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 - 20250771MN000011641A

क	फ़ाइल संख्या FILE NO.	S/49-15/CUS/MUN/2023-2024
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-117-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	03.07.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original No. MCH/ADC/MK/158/2022-23 dtd.10.02.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	03.07.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Heavy Metal & Tubes (India) Pvt. Ltd. 101, Bileshwarpura, Tal. Kalol Dist:-Gandhinagar

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 सम्ब न्धित 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

The present appeal has been filed by M/s. Heavy Metal & Tubes (India) Pvt. Ltd., 101, Bileshwarpura, Tal. Kalol, District-Gandhinagar (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original No. MCH/ADC/MK/158/2022-23 dtd.10.02.2023 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner of Customs, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the Appellant had imported consignments of Stainless-Steel Seamless Pipes (Hot Finish) from China vide Bill of Entry No. 3807481 dated 19-12-2022 under DEEC Licence No. 0811002228 dated 04-08-2021. Intelligence was developed by the Special Intelligence and Investigation Branch(SIIB), Mundra Customs regarding evasion of Anti-Dumping Duty on imports of Stainless-Steel Seamless Tubes and Pipes with specifications of diameters up to and including 6 NPS, or comparable thereof after the issuance of Notification no. 31/2022-Customs (ADD) dated 20-12-2022 issued by Under Secretary from F. No. CBIC-190354/243/2022-TO(TRU-I)-CBEC the Appellant. The said Notification imposed Anti-Dumping Duty on import of "Stainless-Steel Seamless Tubes and Pipes" with specifications of diameters up to and including 6 NPS, or comparable thereof in other unit of measurement, whether manufactured using hot extrusion process or hot piercing process and whether sold as hot finished or cold finished pipes and tubes, including subject goods imported in the form of defectives, non-prime or secondary grades (hereinafter referred to as the subject goods) falling under chapter heading 7304 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), originating in, or exported from China PR, and imported into India. It may be noteworthy to highlight that Millimetres is the unit of measurement being followed in import consignments. Thus, in order to refer the measurement in Millimetres, 6 NPS as specified in the Notification dated 20-12-2022 is equal to 168.3 mm as per available online literatures.

2.1 Subsequent to the publishing of the Notification No. 31/2022-Customs (ADD) dated 20-12-2022 issued by Under Secretary from F.No. CBIC-190354/243/2022-TO(TRU-I)-CBEC, the Appellant had not applied for any further amendment or request for payment of applicable ADD as provided under

the provisions of Section 149 of the Customs Act, 1962 till 26-12-2022, in order to effect the changes warranted under the aforesaid notification. Thus, after having staying action for a considerable time of 4 days and no action being noticed in terms of Section 149 of the Customs Act, 1962, the container no, CCLU7389431 was placed on hold by the SIIB vide letter F. No. S/15-85/SIB-EHolding/CHM/21-22 dated 26-12-2022 at M/s. Saurashtra CFS, Mundra, since, the consignment was ordered Out Of Charge and was leaving Mundra port. Thereafter, the aforesaid cargo stuffed in Container Nos. CCLU7389431 lying in Saurashtra CFS, Mundra were examined by the SIIB Officers of Customs under Panchnama dated 27-12-2022. The officer of Customs examined the goods Stainless-Steel Seamless Pipes (Hot Finish) contained in the container. After having opened the Container, the Customs Officers found all the goods packed in bundles covered with HDPE coverings having the markings "42 x 2.77", "42 x 35", "48.3 x 3.68". Measuring the diameter of the pipes revealed the size to be much below 6 NPS.

2.2 Further, letter dated 09-01-2023 was issued by the SIIB to the Appellant to pay up amount of Anti-Dumping Duty accrued in the import under Bill of Entry No. 3807481 dt. 19-12-2022. In response, the Appellant has vide its letter dated 23-01-2023, requested early release of the goods stated that they do not required any Personal Hearing or Show Cause Notice in the matter.

2.3 Thereafter the Appellant, vide letter dated 01.02.2023, requested to re-assess the Bill of Entry by debiting ADD from Bond amount. Appellant stated that they were ready to pay minimum penalty and they don't require any PH and SCN in this matter.

2.4 The adjudicating authority vide the impugned order as ordered as under:

(i) She confirmed and ordered to re-assess Bill of Entry 3807481 dt. 19-12-2022 under Section 17(4) of the Customs Act, 1962 with imposing Anti-Dumping Duty leviable in terms of Notification No. 31-2022(ADD) dated 20-12-2022.

(ii) She confirmed and ordered for confiscation of the goods pertaining to the Bill of Entry 3807481 dt. 19-12-2022 as Goods declared were in contravention of Section 46 of the Act and were therefore liable for

confiscation under Section 111(m) of the Customs Act, 1962. However, she gave an option to redeem the goods in lieu of confiscation under provision of section 125 of customs Act, 1962 on payment of Redemption Fine of Rs. 3,00,000/- (Rs Three Lac Only).

(iii) She imposed a penalty of Rs. 4,00,000/- (Rs Four Lac Only) on the Appellant M/s. Heavy Metal & Tubes (India) Pvt. Ltd under section 112(a)(ii) of Customs Act, 1962.

3. 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 has submitted that the adjudicating authority has not considered any of the averments made by the Appellant during deciding the matter and has grossly erred in not appreciating the facts of the case that the Appellant had made declarations in the Bills of Entry filed by them on the basis of the purchase order raised by them and supporting documents in respect of the import and that the alleged mis-declaration was not established at all, as all the documents submitted by the Appellant were genuine, thus, the impugned OIO considering the facts that the Appellant did not come forward for amendment of Bill of Entry is misdeclaration on the part of the Appellant is illogical, untenable and ex-facie bad in law and as such the impugned deserves to be set aside in interest of justice.

3.2 The Appellant has submitted that they had forcefully argued that the goods were imported by them under Advance Authorisation and as such there was no restriction related to size of the goods in the Advance Licence. They had availed the benefit of duty free of import of goods under Advance Authorisation No. 0811002228 dated 04.08.2021. Thus, there was no additional duty arising on account of the alleged mis-declaration on the part of the Appellant.

3.3 The adjudicating authority has discussed the applicability of anti-dumping duty on the goods imported by the Appellant in para 4.3 to para 4.5 of the impugned order. However, at conclusion, the adjudicating authority has failed to work out the revised anti dumping duty leviable and demanding the

same from the Appellant on the imported goods. The Appellant has submitted that inspite of the above facts, the learned adjudicating authority has not considered the alleged lapse on the part of the Appellant as a serious offence, as the same differential levy, does not have any revenue implication, as the goods imported under advance authorisation are exempted from anti dumping duty also. Thus, the only procedure that is required to be undertaken in respect of such differential anti dumping duty is by debiting the bond submitted by the Appellant at the time of registration of Advance Authorisation at the port of import.

3.4 However, the adjudicating authority has proceeded at para 4.6 by giving an unreasonable finding, that the Appellant has failed to correctly assess the Anti Dumping duty even though the size of the goods being as "42 x 2.77", "42 x 35", "48.3 x 3.68" and that the Appellant had failed to exercise the option available under the provisions of Section 149 of the Customs Act, 1962 for amendment to declare the Anti Dumping duty and that the Appellant was required to pay the differential duty of amount of Rs. 94,25,380 after imposing Anti Dumping duty covered under Bill of Entry No. 3807481 dated 19.12.2022 and accordingly the Appellant had failed to make proper entries for presenting the import of goods electronically, before the proper officer enabling home consumption, thereby making an attempt to evade the payment of Anti-dumping duty leviable in terms of Notification No. 31/2022 - Customs (ADD) dated 20.12.2022, thus, making the gods liable for confiscation under the provisions of section 111(m) of the Customs Act, 1962.

3.5 Further, the adjudicating authority has at para 4.7 of the impugned OIO observed that the Appellant had imported goods liable for ADD, however, the Appellant had not declared the same and did not come forward for amendment of Bill of Entry, therefore the Appellant render myself liable to penalty under Section 112(a)(ii) of the Custom Act, 1962 for attempting evade duty of Rs. 94.25 lakhs. The Appellant has submitted that the Hon'ble Commissioner (Appeals) would appreciate that the impugned order suffers from legal infirmity in as much as the same has passed in a very casual manner without understanding the applicability of Section 111(m) and 112(a)(ii) of the Customs Act, 1962 in the instant case and as such has resulted in important grave miscarriage of justice and is therefore required to be set aside. The Appellant has submitted that the learned adjudicating authority has failed to give its specific findings and as such the learned adjudicating authority in order

to confirm the allegation has failed to consider and ignored the following basic issues involved in the entire issue viz.

i. The goods were imported under advance authorization and as such there could be no allegation whatsoever, that the alleged misdeclaration was attempted to avoid leviability of anti-dumping duty which would have been applicable on the goods, had the goods not been imported under advance authorisation.

ii. That there was no loss to the exchequer due to the above observations or the alleged misdeclarations made by the learned adjudicating authority;

iii. That the impugned goods had already been assessed before the issuance of notification levying anti dumping duty and as the goods imported by the Appellant did not have any revenue implication the assessing officer could have on his own reassessed the Bill of entry as the same did not have any revenue implication.

iv. That the alleged allegation of re-calling the Bill of Entry had not resulted into any benefit to the Appellant or had resulted in violation of any of the provisions of the FTP or loss to the exchequer of Government of India.

3.6 The Appellant has submitted that the adjudicating authority has at para 4.6 of the impugned order observed that the Appellant had attempted to avoid leviability of Anti-dumping duty as per notification No. 31/2022 (ADD) dated 20.12.2022, however, she has miserably failed to place on records that how the Appellant had attempted to avoid leviability of Anti-dumping duty as per notification No. 31/2022 (ADD) dated 20.12.2022, when the goods were imported under Advance Authorisation and there was no duty payable by the Appellant on import of the impugned goods. Further, The Appellant has submitted that the learned adjudicating authority has in her findings, held that the Appellant had failed to make proper entries for presenting the import of goods electronically, before the proper officer enabling home consumption, thereby, making an attempt to evade payment of Anti-Dumping duty leviable in terms of Notification No. 31/2022 (ADD) dated 20.12.2022, thus, making the goods liable for confiscation under Section 111(m) of the Customs Act, 1962. Moreover, as the

Appellant had imported goods liable for ADD, however, the Appellant had not declared the same and did not come forward for amendment of Bill of Entry till the goods were held by SIIB for detailed investigation and according the Appellant had made themselves liable for penalty under section 112(a)(ii) of the Customs Act.

3.7 The Appellant has submitted that as per Section 111(m) of the Customs Act, 1962, where the goods brought from a place outside India shall be liable to confiscation if such goods 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 subsection (1) of section 54]. The Appellant has submitted that the investigation or the learned adjudicating authority have failed to place on record the particulars which do not correspond to the entry made by the Appellant under the Act ibid, except the fact that the Appellant had not declared the anti dumping duty in the Bill of Entry on the date of presentation of Bill of Entry i.e. 19.12.2022, which could have never been done by the Appellant as the notification No. 31/2022 (ADD) dated 20.12.2022 had been issued only after the Appellant had filed the Bill of Entry, that to, which was imported under Advance Licence and had no revenue implication whatsoever. Thus, the investigation agency or the learned adjudicating authority have failed to find any particulars declared by the Appellant which do not correspond to the particulars of the goods which were imported by the Appellant and in absence of any such allegations, the provisions of Section 111(m) of the Customs Act, 1962, cannot be made applicable in the instant case, especially when there is no mis-match in the description of the goods, quantity of the impugned goods, details of suppliers, value of the goods, country of origin etc. and the goods are imported under Advance Authorisation without any violation of the Foreign Trade Policy and in absence of any such observations / allegations, the provisions of Section 111(m) of the Customs Act, 1962 cannot be invoked in the instant case.

3.8 The Appellant has submitted that as per the proviso to clause (ii), 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. The Appellant has

submitted that the learned adjudicating authority has grossly erred in imposing penalty under the provisions of Section 112(a)(ii) of the Customs Act, 1962, as the penalty under section 112(a)(ii) can be imposed only when the dutiable goods are liable to confiscation, whereas in the instant case, the goods imported by the Appellant were not dutiable goods and were imported duty free by availing the benefit of advance authorisation.

3.9 The Appellant has submitted that otherwise also, as per the proviso to Section 112(a)(ii), where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is of the duty is paid within a period of 30 days from the date of communication of the order determining such duty, the amount of penalty liable to be paid by such person shall be twenty-five per cent of the penalty so determined or Rs. 5,000/- whichever is higher. The Appellant has submitted that the learned adjudicating authority has failed to point out or confirmed any amount of duty, that is required to be paid by the Appellant in the instant case, thus, the imposition of penalty in the instant case does not arise and is beyond the provisions of law. Thus, the Appellant says and submits that the learned adjudicating authority has grossly erred in imposing the penalty on the Appellants under the provisions of Section 112(a)(ii) of the Customs Act, 1962. The Appellant has submitted that otherwise also in the entire case or the entire OIO, the learned adjudicating authority has failed to point out that there is any misdeclaration related to description of goods, in as much as the Appellant had declared the description of imported goods as Stainless Steel Seamless Pipe (Hot finished) under Bill of Entry No. 3807481 dated 19.12.2022. Similarly, the learned adjudicating authority has also failed to point out any alleged misdeclaration so far as quantity, container number, name and address of the supplier, Country of Origin, Commercial Invoice Number and Bill of Lading Number (Emphasis para 1 of the SCN) of the imported goods is concerned. Similarly, the investigating agency has also not disputed any of the above details declared by the Appellant and the entire case has been made on the basis of their assumptions and presumptions that the Appellant had failed to exercise the option available under the provisions of Section 149 of the Customs Act, 1962 for amendment to declare the Anti Dumping duty and that the Appellant was required to pay the differential duty of amount of Rs. 94,25,380/- after imposing of Anti-dumping duty covered under the Bill of Entry No. 3807481 dated 19.12.2022.

3.10 The Appellant has submitted that the investigating agency or the

learned adjudicating authority has not disputed any of the facts / details declared by the Appellant, then, in such case it is difficult to understand as to how the adjudicating authority has observed that the Appellant was required to pay the differential duty of amount of Rs. 94,25,380/- after imposing of Anti dumping duty covered under BE No. 3807481 dated 19.12.2022, when the goods were imported after availing the benefit of advance authorisation and as such no anti dumping duty was required to be paid by the Appellants, thus, making the entire findings of the adjudicating authority raised on baseless and illogical grounds. The Appellant therefore says and submits that the above findings of the learned adjudicating authority are baseless, illogical findings made purely on assumptions and presumptions, hence, the findings of the learned adjudicating authority that as the Appellant had not come forward for amendment of Bill of Entry till the goods were taken up by the investigation for further investigation is baseless and accordingly, the findings that the above lapse on the part of the Appellant had made goods liable for confiscation under Section 111(m) of the Customs Act, 1962 and thus, making the Appellant liable for penalty under section 112(a)(ii) of the Customs Act, 1962 are illogical, irrational, without understanding the legal provisions and as such the same are required to be set aside on the basis of above submissions itself.

The adjudicating authority has at para 4.7 of the impugned OIO, further observed that the Appellant had not declared the ADD in the Bill of Entry and did not come forward for amendment of Bill of Entry till the same had come to the notice of SIIB for detailed investigation and as such the Appellant had rendered themselves liable for penalty under Section 112(a)(ii) of the Customs Act, 1962 for attempting to evade duty of Rs. 94.25 lakhs. The Appellant has submitted that if it was the case of the Department that any Anti Dumping duty had been escaped assessment by the Appellant, then in such case the department was free to demand the ADD as per provisions of Customs Act, 1962, however, only because the Appellant had not come forward for amendment of Bill of Entry, the learned adjudicating authority has confiscated the goods, released the same on redemption fine and imposed exorbitant penalty without any reason is illogical and against the guiding principles laid down by the Customs Act, 1962. The Appellant has submitted that in view of the above submissions, the Appellant had time and against humbly stated that the impugned goods were imported under Advance Licence, then in such a case, it could not be understood as to how the Appellant had attempted to evade duty of Rs. 94.25 lakhs, especially when the learned adjudicating authority has not even

confirmed any duty of Rs. 94.25 lakhs in the impugned order. In support of the claim, the Appellant wishes to reply on the judgment of Hon'ble CESTAT, Chennai Bench in the case of LSML Pvt. Ltd. Versus Principal Commissioner of Customs, Chennai as reported at 2023 (383) E.L.T. 75 (Tri.-Mad), wherein it had been held that Anti-Dumping Duty if escaped assessment, Department free to demand same as per provisions of Customs Act, 1962, however, goods cannot be confiscated and penalty cannot be imposed by invoking Sections 111(m) and 112(a) of Customs Act, 1962.

3.12 The Appellant has submitted that otherwise also amendment could have been allowed to be done of Bill of Entry even in case of post clearance of goods for domestic consumption. The Appellant has submitted that the legal provisions are meant to help the promotion of business and not otherwise. The provisions are not legislated to deny the legitimate benefit, rather they should be interpreted in a way to help the business in getting their dues, which has not happened in the instant case. The Appellant has submitted that in Customs Act, the legislature visualised a situation that in some cases, bonafide mistakes may occur at the time of filing of prescribed documents such as bill of entry. The Appellant has submitted that it was conscious that on the happening of bonafide mistakes the Appellant may not suffer and must get its legitimate right. The consequences of bonafide mistake runs into loss of delayed clearance of goods and accordingly the documents have to be amended so that legitimate right may not be denied to bonafide Appellant. Considering the above situations, Section 149 of the Customs Act, 1962 stipulates that the amendment can be done even after domestic clearance, on the basis of documentary evidences. The spirit and intent of section 149 of the Act ibid is to facilitate the correction of error where Appellant/exporter is in a position to establish that such error was inadvertent and bonafide.

3.13 The provision of section 149 of the Customs Act, 1962, therefore, made it clear that in all cases where the mistakes are bonafide, amendment in the documents has to be allowed and the same cannot be refused even on the ground of technical insufficiency. The Appellant has submitted that the Hon'ble Madras High Court has occasioned to deal with the issue in question in Pasha International V. Commissioner of Customs, Tuticorin 2019 (365) E.L.T. 669 (Mad.) wherein the Hon'ble Court upheld that, "a bonafide request of an assessee could not be rejected merely on the basis that the system did not support such request." Similar issue again came up before the Madras High Court in

Hindustan Unilever Limited v. UOI 2021 (377) E.L.T. 4 (Mad.) where in the Hon'ble Court relying upon the judgment passed by it in Pasha international, once again reiterated that it is incumbent on the authorities to ensure that technology is kept up to date to ensure that technology is kept up to date in order to facilitate seamless exchange of data and further held that:

> *"13. To say that the goods have already been cleared for home consumption and thus no amendment may be made, would fall in the face of the proviso to Section 149 which imposes a condition to be satisfied by an Appellant if he requests amendment after the goods have been cleared. The imposition of the condition itself means that a request for amendment may certainly be considered, subject to satisfaction of the condition imposed. I have gone into on to say that the phrase 'on record' would mean any documents that were available with the petitioner that were contemporaneous with imports must also be taken into consideration, to decide the question of existence of error. The Assessing Authority cannot restrict her examination only to documents that are available on her record. This issue thus stands answered in favour of the petitioner."*

3.14 The Appellant says and submits that the judgment passed by Madras High Court gave relief to the assessees who were being denied amendment of genuine error and who had been harassed due to the technical glitches in the system. The Appellant has submitted that an assessee i.e. an exporter / Appellant of goods cannot be denied a substantive benefit due to some technical or human error or lapse. Furthermore, it is to be understood that the legislative intent is more than the purpose of the legislature and the implication of words while framing it. The purpose behind framing any statute is mainly for the public benefit. The main object of interpreting the statute is to ascertain the intention in which a legislation is made. The Appellant has submitted that the Customs Act, 1962 by way of Section 149 clearly seeks to protect the genuine assessee who by some human error had been facing issues. The Appellant has submitted that the Departmental officers instead of complying with what is mandated to it by the statute, have been acting in a very lackadaisical manner and causing hardship to the genuine assessee as has happened in the instant case. The Appellant has submitted that the literal rule of interpretation clearly offers an understanding for cases falling under Section 149 and the Departmental officers in the instant case should have also acted accordingly,

which was not done by them, resulting in unnecessary delay in obtaining the cargo by the Appellant, which was meant for export obligation by the Appellants. The Appellant has therefore submitted that in the instant case, as there was no specific lapse on the part of the Appellant, the Departmental officers should have helped the Appellant and assisted the Appellant to get their cargo released immediately be getting their Bill of Entry amended, however, they failed to do so, causing substantial difficulties to the Appellant company in getting the cargo released, which resulted in further delay in fulfilment of export obligation besides making the Appellant unnecessarily pass through litigation proceedings and financial and mental stress due to unnecessary confiscation of goods and release of goods on payment of redemption fine duly saddled with unnecessary and unreasonable penalty.

3.15 The Appellant has submitted that the Commissioner of Customs, Nhava Sheva has issued standing order No. 06/2022 dated 04.07.2022 from F. No. S/12-Misc-63/2018-19/CRC-I/NS-III/JNCH wherein it has been instructed that in cases where there is no revenue implication, concerned group officers can reassess re-assess such Bills of Entry. The Appellant has submitted that in the hereby by instant case also the investigation as well as the learned by adjudicated authority were well aware that there is no revenue implication in the instance case and this matter further could have proceeded re-assessed by the Bills of Entries by on their own behalf and thereby could avoid have saved unnecessary litigation process undertaken by them, thus, causing the therefore causing to pass through by unnecessary litigation and pay redemption fine and penalty fees, which was not at all required to be demanded and made to be paid by the claimant, so as to enable them as to get their goods released.

3.16 In view of the above submissions, the Appellant says and submits therefore that as the goods were not by mistake liable for confiscation under Section 112(m) of the Customs Act, the option given to redeem in lieu of confiscation under section 112(m) of the Customs Act, on payment of Rs. of fine of Rs. 3,00,000/- is hereby is also bad in law for justice and as such the same is therefore required by law to be set aside in interest of justice. Considering all the above submissions, the Appellant has submitted and prayed that the entire OIO confiscating the impugned goods under claims. under Section 111(m) of the Customs Act, 1962 by and allowing redemption of footing the said goods by on redemption fine of Rs. 22, Rs.3,00,000/- and by imposition of on penalty of Rs.4,00,000/- under section Section 112(a)(ii) of the Customs Act, 1962 is

hereby ex facie invalid bad in law by and therefore, the Appellant thereby claims to set aside the impugned the OIO claiming the impugned by mistake goods under misclassified under Section 112(m) of the Customs Act, 1962 as amended and redeeming of goods the same on payment for Rs. of fine Rs. Rs. 3,000/- under section 7 of Customs Act, Act 1962 as amended alongwith with imposition of penalty of Rs. Rs. Rs. 4,00,000/- Rs under Section 112(a)(ii) of the Customs Act, as 1962, as the same being ex facie invalid or bad in law.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 20.05.2025 following the principles of natural justice wherein Shri Anil Gidwani, Advocate appeared for the hearing on behalf of the Appellant. 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 Assistant Commissioner (Refund), Customs House, Mundra. and the defense put forth by the Appellant in their appeal. The Appellant has filed the present appeal on 17.04.2023. In the Form C.A.-1, the Appellant has mentioned the date of communication of the Order-In-Original dated 10.02.2023 as 13.02.2023. Hence the appeal was required to be filed on or before 14.04.2023 i.e within 60 days, as stipulated under Section 128(1) of the Customs Act, 1962. However, I find that there was public holiday on 14.04.2025 and 15.04.2023 and 15.04.2023 being Saturday and Sunday. In view of Section 10 of General Clause Act, 1897, the present appeal has been filed on the next working day i.e 17.04.2023 which I consider to be filed within 60 days, as stipulated under Section 128(1) of the Customs Act, 1962. The appellant has submitted a copy of the E payment challan No. 2042899436 dtd 15.02.2023 towards payment of Redemption fine and penalty totaling Rs. 7,00,000/-. As the appeal has been filed within the stipulated time-limit under Section 128(1) of the Customs Act, 1962 and with the mandatory pre-deposit as per Section 129E of the said Act, it has been admitted and being taken up for disposal.

5.1 On going through the material on record, I find that following issues are to be decided in the present appeal:

(i) Whether the imported goods were correctly re-assessed for Anti-Dumping Duty (ADD) and if such re-assessment has a revenue implication despite import under Advance Authorisation.

(ii) Whether the goods are liable for confiscation under Section 111(m) of the Customs Act, 1962, and consequently, whether redemption fine and penalty are imposable.

(iii) Whether the penalty imposed under Section 112(a)(ii) of the Customs Act, 1962, on the Appellant is justified.

5.2 The core of the Appellant's argument rests on the premise that since the goods were imported under Advance Authorisation, there was no revenue implication of the ADD, and hence no mis-declaration or intent to evade duty. While it is true that goods imported under Advance Authorisation are generally exempted from Basic Customs Duty (BCD), Additional Duty of Customs, and Anti-Dumping Duty (as per Notification No. 18/2015-Cus. dated 01.04.2015, read with Notification No. 19/2015-Cus. dated 01.04.2015), this exemption is subject to the conditions specified in the notification. The fact that the goods, as per their actual diameter, fell within the ambit of Notification No. 31/2022 (ADD) dated 20.12.2022, implies that they were liable to ADD. The declaration on the Bill of Entry regarding size, if it did not accurately reflect the dimensions that would attract ADD, constitutes a mis-declaration in a material particular. Even if the duty is ultimately exempted under Advance Authorisation, the initial liability and the accuracy of declaration are crucial for proper assessment and departmental records. The Advance Authorisation exemption essentially means that the duty demand is 'debited' against the bond/undertaking, but the liability to such duty, and the correct classification/description for determining that liability, remains.

5.3 The argument that there was "no revenue implication" because of Advance Authorisation is misleading. The ADD was applicable to the goods. The fact that it was covered by an exemption under Advance Authorisation doesn't negate the initial mis-declaration of the physical characteristics of the goods which led to an incorrect assessment of liability for ADD. The department's

intelligence wing and subsequent physical examination revealed that the declared sizes did not accurately reflect the dimensions that would attract ADD, had the goods not been under Advance Authorisation. This difference in declared vs. actual (or duty-attracting) particulars is what Section 111(m) addresses.

5.4 Section 111(m) of the Customs Act, 1962, renders goods liable for confiscation if they *"do not correspond in respect of value or in any other particular with the entry made under this Act."* In the present case, the physical dimensions of the imported pipes (diameter being below 6 NPS), which were not accurately declared on the Bill of Entry to the extent that it would have immediately triggered the ADD notification, constitutes a "particular" that did not correspond with the entry. This discrepancy, whether intentional or not, leads to a contravention of Section 46 and makes the goods liable to confiscation under Section 111(m). The Appellant's reliance on LSML Pvt. Ltd. Versus Principal Commissioner of Customs, Chennai, 2023 (383) E.L.T. 75 (Tri.-Mad), is considered. In that case, the Hon'ble Tribunal held that goods cannot be confiscated and penalty cannot be imposed under Sections 111(m) and 112(a) if ADD escaped assessment. However, the facts of the present case are distinguishable from the LSML case. In LSML, the issue appears to be merely one of escapement of assessment where the department subsequently found an ADD liability. In the present case, there was a positive act of declaration of product size on the Bill of Entry. Upon physical examination, it was discovered that the declared size did not accurately reflect the actual dimension that would have immediately triggered the ADD notification had the goods not been under Advance Authorisation. This is not a case of mere escapement but a mis-declaration of a physical characteristic (diameter) that had direct duty implications. The responsibility for accurate declaration of all particulars relevant for classification and duty liability rests squarely with the importer. Even if the duty is ultimately exempted under an authorization, the accuracy of the foundational declaration on the Bill of Entry remains paramount for proper customs control and record-keeping. Therefore, the goods become liable for confiscation under Section 111(m) due to this material mis-declaration. Once goods are liable for confiscation, an option to redeem them on payment of redemption fine under Section 125 is appropriate.

5.5 The adjudicating authority found that the goods were declared "in contravention to Section 46 of the Customs Act, 1962," which pertains to filing a Bill of Entry that must be "true and complete in all respects." If the dimensions

were mis-declared (even inadvertently), it impacts the correctness of the Bill of Entry. Therefore, the goods become liable for confiscation. Once goods are liable for confiscation, an option to redeem them on payment of redemption fine under Section 125 is appropriate.

5.6 Section 112(a)(ii) provides for a penalty on any person who does or omits to do any act which would render any goods liable to confiscation under Section 111. As established above, the goods were liable to confiscation under Section 111(m) due to the mis-declaration of particulars on the Bill of Entry, which affected the assessment of ADD liability. The Appellant's argument that "no amount of duty is required to be paid" in the instant case to justify penalty is flawed. The imposition of penalty under Section 112 is for the act or omission that renders goods liable to confiscation, regardless of whether duty was ultimately recovered or exempted. The failure to declare the correct particulars which would attract ADD, even if eventually exempted under Advance Authorisation, constitutes an omission that renders the goods liable.

5.7 The Appellant's contention about Section 149 and Standing Order No. 06/2022 of JNCH is an argument for facilitation of amendment. While the spirit of Section 149 is indeed to allow amendment for bona fide errors, and the Standing Order encourages re-assessment without revenue implication, these are procedural aspects. They do not automatically absolve an importer from the consequences of filing an incorrect Bill of Entry that, if discovered by the department, still attracts the provisions of confiscation and penalty under Sections 111 and 112 respectively. The department, upon detecting a discrepancy, is within its rights to initiate proceedings under the Act. The Appellant's belated request for amendment (which was not made until after the goods were put on hold) does not erase the initial act of mis-declaration. The penalty of Rs. 4,00,000/- is imposed under Section 112(a)(ii), which allows a penalty "not exceeding the value of the goods or five thousand rupees, whichever is the greater." Considering the value of the goods and the nature of the mis-declaration having duty implications (even if covered by exemption), the quantum of penalty does not appear disproportionate.

6. Based on the detailed discussion and findings, I find that the adjudicating authority's decision to re-assess the Bill of Entry, confiscate the goods under Section 111(m) due to mis-declaration of particulars relevant for ADD liability, and impose redemption fine and penalty is legally sound. The fact

that the goods were under Advance Authorisation does not negate the initial mis-declaration of dimensions that would have otherwise attracted ADD. The Appellant failed to ensure the accuracy of their declaration on the Bill of Entry, an omission which renders the goods liable for confiscation. The arguments regarding Section 149 and JNCH Standing Order do not negate the contravention that occurred on the part of the Appellant.

7. I consider the submission of the Appellant that they have paid the entire duty , Redemption fine as well as penalty imposed under Section 112(a)(ii) of the said Act with in 30 days of communication of impugned order dtd. 10.02.2023. It is observed that the goods were given Out of Charge on 16.02.2023 after the appellant paid the entire amount of duty by way of Bond debit and also paid Redemption fine of Rs. 3,00,000/- and penalty of 4,00,000/- as per E-payment challan No. 2042899436 dtd 15.02.2023. In terms of proviso to Section 112(a)(ii) of the Customs, Act, 1962, I find that the appellant has made payment of duty, redemption fine as well as penalty within 30 days of communication of impugned order dtd. 10.02.2023 and hence eligible for payment of reduced penalty of 25 % of the penalty determined in the impugned order i.e Rs. 1,00,000/-. Accordingly, penalty imposed under Section 112(a) (ii) of the Customs Act, 1962 is reduced from Rs. 4,00,000/- to Rs. 1,00,000/-.

8. Accordingly, the impugned order dated 10.02.2023 of the adjudicating authority stands modified to the above mentioned extent only. The appeal filed by the appellant is partly allowed as above with consequential relief, if any , as per law.

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

F. No. S/49-15/CUS/MUN/2023-24 1838

Date: 03.07.2025

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