



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद
 “सीमा शुल्क भवन”, पहली मंजिल, पुराने हाई कोर्ट के सामने, नवरंगपुरा,
 अहमदाबाद - 380 009.

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DIN: 20251171MN000000989E

PREAMBLE

A	फ़ाइल संख्या / File No.	:	GEN/ADJ/ADC/1428/2025-ICD-AKWR-CUS-COMMRTE-AHMEDABAD
B	कारण बताओ नोटिस संख्या - तारीख/ Show Cause Notice No. and Date	:	VIII/10-47A/ICD-Ankleshwar/O&A/13 dated 10.09.2013
C	मूल आदेश संख्या / Order-In-Original No.	:	03/ADC/SRV/ICD Ankleshwar/2025-26
D	आदेश तिथि / Date of Order-In-Original	:	28-11-2025
E	जारी करने की तारीख/ Date of Issue	:	28-11-2025
F	द्वारा पारित / Passed By	:	SHREE RAM VISHNOI , Additional Commissioner, Customs, Ahmedabad Commissionerate
G	आयातक का नाम और पता / Name and Address of Importer / Noticee	:	M/s Flometallic India Ltd. (now known as M/s.Brakes India Private Ltd.), Plot No.824, Jhagadia Industrial Estate, GIDC, Jhagadia- 393110
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क(अपील), चौथी मंजिल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5% (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

**De-novo proceedings arising out of
CESTAT Final Order No. 11602/2023 dated 24.07.2023**

BRIEF FACTS OF THE CASE:

M/s Flometallic India Ltd. (now known as M/s. Brakes India Private Ltd.), situated at Plot No.824, Jhagadia Industrial Estate, GIDC, Jhagadia-393110, (hereinafter referred to as the “Noticee” for sake of brevity) filed the following Bills of Entry for importing products viz. “Pallets/Collar/Lid (Wooden) falling under CTH 44152000” by availing exemption Notification No. 104/94 dated 16.03.1994 and the details are as under :

Sr. No.	Bill of Entry	Date	Assessable Value	Duty involved
1	7955785	15.09.2012	17,55,416	5,06,470
2	9218942	05.02.2013	14,30,419	4,12,702
3	8757909	13.12.2012	17,55,415	5,06,470
4	8177101	10.10.2012	16,71,825	4,82,352
5	9708956	29.03.2013	14,70,919	4,24,387
TOTAL			80,83,994	23,32,381

2. As the Noticee had failed to prove that the imported goods were re-exported, it appeared that the noticee was not entitled for the exemption of Notification No. 104/94-Cus, hence the Bond and Bank Guarantee submitted at the time importation with reference to the aforesaid Bills of Entry were required to be enforced/encashed.

3. Therefore, M/s. Flometallic India Ltd. Plot No. 824, Jhagadia industrial Estate, GIDC, Jhagadia-393110 vide Show Cause Notice No. VIII/10-47/ICD-Ankleshwar/O&A//13 dated 10.09.2013 were called upon to Show Cause to the Additional Commissioner of Customs, Ahmedabad as to why:

(i) The exemption claimed under Notification No. 104/94 Customs dated 16.03.94 to Import Pallets/Collar Lid (Wooden) falling under CTH 44152000 of the schedule to the Customs Tariff Act, 1975,

should not be denied to them and the Bond executed against Bills of Entry may be enforced and Bank Guarantee may be encashed against the duty recoverable.

- (ii) The duty not paid amounting to Rs. 23,32,381/- (Rupees Twenty-Three lac, Thirty-Two Thousand, Three Hundred and Eighty-One only) should not be recovered from them under Sub Section1 of Section 28 of Customs Act 1962, as the noticee was not entitled to avail the exemption Notification No. 104/94-Cus dated 16.03.1994.
- (iii) Interest on Rs. 23,32,381/- (Rupees Twenty-Three lac, Thirty-Two Thousand, Three Hundred Eighty-One Only) should not be recovered from them under Sub Section 1 of Section 28AA of Customs Act 1962.
- (iv) Penalty should not be imposed under Section 112 of Customs Act 1962.

4. The adjudicating authority vide its order 30/ADC/O&A/2014 dated 23.06.2014 confirmed the demand raised in the above referred SCN dated 10.09.2013. The relevant portion of the order is reproduced as under:

“.

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ORDER

- (i) *I hereby deny the exemption claimed under Notification No. 104/94 Customs dated 16.03.94 to import Pallets/Collar/Lid (Wooden) falling under CTH 44152000 of the schedule to the Customs Tariff Act, 1975, in respect of the Bills of Entry detailed in the Show Cause Notice.*
- (ii) *I confirm the demand and order recovery of duty amounting to Rs.23,32,381/- (Rupees twenty three lac, thirty two thousand, three hundred and eighty one only) under Sub Section 1 of Section 28 of Customs Act, 1962.*
- (iii) *I order to enforce the bond executed against all the Bills of Entry and to encash Bank Guarantee against the duty confirmed as above.*

(iv) I order recovery of interest under Sub Section 1 of Section 28 AA of Customs Act, 1962 at prescribed rate.

(v) I impose penalty of Rs.23,32,381/- (Rupees Twenty three Lacs thirty two thousand three Hundred Eighty one Only) under Section 112 [i] of Customs Act, 1962.

.”

5. Aggrieved by the impugned order, the noticee filed an appeal before the Commissioner (Appeal) who vide Order No. AHM-CUSTM-000-APP-356-14-15 dated 09-12-2014, upheld the impugned Order 23.06.2014.

6. The Noticee, again aggrieved by the Order of Commissioner (Appeal), filed an appeal before the Hon'ble CESTAT Ahmedabad vide Customs Appeal No. 10400 of 2015-DB.

7. The Noticee, in Appeal before the Tribunal stated that they have brought the Pallets in non-assembled and dis-assembled form for ease of transportation and same are as per EUR Standard (UIC CODE 435-2 and IPPC approved) and are nothing but durable containers and are straightaway eligible for Notification No. 104/94-Cus dated 16.03.1994. Whereas the department claimed that there is no proof that the imported goods were re-exported, as is the requirement of the said Notification.

8. The Noticee further stated that they are in a position to indicate that the other conditions of the Notification were duly fulfilled by them and the Pallets were re-exported from time to time.

9. Accordingly, the Hon'ble CESTAT Ahmedabad vide its Final Order No. 11602 /2023 dated 24.07.2023 held as under :

“4. Having gone through facts of the case, we find that though described as Pallets, the impugned goods are nothing but containers and capable of containing auto parts. They are also

*capable of further use and the appellants have brought on record before us some evidence indicating that they were exported, on the genuineness of which we are not commenting at present. However, this court is of the view that the goods are nothing but containers of durable use and therefore, otherwise eligible for benefit subject to other conditions of the Notification. We, accordingly, **remand the matter back to the adjudicating authority** with above observations and to decide eligibility of the appellants accordingly. Appeal partly allowed.”*

PERSONAL HEARING: -

10. Consequent to the remand direction of the Hon'ble CESTAT order dated 24.07.2023, the personal hearing in the matter was scheduled on 11.07.2025. However, the personal hearing was not materialized due to personal reason of the authorized person of the Noticee.

10.1. Further, another Personal Hearing was fixed on 21.07.2025 and Shri M. N. Shankar (Senior Manager), and authorized representative of M/s. Flometallic India Ltd. (now known as M/s. Brakes India Private Ltd.) has attended the Personal Hearing through video conferencing.

11. During the Personal Hearing, Shri M. N. Shankar, has submitted that they have re-exported the pallets within the prescribed time limit and submitted all the documents in year 2013 and re-iterated the same. Further, in compliance to Hon'ble CESTAT's order dated 24.07.2023, he submitted that they will submit the proof of re-export for fulfilling the required condition as laid down under Notification 104/94- Cus dated 16.03.1994 along with documents viz. packing list, invoices, Bill of Entry, Shipping Bill and Excel Sheet showing the details. He requested a week's time to submit all the documents and reiterated the written submission dated 04.08.2024.

WRITTEN SUBMISSION/DEFENCE REPLY:

12. The noticee had submitted written defence reply twice, these are as under:

12.1 The noticee vide letter dated 14.08.2025 and 14.10.2025 submitted the below documents as proof of re-export of the wooden pallets imported under Bill of Entry No(s).7955785, 9218942, 8757909, 8177101 & 9708956:

- (i) Excel matrix with details of import & re-export (including details of the import quantity under the BOE & shipping bill-wise re-export quantities).
- (ii) Export Invoice(s) wherein the import Bill of Entry details are incorporated.
- (iii) Export packing list (s).
- (iv) Export Shipping Bill (s) wherein the import Bill of Entry details are incorporated.
- (v) Bills of Entries.

The Noticee submitted a copy of an earlier BG closure order dt. 27.12.2014, issued by the Deputy Commissioner of Customs, ICD Ankleshwar, confirming their compliance with the provisions of Notification No. 104/94 for import of similar pallets vide Bill of Entry No. 9964585 dt. 26.04.2013 and further submitted that the re-exports were completed well within the period of 6 months from the date of import, in line with the requirements of Notification 104/94 and requested to drop the proceedings accordingly.

12.2 The second submission by the Noticee vide mail dated 14.10.2025 is as follows:

“

- *We are manufacturer exporter of Spheroidal Graphite / Ductile Iron Castings (Rough).*
- *We produce safety critical components for automobile industry.*

- *We would like to highlight that Flometallic India Pvt. Ltd., has been successful in obtaining orders and commencing exports even within the first year of its operation and has steadily increased its exports from then.*
- *We export our products to different countries like UK, Czech Republic, Germany and Mexico.*
- *We have our regular customers to whom we export through the ports of Hazira, ICD-Ankleshwar, NhavaSheva and Mundra.*
- *Our exports take place in factory stuffed containers and customs clearance is done at the respective ports.*
- *We pack our export goods in re-usable wooden packing boxes.*
- *It is a pre-requisite of our customers to use returnable pallets instead of single use wooden boxes to reduce environmental damage.*
- *Returnable pallets are widely used all over the world.*
- *“NEFAB Logistics AB, Sweden is one of the leading suppliers of returnable wooden boxes which can be utilized repeatedly. They have developed Durable Packaging Containers for packing and export of our products in to international market. These packing containers are designed in such a way that they can be collapsed after use for ease of handling during transportation and reduction in logistics costs.*
- *In collapsed condition we can load 10 times more pallets in a container compared to non-collapsed condition.*
- *This has been specially designed to suit movement of goods over long distances by sea / air / road with a view to reducing the total supply chain cost.*
- *These pallets are also environmental friendly and reduces carbon foot print which is a key target for most customers in Europe.*
- *These packing boxes can be used multiple times and helps us in reducing the packaging cost thus enabling us to remain competitive in our exports and compete in the international market especially with China, Turkey and Brazil.*

The pallet size that we imported is as below:

1. ***Pallet Packaging Kit (Wooden case) consisting of following***
 1. *Pallet which otherwise is called as Base- size 1200 X 800 mm*

2. Collars which otherwise is called as Frame - size 1200 x 800 x 200 mm, and
3. Lid- size 1200 x 800 x 8 mm

- The Photographs of Pallet, Pallet Collars and Plywood Lid is attached in the word file as **Annexure 1**.
- The assembly process for export packing is attached as a **video file (sent as Mail 2 of 2)** due to file size limitation.
- The base Pallet is made out of solid wood to use as base of the wooden case.
- The Pallet Collars are with hinges to make it convenient to store in collapsed condition and for ease of assembly at the time of packing.
- In collapsed condition more collars can be stored in less space.
- The Lid is made of Plywood to cover the pallet.
- These are Heat Treated as per ISPM standards.

As in the attached video, for export packing of parts

- The Collars are placed on top of the Base Pallet.
- Based on the requirement of the quantity to be packed for individual items as agreed with the customer, we can add the number of collars (Frames) used in each box.
- After loading of the box with parts (castings), the Lid is placed on the top.
- The wooden pallet is then strapped with plastic/iron strip.
- Such packed pallets are then ready for loading on to containers for export.

Monitoring of import and re-export

1. The import and re-export of these Pallet (Base), Collars (Frames) and Lid are effectively monitored by us through an excel matrix to ensure proper accounting and re-export within 6 months of import.
2. We print the reference of the BOE and the quantity thus re-exported in our export invoices / packing lists and capture the data in the shipping bills also.
3. At the time of both import and re-export these Pallet (Base), Collars (Frames) and Lid are identifiable by their colour, size, ISPM marking and

Vendor name markings.

4. We have already submitted all these documents to ICD Ankleshwar Customs, for the below 5 BOE covered in these discussions:

Sr No	Bill of Entry No	Date	Assessable Value	Duty Involved
1	7955785	15.09.2012	17,55,416	5,06,470
2	9218942	05.02.2013	14,30,419	4,12,702
3	8757909	13.12.2012	17,55,415	5,06,470
4	8177101	10.10.2012	16,71,825	4,82,352
5	9708956	29.03.2013	14,70,919	4,24,387
TOAL			80,83,994	23,32,381

Final Submissions

1. The applicability of benefit under Notification 104/94 for the import of this packing material by Flometallic India Pvt Ltd., has been confirmed by
 - The Hon'ble Commissioner (Appeals), Ahmedabad Order-in-Appeal 107/2013/Cus/Commr(A)/AHD dt.6.9.2013, and
 - CESTAT Ahmedabad Final Order No.11602/2023 dt.24.7.2023.
2. Also, by his BG closure order dt.27.12.2014, Dy. Commissioner of Customs, ICD Ankleshwar has confirmed our compliance with the provisions of notification 104/94 for import of similar pallets vide Bill of Entry No.9964585 dt.26.04.2013 (**Annexure 2**)
3. We are also attaching herewith RE-Bond Closure letters issued by Chennai Customs and Mundra Customs confirming our compliance with the provisions of notification 104/94 against various Bills of Entry. Refer attached **Annexures 3, 4, 5 & 6**.

“

Based on the above submissions and documentation provided, the Noticee requested to drop the proceedings accordingly.

DISCUSSIONS AND FINDINGS:

13. I have carefully gone through the Hon'ble CESTAT order, Show Cause Notice, written submissions of the Noticee and material facts available on record.

14. I find that the subject case is derived from Final Order No. 11602/2023 dated 24.07.2023, passed by the Hon'ble CESTAT Ahmedabad, wherein the Hon'ble CESTAT has remanded the matter to examine the eligibility condition for availing the benefits of Notification No. 104/94-Cus dated 16.03.1994, for the re-export of packaging material i.e. Pallet/Collars/Lids.

14.1 Consequent to the remand direction, the main issue to be decided in the present case is whether the goods imported vide 5 Bills of Entry No. 7955785 dated 15.09.2012, 9218942 dated 05.02.2013, 8757909 dated 13.12.2012, 8177101 dated 10.10.2012 & 9708956 dated 29.03.2013 were actually re-exported by the Noticee within six months from their date of importation by fulfilling the conditions and procedure prescribed under Notification No.104/94-Cus dated 16.03.1994.

15. At this juncture, it would be relevant to go through the Notification No. 104/94-Cus dated 16.03.1994. The Notification No. 104/94-Cus dated 16.03.1994 as amended, reads as under :

Notification No. 104/94-Cus., dated 16-3-1994***Exemption to containers of durable nature.***

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

- (a) *the **whole of the** duty **of customs** leviable thereon under the said First Schedule; and*
- (b) *the **whole of the additional duty** leviable thereon under section 3 of the said Customs Tariff Act:*

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

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

16. I find that the Noticee, vide letter dated 14.08.2025, submitted the details of import and re-export under which they had imported pallets, collars and lids, and subsequently re-exported the same within the stipulated period of six months. The Noticee also furnished the export-related documents, including invoices, packing lists, shipping bills, and detailed statements correlating the import and re-export transactions. I note that on verification of the documents submitted by the Noticee, the Superintendent of Customs, ICD Ankleshwar, has furnished a detailed verification report dated 10.11.2025. I note that according to this verification report, it could not be established that the goods re-exported within six months were the same as those imported under the aforementioned five Bills of Entry. The details are as under:

Import Details		Export Details		
Bill of Entry	Quantity Imported	Invoice No. &	Shipping Bill	Quantity Exported

No & Date	Pallet	Collars	LIDS	Date	No. & Date	Pallet	Collars	LIDS
7955785 dt. 15.09.2012	623	1870	623	EX 037 dt. 29.10.2012	2458860 dt. 03.11.2012	5	15	5
				EX 039 dt.31.10.2012	2451737 dt. 02.11.2012	54	162	54
				EX 040 dt. 31.10.2012	2489133 dt. 06.11.2012	27	81	27
				EX 041 dt. 31.10.2012	2489244 dt. 06.11.2012	14	42	14
				EX 042 dt. 31.10.2012	2489319 dt. 06.11.2012	5	15	5
				EX 043 dt. 31.10.2012	2589374 dt. 06.11.2012	44	132	44
				EX 045 dt. 08.11.2012	2566230 dt. 10.11.2012	45	135	45
				EX 046 dt. 08.11.2012	2566237 dt 10.11.2012	45	135	45
				EX 047 dt. 09.11.2012	2582331 dt. 12.11.2012	13	39	13
				EX 048 dt. 09.11.2012	2582479 dt, 12.11.2012	30	90	30
				EX 051 dt. 20.11.2012	2718410 dt, 23.11.2012	14	42	14
				EX 052 dt. 20.11.2012	2718420 dt, 23.11.2012	28	84	28
				EX 055 dt. 23.11.2012	2773418 dt, 27.11.2012	22	66	22
				EX 057 dt, 26.11.2012	2805387 dt, 29.11.2012	5	15	5
				EX 058 dt. 26.11.2012	2805419 dt. 29.11.2012	45	135	45
				EX 059 dt. 26.11.2012	2858511 dt. 03.12.2012	10	30	10
				EX 060 dt. 26.11.2012	2861986 dt. 03.12.2012	37	111	37
				EX 063 dt. 30.11.2012	2906147 dt. 06.12.2012	54	162	54
				EX 066 dt. 30.11.2012	2919419 dt. 06.12.2012	28	84	28
				EX 067 dt. 30.11.2012	2919220 dt. 06.12.2012	54	162	54
				EX 068 dt. 07.12.2012	2946395 dt. 08.12.2012	54	162	54
Total	623	1870	623			633	1899	633

Import Details	Export Details
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Bill of Entry No & Date	Quantity Imported			Invoice No. & Date	Shipping Bill No. & Date	Quantity Exported		
	Pallet	Collars	LIDS			Pallet	Collars	LIDS
8177101 dt. 10.10.2012	623	1870	623	EX 072 dt. 11.12.2012	3038573 dt. 14.12.2012	13	39	13
				EX 073 dt. 11.12.2012	3038066 dt. 14.12.2012	32	96	32
				EX 076 dt. 17.12.2012	3103799 dt. 19.12.2012	13	39	13
				EX 077 dt. 17.12.2012	3103840 dt. 19.12.2012	37	111	37
				EX 078 dt. 18.12.2012	3130977 dt. 20.12.2012	10	30	10
				EX 079 dt. 18.12.2012	3130974 dt. 20.12.2012	37	111	37
				EX 080 dt. 21.12.2012	3164564 dt. 22.12.2012	54	162	54
				EX 081 dt. 28.12.2012	3247622 dt. 28.12.2012	54	162	54
				EX 082 dt. 31.12.2012	3292992 dt. 01.01.2013	54	162	54
				EX 083 dt. 31.12.2012	3310329 dt. 02.01.2013	54	162	54
				EX 084 dt. 07.01.2013	3101809 dt. 08.01.2013	10	30	10
				EX 085 dt. 07.01.2013	3401829 dt. 08.01.2013	35	105	35
				EX 088 dt. 08.01.2013	3401886 dt. 08.01.2013	54	162	54
				EX 089 dt. 16.01.2013	3526754 dt. 17.01.2013	54	162	54
				EX 091 dt. 17.01.2013	3582782 dt. 21.01.2013	15	45	15
				EX 092 dt. 17.01.2013	3587366 dt. 21.01.2013	26	78	26
				EX 094 dt. 23.01.2013	3643938 dt. 24.01.2013	54	162	54
				EX 095 dt. 23.01.2013	3643943 dt. 24.01.2013	54	162	54
Total	623	1870	623			660	1980	660

Bill of Entry No & Date	Import Details			Export Details				
	Quantity Imported			Invoice No. & Date	Shipping Bill No. & Date	Quantity Exported		
	Pallet	Collars	LIDS			Pallet	Collars	LIDS

8757909 dt. 13.12.2012	623	1870	623	EX 103 dt. 06.02.2013	3852566 06.02.2013	54	162	54
				EX 104 dt. 11.02.2013	3936051 12.02.2013	54	162	54
				EX 105 dt. 11.02.2013	3936264 12.02.2013	54	162	54
				EX 108 dt. 13.02.2013	3974621 dt. 14.02.2013	54	162	54
				EX 110 dt. 15.02.2013	4001394 dt. 15.02.2013	54	162	54
				EX 111 dt. 16.02.2013	4020405 dt, 18.02.2013	54	162	54
				EX 115 dt. 19.02.2013	4064951 dt. 20.02.2013	54	162	54
				EX 116 dt. 20.02.2013	4075999 dt. 20.02.2013	54	162	54
				EX 134 dt. 13.03.2013	4427073 dt. 13.03.2013	30	90	30
				EX 145 dt. 26.03.2013	4681583 dt. 28.03.2013	54	162	54
				EX 146 dt. 26.03.2013	4681589 dt. 28.03.2013	54	162	54
				EX 148 dt. 26.03.2013	4681596 dt. 28.03.2013	54	162	54
Total	623	1870	623			624	1872	624

Import Details				Export Details				
Bill of Entry No & Date	Quantity Imported			Invoice No. & Date	Shipping Bill No. & Date	Quantity Exported		
	Pallet	Collars	LIDS			Pallet	Collars	LIDS
9218942 dt. 05.02.2013	348	1100	304	EX 107 dt. 13.02.2013	3974711 dt. 14.02.2013	28	84	28
				EX 119 dt. 28.02.2013	4215929 dt. 28.02.2013	28	84	28
				EX 120 dt. 28.02.2013	4244995 dt. 02.03.2013	27	81	27
				EX 121 dt. 28.02.2013	4251276 dt. 02.03.2013	27	81	27
				EX 122 dt. 28.02.2013	4280882 dt. 05.03.2013	27	81	27
				EX 125 dt. 05.03.2013	4303763 dt. 06.03.2013	27	81	27
				EX 132 dt. 13.03.2013	4417647 dt. 13.03.2023	28	84	28
				EX 135 dt. 13.03.2013	4421270 dt. 13.03.2023	12	36	12

				EX 137 dt. 18.03.2013	4526802 dt. 19.03.2013	18	54	18
				EX 140 dt. 21.03.2013	4606550 dt. 22.03.2013	27	81	27
				EX 147 dt. 26.03.2013	4681567 dt. 28.03.2013	28	84	28
				EX 150 dt. 27.03.2013	4688871 dt. 29.03.2013	54	162	54
				EX 156 dt. 08.04.2013	4873135 dt. 03.04.2013	36	108	36
Total	348	1100	304			367	1101	367

Bill of Entry No & Date	Import Details			Export Details				
	Quantity Imported			Invoice No. & Date	Shipping Bill No. & Date	Quantity Exported		
	Pallet	Collars	LIDS			Pallet	Collars	LIDS
9708956 dt. 29.03.2013	458	1670	384	EX 164 dt. 11.03.2013	4934589 dt 12.04.2013	28	84	28
				EX 165 13.04.2013	4996182 dt. 14.04.2013	0	0	54
				EX 166 13.04.2013	4951833 dt. 15.04.2013	0	0	28
				EX 167 13.04.2013	4961533 dt. 17.04.2013	0	0	19
				EX 168 17.04.2013	5016089 dt. 18.04.2013	0	0	54
				EX 169 17.04.2013	5016088 dt. 18.04.2013	0	0	54
				EX 171 dt. 22.04.2013	5123736 dt. 25.04.2013	0	0	54
				EX 173 dt. 30.04.2013	5216330 dt. 30.04.2013	0	0	54
				EX 174 dt. 30.04.2013	5216313 dt. 30.04.2013	0	0	54
				EX 180 dt. 27.05.2013	5623788 dt. 27.05.2013	30	0	0
				EX 184 dt. 31.05.2013	5745734 dt. 01.06.2013	54	140	0
				EX 185 dt. 31.05.2013	5745713 dt. 01.06.2013	54	162	0
				EX 186 dt. 31.05.2013	5756082 dt. 03.06.2013	54	162	0
				EX 187 dt. 04.06.2013	5790010 dt. 05.06.2013	14	42	0
				EX 188 dt. 04.06.2014	5790011 dt. 05.06.2013	27	81	0

				EX 191 dt.10.06.2013	5872837 dt. 10.06.2013	54	162	0
				EX 192 dt. 10.06.2013	5672838 dt. 10.06.2013	54	162	0
				EX 196 dt. 17.06.2013	5999560 dt. 18.06.2013	16	48	0
				EX 197 dt. 17.06.2013	5999510 dt. 18.06.2013	23	69	0
				EX 199 dt. 26.06.2013	6171765 dt. 28.06.2013	6	18	0
				EX 200 dt. 26.06.2013	6171780 dt. 28.06.2013	42	126	0
				EX 201 dt. 27.06.2013	6160172 dt. 26.06.2013	2	162	0
				EX 202 dt. 28.06.2013	6223145 dt. 01.07.2013	0	84	0
				EX 203 dt. 29.06.2013	6224434 dt. 01.07.2013	0	60	0
				EX 204 dt. 29.06.2013	6224700 dt. 01.07.2013	0	45	0
				EX 207 dt. 05.07.2013	6322982 dt. 06.07.2013	0	63	0
Total	458	1670	384			458	1670	399

16.1 From the verification report and the documentary evidence available on record, I find that the imported goods viz. pallets, collars, lids, etc., are general in nature and do not bear any distinctive markings that could identify their use in the export consignments. Consequently, there is no direct one-to-one correlation between the imported goods and the export goods to establish that the goods imported were the same goods re-exported within six months. Specifically :

(a) The imported pallets, collars and lids lack distinct identifying marks or numbers to establish that the imported goods are the same as those claimed to have been re-exported within six months.

(b) Though the Noticee has indicated, in the export invoices/packing lists, the reference of the Bills of Entry and the quantity re-exported, but they did not record individual identifiers of the imported items, in a way as desired vide CBEC Circular No. 69/2002-Cus., dated 25-10-2002 issued vide F. No. 528/73/2002-CUS (TU).

(c) The Photographs of the imported goods show generic, reusable folding/unfolding packing boxes; however, these boxes do not bear any distinguishing marks or numbers to trace them back to the import entries. Due to the absence of the required identification, the Noticee has failed to establish compliance with the condition of re-export within six months.

16.2 I further find that the Noticee has failed to establish the identity of the goods claimed to have been re-exported, as no conclusive documentary evidence has been produced to show that the imported goods were actually re-exported within six months of their importation. In addition, on examining the packaging materials imported under the five Bills of Entry referred to in the preceding paragraph, it is observed that the figures do not match and there is a variance in the quantities. The same is summarized below:

1. BE No.7955785 Dt.15.09.2012,

Import	Number	Export	Number
Pallet	623	Pallet	633
Collar	1870	Collar	1899
Lids	623	Lids	633

2. BE No.8177101 Dt.10.10.2012,

Import	Number	Export	Number
Pallet	623	Pallet	660
Collar	1870	Collar	1980
Lids	623	Lids	660

3. BE No.8757909 Dt.13.12.2012,

Import	Number	Export	Number
Pallet	623	Pallet	624
Collar	1870	Collar	1872
Lids	623	Lids	624

4. BE No.9218942 Dt.05.02.2013,

Import	Number	Export	Number
Pallet	348	Pallet	367
Collar	1100	Collar	1101
Lids	304	Lids	367

5. BE No.9708956 Dt.29.03.2013,

Import	Number	Export	Number
Pallet	458	Pallet	458
Collar	1670	Collar	1670
Lids	384	Lids	399

16.3 From the above, it is evident that the Noticee has not demonstrated any correct or consistent correlation to conclusively establish that the goods exported were the same as those imported. While examining the export goods in relation to the import documents for verifying their identity, it was observed that no marks, numbers, or other distinguishing identifiers were declared in the import documents submitted at the time of import, namely the Bills of Entry, invoices, packing lists, etc. In view of this, I note that the goods purported to have been re-exported cannot be linked to the goods originally imported, and therefore, their identity cannot be established.

17. I note that the burden to prove that the conditions of Notification has been complied with rests on the Noticee. The Burden of Proof in the case of Fiscal Exemptions rests on the importer, as has been upheld by the Hon'ble Supreme Court in *Union of India v. Wood Papers Ltd.*, [(1990) 4 SCC 256] = 1990 (47) E.L.T 500(S.C.), wherein the Hon'ble Court has upheld the rule as to exemption Notifications in tax statutes as follows :

"2.... Literally exemption is freedom from liability, tax or duty. Fiscally it may assume varying shapes, specially, in a growing economy. For instance, tax holiday to new units, concessional rate of tax to goods or persons for limited period or with the specific objective etc. That is why its construction, unlike charging provision, has to be tested on different touchstone. In fact an

exemption provision is like an exception and on normal principle of construction or interpretation of statutes it is construed strictly either because of legislative intention or on economic justification of inequitable burden or progressive approach of fiscal provisions intended to augment State revenue."(emphasis supplied)

18. The objectives of a tax systems though primarily aimed at mobilizing revenue is not restricted to the said activity. It has been understood as a powerful tool that can be used to remove distortions in the economy and shape Government policy aimed at accelerating the country's growth. However, whether goods or a transaction fall within the scope of an exemption Notification, at times leads to a dispute due to their intricate nature, necessitating inquiry and debate. This has led to the emergence of principles for interpretation of fiscal exemptions, from no less than a Constitutional Bench consisting of five judges of the Hon'ble Supreme Court in Commissioner of Customs (Import) v. M/s Dilip Kumar and Company & Ors. [Civil Appeal No. 3327 of 2007/ AIR 2018 SUPREME COURT 3606/AIRONLINE 2018 SC 731 2018 (361) E.L.T. 577 (S.C.)].

18.1 In the said judgment in Dilip Kumar and Company the Hon'ble Court has overruled its earlier verdict in Sun Export Corporation, Bombay v. Collector of Customs, Bombay [2002-TIOL-118-SC-CX-LB 1997 (93) E.L.T. 641 (S.C.)] and held that benefit of any ambiguity in Notification related to tax exemptions must be interpreted in favour of the State. The Hon'ble Court examined the question as to what is the interpretative rule to be applied while interpreting a tax exemption provision/ notification when there is an ambiguity as to its applicability with reference to the entitlement of the assessee or the rate of tax to be applied ? It held:

“52. To sum up, we answer the reference holding as under

(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.”

18.2 The Hon'ble Supreme Court having declared the ratio on exemption notifications, it is binding on all judicial bodies to apply the same whenever an ambiguity exists in the application of a notification.

18.3 From the above, I note that when an assessee/importer seeks to avail the benefit of an exemption notification, the burden of proving its applicability lies squarely on them. The assessee/importer must clearly demonstrate that their case falls within the parameters of the exemption clause or notification. In situations where an exemption notification is ambiguous and requires strict interpretation, the benefit of such ambiguity cannot be extended to the assessee; rather, it must be interpreted in favour of the Revenue.

19. I find that the imported pallets, collars and lids were not properly identifiable at the time of re-export, and there was also a mismatch in the quantities. This clearly establishes that the Noticee failed to comply with the conditions prescribed under **Notification No. 104/94-Cus., dated 16.03.1994**. Accordingly, I hold that the imported pallets, collars and lids do not qualify for the exemption claimed under the said Notification, and the Noticee is not entitled to the corresponding duty benefits.

19.1 Thus, the benefit of **Notification No. 104/94-Cus., dated 16.03.1994** on the imported pallets, collars and lids valued at **Rs. 80,83,994/-**, involving duty of **Rs. 23,32,381/-**, is liable to be denied—firstly, on the ground of ineligibility for exemption, and secondly, for violation of the condition requiring proof of identity of the imported goods at the time of re-export. Hence, the duty on these goods is required to be demanded.

19.2 I find that the Show Cause Notice also proposes to demand customs duty amounting to **Rs. 23,32,381/-** from the Noticee, along with interest at the applicable rate. The duty and interest are demanded under the proviso to **Section 28(1)** and **Section 28AA** of the Customs Act, 1962, respectively, read with the bonds executed by the Noticee under **Notification No. 104/94-Cus., dated 16.03.1994** at the time of import.

19.3 I observe that, at the time of import, the Noticee executed bonds undertaking to re-export the returnable packing materials—namely pallets, collars, lids, etc.—within six months from the date of import. The Noticee further undertook that failure to comply with the bond conditions would attract penal consequences under the Customs Act, 1962. The packing materials were permitted to be imported without payment of duty only after execution of these bonds, as re-export of the goods was a mandatory condition under the Notification.

19.4 However, as discussed in the preceding paragraphs, the Noticee failed to comply with the stipulations of the Notification, inasmuch as they failed to establish the identity of the imported goods at the time of re-export. Accordingly, I hold that the conditions of the Notification, as well as those of the bond executed at the time of import, have been contravened, and the benefit of **Notification No. 104/94-Cus., dated 16.03.1994** is liable to be denied.

19.5 In view of the above, I hold that the bond executed by the Noticee is required to be enforced, the Bank Guarantee submitted by the importer is required to be encashed, and the duty benefit of **Rs. 23,32,381/-** availed by them under the Notification is liable to be demanded and recovered under **Section 28(1)** of the Customs Act, 1962, along with applicable interest under **Section 28AA**, in terms of the conditions of the said Notification read with the conditions of the bond.

20. I find that the penalty under Section 112 of the Customs Act can be

imposed for the act of contravention of eligible condition prescribed under the notification to avail the duty benefits. The text of section 112 of the Customs act, 1962 is reciprocated as under:

“SECTION 112. Penalty for improper importation of goods, etc. – Any person, - (a) who, in relation to any goods, does or omits to do any act which act, or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or (b)

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

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher: Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty five per cent. of the penalty so determined;

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

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

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

21. From the above, I find that the importer availed the benefit of Notification No. 104/94-Cus., dated 16.03.1994 for the import of packing material, but failed to re-export the same within the prescribed time limit. Consequently, the importer did not comply with the conditions stipulated in the Bond as well as in Notification No. 104/94-Cus., dated 16.03.1994. Therefore, the goods became liable to confiscation under Section 111(o) of the Customs Act, 1962.

21.1 Since the goods are liable to confiscation under Section 111(o), penalty under Section 112(a)(ii) of the Customs Act, 1962 is also attracted. Although I am not ordering confiscation of the impugned goods, the actions of the Noticee have rendered the goods liable to confiscation. Accordingly, I hold the Noticee liable for penalty under Section 112(a) of the Customs Act, 1962.

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

ORDER

22.1 I deny the benefit of Duty exemption claimed under Notification No. 104/94 Customs dated 16.03.1994 on account of contravention of eligibility condition for availing the benefits for re-export of imported packaging material i.e. Pallet/Collars/Lids in respect of the Bills of Entry detailed in the Show Cause Notice.

22.2 I confirm the demand of Customs duty of Rs. 23,32,381/- (Rupees Twenty Three lakh, Thirty Two Thousand, Three Hundred and Eighty One Only) being the duty foregone (saved) at the time of import of packaging material i.e. Pallet/Collars/Lids in terms of Notification No. 104/94 Customs dated 16.03.1994 as amended, read with conditions of Bond executed and order the same to be recovered from M/s. Flometallic India Ltd. (now known as M/s. Brakes India Private Ltd.), in terms of Section 28(1) of the Customs

Act, 1962 along with applicable interest in terms of provisions of Section 28AA of the Customs Act, 1962 by enforcing the terms of the above mentioned Bond. Further, I order for recovery of the same as per Section 142 of the Customs Act, 1962.

22.3 I order enforcement of the Bond executed by the Noticee and order to encash, adjustment/appropriation of Bank Guarantee furnished by the importer at the time of import towards the duty and interest liability as mentioned at Para 22.2 above.

22.4 I impose a penalty of Rs. 2,50,000/- (Rupees Two Lakh and Fifty Thousand only) on M/s Flometallic India Ltd. (now known as M/s. Brakes India Private Ltd.) under Section 112(a) of the Customs Act, 1962.

23. This order is issued without prejudice to any other action that may be taken under the provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.

24. The Show Cause Notice issued vide F. No. VIII/10-47A/ICD-Ankleshwar/ O&A/13 dated 10.09.2013 is disposed off in above terms.

(SHREE RAM VISHNOI)

Additional Commissioner of Customs,
Customs Commissionerate, Ahmedabad
Dated: 28.11.2025

By Speed Post/ By E-mail/ By Hand Delivery/ Through Notice Board:
DIN- 20251171MN00000989E

F. No. GEN/ADJ/ADC/1428/2025-ICD-AKWR-CUS-COMMRTE- AHMEDABAD

To,
M/s. Flometallic India Ltd.
(now known as M/s.Brakes India Private Ltd.),
Plot No.824, Jhagadia Industrial Estate,
GIDC, Jhagadia- 393110

Copy to:-

- (i) The Principal Commissioner, Customs Ahmedabad (Kind Attention: RRA Section).
- (ii) The Assistant Commissioner of Customs, ICD – Ankleshwar.
- (iii) The Superintendent, Customs, H.Q. (Systems), Ahmedabad, in PDF format for uploading on website of Customs Commissionerate, Ahmedabad
- (iv) The Superintendent (Task Force), Customs-Ahmedabad
- (v) Guard File.