सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद
OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,
चौथी मंज़िल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड़ Ishwar Bhuvan Road
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
दूरभाष क्रमांक Tel. No. 079-26589281

DIN - 20250971MN000000E35A

क	फ़ाइल संख्या FILE NO.	S/49-100/CUS/JMN/23-24
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	JMN-CUSTM-000-APP-317-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	25.09.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	17/ADC/2023-24, dated 26.09.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	25.09.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Green Gold Global Resources Pvt. Ltd., 612 Shekhar Central, 4-5, Manromaganj, A.B. Road, Indore – 452001 (M.P.).

1	**यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.**
	This copy is granted free of cost for the private use of the person to whom it is issued.

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

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

Order in Appeal

The present appeal has been filed by M/s Green Gold Global Resources Pvt. Ltd. [erstwhile M/s Green Gold Global Resources LLP], having its Branch and Principal Place of Business at 2nd Floor, Office No. 212, Luxuria Trade Hub, Near V R Mall, Dumas Road (New Magdalla), Surat – 394518, and Registered Office at 612, Shekhar Central, 4-5, Manormaganj, A. B. Road, INDORE – 452001 (M.P.) (hereinafter referred to as the "Appellant"), in terms of Section 128 of the Customs Act, 1962, challenging Order-in-Original No. 17/Additional Commissioner/2023-24, dated 26.09.2023 (hereinafter referred to as the "impugned order") passed by the Additional Commissioner, Customs (Preventive), Jamnagar (hereinafter referred to as the "adjudicating authority").

2. Facts of the case in brief are that the Appellant had imported Non-Coking Coal of Indonesian origin at Navlakhi Port during July 2018 per vessel MV VITA HARMONY and filed Bill of Entry No. 7242843, dated 17.07.2018 for clearance of 25,000 MT of coal, claiming the benefit of Sr. No. 207(1) of Notification No. 46/2011 – Customs, dated 01.06.2011, issued in terms of the Customs (Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India) Rules, 2009 [hereinafter referred to as 'AIFTA Rules'], notified under Notification No. 189/2009 - Customs (N.T.), dated 31.12.2009, by furnishing the prescribed Form A1 Certificate of Origin.

2.1 The subject Bill of Entry No. 7242843, dated 17.07.2018, was provisionally assessed at a value of Rs. 10,79,17,297/-, and a duty amount of Rs. 1,53,95,865/- was paid vide Challan No. 2023407998, dated 18.07.2018. The order for clearance of the goods was given on 31.07.2018. The subject Bill of Entry was finally assessed on 07.08.2019 based on a unit value of USD 46.77 PMT FOB for GCV 4410 Kcal/Kg and on the contracted unit price of USD 60.77 CNF PMT, determining the total assessable value as Rs. 10,84,17,297/-, and the duty payable was calculated at Rs. 1,54,20,865/- after availment of preferential benefit under Sl. No. 207(1) of Notification No. 46/2011 – Customs, dated 01.06.2011. Thereafter, the Appellant paid the balance duty amount of Rs. 25,000/- along with interest vide Challan No. 2023083601, dated 16.10.2019.

2.2 Subsequently, the Additional Commissioner, New Customs House, Panambur, Mangaluru, on 20.03.2020, conveyed an Investigation Report vide letter C. No. 50/2019 SIIB, dated 16.03.2020, informing that the Appellant had imported Indonesian Coal (Non-Coking) per vessel MV VITA HARMONY with different GCV parameters at New Mangalore Port (NMP) during July 2018, and clearances were made under Bills of Entry No. 7188098, dated 12.07.2018, and No. 7188229, dated 12.07.2018, for 11,000 MT and 17,850 MT respectively. It was further informed that the Appellant had actually imported three parcels of steam coal, of which two parcels with GCV 4900 Kcal/Kg (11,000 MT) and GCV 4400 Kcal/Kg (17,850 MT) were discharged at New Mangalore Port, and one parcel with GCV 4400 Kcal/Kg (25,000 MT) was discharged at Navlakhi Port per vessel MV VITA HARMONY. The Appellant had produced Form A1 Certificate (Form of Certificate of Origin prescribed under AIFTA Rules) bearing No. 0000827/KBL/2018, dated 11.07.2018 at Navlakhi Port, from which it was observed that the unit FOB price worked out to be USD 44 PMT at Navlakhi Port, as against a unit FOB price of USD 58 PMT for the same GCV (4400) declared in the Form A1 Certificate submitted at New Mangalore Port. It appeared that two different certificates were on record for two consignments with the same GCV 4400 Kcal/Kg shipped in the same vessel for discharge at (1) New Mangalore Port and (2) Navlakhi Port. The certificates were issued on different dates i.e., 06.07.2018 for New Mangalore Port and 11.07.2018 for Navlakhi Port. It also appeared that although the shipper for both consignments was the same (Pt. Energy Lintas Samudra, Indonesia), and the exporter was the same (A.T. Global Resources Pte Ltd., Singapore), the unit value of coal PMT differed in the Form A1 Certificates for the consignments discharged at New Mangalore Port and Navlakhi Port. As per information from New Customs House, Panambur, Mangaluru, out of the total contracted quantity of 40,000 MT (+/- 10%) of steam coal with GCV 4400 Kcal/Kg procured under Sale and Purchase Contract No. ATGRPL/GGGRLLP – 005, dated 24.05.2018, a parcel of 17,850 MT was imported at New Mangalore Port under Bill of Entry No. 7188229, dated 12.07.2018, wherein the unit FOB value of USD 58 PMT was shown in Form A1 for steam coal of the same GCV 4410 Kcal/Kg, which was more than the unit FOB value of USD 44 PMT declared under Bill of Entry No. 7242843, dated 17.07.2018 under the same contract.

2.3 Statement of Shri Pawan Patidar, General Manager, was recorded under Section 108 of the Customs Act, 1962 on 17.08.2020. He, inter alia, stated that the documents produced at Mangalore Port by them were not in order, and therefore they paid the Customs Duty on coal imported at Mangalore without availing the benefit of Notification No. 46/2011 – Cus, dated 01.06.2011. On being asked about the part consignment of 42,850 MT Indonesian Coal having GCV 4400 discharged at Navlakhi Port, where the benefit of the said notification was availed, he stated that they did not wish to enter into litigation with the department and were willing to pay the appropriate customs duty along with applicable interest for the exemption availed for coal imported vide BE No. 7242843, dated 17.07.2018.

2.3.1 The Appellant subsequently, vide Challan No. 78/2020-21, dated 22.09.2020/24.09.2020, paid the differential duty amount of Rs. 31,30,549/- along with interest of Rs. 10,51,093/-. Further, they also paid a penalty amount of Rs. 4,69,582/- on the differential duty vide Challan No. F-03/2022-23, dated 12.04.2022.

2.4 Subsequently, the statement of Shri Sanjay Kumar Jain, Senior Manager (Marketing), representative of the Appellant, was recorded on 12.04.2022 under Section 108 of the Customs Act, 1962, wherein he, inter alia, stated that the adjusted unit price of USD 46.77 PMT as per Invoice ATGRPL/GGGRLLP-CI/005, dated 04.07.2018, indicates the cost of the material in FOB terms; that the base price agreed upon by the Appellant with the supplier was USD 46.67 PMT FOB for Steam Coal of GCV 4400 Kcal/kg; that since the actual GCV was found to be 4410 Kcal/kg based on testing and sampling, the price was revised upwards to USD 46.77 PMT; that the difference between this cost price and the CNF price of USD 60.77 PMT is USD 14, which corresponds to freight, as the supply was made on CNF terms. He agreed that the Unit Price FOB shown in the Certificate of Origin is USD 58 PMT for New Mangalore Port and, since the 17,850 MT quantity discharged there and the 25,000 MT quantity discharged at Navlakhi Port were of similar nature, imported in the same vessel MV VITA HARMONY and from the same supplier, the FOB unit price of USD 58 PMT should have been applicable to the Navlakhi consignment. He confirmed their willingness to pay duty liability with interest for the differential value, in line with the value adopted for the 17,850 MT import at New Mangalore Port.

2.5 It appeared that the COO submitted for the Navlakhi Port import was inconsistent with the one submitted at New Mangalore Port for an identical consignment. Accordingly, the department considered the lower declared value to be misdeclared and proposed to reject the transaction value under Rule 12 of the Customs Valuation Rules, 2007, and re-determine the value under Rule 9 using the FOB unit value of USD 58 PMT. The assessable value was re-determined at Rs. 12,82,15,265/-, as against Rs. 10,84,17,297/-, resulting in a short levy of Rs. 46,92,114/-. It was further alleged that the Appellant failed to make a truthful declaration under Sections 46(4) and 46(4A) of the Customs Act, 1962, making the goods liable for confiscation under Sections 111(m) and 111(o), and penal action under Sections 112(a), 114A, and 114AA.

2.6 A Show Cause Notice No. ADC - 16/2022-23, dated 31.03.2023, with Corrigendum dated 01.09.2023, was issued proposing to:

(i) Deny the benefit under Sr. No. 207(1) of Notification No. 46/2011 – Cus, dated 01.06.2011 for BE No. 7242843, dated 17.07.2018;

(ii) Reject the assessed value of Rs. 10,84,17,297/- under Rule 12 and re-determine it as Rs. 12,82,15,625/- under Rule 9 read with Rule 3(4), Rule 10(2), and Section 14;

(iii) Demand differential duty of Rs. 46,92,114/- under Section 28(4) with interest under Section 28AA;

(iv) Confiscate 25,000 MT of coal valued at Rs. 12,82,15,265/- under Sections 111(m) and 111(o), read with Section 124;

(v) Impose penalty under Sections 112(a), 114A, and 114AA.

3. The adjudicating authority, vide the impugned order, confirmed the proposals as follows:

(i) Denied the benefit under Sr. No. 207(1) of Notification No. 46/2011 – Cus;

(ii) Rejected the value of Rs. 10,84,17,297/- and re-determined it to Rs. 12,82,15,625/- under Rule 9 and Section 14;

(iii) Confirmed demand of Rs. 46,92,114/- under Section 28(4), and appropriated Rs. 31,30,549/- already paid;

(iv) Ordered recovery of interest under Section 28AA and appropriated Rs. 10,51,093/- already paid;

(v) Imposed penalty of Rs. 46,92,114/- plus an amount equal to interest under Section 114A, and appropriated Rs. 4,69,582/- already paid;

(vi) Confiscated 25,000 MT of coal under Sections 111(m) and 111(o), but did not impose redemption fine under Section 125 as the goods were not available;

(vii) Did not impose penalty under Section 112, since penalty under Section 114A was already imposed;

(viii) Imposed penalty of Rs. 10,00,000/- under Section 114AA.

4. Being aggrieved with the impugned order passed by the adjudicating authority, the Appellant has preferred the present Appeal contending as under.

4.1. The transaction value of the imported goods ought to be accepted as it is in consonance with Section 14 of the Act read with Rules. The adjudicating authority had failed to appreciate that the contract value entered between the supplier and Appellant was USD 46.77 FOB + USD 14.00 Freight. Further, the department accepted the FOB value of USD 58 for coal of GCV 4912 and assessed Bill of Entry No. 7188088, dated 12.07.2018 and cleared the goods. Therefore, the price of GCV 4912 and GCV 4410 Kcal/KG cannot be the same. It ought to be appreciated that it is commercially improbable that the import value of coal of GCV 4912 and GCV 4410 is equal.

4.2. The invoice price is based on the Sale and Purchase Contract between the Appellant and the supplier wherein they had agreed upon the price as USD 46.67 FOB + USD 14.00 Freight for coal of 4400 GCV. Rule 9 clearly provides that the value so determined shall not exceed the price at which such or like goods are ordinarily sold or offered for sale. However, in this case, the value adopted by the proper officer is exorbitant and is equal to the coal of GCV 4900 accepted in respect of the Bill of Entry No. 7188088, dated 12.07.2018 filed on the same day discharged from the same ship by the Appellant. This is the clear evidence to prove that the proposal of the proper officer is against the Rule 9 of the CVR 2007.

4.3. The Respondent erred in solely relying upon the statements of Shri Pawan Patidar and Shri Sanjay Kumar Jain to the extent that they admitted the unit price of USD 58 for New Mangalore Port and accepted the same price for import of steam coal discharged at Navlakhi Port. It was ought to be appreciated that the contract price of the goods clearly reveals the fact the goods were supplied at USD 46.77 FOB plus USD 14.00 Freight. In such circumstances, when the documents more particularly, the agreement entered between the supplier and the Appellant clearly specifies the contract price for the imported goods and in such circumstances the statements of the authorized signatory would not have any evidentiary value.

4.3.1. Further, the Respondent erred in relying upon the statement of Shri Pawan Patidar to the extent that he had agreed to not litigate the matter and agreed for payment of appropriate duty along with interest. The adjudicating authority ought to have appreciated the fact that Mr. Patidar has never agreed to the alleged under-valuation of the imported coal. Mere submission of the authorized representative to the extent of not litigating the matter will not prejudice the rights of the Appellant to not to contest the matter when the same is provided under the provisions of law. In the present case, the Appellant has rightly paid the duty on imported goods then in such circumstances, the Respondent cannot expect the Appellant to bind by the statement of Mr. Patidar and not to contest the matter on its own merits.

4.3.2. The adjudicating authority erred in appreciating the statement of Shri Sanjay Kumar Jain, Senior Manager (Marketing) of the Appellant wherein he admitted that the unit price shown in certificate of origin is USD 58 per M.T. FOB for new Mangalore Port. The Respondent erred in not appreciating the statement fully and partly read and interpreted the statement of Mr. Jain. It is submitted that Mr. Jain clarified that the base price agreed by the Appellant was USD 46.67 per M.T. FOB for steam coal of 4400 GCV. Since the actual GCV of material was found to be 4410 GCV based on testing and sampling, the price was accordingly revised upwards to USD 46.77 per M. T. It was also clarified that the difference between the cost price of USD 46.77 per M.T. FOB and the unit price of USD 60.77 per M.T. CNF is USD 14 per M.T. which was corresponding to freight since, the supply is actually made on CNF terms. The Respondent failed to appreciate that Mr. Jain categorically stated that the difference of USD 14 per M. T. corresponds to freight amount for carriage of cargo from Indonesian Port to New Mangalore Port and Navlakhi Port in the vessel of M.V. Vita Harmony.

4.4. In the present case, the value under Rule 3 of the Rules is available and ascertainable, which in fact has been accepted by the proper officer at the time of final assessment under Section 17 of the Act, then the question of resorting to the provisions of Rule 5 to Rule 9 of the Rules does not apply at all. The Respondent failed to appreciate that the value is to be determined based on the transaction value, which is defined in Rule 3 of the Rules to mean the price actually paid or payable for the goods. This is also the underlying principle of Section 14 of the Act, which provides that the value shall be the price on which such or like goods are sold or either for sale for delivery at the time and place of importation in course of event either buyer and seller have no interest in the business of each other and the price in the sale consideration. The Respondent erred in not considering the fact that there is no reference to the mode of excess payments, the manner in which it was made, the person through whom the payments were sent etc. In the complete absence of any evidence or material on the above front, it cannot be alleged that the Appellant has undervalued the imported goods imported.

4.4.1. Even assuming without admitting, for the sake of arguments only that if they had undervalued the goods, in that event in terms of the Rules, once the transaction value of the goods is discarded, the determination of value is required to be done by sequentially following Rules 4 to 9 of the Rules. Rule 4 and 5 of the Rules mandate, that the value of the imported goods shall be the transaction value of identical / similar goods sold for export to India and imported at or about the same time as the goods being valued. In this connection, it is submitted that the department has not considered the value of goods for the identical/similar goods of GCV 4410 rather considering the value of goods of GCV 4490 imported at Mangalore port, which is not permissible. Reliance is also placed on the decision of Hon'ble Supreme Court in the case of Commissioner of Customs, Calcutta v/s South India Television (P) Ltd. reported in 2007 (214) ELT 3 (SC), wherein the Hon'ble Supreme Court inter alia held, that the onus to prove undervaluation was on the Department by evidence or information about comparable imports and if the charge was not supported by such evidence/information, the benefit of doubt was to go to the importer. Further, it was held that the burden was on the Department to prove that the invoice price was incorrect.

4.4.2. The adjudicating authority failed to appreciate that the price mentioned in the agreement as well as in the invoice is the sole consideration for valuing the imported goods. Further, it is obligation of the Revenue department to adduce cogent and tangible evidence to prove the alleged undervaluation on the part of the Appellant. It is trite law that undervaluation cannot be established unless remittance of differential amount is proved. In the present case, the Revenue department admittedly does not allege that nothing over and above the invoice price was paid to the suppliers. Reliance is placed on the following decisions in support of the aforesaid contention:

a) Reshmi Petrochem Ltd v/s Commissioner 2009 (237) ELT 307 (Tri)

b) Dee Kay Exports v/s Commissioner 2012 (285) ELT 109 (Tri)

c) Shah and Shantibhai v/s Commissioner 2004 (175) ELT 718 (Tri)

4.4.3. It is an obligation upon the Revenue to reject the value declared by the Appellant before enhancing the value in terms of Customs Valuation Rules,

2007. It ought to be appreciated that value declared by the Appellant cannot be rejected in the following three circumstances:

(a) Value declared in the invoice is the sole consideration;

(b) Buyer and seller are not related persons;

(c) Price declared in the import documents at the relevant time and place of importation;

The adjudicating authority ought to have appreciated that the Revenue department has not alleged any of the above-mentioned essentials in the present case and therefore, the declared value of the Appellant cannot be rejected.

4.5. The Respondent failed to appreciate that the entire case booked against the Appellant is purely on assumption and presumption basis. They place reliance on following case laws:

a. Vijay Leather Stores Vs. C.C. reported in 2007 (215) ELT 304(T)
b. Adani Exports Ltd. Vs. C.C. reported in 1999 (111) ELT 143) (T) maintained by the Hon'ble Supreme Court in 2004 (167) ELT 131 (SC);
c. C.C. Vs. Blue Star International reported in 1996 (81) ELT 287(T)

4.6. The Respondent failed to appreciate that price is the sole consideration and there is no payment over and above the invoice price paid by the Appellant to its supplier. Therefore, the price declared by the Appellant is required to be considered as valid price in terms of Customs Valuation Rules, 2007. Reliance is placed upon the following decisions:

i. Eicher Tractors Limited v/s Commissioner - [2000 (122) ELT 322]
ii. Commissioner of C.Ex., Rajkot v/s Jai Bharat Steel Industry - [2005 (192) ELT 792]
iii. Commissioner of Customs v/s Bureau Veritas [2005 (181) ELT 3 (SC)]
iv. Bansal Industries v/s Commissioner of Customs, Chennai - [2002 (147) ELT 967]

4.7. In the present case, the oral statements are not supported by any such documentary evidence. In fact, the documentary evidence clearly laid down the

position that the amount paid to supplier for supply of goods was USD 44.67 per M.T. FOB plus USD 14 was paid towards the freight amount. In such circumstances, when the documentary evidence is in favor of the Appellant then the oral evidences are not required to be looked into as it is a settled position of law that documentary evidence would prevail over oral evidence. Further, in case of conflict between the documents and the statements of witnesses, the fact emerging from the documents shall have higher evidentiary value. Reliance is placed on the following decisions:

a) Philip Fernandes v/s Commissioner, 2002 (146) ELT 180

b) R.P Industries v/s Collector 1996 (82) E-T 129

c) Commissioner v/s Latex Chemicals 2005 (181) ELT 138 (Tri. - Del)

4.8. The adjudicating authority erred in relying upon the decisions passed in the case of M/S. Sangeeta Metals India reported in 2015 (315) ELT 74 (Tri. Mum.) wherein it was held that confessional statement given before a gazette officer of customs under section 108 of the customs act is a valid piece of evidence under Indian Evidence Act, 1881. It is to be appreciated that the ratio laid down in the case of Sangeeta Metals (supra) is not applicable in the present case as the facts and circumstances are totally distinguishable, more particularly, in the present case the documentary evidence clearly supports the position of the Appellant. Further, the benefit of Notification No. 46/2011-Cus dated 01.06.2011 cannot be denied as the Appellant has produced valid Country of Origin (COO) Certificate issued by the issuing authority of the exporting country. In the present case, it is not in dispute that the imported goods were not backed by a valid COO issued by proper authority in terms of the provisions of Rules of origin. The said COO has not been revoked or cancelled and therefore the benefit of exemption notification cannot be denied to the Appellant.

4.9. The adjudicating authority erred in holding that submission of certificate of origin shall not absolve the responsibility to exercise reasonable care and the onus for eligibility of exemption is cast on the importer to furnish certificate of origin that is in compliance and consonance with the provisions of AIFTA Rules. The Respondent failed to appreciate that under Rules of Origin and Notification No.46/2011, there is no power with the Customs authorities to reject the COO

given by the concerned contracting State. Therefore, a COO issued by the designated authority cannot be dishonored unless cancelled by the same authority. It is submitted that there is no provision in the entire legal framework to recall or cancel the preferential tariff treatment once it is granted to the importer. The Appellant submits that in case of reasonable doubt as to the authenticity or accuracy of the document, the customs authority may suspend provision of preferential tariff treatment in terms of Article 16(a)(iii) of the DOGPTA Rules, 2009. Further, in terms of Article 17(e), when the process of verification is being undertaken, sub-paragraph (a)(iii) of paragraph 16 shall be applicable. In other words, the only power casted upon the customs authority is to suspend preferential tariff treatment and not to cancel or withdraw the benefit granted to the importer. Further, the Respondent erred in not appreciating the fact that on reading of the exemption notification it is clear that to avail the benefit of exemption notification only the following conditions have to be fulfilled:

i. Goods should be specified in column 3 of the table;
ii. the importer proves to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the goods in respect of which the benefit of exemption is claimed are of the origin of an ASEAN country.

In the present case it is undisputed that the goods imported are covered under column 3 of the table. The other condition required to be fulfilled is that the goods are of Indonesian origin (ASEAN country).

4.10. The adjudicating authority failed to appreciate that once an importer produces a valid COO issued by the issuing authority of the exporting country, the same is a proof enough to show that the goods fulfil the provisions of Rules of origin. It is also submitted that it is not open for the department to now reject the claim for preferential treatment, which was earlier granted after proper verification, particularly when the COO certifies that the goods are of Indonesian Origin and the said COO remains valid till date. Further, COO must be treated as a proof of fulfilment of the conditions prescribed under the Notification granting preferential tariff concession and that the department cannot go behind the said COO and deny the benefit of preferential concession. The Respondent erred in not appreciating the fact that AIFTA and the Rules

made there-under does not contemplate questioning the certificate after the import is over and thereby retrospectively invalidating the preferential treatment.

4.11. The adjudicating authority erred in not appreciating that Rule 13 of the Rules of Origin states that any claim of eligibility shall be accepted which is supported by a COO as per the specimen attached to the Customs Tariff Origin Rules. It has, however, to be issued by the Government authorities (Issuing Authority) of the exporting party and notified to the other parties in accordance with the Operation Certification Procedure as set out in Annexure-III thereof. It is submitted that the Appellant had submitted COO and the entire set of documents which established the genuineness of the Importer goods and the declarations on the invoice and supporting documents with the Bill of Entry which has also substantiated that the goods of Indonesian Origin have been imported from Indonesia only. It is also relevant that the COO also bears a specific certification from the concerned statutory authorities in Indonesian to the effect that the declaration made by the exporter that the goods are of Indonesian Origin is correct. In view of the aforesaid, having fulfilled the conditions of the exemption notification, the Appellant had rightly claimed the benefit of preferential rate of duty and the same cannot be denied to them.

4.12. The adjudicating authority erred in not appreciating that the BOE No. 7242843, dated 17.07.2018 were never amended or challenged by the Revenue challenging the under-valuation. It is submitted that the Show Cause Notice proposing to change the value of goods without challenging the assessment order is itself bad in law and not sustainable. The captioned Show Cause Notice issued to the Appellant merely demands duty under Section 28 of the Customs Act, 1962 without even stating that the said order of assessment is incorrect. In other words, while issuing the said Show Cause Notice also the department has not questioned the validity and/or the correctness of the said orders of assessment. As such the present case is entirely covered by the decision of the Hon'ble Supreme Court in the aforesaid reference paragraph as well as by the decision of the Hon'ble Tribunal in case of Madhus Garage Equipment vs Commissioner 2006(198) ELT 388 & Commissioner -vs- Videocon

Appliances 2009 (235) ELT 513 and, therefore, the demand of duty cannot be sustained.

4.13. The adjudicating authority ought to have appreciated that inasmuch as the value declared in the bill of entry has been correctly stated and reflects the transaction value of the goods in question in terms of Section 14 of the said Act read with Rule 4 of the said Rules, the charge of under valuation is unsustainable and accordingly the provisions of Section 111(m) of the said Act cannot be invoked and/or pressed for confiscation of the goods. Reliance is placed upon the decision of M/S. Priya Blue Industries Limited V/s. Commissioner of Customs (Prev.) 12004 (172) ELT 145 (SC)I which was a case related to refund. The same analogy is applicable for demanding Basic Customs Duty. They further rely upon the case law of ITC Limited v. Commissioner of Central Excise, Kolkata IV in Civil Appeal Nos. 293-294 of 2009 wherein the Hon'ble Supreme Court vide Order dated 18.09.2019, along with other bunch of appeals has again reiterated the proposition of law that once the assessment order has been passed by the competent authority, the refund of the same cannot be sought until the same has been modified or altered taking the recourse of the appropriate proceedings.

4.13.1. The adjudicating authority erred in holding that the department has an option of either challenging the assessment in appeal or in the alternate to demand duty in terms of Section 28 of the Act. It was also held that there is no restriction on the option of the department either to avail option under section 129D or under Section 28 of the act as both these sections are independent of each other. It is submitted that the said interpretation of the department will make section 129D (2) redundant as the department would never challenge the bill of entry and simultaneously raise the demand under Section 28 of the Act. In the present case, the bill of entry was finally assessed by the proper officer and there was no short levy at the time of assessment and therefore, any duty can be demanded only when the assessment order is challenged before the appropriate forum.

4.14. The adjudicating authority erred in not appreciating that the Show Cause Notice was issued on 31.03.2023 proposing to recover duty of goods

which were imported in July, 2018. Hence, the demand beyond normal period is barred by limitation under Section 28 (1) of the Act. It is further submitted that the SCN has been issued under proviso to Section 28 of the Act and the same can be invoked only in cases where duty has been short levied by reason of collusion or any willful misstatement or suppression of facts by the importer. In view of the aforesaid submissions, it is clear that the Appellant has not undervalued the goods imported by them and therefore, the question of invocation of extended period of limitation does not arise. The Respondent ought to have appreciated that while presenting the Bills of Entry, the Appellant made true and correct declarations and had in support thereof produced proper and correct invoices relating to the imported goods and therefore, larger period is not invokable. In the present case, the Appellant has not suppressed any information from the department and disclosed all the information while filling the Bill of Entry. The Respondent erred in not appreciating that the extended period of limitation can be invoked only on those grounds which are specifically provided under the Statute. If the department seeks to invoke the extended period of limitation on grounds other than those mentioned in the Statute, then such an invocation of extended period of limitation is bad in law. They rely upon the case law of Anand NishiKawa Co. Ltd. vs. CC; Meerut 12005 (188) E.L.T. 149(SC)1, the case law of M/s. Uniworth Textiles Ltd. Vs. CCE, Raipur reported in 2013 (288) E.L.T. 161 (S.C.) and the case law of Aban Lloyd Chiles Offshore Limited and Ors. v. Commissioner of Customs, Maharashtra - 2006 (200) ELT 370 (SC).

4.15 The adjudicating authority failed to appreciate that admittedly the Show Cause Notice was issued beyond the normal period of limitation of two years as prescribed under Section 28 of the Act. In view of the submissions made above, extended period of limitation could not have been invoked and therefore the whole foundation of the Show Cause Notice falls, and no demand can be confirmed against the Appellant. Consequently, also the penalty proposed under Section 114A of the Act cannot be imposed because identical ingredients as under Section 28(4) of the Act are required to be present to impose penalty under Section 114 A of the Act. Without prejudice to the aforesaid and in any event, the Appellant submits that the extended period of limitation cannot be

invoked for Bills of Entry that are assessed provisionally and Bills of Entry that have been finally assessed, after enhancement of value thereof.

4.16. The adjudicating authority ought to have appreciated that the goods are not liable for confiscation under the provisions of Section 111 of the Act as there is no condition of the exemption notification that was not fulfilled by the Appellant. Further, the Appellant submitted a valid COO which is yet not revoked and cancelled by the Indonesian Government and therefore, it cannot be said that there was violation of any condition by the Appellant at the time of import because in terms of the Notification all the conditions have been fulfilled. Without prejudice to the aforesaid, it is submitted that there is no evidence on record to show that the Appellant deliberately violated the provisions of law and under-valued the goods. The Revenue has not placed any facts to show that there was any malafide intention on the part of the Appellant in alleged undervaluation of the goods. In absence of any positive evidence on record, Penalty ought not to have been imposed on the Appellant.

4.17. It is submitted that in the present case, there is no such suppression etc. that has resulted in any short payment of duty. Therefore, penalty under Section 114A of the Customs Act is not imposable. Reliance in this regard is placed on Essar Oil Ltd. vs. Commissioner of Customs (Prev.), Jamnagar [2006 (197) ELT 450 (Tri-Mum.)]. It is settled law, inter alia, by the judgments of the Hon'ble Supreme Court in Hindustan Steel Ltd. vs. State of Orissa reported in 1978 (2) ELT 159, Akbar Badruddin Jiwani vs. Collector of Customs reported in 1990 (47) ELT 161 (SC), that any technical or venial breach of the law without intention to evade duty does not invite the levy of penalty. They further relied upon the case law of Ivica Cosmai v. Commissioner of Customs, 2013 (291) E.L.T. 305 (Tri. - Ahmd.); Commissioner of Central Excise, Customs and Service Tax vs. Jyoti Structures Ltd., MANU/CM/0081/2009, and Sri Chidzhavadzhe, Ancheril Agencies v. The Commissioner of Customs, 2008 (222) ELT 306 (Tri-Bang).

4.17.1. In the present facts, the duty demand is itself not sustainable and there is no intent on the part of the Appellant to evade the payment of Customs duty in any manner. Hence, no penalty can be imposed in terms of Section 114A of the Act. Reliance in this regard is placed upon the following cases:

- Tamil Nadu Housing Board v. CCE, Madras, 1994 (74) E.L.T. 9 (SC); and
- Colo Plast Vs. CCE, Vadodara, 1995 (75) E.L.T. 369 (Tribunal).

4.18. The adjudicating authority erred in imposing penalty equal to the applicable interest under Section 28AA on the duty demanded and confirmed on the Appellant under Section 114A of the Act. It is submitted that penalty cannot be imposed on the interest amount and the same can only be imposed on duty amount and therefore, imposing penalty on the interest amount is clearly beyond the provisions of law.

4.19. The adjudicating authority failed to appreciate that penalty under Section 114AA of the Customs Act is not imposable in the facts of present case. On plain reading of Section 114AA of the Customs Act, it is clear that there are two essential ingredients that needs to be fulfilled for imposition of penalty under the aforesaid section, a) knowledge and b) that the material should be false. In the instant case, as submitted above, there has been no infraction of the law on the part of the Appellant to defraud the exchequer. It is also submitted that in the event there has been any infraction, the same is completely unintended and bona fide and without any intent to evade duty. Therefore, there is no question that the Appellant knowingly taking any undue benefit. Further, the Appellant has not made any false declaration at any point in time. Further, it is submitted that penalty under Section 114AA of the Customs Act can be imposed only on natural person and it cannot be imposed on an artificial person or company because the goods are handled by natural living person and not by an artificial entity and declaration can only be made or caused to be made by a natural person. Hence, it is submitted that penalty under Section 114AA of the Customs Act cannot be imposed on the Appellant for this reason as well. Reliance in this regard is placed on the decision of Hon'ble Tribunal in the case

of Apple Sponge and Power Ltd. v. Commissioner of Service Tax [2018 (362) E.L.T 894 (Tri-Mum)] wherein the Hon'ble Tribunal in the context of Rule 26 of the Central Excise Rules (*pari materia* with Section 114AA of the Act).

5. A Copy of the appeal memorandum were sent to the adjudicating authority for comments. However, no response has been received.

6. Personal hearing in the matter was held on 23.05.2025. Shri Amit Ladha, Advocate appeared for hearing on behalf of the Appellant. He re-iterated the submissions made in appeal memeorandum.

7. I have gone through the facts of the case, the impugned order and the submissions made by the Appellant, both oral as well as written. The issue for consideration in the present appeal is whether the Adjudicating Authority was justified in rejecting the declared assessable value of ₹10,84,17,297/- for 25,000 MT of steam coal and re-determining it as ₹12,82,15,265.20/- under Rule 9 of the Customs Valuation Rules, 2007, denying the benefit of Notification No. 46/2011–Cus dated 01.06.2011, and confirming the differential duty demand of ₹46,92,114/- under Section 28(4) along with interest under Section 28AA and penalties under Sections 114A and 114AA of the Customs Act, 1962.

7.1 It is observed that the core issue in dispute between the Department and the Appellant pertains to the rejection of the declared assessable value and the consequent denial of benefit under Notification No. 46/2011–Cus dated 01.06.2011, owing to the declaration of two different FOB prices by the Appellant in the Certificates of Origin (Form-AI) submitted at two different ports, namely New Mangalore Port and Navlakhi Port, for coal of the same grade (4410 Kcal/kg) imported from the same supplier, under the same contractual terms, and shipped via the same vessel. I have carefully examined the submissions and contentions raised by the Appellant at length and in detail. Upon doing so, I find that the Appellant has completely failed to address or justify the variation in the FOB prices declared in the respective Certificates of Origin which forms the crux of the present dispute. Although several legal arguments were advanced by the Appellant in their defence, no substantive explanation or justification was provided with respect to the discrepancy in FOB values as declared in the two

Certificates of Origin. Furthermore, the Appellant had also failed to provide any such clarification during the course of the investigation and adjudication proceedings. On perusal of the statements recorded under Section 108 of the Customs Act, 1962 during the investigation stage from the representatives of the Appellant, I find that they too failed to provide any valid reason for the aforementioned discrepancy. On the contrary, when confronted with this specific issue, the representatives readily agreed to discharge the differential duty, if any, based on the FOB value declared in the Certificate of Origin submitted at New Mangalore Port. Though Shri Sanjay Jain, Senior Manager (Marketing) of the Appellant, did provide certain clarification in relation to the price declared in the Certificate of Origin submitted at Navlakhi Port, he was unable to offer any explanation for the higher FOB value declared at New Mangalore Port, despite the goods being identical in description, quality, source, and shipment conditions. In fact, he candidly admitted that the FOB value of USD 58 PMT, as reflected in the Certificate of Origin furnished at New Mangalore Port, should have been applied to the consignment imported at Navlakhi Port as well.

7.2 Based on the above facts and admissions, I am of the considered view that the Department was in possession of sufficient and credible evidence to form a reasonable doubt regarding the truth and accuracy of the declared value. The rejection of the declared value under Rule 12 of the Customs Valuation Rules, 2007 was, therefore, entirely justified. Rule 12 empowers the proper officer to reject the declared transaction value where there exists reasonable doubt, and such doubt is not satisfactorily addressed by the importer. In the present case, the doubts raised by the proper officer were substantiated through contemporaneous documentary evidence, namely, the Certificates of Origin submitted by the Appellant at two different ports for the same goods, under identical terms. The burden of proof was thus validly shifted onto the Appellant, who failed to discharge the same.

7.3 The Appellant has relied upon the judgment of the Hon'ble Supreme Court in Commissioner of Customs, Calcutta v. South India Television (P) Ltd., arguing that the burden of proving undervaluation lies upon the Department and that such undervaluation must be demonstrated through evidence of contemporaneous imports. I have carefully examined the judgment and find that

it indeed reiterates that invoice value is not sacrosanct and may be rejected, provided the Department adduces cogent evidence. The relevant portion of the judgment clearly establishes that, once the Department places evidence of undervaluation—such as contemporaneous imports or comparable prices—on record, the burden shifts to the importer to prove the correctness of the declared value.the relevant portion of the said judgement is reproduced as under for reference:

"It is made clear that Section 14(1) and Section 14(1A) are not mutually exclusive. Therefore, the transaction value under Rule 4 must be the price paid or payable on such goods at the time and place of importation in the course of international trade. Section 14 is the deeming provision. It talks of deemed value. The value is deemed to be the price at which such goods are ordinarily sold or offered for sale, for delivery at the time and place of importation in the course of international trade where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or for offer for sale. Therefore, what has to be seen by the Department is the value or cost of the imported goods at the time of importation, i.e., at the time when the goods reaches the customs barrier. Therefore, the invoice price is not sacrosanct. However, before rejecting the invoice price the Department has to give cogent reasons for such rejection. This is because the invoice price forms the basis of the transaction value. Therefore, before rejecting the transaction value as incorrect or unacceptable, the Department has to find out whether there are any imports of identical goods or similar goods at a higher price at around the same time. Unless the evidence is gathered in that regard, the question of importing Section 14(1A) does not arise. In the absence of such evidence, invoice price has to be accepted as the transaction value. Invoice is the evidence of value. Casting suspicion on invoice produced by the importer is not sufficient to reject it as evidence of value of imported goods. Under- valuation has to be proved. If the charge of under-valuation cannot be supported either by evidence or information about comparable imports, the benefit of doubt must go to the importer. If the Department wants to allege under-valuation, it must make detailed inquiries, collect material and also adequate evidence. When under-valuation is alleged, the Department has to prove it by evidence or information about comparable imports. For proving under-valuation, if the Department relies on declaration made in the exporting country, it has to show how such declaration

was procured. We may clarify that strict rules of evidence do not apply to adjudication proceedings. They apply strictly to the courts' proceedings. However, even in adjudication proceedings, the AO has to examine the probative value of the documents on which reliance is placed by the Department in support of its allegation of under-valuation. ***Once the Department discharges the burden of proof to the above extent by producing evidence of contemporaneous imports at higher price, the onus shifts to the importer to establish that the invoice relied on by him is valid.*** *Therefore, the charge of under-invoicing has to be supported by evidence of prices of contemporaneous imports of like goods. Section 14(1) speaks of "deemed value". Therefore, invoice price can be disputed. However, it is for the Department to prove that the invoice price is incorrect. When there is no evidence of contemporaneous imports at a higher price, the invoice price is liable to be accepted."*

7.4 In the present case, the Department has produced documentary evidence in the form of the Appellant's own Certificates of Origin from contemporaneous imports of identical goods, and this is further corroborated by voluntary statements recorded under Section 108 of the Customs Act, 1962. Accordingly, the ratio laid down by the Hon'ble Supreme Court supports the Department's case, and the reliance placed by the Appellant on the same is, in fact, misapplied to their advantage.

7.5 Further, As regards the Appellant's contention that documentary evidence should prevail over oral evidence, I find that the Department's case rests primarily upon documentary evidence, i.e., the Form-AI Certificates filed at the two ports. The oral statements recorded under Section 108 merely support and corroborate the documentary inconsistencies. Hence, the Appellant's argument is misconceived, and I do not find any infirmity in the findings recorded by the adjudicating authority on this issue.

7.6 Now, On the issue of eligibility to exemption under Notification No. 46/2011–Cus, I find that the benefit of the notification is subject to the satisfaction of the competent authority with respect to the genuineness of the Certificate of Origin. Given the discrepancies in the Certificates of Origin for the same goods and the failure of the Appellant to explain or justify the same either

during investigation or appeal proceedings, I am of the considered opinion that the Adjudicating Authority was correct in denying the benefit of the said exemption notification.

7.7 The Appellant further contended that the Show Cause Notice is bad in law, since the Bill of Entry in question was finally assessed and not appealed against. The Appellant relied on the judgment of the Hon'ble Supreme Court in Priya Blue Industries Ltd. v. Commissioner of Customs (Prev.) [2004 (172) ELT 145 (SC)]. However, this reliance is misplaced, as the final assessment can be challenged or altered under Section 28 of the Customs Act, 1962, as per the legal framework laid down in the same judgment. The Supreme Court clearly held that unless a final assessment order is reviewed under Section 28 or modified in appeal, it continues to bind. The relevant observation of the Hon'ble Court in Priya Blue Industries is as under:

> *"We are unable to accept this submission. Just such a contention has been negatived by this Court in Flock (India)'s case (supra).* ***Once an Order of Assessment is passed the duty would be payable as per that order. Unless that order of assessment has been reviewed under Section 28 and/or modified in an Appeal that Order stands****. So long as the Order of Assessment stands the duty would be payable as per that Order of Assessment. A refund claim is not an Appeal proceeding. The Officer considering a refund claim cannot sit in Appeal over an assessment made by a competent Officer. The Officer considering the refund claim cannot also review an assessment order".*

7.8 In the present case, the Show Cause Notice has been issued pursuant to a review under Section 28, and hence the issuance of the notice is legally sustainable. The relevant portion of the judgment in Priya Blue Industries also makes it clear that refund claims cannot act as an appeal against final assessment orders. In this context, the facts of the present case are distinguishable, as the Department has not initiated a refund-based challenge, but has instead initiated proceedings under Section 28 for recovery of duty not levied/short-levied due to mis-declaration. Accordingly, the Appellant's contention is not tenable.

7.9 Now, With regard to the Appellant's objection on limitation, as well as on the confiscation of goods and imposition of penalty, I have carefully considered the findings recorded by the Adjudicating Authority in paragraphs 34.1 to 37.2 of the impugned order. Upon review, I find that the Adjudicating Authority has rendered well-reasoned findings, supported by both fact and law. There is no legal infirmity or procedural impropriety warranting interference at this stage.

7.10 In light of the foregoing findings, and considering the totality of facts, documents, and legal provisions involved, I find no merit in the appeal. Accordingly, the appeal is rejected.

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

F. No. S/49-100/CUS/JMN/23-24 3689 Date: 25.09.2025

By Registered post A.D/E-Mail
To,
M/s. Green Gold Global Resources Pvt. Ltd.,

612 Shekhar Central, 4-5, Manromaganj,

A.B. Road, Indore – 452001 (M.P.).,

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Commissioner of Customs (Preventive), Jamnagar.
3. The Additional Commissioner of Customs, Custom (Preventive), Jamnagar.
4. Guard File.

सत्यापित/ATTESTED
अधीक्षक/SUPERINTENDENT
सीमा शुल्क (अपील), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD.