प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

" सीमा शुल्क भवन", पहली मंजिल, पुराने हाईकोर्ट के सामने, नवरंगपुरा, अहमदाबाद – 380 009.

दूरभाष: (079) 2754 4630 **E-mail:** cus-ahmd-adj@gov.in

DIN No. 20261171MN0000B49740

PREAMBLE

A	फ़ाइलसंख्या/ File No.	:	VIII/10-61/EPC-Paldi/O&A/HQ/2023-24
B	कारणबताओनोटिससंख्या–तारीख Show Cause Notice No. and Date	:	VIII/10-61/EPC-Paldi/O&A/HQ/2023-24 dated 08.09.2023
C	मूलआदेशसंख्या/ Order-In-Original No.	:	**111/ADC/SRV/O&A/HQ/2026-27**
D	आदेशतिथि/ Date of Order-In-Original	:	**17.11.2026**
E	जारीकरनेकीतारीख/ Date of Issue	:	**17.11.2026**
F	द्वारापारित/ Passed By	:	**Shree Ram Vishnoi** Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	**M/s. E-Infochips Pvt. Ltd.,** 11 A/B, Chandra Colony, B/H Cargo Motors, Off. C.G. Road, Ahmedabad- 380006
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क अपील)चौथी मंज़िल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट		

	लगा होना चाहिए।
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।

BRIEF FACTS OF THE CASE:

M/s. E-Infochips Private Ltd, 100 % EOU, 303, Parishram Building, Mithakhali Six Road, Navrangpura, AHMEDABAD - 380006, (hereinafter referred to as "E-Infochips"/ "Importer" for the sake of brevity) are engaged in import of "plant and machinery, raw materials, components, spares and consumables free of import / Customs Duty". The Joint Development Commissioner, O/o the Development Commissioner, KASEZ, Gandhidham had issued LOP for the EOU to the Importer vide LOP No. KASEZ/100%EOU/II/113/2004-05 dated 06.12.2004.

2. An audit had been undertaken by the Audit team, Indian Audit and Accounts Department, Ahmedabad, on the subject matter of "Monitoring of EOU & SEZ by the Development Commissioner" under Specific Compliance Audit (SSCA) at Customs, EPC, Paldi covering period from 2017-18(January, 2018 to 2019-20. During the course of audit, it was observed vide Para, which reads as:

"HM No. SSCA/Monitoring EOU&SEZ/2020-21 dated 31.12.2020 –

M/s. E-Infochips, 303, Parishram Building, Mithakhali Six Road, Navrangpura, Ahmedabad – holding LOP No. KASEZ/100%EOU/N/113/2004-05, dated 6.12.2004 issued by the Jt. Development Commissioner, O/o the Development Commissioner, KASEZ, Gandhidham, vide letter KASEZ/100%EOU/II/52/01-02/vol.II-3387, dated. 21.06.2019, has given clarification regarding import of capital goods under para No.6.01(d) of FTP 2015-20, as under:

As per para of Appendix- 6E (Form of Legal Agreement For EOU/EHTP/STP/BPT), the unit has been permitted to import/indigenously plant and machinery, raw materials, components, spares and consumables free of import / Central Excise duty as per the details given at ANNEXURE –I:

From the above para, it is clear that the permission from the Development Commissioner's (D.C.) office is required for import/ indigenously purchase of Plant and Machinery under Para 6.01(d) of FTP 2015-20.

Hence, EOUs are required to take permission from the Development Commissioner's office for import/ indigenous purchase of Capital Goods whenever required. However, after attestation of list in LUT, they may import/procure Capital Goods on self –certification basis.

During the test check of records, it was noticed that the importer had filed for procurement certificate vide intimation Nos.128/2017-18 dated 05.02.2018, 129/17-18 dated 05.02.2018, 327/17-18 dated 28.02.2018, 413/17-18 dated 16.03.2018, 462/17-18 dated 23.03.2018, 504/17-18 dated 27.03.2018, 84/18-19 dated 16.04.2018 and 94/17-18 dated 02.02.2018 for import of ***EPAC Power Supply Slotted Plates CTH 76061190, Aluminium Plate – UDU Unit/ UDU Unit with Battery CTH 76061190, Sheet Metal Cover UDU CTH 82057000 and 3rd Eye Cam V4 Unit CTH 85299090*** *having Assessable Value of Rs.7,81,54,587/- and duty forgone of Rs.2,39,41,145/-. The Procurement Certificate was issued by Assistant/Dy. Commissioner, Custom Division, Paldi, Ahmedabad and intimation was sent to the Superintendent of Customs, MEPZ-SEZ, Tambaram, Chennai. On verification of the Procurement Certificate Goods and the CTH was not shown in Annexure-I of Legal Agreement issued by Development Commissioner, KASEZ. As per above said provision that the unit has been permitted to import goods as per given details in Annexure –I of LUT, however, these goods were not mentioned in Annexure –I. This has resulted in irregular issuance of Procurement Certificate having assessable value of Rs.78154587/- and duty forgone of Rs.23941145/-……."*

3. The 100% EOU scheme is formulated by the Government of India and as detailed in Chapter 6 of Foreign Trade Policy 2015-2020 and Hand Book of Procedures 2015-2020 regarding operations of 100% EOU, wherein it appears that for proper operations of 100% EOU, Central Board of Indirect Taxation (CBIC) has issued Notification No. 52/2003- Customs dated 31.03.2003 for Customs duty free procurement of goods, manufacture and clearances etc. with following conditions:

(1) The importer has been authorised by the Development Commissioner to establish the unit for the purposes specified in clauses (a) to (e) of the opening paragraph of this Notification;

(2) The unit carries out the manufacture, production, packaging or job-work or service in Customs bond and subject to such other condition as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs or Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be, (hereinafter referred as the said officer) in this behalf;

(3) The unit executes a bond in such form and for such sum and with such authority, as may be specified by the said officer, binding himself,

(a) to bring the said goods into the unit or and use them for the specified purpose mentioned in clauses (a) to (e) in the opening paragraph of this Notification;

(b) to maintain proper account of the receipt, storage and utilization of the goods;

(c) to dispose of the goods or services, the articles produced, manufactured, processed and packaged in the unit| or the waste, scrap and remnants arising out of such production, manufacture, processing or packaging in the manner as provided in the Export and Import Policy and in this Notification.

4. The permission of the Development Commissioner, is required for the import/indigenous purchase of Plant and Machinery/ raw materials as per the proviso made under Para 6.01(d) of FTP – 2015-20. As per the said proviso, it is mandatory for the EOU, who should first take the necessary permission of the Development Commissioner, and attestation of the list in LUT, prior to import or procurement of raw materials /capital goods by the EOU.

4.1 As per provision contained in Para 6.01(d) of FTP, 2015-20, M/s E-Infochips, is permitted to import goods as per details mentioned in Annexure-I of the Legal Agreement filed with the Development Commissioner, KASEZ.

4.2 In terms of Condition No.3 of the said Notification No. 52/2003-Customs dated 31.03.20O3, EOUs are required to furnish/execute a B-17 Bond (General Surety/ Security) as notified vide Notification No. 6/98-CE(NT) dated 02.03.1998 which is revised and updated with reference to GSTIN, as per present FTP provisions and Notification No. 52/2003-Customs dated 31.03.2003 vide Notification No. 01/2018-CE (NT) dated 05.12.2018. This is an all-purpose Bond for operations of EOU including duty free import or procurement of imported goods as specified in Annexure-l to the said Notification, Excise duty free domestic procurement, provisional assessment, export without payment of duty, movement of goods for job work and return, temporary clearances etc. It is observed that accordingly, M/s. E-Infochips Pvt. Ltd, had executed B-17 Bond amounting to **Rs.2,51,20,908/-** before the then jurisdictional Assistant Commissioner of Central Excise, Div- VI, Ahmedabad – South, vide their letter dated 28.12.2017 and the same was accepted on 08.01.2018. Another Bond of **Rs.1,98,62,388/-** was accepted by the Deputy Commissioner, Customs Division, Paldi, Ahmedabad, vide F.No. VIII/48-110/Cus/Paldi/einfo/T/17-18 on 13.04.2018.

4.3 Further, as per Board's Circular No. 50/2018-Customs dated 06.12.2018, the work related to EOUs were to be handled by Customs Office, in whose jurisdiction the unit falls. In the instant case, the said unit - M/s E-Infochips had submitted letters regarding procurement and movement of imported goods (as per sr. no. 3 of Annexure-B of the Show Cause Notice) to the Assistant/ Deputy Commissioner, Customs, Division Paldi, Ahmedabad and accordingly, based on the said intimations "Procurement Certificates" were issued by the jurisdictional Deputy Commissioner.

4.4 It is observed that M/s E-Infochips, on the strength of the procurement certificates (as mentioned in table below) obtained from the jurisdictional Customs authorities, had imported goods viz. EPAC Power Supply Slotted Plates, Aluminium Plate – UDU Unit/ UDU Unit with Battery, Sheet Metal Cover UDU and 3rd Eye Cam V4 Unit falling under CTHs 76061190, 82057000 and 85299090, respectively, valued at **Rs.7,81,54,587/-**, without payment of duty to the tune of **Rs.2,39,41,145/.** Further, on receipt of the imported goods in accordance to Procurement Certificates they had submitted letters of intimation along with documents viz. like calculation sheet, proforma invoice etc. The details as per the procurement certificates obtained by the Importer are as under:

Description of Goods	Qty. (in units)	Value (in Rs.)	BCD @7.5%/10% (in Rs.)	SWS @ (2+1%)/ 10% (in Rs.)	IGST @18% (in Rs.)	Total Duty (in Rs.)
Epac Power Supply slotted plates	1200	171983	12899	387	33348	46634
Steel Metal Cover_UDC	9000	586305	58631	5863	117144	181637
3rd Eye Can V4 Unit	1000	19060064	1906006	190601	3808201	5904808
Aluminium Plate – UDU Unit and UDU Unit with Battery	3000	583667	43775	4378	113728	161880
3rd Eye Can V4 Unit	500	9669639	966964	96696	1931994	2995654
EPAC Power Supply Slotted Plates	1000	146208	10966	1097	28489	40551
3rd Eye Can V4 Unit	1000	19368669	1936867	193687	3669860	6000414
3rd Eye Can V4 Unit	1500	28568052	2856805	85704	5671901	8614410
	Total	**7,81,54,587**	**77,92,913**	**5,78,413**	**1,53,74,665**	**2,39,41,145**

However, on the basis of Bills of Entries filed by the importer, the description of goods, their values and total customs duty leviable/applicable are as given below:

Description of Goods	Qty. (in units	Value (in Rs.)	BCD @(7.5 %)/10% (in Rs.)	SWS @ (2+1%)/ 10% (in Rs.)	IGST @18% (in Rs.)	Total Duty (in Rs.)
Epac Power Supply slotted plates	1200	173184	12989	1299	33745	48033
Steel Metal Cover_UDC	9000	580500	58050	5805	115984	179839
3rd Eye Can V4 Unit	1000	19177656	2876649	287665	4021554	7185867
Aluminium Plate – UDU Unit and UDU Unit with Battery	3000	588653	44149	4415	114699	163263
3rd Eye Can V4 Unit	500	9598142	1439721	143972	2012730	3596423
EPAC Power Supply Slotted Plates	1000	148500	11138	1114	28935	41186
3rd Eye Can V4 Unit	1000	19457656	2918649	291865	4080270	7290783
3rd Eye Can V4 Unit	1500	28246933	3743402	374340	5825642	9943384
	Total	7,79,71,225	1,11,04,745	11,10,475	1,62,33,560	2,84,48,780

5. Whereas, it appeared from the documents viz. LOP, LUT, LUT, Procurement certificates, Invoices, etc. that the said unit –M/s. E-Infochips imported the goods as per Procurement Certificates which were not mentioned in the Annexure –I of the Legal Agreement (LUT) issued for the goods permitted to be imported. Since the procurement certificates empowers the importer to import the raw materials Duty free, which were also done accordingly vide Bills of Entry, this resulted in irregular availment of Duty forgone to the tune of Rs.2,84,48,780/-.

6. As per Appendix -6E of Appendices (as per Para – 6.02(a), 6.03(a)and 6.11 (a) of HBP – "Legal Agreement", the said unit - M/s E-Infochips, as per Para -2, had accepted the terms and conditions vide their letter dated 23.05.2017 at the time of executing LUT with the DC/ Designated Officer, wherein as per another condition quoted at para -3 of the said Appendix-6E, the said unit had been permitted to import / purchase goods as per details given at Annexure–I. Further, as per agreement mentioned at Para -6.11(a) of HBP, the unit has to submit quarterly and annual report in Annexure –III and Annexure –IV, respectively, wherein Annual report shall be duly certified

by a Chartered Accountant/Cost Accountant. In the instant case, it appears that the said unit – M/s. E-Infochips failed to submit the said reports with jurisdictional Assistant/ Deputy Commissioner of Customs, EPC, Div- Paldi, Ahmedabad.

7. It is observed that as per condition made under Para 6.06 (c)(i) of HBP, the period of utilisation of goods,including CapitalGoods, shall be co-terminus with the validity of the LOP. It is found that the said unit - M/s. E-Infochipshad not submitted the data or quarterly or annual report in respect of utilisation of the imported goods in manufacture of their finished goods.

8. Whereas, it is further observed that the said unit had not submitted Bills of Entry(as listed in Annexure A of the Show Cause Notice) at the time of submission of intimation letters to the jurisdictional Asstt. / Dy. Commissioner, Customs, Division Paldi, regarding receipt of imported goods. The said Bill of Entries were obtained from the Development Commissioner, MEPZ SEZ, Tambaram, Chennai, vide email dated 19.05.2023 and 25.05.2023.

Legal Provisions of Customs Act, 1962: -

Section 143. Power to allow import or export on execution of bonds in certain cases. –

(1) Where this Act or any other law requires anything to be done before a person can import or export any goods or clear any goods from the control of officers of customs and the [1] [Assistant Commissioner of Customs or Deputy Commissioner of Customs] is satisfied that having regard to the circumstances of the case, such thing cannot be done before such import, export or clearance without detriment to that person, the [1] [Assistant Commissioner of Customs or Deputy Commissioner of Customs] may, notwithstanding anything contained in this Act or such other law, grant leave for such import, export or clearance on the person executing a bond in such amount, with such surety or security and subject to such conditions as the [1] [Assistant Commissioner of Customs or Deputy Commissioner of Customs] approves, for the doing of that thing within such time after the import, export or clearance as may be specified in the bond.
(2) If the thing is done within the time specified in the bond, the [1] [Assistant Commissioner of Customs or Deputy Commissioner of Customs] shall cancel the bond as discharged in full and shall, on demand, deliver it, so cancelled, to the person who has executed or who is entitled to receive it; and in such a case that person shall not be liable to any penalty provided in this Act or, as the case may be, in such other law for the contravention of the provisions thereof relating to the doing of that thing.
(3) If the thing is not done within the time specified in the bond, the [1] [Assistant Commissioner of Customs or Deputy Commissioner of Customs] shall, without prejudice to any other action that may be taken under

this Act or any other law for the time being in force, be entitled to proceed upon the bond in accordance with law.

Section 111. Confiscation of improperly imported goods, etc. –

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

SECTION 112. Penalty for improper importation of goods, etc.-

Any person, -

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable, -
(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [1] [not exceeding the value of the goods or five thousand rupees], whichever is the greater;
[(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher :
Provided *that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;]*
[(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty [4] [not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;]
(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty [5] [not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;
(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty [6] [not exceeding the duty sought to be evaded on such goods or the

difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.]

Legal provisions of Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017-

Rule8. Recovery of duty in certain case. –

[(1)]The importer who has availed the benefit of an exemption notification shall use the goods imported in accordance with the conditions mentioned in the concerned exemption notification or take action by re-export or clearance of unutilized or defective goods under rule 7 and in the event of any failure, the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service shall take action by invoking the Bond to initiate the recovery proceedings of the amount equal to the difference between the duty leviable on such goods but for the exemption and that already paid, if any, at the time of importation, along with interest, at the rate fixed by notification issued under section 28AA of the Act, for the period starting from the date of importation of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay.
[(2)Notwithstanding anything specified in these rules in relation to removal and processing of imported goods for job work, the importer shall be responsible for ensuring that the said goods are used in accordance with the purposes provided in the exemption notification and in the event of failure to do so, the Jurisdictional Deputy Commissioner of Customs, or, as the case may be, the Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, shall take action under these rules, without prejudice to any other action which may be taken under the Act, rules or regulations made thereunder or under any other law for the time being in force.]

9. In view of the factual position and evidences brought forth in the foregoing paragraphs, the impugned imported goods i.e. EPAC Power Supply Slotted Plated, Aluminium Plate – UDU Unit/ UDU Unit with Battery, Sheet Metal Cover UDU and 3rd Eye Cam V4 Unit declared CTH/HSN as 76061190, 82057000 and 85299090 is not included in the Annexure – I of the LUT executed before the Development Commissioner. Thereby the Importer was not eligible for Duty free import of the said goods classified/declared CTH as 76061190, 82057000 and 85299090. Therefore, the Duty forgone on such imports have been wrongly taken and the said unit – M/s. E-Infochips, is liable to pay the Customs Duty forgone, as mentioned in the table below:

Quantity of Goods.	Value (Amount in Rs.)	BCD @ 7.5/10% (Amount in Rs.)	SWS @ 10% of BCD (Amount in Rs.)	IGST @ 18% (Amount inRs.)	Total Duty (Amount in Rs.)(c+d+e)
(a)	(b)	(c)	(d)	(e)	(f)
18200 units	7,79,71,225	1,11,04,745	11,10,475	1,62,33,560	2,84,48,780

10. M/s. E-Infochips have subscribed to a declaration as to the truthfulness of the contents of the Bill of Entries, in terms of Section 46(4) of the Customs Act, 1962, in respect of the Bill of Entries. As per Section 111(o) of the Customs Act, 1962, any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer under Customs Act, 1962, are liable for confiscation under the said Section. Further, with the introduction of self-assessment and consequent amendments to section 17, since April, 2011, it is the responsibility of the Importer to correctly classify, determine and pay the Duty applicable in respect of the imported goods. M/s. E-Infochips, have thus violated the provisions of Section 46(4) of the Customs Act, 1962. In view of the above, it appears that M/s. E-Infochips have rendered the goods valued at Rs. 7,79,71,225/- covered under the said Bills of Entry, liable for confiscation under Section 111(o) of the Customs Act, 1962, in as much as they mentioned the CTH/HSN which are not in accordance to Annexure –I of LUT, to avail the benefit of Notification No. 52/2003 – Customs, dated 31.03.2003, 59/2017-Customs, dated 30.06.2017 and the Customs (Import of Goods at concessional rate of Duty) Rules, 2017 and to evade payment of due amount of Customs Duty.

11. M/s E-Infochips have indulged themselves, in wrongly declaring the products not included in the LUT under CTHs 76061190, 82057000 and 85299090, respectively. Thus, claiming the benefit of Duty forgone by them @7.5%/10%/15% has thereby rendered the goods liable for confiscation in terms of Section 111(o) of the Customs Act, 1962, in respect of the self-assessed Bill of Entries (as per Annexure –A of the Show Cause Notice).

12. It further appeared that the B-17 Bonds bearing F.No. IV/01/Div-VI/B-17/E-Infochips/CGST/2017-18 dated 08.01.2018 was executed and accepted by the Assistant Commissioner, CGST, Div–VI, Ahmedabad South and F.No. VIII/48-110/Cus/Paldi/einfo/T/17-18 dated 13.04.2018 was accepted by the Deputy Commissioner, Customs Division, Paldi, Ahmedabad, while Procurement Certificates were obtained from the jurisdictional Asstt/Dy. Commissioner, Customs, Division Paldi, Ahmedabad. While obtaining the said Certificates and intimating the receipt of imported goods, the said unit failed to submit the documents viz. LOP, LUT, LUT, B/Es', Quarterly and Annual reports, etc. as such, therefore the

jurisdictional Customs, Division Paldi was unable to initiate action. The said Unit M/s E-Infochips when communicated about the Audit Objection vide Division's letter F. No. VIII/48-500/Cus/Paldi/SSC-Audit/2020-21 dated 09.02.2021, informed vide their letter dated10.03.2021 that they will pay up the Duty forgone amount plus interest in respect of the imported goods EPAC Power Supply Slotted Plates, Sheet Metal Cover UDU, Aluminium plate UDU CTH- 76061190, 82057000. However, the Noticee after a lapse of 30-34 months of import of raw materials that EPAC Power Supply Slotted Plated, Aluminium Plate – UDU Unit/ UDU Unit with Battery, Sheet Metal Cover UDU and 3rdEye Cam V4 Unit falling under CTHs 76061190, 82057000 and 85299090, respectively informed vide their letter dated 10.05.2021, that the said items are already there in the list of permitted items of raw material under Letter of Agreement; that however, in some cases the nomenclature of the item names have changed due to different commercial names used amongst various different regions; that the end use of said items are same in manufacturing of the export products. However, it is also found that they have not submitted any supporting documents in the matter along with their aforementioned submissions.

13. It is observed that as the said unit M/s E-Infochips, did not comply with any of the conditions mentioned at Para -6.02(a), 6.03(a) and 6.11(a) of HBP, hence, it was not possible for the Customs, to ascertain the evasion of the Customs Duty, which was wrongly forgone. It is found that the jurisdiction office of Customs came to know of the said contravention only after the Audit objection was raised vide ***HM No. SSCA/Monitoring EOU&SEZ/2020-21 dated 31.12.2020*** by the Sr. Audit Officer/CRA-V(SSCA) and letter No. CRA/FN-SSCA_Monitoring_EOU_SEZ /2020-21 dated 05.03.2021 of the Deputy Director, Indian Audit & Accounts Department, Office of the Principal Director of Audit (Central), Audit Bhavan, Ahmedabad.

14. It appeared that M/s E-Infochips have indulged themselves in wrongly declaring the products not included in the LUT under CTHs 76061190 and 85299090, respectively, thereby claiming Duty free import and thereby rendering the goods liable for confiscation in terms of Section 111 (o) of the Customs Act, 1962, in respect of the self-assessedBill of Entry (as per Annexure-Aof the Show Cause Notice).

15. For these acts of omission and commission, M/s. E-Infochips appears to be liable to penalty under Section 112(a) of the Customs Act, 1962 in as much as they have rendered the goods liable for confiscation under Section 111(o) of the Customs Act, 1962 and they have intentionally made and used false and incorrect declaration / statements/ documents to evade payment of legitimate Customs duties as discussed in the preceding paras.

16. As narrated in above paras, it appeared that M/s E-Infochips have indulged themselves in wilful mis-declaration of the items i.e. “EPAC Power Supply Slotted Plates, Aluminium Plate – UDU Unit/ UDU Unit with Battery, Sheet Metal Cover UDU and 3rd Eye Cam V4 Unit” declared as falling under CTHs 76061190,82057000 and 85299090 claiming duty foregone rate of 7.5%/10%/15% Duty and thereby rendered themselves liable for penalty under Section 112 of the Customs Act, 1962 for wrongly declaring the chapter head not included in the Annexure – I of the LUT of their raw material EPAC Power Supply Slotted Plates, Aluminium Plate – UDU Unit/ UDU Unit with Battery, Sheet Metal Cover UDU and 3rd Eye Cam V4 Unit.

17. In view of the above facts, it appeared that M/s. E-Infochips had wrongly availed the benefit of Concessional rate of Duty under Notification No. 52/2003 read with the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 for their items i.e. "EPAC Power Supply Slotted Plates, Aluminium Plate – UDU Unit/ UDU Unit with Battery, Sheet Metal Cover UDU and 3rd Eye Cam V4 Unit” declared as falling under CTHs 76061190, 82057000 and 85299090 not included in the Annexure-I of the LUT claiming Duty foregone rate of 7.5%/10%/15% duty with an intent to evade payment of appropriate Customs Duty on these products at the time of their import. By their act of wilful wrong declaration, they appear to have contravened the following provisions of the Customs Act, 1962.

18. As per Section 46 (4) of the Customs Act, 1962, the Importer has to make true declaration with regard to the contents of the Bill of Entry. However, M/s. E-Infochips, wilfully declared CTH not included in their Annexure – I of their LUT for their raw material i.e. “EPAC Power Supply Slotted Plates, Aluminium Plate – UDU Unit/ UDU Unit with Battery, Sheet Metal Cover UDU and 3rd Eye Cam V4 Unit” falling under CTHs 76061190, 82057000 and 85299090 claiming duty foregone rate of 7.5%/10%/15% duty, in the Bill of Entry details as per Annexure-A (of the Show Cause Notice) involving value of Rs.7,79,71,225/- and therefore Duty to the tune of Rs.2,84,48,780/- is liable to be recovered from them under the provisions of Notification No. 52/2003-Customs read with Section 143 of the Customs Act, 1962 and Rule 8 of the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.

19. In view of the above, a Show Cause Notice bearingF. No. VIII/10-61/EPC-Paldi/O&A/HQ/2023-24 dated 08.09.2023 was issued by the Additional Commissioner of Customs Ahmadabad to M/s. E-Infochips Pvt. Ltd. (100% EOU) 303, Parishram Building, Mithakhali Six Road, Navrangpura, Ahmedabad, as to why: -

(a) Imported goods “EPAC Power Supply Slotted Plates, Aluminum Plate-UDU Unit/ UDU Unit with Battery, Sheet Metal Cover UDU and 3rd Eye

Cam V4 Unit" valued at Rs.7,79,71,225/- involving total Customs Duty of Rs.2,84,48,780/- imported by M/s. E-Infochips Pvt. Ltd. (as mentioned in Annexure-A (attached to the Show Cause Notice) should not be held liable to confiscation under Section 111(o) of the Customs Act, 1962;

(b) Duty of Rs.2,84,48,780/- (Rupees Two Crores Eighty Four Lakhs Forty Eight Thousand Seven Hundred and Eighty Only)(as mentioned in Annexure-A (attached to this Show Cause Notice) should not be demanded and recovered from them under the provisions of Notification No.52/2003-Customs read with Section 143 of the Customs Act, 1962 and the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017;

(c) Interest at an appropriate rate as applicable on the Customs Duty evaded as mentioned in (b) above, should not be recovered from them under the provisions of Notification No.52/2003-Customs read with Section 143 of the Customs Act, 1962 and the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017;

(d) Penalty should not be imposed upon them under Section 112(a) &112(b) of the Customs Act, 1962;

(e) Condition of B-17 Bond should not be enforced to recover the above liabilities.

20. The Show Cause Notice was adjudicated by the then Adjudicating Authority vide Order-in-Original No. 05/ADC/VM/O&A/2024-25 dated 18.04.2024, wherein the Adjudicating Authority passed the following order: –

(i) Ordered to confiscate the imported goods viz. "EPAC Power Supply Slotted Plates, Aluminium Plate- UDU Unit/ UDU Unit with Battery, Sheet Metal Cover UDU and 3rd Eye Can V4 Unit" valued at **Rs.7,79,71,225**/-(Rupees Seven Crores Seventy-Nine Lakhs Seventy-One Thousand Two Hundred and Twenty-Five Only), involving total Customs duty of **Rs.2,84,48,780/-**(RupeesTwo Crores Eighty-Four Lakhs Fourty Eight Thousand Seven Hundred and Eighty Only), imported by M/s. E-Infochips Pvt. Ltd., under the provisions of Section 111(o) of the Customs Act, 1962. However, Allowed the Noticee an option to redeem the said goods on payment of **Redemption Fine of Rs.28,00,000/-** (Rupees Twenty-Eight Lakhs Only), as provided under Section 125(1) of the Customs Act, 1962.

(ii) Confirmed the demand and ordered the recovery of duty of **Rs.2,84,48,780/-** (Rupees Two Crores Eighty-Four Lakhs Fourty Eight

Thousand Seven Hundred and Eighty Only) under provisions of Notification 52/2003-Customs read with Section 143 of the Customs Act, 1962 and Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017;

iii) Ordered for recovery of interest on the duty amount at (ii) above, under Section 28AA of the Customs Act, 1962 from M/s. E-Infochips Pvt. Ltd.;

(iv) Imposed penalty of **Rs.28,44,878/-** (Rupees Twenty-Eight Lakhs Fourty-Four Thousand Eight Hundred and Seventy-Eight Only) under the provisions of the Section 112(a) &112(b) of the Customs Act, 1962, on M/s. E-Infochips Pvt. Ltd;

(v) Imposed penalty of Rs.20,00,000/-(Rupees Twenty Lakhs Only) under Section 114AA of the Customs Act,1962 on M/s E-Infochips Pvt.Ltd.;

(vi) Ordered to invoke The Bond furnished by M/s. E-Infochips Pvt. Ltd. for recovery of the above-mentioned confirmed dues.

20.1 Subsequently, a corrigendum dated 17.05.2024 was issued by the then Adjudicating Authority, as :-

1. In the Order-In-Original No. 05/ADC/VM/O&A/2024-25, Para 57 may be read as;-
   "The Notice also proposes to impose penalty on the importer under Section 112 (a) & (b) of the said Act"

   Instead of

   "The Notice also proposes to impose penalty on the importer under Section 112 (a) & (b) and Section 114AA of the said Act"
2. In the Order-In-Original No. 05/ADC/VM/O&A/2024-25, Para 57.3 and Para 57.4 are hereby omitted and
3. In the Order-In-Original No. 05/ADC/VM/O&A/2024-25, in order portion, Serial No. (v), is hereby Omitted.

21. Being aggrieved with the Order-In-Original No.05/ADC/VM/O&A/2024-25 dated 18.04.2024 read with Corrigendum dated 17.05.2024 issued by the Additional Commissioner of Customs, Ahmedabad, the noticee filed an appeal before the Commissioner of Customs (Appeals), Ahmedabad. The Commissioner of Customs (Appeals), Ahmedabad, vide Order-in-Appeal No. AHD-CUSTM-000-APP-094-25-26 dated 24.06.2025, has been pleased to allow the appeal by way of remand, directing the adjudicating authority to pass a fresh, reasoned order after duly taking into consideration the submissions made by the appellant in the present appeal and the material available on record. The authority stated that, in view of the detailed discussions and findings mentioned above, he

was constrained to remand the matter to the adjudicating authority for de novo adjudication with specific directions as under:

- The Adjudicating Authority has been directed to re-examine the matter in detail to determine whether the alleged non-compliance, such as non-inclusion in LUT Annexure-I and non-submission of reports, amounts to substantive violations of the EOU scheme conditions or merely procedural lapses that can be condoned. This assessment is to be made particularly in view of the fact that Procurement Certificates were issued by the Customs Department.

- It has also been directed that a detailed and reasoned analysis be undertaken of the judicial precedents cited by the appellant, especially those supporting the principle that substantive benefits should not be denied for procedural lapses. The authority is required to clearly evaluate the applicability of these decisions to the facts of the present case.

- Further, the re-evaluation must address whether confiscation under Section 111(o) and penalties under Sections 112(a) and 112(b) of the Customs Act, 1962, are justified, based on the nature of the alleged contraventions and whether there was any mens rea or intent to evade duty.

- Finally, the appellant is to be given a fresh opportunity of hearing and allowed to submit additional evidence and arguments before a fresh decision is taken.

Accordingly, in view of the above referred OIA dated 24.06.2025, the case has been taken up for fresh adjudication proceedings.

PERSONAL HEARING:

22. As per the direction of the Commissioner of Customs (Appeals), Ahmedabad the case has been taken up for adjudication. Accordingly, Personal Hearing in the matter was fixed on 12.03.2026. In response to the letter, M/s. E-Infochips Pvt Ltd vide mail dated 11.03.2026 stated that due to the delayed receipt of the notice, they could not coordinate with their consultant to prepare the necessary documents. They requested an adjournment, and the personal hearing was subsequently rescheduled to 24.03.2026. Shri Vijay N. Thakkar, Authorized Representative of the Noticee, M/s. E-Infochips Pvt. Ltd, alongwith Shri Nimesh Patel, Finance Manager of M/s. E-Infochips appeared for personal hearing on 24.03.2026. During the personal hearing they have submitted written submission alongwith quarterly/annual report, LOP with legal argument, procurement Certificates alongwith its amendment for items imported and reiterated the same. They have requested to consider the observation of the Commissioner Appeals and drop the proceedings to finalize the case.

Consequent upon the Annual General Transfer (AGT), the handling Adjudicating Authority was changed. In compliance with the principles of Natural Justice and the statutory mandate under Section 122A of the Customs Act, 1962, any personal hearing previously conducted by the predecessor officer needs to be reheard. Therefore, the competent authority has decided to grant a fresh opportunity for a Personal Hearing. Accordingly, Personal hearing in the matter were fixed on 10.07.2026, 06.10.2026 & 16.10.2026. Shri Vijay N Thakkar, Authorized Representative of M/s. E-Infochips Pvt Ltd alongwith Shri Nimesh Patel, Manager Finance of M/s. E-Infochips Pvt Ltd appeared for personal hearing on 16.10.2026. They requested to attend the personal hearing in person instead of video conferencing. They re-iterated their written submission dated 24.03.2026 alongwith quarterly/annual report, LOP with legal argument, procurement Certificates alongwith its amendment for items imported. They further requested that the observations of the Commissioner (Appeals) be taken into account and that the proceedings initiated against M/s. E-Infochips Pvt Ltd. be dropped, stating they had nothing further to add.

WRITTEN SUBMISSION:

23. During the initial personal hearing dated 24.03.2026, Shri Vijay N. Thakkar, Authorized Representative of the Noticee submitted written submission dated 24.03.2026. The brief summary of the submission is as under: -

23.1 They have submitted that they are 100% EOU constituted under the provisions as laid down in Chapter 6 of Foreign Trade Policy (hereinafter referred to as FTP) read with Hand of Book of Procedures to Foreign Trade Policy (hereinafter referred to as HBP to FTP).

23.2 They have submitted that the objective of constitution EOU scheme is to promote the export and seamless operation of the unit who are engaged in the business of Export of Goods and Services. They further submitted that with a view to eliminate the tax cost on export of goods the EOU is permitted to procure goods duty free in terms of Para. 6.01 of FTP which provides for Export and Import of Goods by EOU.

23.3 They further submitted that Para. 6.05 of FTP read with Para. 6.02 of HBP provides for execution of Legal Agreement (hereinafter referred to as LA). They submitted that LA is an agreement between the Government and the EOU to abide by the policy provisions and one of the items under LA is the list of Raw Materials and Capital Goods permitted to be imported which are to be utilized for manufacturing of Export Products as permitted in Letter of Permission and such list of Raw materials and capital goods are illustrative and it doesn't necessarily mean to include all the raw material and capital goods that would be needed by the EOU. They further submitted that with the technological and sectorial industrial advancement the raw materials and capital goods requirement also undergo change with the passage of time.

23.4 They submitted that it was alleged that they have obtained irregular Procurement certificate for following items namely;

(a) EPAC Power supply slotted plates
(b) Sheet Metal Cover UDC
(c) 3rd Eye Cam V4 Unit
(d) Aluminum Plate – UDC

They submitted that all of the above items are already therein the list of permitted items of raw material under Letter of Agreement however in some case the nomenclature of the item name have changed due to different commercial names used amongst various different region however, the end use of said items are same in manufacturing of the export products and the comparison of the name of above items as per permitted list of items as per LA and the name vide which the Procurement Certificates had been issued to them for said items is as:-

Sl. No.	Name as per List of Permitted item as per LA	Name as per procurement certificate	Usage of the Product in Manufacturing Process
1	Power Supply Slotted Plates	EPAC Power supply slotted plates	The EPAC power supply board is being used in ATC (Advanced Traffic Controller) which is deployed at crossroad as part of intelligent traffic system in US market
2	Enclosures & Parts	Sheet Metal Cover UDC	The Sheet Metal Cover and Aluminium Plates are used for 3rd Eye Cam V4 units which is standalone DVR being used for recording capabilities through our built -in-SD card. It is the best fleet management system to observe your driver's behaviour, reduce accident costs. It gives you unmatched awareness of what's happening with your vehicles and drivers at all times in US Market.
3	Enclosures & Parts	Aluminium Plate – UDC	
4	Camera Module	3rd Eye Cam V4 Unit	

23.5 They further submitted that there is no time limit provided for addition of list of raw materials or capital goods in permitted item of procurement for duty free and the same can be amended from time to time to incorporate the additional requirements. They further contended that there is no such condition in the LA where it is provided that the activity of procurement of raw material or capital goods precedes the addition to the list of permitted items for procurement by EOU. They mentioned that once the new raw material and/or capital goods are incorporated in the LA then it is conclusive evidence that the same is to be used for the manufacture of export goods and any procurement of such goods that may have happened prior to amendment in LA should be ratified with the amendment to LA. They further submitted that as far as the item "3rd Eye Cam V4 unit" is concerned the same have been added into LA vide their application dated 28.03.2018 and admitted the fact of being imported prior to prior to addition of said item in LA.

23.6 It is undisputed fact that all such alleged as irregularly imported goods have been utilized for manufacture and production of permitted export of goods by them and proposing to recover the duty on same would tantamount to increasing tax cost on their export of goods which is very much against the export policy of the country for EOU. They further contended that "***Substantive benefit should not be taken away due to mere procedural lapses".***

23.7 They have submitted that in every legislation there is substantive provisions as well as procedural provisions. There is distinction that can be drawn between the two, in terms of implications of law. The former lays down rights, duties and responsibilities that are established against individuals, whereas the latter prescribes the manner in which such rights and responsibilities may be exercised and enforced in a court. To support their contention, they placed reliance on the decision of Apex Court in the case of **Commissioner of C. Ex., New Delhi Vs. Hari Chand Shri Gopal [2010 (260) E.L.T. 3 (S.C.)]** wherein the Hon'ble Supreme Court has occasioned to deal the doctrine of substantial compliance. in light of the above decision, there is a difference in substantive and procedural provisions stipulated in legislations and mere procedural infraction cannot result into denial of substantive benefit granted under the statute. They submitted that there is plethora of decisions wherein it is time and again reiterated that the substantive benefits should not be denied because of trivial and technical procedural infractions and to support their contention, they relied upon following judgments which are as:-

- Mangalore Chemicals and Fertilizers Limited vs. Deputy Commissioner'–1991(8) TMI 3 - (SC) wherein it was held that procedural infraction of Notification, Circular etc... are to be condoned if exports have already taken place and the law is settled now that substantive benefit could not be denied for procedural lapse.
- Re "Lalubhai Amichand Limited – 2011 (7) TMI 1094 – Government of India
- Re Cipla Limited – 2013 (9) TMI 996 – Government of India wherein the rebate claim of duty paid on exported goods pertaining to 2 central excise invoices was disallowed since the applicant failed to submit duplicate copy of the invoice. The Government notes that the export of duty paid goods is not disputed by the Department in this case. As per para 8.3 of Part I of Chapter 8 of CBE & C Excise Manual of supplementary instructions one of the documents required to be enclosed with rebate claim is invoice issued under Rule 11 of Central Excise Rule, 2002. It doesn't specify that only duplicate copy of invoice is to be produced as notified in the Mumbai-III Committee Trade Notice No.2/2006, dated 22.03.2006. In this case the applicant has submitted original invoice since duplicate copy is misplaced. It was held that the substantial benefit of rebate claim cannot be denied for mere minor procedural lapses. This lapse can be condoned. The Government set aside the impugned order and remands the case back to the original authority for fresh

consideration of rebate claim in accordance with law by taking into account the above observations.

- In the case of Swiss Glasscoat Equipment's Ltd. v/s Commissioner of Central Excise, Ahmedabad (2012-275-ELT-468) it was held that delay in filling of declaration condonable if declaration filed within two months from the date of registration;
- In the case of Union of India *v.* Grasim Industries Ltd *(2006-204-ELT-230] the Division Bench of the Rajasthan High Court, while considering the delay in filing the declarations, with reference to the receipt of capital goods, as contemplated under the provisions of the Central Excise Act and the Rules,* it was held that filing of declaration is necessary, but the limitation prescribed is not mandatory. *Conditions for availing credit are payment of duty as evidenced by the documents and the receipt and use in the manufacture of the capital goods credit cannot be denied on procedural lapses in making declaration or furnishing incomplete particulars, dismissed the appeal filed by the Union of India in respect of the grant of relief under the provisions of the Central Excise Act.*

- In the case of Om Textiles v. CCE, New Delhi [2006-199-ELT-47] the invoice was showing wrong address but address subsequently got corrected from supplier to indicate correct address, the tribunal held that minor procedural lapse to be ignored.

- In the case of CCE Belgaum v. India Sugars And Refineries ltd [2002-149-ELT-173] the Tribunal held that *"we find that the Tribunal has been consistently taking the view that procedural lapse, if any, should not come in the way of denial of substantial justice;*

- In the case of Maxcare Laboratories Ltd v. CCE Bhubaneswar [2001-138-ELT-1185] the Tribunal held that *"It is well settled principles of law that substantial benefit of law otherwise flowing to the assessees should not be denied on the basis of some technical procedural lapses"*

- In the case of Collector Of C.Ex., Bombay v. Kopran Chemicals Co. Ltd [1996-88-ELT- 487} the Tribunal held that *"The procedural requirements laid down in Rule 173L of Rules are basically to provide subjective satisfaction to the concerned officer against mis-use of the facility extended and if the record available is sufficient to satisfy the officer concerned, some minor procedural lapse should not be over emphasized to deny otherwise eligible dues"..*

23.8 It was submitted that the noticee had substantially complied with the provisions of Notification No. 52/2003-Customs in respect of import of goods.

The noticee contended that all conditions stipulated under the said notification had been fulfilled. The exemption of duty-free procurement of the inputs is allowed to "an EOU" and there is no requirement in the Notifications above that the EOU shall get the prior permission of the Development Commissioner. Noticee submitted that they had followed entire process of the Notifications. Thus, there is no violation of any condition of exemption notification. It was further submitted that the notification did not require each final product to be specifically mentioned in the Letter of Permission (LOP), nor did it mandate prior approval from the Development Commissioner for availing duty-free procurement. Accordingly, it was contended that there was no violation of the exemption notification.

23.9 In support of the above contention, the noticee relied upon judicial precedents and submitted that in *Dendyal Magaswargiya Sahakari Soot Girni Ltd. vs. CCE*, it had been held that a vested right could not be denied merely due to delay in issuance of the Letter of Permission. Reliance was also placed on *Commissioner of Central Excise vs. Global Wool Alliance Pvt. Ltd.*, *Commissioner vs. Vijaya Shrimp Farms Ltd.*, and *Arjun Industries Ltd. vs. CCE*, wherein it had been held that once the Letter of Permission was extended by the competent authority, the benefit under the EOU scheme could not be denied and duty demand was not sustainable.

23.10 The noticee further submitted that duty could be demanded only in cases where there was a violation of the conditions of the exemption notification. It was contended that since no such violation existed in the present case, the demand of duty on alleged irregular procurement was unsustainable. The noticee also stated that relevant documentary evidence, including Letters of Permission, Legal Undertakings, product details, client orders, and reports, had been submitted to establish compliance.

23.11 With regard to the findings recorded in paras 46 to 49 of the Order-in-Original, the noticee submitted that the adjudicating authority had merely reiterated the contents of the show cause notice without properly appreciating the facts. It was contended that the observation regarding mismatch between goods mentioned in procurement certificates and Annexure-I of the Legal Undertaking was incorrect and based on a procedural discrepancy relating to nomenclature. They submitted that the apparent discrepancy pointed out in the Show Cause Notice was due to generic name of the Items. In annexure to the LUT, generic names of the equipment were used instead of the specific names i.e. “Power Supply Slotted Plates” instead of “EPCA Power Supply”, “Camera Module” instead of 3rd Eye Cam V4 Unit”, “Enclosure and Parts” instead of “Sheet Metal Core UDC” and “Aluminum Plate UDC”. There was no intention on the part of the noticee to evade duties by way of mis-declaration on their Parts. It was further submitted that differences in nomenclature between the imported goods and those mentioned in the Letter of Approval were insignificant and procedural in nature. The noticee contended that such minor procedural lapses should

not result in denial of substantive benefits, particularly when the goods had been used for authorized export production.

23.12 The noticee submitted that it had imported the goods as a 100% EOU under Notification No. 52/2003-Customs for manufacture of export goods, namely TEC-V4 Unit, and had complied with the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, as well as the provisions of the Foreign Trade Policy and Handbook of Procedures. It was contended that all necessary approvals, including the Letter of Approval with Annexure-I, had been duly obtained and relevant documents had been furnished.

23.13 The noticee emphasized that the imported goods had been duly used in the manufacture of export goods, that differences in nomenclature had been regularized, and that quarterly and annual reports had been duly filed with the authorities. It was therefore contended that the allegations regarding non-compliance with conditions of Notification No. 52/2003-Customs were factually incorrect.

23.14 They have submitted that they had imported said goods for the manufacture of "TEC- V4 Unit" and thereafter exporting the same to overseas market as per the purchase order received. The import and export are subjected to Foreign Trade Policy and the clearance of the imported goods is governed under the Customs Act,1962. The goods so imported is not liable to be treated as Prohibited goods in terms of Section 2(33) of the Customs Act,1962, as they have complied with all the conditions of the Notification No.52/2003-Customs.

23.15 The primary contention of department is that the goods imported by the appellant was not appearing in the Annexure-I of Letter of undertaking and thereby conditions of Para 6 of the FTP 2015-120 read with Notification No.52/2003-Customs was violated and therefore the subject goods were liable for confiscation in terms of Section 111(o) of the customs Act,1962**.** They have categorically contended that in Notification No.52/2003-Customs nowhere such condition is laid down which state that the name of the imported goods has to be in the Annexure-I of Letter of undertaking. Further the description mentioned as per Letter of Approval and its synonymous name mentioned in the Procurement Certificate, the use of the said imported goods is as under:-

Sr. No.	Name as per List of Permitted item as per LA	Name as per procurement certificate	Usage of the Product in Manufacturing Process

1	Power Supply Slotted Plates	EPAC Power supply slotted plates	The EPAC power supply board is being used in ATC (Advanced Traffic Controller) which is deployed at crossroad as part of intelligent traffic system in US market
2	Enclosures & Parts	Sheet Metal Cover UDC	The Sheet Metal Cover and Aluminium Plates are used for 3rd Eye Cam V4 units which is standalone DVR being used for recording capabilities through our built -in-SD card. It is the best fleet management system to observe your driver's behaviour, reduce accident costs. It gives you unmatched awareness of what's happening with your vehicles and drivers at all times in US Market.
3	Enclosures & Parts	Aluminium Plate – UDC	
4	Camera Module	3rd Eye Cam V4 Unit	

Therefore, the allegations of the department that the goods imported under Procurement Certificate is not mentioned in Letter of Approval is not correct as is evident from the Letter of undertaking/Agreement. In view of the conditions as laid down in para 6.01 of the Hand Hook of Procedure has been fulfilled as they have been provided procurement certificate issued on the basis of Letter of Approval. Further letter of approval contains the details of all the materials which they require for the intended manufacture of goods for export. ***Further, they clarified and submitted that they have no DTA clearance.***

23.16 They have further submitted that there is no condition which is alleged to be violated is prescribed in the Notification No.52/2003- Customs, that the description of goods declared in Letter of Approval and mentioned in the Procurement Certificate were synonymous; that on items which were not included in LUT was immediately included therein. Further, submitted that though Camera Module is included in the LUT which is synonymous to 3rd Camera V4 Unit imported was also added on 21.05.2018 in the Letter of permission.

23.17 They have mentioned that their unit is 100% EOU, that in terms of FTP 2015-20 which is statute books wherein under the appellant was granted Letter of Approval, Letter of Permission by the proper officer, for import of raw material without payment of duty for use in the manufacture of

the goods for subsequent export. Whereas procurement certificate has been prescribed in terms of Circular No.50/--- Customs. LUT allow all the raw materials/inputs which are required for use in the manufacture of the goods and its export. Therefore, even if assuming without admitting some discrepancy occurred in Procurement Certificate; may have occurred little bit delay for inclusion of items which may not have earlier included in the Letter of Approval. However, Circular cannot override the right granted to the appellant in terms of FTP which statute book. In the case of Union of India vs Intercontinental Consultants and Technocrats Pvt. Ltd. reported as 2018(10) GSTL 401(SC) where in the Hon'ble Supreme Court of India has held that:

> *Interpretation of statutes - Statutory rules - They cannot go beyond statute -In case of conflict with main enactment, rule has to give way. [paras 26, 27]*
>
> *Interpretation of statutes - Statutory rules - They are framed for achieving purpose behind statute. [paras 27, 28]*

The relevant para 26, 27, and 28 of the said decision is reproduced as under.

> ***26.*** *It is trite that rules cannot go beyond the statute. In Babaji Kondaji Garad, this rule was enunciated in the following manner:*
>
> *"Now if there is any conflict between a statute and the subordinate legislation, it does not require elaborate reasoning to firmly state that the statute prevails over subordinate legislation and the byelaw, if not in conformity with the statute in order to give effect to the statutory provision the Rule or bye-law has to be ignored. The statutory provision has precedence and must be complied with."*
>
> ***27.*** *The aforesaid principle is reiterated in Chenniappa Mudaliar holding that a rule whichcomes in conflict with the main enactment has to give way to the provisions of the Act.*
>
> ***28.*** *It is also well established principle that Rules are framed for achieving the purpose behind the provisions of the Act, as held in TajMahal Hotel :*
>
> *"the Rules were meant only for the purpose of carrying out the provisions of the Act and they could not take away what was conferred by the Act or whittle down its effect."*

23.18 The noticee further submitted that subject demand of duty is barred by limitation as alleged demand of duty pertains to period from 05-Feb-2018 to 16-Apr-2018 for which the time limit to demand the duty under Section 28 of the Customs Act, 1962 has already lapsed. They contended that they had procured all the inputs on the strength of Procurement certificates and all the procurement of their inputs are in the knowledge of the Department. To support their contentions, they refer and rely on the decision of Moserbaer India Ltd. Vs. CC reported in 2015 (325) ELT 236 (SC) and CCE, Vs. Emcure

Pharmaceuticals Ltd. reported in 2014 (307) ELT 180 (Tri). Appellants would also refer and rely on the decision of the Apex Court in the case of Blue Star Ltd. reported in 2015 (318) ELT 11 (SC).

23.19 As regard to penalty in terms of Section 112(a) & (b) the noticee submitted that the confiscation of the goods imported by them is erroneous; that they were not in any way concerned in relation to the import of subject goods in the manner as described in section 111(o) of the Customs Act,1962 i.e. they have not done or omitted to do any act which act or omission would render such goods liable to confiscation under Section 111(o), or abated the doing or omission of such an act, or selling or purchasing, or in any other manner dealing with any goods which the appellant knows or has reason to believe are liable to confiscation under Section 111(o) of the Customs Act,1962 nor acquired possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which the appellant knows or has reason to believe are liable to confiscation under Section 111(o) of the Customs Act,1962 thereby they are not liable to penalty under Section 112(a) & (b) of the Customs Act,1962.

23.20 In conclusion, it was submitted that there had been no contravention of the provisions of Notification No. 52/2003-Customs and that the case was based merely on procedural discrepancies. The noticee therefore prayed that the proceedings initiated under the impugned show cause notice be dropped in entirety.

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23.21 The noticee submitted that the grounds of appeal had already been filed in the present matter and, therefore, were not being repeated. It was further submitted that the Hon'ble Commissioner (Appeals), in the Order-in-Appeal (paras 5.4 to 6), had recorded various observations and issued specific directions, which ought to be duly considered while deciding the present proceedings.

DISCUSSION AND FINDINGS: -

24. I have carefully gone through the Show Cause Notice dated 08.09.2023, the earlier Order-in-Original, Order-in-Appeal No. AHD-CUSTM-000-APP-094-25-26 dated 24.06.2025, the written submissions filed by M/s. E-Infochips Pvt. Ltd., the submission made during the course of personal hearing and the documents available on record. I proceed to decide the case on the basis of facts and evidences available on record.

25. I note that the case originated from an objection raised by the Audit team of Indian Audit and Account Department Ahmedabad. The audit was conducted on the subject matter of "Monitoring of EOUs & SEZs by the Development Commissioner" under the Special Compliance Audit (SCA) at Customs, EPC Paldi. The audit covered the period from January 2018 (FY 2017–18) to FY 2019–20, during which the relevant documents of M/s. E-Infochips Pvt. Ltd. were verified. During the test check of records, it was noticed that the importer had filed for procurement certificate vide intimation Nos.128/2017-18 dated 05.02.2018, 129/17-18 dated 05.02.2018, 327/17-18 dated 28.02.2018, 413/17-18 dated 16.03.2018, 462/17-18 dated 23.03.2018, 504/17-18 dated 27.03.2018, 84/18-19 dated 16.04.2018 and 94/17-18 dated 02.02.2018 for import of **EPAC Power Supply Slotted Plates CTH 76061190, Aluminium Plate – UDU Unit/ UDU Unit with Battery CTH 76061190, Sheet Metal Cover UDU CTH 82057000 and 3rd Eye Cam V4 Unit CTH 85299090** having Assessable Value of Rs.7,81,54,587/- and duty forgone of Rs.2,39,41,145/-. The Procurement Certificates were issued by Assistant/Dy. Commissioner, Custom Division, Paldi, Ahmedabad and intimation was sent to the Superintendent of Customs, MEPZ-SEZ, Tambaram, Chennai. On verification of the Procurement Certificate Goods and the CTH was not shown in Annexure-I of Legal Agreement issued by Development Commissioner, KASEZ. As per above said provision that the unit has been permitted to import goods as per given details in Annexure –I of LUT, however, these goods were not mentioned in Annexure –I. This has resulted in irregular issuance of Procurement Certificate having assessable value of Rs.78154587/- and duty forgone of Rs.23941145/- and accordingly, ***HM No. SSCA/Monitoring EOU&SEZ/2020-21 dated 31.12.2020 issued by the Audit Team.***

26. I note that the primary objection raised by the Audit is that the specific items imported by the Noticee namely, EPAC Power Supply Slotted Plates (CTH 76061190), Aluminium Plate – UDU Unit / UDU Unit with Battery (CTH 76061190), Sheet Metal Cover UDU (CTH 82057000), and 3rd Eye Cam V4 Unit (CTH 85299090) were not itemized along with their respective Customs Tariff Headings (CTH) in Annexure-I of the Legal Agreement (executed under Appendix-6E on 27.05.2017), despite being declared in the Procurement Certificates and the subsequently filed Bills of Entry. Further, the audit has

observed that the noticee failed to submit the Quarterly and Annual Reports in Annexure- III and Annexure-IV with jurisdictional Assistant/Deputy Commissioner of Customs, EPC Paldi, Ahmedabad as required under Para 6.11(a) of Handbook of Procedure (HBP).

27. I find that on the basis of objections raised by Audit team of Indian Audit and Account Department Ahmedabad, a Show Cause Notice bearing no. VIII/10-61/EPC-Paldi/O&A/HQ/2023-24 dated 08.09.2023 was issued to the noticee, which was adjudicated vide Order In Original No.05/ADC/VM/O&A/2024-25 dated 18.04.2024 by the Additional Commissioner of Customs, Ahmedabad. Being aggrieved with the said OIO, the importer had filed an appeal before the Commissioner of Customs (Appeals), Ahmedabad. The Commissioner of Customs (Appeals), Ahmedabad, vide Order-in-Appeal No. AHD-CUSTM-000-APP-094-25-26 dated 24.06.2025 allowed the importer's appeal by way of remand with specific directions as under:

- The Adjudicating Authority has been directed to re-examine the matter in detail to determine whether the alleged non-compliance, such as non-inclusion in LUT Annexure-I and non-submission of reports, amounts to substantive violations of the EOU scheme conditions or merely procedural lapses that can be condoned. This assessment is to be made particularly in view of the fact that Procurement Certificates were issued by the Customs Department.

- It has also been directed that a detailed and reasoned analysis be undertaken of the judicial precedents cited by the appellant, especially those supporting the principle that substantive benefits should not be denied for procedural lapses. The authority is required to clearly evaluate the applicability of these decisions to the facts of the present case.

- Further, the re-evaluation must address whether confiscation under Section 111(o) and penalties under Sections 112(a) and 112(b) of the Customs Act, 1962, are justified, based on the nature of the alleged contraventions and whether there was any mens rea or intent to evade duty.

- Finally, the appellant is to be given a fresh opportunity of hearing and allowed to submit additional evidence and arguments before a fresh decision is taken.

28. Accordingly, in view of the above referred OIA dated 24.06.2025, the case has been taken up for fresh adjudication proceedings. I find that the importer has filed submission dated 24.03.2026 as well as attended the Personal Hearing held on 24.03.2026, wherein they reiterated the contents of their written submission dated 24.03.2026. Consequent upon the Annual

General Transfer (AGT) and the subsequent reallocation of charges within the Commissionerate, the Adjudicating Authority for the case was changed. Accordingly, in compliance with the principles of natural justice and the statutory mandate under Section 122A of the Customs Act, 1962, a fresh opportunity for a personal hearing was granted to rehear the matter previously handled by the predecessor officer. Accordingly, personal hearings were scheduled on 10.07.2026, 06.10.2026, and 16.10.2026. Shri Vijay N. Thakkar, Authorized Representative, along with Shri Nimesh Patel, Finance Manager of M/s. E-Infochips Pvt. Ltd., attended the personal hearing on 16.10.2026. They reiterated their earlier submission dated 24.03.2026 and requested that the matter be decided after taking into account the observations contained in the OIA.

29. I find that the Commissioner (Appeals), while remanding the matter, has specifically directed that the alleged non-compliance relating to non-inclusion of the impugned goods in Annexure-I to the LUT and non-submission of prescribed reports be examined to determine whether such non-compliance constituted a substantive violation of the EOU scheme or merely a procedural lapse capable of being condoned. It was also directed that the fact that Procurement Certificates were issued by the Customs authorities and the judicial decisions cited by the Noticee be properly examined.

29.1. Therefore, the core issue required to be determined is not merely whether the exact description of the impugned goods was reflected in Annexure-I to the LUT. The real issue is whether such discrepancy, in the facts and circumstances of the present case, constitutes a violation of a substantive condition of Notification No. 52/2003-Customs dated 31.03.2003 so as to justify recovery of duty, confiscation of goods and imposition of penalties. For deciding the above issue, it is necessary for me to examine the precise nature of the allegations made in the Show Cause Notice, the conditions of Notification No. 52/2003-Customs, the role and significance of the Procurement Certificates issued by the jurisdictional Customs authorities and the applicability of the judicial decisions relied upon by the Noticee.

30. On going through the SCN, I find that the demand in the present case is principally based on the allegation that the impugned goods were not specifically mentioned in Annexure-I to the Legal Agreement granted to the Noticee and that certain prescribed reports/documents were not submitted. The impugned goods were, however, procured through Procurement Certificates issued by the jurisdictional Customs authorities and were thereafter imported through the prescribed Customs procedure. I further find that the Show Cause Notice does not allege that the impugned goods were diverted, removed from the EOU without permission, sold in the Domestic Tariff Area, or used for any purpose other than the authorised operations of

the EOU. There is also no allegation that the goods were not received in the EOU or that they were not utilised in connection with the manufacture of goods for export. Thus, the present case is mainly confined to the alleged discrepancy regarding the description of the goods vis-à-vis Annexure-I to the LUT.

31. I find that during the course of audit, *M/s. E-Infochips, 303, Parishram Building, Mithakhali Six Road, Navrangpura, Ahmedabad* – holding LOP No. KASEZ/100%EOU/N/113/2004-05, dated 6.12.2004 issued by the Jt. Development Commissioner, O/o the Development Commissioner, KASEZ, Gandhidham, vide letter KASEZ/100%EOU/II/52/01-02/vol.II-3387, dated. 21.06.2019, has given clarification regarding import of capital goods under para No.6.01 (d) of FTP 2015-20, as under*:*

As per para of APPENDIX- 6E (FORM OF LEGAL AGREEMENT FOR EOU/EHTP/STP/BPT), the unit has been permitted to import/indigenously plant and machinery, raw materials, components, spares and consumables free of import/ Central Excise duty as per the details given at ANNEXURE –I of the said LoP:

30.1 From the above para, it is clear that the permission from the Development Commissioner's (D.C.) office is required for import/ indigenously purchase of Plant and Machinery under Para 6.01(d) of FTP 2015-20.

Hence, EOUs are required to take permission from the Development Commissioner's office for import/ indigenous purchase of Capital Goods whenever required. However, after attestation of list in LUT, they may import/procure Capital Goods on self –certification basis.

30.2 *During the test check of records, it was noticed that the importer had filed for procurement certificate vide intimation Nos.128/2017-18 dated 05.02.2018, 129/17-18 dated 05.02.2018, 327/17-18 dated 28.02.2018, 413/17-18 dated 16.03.2018, 462/17-18 dated 23.03.2018, 504/17-18 dated 27.03.2018, 84/18-19 dated 16.04.2018 and 94/17-18 dated 02.02.2018 for import of* ***EPAC Power Supply Slotted Plates CTH 76061190, Aluminium Plate – UDU Unit/ UDU Unit with Battery CTH 76061190, Sheet Metal Cover UDU CTH 82057000 and 3rd Eye Cam V4 Unit CTH 85299090*** *having Assessable Value of Rs.7,81,54,587/- and duty forgone of Rs.2,39,41,145/-. The Procurement Certificate was issued by Assistant/Dy. Commissioner, Custom Division, Paldi, Ahmedabad and intimation was sent to the Superintendent of Customs, MEPZ-SEZ, Tambaram, Chennai. On verification of the Procurement Certificate, it is observed that Goods and the CTH was not shown in Annexure-I of Legal Agreement issued by Development Commissioner, KASEZ. As per above said provision that the unit has been*

permitted to import goods as per given details in Annexure –I of LUT, however, these goods were not mentioned in Annexure –I. Which has resulted in the issuance of the Show Cause Notice dated 08.09.2023 alleging that the importer had irregularly obtained Procurement Certificate having assessable value of Rs.78154587/- and involving total duty of Rs.23941145/-"

30.3 The 100% EOU scheme is formulated by the Government of India as detailed in Chapter 6 of Foreign Trade Policy 2015-2020 and Hand Book of Procedures 2015-2020 regarding operations of 100% EOU. I note that the objective of constitution of the EOU scheme is to promote export and seamless operation of the units engaged in the business of Export of Goods and Services. I further note that with a view to eliminate tax costs on export of goods, the EOU is permitted to procure goods duty free. I find that for proper operations of 100% EOU, Central Board of Indirect Taxation (CBIC) has issued Notification No. 52/2003- Customs dated 31.03.2003 for Customs duty free procurement of goods, manufacture and clearances etc. with following conditions:

(1) The importer has been authorised by the Development Commissioner to establish the unit for the purposes specified in clauses (a) to (e) of the opening paragraph of this Notification;

(2) The unit carries out the manufacture, production, packaging or job-work or service in Customs bond and subject to such other condition as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs or Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be, (hereinafter referred as the said officer) in this behalf;

(3) The unit executes a bond in such form and for such sum and with such authority, as may be specified by the said officer, binding himself,

> *(a) to bring the said goods into the unit or and use them for the specified purpose mentioned in clauses (a) to (e) in the opening paragraph of this Notification;*
> *(b) to maintain proper account of the receipt, storage and utilization of the goods;*
> *(c) to dispose of the goods or services, the articles produced, manufactured, processed and packaged in the unit| or the waste, scrap and remnants arising out of such production, manufacture, processing or packaging in the manner as provided in the Export and Import Policy and in this Notification.*

30.4 From the above, I note that the fundamental purpose of the exemption is, therefore, to permit duty-free procurement of goods required for the authorised operations of the EOU and to ensure that such goods are used for the specified purpose and are not diverted or otherwise misused. In the present case, the Noticee was admittedly operating as an authorised 100% EOU and had executed the prescribed bond. More importantly, there is no allegation in the Show Cause Notice that the impugned goods were diverted

or that they were not used for the authorised operations of the EOU. The Show Cause Notice also does not dispute the utilization of the impugned goods for the authorised operations of the Noticee. Thus, the end-use condition, which constitutes the fundamental purpose of granting the exemption, has not been alleged to have been violated.

31. On a meticulous review of the case records, I find that the primary contention of the Show Cause Notice (SCN) revolves around documentation and reporting lapses, rather than any misuse or diversion of the goods imported for export production. The audit report explicitly records that the Noticee had duly intimated the Department regarding the procurement of the subject goods through multiple advance communications. Specifically, these were filed via Intimation Letter Nos. 128/2017-18 dated 05.02.2018, 129/17-18 dated 05.02.2018, 327/17-18 dated 28.02.2018, 413/17-18 dated 16.03.2018, 462/17-18 dated 23.03.2018, 504/17-18 dated 27.03.2018, 84/18-19 dated 16.04.2018, and 94/17-18 dated 02.02.2018. Through these communications, the Noticee transparently declared its intent to import specific goods, including EPAC Power Supply Slotted Plates (CTH 76061190), Aluminium Plates – UDU Unit/UDU Unit with Battery (CTH 76061190), 3rd Eye Cam V4 Units (CTH 85299090), and Sheet Metal Covers UDU (CTH 82057000). Furthermore, pursuant to Annexure-1 of the LUT dated 23.05.2017, 05.12.2019, 13.05.2021, and 22.03.2022, the Noticee was legally permitted to import or indigenously purchase plant and machinery, raw materials, components, spares, and consumables free of import and central excise duties. A perusal of Annexure-1 of the LUT's dated 23.05.2017 and 05.12.2019 reveals that the Noticee had submitted a comprehensive list of these items, complete with material descriptions and broad CTH classifications intended for duty-free procurement. In these initial Annexures, the items were listed as "Power Supply Slotted Plates under CTH 73089090", "Enclosures under CTH 85182900", and "Camera Module under CTH 85258090". Crucially, in the subsequently amended Annexure-1 of the LUT's dated 13.05.2021 and 22.03.2022, the Noticee correctly aligned the descriptions and CTH classifications with those specified in their advance procurement intimation letters.

While the SCN contends that the Noticee failed to include the exact description of the imported items in their initial LUT approvals, the Noticee argues that they had specified the broad, generic names of the goods in the LUT, while declaring the specific nomenclature and exact CTH in their subsequent intimation letters and corresponding Bills of Entry. In this regard, upon a statutory analysis of the classification framework under the Customs Tariff Act, 1975, I find that the specific technical goods imported are merely the commercial species of the broad, generic genus approved in the Noticee's Legal Agreement. Applying Rule 1 of the General Rules for Interpretation (GRI), classification must be determined strictly according to

the terms of the headings and the relevant Section or Chapter Notes, which carry binding legal force.

For the EPAC Power Supply Slotted Plates and Aluminium Plates (CTH 76061190), Chapter 76 defines plates, sheets, and strip as flat products of a thickness exceeding 0.2 mm. Furthermore, a statutory application of Chapter Note 1(d) to Chapter 76 of the Customs Tariff Act, 1975, explicitly mandates that Headings 7606 and 7607 apply to plates, sheets, and strip. Further, a statutory application of the HSN Explanatory Notes mandates that Heading 7606 encompasses these structural components even if they are drilled, or perforated, provided they maintain their basic mechanical form and do not assume the final character of specific functional machinery classified under other chapters. Operationally, the EPAC power supply slotted board acts as a vital structural base layer utilized inside the Advanced Traffic Controller (ATC) systems deployed at crossroads as a part of intelligent traffic infrastructure, whereas the structural aluminium plates serve as physical protective components built directly into the housing of the 3rd Eye Cam V4 units. These components represent basic structural elements that fall entirely within the functional and legal boundaries of the approved generic categories: "Power Supply Slotted Plates" and "Enclosures & Parts".

For the 3rd Eye Cam V4 Units (CTH 85299090), Chapter Heading 8529 mandates that parts suitable for use solely or principally with a specific electronic apparatus of heading 8525 to 8528. Functionally, the 3rd Eye Cam V4 unit operates as a high-end standalone Digital Video Recorder (DVR) system integrated with built-in SD card capabilities designed for fleet management, behavioural tracking, and accident prevention. As a specialized video capture module, this item legally and technically falls within the scope of the generic entry "Camera Module" permitted in the Letter of Undertaking (LUT). Similarly, the mechanical retaining attributes of the Sheet Metal Covers UDU (CTH 82057000) under GRI 1 align with the operational end-use intended for the broad bucket of "Enclosures & Parts", functioning directly as an outer structural shell that encapsulates the internal circuitry of the fleet recording systems.

Applying the **Doctrine of Substantial Compliance** as articulated by the Hon'ble Supreme Court in *Commissioner of Central Excise v. Hari Chand Shri Gopal*, and relied upon by the noticee in his written submission, when the core, mandatory conditions (such as actual export end-use) are fully satisfied, minor administrative or reporting variations in peripheral documentation must be treated as curable directory irregularities rather than fatal substantive violations.

More Significantly, I find that Show Cause Notice contains no allegation that these goods were diverted, sold in the Domestic Tariff

Area (DTA), or used for anything other than the EOU's authorized operations, rather the noticee had disclosed technical nomenclature and CTH in their advance intimation letters, based on which the Department verified the records and regularly issued valid Procurement Certificates. Furthermore, prior to the issuance of the SCN, the Noticee had already amended Annexure-1 of their LUT to explicitly incorporate these items. This finding is further fortified by the Noticee's Annual Progress Reports (APRs) for the Financial Years 2018-19 and 2019-20, which indicate zero DTA sales and confirm that 100% of the imported goods were consumed in the manufacture of finished products that were ultimately exported out of India, thereby fulfilling the core objective of the EOU scheme. For ease of reference, the relevant extracts of Annexure-1 of the LUT dated 23.05.2017, as well as amended Annexure-1 of LUT's 13.05.2021, along with the corresponding extracts of the Annual Progress Reports for the audit periods 2018-19 and 2019-20 showing nil DTA sales, are reproduced below:

Annexure-1 of LUT dated 23.05.2017:

2. Raw Materials, Components and Consumables to be imported.

HS NO	Description of material
85321000	Capacitor
85312000	Crystal / Oscillator
85411000	Diode
85423100	Integrated Circuit
85312000	LED
85331000	Resistor
85412900	Transistor / Mosfet
85369090	Connector
85041090	Inductor
85181000	MIC
[redacted]	[redacted]
85044090	Ferrite Bead
85353090	Switch
85365090	ESD-Suppressor
85423100	Filter
85441190	Cable
85065000	Battery
[redacted]	[redacted]
[redacted]	[redacted]
85371000	LCD
85258090	Camera Module
[redacted]	[redacted]
[redacted]	[redacted]
85371000	Evaluation Kit

85340000	Bare PCB
90021100	Lens
85419000	Heat Sink
85182900	Enclosure
[redacted]	[redacted]

3. Plant, Machinery and Equipment and Raw Material, Components and Consumables to be indigenously produced and purchased without payment of Central Excise Duties.

No.	Description of material
85340000	Bare PCB
85182900	Metal Enclosure
73089090	Power Supply Slotted Plates
84715000	Computer, Laptop & Server

Annexure-1 of LUT dated 13.05.2021:-

विकास आयुक्त कार्यालय
Office of the Development Commissioner
कांडला विशेष आर्थिक क्षेत्र
Kandla Special Economic Zone
वाणिज्य तथा उद्योग मंत्रालय
Ministry of Commerce & Industry
गांधीधाम - कच्छ
Gandhidham-Kutch-370 230
Phone (02836)-253300, 252475, 252273
Fax (02836) – 252250 & 252194
E-mail admn.kasez-gj@gov.in
Website: www.kasez.gov.in

सत्यमेव जयते

KASEZ

No.KASEZ/100%EOU/II/113/04-05/Vol.II/ 1447 1497 Date: 13-05-2021

M/s. e-infochips Limited,
1st floor, A K Patel House,
Rashmi Society,
Nr. Mithakhali Six Road,
Navrangpura,
Ahmedabad-380009.

Subject: Permission for import of raw materials–reg.

Dear Sirs,

I am directed to refer to your letter dated 06.05.2021 on the subject and to convey no objection for import of raw materials, as per Annexure, in terms of Para 6.01(d) of Foreign Trade Policy, 2015-2020, extended upto 30.09.2021, for manufacture and export of products as approved in the Letter of Permission No. KASEZ/100%EOU/II/113/2004-05 dated 06-12-2004, as amended, subject to the condition that the value of the imported goods shall be taken into account for the purpose of calculation of NFE.

2. Any permission required for import under any other law shall be applicable.

3. This shall form part of the exempted goods covered under your Legal Undertaking executed with this office.

Yours faithfully,

(Satyadeep Mahapatra) 13/05/21
Jt. Development Commissioner
Kandla Special Economic Zone

Encl: As above

Copy to: The Assistant/Deputy Commissioner of Customs, Customs Division Paldi-Vidhyalaya Chambers, Paldi Char Rasta, Ahmedabad-380006.

Jt. Development Commissioner
Kandla Special Economic Zone

Sr.#	Import Material (Raw Material) Description	HS Code
1	Aluminium Plates , Slotted Plates and Sheet	76061190
2	Metal Cover	82057000
3	Thermistor	85334030
4	Varistor	85334090
5	Resonator	85334090
6	Thermal Pads	40169990
7	AC / DC Convertor	85044090
8	DC /DC Convertor	85044090
9	Diplexer	85437099
10	Vibration Motor	85011019
11	Power PCB Relay	85364100
12	Thin-film Directional Coupler	85369090
13	RF Sheild	85437099
14	Spacer	73269099
15	Stand Off	73181600
16	Common Mode Choke	85049090
17	Electronic Integrated Circuits	85423900
18	Electronic Connectors	85366990
19	Heat Shrink Sleeve (Plastic Material)	39172990

Extract of Annual Progress Report 2018-19 Certified by Chartered Accountant Showing Nil DTA Sales:-

ANNUAL PROGRESS REPORT FOR THE WORKING UNITS

PERIOD OF REPORTING : ANNUAL (APRIL-2018 TO MAR-2019)

1	Details of the Unit: (a) Name of the Unit	**e-Infochips Private Limited** (Formerly known as e-Infochips Limited)
	(b) IEC Number	**0895002248**
2	Period of Reporting	2018-2019
3	Approval number & Date	KASEZ/100%EOU/II/134/2004-05 DT 06-12-2004 KASEZ/100%EOU/II/134/2004-05/10370 DT 15-12-2006 KASEZ/100%EOU/II/113/04-05/2456 DT 06-03-2012 KASEZ/100%EOU/II/113/2004-05/15803 DT 10-03-2017
4	Item of Manufacture/service-Annual Capacity (Details of all items to be provided)	Computer Hardware (i.e Evaluation Board) **(Assembled Printed Circuit Boards)**
5	Factory Location / Address	303, Parishram Building. 5/B Rashmi Society Nr. Mithakhali Six Roads Navrangpura, Ahmedabad - 380 009 079-26404179 079-26560722
6	Telephone number Regd. Office Address / Tel / Fax No.	

33	Purchase of indigenous RM / Consumables etc during the year	135.03	0.00
34	Cumulative balance of Indigenous RM / consumables purchased during the year	0.00	0.00
34(A)	Imported RM/consumables etc not utilised beyond five years.	Quantity (Pieces)	Value In Rs..
DTA SALES		0.00	0.00
35 (a)	Sales of goods effected in DTA If any	0.00	0.00
(b)	Sales of rejects in DTA if any:	0.00	0.00
©	Sale of waste/scrap/remnant ***	0.00	0.00
(d)	Sale of product	0.00	0.00
(e)	Total		
36	DTA sale on full duty		

*** Our waste /scrap is not eligible for sale in market.
* Represents duty paid on DTA clearance & Waste.

37	Items of Manufacture/service Annual capacity AT THE END OF FINANCIAL YEAR	Quantity.
1	Assembled Printed Circuit Board	27595

(c)	External commercial borrowing		
	External commercial borrowing pending at the end of last year		
	a) Less than one years	Amount in $	
	b) More than one years		
(d)	Revenue contribution		
	Revenue contribution by units		
	(a) Excise duty on DTA sale during the financial year		N.A
	(b) Income Tax paid, if any, during the financial year		
	© State taxes, cess duties & levies (including CST paid on domestic procurement).		
	(d) Tax deducted at source in respect of employees	764814.00	
		(Rs.In Lakhs)	
(e)	Duty forgone on indigenous procurement	0.00	

For, e-Infochips Private Limited
(Formerly known as e-Infochips Limited)

Authorized Signatory
Signature with Seal of Co.
e-Infochips Private Limited
(Formerly known as e-Infochips Limited)
Nimesh Patel
Authorized Signatory
303, Parishram Building, Navrangpura,
Ahmedabad-09

Date :- 31-Aug-2019
Place :- Ahmedabad

For,C.R.Sharedalal & Co.
Chartered Accountants
Firm Reg.No.109943W

C. R. Sharedalal
Partner
Member Ship No: 002571

C. R. SHAREDALAL & CO.
CHARTERED ACCOUNTANTS
702 PARSHWANATH E-SQUARE
CORPORATE ROAD,PRAHLADNAGAR
AHMEDABAD-380015

Date :- 31-Aug-2019
Place :- Ahmedabad
UDIN :- 19002571AAAAGW7337

Extract of Annual Progress Report 2019-20 Certified by Chartered Accountant Showing Nil DTA Sales:-

ANNUAL PROGRESS REPORT FOR THE WORKING UNITS

PERIOD OF REPORTING : ANNUAL (APRIL-2019 TO MAR-2020)

1	Details of the Unit: (a) Name of the Unit	**e-Infochips Private Limited** (Formerly known as e-Infochips Limited)
	(b) IEC Number	**0895002248**
2	Period of Reporting	2019-2020
3	Approval number & Date	KASEZ/100%EOU/II/134/2004-05 DT 06-12-2004 KASEZ/100%EOU/II/134/2004-05/10370 DT 15-12-2006 KASEZ/100%EOU/II/113/04-05/2456 DT 06-03-2012 KASEZ/100%EOU/II/113/2004-05/15803 DT 10-03-2017
4	Item of Manufacture/service-Annual Capacity (Details of all items to be provided)	eValuation Module Printed Circuit Board Data Processing Unit with AV & Acessories Digital Camera and Video Camera Recorders Assembled Printed Circuit Boards Power Consumption Analyzer Electronics Device -Controlling/Monitoring Mounting Plate Assembled Cable Communicator Device
5	Factory Location / Address	303, Parishram Building, 5/B Rashmi Society Nr. Mithakhali Six Roads Navrangpura, Ahmedabad - 380 009 1st Floor A K Patel House, 5/B Rashmi Society Nr.Mithakhali Six Roads, Navrangpura, Ahmedabad - 380009

31	Cumulative balance of indigenous capital goods purchased during the year.	0.00	0.00
32	Opening balance of indigenous RM/ Consumables etc during the year	**135.03**	0.00
33	Purchase of indigenous RM / Consumables etc during the year	**0.00**	**0.00**
34	Cumulative balance of Indigenous RM / consumables purchased during the year	**135.03**	**0.00**
34(A)	**Imported RM/consumables etc not utilised beyond five years.**	0.00	0.00
DTA SALES		Quantity (Pieces)	Value In Rs..
35 (a)	Sales of goods effected in DTA if any	0.00	0.00
(b)	Sales of rejects in DTA if any:	0.00	0.00
©	Sale of waste/scrap/remnant ***	0.00	0.00
(d)	Sale of product	0.00	0.00
(e)	**Total**	**0.00**	**0.00**
36	DTA sale on full duty	0.00	0.00

*** **Our waste /scrap is not eligible for sale in market.**

* **Represents duty paid on DTA clearance & Waste.**

37	Items of Manufacture/service Annual capacity AT THE END OF FINANCIAL YEAR	**Quantity.**
1	Assembled Cables	43,082.00
2	Assembled Printed Circuit Boards	32,123.00
3	Communicator Device	5,032.00
4	Digital Camera and Video Camera Recorders	14,735.00

(c)	External commercial borrowing			
	External commercial borrowing pending at the end of last year			
	a) Less than one years		Amount in $	
	b) More than one years			
(d)	Revenue contribution			
	Revenue contribution by units			
	(a) Excise duty on DTA sale during the financial year			N.A
	(b) Income Tax paid, if any, during the financial year			
	© State taxes, cess duties & levies (including CST paid on domestic procurement).			
	(d) Tax deducted at source in respect of employees		466335.00	
			(Rs.In Lakhs)	
(e)	Duty forgone on indigenous procurement		0.00	

For, e-Infochips Private Limited
(Formerly known as e-Infochips Limited)

Authorized Signatory
Signature with Seal of Co.
e-Infochips Private Limited
(Formerly known as e-Infochips Limited)
Nimesh Patel
Authorized Signatory
1st Floor A K Patel House , 5/B Rashmi Society
Nr Mithakhali Six Roads, Navrangpura,
Ahmedabad-380009

Date :- 12-Jan-2022
Place :- Ahmedabad

For,C.R.Sharedalal & Co.
Chartered Accountants
Firm Reg.No.109943W

C. R. Sharedalal
Partner
Member Ship No: 002571

C. R. SHAREDALAL & CO.
CHARTERED ACCOUNTANTS
702 PARSHWANATH E-SQUARE
CORPORATE ROAD,PRAHLADNAGAR
AHMEDABAD-380015

UDIN :- 22002571AAAAAQ4322
Date :- 12-Jan-2022
Place :- Ahmedabad

32. I note the Revenue's contention that the Jurisdictional Office of Customs became aware of the alleged contravention only after the Audit objection was raised vide Half Margin (HM) No. SSCA/Monitoring EOU&SEZ/2020-21 dated 31.12.2020. The Noticee in his defense contended that they had approached the jurisdictional Customs authorities for Procurement Certificates by furnishing particulars of the goods proposed to be imported, including their description and other relevant details. The Procurement Certificates were issued by the competent Customs authorities, and the goods were subsequently imported through the prescribed Customs procedure. In support of their contention, the Noticee has relied upon various judicial precedents establishing that the present case involves nothing more than a procedural oversight, and that substantive fiscal benefits cannot be denied on account of mere technical or procedural lapses. The issuance of a Procurement Certificate cannot validate an import where the goods are otherwise inherently ineligible or where there is a substantive violation of the exemption notification. However, the Procurement Certificates are a highly relevant and material circumstance in the present case, particularly when the Commissioner (Appeals) has specifically directed that this aspect be considered during the re-examine the matter and taking into account that Procurement Certificates were issued by the Customs Department itself.

32.1 I note that in the present case, the goods were not procured clandestinely or without the knowledge of the Customs authorities. The particulars of the goods were furnished to the jurisdictional Customs authorities and Procurement Certificates were issued by the Department after examination of the documents submitted by the importer. When this fact is considered together with the absence of any allegation of diversion or unauthorised use, the discrepancy relating to the description of the goods in

Annexure-I cannot, by itself, be treated as establishing a substantive violation of the conditions of the exemption Notification No. 52/2003-Cus.

32.2 I find that the requirement of maintaining an approved list of goods in Annexure-I to the LUT serves an important purpose in monitoring the operations of an EOU and ensuring that duty-free goods are procured solely for authorised activities. Similarly, the requirement of furnishing periodical reports enables the jurisdictional authorities to monitor the receipt, utilisation and balance of duty-free goods effectively. However, I also note that the nature of the alleged lapse has to be determined with reference to the specific facts of the individual case. A distinction has to be made between a case where duty-free goods are procured for an activity not authorised under the EOU scheme or are subsequently diverted or misused, and a case where the goods are procured entirely for the authorised operations of the EOU but there is a discrepancy in their commercial description, nomenclature or surrounding documentation. From the available records on the file, it is also apparent that the noticee has submitted quarterly reports to Development Commissioner, as well as Jurisdictional Customs office, Paldi, Ahmedabad. For ease of reference, the relevant extract of the quarterly report for the period from April 2018 to June 2018 is reproduced below:-

CIN No. U72200GJ1988PLC010830

eInfochips
An Arrow Company

Date: 28-Sep-2018

To,
Office of the Development Commissioner
Kandla Special Economic Zone,
Ministry of Commerce & Industry,
Gandhidham,
Kutch – 370 230.

Subject: Quarterly Report for Apr'2018 to Jun'2018.

KASEZ License Files No: KASEZ/100%EOU/II/134/2004-05/ dated 6th December 2004.

KASEZ Revalidation request letter. Vide ref#: KASEZ/100EOU/II/113/2004-05/0370 dated 15/December 2006.

Green Card Ref: KASEZ/100%EOU/II/113/04-05/9901 dated 23rd March, 2005.

Dear Sir,

We are enclosing herewith Apr'2018 to Jun`2018 Quarterly Report.

Kindly send us acknowledgement.

Thanking you,

Yours Faithfully,

For e-Infochips Limited

Nimesh Patel
Authorized Signatory

31/10/18
डेस्पैच लिपीक
Despatch Clerk
सीमा शुल्क मंडल,
सिटीलय चेम्बर्स, पालडी,
अहमदाबाद-6.

Copy to: The Deputy Commissioner of Customs, Customs Division Paldi, Vidhyalaya Chambers, Paldi, Ahmedabad – 380006.

32.3 In view of the main contention before me to decide whether a nomenclature mismatch or documentation omission in Annexure-I is substantive in nature or a mere procedural infraction, I find it necessary to establish the standard legal definitions of these terms as per judicial consensus in fiscal statutes:

Substantive Character/ Mandatory Requirement: *A* ***substantive requirement*** *is a core, mandatory condition precedent embedded within the statute or notification that directly dictates eligibility. It relates to the absolute essence, objective, and policy intent of the exemption. These are conditions establishing who can claim the exemption or what goods/services qualify. It includes matching specific technical specifications, manufacturing classifications (Tariff Headings), pricing limits, or proving a strict "end-use" requirement. Substantive requirements must be* ***strictly interpreted****. If there is any ambiguity regarding eligibility, the interpretation favors the Revenue. Failure to meet a substantive condition is a fatal defect that completely dismantles the claim. Fiscal statute generally seeks to preserve the need to comply strictly with regulatory requirements that are important, especially when an assessee seeks the benefits of an exemption clause that are important. A provision is mandatory when strict, literal compliance is an absolute requirement under the law. If a mandatory requirement is violated, the action is rendered invalid or void ab initio, and the underlying legal benefit or exemption is forfeited. In exemption notifications, requirements establishing* ***core eligibility, classification, or the nature of goods are invariably deemed mandatory.***

Procedural Character / Directory Requirement: *A* ***procedural requirement*** *is an auxiliary, administrative, or ministerial condition prescribed by the statute to facilitate execution, tracking, and verification. These are the mechanics of how and when the claim must be documented. Examples include filing a specific declaration form, submitting a return within a designated time window, or registering on a specific portal before claiming the benefit. Procedural requirements are generally* ***directory rather than mandatory****. Under the Doctrine of Substantial Compliance, if the core substantive criteria are fully met, an administrative or mechanical delay/lapse in a procedural step is treated as a curable irregularity. It cannot be weaponised by tax authorities to defeat an otherwise valid substantive entitlement. A provision is directory when it serves as a guideline or an administrative aid rather than a rigid, non-negotiable rule. Directory requirements generally relate to ministerial, procedural, or technical steps. While compliance is expected, a minor deviation, delay, or technical irregularity in fulfilling a directory requirement does not automatically invalidate the entire action or deny the legal benefit.*

Doctrine of Substantial Compliance: *It is an equitable judicial tool designed to avoid acute hardship in cases where an assessee does all that can reasonably be expected of it under the law, but fails or faults in minor, tangential, or inconsequential aspects that cannot be described as the "essence" or the "substance" of the legal requirements. Like the concept of "reasonableness", the acceptance or otherwise of a plea of "substantial compliance" depends upon the facts and circumstances of each*

case and the purpose and object to be achieved and the context of the prerequisites which are essential to achieve the object and purpose of the rule or the regulation. Such a defence cannot be pleaded if a clear statutory prerequisite which effectuates the object and the purpose of the statute has not been met. Substantial compliance means "actual compliance in respect to the substance essential to every reasonable objective of the statute". Substantial compliance of an enactment is insisted, where mandatory and directory requirements are lumped together, for in such a case, if mandatory requirements are complied with, it will be proper to say that the enactment has been substantially complied with notwithstanding the noncompliance of directory requirements. In cases where substantial compliance has been found, there has been actual compliance with the statute, albeit procedurally faulty. The doctrine of substantial compliance seeks to preserve the need to comply strictly with the conditions or requirements that are important to invoke a tax or duty exemption and to forgive non-compliance for either unimportant and tangential requirements or requirements that are so confusingly or incorrectly written that an earnest effort at compliance should be accepted.

The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the Statute and the object and purpose to be achieved. In ***Tata Iron & Steel Co. Ltd. v. State of Jharkhand and Ors. (2005) 4 SCC 272***, the Hon'ble Supreme Court held that the principles regarding the construction of an exemption notification are no longer *res integra*. The apex court clarified that while the eligibility clause is given a strict meaning in terms of its literal language, once an assessee satisfies that eligibility threshold, the subsequent clauses and conditions mechanism may be construed liberally.

If exemption is available on complying with certain conditions, the conditions have to be complied with. Some of the provisions of an exemption notification may be directory in nature and some are of mandatory in nature. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption. A distinction between provisions of statute which are of substantive character and were built in with certain specific objectives of policy, on the one hand, and those which are merely procedural and technical in their nature, on the other, must be kept clearly distinguished. Where both requirements are lumped together, the Doctrine of Substantial Compliance applies, which dictates that if the core mandatory provisions are satisfied, an action cannot be invalidated merely because it is procedurally faulty. Applying these settled legal positions to the present

dispute, where the core mandatory provisions of actual export end-use are fully satisfied, an action cannot be invalidated merely because it is procedurally faulty. Because the Doctrine of Substantial Compliance preserves essential conditions while forgiving tangential or technical lapses, the Noticee's minor procedural irregularity in documentation cannot be weaponized to deny a substantive tax benefit for which they have established absolute, undeniable eligibility on the merits of actual export production.

32.4 The Noticee in their defence contended that the goods imported i.e. *EPAC Power Supply Slotted Plates CTH 76061190, Aluminium Plate – UDU Unit/ UDU Unit with Battery CTH 76061190, Sheet Metal Cover UDU CTH 82057000 and 3rd Eye Cam V4 Unit CTH 85299090* by them were already there in the list of permitted items of raw material under Letter of Agreement; however, in some cases the nomenclature of the item name have changed due to different commercial names used amongst various different region and the difference in the nomenclature of the goods imported mentioned in the Letter of Approval and Procurement Certificate is of no relevance as both the descriptions are synonymous with each other. But for this procedural discrepancy, the import of goods is otherwise in compliance with substantial conditions stipulated in the said notification and the Foreign Trade Policy. Therefore, the importer submitted that "Substantive benefit should not be taken away due to mere procedural lapses". They further submitted that the end use of said items is the same in manufacturing of the export products.

In this regard, I find that the importer has imported the following goods:

Sr. No.	Name as per List of Permitted item as per LA	Name as per procurement certificate
1	Power Supply Slotted Plates	EPAC Power supply slotted plates
2	Enclosures & Parts	Sheet Metal Cover UDC
3	Enclosures & Parts	Aluminum Plate -- UDC
4	Camera Module	3rd Eye Cam V4 Unit

I find that as per Annexure-I of the Letter of Approval, the importer was allowed to import the above said goods mentioned at column 2 of the above said table. The importer has imported the items mentioned in column 3 of the said table after obtaining the Procurement Certificate from the Customs after verification of the documents submitted by the Noticee. I further find that to obtain the Procurement Certificate they have submitted all the relevant documents and there is no any allegation in the SCN that the importer has concealed any of the information or has submitted any wrong

or misleading information to the Department for getting issuance of these Procurement Certificate, which clearly indicates that there was no any malafide intention of the Noticee to evade the Customs Duty behind this. I also find that there is no any restriction on the addition of the items in the Annexure-I of the LUT subject to the condition that the same was for the purpose of their authorized operations. Moreover, I also note that the Department has not alleged that the impugned goods were unrelated to the authorised operations of the Noticee. There is also no allegation that the goods were diverted or used for any unauthorised purpose. Therefore, it is an admitted fact that the imported goods were used in the authorized operations of the Noticee, which were further exported. I also find that though the exact name of the goods was not mentioned in the Annexure-I, however, it is also admitted fact that the goods imported by the Noticee were neither restricted nor prohibited and freely importable and there was no any wilful intention appears for not adding the same to their LUT.

32.5 I have carefully considered the judicial decisions cited by the Noticee. The broad principle emerging from the decisions relied upon is that a distinction has to be maintained between conditions which go to the root of eligibility for an exemption or benefit and procedural, technical or documentary requirements prescribed for regulating the manner in which such benefit is administered. The Noticee has, inter alia, relied upon the judgment of the Hon'ble Supreme Court in *Commissioner of Central Excise v. Hari Chand Shri Gopal*. The principle emerging from the said decision is that substantive and mandatory conditions for availing an exemption must be fulfilled. However, the decision also recognizes the distinction between substantive conditions and procedural or directory requirements. Therefore, the ratio of the said decision cannot be understood to mean that every requirement associated with an exemption notification, irrespective of its nature and purpose, is automatically a substantive condition. Relevant part of the decision is reproduced hereunder:

> *"24. The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably expected of it, but failed or faulted in some minor or inconsequent aspects which cannot be described as the "essence" or the "substance" of the requirements. Like the concept of "reasonableness", the acceptance or otherwise of a plea of "substantial compliance" depends upon the facts and circumstances of each case and the purpose and object to be achieved and the context of the prerequisites which are essential to achieve the object and purpose of the rule or the regulation.....*
>
> *Substantial compliance of an enactment is insisted, where mandatory and directory requirements are lumped together, for in such a case, if mandatory requirements are complied with, it will be proper to say that*

the enactment has been substantially complied with notwithstanding the non- compliance of directory requirements. In cases where substantial compliance has been found, there has been actual compliance with the statute, albeit procedurally faulty. The doctrine of substantial compliance seeks to preserve the need to comply strictly with the conditions or requirements that are important to invoke a tax or duty exemption and to forgive non-compliance for either unimportant and tangential requirements or requirements that are so confusingly or incorrectly written that an earnest effort at compliance should be accepted. The test for determining the applicability of the substantial compliance doctrine has been the subject of a myriad of cases and quite often, the critical question to be examined is whether the requirements relate to the "substance" or "essence" of the statute, if so, strict adherence to those requirements is a precondition to give effect to that doctrine. On the other hand, if the requirements are procedural or directory in that they are not of the "essence" of the thing to be done but are given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not strict compliance

32.6 The Noticee has also relied upon *Mangalore Chemicals & Fertilizers Ltd.*, wherein the distinction between substantive requirements and procedural or technical requirements was recognised by the Apex Court. The core principle established is that where the substantive criteria for availing a fiscal benefit stand fully satisfied, an infraction of a procedural condition of a technical nature must be condoned and should not ordinarily result in the total denial of the substantive benefit. The other decisions relied upon by the Noticee including *Swiss Glasscoat Equipment Ltd.*, *Union of India vs. Grasim Industries Ltd.*, *Om Textiles vs. CCE*, *CCE vs. India Sugars & Refineries Ltd.*, *Maxcare Laboratories Ltd.*, and *Collector vs. Kopran Chemicals Co. Ltd.*, also support this common thread that substantive benefits should not be denied merely on account of procedural or technical lapses where the fundamental requirements of the scheme stand fulfilled and where there is no diversion, fraud or misuse resulting in defeat of the object of the exemption.

32.7 I further note that the missing quarterly and annual reports, while technically an omission under the Handbook of Procedures, do not overwrite the physical reality of the raw materials being used inside the EOU. Administrative omissions of this nature represent a curable regulatory irregularity rather than an act of deliberate tax evasion. I have already held that the non-addition of the goods to Annexure-I of the LUT was a procedural lapse and, accordingly, the issue related to the non-reporting of the facts also falls into a similar category, as it does not have any impact on Government Revenue.

32.8 Therefore, in the absence of any allegation or evidence that the substantive purpose of the exemption was defeated, the mere fact that the precise commercial or technical description of the imported goods was not identically reflected in Annexure-I cannot, in the facts of the present case, by itself lead to the conclusion that the entire duty exemption was wrongly availed. The discrepancy relating to the description of the goods in Annexure-I and the alleged reporting lapses cannot, in the facts of the present case, be treated as establishing a violation of the substantive conditions of the exemption, particularly when the fundamental purpose of the EOU scheme has not been alleged to have been defeated. The Procurement Certificates issued by the jurisdictional Customs authorities are also a relevant circumstance. Though issuance of such certificates cannot cure a substantive violation of the conditions of exemption, the fact remains that the impugned goods were procured through the prescribed Customs mechanism and not clandestinely or without disclosure to the jurisdictional authorities. Accordingly, I find that the discrepancy in Annexure-I is in the nature of a procedural or documentary lapse and cannot result in denial of the substantive benefit under Notification No. 52/2003-Customs. Therefore, in view of the above discussions and judicial precedents, I hold that the discrepancy between the description of the impugned goods and the entries in Annexure-I to the LUT, as well as the alleged reporting lapses, are procedural and documentary in nature and do not constitute a substantive violation of the conditions of the exemption notification.

33. In view of the foregoing findings and the judicial precedents discussed above, I hold that where the essential and substantive requirements for availing an exemption stand fulfilled, the benefit cannot be denied merely on account of procedural or technical lapses, unless such lapses result in the violation of a fundamental condition or defeat the object of the scheme. I hold that the alleged discrepancies do not constitute a substantive violation warranting denial of the benefit of Notification No. 52/2003-Customs. Accordingly, I hold that the proposal for recovery of Customs duty, recovery of interest, confiscation of the impugned goods under Section 111(o), imposition of redemption fine, imposition of penalty under Section 112 of the Customs Act, 1962, and invocation of the B-17 Bond are not sustainable and are liable to be dropped.

34. In view of the foregoing discussions and findings, I pass the following Order:

ORDER

i. I drop the proceedings initiated against M/s E- Infochips Pvt. Ltd. in the show cause notice No. VIII/10-61/EPC-Paldi/O&A/HQ/2023-24 dated 08.09.2023.

35. 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.

36. The Show Cause Notice VIII/10-61/EPC-Paldi/O&A/HQ/2023-24 dated 08.09.2023 is disposed of in above terms.

Digitally signed by
SHREE RAM VISHNOI
Date: 17-11-2026
13:34:02

(Shree Ram Vishnoi)
Additional Commissioner
Customs, Ahmedabad

DIN: **20261171MN0000B49740**
F.No. VIII/10-61/EPC-Paldi/O&A/HQ/2023-24
Date:17.11.2026

To,

M/s. E- Infochips Pvt. Ltd. (100% EOU),
303, Parishram Building, Mithakhali Six Road,
Navrangpura, Ahmedabad – 380006

Copy to:

1. The Deputy/Assistant Commissioner, Customs Division, Paldi, Ahmedabad-380007
2. The Joint Development Commissioner, K.A.S.E.Z., Kandla-370201
3. The Asstt. Commissioner (R.R.A.), Customs Hq., A'bad
4. The Asstt. Commissioner (Systems), Customs, Ahmedabad for uploading on website
5. Guard File