



सीमाशुल्क (अपील) आयुक्तका कार्यालय, अहमदाबाद
 OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD
 चौथी मंज़िल 4th Floor, हडको बिल्डिंग HUDCO Building, ईश्वर भुवन रोड़ Ishwar Bhuvan Road,
 नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009.
 दूरभाष क्रमांक Tel. No. 079-26589281
 DIN-20250471MN0000520239

क	फ़ाइल संख्या FILE NO.	S/49-37/CUS/AHD/2022-23
ख	अपीलआदेश संख्या ORDER-IN-APPEAL No. (सीमाशुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	AHD-CUSTOM-000-APP-18-25-26
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	25.04.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER - IN - ORIGINAL NO.	O.I.O. No. 46/MK/ADC/SRT/2021-22 dated 20.01.2022 passed by Additional Commissioner of Customs, Custom House, Surat.
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	25.04.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. GAIL (India) Ltd., GAIL Bhawan, 16, Bhikaji Cama Place, New Delhi - 110066.



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.	सीमाशुल्क 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.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :

(क)	बैगेज के रूप में आयातित कोई माल.				
(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)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.				
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.				
3.	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 :				
	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)	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.				
(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)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो				
(b)	4 copies of the Order - In - Original, in addition to relevant documents, if any				
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां				
(c)	4 copies of the Application for Revision.				
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथासंशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जल्ती और विविध मदों के शीर्षके अधीन आता है में रु. 200/- (रुपए दो सौ मात्र) या रु.1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, 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/-				
(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.	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				
	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 :				
	<table border="1"> <tr> <td>सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td> <td>Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</td> </tr> <tr> <td>दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td> <td>2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td> </tr> </table>	सीमाशुल्क, केन्द्रीय 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 nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
सीमाशुल्क, केन्द्रीय 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 nd 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 रूपए.
(a)	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; पांच हजार रूपए
(b)	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 रूपए.
(c)	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।
(d)	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

1. M/s. GAIL (India) Ltd., GAIL Bhawan, 16, Bhikaji Cama Place, New Delhi - 110066 (hereinafter referred to as the 'GAIL' or 'the appellant') has filed the present appeal under Section 128 of the Customs Act, 1962, against the Order-In-Original No. 46/MK/ADC/SRT/2021-22 dated 20.01.2022 (hereinafter referred to as the 'impugned order') passed by the Additional Commissioner of Customs, Custom House, Surat (hereinafter referred to as the 'adjudicating authority').

2. Facts involved in the appeal, in brief, are that the appellant was engaged in import of Liquefied Natural Gas ('LNG') falling under Customs Tariff Item No. 27111100 for which they have filed nine Bills of Entry with Custom House, Dahej, during the period of January, 2019 to August, 2019. The imported LNG was to be Re-gasified (known as 'RNLG') and then meant for supply to power generating companies. The appellant was availing exemption from Customs duty as per Sr.No. 139B of Notification No. 12/2012-Customs dated 17.03.2012, as amended vide Notification No. 31/2015-Customs dated 07.05.2015, for the period upto 30.06.2017. For the subsequent period starting from 01.07.2017, the said exemption under Sr.No. 10 of Notification No. 52/2017-Cus dated 30.06.2017 has been availed. One of the conditions for availing the said exemption, is that the importer is required to produce a utilization certificate from the power generating company to the effect that the RLNG has been utilized for generating and supplying electrical energy. The appellant has submitted such end use certificate / utilization certificate, which shows the utilized quantity after deducting 0.66% quantity from the quantity imported under respective Bills of Entry. So, it appeared that the appellant was not eligible for the said exemption for the 0.66% quantity, which has not been utilized for power generation.

3. A Show Cause Notice dated 21.01.2021 has been issued to the appellant for demand of duty amounting to Rs.14,63,870/- on the quantity claimed as process loss or transit loss, under the provisions of Section 28(4) with interest under the provisions of Section 28AA and penalty under the provisions of Section 114A of the Customs Act, 1962. The said SCN has been adjudicated vide the impugned order dated 20.01.2022. The adjudicating authority has observed that the quantity of LNG claimed as transit loss has neither been supplied to a power generating company nor been used for generation of electrical energy as provided for in the relevant Notifications and thereby the specified purpose has not been fulfilled in respect of such quantity. Therefore, by application of principle of strict interpretation of the exemption Notification, the adjudicating authority has denied the benefit of exemption in respect of the quantity claimed as transit loss. Thus, the adjudicating authority has confirmed the entire demand of duty of Rs.14,63,870/- under the provisions of Section 28(8) read with Section 28(4); ordered to recover interest under Section 28AA and imposed equal penalty under Section 114A of the Customs Act, 1962.

4. Being aggrieved, the appellant has filed the present appeal, mainly on the following grounds:

4.1 The opponent department had issued SCN u/s 28(4) of the Customs Act, 1962, under the extended period of limitation of five years. On bare reading the said Section, it is explicit that it can be invoked only for the cases involving collusion or wilful mis-statement or suppression of material facts. In the SCN or OIO, there is not even a reference about such pre-requisite condition of wilful mis-statement or collusion or suppression of material fact. The

proper officer has not even alleged any 'collusion or any wilful mis-statement or suppression of facts' by GAIL. Therefore, the SCN is not maintainable.

4.2 The appellant relied upon the following case law:

4.2.1 In the case of *Uniworth Textile Ltd. Vs. Commissioner of Central Excise*, (2013) 9 SCC 753 = 2013 (288) ELT 161 (SC), the Hon'ble Supreme Court states that Section 28 of the Act contemplates two situations, inadvertent non-payment and a deliberate default. It was held that the extended period of limitation under Section 28 is invocable only in specific circumstances like collusion or any wilful mis-statement or suppression of facts. It was further held that the burden of proving mala fide conduct of the assessee lies on the revenue for invoking the proviso. Further, only when specific and explicit averments are made in the show cause notice challenging the conduct of the assessee, notice can be issued during such extended period of limitation.

4.2.2 The Hon'ble Supreme Court in case of *Aban Loyd Chiles Offshore Ltd. Vs. Commissioner of Customs*, (2006) 6 SCC 482 = 2006 (200) E.L.T. 370 (S.C.), had held that for applying the proviso to Section 28, there has to be an intention on the part of the assessee to evade the duty. Also, the Show Cause Notice has to allege that the duty could not be levied or paid by reason of collusion or any wilful mis-statement or suppression of facts.

4.2.3 The Calcutta High Court, in the case of *Simplex Infrastructure Ltd Vs. Commissioner of Service Tax* (2017) 43 GSTR 505 (Cal) [sic - equivalent citation is 2016 (42) S.T.R. 634 (Cal.), Judgment dated 07-04-2016], had held that that if any fact arising to duty was never suppressed and the department was not kept in dark, then it cannot be said that there has been no full & sufficient disclosure by noticee during the course of business or noticee had suppressed material fact by keeping department in dark to evade any tax liability. Therefore, the show cause was barred by limitation.

4.3 The appellant further mentioned that the issue of claiming of exemption on 0.66% quantum of gas "conversion loss" is no longer res-integra as the same has been settled. The Commissioner (Appeals), Pune-II, while deciding GAIL's case by **Order-In-Appeal No. PUNCT-APP11-000-95 to 106-17-18 dated 21.07.2017**, had also allowed such loss by holding that it is technologically impossible for re-gasification of 100% LNG into RLNG. Subsequently, the final assessments u/s 18(2) of the said Act has also been completed. The appellant submitted that the aforesaid decision had attained finality as that order was never assailed to any higher Court and have been accepted by Government of India.

5. The Advocate, on behalf of the appellant, has submitted letters dated 13.12.2023 and 27.05.2024 stating that on similar issue, M/s. GAIL has filed a Special Civil Application No. 7238 of 2022 before Hon'ble Gujarat High Court against the O.I.O. No. AHD-CUSTOM-000-COM-021-21-22 dated 20.01.2022 passed by the Commissioner of Customs, Ahmedabad. Therefore, he requested to keep the present proceedings in abeyance.

Personal Hearing:

6. Personal Hearing in this case was held on 25.02.2025, which was attended by Shri. Sunil Kumar Gupta, GM-F&A, GAIL; Shri. Mandeep Singh, CM-F&A, GAIL; Shri. Manish Jain, Advocate; and Ms. Raksha Bhandari, Advocate. They have produced a copy of a

Judgment dated 09.08.2024 passed by Hon'ble High Court of Gujarat in the SCA No. 7238 of 2022 filed by GAIL (India) Ltd.

7. Due to transfer and change of the Appellate Authority, i.e. Commissioner of Customs (Appeals), Ahmedabad, another Personal Hearing in this case was held before me on 23.04.2025, which was attended by Shri. Sunil Kumar Gupta, GM-F&A, GAIL; Shri. Mandeep Singh, CM-F&A, GAIL and Shri. Manish Jain, Advocate. They reiterated the submissions made at the time of filing of appeal.

Findings:

8. I have carefully gone through the facts of the case and written as well as oral submissions made by or on behalf of the appellant. The issue to be decided in the present appeal is whether demand of duty under the provisions of Section 28(4) read with Section 28(8) of the Customs Act, 1962, on 0.66% quantity of LNG, which is claimed to be transit loss during re-gasification of LNG, is sustainable or not.

9. I find that that Notification No. 52/2017-Cus dated 30.06.2017 was prevailing at the time of imports in the present appeal, under which the exemption has been availed by the appellant. As per Sr.No.10 of the said Notification, Liquefied Natural Gas ('LNG') and Natural Gas attract Nil rate of duty when imported by an importer for supply to a generating company, as defined in clause (28) of Section 2 of the Electricity Act, 2003, for generation of electrical energy, subject to the condition 3 mentioned therein. It is undisputed that 0.66% quantity of LNG was lost as process loss or transit loss and thus not supplied to power generating company for generating electricity energy.

10. In this case, the Show Cause Notice for the Bills of Entry filed during the period of 25.02.2019 to 26.08.2019, has been issued on 21.01.2021 under the provisions of Section 28(4) of the Customs Act, 1962. The said Section 28(4) is applicable for the cases where duty has not been levied or not paid on by reason of collusion or wilful mis-statement or suppression facts. Whereas, in the present case there is no such allegation of collusion or wilful mis-statement or suppression of facts in the SCN. Therefore, I am of the view that SCN under Section 28(4) is not sustainable. In this regard, I rely upon the Judgment dated 09.08.2024 passed by Hon'ble High Court of Gujarat in the *SCA No. 7238 of 2022* on the same issue and in respect of the same appellant viz. **GAIL (India) Ltd.** Extracts from the said Judgment are reproduced below:

"14. From the above observations, it is apparent that the allegation levelled against the petitioner for suppression of material facts are not born out from findings arrived at in the impugned Order-in-Original to invoke provision of section 28(4) of the Act for extended period of limitation to assume jurisdiction by the respondent authorities to issue show cause notices and pass the impugned order.

15. In view of the above facts, we are of the opinion that the Adjudicating Authority could not have assumed the jurisdiction to issue show-cause notice under Section 28(4) of the Act and the entire proceedings pursuant to such show-cause notice are vitiated. As the show-cause notices are held to be without jurisdiction, no further analysis on merits of the case is required. Therefore, both the show-cause notices as well as the impugned Order-in-Original are hereby quashed and set aside. Rule is made absolute to the aforesaid extent. No order as to costs."

I find that the in the present also, no allegation has been levelled against the appellant regarding suppression of facts or collusion or wilful mis-statement. Therefore, the ratio of the aforesaid Judgment dated 09.08.2024 in SCA No. 7238 of 2022 of Hon'ble High Court of Gujarat in similar case of the same appellant, is required to be applied in the present case also.

11. Further, I find that the Principal Commissioner of Customs, Ahmedabad, had sent a proposal to file a Special Leave Petition with Hon'ble Supreme Court against the aforesaid Judgment of Hon'ble Gujarat High Court in SCA No. 7238 of 2022 in the case of M/s. GAIL (India) Ltd. Vs. Union of India & Ors. In response, the Under Secretary, Legal Cell, CBIC, New Delhi, vide letter F.No. CBEC-276/226/2024-CX-8A dated 29.11.2024 communicated that the Legal Cell in consultation with Ld. ASG, DoLA has opined that SLP is not merited in that matter. In view of the above, I find that the issue in respect of the same appellant in similar matter has attained finality.

12. In view of the above position, I am of the view that invocation of provisions of Section 28(4) for demand of Customs duty is not sustainable in the present case. As demand raised under Section 28(4) is not sustainable, penalty imposed under Section 114A is also not sustainable because, both provisions relates to non-payment of duty on account of collusion or wilful mis-statement or suppression of facts. Therefore, penalty imposed under Section 114A in the impugned order is liable to be set aside.

13. However, I find that as per the provisions of Section 28(10B) of the Customs Act, 1962, a notice issued under sub-section (4) shall be deemed to have been issued under sub-section (1), if such notice demanding duty is held not sustainable in any proceeding under this Act, including at any stage of appeal, for the reason that the charges of collusion or any wilful misstatement or suppression of facts to evade duty has not been established against the person to whom such notice was issued and the amount of duty and the interest thereof shall be computed accordingly. In view of the said statutory provisions of Section 28(10B), I am of the view that the Show Cause Notice issued under the provisions of Section 28(4) is to be treated as issued under Section 28(1) of the Customs Act, 1962. Therefore, the Show Cause Notice for the Bills of Entry filed/out-of-charged within the previous period of two years is required to be considered for the purpose of Section 28(1) and the SCN to the extent if issued beyond the normal period of limitation of two years, is required to be treated as time-barred. In the present case, the nine Bills of Entry have been filed during the period of 25.02.2019 to 26.08.2019; whereas, the SCN has been issued on 21.01.2021. Therefore, I find that the entire demand of duty of Rs.14,63,870/- stands covered within the normal period of limitation of two years, as prescribed under Section 28(1) of the Customs Act, 1962.

14. I find that Hon'ble High Court of Gujarat, vide the said Judgment dated 09.08.2024, has quashed the Order-In-Original passed by the Principal Commissioner of Customs, Ahmedabad, only on the ground that the allegation levelled against the petitioner for suppression of material facts are not born out in the findings arrived at in the impugned Order-In-Original to invoke provision of Section 28(4) of the Act for extended period of limitation. So, no further analysis on merits of the case has been given in the said Judgment dated 09.08.2024 (Para 14 and 15 of the Judgment refers). Whereas, in the present case, the entire demand has been made within the normal period of limitation of two years, as prescribed under Section 28(1) read with Section 28(10B), as discussed hereinabove. So, merits of the case are required to be discussed in the present case. I have to examine as to whether Customs duty is

payable on the 0.66% quantity of LNG lost while converting LNG into RLNG or lost during transit.

15. I have referred the wordings of the Notification No. 52/2017-Cus dated 30.06.2017, which was prevailing at the time of imports in the present appeal, under which the exemption has been availed by the appellant. As per Sr.No.10 of the said Notification, Liquefied Natural Gas ('LNG') and Natural Gas, attract Nil rate of duty when imported by an importer for supply to a generating company, as defined in clause (28) of Section 2 of the Electricity Act, 2003, for generation of electrical energy, subject to the condition 3 mentioned therein. There is no dispute regarding fulfillment of the said condition 3 in the present case. I observe that the exemption / Nil rate is applicable for LNG imported for supply to power generating company. It is undisputed that the entire quantity of LNG was imported for supply to such power generating companies, but due to various reasons like conversion process loss, transit loss, inaccurate measurements etc., 0.66% quantity could not be supplied to power generating companies. In this regard, I rely upon the Order dated 08.10.2004 of Hon'ble Supreme Court of India in the case of **BPL Display Devices Ltd. Vs. Commissioner of Central Excise, Ghaziabad** [2004 (174) ELT 5 (SC)]. The said Order is as follows (underline supplied):

"The question in this appeal is whether the appellant is entitled to the benefit of Notification No. 13/97-Cus. as amended by Notification No. 25/99-Cus. These two Notifications provide for certain benefits to specified items if they are imported into India 'for use' in the manufacture of other items specified in the notifications.

2. *It is not in dispute that the appellant had imported parts of picture tubes for manufacture of colour picture tubes. Both the input and the manufactured items are covered by the Notifications. It is also not in dispute that a small percentage of the imported parts were damaged in Transit and could not be used to manufacture picture tubes during the year 2000-2001. The appellant claimed the benefit of the aforesaid Notifications in respect of the entire lot of the parts imported relying, inter alia, upon the earlier decision of the Tribunal in National Organic Chemical Indus. Ltd. v. Collector of Customs (Import), Mumbai, 2000 (126) E.L.T. 1072 which had held that the benefit of the Notifications could not be denied in respect of goods which were intended for use for manufacture of the final product but could not be so used due to shortage or leakage. The Notifications relied upon in the decision in National Organic Chemical Indus. Ltd. (supra) are substantially similar to the present Notification. The appeal preferred by the Department from the decision of the Tribunal was dismissed by this Court on 20th February, 2002 - Commissioner of Customs v. M/s. National Organic Chemical Indus. Ltd. [C.A. No. 6764/99]. The Tribunal, however, relied upon its earlier decision in the case of Commissioner of Central Excise, Meerut v. M/s. BPL Display Devices Ltd. reported in 2002 (147) E.L.T. 912 to hold against the appellant. This Court following the affirmation of the Tribunal's reasoning in National Organic Chemical Indus. Ltd. (supra) on 20-2-2002, allowed the appellant's appeal. This appeal must therefore be necessarily allowed. We are of the view that no material distinction can be drawn between the loss on account of leakage and loss on account of damage. The words 'for use' used in similar exemption Notifications have also been construed by this Court earlier in the State of Haryana v. Dalmia Dadri Cement Ltd., 1987 (Suppl) SCC 679 to mean 'intended for use'. According to this decision the object of grant of exemption*



A-12

was only to debar those importers/manufacturers from the benefit of the Notifications who had diverted the products imported for other purposes and had no intention to use the same for manufacture of the specified items at any stage."

In the present also, the LNG was imported by GAIL for supply to power generating companies. GAIL is one of the Maharatna PSU owned by Govt. of India. There is no allegation against GAIL to the effect that they have illicitly diverted the 0.66% quantity. It is undisputed that the said 0.66% quantity has been lost while conversion or during transit or due to any other reasons, which were beyond the control of GAIL. Therefore, by applying ratio of the aforesaid Order of Hon'ble Supreme Court **BPL Display Devices Ltd.** (supra), I am of the considered view that Customs duty cannot be demanded for such 0.66% quantity even under the provisions of Section 28(1) of the Customs Act, 1962.

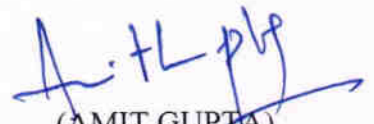
16. Further, I observe that the Commissioner (Appeals), Central Tax, Pune-II, has allowed the appeals filed by the same appellant, i.e. GAIL, on similar issue by **Order-In-Appeal No. PUN-CT-APP-II-000-95 to 106-17-18 dated 21.07.2017**. In the said O-I-A, the Commissioner (Appeals), Pune-II, has inter alia observed as follows:

"10. There being nothing on record to suggest that the appellant cleared any part of the production clandestinely and the appellant being a Public Sector Unit, where nobody has personal stake, I am of the considered view that the very nature of the activity of the appellant is such that a certain quantity of loss is bound to arise in the said conversion from LNG to RLNG and transmission thereof from one point to other and thus, I am not inclined to deny the exemption to such trivial loss of 0.66% of the imported LNG which gets lost during the various process of regasification and transit. Accordingly, I find that the Appellants are eligible for exemption on the entire volume of imported LNG, unloaded from cargo including regasification process losses."

I find that the issue involved in the aforesaid Order-In-Appeal and in the present case is identical and therefore, there is no reason for not following the stand taken in the aforesaid O-I-A dated 21.07.2017 passed by the Commissioner (Appeals), Central Tax, Pune-II.

Order:

17. In view of the above discussion, I set aside the impugned Order-In-Original No. 46/MK/ADC/SRT/2021-22 dated 20.01.2022 passed by the Additional Commissioner of Customs, Custom House, Surat, and allow the appeal filed by M/s. GAIL (India) Ltd. with consequential relief, if any, in accordance to law.


(AMIT GUPTA)
Commissioner (Appeals)
Customs, Ahmedabad

By e-mail [As per Section 153(1)(c) of the Customs Act, 1962]

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3. The Additional Commissioner of Customs, Custom House, Surat.
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4. The Deputy/Assistant Commissioner of Customs, Custom House, Dahej, Dist. Bharuch. (email: chdahej@gmail.com)
5. Guard File.



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