

		<p>प्रधान आयुक्त का कार्यालय, सीमा शुल्क सदन, एमपी और एसईजेड, मुंद्रा, कच्छ-गुजरात -370421</p> <p>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, MP & SEZ MUNDRA, KUTCH-GUJARAT</p> <p>PHONE : 02838-271426/271428</p> <p>FAX :02838-271425</p>	 <p>आज़ादी का अमृत महोत्सव</p>
A	File No.	CUS/APR/INV/56/2024-Gr 2-O/o Pr Commr-Cus-Mundra	
B	Order-in-Original No.	MCH/ADC/AKM/275/2024-25	
C	Passed by	Amit Kumar Mishra Additional Commissioner of Customs Custom House, Mundra.	
D	Date of order	31.01.2025	
E	Noticee/Party/Importer/ Exporter	M/s Ineos Composites India LLP/ IEC-AAHFI5749P, Survey No. 439/1, Village Bhimasar, Taluka Anjar, Dist-Kachchh (Gujarat)- 370160	
F	DIN No.	20250171MO000000B1C5	

1. यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“ सीमा शुल्क आयुक्त (अपील),
चौथी मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा, अहमदाबाद-380 009”
“**THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA**
**Having his office at 4th Floor, HUDCO Building, Ishwar Bhuvan Road,
Navrangpura, Ahmedabad-380 009.**”

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by –

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ झूटि/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

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

An appeal against this order shall lie before the Commissioner (A) 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.

DIN 20250171MO000000B1C5**BRIEF FACTS OF THE CASE:-**

M/s Ineos Composites India LLP (IEC-AAHFI5749P), having address at Survey No. 439/1, Village Bhimasar, Taluka Anjar, Dist-Kachchh (Gujarat)- 370160 (hereinafter also referred to as "the importer/the Noticee" for the sake of brevity") presented Bill of Entry No. 9473073 dated 06.11.2020, through their appointed Customs Broker M/s. Jet Cargo Movers at Custom House, Mundra, for clearance of goods declared as "**Purified Terephthalic Acid (72 MTS)**" under CTH 29173600 having assessable value of Rs. 26,85,600/-, supplied from M/s. Indorama Petrochem Limited, Thailand.

2. During the course of Audit conducted (LAR-26/2021-22) by the Customs Receipts Auditors of office of the Principal Director of Audit (Central), Audit Bhavan, Ahmedabad, the Senior Audit Officer/CRA pointed out that the imported goods were cleared without the payment of Anti-Dumping Duty leviable under Notification No. 28/2019-Customs (ADD) dated 24.07.2020. The corresponding IGST component in respect of the aforementioned un-paid ADD is also leviable upon imported goods and hence recoverable from the importer.

3. Under the impugned Bill of Entry, the importer imported "Purified Terephthalic Acid" supplied from M/s. Indorama Petrochem Limited, Thailand and cleared the goods without the payment of Anti-Dumping Duty. The subject goods "Purified Terephthalic Acid" attracts ADD at the rate of USD 45.43 per MT as per Serial No. 6 of ADD Notification No. 28/2019-Customs (ADD) dated 24.07.2020 as the goods are supplied from M/s. Indorama Petrochem Limited, Thailand. Therefore, it appears that against the impugned Bill of Entry, Anti- Dumping Duty was liable to be charged at the aforementioned rate of USD 45.43 per MT, which along with the corresponding IGST component of the ADD, has not been paid by the importer. Relevant part of the notification is reproduced below:

"Now, therefore, in exercise of the powers conferred by sub-sections (1) and (5) of section 9A of the Customs Tariff Act, read with rules 18, 20 and 23 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Central Government, after considering the aforesaid final findings of the designated authority, hereby imposes on the subject goods, the description of which is specified in column (3) of the Table below, falling under tariff item of the First Schedule to the Customs Tariff Act as specified in the corresponding entry in column (2), originating in the countries as specified in the corresponding entry in column (4), exported from the countries as specified in the corresponding entry in column

(5), produced by the producers as specified in the corresponding entry in column (6), exported by the exporters as specified in the corresponding entry in column (7), and imported into India, an anti-dumping duty at the rate equal to the amount as specified in the corresponding entry in column (8), in the currency as specified in the corresponding entry in column (10), and per unit of measurement specified in the corresponding entry in column (9) of the said Table"

Sl.No.	Tariff Item	Item Description of Goods	Country of Origin	Country of Export	Producer	Exporter	Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
6.	2917	Purified	Thailand	Thailand	M/s. Indorama Petrochem Limited	M/s. Indorama Petrochem Limited	45.43	MT	USD

(only relevant entry i.e. Sl. No. 6 reproduced above)

3.2 Further, as per Section 3(7) of Customs Tariff Act, 1975, any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty per cent, as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under Customs Act, 1962.

4. As per above said notification, Antidumping duty at the rate equal to the amount calculated at the rate mentioned in corresponding entry in column (8) of the table of the notification mentioned above is levied. Further, IGST on corresponding antidumping duty is also levied. However, from the subject Bills of Entry, it appears that the importer cleared the imported "Purified Terephthalic Acid" classifiable under CTH 29173600 without payment of Antidumping Duty and IGST leviable thereon. This has resulted in non-levy of Antidumping Duty of **Rs. 2,45,812/-** and short levy of IGST of **Rs. 44,246/-**, total amounting to **Rs. 2,90,058/-**.

5. Relevant Legal provisions, in so far as they relate to the facts of the case:-

- A. Customs Notification No. 50/2017-Cus dated- 30.06.2017;
- B. The Customs Tariff.
- C. Section 46 of the Customs Act, 1962 provides for filing of Bill of Entry upon importation of goods, which casts a responsibility on the importer to declare truthfully, all contents in the Bill of Entry. Relevant portion of Section 46 (4) is reproduced below:-

"(i) 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".

- D. Section 28 (4) of the Customs Act, 1962 provides that "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 willful 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”.

E. Section 28 (AA) of Customs Act, 1962 provides interest on delayed payment of duty-

(1) Where any duty has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person who is liable to pay the duty as determined under sub-Section (2), or has paid the duty under sub-Section (2B), of Section 28, shall, in addition to the duty, be liable to pay interest at such rate not below ten percent and not exceeding thirty-six per cent per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first day of the month succeeding the month in which the duty ought to have been paid under this Act, or from the date of such erroneous refund, as the case may be, but for the provisions contained in sub-Section (2), or sub-Section (2B), of Section 28, till the date of payment of such duty:

F. Section 114A of the Customs Act, 1962 deals with the penalty by reason of collusion or any willful mis-statement or suppression of facts. The relevant provision is reproduced below:-

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: Provided that where such duty or interest, as the case may be, as determined under sub-Section (8) of Section 28, and the interest payable thereon under Section 28AA, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this Section shall be twenty- five per cent of the duty or interest, as the case may be, so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

5. The importer/noticee has willfully mis-stated the facts & wrongly cleared the goods without the payment of Anti-Dumping Duty which is leviable as per Notification No. 28/2019-Customs (ADD) dated 24.07.2020 at the rate of USD 45.43 per MT on goods originated in or exported from Thailand along with the corresponding IGST component of the ADD.

6. In the light of the documentary evidences, as brought out above and the legal position, it appears that a well thought out conspiracy was hatched by the importer/ noticee to defraud the exchequer by adopting the modus operandi of mis-declaring the description/classification of the goods imported.

7. Whereas, it is apparent that the importer/noticee was in complete knowledge of the correct nature of the goods nevertheless, the importer/auditee cleared the goods without the payment of Anti-Dumping Duty which is leviable as per Notification No. 28/2019-Customs (ADD) dated 24.07.2020 at the rate of USD

45.43 per MT on goods originated in or exported from Thailand along with the corresponding IGST component of the ADD. With the introduction of self-assessment under Section 17, more faith is bestowed on the importer, as the practices of routine assessment, concurrent audit etc. have been dispensed with. As a part of self-assessment, the importer has been entrusted with the responsibility to correctly self-assess the duty. However, in the instance case, the importer intentionally not paid correctly the customs duties on the imported goods. Therefore, it appears that the importer has wilfully violated the provisions of Section 17(1) of the Act in as much as importer has failed to correctly self-assessed the impugned goods and has also wilfully violated the provisions of Sub-section (4) and (4A) of Section 46 of the Act. Therefore, the goods having assessable value of **Rs. 26,85,600/-** as detailed in above table, appears to liable for confiscation under Section 111(m) of the Customs Act, 1962.

8. Therefore, it appears that the importer wilfully cleared impugned goods without the payment of Anti-Dumping Duty resulting into short levy of duty. For such act/omissions, the importer also appears to have rendered themselves liable to penalty under Section 114A of the Customs Act, 1962. Further, it appears that in respect of the Bill of Entry mentioned above, such non-payment of Customs Duty (ADD and the corresponding IGST) on the part of the importer has resulted into short levy of total duty of **Rs.2,90,058/- (Rupees Two Lakh Ninety Thousand and Fifty Eight Only)** for subject Bill of Entry which is recoverable from the importer under the provisions of Section 28(4) of the Customs Act, 1962 along with interest as applicable under Section 28AA of the Act. By the said deliberate wrong claim of notification benefit, the importer also appear to have rendered themselves liable to penalty under Section 114A of the Customs Act, 1962.

9. Therefore, **M/s Ineos Composites India LLP**, Survey No. 439/1, Village Bhimasar, Taluka Anjar, Dist-Kachchh (Gujarat)-370160 were called upon to show cause to the Dy/Assistant Commissioner of Customs, Custom House, Mundra, having office at Room No. 11, PUB Building, 5B, Mundra (Kutch) Gujarat 370 421, as to why:-

- i. The goods imported vide Bill of Entry No. 9473073/06.11.2020, should not be re-assessed with imposition of ADD at the rate of USD 45.43 per MT as per Notification No. 28/2019-Customs (ADD) dated 24.07.2020 along with the corresponding IGST component of the ADD;
- ii. The goods having assessable value of **Rs. 26,85,600/-** covered under Bill of Entry as detailed in above table, should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962;
- iii. The differential duty worked out as to **Rs.2,90,058/- (Rupees Two Lakh Ninety Thousand and Fifty Eight Only)** for Bill of Entry No. 9473073/06.11.2020 should not be recovered from the importer under Section 28 (4) of the Customs Act, 1962 along with the interest thereon as per Section 28AA of the Customs Act, 1962, as applicable.
- iv. Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962.

9.1. Further, a corrigendum dated 22.01.2025 has been issued to the impugned

SCN and adjudication authority has been changed from Deputy/Assistant Commissioner to the Additional Commissioner, Import Assessment, Custom House Mundra.

DEFENSE REPLY

10. As per available records, no defense reply has been submitted by the importer.

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PERSONAL HEARING

11. Adhering to the principal of natural justice, the importer has been provided PH on 20.11.2024, 21.01.2025 and 28.01.2025, however, neither the importer has attended any of the personal hearing nor they have made any request for adjournment of personal hearing.

DISCUSSION AND FINDINGS

12. I have gone through the records of the case and note that 03 different personal hearings have been provided to the said importer; however, the said importer has neither attended any of the personal hearing nor submitted any request for adjournment of PH, thus, the principal of natural justice has been complied with. I proceed to decide the case on the basis of available records. The following main issues are involved in case, which are required to be decided:

- a. Is ADD is leviable on the imported goods “ **Purified Terephthalic Acid (72 MTS)** ” under CTH 29173600 as per Notification No. 28/2019-Customs (ADD) dated 24.07.2020?
- b. Is the said importer has short paid/not paid the ADD and corresponding IGST of Rs. 2,90,058/- by way of willful mis-statement of facts
- c. The importer has short levy duty amounting to Rs. 2,90,058/- (Rupees Two Lakh Ninety Thousand and Fifty Eight Only) for subject Bills of Entries which is required to be recovered from the importer in terms of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962 or otherwise.
- d. Is the importer is also liable for penalty under Section 114A of the Customs Act, 1962 for collusion and willful mis-statement and suppression of facts by him and active involvement in wrongful availment of Notification?

12.1. I note that the present SCN has been issued on the basis of audit objection raised by office of the Principal Director of Audit (Central), Audit Bhavan, Ahmedabad that the importer had imported “**Purified Terephthalic Acid (72 MTS)**” under CTH 29173600 having assessable value of Rs. 26,85,600/- from overseas supplier **M/s. Indorama Petrochem Limited, Thailand** without the payment of Anti-Dumping Duty and corresponding IGST leviable under Notification No. 28/2019-Customs (ADD) dated 24.07.2020.

12.2. I take note of the ADD notification no. 28/2019-Customs (ADD) dated 24.07.2020 and found that ADD is applicable on the import of “**Purified Terephthalic Acid (72 MTS)**” under CTH 29173600. The relevant portion of the

notification is as under:-

"Now, therefore, in exercise of the powers conferred by sub-sections (1) and (5) of section 9A of the Customs Tariff Act, read with rules 18, 20 and 23 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Central Government, after considering the aforesaid final findings of the designated authority, hereby imposes on the subject goods, the description of which is specified in column (3) of the Table below, falling under tariff item of the First Schedule to the Customs Tariff Act as specified in the corresponding entry in column (2), originating in the countries as specified in the corresponding entry in column (4), exported from the countries as specified in the corresponding entry in column

(5), produced by the producers as specified in the corresponding entry in column (6), exported by the exporters as specified in the corresponding entry in column (7), and imported into India, an anti-dumping duty at the rate equal to the amount as specified in the corresponding entry in column (8), in the currency as specified in the corresponding entry in column (10), and per unit of measurement specified in the corresponding entry in column (9) of the said Table"

Sl.No.	Tariff Item	Item Description of Goods	Country of Origin	Country of Export	Producer	Exporter	Amount	Unit	Currency
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
6.	2917	Purified	Thailand	Thailand	M/s. Indorama Petrochem Limited	M/s. Indorama Petrochem Limited	45.43	MT	USD

(only relevant entry i.e. Sl. No. 6 reproduced above)

12.3. I further note that the said importer had procured goods from **M/s. Indorama Petrochem Limited, Thailand** thus, ADD @ 45.43 per MT as per Sr. No. 6 of the Notification No. 28/2019-Customs (ADD) dated 24.07.2020 is leviable on the said imported goods having total quantity of 72 MTs. I am in agreement with the findings of Audit officers. The total amount of ADD not paid by the importer @45.43 per MT on total quantity of 72 MTs demanded from the importer is **Rs. 2,45,812/-**. Further, corresponding IGST not paid by the importer is **Rs. 44,246/-**, total amounting to duty not paid/short paid is **Rs. 2,90,058/-**. The detailed calculation of the short paid/not paid duty required to be demanded and recovered for BE No. E. No. 9473073 dated 06.11.2020 is as under:-

1	Assessable Value (Item)	Rs.26,85,600/-
2	BCD Leviable @ 5%	Rs.1,34,280/-
3	SWS @ 10% of BCD	Rs.13,428/-
4	IGST Paid @ 18%	Rs.5,09,995/-

5	ADD Leviable for 72 MT. (US\$ 45.43 X Rs.75.15 Ex. Rate X 72 MT)	Rs.2,45,812/-
6	IGST leviable @ 18% (1+2+3+5) Total amount of 3079121/-	Rs.5,54,241/-
7	Short Levy of IGST	Rs.44,246/-
8	Total Short Levy of Duty (5+7)	Rs.2,90,058/-

12.4. I also note that in order to sensitize the People of Trade (read Importer/Exporter) about its benefit and consequences of mis-use; Government of India has also issued 'Customs Manual on Self-Assessment 2011'. The publication of the 'Customs Manual on Self-Assessment 2011' was required as because prior to enactment of the provision of 'Self Assessment', mis-classification or wrong-availment of duty exemption etc., in normal course of import, was not considered as mis-declaration or mis statement. Under para-1.3 of Chapter-1 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 CBEC/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, 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 non-compliant 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. All the above-referred Provisions, Act, Rules, Regulation, Foreign Trade Policy etc. may be viewed at www.cbic.gov.in.

12.5. I note that the importer/noticee was in complete knowledge of the correct nature of the goods nevertheless, the importer/auditee has not paid/short paid the ADD and corresponding IGST leviable on the said imported goods as per Notification No. 28/2019-Customs (ADD) dated 24.07.2020. The said importer has tried to take undue benefit by way of short payment of duty.

12.6. As a part of self-assessment by the importer, has been entrusted with the responsibility to correctly self-assess the duty. However, in the instance case, the importer intentionally abused this faith placed upon it by the law of the land. Therefore, the importer has wilfully violated the provisions of Section 17(1) of the Act in as much as importer has failed to correctly self-assessed the impugned goods and has also wilfully violated the provisions of Sub-section (4) and (4A) of Section 46 of the Act. Accordingly, I arrive at the conclusion that the importer has wilfully short paid/not paid the ADD and corresponding IGST *supra*. Thus, the said imported goods are liable for confiscation as per Section 111(m) of the Customs Act, 1962. However, I find the

goods imported vide impugned bill of entry are not available for confiscation, but I rely upon the order of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) wherein the Hon'ble Madras High Court held in para 23 of the judgment as below:

"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 regularized, 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 authorized by this Act...", brings out the point clearly. The power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. When once power of authorization for confiscation of goods gets traced to the said Section III 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 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)."

12.7 I further find that the above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad), has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.) and the same has not been challenged by any of the parties concerned. Hence, I find that any goods improperly imported as provided in any sub-section of the Section 111 of the Customs Act, 1962 are liable to confiscation and merely because the Importer was not caught at the time of clearance of the imported goods, can't be given differential treatment. In view of the above, I find that the decision of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), which has been passed after observing decision of Hon'ble Bombay High Court in case of M/s Finesse Creations Inc reported vide 2009 (248) ELT 122 (Bom)-upheld by Hon'ble Supreme Court in 2010(255) ELT A.120(SC), is squarely applicable in the present case. Accordingly, I observe that the present case also merits imposition of Redemption Fine.

12.8. In view of above, the said importer has rendered themselves liable to penalty under Section 114A of the Customs Act, 1962. Further, I note that in respect of the Bills of Entry mentioned above, the importer has willfully not paid/short paid the duty of **Rs. 2,90,058/- (Rupees Two Lakh Ninety Thousand and Fifty Eight Only)** which is required to be recovered from the importer under the provisions of Section 28(4) of the Customs Act, 1962 (hereinafter referred to as 'the Act') along with interest as applicable under Section 28AA of the Act. By the said deliberate short payment/non payment, the importer also rendered themselves liable to penalty under Section 114A of the Customs Act, 1962.

13. Accordingly, in view of above discussion and findings, I pass following order:-

Order

- i. I order to re-assess the Bill of Entry No. 9473073/06.11.2020 with imposition of ADD at the rate of USD 45.43 per MT as per Notification No. 28/2019-Customs (ADD) dated 24.07.2020 along with the corresponding IGST component of the ADD;
- ii. I confiscate the said importer goods having assessable value of **Rs. 26,85,600/-** covered under Bills of Entries, supra, under Section 111(m) of the Customs Act, 1962. As the goods are not available for confiscation, therefore, in lieu of confiscation, I impose a redemption fine of Rs. 2,00,000 (Rs. Two Lakhs only/-) on the said importer on the importer under Section 125(1) of the Customs Act, 1962;
- iii. I order to demand and recover the differential duty of **Rs.2,90,058/- (Rupees Two Lakh Ninety Thousand and Fifty Eight Only)** [ADD Rs. 2,45,812/- and corresponding IGST Rs. 44,246/-] for Bill of Entry No. 9473073/06.11.2020 under Section 28 (4) of the Customs Act, 1962 along with the interest thereon as per Section 28AA of the Customs Act, 1962, as applicable;
- iv. I order to impose penalty of **Rs. 2,90,058/- (Rupees Two Lakh Ninety Thousand and Fifty Eight Only)** under Section 114A of the Customs Act, 1962. However, in case the said importer pays the duty within 30 days of the communication of the order, the amount of penalty payable is 25% of Rs. 2,90,058/- as per provisions of Section 114A of the Customs Act, 1962.

SCN dated 08.02.2024 with corrigendum dated 22.01.2025 issued to said importer vide F. No. CUS/APR/INV/56/2024-Gr 2-O/o Pr Commr-Cus-Mundra dated are accordingly disposed off.

14. This order is issued without prejudice to any other action which may be contemplated against the importer or any other person in terms of any provision of the Customs Act, 1962 and/or any other law for the time being in force.

**Signed by Amit Kumar
Mishra**

Date: 31-01-2025 21:21:21

(Amit Kumar Mishra)

Additional Commissioner,

Import Assessment, CH Mundra

F. No. CUS/APR/INV/56/2024-Gr 2

Date:- 31-01-2025

To,

1. M/s Ineos Composites India LLP/ IEC-AAHFI5749P,
Survey No. 439/1, Village Bhimasar,
Taluka Anjar, Dist-Kachchh (Gujarat)- 370160

Copy to:

1. The Dy. Commissioner of Customs, Audit, Mundra Customs.
2. CB M/s. Jet Cargo Movers, Gandhidham/Mundra.
3. Office copy.