

	कार्यालय: प्रधान आयुक्त सीमा शुल्क, मुन्द्रा सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात-370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, MUNDRA PORT, KUTCH, GUJARAT-370421 Email ID: group2-mundra@gov.in		
	A.	File NO.	
B.	Order-in-Original No.	: MCH/ADC/ZDC/554/2025-26	
C.	Passed by	: Dipak Zala, Additional Commissioner of Customs, Customs House, AP & SEZ, Mundra	
D.	Date of order and Date of issue	: 16.01.2026 16.01.2026	
E.	SCN F. No. & Date	: CUS/APR/BE/MISC/3749/2024- Gr 2- O/o PrCommr -Cus-Mundra dated 17.01.2025	
F.	Noticee(s)/Party/ Importer	: M/s TOYOTA TSUSHO INDIA PRIVATE LIMITED (IEC- 0799000973), situated at Unit No. 4A, Plot No. 28 to 45, Estate Japanese Industrial Zone, Vithalapur Village, Mandal Taluka, Ahmedabad, Gujarat382120	
G.	DIN	: 20260171MO00000500B	

- यह अपील आदेश संबन्धित को निःशुल्कप्रदान किया जाता है।
This Order - in - Original is granted to the concerned free of charge.
- यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा 128A के अंतर्गत प्रपत्रसीए- 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:
सीमाशुल्क आयुक्त (अपील),
चौथी मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड,
नवरंगपुरा, अहमदाबाद-380 009
THE COMMISSIONER OF CUSTOMS (APPEALS), Ahmedabad
4th Floor, HUDCO Building, Ishwar Bhuvan Road,
Navrangpura, Ahmedabad-380 009
- उक्त अपील यह आदेश भेजने की दिनांक से 3 माह के भीतर दाखिल की जानी चाहिए।
Appeal shall be filed within three months from the date of communication of this order.

4. उक्त अपील के उपर 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 केमदसं. -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 ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदिके 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.

BRIEF FACTS OF THE CASE

1. M/s TOYOTA TSUSHO INDIA PRIVATE LIMITED (IEC- 0799000973), situated at Unit No. 4A, Plot No. 28 to 45, Estate Japanese Industrial Zone, Vithalapur Village, Mandal Taluka, Ahmedabad, Gujarat382120 (hereinafter also referred to as “the importer/the Noticee” for the sake of brevity”) presented following Bill of Entry having details mentioned as under, through their appointed Customs Broker M/s. N. G. Joshi C&F Agents Pvt. Ltd. at Custom House, Mundra, for clearance of following imported goods classifying the same under Tariff item 31059090 of first schedule of the Customs Tariff Act, 1975.

2. During the course of Audit conducted by the Customs Receipts Auditors of office of the Principal Director of Audit (Central), Audit Bhavan, Ahmedabad for the period from April 2021 to September 2021, the Senior Audit Officer/CRA vide Para 10 of LAR No. 11/2022-23, observed that the said importer has imported “Battery materials & Data logger” falling under different CTH and wrongly availed benefit of Notification No. 104/1994 Customs dated 16.03.1994 and not paid applicable BCD and IGST. The details are as under:-

(All Amount in INR)

Sr. No.	BE No.	Date	Item No.	Description	CTH	Assess Value	Duty Paid
1	4681885	14-072021	3	SMG-TB5 (LOT NO. #210420-03-03) (140 KG/DR)(BATTERY MATERIA - L)(RE-SHIP CARGO RETURNABLE GOODS)(FOC)	25041090	641810	0
2	4681885	14-072021	2	TRILITHIUM PHOSPHATE (LOT NO. 999910420-1, 999910420-2,99991-0420-3,999910420-4)(47 KG/DR)(BATTERY MATERIAL)(RE-SHIP CAR	28352990	960145	0
3	4681885	14-072021	1	COBALT LITHIUM MANGANESE NICKEL OXIDE(NDC1017, NDC1042,NDC10 - 43,NDC1048) (200 KG/DR)(BATTERY MATERIAL) (RE-SHIP CARGO RETU	28419000	1654931	0
4	4681885	14-072021	10	LIALES ATH-002(LOT NO.0527002-005)(202 KG/DR)(BATTERY MATER - IAL)(RE-SHIP CARGO RETURNABLE GOODS)(FOC)	32089090	1035647	0

5	4681885	14-072021	9	SOL-RITE TM TIA 12(ODB112) (200 KG/DR)(BATTERY MATERIAL)(RE - - SHIP CARGO RETURNABLE GOODS) (FOC)	38249900	522933	0
6	4681885	14-072021	5	SUNROSE(R)MAC800LC (LOT NO.0527001) (20 KG/PC)(BATTERY MATE - RIAL)(RE-SHIP CARGO RETURNABLE GOODS)(FOC)	39123100	795456	0
7	4681885	14-072021	8	SEPARATOR(LOT 35000002-2) (4.2 KG/RL)(BATTERY MATERIAL)(RE- - SHIP CARGO RETURNABLE GOODS) (FOC)	39211900	617294	0
8	4681885	14-072021	7	SEPARATOR(LOT 35000002-1) (3.5 KG/RL)(BATTERY MATERIAL)(RE- - SHIP CARGO RETURNABLE GOODS) (FOC)	39211900	616787	0
9	4681885	14-072021	6	COPPER FOIL(YB-7.8)(18D1940401,18D2380-401) (250 KG/BOX)(B - ATTERY MATERIAL) (RE-SHIP CARGO RETURNABLE GOODS) (FOC)	74101100	636603	0
10	4681885	14-072021	12	GR20(SERIAL NO.GR211216(NO.1)211224(NO.9) (0.135 KG/PC)(DAT - A LOGGER)(RE-SHIP CARGO RETURNABLE GOODS)(FOC)	90318000	292451	0
11	4681885	14-072021	13	DER-1000(SERIAL NO. 0823(NO.1),0824(NO.2)0825(NO.3) (0.950 KG - /PC)(DATA LOGGER) (RE-SHIP CARGO RETURNABLE GOODS)(FOC)	90318000	237573	0
Total						80,11,630	0

3. Whereas, Notification No. 104/94 dated 16.03.1994 exempts 'containers which are of durable nature' from the whole of the duty of customs leviable thereon under the said First Schedule (i.e., basic customs duty or BCD) and the whole of the integrated tax (or IGST) leviable thereon under sub-section (7) of section 3 of the Customs Tariff Act. It was pointed out by officer of Principal Director of Audit (Central), Audit Bhavan, Ahmedabad that the said importer has imported Battery materials & Data logger” which appears to be other than the definition/meaning of containers. Further, I also take note of the Circular No.51/2020-Customs dated 20.11.2020 issued by CBIC regarding

Clarifications regarding availment of exemption on temporary import of durable Containers. It has been clarified by the CBIC that the containers that satisfy following conditions are eligible for the said duty exemption:

- a. that are durable,
- b. capable of being re-used multiple times,
- c. capable of being identified at the time of re-export viz. a viz. the imported containers, and
- d. satisfy all the other stipulated conditions in the notification.

3.1. It appears that the above mentioned imported goods does not satisfy the aforesaid conditions, thus, are not eligible to avail exemption under Notification No. 104/94 dated 16.03.1994.

Computation of Differential duty:

4. Whereas, it was noticed that M/s Toyota Tsusho India Private Limited had imported items of description Battery Materials and Data logger falling under different CTH on which it availed BCD and IGST exemption benefit under Notification No. 104/1994- Customs ibid. Since description of the imported goods clearly suggested that these were not containers of durable nature, exemption under notification above was not admissible. This resulted in non-levy of duty to the tune of Rs.21,66,169/- due to incorrect availing of notification benefit, which is required to be recovered along with applicable interest from the said importer under provisions of Section 28(4) of the Customs Act, 1962. The details are as under:-

(All Amount in INR)

Sr. No.	BE No.	Date	Item No.	CTH	Assess Value	Duty Paid	duty leviable in %	duty payable
1	4681885	14-072021	3	25041090	641810	Duty paid	10.78%	69155
2	4681885	14-072021	2	28352990	960145	0	27.74%	266296
3	4681885	14-072021	1	28419000	1654931	0	27.74%	458995
4	4681885	14-072021	10	32089090	1035647	0	30.98%	320843
5	4681885	14-072021	9	38249900	522933	0	27.74%	145035

6	4681885	14-072021	5	39123100	795456	0	27.74%	220620
7	4681885	14-072021	8	39211900	617294	0	30.98%	191238
8	4681885	14-072021	7	39211900	616787	0	30.98%	191081
9	4681885	14-072021	6	74101100	636603	0	24.49%	155904
10	4681885	14-072021	12	90318000	292451	0	27.74%	81111
11	4681885	14-072021	13	90318000	237573	0	27.74%	65891
Total					80,11,630	454878		2166169

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:

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 wrongfully mis-declared the description of the goods imported and wrongly availed the benefit of said Notification No. 104/94. Whereas, it is apparent that the importer/noticee was in complete knowledge of the correct nature of the goods nevertheless, the importer/auditee claimed undue notification benefit for the said goods in order to evade payment of BCD/IGST etc .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 willfully 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 willfully violated the provisions of Sub-section (4) and (4A) of Section 46 of the Act. Therefore, the goods having assessable value of **Rs.80,11,630/-**as detailed in above table, appears to liable for confiscation under Section 111(m) of the Customs Act, 1962.

7. Therefore, it appears that the importer wilfully availed the benefit of Notification No. 104/94 for duty evasion in terms of paying NIL BCD/IGST instead of paying duty as mentioned in above table. 21.24% under CTH 38089990 for the impugned goods resulting into short levy of duty of

Rs.21,66,169/- (Rupees Twenty One Lakhs Sixty Six Thousand One Hundred Sixty Nine Only) for subject Bill of Entry, which is recoverable 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 wrong availment of Notification benefit with intention to evade payment of duty, the importer also appears to have rendered themselves liable to penalty under Section 114A of the Customs Act, 1962.

8. Therefore, a Show Cause Notice dated 17.01.2025 bearing F. No. CUS/APR/BE/MISC/3749/2024-Gr2 O/o Pr Coomr-Cus-Mundra was issued to **M/s TOYOTA TSUSHO INDIA PRIVATE LIMITED** situated at Unit No. 4A, Plot No. 28 to 45, Estate Japanese Industrial Zone, Vithalapur Village, Mandal Taluka, Ahmedabad, Gujarat-382120, calling upon to show cause to the Additional Commissioner of Customs, Import Assessment, Custom House, Mundra, having office at PUB Building, 5B, Mundra (Kutch) Gujarat 370 421, as to why:-

- i. The benefit of said notification no. 104/94 dated 16.03.1994 should not be denied and the said BoE(s) should be re-assessed at applicable BCD/IGST.
- ii. The goods having assessable value of **Rs.80,11,630/-** 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 short levy amounting to **Rs.21,66,169/- (Rupees Twenty One Lakhs Sixty Six Thousand One Hundred Sixty Nine Only)** for subject Bills of Entry as detailed in above table, should not be recovered from 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.

RECORD OF PERSONAL HEARING & DEFENCE SUBMISSION

9.1. Following the principles of natural justice, personal hearing in the instant case was scheduled on 02.09.2025. Srhi Sajjad Rauf, authorised representative of the notice, attended the personal hearing virtually and inter alia submitted following written submission:

- The same issue is already covered in the Point No. 2.2 of the SCN No. 93/2024 dated 02.09.2024.
- For SCN No. 93/2024 dated 02.09.2024, the Commissioner of Customs, Chennai has passed and issued OIO No. 112929/2025 dated 31.03.2025
- That they have filed appeal at CESTAT, Chennai against the said Order-in-original.

9.2. At the end of the submissions, he asserted that whatever goods were imported vide BE No. 4681885 dated 14.07.2021 for testing under Indian conditions/temperature. All these goods were immediately re-exported back in as-it-is condition to shipper within period of two months. Also the export bond was cancelled. Hence, they have complied with the customs regulation and are not liable to pay any duty to customs as stated in SCN dated 17.01.2025.

DISCUSSIONS AND FINDINGS

10. Having gone through the case records, impugned SCN, written submissions of the importer and record of personal hearing, I find that the SCN disputes only the eligibility of exemption claimed by the importer under Notification No. 104/94-Cus dated 16.03.1994 and does not allege any mis-declaration with respect to the description or classification of the impugned goods. Thus, I find that following main issues are involved in this case, which are required to be decided at the stage of adjudication: -

1. Whether the benefit of Notification No. 104/94-Cus dated 16.03.1994 availed by the importer under impugned bill of entry required to be denied or otherwise?
2. Whether differential amount of duty demanded under the SCN required to be recovered from the importer under Section 28(4) along with applicable interest under Section 28AA of the Customs Act, 1962 or otherwise?

3. Whether the goods imported under impugned bill of entry are liable for confiscation under Section 111(m) of the Customs Act, 1962 or otherwise.
4. Whether the importer is liable to penalize under Section 114A of the Customs Act, 1962 or otherwise?

11. Having carefully examined the facts on record along with legal provisions applicable to the present case, I, now, proceed to address the issues involved in the impugned SCN.

ELEGIBILITY FOR EXEMPTION UNDER NOTIFICATION NO. 104/94-Cus DATED 16.03.1994

12.1. I find that the SCN states that importer have claimed benefit of Notification No. 104/94-Cus dated 16.03.1994 under BE No. 4681885 dated 14.07.2021. Further, the SCN alleges that the goods imported under impugned BE do not satisfy the conditions of the Notification, thus, are not eligible to avail exemption under Notification No. 104/94 dated 16.03.1994. I find that the SCN has proposed denial of exemption on following items imported under impugned BE.

Sr. No.	BE No.	Date	Item No.	Description	CTH	Assess Value	Duty Paid
1	4681885	14-07-2021	3	SMG-TB5 (LOT NO. #210420-03-03) (140 KG/DR)(BATTERY MATERIA - L)(RE-SHIP CARGO RETURNABLE GOODS)(FOC)	25041090	641810	0
2	4681885	14-07-2021	2	TRILITHIUM PHOSPHATE (LOT NO. 999910420-1, 999910420-2,99991 - 0420-3,999910420-4)(47 KG/DR)(BATTERY MATERIAL)(RE-SHIP CAR	28352990	960145	0
3	4681885	14-07-2021	1	COBALT LITHIUM MANGANESE NICKEL OXIDE(NDC1017, NDC1042,NDC10 - 43,NDC1048) (200 KG/DR)(BATTERY MATERIAL) (RE-SHIP CARGO RETU	28419000	1654931	0

4	4681885	14-07-2021	10	LIALES ATH-002(LOT NO.0527002-005)(202 KG/DR)(BATTERY MATERIAL)(RE-SHIP CARGO RETURNABLE GOODS)(FOC)	32089090	1035647	0
5	4681885	14-07-2021	9	SOL-RITE TM TIA 12(ODB112) (200 KG/DR)(BATTERY MATERIAL)(RE - SHIP CARGO RETURNABLE GOODS) (FOC)	38249900	522933	0
6	4681885	14-07-2021	5	SUNROSE(R)MAC800LC (LOT NO.0527001) (20 KG/PC)(BATTERY MATERIAL)(RE-SHIP CARGO RETURNABLE GOODS)(FOC)	39123100	795456	0
7	4681885	14-07-2021	8	SEPARATOR(LOT 35000002-2) (4.2 KG/RL)(BATTERY MATERIAL)(RE - SHIP CARGO RETURNABLE GOODS) (FOC)	39211900	617294	0
8	4681885	14-07-2021	7	SEPARATOR(LOT 35000002-1) (3.5 KG/RL)(BATTERY MATERIAL)(RE - SHIP CARGO RETURNABLE GOODS) (FOC)	39211900	616787	0
9	4681885	14-07-2021	6	COPPER FOIL(YB-7.8) (18D1940401,18D2380-401) (250 KG/BOX)(B - ATTERY MATERIAL) (RE-SHIP CARGO RETURNABLE GOODS) (FOC)	74101100	636603	0
10	4681885	14-07-2021	12	GR20(SERIAL NO.GR211216(NO.1)211224(NO.9) (0.135 KG/PC)(DATA LOGGER)(RE-SHIP CARGO RETURNABLE GOODS)(FOC)	90318000	292451	0
11	4681885	14-07-2021	13	DER-1000(SERIAL NO. 0823(NO.1),0824(NO.2)0825(NO.3) (0.950 KG - /PC)(DATA LOGGER) (RE-SHIP CARGO RETURNABLE GOODS)(FOC)	90318000	237573	0
Total						80,11,630	0

12.2. From the case records, I observe that a parallel demand in respect of Bill of Entry No. 4681885 dated 14.07.2021, covering the items listed at Sr. Nos. 1 to 9 in the table above, has already been raised vide Show Cause Notice No. 93/2024 dated 02.09.2024 under Section 28(4) of the customs Act, 1962. The said SCN has been adjudicated by the Commissioner of Customs, Chennai-II,

vide Order-in-Original No. 112929/2025 dated 31.03.2025. In view of the above, I find that continuation of proceedings against the items listed at Sr. Nos. 1 to 9 under the present proceedings would amount to duplication of proceedings. Accordingly, the demand of differential duty in respect of these items under the impugned Bill of Entry is not sustainable in the instant proceedings. However, I find that the demand pertaining to items listed at S No. 10 and 11 of the above table are still liable to be taken up for adjudication. Therefore, I continue the proceedings in respect of items listed at Sr. Nos. 10 and 11 in the above table.

12.3. To proceed further, I peruse Notification No. 104/94-Cus dated 16.03.1994. A perusal of the said notification reveals that it grants exemption to containers of a durable nature, falling under the First Schedule to the Customs Tariff Act, 1975, from the whole of the customs duty leviable thereon under the said Schedule, as well as from the whole of the integrated tax leviable under sub-section (7) of Section 3 of the Customs Tariff Act. The exemption is subject to the condition that the importer executes a bond, in such form and for such amount as may be specified by the Assistant Commissioner of Customs or Deputy Commissioner of Customs, binding himself to re-export the said containers within six months from the date of importation, furnish documentary evidence of such re-export to the satisfaction of the said authority, and pay the applicable duty in the event of failure to comply with the said condition.

12.4. I have examined the impugned bill of entry and find that the importer has declared the item listed at Sr. No. 10 (item no. 12) of the above table as "GR20 (SERIAL NO.GR211216 (NO.1)211224(NO.9) (0.135 KG/PC)(DATA LOGGER)". Further, the item listed at Sr. No. 11 (item no. 13) in the above table has been declared as "DER-1000(SERIAL NO. 0823(NO.1), 0824(NO.2)0825(NO.3) (0.950 KG -/PC)(DATA LOGGER)". I also examine the duty components recorded in the impugned Bill of Entry in respect of the above disputed items and find that the importer has indeed availed the benefit of Notification No. 104/94-Cus dated 16.03.1994. Further, I find that the importer has classified both items under Customs Tariff Heading 9031, which covers

“measuring or checking instruments, appliances and machines, not specified or included elsewhere in this Chapter; profile projectors.”

12.5. In view of the above classification and description, it is evident that the goods in question are measuring or checking instruments and not containers of a durable nature. Accordingly, **I hold that the importer has wrongly claimed the exemption under Notification No. 104/94-Cus dated 16.03.1994.**

DETERMINATION OF DUTY:

13.1. I observe that the impugned Show Cause Notice proposes a demand of differential customs duty amounting to Rs.21,66,169/- on an assessable value of Rs.80,11,630/- from the noticee under Section 28(4) of the Customs Act, 1962. However, in view of the foregoing discussions and findings, the demand pertaining to the items listed at Sr. Nos. 1 to 9 in the table of Para 4 of the SCN has already been adjudicated and is, therefore, liable to be excluded from the total demand. Accordingly, I re-determine the duty liability under Section 28(8) of the Customs Act, 1962, as under:

Sr. No.	BE No.	Date	Item No.	CTH	Assess Value (in Rs.)	Duty Paid	duty leviable in %	duty payable (in Rs.)
10	4681885	14-07-2021	12	90318000	292451	0	27.74%	81,125
11	4681885	14-07-2021	13	90318000	237573	0	27.74%	65903
Total					530024	0		1,47,028

13.2. Thus, I determine the differential duty liability in the present proceedings as Rs.1,47,028/- on an assessable value of Rs.5,30,024/-.

INVOCATION OF SECTION 28(4) AND LIABILITY OF INTEREST UNDER SECTION 28AA OF THE CUSTOMS ACT, 1962.

14.1. I observe that Section 17 of the Customs Act, 1962, governs self-assessment and casts a statutory obligation on the importer to correctly assess

and discharge customs duty. This responsibility is not contingent upon departmental intervention. In addition, Section 46(4) of the Act specifically mandates that an importer, while presenting a Bill of Entry, shall make and subscribe to a declaration as to the truth of the contents. Therefore, any misrepresentation or suppression in the declaration, especially with regard to any exemption or concession, directly attracts penal consequences under the Act. I find that in the present case, the noticee, by claiming inapplicable exemption notification, despite the clear description and conditions prescribed therein, have failed in their legal responsibility.

14.2. I find that the classification and description of the goods clearly suggests that the goods do not fall under the description “containers of durable nature.” Despite the clear and unambiguous nature of the product description and its tariff implications, the noticee knowingly and deliberately proceeded to claim the benefit of the exemption to which they were not entitled. Thus, the wrongful availment of the exemption notification by the noticee is a calculated and conscious act of misrepresentation. The incorrect availment of the exemption came to light only after objection raised by the Department. Therefore, the claim of the ineligible exemption cannot be brushed aside as an innocent mistake. Thus, the conduct of the noticee clearly amounts to wilful misstatement and squarely attracting the invocation of Section 28(4) of the Customs Act, 1962.

14.3. In view of the foregoing, I **hold that the demand for differential duty of Rs.1,47,028/- from the noticee is justified and fully sustainable under Section 28(4) of the Customs Act, 1962.** Further, the statutory liability of interest is automatic and compensatory in nature, and no separate mens rea is required for such demand. Therefore, in terms of Section 28AA of the Act, **ibid, the noticee is further liable to pay interest on the said amount from the date it became due till the date of actual payment.**

PENALTY UNDER SECTION 114A OF THE CUSTOMS ACT, 1962:

15.1. I find that the SCN proposes penalty on the noticee under Section 114A of the Customs Act, 1962. The relevant portion of Section 114A of the Customs Act, is re-produced herein 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:

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:

.....

15.2. I find that a penalty under Section 114A of the Customs Act, 1962, may be imposed in cases where duty has either not been levied or has been short-levied due to collusion, willful misstatement, or suppression of material facts. Upon careful consideration of the evidences and the foregoing discussions, I find that the noticee, in the present case, have wilfully misstated and availed exemption that was not admissible to them. **In light of these acts and omissions, I hold the noticee is liable for penalty under Section 114A of the Customs Act, 1962.**

CONFISCATION OF THE GOODS:

16.1. I find that the Show Cause Notice proposes confiscation of goods under the provisions of Section 111 (m) of the Customs Act, 1962. I find that the said section provides that, “any goods which do not correspond in respect of value or

in any other particular with the entry made under this Act, or in respect of which any material particular has been mis-declared in the Bill of Entry or other document, shall be liable to confiscation". Thus, any incorrect or false declaration of material particulars such as description, classification, or value, attracts confiscation of the goods imported under such declaration.

16.2. I find from the case records that, the importer, while filing the impugned bill of entry availed exemption under Notification No. 104/94-Cus. However, exemption was not admissible and the goods were required to be levied duty at standard tariff rate without exemption. I find that this ineligible exemption is not a bona fide mistake but an intentional mis-declaration of a material particular within the meaning of Section 111(m) of the Customs Act, 1962 which was done to avail benefit of exemption by defrauding the government exchequer. These acts and omissions at the end of the importer has rendered the goods liable for confiscation under section 111(m) of the Customs Act, 1962.

16.3. In view of the above, **I hold that the goods, imported under impugned bill of entry, were ineligible for the exemption Notification, are liable for confiscation under Section 111(m) of the Customs Act, 1962.**

IMPOSITION OF REDEMPTION FINE:

17.1. As I have already held in previous para these goods liable for confiscation under Section 111(m) of the Customs Act, 1962, I find it necessary to consider as to whether redemption fine under Section 125 (1) of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the impugned goods as alleged vide subject SCN. The Section 125 (1) *ibid* reads as under:-

“Section 125. Option to pay fine in lieu of confiscation.—(1)
Whenever confiscation of any goods is authorized by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose

possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit.”

17.2. I note that the goods in question which are proposed to be confiscated were already cleared and the same are not available physically for confiscation. Thus, **I refrain from imposing redemption fine in respect of goods imported under the impugned bills of entry.**

18. In view of discussions and findings supra, I pass the following order.

ORDER

- i.** I deny the benefit of Notification No. 104/94-Cus dated 16.03.1994 availed by the importer for the Item Nos. 12 & 13 imported under BE No. 4681885 dated 14.07.2021.
- ii.** I order to confiscate the goods having assessable value of **Rs.5,30,024/- (Rupees Five Lakh Thirty Thousand and Twenty Four Only)** under Section 111 (m) of Customs Act, 1962. I also note that the goods have already been cleared and are not available physically for confiscation; however, as noted above, since the goods are not physically available for confiscation, I do not impose any redemption fine in lieu of such confiscation.
- iii.** I confirm the demand of duty of **Rs.1,47,028/- (Rupees One Lakh Forty Seven Thousand Twenty Eight Only)** under Section 28(4) and order to recover the same from the noticee along with applicable interest under Section 28AA of the Customs Act, 1962.
- iv.** I impose a penalty of **Rs.1,47,028/- (Rupees One Lakh Forty Seven Thousand Twenty Eight Only)** on the noticee under Section 114A of the Customs Act, 1962. Provided that the duty as determined, and the interest payable thereon under section 28AA, is paid within 30 days from the date of the communication of this Order, the amount of penalty liable to be paid shall be 25% of the duty. Provided further that the benefit of reduced penalty shall be available subject to the condition that the amount of penalty so

determined has also been paid within the period of 30 days from the date of the communication of this order.

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

20. The Show Cause Notice bearing F. No. CUS/APR/BE/MISC/3749/2024-Gr 2-O/o Pr Commr-Cus-Mundra dated 17.01.2025 issued to M/s TOYOTA TSUSHO INDIA PRIVATE LIMITED stands disposed of in above terms.

**Dipak Zala,
Additional Commissioner of Customs,
(Import Assessment)
Customs House, Mundra**

By RPAD/ By Hand Delivery/Email/Speed Post

To,
M/s TOYOTA TSUSHO INDIA PRIVATE LIMITED,
Situated at Unit No. 4A, Plot No. 28 to 45,
Estate Japanese Industrial Zone, Vithalapur Village,
Mandal Taluka, Ahmedabad, Gujarat-382120

Copy to:

1. The Addl. Commissioner (RRA), Customs House, Mundra
2. The Addl. Commissioner, Customs Chennai-II (Import), Customs House
No. 60, Rajaji Salai, Chennai 600001
3. The Deputy/Assistant Commissioner (PCA/TRC/EDI), CH, Mundra
4. Guard File