision of this Act, rules, orders and exports and import policy:- (1) No export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the export and import policy for the time being in force.

(2) Where any person makes or abets or attempts to make any export or import in contravention of any provision of this Act or any rules or orders made thereunder or the export and import policy, he shall be liable to a penalty not exceeding one thousand rupees or five times the value of the goods in respect of which any contravention is made or attempted to be made, whichever is more.

(3) Where any person, on a notice to him by the Adjudicating Authority, admits any contravention, the Adjudicating Authority may, in such class or classes of cases and in such manner as may be prescribed, determine, by way of settlement, an amount to be paid by that person.

(4) A penalty imposed under this Act may, if it is not paid, be recovered as an arrear of land revenue and the Importer-exporter Code Number of the person concerned, may, on failure to pay the penalty by him, be suspended by the Adjudicating Authority till the penalty is paid.

(5) Where any contravention of any provision of this Act or any rules or orders made thereunder or the export and import policy has been, is being, or is attempted to be, made, the goods together with any package, covering or receptacle and any conveyances shall, subject to such requirements and conditions as may be prescribed, be liable to confiscation by the Adjudicating Authority.

(6) The goods or the conveyance confiscated under sub-section (5) may be released by the Adjudicating Authority, in such manner and subject to such conditions as may be prescribed, on payment by the person concerned of the redemption charges equivalent to the market value of the goods or conveyance, as the case may be.

Foreign Trade (Regulation) Rules, 1993

Rule 14: Prohibition regarding making, signing of any declaration, statement or documents

(1) No person shall make, sign or use or cause to be made, signed or used any declaration, statement or document for the purposes of obtaining a license or importing any goods knowing or having reason to believe that such declaration, statement or document is false in any material particular.

(2) No person shall employ any corrupt or fraudulent practice for the purposes of obtaining any licence or importing or exporting any goods.

Circular No. 33/2016-Customs dated 22th July, 2016 regarding AEO Programme.

3.2 Legal Compliance:

- 3.2.1 There should be no show cause notice issued to them during last three financial years involving fraud, forgery, outright smuggling, clandestine removal of excisable goods or cases where Service Tax has been collected from customers but not deposited to the Government.
- 3.2.2 There should be no case wherein prosecution has been launched or is being contemplated against the applicant or its senior management.
- 3.2.3 If the ratio of disputed duty demanded or drawback demanded or sought to be denied, in all the show cause notices issued under the Customs Act, 1962 (other than those mentioned in Para 3.2.1 and 3.2.2) during the last three financial years, to the total duty paid and drawback claimed during the said period is more than ten percent, a review would be taken of the nature of cases and decision would be taken on issue or continuance of AEO status by AEO Programme Manager.

Explanation: for para 3.2.1, 3.2.2 and 3.2.3 above, the cases where the show cause notices have been dropped or decided in favor of the applicant by the adjudicating or appellate authorities will not be considered.

- 3.2.4 An applicant will also need to demonstrate that he has:
 - i. procedures in place to identify and disclose any irregularities or errors to the Customs authorities or, where appropriate, other regulatory bodies.
 - ii. taken appropriate remedial action when irregularities or errors are identified.
- 3.2.5 Once an error has been identified, the applicant is expected to take steps to ensure that they do not happen again or, at least, to ensure that they are immediately remedied if they do arise. Failure to take such steps could count against applicant

3.3 Managing commercial and (where appropriate) transport records:

- iv. Have satisfactory procedures in place for archiving of the company's records and information, and also for protection against the loss of information;
- v. Ensure that employees are made aware of the need to inform the Customs authorities whenever compliance difficulties are discovered and establish suitable contacts to inform the Customs authorities of such occurrences;
- vi. Have satisfactory procedures for verifying the accuracy of Customs declarations.

3.5.2 Procedural Security

- v. Procedure should be in place to ensure that information received from business partners is reported accurately and timely as well as declared in the time limit regulated by Customs.

Demand of differential Duties of Customs short-levied and short-paid by reason of willful mis-statement of facts, confiscation of imported goods, role played and imposition of penalty on the Importer:-

9. The facts and evidences discussed in paras supra reveal that the imported goods as detailed in column 5 of the attached Annexure-A imported by M/s. MG Motor India Private Limited were used in manufacturing of passenger vehicles i.e. cars namely Hector, ZS EV, Gloster and Astor. This fact was also accepted by Shri Mukesh Soni, Assistant General Manager-Finance of M/s. MG Motor India Private Limited in his statement dated 01.12.2022 wherein, he accepted that all the goods imported by them by availing benefits of Sr.No.485A, 490, 494A, 516C and 581B of Notification No.50/2017-Customs were used in the manufacturing of cars manufactured by them. Further, after going through the Notification No. 21/2021-Customs dated 31.03.2021 he stated that vide this Notification, amendments had been made at the Sr.No. 448G,

448H, 485A, 490, 494A, 516C and 581B of the Notification No. 50/2017-Customs and through these amendments, benefits given to the import of automobile parts used in the manufacturing of the motor vehicles were withdrawn with effect from 01.04.2021. From these facts, it is clearly evident that the Importer was aware of the correct usage of the imported goods at the time of its importation and was aware of the amended Notification. Even then, with intent to evade payment of applicable Duties of Customs, the Importer had wrongly claimed/ taken benefits of Sr.No.485A, 490, 494A, 516C and 581B of the Notification No. 50/2017-Customs in the Bills of Entry filed by them. Thus, it appeared that M/s. MG Motor India Private Limited had willfully mis stated the Sr. No. of the amended Notification in the Bills of Entry in order to intentionally avail wrong benefit of Sr.No.485A, 490, 494A, 516C and 581B of the Notification No. 50/2017-Customs as amended by Notification No.21/2021-Customs dated 31.03.2021.

9.1 Thus, the facts and evidences discussed above clearly show that the Importer resorted to willful mis-statement of serial numbers of amended Notification No. 50/2017-Customs with an ulterior motive of evading payment of the applicable Duty on the imported goods. Hence, Section 28(4) of the Customs Act, 1962 for demand of Duty is applicable in the instant case. Annexure-A containing details of the goods imported by M/s. MG Motor India Private Limited availing benefits of Sr. No.485A, 490, 494A, 516C and 581B of Notification No. 50/2017-Customs after its amendment vide Notification No. 21/2021-Customs dated 31.03.2021 is prepared and in Column No.17 of the Annexure-A, the differential Duty evaded by them is calculated. The differential Customs Duty aggregating to Rs.1,57,30,212/- leviable on the imported goods and cleared under Bills of Entry mentioned in Column No. 03 of Annexure -A and not paid by M/s. MG Motor India Private Limited is, therefore, liable to be demanded and recovered from them as per the provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.

10. M/s. MG Motor India Private Limited was engaged in the import of various automobile parts and from the discussion in paras supra, it is evident that the goods imported by M/s. MG Motor India Private Limited were used by them for manufacturing of passenger vehicles i.e. cars. The Importer was aware of the correct end use of the imported goods, however, despite being fully aware of the correct end use of the imported goods, the Importer had wrongly availed benefits of serial no. 485A, 490, 494A, 516C and 581B of Notification No.50/2017-Customs after its amendment vide Notification No.21/2021-Customs dated 31.03.2021 and by adopting wrong practices including making false declarations for such imports to evade payment of appropriate Customs Duty. The Importer had deliberately mis stated the serial numbers of amended Notification to escape from detection by Customs authorities. Thus, by the above acts and commission, the Importer had contravened the provisions of Section 46 and Section 111(m) of the Customs Act, 1962 and Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 read with Rule 14 of the Foreign Trade (Regulation) Rules 1993, in as much as the Importer had taken wrong benefit of the Notification No.50/2017-Customs as amended by Notification No. 21/2021-Customs dated 31.03.2021 while filing the Bills of Entry at the time of the importation of the subject imported goods. The same was done to evade the payment of applicable Basic Customs Duty leviable thereon under Section 12 of the Customs Act, 1962, at the rates specified in the first Schedule to the Customs Tariff Act, 1975. This has resulted in short-payment of other Customs levies viz. Social Welfare Cess and IGST as BCD forms part of value for computation of these Duties. Further, as per Circular No. 33/2016-Customs dated 22th July, 2016 regarding AEO Programme, the Importer being an AEO T1 Certificate holder was to ensure that his employees should be well aware of Customs laws and procedures; that they should have satisfactory procedures for verifying the accuracy of Customs declarations and once an error has been identified, the applicant is expected to take steps to ensure

that it does not happen again or, at least, to ensure that these are immediately remedied if they do arise. Failure to take such steps could count against the Importer as mentioned in the said circular. The Importer had clearly failed to comply with these responsibilities cast upon him as AEO T1 Certificate holder. Thus, the Importer mis-stated the serial numbers of amended Notification No.50/2017 despite having the knowledge of the actual end use of the imported goods in manufacturing of vehicles to willingly evade Customs Duty. This act of wilful mis-statement of serial numbers of amended Notification No.50/2017-Customs by M/s. MG Motor India Private Limited has rendered 90,409 pieces of imported goods as described in column 5 of the attached Annexure-A totally valued at **Rs.16,79,90,193/- (Rupees Sixteen Crores Seventy Nine Lakhs Ninety Thousand One Hundred and Ninety Three only)** liable to confiscation as per the provisions of Section 111(m) of the Customs Act, 1962.

11. The subject Notification No. 21/2021-Customs dated 31.03.2021 was issued as per the budgetary changes and all the changes made during the budget are keenly taken note of by the Corporate. Furthermore, the subject amended Notification was in public domain. Hence, it is clearly evident that the Importer had knowingly involved themselves in the wrong availment of benefit of Notification No.50/2017-Customs as amended by Notification No.21/2021-Customs dated 31.03.2021 thereby evading applicable Customs Duty. The explanation given by the Shri Mukesh Soni, Assistant General Manager-Finance of the Importer that they missed the application of amended Notification does not stand to reason on account of the following factors:

- a. Only two amendments, viz. Notification No.02/2021-Cus dated 01.02.2021 and Notification No.21/2021-Cus dated 31.03.2021, were carried out in the principal Notification No.50/2017-Cus dated 30.06.2017, during the first half of the calendar year 2021; and
- b. The latin maxim "Ignorantia juris neminem excusat" meaning "ignorance of law is no excuse for breaking it" is one of the essential principles of jurisprudence. The rationale behind the said principle is that if ignorance was an excuse, every person who is charged of any offence would merely claim that he was unaware of the relevant provisions of the law. This would bring the law enforcement mechanism to a grinding halt which can never be the intention of the legislature.

For the above acts and commissions, M/s. MG Motor India Private Limited has rendered themselves liable to penalty under Section 114A of the Customs Act, 1962. The Importer had knowingly and intentionally made the declarations which were false and incorrect in material particular and had intentionally mis-stated the serial numbers of amended Notification in the transaction of business for the purposes of the Customs Act, 1962 and therefore, the Importer has also rendered themselves liable to penalty under Section 114AA of the Customs Act, 1962.

12. In the present case, the amount of Duty evaded by M/s. MG Motor India Private Limited in respect of imported goods cleared through ICD Dashrath, Vadodara (INBRC6) is the highest. Therefore, the Commissioner of Customs, Ahmedabad having jurisdiction over ICD Dashrath is the proper authority for issuing the Show Cause Notice in terms of Section 110AA of the Customs Act, 1962 read with Notification No.28/2022-Customs (N.T.) dated 31.03.2022, issued by CBIC.

13. In view of the above Show Cause Notice No. VIII/10-41/Commr./O&A/2022-23 dated 11.09.2023 was issued to **M/s. MG Motor India Private Limited (IEC-AAKCM8110E)** having registered office at 10th Floor, Milestone Experion Centre, Sector-15, Part-II, Gurgaon, Haryana- 122 001 and manufacturing plant at GIDC, Industrial Estate, Halol District- Panchmahal, Gujarat-389350, calling upon to show cause in writing to the Commissioner of Customs, Ahmedabad as to why:-

- (i) The benefits of serial No.485A, 490, 494A, 516C and 581B of Notification No.50/2017-Customs availed by them after 01.04.2021 on the Bills of Entry as listed in Annexure-A should not be disallowed and the Bills of Entry should not be re-assessed accordingly.
- (ii) The differential amount of Customs Duty aggregating to **Rs. 1,57,30,212/- (Rupees One Crore Fifty Seven Lakh, Thirty Thousand, Two Hundred and Twelve only)** as detailed in Annexure-A to this Notice leviable on the "imported goods" covered under Bills of Entry as listed in Annexure A, should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962.
- (iii) 90,409 pieces of the imported goods totally valued at **Rs.16,79,90,193/- (Rupees Sixteen Crore, Seventy Nine Lakh, Ninety Thousand, One Hundred and Ninety Three only)** imported vide Bills of Entry as listed in Annexure- A to this Notice should not be held liable to confiscation as per the provisions of Section 111(m) of the Customs Act, 1962.
- (iv) Penalty should not be imposed on them under Section 114A of the Customs Act, 1962, for the reasons discussed above.
- (v) Penalty should not be imposed on them under Section 114AA of the Customs Act, 1962, for the reasons discussed above.

14. Written submission by the importer:

14.1 The importer vide their letter dated 31.10.2023 submitted their written submission wherein they interalia stated as under:

- That it was a bonafide error made by them which was duly identified and acknowledged; that correction process was initiated immediately to pay differential duty along with interest; that the payment of major portion of the differential duty was already paid alongwith interest before issuance of SCN and for rest also the payment in process;
- That Show Cause Notice is invalid in the absence of valid appeal against the out of charge/Bills of Entry and placed the reliance on the case laws of ITC Limited Vs. Commissioner of Central Excise, 2019 (368_ ELT 216 (SC), Jairath International Vs. Union of India 2019 (10)TMI 642, Vittese Export Import Vs. Commissioner of Customs (EP), Mumbai 2008 (224) ELT241 (Tri. Mumbai); Ashok Khetrpal Vs. Commissioner of Customs, Jamnagar 2014 (304)ELT 408 (Tri.Ahmd), Axiom Cordages Ltd. vs. Commissioner of Customs, Nhava Sheva-II 2020 (9) TMI 478-Cestat Mumbai; Tripura Ispat Vs. Union of India, Commissioner 2021 (1)TMI 753- Tripura High Court;
- That the all the Bills of Entry covered under the SCN are provisionally assessed and cited Circular No. 298/14/97-CX dated 25.02.1997 issued by CBEC; that it is well established legal principle that an assessment which is provisional is provisional for all the purpose; that in this regard, they cited judgement of CESTAT, Kolkata in the case of Commissioner of Customs (Port) Kolkata Vs. Narsingh Ispat Ltd vide final Order No. 76649/KOL/2019 and Misc. Order No. 77516/2016 dated 25.11.2019;
- That in terms of Section 28(2) of the Customs Act, any person can pay the amount of Duty along with interest, whether upon his own ascertainment or as done by the proper officer, before the service of a show cause notice and inform

the proper officer of such payment in writing. Upon receipt of such information in writing, proper officer shall refrain from issuing a show cause notice in respect of such Duty and interest; that since the duty demanded in the SCN is not correct and the payment of differential duty alongwith interest was already done for major portion of the Bills of Entry and the rest of the payment is in process, the Duty demanded has not considered those payments and therefore, calculation of the differential duty is not correct; that they has also informed DRI, Jaipur about the partial payment done alongwith details of Bills of Entry;

- That impugned goods are not available for confiscation under Section 111 (m) of the Customs Act, 1962 and submitted that there was no mis-declaration or in any other particular with the entry made under the Customs Act; that they had declared an incorrect classification due to the human mistake and had suo motto corrected the same, therefore, the proposal for confiscation of the impugned goods under Section 111(m) of the Customs Act is not sustainable in law; that they placed reliance on case law of Northern Plastics Ltd. Vs. Commissioner of Central Excise, Ace Kargoways Vs. Commissioner of Customs 2003 (158) ELT 505 (T) , Commissioner of Customs Vs. Maruti Udyog Ltd. 2002 (141) ELT392 (T) and Hindustan Lever Ltd. Vs. Commissioner of Customs 1996 (83) ELT 520 and Metro Tyres Ltd. Vs. Commissioner of Central Excise 1994 (74)ELT 964; that provisions of Section 111 of the Customs Act, not invokable for goods already cleared and placed reliance on decision of Bussa Overseas & Properties Vs. C.L. Mahar, Assistant Commissioner of Customs, Bombay 2004 (163) ELT304 (Bom.) maintained by Hon'ble Supreme Court reported at 2004 (163)ELTA160(SC);
- That in case, Section 111 (m) of Customs Act, 1962 would apply only in a case where there is a mis-declaration of 'value' in the entry filed at the time of import and there is no mis-declaration of the value of the imported goods as determined under Section 14 of the Customs Act, 1962; that only issue in the present case is classification of imported goods and therefore, proposal to confiscate the imported goods is not sustainable and is liable to be dropped on this ground alone;
- That in present case, the differential duty along with interest was already paid for major portion of the demand before issuance of SCN and for rest also, payment is under process; that since the SCN has not considered such payment already made, hence the demanded duty is not correct;
- That no penalty can be imposed on the noticee under Section 114A of the Customs Act and placed reliance on case laws of Collector of Central Excise Vs. H.M.M. Ltd 1995 (76) ELT 497 (SC),

15 Personal Hearing: Personal hearing in the matter was fixed on 19.07.2024. Shri Riddhish Shah, Senior Manager (Finance) attended the personal hearing held on 19.07.2024 wherein he reiterated the submission as detailed in their written submission dated 31.10.2023 and further submitted that in some of the Bills of Entry, re-assessment is done and they have paid duty alongwith interest and after the re-assessment of remaining Bills of Entry, they will be submitting additional written submission in this regard.

16 Findings: I have carefully gone through the Show Cause Notices dated 11.09.2023 and written submissions dated 31.10.2023 filed by the importer as well as the records of Personal Hearing held on 19.07.2024.

17. Whether the Importer is eligible to avail the benefit of Notification No.50/2017-Customs dated 30.06.2017 consequent to budgetary change vide amended Notification No. 21/2021-Customs dated 31.03.2021 claimed by them on the import of goods mentioned in Annexure- A to the Show Cause Notice?

17.1 I find that the basic issue involved in the instant case is whether the importer is eligible for the benefit of Notification No. 50/2017- Customs dated 30.06.2017 amended vide Notification No. 21/2021-Customs dated 31.03.2021 on budgetary change from 01.04.2021. I find that importer is manufacturer of passenger vehicles viz. car of various model and is engaged in import of automobile parts used in the manufacturing of passenger vehicles viz. cars.

Prior to 01.04.2021, importer was importing various automobiles parts suitably for manufacturing of passenger cars availing the benefit of Sr.448G, 448H 485A, 490, 494A, 516C and 581B of Notification No.50/2017-Customs dated 30.06.2017. It is pertinent to re-produce the aforesaid relevant entries of Sr. No. of the Notification No. 50/2017- Customs dated 30.06.2017 for better appreciation.

Notification No. 50/2017-Cus., dated 30-6-2017:

Exemption & Effective Basic and Additional Customs Duty for specified goods falling under Chapters 1 to 98 — Jumbo Notification No. 12/2012-Cus. superseded

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and sub-section (12) of section 3, of Customs Tariff Act, 1975 (51 of 1975), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2012-Customs, dated the 17th March, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 185(E), dated the 17th March, 2017, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below or column (3) of the said Table read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the said Customs Tariff Act, as are specified in the corresponding entry in column (2) of the said Table, when imported into India, -

(a) from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the standard rate specified in the corresponding entry in column (4) of the said Table; and

(b) from so much of integrated tax leviable thereon under sub-section (7) of section 3 of said Customs Tariff Act, read with section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) as is in excess of the amount calculated at the rate specified in the corresponding entry in column (5) of the said Table,

subject to any of the conditions, specified in the Annexure to this notification, the condition number of which is mentioned in the corresponding entry in column (6) of the said Table :

TABLE

S. No.	Chapter or Heading or sub-heading or tariff item	Description of goods	Standard rate	Integrated Goods and Services Tax	Condition No.
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(1)	(2)	(3)	(4)	(5)	(6)
490.	8537	All goods	7.5%	-	-

17.2 Notification No. 50/2017-Cus., dated 30-6-2017 was amended vide Notification No. 2/2021-Cus., dated 1-2-2021 and inserted certain S.Nos and entries therein.

Relevant entries to the present case is reproduced as under:

Notification No. 2/2021-Cus., dated 1-2-2021:

Effective rate of Basic Customs Duty (BCD) and IGST for specified goods under Chapters 1 to 98 revised — Amendment to Notification No. 50/2017-Cus.

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and sub-section (12) of section 3 of Customs Tariff Act, 1975 (51 of 1975), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India, Ministry of Finance (Department of Revenue), No. 50/2017-Customs, dated the 30th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 785(E), dated the 30th June, 2017, namely :-

In the said notification,

I. in the Table, -

(75) after S. No. 448F and the entries relating thereto, the following S. Nos. and entries shall be inserted, namely :-

(1)	(2)	(3)	(4)	(5)	(6)
"448G.	8414 40	All goods	7.5%	-	-
448H.	8414 80 (except 8414 80 11)	All goods	7.5%	-	-";

(77) after S. No. 485 and the entries relating thereto, the following S. No. and entries shall be inserted, namely :-

(1)	(2)	(3)	(4)	(5)	(6)
"485A.	8501 10, 8501 20 00, 8501 31, 8501 32, 8501 33, 8501 34, 8501 40, 8501 51, 8501 52, 8501 53	All goods	10%	-	-";

(83) after S. No. 516B and the entries relating thereto, the following S. No. and entries shall be inserted, namely :-

(1)	(2)	(3)	(4)	(5)	(6)
"516C.	8536 41 00, 8536 49 00	All goods	10%	-	-";

(90) after S. No. 581A and the entries relating thereto, the following S. No. and entries shall be inserted, namely :-

(1)	(2)	(3)	(4)	(5)	(6)
"581B.	9031 80	All goods	7.5%	-	-";

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This notification shall come into force on 2. the 2nd February, 2021.

17.3 Thus, from the perusal of the aforesaid Notification No. 50/2017- Cus dated 30.06.2017 and amendment made thereto vide Notification No. 2/2021-Cus dated 01.02.2021, it reveals that the importer has availed the benefit of Sr. Sr.448G, 448H 485A, 490, 516C and 581B of said notification and paid the duty @ 7.5%/10%. Consequent to Budgetary change, vide Notification No. 21/2021-Customs dated 31.03.2021, some amendments were made in the principal Notification No. 50/2017- Customs dated 30.06.2017 in the entries at serial no. 448G, 448H, 485A, 490, 494A, 516C and 581B wherein the exemption available under these entries was withdrawn for the goods which were suitable for use in motor vehicles, motor cars and motor cycles. More specifically, the exemption available under aforesaid entries was withdrawn for the goods suitable for use in:-

- iv. Motor vehicles falling under heading 8702 or 8704;
- v. Motor cars falling under heading 8703; or
- vi. Motor cycles falling under heading 8711”;

After amendments made vide Notification No.21/2021-Customs dated 31.03.2021, the relevant entries of the Notification No.50/2017- Customs dated 30.06.2017 read as under:-

S. No.	Chapter or Heading or sub-heading or tariff item	Description of goods	Standard rate	Integrated Goods and Services Tax	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
448G	8414 40	All goods other than those suitable for use in – (i) motor vehicles falling under heading 8702 or 8704; (ii) motor cars falling under heading 8703; or (iii) motor cycles falling under heading 8711	7.5%	-	-
448H	8414 80 (except 8414 80 11)	All goods other than those suitable for use in – (i) motor vehicles falling under heading 8702 or 8704; (ii) motor cars falling under heading 8703; or (iii) motor cycles falling under heading 8711	7.5%	-	-
485A	850110/20 850131/32/33/34, 850140, 850151/52/53, 850171/72	All goods other than those suitable for use in – (i) motor vehicles falling under heading 8702 or 8704; (ii) motor cars falling under heading 8703; or (iii) motor cycles falling under heading 8711	10%	-	-
490	8537	All goods other than those suitable for use in – (i) motor vehicles falling under heading 8702 or 8704; (ii) motor cars falling under heading 8703; or (iii) motor cycles falling under heading 8711	7.5%	-	-
494A	9032 89	All goods other than those suitable for use in – (i) motor vehicles falling under heading 8702 or 8704; (ii) motor cars falling under heading 8703; or (iii) motor cycles falling under heading 8711	7.5%	-	-
516C	8536 41 00, 8536 49 00	All goods other than those suitable for use in – (i) motor vehicles falling under heading 8702 or 8704; (ii) motor cars falling under heading 8703; or (iii) motor cycles falling under heading 8711	10%	-	-
581B	9031 80 00	All goods other than those suitable for use	7.5%	-	-

	in – (i) motor vehicles falling under heading 8702 or 8704; (ii) motor cars falling under heading 8703; or (iii) motor cycles falling under heading 8711			
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In view of the above, it is observed that after the amendment vide Notification No.21/2021-Customs dated 31.03.2021 to Principal Notification No. 50/2017-Cus dated 30.06.207, importer is not eligible for exemption for Sr. No. 448G, 448H, 485A, 490, 494A, 516C and 581B as the goods imported were for use principally in motor vehicles, motor cars. I find that Shri Mukesh Soni, Assistant General Manager-Finance, M/s. MG in his statement 01.12.2022 has accepted their mistake and were ready to pay differential Duty along with interest. Thus, I find that the importer is not eligible for the exemption for Sr. No. 448G, 448H, 485A, 490, 494A, 516C and 581B of Notification No. 50/2017-Cus dated 30.06.207 as amended vide Notification No.21/2021-Customs dated 31.03.2021 from 01.04.2021 onwards.

18. Whether the consequential actions such as re-determination of Customs Duty alongwith interest on differential Customs Duty, on M/s. MG Motor India Private Limited arise or otherwise?

18.1 Keeping the aforesaid discussions in mind, I proceed to examine the matter further. I find that in order to sensitize the Trade about its benefit and consequences of mis-use, Government of India has issued 'Customs Manual on Self-Assessment 2011'. The publication of the 'Customs Manual on Self Assessment 2011 ' was required as prior to enactment of the provision of 'Self-Assessment', mis-classification or wrong avilment of Duty exemption etc., in normal course of import, was not considered as mis-declaration or mis-statement. Under para 1.3 of Chapter-I of the above manual, Importers/Exporters, who are unable to do the Self-Assessment because of any complexity, lack of clarity, lack of information etc. may exercise the following options: (a) Seek assistance from Help Desk located in each Custom Houses, or (b) Refer to information on CBIC/ICEGATE web portal www.cbic.gov.in, or (c) Apply in writing to the Deputy/Assistant Commissioner in charge of Appraising Group to allow provisional assessment, or (d) An importer may seek Advance Ruling from the Authority on Advance Ruling, New Delhi if qualifying conditions are satisfied. Para 3(a) of Chapter 1 of the above Manual further stipulates that the Importer/Exporter is responsible for Self-Assessment of duty on imported/exported goods and for filing all declarations and related documents and confirming these are true, correct and complete. Under para 2.1 of Chapter-1 of the above manual, Self-Assessment can result in assured facilitation for compliant Importers. However, delinquent and habitually noncompliant Importers/Exporters could face penal action on account of wrong Self-Assessment made with intent to evade Duty or avoid compliance of conditions of Notifications, Foreign Trade Policy or any other provision under the Customs Act, 1962 or the Allied Acts.

18.2 After introduction of self-assessment through amendment in Section 17 of the Customs Act, 1962 vide Finance Act, 2017, it is the responsibility of the Importer to correctly declare the description, classification, applicable exemption Notification, applicable Duties, rate of Duties and its relevant Notifications etc. in respect of said imported goods and pay the appropriate Duty accordingly. Further, as per Circular No. 33/2016-Customs dated 22th July, 2016 regarding AEO Programme, the Importer being an AEO T1 Certificate holder was to ensure that his employees should be well aware of Customs laws and procedures; that they should have satisfactory procedures for verifying the accuracy of Customs declarations and once an error has been identified, the applicant is expected to take steps to ensure that it does not happen again or, at least, to ensure that these are immediately remedied if they do arise. Failure to take such steps could count against the Importer as mentioned in the said circular. The Importer had clearly failed to comply with these responsibilities cast

upon him as AEO T1 Certificate holder. Thus, the Importer mis-stated the serial numbers of amended Notification No.50/2017 despite having the knowledge of the actual end use of the imported goods in manufacturing of vehicles to willingly evade payment of due Customs Duty. It is therefore very much apparent that Importer has willfully violated the provisions of Section 17(1) of the Customs Act, 1962 in as much as they have failed to correctly self-assess the impugned goods and have also willfully violated the provisions of Sub-section (4) and (4A) of Section 46 of the Customs Act, 1962. Thus, Importer have indulged in wrong availment of Notification No. 50/2017-Cus dated 30.06.2017 as amended vide Notification No.21/2021-Customs dated 31.03.2021 from 01.04.2021 onwards and thereby they have evade payment of Customs Duty at the appropriate rate. By way of adopting this modus in respect of impugned goods, Importer had short paid the Customs Duty of **Rs. 1,57,30,212/- (Rupees One Crore, Fifty Seven Lakh, Thirty Thousand, Two Hundred and Twelve only)** which merits invocation of extended period for demand of the said Customs Duty under the provisions of Section 28(4) of the Customs Act, 1962. I, therefore, find and hold that the Customs Duty of **Rs. 1,57,30,212/- (Rupees One Crore Fifty Seven Lakh, Thirty Thousand, Two Hundred and Twelve only)** is required to be recovered under the provisions of Section 28(4) of the Customs Act, 1962.

19 It has also been proposed in the Show Cause Notices to demand and recover interest on the differential Customs Duty **Rs. 1,57,30,212/- (Rupees One Crore, Fifty Seven Lakh, Thirty Thousand, Two Hundred and Twelve Only)** in respect of the imports under Section 28AA of the Customs Act, 1962. Section 28AA ibid provides that when a person is liable to pay Duty in accordance with the provisions of Section 28 ibid, in addition to such Duty, such person is also liable to pay interest at applicable rate as well. Thus, the said Section provides for payment of interest automatically along with the Duty confirmed/ determined under Section 28 ibid. I have already held that the differential Customs Duties of **Rs. 1,57,30,212/- (Rupees One Crore, Fifty Seven Lakh, Thirty Thousand, Two Hundred and Twelve Only)** is liable to be recovered from the Importer under Section 28(4) of the Customs Act, 1962. I, therefore hold that the interest on the said Customs Duty determined/confirmed under Section 28(4) ibid is to be recovered under Section 28AA of the Customs Act, 1962.

20 Show Cause Notice proposes for the confiscation of the imported goods valued at Rs.16,79,90,193/-under the provisions of Sections 111(m) of the Customs Act, 1962.

20.1 As discussed in paras supra, M/s. MG Motor India Private Limited have imported the impugned goods by wrongly availing the benefit of Sr. No.485A, 490, 494A, 516C and 581B of Notification No.50/2017-Customs dated 30.06.2017 availed by them after its amendment vide Notification No. 21/2021-Customs dated 31.03.2021 and by way of adopting this modus in respect of impugned goods, M/s. MG Motor India Private Limited had got cleared goods valued at Rs.16,79,90,193/- from ICD, Dasharath, Air Cargo Complex, Mumbai, ICD Umbergaon, JNCH, Nhava Sheva, Hazira Port, Air Cargo Complex, New Delhi and ICD Garshi Harsaru without paying Customs Duty at applicable rate. Thus importer has deliberately and knowingly indulged in suppression of material facts in respect of their imported product and has wilfully and wrongly availed the benefit of specific entries of the aforementioned Notifications which was not available to them, with an intent to evade payment of higher rate of Customs Duty and also contravened the provisions of Section 46(4) of the Customs Act, 1962. In terms of Section 46(4) of the Customs Act, 1962, the Importer is required to make and subscribe to a declaration as to truth of the contents of the Bills of Entry submitted for assessment of Customs Duty. Section 111 (m) of the Customs Act, 1962 provides for confiscation of any imported goods which do not correspond in respect of value or in any other particular with the entry

made under this Act. In this case, Importer has resorted to wrong availment of benefit of the specific entries of Notifications as mentioned above in the Bills of Entry filed by them with an intention to avoid higher Duty liability that would have otherwise accrued to them. Thus, provisions of Section 111(m) of the Customs Act, 1962 would come into picture. In the present case, importer has wilfully and wrongly availed the benefit of Sr. No.485A, 490, 494A, 516C and 581B of Notification No.50/2017-Customs dated 30.06.2017 availed by them after its amendment vide Notification No. 21/2021-Customs dated 31.03.2021 which was not available to them with an intent to evade payment of higher rate of Customs Duty, hence the provisions of Section 111(m) comes into play. I thus find that wilful and wrong availment of the benefit of the specific entries of the aforementioned Notifications by Importer has rendered the impugned goods liable for confiscation under Sections 111(m) of the Customs Act, 1962. I, therefore, hold the goods valued at **Rs.16,79,90,193/- (Rupees Sixteen Crore, Seventy Nine Lakh, Ninety Thousand, One Hundred and Ninety Three only)** are liable to confiscation under the provisions of Section 111(m) *ibid*. Further, the aforementioned goods are not physically available for confiscation, and in such cases, redemption fine is imposable in light of the judgment in the case of **M/s. Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad)** wherein the Hon'ble High Court of Madras has observed as under:

The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).

20.2 I also find that Hon'ble High Court of Gujarat by relying on this judgment, in the case of **Synergy Fertilchem Ltd. Vs. Union of India, reported in 2020 (33) G.S.T.L. 513 (Guj.)**, has held *inter alia* as under: -

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174. In the aforesaid context, we may refer to and rely upon a decision of the Madras High Court in the case of *M/s. Visteon Automotive Systems v. The Customs, Excise & Service Tax Appellate Tribunal*, C.M.A. No. 2857 of 2011, decided on 11th August, 2017 [2018 (9) G.S.T.L. 142 (Mad.)], wherein the

following has been observed in Para-23;

"23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act...", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii)."

175. We would like to follow the dictum as laid down by the Madras High Court in Para-23, referred to above."

In view of the above, I find that imported goods valued at **Rs.16,79,90,193/- (Rupees Sixteen Crore, Seventy Nine Lakh, Ninety Thousand, One Hundred and Ninety Three only)** though not available are liable for confiscation under Section 111(m) of the Customs Act, 1962.

21. Whether the Importer is liable for penalty under Section 114A and Section 114AA of the Customs Act, 1962:

21.1 The Show Cause Notice proposes penalty under the provisions of Section 114A of the Customs Act, 1962 on importer. The Penalty under Section 114A can be imposed only if the Duty demanded under Section 28 ibid by alleging wilful mis-statement or suppression of facts etc. is confirmed/determined under Section 28(4) of the Customs Act, 1962. As discussed in the foregoing paras, Importer has deliberately and knowingly indulged in suppression of facts in respect of their imported goods and has wilfully and wrongly availed the benefit of Sr. No.485A, 490, 494A, 516C and 581B of Notification No.50/2017-Customs dated 30.06.2017 availed by them after its amendment vide Notification No. 21/2021-Customs dated 31.03.2021 which was not available to them, with an intention to avoid the higher Duty liability that would have otherwise accrued to them. I have already held that the differential Customs Duty of **Rs. 1,57,30,212/- (Rupees One Crore, Fifty Seven Lakh, Thirty Thousand, Two Hundred and Twelve Only)** is to be demanded and recovered from Importer under the provisions of Section 28(4) of the Customs Act, 1962. As the provision of imposition of penalty under Section 114A ibid is directly linked to Section 28(4) ibid, I find that penalty under Section 114A of the Customs Act, 1962 is to be imposed upon importer M/s. MG Motors India Pvt. Ltd.

21.2 With regard to the proposal for imposition of penalty under Section 114AA of the Customs Act, 1962, I find that importer knew that they were not eligible for the benefit of benefits of serial No.485A, 490, 494A, 516C and 581B of Notification No.50/2017-

Customs dated 30.06.2017 availed by them after 01.04.2021 however, with clear intent to evade the payment of Customs Duty have wrongly declared the Sr. No. 485A, 490, 494A, 516C and 581B of Notification No.50/2017-Customs dated 30.06.2017 as amended vide Notification No. 21/2021-Customs dated 31.03.2021 in the Bills of Entry and made false declaration in the Bills of Entry for the clearance of imported goods claiming exemption of said notification. Thus, they have rendered themselves liable for penal action under Section 114AA of the Customs Act, 1962.

21.3 Further, to fortify my stand on applicability of Penalty under Section 114AA of the Customs Act, 1962, I rely on the decision of Principal Bench, New Delhi in case of Principal Commissioner of Customs, New Delhi (import) Vs. Global Technologies & Research (2023)4 Centax 123 (Tri. Delhi) wherein it has been held that *"Since the importer had made false declarations in the Bill of Entry, penalty was also correctly imposed under Section 114AA by the original authority"*.

22. I find that Importer has contended that all the Bills of Entry covered in the Show Cause Notice are provisionally assessed and same remains provisionally as on date as well.

I find that in the present case, it is not in dispute that Bills of Entry are provisionally assessed. But after the finalisation of the investigations, it has been found that the M/s. MG Motors India Pvt. Ltd. are not eligible for the benefit of Sr. No. 485A, 490,494A,561C and 581B of Notification No. 50/2017-Customs dated 30.06.2017. The present Show Cause Notice seeks to put M/s. MG Motors India Pvt. Ltd., to Notice as to why benefit of Sr. No. 485A, 490,494A,561C and 581B of Notification No. 50/2017-Cus. dated 30.06.2017 availed by them after 01.04.2021 on the Bills of Entry as listed in Annexure-A should not be denied and Bills of Entry should not be re-assessed. This action is in the line of finalisation of the assessment and the action that follows such finalisation is demand and recovery of Customs Duty, if any, arising out of finalisation of assessment. Thus, the present Show Cause Notice proposes both the actions viz. finalisation of assessment as well as demand of Customs Duty and the demand is legally valid under the law. Thus, I find that the contention of the importer fails the test of merit.

22.1 To sustain my above view, I rely on the ratio of decision of Hon'ble Gujarat High Court rendered in case of Gujarat Narmada Valley Fertilizers & Chem Ltd. Vs. Commr. of Customs reported in 2014 (305) ELT 72(Guj) wherein interalia it has been held as under:

"7. In the present case, facts are substantially different. The notice as reproduced hereinabove, first and foremost proposes to adopt certain classification which, in the opinion of the department, would be correct for the imported goods rejecting the classification canvassed by the petitioner. It is in this context that in para 24(1) of the notice calls upon the petitioner show cause why the classification of the imported goods under Heading 2701 19 20 should not be rejected and why the same should not be re-classified under the Heading 2701 12 00 of the First Schedule to the Customs Tariff Act, 1975. Further proposals are only consequential in nature and includes proposal for adopting correct classification and quantifying the differential customs duty on 37,000 MT of coal imported by the petitioner. Proposal is also for recovery of the differential customs duty with interest.

8. In our opinion, this is not a case where recovery of duty under Section 28 of the Act is preceded the finalisation of the classification. As a matter of fact, the very notice issued is for finalization of the classification on the basis of the proposal and the prima facie opinion of the department rejecting the classification presented by the petitioner. We do not find that the same is without jurisdiction."

22.2 Further, Hon'ble Bangalore Tribunal in the case of M/s. Alnco Kondapalli Power Ltd Vs CCE, ST & C, Visakhapatnam-II reported in 2015 (319) ELT 309 (Tri. Bang) interalia has held as under:

"6(c) (3). Learned counsel has relied upon several decisions to support the submission that there cannot be any confiscation and penalty. The first submission was that without finalization of provisional assessment. Revenue could not have issued a show cause notice under Section 28 of the Customs Act, 1962. We have already discussed the relevant decisions cited by learned counsel and have come to the conclusion that in this case, the demand arises as a result of finalization of assessment. Therefore, finalization of provisional assessment under Section 18 of the Customs Act, 1962 and demand of differential duty under Section 28 of the Act, even though contained in the same order, are sustainable in view of the detailed examination of provisions of law as well as the decisions of the Tribunal in the cases of Dabhol Power Company and Mangalore Refinery & Petrochemicals Ltd. referred to supra."

Therefore, in view of the above, plea of the importer that demand cannot be raised in case of Bill of Entry are provisionally assessed and pending for final assessment is incorrect and not tenable.

23 I find that importer has contended that in terms of Section 28(2) of the Customs Act, any person can pay the amount of Duty along with interest, whether upon his own ascertainment or as done by the proper officer, before the service of a show cause notice and inform the proper officer of such payment in writing. Upon receipt of such information in writing, proper officer shall refrain from issuing a show cause notice in respect of such Duty and interest; that since the duty demanded in the SCN is not correct and the payment of differential duty alongwith interest was already done for major portion of the Bills of Entry and the rest of the payment is in process, the Duty demanded has not considered those payments and therefore, calculation of the differential duty is not correct.

I find that the said contention is not tenable as in the present case, differential duty is demanded under Section 28 (4) of the Customs Act, 1962 for wilful mis-statement and suppression of facts as discussed hereinabove, whereas, Section 28 (2) is applicable for demand under Section 28 (1) other than the case where wilful mis-statement or suppression of facts is involved. Further, in the present case, the importer has not paid the entire differential duty alongwith interest during the investigation. Therefore, their said plea is not tenable.

24 I find that importer has contended that the present Show Cause Notice is invalid in the absence of valid appeal against the out of charge/Bills of Entry; that assessment orders being quasi-judicial orders cannot be sought to be set aside by mere issuance of a Show Cause Notice, which has proposed to modify the assessment orders in the instant case. The Noticee has relied upon a few judgements to support their contention. In this regard, I find that the provisions for order for assessment and permitting clearance of goods for home consumption are governed under Section 47 of the Customs Act, 1962. In the case of **M/s Jain Shudh Vanaspati Ltd. reported at 1996 (86) ELT 460 (SC)**, the Hon'ble Apex Court has held that demand under Section 28 of the Customs Act, 1962 can be issued without revising the order passed under Section 47 of the Customs Act, 1962 and the relevant text of the said judgment reads as under:

"It is patent that a show cause notice under the provisions of Section 28 for payment of Customs duties not levied or short-levied or erroneously refunded can be issued only subsequent to the clearance under Section 47 of the concerned goods. Further, Section 28 provides time limits for the issuance of the show cause notice thereunder commencing from the "relevant

date”; “relevant date” is defined by sub-section (3) of Section 28 for the purpose of Section 28 to be the date on which the order for clearance of the goods has been made in a case where duty has not been levied; which is to say that the date upon which the permissible period begins to run is the date of the order under Section 47. **The High Court was, therefore, in error in coming to the conclusion that no show cause notice under Section 28 could have been issued until and unless the order under Section 47 had been first revised under Section 130.”**

The above order has been followed in a number of judicial pronouncements by the CESTAT out of which the relevant text of the case of **M/s Asia Motor Works reported at 2020 (371) ELT 729 (T)** is reproduced under:

“It has been argued by the Ld. Counsel for AMW that since the assessment has not been challenged, demand under Section 28 cannot be raised. In this regard Ld. AR had relied on decision of Ld. Apex Court in case of Jain Shudh Vanaspati Ltd. (supra) wherein it has been held that the demand can be raised under Section 28 even if challenging assessment. Consequently this argument of Ld. Counsel for AMW is rejected.”

In view of the express order of the Hon’ble Apex Court, I find that the contentions of Importer are liable to be set aside.

25 In view of the foregoing discussion and findings, I pass the following order:

:: ORDER::

25.1 I disallow the benefits of serial No.485A, 490, 494A, 516C and 581B of Notification No.50/2017-Customs dated 30.06.2017 as amended vide Notification No. 21/2021-Customs dated 31.03.2021 availed after 01.04.2021 by M/s. M.G. Motors India Pvt. Ltd on the Bills of Entry as mentioned in Annexure-A to Show Cause Notice and order to re-assessed the same accordingly.

25.2 I confirm the demand of Differential Customs Duty amounting to **Rs. 1,57,30,212/- (Rupees One Crore, Fifty Seven Lakh, Thirty Thousand, Two Hundred and Twelve only)** as detailed in Annexure- A of the Show Cause Notice leviable on the “imported goods” covered under Bills of Entry as listed in Annexure A imported by M/s MG Motor India Private Limited under Section 28(4) of the Customs Act, 1962 readwith the provisions of Section 28(8) of the Customs Act, 1962 and order to recover the same.

25.3 Interest at the appropriate rate shall be charged and recovered from M/s. MG Motor India Private Limited, under Section 28AA of the Customs Act, 1962 on the duty confirmed hereinabove at Para 25.2 above.

25.4 I hold the 90,409 pieces of the imported goods totally valued at **Rs.16,79,90,193/- (Rupees Sixteen Crore, Seventy Nine Lakh, Ninety Thousand, One Hundred and Ninety Three only)** imported vide Bills of Entry as listed in Annexure- A of the Show Cause Notice liable for confiscation under Section 111(m) of the Customs Act, 1962. However, I give M/s. MG Motor India Private Limited the option to redeem the goods on payment of Fine of **Rs. 1,68,00,000/- (Rupees One Crore and Sixty Eight Lakh only)** under Section 125 of the Customs Act, 1962.

25.5 I impose penalty of **Rs. 1,57,30,212/- (Rupees One Crore Fifty Seven Lakh, Thirty Thousand, Two Hundred and Twelve only)** plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed above on M/s. MG Motor India Private Limited., under Section 114A of the Customs Act, 1962 in respect of Bills of Entry detailed in Show

Cause Notice. However, I give an option, under proviso to Section 114A of the Customs Act, 1962, to the importer, to pay 25% of the amount of total penalty imposed, subject to the payment of total duty amount and interest confirmed and the amount of 25% of penalty imposed within 30 days of receipt of this order.

25.6 I impose a penalty of **Rs.5,00,000/- (Rs. Five Lakh only)** on M/s. MG Motor India Private Limited under Section 114AA of the Customs Act, 1962.

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

27 The Show Cause Notice No. VIII/10-41/Commr./O&A/2022-23 dated 11.09.2023 is disposed off in above terms.



(Shiv Kumar Sharma)
Principal Commissioner

DIN-20240871MN000055955D

F.No. VIII/10-41/Commr./O&A/2022-23

Date: 08.08.2024

By SPEED POST

प्रेषित/To,

Address-1:

1.M/s MG Motor India Private Limited,
10th Floor, Milestone Experion Centre,
Sector-15, Part-II, Gurgaon,
Haryana- 122 001

& Address-2:

2.M/s MG Motor India Private Limited,
GIDC, Industrial Estate,
Halol District- Panchmahal,
Gujarat-389350

Copy to:-

1. The Chief Commissioner of Customs, Gujarat Customs Zone, Ahmedabad
2. The Additional Director, Directorate of Revenue Intelligence, Plot No. S-10, Bhavani Singh Lane, Bhavani Singh Road, C-Scheme, Jaipur
3. The Deputy Commissioner of Customs, ICD, Dashrath for information.
4. The Deputy Commissioner of Customs, Air Cargo Complex, Mumbai for information.
5. The Deputy Commissioner of Customs, ICD, Umergaon for information.
6. The Deputy Commissioner of Customs, JNCH, Nhava Sheva for information.
7. The Deputy Commissioner of Customs, ICD, Adani Hazira Port for information.
8. The Deputy Commissioner of Customs, Air Cargo Complex, New Delhi for information.
9. The Deputy Commissioner of Customs, ICD, Garhi Harsaru for information.
10. The Superintendent (Systems), Customs, Ahmedabad in PDF format for uploading on website of Customs Commissionerate, Ahmedabad.
11. Guard File.