



प्रधानआयुक्तकाकार्यालय, सीमाशुल्क, अहमदाबाद

सीमाशुल्कभवन, आलइंडीयारेडीऑकेबाजुमे, नवरंगपुरा, अहमदाबाद 380009

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निबन्धितपावतीडाकद्वारा / By SPEED POST A.D.

फा. सं./F. No.: VIII/10-32/Pr.Commr./O&A/2024-25

DIN-

आदेशकीतारीख/Date of Order :10.12.2025

जारीकरनेकीतारीख/Date of Issue :10.12.2025

द्वारापारित :-

शिव कुमार शर्माप्रधान आयुक्त ,

Passed by :-

Shiv Kumar Sharma, Principal Commissioner

मूलआदेशसंख्या :

Order-In-Original No: AHM-CUSTM-000-PR.COMMR-38-2025-26 dated 10.12.2025 in the case of M/s. Mitsubishi Electric Automotive India Pvt. Ltd., Plot No. 1059 to 1060, Sanand II, Industrial Estate, Ahmedabad – 382 110.

1. जिस व्यक्तियों को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।
1. This copy is granted free of charge for private use of the person(s) to whom it is sent.
2. इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, दुसरी मंजिल, बहुमाली भवन, गिरिधर नगर पुल के बाजु मे, गिरिधर नगर, असारवा, अहमदाबाद-380 004 को सम्बोधित होनी चाहिए।
2. Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, Ahmedabad – 380004.

3. उक्त अपील प्रारूप सं. सी.ए.3 में दाखिल की जानी चाहिए। उसपर सीमा शुल्क (अपील) नियमावली, 1982 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियों में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए)। अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियों में अग्रेषित किए जाने चाहिए।

3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएंगी (उनमें से कम से कम एक प्रमाणित प्रति होगी)।

4. The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. केंद्रिय सीमा शुल्क अधिनियम, 1962 की धारा 129 ऐ के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

6. The prescribed fee under the provisions of Section 129A of the Customs Act, 1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. इस आदेश के विरुद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुरमाना का विवाद है अथवा जुरमाना जहां शीर्ष जुरमाना के बारेमे विवाद है उसका भुकतान करके अपील की जा शकती है।

7. An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute".

8. न्यायालय शुल्क अधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर उपयुक्त न्यायालय शुल्क टिकट लगा होना चाहिए।

8. The copy of this order attached therein should bear an appropriate court fee stamp as prescribed under the Court Fees Act, 1870.

Sub: Show Cause Notice No. VIII/10-32/Pr.Commr./O&A/2024-25 dated 24.04.2025 issued by the Principal Commissioner of Customs, Ahmedabad to M/s. Mitsubishi Electric Automotive India Pvt. Ltd., Plot No. 1059 to 1060, Sanand II, Industrial Estate, Ahmedabad – 382 110

BRIEF FACTS OF THE CASE:

M/s. Mitsubishi Electric Automotive India Pvt. Ltd. situated at Plot No. 1059 to 1060, Sanand II, Industrial Estate, Ahmedabad- 382 110 (IEC No. 0498049850) (hereinafter referred as 'the Importer' for the sake of brevity) and having their registered office situated at Plot No. 167-170, Sector-5, IMT Manesar, Gurugram-122 052 (Haryana), inter alia, engaged in importing and trading of Exhaust Gas Recirculation Valves falling under Chapter 84 of the Customs Tariff Act, 1975. Their GST Registration No. is 24AABCM8474A1ZP.

2. During the course of risk analysis of various imported items, it is noticed that goods described as "EGR Valves (Exhaust Gas Recirculation Valves)" were imported by the Importer by classifying the same under CTI 84818090 of the Customs Tariff Act, 1975, claiming exemption of Customs Duty under Serial No. 627 of Notification No. 69/2011-Customs, dated 29.11.2011, as amended, thereby they paid BCD (Basic Customs Duty) @ 0%+ SWS (Social Welfare Surcharge) @ 0% +IGST @ 18% IGST.

3. The relevant portion of CTI 84818090 of the First Schedule to the Customs Tariff Act, 1975 is extracted as below:

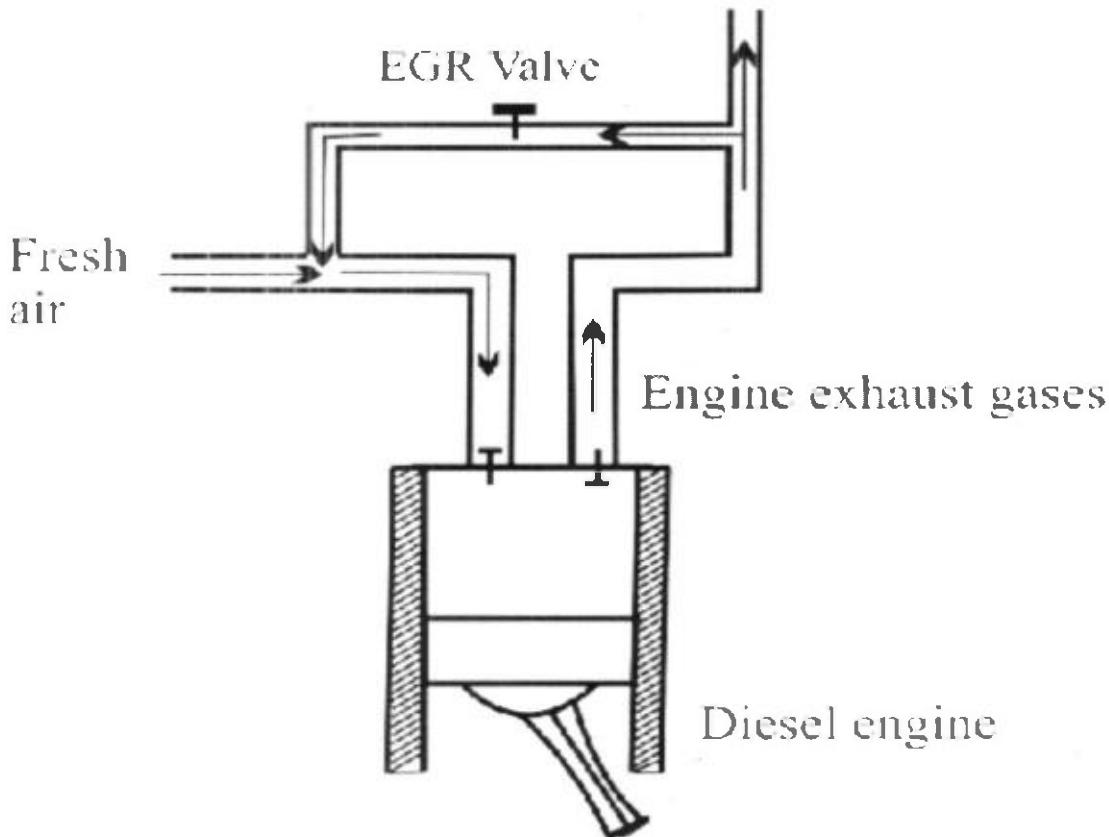
Tariff Item		Description of Goods	Unit	Rate of Duty	
				Standard	Preferential Areas
8481		TAPS, COCKS, VALVES AND SIMILAR APPLIANCES FOR PIPES, BOILER SHELLS, TANKS, VATS OR THE LIKE, INCLUDING PRESSURE-REDUCING VALVES AND THERMOSTATICALLY CONTROLLED VALVES			
8481 80	-	<i>Other appliances :</i>			
8481 80 90	---	Other	Kg.	7.5%	-

4. The main heading of CTH 8481 covers goods having description as "*Taps, Cocks, Valves And Similar Appliances For Pipes, Boiler Shells, Tanks, Vats Or The Like, Including Pressure-Reducing Valves And Thermostatically Controlled Valves.*" Further, the declaration of the subject goods under CTI 8481 80 90 pertains to the residual entry "Others".

TECHNICAL ANALYSIS:

5. It appeared from the technical analysis that the integral function of 'Exhaust Gas Recirculation Valve' or EGR valve is to recirculate finely metered quantities of exhaust gas to the engine intake system for increased engine efficiency, reduced fuel consumption and lower NOx emissions. The exhaust gases in combustion engine mainly consist of carbon dioxide, nitrogen etc. and the mixture has higher specific heat compared to atmospheric air. Recirculated exhaust gas displaces fresh air entering the combustion chamber with carbon dioxide and water vapour present in engine exhaust. Hence, EGR is the most efficient and widely used system to control the formation of oxides of nitrogen inside the combustion chamber of Internal Combustion engine. The exhaust gas for recirculation is taken through an orifice and passed through control valves for regulation of the quantity of recirculation. Due to their specific nature of work in IC engine, the EGR valves are specialized to be employed in the automobile industry.

5.1 The Schematic Diagram below shows the exact function of the EGR valve in an IC engine:



Image

6. In this regard, the relevant extract from the Harmonized Nomenclature Explanatory Notes of CTH 84 is reproduced as below:

"2. Subject to Note 1 to this Section, Note 1 to Chapter 84 and to Note 1 to Chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:

- (a) Parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;*
- (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517, and parts which are suitable for use solely or principally with the goods of heading 8524 are to be classified in heading 8529.*
- (c) All other parts are to be classified in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate or, failing that, in heading 8487 or 8548."*

7. Further, the relevant portion of CTI 84099911 of the First Schedule to the Customs Tariff Act, 1975 is extracted below:

Tariff Item		Description of Goods	Unit	Rate of Duty	
				Standard	Preferential Areas
8409		PARTS SUITABLE FOR USE SOLELY OR PRINCIPALLY WITH THE ENGINES OF HEADING 8407 OR 8408			
8409 99	--	Other			
	---	Valves, inlet and exhaust, piston, piston rings, piston assemblies :			
8409 99 11	----	Valves, inlet and exhaust	Kg.	15%	

8. As per THE GENERAL RULES FOR THE INTERPRETATION OF IMPORT TARIFF, the HSN code is used to classify goods for import/export purposes based on their nature, composition, and intended use. In view of the foregoing paras, it appeared that the EGR valves are meant to be used as parts suitable for use solely or principally with the engines of the Heading 8407 or 8408 and therefore it appeared that the same merits classification under CTI 84099911 and classification under CTH 8481 which is applicable to "TAPS, COCKS, VALVES AND SIMILAR APPLIANCES FOR PIPES, BOILER SHELLS, TANKS, VATS OR THE LIKE, INCLUDING PRESSURE-REDUCING VALVES AND THERMOSTATICALLY CONTROLLED VALVES" does not appear appropriate for the EGR valves.

CUSTOM DUTY STRUCTURE:

9. Customs Duty Structure for the imported goods when classified under CTH 8481 80 90 vis-à-vis CTH 8409 99 11 during the relevant period of import from October, 2021 to February, 2022 were as under:

CTH	BCD (%)	SWS	IGST Schedule/ Sl. No.	IGST (%)	Total (%)
84818090	7.50	0.75	III368	18	27.735
84099911	15.0	1.5	IV116	28	49.12

9.1 From the above, it appeared that the imported goods i.e. EGR Valves in the instant case when are classified under CTI 84818090 attract total Customs duty @ 27.735% of assessable value, but when the said goods are classified under CTI 84099911, they attract total Customs duty @ 49.12% of assessable value. Further, CTI 84818090 has been granted the benefit of exemption of BCD under Serial No. 627 of the Notification No. 69/2011-Cus., dated 29.07.2011, as amended, whereas the CTI 84099911 doesn't have any such exemption under the said Notification when the goods are imported from Japan. Thus, the effective rate of duty becomes only 18% of assessable value when the goods are falling under CTI 84818090 and imported from Japan.

REVENUE RISK REPORT 03/2023-24

10. From the abovementioned facts, the potential risk of misclassification of the goods "Exhaust Gas Recirculation Valve – EGR" under CTI 84818090 instead of respective tariff headings to evade higher duty cannot be ruled out. Therefore, the import data pertaining to CTI 84818090 were studied and

analysed by the office of the Pr. ADG, DGARM, NCTC-Cargo, Mumbai and a Revenue Risk Report No. 03/2023-24, dated 08.03.2024, was issued by the Pr. ADG, NCTC-Cargo, Mumbai, in this regard.

10.1 Under Revenue Risk Report No. 03/2023-24, dated 08.03.2024, it has been noticed that the Importer was importing 'Exhaust Gas Recirculation Valve – EGR' through ICD-Sanand, Customs, Ahmedabad classifying the same under CTI 84818090 and thereby claiming a lower IGST rate @18% under Sr. No. III368 (Schedule-III), instead of applicable IGST rate @28% under Sr. No. IV116 (Schedule-IV) of Notification No. 01/2017-Integrated Taxes (Rates), dated 28.06.2017, and availing the benefit of exemption of BCD under Serial No. 627 of the Notification No. 69/2011-Cus, dated 29.07.2011, as amended, available to goods imported from Japan.

11. On the basis of abovementioned Revenue Risk Report, the Deputy Commissioner of Customs, ICD-Sanand, Customs, Ahmedabad, issued a letter F.No.CUS/APR/MISC/9234/2023-ICD-SNND-CUS-COMMRTE-AHMEDABAD, dated 04.07.2024 to the Importer, interalia, directing them to provide the import data of 'Exhaust Gas Recirculation Valve – EGR' for the period from 01.10.2021 to 04.07.2024 and to pay the differential duty along with interest applicable on the said import immediately.

12. The Importer submitted their reply on 31.07.2024 in compliance to the letter dated 04.07.2024 issued by the Deputy Commissioner of Customs, ICD-Sanand, Customs, Ahmedabad, wherein they, inter alia, submitted as under:

(a) Classification of EGR Valves under CTI 84818090

Functioning of EGR Valves:

- (i) EGR Valves receive the exhaust gas from the cooler (cooler receives the gases from the exhaust) and supplies the same to the intake manifold for being injected into the internal combustion engine. Therefore, the EGR valves are not functioning as intake valves of the internal combustion engine and cannot be regarded as 'intake valves' to be used as a part that is suitable for use with the internal combustion engine.
- (ii) EGR Valve is a mechatronic product that acts as a valve. It converts electrical energy into mechanical energy i.e. back and forth movement of the valve. It opens and closes precisely based on the information received from vehicle's Engine Control Unit (ECU) to regulate the amount of exhaust gas that flows into the intake manifold. The ECU uses engine parameters like speed, temperature, torque, emission levels, and throttle position to determine the optimal amount of recirculation.
- (iii) It helps in reduction of NOx (Nitrogen Oxides) from the exhaust gas and helps in increasing the fuel efficiency. The engine first flows the exhaust gases to the coolant and then these cooled gases are received by the EGR Valve. These exhaust gases are then recirculated back to the intake manifold of the internal combustion engine.
- (iv) It is the ECU that calculates the amount and timing of exhaust gas to be recirculated and accordingly determines the optimum timing and degree of opening and closing the EGR Valve. EGR Valve is a complete valve itself having motor, housing, spring, valve and valve seat as its major child parts.

(v) The above understanding makes it clear that EGR valve does not control the flow of any gases. The EGR valve is a complete valve and not a part of engine.

(b) **Submissions with respect to Classification of EGR Valves under CTH 8481 and not under CTH 8409**

- (i) Custom Tariff Item ('CTI') 84099111 under CTH 8409 bears description as '*Valves, inlet and exhaust*' and covers the items that are used as a part suitable for use solely or principally with internal combustion engine.
- (ii) The items that are used as a part i.e., suitable for use solely or principally with internal combustion engine shall be classified under the Chapter heading 8409. In their case, they infer from the above understanding of the product that the instant EGR Valves function independently wherein the said EGR valve flows the re-circulated exhaust gases to an intake manifold which in turn flows the same to an independent inlet and exhaust valve of the internal combustion engine. The said independent inlet and exhaust valves receiving the re-circulated gases from the instant EGR valve (via intake manifold) generally perform the function of an intake and exhaust valves suitable for internal combustion engine only. In addition to undertaking the flow of re-circulated gases to such inlet manifold, the EGR valve supplies the cooled exhaust gas into the manifold.
- (iii) Pursuant to the above, the said EGR Valve cannot be said to be forming only as a part of internal combustion engine and the same cannot be said to be classified under CTI 84099111.
- (iv) Further to above, reference is made to CTH 8481 bearing description as 'Taps, cocks, valves and similar appliances for pipes, boiler shells, tanks, vats or the like, including pressure -reducing valves and thermostatically controlled valves'.
- (v) In this regard, they submitted that these valves are in the nature of check-valves that generally consists of two ports i.e., one port for entry of exhaust gas and other port for exit of the gas as discussed above. Since these valves are being used for a specialised purpose i.e. for recirculation of exhaust gas and functions independently, these valves thereby merit classification under CTH 8481 and not under CTH 8409.

12.1 The Company had classified the instant EGR valves under CTI 84818090 on account of the interpretation adopted in light of the submissions made *supra*. The Company has made correct classification of the instant EGR Valves and cannot be said to have any fraudulent intention purposively in order to avoid duty payment.

13. The details of EGR Valves imported by the Importer through ICD-Sanand, Customs, Ahmedabad, during the period 01.10.2020 to till date, classifying the same under CTI 84818090 are as under:

Sl. No.	Bill of Entry No./ Date	Description of goods	Assessable Value (Rs.)	Total Customs duty paid (Rs.)
1	5980791/ 25-10-2021	EGR VALVE K005T79177ZG (AUTOMOTIVE PARTS) (FOR INDUSTRIAL USE)	1,60,52,744/-	28,89,494/-
		EGR VALVE	1,22,30,662/-	22,01,519/-

		K005T79177ZG (AUTOMOTIVE PARTS) (FOR INDUSTRIAL USE)		
2	5980389/ 25-10-2021	EGR VALVE K005T79177ZG (AUTOMOTIVE PARTS) (FOR INDUSTRIAL USE)	1,14,66,246/-	20,63,924/-
3	6172800/ 09-11-2021	EGR VALVE K005T79177ZG (AUTOMOTIVE PARTS) (FOR INDUSTRIAL USE)	1,14,66,246/-	20,63,924/-
		EGR VALVE K005T79177ZG (AUTOMOTIVE PARTS) (FOR INDUSTRIAL USE)	30,57,666/-	5,50,380/-
4	6318075/ 19-11-2021	EGR VALVE K005T79177ZG (AUTOMOTIVE PARTS) (FOR INDUSTRIAL USE)	2,12,11,554/-	38,18,080/-
5	7137407/ 19-01-2022	EGR VALVE K005T79177ZG (AUTOMOTIVE PARTS) (FOR INDUSTRIAL USE)	44,93,876/-	8,08,898/-
6	7355145/ 04-02-2022	EGR VALVE K005T79177ZG (AUTOMOTIVE PARTS) (FOR INDUSTRIAL USE)	53,34,906/-	9,60,283/-
7	7657079/ 26-02-2022	EGR VALVE K005T79177ZG (AUTOMOTIVE PARTS) (FOR INDUSTRIAL USE)	53,18,897/-	9,57,401/-
		EGR VALVE K005T79177ZG (AUTOMOTIVE PARTS) (FOR INDUSTRIAL USE)	22,79,527/-	4,10,315/-
		Total	9,29,12,324/-	1,67,24,218/-

14. As per the Note 2 to the Harmonized Nomenclature Explanatory Notes of CTH 84, 'parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate'.

14.1 It appeared that 'valves, inlet and exhaust' that are suitable for use solely or principally with the engines of heading 8407 or 8408 are classifiable under CTI 84099911 whereas "TAPS, COCKS, VALVES AND SIMILAR APPLIANCES FOR PIPES, BOILER SHELLS, TANKS, VATS OR THE LIKE, INCLUDING PRESSURE-REDUCING VALVES AND THERMOSTATICALLY CONTROLLED VALVES" are classifiable under CTH 8481 and under CTI 84818090 when classified as 'others' at eight digit level.

14.2 The EGR valve is a key component of a vehicle's engine management system. It's a part of the emissions control system and helps reduce harmful pollutants. Basically the EGR system is a key technology in internal combustion engines that helps to reduce emissions and improve fuel efficiency. Therefore, it appeared that being a key component of EGR system, EGR Valves are suitable for use solely or principally with the engines of heading 8407 or 8408 and merits classification under CTI 84099911.

14.3 In this regard, exclusion clause of HSN Explanatory Notes to CTH 84.81 with the heading 'Taps, cocks, valves and similar appliances for pipes, boiler, shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves' stipulates that "Taps, cocks, valves, etc., remain in this heading even if specialized for use on a particular machine or apparatus, or on a vehicle or aircraft. However, certain machinery parts which incorporate a complete valve, or which regulate the flow of a fluid inside a machine although not forming a complete valve in themselves, are classified as parts of the relative machines, for example, inlet or exhaust valves for internal combustion engines (heading 84.09), slide valves for steam engines (heading 84.12), suction or pressure valves for air or other gas compressors (heading 84.14), pulsators for milking machines (heading 84.34) and non-automatic greasing nipples (heading 84.87)". It clearly appears from this clause that certain machinery parts which incorporate a complete valve, or which regulate the flow of a fluid inside a machine although not forming a complete valve in themselves, are classified as parts of the relative machines.

14.4 Further, HSN Explanatory Notes to CTH 84.09 with the heading 'Parts suitable for use solely or principally with the engines of heading 84.07 or 84.08.' stipulates that "subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), this heading covers parts of internal combustion piston engines of heading 84.07 or 84.08 (e.g., pistons, cylinders and cylinder blocks; cylinder heads; cylinder liners; inlet or exhaust valves; inlet or exhaust manifolds; piston rings; connecting-rods; carburettors; fuel nozzles)".

14.5 From the exclusion clause of HSN Explanatory Notes to CTH 84.81 and HSN Explanatory Notes to CTH 84.09, it clearly appears that likewise pistons, cylinders and cylinder blocks, cylinder heads, cylinder liners, inlet or exhaust valves, inlet or exhaust manifolds, piston rings, connecting-rods, carburettors, fuel nozzles etc. EGR valves also merit classification under CTH 8409 of Customs Tariff Act, 1975 only.

14.6 The basic function of inlet valve, exhaust valve and EGR valve are similar. When the inlet valve and exhaust valve are vital components of an IC engine and control the flow of fresh air and burnt gases in and out of engine cylinders in the similar way function of controlling and re-circulating the flow of exhaust gases into the internal combustion engine through intake manifold is carried out by the EGR Valve. The submission of the Importer that EGR Valves do not control the flow of any gases and it is the Engine Control Unit that sends signals to the EGR Valves and regulate the amount of exhaust gas that flows into the intake manifold does not acceptable at all. It is EGR valve that actually performs the function of controlling/regulating the flow of exhaust gases and not the ECU. To act upon signal of ECU, does not change the fact that EGR valve actually performs the function of controlling/regulating the flow of exhaust gases in the internal combustion engine. Further, the exclusion clause of the explanatory notes to the CTH 84.81 also does not prescribe such condition that the function of controlling/regulating of flow of a fluid inside a machine should not be on the signals of any other device/part of the machine.

14.7 In view of above, the Importer has wrongly classified the goods in question i.e. EGR Valves under CTI 84818090, imported through the ICD-Sanand, Customs, Ahmedabad, during the period October, 2021 to February, 2022 with an intent to evade the payment of appropriate Customs duty. However, the EGR Valves for automotive use are liable to be classified under CTI 84099911. EGR Valves when classified under CTI 84818090 attract total Customs duty @ 27.735% of assessable value, but when the said goods are classifiable under CTI 84099911, they attract total Customs duty @ 49.12% of

assessable value. Further, CTI 84818090 has been granted the benefit of exemption of BCD under Serial No. 627 of the Notification No. 69/2011-Cus dated 29.07.2011, as amended, whereas the CTI 8409 99 11 doesn't have any such exemption under the said Notification when the goods are imported from Japan. Thus, when EGR Valve is classified under CTI 84818090, the effective rate of duty comes to only 18% of assessable value.

15. From the facts discussed hereinabove, it appeared that the Importer was very well aware of the fact that function of controlling and re-circulating the flow of exhaust gases into the internal combustion engine through intake manifold is carried out by EGR Valve. They were well aware of the fact that EGR Valves are goods designed for a specific purpose and they are not general purpose goods. They were aware of the fact that EGR valve is suitable for use solely or principally with the internal combustion engines and therefore EGR Valve is classifiable under CTI 84099911 only. However, the Importer suppressed the said material facts from the department on the basis of pleas that EGR Valves are complete valves and not part, they do not control the flow of any gases and it is the Engine Control Unit that sends signals to the EGR Valves and regulate the amount of exhaust gas that flows into the intake manifold. It appeared that the Importer suppressed the facts from the department with a sole view to evade the payment of Customs duty at the appropriate rate @ 49.12% of assessable value (15% BCD + 10% SWS of BCD+28% IGST) applicable on CTI 84099911 and the Importer choose to mis-classify EGR valve imported by them under CTI 84818090, that is having applicable Customs duty structure @ 27.735% (7.5% BCD + 10% SWS of BCD+18% IGST) of assessable value. Further, the benefit of exemption of BCD under Serial No. 627 of the Notification No. 69/2011-Cus dated 29.07.2011, was also available to goods falling under CTI 84818090 when the goods were imported from Japan whereas the goods falling under CTI 84099911 didn't have any such exemption available under the said Notification. Thus, effective rate of Customs duty on CTI 84818090 was only 18% of the assessable value.

15.1 Thus, the above discussed acts of omission and commission on the part of the Importer has resulted in short-payment of duty by reason of wilful mis-statement and suppression of facts. Therefore, such short-paid differential duty is required to be recovered from them by invoking the extended period of five years as per Section 28 (4) of the Customs Act, 1962, along with applicable interest under Section 28 AA ibid.

15.2 In terms of Section 46(4) of Customs Act, 1962, the importer is required to make a declaration as to truth of the contents of the Bills of Entry submitted for assessment of Customs duty further as per Section 46(4A)(a), the importer who presents a bill of entry shall ensure the accuracy and completeness of the information given therein, which in the instant case, the Importer has failed to fulfil in respect of the imports of "EGR VALVE K005T79177ZG (AUTOMOTIVE PARTS) (FOR INDUSTRIAL USE)" through ICD, Thar Dry Port, Sanand. The Importer imported "EGR VALVE K005T79177ZG (AUTOMOTIVE PARTS) (FOR INDUSTRIAL USE)" mis-classifying the same under CTI 84818090 by deliberately resorting to wilful mis-statement and suppression of the material facts with an intent to fraudulently avail ineligible benefit of exemption of BCD under Serial No. 627 of the Notification No. 69/2011-Cus dated 29.07.2011, as amended, available to goods falling under CTI 84818090 when the goods were imported from Japan and paying lower IGST @18% under Sr. No. III368 (Schedule-III), in place of applicable IGST @28% as per Sr. No. IV116 (Schedule-IV) of Notification No. 01/2017-Integrated Taxes (Rates), dated 28.06.2017, as amended, applicable on appropriate CTI 84099911 for EGR Valve. Since the importer has imported the impugned goods by way of resorting to mis-classification and thereby it appeared that the said goods have been imported in contravention to the provisions of Section 46(4) & 46(4A)(a) of the Customs Act, 1962. For these

contraventions and violations, the goods fall under the ambit of 'smuggled goods' within the meaning of Section 2(39) of the Customs Act, 1962 and are liable for confiscation under the provisions of Section 111(m) and Section 111(o) of the Customs Act, 1962.

15.3 The aforesaid acts of wilful mis-statement, suppression of facts and mis-classification of impugned goods by the Importer had led to evasion of Customs duty amounting to Rs. 2,89,14,316/- (Rupees Two Crore, Eighty Nine Lakh, Fourteen Thousand, Three Hundred and Sixteen only), as mentioned in Annexure-A to this Show Cause Notice, by the Importer thereby rendering them liable for penalty under Section 114A of the Customs Act, 1962, in as much as the Customs duty was evaded by reason of wilful mis-statement, suppression of facts and mis-classification with a malafide intention. All the aforesaid acts of omission and commission on the part of the Importer has rendered 95,160 units of subject goods i.e. 'EGR VALVE K005T79177ZG (AUTOMOTIVE PARTS) (FOR INDUSTRIAL USE)', imported during the period from October, 2021 to February, 2020 through ICD-Sanand, Customs, Ahmedabad, and amounting to Rs. 9,29,12,324/- (Rupees Nine Crore, Twenty Nine Lakh, Twelve Thousand, Three Hundred and Twenty Four only), as mentioned in Annexure-A to the Show Cause Notice, liable for confiscation under Section 111(m) of the Customs Act, 1962. The Importer is therefore liable to penalty under Section 112(a) and 112(b) of the Customs Act, 1962. In the present case, it is evident that the importer was fully aware about the actual use and characteristics of the impugned goods. However, the Importer had knowingly and intentionally made, signed or used the declaration, statements and/or documents and presented the same to the Customs authorities, which were incorrect in as much as they were not representing the true, correct and actual classification of the imported goods, and has therefore rendered themselves liable for penalty under section 114AA of the Customs Act, 1962.

16. Therefore, a show cause notice bearing F.No.VIII/10-32/Pr.Commr./O&A/2024-25 dated 24.04.2025 was issued to the Importer asking them to show cause to the Principal Commissioner/Commissioner of Customs, Ahmedabad, having his office at 'Custom House', Navrangpura, Ahmedabad-380 009, as to why:

- (i) The classification of the impugned goods 'EGR VALVE K005T79177ZG (AUTOMOTIVE PARTS) (FOR INDUSTRIAL USE)' as declared by them under CTI 84818090 should not be rejected and the said goods should not be reclassified under CTI 84099911 with applicable rate of duty as BCD @15%, SWS @10% of BCD and IGST @28%.
- (ii) The benefit of exemption of BCD availed by them under Serial No. 627 of Notification No. 69/2011-Customs, dated 29.07.2011, as amended, on the impugned goods by way of adopting wrong classification under CTI 84818090 should not be rejected and withdrawn.
- (iii) Differential Customs duty amounting to Rs.2,89,14,316/- (Rupees Two Crore, Eighty Nine Lakh, Fourteen Thousand, Three Hundred and Sixteen only) on the impugned goods as detailed in Annexure -A to the Show Cause Notice should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA ibid;
- (iv) The impugned 95,160 units of subject goods i.e. 'EGR VALVE K005T79177ZG (AUTOMOTIVE PARTS) (FOR INDUSTRIAL USE)', imported during the period from October, 2021 to February, 2020 through ICD-Sanand, Customs, Ahmedabad, and valued at Rs. 9,29,12,324/- (Rupees Nine Crore, Twenty Nine Lakh, Twelve Thousand, Three Hundred and Twenty Four only), as mentioned in Annexure-A to

the Show Cause Notice, which were mis-classified and on which short payment of duty has been done, should not be held liable for confiscation under the provisions of Section 111(m) and Section 111(o) of the Customs Act, 1962;

- (v) Penalty should not be imposed upon them under the provisions of Section 114A of the Customs Act, 1962;
- (vi) Penalty should not be imposed upon them under the provisions of Section 112(a) and 112(b) of the Customs Act, 1962 and
- (vii) Penalty should not be imposed upon them under the provisions of Section 114AA of the Customs Act, 1962.

DEFENCE:

17. M/s. Shardul Amarchand Mangaldas & Co., Advocates & Solicitors vide letter dated 26.05.2025 have submitted defence reply to the above show cause notice dated 24.04.2025 on behalf of the Importer, under which they have interalia submitted that :-

17.1 Exhaust Gas Recirculation ("EGR") is a system commonly used with internal combustion engines, which consists of components like the Exhaust Gas Recirculation Valve ("EGR Valve"), exhaust manifold, intake manifold, cooler, bypass pipes and Engine ECU. EGR is an emission control technology allowing significant Nitrogen Oxide emission reductions from most types of diesel engines. EGR system works by recirculating a portion of exhaust gases back into the engine's intake manifold. This process lowers combustion temperatures, thereby reducing NOX emissions and improving fuel efficiency in Internal Combustion Engine.

17.2 The exhaust gas recirculation in the intake manifold is not continuous during engine operation. The ECU controls the EGR valve to allow the exhaust gas to enter the intake manifold based upon engine status. The ECU, upon getting inputs from various sensors like temperature sensor, pressure sensor, throttle sensors, etc, checks the engine status/condition and decides the optimum time and amount of exhaust gases to be recirculated in the intake manifold, and gives signal inputs to EGR valve to start recirculation. The EGR valve is merely a gateway for circulation of the gases and does not engage in actual control of flow of the gases.

17.3 EGR Valve is installed on the bypass line, recirculates some part of the exhaust gases (after cooling) to reduce Nitrogen Oxide [NOx] generation. Unlike other engine parts like cylinder, piston, shaft, intake and exhaust valves etc. (without which an engine cannot operate), an EGR Valve is not necessarily required for an Engine to operate. An Engine can function without EGR Valve also. Thus, it is not incorporated into the Engine.

17.4 After out of charge order is issued and the duty paid, the assessment proceedings attain finality, and the issue is closed in favour of the importer. This out-of-charge order cannot be unilaterally recalled without an appeal to the jurisdictional authority, [by either party] to reverse such order, as the proceedings have already attained finality. The SCN presently wants to re-call BOE(s), which have already attained out-of-charge without any dispute or challenge from the Customs authorities and seeks to re-classify the EGR Valves that have already undergone classification and appropriate duty payment, without any dispute, during the relevant period covered by such BOE. The Customs Act, the Customs Tariff or any allied Customs Rules and Regulation do not prescribe such process or course of action. Hence, the entire

action of the SCN is bad in law and the proceedings of the SCN deserve to be dropped on this ground alone.

17.5 The SCN presently wants to re-open a closed assessment proceeding merely by issuing a document without any legal backing. The only way to recall any of the BOE(s) filed in the relevant period by the Company is that the Customs authorities file an appeal before the appropriate jurisdictional Commissioner (Appeals). As the out-of-charge on the BOE is in the nature of assessment and is a final order, the same can only be disputed in appeal before the appropriate Commissioner Appeals under Section 128 of the Customs Act. In this regard, they have placed reliance on the case laws (i) ITC Limited Vs Commissioner of Central Excise, Kolkata [2019 (9) TMI 802], (ii) Collector of Central Excise, Kanpur v. Flock (India) Pvt. Ltd. [2000 (120) ELT 285 (SC)] and (iii) Asian Paints (India) Ltd. Vs. CCE [1994 (73) ELT 433] affirmed by Hon'ble Supreme Court in 2002 (142) ELT 522 (SC).

17.6 That once the Noticee has declared what is being imported in the invoice and the Bill of Entry, it cannot be faulted for claiming a classification which, according to it, is correct. Nothing prevented the Customs Department from seeking further literature and information and re-determining the classification of the imported goods, at the time of import (by raising a query) which it had failed to do so. More so than ever, the Customs authorities at the time of issuing the out of charge order on the Bill of Entry(s) accepted the classification declared by the Noticee and cleared the goods on final assessment. Hence, the classification for all means and purposes has achieved finality. The Customs authorities cannot later in the day claim that the Noticee had resorted to misstatement or suppression or collusion when they themselves, at the time of issue of out of charge, had accepted all the documents and the classification declared by the Company and further, issued a valid final out-of-charge order assessing the duty liability which was paid by the Company on the clearance of goods. Therefore, there is no suppression or collusion that can be invoked and the impugned SCN issued under Section 28(4) is void ab-initio and deserves to be quashed at the outset. In this regard, reliance has been placed on (i) Sandor Medicaids Pvt. Ltd. v. CC [2019(367) ELT486], (ii) Northern Plastic Ltd. v. CCE [1998 (101) ELT 549] and (iii) Daxen Agritech [2023 (12) TMI 1080].

17.7 The exception clause deals with parts which regulate (meaning control) the flow of a fluid inside a machine. This is the ECU if bought into the context of the impugned SCN, which is not the device being classified. The EGR valve which is the subject of this investigation does not "control" and cannot scientifically control the passage of gases, which is merely a dumb inlet and outlet for circulation or re-circulation and hence, cannot be covered under the exception clause. Consequently, by virtue of Section Note 2 of Chapter XVI, it is goods - included in the headings of Chapter 84 [CTH 8481] and is in all cases to be classified in that respective heading CT H 84818090.

17.8 In no circumstance, as this is taxation law, can "circulate" interpreted to mean "regulate". The function defined by the word "circulate" has to be taken as the common literal interpretation and meaning of the word, and no other meaning can be ascribed to it. The function "circulate" cannot be interpreted to also mean "regulated", and must be, by judicial principle, restricted to the function conveyed by circulation alone. Further, even scientifically "regulate" has a different connotation from "circulate", and "regulate" cannot be improbably stretched to include "circulate". The EGR valve has no regulation function and is therefore completely outside the exception to CTH 84.81.

17.9 In the case of AOS Systems Vs CCE Delhi [2019 (1) TMI 312 - CESTAT New Delhi], the Tribunal held that simple solenoid valves which just permit the flow (circulation) of water (liquid) are classified under CTH 8481.

17.10 The similar product has been classified under Chapter Heading 8481 by US Customs also, which follow the HSN based System of classification and the same is also applicable in India, both for Customs Tariff and Central Excise Tariff.

17.11 In the present case, the EGR valve is a complete valve in itself and nor covered under any of the exceptions in the explanatory note. Hence, as per the General Note on Parts, the EGR valve should be classified under CTH 84.81 only.

17.12 The Principal Purpose Test laid down by the Supreme Court is also important to be considered in the present case, for the purpose of classification. If the Principal Purpose Test is applied in the present context, it is clear that the principal purpose of the imported EGR valves is that it forms part of EGR system which is a method in modern combustion engines to control NOX emissions. The EGR valve is only engaged in re-circulating exhaust gases and has no control or regulatory functions whatsoever. Further, it is the engine / accelerator/ ECU that sends signals to the EGR valves and controls the flow of exhaust gases. It is not a part which is principally or solely can be used only in internal combustion engine classified in CTI 84099911.

17.13 The Supreme Court in the case of Hindustan Steel Ltd. Vs. State of Orissa [1978 (2) E. L. T. (J159)] has held that no penalty should be imposed for technical or venial breach of legal provisions and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation." The decision of Hindustan Steel was also followed in the case of Customs laws by the Supreme Court in the case of Akbar Badruddin Jiwani Vs. Collector of Customs [1990 (47) ELT 161].

17.14 It is clear that goods which have been cleared for home consumption i.e. for which an out of charge order has been issued on a BOE filed, cease to be "imported goods". Hence, Section 111 of the Customs Act cannot be invoked to confiscate such goods, as Section 111 deals only with imported goods. The aforesaid section cannot be invoked to confiscate goods which have been imported five years ago or goods where the BOE(s) have successfully been given out of charge orders. Hence, the invocation of this Section in the Impugned SCN deserves to be quashed at the outset. In this regard, they have relied on the case law Bussa Overseas & Properties Pvt. Ltd. Vs. C.I. Mahar, Assistant Commissioner of Customs, Bombay [2004 (163) ELT 304 (Bom.)]. The said decision was maintained by the Hon'ble Supreme Court reported in 2004 (163) ELT A160.

17.15 Since this is a classification dispute, in any case, in this regard, the Noticee relied on the case of Northern Plastic Ltd. vs. Collector of Customs & Central Excise [1998 (101) E.L.T. 549 (S.C.)], wherein the Hon'ble Supreme Court has held that merely claiming a particular classification or availing an exemption under the Bill of Entry does not amount to mis-declaration under Section 111(m) of the Act.

17.16 That no differential duty is payable by the Noticee, as the classification of the imported goods have been made correctly and declared by the Noticee. For the same reasons, no penalty can be imposed on the Noticee as the corresponding demand of differential duty is not sustainable. Further, Section 112 is related to Section 111 of the Customs Act, for goods liable to confiscation under Section 111.

17.17 Since the classification declared by the Noticee has been correctly established with respect of the imported products and no duty is payable, the imposition of penalty under Section 114A and 114AA of the Customs Act cannot be sustained for short payment of duty. Hence, the provisions relating to penalty under Section 114A in the SCN deserve to be dropped at the outset.

17.18 It is a well settled principle of law that the extended period of limitation cannot be invoked when the facts were already known to the department. In this regard, they have relied on various case laws.

17.19 No suppression of facts has been done by the Noticee and all relevant information and documents were shared by the Noticee during the investigation as well as correct declarations have been made in the import documents which were already on record with the customs authorities. Accordingly, there is no case of invoking the extended period of limitation in the present case when all information was already available with the customs authorities.

17.20 It is a cardinal principle of law that when the principal demand is not justified, there is no liability to pay ancillary demands or interest. Therefore, it is submitted that the Noticee is not liable to pay any interest as demanded in the Impugned SCN.

17.21 In view of the above, they have requested to drop the subject show cause notice dated 24.04.2025.

PERSONAL HEARING:

18. Personal hearing was held on 11.11.2025 wherein Shri Neeladri Chakrabarti, Advocate of M/s. Shardul Amarchand Mangaldas & Co., Advocates & Solicitors appeared for personal hearing virtually (online mode) on behalf of the Importer. He reiterated the contents of their defence reply dated 26.05.2025 and requested to consider the same.

FINDINGS:

19. I have carefully gone through the show cause notice dated 24.04.2025, Revenue Risk Report No. 03/2023-24 dated 08.03.2024 issued by the Pr. ADG, NCTC-Cargo, Mumbai, defence reply submitted by the Importer and relevant case records.

20. The core issues before me for decision in the present case are as under:

- (i) Whether the classification of the impugned goods viz. 'EGR VALVE K005T79177ZG (AUTOMOTIVE PARTS) (FOR INDUSTRIAL USE)' as declared by the Importer under CTI 84818090 should be rejected and the said goods should be reclassified under CTI 84099911 with applicable rate of duty as BCD @15%, SWS @10% of BCD and IGST @28%?
- (ii) Whether the benefit of exemption of BCD availed by the Importer under Serial No. 627 of Notification No. 69/2011-Customs, dated 29.07.2011, as amended, on the impugned goods by way of adopting wrong classification under CTI 84818090 should be rejected?
- (iii) Whether differential Customs duty amounting to Rs.2,89,14,316/- (Rupees Two Crore, Eighty Nine Lakh, Fourteen Thousand, Three Hundred and Sixteen only) on the impugned goods, as detailed in

Annexure -A to the Show Cause Notice, should be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA ibid?

(iv) Whether the impugned 95,160 units of subject goods i.e. 'EGR VALVE K005T79177ZG (AUTOMOTIVE PARTS) (FOR INDUSTRIAL USE)', imported during the period from October, 2021 to February, 2020 through ICD-Sanand, Customs, Ahmedabad, and valued at Rs. 9,29,12,324/- (Rupees Nine Crore, Twenty Nine Lakh, Twelve Thousand, Three Hundred and Twenty Four only), as mentioned in Annexure-A to the Show Cause Notice, which were mis-classified and on which short payment of duty has been done, should be held liable for confiscation under the provisions of **Section 111(m) of the Customs Act, 1962?**

(v) Whether penalty should be imposed upon the Importer under the provisions of Section 114A, Section 112(a) and 112(b) and Section 114AA of the Customs Act, 1962?

21. The brief issue involved in the instant case is that during the course of risk analysis of various imported items, it was noticed that the Importer has imported goods viz. "EGR Valves (Exhaust Gas Recirculation Valves)" and filed 7 (Seven) Bills of Entry at ICD-Sanand for clearance of the said imported goods, availing the exemption benefit of Basic Customs Duty under Serial No. 627 of Notification No. 69/2011-Customs, dated 29.11.2011, as amended, by mis-classifying the said goods under Customs Tariff Item 84818090 of the Customs Tariff Act, 1975. It is alleged in the show cause notice that EGR Valve imported by the Importer is an important part of Internal Combustion Engine and the same is rightly classifiable under Customs Tariff Item 84099911 of the Customs Tariff Act, 1975, which attracts BCD @ 15% + SWS @10% + IGST @ 28% and by mis-classifying the said goods under Customs Tariff Item 84818090, the Importer has evaded Customs duty amounting to Rs.2,89,14,316/-.

22. Now, I proceed to examine the issues to be decided by me one by one in the light of the records of the case and the submissions made by the Importer.

22.1 The most important issue before me for decision in the present case is whether the imported goods viz. "EGR VALVE K005T79177ZG (AUTOMOTIVE PARTS) (FOR INDUSTRIAL USE)" should be held classifiable under Customs Tariff Item 84099911 of the Customs Tariff Act, 1975 or under Customs Tariff Item 84818090 of the Customs Tariff Act, 1975, as claimed by the importer in the subject Bills of Entry?

22.1.1 The dispute being classification of the imported goods, it would be appropriate to make a reference to the Customs Tariff Headings 8481 and 8409 as appearing in the Customs Tariff Act, 1975 as well as the HSN Explanatory Notes for the said Tariff Headings.

22.1.2 Customs Tariff Heading 8481 of the Customs Tariff Act, 1975, reads as under:

8481		TAPS, COCKS, VALVES AND SIMILAR APPLIANCES FOR PIPES, BOILER SHELLS, TANKS, VATS OR THE LIKE, INCLUDING PRESSURE-REDUCING VALVES AND THERMOSTATICALLY CONTROLLED VALVES
8481 10 00	-	Pressure-reducing valves
8481 20 00	-	Valves for oleohydraulic or pneumatic transmissions

8481 30 00	-	Check (non-return) valves
8481 40 00	-	Safety or relief valves
8481 80	-	<i>Other appliances :</i>
8481 80 10	---	Taps, cocks and similar appliances of iron or steel
8481 80 20	---	Taps, cocks and similar appliances of non- ferrous metal
8481 80 30	---	Industrial valves (excluding pressure-reducing valves, and thermostatically controlled valves)
	---	<i>Inner tube valves :</i>
8481 80 41	----	For bicycles
8481 80 49	----	Other
8481 80 50	---	Expansion valves and solenoid valves for refrigerating and air conditioning appliances and machinery
8481 80 90	---	Other

22.1.3 Customs Tariff Heading 8409 of the Customs Tariff Act, 1975, reads as under:

8409		PARTS SUITABLE FOR USE SOLELY OR PRINCIPALLY WITH THE ENGINES OF HEADING 8407 OR 8408
8409 10 00	-	For aircraft engines
	-	<i>Other :</i>
8409 91	--	<i>Suitable for use solely or principally with spark- ignition internal combustion piston engines:</i>
	---	<i>Valves, inlet and exhaust, piston, piston rings, piston assemblies :</i>
8409 91 11	----	Valves, inlet and exhaust
8409 91 12	----	Pistons
8409 91 13	----	Piston rings
8409 91 14	----	Piston assemblies
8409 91 20	---	Fuel injection equipment excluding injection pumps
	---	<i>Other :</i>
8409 91 91	----	Of petrol engines for motor vehicles
8409 91 92	----	Of other petrol engines
8409 91 93	----	Of kerosene engines
8409 91 94	----	Of gas engines
8409 91 99	----	Other
8409 99	--	<i>Other :</i>
	---	<i>Valves, inlet and exhaust, piston, piston rings, piston assemblies :</i>
8409 99 11	----	Valve, inlet and exhaust

22.1.4 The HSN Explanatory Notes to Customs Tariff Heading 8481 of the Customs Tariff Act, 1975, reads as under:

"This heading covers taps, cocks, valves and similar appliances, used on or in pipes, tanks, vats or the like to regulate the flow (for supply, discharge, etc.), of fluids (liquid, viscous or gaseous), or, in certain cases, of solids (e.g., sand). The heading includes such devices designed to regulate the pressure or the flow velocity of a liquid or a gas.

The appliances regulate the flow by opening or closing an aperture (e.g., gate, disc, ball, plug, needle or diaphragm). They may be operated by hand (by means of a key, wheel, press button, etc.), or by a motor, solenoid, clock movement, etc., or by an automatic device such as a spring, counterweight, float lever, thermostatic element or pressure capsule.

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Taps, cocks, valves, etc., remain in this heading even if specialized for use on a particular machine or apparatus, or on a vehicle or aircraft. However, certain

machinery parts which incorporate a complete valve, or which regulate the flow of a fluid inside a machine although not forming a complete valve in themselves, **are classified as parts of the relative machines**, for example, inlet or exhaust valves for internal combustion engines (**heading 84.09**), slide valves for steam engines (heading 84.12), suction or pressure valves for air or other gas compressors (heading 84.14), pulsators for milking machines (heading 84.34) and non-automatic greasing nipples (heading 84.85).

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PARTS

Subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), parts of the appliances of this heading are also classified here."

22.1.5 The HSN Explanatory Notes to Customs Tariff Heading 8409 of the Customs Tariff Act, 1975, reads as under:

"Subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), **this heading covers parts of internal combustion piston engines of heading 84.07 or 84.08** (e.g., pistons, cylinders and cylinder blocks; cylinder heads; cylinder liners; inlet or exhaust valves; inlet or exhaust manifolds; piston rings; connecting-rods; carburettors; fuel nozzles)."

22.1.6 As per show cause notice, the integral function of 'Exhaust Gas Recirculation Valve' or EGR valve is to recirculate finely metered quantities of exhaust gas to the engine intake system for increased engine efficiency, reduced fuel consumption and lower NOx emissions. The exhaust gases in combustion engine mainly consist of carbon dioxide, nitrogen etc. and the mixture has higher specific heat compared to atmospheric air. Re-circulated exhaust gas displaces fresh air entering the combustion chamber with carbon dioxide and water vapor present in engine exhaust. Hence, EGR is the most efficient and widely used system to control the formation of oxides of nitrogen inside the combustion chamber of Internal Combustion engine. The exhaust gas for recirculation is taken through an orifice and passed through control valves for regulation of the quantity of recirculation. **Due to their specific nature of work in IC engine, the EGR valves are specialized to be employed in the automobile industry.**

22.1.7 Further, as per information available on various websites, Exhaust Gas Recirculation (EGR) is a method to control toxic Nitrogen Oxides (NOx) emissions, produced as a by-product during the combustion process in modern internal combustion engines. The EGR valve is the main component of the EGR system which also include EGR Cooler and Bypass Pipe. It connects the exhaust manifold to the intake manifold and is controlled by either a vacuum or the engine's control unit (ECU). **The function of the EGR valve is to control the flow of exhaust gas being recirculated depending on the engine load.** The EGR valve sends a measured amount of exhaust gas back to the engine's intake manifold. By optimizing the level of oxygen within the combustion process, **EGR valves can improve engine performance, increase durability and reduce NOx emissions.** Therefore, EGR Valve is a critical part of the emissions control system in modern internal combustion engines and without it the system cannot function.

22.1.8 Over recent years, Regulations are becoming increasingly strict to combat the amount of toxic emissions emitted from road transport. NOx is a major component of smog and can have detrimental effects on human health as well as on ecosystems and agricultural crops. Therefore, incorporating EGR systems into the design of a vehicle is important with regards to lowering

harmful emissions to save the environment and have a positive impact on human health. Now a days, majority of modern vehicles are designed to incorporate an Exhaust Gas Recirculation (EGR) system to meet the stringent limits.

22.1.9 The Importer has classified the imported goods viz. "EGR VALVE K005T79177ZG (AUTOMOTIVE PARTS) (FOR INDUSTRIAL USE)" under Customs Tariff Item 84818090 of the Customs Tariff Act, 1975, in all the Bills of Entry filed by them for clearance of the imported goods. On perusal of Customs Tariff Heading 8481 and HSN Explanatory Notes to Customs Tariff Heading 8481, I find that Customs Tariff Heading 8481 is meant for the goods viz. **Taps, Cocks, Valves and similar appliances for Pipes, Boiler Shells, Tanks, Vats** or the like, including pressure-reducing valves and thermostatically controlled valves. The said entry is a general entry for various types of taps, cocks, valves etc. used in pipes, boiler shells, tanks, vats etc. In the instant case, it is an undisputed fact that the imported goods is EGR Valve which is an important part of Internal Combustion Engine used in automobile industry and the same cannot be used anywhere else. Further, the Importer has declared the imported goods as "EGR VALVE K005T79177ZG (**AUTOMOTIVE PARTS**) (FOR INDUSTRIAL USE)" in the Bills of Entry, from which it is crystal clear that the imported goods viz. EGR Valves are nothing but automotive parts. Therefore, I am of the opinion that the subject goods falls outside the purview of Customs Tariff Heading 8481.

22.1.10 Further, General Arrangement of the Chapter 84 as provided under HSN Explanatory Notes stipulates that "Headings 84.81 to 84.84 cover certain general-purpose goods suitable for use as machinery parts or as parts of goods of other Chapters". It is evident from the functions of EGR valve as discussed in foregoing paras that EGR Valve is designed for specific purpose of recirculating finely metered quantities of exhaust gas to the engine intake system for increased engine efficiency, reduced fuel consumption and lower NOx emissions. Re-circulated exhaust gas displaces fresh air entering the combustion chamber with carbon dioxide and water vapor present in engine exhaust. Due to their specific nature of work in IC engine, the EGR valves are specialized to be employed in the automobile industry. Therefore, EGR valve cannot be termed as general purpose of goods by any stretch of the imagination. Therefore, EGR valve does not merit to be classified under Customs Tariff Heading 8481.

22.1.11 The show cause notice has proposed for classification of the imported goods under Customs Tariff Item 84099911 of the Customs Tariff Act, 1975. Customs Tariff Heading 8409 covers "*Parts suitable for use solely or principally with the engines of heading 8407 or 8408*" and Customs Tariff Heading 8407 and 8408 cover various types of Internal Combustion Piston Engines. The Customs Tariff Heading 8409 itself is very clear and unambiguous, which covers the parts suitable for use with internal combustion engines. Therefore, I find that Customs Tariff Item 84099911 which covers "*Valve, inlet and exhaust*" is a specific entry for EGR (Exhaust Gas Recirculation) Valve imported by the Importer, which is undoubtedly an essential part of Internal Combustion Engine used in automotive industry.

22.1.12 It is an admitted fact that the imported goods viz. EGR valves are to be used solely and principally in Internal Combustion Engines. It is also a fact that the Importer has declared the said goods as "**Automotive Parts**" in the subject Bills of Entry and the said goods is not suitable to be used for any other purpose. I find that the purpose of importing the said goods viz. EGR Valves is to

solely and principally use them as components/parts in various models of internal combustion engines falling under Customs Tariff Heading 8407 and 8408. Thus, EGR valve which is a component/part suitable for use solely or principally with internal combustion engines is required to be classified under appropriate heading i.e. Customs Tariff Heading 8409 and specifically under 84099911 of the Customs Tariff Act, 1975, which covers "Valve, inlet and exhaust". I find that when a specific entry is available under Customs Tariff Heading 8409 for the imported EGR Valves, there is no question of considering entries under Customs Tariff Heading 8481 which is general in nature and covers the valves used for Pipes, Boiler Shells, Tanks, Vats or the like, including pressure-reducing valves and thermostatically controlled valves.

22.1.13 Moreover, Rule 3(a) of the General Rules for the Interpretation provides that the heading which provides the most specific description shall be preferred to headings providing a more general description. Accordingly, in terms of Rule 3(a), when comparing the Customs Tariff Items 84818090 and 84099911, it is noticed that the tariff entries of Customs Tariff Heading 8481 are general which covers *Taps, Cocks, Valves used for Pipes, Boiler Shells, Tanks, Vats or the like, including pressure-reducing valves and thermostatically controlled valves*. Whereas, Customs Tariff Heading 8409 covers *Parts suitable for use solely or principally with the engines of heading 8407 or 8408 i.e. Internal Combustion Engines*, wherein Customs Tariff Item 84099911 covers *Valve, inlet and exhaust*, which is more specific tariff heading for the imported goods viz. EGR (Exhaust Gas Recirculation) Valves. Thus Customs Tariff Item 84099911 is more specific than Customs Tariff Item 84818090, therefore, the imported goods viz. EGR Valves are rightly classifiable under Customs Tariff Item 84099911. To fortify my above observation, I place reliance on the judgment passed by the Hon'ble Supreme Court, in the case of Mauri Yeast India Pvt. Ltd. Vs. State of UP [2008 (225) ELT 321 (SC)], wherein the Hon'ble Supreme Court has held that if there is conflict between two entries one leading to an opinion that it comes within the purview of a tariff entry and another the residuary entry, the former should be professed. Accordingly, Customs Tariff Item 84099911 being a specific entry, takes prominence than the general entry i.e. Customs Tariff Item 84818090.

22.1.14 Further, the Supreme Court in the case of O.K. Play (India) Ltd. Vs. Commissioner of Central Excise, reported in 2005 (180) E.L.T. 300 (S.C.), has stated that the 'functional utility', 'predominant usage' of the product is to be considered for the purpose of classification. In the instant case, the functional utility of the imported product, i.e., 'EGR Valve' is to control the flow of exhaust gas being recirculated depending on the engine load, as a part of the EGR system of the Internal Combustion Engines falling under CTH 8407 and 8408. The said imported goods has been declared by the Importer as "Automotive Parts" in the subject seven Bills of Entry and the said goods can only be used in the automotive industry. The EGR Valve is an integral part of the EGR system of Internal Combustion Engine and it can improve engine performance, increase durability and reduce NOx (Nitrogen Oxide) emissions by optimizing the level of oxygen during the combustion process, which is its predominant usage. Following the Supreme Court's decision above, the product in hand, i.e. EGR Valve being a part/component suitable for use solely or principally with the internal combustion engine falling under CTH 8407 and 8408, is classifiable under CTH 8409, more appropriately under 'CTI 84099911- Valve, inlet and exhaust'.

22.1.15 On harmonious reading of the Customs Tariff Headings 8481 and 8498, the HSN Explanatory Notes of the said Tariff Headings, General Rules for the Interpretation and the above two judgments pronounced by the Hon'ble Supreme Court, I find that the

imported goods viz. "EGR VALVE K005T79177ZG (AUTOMOTIVE PARTS) (FOR INDUSTRIAL USE)" merits classification under Customs Tariff Item 84099911 of the Customs Tariff Act, 1975 and not under Customs Tariff Item 84818090 of the Customs Tariff Act, 1975, as claimed by the importer.

22.1.16 The Importer has contended in their defence reply that EGR valve does not control the flow of gases, EGR Valve is not a part of engine and the engine can function without EGR Valve. I find that the above contention of the Importer is false and misleading. It is a fact that the Importer has declared the imported goods in their Bills of Entry as "EGR VALVE K005T79177ZG (**AUTOMOTIVE PARTS**) (FOR INDUSTRIAL USE)", from which it is very much clear that EGR Valve imported by the Importer is an automotive part. It is also a fact that the Importer has admitted in their defence reply that Exhaust Gas Recirculation system helps in reduction of NOx (Nitrogen Oxides) from the exhaust gas and helps in increasing the fuel efficiency of the internal combustion engine. It is also a fact that the Exhaust Gas Recirculation system cannot function without EGR Valve. Further, as discussed in Para 22.1.8 above, regulations are becoming increasingly strict to combat the amount of toxic emissions like NOx emitted from road transport in this modern era. In view of the above admitted facts, it is crystal clear that EGR Valve imported by the importer is an integral part/component of internal combustion engines, which is specifically classifiable under Customs Tariff Heading 8409. Further, from the reading of Customs Tariff Heading 8409, I find that in the said heading there is no mention that the Valves covered there should self control the flow of gases. Likewise, the Customs Tariff Heading 8481 also does not mention that the Valves covered there should not self control the flow of gases. It is the Importer's wrong interpretation with a sole purpose to mislead the adjudicating authority so that they can avail undue benefit of exemption notification by mis-classifying the imported goods. I, therefore, do not agree with the above contention of the Importer.

22.1.17 The Importer has further contended in their defence reply that by virtue of Section Note 2 of Chapter XVI, it is goods - included in the headings of Chapter 84 [CTH 8481] and is in all cases to be classified in that respective heading CTI 84818090. I have gone through the contents of Section Note 2 of Chapter XVI, which reads as under:

"2.- Subject to Note 1 to this Section, Note 1 to Chapter 84 and Note 1 to Chapter 85, parts of machines (not being parts of the articles of heading 84.84, 85.44, 85.45, 85.46 or 85.47) are to be classified according to the following rules :

(a) Parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 84.09, 84.31, 84.48, 84.66, 84.73, 84.85, 85.03, 85.22, 85.29, 85.38 and 85.48) are in all cases to be classified in their respective headings;

(b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 84.79 or 85.43) are to be classified with the machines of that kind or in heading 84.09, 84.31, 84.48, 84.66, 84.73, 85.03, 85.22, 85.29 or 85.38 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 85.17 and 85.25 to 85.28 are to be classified in heading 85.17;

(c) All other parts are to be classified in heading 84.09, 84.31, 84.48, 84.66, 84.73, 85.03, 85.22, 85.29 or 85.38 as appropriate or, failing that, in heading 84.85 or 85.48."

22.1.17.1 I find that in the instant case the imported goods viz. EGR Valve is automotive part as declared by the Importer, which is an integral part of EGR system used in the internal combustion engines and the said goods are specifically classifiable under Customs Tariff Heading 8409 and specifically under Customs Tariff Item 84099911 of the Customs Tariff Act, 1975. Since, there is a specific entry for the imported EGR Valve under CTI 84099911, question of classifying the said goods under a different entry under CTI 84818090 which is general in nature, does not arise. As the Customs Tariff Heading 8409 specifically covers "Parts" suitable for use solely or principally with the engines of heading 8407 or 8408 i.e. Internal Combustion Engines, the provisions of Section Note 2 of Chapter XVI are not applicable in the instant case. Therefore, I do not agree with the above contention of the Importer that by virtue of Section Note 2 of Chapter XVI, the impugned goods is classifiable under CTI 84818090.

22.1.18 The Importer has also contented in their defence reply that the similar product has been classified under Chapter Heading 8481 by US Customs also, which follow the HSN based System of classification and the same is also applicable in India, both for Customs Tariff and Central Excise Tariff and has submitted copy of advises issued by US Tariff. I do not agree with the above contention of the Importer, as the US Tariff advise is unauthorised external aid which cannot be admitted for interpretation.

22.1.19 In view of my findings in the paras supra, I hold that the imported goods viz. "EGR VALVE K005T79177ZG (AUTOMOTIVE PARTS) (FOR INDUSTRIAL USE)" merits classification under Customs Tariff Item 84099911 of the Customs Tariff Act, 1975 and not under Customs Tariff Item 84818090 of the Customs Tariff Act, 1975, as claimed by the importer.

22.2 The second issue for decision before me is whether the benefit of exemption of BCD under Serial No. 627 of Notification No. 69/2011-Customs, dated 29.07.2011, as amended, availed by the Importer for clearance of the imported goods under the Bills of Entry, as mentioned in Annexure-A to the show cause notice, by way of adopting wrong classification under Customs Tariff Item 84818090, should be rejected?

22.2.1 As regards the admissibility of exemption of Basic Customs Duty (BCD) under Serial No. 627 of Notification No. 69/2011-Customs, dated 29.07.2011, as amended, I would like to make a reference to the said notification. As per Notification No. 69/2011-Customs, dated 29.07.2011, as amended, goods of specified descriptions, when imported into India from Japan, are exempted from so much of the duty of customs leviable thereon as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the Table, provided that the exemption shall be available only if importer proves to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the goods in respect of which the benefit of this exemption is claimed are of the origin of Japan, in terms of rules as may be notified in this regard by Central Government by publication in the official gazette.

22.2.2 The exemption available under Serial No. 627 of Notification No. 69/2011-Customs, dated 29.07.2011, as amended, is reproduced as under:

Table

S.No.	Chapter or Heading or sub-heading or tariff item	Description	Rate
(1)	(2)	(3)	(4)
627	84798200 to 84821051	All goods	6.8

22.2.3 I find that the importer has availed the benefit of exemption of BCD available under Serial No. 627 of Notification No. 69/2011-Customs, dated 29.07.2011, as amended, by mis-classifying the imported goods viz. "EGR VALVE K005T79177ZG (AUTOMOTIVE PARTS) (FOR INDUSTRIAL USE)", under Customs Tariff Item 84818090 of the Customs Tariff Act, 1975. I have already held that the said imported goods is classifiable under Customs Tariff Item 84099911 of the Customs Tariff Act, 1975 and not under Customs Tariff Item 84818090 of the Customs Tariff Act, 1975, as claimed by the importer. Therefore, the importer is not entitled for the benefit of exemption of BCD available under Serial No. 627 of Notification No. 69/2011-Customs, dated 29.07.2011, as amended, which is only available to the goods falling under Customs Tariff Item 84798200 to 84821051. Accordingly, I reject the benefit of exemption of BCD availed by the importer under Serial No. 627 of Notification No. 69/2011-Customs, dated 29.07.2011, as amended, in respect of the 7 (Seven) Bills of Entry, as detailed in Annexure-A to the show cause notice. I hold that the Importer is liable to pay customs duty at the normal rate i.e. BCD @15%, SWS @10% of BCD and IGST @28% in respect of the subject seven Bills of Entry.

22.3 The third issue for decision before me is whether the differential Customs duty amounting to Rs.2,89,14,316/- (Rupees Two Crore, Eighty Nine Lakh, Fourteen Thousand, Three Hundred and Sixteen only), on the impugned goods as detailed in Annexure -A to the Show Cause Notice, should be demanded and recovered from the Importer under Section 28(4) of the Customs Act, 1962 along with applicable interest thereon under Section 28AA of the Customs Act, 1962?

22.3.1 As discussed at paras supra, the imported goods "EGR VALVE K005T79177ZG (AUTOMOTIVE PARTS) (FOR INDUSTRIAL USE)" is found as wrongly classified under Customs Tariff Item 84818090 of the Customs Tariff Act, 1975 in order to wrongly avail the benefit of exemption of BCD under Serial No. 627 of Notification No. 69/2011-Customs, dated 29.07.2011, as amended. Correct classification of the product in question is determined under Customs Tariff Item 84099911 of the Customs Tariff Act, 1975. Hence, benefit of exemption of BCD under Serial No. 627 of Notification No. 69/2011-Customs, dated 29.07.2011, as amended, would not be available to the goods imported under the Bills of Entry, as detailed in Annexure-A to the show cause notice. The above acts on the part of the Importer has resulted in evasion of Customs duty amounting to Rs.2,89,14,316/- (Rupees Two Crore, Eighty Nine Lakh, Fourteen Thousand, Three Hundred and Sixteen only), in respect of seven Bills of Entry, as detailed in Annexure-A to the show cause notice, by the said Importer. I find that in order to sensitize the Trade about its benefit and consequences of mis-use, Government of India has issued 'Customs Manual on Self-Assessment 2011'. The publication of the 'Customs Manual on Self Assessment 2011' was required as prior to enactment of the provision of 'Self-Assessment', mis-classification or wrong 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-I of the above manual, Importers/Exporters, who are unable to do the Self-Assessment because of any

complexity, lack of clarity, lack of information etc. may exercise the following options:

- (a) Seek assistance from Help Desk located in each Custom Houses, or
- (b) Refer to information on CBIC/ICEGATE web portal www.cbic.gov.in, or
- (c) Apply in writing to the Deputy/Assistant Commissioner in charge of Appraising Group to allow provisional assessment, or
- (d) An Importer may seek Advance Ruling from the Authority on Advance Ruling, New Delhi if qualifying conditions are satisfied.

Para 3(a) of Chapter 1 of the above Manual further stipulates that the Importer/Exporter is responsible for Self-Assessment of duty on imported/exported goods and for filing all declarations and related documents and confirming these are true, correct and complete. Under para 2.1 of Chapter-1 of the above manual, Self-Assessment can result in assured facilitation for compliant Importers. However, delinquent and habitually noncompliant Importers/Exporters could face penal action on account of wrong Self-Assessment made with intent to evade Duty or avoid compliance of conditions of Notifications, Foreign Trade Policy or any other provision under the Customs Act, 1962 or the Allied Acts.

22.3.2 After introduction of self-assessment through amendment in Section 17 of the Customs Act, 1962 vide Finance Act, 2017, it is the responsibility of the Importer to correctly declare the description, classification, applicable exemption Notification, applicable Duties, rate of Duties and its relevant Notifications etc. in respect of said imported goods and pay the appropriate duty accordingly. In the instant case, it is apparent that the Importer despite being in knowledge of the fact that the imported goods viz. EGR Valves are automotive parts to be used in internal combustion engines, which is rightly classifiable under Customs Tariff Item 84099911 of the Customs Tariff Act, 1975, they intentionally and knowingly mis-classified the said goods under Customs Tariff Item 84818090 of the Customs Tariff Act, 1975 in the subject seven Bills of Entry and wilfully claimed the undue benefit of exemption of BCD under Serial No. 627 of Notification No. 69/2011-Customs, dated 29.07.2011, as amended, with malafide intention to evade payment of Customs duty at appropriate rate. It is therefore very much apparent that Importer has wilfully violated the provisions of Section 17(1) of the Customs Act, 1962 in as much as they have failed to correctly self-assess the impugned goods and have also wilfully violated the provisions of Sub-section (4) and (4A) of Section 46 of the Customs Act, 1962. Thus, Importer has indulged in mis-classification and wrong availment of exemption of BCD under Serial No. 627 of Notification No. 69/2011-Customs, dated 29.07.2011, as amended, with clear intent to evade payment of Customs Duty. By adopting this modus in respect of the impugned goods viz. EGR VALVE K005T79177ZG (AUTOMOTIVE PARTS) (FOR INDUSTRIAL USE), the Importer has short paid Customs duty amounting to Rs. 2,89,14,316/- (Rupees Two Crore, Eighty Nine Lakh, Fourteen Thousand, Three Hundred and Sixteen only), which merits invocation of extended period for demand of the said Customs Duty under the provisions of Section 28(4) of the Customs Act, 1962. I, therefore, find and hold that the differential Customs Duty amounting to Rs. 2,89,14,316/- in respect of the imported goods viz. EGR VALVE K005T79177ZG (AUTOMOTIVE PARTS) (FOR INDUSTRIAL USE) under Bills of Entry, as detailed in Annexure-A to the Show Cause Notice, is recoverable from the Importer invoking the provision of extended period under Section 28(4) of the Customs Act, 1962.

22.3.3 It has also been proposed in the Show Cause Notice to demand and recover interest on the aforesaid Customs Duty under Section 28AA of the Customs Act, 1962. Section 28AA ibid provides that when a person is liable to pay duty in accordance with the provisions of Section 28 ibid, in addition to such duty, such person is also liable to pay interest at applicable rate as well.

Thus, the said Section provides for payment of interest automatically along with the duty confirmed/determined under Section 28 ibid. I have already held that Customs Duty amounting to Rs. 2,89,14,316/- is liable to be recovered under Section 28(4) of the Customs Act, 1962. Therefore, I hold that interest on the said Customs Duty determined/confirmed under Section 28(4) ibid is required to be recovered under Section 28AA of the Customs Act, 1962.

22.4 The fourth issue for decision before me is whether the impugned 95,160 units of subject goods viz. 'EGR VALVE K005T79177ZG (AUTOMOTIVE PARTS) (FOR INDUSTRIAL USE)', imported during the period from October, 2021 to February, 2020 through ICD-Sanand, Customs, Ahmedabad, valued at Rs. 9,29,12,324/- (Rupees Nine Crore, Twenty Nine Lakh, Twelve Thousand, Three Hundred and Twenty Four only), as mentioned in Annexure-A to the Show Cause Notice, which were self-assessed and have already been cleared, should be held liable for confiscation under Section 111 (m) and Section 111(o) of the Customs Act, 1962 and since the same are not physically available for confiscation, fine in lieu of confiscation should be imposed upon the Importer under Section 125 of the Customs Act, 1962?

22.4.1 I find that the Show Cause Notice proposes confiscation of the impugned imported goods under Section 111(m) and Section 111(o) of the Customs Act, 1962. I find that Section 111(o) of the Customs Act, 1962, speaks about confiscation of any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof, in respect of which the condition is not observed. Since, the situation in the present case is different, the provisions of Section 111(o) of the Customs Act, 1962 are not applicable. The issue involved in the present case is wrong availment of exemption notification by mis-classifying the imported goods, therefore, the provisions of Section 111(m) of Customs Act, 1962 will be applicable to the present case. If the goods have been described wrongly or the value of the goods has been incorrectly declared, such goods would come under the purview of Section 111(m) of Customs Act, 1962.

22.4.2 In the instant case the Importer has mis-classified the imported goods viz. EGR VALVE K005T79177ZG (AUTOMOTIVE PARTS) (FOR INDUSTRIAL USE) under Customs Tariff Item 84818090 of the Customs Tariff Act, 1975, for availing undue benefit of exemption of BCD under Serial No. 627 of Notification No. 69/2011-Customs, dated 29.07.2011, as amended, with an intent to evade payment of Basic Customs Duty. Therefore, the said imported goods totally valued at Rs. 9,29,12,324/- imported vide Bills of Entry, as mentioned in Annexure-A to the show cause notice, by mis-classifying under Customs Tariff Item 84818090 of the Customs Tariff Act, 1975 instead of Customs Tariff Item 84099911 of the Customs Tariff Act, 1975, are liable for confiscation under Section 111(m) of the Customs Act, 1962.

22.4.3 I find that in terms of Section 46 (4) of the Customs Act, 1962, the Importer was required to make declaration as regards the truth of contents of the Bill of Entry submitted for assessment of Customs Duty. However, the Importer has contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they have mis-classified the imported goods viz. EGR VALVE K005T79177ZG (AUTOMOTIVE PARTS) (FOR INDUSTRIAL USE) under Customs Tariff Item 84818090 of the Customs Tariff Act, 1975, with an intent to avail undue benefit of exemption of BCD under Serial No. 627 of Notification No. 69/2011-Customs, dated 29.07.2011, as amended, thereby they have short paid the duty with clear intent to evade payment of Customs Duty. Thus, I find that they have violated the provisions of Section 46(4) of the Customs Act, 1962. All these acts on the part of Importer have rendered the imported goods liable for confiscation under Section 111 (m) of the Customs Act, 1962.

22.4.4 As the impugned imported goods are found to be 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 the Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the imported goods, which are not physically available for confiscation. Section 125 (1) *ibid* reads as under:

“SECTION 125. Option to pay fine in lieu of confiscation. — (1)

Whenever confiscation of any goods is authorised 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”

22.4.5 In the instant case, the Importer has mis-classified the imported goods viz. EGR VALVE K005T79177ZG (AUTOMOTIVE PARTS) (FOR INDUSTRIAL USE) under Customs Tariff Item 84818090 of the Customs Tariff Act, 1975 with an intent to avail undue benefit of exemption of BCD under Serial No. 627 of Notification No. 69/2011-Customs, dated 29.07.2011, as amended, in respect of the said imported goods. I find that in the case where goods are not physically available for confiscation, redemption fine is imposable in light of the judgment in the case of M/s. Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad) wherein the Hon'ble High Court of Madras has observed as under:

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

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....
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22.4.6 The Hon'ble High Court of Gujarat by relying on aforesaid judgment, in the case of Synergy Fertichem Ltd. Vs. Union of India, reported in 2020 (33) G.S.T.L. 513 (Guj.), has held interalia as under: -

“174. In the aforesaid context, we may refer to and rely upon a decision of the Madras High Court in the case of M/s. Visteon Automotive Systems v. The Customs, Excise & Service Tax Appellate Tribunal, C.M.A.

No. 2857 of 2011, decided on 11th August, 2017 [2018 (9) G.S.T.L. 142 (Mad.)], wherein the following has been observed in Para-23;

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

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

22.4.7 In view of the above, I hold that redemption fine under Section 125 (1) is liable to be imposed in lieu of confiscation of the imported goods viz. EGR VALVE K005T79177ZG (AUTOMOTIVE PARTS) (FOR INDUSTRIAL USE), totally valued at Rs. 9,29,12,324/- imported vide Bills of Entry, as mentioned in Annexure-A to the show cause notice, though the said goods are not available for confiscation.

22.5 Now, I proceed to decide the fifth issue i.e. the proposal for imposition of penalty under Section 114A, Section 112(a) & 112(b) and Section 114AA of the Customs Act, 1962 against the importer. In the present case, the show cause notice has been issued under Section 28 (4) of the Customs Act, 1962.

22.5.1 I find that the Show Cause Notice has proposed penalty under the provisions of Section 114A of the Customs Act, 1962 on the Importer. The penalty under Section 114A can be imposed only if the duty demanded under Section 28 ibid by alleging wilful mis-statement or suppression of facts etc. is confirmed/determined under Section 28(4) of the Customs Act, 1962. As discussed in the foregoing paras, the Importer has deliberately and knowingly indulged in suppression of facts in respect of their imported goods and has wilfully and wrongly availed the benefit of exemption of BCD under Serial No. 627 of Notification No. 69/2011-Customs, dated 29.07.2011, as amended, which was not available to them, by mis-classifying the imported goods under Customs Tariff Item 84818090 of the Customs Tariff Act, 1975, with an intention to avoid the payment of Customs Duty.

22.5.2 Further, I find that demand of Customs Duty amounting to Rs. 2,89,14,316/- has been made under Section 28(4) of the Customs Act, 1962, which provides for demand of Duty not levied or short levied by reason of collusion or wilful mis-statement or suppression of facts. Hence as a naturally

corollary, penalty is imposable on the Importer under Section 114A of the Customs Act, which provides for penalty equal to duty plus interest in 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. In the instant case, the ingredient of suppression of facts and wilful mis-statement by the Importer has been clearly established as discussed in foregoing paras and hence, I find that this is a fit case for imposition of quantum of penalty equal to the amount of duty plus interest in terms of Section 114A ibid.

22.5.3 The fifth proviso to Section 114A of the Customs Act, 1962 provides that penalty under Section 112 shall not be levied if penalty under Section 114A of the Customs Act, 1962 has been imposed and the same reads as under:

"Provided also that where any penalty has been levied under this Section, no penalty shall be levied under Section 112 or Section 114."

22.5.3.1 In the instant case, I have already found that the Importer is liable to penalty under Section 114A of the Customs Act, 1962 and therefore, I hold that penalty under Section 112 is not imposable in terms of the 5th proviso to Section 114A of the Customs Act, 1962.

22.5.4 I find that the show cause notice has also proposed imposition of penalty under Section 114AA of the Customs Act, 1962 on the Importer. The text of the said statute is reproduced hereunder for ease of reference:

"114AA. Penalty for use of false and incorrect material. - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, **any declaration**, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."

22.5.5 I find that importer was well aware that the imported goods which have been ordered for confiscation, were automotive parts to be used in internal combustion engines and rightly classifiable under Customs Tariff Item 84099911 of the Customs Tariff Act, 1975 and the said imported goods were not eligible for exemption of BCD under Serial No. 627 of Notification No. 69/2011-Customs, dated 29.07.2011, as amended. However, they intentionally and knowingly mis-classified the imported goods under Customs Tariff Item 84818090 of the Customs Tariff Act, 1975 in the Bills of Entry and wilfully claimed the benefit of exemption of BCD under Serial No. 627 of Notification No. 69/2011-Customs, dated 29.07.2011, as amended, with clear intent to evade payment of BCD and contravened the provision of Section 46 (4) of the Customs Act, 1962 by making false declarations in the Bill of Entry. Hence, I find that the importer has knowingly and intentionally mis-classified the imported goods in the Bills of Entry with an intent to avail undue benefit of the exemption of BCD under Serial No. 627 of Notification No. 69/2011-Customs, dated 29.07.2011, as amended. Hence, for the said act of contravention on their part, the Importer is liable for penalty under Section 114AA of the Customs Act, 1962.

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

in the Bill of Entry, penalty was also correctly imposed under Section 114AA by the original authority".

23. The Importer in their defence reply has pleaded that no appeals were filed by the Department against the assessment orders i.e., assessed bills of entry and out of charge order passed by the proper officer and any issues arising out of finalisation of such Bills of Entry cannot be questioned or agitated by the Department subsequently by initiating show cause proceedings against the Importer. The said plea of the Importer is not tenable.

23.1 It can be seen that Section 28 of the Customs Act, 1962 has an exclusive provisions covering the aspect pertaining to non-levy, short levy and erroneous refund. There is no provision or requirement under the Customs Act, 1962 of review of an assessment order before raising demand under Section 28 of the Customs Act, 1962. For raising demand under Section 28 on grounds of short payment/short levy in final assessment etc., no review /appeal against final assessment is required. The demand of non-levy, short-levy and of recovery of erroneous refund under Section 28 of the Act is an independent provision. Provisions of Section 28 satisfy the principles of natural justice by making it mandatory for issuance of show cause notice and to allow the party to have a full hearing on the charges that would be made against them. The proceeding under Section 28 are of exclusive nature, inasmuch as, independent proceedings are held by issue of show cause notice by the Department by which it sets out the reason for claiming non-levy, short-levy relying on evidence. The importer gets full opportunity to know the charges levelled against them as well as the evidence on which the charges are levelled and in turn place their case with supporting evidence in defence.

23.2 The aforesaid issue is settled by the higher judicial fora wherein it is held that Section 28 of the Customs Act, 1962 can be invoked for short levy or non levy of customs duty even if assessment order is not appealed under Section 129 of the Customs Act, 1962. The Hon'ble High Court of Madras in the case of M/s. Venus Enterprise Vs CC, Chennai, reported in 2006 (199) ELT 405 (Mad.) and affirmed by the Hon'ble Supreme Court [2007 (209) ELT A61 (S.C.)], after considering the Apex Court's earlier judgment in the case of M/s. Priya Blue Ind [2004 (172) E.L.T. 145 (S.C.)] has held that in case of short levy, there is no lack of jurisdiction on the part of the adjudicating authority to issue show cause notice under Section 28 of the Act after clearance of the goods. Relevant Para 6 of the judgment is reproduced hereunder:

"6. With regard to question No. 1, the law is well settled that a show cause notice under the provisions of Section 28 of the Act for payment of customs duties not levied or short-levied or erroneously refunded can be issued only subsequent to the clearance of the goods under Section 47 of the Act vide Union of India v. Jain Shudh Vanaspati Ltd. [1996 (86) E.L.T. 460 (S.C.)]. Therefore, as rightly held by the Tribunal, if the contention of the appellant's counsel that when the goods were already cleared, no demand notice can be issued under Section 28 of the Act is accepted, we will be rendering the words "where any duty has been short-levied" as found in Section 28(1) of the Act as unworkable and redundant, inasmuch as the jurisdiction of the authorities to issue notice under Section 28 of the Act with respect to the duty, which has been short levied, would arise only in the case where the goods were already cleared. In view of the clear finding with regard to the mis-declaration and suppression of value, which led to the under-valuation and proposed short levy of duty, we do not see any lack of jurisdiction on the part of the adjudicating authority to issue notice under Section 28(1) of the Act."

23.3 The Hon'ble CESTAT in the case of Rajesh Gandhi Vs CC(Import), Mumbai reported in 2019 (366) ELT 529 (Tri-Mumbai), has held that demand

can be raised without challenging the assessment under Section 17 of the Customs Act, 1962. The relevant Part of the order is reproduced below:-

“6. Before we proceed to adjudge the legality and propriety of the confirmation of differential duty, the confiscation and the imposition of penalties, the preliminaries must be dealt with. These pertain to the permissibility for invoking proviso to Section 28 of Customs Act, 1962 without challenge to the assessment effected under Section 17 of Customs Act, 1962 before the goods were cleared from control of Customs Authorities and the extent of applicability of judicial precedent from the decisions cited by Learned Authorised Representative.

7. The Tribunal, in re Rahul Ramanbhai Patel, as pointed out by Learned Authorised Representative, besides examining the relevancy of statements to fasten the consequences of undervaluation, did also consider the first *supra* and followed earlier decisions to render the finding that -

‘6..... One of the questions of law framed by the Hon’ble High Court reads thus :-

‘Whether the Tribunal was right in holding that the order of assessment on which no appeal was preferred, can be reopened by issue of fresh show cause notice under Section 28A of Customs Act, in the light of the apex court’s decision reported in 2004 (172) E.L.T. 145 (S.C.) in the case of Priya Blue Industries Ltd. v. Commissioner of Customs?’

The Hon’ble High Court answered the above question in favour of the Revenue in paragraph 6 of its judgment, which is reproduced below :-

‘6. With regard to question No. 1, the law is well-settled that show cause notice under the provisions of Section 28 of the Act for payment of customs duties not levied or short-levied or erroneously refunded can be issued only subsequent to the clearance of goods under Section 47 of the Act vide Union of India v. Jain Shudh Vanaspati Ltd. [1996 (86) E.L.T. 460 (S.C.)]. Therefore, as rightly held by the Tribunal, if the contention of the appellant’s counsel that when the goods were already cleared, no demand notice can be issued under Section 28(1) of the Act is accepted, we will be rendering the words “whether any duty has been short-levied” as found in Section 28(1) of the Act as unworkable and redundant, inasmuch as the jurisdiction of the authorities to issue notice under Section 28 of the Act with respect to the duty, which has been short-levied, would arise only in the case where the goods were already cleared. In view of the clear finding with regard to the misdeclaration and suppression of value, which led to the evaluation and proposed short-levy of duty, we do not see any lack of jurisdiction on the part of the adjudicating authority to issue notice under Section 28(1) of the Act.’

7. We are told that the SLP filed against the above decision of the High Court was dismissed by the Apex Court [Venus Enterprises v. Commissioner - 2007 (209) E.L.T. A61 (S.C.)].

8. We also note that this Tribunal followed Jain Shudh Vanaspati Ltd. (supra) and Venus Enterprises (supra) in Ford India Private Limited v. Commr. of Customs, Chennai [2008 (228) E.L.T. 71 (Tri.-Chennai)]. On the other hand, in the cases of Hitaishi Fine Kraft Indus Pvt. Ltd. (supra) and Shimnit Machine Tools & Equipment Ltd. (supra), the decision of the Supreme Court in Jain Shudh Vanaspati (supra) was not considered.

9. In the result, we reject the plea made by the Ld. Counsel that it was not open to the Department to reopen the assessment under Sec. 28 of the Customs Act.’

8. *Though in a different context, the ratio of the decision of the Tribunal in disposing of the appeal of Knowledge Infrastructure Systems Private Ltd. & Others v. Additional Director General, Directorate of Revenue Intelligence, Mumbai [Final Order Nos. A/86617-86619/2018, dated 31st May, 2018] is that after the clearances of imported goods effected under Section 47 of Customs Act, 1962, subject as it is to satisfaction of the proper officer that the goods had discharged the appropriate duty liability and were not prohibited for import, subsequent discovery of non-eligibility for such clearance, on either of these two counts, deems such clearances to have been tentative, and rectifiable, under proceedings that invoke Section 28 and/or specific provisions of Section 111 of Customs Act, 1962, is unequivocally applicable here.*

9. *In the light of this consistent stand, demonstrated in judicial precedent reiterated across time and space, the claim of the appellant that the assessment of the impugned goods at the time of clearance precludes any remedy other than appeal is not acceptable.*

23.4 In light of the above well settled principle of law, contention raised by the importer that Show Cause Notice is invalid in the absence of valid appeal against the out of charge/Bill of Entry is not tenable. Accordingly, I hold that the Show Cause Notice issued under Section 28 (4) of the Customs Act is proper, correct and legal.

24. I find that the importer in their written submission has placed reliance on various case laws/judgments in support of their contention on issues raised in the Show Cause Notice. In this regard, I am of the view that the conclusions arrived may be true in those cases, but the same cannot be extended to other case(s) without looking to the hard realities and specific facts of each case. Thus decisions/judgements were delivered in different context and under different facts and circumstances, which cannot be made applicable in the facts and circumstances of this case. Therefore, I find that while applying the ratio of one case to that of the other, the decisions of the Hon'ble Supreme Court are always required to be borne in mind. The Hon'ble Supreme Court in the case of CCE, Calcutta Vs. Alnoori Tobacco Produced reported in 2004 (170) ELT 135 (SC) has stressed the need to discuss, how the facts of decision relied upon fit factual situation of a given case and to exercise caution while applying the ratio of one case to another. This has been reiterated by the Hon'ble Supreme Court in its judgement in the case of Escorts Ltd. Vs. CCE, Delhi reported in 2004 (173) ELT 113(SC) wherein it has been observed that one additional or different fact may make difference between conclusion in two cases, and so, disposal of cases by blindly placing reliance on a decision is not proper. Again, in the case of Commissioner of Customs (Port), Chennai Vs. Toyato Kirloskar Motor P. Ltd. reported in 2007 (213) ELT 4 (SC), it has been observed by the Hon'ble Supreme Court that, the ratio of a decision has to be understood in factual matrix involved therein and that the ratio of a decision has to be culled from facts of given case, further, the decision is an authority for what it decides and not what can be logically deduced there from.

25. In view of my findings in the paras supra, I pass the following order:

ORDER

25.1 I reject the declared classification of the subject goods viz. 'EGR VALVE K005T79177ZG (AUTOMOTIVE PARTS) (FOR INDUSTRIAL USE)' under Customs Tariff Item 84818090, imported vide the Bills of Entry mentioned in Annexure-A to the show cause notice, and order to re-classify the said goods under Customs Tariff Item 84099911 of the

first schedule to the Customs Tariff Act, 1975, with applicable rate of duty as BCD @15%, SWS @10% of BCD and IGST @28%.

25.2 I deny the exemption benefit of Basic Customs Duty (BCD) under Serial No. 627 of Notification No. 69/2011-Customs, dated 29.07.2011, as amended, availed by the Importer on the impugned goods, as detailed in Annexure-A to the show cause notice, by way of adopting wrong classification under Customs Tariff Item 84818090 of the Customs Tariff Act, 1975.

25.3 I confirm the demand of differential Customs duty amounting to 2,89,14,316/- (Rupees Two Crore, Eighty Nine Lakh, Fourteen Thousand, Three Hundred and Sixteen only) leviable on the imported goods viz. 'EGR VALVE K005T79177ZG (AUTOMOTIVE PARTS) (FOR INDUSTRIAL USE)', as detailed in Annexure-A to the show cause notice issued under Section 28(4) of the Customs Act, 1962, under the provisions of Section 28(8) of the Customs Act, 1962 and order to recover the same from M/s. Mitsubishi Electric Automotive India Pvt. Ltd., Plot No. 1059 to 1060, Sanand II, Industrial Estate, Ahmedabad – 382 110.

25.4 Interest at the appropriate rate shall be charged and recovered from M/s. Mitsubishi Electric Automotive India Pvt. Ltd., Plot No. 1059 to 1060, Sanand II, Industrial Estate, Ahmedabad – 382 110, under Section 28AA of the Customs Act, 1962 on the duty confirmed at Para 25.3 above.

25.5 I hold that the imported goods viz. 95,160 units of 'EGR VALVE K005T79177ZG (AUTOMOTIVE PARTS) (FOR INDUSTRIAL USE)', imported during the period from October, 2021 to February, 2020 through ICD-Sanand, Customs, Ahmedabad, totally valued at Rs. 9,29,12,324/- (Rupees Nine Crore, Twenty Nine Lakh, Twelve Thousand, Three Hundred and Twenty Four only), as mentioned in Annexure-A to the Show Cause Notice, are liable for confiscation under Section 111(m) of the Customs Act, 1962. However, I give M/s. Mitsubishi Electric Automotive India Pvt. Ltd., Plot No. 1059 to 1060, Sanand II, Industrial Estate, Ahmedabad – 382 110, the option to redeem the goods on payment of Fine of Rs.93,00,000/- (Rupees Ninety Three Lakh only) under Section 125 of the Customs Act, 1962 in lieu of confiscation.

25.6 I impose penalty of Rs. 2,89,14,316/- (Rupees Two Crore, Eighty Nine Lakh, Fourteen Thousand, Three Hundred and Sixteen only) plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed above on M/s. Mitsubishi Electric Automotive India Pvt. Ltd., Plot No. 1059 to 1060, Sanand II, Industrial Estate, Ahmedabad – 382 110. However, I give an option, under proviso to Section 114A of the Customs Act, 1962, to the Importer to pay 25% of the amount of total penalty imposed, subject to the payment of total duty amount and interest confirmed and the amount of 25% of penalty imposed within 30 days of receipt of this order.

25.7 I refrain from imposing penalty under Section 112 of the Customs Act, 1962, since as per fifth proviso of Section 114A, penalty under Section 112 and 114A are mutually exclusive.

25.8 I impose penalty of Rs.10,00,000/- (Rupees Ten Lakh only) on M/s. Mitsubishi Electric Automotive India Pvt. Ltd., Plot No. 1059 to 1060, Sanand II, Industrial Estate, Ahmedabad – 382 110, under Section 114AA of the Customs Act, 1962.

26. This order is issued without prejudice to any other action that may be taken under the provisions of the Customs Act, 1962 and

Rules/Regulations framed thereunder or any other law for the time being in force in the Republic of India.

27. The Show Cause Notice bearing F.No. No. VIII/10-32/Pr.Commr./O&A/2024-25 dated 24.04.2025 is disposed off in above terms.

SK
10.12.2025

(Shiv Kumar Sharma)
Principal Commissioner of Customs

F.No. VIII/10-32/Pr.Commr./O&A/2024-25

Date: 10.12.2025

DIN- 20251271MN000000B248

By Speed Post/E-Mail/By Hand

To:

M/s. Mitsubishi Electric Automotive India Pvt. Ltd.,
Plot No. 1059 to 1060, Sanand II,
Industrial Estate,
Ahmedabad – 382 110.

Copy to:

- (1) The Chief Commissioner of Customs, Ahmedabad Zone
- (2) The Additional Commissioner, Customs, TRC, HQ, Ahmedabad.
- (3) The Deputy Commissioner of Customs, ICD-Sanand, Ahmedabad for information please.
- (4) The Superintendent (System), Customs HQ., Ahmedabad for uploading on the Official website of Customs Commissionerate, Ahmedabad.
- (5) Guard File.