



सीमा शुल्क के प्रधान आयुक्त का कार्यालय
सीमा शुल्क सदन, मुंद्रा, कच्छ, गुजरात

OFFICE OF THE PRINCIPAL COMMISSIONER OF
CUSTOMS

CUSTOMS HOUSE, MUNDRA, KUTCH, GUJARAT

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Azadi Ka
Amrit Mahotsav

A. File No.	:	GEN/ADJ/COMM/769/2023-Adjn-O/o Pr Commr-Cus-Mundra
B. Order-in-Original No.	:	MUN-CUSTM-000-COM-07-25-26
C. Passed by	:	Nitin Saini, Commissioner of Customs, Customs House, AP & SEZ, Mundra.
D. Date of order and Date of issue:	:	29.05.2025 29.05.2025
E. SCN No. & Date	:	GEN/ADJ/COMM/769/2023-Adjn -O/o Pr Commr-Cus-Mundra, dated 30.05.2024.
F. Noticee(s) / Party / Importer	:	M/s Mundra Solar PV Ltd. , Adani House, Near Mithakhali Six Road, Navrangpura, Ahmedabad, Gujrat-380009 (IEC-0815006926)
G. DIN	:	20250571M00000333CA7

1. यह अपील आदेश संबंधित को निःशुल्क प्रदान किया जाता है।

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

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004”

“Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”

3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within three months from the date of communication of this order.

4. उक्त अपील के साथ - / 1000 रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो 5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बैंच आहरितट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest,

fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs.10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदसं-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ ड्यूटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.

8. इस आदेश के विरुद्ध अपील हेतु जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

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

BRIEF FACTS OF THE CASE

A specific intelligence was developed by the Directorate of Revenue Intelligence, Regional Unit, Jaipur (hereinafter referred to as '**the DRI, Jaipur**') indicating that **M/s. Mundra Solar PV Limited** (IEC-0815006926) (hereinafter referred to as '**the importer**' or "**M/s. MSPVL**"), registered address at "Adani House, Near Mithakhali Six Road, Navrangpura, Ahmedabad, Gujarat-380009 and corporate office at Adani Corporate House, Shantigram, Near Vaishno Devi Circle, S G Highway, Khodiyar, Ahmedabad-382421, were availing ineligible exemption of Customs duty under **Sr. No. 39** of Notification No. 24/2005-Customs dated 01.03.2005, as amended vide Notification No. 15/2022- Customs dated 01.02.2022 (w.e.f. 01.04.2022) [**RUD No. 1**] while importing **aluminium frame for solar, PV Junction Box and Aluminium Paste to be used for manufacturing of solar panels/modules**. They were also availing the ineligible exemption under **Sr. No. 18**, List A of Notification No. 25/1999-Customs dated 28.02.1999 [**RUD No. 2**] while importing **aluminium frame for solar to be used for manufacturing of solar panels/modules**. The importer was also found to be engaged in misdeclaration of the imported goods namely "**Aluminium Paste**" under CTH 76169990 instead of its correct CTH 32129030 in order to avail ineligible Customs duty exemption under **Sr. No. 18**, List A of Notification No. 25/1999 dated 28.02.1999.

2. The exemption provided under Sr. No. 39 of Notification No. 24/2005-Customs dated 01.03.2005, as amended vide Notification No. 15/2022-Cus dated 01.02.2022 (w.e.f. 01.04.2022) are applicable, subject to the condition that the goods imported shall be used for the manufacture of goods covered under Sr. No. 1 to 38 of the subject notification, provided that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. However, vide Notification No. 15/2022-Customs dated 01.02.2022, **Sr. No. 23** of Notification No.-24/2005 was amended and *the Photovoltaic Cells whether or not assembled in Modules or made up into panels* were excluded from the exemption provided under the subject notification.

2.1 The relevant entries of the Notification No. 24/2005-Cus prior to amendment by Notification No. 15/2022-Customs dated 01.02.2022 are appended as under: -

Notification No. 24/2005 - Customs dated 1st March 2005

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the following goods, falling under the heading, sub-heading or tariff-item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and specified in column (2) of the Table below, when imported into India, from the whole of the duty of customs leviable thereon under the said First Schedule, namely:-

No.	Heading, sub-heading or tariff item	Description
1	2	3
23.	8541	<i>All goods</i>
39	<i>Any Chapter except Chapter 74</i>	<i>All goods [except solar tempered glass or solar tempered (anti-reflective coated) glass] for the manufacture of goods covered by S. Nos. 1 to 38 above, provided that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017</i>

2.2 The relevant entries of Notification No. 15/2022-Customs dated 01.02.2022, through which, the amendments in Notification No. 24/2005-Cus were affected from 01.04.2022: -

Notification No. 15/2022-Customs; New Delhi, the 1st February 2022

G.S.R.(E). -In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary for the public interest so to do, hereby makes further amendments in the following notifications of the Government of India in the Ministry of Finance (Department of Revenue), specified in column (2) of the Table below to the extent specified in the corresponding entry in column (3) of the said Table, namely:

SL. No.	Notification number and Date	Amendments			
(1)	(2)	(3)			
2.	<i>Notification No. 24/2005-Customs, dated the 1st March, 2005, vide number G.S.R. 122(E), dated the 1st March, 2005</i>	<p><i>In the said notification, in the TABLE, -</i></p> <p>i. <i>against Sr. No. 13S, in column (3), after the item (j), the following item shall be inserted with effect from the 1st day of April 2022, namely: - "(k) Wrist wearable devices (commonly known as smart watches);</i></p> <p>ii. <i>for Sr. No. 23 and the entries relating thereto, the following Sr. No. and entries shall be substituted with effect from the 1st day of April 2022, namely: -</i></p> <table border="1" style="margin-left: 20px;"> <tr> <td style="padding: 5px;">"23.</td> <td style="padding: 5px;">8541 (except 8541 42 00 or 8541 43 00)</td> <td style="padding: 5px;">All goods other than Photovoltaic cells whether or not assembled in modules or made up into panels."</td> </tr> </table>	"23.	8541 (except 8541 42 00 or 8541 43 00)	All goods other than Photovoltaic cells whether or not assembled in modules or made up into panels."
"23.	8541 (except 8541 42 00 or 8541 43 00)	All goods other than Photovoltaic cells whether or not assembled in modules or made up into panels."			

2.3 The subject goods **aluminium frame for solar, PV Junction Box and Aluminium Paste** (for manufacturing of solar modules) do not appear to be used for the manufacturing of goods covered under Sr. No.1 to 38 of the said notification because the exemption for the said goods were withdrawn by substituting **Sr. No. 23** of the subject notification vide Notification No. 15/2022 dated 01.02.2022. Therefore, it appears that the exemption under Sr. No. 39 of Notification No. 24/2005-Customs dated 01.03.2005 as amended, were not available to the importer and hence the subject goods appear liable to applicable Basic Customs Duty, SWS, and IGST.

3. On further analysis, it also appears that the imported items **aluminium frame for solar** (for manufacturing of solar panels/modules) were also not eligible for the Customs duty exemption under Sr. No. 18, List-A of Notification No. 25/1999-Customs dated 28.02.1999 as these goods are neither specified in column no. (3) nor falling under the chapter or heading or sub-heading or tariff items specified in the corresponding column (2) of the table provided under the said notification.

3.1 The relevant entries of the Notification No. 25/1999-Customs dated 28.02.1999 are appended as under: -

Notification No. 25/1999-Cus dated 28.02.1999- Serial number 18 (List-A):

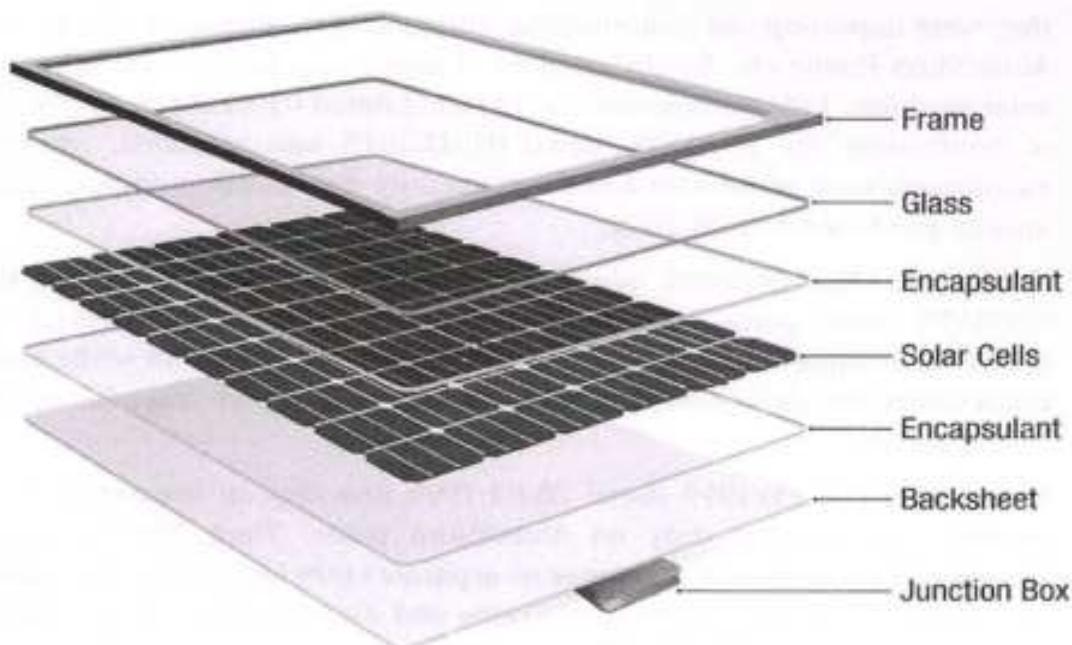
S No	Heading, sub-heading, or tariff item	Description of imported goods	Description of finished goods

(1)	(2)	(3)	(4)
...
	28,38,39,70,74,76	<i>Aluminium paste, ethylene vinyl acetate sheets (EVA); primer for EVA; crane glass; tedlar coated aluminium sheet; phosphorous oxychloride; halo carbon (CF4)/ freon gas; tinned copper interconnect; toughened glass with low iron content and transmissivity of min. 90% and above; multilayered sheets with Tedlar base; Fluro polymer resin; ultra-high purity (UHP) silane in UHP nitrogen; UHP silane; diborane in UHP silane; MOCVD grade phosphine in UHP silane; silver sputtering target; high purity tin tetrachloride; nitrogen trifluoride of 99 % purity and above.</i>	<i>Solar Cells/ Modules.</i>
...

Hence, it appears that these imported goods do not fulfil the conditions required to be eligible for exemption under Sr. No. 18 (List A) of the Notification No. 25/1999-Customs dated 28.02.1999. Therefore, the subject imported items appear liable to applicable Basic Customs Duty, SWS, and IGST.

4. The importer had also misclassified "Aluminium Paste" under CTH 76169990, instead of its correct classification under CTH 32129030, in order to avail of the ineligible Customs duty exemption benefits under Sr. No. 18, List A of Notification No. 25/1999; whereas the same were classified under CTH 32129030 in commercial invoices supplied by the foreign supplier.

5. In order to better appreciate the issue, the structure of a solar panel/module is shown below, as per information available on <https://www.scientificworldinfo.com/2021/10/best-materials-for-solar-modules-and-eva.html>:-



6. Accordingly, an investigation was initiated and following summons were issued to M/s. MSPVL to furnish the relevant records and tender statement. However, none appeared before the Senior Intelligence Officer, DRI, Jaipur.

TABLE - I

Particular of document	Date of issuance	Date of appearance	Remarks	Remarks
Summons-I	10.06.2022	17.06.2022	Did not appear. Response received vide letter dated 16.06.2022 and requested 3 weeks' time to submit documents called for or to appear.	RUD No. 3
Summons-II	27.06.2022	06.07.2022	Did not appear. Response received vide letter dated 05.07.2022 and requested 2 weeks' time.	RUD No. 4
Summons-III	08.07.2022	19.07.2022	Did not appear. Response received vide letter dated 18.07.2022 requesting 10 days' time to submit documents called for or to appear.	RUD No. 5
Summons-IV	25.07.2022	01.08.2022	Did not appear. The importer vide letter dated 05.08.2022 had reported that they had paid differential duty along with applicable interest and requested not to issue show cause notice and to close the file.	RUD No. 6

7. Whereas, M/s. MSPVL vide letter dated 01.08.2022 [**RUD No. 7**], received on 17.08.2022, inter alia, submitted that: -

- a) they had availed of the benefits of Customs duty exemption under Notification No 24/2005-Cus dated 01.03.2005 (inadvertently mentioned as 2015) as amended up to 01.02.2022, which was in force providing exemption from BCD on solar cells, solar modules and all other goods (except for goods falling under chapter 74- i.e., Glass) imported into India and used for manufacturing of solar cells and solar modules;
- b) they were importing raw materials viz. Junction Box, Aluminium Paste and Aluminium Frame etc. for the purpose of manufacturing of solar cells and solar modules. Vide Notification No. 15/2022 dated 01.02.2022, Sr. No. 23 of Notification No. 24/2005- dated 01.03.2015 was amended, whereby exemptions were withdrawn and Customs duty was levied on import of the subject goods w.e.f 01.04.2022;
- c) Notification No. 24/2005 providing exemption, was available at the ICEGATE online portal even after 01.04.2022, therefore they cleared the goods by availing of the benefits of Notification No. 24/2005 while filing BoEs under bonafide belief, since the notification was then available on the online portal;
- d) Notification No. 25/1999 dated 28.02.1999 provided an exemption from payment of Customs duty on Aluminium paste. Thus, MSPVL under bonafide belief that since there was no separate entry for Aluminium Frame, they had cleared both Aluminium Frame and Aluminium Paste classifying under the same CTH 76169990 and availed of the benefits under Notification 25/1999;
- e) on receipt of the summons, they had taken up the matter with their advocate and paid the differential duty along with applicable interest;

f) they had requested not to issue a show cause notice and to close the file.

8. Non-appearance/ Non-cooperation of M/s. MSPVL during the investigation and action taken by DRI, Jaipur: During investigation, M/s. MSPVL were summoned as detailed in para 6, but they did not respond to any of the summons and never appeared before the Senior Intelligence Officer, DRI, Jaipur to tender their statements. Accordingly, a complaint was filed under Sections 174 and 175 of the IPC read with Section 108 of the Customs Act, 1962 before the competent court viz. the Court of Metropolitan Magistrate No. 11, Jaipur Metropolitan I on 05.04.2023 [RUD No. 8].

SUMMARY OF THE INVESTIGATION

Non-payment of the applicable Customs duties by wrong availment of the benefits under Notification No. 24/2005-Customs dated 01.03.2005, as amended vide Notification No. 15/2022-Customs dated 01.02.2022 (w.e.f. 01.04.2022) with respect to the import of goods namely "Aluminium frame for solar, PV Junction Box and Aluminium Paste"

9. Whereas, it appears that M/s. MSPVL had imported **aluminium frame for solar, PV Junction Box and Aluminium Paste** (for solar panels/modules) by wrongly availing of the exemption benefits under Sr. No. 39 of the Notification No.24/2005-Customs dated 01.03.2005, as amended, vide Notification No. 15/2022-Customs dated 01.02.2022 (w.e.f. 01.04.2022), wherein the exemption provided to the subject goods were withdrawn by substituting Sr. No. 23 as "*goods other than Photovoltaic cells whether or not assembled in modules or made up into panels*". Therefore, it appears that the benefits of Sr. No. 39 are not available for the imported goods namely "**aluminium frame for solar, PV Junction Box and Aluminium Paste**" from 01.04.2022. From the submission of the importer, it appears that the importer was fully aware of the said notification and the same was in the public domain too, however, they wilfully misstated the serial number of the said notification, with an intent to evade payment of Customs duty. The importer's stand that the said notification was available on the online portal, and therefore they had erroneously availed of the benefits of said notification, appears to be an afterthought; and in no way it absolves them from their responsibilities. Thus, it appears that the importer had wilfully evaded the applicable Customs duties on '**aluminium frame for solar, PV Junction Box and Aluminium Paste**' imported vide Bills of Entry as detailed in **Annexure-A** to this notice.

9.1 Accordingly, it appears that the importer had evaded customs duties aggregating to **Rs. 52,24,274/-** as detailed in **Annexure-A**, the abstract of which is tabulated below:

TABLE - II

Sr. No.	Custom House Code	Description of goods	Notification Availed	Assessable Value (Rs.)	Differential customs Duty Payable (Rs.)	Remarks
1.	INMUN 1	ALUMINUM FRAME FOR SOLAR SIZE - LONG 1998X35MM, OPT, AL.SLV CORNER: PREPRESSED , PRECRIMPED , FLANGE THICKNESS: 1.3MM and	24/2005	2,43,21,114	31,56,881	Annexure-A

		ALUMINUM FRAME FOR SOLAR SIZE - SHORT 1010X35MM, OPT, AL.SLV PRE FITTED CORNER: PREPRESSED PRECRIMPED FLANGE THICKNES				
2.	INMUN 1	PV JUNCTION BOX, MODEL: PV-JB06X (X=A:1500V), 1500V, IP68 WITH 1.2MTR-CO2 CONNECTOR	24/2005	1,26,88,500	16,46,967	
3.	INMUN 1	ALUMINUM PASTE (RX8252H10)	24/2005	32,39,028	4,20,426	
TOTAL				Rs.4,02,48,642	Rs.52,24,274	

Non-payment of the applicable Customs duties by wrong availment of the benefit of Sr. No. 18(List A) of Notification No. 25/1999 on the import of goods namely "Aluminium Frame for Solar"

10. Whereas, it also appears that the importer had wrongly availed of the benefits of Sr. No. 18 (List A) of Notification No. 25/1999 on the import of goods namely "**Aluminium Frame for Solar**", as the same was not specified at the Sr. No. 18 (List A) of the subject notification. The details of such Bills of Entry are mentioned in Annexure-B to this notice. In the submission made by the importer, they had mentioned that they had wrongly availed of the exemption benefits under Notification No. 25/1999-Customs on the imported item **Aluminium Frame for Solar**, as the said item was never mentioned in the subject notification, thus, it appears that the importer was fully aware of the said notification, which was in the public domain too, however, the importer had intentionally filed the Bills of Entry listed in **Annexure-B** by claiming the ineligible exemption of Notification No. 25/1999-Customs.

10.1 The Sr. No. 18 (List A) of Notification No. 25/1999 dated 28.02.1999 provides for exemption from customs duty in respect of following goods viz.,

"Aluminium paste; ethylene vinyl acetate sheets (EVA); primer for EVA; Crane glass; tedlar coated aluminium sheet; phosphorous oxychloride; halo carbon (CF4)/Freon gas; tinned copper interconnect; toughened glass with low iron content and transmissivity of min. 90% and above; multilayered sheets with Tedlar base; fluro polymer resin; ultra-high purity (UHP) silane in UHP nitrogen; UHP silane; diborane in UHP silane; MOCVD grade phosphine in UHP silane; silver sputtering target; high purity tin tetrachloride; nitrogen trifluoride of 99% purity and above".

10.2. It can be seen that only specific items are covered/ mentioned in Serial No. 18 (List A) of Notification No. 25/1999-Customs and there is only one entry with the word "**Aluminium**", namely "**Aluminium Paste**". By no stretch of imagination, "**Aluminium Paste**" and "**Aluminium Frame**" can be construed as one and the same thing. Thus, it appears that the importer had wilfully misstated that their goods were covered under the said exemption benefits with intent to evade applicable Basic Customs Duty (BCD), SWS, and IGST on the imported goods as detailed in **Annexure-B** to this notice.

10.3. Accordingly, it appears that the importer had evaded customs duties aggregating to **Rs. 3,52,39,516 /-** as detailed in Annexure-B, the abstract of which is tabulated below: -

TABLE - III

Sr. No .	Custo m House Code	Description of Goods	Notifica tion claimed	Assessable Value (Rs.)	Differential Duty Payable (Rs.)	Remark s
1.	INMUN 1	ALUMINIUM FRAME FOR SOLAR SIZE- LONG 1998X35MM OPT,AL,, SLV,CORNER:PRE PRESSED, PRECRIMPED,FL ANGE THICKNESS:1.3M M(18792 PCS and ALUMINIUM FRAME FOR SOLAR SIZE- SHORT 1010X35MM OPT,AL,,SLV,PRE FITTED CORNER:PREPRESSED, PRECRIMPED,FL ANGE THICKNESS:1.3	25/199 9	27,14,90,881	3,52,39,516	Annexu re-B
		Total		27,14,90,881	3,52,39,516	

Misclassification of imported goods namely Aluminium Paste and non-payment of applicable Customs duties by wrong availment of the exemption benefits under Sr. No. 18A of Notification No.25/1999-Customs

11. Whereas, it appears that M/s. MSPVL had imported "**Aluminium Paste**" by classifying the same under CTH 76169990 and by availing of the exemption benefits under Sr. No. 18A of Notification No.25/1999-Customs dated 28.02.1999. However, the classification of the subject item under CTH 76169990 does not appear appropriate as discussed in succeeding paras.

11.1 On examination of data from the e Sanchit portal, the subject item was found classified as mentioned in the below table in commercial invoices supplied by the foreign supplier.

TABLE - IV
[Description in commercial invoice]

Commercial Invoice No	Date of invoice	Connected BOE No./ Date	Item Description	Quantit y	CTH
2022061501 [RUD No. 9]	15.06.2022	9644802/ 20.07.2022	Aluminium Paste (RX8252H10)	2520	32129030
2022053101 [RUD No. 10]	31.05.2022	9413122/ 05.07.2022	Aluminium Paste (RX8252H10)	7200	32129030

2022022601 [RUD No. 11]	26.02.2022	8139460/ 04.04.2022	Aluminium Paste (RX8252H10)	7200	32129030
2022041501 [RUD No. 12]	15.04.2022	8685076/ 14.05.2022	Al Paste (RX8252H10)	14400	32129030

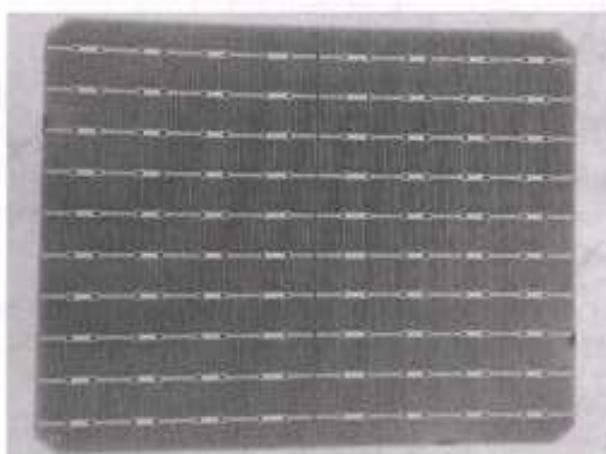
11.1.2 In view of the above, it appears that M/s. MSPVL had changed the declaration of the imported goods by changing the CTH from the one provided by their overseas suppliers in commercial invoices. The suppliers had classified the imported items under HS code 32, while the importer classified the same under CTH 7616, which does not appear appropriate. The importer could not provide any cogent reason for such an act of commission that has resulted in availing of the ineligible exemption. Therefore, it appears that M/s. MSPVL had misclassified the same with intent to avail undue benefits of Customs duty exemption under Sr. No. 18, List-A of Notification No. 25/1999 dated 28.02.1999.

11.2 Classification of imported Aluminium Paste:

The aluminium paste which contains aluminium powder (70% to 85%), organic binders and thinner, is used in the manufacture of solar cells. It is painted/ printed on the front and back of silicon wafers to make metallic contacts on the positive and negative sides of the solar cell. The aluminium layer provides a back surface field and makes a connection with other devices while connecting in series through the soldering process. It is a mixture of solvent and aluminium pigments.



(Aluminium Paste)



(a solar cell having white lines printed/painted with aluminium paste)

11.2.2 Impugned goods (imported aluminium paste) merits classification under CTH 3212: -

- The classification of goods is governed by the principles of "General Rules for the Interpretation of the Schedule (GRI)".
- As per Rule 1 of GRI, the classification shall be determined according to the terms of the headings of tariff schedule and any relative Section or Chapter Notes.

Classification of goods in the Nomenclature shall be governed by the following principles:

1. The titles of sections, chapters and sub-chapters are provided for ease of reference only; for legal purposes, **classification shall be determined according to the terms of the headings of tariff schedule and any relative section or chapter notes.....”**
- As per Rule 3(a) of GRI “the heading which provides the most specific description shall be preferred to headings providing a more general description”. There is a specific entry for Aluminium Paste under CTH 32129030.

Rule 3(a) of GRI: -

3. (a) ***The heading which provides the most specific description shall be preferred to headings providing a more general description.”***
- Tariff Heading 3212:

3212 *Pigments (Including Metallic Powders and Flakes) Dispersed In Non-Aqueous Media, In Liquid Or Paste Form, Of A Kind Used In The Manufacture Of Paints (Including Enamels); Stamping Foils; Dyes And Other Colouring Matter Put Up In Forms Or Packings For Retail Sale*

3212 10 00 - *Stamping foils*

3212 90 - *Other:*

3212 90 10 — *Pigments in linseed oil, white spirit, spirit of kg. turpentine, varnish and other paints or enamel media not elsewhere specified or included*

3212 90 20 — *Dyes and other colouring matter put up in forms or packings for retail sale*

3212 90 30 — *Aluminium paste*

3212 90 90 — *Other*

- Moreover, as per US Customs cross ruling 857411 dated 19.11.1990, it was held that “the applicable subheading for the Aluminium Paste would be 321290”. **(RUD No. 13).**
- Further, as per US Customs cross ruling NY 859491 dated 01.03.1991, it was held that the applicable subheading for the Aluminium Paste would be 321290. **(RUD No. 14).**
- Further, the aluminium paste does not fulfil the mandatory condition prescribed in **Note 8 (b) to the Section XV**, which is reproduced as under: -

“8. In this section, the following expressions have the meanings hereby assigned to them:

(b) Powders Products of which 90 % or more by weight passes through a sieve having a mesh aperture of 1 mm.”

- The chapter note of chapter 32 nowhere excludes the Aluminium Paste used in the manufacture of solar cells.
- Thus, in view of the above-stated facts, it appears that the Aluminium Paste is correctly classifiable under CTH 32129030.

11.2.3 Rejection of classification under CTH 7616

The CTH 7616 is reproduced below:

7616 OTHER ARTICLES OF ALUMINIUM

7616 10 00 - *Nails, tacks, staples (other than those of heading 8305), screws, bolts, nuts, screw hooks, rivets, cotters, cotter-pins, washers and similar articles*

- Other:

7616 91 00 - Cloth, grill, netting and fencing, of aluminium wire

7616 99 - Other:

7616 99 10 - Expanded metal of aluminium and aluminium alloys

7616 99 20 - Chains kg.

7616 99 30 - Bobbins

7616 99 90 - Other

76169990 HG Aluminium art ware

EN 76.16 states, in pertinent part: "This heading covers all articles of Aluminium other than those covered by the preceding headings of this chapter, or by note 1 to section XV, or articles specified or included in chapter 82 or 83, or more specifically covered elsewhere in the **Nomenclature**."

It appears that the impugned goods are specifically covered under Tariff Item 3212 9030, and therefore are excluded from the purview of CTH 7616.

11.2.4 Apparent intent behind misclassification

- As detailed above, the exemption under Sr. No. 18, List-A of Notification No. 25/1999 is not applicable to goods covered under Chapter 32 of the Customs Tariff Act. Because of omissions and commissions discussed supra, the importer appears to have wrongly classified the subject item under chapter 76 to avail of the undue exemption benefits of the subject notification.
- For the sake of clarity and at the cost of repetition, the relevant entries of the Notification No. 25/1999 dated 28.02.1999 are appended as under: -

Notification No. 25/1999 dated 28.02.1999- Serial number 18A:

S No	Heading, sub- heading or tariff item	Description of imported goods	Description of finished goods
(1)	(2)	(3)	(4)
..
18	28,38,39,70,74, 76	Aluminium paste, ethylene vinyl acetate sheets (EVA); primer for EVA; crane glass; tedlar coated aluminium sheet; phosphorous oxychloride; halo carbon (CF ₄)/ freon gas; tinned copper interconnect; toughened glass with low iron content and transmittivity of min. 90% and above; multilayered sheets with tedlar base; fluro polymer resin; ultra high purity (UHP) silane in UHP nitrogen; UHP silane; diborane in UHP silane; MOCVD grade phosphine in UHP silane; silver sputtering target; high purity tin tetrachloride; nitrogen trifluoride of 99 % purity and above.	Solar Cells/Modules.
..

The chapter or heading or sub-heading of the subject items (CTH 32) is not specified in the corresponding column (2) of the table, hence, does not fulfil the conditions to be eligible for exemption benefits under Sr. No. 18 (List A) of Notification No. 25/1999, therefore they are liable to Basic Customs Duty, SWS and IGST thereof.

- Duty structure under CTH 7616 and 3212 is tabulated below:

CTH	Exemption benefits	BCD	SWS (of BCD)	IGST
7616	25/1999	0	0	18%
3212	Nil	10%	10%	18%

- It is apparent that applicable duties on goods classifiable under CTH 3212 is more than the goods under CTH 7616. The action of the importer to misclassify the goods under CTH 7616, has therefore, financial implications.
- Accordingly, it appears that the importer had **wilfully** evaded the applicable Customs duties on the of '**Aluminium Paste**' imported vide Bills of Entry as detailed in attached **Annexure-C** to this notice.

11.3 By non-payment of the applicable Customs duties, the importer had evaded customs duties aggregating to **Rs.17,68,674/-** as detailed in **Annexure-C**, the abstract of which is tabulated below:

TABLE - V

Sr. No.	Custom House Code	Description of goods	Notification Availed	Assessable Value (Rs.)	Differential customs Duty Payable (Rs.)	Remarks
1.	INAMD4	ALUMINUM PASTE (RX8401E) (FREE OF COST)	25/1999	26,49,186	3,43,864	Annexure-C
2.	INNSA1	ALUMINUM PASTE (RX8252H10)	25/1999	11,87,953	1,54,196	
3.	INMUN1	SUPPLY OF ALUMINUM PASTE (RX8252H10)	25/1999	97,89,012	12,70,614	
		TOTAL		1,36,26,151	17,68,674	

Obligation under Self-assessment and reasons for raising duty demand invoking extended period:

12. The importer had subscribed to a declaration as to the truthfulness of the contents of the Bills of Entry in terms of Section 46(4) of the Customs Act, 1962 in all their import consignments. Further, consequent upon the amendments to Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-Assessment' has been introduced in Customs. Section 17 of the Customs Act, 1962 effective from 08.04.2011, provides for self-assessment of duty on imported goods by the importer by filing a Bill of Entry, in the electronic form. Section 46 of the Customs Act, 1962 makes it mandatory for the importer to make an entry for the imported goods by presenting a Bill of Entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulation, 2018 (issued under Section 157 read with Section 46 of the Customs Act, 1962), the Bill of Entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic declaration (which is defined as particulars relating to the imported goods

that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a Bill of Entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under the scheme of self-assessment, it is the importer who has to doubly ensure that he declares the correct description of the imported goods, their correct classification, the applicable rate of duty, value, and benefit of exemption notification claimed, if any, in respect of the imported goods while presenting the Bill of Entry. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 8th April 2011, it is the added and enhanced responsibility of the importer to declare the correct description, value, notification, etc. and to correctly determine and pay the duty applied in respect of the imported goods while presenting the Bill of Entry. Thus, in the self-assessment regime, the onus is on the importer to correctly mention the applicable notifications and pay applicable duties, however, in the instant case, the importer has completely failed in fulfilling their responsibility by not paying applicable Customs duties and the importer has failed to maintain the accuracy and completeness of the details filed in the respective Bills of Entry for import of subject goods by wrong availment of benefits of exemption notifications [Notification No.24/2005-Customs dated 01.03.2005 as amended vide Notification No. 15/2022-Cus, Notification No.-25/1998 and Notification No. 25/1999] and thereby evading payment of the applicable Customs Duty.

12.1 The omissions and commissions of the importer appear to suggest that the ineligible exemption of notifications was availed of by mis-stating and suppressing the facts in the Bills of Entry for financial benefits by willfully evading the applicable Customs duties. Some of the illustrations are as below:

- In respect of import of "**Aluminium Paste**" the importer had changed the declaration of the imported goods by changing the CTH from the one provided by their overseas suppliers in commercial invoices. The suppliers had classified the imported items under HS code 32, whereas the importer classified the same under CTH 7616, which does not appear appropriate. The importer could not provide any cogent reason for such an act of commission that has resulted in availing of the ineligible exemption. Therefore, it appears that M/s. MSPVL had misclassified the same with intent to avail the undue benefits of Customs duty exemption under Sr. No. 18, List-A of Notification No. 25/1999 dated 28.02.1999.
- At serial No. 18 (List A) of Notification No. 25/1999-Customs, there is only one entry with the word '**Aluminium**', namely "**Aluminium Paste**" for which exemption from customs duty is provided. However, the importer has availed of the exemption benefits of the said entry on import of "**Aluminium Frame**". By no stretch of imagination, "**Aluminium Paste**" and "**Aluminium Frame**" can be construed as one and the same thing. The importer could not provide any justification for the same.
- The importer had not only claimed ineligible benefits of Notification No 24/2005 on import of Aluminium Frame but also switched claim under another exemption Notification 25/1999, post amendments in Notification No.24/2005.
- As detailed in para 6 supra, during investigations, the importer was summoned multiple times, but they did not respond to any of the summons and never appeared before the Senior Intelligence Officer, DRI, Jaipur to tender their statements. The non-cooperation in investigations stems from their wilful omission and commission resulting in evasion of customs duty and loss to exchequer.

13. The relevant provisions of law relating to the import of goods in general, the policy and rules relating to the liability of the goods to confiscation, and the persons concerned to penalty for improper importation under the provisions of Customs Act, 1962 and other relevant laws for the time being in force, are summarized as under: -

13.1 Provisions of Customs Act, 1962

Section 17- Assessment of duty.

1. An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty if any, leviable on such goods.
2. The proper officer may verify the 12 [the entries made under section 46 or section 50 and the self-assessment of goods referred to in the sub-section and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

[Provided that the selection of cases for verification shall primarily be based on risk evaluation through appropriate selection criteria.]

(3) For [the purposes of verification] under sub-section (2), the proper officer may require the importer, exporter, or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce the such document or furnish such information.]

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter 16[***] and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

Explanation – For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of section 17 as it stood immediately before the date on which such assent is received.

Section 28(4) of the Customs Act, 1962:

1—2—3—

(4) 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, because of,-

- (a) collusion; or
- (b) any wilful misstatement; 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.

Section 28AA of the Customs Act, 1962:

[28AA. Interest on delayed payment of duty— (1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person,

who is liable to pay duty by the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

(2) Interest at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of a such erroneous refund, as the case may be, up to the date of payment of such duty.

(3) Notwithstanding anything contained in sub-section (1), no interest shall be payable where,—

(a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A; and

(b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.]

Section 46- Entry of goods on importation:

(1) The importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed:

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in any other manner:

Provided further that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this subsection, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

(2) Save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

(3) The importer shall present the bill of entry under sub-section (1) before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrive at a customs station at which such goods are to be cleared for home consumption or warehousing:

Provided that a bill of entry may be presented at any time not exceeding thirty days before the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India:

Provided further that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed.

(4) 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 the such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.

(4A) The importer who presents a bill of entry shall ensure the following, namely:—

(a) the accuracy and completeness of the information given therein;

- (b) the authenticity and validity of any document supporting it; and
- (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or any other law for the time being in force.

(5) If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit the substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa.

Section 110AA. Action subsequent to inquiry, investigation or audit or any other specified purpose. -

Where in pursuance of any proceeding, in accordance with Chapter XIIA or this Chapter, if an officer of customs has reasons to believe that—

- (a) any duty has been short-levied, not levied, short-paid or not paid in a case where an assessment has already been made;
- (b) any duty has been erroneously refunded;
- (c) any drawback has been erroneously allowed; or
- (d) any interest has been short-levied, not levied, short-paid or not paid, or erroneously refunded,

then a such officer of customs shall, after causing inquiry, investigation, or as the case may be, audit, transfer the relevant documents, along with a report in writing—

- (i) to the proper officer having jurisdiction, as assigned under section 5 in respect of assessment of such duty, or to the officer who allowed such refund or drawback; or
- (ii) in case of multiple jurisdictions, to an officer of customs to whom such matter is assigned by the Board, in the exercise of the powers conferred under section 5,

and thereupon, power exercisable under sections 28, 28AAA or Chapter X, shall be exercised by such proper officer or by an officer to whom the proper officer is subordinate in accordance with sub-section (2) of section 5]

Section 111 – Confiscation of improperly imported goods, etc. -The following goods brought from a place outside India shall be liable to confiscation—

- (m) any goods which do not correspond in respect of value or 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 transshipment, with the declaration for transshipment, referred to in the proviso to sub-section (1) of Section 54.

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

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

- (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;

Section 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 partly paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful misstatement 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:

Section 114AA. Penalty for use of false and incorrect material. - “If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material

particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."

Section 125. Option to pay the fine in lieu of confiscation. - (1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods³⁹ or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit:

[Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, no such fine shall be imposed]:

Provided further that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in subsection (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.

(3) Where any fine imposed under sub-section (1), is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

20.2 The Foreign Trade (Development and Regulation) Act, 1992

Section 11: Contravention of provision of this Act, rules, orders and exports and import policy: - (1) No export or import shall be made by any person except by the provisions of this Act, the rules and orders made thereunder and the export and import policy for the time being in force.

(2) Where any person makes or abets or attempts to make any export or import in contravention of any provision of this Act or any rules or orders made thereunder or the export and import policy, he shall be liable to a penalty not exceeding one thousand rupees or five times the value of the goods in respect of which any contravention is made or attempted to be made, whichever is more.

(3) Where any person, on a notice to him by the Adjudicating Authority, admits any contravention, the Adjudicating Authority may, in such class or classes of cases and such manner as may be prescribed, determine, by way of settlement, an amount to be paid by that person.

(4) A penalty imposed under this Act may, if it is not paid, be recovered as an arrear of land revenue, and the Importer-exporter Code Number of the person concerned, may, on failure to pay the penalty by him, be suspended by the Adjudicating Authority till the penalty is paid.

(5) Where any contravention of any provision of this Act or any rules or orders made thereunder or the export and import policy has been, is being, or is attempted to be, made, the goods together with any package, covering or receptacle and any conveyances shall, subject to such requirements and conditions as may be prescribed, be liable to confiscation by the Adjudicating Authority.

(6) The goods or the conveyance confiscated under sub-section (5) may be released by the Adjudicating Authority, in such manner and subject to such conditions as may be prescribed, on payment by the person concerned of the redemption charges equivalent to the market value of the goods or conveyance, as the case may be.

Foreign Trade (Regulation) Rules, 1993

Rule 14: Prohibition regarding making, and signing of any declaration, statement or documents

(1) No person shall make, sign or use or cause to be made, signed or used any declaration, statement or document for the purposes of obtaining a license or importing any goods knowing or having reason to believe that such declaration, statement or document is false in any material particular.

(2) No person shall employ any corrupt or fraudulent practice for the purposes of obtaining any licence or importing or exporting any goods.

Confiscation of imported goods, the role played, and imposition of penalty on the importer: -

14. From the facts and pieces of evidence discussed in paras supra, it appears that the importer had willingly and knowingly evaded the applicable Customs duties by wrongly availing of the exemption benefits of Sr. No. 39 of Notification No.24/2005- Customs dated 01.03.2005, as amended vide Notification No. 15/2022-Cus dated 01.02.2022 (w.e.f. 01.04.2022) and benefits of Sr. No. 18 (List-A) of Notification- 25/1999. These facts have also been accepted by the importer in their written submissions. Moreover, from their submissions, it appears that the importer was fully aware of the said notifications and the same were in the public domain too. It had been also observed that after the amendments made in Notification No. 24/2005, the importer had started and switched to avail the exemption benefits under Notification No. 25/1999, on import of **Aluminium Frame** for solar w.e.f. 14.04.2022. Therefore, it appears that the importer was well aware of the amendments made in Notification No. 24/2005 but with intend to evade payment of applicable customs duty, they started claiming exemption under other Notification, though not eligible. In addition, the importer had intentionally and deliberately misclassified **Aluminium Paste** to avail of the ineligible benefits of the subject notifications. Thereby, it appears that despite being fully aware of the subject notifications, the importer had wrongly availed of the exemptions benefits on goods imported by them vide Bills of Entry as listed in **Annexures-A to C**. Thus, it appears that the importer has wilfully evaded the applicable Customs duties on the goods imported vide Bills of Entry as detailed in attached **Annexures-A to C**.

Wrong availment of exemption benefits under Sr. No. 39 of Not. No. 24/2005 on import of aluminium frame for solar, PV Junction Box and Aluminium Paste: -

14.1 The exemption benefits provided under Notification No. 24/2005-Customs were withdrawn for the imported goods to be used in the manufacturing of solar modules/panels vide Notification No. 15/2022-Customs dated 01.02.2022 (w.e.f. 01.04.2022). It appears that the importer was fully aware of the said notification and its amendment, however, the importer had wrongly availed of the exemption benefits on the **aluminium frame for solar, PV Junction Box and Aluminium Paste** post amendments in Notification No. 24/2005 vide Bills of Entry listed in Annexure A. Thus, it appears that the importer has wilfully evaded the applicable Customs duties on the goods imported vide Bills of Entry as detailed in Annexure A. Thus, by the above acts and commission, the importer has contravened the provisions of Section 46 and Section 111(m) of the Customs Act, 1962, and Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 read with Rule 14 of the Foreign Trade (Regulation) Rules 1993, in as much as the importer has taken wrong benefits of the Notification No.24/2005 as amended while filing the Bills of Entry at the time of the importation of the subject imported goods. The same was done to evade the payment of applicable Basic Customs Duty and this has resulted in short-payment of other Customs levies viz. Social Welfare Cess and IGST as BCD form part of the value for computation of these duties. **This act of wilful misstatement of the applicability of amended Notification No.-24/2005-Customs by M/s. Mundra Solar PV Limited has rendered imported goods as mentioned in column 6 of Annexures A, valued at Rs.4,02,48,642/-, liable to confiscation as per the provisions of Section 111(m) of the Customs Act, 1962.**

Wrong availment of exemption benefits under Sr. No. 18 (List A) of Not. No. 25/1999 on import of Aluminium Frame and misclassification of Aluminium Paste to avail of the exemption benefits of the subject notification

14.2. Further, it appears that M/s. Mundra Solar Energy Limited has imported goods by wrong availment of the benefits under Sr. No. 18 (List A) of Notification No.25/1999 on the import of goods namely aluminium frame for solar as the same were not specified in Sr. No. 18, List-A of the subject notification. It has been further noticed that M/s. Mundra Solar PV Limited has also misclassified their imported goods namely **Paste Back Aluminium or Aluminium Paste or Paste back Aluminium under CTH 761619990 with an intent to avail of the undue benefits of Customs duty exemption** under Sr. No. 18 (List A) of Notification No.-25/1999. The copies of commercial invoices of the overseas suppliers were found to contain the HS code of the imported items as 32, whereas, the importer had willfully and intentionally misclassified the same under CTH 76169990 while filing BoEs, in order to avail of the exemption benefits available for Chapter 76 under Sr. No. 18 (List A) of Notification No. 25/1999 on the subject imported items. Further, from the scrutiny of the import data, it is noticed that the importer has also imported the subject goods without availing of the benefits under Sr. No. 18 A of Notification-25/1999 in other Bills of Entry. Thus, it appears that the importer was fully aware of the said notification and the same was in the public domain too, however, the importer had deliberately and intentionally not paid the Basic Customs Duty (BCD) on the subject goods imported vide Bills of Entry listed in Annexures B and C. Thus, it appears that the importer has wilfully evaded the applicable Basic Customs Duty (BCD), SWS, and IGST thereof on the goods imported vide Bills of Entry as detailed in the respective annexures. Thus, by the above acts and commission, the importer has contravened the provisions of Section 46 and Section 111(m) of the Customs Act, 1962, and Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 read with Rule 14 of the Foreign Trade (Regulation) Rules 1993, in as much as the importer has taken wrong benefits of the Notification No. 25/1999-Customs dated 28.02.1999 while filing the Bills of Entry at the time of the importation of the subject goods. The same was done to evade the payment of applicable Basic Customs Duty and this has resulted in short-payment of other Customs levies viz. Social Welfare Cess and IGST as BCD form part of the value for computation of these duties. **These acts of M/s Mundra Solar PV Limited have rendered imported goods as mentioned in column 6 of Annexures B and C, valued at Rs. 28,51,17,032/-, liable to confiscation as per the provisions of Section 111(m) of the Customs Act, 1962.**

15. M/s Mundra Solar PV Limited was engaged in the import of various goods used in the manufacturing of solar modules/panels. The importer was aware of the correct end use of the imported goods; however, the importer had wrongly availed of the undue benefits of Sr. No. 18 (List A) of Notification No. 25/1999 and Sr. No. 39 of Notification No.-24/2005 by adopting wrong practices including making false declarations for such imports to evade payment of appropriate Customs duty. The importer had deliberately misstated the serial numbers of the subject notifications to escape from detection by customs authorities. Thus, from the facts and evidence discussed above, it appears that the importer has resorted to a wilful misstatement of serial numbers of Notification Nos. 25/1999 and 24/2005 as amended with an ulterior motive of evading payment of the applicable duties on the imported goods. Further, the importer has wilfully and intentionally mis-declared and misclassified some items by manipulating details made by their suppliers in commercial invoices, in order to avail of the undue benefits of the subject notifications. Hence, Section 28(4) of the Customs Act, 1962 for demand of duty is applicable in the instant case as discussed already in paras supra. The details of the goods imported by M/s. Mundra Solar PV Limited by wilful misstatement of serial numbers of Notification Nos. 24/2005-Customs as amended and 25/1999 are mentioned in Annexures-A to C along with the calculation of the respective customs duty evaded. The differential Customs duty aggregating to **Rs.4,22,32,464/-** leviable on

the imported goods and cleared under Bills of Entry mentioned in Annexures-A to C and not paid by M/s. Mundra Solar PV Limited is, therefore, liable to be demanded and recovered from them as per provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.

15.1. The details of Annexures-A to C are tabulated as under:

TABLE-VI

Annexure	Name of the imported goods	Notification availed/ issue involved	AV of the imported goods in INR	Differential Customs duty in INR
Annexure-A	Aluminium frame or solar aluminium frame	24/2005	2,43,21,114	31,56,881
	PV Junction Box	24/2005	1,26,88,500	16,46,967
	Aluminium Paste	24/2005	32,39,028	4,20,426
		Total	4,02,48,642	52,24,274
Annexure-B	Aluminium Frame	25/1999	27,14,90,881	3,52,39,516
Annexure-C	Aluminium Paste	25/1999	1,36,26,151	17,68,674
Grand Total			32,53,65,674	4,22,32,464

16. For the above acts, M/s. Mundra Solar PV Limited appeared to have rendered themselves liable to penalty under Section 114A and/or 112 of the Customs Act, 1962. Further, the importer has knowingly and wilfully made declarations that were false and incorrect in material particular, in the transaction of business for the purposes of the Customs Act, 1962, and therefore, M/s. Mundra Solar PV Limited have also rendered themselves liable to penalty under Section 114AA of the Customs Act, 1962.

Voluntary payments made during the investigation:

17. During the investigation, M/s Mundra Solar PV Limited has made a payment of **Rs. 3,97,50,982/- (Rupees three crore ninety-seven lakhs fifty thousand nine hundred and eighty-two only)** towards differential duty (BCD+SWS+IGST) and **Rs. 13,96,079/- (Rupees thirteen lakhs ninety-six thousand and seventy nine only)** as interest. Therefore, the payment made by the importer is required to be appropriated against the demand of differential duty and interest. The details of payments made and copies of the challans received have been detailed in **Annexure-D** attached to this show cause notice. The copies of challans have been enclosed as **[RUD No. 15]**.

18. It is pertinent to mention that in terms of the provisions of Section 110AA of the Customs Act, 1962 read with Notification No. 28/2022-Customs (N.T.) dated 31.03.2022, the officers of Customs have been appointed as the proper officer for the purpose of exercising of powers under Section 28, Section 28AAA or Chapter X of the

Customs Act, 1962 with jurisdiction over the whole of India with all the powers under the said Act. Further, in the case of multiple jurisdictions, the show cause notice is to be issued by the proper officer of jurisdiction having the highest amount of duty. The instant case involves the import of goods from multiple ports viz INMUN1 (Mundra seaport), INNSA1 (Nhava Sheva) and INAMD4 (Ahmedabad ICD), wherein total customs duty and IGST not paid/ short paid has come to **Rs. 4,22,32,464/-** out of which the differential Customs duty for a single port viz. Mundra Port (INMUN1) has been worked out to Rs. 4,17,34,404/-, which is the highest amongst all ports at which imports have taken place. Therefore, the Principal Commissioner/Commissioner of Customs, Mundra Port is the show cause notice issuing authority as well as adjudicating authority in terms of Section 110AA of the Customs Act, 1962 read with Notification No. 28/2022-Customs (N.T.) dated 31.03.2022, issued by CBIC.

19. Now, therefore, **M/s. Mundra Solar PV Limited** (IEC-0815006926) having registered office at Adani Corporate House, Shantigram, Near Vaishno Devi Circle, S G Highway, Khodiyar, Ahmedabad-382421 and Survey No 180/P, APSEZ, Village-Tunda, Mundra, Gujarat-370435, is hereby called upon to show cause in writing to **the Commissioner of Customs**, Mundra, having their address at 5B, Port User Building, Mundra Port, Mundra, Kutch, Gujarat-370421 within 30 (Thirty) days from the receipt of this notice, as to why:-

- (i) The benefits of **Notification No. 24/2005-Customs dated 01.03.2005-as amended**, availed by them on import of "aluminium frame or solar aluminium frame, PV Junction Box and Aluminium Paste" under Bills of Entry as listed in Annexure-A should not be disallowed;
- (ii) The benefits of **Notification No. 25/1999 dated 28.02.1999, as amended**, availed by them on import of Aluminium Frame under Bills of Entry as listed in Annexure-B should not be disallowed;
- (iii) The classification of the imported goods namely Paste Back Aluminium or Aluminium Paste or Paste back Aluminium under CTH 76169990 under Bills of Entry detailed in Annexure-C, should not be rejected and the imported goods should be classified under CTH 32129030;
- (iv) The benefits of **Notification No. 25/1999 dated 28.02.1999-as amended**, availed by them on import of Paste Back Aluminium or Aluminium Paste or Paste back Aluminium, under Bills of Entry as listed in Annexure-C should not be disallowed;
- (v) The differential amount of Customs duty aggregating to **Rs.4,22,32,464/- (Rupees Four Crores Twenty Two Lakhs Thirty Two Thousand Four Hundred and Sixty-Four only)** as detailed in Annexures- A to C to this notice leviable on the imported goods covered under Bills of Entry as listed in **Annexures- A to C to this show cause notice**, should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962;
- (vi) **Rs. 3,97,50,982/- (Rupees Three Crore Ninety Seven Lakhs Fifty Thousand Nine Hundred and Eighty Two Only)** and **Rs.13,96,079/- (Rupees Thirteen Lakhs Ninety-Six Thousand and Seventy Nine Only)** paid/deposited by the importer during the course of the investigation should not be adjusted and appropriated against differential duty and interest respectively demanded from them at sub-para (v) above;
- (viii) The subject goods totally valued at **Rs. 32,53,65,674/-** imported vide Bills of Entry as listed Annexures- A to C should not be held liable to confiscation as per provisions of Section 111(m) of the Customs Act, 1962.
- (ix) Penalty should not be imposed on them under Section 114A and/or 112 of the Customs Act, 1962;
- (x) Penalty should not be imposed on them under Section 114AA of the Customs Act, 1962, for the reasons discussed above.

DEFENCE SUBMISSION AND PERSONAL HEARING

20. I observe that 'Audi alteram partem', is an important principle of natural justice that dictates to hear the other side before passing any order. Therefore, personal hearing in the matter was granted to the noticees on 27.02.2025, 19.03.2025, 16.04.2025 and 29.04.2025 and 13.05.2025. Advocate Shri Paritosh Gupta, Consultant, representing M/s Mundra Solar PV Ltd. appeared for personal hearing through virtual mode on 13.05.2025. During the personal hearing, he reiterated the submissions as made in the reply dated 15.04.2025 wherein he inter alia stated that:

- i. The first product on which the demand has been raised is on import of "**Junction Box**". (part of Annexure-A to the SCN Sr. No. 3) The demand for the said product is Rs. 16,46,967/- . It is the case of the department that Bills of Entry were filed for import of the said goods claiming exemption under Sr. No. 39 of Notification No. 24/2005 dated 01.03.2005. It is stated that benefit of exemption under the said Sr. No. was for import of all goods falling under any Chapter except Chapter 74, if such goods were used for manufacture of goods covered by Sr. No. 1 to 38 of the said Notification itself. The Notice then refers to Notification No. 15/2022-Cus dated 01.02.2022 by which the parent Notification No. 24/2005 dated 01.03.2005 was amended w.e.f. 01.04.2022 and Sr. No. 23 to the said Notification was amended to exclude Photovoltaic Cells and Module. It is therefore alleged that from 01.04.2022 onwards, Photovoltaic Cells and Module was specifically removed from Sr. No. 23 and consequently, Sr. No. 39 did not include goods which were proposed to be used for manufacture of any goods covered under Sr. No. 1 to 38 of the said Notification. While raising the said allegation, it appears that the department has overlooked the fact that the Bill of Entry in relation to the said import which is matter of dispute in the present case was filed on 02nd of April, 2022 i.e., right after the said amendment was brought into force. It may be further noted that the said amendment Notification No. 15/2022 though issued on 01.02.2022 was only brought in force after two months i.e., on 01.04.2022. It is submitted that even after the issuance of the said amendment Notification, benefit of exemption under the Parent Notification was being extended to import of Junction Box for the purpose of manufacture of Photovoltaic Cells and Module. It would be important to note that even the Company had imported such Junction Box during such period wherein the benefit of exemption was extended without any doubt or dispute. It was in such peculiar circumstances and by oversight, the claim of exemption was made even for Bill of Entry filed on 02nd of April, 2022 overlooking the fact that the amendment Notification was brought into force. It is submitted that the bill of entry was filed online, therefore, when the Company found that the Notification No. 24/2005 is still available on the online portal where the bill of entry was filed, the Company under bona fide belief availed the benefit of the said Notification. Since the Department has not removed the Notification from the online portal, everyone including the Company was of the view that the benefit of Notification are still continued. Copies of few specimen Bills of Entry filed after the issuance of amendment Notification but prior to the same being brought into force are enclosed and marked as **Annexure 'A-Colly.'**. We say and submit that in such circumstances, it cannot be rationally alleged that claim of exemption by the Company was on account of any malafide intention. As soon as the mistake was pointed out by the officers, the entire amount was paid along with interest thereon.
- ii. Coming to the next allegation, it is the case of the department that **Aluminium Frame Solar or Solar Aluminium Frame** (part of Annexure-A to the SCN Sr. No. 1 & 2) has been wrongly imported by the Company by claiming benefit of Sr. No. 39 Exemption Notification No. 24/2005. Even for the said imports, it is alleged that the parent notification was amended vide Notification No. 15/2022-Cus dated 01.02.2022 which was brought in force on 01.04.2022. It may be noted that, similar to the case of import of junction box, the claim of exemption for import of Aluminium Frame Solar or Solar Aluminium Frame was also mistakenly made only in few Bills of Entry filed soon after the amendment was brought in force in the month of April and May, 2022. Similar to the case of Junction Box, the Company have been regularly importing Aluminium Frame Solar or Solar Aluminium Frame. Such products were also imported during this period when the amendment Notification was not brought in force. Copies of few specimen Bills of Entry filed after the issuance of amendment Notification but prior to the same being brought into force are enclosed and marked as **Annexure 'B-Colly.'**.

It was for the said bonafide reason, the Company continued to claim the benefit. There is no allegation that the description of the products was altered in any manner so as to deceive the authorities into accepting the claim of exemption. As pointed out above, as soon as the said mistake was brought to the notice of the Company, the duty along with interest was deposited with a request to close the file without issuing the show cause notice. In the Show Cause Notice, it is further alleged that in some of the Bills of Entry claim of exemption was claimed under Sr. No. 18 of Notification No. 25/99, which was otherwise applicable to only Aluminium Paste (Annexure-B to the SCN). It is submitted that the same was not with any intention to evade payment of duty but on account of a bonafide mistake. It may be noted and appreciated that despite the entry of exemption being available only to Aluminium Paste, but the same was mistakenly claimed for Aluminium Frame Solar or Solar Aluminium Frame. It may however, be noted that description of the goods was never tampered to mislead the Department. It was therefore, evidently a case of bonafide mistake. The Company reiterates that as soon as the mistake was pointed out, the same was rectified by payment of entire amount of Customs Duty along with interest thereon.

- iii. It is submitted that the Company already deposited the amount of duty along with interest and informed the department vide their letter dated 01.08.2022 requesting not to issue show cause notice. The details of duty payment along with interest is reproduced under above annexures.
- iv. It is humbly submitted that once the duty along with interest has been paid and the Company informed the Department to that effect requesting not to issue show cause notice, no show cause notice ought to have been issued in the present case in terms of Section 28 (2) of the Customs Act. For ease of reference Section 28 (2) is reproduced below: -

(2) The person who has paid the duty along with interest or amount of interest under clause (b) of sub-section (1) shall inform the proper officer of such payment in writing, who, on receipt of such information, shall not serve any notice under clause (a) of that sub-section in respect of the duty or interest so paid or any penalty leviable under the provisions of this Act or the rules made thereunder in respect of such duty or interest :

[Provided that where notice under clause (a) of sub-section (1) has been served and the proper officer is of the opinion that the amount of duty along with interest payable thereon under section 28AA or the amount of interest, as the case may be, as specified in the notice, has been paid in full within thirty days from the date of receipt of the notice, no penalty shall be levied and the proceedings against such person or other persons to whom the said notice is served under clause (a) of sub-section (1) shall be deemed to be concluded.]

- v. Without prejudice to the above, it is submitted that in any case no show cause notice ought to have been issued for entire amount instead of amount involving the issue which has not accepted by us in terms of Section 28 (3) of the Customs Act. For ease of reference Section 28 (3) is reproduced below:
- 3) Where the proper officer is of the opinion that the amount paid under clause (b) of sub-section (1) falls short of the amount actually payable, then, he shall proceed to issue the notice as provided for in clause (a) of that sub-section in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of [two years] shall be computed from the date of receipt of information under*

sub-section (2).

From the plain reading of the above, show cause notice issued for entire amount of duty without considering the duty already been paid, needs to be dropped on this count alone, being bad in law.

vi. The last issue raised in the show cause notice is with regard to import of **Aluminium Paste/Paste Back Aluminium** (Annexure-C to the SCN). It is alleged that classification of the goods has been changed by the Company in as much as the goods were classified by the supplier under HS Code 32 or 38; whereas, while filing the import documents, the Company had classified the same goods under CTH 7616 thereby claiming the benefit of exemption under Sr. 18 of Notification No. 25/1999. The Show Cause notice further alleges that the product merits correct classification under CTH 3212 and not CTH 7616 as claimed by the Company. The instance of change of classification has also been cited in the show cause notice as a proof of intent to evade on part of the Company. We say and submit that change in classification was not on account of any malafide intention but on the basis of legal opinion obtained by the Company ascertaining the correct classification of the product. Copy of the said Legal Opinion dated 07.05.2022 obtained by the Company is enclosed and marked as **Annexure 'C'**. It may be noted and appreciated that all the bills of entry filed for import of Aluminium Paste/Paste Back Aluminium are filed only after availing the expert opinion on correct classification of the goods in question. Perusal of the said opinion would clearly show that the product was correctly classifiable under CTH 7616990 rather than Chapter 38 or 32 of the Tariff. The nature of the product is not in dispute. The show cause notice acknowledges that the product imported by the Company is in the nature of aluminium paste containing aluminium powder to the extent of 70% to 85%, organic binders and thinner, and is used in the manufacture of solar cells. It is also noted that the aluminium layer provides a back surface field and makes a connection with other devices while connecting in series through the soldering process and that the product is a mixture of solvent and aluminium pigments. The department has alleged that the product is not covered under CTH 7616 but appropriately classifiable under CTH 3212. Note 1 to Section XV which covers Chapter 32, provides that this section does not cover: prepared paints, inks or other products with a basis of metallic flakes or powder. Chapter Heading 3212 read as under: -

"32.12. – Pigments (including metallic powders and flakes) dispersed in non-aqueous media, in liquid or paste form, of a kind used in the manufacture of paints (including enamels); stamping foils; dyes and other colouring matter put up in forms or packings for retail sale.

vii. First part of the heading covers pigments (including metallic powders and flakes) dispersed in non-aqueous media, in liquid or paste form of a kind used in the manufacture of paints (including enamels). The second part of the heading covers stamping foils. The last part of the heading covers dyes and other colouring matter put up in forms or packings for retail sale.

viii. Reference may be made to HSN Explanatory Notes which provides as under: -

These are concentrated dispersions of pigments (including aluminium or other metal powders and flakes) in a non-aqueous medium (e.g., drying oils, white spirit, gum, wood or sulphate turpentine or varnish), in liquid or paste form, of a kind used in the manufacture of paints or enamels.

These are non-film forming products which normally consist of mixtures of

colouring matter with other substances (e.g., inert diluents, surface-active products which encourage the penetration and fixation of the colouring matter). Mordants are also sometimes added.

They fall here only if :

- (1) In packings for retail sale (e.g., sachets of powder, bottles of liquid) put up for use as dyes, or
- (2) In forms (e.g., balls, tablets or the like) clearly designed for retail sale.

The dyes covered by this heading are mainly those used for domestic purposes and usually sold as "household dyes" (e.g., dyes for clothes, for shoes, for furniture). The heading also includes special dyes used in laboratories, e.g., to colour microscopic preparations.

- ix. As noted in the Show Cause Notice itself, the aluminium paste is not merely a colouring matter but has effect over the electrical performance, wafer bowing and adhesion when used in modules. As can be seen above, for a product to fall under CTH 3212, the product must either be of a kind used in manufacture of paints or other colouring matter put up in forms of packings for retail sale. Therefore, the product in question i.e., Aluminium Paste cannot be classified under Chapter Heading 3212 as alleged by the department.
- x. In this regard, reference may also be made to Notification No. 25/1999 wherein benefit of exemption is specifically extended to the product 'Aluminium Paste'. It would be important to note that the benefit of exemption under Sr. No. 18 is only for products falling under Chapter 28, 38, 39, 70, 74 and 76. If the case of the department is accepted that the product 'Aluminium Paste' is exclusively classifiable under Chapter 32 only, the exemption entry would be incoherent and unworkable. It is therefore, submitted that on the said count, the allegations raised in the show cause notice are wholly unwarranted and without authority of law. We further say and submit that it is even otherwise a settled legal position that the onus to justify reclassification of goods imported by an assessee is on the department, and if such onus is not discharged by the department by bringing on record cogent and reliable evidence, the classification claimed by the assessee cannot be rejected. In the present case, the proposals in the show cause notice have been raised merely on the basis of bald allegation and no evidence has been brought on record by the department to show that the classification claimed by us was wrong or to show that the goods were correctly classifiable under Chapter 32. In this regard, reference is made to judgments of Hon'ble Supreme Court in cases of M/s HPL Chemicals Limited reported in 2006 (197) ELT 324 (SC) and M/s Hindustan Feroda Limited reported in 1997 (89) ELT 16 (SC), wherein the Hon'ble Supreme Court has held that in cases of classification of goods, the onus of establishing that certain goods can be classified and duty thereon can be levied under a particular tariff item lies on the department and if the department fails to discharge such onus by way of concrete and proper evidence, the classification claimed by the assessee cannot be disputed or disturbed. Coming back to the facts of the present case, no evidence much less any concrete or reliable evidence has been brought on record to justifiably dispute the classification claimed by the Company and therefore in terms of the law settled by the Hon'ble Supreme Court, classification of the goods in question claimed under CTH 7616990 cannot be rejected by the department.
- xi. In addition thereto, it is also alleged that one consignment of Aluminium Paste/Paste Back Aluminium (Annexure-A to the SCN Sr. No. 4) was also imported claiming benefit of Sr. No. 39 Exemption Notification No. 24/2005. Even for the said imports, it is alleged that the parent notification was amended vide Notification No. 15/2022-Cus dated 01.02.2022 which was brought in force on 01.04.2022. It may be noted that, similar to the case of import of junction box as

explained above, the claim of exemption for import of Aluminium Paste/Paste Back Aluminium for that one consignment was also mistakenly made soon after the amendment was brought in force. It was in such peculiar circumstances and by oversight, the claim of exemption was made even for Bill of Entry filed on 04th of April, 2022 overlooking the fact that the amendment Notification was brought into force. It is submitted that the bill of entry was filed online, therefore, when the Company found that the Notification No. 24/2005 is still available on the online portal where the bill of entry was filed, the Company under bonafide belief availed the benefit of the said Notification. Since the Department has not removed the Notification from the online portal, everyone including the Company was of the view that the benefit of Notification was still continued. We say and submit that in such circumstances, it cannot be rationally alleged that claim of exemption by the Company was on account of any malafide intention. As soon as the mistake was pointed out by the officers, the entire amount was paid along with interest thereon.

- xii. We further say and submit that the notice is also bad in law in as much as mandatory pre-show cause notice consultation has been bypassed by the authorities. Proviso to Section 28 (1) (a) of the Customs Act provides a mandate on the proper officer to hold a pre-notice consultation with the person chargeable with duty or interest in such manner as may be prescribed before issuing notice under the said Section. Under the said provision, the process of pre-show cause notice consultation is mandatory and there is no discretion on the proper officer to bypass such mandate under any circumstances whatsoever. The non-adherence to the said mandate has been raised before various High Courts, wherein time and again the Hon'ble Courts have quashed and set aside such show cause notices solely on the ground that the pre-show cause notice consultation was not undertaken.
- xiii. We say and submit that pre-show cause notice consultation is not a mere formality. If such opportunity would have been granted to the Company, they would have been able to point out such misunderstanding on part of the authorities which would have avoided the very initiation of the proceeding itself. We say and submit that issuance of show cause notice has been bad in law and without following the due procedure prescribed under the Act.
- xiv. Classification and consequent applicability of nil rate of duty are questions of law involving interpretation, and therefore even if a wrong classification or a wrong nil rate was claimed by an assessee, no malafide could be attributed to the assessee in such cases. In case of Commissioner V/s. Ishaan Research Lab (P) Ltd. reported in 2008 (230) ELT 7 (SC), the Hon'ble Supreme Court has held that in a dispute of classification of products, the assessee cannot be held to be guilty of suppression or mis-statement, and therefore extended period of limitation cannot be invoked. The Hon'ble Supreme Court has, in para 36 of this judgement, with approval referred to a judgement of the Hon'ble Allahabad High Court in case of Shahnaz Ayurvedics reported in 2004 (173) ELT 337 (All.) wherein the Hon'ble Allahabad High Court has held that dispute like classification and valuation were questions of interpretation and therefore allegations of suppression of facts etc. cannot be made against the assessee in cases involving such disputes.
- xv. In Haryana Roadways Engineering Corporation Ltd. reported in 2001 (131) ELT 662 and Wipro Ltd. reported in 2005 (179) ELT 211, the Hon'ble Appellate Tribunal has also held that demand of differential duty on account of dispute of classification cannot be confirmed by invoking extended period of limitation and penalty also cannot be imposed when the dispute is related to interpretation of a statutory provision.

xvi. The Hon'ble Kerala High Court in case of Commissioner of Customs V/s. Cochin Minerals and Rutiles Ltd. reported in 2010 (259)ELT 182 (Ker.) and the Hon'ble Delhi High Court in case of Ballarpur Industries Ltd. reported in 1994 (74) ELT 795 (Delhi) have also held that exemption depends on interpretation of a Notification, and approval of classification list by the Department requiring change on second thoughts by the Department were cases where the demand has to be confined to the normal period of limitation because they were the cases involving interpretation of law.

xvii. In case of Bhilosa Industries Pvt. Ltd. reported in 2015 (317) ELT 283 (Tri.-Ahmd), the Hon'ble CESTAT, Ahmedabad has also held in para 10 of the decision that claim for benefit of a Notification was not a case where intention to evade duty can be attributed to the assessee for invoking extended period, because claim for any exemption can always be made by the assessee. The demand in this case was held to be time-barred and penalties were also set aside.

xviii. It is further submitted that the show cause notice was issued invoking extended period of limitation in complete disregard to the judgment of Hon'ble Tribunal in case of Coastal Energy Pvt. Ltd. vs. Commissioner of Cus., C. Ex. & S. Tax, Guntur reported in 2014 (310) ELT (97) (Tri-Bang.) wherein it is held that for quite some time, the Department had not taken up the issue which would also show that even Departmental officers did not think of the issue in the beginning. All these aspects show that the issue is one of classification, technical in nature and therefore mens rea to evade payment of duty cannot be alleged. Therefore extended period cannot be invoked and no penalty could have been levied and can be levied on the appellants even in respect of demand for normal period. It is pertinent to mention that the said order of Hon'ble Tribunal have been affirmed by Hon'ble Supreme Court in case of Commissioner v. Coastal Energy Pvt. Ltd. - 2016 (340) E.L.T. A204 (S.C.).

xix. We say and submit that invocation of extended period and consequently issuance of Show Cause Notice under Section 28 (4) of the Customs Act has thus been without any authority of law. Not even an iota of evidence has been brought on record to show or suggest that non-payment of duty was on account of any suppression and/or misstatement with an intent to evade payment of duty. It is a settled legal position that the burden to show that non-payment of duty/tax on part of the assessee was on account of any fraud, misdeclaration etc. is entirely on the department and without any tangible evidence on record to discharge such burden, Section 28 (4) of the Act cannot be invoked.

xx. At this stage, we may also highlight that the proposal for imposition of penalty under various provisions of the Act is also illegal and arbitrary, because there is no violation as contemplated under Section 112(a)/114A of the Customs Act and the goods are not liable for confiscation. Section 112 of the Customs Act provides for penalty for improper importation of goods by any person. However, the Company have not done anything nor have they omitted to do anything which act or omission would render imported goods liable for confiscation, and therefore there is no justification in proposal to impose penalty also. As pointed out in the preceding paragraph, the subject goods are undoubtedly, not liable to be confiscated under the provision of Section 111; consequently, no penalty can be imposed under Section 112 (a) of the Act. The said provision only encompasses imposition of penalty on person who does or omits to do any act whereby the subject goods are rendered liable to be confiscated in terms of Section 111. Thus, when the imported goods have been rightly imported by the Company, proposals for demand of duty, confiscation and consequently, proposals for imposition of penalty is illegal and arbitrary.

xxi. Further, the Department has failed to appreciate the ratio of the decision of the Hon'ble Tribunal in the case of Lietronics Vijay India Pvt. Ltd. Vs. Commissioner of Customs, Chennai - (2009) 234 E.L.T. 535 (Tri-Chennai) wherein it was held that classification is a departmental function and misclassification is not a ground for confiscating the goods. Since the Department clearly failed to discharge its function in the instant case, the goods cannot be liable for confiscation under Section 111(m) of the Act which reads as under :

SECTION 111. Confiscation of improperly imported goods, etc. – The following goods brought from a place outside India shall be liable to confiscation : –

(m) [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 transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54];

In any event the provisions of Section 111(m) of the Act are not applicable since the company had correctly declared the value of the said goods in the Bill of Entry.

xxii. Without prejudice to the above, it is submitted that Hon'ble Tribunal in case of Coastal Energy Pvt. Ltd. vs. Commissioner of Cus., CEx. & S.Tax, Guntur reported in 2014 (310) ELT (97) (Tri-Bang.) while setting aside penalty and redemption fine held since the issue is of classification and is technical in nature, mens rea to evade payment of duty does not exist and thus making the imposition of penalty unsustainable.

xxiii. Without prejudice to the above, it is further submitted that in terms of settled law, including the decision of Hon'ble Tribunal in **Raj Television Network V/s Commissioner** reported in 2007 (215) ELT 71, there is no question of any mis-declaration arising out of mis-classification of goods, even assuming that we have mis-classified the goods. Classification is essentially a departmental function and where an importer wrongly classifies the goods in the Bill of Entry, it is for the assessing authority to correct the mistake in due discharge of the said function. In other words, the Revenue ought to have appreciated that mis-classification cannot be a ground for confiscation under Section 111 or for imposing penalty under Section 112 of the Customs Act.

xxiv. The matter of penalty is governed by the principles as laid down by the Hon'ble Supreme Court in the land mark case of Hindustan Steel Limited reported in 1978 ELT (J159) wherein the Hon'ble Supreme Court has held that penalty should not be imposed merely because it was lawful to do so. The Apex Court has further held that only in cases where it was proved that the person was guilty of conduct contumacious or dishonest and the error committed by the person was not bonafide but was with a knowledge that he was required to act otherwise, penalty might be imposed. It is held by the Hon'ble Supreme Court that in other cases where there were only irregularities or contravention flowing from a bonafide belief, even a token penalty would not be justified. Penalty is a quasi-criminal matter and therefore, it could be resorted to only in cases where malafide intention or guilty conscious of an assessee was established. Since it is required to be established that action of an assessee was deliberate in the matter of penalty, this measure is to be resorted to sparingly. In the facts of the present case where no suggestion or allegation of any malafide intention to evade payment of duty is even made out against us, there is no justification in the imposition of penalty in law as well as in facts.

xxv. Moreover, with regard to proposal for imposition of penalty under Section 114AA, it may be noted that it has been a settled position in law that the penalty under section 114AA is applicable only when the issue is of exports and therefore, not applicable in the cases of imports. It is submitted that the purpose of introduction of Section 114AA in the Act w.e.f. 13.07.2006 vide Taxation Laws (Amendment) Act, 2006 was to check frauds in export as stipulated by the observations of Ministry in Twenty Seventh Report of the Standing Committee on Finance (2005-06) (hereinafter referred to as "Report"). It is submitted that vide the aforesaid mentioned Report, the Ministry explained its objection for inserting the new section 114AA in the Act:

"63. The information furnished by the Ministry states as follows on the proposed provision:

"Section 114 provides for penalty for improper exportation of goods. However, there have been instances where export was on paper only and no goods had ever crossed the border. Such serious manipulators could escape penal action even when no goods were actually exported. The lacuna has an added dimension because of various export incentive schemes. To provide for penalty in such cases of false and incorrect declaration of material particulars and for giving false statements, declarations, etc. for the purpose of transaction of business under the Customs Act, it is proposed to provide expressly the power to levy penalty up to 5 times the value of goods. A new section 114 AA is proposed to be inserted after section 114A."

.....

65. The Ministry also informed as under:

"The new Section 114AA has been proposed consequent to the detection of several cases of fraudulent exports where the exports were shown only on paper and no goods crossed the Indian border. The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported, but papers are being created for availing the number of benefits under various export promotion schemes."

66. The Committee observe that owing to the increased instances of wilful fraudulent usage of export promotion schemes, the provision for levying of penalty upto five times the value of goods has been proposed. The proposal appears to be in the right direction as the offences involve criminal intent which cannot be treated at par with other instances of evasion of duty. The Committee, however, advise the Government to monitor the implementation of the provision with due diligence and care so as to ensure that it does not result in undue harassment."

xxvi. That while referring to the rationale of the Standing Committee in the Report, the Hon'ble CESTAT, Chennai in the matter of **Commissioner of Customs, Sea, Chennai - II v. M/s. Sri Krishna Sounds and Lightings** reported in 2019 (370) **ELT 594** has observed that the new penalty section has been introduced with the objective of detecting several fraudulent exports, where the exports were shown on paper and no goods crossed the Indian Border. Therefore, it was held that:-

"On appreciating the evidence as well as the facts presented and after hearing the submissions made by both sides, I am of the view that the Commissioner (Appeals) has rightly set aside the penalty under Section 114AA since the present case involves importation of goods and is not a situation of paper transaction."

xxvii. That the Hon'ble CESTAT, Bangalore in the matter of **M/s. Interglobal Aviation Ltd. v. The Principal Commissioner, Custom Bangalore** reported in 2022 (379) ELT 235 has explicitly held that since the case does not involve export, the penalty under section 114AA of the Act cannot be imposed.

xxviii. Without prejudice, it is submitted that the penalty cannot be imposed under Section 114AA, which reads as under :

SECTION 114AA. Penalty for use of false and incorrect material. - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.]

xxix. From the plain reading of the Section 114AA it is clear that penalty under the said section can be imposed only when a person intentionally or unintentionally makes sign or uses any declaration or statement or documents which is false or incorrect in any material particular for the purpose of transacting business under the Act. However, in the present case, as stated hereinabove, there was no intention on the part of the Noticee to sign the documents. The Noticee has also not done any such alleged acts for transacting business under the Act. Further none of the documents have been signed which contain false declaration and as such penalty under Section 114AA of the Act cannot be imposed.

xxx. It is also submitted that Section 114AA cannot be applied to artificial person for the reason that they cannot sign the declaration. Since the company is body of corporate, penalty under Section 114AA cannot be imposed.

DISCUSSION AND FINDINGS

21. I have gone through the facts of the case, records and documents placed before me. Personal hearing was attended by Authorized Representatives of the Noticee on the scheduled date i.e. 13.05.2025 and written submissions dated 15.04.2025 were made for the noticee.

22. After carefully considering the facts of the case, written submissions made by the Noticee and record of Personal Hearing, the issues to be decided before me are:-

- (i) Whether the benefits of Notification No. 24/2005-Customs dated 01.03.2005- as amended, availed by Importer on import of "**aluminium frame or solar aluminium frame, PV Junction Box and Aluminium Paste**" under Bills of Entry as listed in Annexure-A be disallowed;
- (ii) Whether the benefits of Notification No. 25/1999 dated 28.02.1999, as amended, availed by Importer on import of **Aluminium Frame** under Bills of Entry as listed in Annexure-B be disallowed;
- (iii) Whether the classification of the imported goods namely **Paste Back Aluminium or Aluminium Paste or Paste back Aluminium** under CTH 76169990 under Bills of Entry detailed in Annexure-C, be rejected and the imported goods be classified under CTH 32129030;

- (iv) Whether the benefits of Notification No. 25/1999 dated 28.02.1999-as amended, availed by Importer on import of **Paste Back Aluminium or Aluminium Paste or Paste back Aluminium**, under Bills of Entry as listed in Annexure-C be disallowed;
- (v) Whether the differential amount of Customs duty aggregating to **Rs.4,22,32,464/- (Rupees Four Crores Twenty Two Lakhs Thirty Two Thousand Four Hundred and Sixty-Four only)** as detailed in Annexures- A to C to SCN be demanded and recovered from Importer under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962;
- (vi) Whether **Rs. 3,97,50,982/- (Rupees Three Crore Ninety Seven Lakhs Fifty Thousand Nine Hundred and Eighty Two Only)** and **Rs.13,96,079/- (Rupees Thirteen Lakhs Ninety-Six Thousand and Seventy Nine Only)** paid/deposited by the importer during the course of the investigation be adjusted and appropriated against differential duty and interest respectively demanded from Importer at sub-para (v) above;
- (vii) Whether the subject goods totally valued at **Rs. 32,53,65,674/-** imported vide Bills of Entry as listed Annexures- A to C be held liable to confiscation as per provisions of Section 111(m) of the Customs Act, 1962.
- (viii) Whether the penalty be imposed on Importer under Section 114A and/or 112 of the Customs Act, 1962;
- (ix) Whether the penalty be imposed on them under Section 114AA of the Customs Act, 1962, for the reasons discussed above.

23. I have gone through the allegations in Show Cause Notice and submissions by the Noticee. I find that some of the allegations have been accepted by the Noticee and the same were already being settled. The same is produced below:

Sr. No.	Allegations in the SCN	Submissions of Noticee
1	The benefits of Notification No. 24/2005-Customs dated 01.03.2005-as amended, availed by Importer on import of "aluminium frame or solar aluminium frame, PV Junction Box and Aluminium Paste" to be disallowed.	Noticee accepted the allegations, as a bonafide mistake
2	The benefits of Notification No. 25/1999 dated 28.02.1999, as amended, availed by Importer on import of Aluminium Frame to be disallowed.	Noticee accepted the allegations, as a bonafide mistake
3	The classification of the imported goods namely Paste Back Aluminium or Aluminium Paste or Paste back Aluminium under CTH 76169990 under Bills of Entry detailed in Annexure-C, be rejected and the imported goods be classified under CTH 32129030	Not accepted by Noticee
4	The benefits of Notification No. 25/1999 dated 28.02.1999-as amended, availed by Importer on import of Paste Back Aluminium or Aluminium Paste or Paste back Aluminium to be disallowed.	Not accepted by Noticee

5	Importer wilfully mis-declare the Notification benefit and differential duty to be recovered under Section 28(4) of the Customs Act.	Not accepted by Noticee
6	the subject goods totally valued at Rs. 32,53,65,674/- to be held liable to confiscation as per provisions of Section 111(m) of the Customs Act, 1962.	Not accepted by Noticee
7	Whether the penalty be imposed on Importer under Section, 114AA, 114A and/or 112 of the Customs Act, 1962	Not accepted by Noticee.

23.1 As the Noticee accepted that the benefit of exemption Notification No. 24/2005- Customs dated 01.03.2005-as amended, on import of "**aluminium frame or solar aluminium frame, PV Junction Box and Aluminium Paste**" and benefit of exemption Notification No. 25/1999 dated 28.02.1999, as amended, on import of **Aluminium Frame** was incorrectly availed by them, they vide letter dated 01.08.2022 addressed to DRI intimated deposit of differential duty of Rs. **Rs. 3,97,50,982/-** along with interest of **Rs.13,96,079/-** and requested that since the entire amount of duty along with interest is paid, "your goodself is requested not to issue Show Cause Notice and close the file".

24. In their defence reply, importer has contended that the exemption benefits of aforesaid two Notifications were availed by them by mistake and there was no malafide intention or wilful statement on their part. But I do not agree. It is well established in investigation that all the Bills of Entry in question were cleared on the basis of self assessment made by the importer. Whether or not a specific benefit or exemption is available is the sole lookout of the importer when going for self assessment. Further, it is also the duty of the importer to take steps to correct the self assessment if done wrongly. In the instant case, the importer continued to avail benefit of Sr. No. 39 of Notification No. 24/2005 which had clearly excluded the item imported by importer after its amendment effective from 01.04.2022. I also noticed that the importer after learning that their Aluminium Frame was not eligible for benefit under Notification No. 24/2005, immediately switched over to another Notification 25/1999 (albeit wrongly once again) and yet they did not take steps to correct the self assessment made by them earlier on 02.04.2022 wherein they had chosen the Notification 24/2005. This event clearly shows their malafide intention. Further, for the item Aluminium Frame, the importer wilfully chose to take benefit of Sr. No. 18 of Notification 25/1999 which is apparent from the fact that description of imported goods provided in column 3 of List A of Notification 25/1999 very clearly lists the exact goods to which the benefit is extended and by no stretch of imagination, Aluminium Frame could match or fit into any of the described goods. The said Sr. no. 18 of Notification 25/1999 is produced below:-

<i>S No</i>	<i>Heading, sub-heading or tariff item</i>	<i>Description of imported goods</i>	<i>Description of finished goods</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
..

18	28,38,39,70, 74,76	Aluminium paste, ethylene vinyl acetate sheets (EVA); primer for EVA; crane glass; tedlar coated aluminium sheet; phosphorous oxychloride; halo carbon (CF4)/ freon gas; tinned copper interconnect; toughened glass with low iron content and transmittivity of min. 90% and above; multilayered sheets with tedlar base; fluro polymer resin; ultra high purity (UHP) silane in UHP nitrogen; UHP silane; diborane in UHP silane; MOCVD grade phosphine in UHP silane; silver sputtering target; high purity tin tetrachloride; nitrogen trifluoride of 99 % purity and above.	Solar Cells/Modul es.
..

25. Further, the importer did not return the ineligible benefit of both the Notifications until after the DRI investigation began. What is worse that despite summons dated 10.06.2022, 27.06.2022, 08.07.2022 and 25.07.2022 issued to them under Section 108 of the Customs Act, 1962, they failed to cooperate for investigation and also failed to appear before DRI officers for enquiry. Nor did they explain at any stage how the so called mistake was committed by them. In their letter dated 01.08.2022, the importer initially offered the excuse that they were under bonafide belief that since there was no separate entry for Aluminium Frame, they cleared both Aluminium Frame and Aluminium Paste classifying the same under CTI 7616 9990 and availed benefit under Notification 25/1999. But this excuse fell short as they subsequently opted to classify the same Aluminium frame under a different Tariff Item. The noticee in their defence submission changed their stance once again and have claimed that despite the entry of exemption being available only to Aluminium Paste, the same was mistakenly claimed for Aluminium Frame Solar or Solar Aluminium Frame. These kind of flip-flops hardly inspire the feelings of bonafide and it is clear that the importer willingly and knowingly sought to evade the applicable Customs duties of Rs. 4,04,63,790/- by availing exemption benefits of Sr. No. 39 of Notification No.24/2005-Customs dated 01.03.2005, as amended vide Notification No. 15/2022-Cus dated 01.02.2022 (w.e.f. 01.04.2022) on **Aluminium frame, Aluminium Paste and Junction box** and by availing exemption benefits of Sr. No. 18 of Notification 25/1999 on **Aluminium Frame** imported vide Bills of Entry as detailed in attached Annexures-A & B to the SCN. Importer has cited several case laws to claim that the wilful statement is not applicable to them. However, none of the case law is applicable because of the peculiar facts of the instant case where the benefit of a pre-amended Sr. No. 39 of exemption Notification was wrongly claimed by the importer and later on another exemption Notification was claimed intentionally but without taking necessary steps to correct the earlier self-assessment under Sr. No. 39 of Notification 24/2005. These act of wilful mis-statement of applicability of Notification benefit rendered the goods valued at **Rs. 31,17,39,523/-** liable to confiscation as per the provisions of Section 111(m) of the Customs Act, 1962. However, I refrain from imposing a redemption fine as goods are not available. The differential Customs duty aggregating to **Rs. 4,04,63,790/-**, on the goods imported vide Bills of Entry as detailed in attached Annexures-A & B to the SCN, is confirmed and to be recovered from M/s Mundra Solar PV Ltd. by invoking the extended period of five years under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962. Further, the importer is liable to penalty under Section 114A of the Customs act, 1962 but since the penalties under Section 112 and 114A are mutually exclusive, I do not impose penalty under Section 112 of the Customs Act, 1962. I further find that since M/s Mundra Solar PV Ltd. made false/incorrect declaration for import of goods, they are liable for penalty under Section 114AA of the Customs Act, 1962.

26. Now, I proceed to discuss the classification of Aluminium paste/Paste Back Aluminium, which the Noticee has classified under CTI 7616 9990 in all Bills of Entry

except in one BE dated 04.04.2022 where they classified it under CTI 3212 9090. SCN, on the other hand, has alleged that appropriate classification for said Aluminium Paste is CTI 3212 9030

26.1 SCN has alleged that the classification of goods is governed by the principles of "General Rules for the Interpretation of the Schedule (GRI)" and as per Rule 1 of GRI, the classification shall be determined according to the terms of the headings of tariff schedule and any relative Section or Chapter Notes. The relevant portion is produced below:-

"The titles of sections, chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings of tariff schedule and any relative section or chapter notes....."

The tariff item where SCN proposed to classify the impugned goods i.e Aluminium Paste is 3212 9030 and is produced below:

3212 *Pigments (Including Metallic Powders and Flakes) Dispersed In Non-Aqueous Media, In Liquid Or Paste Form, Of A Kind Used In The Manufacture Of Paints (Including Enamels); Stamping Foils; Dyes And Other Colouring Matter Put Up In Forms Or Packings For Retail Sale*

....
....
....

3212 90 30 -- Aluminium paste

....

It is clear that the Aluminium Paste covered by CTI 3212 9030 needs to meet the requirements of CTH 3212 as well, which is as mandated by Rule 1 of General Rule of Interpretation. CTH 3212 includes only the kind of pigments which are used in manufacture of paints or it includes, for our purposes, other colouring matter put up in forms or packing for retail sale. Aluminium Paste mentioned at CTI 3212 9030 is therefore of a kind needed in manufacturing of paint or it ought to be used as colouring matter put up in forms or packings for retail sale. Now as against the kind of Aluminium Paste intended under CTH 3212, the SCN provides the following description for kind of Aluminium Paste imported by the noticee:-

"The aluminium paste which contains aluminium powder (70% to 85%), organic binders and thinner, is used in the manufacture of solar cells. It is painted/ printed on the front and back of silicon wafers to make metallic contacts on the positive and negative sides of the solar cell. The aluminium layer provides a back surface field and makes a connection with other devices while connecting in series through the soldering process. It is a mixture of solvent and aluminium pigments"

Thus, the aluminium paste imported by noticee is to be used in Solar Cells. In this context, the SCN has cited US Customs cross ruling NY 859491 dated 01.03.1991 to alleged that impugned Aluminium Paste is classified under CTI 3212 9030. However, the said Customs ruling is about "classification of Toyo Alpaste" from Japan which by the way is a reputed manufacturer (M/s Toyal Toyo Aluminium K.K.) of pigments and manufacture several kind/colours of Aluminium Paste which are used in paint/colour industry. The importer, on the other hand, neither belongs to paint industry nor intends to use the said goods as a colouring material but rather uses/print the same on rear surface of Solar Cell and then sintered/heated to form as a aluminium film that work as a Back Surface Film and acts as back electrode, forming a conductive layer on back

of solar cell. Therefore, the impugned goods cannot be covered by CTI 3212 9030 as a pigment or a colouring material.

26.2 Further, I find that the SCN, while proposing the classification of the impugned goods under CTH 3212, relied upon the Rule 3(a) of the General Rule of Interpretation which states that the heading which provides the most specific description shall be preferred to headings providing a more general description. The relevant portion is produced below:-

*"3. When by application of Rule 2 (b) or for any other reason, goods are, **prima facie**, classifiable under two or more headings, classification shall be effected as follows :*

3(a) The heading which provides the most specific description shall be preferred to headings providing a more general description."

I note that GRI Rule 3(a) is applied when by application of Rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings. I find that impugned goods are used for making Solar Cells but the aluminium paste covered under CTI 3212 9030 is of a kind which is used as a pigment or as a colouring material. Therefore, there is no *prima facie* occasion to classify the impugned goods under two different headings and as such Rule 3(a) cannot be invoked.

26.3 In the present case the instant product consists of almost entirely of aluminium powder (70% to 85%) and a small quantity of binding agent and thinner. Since it contains a binding agent, which is not an "element", Note 5(b) to Section XV, does not apply. Further, according to Note 7 to Section XV, products containing base metals and non-metals are to be treated as articles of the base metal which predominates by weight. The instant goods i.e aluminium paste, which consists of 70% to 85% aluminium, is therefore to be classified as an article of Aluminium. As the said goods not covered under any of the entry upto CTH 7615, then it is to be covered under CTH 7616 as other articles of Aluminium and further under CTI 7616 9990.

26.4 Further, I find that the SCN refutes the classification of impugned Aluminium Paste under CTH 7616 on basis of Explanatory Notes to CTH 7616. The relevant portion of Explanatory Notes to CTH 7616 is produced below:

"This heading covers all articles of Aluminium other than those covered by the preceding headings of this chapter, or by note 1 to section XV, or articles specified or included in chapter 82 or 83, or more specifically covered elsewhere in the Nomenclature.

In this regard, as the impugned goods have already been excluded from CTH 3212 by way of Rule 1 of GRI, no case is made out to claim that same is specifically covered elsewhere in the nomenclature.

26.5 Further, I find that the SCN refutes the classification of impugned goods i.e Aluminium Paste under CTH 7616 on basis of exclusion mentioned at Note 1 to Section XV. The relevant portion of Section Note is produced below:

"This Section does not cover :

(a) prepared paints, inks or other products with a basis of metallic flakes or powder (headings 3207 to 3210, 3212, 3213 or 3215)"

However, I find the SCN itself makes it clear that the impugned goods are to be used in solar cells and not for manufacturing any paint or ink. Hence, the above Section Note is of no help.

27. From above discussion, I hold that as per Rule 1 of General Rule of Interpretation, the impugned Aluminium Paste is rightly classifiable under CTI 7616 9990. Accordingly, I drop the demand of Differential Duty amounting to Rs. 17,68,674/- on Aluminium Paste as per Annexure-C to the SCN. Further, I hold Aluminium Paste valued at Rs. 1,36,26,151/-, as per Annexure-C to the SCN, not liable to confiscation under Section 111(m) of the Customs Act, 1962.

28. In view of above discussions and findings supra, I pass the following order.

ORDER

- i) I disallow the benefits of Notification No. 24/2005-Customs dated 01.03.2005-as amended, availed by M/s Mundra Solar PV Ltd. on import of "aluminium frame or solar aluminium frame, PV Junction Box and Aluminium Paste" under Bills of Entry as listed in Annexure-A to SCN;
- ii) I disallow the benefits of Notification No. 25/1999 dated 28.02.1999, as amended, availed by them on import of Aluminium Frame under Bills of Entry as listed in Annexure-B to the SCN;
- iii) I accept the classification of the imported goods namely Paste Back Aluminium or Aluminium Paste under CTH 76169990 and drop the demand of Differential Duty amounting to Rs. 17,68,674/- on said goods under Bills of Entry detailed in Annexure-C to the SCN and hold that the said goods valued at Rs. 1,36,26,151/-, as per Annexure-C to the SCN, not liable to confiscation under Section 111(m) of the Customs Act, 1962 ;
- iv) I allow the benefits of Notification No. 25/1999 dated 28.02.1999-as amended, availed by importer on import of Paste Back Aluminium or Aluminium Paste or Paste back Aluminium, under Bills of Entry as listed in Annexure-C to the SCN;
- v) I confirm the differential amount of Customs duty aggregating to **Rs. 4,04,63,790/- (Rupees Four Crore Four Lakh Sixty Three Thousand Seven Hundred and Ninety Only)** as detailed in Annexures- A & B to the SCN, to be demanded and recovered from importer under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962;
- vi) I order for **Rs. 3,97,50,982/- (Rupees Three Crore Ninety Seven Lakhs Fifty Thousand Nine Hundred and Eighty Two Only)** and **Rs.13,96,079/- (Rupees Thirteen Lakhs Ninety-Six Thousand and Seventy Nine Only)** paid/deposited by the importer during the course of the investigation to be adjusted and appropriated against differential duty and interest respectively demanded from them at sub-para (v) above;
- vii) I order for the confiscation of the subject goods totally valued at **Rs. 31,17,39,523/- (Rupees Thirty One Crore Seventeen Lakh Thirty Nine Thousand Five Hundred and Twenty Three Only)**, imported vide Bills of Entry as listed in Annexures- A & B to the SCN, as per provisions of Section 111(m) of the Customs Act, 1962. But I do not impose any redemption fine as goods are not available for confiscation.
- viii) I impose penalty of **Rs. 4,04,63,790/- (Rupees Four Crore Four Lakh Sixty Three Thousand Seven Hundred and Ninety Only)** on M/s Mundra Solar PV Ltd. under Section 114A of the Customs Act, 1962 for the reason of wilful mis-statement and suppression of facts. I refrain from imposing penalty under Section 112 as penalty under Section 112 and Section 114A are mutually exclusive;

ix) I impose penalty of **Rs. 5,00,00,00/- (Rupees Five Crore only)** on M/s Mundra Solar PV Ltd. under Section 114AA of the Customs Act, 1962, for the reasons discussed above.

29. The O-i-O is issued without prejudice to any other action that may be taken against the claimant under the provisions of the Customs Act, 1962 or rules made there under or any other law for the time being in force.



(Nitin Saini)
Commissioner of Customs,
Custom House, Mundra

Date: 29.05.2025

F.No. GEN/ADJ/COMM/769/2023-Adjn-O/o Pr Commr-Cus-Mundra

BY Speed Post A.D / E-mail

To, (The Noticee):-

1. **M/s. Mundra Solar PV Limited** (IEC-0815006926), registered address at "Adani House, Near Mithakhali Six Road, Navrangpura, Ahmedabad, Gujarat-380009; and **corporate office** at Adani Corporate House, Shantigram, Near Vaishno Devi Circle, S G Highway, Khodiyar, Ahmedabad-382421, Email: kalpesh.dave@adani.com

Copy to:-

1. The Additional Director, Directorate of Revenue Intelligence, Plot No. S-10, Bhawani Singh Lane, Bhawani Singh Road, C-Scheme, Jaipur-302005, (Email: ad-dri-rj@nic.in / drijru@gmail.com).
2. The Deputy/ Asstt. Commissioner (EDI), Custom House, Mundra.
3. The Deputy/ Assistant Commissioner of Customs, (Legal/ Prosecution), Custom House, Mundra.
4. The Notice Board.
5. Guard File.