सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,

चौथी मंज़िल **4th Floor,** हडको भवन **HUDCO Bhawan,** ईश्वर भुवन रोड़ **Ishwar Bhuvan Road**
नवरंगपुरा **Navrangpura,** अहमदाबाद **Ahmedabad – 380 009**
दूरभाष क्रमांक **Tel. No. 079-26589281**

DIN - 20251071MN000062196B

क	फ़ाइल संख्या FILE NO.	S/49-71/CUS/MUN/2024-25
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	MUN-CUSTM-000-APP-384-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	30.10.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original no. MCH/ADC/AK/17/2024-25 dated 18.04.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	30.10.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Ribcon Industries Pvt. Ltd., T-2, Old Industrial Area, Bahadurgarh, Jhajjar, Haryana-124507

1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम **1962** की धारा **129** डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से **3** महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते है.
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज़ के रूप में आयातित कोई माल.
(a)	any goods exported
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट,1870 के मद सं.**6** अनुसूची **1** के अधीन निर्धारित किए गए अनुसार इस आदेश की **4** प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेज़ों के अलावा साथ मूल आदेश की **4** प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की **4** प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, **1962** (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस,दण्ड,जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. **200/-**(रूपए दो सौ मात्र)या रु.**1000/-**(रूपए एक हज़ार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.**6** की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.**200/-** और यदि एक लाख से अधिक हो तो फीस के रूप में रु.**1000/-**
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the

	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.	
4.	मद सं. **2** के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बंन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम **1962** की धारा **129** ए **(1)** के अधीन फॉर्म सी.ए.-**3** में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, **1962** की धारा **129** ए **(6)** के अधीन, सीमाशुल्क अधिनियम, **1962** की धारा **129** ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रुपए.	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए.	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	उक्त अधिनियम की धारा **129** (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	

ORDER-IN-APPEAL

Appeal has been filed by M/s. Ribcon Industries Pvt. Ltd., T-2, Old Industrial Area, Bahadurgarh, Jhajjar, Haryana-124507, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/ADC/AK/17/2024-25 dated 18.04.2024 (hereinafter referred to as 'the impugned order') issued by the Additional Commissioner of Customs, Mundra.

2. Facts of the case, in brief, are that the Appellant is engaged in import of e-scooters/e-bikes in CKD condition by declaring the imported goods as parts and components of e-scooters/ e-bikes and classifying the same under Chapter Tariff Heading (CTH) 8714 of Custom Tariff Act, 1975. The appellant is also registered under GST with GSTIN 06AAHCR3044B1ZU. DRI has issued alert circular No. 06/2022-C1 dated 10.10.2022, wherein it was informed that parts and accessories of these vehicles are classifiable under CTH 8714 and are leviable to tariff rate of BCD @ 15%/25%. In terms of CBIC Notification No. 50/2017-Cus. Dated 30.06.2017 (Sr. No. 531A), effective rate of duty on these goods under CTH 8711 is in the range of 15%/25%/50% depending upon the extent of assembly of these goods at the time of importation, whereas effective rate of BCD on import of their parts & accessories under CTH 8714 is 15% vide Sr. No. 532 of the said notification. Thus, rate of BCD leviable on import of electric vehicle parts in any condition mentioned at Sr. No. 1(b) and 2 of entry 531A of the notification No. 50/ 2017-cus. dated 30.06.2017 (i.e. 25%/50%) is higher than that leviable on import of their parts and accessories i.e. 15%).

2.1 In pursuance of the said circular, Bill of Entry No. 3109245 dated 31.10.2022 filed by the Appellant by declaring the consignment as parts of e-scooters/ e-bikes and classifying the same under Chapter Tariff Heading (CTH) 8714 of Custom Tariff Act, 1975 which attracts Basic Customs duty @ 15% was put up on hold and examined under panchnama by the officers of SIIB and in presence of representatives of Customs Broker, Appellant and Chartered Engineer Shri Tushar Zankat. It may be pointed out that the examination of the consignment revealed that barring the Tyres, Battery and Charger, all other components required for the functioning of an Electric Scooter is present in the import consignment. The details of the said Bill of entry are as below:-

Table-I

Sr. No.	Importer Name	Bill of Entry and date	Customs Broker	Declared assessable value	Total a declared duty (@of 15% under HS code 8714	Date of Examination/ Panchnama
1	M/s. Ribcon Industries Pvt Ltd	3109245/ 31.10.2022	M/s. Silverline Clearing and Forwarding Agency	7,02,60,478	34511947	26.11.2022

2.2 The goods covered above mentioned Bill of Entry were examined under Panchnama in the presence of representative of importer and Custom Broker and Govt. approved Chartered Engineer Shri Tushar Zankat. During the examination, Appellant have declared the goods under HSN 8714: @ 15% rate of BCD. On the basis of physical examination of cargo and import documents, it is observed that parts of e-scooter/e-bikes are being imported as sets of equal quantities required for assembling a particular quantity of e- scooter. All the parts lend the essential character to the e-scooter such as Motors, Controller, frame etc. Thus it appeared that importer has mis-declared the goods in chapter heading 8714. The goods appear to be rightly classifiable under chapter heading of 8711. The duty structure on e-bike/e-scooter parts in Knocked down condition imported by appellant i.e. M/s. Ribcon Industries Pvt. Ltd. appeared to fall under sr. no. 531A of notification No. 50/ 2017-cus. dated 30.06.2017 where standard rate of Basic Customs Duty is 25%/50%.

2.3 Shri Tushar Zankat, Custom Empanelled Chartered Engineer has examined the consignment and certified that upto 70% of the components to assemble and enable the E-Scooter's functioning are present in the consignment. The Chartered Engineer also stated in his Certificate No. CE/TZ/MUN/482/2022-23 dated 16-12-2022, that-

Imported Major Component & Its Applications:

The CE discussed the applications of the major components of the electric Scooter being:

a. Brakes which is an essential component and used to retard the speed as well as arrest the motion of the vehicle using frictional force;

b. Frame is the skeletal body as well as base structure of the vehicle. By considering is an base, the remaining component were built on it to form a *vehicle design.*

c. Converter is the electrical component in the motor. Which is used to convert the electric power from battery to desired voltage and the converted power is supplied to the controller of the scooter.

d. Suspension is used to absorb the vibrations or shocks from the wheel applied to the vehicle during a motion.

e. Rim is the rotating body and outer edge of a wheel used for holding the tire. It makes up the outer circular design of the wheel on which the inside edge of the tire is mounted in scooters.

ABSENCE OF MAJOR COMPONENTS & ITS APPLICATIONS:

(1) Battery The CE has very specifically mentioned that a Battery is the essential part of electric scooter, since it is the energy source for the prime mover(motor), in the conventional vehicle the engine is the energy source of the vehicle. Likewise, the battery will serve the same purpose in the electric vehicles, the battery will define the vehicle capacity (range of the vehicle in the electric vehicle) and its proportional to the battery capacity. Based on which, the vehicle price will be defined. Higher the battery capacity, the higher is the range and price of the vehicle, the better is crucial part of the vehicle as it will act as the engine.

(ii) Tires also not available in the consignment, which is also the essential part to form an electric scooter as it provides the contact of road to vehicle and traction force to move the vehicle"

(iii) Controller is the essential electronic component in te electric scooter, having a vital role in controlling the power supplying to the motor from the battery. It sends the power to the motor based on the accelerator input. It receives the inputs from the accelerator and brakes controls and translates into required current to the motor

(iv) Motor is the prime mover of the vehicle:

(v) Wheel is the rotating body used for holding the tire and providing movement to the vehicle. It makes up the outer circular design on which the inside edge of the tire is mounted in bikes.

2.4 The consignment was examined by Officers of SIIB, Customs, Mundra Port, Mundra on 26.11.2022. During the course of the examination, it was revealed that the consignment contained all the parts for assembling a complete e-scooter barring the batteries, tyres, chargers, front and rear body guards. The said goods appeared to be classified under CTH 8711 attracting duty @ 50% ad-valorem, as per Rule 2(a) of General Rules of interpretation for Import

Tariff, as it could be noticed that the goods declared as parts of E-Bike, if assembled make almost upto 70% of a complete E-bike. It may be noted that as per policy Condition 2(d) of Chapter 87, the import of new vehicles shall be permitted only through the Customs port at Nhava Sheva, Kolkata, Chennai and Chennai Airport, Cochin, ICD-Tughlakabad and Delhi Air Cargo, Mumbai Port and Mumbai Air Cargo Complex, ICD Talegaon Pune. Thus, disabling the Importing 10 make such imports from the port of Mundra and at the same time, import of a bike under the guise of parts attracts Customs duty on a lower side i.e 15%.

2.5 The Appellant appeared to have suppressed that the goods i.e. declared e-bike parts of the instant import contain 75% to 80% of a complete Electric Bike and has made this import with an intent to evade payment of appropriate Customs Duty leviable and also contravened port restriction policy in terms of Chapter notes to Chapter 87 of ITC (HS) of FTP 2015-2020. Based on the above, the goods imported under Bills of Entry mentioned in Table I, having total assessable value of 7,02,60,478/- were seized under Seizure Memo dated 05-01-2023.

2.6 The Appellant, M/s. Ribcon Industries Pvt. Ltd. had imported the parts/sub- assemblies from M/s. Honour Max International Limited, Unit-2 LG-1 Mirror Tower 61 Mody Rd. TST, KL Hongkong and supply them to M/s. Hero Electric only. From the data retrieved from EDI system, it is revealed that a lot of Shipments in past have been cleared by this importer by classifying the goods under 8714. A summons was issued to the appellant to appear on 03.01.2023 for further investigation. Shri Koshinder Singh, Director of M/s Ribcon Industries Pvt. Ltd. appeared for his voluntary statement on 03.01.2023. During his statement he stated as under:

(a) Their firm M/s. Ribcon Industries Pvt. Ltd. is engaged in importation of Electric Scooters parts. After importation of goods they sell the goods mainly to M/s. Hero Electric and M/s Micro Instrument Company.

(b) They import the goods mainly to supply for Mis. Hero Electric, M/s Micro Instrument Company and they import parts of E-scooter except battery, tyres etc. which can be seen in the previous imports made by M/s. Ribcon Industries Pvt. Ltd.

(c) On being asked about mis-classification of goods in current shipments and previous imports under Heading 8714 whereas the goods are having the essential characteristics of finished article. Based on the essential characteristics of the goods, goods are rightly classifiable under chapter Heading 8711. He stated that they are not agreed regarding classification of goods under Heading 8711 with sr. no. 531A 1(b) (where standard rate of BCD 25%).

2.7 Based on voluntary statement given by representative of the M/s. Ribcon Industries Pvt. Ltd., it was revealed that appellant was ready to re-assess the current Bill of Entry provisionally under Heading 8711 with sr. no. 531A 1(b) (where standard rate of BCD 25%) and release the goods under bond and few amount of Bank Guarantee.

2.8 It appeared that the E-scooters/ E-bikes in CKD form imported by the importer M/s. Ribcon Industries Pvt. Ltd. have been mis-declared as "E-Scooter Spare Parts" and mis-classified as parts of e-bike/e-scooter under CTH 8714. From the explanation of HSN explanatory notes (relevant extract shown above), it transpires that even if the bike is imported without fitted with the wheels or tyres and battery, it merits classification as the corresponding complete or finished vehicle provided it has the essential character of the E-bike/ E-scooter, within the ambit of Rule 2(a) of General Rules for Interpretation of Import Tariff. On the reasonable belief that the importer had imported the parts and components of e-bike by mis-declaring and mis- classification the said goods under CTH 8714, instead of correct CTH 8711 meant for e-bike and for the reason of port restriction of said imported goods, the subject goods imported under Bill of Entry mentioned in Table-I by M/s. Ribcon Industries Pvt. Ltd. were seized under Seizure Memo 05-01-2023.

2.9 Investigations revealed that they imported a consignment which could assemble and erect upto 70% of numerous e-Scooters under the guise of spare parts. The consignment did not have any Batteries, Chargers and Tyres required for an e-Scooter. An import of a e-scooter without a battery, its charger and Tyres is reasonably justified as majority wear and tear of any e-scooter that occurs are on the battery and tyres. Notification No. 30/2009-2014 dated 10-02-2010 made the following amendments to the Import Licensing Note No. 2(II)(d) under Chapter 87. The relevant amendment is as under:

"The import of new vehicles shall be permitted only through the Customs port at Nhava Sheva, Kolkata, Chennai and Chennai Airport, Cochin, ICD-Tughlakabad and Delhi Air Cargo, Mumbai Port and Mumbai Air Cargo

Complex, ICD Talegaon Pune."

2.10 Whereas in view of the above licensing notes to Chapter 87 ITC (HS) of Foreign Trade Policy 2015-2020, import of new vehicles is restricted from the Port of Mundra thus, the Importer tried to import it as e-Scooter spare parts. The differential duty applicable on the goods after classifying the goods under CTH 87116020, categorically under Serial No. 531A(2) of Notification No.50/2017 dated 30-06-2017 is as under

Table-II

Sr. No.	BOE	Date	Assessable value (in Rs.)	"TOTAL DUTY In Bills of Entry under CTH 87141090 BCD: 15% IGST: 28%) (in Rs.)	Revised Total Duty under CTH 87116020 with Not.No. 50/2017 Sr.No. 531A(2) @ BCD :50% & IGST :5% (in Rs.)	TOTAL RECOVERABLE AMOUNT (in RS.)
1	3109245	31.10.2022	7,02,60,478	3,45,11,947	4,40,88,450	95,76,503

2.11 Section 17 of the Customs Act, 1962 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 of the Customs Act, 1962, respectively. Thus, under self-assessment, it is the importer or exporter who will ensure that he declares the correct classification, applicable rate of duty, value, benefits of exemption notifications claimed, if any, in respect of the imported / export goods while presenting Bill of Entry or Shpping Bill. In terms of Section 46 (4) of the Customs Act, 1962, the importer is required to make a declaration as to truth of the contents of the Bills of Entry submitted for assessment of Customs duty. M/s. Ribcon Industries Pvt. Ltd. appeared to have wilfully mis-declared the goods as "E- Scooter Spare parts" whereas the goods were "E-Bikes / E-Scooters in CKD form" and also misstated the Tariff Classification of the said goods imported by them as 8714 instead of 8711. Thus, the duty appeared to have been short levied and short paid by wilfully mis- declaring the description of goods as "E- Scooter Spare parts" and misstating the Customs Tariff heading as 8714 as against the applicable Customs Tariff Heading of 87116020 for the discharge of duty payable. Hence it appears that the duty amount is required to be recovered by way of re-assessment.

2.12 Thus, it appeared that the classification of the goods under the Customs tariff head (CTH) 8714 claimed by M/s. Ribcon Industries Pvt. Ltd. is required to be rejected and the said goods as detailed in Bills of Entry filed by the importer are required to be correctly re- classified under Customs Tariff Heading 87116020 and charged to duties accordingly. Accordingly, the differential Customs Duty amounting to Rs.95,76,503/- (Rupees Ninety five Lakh seventy six Thousand five hundred and three Only) is as much as the duty is short paid on account of wilful mis- statement as narrated above. Further the interest at the prescribed rate is also liable to be recovered from them. Also, the importer M/s. Ribeon Industries Pvt. Ltd. have rendered themselves liable to penalty under Section 112 of the Customs Act, 1962.

2.13 It further appeared that the goods i.e., E-Bikes/E-Scooters in CKD form' as detailed in the Bills of Entry filed by the appellant were imported by resorting to mis-declaration and mis-classification by way of wilfull misstatement in the Bills of Entry filed under Section 46 of the Customs Act, 1962. before the designated authority of Customs. The goods having assessable value of Rs.7,02,60,478/- (Rupees Seven crore two Lakh sixty Thousand four hundred and seventy eight Only) as detailed in Bill of Entry mentioned in Table-II appeared liable to confiscation under the provisions of Section 111(d) and 111(m) of the Customs Act, 1962.

2.14 The Appellant appeared to have mis- declared the description of the goods imported by 'hem as 'Paris' instead of "e-bike/e-scooter in CKD condition". Further, it appeared that M/s. Ribcon Industries Pvt. Ltd. deliberately devised fraudulent modus to mis-declare the CKD condition parts of e-bikes/e-scooters and tried to get these goods cleared from the port to hide the actual import of an e-bike/e-scooter, M/s. Ribcon Industries Pvt. Ltd. also violated the policy Condition 2(d) of Chapter 87, wherein it stipulates that the import of new vehicles shall be permitted only through the Customs port at Nhava Sheva, Kolkata, Chennai and Chennai Airport, Cochin, ICD-Tughlakabad and Delhi Air Cargo, Mumbai Port and Mumbai Air Cargo Complex, ICD Talegaon Pune. It appeared that to evade Customs duty and also to avoid various conditions of licensing notes to chapter 87 of ITC (HS) of FTP 2015-2020, the importer started the above fraudulent modus operandi deliberately as can be evident from their method of declaring the import as Spare Parts of E-Scooters/ E-Bikes resulting an attempt to mislead the Customs department and to bypass the provisions of Interpretations of Rule 2(a) of General rules of interpretation for Import Tariff. Thus, it appeared that M/s. Ribcon Industries Pvt. Ltd. knowingly or with an intention made, signed or used false declaration, statement or document which appears to be false or incorrect in material particular, in the transaction of above import business for the purposes of the Customs Act in the Bills of Entry filed by them before the Indian Customs. By their acts of omission and commission it appears that they have rendered the goods imported by them under the above referred Bill of Entry mentioned in Table-I were liable for confiscation under Section 111(d) & Section 111(m) of the Customs Act, 1962. Further, they also appear to have rendered themselves liable for penalty under the provisions of Section 112 of the Customs Act, 1962.

2.15 In view of the above, a Show Cause Notice was issued under F. No. GEN/ADJ/ADC/1286/2023-ADJN dated 24.06.2023 whereby M/s Ribcon Industries Pvt. Ltd., was called upon to show cause, as to why:-

i. The classification of goods imported vide Bill of Entry mentioned in Table-II should not be rejected and re-classified under Customs Tariff Heading 87116020 of the First Schedule to the Customs Tariff Act, 1975 and Customs Duty amount should not be redetermined at Rs.4,40,88,450/- (Rupees Four crore forty Lakh eighty eight Thousand four Hundred and fifty Only).

ii. The goods having total assessable value at Rs.7,02,60,478/- (Rupees Seven crore two Lakh sixty Thousand four hundred and seventy eight Only) as detailed in Table-II, seized vide Seizure Memo bearing DIN 20230171M0000000B36C dated 05-01-2023 should not be held liable for confiscation under the provisions of Section 111(d) and 111(m) of the Customs Act, 1962.

iii. Penalty should not be imposed on them under the provisions of Section 112 of the Customs Act, 1962 acts of omission and commission discussed hereinabove.

2.16 Consequently, the Adjudicating Authority passed the order as under:

i. He rejected the description of goods declared as "parts and components of e-scooters/e bikes" and order to declare it as "E-Bikes E-Scooters in CKD form", and further order to classify all the goods covered under impugned B/E mentioned in Table-II under CTH 87116020.

ii. He ordered for confiscation of the goods ie. "E-Bikes /E-Scooters in CKD form imported vide Bill of Entry No. 3109245 dated 31.10.2022 having assessable value of Rs.7,02,60,478/- under the provisions of Section 111(m) of the Customs Act, 1962. However, he gave an option to the importer to redeem the confiscated goods on payment of redemption fine of Rs. 75,00,000/- under Section 125 of Customs Act, 1962;

iv. He imposed a penalty of Rs. 3,50,000/- on M/s. Ribcon Industries Pvt. Ltd. (IEC No. 0515031712) under Section 112(a)(ii) of the Customs Act, 1962;

SUBMISSIONS OF THE APPELLANT:

Being aggrieved with the impugned order, the Appellant has filed the present appeals wherein they have submitted grounds which are as under:-

3.1 The appellant imported e-bike parts falling under tariff item 8714 1090 (in short impugned goods) vide invoice No. HO20220912 dt. 09.10.2022 from M/s Honour Max International Limited, Hongkong. The appellant filed bill of entry No. 3109245 dt. 31.10.2022 at Customs House Mundra (Code INMUN1) through M/s Silverline Clearing and Forwarding Agency for clearance of impugned goods under Tariff Item 8714 1090.

3.2 The issues involved in this case are as under:

i) whether classification of impugned goods is under tariff item 8714 1090 as claimed by appellant or under heading 8711 6020 as held by Adjudicating Authority?

ii) whether availability of benefit of exemption notification No. 50/2017 Cus dt. 30.06.2017 as amended to impugned goods under SNo.532 as claimed by appellant or under SNo. 531A (2) thereto as held by Adjudicating Authority?

iii) whether goods imported having assessable value of Rs. 7,02,60,478/- and seized vide seizure memo dt. 05.01.2023 are liable to confiscation under section 111 (d) and 111 (m) of Customs Act,?

iv) whether penalty is imposable under section 112 of Customs Act,?

The issue framed by Adjudicating Authority at para 27.2 of impugned order also refers.

3.3 The appellant claimed classification of impugned goods under Tariff Item 8714 1090 as e-bike parts; the department contended classification of impugned goods under Tariff Item 8711 6020 i.e e-bike in CKD Condition (being parts imported constitute 70% of complete e-bike). There is no dispute regarding description, quantity and value of goods imported and declared by appellant under section 46 of Customs Act, 1962. It has been alleged and held that goods imported are e-bike in CKD condition – being parts imported constituted 70% of e-bike based on certificate dt. 16.12.2022 of Sh. Tushar Zankat, Customs Empaneled Chartered Engineer- page 2 & 3 of impugned order refers. Sh. Tushar Zankat, Customs Empaneled Chartered Engineer vide report dt. 16.12.2022 (para 3 of impugned order refers) certified that upto 70% of components to assemble and enable e-scooter functioning are present in the consignment. The said report dt. 16.12.2022 reproduced in show cause notice/impugned order reads as under:-

Imported Major Component & is Application

"The CE discussed the applications of the major components of the electric Scooter being:

(a) Brakes which is an essential component and used to retard the speed as well as arrest the notion of the vehicle using frictional force;

(b) Frame is the skeletal body as well as base structure of the vehicle. By

considering is an base, the remaining component were built on it to form a vehicle design.

(c) Converter is the electrical component in the motor. Which is used to convert the electric power from battery to desired voltage and the converted power is supplied to the controller of the scooter.

(d) Suspension is used to absorb the vibrations or shocks from the wheel applied to the vehicle during a motion.

(e) Rim is the rotating body and outer edge of a wheel used for holding the tire. It makes up the outer circular design of the wheel on which the inside edge of the tire is mounted in scooters.

Absence of major components & its applications

"(i) Battery The CE has very specifically mentioned that a Battery is the essential part of electric scooter, since, it is the energy source for the prime mover(motor), in the conventional vehicle tie engine is the energy source of the vehicle. Likewise, the battery will serve the same purpose in the electric vehicles, the battery will define the vehicle capacity (range of the vehicle in the electric vehicle) und its proportional to the battery capacity. Based on which, the vehicle price will be defined. Higher the battery capacity, the higher is the range and price of the vehicle, the battery is crucial part of the vehicle as it will act as the engine.

"(ii) Tires also not available in the consignment, which is also the essential part to form an electric scooter as it provides the contact of road to vehicle and traction force to move the vehicle"

"(iii) Controller is the essential electronic component in the electric scooter, having a vital role in controlling the power supplying lo the motor from the battery. It sends the power to the motor based on the accelerator input. It receives the inputs from the accelerator and brakes controls and translates into required current to the motor;

"(iv) Motor is the prime mover of the vehicle;

"(v) Wheel is the rotating body used for holding the tire and providing movement to the vehicle. It makes up the outer circular design on which the inside edge of the tire is mounted in bikes

3.4 The impugned consignment was examined by the officers of SIIB, Customs Mundra Port, Mundra vide panchnama dt. 26.11.2022 and stated that consignment contained all parts for assembling a complete e-scooter barring the batteries, tyres, charger, front and rear body guards. The Adjudicating Authority failed to appreciate that Chartered Engineer states that imported parts constitute 70% of the components to assemble and enable e-scooter functioning are present in the consignment. The Chartered Engineer in his report dt. 16.12.2022 stated that besides parts enumerated therein, the other parts were absent in the consignment viz. battery, tyres, controller, motor and wheel - para 3 of show cause notice refers. Further, the SIIB examination report dt. 26.11.2022 states that consignment inter-alia does not contained charger, front and rear body guards - para 4 of show cause notice refers. The conjoint reading of two versions i.e. of Chartered Engineer and SIIB would reveal that that parts imported were less than 70% of parts required to assemble e-bike imported Chartered Engineer report say 70% of parts imported but it did not take into account charger, front and rear body guard as referred by SIIB. Imported parts which constitute less than 70% of the parts necessary to manufacture the E-bike and more so other essential parts are missing, cannot be construed as articles has the essential character of the complete or finished article. If one go by the logic postulated in the show cause notice then even a few of the parts of E bike imported together would also fall within the ambit of the mischief' articles has the essential character of the complete or finished article'. The Adjudicating Authority failed to appreciate the same.

3.5 The Adjudicating Authority incorrectly placed reliance on Rule 2(a) of General Rule of Interpretation for classifying impugned goods under tariff item 8711 6020. The ibid Rule 2 reads as under:-

Rule 2 of General Rule for Interpretation

(a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

3.6 That for classifying impugned goods under tariff item 8711 6020 of Customs tariff Act, it is required as per ibid Rule 2 (a) to present together all the Components to assemble e-bike/e-scooter. It is admitted that impugned consignment contain 70% of component to assemble e-bike/e-scooter and imported goods does not found complete or finished articles. The Hon'ble Supreme Court in the case of Commissioner of Customs Vs. Sony India Ltd. 2008 (231) ELT 385 (SC) held that Rule 2(a) of Rules for interpretation of Tariff applicable only if all components intended to make final products at same time for customs clearance. The impugned rule applicable only when imported goods presented unassembled or dis-assembled can be put together by means of simple fixing device or by riveting or welding. The goods requiring complicated process to make final product, not to be considered as unfinished goods having essential character of complete article. The para 9 & 17 of said decision reads as under:-

> *9. It is then only due to Rule 2(a) that these components are being treated as the CTVs and that is the main plank of the argument of Mr. Kas Singh, Ld. ASG. We would, therefore, consider the implication of Rule 2 (a). Rule 2(a) is as under :-*
>
> > *"Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provide that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled."*
>
> *The Ld. ASG, therefore, suggests that the articles though were not the CTVs in CKD form and were incomplete or unfinished ones, they had the essential character of complete or finished CTVs and applying this Rule, every such component, would have to be taken as an import of CTV. The Ld. ASG heavily relied on the second part of the Rule, starting from words "It was also to be taken to new reference..............." He says that every component whether it is complete or finished and which is presented in unassembled or dis-assembled condition, would have to be taken as the finished article, like CTVs in this case. In our opinion, this argument is completely illogical and again that is not the import of the language of the Rule. If the argument of the Ld. ASG has to be accepted, then we would have to concentrate only on the later part of the Rule, ignoring the first part of the Rule and such dissection, in our opinion, is not possible. The sine qua non for the*

application of this Rule is that any imported article, which is "as presented", must have the essential character of the complete or finished article." This condition cannot be ignored and we cannot allow the reading only of the second part beginning with words "It was also to be taken to new reference............" for application of the Rule. The Rule must apply as a whole. Ld. ASG was not able to point out as to how the first condition can be satisfied in the present case. A mere PCB or a CRT, in our opinion, under any circumstances, cannot be held to have essential character of the CTV. It is only when this first condition is satisfied that the remaining clause would have to be read and thereby, the words "that article" used in the later part would have to pass the test of the opening words of the clause "as presented, the incomplete or unfinished article has the essential character of the complete or finished article".

Once this condition is satisfied then the further clause is activated, suggesting that even when such article is in disassembled or unassembled condition, it would still be taken to be a complete article. Therefore, essentially the second part would come into play provided the component parts intended to make up the finished product are all presented for customs clearance at the same time which is not the case here.

17. Lastly, we must take stock of the argument of Shri Lakshmikumaran that Section Interpretative Rule 2(a) would not be applicable at all in this case. For this he invited our attention to Rule 1 of Interpretative Rules as also to the decision in Simplex Mills v. Union of India [2005 (181) E.L.T.345(S.C.)] wherein this Court had held in para 11 as under:

> *"11. The rules for the interpretation of the Schedule to the Central Excise Tariff Act, 1985 have been framed pursuant to the powers under Section 2 of that Act. According to Rule 1 titles of sections and chapters in the Schedule are provided for ease of reference only. But for legal purposes, classification "shall be determined according to the terms of the headings and any relevant sector or chapter Notes". If neither the heading nor the notes suffice to clarify the scope of a heading, then it must be construed according to the other following provisions contained in the Rules. Rule-I gives primacy to the Section and Chapter Notes along with terms of the headings. They should be first applied. If no clear picture emerges then only can one resort to the subsequent rules."*

Relying on this the further contention of the counsel is that Section Note 2 of Section XVI provides mandate for classification of the parts of machines *falling under Section XVI. In terms of Rule 1 of Interpretative Rules, invocation of Rule 2(a) for certain categories of goods covered in Section XVI like the goods of CTVs are prohibited. For this the learned counsel relied on the decision in Modi Xerox (supra). In that view the learned counsel says that Rule 2(a) would not be applicable at all. This question needs no consideration here particularly in view of the interpretation that we have given to Rule 2(a). On facts, we have already found that Rule 2(a) would not be applicable to the present case since there is no question of the goods having the essential character of CTVs. In that view, the question of applicability of Section 2(a) on this account need not be gone into in this judgment.*

3.7 The Adjudicating Authority incorrectly placed reliance on Rule 2(a) for General Rule of Interpretation by ignoring the Rule 1 of General Rules for Interpretation. The ibid Rule 1 states that classification shall be determined according to terms of heading read with relative section or chapter note of Customs Tariff Act. The said Rule 1 reads as under:-

Rule 1

The titles of Sections, Chapters and Sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the heading and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:

The ibid Rule 1 specifically lays down that Rule 2 to 6 shall be invoked only if the classification cannot be determined by applying principle of Rule 1.

3.8 The Note 3 of section XVII (chapter 86 to 89) of Customs Tariff Act states that parts which are suitable for use solely or principally with article of chapter 87 shall be classified under that heading which correspond to principal use of that part or accessory. The ibid Note 3 to Section XVII reads as under Note 3 to Section XVII of Customs Tariff Act:

"3. References in Chapters 86 to 88 to " parts or " accessories" do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part of accessory which answers to the description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part of accessory"

The Adjudicating Authority failed to appreciate that Note 3 to section XVII laid down the criteria for classification of parts, thus ibid section Note 3 by virtue of Rule 1 of General Rule for Interpretation overrides provisions of Rule 2 to 6 of General Rule of Interpretation of Customs Tariff Act. There is no dispute regarding solely or principally use of imported goods for the manufacture of e-bike. The Adjudicating Authority in para 30 of impugned order relied upon Rule 2(a) of General Rule of Interpretation and it inter-alia reads as under:-

> *"Since more than 70% parts have been imported together barring the batteries, tyres, chargers, front and rear bodyguards, imported part consist the essential characteristics of e-bike, hence reliance on Rule 2 (a) for General of Interpretation has been taken correctly."*

3.9 In para 30.2 of impugned order the Adjudicating Authority follows Rule 1 of General Rule of Interpretation and accordingly applies to Note 3 to section XVII of the Tariff. The ibid para 30.2 of impugned order reads as under:-

> *30.2 Further, as per Note 3 of section XVII (chapter 86 to 89) which states that parts which are suitable for use solely or principally with article of chapter 87 shall be classified under that heading which correspond to principal use of that part or accessory and in this impugned case, principal use of those imported even no. of similar parts is to manufacture complete e bike, hence, I find that investigation agency has rightly classified the goods under HSN code 87116020. This dichotomy of opinion in the application of interpretory Rules shows that the Adjudication Authority has not applied the rules correctly. As once Adjudicating Authority holds that Rule 1 of the said rules is attracted, it excludes applicability of the other Rules of General Rule of Interpretation.*

3.10 That the heading 8714 specifically cover the parts and accessories of vehicles of heading 8711 to 8713. The tariff item 8711 6020 and 8714 1090 reads as under:-

कार्यालय आयुक्त (अपील), नोएडा

Heading 8711

Tariff Item		Description of goods
8711		**Motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side-cars**
8711 60	-	With electric motor for propulsion
8711 60 10	---	Motor Cycles
8711 60 20	**---**	**Scooters**
8711 60 30	---	Mopeds
8711 60 90	---	Others
8711 90	-	Other

Heading 8714

Heading 8714

Tariff Item		Description of goods
8714		**Parts and accessories of vehicles of heading 8711 to 8713**
	-	Of motorcycles (including mopeds)
8714 10	-	**Of motorcycles (including mopeds)**
8714 10 10	---	Saddles
8714 10 90	**---**	**Other**
8714 20	-	Of Carriages for disabled persons
8714 99 90	---	Other

That in terms of Rule 1, the imported parts which are suitable for use solely or principally with of vehicles of heading 8711 to 8713, merit classification under heading 8714. The Adjudicating Authority relied upon both Rule 1 & 2 (a) of General Rules for Interpretation which is incorrect as explained above. The Adjudicating Authority erred in classifying impugned goods as e-bike in CKD condition falling under tariff item 8711 6020 based on SNo. 531A of exemption notification No. 50/2017 Cus, without appreciating the statutory provisions.

3.11 The appellant claimed classification of impugned goods i.e. parts of e-bike under CTH 8714 1090 and the revenue claimed it as e-bike in CKD condition (being parts imported constitute 70% of e-bike) by relying upon Rule 2(a) of General Rules for Interpretation and SNo. 531A of Ntfn. 50/2017 Cus as amended. That certain clarificatory changes made in SNo. 531A of notification

No. 50/2017 Cus by Ntfn. No. 2/2022 dt. 01.02.2022 - letter of Joint Secretary (TRU-I), CBIC, North Block, New Delhi issued under DOF No. 334/01/2022-TRU dt. 01.02.2022. The CBEC vide circular No. 39/2005-Cus dated 03.10.2005 clarified that for the sake of denial of the benefit of a notification, Rule 2(a) cannot be invoked and it reads as under:-

> *Subject: Extension of benefit of Notification 21/2002-Cus., dated 1-3-2002, Sl. No. 276, to Computer Casing and Power Supply Unit imported together - Reg.*
>
> *I am directed to say that a dispute regarding the extension of benefit of Notification 21/2002-Cus., dated 1-3-2002, Sl. No. 276 to computer casing and power supply unit imported together, has been brought to the notice of the Board.*
>
> *2. Under Sl. No. 276 (which has subsequently been withdrawn w.e.f. 1-3-2005) of the CN.21/2002-Cus., dated 1-3-2002, all parts of the machines of heading 8471, other than PPCB's, motherboards and power supply units attracted a concessional rate of duty @ 5%. In case the computer casing/chassis is pre-fitted with the power supply unit, it was not eligible for the benefit of the said entry of the notification and the rate of basic customs duty on the same use to be 15%. However, some importers had imported the chassis and the power supply as separate units in the same consignment. These units were meant to be fitted together after the clearance thereof, but in the form as presented, these were not assembled. The point of dispute is whether in cases where computer casing/chassis and power supply unit were imported in a form not fitted together as an assembly, but separately in the same consignment, the benefit of Notification No. 21/2002-Cus., dated 1-3-2002, (vide S. No. 276) can be denied by applying rule 2(a) of the General Rules for the Interpretation of the First Schedule (GIR).*
>
> *3. This matter was discussed in the Tariff Conference of Chief Commissioners of Customs held at Visakhapatnam on 25th and 26th September, 2003[Agenda Item A-17].*
>
> *4. The Conference noted that there are several rulings of CESTAT that for the sake of denial of the benefit of a notification, Rule 2(a) cannot be*

invoked.

5. The Board had accepted the decision of the Conference. Accordingly, it is clarified that the goods have to be classified in the form as presented and rule 2(a) of the GIR cannot be applied for the sake of allowing/disallowing the benefit of a notification, unless the exemption notification is based on classification of the item under a particular heading of the Customs Tariff. For the purpose of classification, Rule 2(a) of the General Rules of Interpretation could be applied.

3.12 The CBEC circulars are binding on the department and they can not take divergent view. The Hon'ble Supreme Court in the cases of:

i) Ranadey Micronutrient Vs. CCE 1996 (87) ELT 19 (SC) held that circular not advisory in character but are binding on the department.

ii) Mathew M.Thomas Vs. Commissioner of Income Tax reported in 1999(111) ELT 4(SC) held that Board's Circular is binding on all authorities employed in execution of the Act, "proceedings" shall include proceedings at appellate stage.

3.13 The CBEC vide ibid circular dt. 03.10.2005 have clarified that goods have to be classified in the form as presented and Rule 2 (a) of GIR can not be applied for sake of allowing / disallowing the benefit of a notifications. The appellant imported e-bike parts falling under tariff item 8714 1090 and when presented they can not form complete or finished e-bike. The Adjudicating Authority erred in classifying impugned goods under heading 8711 6020 by relying upon Rule 2(a) of General Rules for Interpretation. The impugned goods imported and presented for examination neither contained 100% part of e-bike/ e-scooter nor attained functional characteristics of complete e-bike/ e-scooter. The impugned orders passed in defiance to CBEC Circular dt. 03.10.2005 is bad in law. It is settled law that notification to be interpreted in accordance to language used in the notification. The Hon'ble Supreme Court in case of Collector of Customs Vs. Maestro Motors Ltd. 2004 (174) ELT 289 (SC) held that a notification has to be interpreted in accordance with the language used in the Notification. The decision of Hon'ble Supreme Court in the case of Commissioner of Customs Vs. Sony India Ltd. 2008 (231) ELT 385 (SC) also refers.

3.14 That the Adjudicating Authority erred in ordering confiscation of goods exported during the period 31.10.2022 and are not available for confiscation. The Hon'ble High Court of Bombay in the case of Commissioner of Customs (Import) Vs. Finesse Creation INC 2009 (248) ELT 122 (Bom) held that confiscation not arises if goods are not available for confiscation. The Hon'ble Supreme Court dismissed the petition for special leave to appeal filed by department Commissioner Vs. Finesse Creation INC 2010 (255) ELT A-120 (SC). The Adjudicating Authority incorrectly ordered confiscation of impugned goods under section 111(m) of Customs Act as provisions of same are not applicable in the instant case and same reads as under:-

Section 111 Confiscation of improperly imported goods, etc.

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

(a) to (1) ....

(m) 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 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;

(n) to (q)....

3.15 The Adjudicating Authority failed to appreciate that there are no dispute regarding description of goods, quantity and value thereto declared as per Section 46 of Customs Act, 1962, therefore invocation provision of section 111 (m) are bad in law.

3.16 The Adjudicating Authority erred in imposing penalty under section 112(a) (ii) of Customs Act, 1962 and same are not applicable in the instant case and it reads as under:-

SECTION 112. Penalty for improper importation of goods, etc. Any person,

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

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

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding the value of the goods or five thousand rupees, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, 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;

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty [not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.

3.17 The appellant correctly declared the description of goods, quantity and value thereto. It is incorrect to construed e-bike parts as e-bike in CKD condition by referring to Rule 2(a) of General Rule of Interpretation and report dt. 16.12.2022 of Chartered Engineer stating impugned parts constitute 70% of component of e-bike. There is neither any literature nor any expert opinion brought on record to substantiate that impugned goods imported constitute e-bike in CKD condition. The Hon'ble CESTAT in case of Jay Kay Exports and Industries 2004 (163) ELT 359 (T) held that finalisation of the Tariff heading under which the goods would fall is the ultimate job of the customs authorities and if the appellants have claimed wrong classification according to his limited understanding of the Customs Law, mens rea cannot be attributed on his part Confiscation of the fabric or imposition of penalty set aside - Sections 111 and 112 of Customs Act, 1962. The decision of Hon'ble CESTAT in the case of Shree Ganesh International Vs Commissioner of C. Ex. Jaipur 2004 (174) ELT 171 (T) also refers.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 27.05.2025, following the principles of natural justice wherein Shri Sudhir Malhotra, Advocate appeared for the hearing and he re-iterated the submission made at the time of filing the appeal.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner, Customs, Mundra and the defense put forth by the Appellant in their appeal.

5.1 The right to appeal is a creation of statute and must be exercised subject to the conditions laid down in the statute itself. The primary issue is the Appellant's failure to deposit the mandatory pre-deposit as prescribed under Section 129E of the Customs Act, 1962. Section 129E(i) of the Customs Act, 1962, explicitly mandates:

> *"The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal,— (i) under sub-section (1) of section 128, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of customs lower in rank than the [Principal Commissioner of Customs or Commissioner of Customs]".*

5.2 The right to appeal is a conditional statutory remedy. For an appeal filed against an Order-in-Original passed by an Additional Commissioner, the mandatory pre-deposit is 7.5% of the aggregate of the Duty, Fine, and Penalty in dispute. The statutory requirement for the pre-deposit is mandatory and cannot be waived on grounds of financial hardship or equity, as explicitly held by the Courts.

5.3 The Appellant has mentioned in the Sr. NO. 6 of Appeal in Form CA-1 that Goods against impugned bill of entry NO. 3109245 dtd. 31.10.2022 cleared on furnishing bank guarantee dtd. 23.01.2023 of Rs. 98,36,470/- of ICIC Band (Annexure B) . It is observed that the appellant relies on a Bank Guarantee (BG) furnished for the provisional release of goods under Section 110A of the Customs Act, 1962. This reliance is misconceived and legally untenable. A Bank Guarantee is merely a third-party security instrument ensuring that the amount specified will be paid by the bank to the Customs Department if and when a demand is confirmed. It remains a contingent liability. In contrast, the Pre-Deposit under Section 129E must be a direct deposit of money (cash or ECL) to the Government account to be properly accounted for as a deposit pending appeal. The BG was executed for the distinct and one-time purpose of the provisional release of seized goods, ensuring the safety of revenue pending adjudication by the original authority. The Pre-Deposit under Section 129E is mandated for the maintenance of the appeal itself, which begins after the adjudication order is passed, acting as a mandatory cash component for admission of the appeal.

5.4 The Board's Circular No. 984/08/2014-CX, dated 16.09.2014, clarified that payment made during the course of investigation/audit can be considered towards the pre-deposit, but this clarification applies only to payments already made in cash/duty, not to a Bank Guarantee which represents a contingent commitment of a third party (the bank). The appeal is liable to be rejected for non-compliance where the mandatory deposit is not paid. The Appellant's contention essentially seeks to substitute a contingent security instrument for a statutory cash deposit. Such substitution is not permitted by the explicit language of Section 129E, which requires the appellant to have "deposited" the amount. The BG remains a security for the enforcement of the confirmed duty/fine/penalty if the appeal is lost.

5.5 The appeal was filed without the necessary pre-deposit, which is a mandatory statutory requirement for the appeal to be 'entertained'. The core legal principle at hand is established in Section 129E(i) of the Customs Act, 1962, which explicitly states that the Commissioner (Appeals) "shall not entertain any appeal" unless the appellant has deposited the prescribed percentage of the duty or penalty in dispute. The word "shall not entertain" in Section 129E creates an absolute bar for the appellate authority to proceed with the merits of the case in the absence of the stipulated pre-deposit. The appellate authority has no discretionary power to waive the pre-deposit below the statutory percentage, which was explicitly removed by the 2014 amendment to Section 129E. In line with the settled legal position, the appeal is not entertainable.

5.6 Since the appeal cannot be entertained due to the fatal procedural defect of non-payment of the mandatory pre-deposit, it is not necessary and indeed impermissible to proceed to discuss the merits of the appeal. The Appellate Authority does not acquire the jurisdiction to address the Appellant's grounds regarding re-classification (CTH 8714 vs. CTH 8711), the invocation of Rule 2(a) of the General Rules of Interpretation, the merits of confiscation, or the imposition of penalties unless the prerequisite of Section 129E is satisfied. The appeal is therefore rejected solely on the ground of non-compliance with the statutory pre-condition.

6. In exercise of the powers conferred under Section 128A of the Customs Act, 1962, I pass the following order:

(i) The appeal filed by M/s Ribcon Industries Pvt. Ltd. is hereby rejected for non-compliance with the mandatory pre-deposit requirements of Section 129E of the Customs Act, 1962.

(ii) This rejection is on the ground of maintainability only, and all the findings in the Order-in-Original No. MCH/ADC/AK/17/2024-25 dtd. 18.04.2024, including the re-classified duty demand, fine, and penalty, are hereby deemed to be upheld due to the failure to file a valid appeal.

7. The appeal filed by M/s. Ribcon Industries Pvt. Ltd. is hereby rejected as non-maintainable.

(AMIT GUPTA)
Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-71/CUS/MUN/2024-25 4271

Date: 30.10.2025

सत्यापित/ATTESTED
अधीक्षक/SUPRERINTENDENT
सीमा शुल्क (अपील्स), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD

By Speed post /E-Mail

To,
M/s. Ribcon Industries Pvt. Ltd.,
T-2, Old Industrial Area, Bahadurgarh,
Jhajjar, Haryana-124507

Copy to:

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