



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमा शुल्क भवन, ”पहली मंजिल, पुराने हाईकोर्ट के सामने, नवरंगपुरा, अहमदाबाद – 380 009.

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**PREAMBLE**

A	फाइल संख्या/ File No.	:	VIII/10-61/EPC-Paldi/O&A/HQ/2023-24
B	कारणबताओनोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	F.No. VIII/10-61/EPC-Paldi/O&A/HQ/2023-24 dated 08.09.2023
C	मूल आदेश संख्या/ Order-In-Original No.	:	05/ADC/VM/O&A/2024-25
D	आदेश तिथि/ Date of Order-In-Original	:	18.04.2024
E	जारी करने की तारीख/ Date of Issue	:	18.04.2024
F	द्वारा पारित/ Passed By	:	Vishal Malani, Additional Commissioner, Customs, Ahmedabad.
G	आयातक का नाम और पता / Name and Address of Importer / Passenger	:	M/s. E- Infochips Pvt. Ltd, 100% EOU, 303, Parishram Building, Mithakhali Six Road, Navrangpura, Ahmedabad - 380006
(1)	यह प्रति व्यक्ति के उपयोग के लिए निःशुल्क प्रदान किया जाता है जिन्हे यह जारी किया जाता है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्त किया तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क (अपील, छवि मंजिल, हुड़को भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये पे 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 साथकेवल पांच (5.00) रुपये पे न्यायालय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को ७.५ % अधिकतम १० करोड़ शुल्क हम करना होगा जहां शुल्क या इयूटी 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, १९६२ के धरा १२९ के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

### **BRIEF FACTS OF THE CASE:**

M/s. e-Infochips Private Ltd, 100 % EOU, 303, Parishram Building, Mithakhali Six Road, Navrangpura, AHMEDABAD - 380006, (hereinafter referred to as "e-Infochips" / "Importer" for the sake of brevity) are engaged in import of "plant and machinery, raw materials, components, spares and consumables free of import / Customs Duty". The Joint Development Commissioner, O/o the Development Commissioner, KASEZ, Gandhidham had issued LOP for the EOU to the Importer vide LOP No. KASEZ/100%EOU/II/113/2004-05 dated 06.12.2004.

2. Whereas, an audit had been undertaken by the Audit team, Indian Audit and Accounts Department, Ahmedabad, on the subject matter of "Monitoring of EOU & SEZ by the Development Commissioner" under Specific Compliance Audit (SSCA) at Customs, EPC, Paldi covering period from 2017-18 (January, 2018 to 2019-20). During the course of audit, it was observed vide Para, which reads as:

***"HM No. SSCA/Monitoring EOU&SEZ/2020-21 dated 31.12.2020 -***

*M/s. e-Infochips, 303, Parishram Building, Mithakhali Six Road, Navrangpura, Ahmedabad - holding LOP No. KASEZ/100%EOU/N/113/2004-05, dated 6.12.2004 issued by the Jt. Development Commissioner, O/o the Development Commissioner, KASEZ, Gandhidham, vide letter KASEZ/100%EOU/II/52/01-02/vol.II-3387, dated 21.06.2019, has given clarification regarding import of capital goods under para No.6.01 (d) of FTP 2015-20, as under:*

*As per para of APPENDIX- 6E (FORM OF LEGAL AGREEMENT FOR EOU/EHTP/STP/BPT), the unit has been permitted to import/indigenously plant and machinery, raw materials, components, spares and consumables free of import / Central Excise duty as per the details given at ANNEXURE -I:*

*From the above para, it is clear that the permission from the Development Commissioner's (D.C.) office is required for import/ indigenously purchase of Plant and Machinery under Para 6.01(d) of FTP 2015-20.*

*Hence, EOUs are required to take permission from the Development Commissioner's office for import/ indigenously purchase of Capital Goods whenever required. However, after attestation of list in LUT, they may import/ procure Capital Goods on self -certification basis.*

*During the test check of records, it was noticed that the importer had filed for procurement certificate vide intimation Nos.128/2017-18 dated 05.02.2018, 129/17-18 dated 05.02.2018, 327/17-18 dated 28.02.2018, 413/17-18 dated 16.03.2018, 462/17-18 dated 23.03.2018, 504/17-18 dated 27.03.2018, 84/18-19 dated 16.04.2018 and 94/17-18 dated 02.02.2018 for import of **EPAC Power Supply Slotted Plates CTH 76061190, Aluminium Plate – UDU Unit/ UDU Unit with Battery CTH 76061190, Sheet Metal Cover UDU CTH 82057000 and 3<sup>rd</sup> Eye Cam V4 Unit CTH 85299090** having Assessable Value of Rs. 7,81,54,587/- and duty forgone of Rs. 2,39,41,145/-*

. The Procurement Certificate was issued by Assistant/Dy. Commissioner, Custom Division, Paldi, Ahmedabad and intimation was sent to the Superintendent of Customs, MEPZ-SEZ, Tambaram, Chennai. On verification of the Procurement Certificate Goods and the CTH was not shown in Annexure-I of Legal Agreement issued by Development Commissioner, KASEZ. As per above said provision that the unit has been permitted to import goods as per given details in Annexure -I of LUT, however, these goods were not mentioned in Annexure -I. This has resulted in irregular issuance of Procurement Certificate having assessable value of Rs.78154587/- and duty forgone of Rs.23941145/-

3. Whereas, it appears that 100% EOU scheme is formulated by the Government of India and as detailed in Chapter 6 of Foreign Trade Policy 2015-2020 and Hand Book of Procedures 2015-2020 regarding operations of 100% EOU, wherein it appears that for proper operations of 100% EOU, Central Board of Indirect Taxation (CBIC) has issued Notification No. 52/2003- Customs dated 31.03.2003 for Customs duty free procurement of goods, manufacture and clearances etc. with following conditions:

(1) *The importer has been authorised by the Development Commissioner to establish the unit for the purposes specified in clauses (a) to (e) of the opening paragraph of this Notification;*

(2) *The unit carries out the manufacture, production, packaging or job-work or service in Customs bond and subject to such other condition as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs or Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be, (hereinafter referred as the said officer) in this behalf;*

(3) *The unit executes a bond in such form and for such sum and with such authority, as may be specified by the said officer, binding himself,*

*(a) to bring the said goods into the unit or and use them for the specified purpose mentioned in clauses (a) to (e) in the opening paragraph of this Notification;*

*(b) to maintain proper account of the receipt, storage and utilization of the goods;*

*(c) to dispose of the goods or services, the articles produced, manufactured, processed and packaged in the unit | or the waste, scrap and remnants arising out of such production, manufacture, processing or packaging in the manner as provided in the Export and Import Policy and in this Notification.*

4. Whereas the permission of the Development Commissioner, is required for the import/indigenous purchase of Plant and Machinery/ raw materials as per the proviso made under Para 6.01(d) of FTP – 2015-20. As per the said proviso, it is mandatory for the EOU, who should first take the necessary permission of the Development Commissioner, and attestation of the list in LUT, prior to import or procurement of raw materials /capital goods by the EOU.

4.1 As per provision contained in Para 6.01(d) of FTP, 2015-20, M/s e-Infochips, is permitted to import goods as per details mentioned in Annexure-I of the Legal Agreement filed with the Development Commissioner, KASEZ.

4.2 Whereas, it appears that, in terms of Condition No.3 of the said Notification No. 52/2003-Customs dated 31.03.2003, EOUs are required to furnish/execute a B-17 Bond (General Surety/ Security) as notified vide Notification No. 6/98-CE(NT) dated 02.03.1998 which is revised and updated with reference to GSTIN, as per present FTP provisions and Notification No. 52/2003-Customs dated 31.03.2003 vide Notification No. 01/2018-CE (NT) dated 05.12.2018. This is an all-purpose Bond for operations of EOU including duty free import or procurement of imported goods as specified in Annexure-I to the said Notification, Excise duty free domestic procurement, provisional assessment, export without payment of duty, movement of goods for job work and return, temporary clearances etc. It is observed that accordingly, M/s. e-Infochips Pvt. Ltd, had executed B-17 Bond amounting to **Rs. 2,51,20,908/-** before the then jurisdictional Assistant Commissioner of Central Excise, Div-VI, Ahmedabad – South, vide their letter dated 28.12.2017 and the same was accepted on 08.01.2018. Another Bond of **Rs.1,98,62,388/-** was accepted by the Deputy Commissioner, Customs Division, Paldi, Ahmedabad, vide F.No. VIII/48-110/Cus/Paldi/cinfo/T/17-18 on 13.04.2018.

4.3 Further, as per Board's Circular No. 50/2018-Customs dated 06.12.2018, the work related to EOUs were to be handled by Customs Office, in whose jurisdiction the unit falls. In the instant case, the said unit - M/s e-Infochips had submitted letters regarding procurement and movement of imported goods (as per sr. no. 3 of Annexure-B of the Show Cause Notice) to the Assistant/ Deputy Commissioner, Customs, Division Paldi, Ahmedabad and accordingly, based on the said intimations "Procurement Certificates" were issued by the jurisdictional Deputy Commissioner.

4.4 Whereas, it is observed that M/s e-Infochips, on the strength of the procurement certificates (as mentioned in table below) obtained from the jurisdictional Customs authorities, had imported goods viz. EPAC Power Supply Slotted Plates, Aluminium Plate – UDU Unit/ UDU Unit with Battery, Sheet Metal Cover UDU and 3<sup>rd</sup> Eye Cam V4 Unit falling under CTHs 76061190, 82057000 and 85299090, respectively, valued at **Rs. 7,81,54,587/-**, without payment of duty to the tune of **Rs. 2,39,41,145/-**. Further, on receipt of the imported goods in accordance to Procurement Certificates they had submitted letters of intimation along with documents viz. like calculation sheet, proforma invoice etc. The details as per the procurement certificates obtained by the Importer are as under:

Description of Goods	Qty. (in units)	Value (in Rs.)	BCD @ (7.5 %)/ 10% (in Rs.)	SWS @ (2+1%)/ (in Rs.)	IGST @ 18% (in Rs.)	Total (in Rs.)	Duty
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						10% (in Rs.)		
Epac Power Supply slotted plates	1200	171983	12899	387	33348	46634		
Steel Metal Cover_UDC	9000	586305	58631	5863	117144	181637		
3 <sup>rd</sup> Eye Can V4 Unit	1000	19060064	1906006	190601	3808201	5904808		
Aluminium Plate – UDU Unit and UDU Unit with Battery	3000	583667	43775	4378	113728	161880		
3 <sup>rd</sup> Eye Can V4 Unit	500	9669639	966964	96696	1931994	2995654		
EPAC Power Supply Slotted Plates	1000	146208	10966	1097	28489	40551		
3 <sup>rd</sup> Eye Can V4 Unit	1000	19368669	1936867	193687	3669860	6000414		
3 <sup>rd</sup> Eye Can V4 Unit	1500	28568052	2856805	85704	5671901	8614410		
	<b>Total</b>	<b>7,81,54,587</b>	<b>77,92,913</b>	<b>5,78,413</b>	<b>1,53,74,665</b>	<b>2,39,41,145</b>		

However, on the basis of Bills of Entries filed by the importer, the description of goods, their values and total customs duty leviable/applicable are as given below:

Description of Goods	Qty. (in units)	Value (in Rs.)	BCD @ (7.5%)/ 10% (in Rs.)	SWS @ (2+1%)/ 10% (in Rs.)	IGST @ 18% (in Rs.)	Total Duty (in Rs.)
Epac Power Supply slotted plates	1200	173184	12989	1299	33745	48033
Steel Metal Cover_UDC	9000	580500	58050	5805	115984	179839
3 <sup>rd</sup> Eye Can V4 Unit	1000	19177656	2876649	287665	4021554	7185867
Aluminium Plate – UDU Unit and UDU Unit with Battery	3000	588653	44149	4415	114699	163263
3 <sup>rd</sup> Eye Can V4 Unit	500	9598142	1439721	143972	2012730	3596423
EPAC Power Supply Slotted Plates	1000	148500	11138	1114	28935	41186
3 <sup>rd</sup> Eye Can V4 Unit	1000	19457656	2918649	291865	4080270	7290783
3 <sup>rd</sup> Eye Can V4 Unit	1500	28246933	3743402	374340	5825642	9943384
	<b>Total</b>	<b>7,79,71,225</b>	<b>1,11,04,745</b>	<b>11,10,475</b>	<b>1,62,33,560</b>	<b>2,84,48,780</b>

5. Whereas, it appears from the documents viz. LOP, LOA, LUT, Procurement certificates , Invoices, etc. that the said unit –M/s. e-Infochips imported the goods as per Procurement Certificates which were not mentioned in the Annexure –I of the Legal Agreement (LUT) issued for the goods permitted to be imported. Since the procurement certificates empowers the importer to import the raw materials Duty free, which were also done

accordingly vide Bills of Entry, this resulted in irregular availment of Duty forgone to the tune of Rs.2,84,48,780/-.

6. Whereas, as per Appendix -6E of Appendices (as per Para – 6.02(a), 6.03(a)and 6.11 (a) of HBP – “Legal Agreement”, the said unit - M/s e-Infochips, as per Para -2, had accepted the terms and conditions vide their letter dated 23.05.2017 at the time of executing LUT with the DC/ Designated Officer, wherein as per another condition quoted at para -3 of the said Appendix-6E, the said unit had been permitted to import / purchase goods as per details given at Annexure-I. Further , as per agreement mentioned at Para -6.11(a) of HBP, the unit has to submit quarterly and annual report in Annexure –III and Annexure –IV, respectively, wherein Annual report shall be duly certified by a Chartered Accountant/Cost Accountant. In the instant case, it appears that the said unit – M/s. e-Infochips failed to submit the said reports with jurisdictional Assistant/ Deputy Commissioner of Customs, EPC, Div- Paldi, Ahmedabad.

7. It is observed that as per condition made under Para 6.06 (c)(i) of HBP, the period of utilisation of goods , including Capital Goods , shall be co-terminus with the validity of the LOP. It is found that the said unit - M/s. e-Infochips had not submitted the data or quarterly or annual report in respect of utilisation of the imported goods in manufacture of their finished goods.

8. Whereas, it is further observed that the said unit had not submitted Bills of Entry ( as listed in Annexure A of the Show Cause Notice) at the time of submission of intimation letters to the jurisdictional Asstt/ Dy. Commissioner, Customs, Division Paldi, regarding receipt of imported goods. The said Bill of Entries were obtained from the Development Commissioner, MEPZ SEZ, Tambaram, Chennai, vide email dated 19.05.2023 and 25.05.2023.

#### **Legal Provisions of Customs Act, 1962 :-**

##### ***Section 143. Power to allow import or export on execution of bonds in certain cases. -***

*(1) Where this Act or any other law requires anything to be done before a person can import or export any goods or clear any goods from the control of officers of customs and the <sup>1</sup> [Assistant Commissioner of Customs or Deputy Commissioner of Customs] is satisfied that having regard to the circumstances of the case, such thing cannot be done before such import, export or clearance without detriment to that person, the <sup>1</sup> [Assistant Commissioner of Customs or Deputy Commissioner of Customs] may, notwithstanding anything contained in this Act or such other law, grant leave for such import, export or clearance on the person executing a bond in such amount, with such surety or security and subject to such conditions as the <sup>1</sup> [Assistant Commissioner of Customs or Deputy Commissioner of Customs] approves, for the doing of that thing within such time after the import, export or clearance as may be specified in the bond.*

(2) If the thing is done within the time specified in the bond, the <sup>1</sup> [Assistant Commissioner of Customs or Deputy Commissioner of Customs] shall cancel the bond as discharged in full and shall, on demand, deliver it, so cancelled, to the person who has executed or who is entitled to receive it; and in such a case that person shall not be liable to any penalty provided in this Act or, as the case may be, in such other law for the contravention of the provisions thereof relating to the doing of that thing.

(3) If the thing is not done within the time specified in the bond, the <sup>1</sup> [Assistant Commissioner of Customs or Deputy Commissioner of Customs] shall, without prejudice to any other action that may be taken under this Act or any other law for the time being in force, be entitled to proceed upon the bond in accordance with law.

**Section 111. Confiscation of improperly imported goods, etc. -**

(a) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

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

(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 <sup>1</sup> [not exceeding the value of the goods or five thousand rupees], whichever is the greater;

<sup>2</sup> [(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;]

<sup>3</sup> [(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 <sup>4</sup> [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 <sup>5</sup> [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 <sup>6</sup> [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.]

**Legal provisions of Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017-**

**Rule 8. Recovery of duty in certain case. -**

<sup>1</sup> [(1)]The importer who has availed the benefit of an exemption notification shall use the goods imported in accordance with the conditions mentioned in the concerned exemption notification or take action by re-export or clearance of

unutilized or defective goods under rule 7 and in the event of any failure, the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service shall take action by invoking the Bond to initiate the recovery proceedings of the amount equal to the difference between the duty leviable on such goods but for the exemption and that already paid, if any, at the time of importation, along with interest, at the rate fixed by notification issued under section 28AA of the Act, for the period starting from the date of importation of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay.

<sup>2</sup> [(2) Notwithstanding anything specified in these rules in relation to removal and processing of imported goods for job work, the importer shall be responsible for ensuring that the said goods are used in accordance with the purposes provided in the exemption notification and in the event of failure to do so, the Jurisdictional Deputy Commissioner of Customs, or, as the case may be, the Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, shall take action under these rules, without prejudice to any other action which may be taken under the Act, rules or regulations made thereunder or under any other law for the time being in force.]

**9.** In view of the factual position and evidences brought forth in the foregoing paragraphs, the impugned imported goods i.e. EPAC Power Supply Slotted Plated, Aluminium Plate – UDU Unit/ UDU Unit with Battery, Sheet Metal Cover UDU and 3<sup>rd</sup> Eye Cam V4 Unit declared CTH/HSN as 76061190, 82057000 and 85299090 is not included in the Annexure – I of the LUT executed before the Development Commissioner. Thereby the Importer was not eligible for Duty free import of the said goods classified/declared CTH as 76061190, 82057000 and 85299090. Therefore, the Duty forgone on such imports have been wrongly taken and the said unit – M/s. e-Infochips, is liable to pay the Customs Duty forgone, as mentioned in the table below:

Quantity of Goods.	Value (Amount in Rs.)	BCD @ 7.5/10% (Amount in Rs.)	SWS @ 10% of BCD (Amount in Rs.)	IGST @ 18% (Amount in Rs.)	Total Duty (Amount in Rs.) (c+d+e)
(a)	(b)	(c)	(d)	(e)	(f)
18200 units	7,79,71,225	1,11,04,745	11,10,475	1,62,33,560	2,84,48,780

**10.** M/s. e-Infochips have subscribed to a declaration as to the truthfulness of the contents of the Bill of Entries, in terms of Section 46(4) of the Customs Act, 1962, in respect of the Bill of Entries. As per Section 111(o) of the Customs Act, 1962, *any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer under*

Customs Act, 1962, are liable for confiscation under the said Section. Further, with the introduction of self-assessment and consequent amendments to section 17, since April, 2011, it is the responsibility of the Importer to correctly classify, determine and pay the Duty applicable in respect of the imported goods. M/s. e-Infochips, have thus violated the provisions of Section 46(4) of the Customs Act, 1962. In view of the above , it appears that M/s. e-Infochips have rendered the goods valued at Rs. 7,79,71,225/- covered under the said Bills of Entry, liable for confiscation under Section 111(o) of the Customs Act, 1962, in as much as they mentioned the CTH/HSN which are not in accordance to Annexure -I of LUT, to avail the benefit of Notification No. 52/2003 – Customs, dated 31.03.2003, 59/2017-Customs, dated 30.06.2017 and the Customs (Import of Goods at concessional rate of Duty) Rules, 2017 and to evade payment of due amount of Customs Duty.

**11.** Whereas, it appears that M/s e-Infochips have indulged themselves, in wrongly declaring the products not included in the LUT under CTHs 76061190, 82057000 and 85299090, respectively. Thus claiming the benefit of Duty forgone by them @7.5%/10%/15% has thereby rendered the goods liable for confiscation in terms of Section 111(o) of the Customs Act, 1962, in respect of the self assessed Bill of Entries (as per Annexure -A of the Show Cause Notice).

**12.** It further appears that the B-17 Bonds bearing F.No. IV/01/Div-VI/B-17/e-infochips/CGST/2017-18 dated 08.01.2018 was executed and accepted by the Assistant Commissioner, CGST, Div-VI, Ahmedabad South and F.No. VIII/48-110/Cus/Paldi/einfo/T/17-18 dated 13.04.2018 was accepted by the Deputy Commissioner, Customs Division, Paldi, Ahmedabad, while Procurement Certificates were obtained from the jurisdictional Asstt/Dy. Commissioner, Customs, Division Paldi, Ahmedabad. While obtaining the said Certificates and intimating the receipt of imported goods, the said unit failed to submit the documents viz. LOP, LOA, LUT, B/Es', Quarterly and Annual reports, etc. as such, therefore the jurisdictional Customs, Division Paldi was unable to initiate action. The said Unit – M/s e-Infochips when communicated about the Audit Objection vide Division's letter F. No. VIII/48-500/Cus/Paldi/SSC-Audit/2020-21 dated 09.02.2021, informed vide their letter dated 10.03.2021 that they will pay up the Duty forgone amount plus interest in respect of the imported goods EPAC Power Supply Slotted Plates, Sheet Metal Cover UDU, Aluminium plate UDU CTH- 76061190, 82057000. However, the Noticee after a lapse of 30-34 months of import of raw materials that EPAC Power Supply Slotted Plated, Aluminium Plate – UDU Unit/ UDU Unit with Battery, Sheet Metal Cover UDU and 3<sup>rd</sup>Eye Cam V4 Unit falling

under CTHs 76061190, 82057000 and 85299090, respectively informed vide their letter dated 10.05.2021, that the said items are already there in the list of permitted items of raw material under Letter of Agreement; that however, in some cases the nomenclature of the item names have changed due to different commercial names used amongst various different regions; that the end use of said items are same in manufacturing of the export products. However, it is also found that they have not submitted any supporting documents in the matter along with their aforementioned submissions.

**13.** Whereas , it is observed that as the said unit – M/s e-Infochips, did not comply with any of the conditions mentioned at Para -6.02(a) , 6.03(a) and 6.11(a) of HBP, hence, it was not possible for the Customs, to ascertain the evasion of the Customs Duty , which was wrongly forgone. It is found that the jurisdiction office of Customs came to know of the said contravention only after the Audit objection was raised vide **HM No. SSCA/Monitoring EOU&SEZ/2020-21 dated 31.12.2020** by the Sr. Audit Officer/CRA-V(SSCA) and letter No. CRA/FN-SSCA\_Monitoring\_EOU\_SEZ /2020-21 dated 05.03.2021 of the Deputy Director, Indian Audit & Accounts Department, Office of the Principal Director of Audit (Central), Audit Bhavan, Ahmedabad.

**14.** It appears that M/s e-Infochips have indulged themselves in wrongly declaring the products not included in the LUT under CTHs 76061190 and 85299090, respectively, thereby claiming Duty free import and thereby rendering the goods liable for confiscation in terms of Section 111 (o) of the Customs Act, 1962, in respect of the self assessed Bill of Entry (as per Annexure-A of the Show Cause Notice).

**15.** For these acts of omission and commission, M/s. e-Infochips appears to be liable to penalty under Section 112(a) of the Customs Act, 1962 in as much as they have rendered the goods liable for confiscation under Section 111(o) of the Customs Act, 1962 and they have intentionally made and used false and incorrect declaration / statements/ documents to evade payment of legitimate Customs duties as discussed in the preceding paras.

**16.** As narrated in above paras, it appears that M/s e-Infochips have indulged themselves in wilful mis-declaration of the items i.e. “EPAC Power Supply Slotted Plates, Aluminium Plate – UDU Unit/ UDU Unit with Battery, Sheet Metal Cover UDU and 3<sup>rd</sup> Eye Cam V4 Unit” declared as falling under CTHs 76061190,82057000 and 85299090 claiming duty foregone rate of 7.5%/10%/15% Duty and thereby rendered themselves liable for penalty under Section 112 of the Customs Act, 1962 for wrongly declaring the chapter

head not included in the Annexure – I of the LUT of their raw material EPAC Power Supply Slotted Plates, Aluminium Plate – UDU Unit/ UDU Unit with Battery, Sheet Metal Cover UDU and 3<sup>rd</sup> Eye Cam V4 Unit.

**17.** In view of the above facts, it appears that M/s. e-Infochips had wrongly availed the benefit of Concessional rate of Duty under Notification No. 52/2003 read with the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 for their items i.e. "EPAC Power Supply Slotted Plates, Aluminium Plate – UDU Unit/ UDU Unit with Battery, Sheet Metal Cover UDU and 3<sup>rd</sup> Eye Cam V4 Unit" declared as falling under CTHs 76061190, 82057000 and 85299090 not included in the Annexure – I of the LUT claiming Duty foregone rate of 7.5%/10%/15% duty with an intent to evade payment of appropriate Customs Duty on these products at the time of their import. By their act of wilful wrong declaration, they appear to have contravened the following provisions of the Customs Act, 1962.

**18.** As per Section 46 (4) of the Customs Act, 1962, the Importer has to make true declaration with regard to the contents of the Bill of Entry. However, M/s. e-Infochips, wilfully declared CTH not included in their Annexure – I of their LUT for their raw material i.e. "EPAC Power Supply Slotted Plates, Aluminium Plate – UDU Unit/ UDU Unit with Battery, Sheet Metal Cover UDU and 3<sup>rd</sup> Eye Cam V4 Unit" falling under CTHs 76061190, 82057000 and 85299090 claiming duty foregone rate of 7.5%/10%/15% duty, in the Bill of Entry details as per Annexure-A (of the Show Cause Notice) involving value of Rs. 7,79,71,225/- and therefore Duty to the tune of Rs. 2,84,48,780/- is liable to be recovered from them under the provisions of Notification No. 52/2003- Customs read with Section 143 of the Customs Act, 1962 and Rule 8 of the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.

**SHOW CAUSE NOTICE:**

**19.** For the aforementioned reasons, M/s. e-Infochips Pvt. Ltd. (100 % EOU) 303, Parishram Building, Mithakhali Six Road, Navrangpura, Ahmedabad was issued a Show Cause Notice vide F.No. VIII/10-61/EPC-Paldi/O&A/HQ/2023-24 dated 08.09.223 wherein they were called upon to show cause to The Additional Commissioner of Customs, as to why:-

(a) Imported goods "EPAC Power Supply Slotted Plates, Aluminum Plate – UDU Unit/ UDU Unit with Battery, Sheet Metal Cover UDU and 3<sup>rd</sup> Eye Cam V4 Unit" valued at **Rs. 7,79,71,225/-** involving total Customs Duty of **Rs. 2,84,48,780/-** imported by M/s. e-Infochips Pvt. Ltd. (as mentioned in Annexure-A (attached to the Show Cause Notice) should not be held liable to **confiscation under Section 111 (o)** of the Customs Act, 1962;

(b) **Duty of Rs.2,84,48,780/- (Rupees Two Crores Eighty Four Lakhs Forty Eight Thousand Seven Hundred and Eighty only)** (as mentioned in Annexure-A (attached to this Show Cause Notice) should not be demanded and recovered from them under the provisions of **Notification No.52/2003-Customs read with Section 143 of the Customs Act, 1962 and the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017;**

(c) **Interest** at an appropriate rate as applicable on the Customs Duty evaded as mentioned in (b) above, should not be recovered from them under the provisions of **Notification No.52/2003-Customs read with Section 143 of the Customs Act, 1962 and the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017;**

(d) **Penalty** should not be imposed upon them under **Section 112 (a) & (b) of the Customs Act, 1962;**

(e) **Condition of B-17 Bond should not be enforced** to recover the above liabilities.

**SUBMISSION:**

**20.** In response to the the Show Cause Notice dated 08.09.2023, M/s e-Infochips Pvt. Ltd, presented a submission on 07.12.2023. The main contentions of M/s e-Infochips is as under:

**20.1.** That they do not agree with allegations levelled in impugned SCN and they submitted that they are 100% EOU constituted under the provisions as laid down in Chapter 6 of Foreign Trade Policy (hereinafter referred to as FTP) read with Hand of Book of Procedures to Foreign Trade Policy (hereinafter referred to as HBP to FTP).

**20.2.** They would like to draw attention to Para. 6.01 of FTP which provides for Export and Import of Goods by EOU, the relevant sub- paras. of said Para 6.01 are reproduced hereunder for the ease of your reference:

(i) *An EOU / EHTP/ STP/ BTP Unit may import and / or procure, from DTA Or bonded warehouses in DTA / international exhibition held in India, all types of goods, including capital goods, required for its activities, provided they are not prohibited items of import in the ITC (HS) subject to conditions given at para (i) & (m) below. Any permission required for import under any other law shall be applicable. Units shall also be permitted to import goods including capital goods required for approved activity, free of cost or on loan / lease from clients. Import of capital goods will be on a self-certification basis. Goods imported by a unit shall be with actual user condition and shall be utilized for export production.*

(ii) *The imports and/ or procurement from bonded warehouse in DTA or from international exhibition held in India shall be without payment of duty of Customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 and additional duty, if any, leviable thereon under Section 3(1), 3(3) and 3(5) of the said Customs Tariff Act. Such imports and/ or procurements shall be made without payment of integrated tax and compensation cess leviable thereon under section 3(7) and 3(9) of the Customs Tariff Act, 1975 as per notification issued by the Department of Revenue and such exemptions would be available upto 31.09.2021.*

(iii) *The procurement of goods covered under GST from DTA would be on payment of applicable GST and compensation cess. The refund of GST paid on such supply from DTA to EOU would be available to the supplier subject to such Conditions and documentations as specified under GST rules and notifications issued there under. EOUs can also procure excisable goods falling under the Fourth Schedule of Central Excise Act, 1944 from DTA without payment of applicable duty of excise.*

(iv) *They submit that EOU/EHTP/ STP/ BTP units may import/procure from DTA, With or without payment of duties/taxes as provided at Para 6.01 (d) (i) and 6.01(d) (ii) above, certain specified goods for creating a central facility, Software EOU/ DTA units may use such facility for export of software.*

**20.3.** They submit that Para. 6.05 of FTP read with Para. 6.02 of HBP provides for execution of Legal Agreement (hereinafter referred to as LA) and that LA is an agreement between the Government and the EOU to abide by the policy provisions. They submit that one of the item under LA is the list of Raw Materials and Capital Goods permitted to be imported which are to be utilized for manufacturing of Export Products as permitted in Letter of Permission. They submit that such list of Raw materials and capital goods are illustrative and it doesn't necessarily mean to include all the raw material and capital goods that would be needed by the EOU. They further submit that with the technological and sectorial industrial advancement the raw materials and capital goods requirement also undergo change with the passage of time.

**20.4.** They submitted that it is alleged that they have obtained irregular Procurement certificate for following items namely:

- (a) EPAC Power supply slotted plates
- (b) Sheet Metal Cover UDC

- (c) 3rd Eye Cam V4 Unit
- (d) Aluminium Plate -UDC

**20.5.** They submitted that all of the above items are already therein the list of permitted items of raw material under Letter of Agreement however in some case the nomenclature of the item name have changed due to different commercial names used amongst various different region. They add that the end use of said items are same in manufacturing of the export products.

**20.6.** They also submitted the comparison of the name of above items as per permitted list of items as per LA and the name vide which the Procurement certificates had been issued to them for said items:

S. No.	Name as per list of permitted item as per LA	Name as per Procurement Certificate	Usage of the Product in Manufacturing Process
1	Power Supply Slotted EPAC	EPAC Power Supply Slotted plates	The EPAC power supply board is used in ATC (Advanced Traffic Controller) which is deployed at crossroads as part of intelligent traffic system in US
2	Enclosures & Parts	Sheet Metal Cover UDC	The sheet metal cover and aluminium plates are used for 3rd eye Cam 4 units which is standalone DVR being used for recording capabilities through our built-in SD card. It is the best fleet management system to observe your driver's behaviour, reduce accident costs. It gives you unmatched awareness of what's happening with your vehicles and drivers at all times in US market
3	Enclosures & Parts	Aluminium Plate UDC	
4	Camera Module	3rdEye Can V4 Unit	

**20.7.** They submit that the items allowed to procure duty free appended to LA is merely to see that no items of raw materials or capital goods which are not to be used for the export of goods manufactured by the EOU should be permitted. They thus, submit that even in case if some of the items of raw materials and capital goods procured by EOU which are not part of the list of permitted items of procurement as per LA but required for manufacture of export of goods then the same should also be allowed.

**20.8.** They submitted that there is no time limit provided for addition in list of raw materials or capital goods i.e. permitted item of procurement for duty free import of goods and the same can be amended from time to time to incorporate the additional requirements.

**20.9.** They submitted that there is no such condition in the LA where it is provided that the activity of procurement of raw materials or capital goods precedes the addition to the list of permitted items for procurement by EOU. They also submit that once the new raw material and/or capital goods are

incorporated in the LA then it is conclusive evidence that the same is to be used for the manufacture of export goods and any procurement of such goods that may have happened prior to amendment in LA should be ratified with the amendment to LA.

**20.10.** They submitted that as far as the item "3rd Eye Cam V4 unit" is concerned the same have been added into LA vide their application dated 28.03.2018. Noticees submit that as regard said item the only lapse that could be attached to the account of noticees is that said goods had been procured prior to addition of said item in LA.

**20.11.** They rely on the principle - "Substantive benefit should not be taken away due to mere procedural lapses". Noticees submit that said principle is evolved with the rudimentary idea that when there are trivial lapses then because of that trivial lapses the Substantive benefit which otherwise is allowable shouldn't be deprived off.

**20.12.** They place reliance on the decision of Apex Court in the case of Commissioner of C. Ex. New Delhi Vs. Hari Chand Shri Gopal [2010 (260) E.L.T. 3 (S.C.)], wherein the Hon'ble Supreme Court has occasioned to deal the doctrine of substantial compliance. The relevant extract of the decision is reproduced hereunder:

*"24. The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably expected of it, but failed or faulted in some minor or inconsequential aspects which cannot be described as the "essence" or the "substance" of the requirements. Like the concept of "reasonableness", the acceptance or otherwise of a plea of "substantial compliance" depends upon the facts and circumstances of each case and the purpose and object to be achieved and the context of the prerequisites which are essential to achieve the object and purpose of the rule or the regulation....*

*Substantial compliance means "actual compliance in respect to the substance essential to every reasonable objective of the statute" and the court should determine whether the statute has been followed sufficiently so as to carry out the intent of the statute and accomplish the reasonable objectives for which it was passed. Fiscal statute generally seeks to preserve the need to comply strictly with regulatory requirements that are important, especially when a party seeks the benefits of an exemption clause that are important. Substantial compliance of an enactment is insisted, where mandatory and directory requirements are lumped together, for in such a case, if mandatory requirements are complied with, it will be proper to say that the enactment has been substantially complied with notwithstanding the non-compliance of directory requirements. In cases where substantial compliance has been found, there has been actual compliance with the statute, albeit procedurally faulty. The doctrine of substantial compliance seeks to preserve the need to comply strictly with the conditions or requirements that are important to invoke a tax or duty exemption and to forgive non-compliance for either unimportant and tangential requirements or requirements that are so confusingly or incorrectly written that an earnest effort at compliance should be accepted. The test for determining the applicability of the substantial compliance doctrine has been the subject of a myriad of cases and quite often, the critical question to be examined is whether the requirements relate to the "substance" or "essence" of the statute, if so, strict adherence to those requirements is a precondition to give effect to that doctrine. On the other hand, if the requirements are procedural or directory in that they are not of the "essence" of the thing to be done but are given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not strict compliance."*

, in light of the above submissions, there is a difference in substantive and procedural provisions stipulated in legislations and mere procedural infraction cannot result into denial of substantive benefit granted under the statute and hence, they submit that assuming but without admitting the fact that the addition of items of raw material is required to be done in LA from time to time, even then the same is merely a procedural requirement and substantive benefit of duty should not be denied to them. They submit that the procedure to add the items of raw materials and capital goods are on self-declaration basis and does not require any approval from BOA. They further submit that it is undisputed fact that all such alleged as irregularly imported goods have been utilized for manufacture and they submit that procedure has been prescribed to facilitate verification of substantive requirement. As long as a fundamental requirement is met other procedural deviation can be condoned. They also refer and rely on decision in case of Mangalore Chemicals and Fertilizers Limited v. Deputy Commissioner- 1991 (8) TMI 83- (SC) wherein it was held that procedural infraction of Notification, Circular etc. are to be condoned if exports have already taken place and the law is settled now that substantive benefit could not be denied for procedural lapses.

**22.** They also present several case laws in their favour of their contention.

**23.** Noticees would like draw your kind attention to similar issue in Re Cipla Limited - 2013 (9) TMI 996 - Government of India wherein the rebate claim of duty paid on exported goods pertaining to 2 central excise invoices was disallowed since the applicant failed to submit duplicate copy of the invoice. The Government notes that the export of duty paid goods is not disputed by the Department in this case. As per para 8.3 of Part I of Chapter 8 of CBE&C Excise Manual of supplementary instructions one of the documents required to be enclosed with rebate claim is invoice issued under Rule 11 of Central Excise

**24.** They submit that there is no condition in Notification No. 52/2003- CUs. dated 31.03.2003 as amended from time to time, which requires for mentioning of each final product in the LOP. The exemption of duty free procurement of the inputs is allowed to "an EOU" and there is no requirement in the Notifications above that the EOU shall get the prior permission of the Development Commissioner. They submit that they had followed entire process of the Notifications. Thus, there is no violation of any condition of exemption notification. To support this contention, they refer and rely on the decision of Chandigarh Tribunal in the case of Dendyal Magaswargiya sahakari Soot Frini Ltd. Vs.CCE, Kolhapur cited as 2014-TIOL-1527-CESTAT, Mum, wherein it has been held that accrued vested right cannot be taken away merely because there is a delay in issuing the letter of permission by the Development Commissioner.

They also refer and rely on the decision of Chandigarh Tribunal in the case of Commissioner of C.Ex., Thane-1 Vs. Global Wool Alliance P. Ltd. reported in 2012 (278) ELT 249 (Tri. Mum.) and Commissioner of Cus. &C. EX., Guntur Vs. Vijaya Shrimp Farms Ltd. reported in 2014 (300) ELT 564 (Tri. Bang.) and Arjun Industries Ltd. Vs. Commissioner of Central Excise, Jaipur reported in 2005 (183) ELT 446 (Tri. Del.) to say that duty free import of capital goods and inputs allowed in terms of EOU Scheme and whey validity of Letter of Permission (LOP) was extended by export promoting authorities namely, Assistant Development Commissioner, Noida, Revenue authorities also required to grant permission to appellant for harmonious functioning of EOU Scheme and duty demand in respect of imported machinery not sustainable.

**25.** They submit that duty can be demanded in impugned case when there is any violation of the Condition of Exemption Notification under which goods have been procured duty free i.e. Notification No. 52/2003-Cus. dated 31.03.2003. They submit that it is abundantly clear that there is no violation of any of the condition of Notification No. 52/2003-CUs. dated 31.03.2003 and hence no duty can be demanded for alleged irregular procurement of goods.

**26.** They submit that without prejudice to whatever submitted hereinabove the alleged demand of duty is time barred. They refer to Section 28 of the Customs Act, 1962 which reads as under:

*Section 28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.-*

*(1) Where any duty has not been levied or not paid or short-levied or short-paid or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any wilful mis-statement or suppression of facts, =*

*(a) the proper officer shall, within two years from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:*

*Provided that before issuing notice, the proper officer shall hold pre- notice consultation with the person chargeable with duty or interest in such manner as may be prescribed;*

*(b) the person chargeable with the duty or interest, may pay before service of notice under clause (a) on the basis of, -*

*(i) his own ascertainment of such duty; or*

*(ii) the duty ascertained by the proper officer, the amount of duty along with the interest payable thereon under section 28AA or the amount of interest which has not been so paid or part-paid.*

*Provided that the proper officer shall not serve such show cause notice, where the amount involved is less than rupees one hundred.*

Explanation 1.-For the purposes of this section, relevant date means,-

- (a) in a case where duty is not levied or not paid or short-levied or short- paid, or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;
- (b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re- assessment, as the case may be;
- (c) in a case where duty or interest has been erroneously refunded, the date of refund;
- (d) in any other case, the date of payment of duty or interest.

[Emphasis supplied...]

**27.** Based on above, they **submit that subject demand of duty is barred by limitation** as alleged demand of duty pertains to period from 05-Feb-2018 to 16-Apr-2018 for which the time limit to demand the duty under Section 28 of the Customs Act, 1962 has already lapsed.

**28.** They submit that they had procured all the inputs on the strength of Procurement certificates and all the procurement of their inputs are in the knowledge of the Department. To support their contentions, they refer and rely on the decision of Moser Baer India Ltd. vs. CC reported in 2015 (325) ELT 236 (SC) and CCE, Vs. Emcure Pharmaceuticals Ltd. reported in 2014 (307) ELT 180 (Tri). They also refer and rely on the decision of the Apex Court in the case of Blue Star Ltd. reported in 2015 (318) ELT 11 (SC).

**29.** They submit that the questions of any suppression or non-disclosure of any material fact on the part of them don't arise and by any imaginary stretching of mind also it was not possible for them to do so.

**30.** They submit that without prejudice to the submissions in the foregoing paragraphs, it is submitted that on perusal of the facts of the Case it is amply clear that appellants had never submitted incorrect material or false documents to the department. The Department had always been in possession of all the factual details, documents and in knowledge of all material facts and there has nothing that had been concealed from them and hence no penalty is imposable on the appellants under Section 112 (a) & (b) of the Customs Act, 1962.

**31.** They submit that without prejudice to the submissions in the foregoing paragraphs, it is submitted that the case involves interpretations of the provisions of the Customs Act, 1962, Customs Tariff Act, 1975 and Central Excise Act. As already submitted, they acted in bonafide belief. It has been held by the Hon'ble Customs, Excise & Service Tax Appellate Tribunal in a large

number of cases that no penalty is imposable in cases involving interpretation of the statutory provisions, Some of these Cases are as under:

**32.** In view of the foregoing, they prayed:

**32.1.** to set aside the impugned SCN issued vide F. No. VIII/10-61/EPC-Paldi/O&A/HQ/2023-24 dated 08.09.2023:

**32.2.** to set aside the order for Confiscation under Section 111 (o) of the Customs Act, 1962;

**32.3.** to set aside the demand of duty of Rs.2,84,48,780/- (Rupees Two Crores Eighty Four Lakhs Forty Eight Thousand Seven Hundred and Eighty only) under the provisions of Notification No.52/ 2003- Customs read with Section 143 of the Customs Act, 1962 and the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017:

**32.3.** to set aside the demand of Interest under the provisions of Notification No.52/2003-Customs read with Section 143 of the Customs Act, 1962 and the Customs (Import of Goods at Concessional Rate of Duty) Rules,2017:

**32.4.** to set aside the demand for Penalty under Section 112 (a) & (b) of the Customs Act, 1962;

**32.5.** to set aside the order for enforcement of B-17 Bond.

**33.** They also requested for the opportunity to be heard before the matter is decided.

#### **PERSONAL HEARING:-**

**34.** Personal hearings were granted to the Noticee on 14.03.2024. However, the Noticee vide their letter dated 12.03.2024 requested for adjournment of the date of personal hearing by atleast a week.

**35.** As requested by the Noticee, another personal hearing was given to them on 19.03.2024. The Noticee, through their Authorised Representative appeared for personal hearing on 19.03.2024. The authorised representative stated that the apparent discrepancy pointed out in the Show Cause Notice is due to generic name of the items. In annexure to the LUT, generic names of the equipment were used instead of the specific names i.e. "Power Supply Slotted Plates" instead of "EPAC power Supply"; "Camera Module" instead of "3<sup>rd</sup>

EyeCam V4 Unit"; "Enclosure and Parts" instead of "Sheet Metal Core UDC" and "Aluminium Plate UDC". There was no intention on part of the Noticee to evade duties by way of mis-declaration on their parts.

**DISCUSSION AND FINDINGS:-**

36. I find that in the instant matter the issue before me is to decide whether:

(a) Goods Imported by M/s E-Infochips Pvt. Ltd i.e. "EPAC Power Supply Slotted Plates, Aluminum Plate – UDU Unit/ UDU Unit with Battery, Sheet Metal Cover UDU and 3<sup>rd</sup> Eye Cam V4 Unit" valued at **Rs. 7,79,71,225/-** involving total Customs Duty of **Rs. 2,84,48,780/-** should be held liable to **confiscation under Section 111 (o) of the Customs Act, 1962;**

(b) **Duty of Rs.2,84,48,780/- (Rupees Two Crores Eighty Four Lakhs Forty Eight Thousand Seven Hundred and Eighty only)** should be demanded and recovered from them under the provisions of **Notification No.52/2003-Customs read with Section 143 of the Customs Act, 1962 and the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017;**

(c) **Interest** at an appropriate rate as applicable on the Customs Duty evaded as mentioned in (b) above, should be recovered from them under the provisions of **Notification No.52/2003-Customs read with Section 143 of the Customs Act, 1962 and the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017;**

(d) **Penalty** should be imposed upon them under **Section 112 (a) & (b) of the Customs Act, 1962;**

(e) **Condition of B-17 Bond should be enforced** to recover the above liabilities.

37. I find that an audit had been undertaken by the Indian Audit and Accounts Department, Ahmedabad , on the subject matter of "Monitoring of EOU & SEZ by the Development Commissioner" under Specific Compliance Audit (SSCA) at Customs, EPC, Paldi covering period from 2017-18( January, 2018 to 2019-20 . During the course of audit, it was observed vide Para, which reads as:

**"HM No. SSCA/Monitoring EOU&SEZ/2020-21 dated 31.12.2020 -**

*M/s. e-infochips, 303, Parishram Building, Mithakhali Six Road, Navrangpura, Ahmedabad – holding LOP No. KASEZ/100%EOU/N/113/2004-05, dated 6.12.2004 issued by the Jt. Development Commissioner, O/o the Development Commissioner, KASEZ, Gandhidham, vide letter KASEZ/100%EOU/II/52/01-02/vol.II-3387, dated. 21.06.2019, has given clarification regarding import of capital goods under para No.6.01 (d) of FTP 2015-20, as under:*

*As per para of APPENDIX- 6E (FORM OF LEGAL AGREEMENT FOR EOU/EHTP/STP/BPT), the unit has been permitted to import/indigenously plant and machinery, raw materials , components, spares and consumables free of import / Central Excise duty as per the details given at ANNEXURE -I:*

*From the above para, it is clear that the permission from the Development Commissioner's (D.C.) office is required for import/ indigenously purchase of Plant and Machinery under Para 6.01(d) of FTP 2015-20.*

*Hence, EOs are required to take permission from the Development Commissioner's office for import/ indigenously purchase of Capital Goods whenever required. However, after attestation of list in LUT, they may import/ procure Capital Goods on self -certification basis.*

*During the test check of records, it was noticed that the importer had filed for procurement certificate vide intimation Nos.128/2017-18 dated 05.02.2018, 129/17-18 dated 05.02.2018, 327/17-18 dated 28.02.2018, 413/17-18 dated 16.03.2018, 462/17-18 dated 23.03.2018, 504/17-18 dated 27.03.2018, 84/18-19 dated 16.04.2018 and 94/17-18 dated 02.02.2018 for import of **EPAC Power Supply Slotted Plates CTH 76061190, Aluminium Plate – UDU Unit/ UDU Unit with Battery CTH 76061190, Sheet Metal Cover UDU CTH 82057000 and 3<sup>rd</sup> Eye Cam V4 Unit CTH 85299090** having Assessable Value of Rs. 7,81,54,587/- and duty forgone of Rs. 2,39,41,145/- . The Procurement Certificate was issued by Assistant/Dy. Commissioner, Custom Division, Paldi, Ahmedabad and intimation was sent to the Superintendent of Customs, MEPZ-SEZ, Tambaram, Chennai. On verification of the Procurement Certificate it is observed that Goods and the CTH was not shown in Annexure-I of Legal Agreement issued by Development Commissioner, KASEZ. As per above said provision that the unit has been permitted to import goods as per given details in Annexure -I of LUT, however, these goods were not mentioned in Annexure -I. This has resulted in irregular issuance of*

*Procurement Certificate having assessable value of Rs.78154587/- and duty forgone of Rs.23941145/-.....”*

**38.** I find that 100% EOU scheme is formulated by the Government of India and as detailed in Chapter 6 of Foreign Trade Policy 2015-2020 and Hand Book of Procedures 2015-2020 regarding operations of 100% EOU. For proper operations of 100% EOU, Central Board of Indirect Taxation (CBIC) has issued Notification No. 52/2003- Customs dated 31.03.2003 for Customs duty free procurement of goods, manufacture and clearances etc. with following conditions:

- (1) The importer has been authorised by the Development Commissioner to establish the unit for the purposes specified in clauses (a) to (e) of the opening paragraph of this Notification;*
- (2) The unit carries out the manufacture, production, packaging or job-work or service in Customs bond and subject to such other condition as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs or Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be, (hereinafter referred as the said officer) in this behalf;*
- (3) The unit executes a bond in such form and for such sum and with such authority, as may be specified by the said officer, binding himself,*
  - (a) to bring the said goods into the unit or and use them for the specified purpose mentioned in clauses (a) to (e) in the opening paragraph of this Notification;*
  - (b) to maintain proper account of the receipt, storage and utilization of the goods;*
  - (c) to dispose of the goods or services, the articles produced, manufactured, processed and packaged in the unit | or the waste, scrap and remnants arising out of such production, manufacture, processing or packaging in the manner as provided in the Export and Import Policy and in this Notification.*

**39.** I find that the permission of the Development Commissioner, is required for the import/indigenous purchase of Plant and Machinery/ raw materials as per the proviso made under Para 6.01(d) of FTP – 2015-20. As per the said proviso, it is mandatory for the EOU, who should first take the necessary permission of the Development Commissioner, and attestation of the list in LUT, prior to import or procurement of raw materials /capital goods by the EOU.

**40.** I find that as per provision contained in Para 6.01(d) of FTP, 2015-20, M/s e-Infochips was permitted to import goods as per details mentioned in Annexure-I of the Legal Agreement filed with the Development Commissioner, KASEZ.

**41.** I find that in terms of Condition No.3 of the said Notification No. 52/2003-Customs dated 31.03.2003, EOU are required to furnish/execute a B-17 Bond (General Surety/ Security) as notified vide Notification No. 6/98-CE(NT) dated 02.03.1998 which is revised and updated with reference to GSTIN, as per present FTP provisions and Notification No. 52/2003-Customs dated 31.03.2003 vide Notification No. 01/2018-CE (NT) dated 05.12.2018. This is an all-purpose Bond for operations of EOU including duty free import or procurement of imported goods as specified in Annexure-I to the said Notification, Excise duty free domestic procurement, provisional assessment, export without payment of duty, movement of goods for job work and return, temporary clearances etc. I find that M/s. e-Infochips Pvt. Ltd, had executed B-17 Bond amounting to **Rs. 2,51,20,908/-** before the then jurisdictional Assistant Commissioner of Central Excise, Div- VI, Ahmedabad – South, vide their letter dated 28.12.2017 and the same was accepted on 08.01.2018. Another Bond of **Rs.1,98,62,388/-** was accepted by the Deputy Commissioner, Customs Division, Paldi, Ahmedabad, vide F.No. VIII/48-110/Cus/Paldi/einfo/T/17-18 on 13.04.2018.

**42.** I find that as per Board's Circular No. 50/2018-Customs dated 06.12.2018, the work related to EOU were to be handled by Customs Office, in whose jurisdiction the unit falls. In the instant case, the said unit - M/s e-Infochips had submitted letters regarding procurement and movement of imported goods to the Assistant/ Deputy Commissioner, Customs, Division Paldi, Ahmedabad and accordingly, based on the said intimations "Procurement Certificates" were issued by the jurisdictional Deputy Commissioner.

**43.** I find that M/s e-Infochips, on the strength of the procurement certificates (as mentioned in table below) obtained from the jurisdictional Customs authorities, had imported goods viz. EPAC Power Supply Slotted Plates, Aluminium Plate – UDU Unit/ UDU Unit with Battery, Sheet Metal Cover UDU and 3<sup>rd</sup> Eye Cam V4 Unit falling under CTHs 76061190, 82057000 and 85299090, respectively, valued at **Rs. 7,81,54,587/-**, without payment of duty to the tune of **Rs. 2,39,41,145/-**. Further, on receipt of the imported goods in accordance to Procurement, they had submitted letters of intimation along with documents, calculation sheet, proforma invoice etc.

44. I find that the details as per the procurement certificates obtained by the Importer are as under:

Description of Goods	Qty. (in units)	Value (in Rs.)	BCD @ (7.5 %)/10% (in Rs.)	SWS @ (2+1%)/ 10% (in Rs.)	IGST @18% (in Rs.)	Total Duty (in Rs.)
Epac Power Supply slotted plates	1200	171983	12899	387	33348	46634
Steel Metal Cover UDC	9000	586305	58631	5863	117144	181637
3 <sup>rd</sup> Eye Can V4 Unit	1000	19060064	1906006	190601	3808201	5904808
Aluminium Plate – UDU Unit and UDU Unit with Battery	3000	583667	43775	4378	113728	161880
3 <sup>rd</sup> Eye Can V4 Unit	500	9669639	966964	96696	1931994	2995654
EPAC Power Supply Slotted Plates	1000	146208	10966	1097	28489	40551
3 <sup>rd</sup> Eye Can V4 Unit	1000	19368669	1936867	193687	3669860	6000414
3 <sup>rd</sup> Eye Can V4 Unit	1500	28568052	2856805	85704	5671901	8614410
<b>Total</b>	<b>7,81,54,587</b>	<b>77,92,913</b>	<b>5,78,413</b>	<b>1,53,74,665</b>	<b>2,39,41,145</b>	

45. However, the details as per Bills of Entry filed by the importer are as under:

Description of Goods	Qty. (in units)	Value (in Rs.)	BCD @ (7.5 %)/10% (in Rs.)	SWS @ (2+1%)/ 10% (in Rs.)	IGST @18% (in Rs.)	Total Duty (in Rs.)
Epac Power Supply slotted plates	1200	173184	12989	1299	33745	48033
Steel Metal Cover UDC	9000	580500	58050	5805	115984	179839
3 <sup>rd</sup> Eye Can V4 Unit	1000	19177656	2876649	287665	4021554	7185867
Aluminium Plate – UDU Unit and UDU Unit with Battery	3000	588653	44149	4415	114699	163263
3 <sup>rd</sup> Eye Can V4 Unit	500	9598142	1439721	143972	2012730	3596423
EPAC Power Supply Slotted Plates	1000	148500	11138	1114	28935	41186
3 <sup>rd</sup> Eye Can V4 Unit	1000	19457656	2918649	291865	4080270	7290783
3 <sup>rd</sup> Eye Can V4 Unit	1500	28246933	3743402	374340	5825642	9943384
<b>Total</b>	<b>7,79,71,225</b>	<b>1,11,04,745</b>	<b>11,10,475</b>	<b>1,62,33,560</b>	<b>2,84,48,780</b>	

46. I find that from the documents viz. LOP, LOA, LUT, Procurement certificates , Invoices, etc. it comes to fore that the said unit –M/s. e-Infochips imported the goods as per Procurement Certificates which were not mentioned in the Annexure –I of the Legal Agreement (LUT) issued for the goods permitted to be imported. Since the procurement certificates empowers the importer to import the raw materials Duty free, which were also done accordingly vide Bills of Entry (as per Annexure –A of the Show Cause Notice), this resulted in irregular availment of Duty forgone to the tune of Rs.2,84,48,780/-.

47. I find that as per Appendix -6E of Appendices (as per Para – 6.02(a), 6.03(a)and 6.11 (a) of HBP – “Legal Agreement”, the said unit - M/s e-Infochips, as per Para -2, had accepted the terms and conditions vide their letter dated 23.05.2017 at the time of executing LUT with the DC/ Designated

Officer, wherein as per another condition quoted at para -3 of the said Appendix-6E, the said unit had been permitted to import / purchase goods as per details given at Annexure-I. Further , as per agreement mentioned at Para -6.11(a) of HBP, the unit has to submit quarterly and annual report in Annexure -III and Annexure -IV, respectively, wherein Annual report shall be duly certified by a Chartered Accountant/Cost Accountant. In the instant case, it appears that the said unit – M/s. e-Infochips failed to submit the said reports with jurisdictional Assistant/ Deputy Commissioner of Customs, EPC, Div- Paldi, Ahmedabad.

**48.** I find that as per condition made under Para 6.06 (c)(i) of HBP, the period of utilisation of goods , including Capital Goods , shall be co-terminus with the validity of the LOP. It is found that the said unit - M/s. e-Infochips had not submitted the data or quarterly or annual report in respect of utilisation of the imported goods in manufacture of their finished goods.

**49.** I find that the said unit did not submit Bills of Entry at the time of submission of intimation letters to the jurisdictional Asstt/ Dy. Commissioner, Customs, Division Paldi, regarding receipt of imported goods. The said Bill of Entries were obtained from the Development Commissioner, MEPZ SEZ, Tambaram, Chennai, vide email dated 19.05.2023 and 25.05.2023. Accordingly, a Show Cause Notice was issued to them.

**50.** Now, I proceed to discuss the contentions raised by the importer during the course of adjudication process. The discussion is as under:

**50.1.** I find that the importer has contended that the generic specifications were used instead of specific specifications. The same is procedural matter and thus, they are eligible for benefit of the instant Procurement certificate and that mere procedural infraction cannot result into denial of substantive benefit. They submit that they had procured all the inputs on the strength of Procurement certificates and all the procurement of their inputs are in the knowledge of the Department thus the questions of any suppression or non-disclosure of any material fact on their part does not arise. They have also referred various case laws to support their viewpoint.

**50.2.** In this regard I find that when Procurement Certificate was issued to the importer it was based on the submission by the importer themselves. The onus of giving correct description and particulars is on the importer and not the department. The use of different description i.e. generic or specific or any other, by the importer during the course of import or during the course of Legal Agreement (LA) or while acquiring the Procurement Certificates should be in consonance. Any discrepancy on their part is intentional. That the lapse occurred has been accepted by the importer, but the reason for discrepancy is ambiguous. During the course of Audit the same was pointed out to the importer. It was again pointed out in the Show Cause Notice as well. The contention of the importer that the compliance is procedural and not mandatory is misplaced as it involves the element of contract (agreement). Thus, the compliance is not procedural but substantial in nature being a mandatory requirement.

**50.2.1.** I find that it has been accepted by the importer that they have imported certain parts of import consignment which were added in the Annexure to the Legal Agreement at a later stage. It is evident that by doing so, the importer themselves knew that they had not followed the terms and conditions of Legal Agreement and imported the material without authority.

**50.3.** In view of the above discussion, I find that the importer is liable to pay Customs duty as they had imported the goods without payment of duty, which was not listed in Annexure-I to the Legal Agreement with Development Commissioner, K.A.S.E.Z.. and hence not eligible for exemption from payment of duty. The said duty is recoverable under the provisions of the Customs Act, 1962.

**50.4.** In this connection, I find that Hon'ble Supreme Court, in the case of M/s. Ganesh Metal Processors Industries vs U.O.I. (2003 (151) E.L.T. 21 (S.C.) has held that " The Notification had to be read as whole. If any of the condition laid down in the Notification is not fulfilled, the party is not entitled to the benefit of that notification."

**50.5.** In the case of Godrej & Boyce Mfg. Co. Ltd. Vs the Commissioner of Customs (Export), Mumbai, reported in 2013 (293) ELT 46, the Tribunal held as under :-

*“ Since it is the appellant who has claimed the benefit of duty exemption, the onus of leading evidence to prove eligibility to exemption lies on the appellant and not on the Revenue. As held by the Apex Court in the case of Mysore Metal Industries (1988 (36) ELT 369 (S.C.)) “the burden” is on the party who claims exemption, to prove the facts that entitled to him to exemption.” Suffice to say that the appellant has miserably failed to discharge this onus. ”*

**50.6.** I find that the importer has also contended that even in case if some of the items of raw materials and capital goods procured by EOU which are not part of the list of permitted items of procurement as per LA but required for manufacture of export of goods then the same should also be allowed. I find that this contention is irrational as it would mean that any type and description of raw material could be procured based on a Legal Agreement. The logic of procuring unlisted raw material or capital goods that are required for manufacture of goods by a EOU even if they are not part of permitted list is without merit and is in gross violation of the set procedure.

**50.7.** I find that the importer has submitted that duty can be demanded in impugned case when there is any violation of the Condition of Exemption Notification under which goods have been procured duty free i.e. Notification No. 52/2003-Cus. dated 31.03.2003. There is no violation of any of the condition of Notification No. 52/2003-CUS. dated 31.03.2003 and hence no duty can be demanded for alleged irregular procurement of goods.

**50.8.** I find that the importer on the first instance declared the imported goods, which was not listed in the Annexure-I to the Legal Agreement executed with the Development Commissioner, K.A.S.E.Z.. Further, by filing intimation for the said goods with the Customs authority, the importer made the Department to believe that whatever they have declared was correct and in conformity with Terms and Conditions agreed upon by them for such procurement. I find that the importer had imported the goods falling under C.T.H. 76061190 and 85299090 vide various Bills of Entry, without payment of duty, despite knowing it fully well that the goods for which Procurement Certificate was obtained, was not listed in Annexure-I to the Legal Agreement. Further, by importing such goods, the importer has violated condition of B-17 Bond executed with the jurisdictional Customs authority. Further, on the basis of the said Procurement Certificate, the importer also availed benefit of Noti. No. 52/2003-Cus. Dt. 31.03.2003, as amended vide Noti. No. 59/2017-Cus. Dt. 30.06.2017, by availing exemption from payment of appropriate duty on the goods procured. This resulted into wrong availment of benefit of Notification because goods falling under 76061190, 85299090 and

82057000 were not mentioned in the Annexure-I to the Legal Agreement dt. 25.05.2017.

**50.9.** In this connection, condition No. 8 of the above Agreement is relevant, which is re-produced here in below :-

*"The unit shall also be subject to the conditions stipulated and required for availing exemption from duty of Customs and Excise under the relevant Customs & Excise Notifications and any Customs duties / Excise duties and interest payable to / leviable by the Government for failure to fulfil such conditions shall also, without prejudice to any other mode of recovery be recoverable in accordance with the provisions of Section 142 of the Customs Act, 1962 / Section II of the C. Ex. Act, 1944 and rules made thereunder and / or from any payment due to the Unit from the Government."*

**50.10.** I find that it is the responsibility of the importer to correctly classify, determine and pay the duty applicable in respect of the imported goods. M/s. E-Infochips have subscribed to a declaration as to the truthfulness of the contents of the Bills of Entry in terms of Section 46(4) of the Customs Act, 1962 and by above omission and commission, they have violated provisions of Section 46(4) also.

**50.11.** The importer has contended that Procurement Certificate was issued by the Department and accordingly they had filed B/E. While reading between the lines, I find that P.C. was issued only on the basis of Intimation (Declaration) submitted by the Importer and the said Intimation was containing the goods which were not allowed to import by availing the benefit of duty exemption.

**50.12.** Further, any contention of the importer regarding the wrong mention of C.T.H. as typographical error, is also not sustainable. It is the importer who is liable to ensure that he scrupulously follow each and every condition of the Notification, benefit of which he intends to avail.

**50.13.** I find that several case laws have been cited by the importer in their submission. However, I find that the ratio of case laws cited by them in their submissions are not squarely applicable in this case.

**50.14.** I find that the importer has contended that the Show Cause Notice takes into account the matter that is time barred under section 28 of the Customs Act, 1962 and submit that subject demand of duty is barred by limitation. However, I find that the demand in the instant matter has not been made under section 28 of the Customs Act, 1962. The demand has been made under the provisions of Notification no. 52/2003-Customs read with Section 143 of the Customs Act, 1962 and Customs (Import of Goods at Concessional Rate

of Duty) Rules, 2017. Thus, the contention of the importer regarding the demand of duty being time barred is misplaced and lacks merit.

**51.** I find that the department is within right to enforce bond as provided under Section 143 of the Customs Act, 1962. The section is reciprocated as under:

***"Section 143. Power to allow import or export on execution of bonds in certain cases. -***

*(1) Where this Act or any other law requires anything to be done before a person can import or export any goods or clear any goods from the control of officers of customs and the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] is satisfied that having regard to the circumstances of the case, such thing cannot be done before such import, export or clearance without detriment to that person, the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] may, notwithstanding anything contained in this Act or such other law, grant leave for such import, export or clearance on the person executing a bond in such amount, with such surety or security and subject to such conditions as the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] approves, for the doing of that thing within such time after the import, export or clearance as may be specified in the bond.*

*(2) If the thing is done within the time specified in the bond, the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] shall cancel the bond as discharged in full and shall, on demand, deliver it, so cancelled, to the person who has executed or who is entitled to receive it; and in such a case that person shall not be liable to any penalty provided in this Act or, as the case may be, in such other law for the contravention of the provisions thereof relating to the doing of that thing.*

*(3) If the thing is not done within the time specified in the bond, the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] shall, without prejudice to any other action that may be taken under this Act or any other law for the time being in force, be entitled to proceed upon the bond in accordance with law."*

**52.** The Show Cause Notice has also proposed for confiscation of imported goods under Section 111(o) of the said Act. The said provision reads as under :-

*" (o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer; "*

**53.** I find that in terms of Section 46(4) of the said Act, the importer was required to make declaration as regards the truth of contents of the Bill of Entry submitted for assessment of Customs duty but they have contravened the provisions of Section 46(4) in as much as they have mis-declared the goods imported and thereby wrongly availed benefit of exemption Notification knowingly and intentionally to evade payment of Customs duty. Accordingly, the importer has made willful mis-statement about the goods imported. Thus, I find that they have violated provisions of Section 46(4) of the said Act. All these acts on the part of the importer have rendered the imported goods, covered in the Show Cause Notice, liable to confiscation under Section 111(o) of the said Act.

54. As the impugned goods are found to be liable to confiscation under Section 111(o), I find it necessary to consider as to whether redemption fine under Section 125(1) is liable to be imposed in lieu of confiscation in respect of the imported goods, which are not physically available for confiscation. The Section 125(1) of the said Act reads as under :-

*"125. Option to pay fine in lieu of confiscation.—*

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

55. In this connection, I rely on the decision in the case of Weston Components Ltd. Vs. Commr. of Customs, New Delhi (2000 (115) E.L.T. 278 (S.C.)). In this case, it was held that :-

*"Redemption fine imposable even after release of goods on execution of bond - Mere fact that the goods were released on the bond would not take away the power of the Customs Authorities to levy redemption fine if subsequent to release of goods import was found not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods - Section 125 of Customs Act, 1962."*

56. In view of the above, I find that redemption fine under Section 125(1) is liable to be imposed in lieu of confiscation in respect of the imported goods, which are not physically available for confiscation.

57. The Notice also proposes to impose penalty on the importer under Section 112(a) & (b) and Section 114AA of the said Act.

57.1 Section 112 of the said Act reads as under :-

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

*(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, to a penalty [not exceeding the duty sought to be evaded on such goods or five thousand rupees], whichever is the greater;

(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.]

**57.2** I find that the importer has rendered himself liable to penalty under Section 112 in view of the omission and commission discussed herein above.

**57.3** Section 114AA of the said Act reads as under :-

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

**57.4** I find that the importer has deliberately and knowingly declared and imported the goods which they were not allowed to. Thus, they have rendered themselves liable for penal action as provided in Section 114AA of the said Act.

**In view of the foregoing discussions and findings, I pass the following Order:-**

**ORDER**

(i) I hold imported goods viz. “EPAC Power Supply Slotted Plates, Aluminium Plate- UDU Unit/ UDU Unit with Battery, Sheet Metal Cover UDU and 3<sup>rd</sup> Eye Can V4 Unit” valued at **Rs. 7,79,71,225/- (Rs Seven Crores Seventy Nine Lakhs Seventy One Thousand Two Hundred and Twenty Five Only)**, involving total Customs duty of Rs. 2,84,48,780/- (Rs. Two Crores Eighty Four Lakhs Fourty Eight Thousand Seven Hundred and Eighty Only), imported by M/s. E-Infochips Pvt. Ltd., as liable to confiscation under Section 111(o) of the Customs Act, 1962. However, I allow the same to be redeemed on payment of redemption fine of Rs. 28,00,000/- (Rupees Twenty-Eight Lakhs Only) , as provided under Section 125(1) of the Customs Act, 1962.

(ii) I confirm the demand and order the recovery of duty of **Rs. 2,84,48,780/- (Rupees Two Crores Eighty Four Lakhs Fourty Eight Thousand Seven**

**Hundred and Eighty Only)** under provisions of Notification 52/2003-Customs read with Section 143 of the Customs Act, 1962 and Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017;

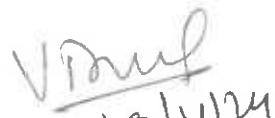
(iii) I Order recovery of interest on the duty amount at (ii) above, under Section 28AA of the Customs Act, 1962 from M/s. E-Infochips Pvt. Ltd.;

(iv) I impose penalty of Rs. 28,44,878/- (Rupees Twenty-Eight Lakhs Fourty-Four Thousand Eight Hundred and Seventy Eight Only) under Section 112(a) & (b) of the Customs Act, 1962, on M/s. E-Infochips Pvt. Ltd;

(v) I impose penalty of Rs. 20,00,000/- (Rupees Twenty Lakhs Only ) under Section 114AA of the Customs Act, 1962, on M/s. E-Infochips Pvt. Ltd.;

(vi) I order to invoke The Bond furnished by M/s. E-Infochips Pvt. Ltd. for recovery of the above mentioned confirmed dues.

40. 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.

  
18/4/24  
(Vishal Malani)  
**Additional Commissioner**

DIN: 20240471MN000000EF36

F.No. VIII/10-61/EPC-Paldi/O&A/HQ/2023-24

Date: 18.04.2024

To,  
M/s. E- Infochips Pvt. Ltd, 100% EOU,  
303, Parishram Building, Mithakhali Six Road,  
Navrangpura, Ahmedabad – 380006

**Copy to :-**

1. The Principal Commissioner, Customs Commissionerate, Ahmedabad, for information please.
2. The Deputy Commissioner, Customs Division, Paldi, Ahmedabad – 380 007
3. The Joint Development Commissioner, K.A.S.E.Z., Kandla – 370 201
4. The Dy. Commissioner (Task Force), Customs Hq., A'bad
5. The Asstt. Commissioner (R.R.A.), Customs Hq., A'bad
6. Superintendent (Systems), Customs, Ahmedabad for uploading on website
7. Guard File.