

	<p>कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा, सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS: CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421. PHONE : 02838-271426/271163 FAX :02838-271425 E-mail id- adj-mundra@gov.in</p>	
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A	FILE NO./फ़ाइल संख्या	GEN/ADJ/ADC/1024/2025-Adjn
B	OIO NO./आदेश संख्या	MCH/ADC/ZDC/07/2026-27
C	PASSED BY/जारीकर्ता	Dipak Zala, Additional Commissioner of Customs, Mundra Customs.
D	DATE OF ORDER/आदेश की तारीख	07.04.2026
E	DATE OF ISSUE/जारी करने की तिथि	09.04.2026
F	SCN No. & Date/कारण बताओ नोटिस क्रमांक	07/2025-26/ADC/AKM/Gr-II/MCH dated 16.04.2025
G	NOTICEE/ PARTY/ IMPORTER नोटिसकर्ता/पार्टी/आयातक	M/s. Moresco HM & Lub India Private Limited (IEC: AAKCM8520E), Industrial Plot No. E-465 & amp; E- Sanand II Industrial Estate, Ahmedabad-382110.
H	DIN/दस्तावेज पहचान संख्या	20260471MO000000055E

1. यह आदेश संबंधित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1 में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“सीमाशुल्क आयुक्त) अपील(
चौथी मंजिल, हुडको बिल्डिंग, ईश्वरभुवन रोड,
नवरंगपुरा, अहमदाबाद 380 009”

“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA

**HAVING HIS OFFICE AT 4TH FLOOR, HUDCO BUILDING, ISHWAR BHUVAN
ROAD,
NAVRANGPURA, AHMEDABAD-380 009.”**

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।
Appeal shall be filed within sixty days from the date of communication of this order.
4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5 -/रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-
Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must be accompanied by –
- i. उक्त अपील की एक प्रति और A copy of the appeal, and
- ii. इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची 1-के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं० 6-में निर्धारित 5 -/रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।
This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.
5. अपील ज्ञापन के साथ ड्यूटी / ब्याज / दण्ड / जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।
Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.
6. अपील प्रस्तुत करते समय, सीमाशुल्क) अपील (नियम, 1982 और सीमाशुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।
While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.
7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5 % भुगतान करना होगा।
An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE

M/s MORESCO HM & LUB INDIA PRIVATE LIMITED (IEC- AAKCM8520E), situated at Industrial Plot No. E-465 & amp; E- Sanand II Industrial Estate, Ahmedabad-382110 (hereinafter also referred to as "the importer/the Noticee" for the sake of brevity") filed following Bills of Entry having details mentioned as under, through their authorised Customs Broker M/s. Suraj Forwarders & Shipping Agencies at Custom House, Mundra, for clearance of following imported goods, classifying the same under Tariff heading as mentioned below of first schedule of the Customs Tariff Act, 1975.

TABLE-A

Sr. No.	B/E No.	B/E Date	Item Description	Item No.	CTH	Qty (in Kgs)	Ass. Value	Duty Levied (BCD-5%, SWS-10%, IGST-5%) =
1.	2497863	18.09.2022	PLUNGER LUBRICANT, NEOCASTER B-200R (18L/PAIL) (250 PAIL) (4- 500 liters)	4	27101990	4500	8,86,972	95,571
2.	2497863	18.09.2022	FORGING OIL, LUBCASTER AP-2 (T) (18KG/PAIL) (10 PAIL)	5	27101990	180	32,632	3,516
3.	9996552	13.08.2022	PLUNGER LUBRICANT, NEOCASTER B-200R (18L/PAIL) (180 PAIL) (3- 240 Liters)	4	27101990	3240	6,18,758	66,671
4.	9996552	13.08.2022	FORGING OIL, LUBCASTER F-1020 (T) (20KG/PAIL) (50 PAIL)	5	27101990	1000	1,48,463	15,997
5.	9996552	13.08.2022	FORGING OIL, LUBCASTER AP-2 (T) (18KG/PAIL) (25 PAIL)	6	27101990	450	86,822	9,355
TOTAL							17,73,646	1,91,111

2. During the course of Audit conducted by the Customs Receipts Auditors of office of the Principal Director of Audit (Central), Audit Bhavan, Ahmedabad for the period from July, 2022 to September, 2022, the Senior Audit Officer/CRA vide Para 05 of LAR No. 15/2022-23, observed that Customs Tariff Heading 27101990 covers "others" of CTH 2710 (Petroleum oils and oils obtained from bituminous minerals (other than crude) and preparations not elsewhere specified or included) and attract 5% BCD, SWS 10% and 18% IGST. Thus, total duty at the rate of 24.49% is applicable on its import.

2.1. Further Sr.No.33 of Schedule III to the IGST Notification No. 01/2017- IT(R) covers [Petroleum oils and oils obtained from bituminous minerals, other than petroleum crude, preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations, waste oils, Avags [other than kerosene PDS, petrol, diesel and ATF, not in GST]. Whereas, Sr. No. 164 of Schedule I of IGST Notification ibid covers "(a) kerosene oil PDS (b) bunker fuels for use in ships or vessels namely (i) IFO 180 CST, ii) IFO 380 CST" falling under CTH 2710.

2.2. During the audit, it has been observed that "Plunger Lubricant, Forging oil, Vacuum pump oil" falling under CTH 27101990 was imported by the said importer by classifying the same under CTH 27101990 and paid IGST at the rate of 5% under serial number 164 of Schedule I of the IGST Notification ibid which is applicable to a) kerosene oil PDS (b) bunker fuels for use in ships or vessels namely (i) IFO 180 CST, ii) IFO 380 CST falling under CTH 2710 and not to the imported goods which are "Plunger

Lubricant, Forging oil, Vacuum pump oil" given the facts that the goods are different goods. Hence, the importer was liable to pay IGST @18% in view of Sl.No.33 of the IGST Notification ibid. This has resulted in short levy of duty to the tune of Rs. 2,43,255/- which is required to be recovered along with interest. The detail of short paid duty is as under: -

TABLE-B

Sr. No.	B/E No.	B/E Date	Item No.	Ass. Value (Item)	Duty Levied (BCD- 5%, SWS- 10%, IGST- 5%) = 10.775%	Duty Leviable (BCD- 5%, SWS- 10%, IGST- 18%) = 24.49%	Short levy of duty
1.	2497863	18.09.2022	4	8,86,972	95,571	2,17,219	1,21,648
2.	2497863	18.09.2022	5	32,632	3,516	7,992	4,475
3.	9996552	13.08.2022	4	6,18,758	66,671	1,51,534	84,863
4.	9996552	13.08.2022	5	1,48,463	15,997	36,359	20,362
5.	9996552	13.08.2022	6	86,822	9,355	21,263	11,908
TOTAL				17,73,646	1,91,111	4,34,366	2,43,255

3. Relevant Legal provisions, in so far as they relate to the facts of the case:-

A. Customs Notification No. 50/2017-Cus dated-30.06.2017;

B. The Customs Tariff.

C. Section 46 of the Customs Act, 1962 provides for filing of Bill of Entry upon importation of goods, which casts a responsibility on the importer to declare truthfully, all contents in the Bill of Entry. Relevant portion of Section 46 (4) is reproduced below:-

"(i) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed".

D. Section 28 (4) of the Customs Act, 1962 provides that "Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-

(a) collusion; or

(b) any willful mis-statement; or

(c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid) or which has been so 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".

E. Section 28 (AA) of Customs Act, 1962 provides interest on delayed payment of duty-

(1) Where any duty has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person who is liable to pay the duty as determined under sub-Section (2), or has paid the duty under sub-Section (2B), of Section 28, shall, in addition to the duty, be liable to pay interest at such rate not below ten percent and not exceeding thirty-six per cent per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first day of the month succeeding the month in which the duty ought to have been paid under this Act, or from the date of such erroneous refund, as the case may be, but for the provisions contained in sub-Section (2), or sub-Section (2B), of Section 28, till the date of payment of such duty:

F. Section 114A of the Customs Act, 1962 deals with the penalty by reason of collusion or any willful mis-statement or suppression of facts. The relevant provision is reproduced below:-

114A- Penalty for short-levy or non-levy of duty in certain cases - Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-Section (8) of Section 28 shall also be liable to pay a penalty equal to the duty or interest so determined: Provided that where such duty or interest, as the case may be, 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 the 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 duty or interest, as the case may be, so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

4. In view of above, it appears that the importer had paid the IGST at 5% by wrongly claiming the benefit of serial number 164 of Schedule I of the Notification No.1/2017-IT(R) *ibid*, whereas, IGST @18% is required to be paid on the said imported goods as per Sl. No. 33 of Schedule III of the Notification No.1/2017-IT(R) *ibid*.

5. Whereas, it is apparent that the importer/noticee had full knowledge of the correct nature of the goods nevertheless, the importer has claimed undue benefit of notification for the said goods in order to clear the goods by paying IGST @ reduced rate 5% instead of correct rate of IGST @ 18%.

With the introduction of self-assessment under Section 17, more faith is bestowed on the importer, as the practices of routine assessment, concurrent audit etc. have been dispensed with. As a part of self-assessment, the importer has been entrusted with the responsibility to correctly self-assess the duty. However, in the instant case, the importer intentionally did not pay duties correctly on the imported goods. Therefore, it appears that the importer has wilfully violated the provisions of Section 17(1) of the Act in as much as importer has failed to correctly self-assessed the impugned goods and has also wilfully violated the provisions of Sub-section (4) and (4A) of Section 46 of the Act. Therefore, the goods having assessable value of **Rs. 17,73,646/-** as detailed in above table, appears to liable for confiscation under Section 111(m) of the Customs Act, 1962.

6. In view of the above, it appears that the importer wilfully availed the benefit of serial number 164 of Schedule I of the Notification No.1/2017-IT(R) ibid for duty evasion in terms of paying IGST at lower rate than actual applicable rate of 18% resulting into short levy of duty of **Rs. 2,43,255/- (Rupees Two Lakh Forty-Three Thousand Two Hundred and Fifty-Five Only)** for subject Bill of Entry, which is recoverable from the importer under the provisions of Section 28(4) of the Customs Act, 1962 (hereinafter referred to as 'the Act') along with interest as applicable under Section 28AA of the Act. By the said deliberate short payment and wrong availment of benefit of said notification, the importer also appears to have rendered themselves liable to penalty under Section 114A of the Customs Act, 1962.

7. Accordingly, Show Cause Notice dated 16.04.2025 was issued to M/s MORESCO HM&LUB INDIA PRIVATE LIMITED (IEC-AAKCM8520E) wherein they were called upon to show cause to the Additional Commissioner of Customs as to why:-

i. The benefit of Sr. No. 164 of Schedule I of the Notification No.1/2017-IT(R) ibid availed by the said importer should not be denied and IGST @18% should not be demanded by re-assessing the said BoE as per Sl. No. 33 of the Schedule -III of Notification No.1/2017-IT(R) ibid;

ii. The goods having assessable value of **Rs. 17,73,646/-** covered under Bill(s) of Entry as detailed in above table, should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962;

iii. The differential duty worked out as short levy amounting to **Rs. 2,43,255/- (Rupees Two Lakh Forty-Three Thousand Two Hundred and Fifty-Five Only)** for subject Bill(s) of Entry as detailed in above table, should not be recovered from importer under Section 28 (4) of the Customs Act, 1962 along with the interest thereon as per Section 28AA of the Customs Act, 1962, as applicable;

iv. Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962.

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Record of Personal Hearing

8. In compliance with the principle of natural justice "Audi alteram

partem”, opportunities to be heard were granted to the noticee on 02.09.2025, 17.09.2025 and 26.03.2026. The Importer failed to turn up for the personal hearing before the adjudicating authority.

Written Submission of Noticee/Importer

9. A mail dated 08.01.2026 received to this office from importer wherein they submitted that they have paid the differential duty liability so determined, along with applicable interest & penalty. Details of the payment are as under: -

B/E No. & Date	Short Levy (INR)	Interest Amount (INR)	Penalty amount (INR)	Challan No. & Date	Amount Paid
2497863/ 18.09.2022	1,26,123/-	62,353/-	18,918/-	6796514458/ 08.01.2026	2,07,394/-
9996552/ 13.08.2022	1,17,133/-	59,690/-	17,570/-	1525151844/ 08.01.2026	1,94,393/-

In view of the above voluntary compliance and full discharge of the duty liability along with interest & penalty, we respectfully request your good office to take the above payment on record and drop further proceedings initiated vide Demand-cum-Show Cause Notice, as no amount remains payable by them.

The importer, vide email dated 26.03.2026 submitted that the matter has already been duly addressed from their end. they have paid the applicable differential duty along with interest and penalty, and the complete details were submitted to your good office on 08th January 2026. The acknowledgement letter for the same is enclosed herewith for your ready reference. In view of the above compliance and submission already made, they believe that no further personal hearing is required in the matter.

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DISCUSSION AND FINDINGS

10. I have carefully gone through the facts of the case, SCN and records of the case. The principles of natural justice have been complied with by granting adequate opportunities to the noticee to present their defence. Now, I proceed to examine the issues involved in the present case in light of available records, statutory provisions and judicial precedents. On careful perusal of the Show Cause Notice, written submission and case records, I find that the following issues arise for determination in this adjudication:

- i. Whether benefit of Sr. No. 164 of Schedule I of the Notification No.1/2017-IT(R) ibid availed by the said importer is liable to be rejected and IGST @18% under Sl. No. 33 of the Schedule -III of Notification No.1/2017-IT(R) ibid is rightly applicable on the impugned goods or otherwise;
- ii. Whether the differential duty to the tune of **Rs. 2,43,255/- (Rupees**

Two Lakh Forty-Three Thousand Two Hundred and Fifty-Five Only) demanded under SCN is recoverable from the noticee in terms of Section 28 (4) of the Customs Act, 1962 along with the interest thereon as per Section 28AA of the Customs Act, 1962, as applicable.

- iii. Whether the imported goods are liable for confiscation under section 111(m) of the Customs Act, 1962 or otherwise.
- iv. Whether acts of the importer attract penal action as proposed under Section 114A of the Customs Act, 1962.

11. After having identified and framed the main issues to be decided, I now proceed to deal with each of the issues individually for analysis in light of facts, submissions, circumstances of the case, provisions of the Customs Act, 1962 and nuances of various judicial pronouncements.

(A) Whether benefit of Sr. No. 164 of Schedule I of the Notification No.1/2017-IT(R) ibid availed by the said importer is liable to be rejected and and IGST @18% under Sl. No. 33 of the Schedule -III of Notification No.1/2017-IT(R) ibid is rightly applicable on the impugned goods or otherwise.

12.1 I find that M/s. Moresco HM & LUB India Private Limited imported plunger lubricant and forging oil under CTH 27101990 vide bills of entries as detailed above table-A and claimed IGST notification sr no. 164 of Schedule I and paid IGST @ 5%. I noticed that during the course of audit, Senior Audit Officer vide Para 05 of LAR No. 15/2022-23, observed that Customs Tariff Heading 27101990 covers "others" of CTH 2710 (Petroleum oils and oils obtained from bituminous minerals (other than crude) and preparations not elsewhere specified or included) and attract 5% BCD, SWS 10% and 18% IGST. Thus, total duty at the rate of 24.49% is applicable on its import.

12.2 I observed that Sr.No.33 of Schedule III to the IGST Notification No. 01/2017- IT(R) covers [Petroleum oils and oils obtained from bituminous minerals, other than petroleum crude, preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations, waste oils, Avags [other than kerosene PDS, petrol, diesel and ATF, not in GST]. Whereas, Sr. No. 164 of Schedule I of IGST Notification ibid covers "(a) kerosene oil PDS (b) bunker fuels for use in ships or vessels namely (i) IFO 180 CST, ii) IFO 380 CST" falling under CTH 2710.

12.3 I find that importer paid IGST at the rate of 5% under serial number 164 of Schedule I of the IGST Notification ibid which is applicable to a) kerosene oil PDS (b) bunker fuels for use in ships or vessels namely (i) IFO 180 CST, ii) IFO 380 CST falling under CTH 2710 and not to the imported goods which are "Plunger Lubricant, Forging oil, Vacuum pump oil" given the facts that the goods are different goods. Hence, the importer is liable to pay IGST @18% in view of Sl.No.33 of Schedule-III of the IGST Notification ibid. Accordingly, Customs Duty @ 24.49% (BCD- 5%, SWS- 10% & IGST-18%) was applicable. In view of the above facts, I hold that IGST @18% under Sl. No. 33 of the Schedule -III of Notification No.1/2017-IT(R) ibid is

rightly applicable on the impugned goods.

12.4 I find that importer paid Rs. 2,43,256/- along with interest Rs. 1,22,043/- and penalty Rs. 36,488/- vide challans no. 6796514458/08.01.2026 and 1525151844/08.01.2026. In this matter, I find that the facility of conclusion of the proceedings under Section 28(6) of the Customs Act, 1962, is available subject to two conditions stipulated in Section 28(5) *ibid*, i.e.

(i) payment of duty, interest & 15% penalty within 30 days of the receipt of the notice, and (ii) informing the proper officer of such payment in writing.

Show Cause Notice was issued to M/s. Moresco Hm & Lub India Private Limited on 16.04.2025 and importer paid duty liability along with interest and penalty on 08.01.2026 (after 267 days). The importer failed to pay the differential customs duty, applicable interest, and a penalty equivalent to 15% of the differential duty within the prescribed period of 30 days from the date of receipt of the SCN. Accordingly, it is observed that the importer has not fulfilled the conditions stipulated under Section 28(5) of the Customs Act, 1962. Therefore, the case cannot be concluded under Section 28(6) of the Customs Act, 1962.

(B) Whether the differential duty to the tune of Rs. 2,43,255/- (Rupees Two Lakh Forty-Three Thousand Two Hundred and Fifty-Five Only) demanded under SCN is recoverable from the noticee in terms of Section 28 (4) of the Customs Act, 1962 along with the interest thereon as per Section 28AA of the Customs Act, 1962, as applicable.

13.1 I noticed that in the instant matter that importer had wrongly claimed the rate of 5% under serial number 164 of Schedule I of the IGST Notification instead of Sl.No.33 of Schedule-III (18%) of the said IGST Notification. These acts of importer are in contravention of various provisions of the Customs Act and the Rules made thereunder, with an intent to evade Customs Duty of **Rs. 2,43,255/- (Rupees Two Lakh Forty-Three Thousand Two Hundred and Fifty-Five Only)**. Hence, the provisions of the Section 28(4) of the Customs Act, 1962 for invoking the extended period for demand of duty is rightly invocable in the instant case. Therefore, the differential duty amounting **Rs. 2,43,255/-** as demanded under SCN are recoverable from the Noticees in terms of 28(4) of the Customs Act, 1962. Further, I find that interest on delayed payment of duty which accrues automatically once demand of duty is confirmed is also recoverable from the importer under the provisions of Section 28AA of the Customs Act, 1962. For this, I rely on the decision of the **Hon'ble Apex Court in the case of CCE Pune Vs SKF India Ltd. [2009(239) ELT (385) SC]**.

(C) Whether the imported goods are liable for confiscation under section 111(m) of the Customs Act, 1962 or otherwise.

14.1 As per my detail findings in above para, IGST @ 18% under Sr.No.33 of Schedule III to the IGST Notification No. 01/2017- IT(R) is rightly applicable on the impugned goods. However, the importer claimed IGST @ 5% under serial number 164 of Schedule I of the IGST Notification and thereby evaded Customs Duty amounting to **Rs. 2,43,255/- (Rupees Two**

Lakh Forty-Three Thousand Two Hundred and Fifty-Five Only).

14.2 I also find that it is a fact that consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011; 'Self-Assessment' has been introduced in Customs. Section 17 of the Customs Act, effective from 08.04.2011, provides for self-assessment of duty on imported goods by the importer himself by filing a Bill of Entry, in the electronic form. Provisions of the Section 46 of the Customs Act, 1962 makes it mandatory for the importer to make proper & correct entry for the imported goods by presenting a Bill of Entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Declaration) Regulation, 2011 (issued under Section 157 read with Section 46 of the Customs Act, 1962) the Bill of Entry shall be deemed to have been filed and after self-assessment of duty completed when, after entry of the electronic declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a Bill of Entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under self-assessment, it is the importer who has to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry. Thus, with the introduction of self-assessment by amendments to Section 17, since 8th April, 2011, it is the added and enhanced responsibility of the importer to declare the correct description, value, quantity, notification, etc and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

14.3 From the above, I find that the Noticee has violated Sub-Section (4) and 4(A) of Section 46 of the Customs Act as they have mis-classified the goods and evaded the payment of applicable duty. I find that the Noticee was required to comply with Section 46 which mandates that the importer filing the Bill of Entry must make true and correct declarations and ensure the following:

- i. Accuracy and completeness of the information declared;
- ii. The authenticity and validity of any document supporting the information provided; and
- iii. Comply with restrictions or prohibitions relating to the goods under this Act or any law in force at the time being.

14.4 I find that the Show Cause Notices propose confiscation of goods under the provisions of Section 111 (m) of the Customs Act, 1962. Provisions of Section 111 (m) of the Customs Act, 1962 is re-produced herein below:

“any goods which do not correspond in respect of value or in any other particular with the entry made under this Act, shall be liable to confiscation.”

In the instant case, the importer has wrongly claimed benefit of serial number 164 of Schedule I of the Notification No.1/2017-IT(R) *ibid* and hence, contravened the provisions of Section 46 of the Customs Act, 1962.

These acts of omission and commission on the part of the importer rendered the goods liable for confiscation under the provisions of Section 111 (m) of the Customs Act, 1962.

REDEMPTION FINE: -

14.5 As the impugned goods are found to be liable for confiscation under Section 111 of the Customs Act, 1962, I find that it is necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation. I find that, in the present case, the subject goods are not physically available for confiscation at this stage. The goods have already been cleared and are no longer under the control of Customs. Therefore, physical confiscation of the goods is not feasible. However, I note that the Hon'ble CESTAT, Ahmedabad, in the case of M/s. Van Oord India Pvt. Ltd. vs. Commissioner of Customs, Ahmedabad [Customs Appeal No. 10679 of 2024-DB], has held that redemption fine can be imposed even when the goods are not physically available for confiscation. Further, these points were already settled in case of Judgment dated 11.08.2017 of Hon'ble High Court of Madras in C.M.A. No. 2857 of 2011 in the case of Visteon Automotive Systems India Ltd. Vs. CESTAT, Chennai [2018 (9) G.S.T.L. 142 (Mad.)].

Para 23 of the said Judgment is as follows:

“ The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act.”

14.6 I further find that the above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad), has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.) and the same has not been challenged by any of the parties concerned. Hence, from the above discussion and relying on the above judgements, I conclude that in the present case, the redemption fine in lieu of confiscation of the goods under Section 125 of the Customs Act, 1962 is

required to be imposed.

(D) Whether acts of the importer attract penal action as proposed under Section 114A of the Customs Act, 1962.

15.1 I find that the SCN proposes penalty on the notice under section of 114A of the Customs Act, 1962. Provisions of Section 114A of the Customs Act, is reproduced herein below: -

“SECTION 114A. Penalty for short-levy or non-levy of duty in certain cases. – Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has 2 [****]been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under [sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined:

[Provided that where such duty or interest, as the case may be, 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 the 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 duty or interest, as the case may be, so determined:

15.2 Penalty under Section 114A can be imposed in cases where the duty has not been levied or has been short-levied by reason of collusion or any wilful mis-statement or suppression of facts. I find on the basis of the evidence and above discussions that the importer in the present case has wilfully wrongly availed the benefit of IGST notification, whereas they were fully aware, for such act and omissions, I hold the importer liable to penalty under Section 114A of the Customs Act, 1962.

16. In view of the above facts of the case and findings on record, I pass the following order: -

ORDER

- i. I order to reject the benefit of IGST under Sr. No. 164 of Schedule I of the Notification No.1/2017-IT(R) on the impugned goods as detailed in table-A, and order to re-assess the said Bills of Entries as per Sl. No. 33 of the Schedule –III of Notification No.1/2017-IT(R).
- ii. I hold that the impugned goods having assessable value of **Rs. 17,73,646/- (Rupees Seventeen Lakh Seventy-Three Thousand Six Hundred and Forty-Six only)** are liable for confiscation under Section 111(m) of the Customs Act, 1962. I impose **redemption fine of Rs.25,000/- (Rs. Twenty Five Thousand only)** under Section 125(1) of the Customs Act, 1962, in lieu of confiscation.
- iii. I confirm the demand of differential duty amounting to **Rs. 2,43,255/- (Rupees Two Lakh Forty-Three Thousand Two Hundred and Fifty-Five only)** Under Section 28(4) of the Customs

Act, 1962 and order to recover the same from the importer along-with applicable interest in terms of Section 28AA of the Customs Act, 1962.

- iv. I order to appropriate the amount of Customs duty, along with interest and penalty amounting to **Rs. 4,01,787/-** paid by M/s. Moresco HM & LUB India Private Limited on 08.01.2026, towards the duty leviable, applicable interest and penalty imposed on the importer (discussed in para 12.4).
- v. I impose penalty of **Rs. 2,43,255/- (Rupees Two Lakh Forty-Three Thousand Two Hundred and Fifty-Five only)** on M/s. Moresco HM & LUB India Private Limited under Section 114A of the Customs Act, 1962. However, in case the importer pays the duty along with interest within 30 days of the communication of the order, the amount of penalty payable shall be twenty-five percent of the duty, as per proviso of Section 114A of the Customs Act, 1962.

17. This order is issued without prejudice to any other action which may be contemplated against the importer or any other person under 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. The Show Cause Notice No. 07/2025-26/ADC/AKM/Gr-II/MCH dated 16.04.2025 stands disposed in above terms.

Dipak Zala,
Additional Commissioner,
Custom House, Mundra.

By Speed Post/Regd. Post/E-mail/Hand Delivery

To,

M/s. Moresco Hm&Lub India Private Limited,
Industrial Plot No. E-465 & amp;
E- Sanand II Industrial Estate, Ahmedabad 382110.

Copy to:

1. The DC/AC, RRA/TRC/Audit/EDI, Mundra Customs.
2. Notice Board/Guard File.