

1831 & 1832

	<p>कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा, सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 <b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS:</b> <b>CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421.</b> <b>PHONE : 02838-271426/271423 FAX :02838- 271425</b> <b>Email: adj-mundra@gov.in</b></p>	
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DIN: 20240571MO0000002E8C

### SHOW CAUSE NOTICE

#### (ISSUED UNDER SECTION 28(4) OF THE CUSTOMS ACT, 1962)

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 Energy Limited** (IEC-AANCM0140K) (*hereinafter referred to as 'the importer' or "M/s. MSEL"*), having registered addresses at Adani House, 56, Shrimali Society, Navrangpura, Ahmedabad, Gujarat-370435 and Survey No 180/P, APSEZ, Village-Tunda, Mundra, Gujarat-370435, 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 or solar aluminium frame, sealant and potting material, and junction box** 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 or solar aluminium frame, and PVDF backsheet** to be used for manufacturing of solar panels/modules. The importer was also found to be availing ineligible exemption of Customs duty under **Sr. No. 68** of Notification No. 25/1998-Customs dated 02.06.1998, while importing the **PVDF backsheet** for manufacturing solar panels/modules. It was further observed that the importer was also engaged in misdeclaration of the imported goods namely "**Aluminium Paste or Paste back Aluminium**" under CTH 76169990 instead of its correct CTH 32129030 in order to avail of the ineligible Customs duty exemption under **Sr. No. 18**, List A of Notification No. 25/1999 dated 28.02.1999. Similarly, they misdeclared **Poly Olefin Elastomer (POE)** as Ethylene Vinyl Acetate (EVA) 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	All goods
39.	Any Chapter except Chapter 74	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

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

		00 or 8541 modules or made 43 00) up into panels.";
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**2.3** The subject goods **aluminium frame or solar aluminium frame, sealant and potting material, and junction box** (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 or solar aluminium frame, and PVDF backsheet** (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):**

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

Hence, it appears that these imported goods do not fulfil the conditions required to be eligible for exemption under Sr. No. 18 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. Moreover, the importer had also availed of the exemption under Sr. No. 68 of Notification No. 25/1998-Cus dated 02.06.1998. The Customs duty leviable on certain goods had been exempted vide the said notification. The relevant contents of Sr. No. 68 of Notification No. 25/1998-Cus dated 02.06.1998 are reproduced hereunder:

<b>S. No.</b>	<b>Sub-heading No.</b>	<b>Description</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>
1.	7017.10 or 7020.00	<i>Quartz reactor tubes and holders are designed for insertion into diffusion and oxidation furnaces for the production of semiconductor wafers.</i>
68.	9031.90	<i>Parts and accessories of optical instruments and appliances for measuring surface particulate contamination on semiconductor wafers.</i>

It appears that the benefits availed by the importer on the imported goods namely “**PVDF Back Sheet Cynagrd 205A, 465A, 205A (R) or 465A (R)**” (for manufacturing of solar panels/modules) under Sr. No. 68 of the subject notification do not appear appropriate as the exemption is applicable specifically to parts and accessories of optical instruments and appliances for measuring surface particulate contamination on semiconductor wafers, falling under Tariff sub-heading 9031.90. It is also observed that the importer has availed of the exemption, sometimes under Sr. No. 18, List-A of Notification No. 25/1999 dated 28.02.1999 and sometimes under Sr. No. 68 of Notification No. 25/1998 dated 02.06.1998, on same goods (PVDF backsheet), without any logical reasoning and justification.

5. On examination of the import data with respect to the description of goods mentioned in Bills of Entry filed by the importer and commercial invoices supplied by the foreign supplier, it was noticed that the importer had misdeclared the imported goods as Ethylene Vinyl Acetate (EVA) sheets in Bills of Entry, instead of Poly Olefin Elastomer (POE) as mentioned in commercial invoices, in order to avail of the ineligible benefits of Customs duty exemption under Sr No. 18 List-A of Notification No. 25/1999.

6. The importer had also misclassified “Aluminium Paste or paste Back Aluminium” under CTH 76169990, instead of its correct classification under CTH 32129030, in order to avail ineligible Customs duty exemption 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.

7. 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>: -

8. Accordingly, an investigation was initiated and following summonses were issued to M/s. MSEL 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	16.06.2022	Did not appear. Response received vide letter dated 16.06.2022 and requested 3 weeks' time to submit documents called for or to appear.	<b>RUD No. 3</b>
Summons-II	27.06.2022	06.07.2022	Did not appear. Response received vide letter dated 05.07.2022 and requested 2 weeks' time.	<b>RUD No. 4</b>
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.	<b>RUD No. 5</b>
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.	<b>RUD No. 6</b>

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

- 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;
- they were importing raw materials viz. Aluminium Paste, Aluminium Frame, EVA, POE, Backsheet, Junction Box 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;
- 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 benefits of Notification No 24/2005 while filing BoEs under bonafide belief, since the notification was then available on the online portal;
- Notification No. 25/1999 dated 28.02.1999 provided an exemption from payment of Customs duty on (i) Aluminium paste (ii) EVA. Thus, MSEL 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.

**10.** Whereas, on examination of the documents furnished by M/s. MSEL vide letter dated 01.08.2022, it was observed that they were importing one more item namely **Poly Olefin Elastomer (POE)** by availing Customs duty exemption under Sr. No. 18 (List A) of Notification No. 25/1999, by misdeclaring the same as Ethylene Vinyl Acetate (EVA) in the Bills in Entry filed by them. Whereas, it appears that the Customs duty exemption were not available for the imported item **POE** under the subject notification. Accordingly, summons dated 17.01.2023 [RUD No. 8] was issued to M/s. MSEL. The importer, vide letter dated 30.01.2023 [RUD No. 9], requested an extension of ten (10) days' time to furnish the records called for and to tender the statement. The extension of time was granted, and the importer was informed vide email dated 31.01.2023 [RUD No. 10], however, none appeared on the scheduled date. The importer, vide letter dated 10.02.2023 [RUD No. 11], again requested for an extension of time which was again granted and communicated to them vide email dated 03.03.2023 [RUD No. 12]. However, none appeared on the scheduled date.

**11.** Whereas, M/s. MSEL vide letter dated 03.03.2023 [RUD No. 13] had, inter alia, submitted that: -

- i. they had availed of the benefits of Basic Customs Duty (BCD) exemption under Notification No. 25/1999-Cus dated 28.02.199 (as amended up to 01.02.2022) which provides the exemption from the payment of BCD on Ethylene Vinyl Acetate Sheets (EVA) imported into India and used for manufacturing of solar cells and solar modules;
- ii. they were importing raw material EVA & POE (under same HSN code 39201099) for manufacturing of solar modules;
- iii. for EVA (39201099), they were claiming BCD exemption under Notification No. 25/1999 and were paying Anti-Dumping Duty (ADD) under Notification No. 15/2019;
- iv. for POE (39206290), they were paying BCD at the rate of 10 %, as per tariff & ADD was not applicable;
- v. for the below-mentioned three import shipments, import invoices had only technical information and did not contain separate details of the imported goods i.e. EVA and POE, that had resulted in the filing of BoE with single HSN:

- a. **BOE No 8908543:** Import invoices do not contain separate descriptions for EVA and POE. Consequently, BE had been filed under the EVA HSN Code; that has resulted in inadvertent availment of BCD exemption for POE as well as inadvertent payment of ADD on POE;
- b. **BOE No 8924224:** Import invoices do not contain separate descriptions for EVA and POE. Consequently, BE had been filed under the EVA HSN Code; that has resulted in inadvertent availment of BCD exemption for POE as well as inadvertent payment of ADD on POE. Moreover, ADD on EVA was inadvertently paid on gross weight instead of net weight.
- c. **BOE No 9229760:** Import invoices do not contain separate descriptions for EVA and POE. Consequently, BE had been filed under the EVA HSN Code. That has resulted in inadvertent availment of BCD exemption for POE as well as inadvertent payment of ADD on POE.

- vi. Notification No. 25/1999 dated 28.02.199 provides an exemption from payment of Customs duty on EVA. Thus, they had cleared POE classifying

the same under CTH code i.e. 3920 and availed of the benefits under Notification 25/1999 under bonafide belief that since there was no separate entry for POE;

vii. on receipt of the summons, they had taken up the matter with their advocate and paid the differential duty along with applicable interest.

**12. Non-appearance/ Non-cooperation of M/s. MSEL during the investigation and action taken by DRI, Jaipur:** During investigation, M/s. MSEL were summoned as detailed in para 8 and 10 above, but they did not respond to any of the summons and never appeared before the Senior Intelligence Officer, DRI, Jaipur to tender their statements. M/s. MSEL vide their letter dated 06.03.2023 [RUD No.14] assured to tender their oral evidence/statement on 09.03.2023, but they did not appear on the scheduled date. 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. 15].

#### **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 “Junction box”**

**13.** Whereas, it appears that M/s. MSEL had imported **Junction Box** (for solar panels/modules) by wrongly availing the exemption 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 “Junction Box” 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 it 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 'Junction Box' imported vide Bills of Entry as detailed in **Annexure-A** to this notice.

**13.1** Accordingly, it appears that the importer had evaded customs duties aggregating to **Rs. 25,57,176/-** 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.	INMUN1	Junction Box 3QXY with 2 X 1.8M cable, QC4.10 AND	24/2005	1,97,00,894	25,57,176	<b>Annexure-A</b>

	Junction Box 3QXY with 2 X 0.3M cable, QC4.10			
	<b>TOTAL</b>		1,97,00,89 4	25,57,176

**Non-payment of the applicable Customs duties by wrong availment of the benefit of Sr. No. 39 under Notification No. 24/2005-Customs, as amended and Notification No. 25/1999 on the import of goods namely “Aluminium Frame or Solar Aluminium Frame”**

**14.1** Whereas, it appears that M/s. MSEL had imported **Aluminium Frame Solar or Solar Aluminium Frame** (for solar panels/modules) by wrongly availing the exemption 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 Solar or Solar Aluminium Frame”** 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 it 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 Solar or Solar Aluminium Frame’ imported vide Bills of Entry as detailed in **Annexure-B** to this notice.

**14.2.1** Whereas, it also appears that the importer had wrongly availed the benefits of Sr. No. 18 of Notification No.25/1999 on the import of goods namely **“Aluminium Frame or Solar Aluminium Frame”**, as the same was not specified at the Sr. No. 18 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 the exemption under Notification No. 25/1999-Customs on the imported item **Aluminium Frame or Solar Aluminium Frame**, 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-C and claimed ineligible exemption of Notification No. 25/1999-Customs.

**14.2.2** The Sr. No. 18 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".*

**14.2.3** It can be seen that only specific items are covered/ mentioned in Serial No. 18 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. Thus, it appears that the importer had wilfully misstated that their goods were covered under the said exemption with intent to evade applicable Basic Customs Duty (BCD), SWS, and IGST on the imported goods as detailed in **Annexure-C** to this notice.

**14.3.** Accordingly, it appears that the importer had evaded customs duties aggregating to **Rs.4,17,70,297/-** as detailed in Annexure-B and Annexure-C, the abstract of which is tabulated below: -

**TABLE - III**

<b>Sr. No.</b>	<b>Custom House Code</b>	<b>Description of Goods</b>	<b>Notification claimed</b>	<b>Assessable Value (Rs.)</b>	<b>Differential Duty Payable (Rs.)</b>	<b>Remarks</b>
1.	INMUN1	Aluminium Frame or Solar Aluminium Frame	24/2005	44131757	5728302	<b>Annexure-B</b>
2.	INMUN1	Aluminium Frame or Solar Aluminium Frame	25/1999	277673306	36041995	<b>Annexure-C</b>
		Total		<b>32,18,05,063</b>	<b>4,17,70,297</b>	

**Non-payment of applicable Customs Duties by wrong availment of 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 "Sealant and Potting Material".**

**15.** Whereas, it appears that M/s. MSEL had imported **Sealant and Potting Material** (for solar panels/modules) by wrongly availing the exemption 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 benefits 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 "**Sealant and Potting Material**" 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.

**15.1** Accordingly, it appears that the importer had evaded customs duties on import of **"Sealant and Potting Material"**, aggregating to **Rs. 16,94,692/-** as detailed in the attached **Annexure-D** to this notice, the abstract of which is tabulated below: -

TABLE - IV

Sr. No.	Custom House Code	Description of goods	Notification Availed	Assessable Value (Rs.)	Differential customs Duty Payable (Rs.)	Remarks
1.	INMUN1	"Selant and potting material" (CTH declared 35069190, 35061000 & 32141000)	24/2005	1,30,56,182	16,94,692	<b>Annexure-D</b>
		<b>TOTAL</b>		<b>1,30,56,182</b> /-	<b>16,94,692</b> /-	

**Non-payment of the applicable Customs duties by wrong availment of the benefit of Sr. No. 18 under Notification No.25/1999-Customs and Sr. No. 68 of Notification No. 25/1998 regarding the import of "PVDF or PV Backsheet"**

**16.** Whereas, it also appears that M/s. MSEL had wrongly availed the exemption under Sr. No. 18, List-A of Notification-25/1999 on the import of goods namely, backsheet as detailed in **Annexure-E** to this notice, as the same was not specified at the Sr. No. 18 of the subject notification. Sr. No. 18, List-A of Notification No. 25/1999 dated 28.02.1999 provides for Customs duty exemption for the 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**; fluoro 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".*

**16.1** Whereas, it appears that the notification benefit is applicable only if the subject multilayered sheets have a Tedlar base i.e., the goods should have the base sheet of Tedlar® which is a registered trademark of Dupont TM. The importer has neither imported goods from Dupont nor uploaded any NOC from Dupont for using their registered trademark viz., Tedlar®. Further, on scrutiny of the technical write-up available in the public domain and declaration by the importer in subject Bills of Entry, it appears that the subject imported goods viz., "Backsheets for Solar Module/Panels", are being manufactured/supplied by M/s Cybrid Technologies Inc. by using their native technology other than Tedlar®. Given the above, on examination of the details provided under Bills of Entry, it appears that the subject goods do not fall under the exemption under Sr. No. 18, List-A of Notification No. 25/1999 dated 28.02.1999, and hence it appears that these goods are ineligible for the notification benefit and applicable duty of BCD @ 10%, SWS @ 10% and IGST @ 18% is payable. Further, from the scrutiny of import data, it is observed that in some cases, the importer had also imported similar goods by not availing of the benefits under Sr. No. 18, List-A of Notification No. 25/1999. Thus, it appears that the importer was fully aware of the fact that the said exemption is not available on import of "Backsheets for Solar Module/Panels". Further the said notification was in the public domain too. However, the importer has availed of the undue benefits of Notification No. 25/1999 under the said serial number and has not paid the Customs Duty on

the subject goods imported by them vide Bills of Entry listed in **Annexure-E**. Thus, it appears that the importer had wilfully misstated that their goods were covered under the said exemption with an intent to evade the applicable Customs duty on the goods imported vide Bills of Entry as detailed in **Annexure-E**.

**16.2.1** Whereas, it also appears that M/s. MSEL had wrongly availed the exemption under Sr. No. 68 of Notification-25/1998 on the import of goods, namely PVDF or PV Backsheet, as detailed in **Annexure- F** to this notice, as the same was not specified at the Sr. No. 68 of the subject notification.

**16.2.2** The importer had claimed the benefits of Sr. No. 68 of Notification No. 25/1998-Cus dated 02.06.1998. The Customs duty leviable on certain specific goods had been exempted vide the said notification. The relevant contents of Sr. No. 68 of Notification No. 25/1998 dated 02.06.1998 are reproduced as under:

<b>S. No.</b>	<b>Sub-heading No.</b>	<b>Description</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>
1.	7017.10 or 7020.00	<i>Quartz reactor tubes and holders are designed for insertion into diffusion and oxidation furnaces for the production of semiconductor wafers.</i>
...	....	.....
68	9031.90	<b>Parts and accessories of optical instruments and appliances for measuring surface particulate contamination on semiconductor wafers.</b>

**16.2.3** It appears that the benefits availed by the importer on the imported goods namely "**PVDF Back Sheet Cynagrd 205A, 465A, 205A (R) or 465A (R)**" (for manufacturing of solar panels/modules) under Sr. No. 68 of the subject notification do not appear appropriate as the exemption is applicable specifically to parts and accessories of optical instruments and appliances for measuring surface particulate contamination on semiconductor wafers, falling under Tariff sub-heading 9031.90. Further, the importer has availed of the benefits on import of PVDF backsheet sometimes under Sr. No. 18 of Notification No. 25/1999 dated 28.02.1999 and sometimes under Sr. No. 68 of Notification No. 25/1998 dated 02.06.1998, without any logical reasoning and justification.

**16.3** The importer has imported goods namely 'PVDF or PV Backsheet' by filing Bills of Entry as detailed in **Annexure-E and F** attached to this show cause notice. By non-payment of applicable customs duties (Basic Customs Duty and differential IGST), the importer has evaded customs duty aggregating to **Rs 1,71,52,655/-** by availing of the ineligible exemption under Notification No. 25/1999 and 25/1998 as detailed in **Annexure- E and F**, the abstract of which is tabled below: -

**TABLE - VI**

<b>Sr. No.</b>	<b>Custom House Code</b>	<b>Description of Goods</b>	<b>Notification Availed</b>	<b>Assessable Value (Rs.)</b>	<b>Differential Duty Payable (Rs.)</b>	<b>Remarks</b>
1.	INAMD4	PV BACKSHEET (SOLAR BACKSHEET) CYNAGARD 465A (R)	25/1999	1256795	163129	<b>Annexure-E</b>

	1133MM X 200M 1500V			
INMUN1	PVDF BACK SHEET CYNAGRD205 (A) 1133MM*200M 1500V	25/1999	26835333	3483226
<b>TOTAL</b>			<b>28092128</b>	<b>3646355</b>
2.	PVDF BACK SHEET CYNAGRD205 (A) 1133MM*200M 1500V & INMUN1 PV BACKSHEET (SOLAR BACKSHEET) CYNAGARD 465A (R) 1133MM X 200M 1500V	25/1998	110448384	13506300
	<b>Grand Total</b>		<b>13,85,40,512</b>	<b>1,71,52,655</b>

**16.4** Copies of Bills of Entry No. 8184836 dated 07.04.2022 and 8555842 dated 05.05.2022, wherein the benefits of exemption under Serial No 18, List -A of Notification 25/1999 were claimed and Bills of Entry No. 8085297 dated 31.03.2022, 8085576 dated 31.03.2022, 8907025 dated 31.05.2022, 8907026 dated 31.05.2022 and 8914283 dated 31.05.2022, wherein the benefits of exemption under Serial No. 68 of Notification 25/1998 were claimed are enclosed as **RUD No.16**.

**Misdeclaration of imported goods Poly Olefin Elastomer (POE) as EVA (Ethylene Vinyl Acetate) and non-payment of applicable Customs duties by wrong availment of the benefit of Sr. No. 18 under Notification No.25/1999- Customs regarding the import of "Poly Olefin Elastomer (POE)"**

**17.** Whereas, M/s. MSEL vide their letter dated 01.08.2022 **[RUD No. 7]** provided the statement of Bills of Entry of the imported goods under Notification No. 24/2005 and 25/1999 along with duty calculation and payment of Customs duty. On perusal of the said sheet, it was observed that:-

- (i) they had not admitted duty liability on the imported goods namely EVA imported by claiming benefits of BCD exemption under Sr. No. 18, list A of Notification No 25/1999 under Bills of Entry No. 8282676 dated 15.04.2022, 8908543 dated 31.05.2022, 8924224 dated 01.06.2022 and 9229760 dated 22.06.2022;
- (ii) they had admitted duty liability of Anti-Dumping duty not paid by them earlier on the imported goods namely EVA under Bill of Entry No. 8282676 dated 15.04.2022. The importer had discharged duty liability of Rs.59,65,005/- and submitted copies of challans in this regard.
- (iii) It was further observed from their submission, that M/s. MSEL had imported one more item namely Poly Olefin Elastomer (POE) under Bills of Entry No. 8908543 dated 31.05.2022, 8924224 dated 01.06.2022 and

9229760 dated 22.06.2022 by claiming benefits of BCD exemption under Sr. No. 18A of Notification No. 25/1999. On scrutiny of the import data from the e Sanchit portal, it was noticed that the subject items were declared under the cited three Bills of Entry and commercial invoices as mentioned in Table VII and Table VIII respectively:

**TABLE – VII**  
[Declaration in Bills of Entry]

<b>Bill of Entry No</b>	<b>Date of Bill of Entry</b>	<b>Description</b>	<b>Quantity</b>	<b>CTH</b>
8908543 [RUD No. 17]	31.05.2022	Supply of EVA F 406PS-0.65X1127MM X110 M	31736.32	39201099
		Supply of EVA TF8-0.7 X 1127MM X 110 M	31736.32	39201099
8924224 [RUD No. 18]	01.06.2022	Supply of EVA and POE F 406PS-0.65X1127MM X110 M	66943.8	39201099
		Supply of EVA and TF8-0.7 X 1127MM X 110 M	167359.5	39201099
9229760 [RUD No. 19]	22.06.2022	Supply of EVA F 406PS-0.65X1127MM X110 M	50207.85	39201099
		Supply of EVA TF8-0.7 X 1127MM X 110 M	50207.85	39201099

**TABLE – VIII**  
[Details in commercial invoice]

<b>Commercial Invoice No</b>	<b>Date of invoice</b>	<b>Connected BOE No./ Date</b>	<b>Item Description</b>	<b>Quantity</b>	<b>CTH</b>
MS22B0332-1 [RUD No. 20]	05.05.2022	8908543/ 31.05.2022	Supply of EVA	31736.32	39206190
			Supply of POE	31736.32	39019000
MS22B0332-2 [RUD No. 21]	18.05.2022	8924224/ 01.06.2022	Supply of EVA	66943.8	39206190
			Supply of POE	167359.5	39019000
MS22B0332-4 [RUD No. 22]	28.05.2022	9229760/ 22.06.2022	Supply of EVA	50207.85	39206190
			Supply of POE	50207.85	39019000

**17.1** Accordingly, it appears that M/s. MSEL **had imported Poly Olefin Elastomer (POE) by misdeclaring and misclassifying the same as EVA (Ethylene Vinyl Acetate)** under CTH 39201099 with an intent to avail the undue benefits of Customs duty exemption under Sr. No. 18 (List A) of Notification No. 25/1999. Undoubtedly, the Poly Olefin Elastomer (POE) is not mentioned at Sr. No. 18 (List A) of Notification No. 25/1999, whereas EVA (Ethylene Vinyl Acetate) finds a mention thereunder.

**17.2** Accordingly, summons dated 17.01.2023 [RUD No. 8] was issued to M/s. MSEL to provide details of Bills of Entry under which POE was imported, grounds in support of availment of benefits under Sr. No. 18, List A of Notification No.

25/1999 and to tender the statement in this regard. M/s. MSEL had requested for extension of time twice which was granted and communicated to them, however, none appeared in response to the said summons. M/s. MSEL vide their letter dated 06.03.2023 **admitted that the import invoices of the referred three import shipments consisted of only technical information and did not contain separate details of the imported goods i.e. EVA and POE**, that had resulted in the filing of BoE with a single HSN. They had further submitted that they had discharged applicable duty liability on the imported goods POE and submitted copies of challans.

**17.3** As discussed supra, it appears that Customs duty exemption for the imported item Poly Olefin Elastomer (POE) was not available under Sr. No. 18, List-A of Notification No. 25/1999 dated 28.02.1999. The said notification was in the public domain, however, despite being fully aware of the subject notification, the importer had wrongly and wilfully availed the exemption on the subject item **by misdeclaring the same as EVA**. Thus, it appears that the importer had wilfully evaded the applicable customs duties on the goods imported vide Bills of Entry as detailed in **Annexure-G** to this notice.

**17.4** Accordingly, it appears that the importer had evaded Customs duties aggregating to **Rs. 1,25,61,682/-** as detailed in **Annexure-G**, the abstract of which is tabulated below:

**TABLE - IX**

<b>Sr. No.</b>	<b>Custom House Code</b>	<b>Description of goods</b>	<b>Notification Availed</b>	<b>Assessable Value (Rs.)</b>	<b>Differential customs Duty Payable (Rs.)</b>	<b>Remarks</b>
1.	INMUN1	Supply of EVA F 406PS & Supply of EVA TF8 0.7X 1127MMX110M	25/1999	8,15,01,720/-	65,96,677/-	Annexure-G
2.	INMUN1	Supply of EVA F 406PS & Supply of EVA F 806PS	Non-payment of Anti-Dumping Duty	3,53,34,642/-	59,65,005/-	
		<b>TOTAL</b>		<b>11,68,36,36</b>	<b>1,25,61,68</b>	

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

**18.** Whereas, it appears that M/s. MSEL had imported "**Paste Back Aluminium or Aluminium Paste or Paste Back Aluminium**" by classifying the same under CTH 76169990 and by availing the exemption 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.

**18.1.1.** 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 - X**  
**[Description in commercial invoice]**

<b>Commercial Invoice No</b>	<b>Date of invoice</b>	<b>Connected BOE No./ Date</b>	<b>Item Description</b>	<b>Quantity</b>	<b>CTH</b>
NTTS20220607 [RUD No. 23]	07.06.2022	9118598/ 15.06.2022	Aluminium Paste	200	32073000/ 382499999
2022061701-1 [RUD No. 24]	17.06.2022	926984/ 24.06.2022	Aluminium Paste (RX8401E)	200	32129030
NTTS20220627 [RUD No. 25]	29.06.2022	9644926/ 20.07.2022	Paste Back Al	1000	32073000/ 382499999
2022062301 [RUD No. 26]	23.06.2022	9645151/ 21.07.2022	Al Paste (RX8401E)	1000	32129030

**18.1.2.** In view of the above, it appears that M/s. MSEL 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 or 38, 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 ineligible exemption. Therefore, it appears that M/s. MSEL 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.

### **18.2. Classification of imported Aluminium Paste**

**18.2.1.** 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)

### **18.2.2 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.

#### **GENERAL RULES FOR THE INTERPRETATION OF THE HARMONIZED SYSTEM**

*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-27)**.

- 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-28)**.

- 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.

### **18.2.3 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, coppers, 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.

**18.2.4 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 CTH 76 to avail the undue exemption benefits.
- 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:**

<b>S No</b>	<b>Heading, sub-heading or tariff item</b>	<b>Description of imported goods</b>	<b>Description of finished goods</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>
..	....	.....	.....
18	28,38,39,70,74, <b>76</b>	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;	Solar Cells/ Modules.

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

**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 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 **'Paste Back Aluminium or Aluminium Paste or Paste back Aluminium'** imported vide Bills of Entry as detailed in attached **Annexure-H** to this notice.

**18.3** By non-payment of the applicable Customs duties, the importer had evaded customs duties aggregating to **Rs.3,37,662/-** as detailed in **Annexure-H**, the abstract of which is tabulated below: -

TABLE - XI

Sr. No.	Custom House Code	Description of goods	Notification Availed	Assessable Value (Rs.)	Differential customs Duty Payable (Rs.)	Remarks
1.	INAMD4	Paste Back Aluminium or Aluminium Paste or Paste back Aluminium	25/1999	6,34,268	82,328	<b>Annexure-H</b>
2.	INNSA11	Paste Back Aluminium or Aluminium Paste or Paste back Aluminium	25/1999	19,67,138	2,55,335	
		<b>TOTAL</b>		<b>26,01,406/-</b>	<b>3,37,662/-</b>	

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

**19.1.** 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. 8<sup>th</sup> 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.

**19.2** The omissions and commissions of the importer appears to suggest that the ineligible exemption of notifications were availed by mis-stating and suppression of the facts in the Bills of Entry for financial benefits by wilfully evading the applicable Customs duties. Some of the illustrations are as below:

- On import of identical goods "**PVDF Back Sheet Cynagrd 205A, 465A, 205A (R) or 465A (R)**" (for manufacturing of solar panels/modules), the importer had availed the ineligible exemption sometimes under Sr. No. 18, List-A of Notification No. 25/1999 dated 28.02.1999 and sometimes under Sr. No. 68 of Notification No. 25/1998 dated 02.06.1998, without any logical reasoning and justification. During course of investigation, they could not provide any cogent reasons.
- On examination of the import data with respect to the description of goods mentioned in Bills of Entry filed by the importer and commercial invoices

supplied by the foreign supplier, it was noticed that the importer had misdeclared the imported goods as Ethylene Vinyl Acetate (EVA) sheets in Bills of Entry, instead of Poly Olefin Elastomer (POE) as mentioned in commercial invoices, in order to avail of the ineligible benefits of Customs duty exemption under Sr. No. 18 List-A of Notification No. 25/1999. **They have changed the description of the goods at the time of filing Bills of Entry.**

- In respect of import of "**Paste Back Aluminium or 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 or 38, 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 ineligible exemption. Therefore, it appears that M/s. MSEL 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 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 the exemption 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.
- As detailed in para 8 and 10 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.

**20.** 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:-

## **20.1 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 absent is received.*

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

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(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;

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 goods<sup>39</sup>[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

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- (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, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111 shall be liable,—

- (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 goods<sup>39</sup>[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: -**

**21.** 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); benefits of Sr. No. 68 of Notification No. 25/1998 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 of the exemption benefits under Notification No. 25/1999, on import of **Aluminium Frame** w.e.f. 07.04.2022. Moreover, the importer had claimed benefits of exemption under multiple notifications for a single item namely **PVDF or PV backsheets**. In addition, the importer had intentionally and deliberately misdeclared **POE as EVA** and 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 the exemptions on goods imported by them vide Bills of Entry as listed in **Annexures-A to H**. 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 H**.

**21.1.** 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 junction box; aluminium frame; and sealant and potting material, post amendments in Notification No. 24/2005 vide Bills of Entry listed in Annexures A,B and D. Thus, it appears that the importer has wilfully evaded the applicable Customs duties on the goods imported vide

Bills of Entry as detailed in 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.-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 Energy Limited has rendered imported goods as mentioned in column 6 of Annexures A, B and D, valued at Rs. 7,68,88,833/-, liable to confiscation as per the provisions of Section 111(m) of the Customs Act, 1962.**

**21.2.** 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 and PVDF or PV Backsheets 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 Energy 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 32/38, whereas, the importer had wilfully and intentionally misclassified the same under CTH 76169990 while filing BoEs, in order to avail the exemption 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. Additionally, the importer had also misdeclared Poly Olefin Elastomer (POE) as Ethylene Vinyl Acetate (EVA), in order to avail of the undue benefits under Sr. No. 18 (List A) of Notification No. 25/1999 as the description Ethylene Vinyl Acetate (EVA) was mentioned in Sr. No. 18 (List A) of Notification No. 25/1999, while POE was not mentioned for the exemption in the said serial number of the subject notification. In contrast to the submission made by the importer, it was found that the copies of commercial invoices of the overseas suppliers contained the description and quantity of the imported goods as EVA and POE separately, thereby it appears that the importer had deliberately misdeclared all goods as EVA. 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 C,E,G and H. 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 Energy Limited have rendered imported goods as mentioned in column 6 of Annexures C,E,G and H, valued at Rs. 42,52,03,202/-, liable to confiscation as per the provisions of Section 111(m) of the Customs Act, 1962.**

**21.2.1.** It appears that M/s Mundra Solar Energy Limited had imported goods by wrong availment of the benefit of Sr. No. 18 (List A) of Notification-25/1999 on import of goods namely PVDF backsheet as the same was not specified at the Sr. No. 18 (List A) of the subject notification. The Sr. No. 18 (List A) of Notification No, 025/1999 dated 28.02.1999 provides for BCD exemption for the 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 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".*

Whereas, the notification benefit is applicable only if the subject multilayered sheets have a Tedlar base i.e., the goods should have the base sheet of Tedlar® which is a registered trademark of Dupont TM. The importer has neither imported goods from Dupont nor they have uploaded any NOC from Dupont for using their registered trademark viz., Tedlar®. Further, on scrutiny of the technical write-up available in the public domain and declaration by the importer in subject BoEs, it appears that the subject imported goods viz., "PVDF Backsheets for Solar Module/Panels", were manufactured/supplied by using their native trademark technology other than Tedlar®. Given the above, on examination of the details provided under Bills of Entry, it appears that the subject goods do not fall under the exemption under Sr. No. 18 (List A) of Notification No. 025/1999 dated 28.02.1999, and hence it appears that these goods are ineligible for the notification benefit and merit duty of BCD @ 10%, SWS @ 10% and IGST @ 18%.

**21.3.** Further, it also appears that M/s Mundra Solar Energy Limited had imported goods by wrong availment of the benefits of Sr. No. 68 of Notification-25/1998 on import of goods namely PVDF backsheet as the same was not specified at the Sr. No. 68 of the subject notification.

The scrutiny of import data, reveals that the importer has also imported the same goods by not availing the benefits of Sr. No. 68 of Notification-25/1998 and Sr. 18 (List A) of Notification 25/1999. Thus, it appears that the importer was fully aware of Notification-25/1998 and Notification 25/1999, which were in the public domain too, however, the importer has randomly availed the undue benefits of Notification-25/1998 and Notification 25/1999 and has not paid the Basic Customs Duty (BCD) on the subject goods imported vide Bills of Entry listed in respective annexures. Thus, it appears that the importer had wilfully evaded the applicable Basic Customs Duty (BCD), SWS, and IGST thereof on the imported goods vide Bills of Entry as detailed in 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 benefit of the Notification-25/1998 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. **These acts of wilful misstatement of the serial number of Notification-25/1998 by M/s Mundra Solar Energy Limited have rendered the imported goods as mentioned in column 6 of the Annexure F, valued at Rs. 11,04,48,384/-, liable to confiscation as per the provisions of Section 111(m) of the Customs Act, 1962.**

**22.** M/s Mundra Solar Energy 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. 68 of Notification No. 25/1998, 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. 25/1998, 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 misdeclared 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 para 19.2 Supra. The details of the goods imported by M/s MSEL by wilful misstatement of serial numbers of Notification Nos. 24/2005-Customs as amended, 25/1998-as amended and 25/1999 are mentioned in Annexures-A to H along with the calculation of the respective customs duty evaded. The differential Customs duty aggregating to Rs. 7,60,74,167/- leviable on the imported goods and cleared under Bills of Entry mentioned in Annexures-A to H and not paid by M/s. Mundra Solar Energy 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.

The details of Annexure-A to H are tabulated as under:

**TABLE-XII**

Annexure	Name of the imported goods	Notification availed/ issued involved	AV of the imported goods in INR	Differential Customs duty in INR
Annexure-A	Junction Box	24/2005	1,97,00,894	25,57,176
Annexure-B	Aluminium Frame	24/2005	4,41,31,757	57,28,302
Annexure-C	Aluminium Frame	25/1999	27,76,73,306	3,60,41,995

Annexure-D	Sealant and Potting Material	24/2005	1,30,56,182	16,94,692
Annexure-E	PVDF Backsheets	25/1999	2,80,92,128	36,46,355
Annexure-F	PVDF Backsheets	25/1998	11,04,48,384	1,35,06,300
Annexure-G	POE mis-declared as EVA	25/1999	11,68,36,362	1,25,61,682
Annexure-H	Aluminium Paste mis classified under CTH 76169990	25/1999	26,01,406	3,37,662
<b>Total</b>			<b>61,25,40,419/-</b>	<b>7,60,74,164/-</b>

**23.** For the above acts, **M/s. Mundra Solar Energy 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 Energy Limited** have also rendered themselves liable to penalty under Section 114AA of the Customs Act, 1962.

**Voluntary payments made during the investigation:**

**24.** During the investigation, **M/s Mundra Solar Energy Limited** has made a payment of **Rs.6,22,30,206/- (Rupees Six Crore Twenty-Two Lakhs Thirty Thousand Two Hundred and Six only)** towards differential duty (BCD+SWS+ADD+IGST) and **Rs.30,49,876/- (Rupees Thirty Lakhs Forty Nine Thousand Eight Hundred and Seventy Six only)** as interest. Therefore, the payment made by the importer is required to be appropriated against the demand of differential duty, anti-dumping duty and interest. The details of payments made and copies of the challans received have been detailed in **Annexure-I** attached to this show cause notice. The copies of challans have been enclosed as **[RUD No. 29]**.

**25.** 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. 7,60,74,164/- out of which the differential Customs duty for a single port viz. Mundra Port (INMUN1) has been worked out to Rs. 7,55,73,372/-, 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.

**26.** Now, therefore, **M/s. Mundra Solar Energy Limited**, (IEC-AANCM0140K), having registered addresses at Adani House, 56, Shrimali Society, Navrangpura, Ahmedabad, Gujarat-370435, 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**, Custom House, 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 01.03.2055- as amended, availed by them on import of "Junction Box; Aluminium Frame; and Selant and Potting Material under Bills of Entry as listed in Annexure-A, B and D respectively should not be disallowed;
- (ii) The benefits of Notification No. 25/1999- Customs dated 28.02.1999, as amended, availed by them on import of Aluminium Frame, PVDF or PV Backsheets; and POE (by misdeclaring the same as EVA), under Bills of Entry as listed in Annexure-C, E and G respectively should not be disallowed;
- (iii) The benefits of Notification No. 25/1998 dated 02.06.1998-as amended, availed by them on import of PVDF Back Sheets imported under Bills of Entry as listed in Annexure-F should not be disallowed;
- (iv) 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-H, should not rejected and the imported goods should be classified under CTH 32129030;
- (v) The benefits of Notification No. 25/1999- Customs 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-H should not be disallowed;
- (vi) The differential amount of Customs duty aggregating to **Rs.7,60,74,164/- (Rupees Seven Crores Sixty Lakhs Seventy-Four Thousand One Hundred and Sixty-Four only)** as detailed in Annexures- A to H to this notice, leviable on the imported goods covered under Bills of Entry as listed in **Annexures- A to H to this 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;
- (vii) **Rs.6,22,30,206/- (Rupees Six Crore Twenty-Two Lakhs Thirty Thousand Two Hundred and Six only)** and **Rs.30,49,876/- (Rupees Thirty Lakhs Forty Nine Thousand Eight Hundred and Seventy Six only)** (As detailed vide **Annexure-I** to this notice) 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 (vi) above;
- (viii) The subject goods totally valued at **Rs.61,25,40,419/- (Rupees Sixty One Crores Twenty Five Lakhs Forty Thousand Four Hundred Nineteen only)** imported vide Bills of Entry as listed Annexures- A to H 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.

**27.** The noticees may submit their written reply to this Show Cause Notice to the adjudication authority within 30 days of the receipt of this show cause notice. The above noticees are further advised to indicate in their written submission whether they desire to be heard in person before the case is adjudicated. If no mention is made of this in the written submission, it would be presumed that they do not desire to be heard in person. They are also required to produce at the time of showing cause all evidence on which they intend to rely in support of their defence.

**28.** The noticees should note that, if no cause is shown by them against the action proposed to be taken within 30 days from the date of receipt of this show cause notice or if they do not appear before the adjudicating authority i.e. to the Principal Commissioner/Commissioner of Customs, Mundra, having their address at 5B, Port User Building, Mundra Port, Mundra, Kutch, Gujarat-370421 when the case is posted for hearing, the case will be decided *ex-parte* on the basis of the material evidence available on record.

**29.** This notice is issued without prejudice to any other action that may be taken against all of them or any other person(s) under the provisions of the Customs Act, 1962 or any other law for the time being in force.

**30.** This show cause notice is being issued on the basis of evidence available on record and relied upon documents as discussed in the aforementioned paragraphs.

**31.** The department reserves the right to add, alter, amend, modify or supplement this notice at any time on the basis of any evidence, or material facts related to the import of goods under investigation and any other importer by the said exporter, which may come to the notice of the department after issuance of this notice and prior to the adjudication of the case.

**32.** The list of documents relied upon for the issuance of this notice is attached as Annexure-R to this notice. All the relied-upon documents are enclosed herewith.

**33.** The Noticees also have an option to avail provisions of Chapter XIVA Settlement of Cases of the Customs Act, 1962 to settle their case through the Settlement Commission by filing an application if desired and eligible.

**Encl: Annexures A to I, R and Copies of RUD's.**

  
(K. Engineer)

Principal Commissioner of Customs,  
Custom House, Mundra.  
Date: 30.05.2024

F. No. GEN/ADJ/COMM/617/2023-Adjn-O/o Pr Commr-Cus-Mundra.

**BY Speed Post A.D / E-mail**

1831 & 1832

O/C

**To, (The Noticee):-**

**M/s. Mundra Solar Energy Limited (IEC-AANCM0140K),**  
Adani House, 56, Shrimali Society,  
Navrangpura, Ahmedabad, Gujarat-370435;

**Branch office address:** Survey No 180/P,  
APSEZ, Village-Tunda, Mundra, Gujarat-370435,  
(Email: sunil.chandaran@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/ Assistant Commissioner (EDI), Custom House, Mundra.
- 2) Notice Board.
- 3) Guard File.