प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद
सीमा शुल्क भवन, आल इंडीया रेडियो के पास, नवरंगपुरा ,अह्मदाबाद 380009
दुर भाष (079) 2754 46 30 **फैक्स** (079) 2754 23 43
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, AHMEDABAD
CUSTOMS HOUSE, NEAR ALL INDIA RADIO, NAVRANGPURA, AHMEDABAD 380009
PHONE: (079) 2754 46 30 FAX (079) 2754 23 43

निबन्धित पावती डाक द्वारा / By SPEED POST A.D.

फा. सं./ F. No.: VIII/10-28/Commr./O&A/2022-23
DIN- 20241171MN000000DB00

आदेश की तारीख/Date of Order : 22.11.2024
जारी करने की तारीख/Date of Issue : 22.11.2024

द्वारापारित :- **शिव कुमार शर्मा, प्रधान आयुक्त**
Passed by :- Shiv Kumar Sharma, Principal Commissioner

मूल आदेश संख्या :

Order-In-Original No: AHM-CUSTM-000-PR.COMMR-56-2024-25 dtd. 22.11.2024 in the case of M/s. Waaree Energies Limited, 602, Western Edge-I, Off Western Express Highway, Borivali (East), Mumbai, 400066.

1 जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।

1. This copy is granted free of charge for private use of the person(s) to whom it is sent.

2. इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, दुसरी मंज़िल, बहुमाली भवन, गिरिधर नगर पुल के बाजु मे, गिरिधर नगर, असारवा, अह्मदाबाद-380 004 को सम्बोधित होनी चाहिए।

2. Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, *Ahmedabad* – 380004.

3. उक्त अपील प्रारुप सं. सी.ए.3 में दाखिल की जानी चाहिए। उसपर सीमा शुल्क (अपील) नियमावली, 1982 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियोँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की

जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए)। अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियोँ में अग्रेषित किए जाने चाहिए।

3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलगन की जाएंगी (उनमें से कम से कम एक प्रमाणित प्रति होगी)।

4. The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. केंद्रिय सीमा शुल्क अधिनियम,1962 की धारा 129 ऐ के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

6. The prescribed fee under the provisions of Section 129A of the Customs Act,1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. इस आदेश के विरूद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुरमाना का विवाद है अथवा जुरमाना जहां शीर्फ जुरमाना के बारेमे विवाद है उसका भुकतान करके अपील की जा शकती है।

7. An appeal against this order shall lie before the Tribunal 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".

8. न्यायालय शुल्क अधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर उपयुक्त न्यायालय शुल्क टिकट लगा होना चाहिए।

8. The copy of this order attached therein should bear an appropriate court fee stamp as prescribed under the Court Fees Act, 1870.

Sub: Show Cause Notice No. VIII/10-28/Commr./O&A/ 2022-23 dated 04.01.2024 issued by the Principal Commissioner of Customs, Ahmedabad to M/s. Waaree Energies Limited, 602, Western Edge-I, Off Western Express Highway, Borivali (East), Mumbai, 400066.

BRIEF FACTS OF THE CASE.

M/s. Waaree Energies Limited, 602, Western Edge-I, Off Western Express Highway, Borivali (East), Mumbai- 400 066, (herein after referred to as "the Importer" or "the Noticee" for the sake of brevity), were importing "Cell Ribbon" & "Bus bar", falling under Customs Tariff Heading No.74081990 of the Customs Tariff Act, 1975, and availing exemption of (Basic Customs Duty) as per Notification No. 50/2017-Cus dated 30.06.2017, as amended (Sr.No.381).

2. On the basis of intelligence, an investigation was initiated by the Directorate of Revenue Intelligence against M/s Waaree Energies Limited, who were importing "Cell Ribbon" & "Bus bar", falling under Customs Tariff Heading No.74081990 of the first Schedule to the Customs Tariff Act, 1975, and wrongly availing exemption of BCD as per Notification No.50/2017-Cus dated 30.06.2017, as amended (Sr.No.381) in the guise of "Flat Copper wire". The Importer followed the procedure prescribed under Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.

3. An enquiry was initiated under Summons proceeding and Summon dated 12.04.2022 (CBIC-DIN-202204DDZ10000914319) was issued to the importer. A letter F.No. DRI/AZU/SRU/B/INV-07(INT-07)/2022 dated 12.04.2022 was issued to the Deputy Commissioner of Customs, EPC-07 Daman to call for the copies of applications for import of "Cell Ribbon & Bus Bar for solar PV Module" filed by the Importer. The Deputy Commissioner of Customs, EPC-07, Daman vide letter F.No VIII/48-20/Cus-EPC-07/DMN/Waaree Energies/Inv/22-23 dated 10.05.2022 forwarded the copies of 42 applications filed by the importer and Annexures issued to them.

4. The importer vide letter dated 19.04.2022 submitted files bearing page No. 1 to 693 containing the:-

i. details of imported goods under Customs Tariff Heading 74 for the period from January, 2020 to March, 2022;
ii. copies of BE, BL, Commercial invoices, Packing list, Duty payment receipt;
iii. Copies of application of Annexure certificate and copy of approved Annexure Certificate.

5. Investigation in respect of past consignments imported by the Importer:

On scrutiny of the documents submitted by the Importer vide letter dated 19.04.2022 and the documents submitted by the Deputy Commissioner of Customs, EPC-07, Daman vide letter F.No.VIII/48-20/Cus-EPC-07/DMN/Waaree Energies/ Inv/22-23 dated 10.05.2022, it appeared that the Importer had imported various sizes of "Cell Ribbon" and "Bus Bar" for manufacturing of 'Solar Photo Voltaic Module' (PV Module) at their various manufacturing plants situated in and around Valsad district. The Importer had filed application under Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, and in response, the Assistant/Deputy Commissioner of Customs, EPC-07, Daman issued relevant Certificate to import the said goods in terms of Sr. No. 381 of Notification No.50/2017-Cus dated 30.06.2017, as amended. The Importer wrongly availed the benefit of Notification No. 50/2017-Cus dated 30.06.2017, as amended, on import of "Cell Ribbon" & "Bus Bar" during 01.04.2020 to 12.04.2022 and short paid the Customs duties of Rs. 3,79,13,265/- (details as per Annexure-A attached to this Show Cause Notice) at ICD Tumb, Nhava Seva sea port & Sahar ACC summarized as below:

SUMMARY OF ANNEXURE-A

Sl. No	Port of Import	No. of consignments	Assessable value of goods (Rs.)	Differential duty payable (Rs.)
1	ICD Tumb (INSAJ6)	36	52,43,69,879	3,40,31,606

2	JNCH Nhava Sheva (INNSA1)	7	5,87,55,591	38,13,237
3	ACC Sahar (INBOM4)	2	10,54,257	6,842
	TOTAL	**45**	**58,41,79,727**	**3,79,13,265**

6. Statements recorded under Section 108 of the Customs Act, 1962:-

6.1 Statement of **Shri Abhishek Sureshbhai Rathod**, AGM (Commercial) of M/s Waaree Energies Limited was recorded on 19.04.2022 under Section 108 of Customs Act, 1962 wherein he interlia stated that:

- Shri Hitesh C. Doshi was Managing Director in the said Company; other Directors were Shri Viren C. Doshi (looking after EPC project work), Shri Hitesh Mehta (looking after finance work), Shri Rajendra Malla, Smt. Richa Goyal & others; that he reported to Shri Jignesh Rathod, Vice President; that all the directors were sitting at Regd. Office of Waaree Energies Limited situated at 602, Western Edge-I Off. Western Express Highway, Borivali (East), Mumbai, Maharashtra-400066.
- His work was mainly focused on documentation of all the import-export of the Company viz preparation & filing of Bill of Entry for import, Invoices & Shipping bills for export, Logistics, Export Container booking etc. but he was sitting at Surat SEZ Unit of Waaree Energies Limited.
- They used to import "Cell Ribbon & Bus Bar for Solar PV Module" from Tai Cang JuRen PV Material Co. Ltd., China; that earlier they had availed benefit of Notification No.24/2005-Cus (Sr. No.39) dated 01.03.2005, as amended. But once the Notification No. 24/2005-Cus was amended vide Notification No. 06/2020-Cus dated 02.02.2020 and goods falling under Chapter 74 of Customs Tariff were removed from the said Notification, they started availing benefit of exemption under Notification No. 50/2017-Cus dated 30.06.2017.
- On being asked regarding final authority for taking decision in respect of availment of any exemption Notification, he stated that generally he informed Shri Jignesh Rathod about the same and afterwards discussed the same with Shri Hitesh Mehta, Director, verbally, and they opted for exemption Notification No. 50/2017-Cus dated 30.06.2017.
- Both Cell Ribbon and Bus Bar used in photovoltaic cells were tinned coated copper interconnect but vary in usage & sizes. Bus Bars were thicker than Cell Ribbons in size. Cell Ribbon was used in connecting internal cells in a solar module while Bus Bar was used for output in a solar module.
- On being shown print out of Sr. No.381 of Notification No. 50/2017-Cus dated 30.06.2017, and on perusal of the said Sr. No. of the said Notification, he found that as per Sr. No. 381 of Notification 50/2017-Cus dated 30.06.2017, exemption was available to "Flat Copper wire for use in the manufacture of photo voltaic ribbon (tinned copper interconnect) for manufacturer of solar photovoltaic cell or modules".
- They imported "Cell Ribbon & Bus Bar for Solar PV Module" i.e. 'Tinned Copper Interconnect' (an intermediate product as per Sr.No.381 of said Notification) instead of "Flat copper wire", from their supplier M/s Tai CangJuren International Trade Co., Ltd, China; that on perusal of the above said Notification, it was clear that benefit of said Notification was not available to their imported goods, and they had wrongly availed the benefit of Notification No. 50/2017-Cus dated 30.06.2017, as amended.
- When application for IGCR (Import of Goods at Concessional Rate of Duty) was mandatorily made online from 01.03.2022, he started to study about the benefits of exemption Notification, which were availed by them; and in April-2022, he came to know that they could also avail benefit of exemption under Notification No.25/1999-Cus dated 28.02.1999, as amended, and they started planning to import said goods under the said Notification.

6.2 Statement of **Shri Hitesh Pranjivan Mehta**, Director-Finance, M/s. Waaree Energies Limited, Plot No. 231-236, Surat Special Economic Zone, Sachin, Surat was recorded on 23.05.2022 under Section 108 of the Customs Act, 1962 wherein he interlia stated that:

- He worked as Head (Accounts & Finance) in M/s. Waaree Instruments Ltd. (Now known as M/s. Waaree Energies Limited) since 2011 and working as Director-Finance in M/s. Waaree Energies Limited; that his official email ID is hiteshmehta@waaree.com, and his personal email id is hitesh_hm007@hotmail.com.
- M/s. Waaree Energies Limited was engaged in the manufacturing/assembling of solar panel; that majority of their input material such as Solar Cell, Aluminium Frame, Solar Glass, Junction Box, Ethylene Vinyl Acetate (EVA) Sheet, Back Sheet, Copper Ribbon and Copper Bus Bar (Tinned coated interconnect) etc, were procured on import; and that he looked after finance matter of M/s. Waaree Energies Limited.
- Apart from him, Shri Hitesh C. Doshi and Shri Viren C. Doshi were the other Directors. There were four independent Directors in the firm, whose names were Shri Rajendra Malla, Smt. Richa Goyal, Shri Sujit Verma & Shri Jayesh Shah.
- On perusing the statement dated 19.04.2022 of Shri Abhishek Sureshbhai Rathod, AGM-Commercial of M/s. Waaree Energies Limited, he stated that the content mentioned therein were true and correct.
- On being asked, he stated that generally they used to import "Cell Ribbon & Bus Bar for Solar PV Module"; that both Cell Ribbon and Bus Bar used to connect photovoltaic cells, were tinned coated copper interconnect, but vary in usage & sizes; that Bus Bars were thicker than Cell Ribbons in size; that Cell Ribbon was used in connecting internal cells in a Solar module while Bus Bar was used for output in a Solar module; and that earlier they were availing the benefit of Notification No.24/2005-Cus (Sr. No.39) dated 01.03.2005 as amended. But,once the Notification No.24/2005-Cus was amended vide Notification No. 06/2020-Cus dated 02.02.2020 and goods falling under Chapter 74 of the Customs Tariff were removed from said Notification, they started to avail the benefit of exemption under Notification No. 50/2017-Cus (S. No. 381) dated 30.06.2017.
- They imported "Cell Ribbon & Bus Bar for Solar PV Module" i.e. 'Tinned Copper Interconnect' (an intermediate product as per Sr.No.381 of said Notification) instead of "Flat copper wire" but, it was clear that benefit of the said Notification was not available to their imported goods, and they had wrongly availed the benefit of Notification No.50/2017-Cus dated 30.06.2017, as amended.
- On being asked regarding final authority for taking decision in respect of availment of any exemption Notification, he stated that generally whenever any major changes happen in the exemption Notification, or if there was any kind of Duty changes or any such financial/technical issue occur, Shri Abhishek Sureshbhai Rathod used to inform his reporting Manager i.e. Shri Jignesh Rathod about the same, and discussed the same with him, and they used to take the decision on major issues. However, in the present case, as per his knowledge, since there was only change in the Notification of exemption from Notification No.24/2005-Cus (Sr.No.39) dated 01.03.2005 to Notification No. 50/2017-Cus dated 30.06.2017, and no Customs Duty liability involved, Shri Abhishek Sureshbhai Rathod took the decision for opting the exemption Notification No. 50/2017-Cus dated 30.06.2017; and that he came to know about the issue that the said exemption benefit under Notification No.50/2017 was not available for the product "Tinned coated interconnect", when DRI initiated the investigation. He further stated that the exemption Notification No.25/1999-Cus dated 28.02.1999 was applicable to them.
- On being asked, he stated that at that time, they were importing the goods in question under exemption benefit of Notification No.25/1999-Cus dated 28.02.1999.

- On being asked regarding the payment of Customs Duty, he stated that as stated above, unintentionally they have availed the exemption benefit of exemption Notification No. 50/2017-Cus dated 30.06.2017 but their imported product was exempted under exemption Notification No. 25/1999-Cus dated 28.02.1999. As there was no malafide intention, he had to discuss the issue in the meeting of their Board of Directors and they would take the decision of payment of Customs Duty.
- After perusing the undertaking endorsed under Annexure-III (Application under the Custom- Import of Goods at Concessional Rate of Duty) submitted by them to Customs authorities, he stated that he had perused the said Annexure-III, that they had given undertaking at the time of application for payment of differential Duty in case of non-compliance; and that he would discuss the issue with board of Directors and inform accordingly within a week.

7. OUTCOME OF INVESTIGATION:

7.1 The Importer was engaged in the manufacturing /assembling of solar panel and import input materials for the same. It appeared that the Importer had submitted application under Rule 4 of the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 before the jurisdictional Deputy Commissioner of Customs (EPC) for import of inputs/parts/accessories/Raw materials at concessional rate of Duty under above mentioned rule. The importer had submitted Bond with surety before jurisdictional Assistant /Deputy Commissioner of Customs, (EPC). The necessary debit entries had made in the relevant Bond register from time to time by the EPC formation. The Assistant Commissioner /Deputy Commissioner of Customs, EPC issued a letter (Annexure) addressed to the Assistant/Deputy Commissioner of Customs at port of import having details of goods to be imported. On the basis of Annexure, the goods were assessed and cleared from the port of import. In the instant case, the importer had imported PV Cell Ribbon & Bus Bar Ribbon from various ports and cleared the same against the Annexure issued by the jurisdictional Assistant Commissioner /Deputy Commissioner of Customs, EPC under the provisions of Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.

7.2 On scrutiny of documents submitted by the Importer vide letter dated 19.04.2022 as well as documents received from the Deputy Commissioner of Customs, EPC-07, Daman vide letter F.No VIII/48-20/Cus-EPC-07/DMN/Waaree Energies/Inv/22-23 dated 10.05.2022, it appears that prior to the amendment vide Notification No. 06/2020-Cus dated 02.02.2020, the Importer had availed the benefit of Notification No. 24/2005-Customs dated 01.03.2005 against import of their raw material i.e. PV Cell Ribbon & Bus Bar under Customs Tariff Heading No.74081990. On a sample basis, documents relating to import of goods under Bill of Entry No. 6524075 dated 18.01.2020 is discussed below.

7.3 The importer had filed application vide Annexure Form No.248/19-20 dated 04.01.2020 under the provisions of the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 before the Deputy Commissioner of Customs, EPC-7 Daman for import of raw material viz. Cell Ribbon & Bus Bar Ribbon under Notification No.24/2005-Custom dated 01.03.2005 (Sl.No. 39). The Deputy Commissioner of Customs, EPC-7 Nani Daman issued Annexure No. 554/2019/EPC-07 (F.No. VIII/48-14/Waaree/Bond/Cus-EPC-07/19-20) dated 06.01.2020 addressed to the Assistant Commissioner of Customs, ICD Tumb and the importer had cleared the said goods against said Annexure vide Bill of Entry No. 6524075 dated 18.01.2020. Scanned images of Annexure Form No.248/19-20 dated 04.01.2020 submitted by the importer for import of Cell Ribbon & Bus Bar under Customs Tariff Heading No.74081990 availing benefit under Notification No.24/2005-Custom dated 01.03.2005 (Sr.No. 39), and relevant Commercial invoice No. JRIT20191214001 dated 14.12.2019 issued by Tai Cang JuRen International Trade Co. Ltd, Tai Cang, China are reproduced as below:

SCAN IMAGE OF COMMERCIAL INVOICE NO. JRIT20191214001 DATED 14.12.2019

(3)

TaiCang JuRen International Trade CO.,LTD

No.3 Fuqiao Industrial Zone, South Ring Road,Fuqiao Town,Taicang City,Suzhou City

TEL:86-512-53657898 FAX:86-512-53657899

COMMERCIAL INVOICE

INVOICE NO.: JRIT20191214001 DATE: 2019.12.14

TO:WAAREE ENERGIES LIMITED ADD: S.Y No. 28 /1 , Tumb Village, Tumb , Umbergaon , Valsad, Gujarat - 396150	PO No: 1700002938 PAYMENT TERMS: T/T 60 Days from the date of B/L FOB SHANGHAI

PO No	Item NO.	DESCRIPTION OF GOODS	QUANTITY (NO)	UNIT PRICE (USD)	AMOUNT (USD)
1700002938	RMBTB0000018	9BB 2540.5mm Cell Ribbon	16000	8.68	138880.00
1700002938	RMBUS0000015	9BB 540.4*6mm Busbar Ribbon	4000	8.68	34720.00
TOTAL			20000		173600.00

Country of Origin: TaiCang China

TaiCang JuRen International Trade CO.,LTD

Eva chee

WAAREE
One with the Sun

ANNEXURE FORM NO: 248/19-20 Date: 04-01-2020

To
The Dy. Commissioner of Customs (EPC-7)
Office of The Asst. /Dy. Commissioner of Customs,
Custom House, Near Nani Daman Jetty,
Waniyawad, Nani Daman 396210

3626 RECEIVED 06/01/20

Subject: Information under Rule 4 of Customs (Import of Goods at Concessional Rate of Duty) Rules 2017 about intent to avail benefit of exemption notifications

Sir,

1. We are registered with your Division as Manufacture of Solar Power Generating Systems Solar Photovoltaic module / Solar Panel under falling under Chapter 8541.
2. We want to import inputs / Parts / Accessories/ Raw Material at Concessional rate of duty under above mentioned rule, hence the required information is given here below: -

i.	Name & Address of Manufacturer and Importer	WAAREE ENERGIES LIMITED SURVEY NO.38/1, TUMB VILLAGE, TALUKA UMBERGAON, DIST. VALSAD, GUJARAT-396150
ii.	Goods produced in his factory / chapter Heading	Solar Photovoltaic Modules Chapter 8541
iii.	IEC Code No	0307047296
iv.	GST Registration No:	24AAACA4043J2Z1
v.	Import Invoice No and Date	JRIT20191214001 dated 14-12-2019
vi.	Name and Address of Foreign Supplier	TAICANG JUREN PV MATERIAL CO., LTD FUQIAO INDUSTRIAL PARK,NAN HUAN WEST ROAD, TAICANG PORT,DEVELOPMENT ZONE,TAICANG CITY,JIANGSU,CHINA
vii.	Notification No. Under which concessional rate applicable.	Notification No.024/2005 Customs dated 01/03/2005 (Sr.No.39)
viii.	Detail of Port of import	The Specified Officer of Customs/The Assistant/Deputy Commissioner of Customs, ICD Tumb, Navkar Terminals Ltd Umbergaon

WAAREE
One with the Sun

ix.	Detail of LUT/Bond given to Customs Department	Rs.37,00,00,000.00 F.NO.VIII/48-14/WAAREE/BOND/CUS-EPC-07/DAMAN/19-20 DTD.10.04.2019 (BOND ENTRY NO.05/19-20 DTD 10.04.2019)
x.	The nature and description of the imported Goods Used in the manufacture of such good and HS Code	0.25*0.9mm Cell Ribbon & 0.4*5mm Busbar Ribbon Chapter Head No: 74081990
xi.	Quantity of Goods to be Imported	(9000+3200) = 12200.00 KGS
xii.	Calculation Sheet of duty saved And Pending Amount in Bond	Rs. 4,97,946.06 Rs. 10,64,72,917.52 Rs. 10,59,74,971.46

3. This letter of information has been submitted in duplicate with your office and one set is submitted to the AC/DC of Customs of Port of Importation. You are requested to forward one copy of letter of intimation to the AC/DC of Customs Port of Importation. So that we can claim the concessional rate of duty while filing Bill of Entry under Section 46 of the Custom Act 1962.

Thanking You
Yours Faithfully
FOR, Waaree Energies Limited

Authorized Signatory

Copy to: 1) The Specified Officer of Customs/The Assistant/Deputy Commissioner of Customs, ICD Tumb, Navkar Terminals Ltd, Umbergaon.

Enclosure: 2) Calculation Sheet
3) Invoice and Packing List
4) Bill of Lading

8. The Notification No. 24/2005-Custom dated 01.03.2005 (Sr.No.39) was amended vide Notification No. 06/2020-Cus dated 02.02.2020, wherein against S.No.39 for the entry in column (2), the entry "Any chapter except Chapter 74" was substituted, which made the import product ineligible to avail the said benefit. It appears that after the amendment to the Notification No. 24/2005-Custom dated 01.03.2005 (Sr.No. 39), the importer intended to avail the benefit of Sr.No.381 of Notification No.50/2017-Cus dated 30.06.2017 for the import of Cell Ribbon & Bus Bar under Customs Tariff Heading No.74081990. It appears that as per Sr.No.381 of Notification No.50/2017-Cus dated 30.06.2017, exemption benefit was available to "Flat Copper wire for use in the manufacture of photo voltaic ribbon (tinned copper interconnect) for manufacturer of solar photovoltaic cell or modules" subject to the condition that the Importer followed the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. The relevant portion of Sr. No.381 of Notification No.50/2017-Cus dated 30.06.2017, as amended, is as under:

Sr. No	**Chapter or heading or subheading or tariff item**	**Description of goods**	**Standard rate**	**IGST**	**Con. No**
(1)	(2)	(3)	(4)	(5)	(6)
381	7408	Flat Copper wire for use in the manufacture of photo voltaic ribbon (tinned copper interconnect) for manufacturer of solar photovoltaic cell or modules	Nil	-	9

9. After 02.02.2020 the importer imported various consignment of Bus Bar, Cell Ribbon & Round Wire under Customs Tariff Heading No.74081990 at ICD Tumb, JNCH Nhava Sheva & ACC Sahar during the period from 01.04.2020 to 12.04.2022 and availed the benefit of exemption at Sr.No.381 of Notification 50/2017-Cus dated 30.06.2017 in guise of Flat Copper Wire. On a sample basis, documents relating to an import of similar goods under Bill of Entry No. 7146911 dated 19.01.2022 is discussed below.

9.1 The Importer had filed application vide Annexure Form No.296/21-22 dated 12.01.2022 under the provisions of Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 before the Deputy Commissioner of Customs, EPC-7 Daman for import of raw material viz. Ribbon & Bus Bar Ribbon under Notification No.50/2017-Custom dated 30.06.2017 (Sr.No.381). The Deputy Commissioner of Customs, EPC-7 Daman issued Annexure No. 738/2021/EPC-07 (F.No. VIII/48-09/Cus-EPC-07/Daman/Waaree Energies/ Bond/2020-21) dated 13.01.2022 addressed to the Assistant Commissioner of Customs, ICD Tumb and the importer had cleared the said goods against said Annexure vide Bill of Entry No. 7146911 dated 19.01.2022. Scanned images of Annexure Form No.296/21-22 dated 12.01.2022 submitted by the importer for import of Ribbon & Bus Bar Ribbon under Customs Tariff Heading No. 74081990 under Notification No.50/2017-Customs dated 30.06.2017 (Sr.No. 381) and relevant Commercial invoice No. JRIT20211228001 dated 28.12.2021 issued by Tai Cang Ju Ren International Trade Co. Ltd, Tai Cang, China are reproduced below:

SCAN IMAGE OF COMMERCIAL INVOICE NO. JRIT20211228001 DATED 28.12.2021

TaiCang JuRen International Trade CO.,LTD

No.3 Fuqiao Industrial Zone, South Ring Road,Fuqiao Town,Taicang City,Suzhou City.

TEL:86-512-53657898 FAX:86-512-53657899

615

COMMERCIAL INVOICE

INVOICE NO.: JRIT20211228001 DATE: 2021.12.28

TO:Wasree Energies Limited	PO No: 1700004861
Unit 2B, Survey no. 267 NH-8, Nr Reliance Petrol Pump, Umbergaon-396105,Nandigram Village, Taluka-Umbergaon,, India.	PAYMENT TERMS: T/T 60 Days from the date of B/L FOB SHANGHAI

NO.	Item NO.	DESCRIPTION OF GOODS	QUANTITY (KG)	UNIT PRICE (USD)	AMOUNT (USD)
1	RMRIB00000021	0.25*0.9mm Ribbon	20871.875	13.81	288478.59
2	RMBUS00000001	0.4*5mm BARBUS Ribbon	6616	13.81	91353.15
TOTAL			27286.875		379831.74

Country of Origin:China

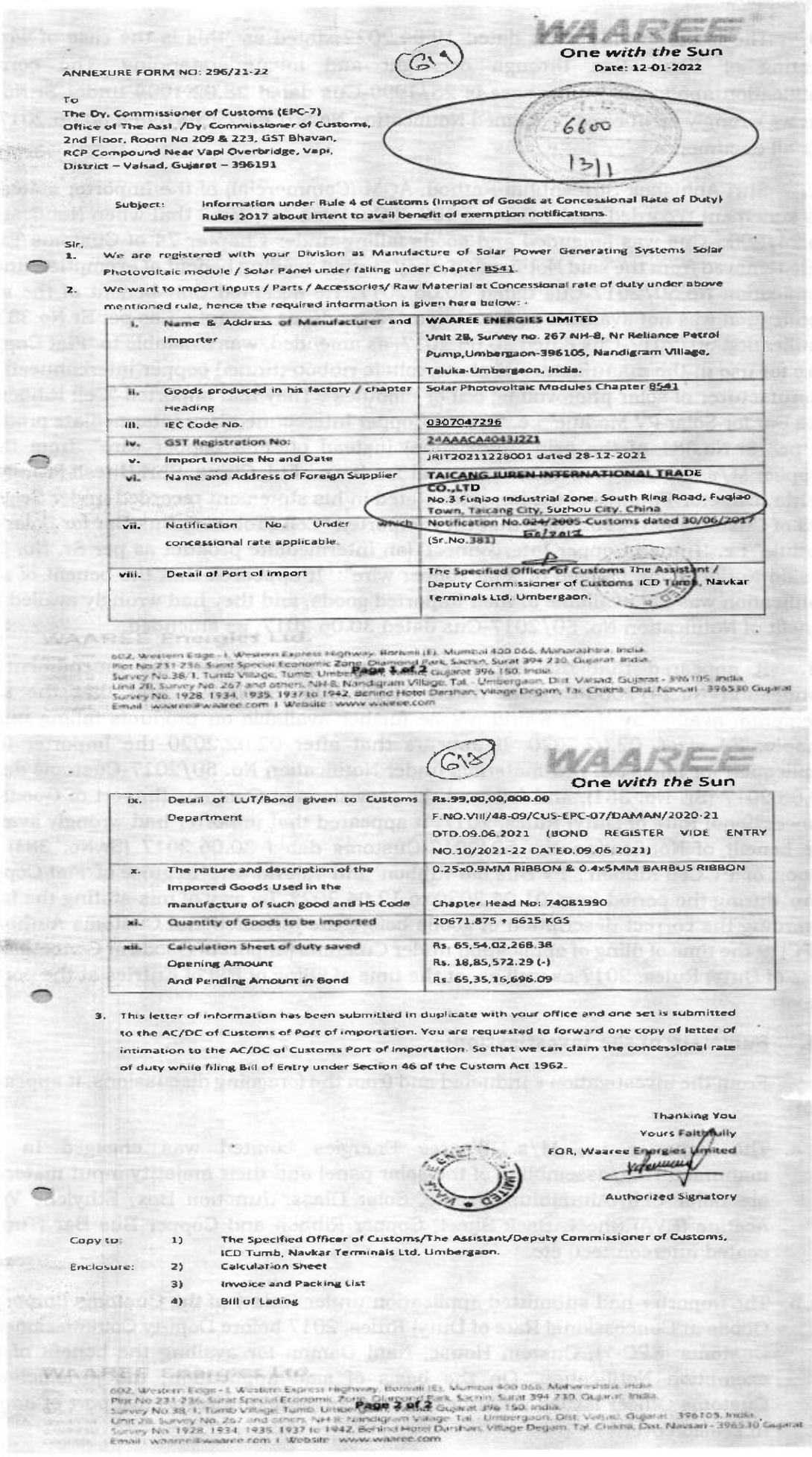
BANK INFORMATION

Beneficiary's Name: TAICANG JUREN INTERNATIONAL TRADE CO., LTD
A/C NO.: 3305051291100000034J9
Beneficiary's Bank: TAICANG RURAL COMMERCIAL BANK
SWIFT: TCRBCN3H
Bank Address: NO. 198 EAST SHANGHAI ROAD, TAICANG CITY, JIANGSU, CHINA
TEL: 86-0512-53282867

TaiCang JuRen International Trade CO.,LTD

Eva chen

SCAN IMAGE OF ANNEXURE FORM NO. 296/21-22 dated 12.01.2022



ANNEXURE FORM NO: 296/21-22

WAAREE
One with the Sun
Date: 12-01-2022

To
The Dy. Commissioner of Customs (EPC-7)
Office of The Asst. /Dy. Commissioner of Customs,
2nd Floor, Room No 209 & 223, GST Bhavan,
RCP Compound Near Vapi Overbridge, Vapi,
District – Valsad, Gujarat – 396191

6600
13/1

Subject: Information under Rule 4 of Customs (Import of Goods at Concessional Rate of Duty) Rules 2017 about intent to avail benefit of exemption notifications.

Sir,

1. We are registered with your Division as Manufacture of Solar Power Generating Systems Solar Photovoltaic module / Solar Panel under falling under Chapter 8541.

2. We want to import inputs / Parts / Accessories/ Raw Material at Concessional rate of duty under above mentioned rule, hence the required information is given here below: -

i.	Name & Address of Manufacturer and Importer	WAAREE ENERGIES LIMITED Unit 28, Survey no. 267 NH-8, Nr Reliance Petrol Pump,Umbergaon-396105, Nandigram Village, Taluka-Umbergaon, India.
ii.	Goods produced in his factory / chapter Heading	Solar Photovoltaic Modules Chapter 8541
iii.	IEC Code No.	0307047296
iv.	GST Registration No:	24AAACA4043J2Z1
v.	Import Invoice No and Date	JRIT20211228001 dated 28-12-2021
vi.	Name and Address of Foreign Supplier	TAICANG JUREN INTERNATIONAL TRADE CO.,LTD No.3 Fuqiao Industrial Zone, South Ring Road, Fuqiao Town, Taicang City, Suzhou City, China
vii.	Notification No. Under which concessional rate applicable.	Notification No.024/2005-Customs dated 30/06/2017 (Sr.No.381)
viii.	Detail of Port of import	The Specified Officer of Customs The Assistant / Deputy Commissioner of Customs ICD Tumb, Navkar Terminals Ltd, Umbergaon.

602, Western Edge - I, Western Express Highway, Borivali (E), Mumbai 400 066, Maharashtra, India.
Plot No 231-236, Surat Special Economic Zone, Diamond Park, Sachin, Surat 394 230, Gujarat, India.
Survey No.38/1, Tumb Village, Tumb, Umbergaon, Gujarat 396 150, India.
Unit 28, Survey No. 267 and others, NH-8, Nandigram Village, Tal. - Umbergaon, Dist. Valsad, Gujarat - 396105, India.
Survey No. 1928, 1934, 1935, 1937 to 1942, Behind Hotel Darshan, Village Degam, Tal. Chikhli, Dist. Navsari - 396530 Gujarat
Email : waaree@waaree.com | Website : www.waaree.com

Page 1 of 2

WAAREE
One with the Sun

ix.	Detail of LUT/Bond given to Customs Department	Rs.99,00,00,000.00 F.NO.VIII/48-09/CUS-EPC-07/DAMAN/2020-21 DTD.09.06.2021 (BOND REGISTER VIDE ENTRY NO.10/2021-22 DATED.09.06.2021)
x.	The nature and description of the Imported Goods Used in the manufacture of such good and HS Code	0.25x0.9MM RIBBON & 0.4x5MM BARBUS RIBBON Chapter Head No: 74081990
xi.	Quantity of Goods to be Imported	20671.875 + 6615 KGS
xii.	Calculation Sheet of duty saved Opening Amount And Pending Amount in Bond	Rs. 65,54,02,268.38 Rs. 18,85,572.29 (-) Rs. 65,35,16,696.09

3. This letter of information has been submitted in duplicate with your office and one set is submitted to the AC/DC of Customs of Port of importation. You are requested to forward one copy of letter of intimation to the AC/DC of Customs Port of importation. So that we can claim the concessional rate of duty while filing Bill of Entry under Section 46 of the Custom Act 1962.

Thanking You
Yours Faithfully
FOR, Waaree Energies Limited

Authorized Signatory

Copy to: 1) The Specified Officer of Customs/The Assistant/Deputy Commissioner of Customs, ICD Tumb, Navkar Terminals Ltd, Umbergaon.

Enclosure: 2) Calculation Sheet
3) Invoice and Packing List
4) Bill of Lading

602, Western Edge - I, Western Express Highway, Borivali (E), Mumbai 400 066, Maharashtra, India.
Plot No 231-236, Surat Special Economic Zone, Diamond Park, Sachin, Surat 394 230, Gujarat, India.
Survey No.38/1, Tumb Village, Tumb, Umbergaon, Gujarat 396 150, India.
Unit 28, Survey No. 267 and others, NH-8, Nandigram Village, Tal. - Umbergaon, Dist. Valsad, Gujarat - 396105, India.
Survey No. 1928, 1934, 1935, 1937 to 1942, Behind Hotel Darshan, Village Degam, Tal. Chikhli, Dist. Navsari - 396530 Gujarat
Email : waaree@waaree.com | Website : www.waaree.com

Page 2 of 2

9.2 The Importer had mentioned the Notification No.50/2017-Customs dated 30.06.2017 (Sr.No.381) against the Sr. No. vii (Notification No. under which concessional rate applicable) of the said application. Further the Importer had

mentioned the nature and description of goods as 'Round Wire'/ 'Cell Ribbon' / 'Bus Bar Ribbon', etc. and HS code as 74081990 against Sr. No. x (The nature and description of imported goods used in the manufacture of such goods and HSN) of the said application.

10. The importer vide letter dated 19.04.2022 stated as "this is the case of wrong quoting of Notification through oversight and misunderstanding. The correct Notification applicable in our case is 25/1999-Cus dated 28.02.1999 under Sr.No.18 but we wrongly mentioned & claimed Notification No.50/2017-Cus dated 30.06.2017 in our all documents."

11. Shri Abhishek Sureshbhai Rathod, AGM (Commercial) of the Importer stated in his statement recorded under Section 108 of Customs Act, 1962 that when Notification No.24/2005-Cus was amended and goods falling under Chapter 74 of Customs Tariff were removed from the said Notification, they started availing benefit of exemption under Notification No.50/2017-Cus dated 30.06.2017. He accepted that benefit of the said Notification was not available to their imported goods, as exemption as per Sr.No.381 of Notification 50/2017-Cus dated 30.06.2017, as amended, was available to "Flat Copper wire for use in the manufacture of photo voltaic ribbon (tinned copper interconnect) for manufacturer of solar photovoltaic cell or modules". They had imported "Cell Ribbon & Bus Bar for Solar PV Module" i.e. 'Tinned Copper Interconnect' (an intermediate product as per Sr.No.381 of the said Notification) instead of "Flat copper wire", from their supplier M/s. Tai Cang Juren International Trade Co., Ltd, China. Shri Hitesh Pranjivan Mehta, Director-Finance of the importer stated in his statement recorded under Section 108 of Customs Act, 1962, and that they imported "Cell Ribbon & Bus Bar for Solar PV Module" i.e. 'Tinned Copper Interconnect' (an intermediate product as per Sr. No. 381 of said Notification), instead of "Flat copper wire". It appeared that the benefit of said Notification was not available to their imported goods, and they had wrongly availed the benefit of Notification No. 50/2017-Cus dated 30.06.2017, as amended.

12. It appeared that the Importer was well aware about the amendment to Notification No.24/2005-Custom dated 01.03.2005 (Sr.No.39), and that the said exemption availed by them would not be further available on products falling under Chapter 74 w.e.f. 02.02.2020. It appears that after 02.02.2020 the Importer filed application for import of raw materials under Notification No. 50/2017-Customs dated 30.06.2017 (Sr. No. 381), and followed the provisions of Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. It appeared that importer had wrongly availed the benefit of Notification No. 50/2017-Customs dated 30.06.2017 (Sr.No. 381) on import of 'PV Cell Ribbon', 'PV Bus bar Ribbon' and 'Round wire' in guise of 'Flat Copper Wire' during the period from 01.04.2020 to 12.04.2022, by way of mis-stating the facts regarding the correct description of goods before the jurisdictional Customs Authority (EPC) at the time of filing of application under Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017,as well as, at the time of filling of Bill of Entries at the port of import.

13. Summary of the Investigation:

From the investigation conducted and from the foregoing discussions, it appeared that:

a. The importer i.e. M/s. Waaree Energies Limited was engaged in the manufacturing/assembling of the solar panel and their majority input materials are Solar Cell, Aluminium Frame, Solar Glass, Junction Box, Ethylene Vinyl Acetate (EVA) Sheet, Back Sheet, Copper Ribbon and Copper Bus Bar (Tinned coated interconnect) etc.

b. The importer had submitted application under Rule 4 of the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 before Deputy Commissioner of Customs (EPC-7), Custom House, Nani Daman for availing the benefit of the exemption Notification. On the basis of said application, the jurisdictional Customs Officer issued an Annexure and forwarded to respective port of import in sealed cover.

c. Prior to issuance of Notification No.06/2020-Cus dated 02.02.2020, the importer was importing "Cell Ribbon & Bus Bar under CTH 74081900 and availing the benefit of Notification No.24/2005-Cus dated 01.03.2005 (Sr. No. 39)

d. The Notification No. 24/2005-Cus dated 01.03.2005 (Sr. No. 39) was amended vide Notification No.06/2020-Cus dated 02.02.2020, wherein the entry against Sr.No. 39 was substituted by the words "Any Chapter except Chapter 74".

e. After 01.04.2020, the importer started availing the exemption benefit of Notification No. 50/2017-Cus (S. No. 381) dated 30.06.2017 against the import of "Cell Ribbon" and "Bus Bar" of various sizes, and disclosing the description of goods as "Cell Ribbon / Bus Bar Ribbon, etc".

f. On scrutiny of documents, it appeared that Importer had never used the description of goods **"Tinned Copper interconnect"** in their application filed before EPC, Daman.

g. The 'Cell Ribbon' and 'Bus Bar' falling under Customs Tariff Heading No. 74081990 imported by the Importer was used to connect photovoltaic cells, which vary in usage & sizes. Bus Bars are thicker than Cell Ribbons in size. The Cell Ribbon was used in connecting internal cells in a solar module, while Bus Bar was used for output in a solar module.

h. The 'Cell Ribbon' and 'Bus Bar' were different articles from 'Flat Copper wire' as mentioned at Sr.No.381 of Notification No.50/2017-Cus dated 30.06.2017, as amended. The Cell Ribbon & Bus Bar were types of photo voltaic ribbon (tinned copper interconnect) and the benefit of Sr.No.381 of Notification No.50/2017-Cus dated 30.06.2017, as amended, appeared to be available to "Flat Copper Wire" used to manufacture PV Ribbon (Tinned Copper Interconnect) and not for the import of PV Ribbon (Tinned Copper Interconnect) itself. Thus, the exemption benefit of Sr.No. 381 of Notification No.50/2017-Cus dated 30.06.2017, as amended, was not applicable to the 'Cell Ribbon' and 'Bus Bar' imported by the importer.

i. Shri Abhishek Sureshbhai Rathod, AGM (Commercial) of M/s Waaree Energies Limited accepted that benefit of said Notification was not available to their imported goods as exemption as per Sr. No. 381 of Notification 50/2017-Cus dated 30.06.2017, as amended, was available to "Flat Copper wire for use in the manufacture of photo voltaic ribbon (tinned copper interconnect) for manufacturer of solar photovoltaic cell or modules". They imported "Cell Ribbon & Bus Bar for Solar PV Module" i.e. 'Tinned Copper Interconnect' (an intermediate product as per Sr. No 381 of said notification) instead of "Flat copper wire", from their supplier M/s Tai CangJuren International Trade Co., Ltd, China.

j. Shri Hitesh Pranjivan Mehta, Director-Finance of the Importer also accepted that they had imported "Cell Ribbon & Bus Bar for Solar PV Module" i.e. 'Tinned Copper Interconnect' (an intermediate product as per Sr. No. 381 of said Notification) instead of "Flat copper wire" thus, it is crystal clear that benefit of said Notification was not available to their imported goods and they have wrongly availed the benefit of Notification No. 50/2017-Cus dated 30.06.2017, as amended.

k. The Importer was fully aware about the facts that the 'Cell Ribbon' and 'Bus Bar' are different articles from 'Flat Copper wire' and exemption benefit of Sr.No.381 of Notification No.50/2017-Cus dated 30.06.2017, as amended, was not applicable to 'Cell Ribbon' and 'Bus Bar' imported by them.

l. The importer availed the exemption benefit of BCD and SWS on the import of 'Cell Ribbon' and 'Bus Bar' in guise of 'Flat Copper wire' and indulged in evasion of Customs Duty totally amounting to Rs. **3,79,13,265/- (Rupees Three Crores**

Seventy Nine Lakhs Thirteen Thousand Two Hundred and Sixty Five only) (details as per Annexure-A) during the period from 01.04.2020 to 12.04.2022.

14. SUPPRESSION OF FACTS AND INVOKING EXTENDED PERIOD OF TIME:

14.1 The subject Bills of Entry as mentioned in Annexure-A to the Show Cause Notice, filed by the importer, wherein they had declared the description, classification of goods and country of origin, were self-assessed by them. However, as per Sr.No.381 of Notification No.50/2017-Cus dated 30.06.2017, as amended, the benefit of the Notification was not applicable to the 'Cell Ribbon' and 'Bus Bar' imported by the Importer. Shri Abhishek Sureshbhai Rathod, AGM-Commercial of M/s Waaree Energies Limited in his statement dated 19.04.2022, recorded under Section 108 of the Customs Act, 1962, and Shri Hitesh Pranjivan Mehta Director-Finance of M/s. Waaree Energies Limited in his statement dated 23.05.2022, recorded under Section 108 of the Customs Act, 1962, accepted that the benefit of said Notification was not available to their imported goods and they had wrongly availed the benefit of Notification No. 50/2017-Cus dated 30.06.2017, as amended.

14.2 Vide Finance Act, 2011, "Self-Assessment" was introduced w.e.f. from 08.04.2011 under the Customs Act, 1962. Section 17 of the said Act provides for self-assessment of Duty on import and export goods by the Importer or exporter himself by filing a Bill of Entry or Shipping Bill as the case may be, in the electronic form, as per Section 46 or 50, respectively. Thus, under self-assessment, it is the responsibility of the Importer or exporter to ensure that he declares the correct classification, applicable rate of Duty, value, benefit or exemption Notification claimed, if any in respect of the imported/exported goods, while presenting Bill of Entry or Shipping Bill. Therefore, by not self-assessing the subject goods properly, it appeared that the Importer willfully evaded Customs Duty on the impugned goods. In the present case, importer wrongly availed the benefit of exemption Notification, wherein imported goods had not fulfilled the criteria as per Sr. No. 381 of the Notification No. 50/2017-Customs dated 30.06.2017, as amended. The Importer appeared to have indulged in willful misstatement of facts with intent to evade the payment of applicable Customs duties.

14.3 Therefore, it appeared that importer had wrongly availed the benefit of Notification No. 50/2017-Customs dated 30.06.2017 (Sr.No. 381) on import of 'PV Cell Ribbon', 'PV Bus bar Ribbon' and 'Round wire' in guise of 'Flat Copper Wire' during the period from 01.04.2020 to 12.04.2022, by way of mis-stating the facts regarding the correct description of goods before the jurisdictional Customs Authority (EPC) at the time of filing of application under Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, as well as, at the time of filling of Bill of Entries at the port of import at ICD Tumb, Nhava Sheva & Sahar ACC with clear intent to evade the payment of Customs Duty. Therefore, in light of the discussions in preceding paragraphs, the case appeared to be fit for invocation of extended period under the provisions of the Section 28(4) of the Customs Act, 1962.

15. LEGAL PROVISIONS:

15.1 Section 17. Assessment of duty. -

(1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

(2) The proper officer may verify the entries made under section 46 or section 50 and the self assessment of goods referred to in sub-section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

Provided *that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.*

(3) For the purposes of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self- assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re- assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

Explanation. *- For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of section 17 as it stood immediately before the date on which such assent is received.]*

15.2 In terms of Section 28(4), *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.

15.3 Section 28AA of the Customs Act, 1962 reads as follows:

Interest on delayed payment of duty

(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

(2) Interest at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty

15.4 Section 46(4A) of the Customs Act, 1962 states that:

"The importer who presents a bill of entry shall ensure the following, namely:--

(a) the accuracy and completeness of the information given therein;

(b) the authenticity and validity of any document supporting it; and

(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force."

15.5 Section 111 of Customs Act, 1962 reads as follows:

Confiscation of improperly imported goods etc,-

The following goods brought from a place outside India shall be liable to confiscation: -

(a) .....
(b) .....
(c) .....

(m) 1[any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 2[in respect thereof or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54];

.....

(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.

15.6 Section 112 of Customs Act, 1962 reads as follows:

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) .....

(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;]

15.7 The Section 114A of the Customs Act, 1962 reads as follows.

"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 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 9 [sub-section (8) of section 28] shall, also be liable to pay a penalty equal to the duty or interest so determined.

.....

.....

Provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114."

15.8 The Section 114AA of the Customs Act, 1962 reads as follows:

"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."

15.9 *Section 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 goods39[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:*
[Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, [no such fine shall be imposed]:
Provided further that], without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.
[(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.]

16. CONTRAVENTIONS OF VARIOUS PROVISIONS OF CUSTOMS ACT, 1962 BY THE IMPORTER:

16.1 As discussed in above paras, it appeared that the Importer had imported the goods "Cell Ribbon & Bus Bar" by wrongly availing the benefit under the Sr.No.381 of Notification No.50/2017-Customs dated 30.06.2017 (as amended) which had led to evasion in the payment of Customs Duty by the Importer. Thus, it appeared that the subject imported goods which were imported by wrongly availing the benefit under the Sr.No.381 of Notification No.50/2017-Customs dated 30.06.2017 (as amended) do not correspond with the entry/declaration made while filing the Bills of Entry under the Customs Act, 1962 in as much as imported goods "Cell Ribbon & Bus Bar" were not eligible to be imported availing the benefit of Sr.No.381 of Notification No.50/2017-Customs dated 30.06.2017 (as amended). In view of the same, the goods imported during the period from 01.04.2020 to 12.04.2022 having assessable value of **Rs.58,41,79,727/- (Rupees Fifty Eight Crore, Forty One Lakh, Seventy Nine Thousand, Seven Hundred and Twenty Seven only)** were liable for confiscation under Section 111(m) of the Customs Act, 1962.

16.2 In view of Para 16.1 above, it appeared that the Importer, by rendering the subject imported goods liable for confiscation under Section 111(m) of the Customs Act,1962, had also made themselves liable for penalty under Section 112 of the Customs Act, 1962.

16.3 In view of the above discussion, it appeared that the Duty, with respect to the import of the subject goods in question has been short paid by the Importer, by reasons of wilful wrong availment of Duty benefit as well as suppression of facts that had come into light during investigation, and therefore, the Importer being liable to pay the outstanding Duty, also appears liable for penalty under Section 114A of the Customs Act, 1962.

16.4 In view of the above discussions, it appeared that the Importer had prior knowledge about the ineligibility of the benefit Sr.No.381 of Notification No.50/2017-Customs dated 30.06.2017 (as amended) in respect of the subject goods. Importer was fully aware about the facts that the 'Cell Ribbon' and 'Bus Bar' were different articles from 'Flat Copper wire' and exemption benefit of Sr.No.381 of Notification No.50/2017-Cus dated 30.06.2017, as amended, was not admissible to 'Cell Ribbon' and 'Bus Bar' imported by them, however, Importer knowingly and deliberately availed the benefit of exemption Notification No. 50/2017-Customs dated 30.06.2017, as amended on import of "Cell Ribbon" & "Bus Bar", in guise of "Flat Copper Wire for using the same in the manufacture of photo voltaic ribbon (tinned copper interconnect) and further in the manufacture of solar photovoltaic cell or module". In view of the same, it appeared that the Importer knowingly and intentionally made false declaration so as to wrongly avail the Duty benefit in order to evade Duty payment and thereby importer have made themselves liable for penalty under section 114AA of the Customs Act, 1962.

16.5 In view of the discussed herein above, it appeared that the Importer had deliberately with clear intent to evade the payment of Customs Duty, had wrongly availed the benefit of Sr.No.381 of Notification No.50/2017-Cus dated 30.06.2017, as amended while filing the Bills of Entry for clearance of "Cell Ribbon" & "Bus Bar" at ICD Tumb, Nhava Sheva & Sahar Air Cargo Complex and not paid the total Customs Duty **Rs. 3,79,13,265/-** which was recoverable from them under Section 28(4) of the Customs Act, 1962 alongwith interest under Section 28AA of the Customs Act, 1962.

17. In view of the above Show Cause Notice No. VIII/10-49/Commr./O&A/ 2023-24 dated 25.06.2024 was issued to **M/s. Waaree Energies Limited,** 602, Western Edge-I, Off Western Express Highway, Borivali (East), Mumbai- 400066, calling upon to show cause in writing to the Principal Commissioner of Customs, Ahmedabad within 30 days of the receipt of Notice as to why:-

(a) The exemption benefit of Sr.No.381 of Notification No. 50/2017-Customs dated 30.06.2017, as amended, availed for clearance of Imported goods viz. "Cell Ribbon & Bus Bar" under various Bill of Entry (as mentioned in **Annexure-A**) filed at ICD Tumb, Nhava Sheva & Sahar ACC should not be denied;

(b) Impugned goods viz. "Cell Ribbon & Bus Bar" imported vide Bills of Entry as mentioned in Annexure-A to Show Cause Notice having assessable value of **Rs 58,41,79,727/- (Rupees Fifty Eight Crore, Forty One Lakh, Seventy Nine Thousand, Seven Hundred and Twenty Seven only),** should not be held liable to confiscation under Section 111 (m) of the Customs Act, 1962 and why fine in lieu of confiscation should not be imposed on them under Section 125 of the Customs Act,1962;

(c) The differential Customs Duty worked out as short paid amounting to **Rs. 3,79,13,265/- (Rupees Three Crore, Seventy Nine Lakh, Thirteen Thousand, Two Hundred and Sixty Five only)** for the Bills of Entry as detailed in Annexure-A filed at ICD Tumb, Nhava Sheva & Sahar ACC, should not be demanded and recovered under Section 28(4) of the Customs Act, 1962, along with applicable interest in terms of Section 28AA of the Customs Act, 1962;

(d) Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962;

(e) Penalty should not be imposed upon them under Section 112 of the Customs Act, 1962;

(f) Penalty should not be imposed upon them under Section 114AA of the Customs Act, 1962.

DEFENSE SUBMISSIONS

18. The importer vide letter dated 05.08.2024 submitted their reply to the Show Cause Notice wherein they interalia stated as under:

- The Importer is engaged in manufacturing of "Solar Photo Voltaic Module" falling under HSN 8541. The Importer has imported "Cell Ribbon & Bus Bar falling under Customs Tariff Heading No. 74081990 as a raw material for Solar Photo Voltaic Module. Both Cell Ribbon and Bus Bar are used in photovoltaic cells.

- The Importer had availed exemption under Sr. No. 381 of Notification No.50/2017-Cus dated 30.06.2017 for HSN 7408 wherein the description of goods was mentioned as "**Flat copper wire for use in the manufacture of photo voltaic ribbon (tinned copper interconnect) for manufacture of solar photovoltaic cells or modules**".

- Prior to notification No. 50/2017, the importer was availing the benefit of Notification No. 24/2005-Cus (Sr. No.39) dated 01.03.2005 as amended wherein exemption as given to "All Goods". But, once the Notification No. 24/2005-Cus was amended vide Notification No 06/2020-Cus dated 02.02.2020 and goods falling under Chapter 74 of the Customs Tariff were removed from said Notification, the importer started to avail the benefit of exemption under Notification No. 50/2017-Cus (S. No. 381) dated 30.06.2017.

- They are not engaged in manufacturing of photo voltaic ribbon (tinned copper interconnect) but in fact uses photo voltaic ribbon (tinned copper interconnect) to manufacture solar modules (solar panels). Thus, the exemption under Sr No. 381 of Not. No. 50/2017-Cus dt. 30.06.2017 is not available to them, however, they are eligible for exemption under Sr. No. 18 of Not. No. 25/1999–Cus dt. 28.02.1999 and instead of availing the exemption Notification No.25/ 1999-Cus dated 28.02.1999 which is applicable to the importer, they have mentioned notification on. 50/2017.

- Notification No. 50/2017 also exempts the products under the HSN code 7408 which is used in the manufacture of photovoltaic cells. The mentioning of notification no. 50/2017 instead of Notification No. 25/1999 was due to misunderstanding in the reading of sentences of the description of the goods. However, the final use of the imported goods is same for the "manufacture of solar photovoltaic cells or modules".

- It was a procedural inadvertent mistake on their part and now they are correctly availing the exemption under Notification No.25/1999-Cus dated 28.02.1999 which is not disputed by the department. There was no duty that was applicable to them as per Notification No.25/ 1999-Cus dated 28.02.1999.

- It is a well settled law that substantive benefits can never be denied due to procedural lapse. In this connection, reliance is placed on:

    - ***M/S AGV FENESTRATION PVT LTD VERSUS CCE-CHANDIGARH-1 -2023 (12) TMI 563 CESTAT CHANDIGARH;***

- ***M/S. S.L. POLYPACK PRIVATE LIMITED VERSUS COMMISSIONER OF CGST & CX, HOWRAH COMMISSIONERATE -2023 (1) TMI 931 CESTAT KOLKATA;***
- ***MJ GOLD PVT LTD VERSUS PRINCIPAL COMMISSIONER OF CUSTOMS (IMPORT), NEW DELHI-2022(10) TMI 292-CESTAT NEW DELHI.***
- ***Further, the apex court has held in various decisions that the procedural lapses cannot take away substantive remedy [Mangalore Chemicals & Fertilizers Ltd Vs Deputy Commissioner-1991 (55) ELT 437 (S.C.)].***

- The import of Cell Ribbon & Bus Bar for Solar PV Module" was exempt from duty under exemption Notification No.25/ 1999-Cus dated 28.02.1999. When there was no duty liability then invoking of section 28(4) of the Customs Act, 1962 is bad in law which can only be invoked when "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 wilful mis-statement; or (c) suppression of facts,".

- The Importer used to import the product under the correct Notification No. 24/2005- Cus (Sr. No.39) dated 01.03.2005 as amended before. It was only after the amendment that there was a misunderstanding in reading the notification. When there was no duty liability at all then section 28(4) could not have been invoked. Also, the product imported i.e. Cell Ribbon & Bus Bar for Solar PV Module and the HSN code of the same i.e. 74081990 was also correctly mentioned in the Form IGCR-1 wherein one time information was given on the common portal containing the information as required under Rule 4 of the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 before getting the acceptance for the same for import. Hence, it is clear that the Importer had given all the information before the import i.e. the HSN code under which the product that was imported falls and the exact description of the goods that was imported.

- The Importer could not have gained anything by mentioning the incorrect notification number as the product was exempt even in the correct notification that was to be mentioned by the Importer. Further, when the Importer had given all the details that was called upon in the inquiry that was initiated then the levelling of the allegation of "wilful misstatement has caused gross injustice to the Importer who has acted in the most co-operative manner and had given all the details before the import of the goods too and in the bills of entries filed for the same. In this connection, reliance is placed on:

  - ***HIKOKI POWER TOOLS INDIA PVT LTD AND SHRI DATTATREYA JOSHI VICE PRESIDENT & COMPANY SECRETARY VERSUS COMMISSIONER OF CUSTOMS, BANGALORE -2024 (3) TMI 137 CESTAT BANGALORE;***
  - ***M/S SIGNET CHEMICAL PVT. LTD. VERSUS COMMISSIONER OF CUSTOMS, NS-1, MUMBAI-II AND COMMISSIONER OF CUSTOMS (IMP.), MUMBAI 2020 (10) TMI 289 CESTAT MUMBAI;***
  - ***M/S CANON INDIA PRIVATE LIMITED VERSUS COMMISSIONER OF CUSTOMS -2021 (376) E.E.T. 3 (SC);***
  - ***SARABHAI M CHEMICALS VERSUS COMMISSIONER OF CENTRAL EXCISE VADODARA 2005 (179) E.L.T. 3(S.C.);***
  - ***BHARAT CARBON & RIBBON MFG. CO. LTD. Versus COMMR. OF C. EX., FARIDABAD 2005 (186) E.L.T. 491 (Tri. - Del.) "BHARAT CARBON & RIBBON MFG. CO. LTD. Versus COMMR. OF C. EX., FARIDABAD 2005 (186) E.L.T. 491 (Tri. - Del.).***

- Based on the above ground the demand of customs duty under Section 28(4) of the Customs Act, 1962 must be dropped. Also, when the demand of tax itself is

bad in law then the question of imposing interest on the same u/s 28AA of the Customs Act, 1962 does not arise and the same must also be dropped.

- When the demand of tax itself is bad in law then the question of imposing penalty on the same does not arise. In the present case the product that was imported is exempt from duty hence, no tax demand and penalty can arise. In this case it is firstly stated that when there is no duty applicable then there can be no demand of penalty and secondly section 114A of the Customs Act, 1962 can only be invoked when there is any "collusion or any wilful mis-statement or suppression of facts. From the above submission made and judgments relied upon it is very clear that none of the allegations of "collusion or any wilful mis-statement or suppression of facts" hold good against the Importer. Hence, the penalty being bad in law must be dropped. In this connection, reliance is placed on:

  - ***HON' SUPREME COURT IN CASE OF COMMISSIONER V. LEWEK ALTAIR SHIPPING PVT LTD. - 2019 (367) E.L.T. A328 (S.C.);***
  - ***SURYA OFFSET Versus COMMISSIONER OF C. EX., AHMEDABAD 2011 (267) E.L.T. 516 (Tri. Ahmd.);***
  - ***M/S MIDAS FERTCHEM IMPEX PVT LTD., MS. RASHMI JAIN, DIRECTOR, SHRI MANISH JAIN, DIRECTOR, M/S MIDAS IMPORT CORPORATION, VERSUS PRINCIPAL COMMISSIONER OF CUSTOMS, AIR CARGO COMPLEX (IMPORT) NEW DELHI -2023 (1) TMI 998 - CESTAT, NEW DELHI;***

- Section 111(m) of the Customs Act, 1962 could not have been invoked in the present case. The product imported i.e. Cell Ribbon & Bus Bar for Solar PV Module and the HSN code of the same i.e. 74081990 was correctly mentioned in the Form IGCR-1 and the bill of entries were also correctly filed. The said clause does not apply when there is an incorrect mentioning of the only the notification number which was a procedural lapse in the case of the Importer. If this was the case, then in every case of procedural lapses confiscation could have been invoked. The description of the goods and the HSN code was correctly mentioned, and the product imported was exempt. Invoking of such a harsh provision for a procedural lapse has caused gross injustice to the Importer who has acted in the most genuine manner. When the demand to confiscate the goods, itself is bad in law then the question of imposing of fine in lieu of confiscation does not arise. In this connection, reliance is placed on:

  - ***COMMR. OF CUS., C. EX. & S.T., HYDERABAD-III Versus SELECT FOAM PRODUCTS 2019 (366) E.L.T. 1057 (Tri. - Hyd.).***

- Section 112 can only be invoked when the goods are liable to confiscation. In this case where the invocation of Section 111(m) in itself is bad in law and no breach as per Section 111(m) was committed by the Importer then section 112 could not have been invoked. The case of the Importer does not fall in any of the clause (i), (ii), (ii), (iv) or (v) of Section 112 and hence no penalty can be levied on the Importer on the goods which are exempt and where only a procedural lapse of mentioning incorrect notification number.

- Section 114AA is not applicable on the importer because the importer had no intention to hide the facts or to evade the payment of custom duty. Penalty u/s 114AA can be invoked only when the person knowingly or intentionally makes any declaration which is false or incorrect. In the instant case, there was no such intention to make any false or incorrect declaration. The importer is eligible for exemption under Notification No.25/1999-Cus dated 28.02.1999. Further, the importer has bonafidely imported the goods for use in production of solar panels

and thus the elements of section 114AA for invoking penalty is not present in the importer's case.

PERSONAL HEARING:

19. Personal hearing was held on 07.11.2024 through video conferencing wherein Shri Kushal Rathi, Chartered Accountant appeared on behalf of the importer wherein he reiterated their submission dated 10.04.2024. On being asked whether he would like to make any additional submission in this regard, he stated that they have already submitted detailed reply vide letter dated 10.04.2024 in this regard.

DISCUSSION AND FINDINGS:

20. I have carefully gone through the relevant records, the written submission dated 10.04.2024 made by the Noticee M/s. Waaree Energies Limited as well as compilation of statutory provisions and case laws submitted by their Chartered Accountant during the personal hearing held on 07.11.2024.

20.1 I find that the present case came into light when on the basis of information, an enquiry was initiated against M/s. Waaree Energies Limited, who were importing "Cell Ribbon" and "Bus Bar", by classifying under Customs Tariff Item 74081990 of first Schedule to the Customs Tariff Act, 1975, thereby availing exemption of BCD as per Notification No. **50/2017-Cus dated 30.06.2017 at (Sr. No. 381)** (hereinafter referred to as "the said notification" for the sake of brevity), as amended, in guise of "Flat Copper wire for using the same in the manufacture of photo voltaic ribbon (tinned copper interconnect) and further in the manufacture of solar photovoltaic cell or module". Thus, it was observed that M/s Waaree Energies Limited had availed inappropriate and undue benefit of Notification No. 50/2017-Cus dated 30.06.2017 (Sl. No 381) as amended (which are available to imported goods i.e. **Flat Copper wire for use in the manufacture of photo voltaic ribbon (tinned copper interconnect) for manufacture of solar photovoltaic cell or modules**) and was liable to pay the duty not paid/short paid for the period 01.04.2020 to 12.04.2022 under Section 28(4) of the Customs Act, 1962 (hereinafter referred to as "the Act") along-with applicable interest under Section 28AA of the Act. Further, it appeared that as the subject goods were imported by reason of willful mis-statement resulting in misuse of Notification benefit, the subject goods were liable for confiscation under Section 111(m) of the Act and M/s. Waaree Energies Limited had rendered themselves liable to applicable penalty under Section 112, 114A and 114AA of the Act.

21. From the facts of the case and submissions of the Noticee, following questions have arisen for consideration in the present case: -

(i) Whether the exemption benefit of Sr. No. 381 of Notification No. 50/2017-Customs dated 30.06.2017, as amended, availed for clearance of Imported goods viz. 'Ribbon', 'Cell Ribbon' and 'Bus Bar Ribbon' under various Bill

of Entry for the period April, 2020 to April, 2022 is rightly claimed by the Importer;

(ii) Whether the Impugned goods viz. 'Cell Ribbon' and 'Bus Bar' imported vide Bills of Entry as mentioned in Annexure-A to Show Cause Notice having assessable value of **Rs. 58,41,79,727/- (Rupees Fifty Eight Crore, Forty One Lakh, Seventy Nine Thousand, Seven Hundred and Twenty Seven only)** are to be confiscated;

(iii) Whether the differential Customs Duty of **Rs. 3,79,13,265/- (Rupees Three Crore, Seventy Nine Lakh, Thirteen Thousand, Two Hundred and Sixty Five only)** is liable to be demanded and recovered under Section 28(4) of the Customs Act, 1962, along with applicable interest in terms of Section 28AA of the Customs Act, 1962;

(iv) Whether the Importer is liable for penalty under Section 112, 114A & 114AA of the Customs Act, 1962;

22. I find that Duty liability with interest and penal liabilities would be relevant only if the bone of contention that whether the Importer has wrongly claimed the benefit of Sr. No. 381 of Notification No. 50/2017-Cus, dated 30.06.2017 is answered in the affirmative. Thus, the main point is being taken up firstly for examination.

23. Whether the exemption benefit of Sr. No. 381 of Notification No. 50/2017-Customs dated 30.06.2017, as amended, availed for clearance of Imported goods viz. 'Cell Ribbon' and 'Bus Bar Ribbon' under various Bill of Entry is rightly claimed by the Importer.

23.1 I find that the noticee, M/s. Waaree Energies Limited is engaged in manufacturing of 'Solar Photo Voltaic Module' (PV Module) at their various manufacturing plants situated in and around Valsad District. The Noticee were importing various sizes of "Cell Ribbon" and "Bus Bar ribbon", by classifying under Customs Tariff Item 74081990 of first Schedule to the Customs Tariff Act, 1975, and availing exemption of BCD as per the said notification. The importer followed the procedure laid down under Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.

23.2 I also find that the Noticee vide their letter dated 10.04.2024 has submitted that they used to import "Cell Ribbon & Bus Bar for Solar PV Module" from TaiCang JuRen PV Material Co. Ltd., China and earlier they had availed benefit of Notification No. 24/2005-Cus (Sr. No.39) dated 01.03.2005, as amended. For better understanding of the facts, the relevant portion of Notification No 24/2005-Cus dated 01.03.2005, as amended, is reproduced hereunder:

Sr. No.	Chapter or heading or subheading or tariff item	Description of goods
(1)	(2)	(3)
39	Any Chapter	All goods except Solar tempered glass or solar tempered (anti-reflective coated glass) for the manufacture of goods covered by Sr. No. 1 to 38 above, provided that the importer follows the procedure set out in the Customs (Import of goods at Concessional Rate of Duty) Rules, 2017

Further, I find that the said Notification was amended vide Notification No. 06/2020-Cus dated 02.02.2020. From the said amendment notification, it is observed that in the Notification No. 24/2005 against entry no. 39 in column no. 2 the words "Any chapter except 74" is substituted in the description of the goods mentioned therein.

23.3 Further, I find that once the Notification No. 24/2005-Cus was amended vide Notification No. 06/2020-Cus dated 02.02.2020 and goods falling under Chapter 74 of the Customs Tariff were removed from the said notification, they started availing benefit of exemption under the said notification. For better understanding of the facts, the relevant portion of Sr. No 381 of Notification 50/2017-Cus dated 30.06.2017, as amended, is reproduced hereunder:

Sr. No.	Chapter or heading or subheading or tariff item	Description of goods	Standard rate	IGST	Con. No
(1)	(2)	(3)	(4)	(5)	(6)
381	7408	Flat Copper wire for use in the manufacture of photo voltaic ribbon (tinned copper interconnect) for manufacturer of solar photovoltaic cell or modules	Nil	-	9

23.4 From a plain reading of the entry mentioned at Sr. No. 381 of Notification 50/2017-Cus dated 30.06.2017, I note that the exemption benefit was available to "**Flat Copper wire for use in the manufacture of photo voltaic ribbon (tinned copper interconnect) for manufacturer of solar photovoltaic cell or modules**" subject to the condition that the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 should be followed. Further, I note that the Noticee themselves in their submission accepted this fact that the goods i.e. various sizes of "**Cell Ribbon**" and "**Bus Bar ribbon**", falling under Tariff Item 74081990 of first Schedule to the Customs Tariff Act, 1975 was not exempted in the above said notification and they had wrongly availed the benefit of the said notification.

23.5 I find that the noticee in their submission dated 10.04.2024 submitted that Both Cell Ribbon and Bus Bar were used in photovoltaic cells. Cell ribbon was issued in connecting internal cells in a solar module while bus bar was used for output in a solar module. I note that the importer also admitted the fact that they were not engaged in manufacturing of photo voltaic ribbon (tinned copper interconnect) but in fact used photo voltaic ribbon (tinned copper interconnect) to manufacture solar modules (solar panels). Thus, they had wrongly availed the benefit of the said notification.

23.6 From the documents/records available on record in respect of import of "Cell Ribbon" and "Bus Bar ribbon", i.e. copy of BE, BL, Commercial invoices, Packing list, Duty payment receipt, Copies of application of Annexure certificate and copy of approved Annexure certificate, I find that the importer had filed application vide Annexure Form No. 296/21-22 dated 12.01.2022 under the provisions of Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 before the Deputy Commissioner of Customs, EPC-7 Daman for import of raw material viz. Ribbon & Bus bar Ribbon claiming exemption under Notification No. 50/2017-Custom dated 30.06.2017 (Sr. No. 381). The Deputy Commissioner of Customs, EPC-7 Daman issued Annexure No. 738/2021/EPC-07 (F.No. VIII/48-09/Cus-EPC-07/Daman/Waaree Energies/ Bond/2020-21) dated 13.01.2022 addressed to the Assistant/Deputy Commissioner of Customs, ICD Tumb and the importer had cleared the said goods against said Annexure vide Bill of Entry No. 7146911 dated 19.01.2022. For better understanding of the facts, scanned images of Annexure Form No. 296/21-22 dated 12.01.2022 submitted by the importer for import of Ribbon & Bus bar Ribbon and relevant Commercial invoice No. JRIT20211228001 dated 28.12.2021 issued by TaiCang JuRen International Trade Co. Ltd, TaiCang, China are reproduced below :

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SCAN IMAGE OF COMMERCIAL INVOICE NO. JRIT20211228001 DATED 28.12.2021

TaiCang JuRen International Trade CO.,LTD

No.3 Fuqiao Industrial Zone, South Ring Road,Fuqiao Town,Taicang City,Suzhou City.

TEL:86-512-53657898 FAX:86-512-53657899

G15

COMMERCIAL INVOICE

INVOICE NO.: JRIT20211228001 DATE: 2021.12.28

TO:Wearee Energies Limited	PO No: 1700004961
Unit 2B, Survey no. 267 NH-8, Nr Reliance Petrol Pump, Umbergaon-396105,Nandigram Village, Taluka-Umbergaon,, India.	PAYMENT TERMS: T/T 60 Days from the date of B/L FOB SHANGHAI

NO.	Item NO.	DESCRIPTION OF GOODS	QUANTITY (KG)	UNIT PRICE (USD)	AMOUNT (USD)
1	RMRIB03000021	0.25*0.9mm Ribbon	20971.075	13.61	285478.59
2	RMBUS00000005	0.4*5mm BARBUS Ribbon	6615	13.61	91353.15
TOTAL			27586.075		376831.74

Country of Origin:China

BANK INFORMATION

Beneficiary's Name: TAICANG JUREN INTERNATIONAL TRADE CO., LTD
A/C NO.: 338058129114000003439
Beneficiary's Bank: TAICANG RURAL COMMERCIAL BANK
SWIFT: YLBKCN5H
Bank Address: NO.198 EAST SHANGHAI ROAD, TAICANG CITY, JIANGSU, CHINA
TEL: 86-0512-53282867

TaiCang JuRen International Trade CO.,LTD

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SCAN IMAGE OF ANNEXURE FORM NO. 296/21-22 dated 12.01.2022

WAAREE
One with the Sun

ANNEXURE FORM NO: 296/21-22

Date: 12-01-2022

To
The Dy. Commissioner of Customs (EPC-7)
Office of The Asst. /Dy. Commissioner of Customs,
2nd Floor, Room No 209 & 223, GST Bhavan,
RCP Compound Near Vapi Overbridge, Vapi,
District – Valsad, Gujarat – 396191

6600
13/1

Subject: Information under Rule 4 of Customs (Import of Goods at Concessional Rate of Duty) Rules 2017 about intent to avail benefit of exemption notifications.

Sir,

1. We are registered with your Division as Manufacture of Solar Power Generating Systems Solar Photovoltaic module / Solar Panel under falling under Chapter 8541.

2. We want to import inputs / Parts / Accessories/ Raw Material at Concessional rate of duty under above mentioned rule, hence the required information is given here below: -

i.	Name & Address of Manufacturer and Importer	**WAAREE ENERGIES LIMITED** Unit 2B, Survey no. 267 NH-8, Nr Reliance Petrol Pump,Umbergaon-396105, Nandigram Village, Taluka-Umbergaon, India.
ii.	Goods produced in his factory / chapter Heading	Solar Photovoltaic Modules Chapter 8541
iii.	IEC Code No.	0307047296
iv.	GST Registration No:	24AAACA4043J2Z1
v.	Import Invoice No and Date	JRIT20211228001 dated 28-12-2021
vi.	Name and Address of Foreign Supplier	**TAICANG JUREN INTERNATIONAL TRADE CO.,LTD** No.3 Fuqiao Industrial Zone, South Ring Road, Fuqiao Town, Taicang City, Suzhou City, China
vii.	Notification No. Under which concessional rate applicable.	Notification No.024/2005-Customs dated 30/06/2017 (Sr.No.381)
viii.	Detail of Port of Import	The Specified Officer of Customs The Assistant / Deputy Commissioner of Customs ICD Tumb, Navkar Terminals Ltd, Umbergaon.

WAAREE Energies Ltd.
602, Western Edge - I, Western Express Highway, Borivali (E), Mumbai 400 066, Maharashtra, India.
Plot No.231 236, Surat Special Economic Zone, Diamond Park, Sachin, Surat 394 230, Gujarat, India.
Survey No.38/1, Tumb Village, Tumb, Umbergaon, Dist. Valsad, Gujarat 396 150, India.
Unit 2B, Survey No. 267 and others, NH-8, Nandigram Village, Tal. Umbergaon, Dist. Valsad, Gujarat - 396105, India.
Survey No. 1928, 1934, 1935, 1937 to 1942, Behind Hotel Darshan, Village Degam, Tal. Chikhli, Dist. Navsari - 396530 Gujarat.
Email : waaree@waaree.com | Website : www.waaree.com

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ix.	Detail of LUT/Bond given to Customs Department	Rs.99,00,00,000.00 F.NO.VIII/48-09/CUS-EPC-07/DAMAN/2020-21 DTD.09.06.2021 (BOND REGISTER VIDE ENTRY NO.10/2021-22 DATED.09.06.2021)
x.	The nature and description of the Imported Goods Used in the manufacture of such good and HS Code	0.25x0.9MM RIBBON & 0.4x5MM BARBUS RIBBON Chapter Head No: 74081990
xi.	Quantity of Goods to be Imported	20671.875 + 6615 KGS
xii.	Calculation Sheet of duty saved Opening Amount And Pending Amount in Bond	Rs. 65,54,02,268.38 Rs. 18,85,572.29 (-) Rs. 65,35,16,696.09

3. This letter of information has been submitted in duplicate with your office and one set is submitted to the AC/DC of Customs of Port of importation. You are requested to forward one copy of letter of intimation to the AC/DC of Customs Port of importation. So that we can claim the concessional rate of duty while filing Bill of Entry under Section 46 of the Custom Act 1962.

Thanking You
Yours Faithfully
FOR, Waaree Energies Limited

Authorized Signatory

Copy to: 1) The Specified Officer of Customs/The Assistant/Deputy Commissioner of Customs, ICD Tumb, Navkar Terminals Ltd, Umbergaon.

Enclosure: 2) Calculation Sheet
3) Invoice and Packing List
4) Bill of Lading

WAAREE Energies Ltd.
602, Western Edge - I, Western Express Highway, Borivali (E), Mumbai 400 066, Maharashtra, India.
Plot No.231 236, Surat Special Economic Zone, Diamond Park, Sachin, Surat 394 230, Gujarat, India.
Survey No.38/1, Tumb Village, Tumb, Umbergaon, Dist. Valsad, Gujarat 396 150, India.
Unit 2B, Survey No. 267 and others, NH-8, Nandigram Village, Tal. Umbergaon, Dist. Valsad, Gujarat - 396105, India.
Survey No. 1928, 1934, 1935, 1937 to 1942, Behind Hotel Darshan, Village Degam, Tal. Chikhli, Dist. Navsari - 396530 Gujarat.
Email : waaree@waaree.com | Website : www.waaree.com

From the perusal of the annexure submitted by the importer, it is evident that the importer mentioned Notification No. 50/2017-Customs dated 30.06.2017 (Sr. No. 381) against Sr. No. VII (Notification No. under which concessional rate is applicable) in the application. Furthermore, the importer specified the nature and description of goods as 'Ribbon'/' Bar Bus Ribbon' and provided the HS code 74081990 against Sr. No. X (The nature and description of imported goods used in manufacturing such goods and HSN) in the application. In addition to this, based on the application and commercial invoices, it is evident that they have not imported "Flat Copper Wire" for which they availed the benefit of exemption under the said notification. I find that the rule itself clearly states that the importer must provide a one-time prior information regarding the applicable notification for such imports to avail of the notification benefits. Therefore, it is pertinent to mention that these benefits are contingent upon use of the imported goods in manufacturing a commodity for the specified end use covered by that notification.

23.7 I find that the importer vide letter dated 19.04.2022 has already stated as *"this is the case of wrong quoting of Notification through oversight and misunderstanding. The correct Notification applicable in our case is 25/1999-Cus dated 28.02.1999 under Sr. No. 18 but we wrongly mentioned & claimed Notification No 50/2017-Cus dated 30.06.2017 under Sr. No. 381 in our all documents."*

23.8 I also find that the statement of Shri Abhishek Sureshbhai Rathod, Assistant General Manager-Commercial of M/s Waaree Energies Limited, was recorded on 19.04.2022 under Section 108 of the Customs Act, 1962 to seek further clarity on this issue. In his deposition, when specifically questioned, he admitted that after the amendment of Notification No. 24/2005-Cus by Notification No. 06/2020-Cus dated 02.02.2020, goods falling under Chapter 74 of the Customs Tariff were removed from the said notification. Consequently, they started to avail the benefit of exemption under the said notification. I further find that, upon reviewing the said notification, he accepted that they imported "Cell Ribbon & Bus Bar for Solar PV Module," i.e., 'Tinned Copper Interconnect' (an intermediate product as per Sr. No. 381 of the said notification) instead of "Flat Copper Wire." I find that the statement of Shri Pranjivan Mehta, Director-finance of M/s Waaree Energies Limited, was recorded on 23.05.2022 under Section 108 of the Customs Act, 1962 and on perusal of Statement of Shri Abhishek Sureshbhai Rathod, he stated that the facts mentioned in the Statement was true and correct. In his deposition, he admitted that they have wrongly availed the benefit of exemption notification for their imported goods viz. "Cell Ribbon & Bus Bar for Solar PV Module". In light of the facts admitted by the authorized persons of the importer, it transpires that the benefit of the said notification was not available to their imported goods, and they had wrongly availed the benefit of the said notification.

23.9 Furthermore, I find that the importer was fully aware of the amendment to Notification No. 24/2005-Cus dated 01.03.2005 (Sr. No. 39) and that the exemption they had availed would no longer apply to their products falling under Chapter 74 as of 02.02.2020. After 02.02.2020, the importer had started referencing Notification No. 50/2017-Customs dated 30.06.2017 (Sr. No. 381) in their application under the

provisions of the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, to avail the exemption of Basic Customs Duty for the import of raw materials. This fact reveals that the importer had intentionally and wrongly availed the benefit of the said notification on the imported goods by misrepresenting facts before the jurisdictional customs authority (EPC) at the time of filing the application under the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, as well as at the time of filing the Bill of Entries at the port of import.

23.10 From the above facts, I note that "Cell Ribbon" and "Bus Bar Ribbon" are used in photovoltaic cells. The cell ribbon is used for connecting internal cells within a solar module, while the bus bar is used for output in a solar module. Further, "Cell Ribbon" and "Bus Bar Ribbon" are types of photovoltaic ribbon (tinned copper interconnect), which is classified as an intermediate product as per Sr. No. 381 of Notification No. 50/2017-Cus dated 30.06.2017. Although these products are types of intermediate products (tinned copper interconnect), the notification does not exempt these intermediary goods from the levy of Basic Customs Duty, as the imported raw materials are distinct products according to the notification. Thus, I find that the importer has not only violated the clear provisions of exemption Notification No. 50/2017 by wrongly availing the exemption benefits but also contravened the provisions of IGCR Rules, 2017, by submitting incorrect information before the Jurisdictional Assistant Commissioner/ Deputy Commissioner.

23.11 I find that the noticee has argued in their submission that it is merely a procedural lapse for not availing the correct notification in their applications through which they intended to avail the exemption benefits. However, the relevant serial number of the notification is specific about such parts and components that are to be used in further manufacturing. For the sake of clarity, I would like to mention the decision of the Tribunal in the case of ***Commissioner of Central Excise and GST, Delhi-I vs. SB Industries*, reported as 2019 (366) ELT 185 (T)**, where it was held that a violation of the terms and conditions of the bond/undertaking is sufficient ground to hold the appellant liable to pay the duty forgone, as the undertaking wrongly stated that the imported parts and components were used for manufacturing.

23.12 I find that the benefit of exemption notification should not be extended to circumvent any goods and should not be elastically stretched to cover goods that may not fall under its scope. The decision of the Hon'ble Apex Court in the case of ***Commissioner of Customs (Import), Mumbai vs. Dilip Kumar & Company*, reported as 2018 (361) ELT 577 (SC)**, is relied upon, wherein it has been held that exemption notifications should be interpreted strictly. The burden of proving applicability lies with the assessee, who must show that their case falls within the parameters of the exemption clause or exemption notification. In cases of ambiguity, the benefit shall favor the state; however, in a taxing statute, any ambiguity generally benefits the assessee. In a prior decision, in ***Tata Iron & Steel Co. Ltd. vs. State of Jharkhand*, reported**

as (2005) 4 SCC 272, the two-judge bench of the Hon'ble Supreme Court established that eligibility clauses related to exemption notifications must be interpreted strictly. Following ***Novopan India Ltd. vs. Collector of C. Ex. and Customs, Hyderabad,* reported as 1994 (73) ELT 769 (SC)**, it was held that "the principle that if a provision of fiscal statute is unclear, an interpretation favoring the assessee may be adopted, does not apply to exemption notifications; it is for the assessee to demonstrate that they fall within the purview of the exemption." This view was recently affirmed by the Hon'ble Apex Court in the case of ***L.R. Brothers Indo Flora Ltd. vs. Commissioner of Central Excise*, reported as 2020 (373) ELT 721 (SC)**. Summarizing, it is evident that the importer has wrongly availed the benefit of the exemption from basic customs duty by incorrectly claiming the benefit under Notification No. 50/2017.

23.13 In view of the above facts, it is evident that M/s Waaree Energies Limited has wilfully and wrongly availed the benefit of Notification No. 50/2017-Cus dated 30.06.2017, as amended, since the goods imported by them were not covered under the said exemption notification. The importer, in their submission dated 19.04.2022, and Shri Abhishek Sureshbhai Rathod, in his statement dated 19.04.2022 and Shri Pranjivan Mehta, in his statement dated 19.04.2022, have admitted the fact that the benefit of the said notification was not applicable to their imported goods, and they had wrongly availed the benefit of Notification No. 50/2017-Cus dated 30.06.2017, as amended. Therefore, I find that M/s Waaree Energies Limited was availing blanket exemption for their imported goods by misclassifying them as "Flat Copper Wire for use in the manufacture of photovoltaic ribbon (tinned copper interconnect) and further in the manufacture of solar photovoltaic cell or module."

23.14 From the facts discussed above, I find that it is clear and discernible that M/s Waaree Energies Limited is directly considering their imported goods under column 2 of Sr. No. 381 in Notification No. 50/2017-Cus dated 30.06.2017, which provides an exemption from Basic Customs Duty for "***Flat Copper Wire for use in the manufacture of photovoltaic ribbon (tinned copper interconnect) for manufacturing solar photovoltaic cells or modules***" only, however, their product is other than the goods exempted by the said notification. I, therefore, find and hold that the importer is not eligible to avail the benefit of Sr. No. 381 of Notification No. 50/2017-Cus dated 30.06.2017 in this case, and the applicable Customs Duty of Rs. 3,79,13,265/- is liable to be recovered, as the exemption notification was not applicable to the importer for the said imported goods.

23.15 M/s Waaree Energies Limited has argued that they mentioned incorrect exemption notification No. 50/2017 dated 30.06.2017 due to misunderstanding of the description of the goods. They assert that they were actually eligible for exemption under Sr. No. 18 of Notification No. 25/1999-Cus dated 28.02.1999 and that this was merely a procedural lapse. They further contended that no duty was payable on the said goods as they would have been exempted if the correct notification No. 25/1999-Cus dated 28.02.1999 had been cited. They argue that it is well-settled law that substantive

benefits cannot be denied due to procedural lapses, and they have cited various judgments to support their position. In this regard, I find that the importer contended that their imported goods were eligible for exemption under Sr. No. 18 of Notification No. 25/1999-Cus dated 28.02.1999. Before proceeding further, I would like to reiterate the relevant portion of Sr. No 18 of Notification 25/1999–Cus dt. 28.02.1999, as amended, for better understanding of the facts:

Notification No. 25/99-Customs dated 28.02.1999

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods specified in column (3) of Table below, and falling under the Chapters of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) specified in the corresponding entry in column (2) of the said Table, when imported into India for use in the manufacture of the finished goods specified in the corresponding entry in column (4) of the said Table, from so much of that portion of the duty of customs leviable thereon which is specified in the said First Schedule, as is in excess of the amount calculated at the rate of,

(a) 5% ad valorem in the case of the imported goods specified in List A;
(b) .....
(c) .....

Sr. No.	[Chapter or Heading or Sub-heading or tariff item]	Description of imported goods	Description of finished goods
(1)	(2)	(3)	(4)
LIST A			
18.	28,38,39,70, **74**,76	Aluminium paste; ethylene vinyl acetate sheets (EVA); primer for EVA; Crane glass; tedlar coated aluminium sheet; phosphorous oxychloride; halo carbon (CF4)/Freon gas; **tinned copper interconnect**; toughened glass with low iron content and transmittivity of min. 90% and above; multilayered sheets with tedlar base; fluro polymer resin; ultra high purity (UHP) silane in UHP nitrogen; UHP silane; diborane in UHP silane; MOCVD grade phosphine in UHP silane; silver sputtering target; high purity tin tetrachloride; nitrogen trifluoride of 99% purity and above	Solar cells/ modules.

I note that the importer asserted eligibility for duty exemption on the imported goods under Sr. No. 18 of Notification No. 25/1999–Cus dated 28.02.1999. However, this claim was not invoked contemporaneously with the filing of the Bill of Entry but was instead raised belatedly, post facto, after initiation of investigation by the DRI. Under the self-assessment regime, wherein the Customs authorities rely extensively on declarations made by importers, it is incumbent upon the importer to exercise due diligence in verifying the applicability of relevant notifications and the accurate identification of any exemption serial numbers claimed. I also note that if an importer realizes that incorrect information was submitted in the Bill of Entry, they have the option to request for amendment under Section 149 of the Customs Act, 1962. This provision allows for rectifications in specified circumstances. However, in this case, the importer did not pursue amendment, nor did they claim the benefit at the appropriate time. It is solely the importer's prerogative to decide whether or not to avail an exemption notification;

however, it is not obligatory upon the Customs authorities to confer exemption benefits suo motu, especially if not expressly claimed by the importer at the outset. After being noticed by the department, there remains no room for any other interpretation than holding that impugned imported goods are not eligible for benefit of duty exemption. The said benefit cannot be extended at a belated stage as and when required for the sake of convenience of the importer. Hence, I find from the facts and circumstances, that it is unequivocally apparent that the benefit of the said notification was not available to their imported goods, and they had wrongly availed the benefit of Notification No. 50/2017-Cus dated 30.06.2017 (at Sr. No. 381).

23.16 The noticee further contended that after the DRI investigation, they have started to avail the benefit of exemption Notification No. 25/99 and at present they are importing the said goods under exemption Notification No. 25/99. Upon examination of the submissions made by the noticee, I note that it is evident that a material alteration in the description of goods on the bill of entry has been effected subsequent to the commencement of DRI's investigation. Originally, the description of the goods in the bill of entry was designated as **"Cell Ribbon" and "Bus Bar Ribbon"**; however, the noticee has since amended these descriptions to **"Tinned Copper Interconnect Ribbon for Solar PV Module"** and **"Tinned Copper Interconnect Busbar for Solar PV Module."** This alteration, undertaken post-initiation of DRI's scrutiny, raises serious concerns regarding the intent to misrepresent the true nature of the goods to improperly avail customs duty exemptions. It is pertinent to note that, based on the record and the historical pattern of entries filed prior to the investigation, the noticee has consistently refrained from using the term **"Tinned Copper Interconnect"** in describing these goods. This post-hoc alteration appears to be a deliberate attempt to bring the imported goods within the purview of exemption under Notification No. 25/99-Cus., which would otherwise be inapplicable. It is a well-settled principle that a misdeclaration or recharacterization of goods with the intent of securing undue benefits under exemption notifications amounts to a breach of the duty of full and honest disclosure. Furthermore, any exemption claims demand strict interpretation, and any misrepresentation or concealment invalidates the right to claim such an exemption. The noticee, being an established and reputed entity, is expected to exercise due diligence and legal responsibility in assessing the eligibility of any customs exemptions, particularly under Notification No. 50/2017-Cus. It is implausible that a company of such stature would avail itself of such significant fiscal benefits "randomly" or without thoroughly evaluating the legal applicability of the said notification to the goods in question. Further, exemption notifications must be anchored in bona fide compliance with both the letter and spirit of the law, and any deviation to achieve unintended fiscal advantage warrants close scrutiny. In light of these considerations, the noticee's contentions regarding the continuous applicability of the exemption under Notification No. 25/99-Cus. are untenable, as they lack the requisite legal foundation and appear to contravene established customs practices and judicial precedents on exemption notifications.

23.17 I further find that the Hon'ble Courts have consistently held that exemption notifications are to be strictly interpreted and that, even in cases of doubt, the benefit of doubt should favor the revenue. The Hon'ble Apex Court in the case of M/s Larsen & Toubro Ltd. Vs Commissioner of Central Excise1 Ahmedabad reported in 2015 (3240 ELT 646 (SC) had held to this effect in Para 23 of the decision:

> "23. *On these facts, as far as appeal of the L&T is concerned that warrants to be dismissed when we find that the assessee was producing RMC and *the exemption notification exempts only CM and the two products are different. Even If there is a doubt, which was even accepted by the assessee, since we are dealing with the exemption notification it has to be strict interpretation and in case of doubt, benefit has to be given to the Revenue. Appeals of L&T therefore fails and are dismissed*"

A review petition against this decision was also rejected by the Hon'ble Apex Court, as reported in *Larsen & Toubro Ltd. vs Commissioner*, 2016 (336) ELT A135 (S.C.). Applying the ratio of these decisions in this case, I find that the noticee, who is availing substantial exemption benefits from duty, was required to comply with the notification's conditions. Non-compliance would constitute a violation of the exemption notification, making them ineligible for such an exemption

23.18 I further find that, in the case of *BPL Ltd.*, reported as 2015 (319) ELT 556 (S.C.), the Apex Court ruled that strict interpretation must be applied to exemption notifications, and it is upon the assessee to demonstrate that they fulfill all eligibility conditions under such notifications. The review petition filed by *M/s BPL Ltd.* was dismissed by the Supreme Court, as reported in 2015 (324) ELT A79 (S.C.).

23.19 Regarding the importer's contention of procedural lapse, I rely on the decision in ***Eagle Flask Industries Ltd. vs Commissioner of Central Excise, Pune***, *as reported in 2004 (171) E.L.T. 296 (S.C.)*, wherein the Hon'ble Supreme Court held that:

> *"6. We find that Notification No. 11/88 deals with exemption from operation of Rule 174 to exempted goods. The notification has been issued in exercise of powers conferred by Rule 174-A of the Rules. Inter alia, it is stated therein that, where the goods are chargeable to nil rate of duty or exempted from the whole of duty of excise leviable thereon, the goods are exempted from the operation of Rule 174 of the Rules. The goods are specified in the Schedule to the Central Excise Tariff Act, 1985 (in short "the Tariff Act"). The proviso makes it clear that where goods are chargeable to nil rate of duty or where the exemption from the whole of the duty of excise leviable is granted on any of the six categories enumerated, the manufacturer is required to make a declaration and give an undertaking, as specified in the form annexed while claiming exemption for the first time under this notification and thereafter before the 15th day of April of each financial year. As found by the forums below, including CEGAT, factually, the declaration and the undertaking were not submitted by the appellants. This is not an empty formality. It is the foundation for availing the benefits under the notification. It cannot be said that they are mere procedural requirements, with no consequences attached for non-observance. The consequences are denial of benefits under the notification. For availing benefits under an exemption notification, the conditions have to be strictly complied with. Therefore, CEGAT endorsed the view that the exemption from operation of Rule 174, was not available to the appellants. On the facts found, the view is on terra firma. We find no merit in this appeal, which is, accordingly, dismissed."*

23.20 I also rely on the decision of the Hon'ble High Court of Madhya Pradesh in **"Principal Commr. Of CGST & C. Ex., Bhopal Vs. Teva API India Ltd"** *as reported in 2019 (367) E.L.T. 618 (M.P.),* where it was held that:

> *"15. The respondent though has supported the impugned judgment by relying on the decisions in "Commissioner of C. Ex., Nagpur v. Ballarpur Industries Ltd. [2007 (215) E.L.T. 489 (S.C.), Commissioner of Central Excise v. Gas Authority of India Ltd. [2008 (232) E.L.T. 7 (S.C.)], Commissioner v. Reliance Ports And Terminals Ltd. [2016 (334) E.L.T. 630 (Guj.)]" to bring home the submissions that the Notification No. 22/2003-C.E., Notification No. 30/2015-Central Excise, Notification No. 52/2003-Cus. & Notification No. 34/2015-Cus. though are nomenclatured as Exemption Notifications but in substance lay down the procedural aspect to be adhered to while destroying the rejected inputs and expired manufactured goods. It is accordingly urged that the CESTAT was well within its jurisdiction in holding the same being directory/procedural in according the refund of duty. These contentions when tested on the anvil of the law laid down by Hon'ble Supreme Court in Eagle Flask Industries Ltd. (supra) and in Commissioner of Customs (Import), Mumbai (supra) do not merit consideration.*
>
> *16. In view of above analysis, the substantial question of law is answered in favour of the appellant that the CESTAT committed fundamental error in construing the Exemption Notification [Notification No. 22/2003-C.E., Notification No. 30/2015-Central Excise, Notification No. 52/2003-Cus. & Notification No. 34/2015-Cus.] as directory by condoning the lapse on the part of the assessee in destroying the manufactured goods outside the unit without permission of the concerned Authority."*

23.21 From ratio of these judgments, it is clear that a procedural lapse cannot be used as an excuse by the importer. It is the importer's responsibility to cite correct notification number to avail the benefit of the exemption; however, they failed to do so in this case.

23.22 Further, I find that the Noticee has quoted and relied on various case laws/judgments in their defense submission to support their contention on some issues raised in the Show Cause Notice. I am of the view that conclusions in those cases may be correct, but they cannot be applied universally without considering the hard realities and specific facts of each case. Those decisions were made in different contexts, with different facts and circumstances, and the ratio cannot apply here directly. Therefore, I find that while applying the ratio of one case to that of the other, the decisions of the Hon'ble Supreme Court are always required to be borne in mind. The Hon'ble Supreme Court in the case of *CCE, Calcutta Vs Alnoori Tobacco Products [2004 (170) ELT 135(SC)* has stressed the need to discuss, how the facts of decision relied upon fit factual situation of a given case and to exercise caution while applying the ratio of one case to another. This has been reiterated by the Hon'ble Supreme Court in its judgement in the case of *Escorts Ltd. Vs CCE, Delhi [2004(173) ELT 113(SC)]* wherein it has been observed that one additional or different fact may make huge difference between conclusion in two cases, and so, disposal of cases by blindly placing reliance on a decision is not proper. Again in the case of *CC(Port), Chennai Vs Toyota Kirloskar [2007(2013) ELT4(SC)]*, it has been observed by the Hon'ble Supreme Court that, the ratio of a decision has to be understood in factual matrix involved therein and that the ratio of a decision has to

be culled from facts of given case, further, the decision is an authority for what it decides and not what can be logically deduced there from.

23.23 As regard proposal in the show cause notice for demand of differential Customs Duty along with applicable interest, I find that the Noticee in their defense submission has submitted that they had prior knowledge about the ineligibility of the benefit of Sr. No.381 of Notification No.50/2017-Customs dated 30.06.2017 (as amended) in respect of the subject goods. Therefore, I find that the noticee was fully aware about the facts that the 'Cell Ribbon' and 'Bus Bar Ribbon' are different articles from Flat Copper wire' and exemption benefit of Sr. No. 381 of Notification No.50/2017-Cus dated 30.06.2017, as amended, was not admissible to 'Ribbon', 'Cell Ribbon' and 'Bus Bar Ribbon' imported by them. From the facts available on record and the deposition of the concerned persons of the importer, the facts reveal that the noticee has knowingly and deliberately availed the benefit of exemption Notification No. 50/2017-Customs dated 30.06.2017, as amended on import of 'Cell Ribbon' and 'Bus Bar Ribbon', in guise of "Flat Copper Wire for using the same in the manufacture of photo voltaic ribbon (tinned copper interconnect) for furtherance in manufacturing of solar photovoltaic cell or module". I, therefore, find and hold that the aforementioned Duty is recoverable from M/s. Waaree Energies Limited under the provisions of Section 28(4) of the Customs Act, 1962.

23.24 The importer has contended that when the demand for duty is unsustainable in law, the question of imposing interest does not arise. In this regard, I find that, as elaborated in the preceding paragraphs, I have already held that the duty in the present case is recoverable from the importer under the provisions of Section 28(4) of the Customs Act, 1962. Further, Section 28AA of the Customs Act, 1962, provides that where a person is liable to pay duty in accordance with the provisions of Section 28, such person shall, in addition to the duty, be liable to pay interest at the applicable rate. The said section mandates automatic payment of interest along with the duty confirmed or determined under Section 28. In light of the foregoing paras, I have already held that the customs duty amounting to Rs. 3,79,13,265/- (Rupees Three Crore, Seventy Nine Lakh, Thirteen Thousand, Two Hundred and Sixty Five Only) is recoverable under Section 28(4) of the Customs Act, 1962. Therefore, I hold that the differential customs duty of Rs. 3,79,13,265/- is to be demanded and recovered as determined under Section 28(8) of the Customs Act, 1962, along with applicable interest, as provided under Section 28AA of the Customs Act, 1962.

24. In the present case, M/s. Waaree Energies Limited has contended that invocation of Section 28(4) of the Customs Act, 1962, is not applicable on the grounds that there was no suppression of facts or collusion on their part. It has been argued that they did not misdeclare the imported goods and submitted all relevant documents at the time of filing the Bill of Entry. Further, the HSN code of the imported goods was correctly mentioned in Form IGCR-1 on the common portal prior to obtaining clearance for import. They claim that incorrect mention of the notification number was due to an

interpretational issue of law. Additionally, they contended that the import of "Cell Ribbon and Bus Bar for Solar PV Module" was exempted under Notification No. 25/1999-Cus dated 28.02.1999, and thus, no duty liability arose, rendering the invocation of Section 28(4) improper. Upon examination of the facts, I note that the importer had 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 in all their import consignments. Further, consequent upon the amendments to Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-Assessment' has been introduced in Customs. Section 17 of the Customs Act, 1962 effective from 08.04.2011, which provides for self-assessment of duty on imported goods by the importer by filing a Bill of Entry, in the electronic form. Section 46 of the Customs Act, 1962 makes it mandatory for the importer to make an 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 Integrated Declaration and Paperless Processing) Regulation, 2018 (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 self-assessment of duty completed when, after entry of the electronic declaration in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service center, a Bill of Entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under the scheme of self-assessment, it is the importer who has to doubly ensure that he declares correct description of the imported goods, their correct classification, the applicable rate of duty, value, and benefit of exemption notification claimed, if any, in respect of the imported goods while presenting the Bill of Entry. I note that with the introduction of self-assessment by amendment to Section 17, w.e.f. 8th April 2011, it is added and enhanced responsibility of the importer to declare correct description, value, notification, etc. and to correctly determine and pay the duty applicable in respect of the imported goods. Further, in the self-assessment regime, the onus is on the importer to correctly mention the applicable notifications and pay applicable duties. In the instant case, it is apparent that the importer was aware that 'Cell Ribbon,' and 'Bus Bar Ribbon' are distinct from "Flat Copper Wire" intended for use in the manufacture of photovoltaic ribbon (tinned copper interconnect) and, subsequently, in the manufacture of solar photovoltaic cells or modules. I note that the benefit of the exemption under Sr. No. 381 of Notification No. 50/2017-Cus dated 30.06.2017, as amended, was not available for the goods imported by the Noticee. Notwithstanding this, I find that the importer knowingly and deliberately availed of the benefit of the said Notification, by misclassifying the goods in question as "Flat Copper Wire for use in the manufacture of photovoltaic ribbon (tinned copper interconnect) and further in the manufacture of solar photovoltaic cells or modules," with malafide intention to evade payment of customs duty at the appropriate rate. This constitutes a willful mis-declaration and suppression of facts with an intent to evade duty, thereby justifying the invocation of the extended period of limitation under Section 28(4) of the Customs Act, 1962. In view of the above, I find that the contentions raised by the importer are devoid of merit, and the invocation of the extended period under Section

28(4) is legally sustainable. Consequently, I find that the ratio of the judicial precedents relied upon by the Noticee are inapplicable to the facts of the present case.

25. Whether the goods valued at Rs. 58,41,79,727/- imported by M/s. Waaree Energies Limited are liable for confiscation under Section 111(m) of the Customs Act, 1962?

25.1 The present Show Cause Notice also proposes for the confiscation of the imported goods valued at Rs. 58,41,79,727/- under the provisions of Sections 111(m) of the Customs Act, 1962.

25.2 As discussed in paras supra, the noticee has imported the impugned goods by wrongly availing the benefit of Sr. No. 381 of Notification No.50/2017-Customs dated 30.06.2017 as amended (by paying NIL BCD) instead of paying Customs Duty at the rate of 5% BCD and 10% SWS and by way of adopting this modus in respect of impugned goods, they had got cleared goods valued at Rs. 58,41,79,727/- from ICD Tumb and other ports without paying Customs Duty at applicable rate. Thus M/s. Waaree Energies Limited has deliberately and knowingly indulged in suppression of facts in respect of their imported goods and has wilfully and wrongly availed the benefit of specific entries of the aforementioned Notifications which was not available to them, with an intent to evade payment of Customs Duty. Section 111 (m) of the Customs Act, 1962 provides for confiscation of any imported goods which do not correspond in respect of value or in any other particular with the entry made under this Act. In this case, the importer has resorted to wrong availment of benefit of the specific entry of the Notification as mentioned above in the Bills of Entry filed by them with an intention to avoid Customs Duty liability that would have otherwise accrued to them. Thus, provisions of Section 111(m) of the Customs Act, 1962 would come into picture. I thus find that wilful and wrong availment of the benefit of the specific entry of the aforementioned Notification by M/s. Waaree Energies Limited has rendered the impugned goods liable for confiscation under Sections 111(m) of the Customs Act, 1962. I, therefore, hold the goods valued at **Rs. 58,41,79,727/- (Rupees Fifty Eight Crore, Forty One Lakh, Seventy Nine Thousand, Seven Hundred and Twenty Seven only)** liable to confiscation under the provisions of Sections 111(m) ibid. Further, the aforementioned goods are not physically available for confiscation, and in such cases, redemption fine is imposable in light of the judgment in the case of **M/s. Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad) wherein the Hon'ble High Court of Madras** has observed as under:

> *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. We accordingly answer question No. (iii).

25.3 Hon'ble High Court of Gujarat by relying on this judgment, in the case of **Synergy Fertichem Ltd. Vs. Union of India, reported in 2020 (33) G.S.T.L. 513 (Guj.),** has held interalia as under:-

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174. *..... In the aforesaid context, we may refer to and rely upon a decision of the Madras High Court in the case of M/s. Visteon Automotive Systems v. The Customs, Excise & Service Tax Appellate Tribunal, C.M.A. No. 2857 of 2011, decided on 11th August, 2017 [2018 (9) G.S.T.L. 142 (Mad.)], wherein the following has been observed in Para-23;*

"23. 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. We accordingly answer question No. (iii)."

175. We would like to follow the dictum as laid down by the Madras High Court in Para-23, referred to above."

25.4 The Importer, M/s. Waaree Energies Limited, has contended that the impugned goods are not liable for confiscation under Section 111(m) of the Customs Act, 1962, on

the grounds that they had correctly declared the description of the goods and the corresponding HSN code in Form IGCR-1 as well as in the Bill of Entry. The Importer further contended that the incorrect notification number mentioned in the Bill of Entry was merely a procedural lapse, and that the imported goods were exempt from duty. The Importer has also relied on a judicial decision to support their contention. In this regard, I find that as discussed in the preceding paragraphs, it is clear that the importer was fully aware that they were not eligible to avail the benefit of Customs Notification No. 50/2017-Cus dated 30.06.2017, as amended (Sr. No. 381). Despite this, they willfully availed the full exemption from Basic Customs Duty (BCD) by importing "Cell Ribbon" and "Bus Bar Ribbon" under the guise of "Flat Copper Wire". Furthermore, it is pertinent to note that the misuse of the said Notification would not have come to light had the departmental officers not initiated an investigation into the matter. M/s. Waaree Energies Limited suppressed material facts by mis-declaring that the imported "Cell Ribbon" and "Bus Bar Ribbon" were exempt from customs duty, which clearly establishes *mens rea* on the part of the Importer to evade payment of Customs Duty. As elaborated earlier, Section 111(m) of the Customs Act, 1962, is applicable in this case, as M/s. Waaree Energies Limited wrongfully availed the benefit of Sr. No. 381 of Notification No. 50/2017-Cus dated 30.06.2017, as amended, which was not available to them, with intent to evade the customs duty otherwise payable. In view of the foregoing, I find that the contentions raised by M/s. Waaree Energies Limited are devoid of legal merit, and the judicial precedent relied upon by them is not applicable to the facts and circumstances of the present case.

26. Whether M/s. Waaree Energies Limited is liable for penalty under Section 114A of the Customs Act, 1962 ?

The Show Cause Notice proposes penalty under the provisions of Section 114A of the Customs Act, 1962 on the noticee. The Penalty under Section 114A can be imposed only if the Duty demanded under Section 28 ibid by alleging wilful mis-statement or suppression of facts etc. is confirmed/determined under Section 28(4) of the Customs Act, 1962. As discussed in the foregoing paras, M/s. Waaree Energies Limited has deliberately and knowingly indulged in suppression of facts in respect of their imported product and has wilfully and wrongly availed the benefit of specific entry of Notification No.50/2017-Customs dated 30.06.2017 (Sr.No.381 of said Notification) as amended (by paying NIL BCD) which was not available to them with an intention to avoid the Customs Duty liability that would have otherwise accrued to them. I have already held that the differential Customs Duty of **Rs. 3,79,13,265/- (Rupees Three Crore, Seventy Nine Lakh, Thirteen Thousand, Two Hundred and Sixty Five Only)** is to be demanded and recovered from M/s. Waaree Energies Limited under the provisions of Section 28(4) of the Customs Act, 1962. As the provision of imposition of penalty under Section 114A ibid is directly linked to Section 28(4) ibid, I find that penalty under Section 114A of the Customs Act, 1962 is to be imposed upon M/s. Waaree Energies Limited.

27. Whether M/s. Waaree Energies Limited is liable for penalty under Section 112 of the Customs Act, 1962:

I find that fifth proviso to Section 114A stipulates that "where any penalty has been levied under this section, no penalty shall be levied under Section 112 or Section 114." Thus, I am inclined to hold that the penalty under Section 114A ibid has already been imposed upon the noticee, simultaneously the penalty under Section 112 of the Customs Act, 1962, is not imposable in terms of the fifth proviso to Section 114A *ibid* in the instant case. Hence, I refrain from imposing penalty on the importer under Section 112 of the Customs Act, 1962.

28. Whether M/s. Waaree Energies Limited is liable for penalty under Section 114AA of the Customs Act, 1962?

28.1 The Show Cause Notice also proposes Penalty under Section 114AA of the Customs Act, 1962 on M/s. Waaree Energies Limited. The importer contended that Section 114AA is not applicable on the importer because the importer had no intention to hide the facts or to evade the payment of custom duty. They further contended that the penalty under section 114AA ibid can be invoked only when the person knowingly or intentionally makes any declaration which is false or incorrect. As discussed in the foregoing paras, it is evident that despite knowing the actual facts of the imported goods, the noticee had knowingly and intentionally made, signed or used the declaration, statements and/or documents and presented them to the Customs Authorities which were found incorrect in as much as the exemption notification was not available to the imported goods. Therefore, contention of the noticee does not hold water and I reject the same. I therefore find and hold that for this act on the part of M/s. Waaree Energies Limited, they are liable for penalty in terms of the provisions of Section 114AA of the Customs Act, 1962.

28.2 Further, I rely on the decision of Principal Bench, New Delhi in case of **Principal Commissioner of Customs, New Delhi (import) Vs. Global Technologies & Research (2023)4 Centax 123 (Tri. Delhi)** wherein it has been held that *"Since the importer had made false declarations in the Bill of Entry, penalty was also correctly imposed under Section 114AA by the original authority".*

29. In view of my findings in paras supra, I pass the following order:

:ORDER:

a) I deny the benefit of Customs Notification No.50/2017-Cus dated 30.06.2017 as amended (Sl. No. 381) as claimed by them for exemption from payment of Basic Customs Duty;

b) I confirm the Differential Duty amounting to **Rs. 3,79,13,265/- (Rupees Three Crore, Seventy Nine Lakh, Thirteen Thousand, Two Hundred and Sixty Five Only)**, as discussed above in foregoing paras for wrong availment of exemption notification no. 50/2017-Cus dated 30.06.2017 (Sr. No. 381) as

detailed in Annexure-A to the Notice with respect to the impugned goods imported through various ports and ICD and order recovery of the same from M/s. Waaree Energies Limited, 602, Western Edge-I, Off Western Express Highway, Borivali (East), Mumbai- 400066 under Section 28(4) of the Customs Act, 1962.

c) I order to recover the interest on the aforesaid demand of Duty confirmed at 29 (b) above as applicable in terms of Section 28AA of the Customs Act, 1962;

d) I hold the goods imported during the period under consideration valued at **Rs. 58,41,79,727/- (Rupees Fifty Eight Crore, Forty One Lakh, Seventy Nine Thousand, Seven Hundred and Twenty Seven Only)** liable to confiscation under the provisions of Section 111(m) of the Customs Act, 1962. However, as the goods are not physically available for confiscation, I impose redemption fine of Rs. 3,00,00,000/- (Rupees Three Crore only) in lieu of confiscation under Section 125 of the Customs Act, 1962;

e) I impose a penalty of **Rs. 3,79,13,265/- (Rupees Three Crore, Seventy Nine Lakh, Thirteen Thousand, Two Hundred and Sixty Five Only)** on M/s. Waaree Energies Limited plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed at 29 (b) above under Section 114A of the Customs Act, 1962. However, in view of the first and second proviso to Section 114A of the Customs Act, 1962, if the amount of Customs Duty confirmed and interest thereon is paid within a period of thirty days from the date of the communication of this Order, the penalty shall be twenty five percent of the Duty, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days;

f) I refrain from imposing any penalty on M/s. Waaree Energies Limited under Section 112 of the Customs Act, 1962;

g) I impose a penalty of Rs 5,00,000/- (Rs Five Lakh only) on M/s. Waaree Energies Limited under Section 114AA of the Customs Act, 1962.

30. 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.

31. The Show Cause Notice VIII/10-28/Commr./O&A/ 2022-23 dated 04.01.2024 is disposed off in above terms.

22.11.2024

(Shiv Kumar Sharma)
Principal Commissioner,
Customs, Ahmedabad

DIN-20241171MN000000DB00
F.No. VIII/10-28/Commr/O&A/2022-23 Date: 22 .11.2024

To
M/s. Waaree Energies Limited,
602, Western Edge-I, Off Western Express Highway,
Borivali (East), Mumbai- 400066

Copy to:

(1) The Chief Commissioner of Customs, Gujarat Customs Zone, Ahmedabad.
(2) The Additional Director General, DRI, Ahmedabad Zonal Unit.
(3) The Additional Commissioner, Customs, TRC, HQ, Ahmedabad.
(4) The Deputy Commissioner of Customs, ICD Tumb, Nhava Sheva & Sahar ACC
(5) The Superintendent of Customs (Systems) in PDF format for uploading on the website of Customs Commissionerate, Ahmedabad.
(6) Guard File.