



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,
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नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
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DIN – 20250571MN0000823304

क	फ़ाइल संख्या FILE NO.	S/49-166/CUS/AHD/23-24
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	AHD-CUSTM-000-APP-049-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	30.05.2025
ड	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order – In – Original No. 132/ADC/VM/O&A/2022-23, dated 17.03.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	30.05.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Satkul Enterprises Ltd, Plot No. 124, Sub Plot No. 03, B/s. Rajni Estate, Rakhial, Ahmedabad – 380 023



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 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मर्दों के शीर्ष के अधीन आता है में रु. 200/- (रूपए दो सौ मात्र)या रु.1000/- (रूपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां। यदि शुल्क, मांगा गया 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 :
	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ
	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016
	2 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 रुपए या उससे कम हो तो एक हजार रुपए.
(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 रुपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पाँच हजार रुपए
(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 रुपए से अधिक हो तो; दस हजार रुपए.
(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.



कृपया निम्नलिखित अधिकारी को अपील के साथ रुपये 1000.00 एवं दंड विवाद में है, या दंड के %10 अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।



ORDER-IN-APPEAL

M/s Satkul Enterprises Ltd, Plot No. 124, Sub Plot No. 03, B/s. Rajni Estate, Rakhial, Ahmedabad – 380 023 [hereinafter referred to as 'the Appellant'] has filed this Appeal against O-I-O No 132/ADC/VM/O&A/2022-23, dated 17.03.2023 [hereinafter referred to as 'the impugned order'] passed by Additional Commissioner Customs, Ahmedabad [hereinafter referred to as 'the adjudicating authority'].

2. Facts of the case, in brief, the Appellant had filed 6 Bill of Entry mentioned in Table-A hereunder for clearance of the goods viz. Cobalt Base Bare Cast Rods for Home consumption at the ICD Khodiyar. Details of Bill of Entry, Assessable Value, duty paid and demanded is mentioned in the Table-A as under.

Table-A

Sr No.	Bill of Entry Nos	Bill of Entry date	Total Qtty [Kgs]	Total Assessable Value Rs.	Total Duty paid @ 2.5 % BCD -Rs.	alleged Total Duty payable @ 10 % BCD -Rs	Differential duty ordered to be recovered Rs.
1	2	3	4	5	6	7	8
1	7571105	02.05.2020					
2	8242112	22.07.2020					
3	8631415	29.08.2020					
4	9081592	06.10.2020	7386	1,88,40,802	40,02,728	58,36,880	18,34,152
5	9419089	02.11.2020					
6	9922406	11.12.2020					
Total			7386	1,88,40,802	40,02,728	58,36,880	18,34,152

2.1 Appellant has declared classification of imported Goods under CTH 81052010 of the First Schedule of Customs Tariff Act, 1975 attracting Basic Customs Duty @ 2.5 %. Appellant had availed benefit of exemption under Notification No. 50/2017-Cus dated 30.06.2017 (Sr No. 309A) and paid duty @ 2.5 % Adv. The said Bill of Entry were assessed by Faceless Assessment Group and cleared by Officers. However, the imported product appeared to be a finished product not classifiable under CTH 81052010 and also appeared to be Article of Cobalt attracting duty @ 10 % BCD. The proper customs officers have not accepted declared classification and issued SCN dated 25.04.2022 proposing to change classification of Goods from declared CTH 81052010 to proposed CTH 81059000 with proposals to recover differential duty Rs. 18,34,152/- with interest, redemption fine and penalty as mentioned in the SCN dated 25.04.2022. Appellant has also objected the proposals in the SCN dated 25.04.2022, filed interim reply asking for copies of documents/information. However, the adjudicating authority has passed the impugned order by changing classification of goods from declared CTH 81052010 to CTH 81059000 and the impugned order has also confirmed differential Customs duty Rs. 18,34,152/- with interest and imposed R/F of Rs. 15,00,000/- under Section 125 (1) of the Customs Act, 1962 and Penalty of Rs. 1,50,000/- under Section 112 (a) (ii) of the Customs Act, 1962.

3. Being aggrieved with the impugned order changing classification and against order of recovery of differential duty of Rs. 18,34,152/- with interest, Redemption




Fine and Penalty, the Appellant has preferred this appeal on various ground as mentioned in the grounds of Appeal.

PERSONAL HEARING:-

4. Personal hearing in the matter was held on 23.04.2025. Shri P. P. Jadeja, Consultant and Shri Kulbir Singh Bagga, Director of Appellant firm appeared for personal hearing. They reiterated submissions made in Appeal, filed synopsis and argued during the personal hearing. They also stated that impugned order is passed on assumptions and presumption. It is not sustainable in law in absence of the evidence for change of classification. Revenue has not discharged the burden cast on it for changing the classification. Classification is changed to CTH 81059000, as it attracted higher duty @ 10% Adv. Consequently, the differential duty of Rs. 18,34,152/- confirmed with interest, Redemption Fine and Penalty imposed are not justified / sustainable in this case. They requested to set aside differential duty demands, interest, R/F and penalties as well as to allow their appeal with consequential reliefs, in the interest of justice.

DISCUSSION & FINDINGS:-

5. I have carefully gone through the Appeal Memorandum as well as records of the case and submissions made on behalf of Appellant during hearing. The issues to be decided in this Appeal are whether the impugned Order passed by adjudicating authority is legal and proper or otherwise for changing classification of goods from declared CTH 81052010 to CTH 81059000 and confirmation of the differential Customs duty Rs. 18,34,152/- with interest, imposition of Redemption Fine of Rs. 15,00,000/- and Penalty Rs. 1,50,000/-.

5.1 Being aggrieved, the Appellant has filed the present appeal on 22.05.2023. In the Form C.A.-1, the date of communication of the Order-In-Original dated 17.03.2023 has been shown as 30.03.2023. Thus, the appeal has been filed within normal period of 60 days, as stipulated under Section 128 (1) of the Customs Act, 1962. The Appellant has submitted copy of the T.R.6 Challan No. 732, dated 16.05.2023 for Rs.1,37,561/- towards payment of pre-deposit calculated @ 7.5% of the disputed amount of differential duty of Rs. 18,34,152/- under the provisions of Section 129E of the Customs Act, 1962. As the appeal has been filed within the stipulated time-limit and with the mandatory pre-deposit, it has been admitted and being taken up for disposal on merits.

6. It is observed that Appellant imported goods i.e. "Cobalt Base Bare Cast Rods" with various sizes (GLC06 and GLC021 3.2 MMx1000MM/4.0 MMx1000MM) as mentioned in documents submitted and classified the goods under CTH 81052010. The goods imported by the Appellant are "Freely Importable" into India. There is no dispute on description, quality, quantity and value of imported goods, in question. The dispute is on classification of goods whether under CTH 81052010, as claimed by Appellant or under CTH 81059000, as held in the impugned order. There is no disputed also that



goods in question are covered under the Chapter 8105. The entry under chapter 8105 is reproduced for reference as under:-

CTH	Description of goods	unit	BCD
8105	COBALT MATTES AND OTHER INTERMEDIATE PRODUCTS OF COBALT METALLURGY; COBALT AND ARTICLES THEREOF, INCLUDING WASTE AND SCRAP		
810520	- Cobalt mattes and other intermediate products of cobalt metallurgy; unwrought cobalt; powders :	Kg	5 %
8105 20 10	--- Cobalt mattes and other intermediate products of cobalt metallurgy	Kg	2.5% **
8105 20 20	--- Cobalt unwrought	Kg	5 %
8105 20 30	--- Powders	Kg	5 %
8105 30 00	- Waste and scrap	Kg	5 %
8105 90 00	- Other	Kg	10 %

** Effective rates of Basic Customs duty revised @ 2.5% vide entry No. 390A inserted in Notification No. 50/2017-Cus. vide Notification No. 25/2019-Cus., dated 06.07.2019.

6.1 It is also observed that from the case records that Appellant has entered into Sales Contract with Overseas supplier for import of "Cobalt Base Bare Cast Rods" of various sizes at agreed terms and conditions of price as intermediate goods. Agreement between Appellant and supplier is reflected in the Proforma Invoices in Bill of Entry filed for clearance on self assessment on payment of applicable Basic Customs Duty @ 2.5% on the declared value. The goods were cleared from 05.02.2020 to 11.12.2020, SCN F. No. VIII/10-19/ ICD-Khod/0&A/HQ/2022-23 dated 25.04.2022 was issued for recovery of total differential Custom duty amounting to Rs. 18,34,152/- under Section 28 (1) of the Customs Act 1962, with interest u/s 28AA of Customs Act, 1962. R/f and Penalty was proposed in SCN.

6.2 The adjudicating authority has issued the impugned Order-in-Original No. 132/ADC/VM/O&A/2022-23, dated 17.03.2023, wherein the following orders have been passed:

- i. Rejected the declared classification of Bare Cast Rod of Cobalt imported by the said importer under 06 Bills of Entry as detailed in Table B of para 6 to the said SCN under Customs Tariff Heading No. 8105 2010 of the First Schedule of the Customs Tariff Act, 1975;
- ii. Classified the said imported goods, i.e. "Cobalt Base Bare Cast Rod" under Customs Tariff Heading No. 8105 9000 of the First Schedule of the Customs Tariff Act, 1975;
- iii. Ordered that the imported goods, i.e. "Cobalt Base Bare Cast Rod" covered under 06 Bills of Entry as per Table B of para 6 to the said SCN above imported by the said importer M/s. Satkul Enterprises Ltd., should be assessed to duty @ 30.980 % (B.C.D. @ 10% + S.W.S. @ 1% + I.G.S.T. @ 18%) under C.T.H. 81059000 and accordingly, he confirmed the demand and ordered to recover the total amount of differential Custom duties amounting to Rs. 18,34,152/- (Rupees Eighteen Lakh Thirty Four Thousand One Hundred and Fifty Two only)) under Section 28 (1) of Custom Act, 1962 by denying the benefit of Sr. No. 390A of Notification No. 50/2017-Cus. Dt. 30.06.2017.




iv. Ordered confiscation of the total quantity of 7386 Kgs. of said imported goods Cobalt Base Bare Cast Rod imported by the said importer and covered under 06 Bills of Entry as detailed in Table B of para 6 to the said SCN having declared value of Rs.1,88,40,8021- (Rupees One Crore Eighteen Lakh Forty Thousand Eight Hundred and Two only) under Section 111(m) and Section 111 (o) of Customs Act, 1962 for the act of willful mis-statement and intentional suppression of facts with regard to classification of the said goods by way of submitting false declaration leading to unlawful, illegal and wrong availment of concessional duty benefit under Sr. No. 390A of the Notification No. 50/2017-Cus Dt. 30.06.2017. As the goods were not available physically for confiscation, he allowed the Appellant to redeem the same on payment of redemption fine of Rs. 15,00,000/- (Rupees Fifteen Lakh only) under Section 125(1) of the Customs Act, 1962 in lieu of confiscation.

v. Ordered to recover the interest at an appropriate rate as applicable, on the Customs duty confirmed to the tune of Rs. 18,34,152/- from the importer M/s Satkul Enterprises Ltd under Section 28AA of Customs Act, 1962.

vi. Imposed a penalty of Rs. 1,50,000/- (Rupees One Lakh fifty Thousand only) on M/s Satkul Enterprises Ltd. in terms of the provisions of Section 112 (a) (ii) of the Customs Act, 1962;

6.3 It is observed from the impugned Order dated 17.03.2023 that the Appellant had also submitted interim replies to the Show Cause Notice on various occasions, specifically on 04.05.2022, 11.01.2023, 27.01.2023, 15.02.2023, and 27.02.2023. A brief summary of the interim replies is as under:-

- (i) At the outset they have already denied all allegations made in the SCN and that they have mis-declared goods imported under 06 Bills of Entry in question filed by them and intentional suppression of facts with regard to classification of the said goods by way of submitting false leading to unlawful, illegal and wrong availment of the duty benefit under Sr. No. 390A of Notification No. 50/2017-Cus. Dt.30.06.2017, in order to pay less customs duty to Govt. They strongly object to such a wild allegation without any such evidences.
- (ii) They desire to participate in adjudication and make/ file written submission against SCN and also seek opportunity of the personal hearing. However, they require some documents. They will also require cross examination under Section 138B of Customs Act, 1962 of all those officers who had examined/ assessed Bill of Entry, cleared goods and of Chartered Engineer Shri Bhasker G. Bhatt who has issued certificate No. BB/B-15.2/22/SEL/khodiyar dated 19.02.2022, which is also relied upon in this SCN for demanding differential duty.
- (iii) Speaking Order No. 18/DC/ICD/IMP/SATKUL/2022 dated 25.03.2022 for Re-Assessment Order in Bill of Entry No. 7381329 dated 05.02.2021 is unduly relied upon for the SCN. They bring to notice that they have already filed an Appeal before Commissioner (Appeals) Customs Ahmedabad on 29.04.2022

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against the said order dated 25.03.2022. Therefore, SCN may not be decided till final outcome of their Appeal.

- (iv) They desire to participate in adjudication and make/file written submission against SCN and also seek opportunity of the personal hearing. However, they requested copies of following documents and also information as shown below.
 - a) Test Memo for drawing samples drawn by customs of imported goods
 - b) Test Result of samples drawn & received by Customs for the said goods.
 - c) Copies of evidence relied upon for changing classification of goods
 - d) Copy of other documents/literature etc. relied upon in this SCN for changing classification of goods and demanding differential duty
 - e) NIDB data in respect of CTH No. 81052010.
- (v) They also desire that they may be allowed some more time to file reply to this SCN and opportunity of Personal Hearing after final outcome of their Appeal.

6.4 The Appellant has submitted that in paragraph 16.3 of the impugned order dated 17.03.2023, the adjudicating authority has stated that the Appellant was provided with the Test Memo, Test Results of the samples, and NIDB data, as requested. However, the "Test Memo for drawing of samples of the imported goods" pertains to Bill of Entry No. 2501177 dated 25.01.2021. In that case, proper customs officers conducted due examination, drew samples on 06.02.2021 vide Test Memo No. 1567 dated 06.02.2021, and received test reports accordingly. Subsequently, the goods were released on payment of Basic Customs Duty (BCD) at the rate of 2.5%, as declared and claimed by the Appellant. It is pertinent to note that the procedure followed for sample drawing in the said Bill of Entry was not followed in the Bill of Entry under dispute in the present case. Moreover, although the Appellant had specifically requested NIDB data for CTH 81052010, the adjudicating authority provided NIDB data only for CTH 81059000. The appellant, however, obtained the relevant NIDB data under the RTI Act, which clearly shows that Bills of Entry cleared under CTH 81052010 were assessed and finalized at a BCD rate of 2.5%, in line with the appellant's declared classification. Hence, it is evident that the adjudicating authority failed to provide relevant and complete information, did not follow the prescribed legal procedures for sample drawing, and incorrectly interpreted or relied upon documents. The order was passed ex parte, without allowing cross-examination or following the evidentiary procedure under Section 138B of the Customs Act, 1962. It is observed that no independent or cogent evidence has been adduced to justify the re-opening of the finalized assessment of the Bill of Entry in question. The Appellant has also strongly contended that the impugned Order-in-Original is based merely on assumptions and presumptions, which cannot be sustained under settled legal principles. Accordingly, the order deserves to be set aside in the interest of justice.

6.5 The Appellant also submitted that it is a well-settled principle of law that a Show Cause Notice (SCN) forms the foundation of any proceedings for recovery of duty. It is equally established that, in order to sustain such proceedings, the investigating authority must bring forth credible evidence, consolidate all relevant facts, and clearly

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articulate the allegations in the SCN, thereby affording the assessee a fair and adequate opportunity to respond in accordance with the principles of natural justice. Ex parte orders passed on the basis of assumptions and presumptions, without adherence to due process, cannot be upheld under settled legal jurisprudence. In the present case, the impugned order has failed to appropriately consider critical factual and legal aspects before arriving at its conclusions. I find that the principles of natural justice have been violated at multiple stages of the adjudication process. Accordingly, the impugned order is vitiated from the outset and is unsustainable in law. It deserves to be set aside on the grounds of serious procedural lapses and gross violation of the principles of natural justice.

6.6 It is observed that in this case, SCN is based on (1) Chartered Engineer Certificate Ref No. BB/B-15.2/22/SEL/Khodiyar dated 19.02.2022 by Shri Bhasker G. Bhatt (2) Order No. 18/DC/ICD/IMP/Satkul/2022 dt. 25.03.2022 passed by Deputy Commissioner of Customs, ICD, Khodiyar in Bill of Entry No. 7381329 dated 05.02.2022.

6.7 As regards (1) Report No. BB/B-15.2/22/SEL/Khodiyar dated 19.02.2022 given by Chartered Engineer Shri Bhasker G. Bhatt, relied upon by adjudicating authority, shows that:-

"COBALT BASE BARE CAST ROD' are finished end product suitable for the usage as a welding rod and has direct application as a Welding Rod".



6.8 The Appellant has submitted that the Chartered Engineer, Shri Bhaskar Bhatt, relied upon an article from the "Alibaba" website to form his opinion. However, it is contended that Shri Bhatt did not consider the complete version of the article. The Appellant has produced the full version of the referenced article, which provides additional details regarding the applications of the product, including its use in manufacturing valves, seal inserts, rotating sealing rings, drill head cutter edges, and other components. This information supports the classification of the imported goods as intermediate products, specifically "Cobalt Base Bare Rods," which are used by industrial consumers in the production of final goods. The opinion that the goods are suitable for use as welding rods does not, by itself, justify their classification as "Articles of Cobalt" under CTH 81059000. A mere potential application in welding does not alter the essential character of the goods as intermediate cobalt metallurgy products. The Chartered Engineer's opinion does not contradict the Appellant's position; rather, the adjudicating authority appears to have misread or misinterpreted the report to justify a change in classification from CTH 81052010 to CTH 81059000. Furthermore, it is observed that the Chartered Engineer's report dated 19.02.2022 has been applied retrospectively to the period from 02.05.2020 to 11.12.2020, which is both procedurally and legally incorrect. As per established procedure, samples must be drawn and tested in accordance with law, ideally from each consignment under dispute, particularly when classification or potential evasion of duty is in question.

6.9 Further it is observed that Appellant has on its own, after clearance of goods of Bill of Entry, obtained and produced another opinion after physical verification of goods from another independent Chartered Engineer Shri Atanu Kundu, which shows that :-

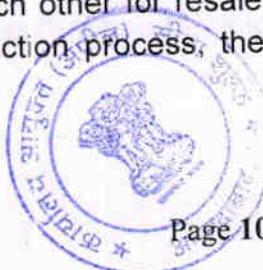
"I am of the opinion that the Cobalt Base Bare Cast Rod is an intermediate product of cobalt metallurgy"

6.10 It is also observed that Appellant has also produced another Report of the same Charter Engineer Shri Bhaskar G. Bhatt given to Customs at ICD-Khodiyar on 30.03.2024 in import of "Cobalt Base Bare Cast Rod" imported by M/s P J SUROTIA & CO for the similar goods, which shows that :-

"These imported Cobalt Base Bare Rods are an intermediate phase; because the application of these Cobalt based alloy rod is to offer hardening on the surface by Tungsten Inert Gas (TIG) brazing process."

6.11 It is further observed that, in addition to the three separate and independent reports submitted by Chartered Engineers in this matter, the Appellant has contended that the term "Intermediate Goods" is not defined under the Customs Act or its associated Rules. However, publicly available definitions such as those found on reputable sources including internet search results (e.g., Google) explain that intermediate goods are products used in the production of final or finished goods, also known as consumer goods. For instance, salt may serve as both a finished product (when consumed directly) and an intermediate good (when used as an input in food manufacturing). Intermediate goods are typically traded between industries for the purpose of further processing, resale, or incorporation into final products. They are also referred to as semi-finished products, as they are not consumed in their existing form but are instead transformed into part of a finished product. This commonly accepted definition supports the Appellant's classification of the goods in question as intermediate products of cobalt metallurgy, appropriately falling under CTH 81052010. Intermediate goods are products that are used in the production process to make other goods, which are ultimately sold to consumers.

- The intermediate goods are sold industry-to-industry for resale or to produce other products.
- Intermediate goods are typically used directly by a producer, sold to another company to make another intermediary good, or sold to another company to make a finished product.
- When calculating GDP, economists use the value-added approach with intermediate goods to guarantee that they are not counted twice—once when purchased, and once when the final good is sold.
- Intermediate goods are vital to the production process, which is why they are also called producer goods. Industries sell these goods to each other for resale or to produce other goods. When they are used in the production process, they are transformed into another state.

कार्यालय अधिकारी का विवरण निम्नांकित है। इसका उपयोग अधिकारी की विवरणों को अधिकारी के विवरणों से विभिन्न बताने के लिए किया जाता है।

- There are typically three options for use of intermediate goods. A producer may make and use their own intermediate goods. The producer may also produce the goods and then sell them, which is a highly common practice between industries. Companies buy intermediate goods for specific use in creating either secondary intermediate product or in producing finished good. Inevitably, all intermediate goods are either a component of the final product or are completely reconfigured during the production process.
- There are many intermediate goods that can be used for multiple purposes. Steel is an example of an intermediate good. It can be used in the construction of homes, cars, bridges, planes, and countless other products. Wood is used to make flooring and furniture, glass is used in the production of windows and eyeglasses, and precious metals like gold and silver are used to make decorations, housing fixtures, and jewelry. Intermediate goods can be used in production, but they can also be consumer goods. How it is classified depends on who buys it. If a consumer buys a bag of sugar to use at home, it is a consumer good. But if a manufacturer purchases sugar to use during the production of another product, it becomes an intermediate good.

6.12 Therefore, in the facts and circumstances of the present case, the Chartered Engineer's opinion dated 19.02.2022, which has been relied upon by the adjudicating authority, loses its evidentiary value. This is primarily because the said opinion was not subjected to the process of cross-examination during the proceedings, which is a fundamental requirement under the principles of natural justice. Moreover, the samples were not drawn in accordance with the prescribed legal procedure, and the report itself has not been accurately interpreted. Accordingly, the Chartered Engineer's report dated 19.02.2022 cannot form the sole basis for the demand of differential duty, particularly when the cross-examination of the Chartered Engineer, Shri Bhaskar G. Bhatt, was denied. In the absence of such cross-examination, the report fails to meet the evidentiary threshold required under Section 138B of the Customs Act, 1962. It is also noteworthy that the report, on its face, does not appear to be adverse to the Appellant. Hence, it cannot be relied upon to sustain the duty demand.

6.13 As regards the second relied-upon document, Speaking Order No. 18/DC/ICD/IMP/Satkul/2022 dated 25.03.2022, passed by the Deputy Commissioner of Customs, ICD, Khodiyar in respect of Bill of Entry No. 7381329 dated 05.02.2022, it is submitted that this document cannot be treated as valid "evidence" in the present case. The said speaking order reflects the unapproved and disputed views of an individual Customs officer, and it is currently under judicial scrutiny. Significantly, the aforementioned order has not been sustained. In fact, it was set aside by Order-in-Appeal No. AHD-CUSTM-000-APP-388-2023-24, dated 19.01.2024, issued by the then Commissioner of Customs (Appeals), Ahmedabad. The Appellate Authority remanded the matter back to the adjudicating authority (DC/AC, ICD) for fresh examination of the Appellant's submissions, with clear directions to pass a fresh speaking order after duly following the principles of natural justice and considering all relevant legal provisions and factual details. The remanded proceedings are still pending. In this context, it is a settled

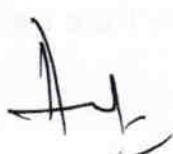


legal position that the views expressed by an individual adjudicating authority in an O-I-O do not carry conclusive evidentiary value, unless they are upheld by appellate forums, up to and including the Hon'ble Supreme Court, particularly in matters involving classification and interpretation of fiscal statutes. Reliance on such untested and one-sided views in the present impugned order is misplaced and unjustified. Accordingly, the impugned order cannot be sustained, as the charges against the Appellant are not substantiated with cogent and reliable evidence. The reliance placed on the two aforementioned documents as RUDs (Relied Upon Documents) lacks legal and evidentiary weight and is contrary to settled jurisprudence.

7. It is also a settled principle of law that the classification of goods must be determined by taking into account multiple relevant factors, including but not limited to the following aspects:

- (a) HSN with Explanatory Notes provide safe guide for interpretation of an entry for classification.
- (b) Importance to be given to the Act, Rules of Interpretation of the Tariff
- (c) Functional utility, design, shape and predominant usage have also to be taken into consideration
- (d) How the product is known in the market and its actual use will also be a relevant factor to be taken into account.

7.1 It is observed that the Hon'ble Supreme Court, in the case of *CCE v. D.L. Steels – 2022 (381) E.L.T. 289 (S.C.)*, has held that when the Revenue challenges the classification declared by the assessee, the burden of proof lies on the Revenue to establish that the item in question falls under the tariff heading as claimed by it. For the purpose of determining the correct classification of a product, several critical factors must be considered the nature of the product, its composition, its intended use, and how it is known and marketed in trade parlance. Additionally, the General Rules for the Interpretation of the Tariff must be applied appropriately. In particular, Rule 3 (a) of the General Rules provides that a specific entry shall prevail over a general entry. In the present case, the product in question has been specifically classified by the Appellant under CTH 81052010 as "intermediate products of cobalt metallurgy." This classification, being a specific one, cannot be altered to the more general category of "Articles of Cobalt" under CTH 81059000 without cogent evidence supporting such reclassification. The expression "Articles of Cobalt" is broad and general in nature. It refers to items made from cobalt that have a distinct identity and function in the market. However, the goods in question Cobalt Base Bare Cast Rods are not finished articles in themselves; rather, they are intermediate products used in industrial processes, particularly for surfacing base metals to enhance wear-resistance and hardness. These rods are melted and applied to components like valves, valve seats, and valve pins, thereby extending their service life. When applying the relevant Chapter Notes, Section Notes, and the General Rules of Interpretation, it becomes clear that these rods do not qualify as "Articles of Cobalt." The adjudicating authority, therefore, has erred in classifying Cobalt Base Bare Cast Rods under the residual heading CTH 81059000 as "Others" under Articles of Cobalt. The




Appellant has rightly contended that the goods are intermediate products of cobalt metallurgy, used for alloying or surfacing in industrial applications, and require further processing before final use. At the relevant time, Sub-heading Note 1 to Chapter 81 indicated that the definition of "Bars and Rods" under Note 1 to Chapter 74 applied *mutatis mutandis* to Chapter 81. Subsequently, this Note has been merged into the Section Notes of Section XV of the Customs Tariff Act, 1975. In this context, Notes 3, 5(a), and 9(a) of Section XV are relevant:

- Note 5(a) provides that an alloy of base metals shall be classified according to the metal which predominates by weight.
- Note 9 (a) clarifies the meanings of expressions used in Chapters 74 to 76 and 78 to 81, and should be considered while interpreting the classification of such products.

9 (a) :- Bars and rods

Wire-bars and billets of Chapter 74 with their ends tapered or otherwise worked simply to facilitate their entry into machines for converting them into, for example, drawing stock (wire-rod) or tubes, are however to be taken to be unwrought copper of heading 7403. This provision applies *mutatis mutandis* to the products of Chapter 81.

7.2 It is observed that the impugned order, in paragraph 18.14, refers to Chapter Heading 81.05 of the Explanatory Notes (Sixth Edition, 2017) to the Harmonized Commodity Description and Coding System issued by the World Customs Organization. However, the impugned order has not properly considered the Notes to Section XV of the Customs Tariff Act, 1975. Specifically, Notes 3, 5 (a), and 9(a) to Section XV clearly define the identity and classification of the goods in question under CTH 81052010. The Explanatory Notes cited in the O-I-O acknowledge the existence of many cobalt alloys; those that fall within the heading in accordance with Note 5 to Section XV include:

"(1) The cobalt-chromium-tungsten ("Stellite") group (often containing small proportions of other elements). These are used in the manufacture of Valves and Valve seats, tools etc. because of their resistance to wear and corrosion at high temperatures."

7.3 The Appellant has contended that cobalt-based alloys, commonly known as "Stellites," are widely used as corrosion and oxidation-resistant coatings across various applications. Cobalt Base Bare Rods (Stellite) offer exceptional resistance to numerous forms of chemical and mechanical degradation over a broad temperature range. These rods possess outstanding anti-galling properties, high-temperature hardness, and strong resistance to cavitation erosion, making them highly valuable in industrial processes. They bond effectively with all weldable grades of steel and stainless articles. Cobalt Base Bare Rods are specially formulated to withstand a wide array of harsh environments, including abrasion, corrosion, galling, oxidation, and erosion. They maintain their hardness at temperatures up to 1500°F (800°C) and have proven to be indispensable in various industries.

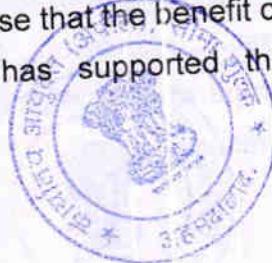


7.4 The Appellant has further contended that a similar issue was adjudicated in the case of M/s. Sri Murugan Enterprises, wherein the Commissioner of Customs (Appeals-I), Chennai, by Order-in-Appeal C. Cus. I No. 336/2023 dated 15.11.2023, set aside the differential duty demand raised under CTH 81059000. The dispute in that case similarly involved the classification of goods under either CTH 81052010 or 81059000. The Appellant has submitted a copy of the said Order-in-Appeal dated 15.11.2023, and upon perusal, it is evident that the findings therein are directly applicable to the present case and support setting aside the differential duty demand under CTH 81059000.

7.5 The Appellant has also contended that they were provided with generic information regarding consignments cleared under CTH 81052010 by the Office of the Directorate General of Valuation, Mumbai, pertaining to imports classified under this tariff heading. The information furnished by DG Valuation, Mumbai, indicates that across India, clearances under CTH 81052010 consistently include rods, welding wires, bars, powder, articles of cobalt, pieces of cobalt, and similar goods, which have been cleared without interruption under this classification nationwide. The data obtained under the RTI Act, 2005, confirms that comparable goods have been undisputedly cleared under CTH 81052010. This supports the Appellant's contention to set aside the impugned order based on the principle of parity.

7.6 It is well settled that the burden of proof lies with the taxing authorities to establish that the item in question is taxable as claimed by the department. The Hon'ble Courts have held that there must be sufficient material to support such a finding. It is incumbent upon the taxing authority to present evidence in this regard, even before the first adjudicating authority. In this case, the Revenue has failed to discharge this burden by adducing any evidence. Furthermore, clearances of "COBALT BASE BARE CAST ROD" under CTH 81052010 were allowed following queries on classification and clarification that the goods are "intermediate goods," and the consignments under such Bills of Entry were released without objection. Mere assertions without supporting evidence are insufficient to justify a change in classification. It is also settled law that where entries in the HSN and the Customs Tariff are not aligned, reliance cannot be placed on the HSN for classification under the Tariff. Notably, one of the factors on which the impugned order relied for its conclusion is the entries in the HSN.

7.7 It is observed that the Appellant claimed the benefit of exemption under Notification No. 50/2017-Cus [Sr. No. 390A]. The effective rate of Basic Customs Duty (BCD) was revised to 2.5% unconditionally under entry No. 390A, inserted in Notification No. 50/2017-Cus by Notification No. 25/2019-Cus dated 06-07-2019. It is well settled that when claiming exemption under a notification, the onus lies on the Appellant to demonstrate eligibility and that the exemption clearly applies in their favor. In the facts of this case, the Appellant has sufficiently made out its case that the benefit of exemption is available for intermediate goods. The Appellant has supported this claim with

documentary evidence showing that the goods in question are intermediate goods classified under CTH 81052010 and are therefore eligible for the claimed exemption. The settled legal position is that once the Appellant proves eligibility for the exemption claimed, the Revenue must produce equally cogent evidence if it wishes to deny the Appellant's entitlement to the unconditional benefit. While the Appellant has discharged its burden, the adjudicating authority has failed to discharge the shifted burden of providing any evidence to deny the exemption in this case. Contentions supported by documentary evidence cannot be rejected without contrary evidence.

7.8 The Appellant, relying on the CESTAT decision dated 25.11.2024 in the case of M/s Kopertek Metals Pvt. Ltd., applicable to all cases of duty/tax demands under Customs, Central Excise, and Service Tax, has contended that Section 28 (9) of the Customs Act, 1962, mandates a statutory time limit of six months for the Adjudicating Authority to adjudicate a Show Cause Notice issued under Section 28(1). However, no reasons have been provided in the impugned order dated 17.03.2023 for the delay. The adjudicating authority is required to record valid reasons while adjudicating the Show Cause Notice and cannot leave it to speculation why the prescribed time limit under Section 28 (9) (a) was not adhered to. Therefore, the impugned order dated 17.03.2023 is unsustainable on this ground as well, in addition to the other merits-based grounds.

7.9 I am also of the considered view that the issue of classification of goods under one heading or another is a question of law, not a statement of fact. Therefore, claiming a particular classification under the Customs Tariff Act cannot and does not amount to a misstatement, much less a wilful misstatement. It is settled law that asserting a specific classification is a matter of belief on the part of the taxpayer or assessee. In *Raj Television Network v. CCE, Chennai*, 2007 (215) ELT 71 (Tri.—Chennai), the Hon'ble Tribunal held that classification is a departmental function and, therefore, an importer cannot be accused of having 'misclassified' the goods imported by him. Similarly, in *Northern Plastic Ltd v. CCE*, 1998 (101) ELT 549 (S.C.), the Hon'ble Apex Court held that when the description of goods is given correctly and fully in the Bill of Entry/classification declaration, and the appellant lays claim to some exemption whether admissible or not it is a matter of the assessee's belief and does not amount to misdeclaration. In *CCE, Delhi v. Ishaan Research Lab (P) Ltd*, 2008 (230) ELT 7 (S.C.), the Hon'ble Apex Court recognized that where a genuine dispute prevails regarding classification of products, there can be no finding of suppression or misstatement. Accordingly, in the facts of this case, the dispute concerns only the classification of goods imported by the Appellant. Therefore, the charge of intentional misclassification or misdeclaration cannot be sustained.

7.10 I am also of the considered view that classification cannot be altered merely because the proposed classification attracts a higher customs duty than the declared classification, especially if no valid reason for such change is disclosed.




7.11 The impugned order has erred in holding that product in question imported by the Appellant is nothing but alloy of cobalt manufactured by Chinese supplier in the proportion of the element fused with cobalt and the same is to be considered as articles of cobalt.

7.12 Appellant has produced Analytical Report No. 39/2022-23, dated 09.03.2023 provided to Appellant by department for another Bill of Entry at ACC, regarding classification of "Article of Titanium" whether under CTI 81089010 or under CTI 81089090. Appellant rely Para 5 of Analytical Report No. 39/2022-23, dated 09.03.2023 which shows as under:-

"Wrought Titanium is classifiable under CTH 81089010, if such imported products are in the form of beaten shapes such as plates, bars, tubes, rods, billets etc. For manufacturing the final Product, one of the prerequisites is that the titanium should be in wrought form so that it could be further processed by processes like cutting, forming machining and joining and made into necessary shape and dimension, as may be required Such final product becomes an Article of Titanium', and hence classifiable under CTH 81089090."

7.13 It is observed that the above paragraph illustrates how classification of imported goods can be determined under CTH 81089010 or CTH 81089090. The principle is that titanium products in beaten forms such as plates, bars, tubes, rods, billets, etc., are classified as unwrought titanium under CTH 81089010. By analogy, since the analytical report identifies the product as "Titanium," the same principle applies here for "Cobalt." Accordingly, cobalt goods used or usable in industrial processes are classifiable under CTH 81052010. The Appellant declared the goods in question as "intermediate products of cobalt metallurgy," and these were cleared by the proper officers after due examination and final assessment in accordance with the law. Therefore, classification under CTH 81052010 should be upheld, considering the overall facts and evidence provided by the appellant in this case.

7.14 The Appellant has contended that the department has failed to produce any reliable or acceptable evidence to justify changing the classification from CTH 81052010 to 81059000 in its favor. The reliance on RUD mentioned in the SCN does not constitute credible evidence in this case. Therefore, the impugned order, lacking any substantive evidence to warrant a change in classification, is without merit and deserves to be set aside. Furthermore, the Appellant argues that since the goods were neither seized nor retained by customs officers, the imposition of a Redemption Fine under Section 125 of the Customs Act, 1962 is untenable. The Redemption Fine imposed is contrary to established law and should be quashed. The Appellant relies on decisions such as *Shiv Kripa Ispat Pvt. Ltd v/s CCE, 2009 (235) ELT 623 (Tri-LB)*, upheld by the Hon'ble Bombay High Court in 2015 (318) ELT 259 (Bom), which support this position. I concur with these contentions regarding the Redemption Fine and respectfully follow the precedents cited.



7.15 The Appellant has contested the penalty imposed under Sections 112 (a) (ii) of the Customs Act, 1962, arguing that the proceedings related to the change in classification to a higher duty pertain solely to interpretation of classification entries and do not involve any deliberate attempt to evade duty or willful contravention of the law. Therefore, the penalty imposed are not sustainable and ought to be set aside.

7.16 The Appellant has also submitted a copy of Bill of Entry No. 9726413, dated 26-04-2025 by M/s P J Surotia & Co., along with a clarification wherein the Out of Charge Certificate (OOC) was granted on 03.05.2025 following a specific query regarding classification under CTH 81052010 and the importer's subsequent clarification. This serves as additional evidence demonstrating that "Cobalt Base Bare Cast Rods" are being cleared at ICD-Khodiyar undisputedly, with duty paid under CTH 81052010, as claimed by the Appellant.

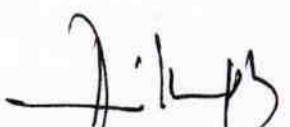
8. In view of the above findings, I am of the considered opinion that the principles of natural justice were violated during the adjudication proceedings at various stages. Further, the adjudicating authority has failed to adduce any reliable evidence on record to justify changing the declared classification from CTH 81052010 to CTH 81059000. Taking into account the nature of the product, its composition, its usage, how it is recognized and utilized in the market, and the supporting documentary evidence submitted by the Appellant during these proceedings, it is clear that the goods in question "Cobalt Base Bare Cast Rods" are appropriately classifiable under CTH 81052010, as originally declared by the Appellant. Accordingly, the impugned order effecting reclassification to CTH 81059000 is not sustainable in law or on facts. The Order-in-Original No. 132/ADC/VM/O&A/2022-23, dated 17.03.2023, passed by the Additional Commissioner, Customs, Ahmedabad, confirming recovery of differential customs duty amounting to ₹18,34,152/- along with interest and denying the benefit of unconditional Notification No. 50/2017-Cus [Sr. No. 390A] dated 30.06.2017, is legally unsustainable. Moreover, based on the facts and circumstances of the case, it is not a fit case for the imposition of Redemption Fine and Penalty. Accordingly, the Redemption Fine and Penalty imposed are hereby set aside. This Order-in-Original is untenable on multiple grounds, both factual and legal. Therefore, the impugned Order No. 132/ADC/VM/O&A/2022-23, dated 17.03.2023 is set aside.

9. In view of the above, the appeal filed by the Appellant is allowed with consequential reliefs, if any, in accordance with the law.



F. No. S/49-166/CUS/AHD/23-24

1266


 (Amit Gupta)
 Commissioner (Appeals),
 Customs, Ahmedabad

Date: 30.05.2025

By Registered post A.D

To,

✓ M/s Satkul Enterprises Ltd,
Plot No. 124, Sub Plot No. 03,
B/s. Rajni Estate,
Rakhial,
Ahmedabad – 380 023

Shri P. P. Jadeja
(Consultants & Practitioners)
53 – Sarovar Complex,
Off. C. G. Road,
B/h. Jain Derasar,
Navrangpura,
Ahmedabad – 380 009

सत्यापित/ATTESTED
पूर्ण
अधीक्षक/SUPERINTENDENT
सीमा शुल्क (अपील), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD.



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1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House, Ahmedabad.
3. The Additional Commissioner, Customs, Custom House, Ahmedabad
4. Guard File.