



प्रधानआयुक्तकाकार्यालय, सीमाशुल्क, अहमदाबाद
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निबन्धितपावतीडाकद्वारा / By SPEED POST A.D.

फ़ा. सं./F. No.:VIII/10-06/Pr.Commr./O&A/2017

DIN- 20260271MN0000000DFB

आदेशकीतारीख/Date of Order :26.02.2026

जारीकरनेकीतारीख/Date of Issue :26.02.2026

द्वारापारित :-

शिव कुमार शर्मा, प्रधान आयुक्त

Passed by :-

Shiv Kumar Sharma, Principal Commissioner

मूलआदेशसंख्या :

Order-In-Original No: AHM-CUSTM-000-PR.COMMR-48-2025-26 dated 26.02.2026 in the case of M/s. Hindalco Industries Ltd., Century Bhavan, 3rd Floor, Dr Annie Besant Road, Worli, Mumbai -400 030.

- 1 जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।
1. This copy is granted free of charge for private use of the person(s) to whom it is sent.
2. इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, दुसरी मंज़िल, बहुमाली भवन, गिरिधर नगर पुल के बाजु मे, गिरिधर नगर, असारवा, अहमदाबाद-380 004 को सम्बोधित होनी चाहिए।
2. Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, Ahmedabad - 380004.
3. उक्त अपील प्रारूप सं. सी.ए.3 में दाखिल की जानी चाहिए। उसपर सीमा शुल्क (अपील) नियमावली, 1982 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियों में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम

से कम एक प्रति प्रमाणित होनी चाहिए)। अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियों में अग्रेषित किए जाने चाहिए।

3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.
4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएंगी (उनमें से कम से कम एक प्रमाणित प्रति होगी)
4. The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)
5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।
5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.
6. केंद्रिय सीमा शुल्क अधिनियम, 1962 की धारा 129 ऐ के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।
6. The prescribed fee under the provisions of Section 129A of the Customs Act, 1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.
7. इस आदेश के विरुद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुर्माना का विवाद है अथवा जुर्माना जहां सिर्फ जुर्माना के बारे में विवाद है उसका भुक्तान करके अपील की जा सकती है।
7. An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute".
8. न्यायालय शुल्क अधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर उपयुक्त न्यायालय शुल्क टिकट लगा होना चाहिए।
8. The copy of this order attached therein should bear an appropriate court fee stamp as prescribed under the Court Fees Act, 1870.

Sub: Show Cause Notice No. VIII/10-06/Pr.Commr./O&A/2017 dated 17.11.2017 issued by the Principal Commissioner of Customs, Ahmedabad to M/s. Hindalco Industries Ltd., Century Bhavan, 3rd Floor, Dr Annie Besant Road, Worli, Mumbai -400 030.

BRIEF FACTS OF THE CASE:

This order is passed in denovo proceedings arising out of Final Order No. A/11978-11979/2024 dated 30.08.2024 passed by the Hon'ble CESTAT, Ahmedabad in Appeal No. 11112/2018 and 11272/2018 respectively filed by M/s. Hindalco Industries Ltd. and the department against Order-In-Original No. AHM-CUSTM-000-COM-012-17-18 dated 05.02.2018 passed by the Commissioner of Customs, Ahmedabad in respect of M/s. Hindalco Industries Ltd., Century Bhavan, 3rd Floor, Dr Annie Besant Road, Worli, Mumbai -400 030 (hereinafter referred to as the Importer for the sake of brevity).

2. The facts of the case, in brief, are that the Importer had exported 75.023 MTs of continuous cast copper wire rod of 8 mm diameter falling under CTI 74081190 to M/s. Motherson Electrical Wires Lanka Private Limited (hereinafter referred to as 'M/s Motherson, Sri Lanka'), Sri Lanka vide Shipping Bill No. 4040585 dated 09.11.2015. The exports were made towards the fulfilment of export obligations against an Advance Licence.

3. The Importer subsequently filed a Bill of Entry No. 5424120 dated 27.05.2016 for re-import of 70.71 MTs of continuous cast copper wire rod of 8 mm diameter, originally exported under Shipping Bill No. 4040585 dated 09.11.2015. The Importer claimed the benefit of exemption under Serial No. 2 of Notification No 158/1995-Customs dated 14.11.1995 for not paying any duty on the re-imports. They also executed a bond for the same. Notification No 158/1995-Customs dated 14.11.1995 exempted customs duty and the additional duty leviable under Section 3 of the Customs Tariff Act, 1975 when re-imported into India for repairs, reconditioning, reprocessing, remaking or similar other processes, subject to the conditions laid down.

4. Thereafter, the Importer exported a quantity of 74.816 MTs of continuous cast copper wire rod of 8 mm diameter to M/s Motherson, Sri Lanka vide two Shipping Bill Nos. 8379586 dated 20.06.2016 and 8412386 dated 22.06.2016 (ARE 1 No. 472 dated 20.06.2016, ARE 1 Nos. 489 and 495, both dated 21.6.2016). The Importer under their letter No HIL/BC/EX/SL/MS/2016 dated 18.7.2016 requested to consider the exports made against the Shipping Bill Nos. 8379586 dated 20.06.2016 and 8412386 dated 22.06.2016 to M/s Motherson, Sri Lanka, as fulfillment of the conditions of Notification No. 158/1995-Customs dated 14.11.1995 for claiming exemption from payment of customs duty. They requested to consider the exports made by them against the re-import of goods made under Bill of Entry No. 5424120 dated 27.05.2016 and consequent cancellation of the bond of Rs.70 lacs executed by them.

5. From the above facts, it appeared that the Importer had to re-export the re-imported continuous cast copper wire rod of 8mm diameter after processing or refining or re-making or subjecting them to any processes. The Importer had also to satisfy the Assistant Commissioner or Deputy Commissioner of Customs as regards the identity of the goods for claiming exemption from payment of customs duty and additional customs duty, under Notification No. 158/1995-Customs dated 14.11.1995. It appeared from the Shipping Bill Nos. 8379586 dated 20.06.2016 and 8412386 dated 22.06.2016 that there was no mention made by the Importer that these exports were in fulfillment of the obligations against the re-import of the same goods under Bill of Entry No. 5424120 dated 27.05.2016 and the conditions envisaged in the Notification No. 158/1995-Customs dated 14.11.1995. There was also no mention in the accompanying packing list and the ARE 1 document that the exports were made to satisfy the conditions imposed under Notification No. 158/1995-Customs dated 14.11.1995. It was not forthcoming from any of the documents that said exports were re-exports made against the re-import of goods under Bill of Entry No. 5424120 dated 27.5.2016. The Importer had not communicated with or informed the Assistant or Deputy Commissioner of

Customs before the exports were made, in order to satisfy him about the identity of the goods, as envisaged in Condition 3 to Serial No. 2 of Notification No. 158/1995-Customs dated 14.11.1995. It appeared that the Importer had not shown as to what processes had been carried out on the re-imported goods before exporting the same under Shipping Bill Nos. 8379586 dated 20.06.2016 and 8412386 dated 22.06.2016. Further, the packing list of the Bill of Entry No 5424120 dated 27.5.2016 showed the markings on the coils started from "15-" whereas the marking on the coils exported under the two Shipping Bill Nos. 8379586 dated 20.6.2016 and 8412386 dated 22.6.2016 started with "16-", as can be seen from the accompanying ARE1s. Therefore, the goods have not been made identifiable to the satisfaction of the Assistant/Deputy Commissioner of Customs.

6. It, therefore, appeared that the Importer had not fulfilled the stipulated conditions as envisaged in Notification No. 158/1995-Customs dated 14.11.1995, especially Condition No. 3 to Serial No. 2 relating to the identity of the re-exported goods. Hence, the exemption from duty availed by the Importer in terms of Serial No. 2 of Notification No. 158/1995-Customs dated 14.11.1995 on the re-imported goods would not be admissible. Consequently, the customs duty amounting to Rs.56,96,797/-, as detailed in Annexure-A to the show cause notice, leviable on 70.71 MTs of continuous cast copper wire rod of 8mm diameter valued at Rs.2,43,29,172/-, re-imported under Bill of Entry No. 5424120 dated 27.05.2016 is required to be demanded and recovered from the Importer under the provisions of Section 28(1) of the Customs Act, 1962 read with Condition 4(d) to Serial No. 2 of Notification No. 158/1995-Customs dated 14.11.1995 and conditions of the bond executed by the Importer along with interest under Section 28AA of the Customs Act, 1962. It appeared that the goods viz. 70.71 MTs of continuous cast copper wire rod of 8mm diameter valued at Rs.2,43,29,172/- would be liable to confiscation under Section 111(o) of the Customs Act, 1962 and the Importer is also liable for penal action under the provisions of Section 112(a) of the Customs Act, 1962, for wrongly claiming the exemption under Serial No. 2 of Notification No. 158/1995-Customs dated 14.11.1995.

7. The Importer under their letter dated 07.06.2017 submitted that the endorsement by the Bank of India, Sri Lanka on the final commercial invoice 'Import permitted duty free subject to verification of cargo' may be considered. Further, the certificate issued by the State Bank of India dated 21.09.2016 on the accounting of foreign exchange received from Sri Lanka towards the Shipping Bill Nos. 8379586 dated 20.6.2016 and 8412386 dated 22.6.2016 and the Shipping Bill No. 4040585 dated 9.11.2015 may also be considered. Moreover, the Range Superintendent, Central Excise, AR I, Division V, Bharuch Commissionerate has under their letter No XE0501/HIL/Export/2016-17 dated 31.1.2017 given a No Objection Certificate to consider ARE 1 No. 472 dated 20.06.2016, ARE 1 Nos. 489 and 495, both dated 21.06.2016 as re-export of imported goods. A pre-consultation discussion was held with the Importer on 08.11.2017, as per the Board's Instruction No 1080/09/DLA/MISC/2015 dated 21.12.2015 and Instruction No 1080/11/DLA/CC Conference/2016 dated 08.07.2016. Mr Anand Mohan Mehta, General Manager (Excise & Customs) and Mr Santosh Singh, Assistant Manager (Commercial) both from the Importer company, appeared and reiterated their submissions dated 07.06.2017.

8. Therefore, a show cause notice bearing F. No. VIII/10-06/Pr.Commr./O&A/2017 dated 17.11.2017 was issued to the Importer asking them to show cause to the Principal Commissioner of Customs, Ahmedabad, as to why:

- (i) the benefit of exemption claimed under Notification No. 158/1995-Customs dated 14.11.1995 should not be denied on the quantity of 70.71

MTs of continuous cast copper wire rod of 8 mm diameter, re-imported vide Bill of Entry No 5424120 dated 27.05.2016, for non-fulfillment of the conditions envisaged in the notification;

- (ii) the quantity of 70.71 MTs of continuous cast copper wire rod of 8 mm diameter valued at Rs 2,43,29,172/- (Rupees Two Crore, Forty Three Lakh, Twenty Nine Thousand, One Hundred and Seventy Two only), re-imported vide Bill of Entry No 5424120 dated 27.05.2016, should not be held liable to confiscation under Section 111(o) of the Customs Act, 1962;
- (iii) the amount of Rs 56,96,797/- (Rupees Fifty Six Lakh, Ninety Six Thousand, Seven Hundred and Ninety Seven only) leviable on the quantity of 70.71 MTs of continuous cast copper wire rod of 8 mm diameter, re-imported vide Bill of Entry No 5424120 dated 27.05.2016, should not be demanded and recovered under Section 28(1) of the Customs Act, 1962 read with Condition No. 4(d) to the Notification No. 158/1995-Customs and the conditions of the bond executed by the Importer;
- (iv) penalty should not be imposed on the Importer under Section 112(a) of the Customs Act, 1962; and
- (v) interest should not be recovered under Section 28AA of the Customs Act, 1962.

9. The above show cause dated 17.11.2017 was adjudicated by the Principal Commissioner of Customs, Ahmedabad, vide Order-In-Original No. AHM-CUSTM-000-COM-012-17-18 dated 05.02.2018 wherein the demands raised under the show cause notice were confirmed except imposition of redemption fine on the confiscated goods, the details of which are as under:

- (i) Denied the benefit of exemption under Notification No. 158/1995-Customs dated 14.11.1995 from payment of customs duties to the Importer on the quantity of 70.71 MTs of continuous cast copper wire rod of 8 mm diameter, re-imported vide Bill of Entry No. 5424120 dated 27.5.2016, for non-fulfillment of the conditions envisaged in the notification.
- (ii) Held the quantity of 70.71 MTs of continuous cast copper wire rod of 8 mm diameter valued at Rs 2,43,29,172/-, re-imported vide Bill of Entry No 5424120 dated 27.5.2016 as liable to confiscation, under the provisions of Section 111(o) of the Customs Act, 1962. As the goods are physically not available for confiscation, no redemption fine was imposed on the goods.
- (iii) Ordered to recover the customs duty amounting to Rs 56,96,797/- (Rupees Fifty Six Lakh, Ninety Six Thousand, Seven Hundred and Ninety Seven only) from the Importer, under the provisions of Section 28(1) of the Customs Act, 1962 read with condition 4(d) to Notification No.158/1995-Customs dated 14.11.1995 and the conditions of the bond executed by the Importer.
- (iv) Ordered to recover interest under Section 28AA of the Customs Act, 1962 from the importer, on the confirmed demand.
- (v) Imposed penalty of Rs 5,00,000/- (Rupees Five lakh only) on the Importer, under the provisions of Section 112(a)(ii) of the Customs Act, 1962.

10. Being aggrieved, the Importer preferred an appeal before the Hon'ble CESTAT, Ahmedabad against the said Order-in-Original No. AHM-CUSTM-000-COM-012-17-18 dated 05.02.2018. As no redemption fine had been imposed by

the adjudicating authority in lieu of confiscation of the imported goods under Bill of Entry No. 5424120 dated 27.5.2016, the department also filed an appeal before the Hon'ble CESTAT, Ahmedabad against the said Order-in-Original.

11. The Hon'ble CESTAT, Ahmedabad, vide Final Order No. A/11978-11979/2024 dated 30.08.2024 allowed the appeals filed by the Importer and the department and remanded the matter to the adjudicating authority for fresh adjudication.

PERSONAL HEARING:

12. Personal hearing in the instant case was held on 20.01.2026 wherein Ms. Raksha Bhandari, Advocate of M/s. Lakshmikumaran & Sridharan appeared for personal hearing virtually (online mode) on behalf of the Importer. She informed that they have submitted some documents vide email dated 20.01.2026 for establishing the identity of re-exported goods and requested to consider the same. She requested for time upto 28th January, 2026 for submission of their defence reply.

DEFENCE:

13. M/s. Lakshmikumaran & Sridharan, vide email dated 05.02.2026, submitted the defence reply to the above show cause notice dated 17.11.2017 on behalf of the Importer i.e. M/s. Hindalco Industries Limited, under which they have interalia submitted that :-

13.1 The Importer is entitled for benefit of exemption under Notification No. 158/1995-Customs dated 14.11.1995, as all the conditions of the said Notification are satisfied in the present case. The re-import in the present case has taken place within one year from the date of exportation. Also, there is no dispute that the goods have not been re-exported within six months from the date of re-importation. The Importer has satisfied the Assistant commissioner about the identity of imported goods and re-exported vide Shipping Bills dated 20.06.2016 and 22.06.2016.

13.2 The Importer exports finished goods under the physical supervision of Central Excise. The concerned Range Superintendent and Inspector visited Importer's plant, containers are stuffed in their presence and after generation of exports documents like ARE-1, Excise Invoice and Export Invoice cum packing list, containers are sealed by them and thereafter permission is granted to export the goods by way of signing the exports documents by the Excise Range Superintendent and Inspector.

13.3 The Range Superintendent, Central Excise, Range-1, Division V, Bharuch Commissionerate has under their letter No. XE0501/HIL/Export/2016-17 dated 31.01.2017 given a No Objection Certificate to consider ARE 1 No. 472 dated 20.06.2016, ARE 1 Nos 489 and 495, both dated 21.06.2016 for re-export of imported goods. Thus, department cannot dispute the identity of goods.

13.4 That the endorsement by the Bank of India, Sri Lanka on the final commercial invoice 'import permitted duty-free subject to verification of cargo' may be considered. The certificate issued by the State Bank of India dated 21.09.2016 on the accounting of the foreign exchange received from Sri Lanka towards the shipping Bills Nos. 8379586 dated 20.06.2016 and 8412386 dated 22.06.2016 and adjusted from the earlier Shipping Bill No. 4040585 dated 09.11.2015, may also be considered. The said certificate clearly demonstrates that the goods exported are against the re-imported good.

13.5 The Importer also maintained a separate register of the re-imported goods that were meant for re-export. From the said register, it is evident that the re-imported goods were received at the Importer's premises on 10.06.2016. Thereafter, the said goods were issued to Plant for reprocessing on 11.06.2016. After reprocessing, the goods were again received at the Importer's premises on 20.06.2016 whereafter the goods were re-exported vide Shipping Bills dated 20.06.2016 and 22.06.2016 under ARE No(s). 472 dated 20.06.2016 and 489 and 495 both dated 21.06.2016. Further, there is evidence showing that the goods that were rejected by the foreign customer were charged out for reprocessing.

13.6 The conditions stipulated in the Notification No. 158/1995, nowhere the Importer is required to endorse or mention in the Shipping Bills or A.R.E. or Bill of Entry regarding the export of goods in terms of fulfilment of obligation under Notification No. 158/1995. Therefore, an additional condition cannot be imposed by an administrative authority. In this regard, they have relied on the case laws (i) Modi Rubber Ltd. v.v. Union of India. 1978 (2) ELT (J127) (Delhi) and (ii) Mamia Drinks and Industries Lid. v. Assistant Collector of Central Excise. [1987] 30 EIT 224 (Orissa).

13.7 The Condition (3) of Notification No. 158/95 establishes that the Assistant Commissioner of Customs must be satisfied with regard to identity of goods. However, the Condition does not lay down grounds for deciding satisfaction with regard to identity of goods. Therefore, the understanding that an endorsement/ mention is required in the Shipping Bills or Bill of Entry or A.R.E is totally flawed.

13.8 That at most the above error can be considered as lapse in observance of procedural condition which can be condoned by the Adjudicating Authority. The Hon'ble Supreme Court in Mangalore Chemicals and Fertilizers Ltd. Vs. Deputy Commissioner, 1991 (55) KL.T. 437 (S.C.) has held that non-observance of procedural condition is condonable and should not be a ground to reject a substantive benefit.

13.9 In the present case, the provision of Section 111(o) will not apply, as the Importer has complied with all the conditions mentioned under the Notification No. 158/1995- Customs dated 14.11.1995. Hence, penalty under Section 112(a) cannot be imposed on the Importer.

13.10 Section 125 of the Customs Act provides for an option to the importer to redeem the confiscated goods upon payment of redemption fine. It clearly follows that the importer is liable to pay redemption fine only when the goods are confiscated. In the present case, confiscation under Section 111 is not applicable. Consequently, any proposal to impose redemption fine is also not sustainable. Further, in absence of seizure, redemption fine is not imposable.

13.11 It is the settled legal position that when the goods are not physically available for confiscation, a redemption fine cannot be imposed. Reliance has been placed upon the decision of the Hon'ble Bombay High Court in CC v. Finesse Creations Inc [2009 (248) E.L.T. 122 (Bom.)]. The said decision was also affirmed by the Hon'ble Apex Court in Commissioner v. Finesse Creation Inc. - 2010 (255) E.L.T. A120 (S.C.)].

13.12 It is a cardinal principle of law that when the principal demand is not justified, there is no liability to pay ancillary demands. Therefore, it is submitted that the Importer is not liable to pay interest as proposed in the impugned SCN.

13.13 In view of the submissions made above, the Importer prayed that the Show Cause Notice dated 17.11.2017 be set aside with consequential relief.

FINDINGS:

14. I have carefully gone through the show cause notice dated 17.11.2017, Final Order No. A/11978-11979/2024 dated 30.08.2024 passed by the Hon'ble CESTAT, Ahmedabad, defence reply dated 05.02.2026 and relevant case records.

15. The brief issue involved in the instant case is that the Importer had exported 75.023 MTs of continuous cast copper wire rod of 8 mm diameter to M/s Motherson Electrical Wires Lanka Private Limited, Sri Lanka vide Shipping Bill No. 4040585 dated 09.11.2015. The said customer rejected 70.71 MTs of continuous cast copper wire rod of 8 mm diameter out of 75.023 MT due to poor quality, therefore, the Importer filed a Bill of Entry No. 5424120 dated 27.5.2016 for re-import of the said 70.71 MTs of continuous cast copper wire rod of 8 mm diameter, rejected by the customer. The Importer claimed the benefit of exemption under Serial No. 2 of Notification No 158/1995-Customs dated 14.11.1995 for not paying any duty on the re-imports. Thereafter, the Importer exported a quantity of 74.816 MTs of copper rod to M/s Motherson, Sri Lanka vide two Shipping Bill Nos. 8379586 dated 20.6.2016 and 8412386 dated 22.6.2016 (ARE 1 Nos 472 dated 20.06.2016, ARE 1 Nos 489 and 495, both dated 21.06.2016) and vide their letter No HIL/BC/EX/SL/MS/2016 dated 18.7.2016, they requested to consider these exports as fulfilment of the conditions relating to Notification No. 158/1995-Customs dated 14.11.1995 in order to claim exemption from payment of customs duty. It appeared that the Importer had not satisfied the Jurisdictional Assistant Commissioner or Deputy Commissioner of Customs ('JDC') as regards the identity of the goods for claiming exemption from payment of customs duty under Notification No. 158/1995-Customs. It is alleged in the show cause notice dated 17.11.2017 that the Importer has wrongly availed the benefit of exemption under Notification No. 158/1995-Customs dated 14.11.1995, as they have not fulfilled the conditions of the said notification, thereby they have evaded Customs duty amounting to Rs 56,96,797/-in respect of Bill of Entry No. 5424120 dated 27.05.2016.

15.1 The show cause notice dated 17.11.2017 was adjudicated by the Principal Commissioner of Customs, Ahmedabad, vide Order-In-Original No. AHM-CUSTM-000-COM-012-17-18 dated 05.02.2018 wherein the demands raised under the show cause notice were confirmed against the Importer except imposition of redemption fine on the confiscated goods.

15.2 Being aggrieved, both the department and the Importer filed appeals before the Hon'ble CESTAT, Ahmedabad against the said Order-in-Original, who vide Final Order No. A/11978-11979/2024 dated 30.08.2024 allowed the appeals filed by the department and the Importer. The Hon'ble CESTAT, Ahmedabad, under the said Final Order set aside the Order-In-Original No. AHM-CUSTM-000-COM-012-17-18 dated 05.02.2018 and remanded the matter to the adjudicating authority for fresh adjudication with the following observation:

*"4. We have considered the rival submissions. We find that the entire disputerelates to establishing identity of goods. According to the impugned orders appellant has sought to establish the identity on the basis of NOC received from Range Authority as well as on the base of supervision of export by the Range Authority. The said evidence was rejected by the Order-In-Original. However, appellant has produced the entire set of documents which according to him would establish identity of goods. **Since, Lower Authority did not have opportunity to examine this documents, we set aside the impugned order and remand the matter back to the original Adjudicating Authority for fresh adjudication, after examining the document submitted by the appellant.**"*

Miscellaneous Application is allowed.

Appeal of revenue seeking to impose redemption fine is also therefore discussed and matter is remanded for fresh adjudication.”

15.3. Accordingly, I take up the matter for denovo adjudication in accordance with the CESTAT's above directions.

16. The core issues before me for decision in this denovo adjudication are as under:

- (i) Whether the benefit of exemption claimed under Notification No. 158/1995-Customs dated 14.11.1995 should be denied on the quantity of 70.71 MTs of continuous cast copper wire rod of 8mm diameter, re-imported vide Bill of Entry No. 5424120 dated 27.05.2016?
- (ii) Whether the quantity of 70.71 MTs of continuous cast copper wire rod of 8mm diameter valued at Rs. 2,43,29,172/-, re-imported vide Bill of Entry No 5424120 dated 27.05.2016, should be held liable to confiscation under Section 111(o) of the Customs Act, 1962 and since the goods are not available for confiscation, fine as contemplated under Section 125 of the Customs Act, 1962, should be imposed on the Importer in lieu of confiscation?
- (iii) Whether total non-levied/short-levied duty amounting to Rs 56,96,797/- (Rupees Fifty Six Lakh, Ninety Six Thousand, Seven Hundred and Ninety Seven only), in respect of the goods imported vide Bill of Entry No 5424120 dated 27.05.2016, as detailed in Annexure-A to the show cause notice, should be demanded and recovered from the Importer, under Section 28(1) of the Customs Act, 1962 read with Condition No. 4(d) to the Notification No. 158/1995-Customs and the conditions of the bond executed by the Importer along with applicable interest under Section 28AA of the Customs Act, 1962?
- (iv) Whether penalty should be imposed upon the Importer under Section 112(a) of the Customs Act, 1962?

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

17.1 The first issue before me for decision in the present case is whether the benefit of exemption claimed under Serial No. 2 of Notification No. 158/1995-Customs dated 14.11.1995 should be denied on the quantity of 70.71 MTs of Continuous Cast Copper Wire Rod of 8 mm diameter, re-imported vide Bill of Entry No. 5424120 dated 27.05.2016.

17.1.1 The dispute being wrong availment of the benefit of exemption Notification No. 158/1995-Customs dated 14.11.1995, it would be appropriate to make a reference to the said notification. The relevant entry at Serial No. 2 of the said notification is reproduced below:

“Sl. No.	Description of goods	Conditions
2	Goods manufactured in India and reimported for (a) reprocessing; or (b) refining; or (c)	1 Such reimportation takes place within one year from the date of exportation. 2 Goods are re-exported within six months of the date of re-importation or such extended period not exceeding a further period of six

<p>re-making; or (d) subject to any process similar to the processes referred to in clauses (a) to (c) above</p>	<p>months as the Commissioner of Customs may allow;</p> <p>3 The Assistant Commissioner of Customs or Deputy Commissioner of Customs, is satisfied as regards identity of the goods</p> <p>4 The importer executes a bond to the effect –</p> <p>(a) that such reprocessing, refining or remaking or similar processes shall be carried out in any factory under Central Excise control following the procedure laid down under Rule 173MM of the Central Excise Rules, 1944 or in a Customs bond under provisions of Section 65 of the Customs Act, 1962 (52 of 1962);</p> <p>(b) that he shall maintain a due account of the use of the said re-imported goods received in the premises specified in item (a) above and shall produce the said accounts duly certified by the officer of Central Excise or Customs, as the case may be, incharge of the factory or the bonded premises to the effect that the goods tendered for re-import are reprocessed, refined or remade or subjected to any process, as the case may be, from the said re-imported goods;</p> <p>(c) that in case any waste or scrap arising during such operations and the importer agrees to destroy the same before the officer of Central Excise or Customs, as the case may be, or to pay on such waste or scrap the appropriate duties of Customs as if such waste or scrap is imported;</p> <p>(d) that he shall pay, on demand, in the event of his failure to comply with any of the aforesaid conditions, an amount equal to the different between the duty leviable on such goods at the time of importation but for the exemption contained herein.</p> <p>Provided that in case of reprocessing, refining or remaking or similar process, if any loss of imported goods is noticed during such operations, the quantity of such loss shall be exempted from the whole of the duties of customs (basic customs duty and additional customs duty, etc) subject to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs hat such loss has occurred during such operations.</p>
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17.1.2 I find that in the present case the Importer had exported 75.023 MTs of continuous cast copper wire rod of 8 mm diameter falling under CTI 74081190 to M/s Motherson Electrical Wires Lanka Private Limited, Sri Lanka vide Shipping Bill No. 4040585 dated 09.11.2015 and on rejection by the customer due to poor quality of the goods, they have re-imported 70.71 MTs of continuous cast copper wire rod of 8 mm diameter, vide Bill of Entry No. 5424120 dated 27.05.2016 availing the benefit of exemption under Serial No. 2 of Notification No. 158/1995-Customs dated 14.11.1995. Thereafter, the Importer exported 74.816 MTs of continuous cast copper wire rod of 8 mm diameter to M/s Motherson, Sri Lanka vide two Shipping Bill Nos. 8379586

dated 20.6.2016 and 8412386 dated 22.6.2016 (ARE 1 No. 472 dated 20.06.2016, ARE 1 Nos 489 and 495, both dated 21.06.2016). After the physical export, the Importer vide their letter No HIL/BC/EX/SL/MS/2016 dated 18.7.2016 requested to consider these exports as fulfilment of the conditions relating to Notification No. 158/1995-Customs dated 14.11.1995 in order to claim exemption from payment of customs duty.

17.1.3 I find that for availing the benefit of exemption under Serial No. 2 of Notification No. 158/1995-Customs dated 14.11.1995, the Importer has to fulfil the following three conditions:

- (1) The reimportation takes place within one year from the date of exportation.
- (2) The Goods are re-exported within six months of the date of re-importation or such extended period not exceeding a further period of six months as the Commissioner of Customs may allow.
- (3) The Assistant Commissioner of Customs or Deputy Commissioner of Customs, is satisfied as regards identity of the goods.

17.1.4 The condition No. 3 to Serial No. 2 of Notification No. 158/1995-Customs dated 14.11.1995 stipulates that the Assistant Commissioner/Deputy Commissioner of Customs is satisfied with the identity of the goods re-exported by the importer. However, in the instant case, the Importer did not inform the Jurisdictional Range Officer that the goods being exported under Shipping Bill Nos. 8379586 dated 20.06.2016 and 8412386 dated 22.06.2016 (ARE 1 No. 472 dated 20.06.2016, ARE 1 Nos. 489 and 495, both dated 21.06.2016) are re-export of the goods re-imported under Bill of Entry No. 5424120 dated 27.05.2016. It is only after more than 20 days of the physical export, the Importer vide their letter No HIL/BC/EX/SL/MS/2016 dated 18.07.2016, requested to consider the said exports as fulfillment of the conditions of Notification No. 158/1995-Customs dated 14.11.1995. I have carefully gone through the Shipping Bill Nos. 8379686 dated 20.06.2016 and 8412386 dated 22.06.2016 alongwith their accompanying ARE 1 No. 472 dated 20.06.2016 and ARE1 Nos. 489 and 495, both dated 21.06.2016 and I find that there is no endorsement or mention anywhere in any of the documents that these goods are exported against the re-imported goods under Bill of Entry No. 5424120 dated 27.05.2016 and in fulfillment of the conditions of Notification No. 158/1995-Customs dated 14.11.1995. Further, there is no mention of the corresponding Bill of Entry number by which the goods were re-imported and there is no reference at all which would identify the re-imported goods with the re-exported goods. As the Importer did not inform the Range Officers about the re-export of re-imported goods, the examining officers could not verify the identity of the exported goods with the re-imported goods. The identification of the re-exported goods with those of the re-imported goods is very crucial and vital for compliance and observance of the conditions of Notification No. 158/1995-Customs dated 14.11.1995. In the instant case, the Importer has failed to establish identity of the re-exported goods with the re-imported goods to the satisfaction of the Assistant/Deputy Commissioner, thereby the Importer has not fulfilled the condition No. 3 to Serial No. 2 of Notification No. 158/1995-Customs dated 14.11.1995.

17.1.5 I find that the Importer under a Miscellaneous Application has submitted some documents before the Hon'ble CESTAT, Ahmedabad for establishing identity of goods and the Hon'ble CESTAT, Ahmedabad has remanded the matter back to the adjudicating authority for fresh adjudication after examining the document submitted by the Importer. The Advocate of the Importer, during the personal hearing has submitted the following documents for the purpose of establishing the identity of the exported goods with the goods re-imported under Bill of Entry No. 5424120 dated 27.05.2016:

- (i) Export details of goods as originally exported.
- (ii) Details pertaining to rejection of goods by foreign purchaser and import documents by the Importer.
- (iii) Rejected export goods received for re-processing along with the supporting documents.
- (iv) Documents charged out of the plant after re-processing.
- (v) Details of goods re-exported after reprocessing in plant.

17.1.5.1 Now, I proceed to examine the above documents, as directed by the Hon'ble CESTAT, Ahmedabad.

17.1.5.2 I have carefully gone through the above documents submitted on behalf of the Importer. On perusal of Packing List issued by the overseas buyer M/s. Motherson, Srilanka to the Importer at the time of sending back the goods, I find that the Coil (Lot) numbers mentioned in the said Packing List do not match with Packing List issued by the Importer to M/s. Motherson, Srilanka at the time of re-export. Further, there is no corresponding entries in the Shipping Bill, Invoice, Packing List, ARE-1 or in any export documents showing that the goods intended for export was the re-imported goods for necessary reprocessing. I also find from the letter dated 05.03.2016 issued by M/s. Motherson, Srilanka that they have returned the subject goods mentioning that "Because of the Poor Quality of Copper Rod 8mm, we could not run on MWD (Multi Wire Drawing Machine)". The Importer has never disclosed to the department about the process they have carried out on the said returned goods to improve the quality. I find that the manufacturing process of Copper Rod by the Importer involves smelting, electro-refining and continuous casting, which typically takes several weeks for the full end-to-end process. However, I find from the copy of account register of returned goods submitted by the Importer that they have shown the date of receipt of 70.711 MTs of continuous cast copper wire rod of 8 mm diameter as 10.06.2016, the date of issue to the plant for reprocessing as 11.06.2016 and the date of receipt from the plant after reprocessing as 20.06.2016 i.e. within 9 days from the date of issue to the plant, which is doubtful. Further, the said document has not been authenticated/certified by the jurisdictional Central Excise/Customs Officer, as required under Condition No. 4(b) to Serial No. 2 of Notification No. 158/1995-Customs dated 14.11.1995, which stipulates that the Importer "*shall maintain a due account of the use of the said re-imported goods received in the premises specified in item (a) above and shall produce the said accounts duly certified by the officer of Central Excise or Customs, as the case may be, incharge of the factory or the bonded premises to the effect that the goods tendered for re-import are reprocessed, refined or remade or subjected to any process, as the case may be, from the said re-imported goods.*" Therefore, I find that the Importer has not maintained proper account of the re-imported goods and the processed goods, as required under the exemption Notification No. 158/1995-Customs dated 14.11.1995. Further, the Lot No. shown in 'Sales Return Note' and 'Sample document charged out of the rejected material for reprocessing' does not match with the Lot No. mentioned in Packing List of Export Invoice No. EW/16000472 dated 20.06.2016 and ARE1s.

17.1.5.3 In view of the above, I hold that the above documents submitted by the Importer before me as well as before the Hon'ble CESTAT, Ahmedabad, do not establish the identity of the re-exported goods with the re-imported goods under Bill of Entry No. 5424120 dated 27.05.2016.

17.1.6 Further, I find that the Importer is well aware of the fact that they have to fulfill the conditions of the Notification No. 158/1995-Customs dated 14.11.1995 for availing the benefit of exemption under the said notification and one of such conditions is "the Assistant Commissioner of Customs or Deputy Commissioner of Customs, is satisfied as regards identity of the goods". It is the obligation of the Importer to ensure that the conditions of the exemption notification are fulfilled by them. However, in the present case, the Importer did

not inform the jurisdictional Range Officers about the re-export of re-imported goods under Bill of Entry No. 5424120 dated 27.05.2016, thereby, the Range Officers could not physically verify the identity of the exported goods with the re-imported goods. The Importer informed the department about the re-export after the physical export of the goods when they requested to consider the said exports as re-export of re-imported goods, vide their letter dated 18.07.2016. I find that identity of the re-exported goods with the re-imported goods cannot be established based on the export documents and the same can be done only by physical verification of the goods. However, the Range Officers did not have opportunity to physically verify the exported goods, as the Importer did not inform the Officers about the re-export. This is a serious lapse on the part of the Importer and the same is not condonable for giving the benefit of exemption. Therefore, I hold that the Importer has failed to satisfy the JAC/JDC regarding identity of the goods re-exported.

17.1.7 It is settled law that the onus of proving that the goods fall within four corners of exemption notification is always on the claimant. In this regard, I place reliance on the judgment passed by the Hon'ble Supreme Court rendered in the case of Meridian Industries Ltd. Vs. Commissioner [2015 (325) E.L.T. (S.C.)] wherein the Hon'ble Supreme Court has held as under:

"13. The appellant is seeking the benefit of exemption Notification No. 8/97-C.E. Since it is an exemption notification, onus lies upon the appellant to show that its cases falls within the four corners of this notification and is unambiguously covered by the provisions thereof. It is also to be borne in mind that such exemption notifications are to be given strict interpretation and, therefore, unless the assessee is able to make out a clear case in its favour, it is not entitled to claim the benefit thereof. Otherwise, if there is a doubt or two interpretations are possible, on which favours the Department is to be resorted to while construing an exemption notification."

17.1.7.1 In the present case, the Importer has failed to prove that the re-exported goods are the same goods which had been re-imported, thereby they have not fulfilled the conditions of Serial No. 2 of Notification No 158/1995-Customs dated 14.11.1995 for availing the benefit of exemption under the said notification.

17.1.8 The importer has contended in their defence reply that the Range Superintendent, Central Excise, Range-1, Division V, Bharuch Commissionerate under their letter No. XE0501/HIL/Export/2016-17 dated 31.01.2017 has given a No Objection Certificate to consider ARE 1 No. 472 dated 20.06.2016, ARE 1 Nos 489 and 495, both dated 21.06.2016 for re-export of imported goods and hence department cannot dispute the identity of goods. I do not agree with the above contention of the Importer. I have carefully gone through the said certificate dated 31.01.2017 issued by the Range Superintendent. I find that after referring to the request made by the Importer and the certificate dated 21.09.2016 issued by the State Bank of India, the Range Superintendent has mentioned that *"In view of the above, this office has no objection to consider the ARE-1 No 472 dated 20.6.2016, 489 & 495, both dated 21.6.2016 as re-export of imported goods"*. The Range Superintendent has not certified or confirmed that the exported goods were the same goods which were re-imported by the Importer under Bill of Entry No. 5424120 dated 27.05.2016. I find that the said certificate is not based on any documentary evidence or physical verification made by him. The certificate simply says that 'exports could be considered' but he has not made a clear and conclusive statement or certification to the effect that the re-exported goods were the same as the re-imported goods and he has also not adduced any evidence to that effect in his certificate. When a substantial benefit is to be given to the importer, the Range Superintendent cannot give a statement without actually confirming the nexus between the re-imported and the re-exported goods. This

is a crucial and vital factor in determining the eligibility for availing the benefit of exemption under Notification No. 158/1995-Customs dated 14.11.1995. Merely certifying that the goods were exported without any physical verification does in no way connect the re-imported goods with the re-exported goods. Therefore, the certificate dated 31.01.2017 cannot support the case of the importer. Accordingly, I find that the certificate fails to establish that the goods re-exported under Shipping Bill Nos. 8379586 dated 20.06.2016 and 8412386 dated 22.06.2016 were the same goods which were re-imported under Bill of Entry No 5424120 dated 27.05.2016. The certificate cannot be given any credence without the fundamental evidences required for bringing about a nexus between the re-imported and re-exported goods. Even otherwise, it is upto the JDC/JAC to get himself satisfied about the identity of the re-exported goods with the re-imported goods, which has not been done by the Importer.

17.1.9 The importer has also contended that a certificate dated 21.09.2016 has been issued by the State Bank of India on the accounting of foreign exchange received from Sri Lanka towards the Shipping Bill Nos. 8379586 dated 20.06.2016 and 8412386 dated 22.06.2016 and the Shipping Bill No. 4040585 dated 09.11.2015. I have carefully gone through the letter dated 21.09.2016 issued by the State Bank of India, Mumbai. The letter only speaks about financial adjustment of realization of export proceeds in respect of Shipping Bill No 4040585 and Shipping Bills Nos. 8379586 and 8412386. In the said letter the Bank has not admitted that the goods re-exported were the same goods which were re-imported. The Bank has also not certified the identity of the goods. The Bank has only made an adjustment in respect of two different financial transactions. It has nothing to do with the nexus between the re-imported and re-exported goods. Accordingly, the reliance placed on the bank's above letter is not justified and cannot be accepted.

17.1.10 The importer has further contended in their defence reply that the endorsement made by the Bank of India, Sri Lanka on the final commercial invoice 'import permitted duty-free subject to verification of cargo' may be considered. I have carefully gone through the endorsement made on the commercial invoice No. 1600032 dated 27.06.2016. I find that the endorsement has nothing to do to prove or establish the identity of the re-exported goods with the re-imported goods. I, therefore, reject the above contention of the Importer.

17.1.11 The importer has also contended in their defence reply that the exports were made in the physical supervision of the Range Superintendent and Range Inspector. I find that in the present case, the Range Superintendent and Range Inspector did not have opportunity to establish the identity of the exported goods with the re-imported goods, as the Importer had not informed the Range Officers that the exports of goods being made by them under Shipping Bill Nos. 8379586 dated 20.06.2016 and 8412386 dated 22.06.2016 are re-exports of the goods re-imported under Bill of Entry No. 5424120 dated 27.05.2016 and the said exports were in fulfillment of the conditions of Notification No 158/1995-Customs dated 14.11.1995. Further, there was no mention about the re-export in any of the export documents. The said fact came to the knowledge of the department only when the Importer under their letter No HIL/BC/EX/SL/MS/2016 dated 18.7.2016 requested to consider the exports made under the Shipping Bill Nos. 8379586 dated 20.06.2016 and 8412386 dated 22.06.2016 to M/s. Motherson, Sri Lanka, against the re-import under Bill of Entry No. 5424120 dated 27.05.2016 and as fulfilment of the conditions of Notification No. 158/1995-Customs dated 14.11.1995 for claiming exemption from payment of customs duty. It is the obligation on the part of the Importer to satisfy the jurisdictional Assistant/Deputy Commissioner regarding identity of the exported goods. Therefore, the above contention of the Importer is liable to be rejected.

17.1.12 In view of the above, I hold that the Importer has failed to satisfy the JAC/JDC regarding identity of the goods re-exported with the re-imported goods under Bill of Entry No. 5424120 dated 27.05.2016, thereby they have not fulfilled the stipulated conditions of the exemption Notification No. 158/1995-Customs dated 14.11.1995 (Sl.No.2). Accordingly, I reject the benefit of exemption availed by the Importer under Serial No.2 of Notification No. 158/1995-Customs dated 14.11.1995, in respect of the re-imported goods under Bill of Entry No. 5424120 dated 27.05.2016. I hold that the Importer is liable to pay customs duty at the normal rate in respect of the subject Bill of Entry No. 5424120 dated 27.05.2016.

17.2 The second issue for decision before me is whether the imported goods viz. 70.71 MTs of Continuous Cast Copper Wire Rod of 8 mm diameter valued at Rs 2,43,29,172/-(Rupees Two Crore, Forty Three Lakh, Twenty Nine Thousand, One Hundred and Seventy Two only), re-imported vide Bill of Entry No. 5424120 dated 27.05.2016, should be held liable to confiscation under Section 111(o) of the Customs Act, 1962 for wrong availment of the benefit of exemption Notification No 158/1995-Customs dated 14.11.1995 and since the goods are not available for confiscation, fine as contemplated under Section 125 of the Customs Act, 1962, should be imposed on the Importer in lieu of confiscation or otherwise.

17.2.1 I find that in the first round of adjudication, the adjudicating authority had not imposed redemption fine on the imported goods proposed to be confiscated under Order-In-Original No. AHM-CUSTOM-000-COM-012-17-18 dated 05.02.2018. Being aggrieved, the department had preferred an appeal before the Hon'ble CESTAT, Ahmedabad. The Hon'ble CESTAT, Ahmedabad vide Final Order No. A/11978-11979/2024 dated 30.08.2024 has allowed the appeal and remanded the matter back to the adjudicating authority for fresh adjudication. The Hon'ble CESTAT's observation is as under:

"4.

Appeal of revenue seeking to impose redemption fine is also therefore discussed and matter is remanded for fresh adjudication."

17.2.1.1 Accordingly, I take up the matter regarding imposition of redemption fine in this denovo adjudication.

17.2.2 I find that the Show Cause Notice proposes confiscation of the impugned imported goods under Section 111(o) of the Customs Act, 1962. I find that Section 111(o) of the Customs Act, 1962, speaks about confiscation of any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof, in respect of which the condition is not observed. Since, the issue involved in the present case is wrong availment of exemption notification without fulfilling the stipulated conditions of the notification, the provisions of Section 111(o) of the Customs Act, 1962 will be applicable to the present case.

17.2.3 In the instant case, the Importer has availed undue benefit of exemption under Serial No. 2 of Notification No 158/1995-Customs dated 14.11.1995 on the imported goods viz. 70.71 MTs of Continuous Cast Copper Wire Rod of 8 mm diameter valued at Rs. 2,43,29,172/-, re-imported vide Bill of Entry No. 5424120 dated 27.05.2016 and they have failed to establish the identity of the re-exported goods to the satisfaction of the Assistant/Deputy Commissioner of Customs, thereby they have not fulfilled the conditions of the Notification, with an intent to evade payment of Basic Customs Duty. Therefore, the said imported goods totally valued at Rs. 2,43,29,172/-, re-imported vide Bill of Entry No. 5424120 dated 27.05.2016, are liable for confiscation under the provisions of Section 111(o) of the Customs Act, 1962.

17.2.4 I find that in terms of Section 46 (4) of the Customs Act, 1962, the Importer was required to make declaration as regards the truth of contents of the Bill of Entry submitted for assessment of Customs Duty. However, the Importer has contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they have availed undue benefit of exemption under Serial No. 2 of Notification No 158/1995-Customs dated 14.11.1995, without fulfilling the stipulated conditions of the notification, thereby they have short paid the duty with clear intent to evade payment of Customs Duty. Thus, I find that they have violated the provisions of Section 46(4) of the Customs Act, 1962. All these acts on the part of Importer have rendered the imported goods liable for confiscation under Section 111(o) of the Customs Act, 1962.

17.2.5 As the impugned imported goods are found to be liable for confiscation under Section 111(o) of the Customs Act, 1962, I find it necessary to consider as to whether redemption fine under Section 125 (1) of the Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the imported goods, which are not physically available for confiscation. Section 125 (1) *ibid* reads as under:

“SECTION 125. Option to pay fine in lieu of confiscation. — (1) *Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit”*

17.2.6 In the instant case, the Importer has availed the benefit of exemption under Serial No. 2 of Notification No 158/1995-Customs dated 14.11.1995 in respect of the goods viz. 70.71 MTs of Continuous Cast Copper Wire Rod of 8 mm diameter valued at Rs 2,43,29,172/-, re-imported vide Bill of Entry No. 5424120 dated 27.05.2016 and they have failed to prove the identity of the re-exported goods with the re-imported goods thereby they have not fulfilled the stipulated conditions of the said notification, in respect of the said imported goods. I find that in the case where goods are not physically available for confiscation, redemption fine is imposable in light of the judgment passed by the Hon'ble Supreme Court in the case of M/s. Weston Components Ltd. Vs. Commissioner of Customs, New Delhi [2000 (115) ELT 278 (SC)]. The observation of Hon'ble Supreme Court is as under:

*“[Order] – It is contended by the learned Counsel for the appellant that redemption fine could not be imposed because the goods were no longer in the custody of the respondent-authority. **It is an admitted fact that the goods were released to the appellant on an application made by it and on the appellant executing a bond. Under these circumstances if subsequently it is found that the import was not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods, then the mere fact that the goods were released on the bond being executed, would not take away the power of the customs authorities to levy redemption fine.**”*

17.2.7 I find that in the present case the Importer has executed a Bond for availing the benefit of exemption in terms of Condition No. 4 to Serial No. 2 of Notification No 158/1995-Customs dated 14.11.1995 and the goods has been released accordingly. Therefore, the ratio of the above judgment passed by the Hon'ble Supreme Court is squarely applicable to the present case and redemption fine is imposable even after release of goods on execution of bond.

17.2.8 Further, in the case of M/s. Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad), the Hon'ble High Court of Madras has observed as under:

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

....

....

....”

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

“174. In the aforesaid context, we may refer to and rely upon a decision of the Madras High Court in the case of M/s. Visteon Automotive Systems v. The Customs, Excise & Service Tax Appellate Tribunal, C.M.A. No. 2857 of 2011, decided on 11th August, 2017 [2018 (9) G.S.T.L. 142 (Mad.)], wherein the following has been observed in Para-23;

“23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, “Whenever confiscation of any goods is authorised by this Act...”, brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence,

their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).“

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

17.2.10 I find ratio of decision of jurisdictional Hon'ble Tribunal, Ahmedabad rendered in the case of M/s. Van Oord India Pvt. Ltd Vs. Commissioner of Customs, Ahmedabad vide Final Order No. 11039-11040/2025 dated 13.11.2025 is also squarely applicable to the present case as the Hon'ble Tribunal after having considered the aforesaid decisions of Hon'ble Madras High Court in case of M/s. Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad) and Hon'ble Gujarat High Court rendered in case of Synergy Fertichem Ltd. Vs. Union of India, reported in 2020 (33) G.S.T.L. 513 (Guj.), have upheld the confiscation and redemption fine even in absence of physical availability of the goods. Relevant Para of the said Final Order No. 11039-11040/2025 dated 13.11.2025 is re-produced as under:

“5.7 Relying on the decision in the case of Shiv Kripa Ispat Pvt. Ltd. and Chinku Exports, the appellant have challenged confiscation of the imported tugs on the ground that these are not physically available as the same were re-exported. We find that this has elaborately been discussed by the Adjudicating Authority in para 20.1 and 20.2 of the impugned order. We find that Hon'ble Madras High Court in the case of Visteon Automotive Systems India Limited reported at 2018 (009) GSTL 0142 (Madras) and Hon'ble Gujarat High Court in the case of Synergy Fertichem Pvt. Ltd. reported at 2020 (33) G.S.T.L. 513 (Guj.), have held that availability of the goods is not necessary for confiscation of the seized goods. The opening words of Section 125 mention that, “Whenever confiscation of any goods is authorized by this Act.....” brings out the point clearly. Qua power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. Once power of authorization of confiscation of goods gets traced to that Section, physical availability of the goods is not so much relevant. The redemption is in fact, to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves goods from getting confiscated. Therefore, physical availability of goods does not have any significance for imposition of redemption fine under Section 125 of the Act. We therefore, agree with the learned Adjudicating Authority that non availability of goods physically does not impact their confiscation and imposition of redemption fine. We however find that the learned Adjudicating Authority has imposed very heavy redemption fine equal to 10% of the value of the tugs. What has been saved by the appellant in this case is an amount equal to 5% of the duty because if the appellant had paid full duty, they would have been entitled to 95% of the duty amount as draw back. Therefore, quantum of redemption fine to be imposed in lieu of confiscation in this case should be governed by the amount of benefit that would have been accrued to the appellant.”

17.2.11 In view of the above, I hold that redemption fine under Section 125 (1) is liable to be imposed in lieu of confiscation of the imported goods viz. 70.71 MTs of Continuous Cast Copper Wire Rod of 8 mm diameter valued at Rs 2,43,29,172/-, re-imported vide Bill of Entry No 5424120 dated 27.05.2016, though the said goods are not available for confiscation.

17.3 The third issue for decision before me is whether non-levied/short-levied Customs duty amounting to Rs. 56,96,797/-(Rupees Fifty Six Lakh, Ninety Six Thousand, Seven Hundred and Ninety Seven only), in respect of the

goods imported vide Bill of Entry No. 5424120 dated 27.05.2016, as detailed in Annexure-A to the show cause notice, should be demanded and recovered from the Importer, under Section 28(1) of the Customs Act, 1962 read with Condition No. 4(d) to Serial No. 2 of Notification No. 158/1995-Customs dated 14.11.1995 and the conditions of the bond executed by the Importer along with applicable interest under Section 28AA of the Customs Act, 1962.

17.3.1 As discussed at paras supra, the Importer has availed the benefit of exemption under Serial No. 2 of Notification No 158/1995-Customs dated 14.11.1995 and they have failed to prove the identity of the re-exported goods with the re-imported goods to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs, thereby the Importer has not fulfilled the conditions of the said notification for availing the benefit of exemption. Therefore, benefit of exemption under the said notification would not be available to the goods viz. 70.71 MTs of Continuous Cast Copper Wire Rod of 8 mm diameter, re-imported vide Bill of Entry No 5424120 dated 27.05.2016, as detailed in Annexure-A to the show cause notice. The above acts on the part of the Importer has resulted in evasion of Customs duty amounting to Rs. 56,96,797/- (Rupees Fifty Six Lakh, Ninety Six Thousand, Seven Hundred and Ninety Seven only), in respect of Bill of Entry No. 5424120 dated 27.05.2016, as detailed in Annexure-A to the show cause notice, by the said Importer.

17.3.2 After introduction of self-assessment through amendment in Section 17 of the Customs Act, 1962 vide Finance Act, 2017, it is the responsibility of the Importer to correctly declare the description, classification, applicable exemption Notification, applicable Duties, rate of Duties and its relevant Notifications etc. in respect of said imported goods and pay the appropriate duty accordingly. In the instant case, the Importer has wrongly availed the benefit of exemption under Serial No. 2 of Notification No 158/1995-Customs dated 14.11.1995 without fulfilling the stipulated conditions of the said notification for availing the benefit of exemption. It is therefore very much apparent that Importer has violated the provisions of Section 17(1) of the Customs Act, 1962 in as much as they have failed to correctly self-assess the impugned goods. I, therefore, find and hold that the differential Customs Duty amounting to Rs. 56,96,797/- in respect of the imported goods viz. 70.71 MTs of Continuous Cast Copper Wire Rod of 8 mm diameter, re-imported vide Bill of Entry No. 5424120 dated 27.05.2016, is recoverable from the Importer under Section 28(1) of the Customs Act, 1962 read with Condition No. 4(d) to Serial No. 2 of Notification No. 158/1995-Customs dated 14.11.1995 and the conditions of the bond executed by the Importer.

17.3.3 It has also been proposed in the Show Cause Notice to demand and recover interest on the aforesaid Customs Duty under Section 28AA of the Customs Act, 1962. Section 28AA *ibid* provides that when a person is liable to pay duty in accordance with the provisions of Section 28 *ibid*, in addition to such duty, such person is also liable to pay interest at applicable rate as well. Thus, the said Section provides for payment of interest automatically along with the duty confirmed/determined under Section 28 *ibid*. I have already held that Customs Duty amounting to Rs 56,96,797/- is liable to be recovered under Section 28(1) of the Customs Act, 1962. Therefore, I hold that interest on the said Customs Duty determined/confirmed under Section 28(1) *ibid* is required to be recovered under Section 28AA of the Customs Act, 1962.

17.4 Now, I proceed to decide the fourth issue i.e. the proposal for imposition of penalty under Section 112(a) of the Customs Act, 1962 against the Importer.

17.4.1 I find that the show cause notice has also proposed imposition of penalty under Section 112 (a) of the Customs Act, 1962 on the Importer. The text of the said statute is reproduced hereunder for ease of reference:

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).....
shall be liable,—
(i)
(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.”

17.4.2 In the present case the Importer has availed undue benefit of exemption under Serial No. 2 of Notification No 158/1995-Customs dated 14.11.1995 on the imported goods viz. 70.71 MTs of Continuous Cast Copper Wire Rod of 8 mm diameter valued at Rs. 2,43,29,172/-, re-imported vide Bill of Entry No. 5424120 dated 27.05.2016 and they have failed to establish the identity of the re-exported goods to the satisfaction of the Assistant/Deputy Commissioner of Customs, thereby they have not fulfilled the conditions of the Notification, with an intent to evade payment of Basic Customs Duty. Therefore, the said imported goods totally valued at Rs. 2,43,29,172/-, re-imported vide Bill of Entry No. 5424120 dated 27.05.2016, are liable for confiscation under the provisions of Section 111(o) of the Customs Act, 1962. Hence, for the said act of contravention on their part, the Importer is liable for penalty under Section 112(a)(ii) of the Customs Act, 1962.

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

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

ORDER

19.1 I deny the benefit of exemption under Notification No. 158/1995-Customs dated 14.11.1995, availed by M/s. Hindalco Industries Ltd., Century

Bhavan, 3rd Floor, Dr Annie Besant Road, Worli, Mumbai -400030, on the impugned goods viz. 70.71 MTs of Continuous Cast Copper Wire Rod of 8 mm diameter, re-imported vide Bill of Entry No 5424120 dated 27.05.2016, for non-fulfillment of the conditions envisaged in the notification.

19.2 I hold that the impugned goods viz. 70.71 MTs of Continuous Cast Copper Wire Rod of 8 mm diameter valued at Rs 2,43,29,172/- (Rupees Two Crore, Forty Three Lakh, Twenty Nine Thousand, One Hundred and Seventy Two only), re-imported vide Bill of Entry No 5424120 dated 27.05.2016, are liable for confiscation under Section 111(o) of the Customs Act, 1962. However, I give M/s. Hindalco Industries Ltd., Century Bhavan, 3rd Floor, Dr Annie Besant Road, Worli, Mumbai -400030, the option to redeem the goods on payment of Fine of Rs.12,00,000/- (Rupees Twelve Lakh only) under Section 125 of the Customs Act, 1962 in lieu of confiscation.

19.3 I confirm the demand of Customs duty amounting to Rs 56,96,797/- (Rupees Fifty Six Lakh, Ninety Six Thousand, Seven Hundred and Ninety Seven only) in respect of the goods re-imported vide Bill of Entry No 5424120 dated 27.05.2016 and order to recover the same from M/s. Hindalco Industries Ltd., Century Bhavan, 3rd Floor, Dr Annie Besant Road, Worli, Mumbai -400030, under Section 28(1) of the Customs Act, 1962 read with condition No. 4(d) to Notification No. 58/1995-Customs dated 14.11.1995 and the conditions of the bond executed by them.

19.4 Interest at the appropriate rate shall be charged and recovered from M/s. Hindalco Industries Ltd., Century Bhavan, 3rd Floor, Dr Annie Besant Road, Worli, Mumbai -400030, under Section 28AA of the Customs Act, 1962 on the duty confirmed at Para 19.3 above.

19.5 I impose penalty of Rs.5,00,000/- (Rupees Five Lakh only) under Section 112(a)(ii) of the Customs Act, 1962.

20. 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.

21. The Show Cause Notice bearing F. No. VIII/10-06/Pr.Commr./O&A/2017 dated 17.11.2017 is disposed off in above terms.



26.02.2026

(Shiv Kumar Sharma)

Principal Commissioner of Customs

F. No. VIII/10-06/Pr.Commr./O&A/2017

Date: 26.02.2026

DIN- 20260271MN0000000DFB

By Speed Post/E-Mail/By Hand

To:

M/s. Hindalco Industries Ltd.,
Century Bhavan, 3rd Floor, Dr Annie Besant Road,
Worli, Mumbai -400 030

Copy to:

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