



सीमा शुल्क (अपील) आयुक्त का कार्यालय,

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), अहमदाबाद AHMEDABAD,  
चौथी मंज़िल 4th Floor, हुड़को बिल्डिंग HUDCO Building, ईश्वर भुवन रोड Ishwar Bhuvan Road,  
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009

दूरभाष क्रमांक Tel. No. 079-26589281

DIN- 20250971MN000000C1B4

क	फ़ाइलसंख्या FILE NO.	S/49-52/CUS/AHD/2025-26
ख	अपील आदेश संख्या ORDER-IN- APPEAL No. ( सीमा शुल्क अधिनियम, 1962 की धारा 128 के अंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	AHD-CUSTM-000-APP-242-25-26
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	12.09.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	173/ADC/ACC/OIO/Uratom/24-25 dt. 04.03.2025
	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	12.09.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Uratom Solar (India) Pvt. Ltd. situated at S No. 752, P1, N.H.27, Near Chordi Village, Gondal, Ahmedabad -360311.
1.	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है।	
	This copy is granted free of cost for the private use of the person to whom it is issued.	
2.	सीमा शुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं।	



	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	<b>लिखित सम्बन्धित आदेश/Order relating to :</b>
(क)	<b>बैगेज के रूप में आयातित कोई माल.</b>
(a)	any goods imported on baggage.
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	<b>सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.</b>
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	<b>पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :</b>
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	<b>कोर्ट फी एक्ट, 1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.</b>
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	<b>सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो</b>
(ब)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	<b>पुनरीक्षण के लिए आवेदन की 4 प्रतियां</b>
(c)	4 copies of the Application for Revision.
(घ)	<b>पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथासंशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मर्दों के शीषके अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) या रु. 1000/- (रूपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां, यदि शुल्क मांगा गया व्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-</b>
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	<b>मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.3. में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं</b>
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :



	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 <sup>nd</sup> Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रुपए।	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो, पाँच हजार रुपए।	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रुपए।	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10 % अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10 % अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।	
(द)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए।	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.



## ORDER IN APPEAL

M/s Uratom Solar (India) Pvt. Ltd. situated at S No. 752, P1, N.H.27, Near Chordi Village, Gondal, Ahmedabad -360311 (hereinafter referred to as 'the appellants' for the sake of brevity) have filed the present appeal challenging Order-in-Original No. 173/ADC/ACC/OIO/Uratom/24-25 dated 04.03.2025 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner of Customs, Ahmedabad (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, are that the appellants had imported goods viz. solar glass and solar cells under CTH 70071900 and 85414200 respectively by availing the benefit of exemption under Notification No. 24/2005-Customs dated 01.03.2005-as amended.

2.1 Show Cause Notice No. GEN/ADC/1253/2024-ACC-AHMD/CUS-COMMRTE-AHMDEBAD dated 14.08.2024 was issued wherein demand of differential Custom duty to the tune of Rs. 11,62,045/- was raised in terms of the provisions of Section 28(4) of the Customs Act amongst other proposals. The demand was raised on the ground that the appellants had filed Bill of Entry for import of the goods viz. Solar Glass and Solar Cell under Custom Tariff Head 70071900 and 85414200 by availing the benefit of exemption of Custom duty under Notification No. 24/2005-Custom dated 01.03.2005. However, vide Notification No. 15/2022-Customs dated 01.02.2022, **Sr. No 23** of Notification No.-24/2005 was substituted and *the Photovoltaic Cells whether or not assembled in Modules or made up into panels* were excluded from the exemption. This resulted short payment of Custom duty amounting to Rs. 11,62,045/- and the same was demanded under Section 28A(4) of the Customs Act, 1962 along with interest under Section 28AA of the Custom Act,1962 .

3. The adjudicating authority has decided the matter vide Order-in-Original No. 173/ADC/ACC/OIO/Uratom/24-25 dated 04.03.2025 wherein the following order was passed:

a. *I order to confirm the demand of differential Customs Duty of Rs. 11,62,045/- (Rupees Eleven Lakh, Sixty-Two Thousand, Forty-Five Only under Section 28(4) of the Customs Act, 1962 read with Section 28(8) of the Custom Act. I order to appropriate the amount of Rs. 11,62,045/- paid by the importer vide various challans as mentioned in para 13, towards the confirmed duty liability. I order to vacate the protest made by the importer for payment of duty in respect of Bill of entry No. 9426688 dated 06.07.2022.*



b. I order to confirm the demand of interest on the confirmed demand of Customs Duty, confirmed at para 23 (a) above and order to appropriate the amount of Rs. 18,890/- paid by the importer vide various challans as mentioned in para 13, towards the applicable interest in terms of Section 28AA of the Customs Act, 1962.

c. I order to hold the subject goods valued at Rs. 40,37,603/- (Rupees Forty Lakh, Thirty-Seven Thousand, Six Hundred and Three only) liable to confiscation under the provisions of Section 111(m) of the Customs Act, 1962 and order to **impose redemption fine of Rs 5,00,000/- (Rupees Five lakh only )** in lieu of confiscation under Section 125 of the Customs Act, 1962.

d. I impose a penalty of **Rs. 11,62,045/- (Rupees Eleven Lakh, Sixty-Two Thousand, Forty-Five Only** on importer **plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962** payable on the Duty demanded and confirmed at 25 (b) above under Section 114A of the Customs Act, 1962. However, in view of the first and second proviso to Section 114A of the Customs Act, 1962, if the amount of Customs Duty confirmed and interest thereon is paid within a period of thirty days from the date of the communication of this Order, the penalty shall be twenty five percent of the Duty and Interest, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days.

e. I order to impose a penalty of **Rs. 11,62,045/- (Rupees Eleven Lakh, Sixty-Two Thousand, Forty-Five Only)** on Importer under Section 114AA of the Customs Act, 1962.

f. I refrain from imposing penalty on Importer under Section 112 of the Customs Act, 1962.

4. Being aggrieved with the impugned order passed by the adjudicating authority, the appellants have filed the present appeal. They have, *inter-alia*, raised various contentions and filed detailed submissions in support of their claims which are summarised as under:

They were not aware about the amendment to Notn. No. 24/2005-Cus vide Notn. No. 15/2022-Cus dated 1.2.2022 whereby the exemption to Photovoltaic Cells had been withdrawn.

That they had been importing the said goods and claiming the exemption under Sr. No. 23 of Notn. No. 24/2005-Cus and accordingly claimed the benefit of the said notification in respect of the imports under consideration owing to the fact that they were unaware of the amendment by virtue of Notn. No. 15/2022-Cus dated 1.2.2022. Thus, there was no malafide intention on their part to evade payment of customs duty.

- The issue of inadmissibility of exemption was not raised by the assessing officer at the time of assessment of the Bills of Entry under consideration. All the documents were presented to the department at the time of filing of Bill of Entry and the appellants had not suppressed any information, documents and material from the revenue at the time of filing the Bill of Entry.
- The fact that the self-assessment was endorsed by the department confirmed the understanding of the appellant to the effect that the exemption was admissible.
- The appellants had filed the Bill of Entry Nos. 8732158 on 18.05.2022, 9426688 on 06.07.2022 and 2634724 dated 27.09.2022 and the Show Cause Notice was issued on 14.08.2024 i.e. beyond the time limit of two years in respect of two Bill of Entry filed on 18.05.2022 and 06.07.2022. Thus, the demand with respect to Bills of Entry Nos. 8732158 on 18.05.2022 and 9426688 on 06.07.2022 was hit by limitation. Reliance was placed on the case laws of Dr. Rai Memorial Cancer Institute reported at 2022 (381) ELT 540 (T), M/s Sirthai Superware India Ltd. reported at 2020 (371) ELT 324 (T), M/s Semco Electric Pvt. Ltd. reported at 2019 (370) ELT 1052 (T) and M/s Sandor Medicaids Pvt. Ltd. reported at 2019 (367) ELT 486 (T)
- The ingredients such as collusion or wilful mis-statement or suppression of facts were absent in the facts of the case at hand and as such penalty under Section 114A of the Customs Act was not imposable
- The facts of the case did not involve false or incorrect declaration, statement or document signed or used by any person. Neither the Show Cause Notice spelt out as to which declaration, document or statement had been intentionally signed incorrectly nor did the adjudicating authority find that any such declaration, statement or document has been incorrectly signed or used by the appellants. Under such circumstances, no penalty was imposable under Section 114AA of the Customs Act
- The goods under consideration had already been assessed and out of charge ordered without any objection raised by the Customs department. The said goods were not available for confiscation and in such cases, confiscation was not justified and no redemption fine could be imposed. Reliance was placed on the case laws of M/s Indokem Ltd. reported at ELT 2017 (352) ELT 386 (Tri. - Mumbai), M/s Vidhi Dyestuff Manufacturing Ltd. reported at 2015 (327) E.L.T. 500 (Tri. - Mumbai), M/s Finesse Creation Inc. reported at 2009 (248) ELT 122 (Bom) upheld by the Supreme Court as reported at 2010 (255) ELT A120 (SC) and M/s Elder Pharmaceuticals reported at 2019 (370) ELT 1380 (T)



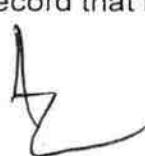
5. Personal hearing in the matter was held on 07.08.2025 wherein Shri John Christian, Consultant and Shri Ashish Jain, Consultant appeared on behalf of the appellants and they reiterated their written submissions.

6. I have carefully gone through the impugned order, appeal memorandum filed by the appellants, submissions made by the appellants during course of hearing as well as the documents and evidences available on record.

7. The appellants have not advanced any pleas regarding admissibility of the exemption under Notn. No. 24/2055-Cus as amended on merits but have contested the impugned order on limitation, imposition of penalty under Sections 114A and 114AA of the Customs Act and imposition of redemption fine on the goods under consideration. Thus, I am not delving in the merits of admissibility of exemption and restrict my findings only with regard to the issues under dispute.

8. In the facts of the case, the appellants had filed Bills of Entry Nos. 8732158 on 18.05.2022, 9426688 on 06.07.2022 and 2634724 dated 27.09.2022 by claiming the exemption under Notn. No. 24/2005-Cus as amended. The extended period of limitation as provided for under Section 28(4) of the Customs Act is invokable only in cases where the duty has not been levied, short-levied or short paid by reason of collusion, wilful mis-statement or suppression of facts. In the facts of case at hand, there is nothing in the Show Cause Notice or the impugned order so as to indicate that the appellants had indulged in collusion, mis-declaration of the goods or suppression of facts. The duty demand has arisen solely due to inadmissibility of exemption under Notn. No. 24/2005-Cus as amended.

8.1 It is the contention of the appellants that they had correctly declared the description of the goods in the Bills of Entry filed by them. Neither the Show Cause Notice nor the impugned order finds any mention that the description of the goods under import was mis-declared. Thus, there is no dispute regarding the fact that the description of the goods has been mis-declared in the Bills of Entry. Further, the appellants have contested that they have not indulged in any sort of suppression of facts and all the relevant documents had been presented to the department while filing the concerned Bills of Entry. This fact also remains undisputed in as much as the Show Cause Notice or the impugned order fail to specify any material facts which stand suppressed by the appellants. As regards the issue of 'collusion', there is absolutely no allegation of the same in the Show Cause Notice or findings to that effect in the impugned order. Thus, it is an apparent fact on record that no specific act of mis-



declaration has been pointed out or suppression of any material facts been identified or collusion been spelt out either in the Show Cause Notice or the impugned order.

8.2 Further, the facts of the case indicate that the demand has arisen due to the fact that the impugned order finds that the benefit of exemption under Notn. No. 24/2005-Cus as amended was not admissible to the appellants. The relevant Bills of Entry clearly indicate that the appellants have claimed the benefit of the said notification and Out of Charge has been ordered in respect of all the Bills of Entry without any objection raised by the department to the effect that the exemption under the said notification was not admissible either at the assessment stage or the Out of Charge stage. All the material facts to examine the admissibility or otherwise of the exemption notification were available to the department at the time of filing the Bill of Entry and as already mentioned hereinabove, no specific act of collusion, mis-declaration or suppression of facts has been identified either in the Show Cause Notice or the impugned order.

8.3 The above facts indicate that the ingredients such as collusion, mis-declaration or suppression of facts are not established in the facts of the case at hand and as such the provisions of Section 28(4) of the Customs Act are not applicable. My views are amply supported by the following judicial pronouncements:

M/s Midas Fertchem Impex Pvt. Ltd. reported at 2023 (384) ELT 397 (T) of which the relevant findings are reproduced under:

*In practice, the importer makes an entry under section 46 and also self-assesses duty under section 17(1) by filing the Bill of Entry. There is no separate mechanism to self-assess duty. The columns pertaining to classification, valuation, rate of duty and exemption notifications which determine the duty liability are part of the Bill of Entry which is also an entry under section 46. Thus, although the Bill of Entry requires the importer to make a true declaration and further to confirm that the contents of the Bill of Entry are true and correct, the columns pertaining to classification, exemption notifications claimed and in some cases even the valuation are matters of self-assessment and are not matters of fact. Self-assessment is also a form of assessment but the importer is not an expert in assessment of duty and can make mistakes and it is for this reason, there is a provision for re-assessment of duty by the officer. Simply because the importer claimed a wrong classification or claimed an ineligible exemption notification or in some cases, has not done the valuation fully as per the law, it cannot be said that the*



*importer mis-declared. As far as the description of the goods, quantity, etc. are concerned, the importer is bound to state the truth in the Bill of Entry. Thus, simply claiming a wrong classification or an ineligible exemption notification is not a mis-statement. Assessment, including self-assessment is a matter of considered judgment and remedies are available against them. While self-assessment may be modified by through re-assessment by the proper officer, both self-assessment and the assessment by the proper officer can be assailed in an appeal before the Commissioner (Appeals) or reviewed through an SCN under section 28. Therefore, any wrong classification or claim of an ineligible notification or wrong self-assessment of duty by an importer will not amount to mis-statement or suppression.*

M/s Power Grid Corporation of India Ltd. reported at (2024) 19 Centax 350 (T) wherein the Hon'ble Tribunal bench of Ahmedabad has ruled as under:

*We find that the demand was raised invoking the extended period and on scrutiny of the records, we are of the view that this matter can be disposed of on limitation without entering into the issue on merit. As regard limitation, we find that the appellant have filed the bill of entry on 9-2-2017 and declared the goods correctly as per the document i.e. Composite Long Rod Insulators, therefore, there is no mis-declaration. The issue was only of interpretation of the words 'composite' and 'polymer', the word 'composite' was used whether the goods imported falls under the description i.e. Polymer Long Rod Insulators as appearing in the Notification. Therefore, the issue involved is clearly an interpretation of the entry provided under the Notification. We find that the appellant have very strong *prima facie* case on merit also as decided by the adjudicating authority. We find that there is no change of circumstances from date of filing of bill of entry till the issue of show cause notice, therefore, nothing prevented the department to issue show cause notice within the normal period from the date of filing of bill of entry i.e. 9-2-2017. Therefore, there is no reason for invoking the extended period upto three years, when there is no change in the facts of the case. In the similar type of facts in various judgments, the Hon'ble Supreme Court has taken a view that the extended period cannot be invoked.*

M/s Sirthai Superware India Ltd. reported at 2020 (371) ELT 324 (T) of which the relevant text of the ruling is reproduced under:

When Commissioner has himself in the para 33 of his order for holding the classification under the Heading 392410, referred to description made in the Bill of Entries/invoices he cannot be justified in holding the charge of misdeclaration against appellants. For that reason we are of the view that by giving the correct description on the documents relating to import clearance appellants have discharge the burden of making correct declaration on the Bill of Entry. Hence any error in classification or the exemption claimed on Bill of Entry cannot be misdeclaration with the intention to evade payment of duty for the purpose of invoking extended period of limitation. Hence demand made by invoking extended period of limitation needs to be set aside.

8.5 In view of the above, I find that the demand with respect to Bills of Entry Nos. 8732158 dated 18.05.2022 and 9426688 dated 06.07.2022 is barred by limitation in as much as the Show Cause Notice has been issued on 14.8.2024 i.e. beyond the normal period of 2 years. As regards the question of demand pertaining to Bill of Entry No. 2634724 dated 27.09.2022 is concerned, I find that the same is within the normal period of 2 years and as such covered under the provisions of Section 28(1) of the Customs Act and the same is upheld. Accordingly, I set aside the demand of Rs. 9,39,809/- with respect to Bills of Entry Nos. Bills of Entry Nos. 8732158 dated 18.05.2022 and 9426688 dated 06.07.2022 with consequent relief and uphold the demand of Rs. 2,22,236/- with respect to Bill of Entry No. 2634724 dated 27.9.2022.

9. The appellants have contested the imposition of penalty under Section 114A of the Customs Act. In the facts of the case at hand the demand with respect to Bills of Entry Nos. 8732158 dated 18.05.2022 and 9426688 dated 06.07.2022 has been set aside and as such the penalty with respect to the said demand does not survive. However, with regard to the demand of Rs. 2,22,236/- with respect to Bill of Entry No. 2634724 dated 27.9.2022 which has been upheld, I find that the provisions of Section 114A will not be applicable in as much as the ingredients of collusion, wilful mis-statement or suppression of facts are not justified in the facts of the case at hand. However, I find that the adjudicating authority had refrained to impose penalty under Section 112 of the Customs Act on the sole ground that penalty under Section 114A of the Customs Act had been imposed. Now that the penalty under Section 114A of the Customs Act is found to be unjustified, the penalty under Section 112 of the Customs Act would be imposable. Accordingly, I set aside the entire penalty imposed under Section 114A of the Customs Act in the impugned order and impose penalty of Rs. 22,000/- on the appellants in terms of the provisions of Section 112(a)(ii) of the Customs Act.



10. The appellants have contested the imposition of redemption fine and confiscation of the goods on the ground of non-availability of the goods. It is an undisputed fact that the goods are not available for confiscation and also there is nothing in the Show Cause Notice to indicate that a bond has been filed. In such circumstances, confiscation of goods or imposition of redemption fine is not sustainable. My views are supported by the following judicial pronouncements:

M/s Finesse Creation Inc. reported at 2009 (248) ELT 122 (Bom) upheld by the Hon'ble Supreme Court as reported at 2010 (255) ELTA120 (SC) wherein it has been held as under:

5. *In our opinion, the concept of redemption fine arises in the event the goods are available and are to be redeemed. If the goods are not available, there is no question of redemption of the goods. Under Section 125 a power is conferred on the Customs Authorities in case import of goods becoming prohibited on account of breach of the provisions of the Act, rules or notification, to order confiscation of the goods with a discretion in the authorities on passing the order of confiscation, to release the goods on payment of redemption fine. Such an order can only be passed if the goods are available, for redemption. The question of confiscating the goods would not arise if there are no goods available for confiscation nor consequently redemption. Once goods cannot be redeemed no fine can be imposed. The fine is in the nature of computation to the state for the wrong done by the importer/exporter.*

6. *In these circumstances, in our opinion, the tribunal was right in holding that in the absence of the goods being available no fine in lieu of confiscation could have been imposed. The goods in fact had been cleared earlier.*

M/s Elder Pharmaceuticals reported at 2019 (370) ELT 1380 (T) wherein it has been held as under:

  
*It is seen that the adjudication order has recorded that the goods are not available for confiscation. In the absence of the goods and relying upon the decision of the Hon'ble Supreme Court in Weston Components Ltd. v. Commissioner of Customs, New Delhi [2000 (1) SCR 26 = 2000 (115) E.L.T. 278 (S.C.)] and of the Hon'ble Bombay High Court in Commissioner of Customs (Import), Mumbai v. Finesse Creation [2009 (248) E.L.T. 122 (Bom.)], we set aside the redemption fine.*



M/s Indokem Ltd. reported at ELT 2017 (352) ELT 386 (Tri.- Mumbai) wherein the Hon'blr Tribunal held as under:

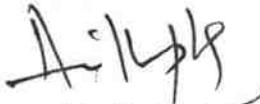
**"4.1 Moreover it is seen that the goods are not available for confiscation and the same have not been seized or provisionally released, thus no redemption fine can be imposed. In these circumstances, the confiscation cannot be ordered."**

10.1 In view of the above, I set aside the redemption fine of Rs. 5,00,000/- imposed by the adjudicating authority.

11. As regards the penalty under Section 114AA of the Customs Act is concerned, I find force in the argument of the appellants to the effect that of the case did not involve false or incorrect declaration, statement or document signed or used by any person. Further, I find that the Show Cause Notice fails to identify as to which declaration, document or statement had been intentionally signed incorrectly and there is no finding in the impugned order identifying such declaration, document or statement. Thus, the provisions of Section 114AA of the Customs Act are not applicable to the facts of the case at hand. Accordingly, I set aside the penalty under Section 114AA of the Customs Act.

12. Accordingly, I allow the appeal partially as set discussed hereinabove.



  
(Amit Gupta)

Commissioner (Appeals),  
Customs, Ahmedabad

F. No. S/49-52/CUS/AHD/2025-26   
3412

Date: 12.09.2025

By Speed Post.  
To,  
M/s Uratom Solar (India) Pvt. Ltd.  
situated at S No. 752, P1, N.H.27,  
Near Chordi Village, Gondal, Ahmedabad -360311.

  
सत्यापिता/ATTESTED  
अधीक्षक/SUPERINTENDENT  
सीमा शुल्क (अधीक्षक), अहमदाबाद.  
CUSTOMS (APPEALS), AHMEDABAD.

Copy to:

- 1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
- 2. The Principal Commissioner of Customs, Custom House, Ahmedabad.
- 3. The Additional Commissioner, Customs, Air Cargo Complex, Old Airport, Ahmedabad-380 003.
- 4. Shri Ashish Jain / Shri John F Christian, consultant of M/s Uratom Solar (I) Pvt. Ltd.
- 5. Guard File.

