सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

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

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

DIN - 20250971MN0000555D16

क	फ़ाइल संख्या FILE NO.	S/49-258/CUS/MUN/2023-24
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	MUN-CUSTM-000-APP-184-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	19.09.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original no. MCH/ADC/AK/242/2023-24 dated 26.01.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	19.09.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Suzuki Motor Gujarat Private Limited, Plot No. 334 and 335 Survey No. 293, Hansalpur NR Becharaji Tal Mandal, Distt, Ahmedabad, Gujarat-382130.

कार्यालय आयुक्त (अपील), सीमा शुल्क, अहमदाबाद.

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

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

ORDER-IN-APPEAL

Appeal has been filed by M/s. Suzuki Motor Gujarat Private Limited, Plot No. 334 and 335 Survey No. 293, Hansalpur NR Becharaji Tal Mandal, Distt, Ahmedabad, Gujarat-382130, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/ADC/AK/242/2023-24 dated 26.01.2024 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Customs House, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the Appellant presented Bill of Entry bearing No. 8616272 dated 28.08.2020, through their Customs Broker M/s. Yusen logistics (India) Private Limited (CHA), at Custom House, Mundra, for clearance of goods i.e. Camshaft Housing Assembly Machine Serial No. A8166 under CTH 84798999 against EPCG License (Customs Notification No. 016/2015-Cus. Dated 01.04.2015). During the course of Audit Customs Revenue Audit (Para-04, LAR- 77/2018-19 dated 15.05.2019), it was observed from the data analysis of Bill of Entry that the said importer had imported "Camshaft Housing Assembly Machine Serial No. A8166" under Customs Tariff Heading No. 84798999 (other than composting machines). The said importer made IGST payment at the rate of 12 per cent under serial number 201 of Schedule II of IGST Notification No. 1/2017-Integrated Tax (rate) dated 28.06.2017. As the imported goods were other than composting machines, these attracted 18 percent IGST as per Serial Number 366 of Schedule III of IGST Notification No. 1/2017-Integrated Tax (rate) dated 28.06.2017. Imports were effected under Customs Notification No. 016/2015-Cus (EPCG Scheme), this resulted in short levy of duty of 44,99,691/- (details mentioned in Table-A).

Table-A

BE No.	Importer Name	Item Description	CTH	Assess value (Rs.)	Duty paid under EPCG Lic. with IGST paid under Sl. No. 201 of Schedule II (in Rs.)	Payable under Sl. No. 366 of Schedule III (IGST@18%)	Differential Duty (in Rs.)
8616272/ 28.08.2020	Suzuki Motor Gujarat Private Limited	Camshaft Housing Assembly Machine Serial No. A8166	84798999	414714924/-	19214615/-	(Not explicitly stated in table, but the differential duty is the difference between 18% and 12%)	4499691/-

2.1 It appeared that goods imported by the Appellant are "Camshaft Housing Assembly Machine Serial No. A8166 under Customs Tariff Heading No.84798999" classified imported goods under Sr. No. 201 of Schedule II of IGST notification no 1/2017-Integrated Tax (rate) dated 28.06.2017. Imports were effected under Customs Notification No. 016/2015-Cus (EPCG Scheme). The relevant portion of Notification No. 1/2017-Integrated Tax (rate) dated 28.06.2017 as amended is stipulated as under:

Notification No. 1/2017-Integrated Tax (rate) (Schedule-II)

Sr. No.	Chapter/Heading/ Subheading/Tariff item	Description of Goods
201	8479	Composting Machine

Notification No. 1/2017-Integrated Tax (rate) (Schedule-III)

Sr. No.	Chapter/Heading/Subheading/Tariff item	Description of Goods
366	8479	Machines and mechanical appliances having individual functions, not specified or included elsewhere in this Chapter (other than Composting Machines)

2.2 It appeared that the Appellant had imported ""Camshaft Housing Assembly Machine Serial No. A8166 under Customs Tariff Heading No.84798999" and classified them under Sr. No 201 of Schedule II of IGST Notification No. 01/2017-Integrated Tax (rate) dated 28.06.2017. From the description of imported goods, it appears that the items are to be correctly leviable to tax under Sr. No 366 of Schedule III of IGST Notification No. 1/2017-Integrated Tax (rate) dated 28.06.2017. Imports were effected under Customs Notification No. 016/2015-Cus (EPCG Scheme), this has resulted in short levy of IGST of Rs. 44,99,691/-. Further, duty exemption on import of capital goods under Export Promotion Capital Goods (EPCG)' scheme has been provided to importers through Customs Notification No. 16/2015-Cus, subject to fulfillment of export obligation equal to six times the duty saved on such imports. Thus, it is apparent that determination of correct duty saved amount is crucial for imports under EPCG scheme.

2.3 The import of goods has been defined in the IGST Act, 2017 as bringing goods in India from a place outside India. All import shall be deemed as inter-state supplies and accordingly integrated tax shall be levied in addition to

the applicable Custom duties. The IGST Act, 2017 provides that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of Customs are levied on the said goods under the Customs Act, 1962. Section 5 of Integrated Goods and Service Tax Act, 2017 stipulates that "Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 (51 of 1975) on the value as determined under the said Act at the point when duties of customs are levied on the said goods under Section 12 of the Customs Act 1962."

2.4 As per Sub Section 7 of Section 3 of Customs Tariff Act, 1975 any article which has been imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty percent, as is leviable under Section 5 of the Integrated Goods and Service Tax, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section 8 or sub-section 8A as the case may be.

2.5 In view of the above, a Show Cause Notice under F. No. CUS/APR/MISC/9085/2023-Gr 5-6-0/0 Pr Commr-Cus-Mundra dated 01.09.2023 was issued whereby the Appellant was called upon to show cause in writing to the Additional Commissioner of Customs, having office at Office of the Commissioner, Custom House, 5B, Port User Building, Mundra Port, Mundra-Kutch within 15 (fifteen) days from the date of receipt of this notice, as to why:

(i) The listing and taxing of said imported goods under serial number 201 of Schedule-II of IGST Notification No. 1/2017- Integrated Tax (rate) dated 28.06.2017 should not be denied;

(ii) The said imported goods should not be listed an taxed under serial number 366 of Schedule III of IGST Notification No. 1/2017- Integrated Tax (rate) dated 28.06.2017;

(iii) An amount of Integrated Goods and Service Tax of Rs. 44,99,691/- (Rupees Forty Four Lakh Ninety-Nine Thousand Six Hundred Ninety One Only) (the differential IGST as detailed in Table-A to the SCN) leviable on the impugned goods and short paid by the Appellant should not be demanded and recovered in terms of Section 28(4) of the

Customs Act, 1962 read with Section 5 of the Integrated Goods and Service Tax Act, 2017;

(iv) The applicable interest on the amount as at Sr. No. (iii) above should not be demanded and recovered under Section 28AA of the Customs Act, 1962 read with Section 50 of the Central Goods and Service Tax Act, 2017;

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

2.6 Consequently, the Adjudicating Authority passed the following order:

(i) He denied listing and taxing of the goods "Camshaft Housing Assembly Machine Serial No. A8166" under SL. No. 201 of Schedule-II of IGST Notification No. 1/2017-Integrated Tax (rate) dated 28.06.2017 and order to list and tax the subject goods under SL. No. 366 of Schedule-III of IGST Notification No. 1/2017-Integrated Tax (rate) dated 28.06.2017;

(ii) He confirmed and ordered to recover the differential amount of IGST totally amounting to Rs. 44,99,691/- (Rupees Forty Four Lakh Ninety-Nine Thousand Six Hundred Ninety One Only) in respect of the goods covered under Bill of Entry No. 8616272 dated 28.08.2020 under Section 28(84) of the Customs Act, 1962 read with section 5 of the Integrated Goods and Service Tax Act, 2017.

(iii) He ordered to charge and recovered interest from M/s. Suzuki Motor Gujarat Private Limited, Plot no. 334 and 335, Survey No. 293, Hansalpur NR Becharaji, Tal Mandal, Distt, Ahmedabad, Gujarat-382130, on the confirmed IGST amount at Sl No. (ii) above, under Section 28AA of the Customs Act, 1962 read with Section 50 of the Central Goods and Service Tax Act, 2017;

(iv) He ordered the Bill of Entry No. 8616272 dated 28.08.2020 should be re- called and re-assessed at the appropriate rate of IGST and the same should be debited from EPCG License No. 0830011944 dated

19.08.2020;

(v) He imposed a penalty of Rs. 44,99,691/- (Rupees Forty Four Lakh Ninety-Nine Thousand Six Hundred Ninety One Only) upon M/s. Suzuki Motor Gujarat Private Limited, Plot no. 334 and 335, Survey No. 293, Hansalpur NR Becharaji, Tal Mandal, Distt, Ahmedabad, Gujarat-382130, under Section 114A of the Customs Act, 1962.

SUBMISSIONS OF THE APPELLANT:

Being aggrieved with the impugned order, the Appellant has filed the present appeals wherein they have submitted grounds which are as under:-

3.1 It is submitted that the Appellant has imported goods under EPCG authorization. The said scheme is governed by the Exemption Notification No. 016/2015-Cus dated 01.04.2015 which permits exemption of customs duties for the import of capital goods for pre-production, production, and post-production subject to an export obligation equivalent to 6 times of duty saved on capital goods, to be fulfilled in 6 years reckoned from the date of issue of authorisation as has been specified in Chapter 5 of the Foreign Trade Policy 2015-20. As has been stated, the imported goods are capital goods covered by the exemption as per the EPCG Authorization and the bond is to be executed for entire duty of IGST payable, regardless of the FTP. Similar benefit is available as per the DFIA scheme. The adjudicating authority in Para 14.1 of the OIO has referred to Section 3(7) of the Customs Tariff Act and Section 5(1) of the IGST Act which acts as a mere enabling provision to impose IGST on the imported goods. Para 5.01 of the Foreign Trade Policy 2015-20 (FTP) clearly provides for an exemption from the payment of IGST leviable under Section 3(7) of the Customs Tariff Act. This means that IGST will not be applicable if the authorisation has been received under the EPCG scheme and the export obligation as specified has been fulfilled. The Para 5.01 of the Foreign Trade Policy 2015-20 (FTP) provides:

"5.01 EPCG Scheme

EPCG Scheme allows import of capital goods (except those specified in negative list in Appendix 5 F) for pre-production, production and postproduction at zero customs duty. Capital goods imported under EPCG Authorisation for physical exports are also exempt from IGST and Compensation Cess upto 31.03.2020 only, leviable thereon under the

subsection (7) and subsection (9) respectively, of section 3 of the Customs Tarff Act, 1975 (51 of 1975), as provided in the notification issued by Department of Revenue. Alternatively, the Authorisation holder may also procure Capital Goods from indigenous sources in accordance with provisions of paragraph 5.07 of FTP. Capital goods for the purpose of the EPCG scheme shall include:

(i) Capital Goods as defined in Chapter 9 including in CKD/SKD condition thereof;

(ii) Computer systems and software which are a part of the Capital Goods being imported;

(iii) Spares, moulds, dies, jigs, fixtures, tools & refractories; and

(iv) Catalysts for initial charge plus one subsequent charge.

(b) Import of capital goods for Project Imports notified by Central Board of Excise and Customs is also permitted under EPCG Scheme.

(c) Import under EPCG Scheme shall be subject to an export obligation equivalent to 6 times of duties, taxes and cess saved on capital goods, to be fulfilled in 6 years reckoned from date of issue of Authorisation. Authorisation shall be valid for import for 18 months from the date of issue of Authorisation. Revalidation of EPCG Authorisation shall not be permitted.

3.2 The Exemption Notification No. 16/2015-Cus reads as follows:

"Notification No. 16/2015 - Customs New Delhi, the 1 st April, 2015. a. G.S.R. 252 (E)-In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods specified in the Table 1 annexed hereto, from-

(i) the whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the said Customs Tariff Act), and

(ii) the whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act, when specifically claimed by the importer."

3.3 Accordingly, by virtue of the FTP para 5.01 and the exemption notification 16/2015 - Cus the following duties namely, customs duty leviable under the Customs Tariff Act including any other additional duty along with

IGST and Compensation Cess are and have been exempted. Thus, all such duties even if leviable are still exempted as has been specified in the FTP and the Notification thereunder. It is submitted that the appellant had imported these goods under the EPCG scheme with EPCG Authorisation No. 0830011944 issued on 19.08.2020. The due export obligation which is six times of the duty saved on the imported goods, was completed after including IGST at the rate of 18% rather than 12%. Therefore, like all other concurrent duties, the present rate of IGST is still exempted, even if leviable on merit. It is further submitted that the adjudicating authority rather going into the merits of the submission concerning EPCG authorization and the FTP, has strayed and merely re-amplified the fact that there has not been any dispute concerning the payment of IGST.

3.4 The IGST is imposable vide Section 3 of the Customs Tariff Act and not by the importer. Exemption from IGST, if available, is not imposed but only tentatively claimed by the importer and the exemption is allowed by the proper officer by application of Section 17(2) of the Act, as the exemption allowed is conditional and under a bond, and, therefore, the proper officer, only if satisfied that the exemption is available, grants clearance of the conditionally exempted goods under Section 47 of the Act. If not satisfied, then denies grant of clearance except after exhausting the course of actions vide the ensuing Sections 17(3) to 17(5) of the Act and then orders clearance under the said Section 47. It is the Act that imposes and also it is the Act that grants exemption. The importer is not vested with any statutory powers to impose on himself any IGST that is exempt under Section 25 Notification. The self-assessment made in a bill of entry is not absolute, it is only tentative claim and is subject to the caveats statutorily permitted to the proper officer allowing clearance vide the Sections 17(2) to 17(5) in the Act. Self- assessments even in an RMS facilitated situation are open to and allowed to be interdicted by the Proper Officer.

3.5 Additionally, it is submitted that in the instant case the assessment of the Bill of Entry has been done by the Faceless Assessment Group ("FAG") and is not self-assessed. The submission made in the impugned BOE is on 28.08.2020 and the assessment was done by the FAG on 01.09.2020. This emphasizes the fact that IGST was duly assessed by the FAG and the allegation of wrongful assessment goes to bay. Assuming without admitting, it is a case of self- assessment, in that case also at best the customs authorities can ask for debit of 6% IGST from the bond thereof.

3.6 Hence, the adjudicating authority has erred in levying and demanding the IGST at the rate of 18% in cash by merely referring to the enabling provisions since in the present case, the IGST even if applicable is expressly exempt vide Para 5.01 of FTP and the aforementioned Notification.

3.7 It is submitted that the Appellant has fulfilled the export obligation in respect of the EPCG authorization and that too after considering IGST Rate at 18 per cent instead of 12 per cent. The relevant Authorization clearly indicates 100% export obligation fulfilment within the respective initial export obligation period. Furthermore, the Export Obligation Discharge Certificate (EODC) was issued by the DGFT entailing the fact that export obligation has been completed at 18 per cent (IGST Rate). The same can be confirmed from the redemption letter which clearly provides, "it is observed that the Export Obligation stipulated in the Licence has been met in full in proportion to duty amount utilized by you. Consequently, Export Obligation has been discharged against the said Authorization in terms of Para 5.13 of H.B. of procedure".

3.8 Further, it is submitted that there is no allegation of non-fulfillment of the obligation and no invocation of the bond for demand for recovery of any or all duties. The allegation of the supposed non-levy of an exempted duty is not on the grounds that duty was not exempted; but on the subtle grounds that the bond amount falls short to the extent of the Differential IGST duty which is exempted. Thus, it is submitted that once the export obligation has been duly fulfilled against the relevant EPCG Authorization, the demand made by the department in terms of differential payment of IGST lies unsustainable.

3.9 Without prejudice, the Appellant has submitted that the Bill of Entry can be amended. The adjudicating authority has stated in para 14.2.1 of the OIO that "if the Audit Customs Revenue Audit, Ahmedabad, would not have observed the said classification done by the appellant, then the evasion of duty would not have come to the knowledge of the department". With regards to the same, it is submitted that the appellant made an inadvertent error and to rectify the same the letter for amendment of the BOE was presented. Hence, the appellant did not dispute the classification given by the department and vigilantly took steps to rectify the error wherein they requested the amendment of bill of entry under Section 149 of the Act and showed their willingness to debit the differential amount of IGST from their EPCG licence. Moreover, as has been specified, the export obligation was duly fulfilled within the prescribed period and the same

was completed even before the SCN was issued. Therefore, re-emphasizing the fact that the Appellant in any case did not have any intention to evade duty.

3.10 It is submitted that the Bill of Entry is capable of being amended even after post- clearance by the Proper Officer by application of Section 149 read with Section 154 of the Act. Section 149 provides that proper officer in his discretion may allow amendment in documents (including bill of entry) already submitted with the customs authorities. It further provides that no amendment of a bill of entry shall be so authorised to be amended after the imported goods have been cleared for home consumption, except on the basis of documentary evidence which was in existence at the time the goods were cleared. Reliance in this regard is placed on the below mentioned judicial pronouncements to show that if the documents were in existence at the time of import, then even after clearance of goods from the customs port, the bill of entry may be amended.

- Senka Carbon Pvt. Ltd. vs. Commissioner of Customs, Chennai, 2007 (216) ELT 397 (Tri-Chennai)
- Brakes India Limited vs. Commissioner of Customs, Chennai, 2008 (221) ELT 300 (Tri. Chennai)

3.11 Furthermore, the appellant submits that it is a settled proposition of law that substantial benefits cannot be denied merely because of procedural lapse. Accordingly, a substantial benefit of exemption under EPCG scheme cannot be denied merely because of a procedural mistake. Reliance in this regard is placed upon the following judgments rendered:

- Archana Syntex Pvt. Ltd v/s. CCEX, Belapur - 2005 (191) E.L.T. 546 (Tri.- Mumbai);
- CC (Airport), Chennai v/s. Compagnie General Des Eaux - 2005 (192) E.L.T. 201 (Tri.-Chennai);
- CCEX, Rajkot v/s. Ellora Times P. Ltd. - 2008 (228) E.L.T. 381 (Tri.-Ahmd.);
- Packaging India Pvt. Ltd., v/s. CCEX, Meerut 2013 (294) E.L.T. (Tri.-Del.);
- ABB India Ltd., v/s. UOI - 2020 (373) E.L.T. 205 (Ker.).

3.12 Moreover, there have been various judicial precedents indicating that amendment of Bill of Entry cannot be denied only because of a mere

technical error. Further, emphasizing upon the fact that even if all the documents to correct the error were not on record, the same cannot be a good enough reason to justify non-allowance of amendment of the Bill of Entry. In the case of Hindustan Unilever vs. Union of India, 2021 (49) GSTL 292 (Mad.), the Madras High Court pronounced that,

> *"12. The argument put forth by the revenue in that case was that, only such documents that were already on record with the respondents could be taken into account to correct the error, if at all and no other documents may be admitted for that purpose. I have rejected that argument stating that the spirit and intent of Section 149 is to facilitate the correction of error where the importer is in a position to establish that such error was inadvertent and bona fide.*
>
> *13. To say that the goods have already been cleared for home consumption and thus no amendment may be made, would fall in the face of the proviso to Section 149 which imposes a condition to be satisfied by an importer if he requests amendment after the goods have been cleared. The imposition of the condition itself means that a request for amendment may certainly be considered, subject to satisfaction of the condition imposed. I have gone into on to say that the phrase 'on record' would mean any documents that were available with the petitioner that were contemporaneous with imports must also be taken into consideration, to decide the question of existence of error. The Assessing Authority cannot restrict her examination only to documents that are available on her record. This issue thus stands answered in favour of the petitioner."*

From the above case law, it can be stated that it is essential for the proper officer to recognize the spirit and intent of Section 149 of the Act which is fundamentally to facilitate the correction of error where the importer is in a position to establish that such error was inadvertent and bona fide.

3.13 In another case of Oriental Carbon & Chemicals Ltd. vs. Union of India, 2021 (377) ELT 850 (Guj.), it was held that,

> *"21. Section 149 of the Customs Act, 1962, specifically permits amendment of the shipping bills even after the export on the basis of the documentary evidence which was in existence at the time the goods were exported. There*

is no restriction in the said provision for not allowing the amendment after the goods are exported unless the goods are checked at the time of export. Hence, the authorities cannot to introduce such restrictions de hors the said provision."

3.14 Furthermore, in Dimension Data India Pvt. Ltd. vs. Commissioner of Customs, 2021 (376) ELT 192 (Bom.), where the point for consideration was, whether the request of the petitioner for correction of inadvertent mistake or error in the self-assessed Bills of Entry and consequential passing of orders for reassessment is legal and valid? The High Court of Bombay in light of the above question discussed the relevant provisions of the Customs Act and gave a finding that, the amendment of Bill of Entry is clearly permissible even in a situation where the goods are cleared for home consumption. The only condition is that in such a case, the amendment shall be allowed only on the basis of the documentary evidence which was in existence at the time of clearance of the goods. Additionally, in the case of M/s. Hewlett Packard Enterprise India Pvt. Ltd. v. Joint Commissioner of Customs & Ors. reported in 2020 (10) T.M.I. 970-Madras High Court = 2021 (375) E.L.T. 488 (Mad.), it was held that the proviso to Section 149 contemplates an opportunity to be extended to an assessee to produce such documents that were in existence at the stipulated time that would serve to establish the error, if any, in the Bill-of-Entry. The same was ratio was affirmed in Lenovo India Pvt. Ltd. VS. Commr. Of Cus., Chennai-VII Commissionerate.

3.15 It is further submitted that the allegation made by the adjudicating authority, that the re-assessment of the impugned BOE was only after the SCN was issued serves no purpose, since it does not justify the amendment of the Bill of Entry. Additionally, through the submissions made by the Appellant, there has always been a voluntary effort to rectify the remedy through the amendment of the impugned BOE. Thus, the stand taken by the adjudicating authority to establish wilful short payment of IGST is not the correct since, it is a clerical mistake (capable of being corrected even post clearance) which is the real situation and fact that deserves to be admitted.

3.16 The adjudicating authority in para 16 and para 17(iv) of the OIO has allowed the reassessment of the bill of entry at the appropriate rate of IGST applicable and the same to be debited from the EPCG License No. 0830011944. On the other hand, the adjudicating authority in para 17(ii) of the Order has also

confirmed to recover the differential amount of IGST amounting to Rs. 44,99,691/-. It is submitted that the same is self-contradictory because once the reassessment of the bill of entry and the debit of the same amount from the EPCG licence is allowed then the question to demand and recover the differential amount of IGST from the appellant provides to be irrational and therefore, the ask for recovery of differential IGST as per 17(ii) of the OIO cannot hold good.

3.17 It is submitted that the adjudicating authority in para 14.3.1 has erred in invoking Section 17 of the Act on the ground that it is the responsibility of the importer to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods. It has been further provided in the OIO that appellant failed to discharge the legal statutory obligation entrusted upon them under Section 17 read with Section 46 of the Customs Tariff Act, 1962 in correct determination of SL. No. and Schedule of IGST Notification for levy and payment of IGST for the imported goods.

3.18 In this regard, it is submitted that it is settled law that allowing the correct classification on the import of the goods is the responsibility of the Customs authorities. It is submitted that the Appellant made true description of the goods in the Bills of Entry. Thereafter, if in the assessment proceeding the customs authorities were of the different view then, they may deny the classification. Also, it must be noted that the assessment in the present case, was done by the FAG, thereby the allegation of imposing wrongful assessment upon the Appellant is incorrect. In such a situation, it cannot be construed that the Appellant has an intention to evade the payment of taxes. Nonetheless, it is a settled law that a mere claim for a particular classification does not amount to wilful suppression. Reliance is also placed on the following decisions: E.3 In the case of Sony India Pvt. Ltd. vs. Union of India 2022 (379) E.L.T. 588 (Telangana), the High Court of Telangana held that, "it is the duty and responsibility of the Assessing Officer/Assistant Commissioner to correctly determine the duty leviable in accordance with law before clearing the goods for home consumption. The assessing officer instead, having failed in correctly determining the duty payable, has caused serious prejudice to the importer/petitioner at the first instance". This decision was affirmed by the Supreme Court in Union of India vs. Sony India Pvt. Ltd. 2023 (385) ELT 93(SC). Therefore, the ratio in the aforesaid judgment clearly provides a similarity to the present case, conforming that it is the responsibility of the adjudicating authority to assess and correctly determine

the duty leviable and the onus cannot be shifted onto the Appellant. Moreover, the assessment in this case was done by the FAG which shifts the burden of determining the correct duty all the more on the department.

3.19 In another case of Commissioner of Customs, Trichy v. JSW Steels LTD. [2018 (364) E.L.T. 874 (Tri. - Chennai)], Hon'ble Tribunal held as under:

> *"The main argument put forward by Ld. AR appearing for department is that the Chemical Laboratory did not have facility to conduct necessary tests for determining the MMR, the sample ought to have been sent to various other Laboratories which have the facility. It is the responsibility of the department to send the sample to a Lab which has all the testing facilities to test the required parameters which are prescribed under the notification. In the absence of such test report, the authorities below have relied upon the report given by independent surveyor. The grounds of appeal itself states that the erroneous decision came to be passed because of failure to get the sample tested at the appropriate Lab. For this deficiency, the appellant cannot be saddled with burden to pay duty by denying the exemption. We do not find any merits in the appeal filed by department. The appeals are dismissed." (Emphasis supplied).*

3.20 In the case of Global Exim v. Commissioner, 2010 (253) E.L.T. 417 (Tri.-Mumbai)., the Honble Tribunal held as under:

"The next contention is that the specification provided in the DFIA is only upto 50 mm bore in respect of bearings and appellants have imported several types of bearings whereas the export was only of one type. In this regard, we have to take note of the fact that when exports were made shipping bill was filed with Customs Authorities and in the shipping bill a declaration to the effect that it is under DFIA scheme would have been made. In such a situation, customs officers also should have verified the specifications. Having allowed export of motors with input specifications as bearings upto 50 mm bore, it may not be appropriate for the customs authorities to insist on ------page 23 to 25 of appeal memo to be added here(not available in scanned file)

> *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 (1) and for this purpose, examine or test any imported goods or export goods or such part thereof 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 subsection (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."

In practice, the importer makes an entry under section 46 and also self-assesses duty under section 17(1) by filing the Bill of Entry. There is no separate mechanism to self- · assess duty. The columns pertaining to classification, valuation, rate of duty and exemption notifications which determine the duty liability are part of the Bill of Entry which is also an entry under section 46. Thus, although the Bill of Entry requires the importer to make a true declaration and further to confirm that the contents of the Bill of Entry are true and correct, the columns pertaining to classification, exemption notifications claimed and in some cases even the valuation are matters of self-assessment and are not matters of fact. Self-assessment is also a form of assessment but the importer is not an expert in assessment of duty and can make mistakes and it is for this reason, there is a provision for re-assessment of duty by the officer. Simply because the importer claimed a wrong classification or claimed an ineligible exemption notification or in some cases, has not done the valuation fully as per the law, it cannot be said that the importer mis-declared. As far as the description of the goods, quantity, etc. are concerned, the importer is bound to state the truth in the Bill of Entry. Thus, simply claiming a wrong classification or an ineligible exemption notification is not a mis-statement. Assessment,

including self-assessment is a matter of considered judgment and remedies are available against them. While self-assessment may be modified by through re-assessment by the proper officer, both self-assessment and the assessment by the proper officer can be assailed in an appeal before the Commissioner (Appeals) or reviewed through an SCN under section 28. Therefore, any wrong classification or claim of an ineligible notification or wrong self-assessment of duty by an importer will not amount to mis-statement or suppression."

3.21 From the above case law, it can be observed that the classification made by the appellant cannot be equated as mis-statement or suppression of facts with the intent to evade the duty since even the Hon'ble CESTAT considers the fact that importer is not an expert in assessment of duty and can make mistakes due to which the provisions of re-assessment under Section 17(4) are made available. Moreso over, the assessment was made by the FAG, which essentially eliminates the contention made by the adjudicating authority that self-assessment was wrongly done. Therefore, the appellant cannot be held liable for the contravention of Section 46(4) and the adjudicating authority has erred in finding that the said act of commission and omission on the part of the appellant amounts to misstatement and suppression of facts with intent to evade payment of appropriate duty.

3.22 Moreover, without prejudice it is submitted that the adjudicating authority in para 14.2.2 of the OIO has emphasised upon the option with the appellant to avail the facility provided under Section 28(5) of the Act wherein the appellant would have concluded the proceedings initiated by the SCN by payment of differential amount of IGST, interest and 15% penalty as specified. The adjudicating authority reiterated the willingness of the appellant to pay the differential amount of IGST and interest thereof but not the penalty. With regards to this, it is submitted that Section 28(5) cannot be invoked upon the appellant in the first place since there was no wilful misstatement or suppression of facts from the side of the appellant. The misclassification of goods was an inadvertent error made by the appellant which shall be rectified through the amendment of bill of entry under Section 149 of the Act.

3.23 Without prejudice to the submissions in the foregoing paragraphs, it is submitted that the case involves interpretation of the provisions of the Customs Act and the impugned Notification. Classification of any item comes

within the interpretation of law. Therefore, cannot be construed to be a case of willful misstatement or suppression of facts. The above proposition is supported by the judgment of Hon'ble Tribunal in the case of Singh Brothers vs. Commissioner of Customs & Central Excise, Indore, 2009 (14) STR 552 (Tri.-Del.), wherein it was held as under:

> *"7.....It was submitted that the show cause notice having been issued on 18-10-2006 relating to the period of 21-8-2002 to 2-5-2006, the demand is substantially time-barred. This submission of the Advocate deserves to be accepted as it is a question of interpretation of law and there can be no question of suppression on the part of the Noticees. As a result, demand requires to be restricted for the period within the normal period of limitation and accordingly to be re-quantified..... (Emphasis Supplied)*

3.24 To similar effect are the judgments of Hon'ble Tribunal in the following cases:

Steelcast Ltd. vs. Commissioner of Central Excise, Bhavnagar [2009 (14) STR 129 (Tri.- Del.)];

P.T. Education & Training Services Ltd. vs. Commissioner of Central Excise, Jaipur [2009 (14) STR 34 (Tri.-Del.)];

K.K. Appachan vs. Commissioner of Central Excise, Palakkad [2007 (7) STR 230(Tri.- Bang.)].

3.25 Without prejudice to the foregoing, the adjudicating authority has misinterpreted the willingness of the appellant with respect to payment of interest on the differential amount of IGST in para 14.2.1 of the OIO. In this regard, it is submitted that the appellant has nowhere in the reply to the SCN or the personal hearing, mentioned or shown their willingness to pay the interest on the different amount of IGST. The appellant has only shown their willingness to get the impugned BOE amended and subsequent debit of the differential amount of IGST from their EPCG license. Therefore, the statement that the Appellant was willing to pay interest has been wrongfully connected. Furthermore, the adjudicating authority in para 15.2 has erred in imposing the liability for payment of interest since the differential amount cannot be demanded and recovered under Section 28(4) of the Customs Act, 1962. Without prejudice to the other submissions, it is submitted that the Appellant is not liable to pay the IGST in the first place considering that Appellant is exempted under the EPCG scheme wherein they have fulfilled the export obligation as well. Thus,

the question of payment of interest on the differential amount does not arise when the said amount is not payable in the first place.

3.26 In light of the aforesaid line of argumentation, the judgment of Mahindra & Mahindra Ltd vs. Union of India (WP No. 1848 of 2009) holds relevance. The Bombay High Court in this case establishes that interests or penalties on IGST which is not intrinsically linked to the basic customs duty cannot be imposea without explicit substantive provision. Therefore, since there does not exist any substantive provision for payment of interest on IGST, the imposition of the same would prove to be untenable. The same has been affirmed by the apex court in the matter, Mahindra & Mahindra Limited vs Union of India (2023) 3 Centax 261 (Bom.).

3.27 For ease of reference, the relevant part of the provision is extracted below-

> *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 wilful 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.....*

3.28 The adjudicating authority in para 15.1 of the OIO has erred in imposing penalty upon the appellants under Section 114A of the Customs Act, 1962. It has been provided in the OIO that this is not a case of classification dispute or exemption benefit but a case of suppression of facts and mis-statement with regard to correct generic description of the goods. Furthermore, they imposed the penalty on the ground that the ingredients of suppression of facts with the intent to evade duty is present in the instant case. In this regard it is submitted that the ingredients with respect to wilful suppression of facts so as to evade the duty are not present in the instant case because the appellant made an inadvertent error in classifying the goods to which they have shown willingness to amend the bill of entry and make the necessary changes. In addition, the Appellant was always eligible for EPCG exemption, where the export obligation was fulfilled and that too at 18 per cent IGST.

3.29 In the case of Collector of Central Excise, Hyderabad us. Chemphar Drugs and Liniments, 1989(40) ELT 276 (SC), the Hon'ble Court held that something positive other than mere inaction or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information when the manufacturer knew otherwise, is required before it is saddled with any liability. The same reasoning has been followed in a series of cases thereafter, some of which are listed below:

Padmini Products us. Collector of Central Excise, Bangalore 1989 (43) ELT 195 (SC);

Gopal ZardaUdyog us. Commissioner of Central Excise, New Delhi 2005 (188) ELT 251 (SC);

Anand Nishikawa Co. Ltd. us. Commissioner of Central Excise, Meerut 2005 (188) ELT 149 (SC);

Lubri-Chem Industries Ltd. Us. Collector of Central Excise, Bombay 1994 (73) ELT 257 (SC); and

Cosmic Dye Chemical us. Collector of Central Excise, Bombay 1995 (75) ELT 721 (SC).

3.30 Similarly, in the case of Pushpam Pharmaceuticals Company us. Collector of Central Excise, Bombay, 1995 (78) ELT 401 (SC), the Hon'ble Supreme Court held as under:

"4. Section 11A empowers the Department to re-open proceedings if the levy has been short-levied or not levied within six months from the relevant date. But the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts. The meaning of the word both in law and even otherwise is well known. In normal understanding it is not different that what is explained in various dictionaries unless of course the context in which it has been used indicates otherwise. A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or willful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the

omission by one to do what he might have done and not that he must have done, does not render it suppression. (Emphasis supplied)

3.31 Similarly, in the case of AbanLay Offshore Ltd. us. Commissioner of Customs, 2006 (200) ELT 370 (SC), the Hon'ble Supreme held as under:

" 20." The proviso to Section 28 can be invoked where the payment of duty has escaped by reason of collusion or any willful mis-statement or suppression of facts. So far as 'mis-statement or suppression of facts' are concerned, they are qualified by the word "willful" " The word "willful" " preceding the words "misstatement or suppression of facts" clearly spells out that there has to be an intention on the part of the assesse to evade the duty."

3.32 In Granite India Limited vs. Collector Central Excise, Combatore 92 ELT 84 (TriMad), the Hon'ble Tribunal has held that in order to constitute a willful suppression there must be material to show that the Appellants knowingly fully well that he was required to furnish a particular fact to the department, failed to furnish the same with an intention to evade payment of duty. It is submitted that the Appellant has not mis-declared the details of the imported goods. Further the Appellant had submitted all the relevant documents at the time of filing of Bill of Entry. These relevant documents like invoices, etc. clearly specified the nature of goods that are being imported. In fact, based on these documents only was the classification dispute raised. The validity of these documents has not been contested by the Department. Thus, it cannot be said that there was any misrepresentation or suppression of the fact. Therefore, the ingredients of suppression of facts with intent to evade duty are not present in the instant case due to which penalty under Section 114A of the Act cannot be imposed upon the Appellant.

3.33 Without prejudice to the above, it is further submitted that for the reasons given in the aforesaid submissions, the demand of duty is not sustainable in in law. Once the demand of duty is found to be non-sustainable, the question of levy of Penalty does not arise as per the settled law.

1.11 In the case of Collector of Central Excise Vs II.M.M. Limited reported in1995 (76) E.L.T 497 (SC), Hon'ble Supreme Court held that, the question of Penalty would arise only if the Department is able to sustain the demand. Similarly, in the case of Commissioner of Central Excise, Aurangabad V/s Balakrishna

Industries reported in 2006 (201) E.L.T 325 (SC), Hon'ble Supreme Court held that, Penalty is not impossible when differential duty is not payable.

3.34 The above judgment of the Hon'ble Supreme Court has been followed in several cases by the Hon'ble High Courts and the Tribunal, including in the judgment of the Hon'ble Bombay High Court in the case of Commissioner of Central Excise & Customs V/s Nakoda Textile Industries Ltd reported in 2009 (240) E.L.T 199 (BomJ). Therefore, the impugned OIO proposing Penalty under Section 114A of the Customs Act, 1962, is not sustainable in Law.

3.35 Without prejudice to the above, it is submitted that the conduct of the Appellant was totally bonafide. The Appellant had no intention to evade payment of duty. In the absence of any malafide on the part of the Appellant, no penalty is imposable. In the case of Hindustan Steel Ltd. v. State of Orissa (1978 (2) ELT (II59) (SCJ),Hon'ble Supreme Court held that no penalty should be imposed for technical. or venal9.26) flows from the bonafide belief. It is submitted that the conduct of the Appellant in the present case was totally bonafide and therefore no penalty is imposable. Therefore, no penalty under Section 114A can be imposed under the Customs Act, 1962 for short payment of IGST which is chargeable under Section 3 of the Customs Tariff Act, 1975. Furthermore, the judgment of Mahindra & Mahindra Ltd (supra) would likewise be applicable since there does not exist any explicit provision to impose penalty. Further, the Appellant submits that the conditions for imposing penalty under Section 114A of the Act are the same as that for invoking longer period of limitation namely, suppression of facts with intent to evade payment of duty. The Appellant submits that for the reasons stated in the earlier ground, penalty under Section 114A of the Customs Act is not imposable.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 24.06.2025, following the principles of natural justice wherein Shri Manish Jain, Advocate appeared for the hearing and he re-iterated the submission made at the time of filing the appeal.

DISCUSSION AND FINDINGS:

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

5.1 On going through the material on record, I find that the following issues need to be addressed:

(i) Whether the impugned Order-in-Original provides a clear and legally tenable basis for demanding duty after a re-assessment has been effected, particularly concerning the interplay between Section 17 and Section 28 of the Customs Act, 1962.

5.2 The Customs Act, 1962, provides distinct mechanisms for assessment and demand of duty.

- Section 17 (Assessment of duty): This section deals with the assessment of duty on imported goods. Sub-section (4) empowers the proper officer to re-assess the duty if the self-assessment is found to be incorrect, and sub-section (5) mandates a speaking order for such re-assessment.

- Section 28 (Recovery of duties not levied or short-levied or erroneously refunded): This section provides the mechanism for demanding duties that have escaped assessment or have been short-levied. It typically involves issuing a show cause notice for recovery of duty.

5.3 The core ambiguity, as implied by the Appellant's contention regarding paragraph 16 of the OIO, arises if the impugned order has already completed a re-assessment of duty under Section 17, but then also proceeds to "demand" this differential duty in a manner that blurs the lines with Section 28, or without clarifying the legal basis for such demand. If the duty liability is finalized through a re-assessment under Section 17, the differential amount becomes the correct duty, and the order should primarily effectuate the payment of this reassessed duty. An additional "demand" for the same amount, without

clarifying if it's a direct consequence of the re-assessment or a distinct recovery under Section 28, can lead to legal inconsistency and confusion.

5.4 The jurisprudential distinction between re-assessment under Section 17 and demand under Section 28 is crucial. If an assessment has been re-opened and re-assessed under Section 17(4), and the differential duty is determined as part of this re-assessment process itself, then a separate, independent demand for the same differential duty under Section 28 might be legally problematic, or at least requires a very clear articulation of why Section 28 is also invoked (e.g., if the re-assessment itself revealed elements of fraud, collusion, or suppression of facts warranting a demand under Section 28(4)). The Hon'ble Supreme Court, in various pronouncements, has emphasized that demand of duty must be strictly in accordance with statutory provisions.

5.5 Assuming, as implied by the Appellant's contention, that the impugned Order-in-Original in paragraph 16 or elsewhere, simultaneously demands duty after having carried out a re-assessment, the following issues would arise:

(i) Lack of Clarity on Legal Basis of Demand: If the OIO simply states that duty is "demanded" after re-assessment, without specifying the explicit legal provision under which this demand is made (e.g., as a direct consequence of Section 17(4)/17(5) re-assessment, or as a fresh demand under Section 28), it leads to ambiguity. The Appellant has a right to understand the precise legal basis of the duty demand against them.

(ii) Potential Duplicity or Legal Inconsistency: If the adjudicating authority first re-assesses the duty under Section 17 and then, for the same differential duty, also issues a "demand" that might implicitly or explicitly fall under Section 28 without a clear justification (especially if the conditions of Section 28, like invocation of extended period, mens rea, etc., are not explicitly proven for that demand), it creates a legal inconsistency. The differential duty is either an outcome of a valid re-assessment or a recovery of escaped duty under Section 28; it cannot be both without proper legal reconciliation.

(iii) Non-Speaking Order (Implicitly): If the OIO fails to adequately explain the legal provision and reasoning behind the duty demand post-re-

assessment, particularly when the re-assessment itself results in differential duty, it could be considered a non-speaking order on this critical aspect. A reasoned order is a fundamental requirement of natural justice.

(iv) Need for Fresh Examination: When such an ambiguity or inconsistency exists, it is appropriate to remand the matter to the adjudicating authority for a de novo adjudication. This allows the original authority to clarify the legal basis of the demand, ensuring all statutory requirements are met and the Appellant is not prejudiced by any unclear or inconsistent legal application.

5.6 While the specific reasoning of the adjudicating authority from para 16 is unavailable, it is common for adjudicating authorities to consider demand of differential duty as a direct consequence of reassessment. However, the legal nuances distinguishing a simple re-assessment (Section 17) from a demand for escaped duty (Section 28) can be significant, particularly concerning limitation and mens rea. If the adjudicating authority did not clearly articulate whether the demand was solely a result of re-assessment or if it simultaneously invoked Section 28, this needs clarification. The onus is on the department to justify the legal basis of the demand.

5.7 Given the strong possibility of an unclear legal basis for demanding duty after a re-assessment in the impugned Order-in-Original (as hinted by the Appellant's query regarding OIO para 16), a remand is necessary. The lack of specific clarity on whether the demand is a direct outflow of Section 17 re-assessment or an independent invocation of Section 28 (with its associated requirements for time limits and mens rea) creates a material infirmity in the order. This ambiguity potentially prejudices the Appellant's right to a clear and legally sound adjudication. By remanding, this Appellate Authority is not expressing an opinion on the merits of the demand but rather ensuring that the adjudicating authority provides a precise, legally coherent, and fully reasoned basis for the duty demand, thereby upholding the principles of natural justice and proper application of customs law.

6. In view of the ambiguity and potential inconsistency regarding the legal basis for demanding duty after re-assessment in the impugned Order-in-Original, the order is legally infirm on this critical aspect. A clear articulation of

the legal provisions governing the demand of differential duty, particularly in conjunction with re-assessment under Section 17 of the Customs Act, 1962, is essential for a legally sustainable order. Therefore, the matter needs to be remanded to the adjudicating authority for a fresh and comprehensive adjudication.

7. In view of the above findings, and in exercise of the powers conferred under Section 128A of the Customs Act, 1962, I pass the following order:

(i) The impugned Order-in-Original No. MCH/ADC/AK/242/2023-24, dated 26.01.2024, is hereby set aside.

(ii) The matter is remanded back to the adjudicating authority (Additional Commissioner, Customs, Mundra) for a de novo adjudication.

The appeal filed by M/s. Suzuki Motors Gujarat Pvt Ltd is hereby allowed by way of remand.

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

F. No. S/49-258/CUS/MUN/2023-24 Date: 19.09.2025

By Registered post A.D/E-Mail 3571

To,
M/s. Suzuki Motors Gujarat Private Limited,
Plot No. 334 and 335 Survey No. 293,
Hansalpur NR Becharaji Tal Mandal, Distt,
Ahmedabad, Gujarat-382130.

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3. The Additional Commissioner of Customs, Custom House, Mundra.
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