

	<p>कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा, सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS: CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421. PHONE : 02838-271426/271163 FAX :02838-271425 E-mail id- adj-mundra@gov.in</p>	
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A	FILE NO.	F. No. GEN/ADJ/ADC/2302/2023-Adjn
B	ORDER-IN-ORIGINAL NO.	MCH/ADC/AKM/158/2024-25
C	PASSED BY	AMIT KUMAR MISHRA ADDITIONAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE, MUNDRA.
D	DATE OF ORDER	22.10.2024
E	DATE OF ISSUE	22.10.2024
F	SCN NUMBER & DATE	CUS/APR/SCN/832/2023-Gr 2 O/o Pr Commr-Cus-Mundra dated 01.11.2023
G	NOTICEE/ PARTY/ IMPORTER	1. M/s. Sol Inks Pvt. Ltd.
H	DIN NUMBER	20241071MO0000111D81

1. यहआदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1 में चार प्रतियों में नीचे बताए गए पते परअपील कर सकताहै-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“सीमाशुल्कआयुक्त (अपील),
चौथी मंजिल, हुडको बिल्डिंग, ईश्वरभुवन रोड,
नवरंगपुरा,अहमदाबाद 380 009”

“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
HAVING HIS OFFICE AT 4TH FLOOR, HUDCO BUILDING, ISHWAR BHUVAN
ROAD,
NAVRANGPURA, AHMEDABAD-380 009.”

3. उक्तअपील यहआदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must be accompanied by –

- i. उक्त अपील की एक प्रति और A copy of the appeal, and
- ii. इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं०-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और सीमाशुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

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BRIEF FACTS OF THE CASE

1. M/s. Sol Inks Pvt. Ltd., 201, Somnath Chamber, Near Adarsh Hotel, 8-A National Highway, Lalpar, Morbi – 363642, Gujarat (IEC: 2412012661, GSTIN: 24AASCS5812M1ZT), (hereinafter also referred to as “the Importer/the Noticee” for the sake of brevity”) are engaged in the Import of “Transparent Glossy Polishable Frit”, “Transparent Hi-Resistance Frit”, “Transparent Glossy Hi-Resistance Frit”, “Glossy Transparent MicroFrit” falling under CTH 32074000 of the first Schedule of Customs Tariff Act, 1975.
2. Whereas, the said Importer availed the benefit of concessional rate of Basic Customs duty under Serial no. 236 of Notification No. 50/2017-Customs dated 30-06-2017 and discharged BCD @ 5%.
3. An analysis of data (Analytics Report - 19 /2021-22) studying “Wrong claims of concessional BCD rate @ 5% under Sr.No.236 of Notification No.50/2017-Customs dated 30-06-2017 especially meant for goods of tariff item 32074000 was carried out by the Directorate General of Analytics and Risk Management, National Customs Targeting Centre, Mumbai. The tariff heading of 3207 inter alia covers “GLASS FRIT AND OTHER GLASS, IN THE FORM OF POWDER, GRANULES OR FLAKES”. This heading has four categories of goods marked by single (-), which can be noted from the complete description of heading 3207, as given below:

3207	Prepared Pigments, Prepared Opacifiers And Prepared Colours, Vitriifiable Enamels And Glazes, Engobes (slips), Liquid Lustres And Similar Preparations, Of A Kind Used In The Ceramic Enamelling Or Glass Industry; Glass Frit And Other Glass, In The Form Of Powder, Granules or Flakes
3207 10	Prepared Pigments, Prepared Opacifiers, Prepared Colours and similar preparations:
3207 10 10	Prepared organic dye-stuff pigments, dry
3207 10 20	Prepared organic dye-stuff pigments, paste
3207 10 30	Prepared inorganic pigments
3207 10 40	Prepared opacifiers prepared colours and similar preparations
3207 10 90	Other
3207 20	Vitriifiable enamels and glazes, engobes (slips) and similar preparations :
3207 20 10	Vitriifiable enamels and glazes
3207 20 20	Engobes (slips) and similar preparations
3207 30 00	Liquid lustres and similar preparations
3207 40 00	Glass frit and other glass, in the form of powder, granules or flakes

3.1. Whereas, it has been noted that “all goods”, falling under tariff item 32074000, are eligible to a concessional BCD rate @ 5%, as provided under Entry/Sr.No. 236 of Notification No.50/2017-Customs dated 30-06-2017. Entry 236 reads as under:

S. No.	Chapter or heading or sub-heading or tariff item	Description of goods	Standard rate	Integrated Goods and Services Tax	Condition No.
236	3207 40 00	All goods	5%	--	--

4. Whereas, it is implied that “Transparent Glossy Polishable Frit”, “Transparent Hi-Resistance Frit”, “Transparent Glossy Hi-Resistance Frit”, “Glossy Transparent MicroFrit”, which are generally in the form of powders or granules, are excluded from tariff item-32074000, as such goods are specifically falling under tariff item 32072010 in view of their use for polishing and glazing, thus, do not appear to be eligible for the benefit of concessional rate of Basic Customs duty under Entry/Sr.No. 236 of Notification No.50/2017-Customs dated 30-06-2017.

5. Whereas, in the above context, the HSN Explanatory Notes relevant to heading 3207 are reproduced below:

“This heading covers a range of preparations used in the ceramic industry (china, earthenware, etc.), in the glass industry or for colouring or finishing metal articles.

- Prepared pigments, prepared opacifiers and prepared colours are dry mixtures formed by the heat treatment of oxides (of antimony, silver, arsenic, copper, chromium, cobalt, etc.) or salts (fluorides, phosphates, etc.) with or without fluxes or other substances, and are fired at high temperatures, generally above 300 °C, after application. The goods are used to produce a coloured or opaque surface in the*

course of ceramic firing. They may be incorporated in the glaze or enamel, or be applied as a coating before glazing.

2. *Vitrifiable enamels and glazes are mixtures of silica with other products (feldspar, kaolin, alkalies, sodium carbonate, alkaline-earth metal compounds, lead oxide, boric acid, etc.) giving a smooth surface, either matt or glossy, by vitrification under heat. In most cases some of the constituents have been fused together in a preliminary process and are present in the mixture in the form of powdered frit (see below).*

They may be transparent (whether or not coloured) or rendered opaque by the addition of opacifiers or pigments; sometimes substances (e.g., titanium or zinc oxides) are added which produce decorative crystalline effects on cooling after the firing. These vitrifiable enamels and glazes are generally in the form of powders or granules.

3. *Engobes (slips) are semi-fluid pastes with a basis of clay, whether or not coloured, used to coat ceramic ware, either completely or in the form of a pattern. They are applied either before firing or after a preliminary first firing.*
4. *Liquid lustres are solutions or suspensions of metal compounds in spirits of turpentine or other organic solvents, used for decorating ceramics or glassware. The most widely used are gold, silver, aluminium or chromium lustres.*
5. *Glass frit and all other varieties of glass (including vitrite and glass obtained from fused quartz or other fused silica) in the form of powder, granules or flakes, whether or not coloured or silvered."*

6. Whereas, point (2) above – with the description “Vetrifiable enamels and glazers” – explains, inter alia, that in most cases, some of the constituents have been fused together in a preliminary process and are present in the mixture in the form of powdered frit; they may be transparent (whether or not coloured) or rendered opaque by the addition of opacifiers or pigments. These “Vetrifiable enamels and glazers” are generally in the form of powders or granules. Given the above nature of goods (i.e. Vetrifiable enamels and glazers of CTH 32072010) - being transparent and usually in powder or granules form - there is a potential risk, as such goods could be mis-declared and/or wrongly classified under tariff item 32074000 for claiming a concessional BCD rate @ 5% under Sr.No.236 of Notification No.50/2017-Customs. Having noted the said possibility of wrong classification, the item descriptions of imported during the period from 01-07-2017 to 29-05-2021 were analysed. It has been observed that in several cases, “Glazed materials or compounds” have been incorrectly classified under tariff item 32074000 enabling to claim inadmissible concessional BCD rate @ 5%, instead of classifying under CTH-32072010 which attracts BCD @ 7.5%. For illustration purposes, a few such item descriptions are given below:

Item Description
GLAZE COMPOUND : KRATOS-2039 (SVB REF.NO: S/9-17/GATT/08 GVCDTD:29.03.2019)

GRAIN FRIT : CEDM/B/P1 GLAZE FRITS
GLAZE COMPOUND : KRATOS-2010 (SVB REF.NO: S/9-17/GATT/08 GVCDTD:29.03.2019)
MICRONIZADO ANTISLIP R12(CERAMIC GLAZE MATERIAL) XG05 0005
CEBRP63/P1 GLAZE FRITS HVT CLEA (CERAMIC GLAZE MATERIAL)
GLASS FRIT 9 (GLAZE)
TRANSPARENT GLOSSY GLAZE
CEBRP63/P87 GLAZE FRITS HVT CLEA (CERAMIC GLAZE MATERIAL)
GLAZE COMPOUND : MTL-100 (SVB REF.NO: S/9-17/GATT/08 GVC DTD:29.03.2019)
SF 112 REFRACT GLAZE (TO GLAZE THE CERAMIC MATERIAL)

7. Whereas, the Importer has cleared for home consumption the goods viz. “Transparent Glossy Polishable Frit”, “Transparent Hi-Resistance Frit”, “Transparent Glossy Hi-Resistance Frit”, “Glossy Transparent MicroFrit” which are glazed materials used for polishing on the payment of Basic Customs Duty @ 5% against Sr.No. 236 of Notification No.50/2017-Customs dated 30-06-2017. The said Importer is required to be correctly classify the goods in question under CTH 32072010 and discharge the Basic Customs Duty @ 7.5% Adv. The details of the Bills of Entry wherein, the said Importer has short paid the Customs duty on account of improper classification and applying improper rates of Basic Customs Duty are as under:

S. No.	BE NO.	BE Date	Assessed Value	Total Duty Assessed	Total Duty payable	Diff/ Short paid
1	3413562	27-05-2019	2612069	639696	724457	84761
2	3295612	18-05-2019	2612069	639696	724457	84761
3	3295612	18-05-2019	2547106	623786	706440	82654
4	3489754	02-06-2019	2547106	623786	706440	82654
5	2085272	17-02-2019	2398984	587511	665358	77847
6	9719887	19-01-2019	2386805	584528	661980	77452
7	4157993	20-07-2019	2343852	445098	650067	204969
8	4157993	20-07-2019	2339776	444324	648937	204613
9	3575007	08-06-2019	2325747	569575	645046	75471
10	3489754	02-06-2019	1959850	479967	543564	63597
11	4058995	13-07-2019	1264518	240132	350714	110582
12	4058995	13-07-2019	1264518	240132	350714	110582
13	4355295	03-08-2019	1242180	235890	344519	108629
14	4355295	03-08-2019	1242180	235890	344519	108629

15	4355295	03-08-2019	1228835	233356	340817	107461
16	9945106	05-02-2019	1207534	295725	334910	39185
17	9719887	19-01-2019	1194617	292562	331327	38765
18	3218448	14-05-2019	1193180	292210	330928	38718
19	4058995	13-07-2019	1179078	223907	327017	103110
20	4058995	13-07-2019	1179078	223907	327017	103110
21	4355295	03-08-2019	1158249	219952	321240	101288
22	4355295	03-08-2019	1158249	219952	321240	101288
23	9719887	19-01-2019	1150372	281726	319056	37330
24	9106068	03-12-2018	1146878	280871	318087	37216
25	4355295	03-08-2019	1145806	217589	317789	100200
26	4058995	13-07-2019	994786	188910	275904	86994
27	4058995	13-07-2019	927571	176146	257262	81116
28	3489754	02-06-2019	635978	155751	176388	20637
29	9106068	03-12-2018	587003	143757	162805	19048
30	9106068	03-12-2018	586985	143753	162800	19047
31	3218500	14-05-2019	551021	134945	152826	17881
32	9106068	03-12-2018	537334	131593	149030	17437
33	8365572	08-10-2018	536376	131358	148764	17406
34	9106068	03-12-2018	519272	127170	144020	16850
35	9106068	03-12-2018	519272	127170	144020	16850
36	9106068	03-12-2018	519256	127166	144016	16850
37	3218448	14-05-2019	422541	103480	117192	13712
38	8365572	08-10-2018	310942	76150	86240	10090
39	8365572	08-10-2018	252641	61872	70070	8198
40	8365572	08-10-2018	248754	60920	68992	8072
41	9945106	05-02-2019	165477	40525	45895	5370
42	4157993	20-07-2019	125685	23868	34859	10991
43	3218500	14-05-2019	102101	25005	28318	3313
TOTAL			50571631	11351306	14026042	2674735

8. Relevant Legal provisions, in so far as they relate to the facts of the case: -

A. Serial No. 236 of Customs Notification No. 50/2017-Cus dated 30-06-

2017;

S. No.	Chapter or heading or sub-heading or tariff item	Description of goods	Standard rate	Integrated Goods and Services Tax	Condition No.
236	3207 40 00	All goods	5%	--	--

B. The Customs Tariff Act, 1975.

C. Section 46 of the Customs Act, 1962 provides for filing of Bill of Entry upon importation of goods, which casts a responsibility on the Importer to declare truthfully, all contents in the Bill of Entry. Relevant portion of Section 46 (4) is reproduced below:-

“(i) The Importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed”.

D. Section 28 (4) of the Customs Act, 1962 provides that –

“Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-

(a) collusion; or

(b) any willful mis-statement; or

(c) suppression of facts,

by the Importer or the exporter or the agent or employee of the Importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been [so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice”.

E . Section 28 (AA) of Customs Act, 1962 provides interest on delayed payment of duty-

(1) Where any duty has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person who is liable to pay the duty as determined under sub-Section (2), or has paid the duty under sub-Section (2B), of Section 28, shall, in addition to the duty, be liable to pay interest at such rate not below ten percent and not exceeding thirty-six per cent per

annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first day of the month succeeding the month in which the duty ought to have been paid under this Act, or from the date of such erroneous refund, as the case may be, but for the provisions contained in sub-Section (2), or sub-Section (2B), of Section 28, till the date of payment of such duty:

F Section 111 (m) of the Customs Act, 1962 – The following goods brought from a place outside India shall be liable to confiscation:

“any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of Section 54”.

G Section 114A of the Customs Act, 1962 deals with the penalty by reason of collusion or any willful mis-statement or suppression of facts. The relevant provision is reproduced below: -

114A - Penalty for short-levy or non-levy of duty in certain cases - Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-Section (8) of Section 28 shall also be liable to pay a penalty equal to the duty or interest so determined: Provided that where such duty or interest, as the case may be, as determined under sub-Section (8) of Section 28, and the interest payable thereon under Section 28AA, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this Section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

9. It appears that the Importer has willfully mis-stated the facts & wrongly availed the benefit of concessional rate of Basic Customs duty which is on lower side by categorizing its goods under CTH 3207400 along with the benefit of Serial No. 236 of Notification No. 50/2017-Customs dated 30-06-2017. Since, the referred provision of the said notification prescribes a concessional rate of Basic Customs Duty of 5% Adv., whereas, the CTH 32072010 having the classification of “Grain Frit for Ceramic Industry” and “Glaze Frits HVT Clea” as Vetrifiable enamels and glazers has a higher rate of Basic Customs Duty, (which appears to be apt for the instant goods under import i.e. “Transparent Glossy

Polishable Frit", "*Transparent Hi-Resistance Frit*", "*Transparent Glossy Hi- Resistance Frit*", "*Glossy Transparent MicroFrit*") the said Importer has tried to evade differential duty @ 2.5% even though the goods under importer are not eligible for any concessional rate of duty.

10. In the light of the documentary evidences, as brought out above and the legal position, it appears that a well thought out conspiracy was hatched by the Importer to defraud the exchequer by adopting the modus operandi of mis-declaring the goods under CTH 32074000 for availing the benefit of concessional rate of BCD under Serial No. 236 of Notification No. 50/2017-Customs dated 30-06-2017.

11. Whereas, it is apparent that the Importer/Noticee was in complete knowledge of the correct nature of the goods nevertheless, the Importer claimed undue concessional rate of duty benefit for the said goods in order to clear the goods by wrongly availing the provisions of the duty on a lower side under Serial No. 236 of Notification No. 50/2017-Customs dated 30-06-2017. Subsequent, to the introduction of self-assessment under Section 17 of the Customs Act, 1962, more faith has been bestowed on the Importers/trade and the practice of routine assessment and concurrent audit etc. have been dispensed with. As a part of self-assessment by the Importer, the responsibility has been entrusted upon them to correctly self-assess the duty. However, in the instance case, the Importer intentionally abused this faith placed upon it by the law of the land. Therefore, it appears that the Importer has willfully violated the provisions of Section 17(1) of the Act in as much as Importer has failed to correctly self-assess the impugned goods and has also willfully violated the provisions of Sub-Section (4) and (4A) of Section 46 of the Act. Therefore, the goods having assessable value of ₹5,05,71,631/- (Five Crore Five Lakh Seventy One Thousand Six Hundred and Thirty one only)as detailed herein above, appears liable for confiscation under Section 111(m) of the Customs Act, 1962.

12. It appears that the Importer willfully claimed undue notifications benefit for the impugned goods resulting into short levy of duty. Further, it appears that such wrong claim of concessional rate of duty under the provisions of the above mentioned notifications by the Importer has resulted into short levy of duty of ₹26,74,735/-, which is recoverable from the said Importer under the provisions of Section 28(4) of the Customs Act, 1962 along with interest as applicable under Section 28AA of the Act. For such act of omission and commission, the Importer also appears to have rendered themselves liable to penalty under Section 114A of the Customs Act, 1962.

13. Now, therefore, M/s. Sol Inks Pvt. Ltd., 201, Somnath Chamber, Near Adarsh Hotel, 8-A National Highway, Lalpar, Morbi – 363642, Gujarat are hereby called upon to show cause to the Additional Commissioner of Customs, Custom House, Mundra, having office at Room No. 104, PUB Building, 5B, Mundra (Kutch) Gujarat 370421, as to why: -

- i. The goods having assessable value of ₹5,05,71,631/- (Five Crore Five Lakh Seventy-One Thousand Six Hundred and Thirty one only) covered under Bills of Entry as detailed herein above, should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962;
- ii. the Serial No. 92A or Serial No. 101 of Schedule-II of IGST Notification 01/2017-IGST(Rate) on the goods should not be denied and the same should not be re-assessed at correct rate of IGST @18% under Sr. No. 453 of Schedule III of IGST Notification No. 01/2017;
- iii. The differential duty worked out to ₹26,74,735/- (Rupees Twenty-Six Lakhs Seventy-Four Thousand Seven Hundred Thirty-Five Only) for Bills of Entry as detailed herein above, should not be recovered under Section 28 (4) of the Customs Act, 1962 along with applicable interest thereon as per Section 28AA of the Customs Act, 1962, as applicable.
- iv. Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962.

13.1 Vide Corrigendum dt. 21.10.2024 the group -2 O/o, CH, Mundrta has made following corrections to the SCN CUS/APR/SCN/832/2023- Gr2 O/o Pr Commr-Cus-Mundra dt. 01.11.2023, the details are enumerated as below:

Content in the para 13(ii) of the SCN dated 01.11.2023	May be read as in para 13(ii) of the SCN dated 01.11.2023
The Serial No. 92A or Serial No. 101 of Schedule-II of IGST Notification 01/2017-IGST(Rate) on the goods should not be denied and the same should not be re-assessed at correct rate of IGST @18% under Sr. No. 453 of Schedule III of IGST Notification No. 01/2017;	Classification under tariff item 32074000 for claiming a concessional BCD rate @ 5% under Sr.No.236 of Notification No.50/2017-Customs should not be denied and the goods should not be re-classified under tariff item 32072010 with BCD @ 7.5%.

PERSONAL HEARING

14. The Personal Hearing in the matter, was Fixed on Dated 18.01.2024, 22.08.2024 and 07.10.2024 In response to which neither the importer nor his authorised representative

turned up for the PH before the adjudicating authority.

DISCUSSION & FINDING

15. I have carefully gone through the facts of the case, allegations made in the show cause notice dated 16.10.2023, following the principles of natural justice as per the provisions of the Customs Act / Rules.

I find that following main issues are involved in the SCN, which are required to be decided-

- i. Whether the goods having assessable value of ₹5,05,71,631/- (Five Crore Five Lakh Seventy-One Thousand Six Hundred and Thirty-one only) covered under Bills of Entry as detailed herein above, should be held liable for confiscation under Section 111(m) of the Customs Act, 1962.
- ii. Whether classification under tariff item 32074000 for claiming a concessional BCD rate @ 5% under Sr.No.236 of Notification No.50/2017-Customs should be denied and the goods should be re-classified under tariff item 32072010 with BCD @ 7.5%.
- iii. Whether the differential duty worked out to ₹26,74,735/- (Rupees Twenty-Six Lakhs Seventy-Four Thousand Seven Hundred Thirty-Five Only) for Bills of Entry as detailed herein above, should be recovered under Section 28 (4) of the Customs Act, 1962 along with applicable interest thereon as per Section 28AA of the Customs Act, 1962, as applicable.
- iv. Whether penalty should be imposed upon them under Section 114A of the Customs Act, 1962.

Discussion and Finding

16. M/s. Sol Inks Pvt. Ltd engaged in the Import of “*Transparent Glossy Polishable Frit*”, “*Transparent Hi-Resistance Frit*”, “*Transparent Glossy Hi- Resistance Frit*”, “*Glossy Transparent MicroFrit*” falling under CTH 32074000 of the first Schedule of Customs Tariff Act, 1975 has availed the benefit of concessional rate of Basic Customs duty under Serial no. 236 of Notification No. 50/2017-Customs dated 30-06-2017 and discharged BCD @ 5%. An analysis of data (Analytics Report - 19 /2021-22) studying “Wrong claims of concessional BCD rate @ 5% under Sr.No.236 of Notification No.50/2017-Customs dated 30-06-2017 especially meant for goods of tariff item 32074000 was carried out by the Directorate General of Analytics and Risk Management, National Customs Targeting Centre, Mumbai. The tariff heading of 3207 inter alia covers “GLASS FRIT AND OTHER GLASS, IN THE FORM OF POWDER, GRANULES OR FLAKES”.

it is implied from the table at point no. 3.1 above that "*Transparent Glossy Polishable Frit*", "*Transparent Hi-Resistance Frit*", "*Transparent Glossy Hi- Resistance Frit*", "*Glossy Transparent MicroFrit*", which are generally in the form of powders or granules, are excluded from tariff item-32074000, as such goods imported by M/s Sol Inks Pvt. Ltd. are specifically falling under tariff item 32072010 in view of their use for polishing and glazing, Therefore, I find that the goods do not appear to be eligible for the benefit of concessional rate of Basic Customs duty under Entry/Sr.No. 236 of Notification No.50/2017-Customs dated 30-06-2017.

17. Further, I find that the Importer has willfully mis-stated the facts & wrongly availed the benefit of concessional rate of Basic Customs duty which is on lower side by categorizing its goods under CTH 32074000 along with the benefit of Serial No. 236 of Notification No. 50/2017-Customs dated 30-06-2017. Since, the referred provision of the said notification prescribes a concessional rate of Basic Customs Duty of 5% Adv., whereas, the CTH 32072010 having the classification of "Grain Frit for Ceramic Industry" and "Glaze Frits HVT Clea" as Vetrifiable enamels and glazers has a higher rate of Basic Customs Duty, (which appears to be apt for the instant goods under import i.e. "*Transparent Glossy Polishable Frit*", "*Transparent Hi-Resistance Frit*", "*Transparent Glossy Hi- Resistance Frit*", "*Glossy Transparent MicroFrit*") the said Importer has tried to evade differential duty @ 2.5% even though the goods under importer are not eligible for any concessional rate of duty.

18. I find that the present case is projected to recover the illegally gained duty difference of 2.5% by means of mis classifying the goods under CTH 32074000 instead of the correct CTH 32072010 and there is no contention for the IGST schedule. Also the analysis of NCTC is silent on the matter of IGST schedule. Therefore, I find that the demand for change in the IGST schedule is liable to be dropped.

19. In the light of the documentary evidences, as brought out above and the legal position, I also find that a well thought out conspiracy was hatched by the Importer to defraud the exchequer by adopting the modus operandi of mis-declaring the goods under CTH 32074000 for availing the benefit of concessional rate of BCD under Serial No. 236 of Notification No. 50/2017-Customs dated 30-06-2017 which are correctly classifiable under chapter heading 32072010 with BCD @ 7.5%.

20. Further, I find that the Importer/Noticee was in complete knowledge of the correct nature of the goods nevertheless, the Importer claimed undue concessional rate of duty benefit for the said goods in order to clear the goods by wrongly availing the provisions of the duty on a lower side under Serial No. 236 of Notification No. 50/2017-Customs dated 30-06-2017. Subsequent, to the introduction of self-assessment under Section 17 of the

Customs Act, 1962, more faith has been bestowed on the Importers/trade and the practice of routine assessment and concurrent audit etc. have been dispensed with. As a part of self-assessment by the Importer, the responsibility has been entrusted upon them to correctly self-assess the duty. However, in the instance case, the Importer intentionally abused this faith placed upon it by the law of the land. Therefore, it appears that the Importer has willfully violated the provisions of Section 17(1) of the Act in as much as Importer has failed to correctly self-assess the impugned goods and has also willfully violated the provisions of Sub-Section (4) and (4A) of Section 46 of the Act. Therefore, the goods having assessable value of ₹5,05,71,631/- (Five Crore Five Lakh Seventy-One Thousand Six Hundred and Thirty-one only) as detailed herein above are liable for confiscation under Section 111(m) of the Customs Act, 1962.

20.1 I am inclined to impose redemption fine on them although the same are not available for confiscation. In this regard, I rely upon the judgements, as enumerated below:

i Hon'ble Madras High Court in the case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) has after observing decision of Hon'ble Bombay High Court in case of M/s Finesse Creations Inc reported vide 2009 (248) ELT 122 (Bom)-upheld by Hon'ble Supreme Court in 2010(255) ELT A.120(SC), held in para 23 of the judgment as below:

"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.

ii. The above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.).

iii. Further, neither the decision of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) nor the decision of Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd. reported in 2020 (33)

G.S.T.L. 513 (Guj.) has been challenged by any of the parties and are in operation.

21. Further, I find that the Importer willfully claimed undue notifications benefit for the impugned goods resulting into short levy of duty. Further, it is found that such wrong claim of concessional rate of duty under the provisions of the above mentioned notifications by the Importer has resulted into short levy of duty of ₹26,74,735/-, which is recoverable from the said Importer under the provisions of Section 28(4) of the Customs Act, 1962 along with interest as applicable under Section 28AA of the Act. For such act of omission and commission, the Importer has rendered himself liable to penalty under Section 114A of the Customs Act, 1962.

22. In view of the forgoing discussions and findings, I pass the following order:

- i. I order for confiscation of the goods having assessable value of 5,05,71,631/- (Rs. Five Core Five Lakh Seventy One Thousand Six Hundred and Thirty-One Only) covered under Bills of Entry as detailed at the point no. 7, above, under Section 111(m) of the Customs Act, 1962. However, I offer the same for redemption under Section 125 (1) of the Customs Act, 1962 upon payment of a fine of Rs. 50,00,000./- (Rs. Fifty Lakhs Only). Further, as per the provisions of Section 125(3) of the Customs Act, 1962 if option of payment of fine is not exercised within 120 days from the date of this order, the same shall become void.
- ii. I reject classification under tariff item 32074000 for claiming a concessional BCD rate @ 5% under Sr.No.236 of Notification No.50/2017-Customs and order for re-classification of the goods under tariff item 32072010 with BCD @ 7.5%.
- iii. I confirm and order for recovery of the differential duty worked out to ₹ 26,74,735/- (Rs. Twenty Six Lakh Seventy Four Thousand Seven Hundred Thirty Five only) for Bills of Entry as detailed at the point no. 7 above, under Section 28 (4) of the Customs Act, 1962 along with applicable interest thereon as per Section 28AA of the Customs Act, 1962, as applicable.
- iv. I impose a penalty of Rs. ₹ 26,74,735/- (Rs. Twenty Six Lakh Seventy Four Thousand Seven Hundred Thirty Five only) under section 114A of the Customs Act, 1962 on M/s Sol Inks pvt. Ltd. for the goods imported vide 43 Bills of Entry as mentioned at point no.7 above. However, as per first proviso to Section 114A of the Customs Act, 1962 if they pay the amount of duty determined above along with interest payable thereon as ordered under (iii) above within thirty days from the date of communication of this order, the amount of penalty shall be twenty-five percent of the duty confirmed above. The benefit of reduced penalty shall be available if the amount of reduced penalty is also paid within the aforesaid period of thirty days.

(Amit Kumar Mishra)
Additional Commissioner

To,

M/s. Sol Inks Pvt. Ltd.,
201, Somnath Chamber,
Near Adarsh Hotel,
8-A National Highway, Lalpar,
Morbi – 363642, Gujarat

Copy to:

1. The Dy./Asstt. Commissioner (Gr. 2), Custom House, Mundra.
2. The Dy./Asstt. Commissioner (Legal/Prosecution), Custom House, Mundra.
3. The Dy./Asstt. Commissioner (RRA/TRC), Customs House, Mundra.
4. The Dy./Asstt. Commissioner (EDI), Custom House, Mundra.
5. Notice Board (to display on Notice Board for all Noticees).
6. Guard File.