



प्रधान आयुक्त का कार्यालय, सीमा शुल्क,अहमदाबाद

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

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PREAMBLE

A	फाइल संख्या/ File No.	:	F. No. VIII/10-64/ICD-SND/O&A/HQ/2023-24
B	कारण बताओ नोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	F. No. VIII/10-64/ICD-SND/O&A/HQ/2023-24 dated 21.12.2023
C	मूल आदेश संख्या/ Order-In-Original No.	:	105/ADC/VM/O&A/2024-25
D	आदेश तिथि/ Date of Order-In-Original	:	22.07.2024
E	जारी करनेकी तारीख/ Date of Issue	:	22.07.2024
F	द्वारापारित/ Passed By	:	Vishal Malani, Additional Commissioner, Customs, Ahmedabad.
G	आयातक का नाम औरपता / Name and Address of Importer / Passenger	:	M/s. Suzuki Motor Gujarat Pvt. Ltd. situated at Block No. 334 and 335, Hansalpur, Near Village Becharaji, Mandal, Ahmedabad – 382 130
(1)	यह प्रति व्यक्ति के उपयोग के लिए निःशुल्क प्रदान किया जाता है जिन्हें यह जारी किया जाता है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्त किया तारीख के ६० दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क)अपील(, ४वि मंजिल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच)५.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथकेवल पांच)५.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को ७.५ %अधिकतम १० करोड़ शुल्क हम करना होगा जहां शुल्क या इयूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, १९६२ के धरा १२९ के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

BRIEF FACTS OF THE CASE:

M/s. Suzuki Motor Gujarat Pvt. Ltd. situated at Block No. 334 and 335, Hansalpur, Near Village Becharaji, Mandal, Ahmedabad – 382 130, Gujarat (hereinafter referred to as 'the importer'), holding IEC – 0815005687, is engaged in the import of Components for Suzuki Motor Vehicle (CTH 72042190)' packed into steel Racks which are durable in nature.

2. The steel racks, which are used to pack the various imported components, are returnable and are to be re-exported to their group company viz. M/s. Suzuki Motor Corporation, Japan. The importer is availing the exemption from payment of whole of Customs duty and whole of Additional duty leviable under Notification No. 104/94-Customs dated 16.03.1994 in respect of such Returnable Racks. For the purpose of availing the benefit of exemption under Notification No. 104/94-Cus, the importer had executed the following RE-Bonds:

- a) 2001486690 dtd. 02.11.2018
- b) 2001660498 dtd. 13.11.2019
- c) 2001733725 dtd. 19.05.2020
- d) 2001866717 dtd. 27.05.2021
- e) 2001936119 dtd. 07.12.2021

2.1 In terms of the provisions of Notification No. 104/94-Cus, the exemption to packing material is subject to the condition that the same are re-exported within a period of 6 months from the date of their importation. The said notification makes provision for extension of such time limit in cases which merit sufficient cause for delay. The relevant provisions of the said notification are reproduced under for ease of reference:

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts containers which are of durable nature, falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India, from, -

(a) the whole of the duty of customs leviable thereon under the said First Schedule; and

(b) the whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act:

Provided that the importer, by execution of a bond in such form and for such sum as may be specified by the Assistant Commissioner of Customs or Deputy Commissioner of Customs

binds himself to re-export the said containers within six months from the date of their importation and to furnish documentary evidence thereof to the satisfaction of the said Assistant Commissioner and to pay the duty leviable thereon in the event of the importer's failure to do so:

Provided further that in any particular case, the aforesaid period of six months may, on sufficient cause being shown, be extended by the said Assistant Commissioner for such further period, as he may deem fit.

3. During the course of verification of the import of returnable racks vis-a-vis re-export of the same, it was revealed that the importer had failed to re-export the returnable racks with respect to 5 RE-Bonds within the stipulated time frame. The details of Bills of Entry of returnable racks wherein the impugned goods have not been exported within stipulated time frame are tabulated as under:

1

RE BOND NO. 2001486690						
S.No.	BoE No.	Date	Shipping Bill No.	Date	Qty (PCS)	Delay in export (in days)
1	8728423	03-Nov-18	5529963	12-Jul-19	6	68
2	8958614	22-Nov-18	5529963	12-Jul-19	2	49
3	2891987	18-Apr-19	4491067	14-Aug-20	15	301
4	5152723	03-Oct-19	3875567	17-Jul-20	11	105
5	5440248	25-Oct-19	4491067	14-Aug-20	7	111
6	5152723	03-Oct-19	5210177	16-Sep-20	1	166
7	5485486	30-Oct-19	4491067	14-Aug-20	7	106

2

RE BOND NO. 2001660498						
Sr. No.	BoE No.	Date	Shipping Bill No.	Date	Qty (PCS)	Delay in export (in days)
1	5673788	14-Nov-19	5210177	16-Sep-20	4	124
2	5673788	14-Nov-19	5816376	13-Oct-20	6	151
3	5673788	14-Nov-19	6688759	21-Nov-20	7	190
4	5673368	14-Nov-19	4491067	14-Aug-20	7	91
5	6207157	23-Dec-19	3820717	15-Jul-20	29	22
6	6347747	04-Jan-20	3820717	15-Jul-20	26	10
7	6437724	11-Jan-20	3820717	15-Jul-20	42	3
8	6437724	11-Jan-20	3820717	15-Jul-20	23	3
9	6437878	11-Jan-20	3820717	15-Jul-20	6	3
10	6438198	11-Jan-20	3820717	15-Jul-20	14	3
11	6648527	27-Jan-20	4491067	14-Aug-20	7	17
12	6700805	31-Jan-20	4491067	14-Aug-20	15	13
13	6700742	31-Jan-20	4491067	14-Aug-20	4	13
14	6704637	31-Jan-20	4491067	14-Aug-20	8	13
15	6704637	31-Jan-20	4629448	21-Aug-20	1	20
16	6704637	31-Jan-20	4491067	14-Aug-20	3	13
17	6793665	07-Feb-20	4491067	14-Aug-20	20	6
18	6793633	07-Feb-20	4491067	14-Aug-20	5	6
19	6795710	07-Feb-20	4491067	14-Aug-20	20	6
20	6795710	07-Feb-20	4491067	14-Aug-20	7	6
21	6925892	18-Feb-20	4629448	21-Aug-20	15	2
22	7497284	21-Apr-20	6947579	03-Dec-20	1	43
23	7498500	22-Apr-20	6078672	23-Oct-20	2	1
24	7564119	01-May-20	6947579	03-Dec-20	1	33

25	7563741	01-May-20	6947579	03-Dec-20	13	33
26	7578484	03-May-20	6403795	07-Nov-20	20	5
27	7578484	03-May-20	6688759	21-Nov-20	2	19
28	7578484	03-May-20	6947579	03-Dec-20	2	31
29	7578693	03-May-20	6403795	07-Nov-20	3	5
30	7577419	03-May-20	6947579	03-Dec-20	1	31
31	7630035	11-May-20	6947579	03-Dec-20	1	23
32	7630325	11-May-20	6947579	03-Dec-20	19	23
33	6994799	24-Feb-20	6947579	03-Dec-20	12	100
34	6994799	24-Feb-20	8100602	22-Jan-21	13	150
35	6994799	24-Feb-20	6947579	03-Dec-20	14	100

3

RE BOND NO. 2001733725						
S.no.	BoE No.	Date	Shipping Bill No.	Date	Qty exported	Delay in Export (in days)
1	7703650	19-May-20	6688759	21-Nov-20	12	3
2	7705690	20-May-20	6947579	03-Dec-20	28	14
3	7740746	25-May-20	6947579	03-Dec-20	33	9
4	7797828	01-Jun-20	7422227	23-Dec-20	54	22
5	7797828	01-Jun-20	8100602	22-Jan-21	29	52
6	7799852	01-Jun-20	6947579	03-Dec-20	18	2
7	7889415	12-Jun-20	8100602	22-Jan-21	73	41
8	7889415	12-Jun-20	8582833	11-Feb-21	14	61
9	7886725	12-Jun-20	7422227	23-Dec-20	27	11
10	8088721	06-Jul-20	8100602	22-Jan-21	17	17
11	8232375	21-Jul-20	8261345	29-Jan-21	1	9
12	8232380	21-Jul-20	8261345	29-Jan-21	17	9
13	8215483	20-Jul-20	8100602	22-Jan-21	7	3
14	8215483	20-Jul-20	8261345	29-Jan-21	22	10
15	8297060	27-Jul-20	8261345	29-Jan-21	28	3
16	8297060	27-Jul-20	8582833	11-Feb-21	18	16
17	8296759	27-Jul-20	8261345	29-Jan-21	4	3
18	8294431	27-Jul-20	8261345	29-Jan-21	43	3
19	8296391	27-Jun-20	8582833	11-Feb-21	18	46
20	8280570	25-Jul-20	8261345	29-Jan-21	1	5
21	8294254	27-Jul-20	8261345	29-Jan-21	30	3
22	8383973	05-Aug-20	8582833	11-Feb-21	18	7

4

RE BOND NO. 2001866717						
S.no.	BoE No.	Date	Shipping Bill No.	Date	Qty exported	Delay in export (in days)
1	5991440	26-Oct-21	1275149	09-May-22	5	12
2	5991421	26-Oct-21	1275149	09-May-22	5	12
3	5991543	26-Oct-21	1275149	09-May-22	3	12

5

RE BOND NO. 2001936119						
S.no.	BoE No.	Date	Shipping Bill No.	Date	Qty exported	Delay in Export (in days)
1	6912735	01-Jan-22	3077836	26-Jul-22	1	12
2	6916306	01-Jan-22	3077836	26-Jul-22	1	12
3	6916560	01-Jan-22	2846932	15-Jul-22	4	12
4	6916224	01-Jan-22	2846932	15-Jul-22	36	12
5	7145099	19-Jan-22	3077836	26-Jul-22	1	12
6	7145821	19-Jan-22	3077836	26-Jul-22	1	12
7	8084755	31-Mar-22	4651566	06-Oct-22	5	12
8	8069682	30-Mar-22	4651566	06-Oct-22	6	12
9	8070030	30-Mar-22	4651566	06-Oct-22	52	12

4. In view of the above, it appeared that the importer have failed to re-export the returnable racks within the stipulated time frame of 6 months. Though the said notification provides for extending the time frame of re-export, the importer have neither sought for such extension from the competent authority nor shown any cause for the delay. Thus, it appeared

that the conditions of Notn. No. 104/94-Cus. have not been fulfilled in the instant case. In case of a conditional exemption notification, the benefit of exemption under the said notification is not admissible if the conditions spelt out therein are not fulfilled. In the instant case, it appeared that the importer have failed to fulfill the conditions of Notn. No. 104/94-Cus and as such the benefit of exemption under the said notification is inadmissible in respect of the returnable racks covered under the Bills of Entry appearing in the table to para 3 above.

5. The importer was directed to pay the Customs duty to the tune of Rs. 30,27,134/- vide letter F. No. VIII/48-41/Bond/ICD-SND/2020-21 dated 15.05.2023 issued by the Deputy Commissioner of Customs, ICD Sanand, Ahmedabad in respect of the returnable racks which were not re-exported within the stipulated time frame of 6 months from the date of their importation. The importer submitted their written submissions vide their letter dated 1.6.2023 wherein they submitted that due to Covid-19 pandemic, they were unable to re-export the impugned goods within the stipulated time. They further submitted that they are in the process of filing a representation before the Central Board of Indirect Taxes and Customs requesting condonation for the time period during which Covid-19 was prevailing. However, the available facts indicate that the importer had not sought for any extension of time limit as provided for in Notn. No. 104/94-Cus in respect of the impugned goods. The notification expressly provides for seeking extension of time limit, however, the importer have failed to do so and as such the conditions of the said notification are not fulfilled.

6. The importer had executed RE-Bonds, as detailed at para 2 hereinabove, binding himself to re-export the said returnable racks within six months from the date of their importation and to furnish documentary evidence thereof to the satisfaction of the said Assistant Commissioner and to pay the duty leviable thereon in the event of the importer's failure to do so. However, it is observed that the importer have neither re-exported the same nor paid the Customs duty leviable thereon in terms of the Bonds executed by them. At this juncture, it is to mention that the term "Bond" is not defined under the Customs Act, 1962. However, the same has been defined under Sub-section (5) of Section 2 of the Indian Stamp Act, 1899 as under:

(5) "*Bond*" — "*Bond*" includes—

(a) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;

(b) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and

(c) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another:

Likewise, Section 2(d) of The Limitation Act, 1963 defines the term 'Bond' as under:

(d) "bond" includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;

In light of the definition of the term 'Bond' it is expressly clear that the importer has undertaken the obligation to pay Customs Duty alongwith Interest in the event of non-fulfillment of export obligation. Such act of the importer to the effect of not paying Customs Duty alongwith Interest tantamount to dishonoring the Bond executed by them.

7. In view of the above, it appeared that the importer have contravened the provisions of Notn. No. 104/94-Cus and as such the benefit of exemption thereunder is not admissible and the Customs duty to the tune of Rs. 30,27,134/- (as detailed at Annx. A to this Notice) is liable to be demanded and recovered in terms of the provisions of Sec. 143 of the Customs Act read with Notn. No. 104/94-Cus and the conditions of the Bonds executed by them. Further, it appeared that the importer is also liable to pay interest in terms of the provisions of Sec. 143 of the Customs Act read with Notn. No. 104/94-Cus and the RE-Bonds executed by them.

8. Further, the importer had availed the benefit of exemption under Notification No. 104/94-Cus. One of the conditions laid down in the said exemption Notification is that the importer was required to re-export goods within a period of 6 months. Thus, the exemption was admissible subject to fulfilment of the conditions laid down in the exemption Notification. In the

instant case, the condition of re-export within a stipulated time frame under the exemption Notification has not been fulfilled and as such it appeared that the impugned goods are liable to confiscation in terms of the provisions of Section 111(o) of the Customs Act. The relevant text of the said statute is reproduced under:

The following goods brought from a place outside India shall be liable to confiscation:

(a) _ _ _ _

(b) _ _ _ _

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

8.1 Also, in terms of the provisions of Section 112(a) any person, who omits to do any act which act or omission would render such goods liable to confiscation under Section 111, is liable to penalty. In the instant case, the importer have failed to re-export the impugned goods within the stipulated time frame and thereby have rendered such returnable racks under consideration liable to confiscation. Thus, the importer appeared to have committed an act which have rendered the returnable racks liable to confiscation and as such the importer have rendered themselves liable to penalty under Section 112(a) of the Customs Act, 1962.

SHOW CAUSE NOTICE:-

9. In light of above findings, a Show Cause Notice was issued to M/s.Suzuki Motor Gujarat Pvt. Ltd. to the Additional Commissioner of Customs, Ahmedabad having his office at Custom House, 1st Floor, Near All India Radio, Navrangpura Ahmedabad as to why :-

- (i) The duty total amounting to Rs. 30,27,134/- (Rupees Thirty Lacs Twenty Seven thousand One hundred and Thirty Four only) (as detailed in annexure-A), should not be demanded and recovered from them in terms of the provisions of Section 143 of the Customs Act, 1962 read with Notn. No. 104/94-Cus and the RE-Bonds executed by them.
- (ii) Interest should not be charged and recovered from them in terms of the provisions of Section 143 of the Customs Act, 1962

read with Notn. No. 104/94-Cus and the RE-Bonds executed by them.

- (iii) The goods, totally valued at Rs. 97,72,210/- (as detailed in Annx. A) should not be confiscated in terms of the provisions of Section 111(o) of the Customs Act and since the goods are not physically available for confiscation why redemption fine should not be imposed on them in terms of the provisions of Section 125 of the Customs Act.
- (iv) Penalty under Section 112(a) of the Customs Act, 1962 should not be imposed on them.

SUBMISSION:-

10. In response to the Show Cause Notice dated 21.12.2023 M/s Suzuki Motor Gujarat Pvt. Ltd presented a submission on 06.02.2024. The relevant portion of the submission is as under -

A. THAT DEMAND FOR DIFFERENTIAL DUTY AMOUNTING TO RS. 30,27,431/- UNDER SECTION 143 THE CUSTOMS IS LIABLE TO BE SET ASIDE AS THE NOTICEES HAVE FULFILLED THE CONDITION OF NOTIFICATION NO. 104/94-CUS. DATED 16.03.1994. FURTHER THE NOTICEES WERE ALLOWED TO RE-EXPORT THE GOODS:

A.1. It was submitted that the impugned SCN has been issued on the ground that Noticee has failed to re-export the durable racks within the stipulated time frame and therefore not eligible to avail the benefit of Custom Duty and Additional Duty exemption under Notification No. 104/1994-Cus dated 16.03.1994.

A.2. Relevant portion of the notification is extracted below-

"Provided that the importer, by execution of a bond in such form and for such sum as may be specified by the Assistant Commissioner of Customs or Dy. Commissioner of Customs binds himself to re-export the said containers within six months from the date of their importation and to furnish documentary evidence thereof of the satisfaction of the said Assistant Commissioner and to pay the duty leviable thereon in the event of the importer's failure to do so:

Provided further that in any particular case, the aforesaid period of six months may, on sufficient cause being shown, be extended by the said Assistant Commissioner for such further period, as he may deem fit."

(Empasis Supplied)

A.3. In this regard, it was submitted that the Noticee had correctly availed the exemption and the department has failed to correctly interpret the concerned Notification. Notification No. 104/94-Cus dated 16.03.2023 provides exemption to the containers of the durable nature. Further, the durable containers were to be re-exported within six-months from the date of their importation. On showing sufficient cause the time period may be extended by the proper officer.

A.4. The instant show cause notice has been invoked under Section 143 of the Customs Act which provides for execution of bonds for ensuring fulfillment of conditions. Therefore, it is not a demand under Section 28 of the Customs Act following allegation of short payment, non-payment, or evasion of duties but for enforcing the obligations as stipulated in the notification.

A.5. The condition of bond as stipulated in Section 143 was cited by them as reference -

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

- (1) Where this Act or any other law requires anything to be done before a person can import or export any goods or clear any goods from the control of officers of customs and the Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied that having regard to the circumstances of the case, such thing cannot be done before such import, export or clearance without detriment to that person, the Assistant Commissioner of Customs or Deputy Commissioner of Customs may, notwithstanding anything contained in this Act or such other law, grant leave for such import, export or clearance on the person executing a bond in such amount, with such surety or security and subject to such conditions as the Assistant Commissioner of Customs or Deputy Commissioner of Customs approves, for the doing of that thing within such time after the import, export or clearance as may be specified in the bond.

(2) If the thing is done within the time specified in the bond, the Assistant Commissioner of Customs or Deputy Commissioner of Customs shall cancel the bond as discharged in full and shall, on demand, deliver it, so cancelled, to the person who has executed or who is entitled to receive it; and in such a case that person shall not be liable to any penalty provided in this Act or, as the case may be, in such other law for the contravention of the provisions thereof relating to the doing of that thing.

A.6. It was submitted that the Noticees have fulfilled the conditions as stipulated in the notification and hence are rightly entitled to the benefit of exemption on re-export of durable containers/racks.

A.7. Due to the global pandemic, certain import export transactions of the company were on hold due to various restrictions imposed by the government to prevent the outbreak. Due to

the same. The durable racks could not be re-exported within the stipulated time. However, they were later allowed to re-export the racks. Therefore, it cannot be said that the conditions/obligation of the notification has not been followed by them.

A.8. Reliance in this regard was placed on the decision of the Hon'ble CESTAT, New Delhi in the case of *M/s. Ribbel International Limited v. CC- 2019 (9) TMI 537- CESTAT New Delhi*. The bench in that aforementioned matter observed that there is no cause for demanding customs duty when the export obligation was fulfilled by them.

A.9. Similarly, in the instant case, they have very well fulfilled the obligation of re-exporting the durable racks in order to avail the exemption notification benefit.

A.10. In light of the above decision, they humbly submitted that the impugned SCN under Section 143 of the Customs Act is not sustainable and is liable to be dropped herewith.

B. PERMITTING TO RE-EXPORT THE GOODS AMOUNTS TO POST FACTO PERMISSION

B.1. It was submitted that the Noticee has been re-exporting the racks/containers in the past and claiming the benefit of the said Notification. Further, once the containers are allowed to be exported, it has to be understood that the period of re-export has been extended up to the date of said export. Reliance in this regard is placed on the decision of *Intermark Shipping Agencies Pvt. Ltd. v. Central Ex., Cus., (A), Kandla, 2014 (314) E.L.T. 557 (Tri. - Ahmd.)*. The relevant part of the decision reads as follows-

"5... It is seen from the language of this notification that it pertains to exemption to durable containers from payment of customs duty when imported into India if the importer executes a bond and re-export of containers is done within the prescribed period or extended period. It is evident from the facts available on record that the impugned containers have been exported and the duty demanded has also been set aside by the first appellate authority. The said containers were never seized or confiscated. Once the containers have been allowed to be exported, it has to be understood that the period up to the date of export has been extended by the appropriate authority. Once the imported containers have been allowed export there was no point in demanding duty and has been correctly set aside by the first appellate authority"

(Emphasis Supplied)

B.2. Further, post facto permission to re-export the goods was granted to the Noticees by the customs officer. Any permission granted prior or subsequently would imply granting the

permission itself. Reliance in this regard was placed on the decision of *Life Insurance Corporation of India v. Escorts Ltd. and Ors- 1986 Supreme Court Cases 264*. The above decision of Apex Court was placed reliance on by Hon'ble CESTAT, Mumbai in the case of *Hyundai Heavy Industries Co. Ltd. v. Commr. of Cus. (Import), Mumbai- 2006 (205) E.L.T. 841 (Tri. - Mumbai)*.

B.3. Therefore, any irregularities cease to exist upon the post facto permit issued in the instant case of re-export of the durable containers. In light of the same, all factual errors are rendered irrelevant and hence, the demand is liable to be set aside.

B.4. Reliance in this regard was placed on the decision in *Essar Power Gujarat Ltd. Versus Commissioner of Customs, Jamnagar 2011 (265) E.L.T. 143 (Tri. - Ahmd.)* wherein it was held that the post-facto permission issued to the assessee should have been considered by the authorities and by the virtue of such permission no case would lie against the said assessee.

B.5. By the application of the ratio in the above decisions to the present case, the post facto export permit is expressly applicable to the durable containers. Thus, no law has been violated. In this light, the imported goods cannot be confiscated, and no penalty is imposable on them.

C. GLOBAL PANDEMIC WAS AN UNPRECEDENTED EVENT AND WAS BEYOND THE CONTROL OF THE COMPANY:

C.1. It was submitted that a Nationwide lockdown was imposed on 24.03.2020 by the Government of India. The lockdown was extended time and again in lieu of the severe conditions faced in the country. During the period of lockdown, restrictions were imposed in order to avoid spreading the pandemic.

C.2. The Noticee humbly submits that due to the unprecedented times of the Covid-19 pandemic that affected the entire globe, the Company was unable to re-export some of the racks within the stipulated time as the Company's plant was not operational along with several other restrictions imposed. Further, the Company sought extension for some of the Bills of Entry, the extension was granted of 60 days. The details of the racks which could not be re-exported within the stipulated time are mentioned on **page 2-4 of the SCN**.

C.3. Further, the Government of India announced various additional relaxations in order to overcome the unprecedented hardships that were caused due to the pandemic. CBIC vide

Circular No. 21/2021-Customs dated 24.09.2021, with the aim of promoting export of laden marine containers, extended the period of 6 months to another 3 months wherein the period of initial 6 months is till on or before 31.03.2022. The said circular read with Circular No. 83/98- Customs dated 5.11.1998 provides extension in case of genuine difficulty.

C.4. The Noticee had further requested that the decision of the Hon'ble Supreme Court in case of the *IN RE: Cognizance for Extension Of Limitation, 2022 (1) TMI 385- SC Order* shall also be applied for compliance under Notification No. 104/1994-Cus dated 16.03.1994.

C.5. In the light of the above, the Noticee submitted that the duty and the interest demanded is not sustainable in law as the global pandemic was an unprecedented event and was beyond their control.

D. IMPUGNED GOODS ARE NOT LIABLE FOR CONFISCATION UNDER SECTION 111(O) OF THE CUSTOMS ACT, 1962 AND REDEMPTION FINE IMPOSED IN TERMS OF SECTION 125 OF THE CUSTOMS ACT, 1962 IS LIABLE TO BE SET ASIDE:

D.1. The condition of bond as stipulated in Section 111(o) was cited by them as reference -

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

D.2. It was submitted that in the exemption notification benefit is available on re export of the durable containers/racks within 6 months of import. Further, the proviso stipulates extension of time on showing sufficient cause to the proper officer. In the instant case, the durable racks were re-exported. However, due to the unprecedented event of the global pandemic, the re-export was slightly delayed. Even in case of delay, the goods were allowed to be re-exported, as the same was sanctioned by the proper officer.

D.3. In light of the above scenario, it cannot be said that they have not fulfilled the condition of the notification.

D.4. It was further submitted that the goods are not available for confiscation. Since the goods are not available for confiscation, redemption fine under Section 125 is not imposable. For ease of reference, the relevant portion is extracted below-

SECTION 125. Option to pay fine in lieu of confiscation.— (1) Whenever confiscation of any goods is authorized 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 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 such possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit.

D.5. Section 125 of the Customs Act provides for an option on part of 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, it has been clearly shown in the preceding paragraphs that the confiscation under Section 111 is not applicable. Consequently, any proposal to impose redemption fine is also not sustainable.

D.6. Moreover, under section 125, fine is imposable in situation where goods are available for confiscation. In the present case goods are not available for confiscation therefore fine under section 125 is not imposable. Further, in absence of seizure, redemption fine is not imposable.

D.7. Reliance in this regard was placed on the decisions of *Bhagyanagar Metals Ltd. v. C.C.Ex., Hyderabad- 2016 (333) E.L.T. 395 (Tri.- LB)*; *Asia Motor Works v. CC, Kandla- 2020 (371) E.L.T. 729 (Tri.- Ahmd.)*; *C.C.E Ahmedabad-I v. Bhairavi Exim Pvt Ltd.*

D.8. In the light of the above, it was submitted that proposal of imposing redemption fine is liable to be set aside.

E. PENALTY CANNOT BE IMPOSED UNDER SECTION 112(a) OF THE CUSTOMS ACT, 1962.

The condition of bond as stipulated in Section 112 was cited by them as reference

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

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

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;

¹[(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty five per cent. of the penalty so determined;

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.

E.1. The noticee contended that penalty under Section 112(a) of the Customs Act can only be imposed for doing or omitting to do an act which would render the goods liable for confiscation under Section 111 or abets to do such an act. They have not rendered the goods liable to confiscation. This has been explained in detail in the previous paras, thus penalty under Section 111(o) shall not apply in the present case.

E.2. Further, as reiterated above, post facto re export permission was granted to them which has been established above, thus imposition of penalty in instant case is not sustainable.

E.3. They also submitted that for the reasons given in the foregoing paragraphs, the demand of duty is not sustainable in law. Once the demand of duty is found to be non-sustainable, the question of levy of penalty does not arise as per the settled law.

E.4. Reliance is placed on the decision of the Hon'ble Supreme court in the case of *CCE v. H.M.M. Limited, 1995 (76) ELT 497 (SC)*, wherein it was held that the question of penalty would arise only if the department were able to sustain the demand. Similarly, in the case of *CCE, Aurangabad v. Balakrishna Industries, 2006 (201) ELT 325 (SC)*, Hon'ble Supreme

Court held that penalty is not imposable when differential duty is not payable. The above judgment of the Hon'ble Supreme Court has been followed in several cases by the Hon'ble High Courts and the Tribunal, including in the judgment of the Hon'ble Bombay High Court in the case of *CCE & CC. v. Nakoda Textile Industries Ltd., 2009 (240) ELT 199 (Bom.)*.

E.5. Without prejudice to the above discussion, it is submitted that in terms of various decisions of the Supreme Court and various other High Courts and Tribunals, penalty cannot be imposed on the Appellants in absence of mens rea. Reliance in this regard is placed on the following decisions:

- i. *Hindustan Steel Ltd. Vs. State of Orissa, 1978 (2) ELT (J159)*
- ii. *Akbar Badruddin Jiwani v. Collector of Customs, 1990 (47) ELT 16*

E.6. Therefore, the impugned SCN proposing penalty under Section 112(a) of the Customs Act, 1962, is not sustainable in law for this reason also.

F. NO INTEREST IS PAYABLE IN THE INSTANT CASE IN TERMS OF SECTION 143 OF THE CUSTOMS ACT, 1962

F.1. It has been demonstrated in the above that the demand of differential duty is not maintainable. Since there is no liability to pay duty, no interest could be charged from them.

F.2. The Hon'ble Supreme Court of India in *Prathibha Processors vs. Union of India, 1996 (88) E.L.T. 12 (S.C.)*, has held that when the principal amount (duty) is not payable due to exemption, there is no occasion or basis to levy any interest either. Relevant portions from the judgment is extracted below for a ready reference:

"14. ...

The goods are not exigible to duty at that time. Calculation of interest is always on the principal amount. The "interest" payable under Section 61(2) of the Act is a mere "accessory" of the principal and if the principal is not recoverable/payable, so is the interest on it. This is a basic principle based on common sense and also flowing from the language of Section 61(2) of the Act. The principal amount herein is the amount of duty payable on clearance of goods. When such principal amount is nil because of the exemption, a fortiori, interest payable is also nil. In other words, we are clear in our mind that the interest is necessarily linked to the duty payable. The interest provided under Section 61(2) has no independent or separate existence. When the goods are wholly exempted from the payment of duty on removal from the warehouse, one cannot be

saddled with the liability to pay interest on a non-existing duty. Payment of interest under Section 61(2) is solely dependent upon the exigibility or factual liability to pay the principal amount, that is, the duty on the warehoused goods at the time of delivery. At that time, the principal amount (duty) is not payable due to exemption. So, there is no occasion or basis to levy any interest, either. We hold accordingly.

(Emphasis Supplied)

F.3. Thus, from the above referred to principle that interest is necessarily linked to the duty payable. They submitted that once the duty itself cannot be demanded, the corresponding interest shall also be held to be not payable. They referred to the case of Hon'ble Supreme Court in the case of *Commissioner of Customs, Chennai vs. Jayathi Krishna and Co., 2000 119 ELT 4 SC.*

F.4. In the light of the above, interest cannot be demanded when duty demand is not sustainable has also been upheld in several High Court and Tribunal decisions.

The Noticee thus prayed that the proceedings initiated vide SCN F. NO. VII/10-64/1CD-SND/O&A/HQ/2023-24 dated 21.12.2023 is not sustainable and is liable to be dropped

10.1. The authorized representative of the noticee also submitted following case laws and notifications on 04.07.2024 in support of their contentions:-

- a) Circular no 21/2021-Cus dated 04.09.2021 regarding easing container availability for export cargo.
- b) Circular no. 83/98-Customs regarding movement of containers cargo-Instructions reg.
- c) M/s Ribbel Internatoinal Ltd. vs Commissioner of Customs, 2019 (9) TMI 537 CESTAT New Delhi
- d) M/s Intermark Shipping Agencies Pvt. Ltd. vs Central Ex., Cus., (A), Kandla.
- e) M/s Hyundai Heavy Industries Co. Ltd. vs Commissioner of Customs (Import), Mumbai 2006 (205), E.L.T/ 841 (Tri- Mumbai).
- f) M/s Essar Power Gujarat Ltd. vs Commissioner of Customs, Jamnagar, 2011 (265) E.L.T. 143 (Tri-Ahmedabad)
- g) M/s Lubi Industries LLP vs Union of India 2020 (373) E.L.T 454 (Gujarat)
- h) M/s United Export vs Commissioner of Customs (ICD), New Delhi 2017 (357) E.L.T 156 (Tribunal- Delhi)

- i) Commissioner of Customs, Kandla vs APL (India) Pvt. Ltd. 2008 (230) E.L.T 468 (Tribunal – Ahmedabad)
 - j) M/s Teletube Electronics Ltd vs Commissioner of Customs, ICD TKD, New Delhi 2009 (240) E.L.T. 710 (Tribunal Delhi)
 - k) Commissioner of Customs & Central Excise, Indore vs Neo Snack Ltd 2009 (238) E.L.T 88 (Tribunal Delhi)
 - l) M/s Allianz Exports vs Commisioner of Customs, New Delhi 2006 (200) E.L.T. 507 (Tribunal Delhi)
 - m) M/s Bhagyanagar Metals Ltd. vs Commissioner of Central Excise, Hyderabad-II, 2016 (333) E.L.T. 395 (Tribunal – LB)
- , among various others.

PERSONAL HEARING:-

11. During the course of adjudication proceedings opportunity of personal hearings were given to the noticee on 04.07.2024, wherein the authorized representative of the noticee reiterated the submission presented by them on 06.02.2024. The authorized representative also added that there was no intentional evasion of duty, the re-export of steel racks could not take place due to COVID pandemic and the same since have been re-exported. He also referred to case law of M/s Intermark Shipping Agencies Pvt. Ltd. vs Central Excise and Customs, Kandla, 2014 (314) E.L.T 557 (Tribunal-Ahmedabad) and requested to drop the proceedings.

DISCUSSION AND FINDINGS:-

12. I find that the matter before me in this instance is to decide whether -

- (i) The duty total amounting to Rs. 30,27,134/- (Rupees Thirty Lacs Twenty Seven thousand One hundred and Thirty Four only) (as detailed in annexure-A to the Show Cause Notice), should be demanded and recovered from M/s Suzuki Motors Gujarat Pvt. Ltd. in terms of the provisions of Section 143 of the Customs Act, 1962 read with Notn. No. 104/94-Cus and the RE-Bonds executed by them.
- (ii) Interest should be charged and recovered M/s Suzuki Motors Gujarat Pvt. Ltd. in terms of the provisions of Section 143 of the Customs Act, 1962 read with Notn. No. 104/94-Cus and the RE-Bonds executed by them.
- (iii) The goods, totally valued at Rs. 97,72,210/- (as detailed in Annx. A) should be confiscated in terms of the provisions of Section

111(o) of the Customs Act and as the goods are not physically available for confiscation should redemption fine be imposed on M/s Suzuki Motors Gujarat Pvt. Ltd., in terms of the provisions of Section 125 of the Customs Act.

- (iv) Penalty under Section 112(a) of the Customs Act, 1962 should be imposed on them.

13. In this regard, I now proceed to discuss each of the aforementioned points in detail one after the other-

13.1. Whether the duty total amounting to Rs. 30,27,134/- (Rupees Thirty Lacs Twenty Seven thousand One hundred and Thirty Four only), should be demanded and recovered from M/s Suzuki Motors Gujarat Pvt. Ltd. in terms of the provisions of Section 143 of the Customs Act, 1962 read with Notn. No. 104/94-Cus and the RE-Bonds executed by them?

13.1.1. I find that the steel racks, which are used to pack the Components for Suzuki Motor Vehicle (CTH 72042190) during their import nu M/s Suzuki Motors Gujarat Pvt. Ltd (the importer), are returnable and are to be re-exported to their group company viz. M/s. Suzuki Motor Corporation, Japan. The importer availed the exemption from payment of whole of Customs duty and whole of Additional duty leviable under Notification No. 104/94-Customs dated 16.03.1994 in respect of such Returnable Racks. For the purpose of availing the benefit of exemption under Notification No. 104/94-Cus, the importer had executed the following RE-Bonds:

- a) 2001486690 dtd. 02.11.2018
- b) 2001660498 dtd. 13.11.2019
- c) 2001733725 dtd. 19.05.2020
- d) 2001866717 dtd. 27.05.2021
- e) 2001936119 dtd. 07.12.2021

13.1.2. I find that in terms of the provisions of Notification No. 104/94-Cus, the exemption to packing material is subject to the condition that the same are re-exported within a period of 6 months from the date of their importation. However, during the course of verification of the import of returnable racks vis-a-vis re-export of the same, it was revealed that the importer had failed to re-export the returnable racks with respect to 5 RE-Bonds within the stipulated time frame.

13.1.3. I find that the importer had executed 05 Nos of RE-Bonds, thereby binding themselves to re-export the said returnable racks within six months from the date of their importation and to furnish documentary evidence thereof to the satisfaction of the said Assistant Commissioner and to pay the duty leviable thereon in the event of the importer's failure to do so. However, it is observed that the importer neither exported the same in prescribed time limit nor paid the Customs duty leviable thereon in terms of the Bonds executed by them. I find that the importer was thus, directed to pay the Customs duty to the tune of Rs. 30,27,134/- vide letter F. No. VIII/48-41/Bond/ICD-SND/2020-21 dated 15.05.2023 issued by the Deputy Commissioner of Customs, ICD Sanand, Ahmedabad.

13.1.4. I find that the importer contravened the provisions of Notn. No. 104/94-Cus and as such the benefit of exemption thereunder is not admissible and the Customs duty to the tune of Rs. 30,27,134/- is liable to be demanded and recovered in terms of the provisions of Sec. 143 of the Customs Act read with Notn. No. 104/94-Cus and the conditions of the Bonds executed by them. Further, the importer is also found to be liable to pay interest in terms of the provisions of Sec. 143 of the Customs Act read with Notn. No. 104/94-Cus and the RE-Bonds executed by them. Hence a Show Cause Notice was issued to them.

13.1.5. I find that in response to the Notice issued to them the importer has contended that the duty demand of Rs. 30, 27, 431/- under section 143 should be set aside as they have fulfilled the conditions as stipulated in the notification and hence are rightly entitled to the benefit of exemption on re-export of durable containers/ racks. It was due to COVID pandemic that they could not re-export as there were government restrictions in place. Therefore, it cannot be said that the conditions of the notification has not been followed.

13.1.6. I also find that the noticee has placed reliance in this regard on the decision of the Hon'ble CESTAT, New Delhi in the case of M/s. Ribbel International Limited v. CC- 2019 (9) TMI 537- CESTAT New Delhi.

13.1.7. I find that in the case of M/s. Ribbel International Limited v. CC- 2019 (9) TMI 537- CESTAT, New Delhi, the bench had observed that there is no cause for demanding customs duty when the export obligation was fulfilled by the assesses. I find that for each instance of import of impugned goods, such goods have been re-exported as well.

13.1.8. I also find that, even though with delay, it is evident that the importer has re-exported the racks that were imported by them. This is evident from the fact that for each import of racks through various Bills of Entry a subsequent Shipping bills have also been filed. I also find that it is well known fact that due to the global pandemic various restrictions were put on movement within the country and beyond the borders. Further, the Company sought extension for some of the Bills of Entry, the extension was granted of 60 days.

13.1.9. I find that the Government of India announced various additional relaxations in order to overcome the unprecedented hardships that were caused due to the pandemic. CBIC vide Circular No. 21/2021-Customs dated 24.09.2021, with the aim of promoting export of laden marine containers, extended the period of 6 months to another 3 months wherein the period of initial 6 months is till on or before 31.03.2022. The said circular read with Circular No. 83/98- Customs dated 5.11.1998 provides extension in case of genuine difficulty. In this regard, I find that the decision of the Hon'ble Supreme Court in case of the IN RE: Cognizance for Extension Of Limitation, 2022 (1) TMI 385- SC Order shall also be applied for compliance under Notification No. 104/1994-Cus dated 16.03.1994.

13.1.10. I find that it is submitted by the noticee that they have been re-exporting the racks/containers in the past and claiming the benefit of the said notification and that, once the containers are allowed to be exported, it has to be understood that the period of re-export has been extended up to the date of said export. In this regard the noticee has relied placed upon the decision of Intermark Shipping Agencies Pvt. Ltd. v. Central Ex., Cus., (A), Kandla, 2014 (314) E.L.T. 557 (Tri. - Ahmd.). The relevant part of the decision reads as follows-

"5... It is seen from the language of this notification that it pertains to exemption to durable containers from payment of customs duty when imported into India if the importer executes a bond and re-export of containers is done within the prescribed period or extended period. It is evident from the facts available on record that the impugned containers have been exported and the duty demanded has also been set aside by the first appellate authority. The said containers were never seized or confiscated. Once the containers have been allowed to be exported, it has to be understood that the period up to the date of export has been extended by the appropriate authority. Once the imported containers have been allowed export there was no point in demanding duty and has been correctly set aside by the first appellate authority"

(Emphasis Supplied)

I find that the noticee has relied upon the decision of Life Insurance Corporation of India v. Escorts Ltd. and Ors- 1986 Supreme Court Cases 264 wherein it was ruled that any permission granted prior or subsequently would imply granting the permission itself. The above decision of Apex Court was placed reliance on by Hon'ble CESTAT, Mumbai in the case of Hyundai Heavy Industries Co. Ltd. v. Commr. of Cus. (Import), Mumbai- 2006 (205) E.L.T. 841 (Tri. - Mumbai). I also find that in the case of Essar Power Gujarat Ltd. Versus Commissioner of Customs, Jamnagar 2011 (265) E.L.T. 143 (Tri. - Ahmd.) it was held that the post-facto permission issued to the assessee should have been considered by the authorities and by the virtue of such permission no case would lie against the said assessee.

13.1.11. I find that in this instance, the post facto permission to re-export the goods was granted to the Noticee by the customs officer. Therefore, in light of abovesaid case laws, any irregularities cease to exist upon the post facto permit issued in the instant case of re-export of the durable racks.

13.1.12. I thus find that the contention of the importer that certain import export transactions of the company were on hold due to various restrictions imposed by the government to prevent the outbreak, and hence, the durable racks could not be re-exported within the stipulated time, holds merit. Thus, in the light of the above discussion, **the demand of duty is not sustainable in law as the global pandemic was an unprecedented event and was beyond the control of the Noticee.**

13.2. Whether Interest should be charged and recovered from M/s Suzuki Motors Gujarat Pvt. Ltd. in terms of the provisions of Section 143 of the Customs Act, 1962 read with Notn. No. 104/94-Cus and the RE-Bonds executed by them?

13.2.1. I find that in the instant case, the Noticee could not fulfil the re-export obligation due to COVID pandemic. As such as discussed in para 13.1. above,

the duty demand is not sustainable and as such, the demand of interest is also not sustainable

13.3. Whether the goods, totally valued at Rs. 97,72,210/- should be confiscated in terms of the provisions of Section 111(o) of the Customs Act and as the goods are not physically available for confiscation should redemption fine be imposed on M/s Suzuki Motors Gujarat Pvt. Ltd., in terms of the provisions of Section 125 of the Customs Act.

13.3.1. I find that Section 111(o) of the Customs Act, 1962 provides that -

“Section 111 (o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;”

13.3.2. I find that a valid justification for the delay in export of the durable racks by the noticee has been provided in their submissions. I also find that the post facto permission to re-export the goods was granted to the Noticee by the customs officer and the impugned goods have since been exported and not physically available for confiscation. As the condition for export of goods has been satisfied there stands no need for confiscation of the impugned goods.

13.3.3. I find that redemption fine in lieu of confiscation under Section 125 is also proposed in the Show Cause notice dated 21.12.2023. In this regard, section 125 of the Customs Act, 1962 is reciprocated as under-

SECTION 125. Option to pay fine in lieu of confiscation.-- (1) Whenever confiscation of any goods is authorized 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 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 such possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit.

13.3.4. I find that as the goods are not available for confiscation and they have been exported to fulfil the terms of the bond, there stands no need to levy redemption fine on the importer.

13.4. Whether penalty under Section 112(a) of the Customs Act, 1962 should be imposed on the Noticee?

13.4.1. The text of section 112 (A) of the Customs act, 1962 is reciprocated as under-

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

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

(b)

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;

¹[(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty five per cent. of the penalty so determined;

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.

13.4.2. I find that penalty under Section 112(a) of the Customs Act can be imposed for committing or omitting an act which would render the goods liable for confiscation under Section 111 or abets to do such an act. From discussion in para supra, it is evident that the noticee has not rendered the goods liable to confiscation. The post facto re-export permission was granted to the

Noticees which has been established above, thus imposition of penalty in instant case is not sustainable for reasons given in forgoing paras.

13.4.3. I find that the noticee has relied on the decision of the Hon'ble Supreme court in the case of CCE v. H.M.M. Limited, 1995 (76) ELT 497 (SC), wherein it was held that the question of penalty would arise only if the department were able to sustain the demand. Similarly, in the case of CCE, Aurangabad v. Balakrishna Industries, 2006 (201) ELT 325 (SC), Hon'ble Supreme Court held that penalty is not imposable when differential duty is not payable. The above judgment of the Hon'ble Supreme Court has been followed in several cases by the Hon'ble High Courts and the Tribunal, including in the judgment of the Hon'ble Bombay High Court in the case of CCE & CC. v. Nakoda Textile Industries Ltd., 2009 (240) ELT 199 (Bom.). Also, it is submitted that in terms of various decisions of the Supreme Court and various other High Courts and Tribunals, penalty cannot be imposed on the Appellants in absence of mens rea. Reliance in this regard has been placed on the following decisions:

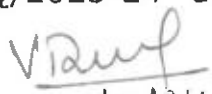
- i. *Hindustan Steel Ltd. Vs. State of Orissa, 1978 (2) ELT (J159)*
- ii. *Akbar Badruddin Jiwani v. Collector of Customs, 1990 (47) ELT 16*

Therefore, the impugned SCN proposing penalty under Section 112(a) of the Customs Act, 1962, is not sustainable.

14. Accordingly, I pass the following order:

ORDER

I drop the proceedings initiated against the Noticee vide Show Cause Notice issued vide F. No. VIII/10-64/ICD-SND/O&A/HQ/2023-24 dated 21.12.2023.


22/7/24
(Vishal Malani)
Additional Commissioner
Customs, Ahmedabad.

DIN: 20240771MN000000AB09

F. No. VIII/10-64/ICD-SND/O&A/HQ/2023-24


Dated: 22.07.2024

BY SPEED POST A.D./E-mail/Hand Delivery/Through Notice Board

To,

M/s. Suzuki Motor Gujarat Pvt. Ltd. situated at Block No. 334 and 335, Hansalpur, Near Village Becharaji, Mandal, Ahmedabad- 382130

Copy to:-

- 1) The Principal Commissioner, for information please (RRA Copy).
- 2) The Assistant/ Deputy Commissioner ICD-Sanand
- 3) The Superintendent (TRC- Cell), Customs HQ, Ahmedabad
- 4) The Superintendent of Customs (Systems), Customs HQ, Ahmedabad
for uploading on official web-site i.e.
<http://www.ahmedabadcustoms.gov.in>
- 5)  Guard File.