



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद  
सीमा शुल्क भवन, आल इंडीया रेडियो के पास, नवरंगपुरा, अहमदाबाद 380009  
दूर भाष (079) 2754 46 30 फैक्स (079) 2754 23 43

**OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, AHMEDABAD  
CUSTOMS HOUSE, NEAR ALL INDIA RADIO, NAVRANGPURA, AHMEDABAD 380009  
PHONE: (079) 2754 46 30 FAX (079) 2754 23 43**

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

फा. सं./ F. No.: **VIII/10-12/Commr./OA/2023-24**  
DIN- 20241271MN000055155F

आदेश की तारीख / Date of Order : 24.12.2024  
जारी करने की तारीख / Date of Issue : 24.12.2024

द्वारा पारित :-  
**Passed by :-**

शिव कुमार शर्मा, प्रधान आयुक्त  
**Shiv Kumar Sharma, Principal Commissioner**

मूल आदेश संख्या :

**Order-In-Original No: AHM-CUSTM-000-PR.COMMR-58-2024-25 dtd.24.12.2024** in  
the case of M/s. Goldi Sun Private Limited (IEC-AAICG2951R), 1010, 10th floor, Infinity  
Tower, Nr. Railway Station, Lal Darwaja Surat, Gujarat-395008.

- जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।
  - This copy is granted free of charge for private use of the person(s) to whom it is sent.
- इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, दुसरी मंजिल, बहुमाली भवन, गिरिधर नगर पुल के बाजु में, गिरिधर नगर, असारवा, अहमदाबाद-380 004 को सम्बोधित होनी चाहिए।
- Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, Ahmedabad – 380004.
- उक्त अपील प्रारूप सं. सी.ए.3 में दाखिल की जानी चाहिए। उसपर सीमा शुल्क (अपील) नियमावली, 1982 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियों में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की

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

3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.
4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएंगी (उनमें से कम से कम एक प्रमाणित प्रति होगी)
4. The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)
5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।
5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.
6. केंद्रिय सीमा शुल्क अधिनियम, 1962 की धारा 129 ऐ के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।
6. The prescribed fee under the provisions of Section 129A of the Customs Act, 1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.
7. इस आदेश के विरुद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुरमाना का विवाद है अथवा जुरमाना जहां शीर्फ जुरमाना के बारेमें विवाद है उसका भुकतान करके अपील की जा शकती है।
7. An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute”.
8. न्यायालय शुल्क अधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर उपयुक्त न्यायालय शुल्क टिकट लगा होना चाहिए।
8. The copy of this order attached therein should bear an appropriate court fee stamp as prescribed under the Court Fees Act, 1870.

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Sub: Show Cause Notice No. VIII/10-12/Commr./OA/2023-24 dated 29.02.2024 issued by the Principal Commissioner of Customs, Ahmedabad to M/s. Goldi Sun Private Limited (IEC-AAICG2951R), 1010, 10th floor, Infinity Tower, Nr. Railway Station, Lal Darwaja Surat, Gujarat-395008.

## **BRIEF FACTS OF THE CASE.**

M/s Goldi Sun Private Limited (IEC-AAICG2951R) (hereinafter referred to as 'the importer', "the noticee" or "M/s. GSPL"), having registered address as 1010, 10<sup>th</sup> floor, Infinity Tower, Nr. Railway Station, Lal Darwaja Surat, Gujarat-395008 is engaged in the manufacturing of solar panels/modules, engineering procurement and construction of solar projects.

**2.** Intelligence was developed by the Directorate of Revenue Intelligence, Regional Unit, Jaipur (hereinafter referred to as 'the DRI, Jaipur') indicating that M/s Goldi Sun Private Limited (IEC-AAICG2951R), having registered address as 1010, 10<sup>th</sup> floor, Infinity Tower, Nr. Railway Station, Lal Darwaja Surat, Gujarat-395008, were availing ineligible benefits of exemption of Customs duty under Sr. No. 38A of Notification No. 24/2005-Customs dated 01.03.2005, as amended vide Notification No. 15/2022-Customs dated 01.02.2022 (w.e.f. 01.04.2022) while importing the solar cells to be used for manufacturing of solar panels/modules and also availing the ineligible benefits under Sr. No. 18 of Notification No. 25/1999-Customs dated 28.02.1999 while importing the **aluminium frame, and back sheet** to be used for manufacturing of solar panels/modules.

**3.** Exemption benefits provided under **Sr. No. 38A** of Notification No. 24/2005-Customs dated 01.03.2005 as amended vide Notification No. 15/2022-Customs dated 01.02.2022 (w.e.f. 01.04.2022) were applicable for the imported goods which shall be solely and exclusively used with the goods covered under Sr. No. 1 to 38 of the subject Notification. However, vide Notification No. 15/2022-Customs dated 01.02.2022, **Sr. No 23** of Notification No.-24/2005 01.03.2005 was substituted and the Photovoltaic Cells whether or not assembled in Modules or made up into panels were excluded from the exemption provided under the subject Notification. The relevant entries of the Notification No. 24/2005-Cus 01.03.2005 as amended by Notification No. 15/2022-Customs dated 01.02.2022 are appended as under: -

*Notification No. 15/2022-Customs; New Delhi, the 1<sup>st</sup>February 2022*

G.S.R. ....(E). -In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary for the public interest so to do, hereby makes further amendments in the following Notifications of the Government of India in the Ministry of Finance (Department of Revenue), specified in column (2) of the Table below to the extent specified in the corresponding entry in column (3) of the said Table, namely:

<b>Sl. No.</b>	<b>Notificat ion number and Date</b>	<b>Amendments</b>					
		<b>(1)</b>	<b>(2)</b>	<b>(3)</b>			
2.	<i>Notification No. 24/2005-Customs, dated the 1<sup>st</sup> March, 2005, vide number G.S.R. 122(E), dated the 1<sup>st</sup>March, 2005</i>	<i>In the said Notification, in the TABLE, -</i>					
		<i>i. against Sr. No.13S, in column (3), after the item (j), the following item shall be inserted with effect from the 1<sup>st</sup>day of April 2022, namely: - "(k) Wrist wearable devices (commonly known as smart watches)";</i>					
		<i>ii. for Sr. No. 23 and the entries relating thereto, the following Sr. No. and entries shall be substituted with effect from the 1<sup>st</sup> day of April 2022, namely:</i>					
			<table border="1"><tr><td><b>"23.</b></td><td><b>8541 (except 8541 42 00</b></td><td><b>All goods other than Photovoltaic cells whether or not assembled</b></td></tr></table>	<b>"23.</b>	<b>8541 (except 8541 42 00</b>	<b>All goods other than Photovoltaic cells whether or not assembled</b>	
<b>"23.</b>	<b>8541 (except 8541 42 00</b>	<b>All goods other than Photovoltaic cells whether or not assembled</b>					

			or 8541 43 00)	in modules or made up into panels.”;
		iii.	after Sr.No.38, the following Sr. No. and entries shall be inserted with effect from the 1 <sup>st</sup> day of April 2022, namely:	
		“38A.	8541 42 00 or 8541 43 00	All goods for use solely and exclusively with goods covered under Sr. No. 1 to 38”.

The subject solar cells (for manufacturing of solar modules) do not appear to be used for the manufacture of goods covered under Sr. No.1 to 38 of the said Notification, therefore, it appeared that the benefits of exemption under Notification No. 24/2005-Customs dated 01.03.2005-as amended, were not available to the importer and hence it appears that the subject goods are liable to Basic Customs Duty, SWS, and IGST thereof.

4. On further analysis, it appeared that the imported items aluminium frame & back sheet (for manufacturing of solar panels/modules) were also not eligible for the exemption under Notification No. 25/1999-Customs dated 28.02.1999 as these goods are neither specified in column no. (3) nor falling under the chapter or heading or sub-heading or tariff items specified in the corresponding column (2) of the table provided under the said Notification.

The relevant entries of the Notification No. 25/1999-Customs dated 28.02.1999 are produced as under: -

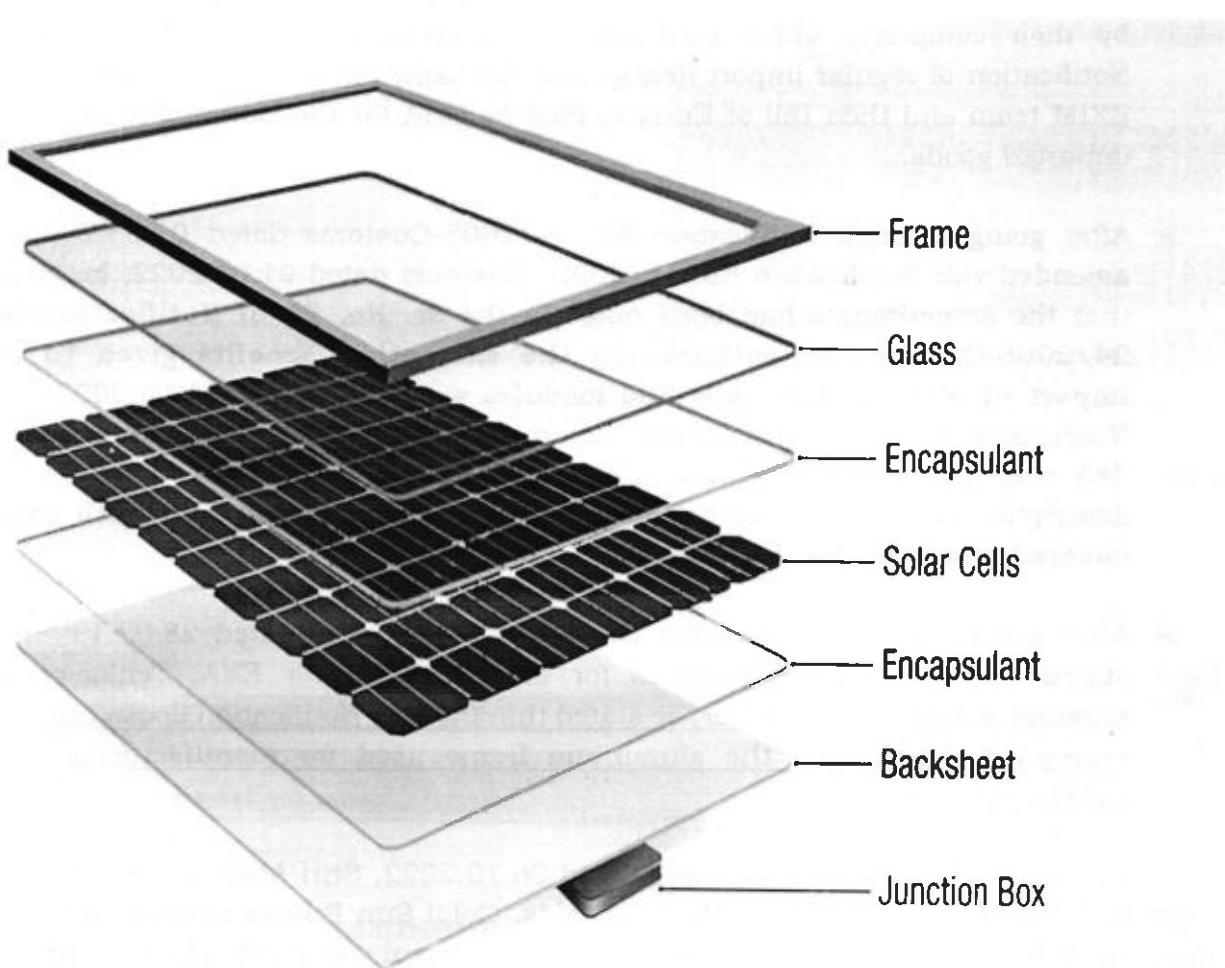
**Notification No. 25/1999-Cus dated 28.02.1999- Serial number 18:**

Sr. No.	Heading, sub- heading, or tariff item	Description of imported goods	Description of finished goods
(1)	(2)	(3)	(4)
..	....	.....	.....
18	28,38,39, 70,74,76	Aluminium paste, ethylene vinyl acetate sheets (EVA); primer for EVA; crane glass; tedlar coated aluminium sheet; phosphorous oxychloride; halo carbon (CF <sub>4</sub> )/ freon gas; tinned copper interconnect; toughened glass with low iron content and transmissivity of min. 90% and above; multilayered sheets with Tedlar base; Fluro polymer resin; ultra-high purity (UHP) silane in UHP nitrogen; UHP silane; diborane in UHP silane; MOCVD grade phosphine in UHP silane; silver sputtering target; high purity tin tetrachloride; nitrogen trifluoride of 99 % purity and above.	Solar Cells/Modules

Hence, it appears that these imported goods do not fulfill the conditions required to be eligible for exemption benefits under Sr. No. 18 of the Notification No. 25/1999-

Customs dated 28.02.1999. So, it appears that they are liable to Basic Customs Duty, SWS, and IGST thereof.

5. Structure of a solar panel/module is shown below, as per information available on <https://www.scientificworldinfo.com/2021/10/best-materials-for-solar-modules-and-eva.html> : -



6. On examination of the import data of M/s. Goldi Sun Pvt. Ltd, it was observed that the importer had not paid the applicable duties and availed the benefits of exemption under Sr. No. 38A of Notification No. 24/2005-Customs dated 01.03.2005 as amended, against the import of goods i.e., solar cells (for Solar Panels/modules) which were imported after the effective date of its amendment i.e., 01.04.2022 vide Notification No. 15/2022-Customs dated 01.02.2022. Therefore, summons dated 27.06.2022 and dated 25.07.2022 were issued to M/s Goldi Sun Private Limited to appear on 13.07.2022 and 02.08.2022 respectively to tender statement and to submit copies of Bills of Entry from 01.04.2022 onwards. M/s Goldi Sun Pvt. Ltd., vide their letter dated 24.08.2022, provided the details of Bills of Entry of the imported goods namely solar cells, wherein the benefits of the exemption of the subject Notification were availed.

7. In response to the summons dated 06.10.2022, Shri Alplesh Dave S/o Sh. Jagdish Chandra, Senior General Manager, M/s. Goldi Sun Private Limited appeared on 06.10.2022 for tendering his statement under Section 108 of the Customs Act, 1962 on 06.10.2022, wherein he, *inter alia*, stated that: -

- M/s Goldi Sun Private Limited is engaged in the manufacturing of solar panels/modules, engineering procurement and construction of solar projects.
- He is responsible for import-export-related work, including classification and any Notification-related compliance. In respect of import, there is a purchasing team in M/s Goldi Solar Private Limited, which on the requirement of any import items,

contacts the supplier and issues the purchase order, and then informs to EXIM team, which is supervised by him. The EXIM team arranges the freight forwarder. Before any import, the purchase team hands over the import documents (invoice, packing list, COO, BL) to the EXIM team, which then hands over these documents to the concerned CHA, who prepares the checklist (based on a master list shared by their company, which contains classification and applicable exemption Notification of regular import items), and the same checklist is verified by their EXIM team and then Bill of Entry is filed by CHA for the customs clearance of imported goods.

- After going through Notification No. 24/2005-Customs dated 01.03.2005 as amended vide Notification No. 15/2022- Customs dated 01.02.2022, he stated that the amendments had been made in the **Sr. No. 23 of Notification No. 24/2005-Customs by withdrawing the exemption benefits given to the import of photovoltaic cells** and modules with effect from 01.04.2022, vide Notification No. 15/2022-Customs dated 01.02.2022 and a separate serial no. 38A was inserted for the tariff heading 85414200 or 85414300 having the description of goods as "**All goods for use solely and exclusively with goods covered under Sr. No. 1 to 38**".
- After going through Notification No. 25/1999-Customs dated 28.02.1999, he stated that Sr. No. 18 provides for an exemption for EVA, Tedlar-coated aluminium paste, etc. Further, he stated that the said Notification doesn't provide exemption benefits for the aluminium frame used for manufacturing solar panels/modules.

8. In continuation of the statement dated 06.10.2022, Shri Alplesh Dave S/o Sh. Jagdish Chandra, Senior General Manager, M/s. Goldi Sun Private Limited, appeared on 07.10.2022 for giving his next statement. His statement was recorded under Section 108 of the Customs Act, 1962 on 07.10.2022 and wherein, he inter alia, stated that:

- On being asked whether M/s Goldi Sun Private Limited had availed the benefits of Notification No. 24/2005-Customs dated 01.03.2005 as amended vide Notification No. 15/2022 dated 01.02.2022, he stated that they had availed the benefits of Notification No. 24/2005-Customs as amended vide Notification No. 15/2022-Customs dated 01.02.2022, even after its effective date of implementation of amending Notification i.e., 01.04.2022.
- On being asked about the eligibility of items related to solar panel/module manufacturing being imported by M/s. Goldi Solar Private Limited (*sic M/s Goldi Sun Private Limited*), for exemption under Sr. No. 38A of the Notification No. 24/2005-Customs as amended, he stated that the import items were used in the manufacturing of solar photovoltaic modules/panels, for which they were under the impression that the spirit of Indian government is of promoting use of renewable energy sources to manage power requirement, hence, these items would be under exemption category. However, on receipt of the summons dated 27.06.2022 from DRI and discussion with the DRI officers, they realized that their import items were not eligible for the exemption benefits on solar photovoltaic cells, as the exemption on these was withdrawn through Notification No. 15/2022-Customs dated 01.02.2022. They admitted the duty liability.
- On being asked about the BoEs filed by claiming the benefits of Notification No. 25/1999-Customs dated 28.02.1999 - as amended, he stated that they had filed the BoEs claiming benefits of this Notification for their imports of **aluminium frame, and solar backsheets**. As already stated, the wrong availment of Notification benefits had happened due to a lack of clarity on the issue, however, as when they got clarity, they were of the opinion that the benefits of Notification

No. 25/1999-Customs did not apply to the aluminium frame and admitted the corresponding duty liability.

➤ On further being asked about the payment of the applicable differential duty, he stated that they had calculated and paid the applicable differential duty along with interest as detailed below: -

- i. On receipt of the summons dated 27.06.2022 from the DRI office and subsequent investigation they had calculated and paid the applicable differential duty along with interest amounting to **Rs. 3,99,07,070/-** in respect of BoEs filed for **solar cells** under Notification No. 24/2005-Customs, as detailed in attached Annexure-A to his statement, submitted under his dated signature.
- ii. On receipt of summons dated 27.06.2022 from the DRI office and subsequent investigation they had calculated and paid the applicable differential duty along with interest amounting to **Rs. 1,66,92,061/-** in respect of BOEs filed for **aluminium frame** under Notification No. 25/1999-Customs, as detailed in attached Annexure-B to his statement, submitted under his dated signature.
- iii. Further, he stated that prior to the summons dated 27.06.2022 from this office there were some BoEs for warehousing that were filed by their company claiming the benefit of Notification No. 24/2005-Customs and Notification No. 25/1999-Customs, meanwhile they received summon dated 27.06.2022 from this DRI office and then after due analysis they realized that above said warehousing BoEs were not eligible for the exemption benefits, therefore, in respect of investigation by DRI, they at the time of ex-bond clearance, paid the full applicable duty, which came to **Rs. 5,91,50,061.69**, as detailed in attached Annexure-C to his statement, submitted under his dated signature.

**9.** The import data of the subject importer was further examined and it was noticed that the importer was importing **backsheets** falling under tariff item 39201099 by availing the benefits of Sr. No. 18 of Notification No.-25/1999-Customs dated 28.02.1999.

**10.** Accordingly, summons dated 20.03.2023 was issued to M/s Goldi Sun Private Limited to appear on 28.03.2023, however no one turned up on the behalf of the importer. Further, summons dated 28.03.2023 was issued to M/s. Goldi Sun Private Limited to tender the statement. In response to summons dated 28.03.2023, Shri Alpesh Dave S/o Sh. Jagdish Chandra, Senior General Manager, M/s. Goldi Sun Private Limited appeared on 10.04.2023 for giving his statement. His statement was recorded under Section 108 of the Customs Act, 1962 on 10.04.2023, and the relevant portion of his voluntary statement is as under: -

➤ On being asked about the eligibility regarding the availment of benefits under Sr. No. 18 of Notification No. 25/1999-Customs on the items namely "Backsheet", he stated that though in the subject Notification, there are no specific entries of item namely "Backsheet" yet item namely Backsheet/ Solar Backsheet as declared by them in the Bills of Entry is also known as "**multilayered sheet with Tedlar base**", which has a specific entry at Sr. No. 18 of Notification No. 25/1999 dated 28.02.1999. Therefore, he expressed that they had rightly availed the benefits of Sr. No. 18 of Notification No. 25/1999 dated 28.02.1999 on the import of this item namely Backsheet/Solar Backsheet. Further, in support of their claim, he stated that they would submit the technical write-up along with the datasheet within the week.

11. M/s Goldi Sun Pvt. Ltd. vide their e-mail dated 28.04.2023 submitted the technical write-up for the product **Backsheet**. As per the technical write up provided by M/s Goldi Sun Pvt. Ltd., the subject imported goods, "Backsheet" is a multilayered sheet, out of which tedlar is one type of layer. However, the claim of the importer did not appear justifiable as the Tedlar® is a registered trademark of Dupont TM. As per the technical write up available on the website of Dupont company (<https://www.dupont.com/brands/tedlar-60-years-superior-protection.html>), the tedlar is a polyvinyl fluoride film product which is a registered trademark of their company. It is used in solar modules, aircraft, wall covering, etc.

#### **SUMMARY OF THE INVESTIGATION**

**Non-payment of applicable Customs Duties by wrong availment of benefits under Notification No. 24/2005-Customs dated 01.03.2005 as amended vide Notification No. 15/2022-Customs dated 01.02.2022 (w.e.f. 01.04.2022) with respect to the import of solar cells.**

12. It appeared that M/s Goldi Sun Pvt. Ltd had imported solar cells (for solar panels/modules) by wrongly availing the exemption benefits provided under Notification No. 24/2005-Customs dated 01.03.2005 as amended vide Notification No. 15/2022-Customs dated 01.02.2022 (w.e.f. 01.04.2022). From the statement of the authorized person of M/s GSPL, it appeared that the importer was fully aware of the said Notification and the same was in the public domain, however, despite being fully aware of the subject Notification they wilfully misstated the coverage of the imported goods under a particular serial no. of the said Notification, as amended, with intent to evade payment of duty. The importer had by willful misstatement wrongly availed the benefit on 'solar cells' imported by them vide Bills of Entry listed in Annexure-A to the show cause notice. Thus, it appears that the importer had willfully evaded the applicable Customs duties on the imported goods imported vide Bills of Entry as detailed in **Annexure-A** to the SCN.

12.1 By non-payment of the applicable customs duties, the importer had evaded customs duties aggregating to Rs. 12,16,74,560/- as detailed in the attached Annexure-A to this notice and tabled below.

<b>Sr. No.</b>	<b>Custom House Code</b>	<b>Description of goods</b>	<b>Assessable Value (Rs.)</b>	<b>Differential Duty Payable (Rs.)</b>
1.	INNSA1	Solar Cells	13,82,01,079/-	6,97,22,444/-
2.	INSAJ6	Solar Cells	10,31,40,032/-	5,19,52,116/-
<b>TOTAL</b>			<b>24,13,41,111/-</b>	<b>12,16,74,560/-</b>

**Non-payment of applicable Customs Duties by wrong availment of the benefit of Sr. No. 18 under Notification No.25/1999-Customs regarding the import of Aluminium Frame.**

13. It also appeared that M/s Goldi Sun Pvt. Ltd had wrongly availed the benefit of Sr. No. 18 of Notification-25/1999 on the import of goods namely solar aluminum frame, as the same was not specified at the Sr. No. 18 of the subject Notification. The details of such BoEs were mentioned in Annexure-B to this notice. In the statement, the authorized person of M/s GSPL had mentioned that they had wrongly availed the benefits of 25/1999-Customs on the import item i.e. **aluminum frame** due to lack of clarity on the issue, however, from the scrutiny of import data, it was found that the importer had also imported the subject goods by not availing the benefit of Sr. No. 18 of

Notification-25/1999 vide BoEs other than those mentioned in Annexure-B attached to the show cause notice viz. BoEs No. 7424114 dated 09.02.2022, 8069215 dated 30.03.2022, 8314861 dated 18.04.2022, 8361743 dated 21.04.2022, etc. Thus, it appeared that the importer was fully aware of the said Notification and the Notification No. 25/1999-Customs dated 28.02.1999 was in the public domain, however, despite being fully aware of the subject Notification and imposition of applicable Customs duties on the subject goods, the importer had intentionally filed the BoEs with the claim of benefits of Notification No. 25/1999-Customs and not paid the applicable Customs duties on the subject goods imported by them vide Bills of Entry listed in Annexure-B to the SCN. The Sr. No. 18 of Notification No. 25/1999 dated 28.02.1999 provides for exemption for the following goods viz.,

**"Aluminium paste; ethylene vinyl acetate sheets (EVA); primer for EVA; Crane glass; tedlar coated aluminium sheet; phosphorous oxychloride; halo carbon (CF4)/Freon gas; tinned copper interconnect; toughened glass with low iron content and transmissivity of min. 90% and above; multilayered sheets with Tedlar base; fluro polymer resin; ultra-high purity (UHP) silane in UHP nitrogen; UHP silane; diborane in UHP silane; MOCVD grade phosphine in UHP silane; silver sputtering target; high purity tin tetrachloride; nitrogen trifluoride of 99% purity and above".**

**14.** It can be seen that only a handful of items are covered/ mentioned in Serial no. 18 of the Notification no. 25/1999-Customs and there is only one entry with the word **Aluminium**, namely "**Aluminium Paste**" there. No person can come to a conclusion that "**Aluminium Paste**" and "**Aluminium Frame**" are one and the same things! Thus, it appears that the importer had wilfully misstated that his goods were covered under the said exemption with intent to evade the applicable Basic Customs Duty (BCD), SWS, and IGST thereof on the imported goods imported vide Bills of Entry as detailed in **Annexure-B** to the notice.

**14.1.** ~~By non-payment of applicable Customs duty, the importer had evaded customs duties aggregating to Rs. 1,09,59,013/- as detailed in the Annexure-B to the SCN and tabled as below.~~

<b>Sr. No.</b>	<b>Custom House Code</b>	<b>Description of Goods</b>	<b>Assessable Value (Rs.)</b>	<b>Differential Duty Payable (Rs.)</b>
<b>1.</b>	INSAJ6	Solar Aluminium Frames	8,44,29,992/-	1,09,59,013/-
<b>Total</b>			<b>8,44,29,992/-</b>	<b>1,09,59,013/-</b>

**Non-payment of applicable Customs duties by wrong availment of the benefit of Sr. No. 18 under Notification No.25/1999-Customs regarding the import of "Backsheet"**

**15.** It also appeared that M/s Goldi Sun Pvt. Ltd had wrongly availed the benefit of Sr. No. 18 of Notification-25/1999 on the import of goods namely Backsheet as detailed in Annexure-C to the SCN, as the same was not specified at the Sr. No. 18 of the subject Notification. The Sr. No. 18 of Notification No. 25/1999 dated 28.02.1999 provides for BCD exemption for the following goods viz.,

**"Aluminium paste; ethylene vinyl acetate sheets (EVA); primer for EVA; Crane glass; tedlar coated aluminium sheet; phosphorous oxychloride; halo carbon (CF4)/Freon gas; tinned copper interconnect; toughened glass with low iron content and transmissivity of min. 90% and above; multilayered sheets with Tedlar base; fluro polymer resin; ultra-high purity (UHP) silane in UHP nitrogen;**

*UHP silane; diborane in UHP silane; MOCVD grade phosphine in UHP silane; silver sputtering target; high purity tin tetrachloride; nitrogen trifluoride of 99% purity and above".*

**16.** The importer in his statement dated 10.04.2023 stated that the item namely Backsheet/Solar Backsheet as declared by them in the Bills of Entry was also known as "**multilayered sheet with Tedlar base**", which had a specific entry at Sr. No. 18 of Notification No. 25/1999 dated 28.02.1999. However, the Notification benefit was applicable only if the subject multilayered sheets had a Tedlar base i.e., the goods should have the base sheet of Tedlar® which was a registered trademark of Dupont TM. The importer had neither imported goods from Dupont nor they had uploaded any NOC from Dupont for using their registered trademark viz., Tedlar®. Further, on scrutiny of the technical write-up provided by the importer vide e-mail dated 28.04.2023 and available in the public domain and declaration by the importer in subject BoEs, it appeared that the subject imported goods viz., "Backsheets for Solar Module/Panels", were being manufactured/supplied by M/s Cybrid Technologies Inc. or M/S. Jolywood (Suzhou) Sunwatt Co. Ltd by using their native trademark technology other than Tedlar®. Given the above, on examination of the details provided under Bills of Entry, it appeared that the subject goods did not fall under the exemption under Sr. No. 18 of Notification No. 025/1999 dated 28.02.1999, and hence it appears that these goods are ineligible for the Notification benefit and merit duty of BCD @ 10%, SWS @ 10% and IGST @ 18%. Further, from the scrutiny of import data, it appeared that the importer had also imported similar goods by not availing the benefit of Sr. No. 18 of Notification-25/1999 vide BoEs other than those mentioned in Annexure-C attached with the SCN viz. BoEs No. 7720572 dated 03.03.2022, 7915410 dated 18.03.2022, 8102288 dated 01.04.2022, 8365156 dated 21.04.2022 etc. Thus, it appeared that the importer was fully aware of the said Notification and the Notification No. 25/1999- Customs dated 28.02.1999 was in the public domain too, however, despite being fully aware that their goods were not covered under the subject Notification, the importer randomly availed the undue benefits of Notification No. 25/1999-Cus dated 28.02.1999 and had not paid the applicable customs duty on the subject goods imported by them vide Bills of Entry listed in Annexure-C to the SCN. Thus, it appeared that the importer had willfully misstated that their goods were covered under the said exemption with intent to evade the applicable customs duty on the imported goods vide Bills of Entry as detailed in Annexure-C to the SCN.

**17.** The importer had imported goods namely 'Solar Backsheet' by filing Bills of Entry as detailed in Annexure-C to the show cause notice. By non-payment of applicable customs duties (Basic Customs Duty and differential IGST), the importer had evaded customs duty aggregating to Rs 1,08,97,904/- as detailed in the attached **Annexure-C** to the SCN and tabled below.

<b>Sr. No.</b>	<b>Custom House Code</b>	<b>Description of Goods</b>	<b>Assessable Value (Rs.)</b>	<b>Differential Duty Payable (Rs.)</b>
1.	INSAJ6	Back sheet	7,76,89,590/-	1,00,84,109/-
2.	INHZA1	Back sheet	62,37,235/-	8,09,593/-
3.	INBOM4	Back sheet	32,376/-	4,202/-
		<b>Total</b>	<b>8,39,59,201/-</b>	<b>1,08,97,904/-</b>

**18.** The importer had subscribed to a declaration as to the truthfulness of the contents of the Bills of Entry in terms of Section 46(4) of the Customs Act, 1962 in all their import consignments. Further, consequent upon the amendments to Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-Assessment' has been introduced in Customs. Section 17 of the Customs Act, 1962 effective from 08.04.2011, provides for self-assessment of duty on imported goods by the importer by filing a Bill of Entry, in the electronic form. Section 46 of the Customs Act, 1962 makes it mandatory for the importer to make an entry for the imported goods by presenting a Bill of Entry

electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulation, 2018 (issued under Section 157 read with Section 46 of the Customs Act, 1962), the Bill of Entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service center, a Bill of Entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under the scheme of self-assessment, it is the importer who has to doubly ensure that he declares the correct description of the imported goods, their correct classification, the applicable rate of duty, value, and benefit of exemption Notification claimed, if any, in respect of the imported goods while presenting the Bill of Entry. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 8<sup>th</sup> April 2011, it is the added and enhanced responsibility of the importer to declare the correct description, value, Notification, etc. and to correctly determine and pay the duty applies in respect of the imported goods. Further, the meaning and definition of assessment has been substituted by Finance Act, 2018 dated 29.03.2018, which states that "assessment" means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable with reference to the tariff classification of the imported goods, value of imported goods, exemption or concession of duty, tax, cess or any other sum consequent upon any Notification issued in respect of imported goods, quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of imported goods, origin of imported goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods and any other specific factor which affects the duty, tax, cess or any other sum payable on imported goods and includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil, as determined in accordance with the provisions of the Customs Tariff Act. Thus, in the self-assessment regime, the onus is on the importer to correctly mention the applicable Notifications and pay applicable duties, however, in the instant case, the importer had completely failed in fulfilling his responsibility by not paying applicable Customs duties and the importer has failed to maintain the accuracy and completeness of the details filed in the respective Bills of Entry for import of subject goods by wrong availment of exemption Notification No.24/2005-Customs dated 01.03.2005 as amended vide Notification No. 15/2022-Cus dated 01.02.2022 and Notification No. 25/1999-Cus] and thereby evaded payment of Customs Duty.

**19.** The relevant provisions of law relating to the import of goods in general, the policy and rules relating to the liability of the goods to confiscation, and the persons concerned to penalty for improper importation under the provisions of Customs Act, 1962 and other relevant laws for the time being in force, are summarized as under: -

## **20.1 Provisions of Customs Act, 1962**

### **Section 17- Assessment of duty.**

1. *An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty if any, leviable on such goods.*
2. *The proper officer may verify the 12 [the entries made under section 46 or section 50 and the self-assessment of goods referred to in the sub-section and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.*

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

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

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

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter 16[\*\*\*] and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

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

#### **Section 28 (4) of the Customs Act, 1962:**

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(4) Where any duty has not been levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, because of,-

- (a) collusion; or
- (b) any wilful misstatement; or
- (c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

#### **Section 28AA of the Customs Act, 1962:**

[28AA. Interest on delayed payment of duty— (1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty by the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section. (2) Interest at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as the Central Government may, by Notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of a such erroneous refund, as the case may be, up to the date of payment of such duty.

(3) Notwithstanding anything contained in sub-section (1), no interest shall be payable where,—

(a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A; and

(b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.]

#### **Section 46- Entry of goods on importation:**

(1) The importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed:

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in any other manner:

Provided further that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this subsection, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

(2) Save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

(3) The importer shall present the bill of entry under sub-section (1) before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrive at a customs station at which such goods are to be cleared for home consumption or warehousing:

Provided that a bill of entry may be presented at any time not exceeding thirty days before the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India:

Provided further that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed.

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

(4A) The importer who presents a bill of entry shall ensure the following, namely: —

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

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

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

(5) If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit the substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa.

**Section 110AA. Action subsequent to inquiry, investigation or audit or any other specified purpose. -**

Where in pursuance of any proceeding, in accordance with Chapter XIIA or this Chapter, if an officer of customs has reasons to believe that—

- (a) any duty has been short-levied, not levied, short-paid or not paid in a case where an assessment has already been made;
- (b) any duty has been erroneously refunded;
- (c) any drawback has been erroneously allowed; or
- (d) any interest has been short-levied, not levied, short-paid or not paid, or erroneously refunded,

then a such officer of customs shall, after causing inquiry, investigation, or as the case may be, audit, transfer the relevant documents, along with a report in writing—

- (i) to the proper officer having jurisdiction, as assigned under section 5 in respect of assessment of such duty, or to the officer who allowed such refund or drawback; or
- (ii) in case of multiple jurisdictions, to an officer of customs to whom such matter is assigned by the Board, in the exercise of the powers conferred under section 5,

and thereupon, power exercisable under sections 28, 28AAA or Chapter X, shall be exercised by such proper officer or by an officer to whom the proper officer is subordinate in accordance with sub-section (2) of section 5]

**Section 111 – Confiscation of improperly imported goods, etc. -**The following goods brought from a place outside India shall be liable to confiscation-

(m) any goods which do not correspond in respect of value or 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 transshipment, with the declaration for transshipment, referred to in the proviso to sub-section (1) of Section 54.

**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, harboring, 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,—

(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:

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

**Section 114AA. Penalty for use of false and incorrect material. –** “If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material

particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."

**Section 125. Option to pay the fine in lieu of confiscation.** - (1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods<sup>39</sup> or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit:

[Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, [no such fine shall be imposed]:

Provided further that], without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in subsection (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.

(3) Where any fine imposed under sub-section (1), is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

## 20.2 The Foreign Trade (Development and Regulation) Act, 1992

**Section 11: Contravention of provision of this Act, rules, orders and exports and import policy:** - (1) No export or import shall be made by any person except by the provisions of this Act, the rules and orders made thereunder and the export and import policy for the time being in force.

(2) Where any person makes or abets or attempts to make any export or import in contravention of any provision of this Act or any rules or orders made thereunder or the export and import policy, he shall be liable to a penalty not exceeding one thousand rupees or five times the value of the goods in respect of which any contravention is made or attempted to be made, whichever is more.

(3) Where any person, on a notice to him by the Adjudicating Authority, admits any contravention, the Adjudicating Authority may, in such class or classes of cases and such manner as may be prescribed, determine, by way of settlement, an amount to be paid by that person.

(4) A penalty imposed under this Act may, if it is not paid, be recovered as an arrear of land revenue, and the Importer-exporter Code Number of the person concerned, may, on failure to pay the penalty by him, be suspended by the Adjudicating Authority till the penalty is paid.

(5) Where any contravention of any provision of this Act or any rules or orders made thereunder or the export and import policy has been, is being, or is attempted to be, made, the goods together with any package, covering or receptacle and any conveyances shall, subject to such requirements and conditions as may be prescribed, be liable to confiscation by the Adjudicating Authority.

(6) The goods or the conveyance confiscated under sub-section (5) may be released by the Adjudicating Authority, in such manner and subject to such conditions as may be prescribed, on payment by the person concerned of the redemption charges equivalent to the market value of the goods or conveyance, as the case may be.

### **20.3 Foreign Trade (Regulation) Rules, 1993**

#### **Rule 14: Prohibition regarding making, and signing of any declaration, statement or documents**

*(1) No person shall make, sign or use or cause to be made, signed or used any declaration, statement or document for the purposes of obtaining a license or importing any goods knowing or having reason to believe that such declaration, statement or document is false in any material particular.*

*(2) No person shall employ any corrupt or fraudulent practice for the purposes of obtaining any licence or importing or exporting any goods.*

#### **The demand of Customs duties not paid by reason of willful misstatement of facts, confiscation of imported goods, the role played, and imposition of penalty on the importer:**

**21.** Thus from the facts and pieces of evidence discussed in paras supra, it appeared that the importer had willingly and knowingly evaded the applicable Customs Duties by wrongly availing the exemption benefits provided under Sr. No. 38A of Notification No.24/2005-Customs dated 01.03.2005 as amended vide Notification No. 15/2022-Cus, dated 01.02.2022 (w.e.f. 01.04.2022) and benefit of Sr. No. 18 of Notification-25/1999. The said facts had also been accepted by Shri Alpesh Dave, Senior General Manager of M/s Goldi Sun Private Limited in his statement dated 06.10.2022, 07.10.2022 & 10.04.2023. Moreover, from his statement, it appeared that the importer was fully aware of the said Notifications and the same was in the public domain too. Despite being fully aware of the subject Notifications, the importer had wilfully misstated that their goods '**solar cells**', "**aluminium frames**", and "**back sheets**" were covered under the two Notifications under consideration, and wrongly availed the benefit on goods imported by them vide Bills of Entry listed in **Annexures-A, B, and C** to the SCN respectively. Thus, it appeared that the importer had wilfully evaded the applicable Customs Duties on the goods imported vide Bills of Entry as detailed in Annexures-A, B, and C to the SCN respectively.

**22.** The exemption benefits provided under Notification No. 24/2005-Customs were withdrawn for solar cells and other parts used in the manufacture of solar modules/panels vide Notification No. 15/2022-Customs dated 01.02.2022 (w.e.f. 01.04.2022). However, despite being fully aware of the subject Notification and its amendment thereof, the importer had wrongly availed the benefit on 'solar cells' imported by them vide Bills of Entry listed in Annexure-A to the SCN. Thus, it appeared that the importer had wilfully evaded the applicable Customs duties on the imported goods i.e. solar cells imported vide Bills of Entry as detailed in attached Annexure-A to the SCN. Thus, by the above acts and commission, the importer had contravened the provisions of Section 46 and Section 111(m) of the Customs Act, 1962, and Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 read with Rule 14 of the Foreign Trade (Regulation) Rules 1993, in as much as the importer had taken wrong benefit of the Notification No.-24/2005-Cus dated 01.03.2005 as amended while filing the Bills of Entry at the time of the importation of the subject imported goods. The same was done to evade the payment of applicable Customs Duty. This has resulted in short-payment of other Customs levies viz. Social Welfare Cess and IGST as BCD form part of the value for computation of these duties. This act of wilful misstatement of the applicability of amended Notification No.-24/2005-Cus dated 01.03.2005 by M/s Goldi Sun Private Limited has rendered imported goods as mentioned in the Annexure-A to the SCN dated 29.02.2024 valued at **Rs. 24,13,41,111/-**, liable to confiscation as per the provisions of Section 111(m) of the Customs Act, 1962.

**23.** Further, it appeared that M/s Goldi Sun Pvt. Ltd had imported goods by wrong availment of the benefits under Sr. No. 18 of Notification No.-25/1999-Cus dated 28.02.1999 on the import of goods namely solar aluminum frame, as the same was not specified in the Sr. No. 18 of the subject Notification. Further, from the scrutiny of import data, it was noticed that the importer had also imported the subject goods without availing the benefit of Sr. No. 18 of Notification-25/1999 Cus dated 28.02.1999 in BoEs other than those mentioned in Annexure-B viz. BoEs No. 7424114 dated 09.02.2022, 8069215 dated 30.03.2022, 8314861 dated 18.04.2022, 8361743 dated 21.04.2022 etc. Thus, it appeared that the importer was fully aware of the said Notification and the Notification No. 25/1999-Cus dated 28.02.1999 was in the public domain too, however, despite being fully aware of the subject Notification and imposition of applicable BCD on the subject goods, the importer had not paid the applicable customs duty on the subject goods imported by them vide Bills of Entry listed in Annexure-B to the SCN. Thus, it appeared that the importer had wilfully misstated about coverage of aluminium frame under the Notification under consideration, with intent to evade payment of duty on the goods imported vide Bills of Entry as detailed in the attached Annexure-B. Thus, by the above acts and commission, the importer had contravened the provisions of Section 46 and Section 111(m) of the Customs Act, 1962, and Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 read with Rule 14 of the Foreign Trade (Regulation) Rules 1993, in as much as the importer had taken wrong benefit of the Notification No. 25/1999-Customs dated 28.02.1999 while filing the Bills of Entry at the time of the importation of the subject imported goods. The same was done to evade the payment of applicable Basic Customs Duty leviable thereon under Section 12 of the Customs Act, 1962, at the rates specified in the First Schedule to the Customs Tariff Act, 1975. This had resulted in short-payment of other Customs levies viz. Social Welfare Cess and IGST as BCD forms part of the value for computation of these duties. This act of wilful mis-statement of the serial number of amended Notification no. 25/1999-Cus dated 28.02.1999 by M/s Goldi Sun Private Limited had rendered imported goods as mentioned in the attached Annexure-B to the SCN dated 29.02.2024 valued at Rs. 8,44,29,992/- respectively, liable to confiscation as per the provisions of Section 111(m) of the Customs Act, 1962.

**24.** Further, it also appeared that M/s Goldi Sun Pvt. Ltd had imported goods by wrong availment of the benefit of Sr. No. 18 of Notification-25/1999 Cus dated 28.02.1999 on import of goods namely backsheet as the same was not specified at the Sr. No. 18 of the subject Notification. The Sr. No. 18 of Notification No. 25/1999 dated 28.02.1999 provides for BCD exemption for the following goods viz.,

*"Aluminium paste; ethylene vinyl acetate sheets (EVA); primer for EVA; Crane glass; tedlar coated aluminium sheet; phosphorous oxychloride; halo carbon (CF4)/Freon gas; tinned copper interconnect; toughened glass with low iron content and transmittivity of min. 90% and above; multilayered sheets with Tedlar base; fluro polymer resin; ultra-high purity (UHP) silane in UHP nitrogen; UHP silane; diborane in UHP silane; MOCVD grade phosphine in UHP silane; silver sputtering target; high purity tin tetrachloride; nitrogen trifluoride of 99% purity and above".*

**25.** The importer in his statement dated 10.04.2023 stated that the item namely Backsheet/Solar Backsheet as declared by them in the Bills of Entry was also known as "multilayered sheet with Tedlar base" which has a specific entry at Sr. No. 18 of Notification No. 25/1999Cus dated 28.02.1999. However, the Notification benefit was applicable only if the subject multilayered sheets have a Tedlar base i.e., the goods should have the base sheet of Tedlar® which is a registered trademark of Dupont TM. The importer had neither imported goods from Dupont nor they had uploaded any NOC from Dupont for using their registered trademark viz., Tedlar®. Further, on scrutiny of the technical write-up available in the public domain and declaration by the importer in subject BoEs, it appeared that the subject imported goods viz., "Backsheets for Solar Module/Panels", were being manufactured/supplied by M/s Cybrid Technologies Inc. or M/S. Jolywood (Suzhou) Sunwatt Co. Ltd by using their native trademark technology

other than Tedlar®. Given the above, on examination of the details provided under Bills of Entry, it appeared that the subject goods did not fall under the exemption under Sr. No. 18 of Notification No. 25/1999-Cus dated 28.02.1999, and hence it appeared that these goods were ineligible for the Notification benefit and merit duty of BCD @ 10%, SWS @ 10% and IGST @ 18%. Further, from the scrutiny of import data, it appeared that the importer had also imported similar goods by not availing the benefit of Sr. No. 18 of Notification-25/1999 vide BoEs other than those mentioned in Annexure-C attached with the SCN viz. BoEs No. 7720572 dated 03.03.2022, 7915410 dated 18.03.2022, 8102288 dated 01.04.2022, 8365156 dated 21.04.2022 etc. Thus, it appeared that the importer was fully aware of the said Notification and the Notification No. 25/1999-Customs dated 28.02.1999 was in the public domain too, however, despite being fully aware that their goods were not covered under the subject Notification, the importer randomly availed the undue benefits of Notification No. 25/1999-Cus dated 28.02.1999 and had not paid the Basic Customs Duty (BCD) on the subject goods imported by them vide Bills of Entry listed in Annexure-C to the SCN. Thus, it appeared that the importer had wilfully misstated that their goods were covered under the said exemption with intent to evade the applicable customs duty on the imported goods vide Bills of Entry as detailed in Annexure-C to the SCN. Thus, by the above acts and commission, the importer had contravened the provisions of Section 46 and Section 111(m) of the Customs Act, 1962, and Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 read with Rule 14 of the Foreign Trade (Regulation) Rules 1993, in as much as the importer had taken wrong benefit of the Notification No. 25/1999-Customs dated 28.02.1999 while filing the Bills of Entry at the time of the importation of the subject imported goods. The same was done to evade the payment of applicable Basic Customs Duty leviable thereon under Section 12 of the Customs Act, 1962, at the rates specified in the First Schedule to the Customs Tariff Act, 1975. This had resulted in short-payment of other Customs levies viz. Social Welfare Cess and IGST as BCD form part of the value for computation of these duties. This act of wilful misstatement about coverage of imported goods under a serial number of amended Notification no. 25/1999-Customs dated 28.02.1999 by M/s Goldi Sun Private Limited had rendered imported goods as mentioned in the attached Annexure-C to the SCN dated 29.02.2024 valued at Rs. 8,39,59,201/-, liable to confiscation as per the provisions of Section 111(m) of the Customs Act, 1962.

**26.** M/s Goldi Sun Private Limited was engaged in the import of various goods used in the manufacturing of solar modules/panels. The importer was aware of the correct end use of the imported goods, however, despite being fully aware of the correct end use of the imported goods, the importer had wrongly availed benefits of serial no. 18 of Notification No. 25/1999-Cus dated 28.02.1999 & serial no. 38A of the amended Notification No.-24/2005-Cus dated 01.03.2005, as amended vide Notification No.15/2022-Customs dated 01.02.2022, by adopting wrong practices including making false declarations for such imports to evade payment of appropriate customs duty. The importer had deliberately misstated the serial numbers of the subject Notifications to escape from detection by customs authorities. Thus, from the facts and evidence discussed above, it appeared that the importer had resorted to a wilful misstatement of serial numbers of Notification No. 25/1999-Customs dated 28.02.1999 & Notification No.-24/2005-Cus dated 01.03.2005 as amended with an ulterior motive of evading payment of the applicable duties on the imported goods. Hence, Section 28(4) of the Customs Act, 1962 for demand of duty is applicable in the instant case. The details of the goods imported by M/s Goldi Sun Private Limited by wilful misstatement of serial numbers of Notification No. 24/2005-Customs dated 01.03.2005 as amended & Notification No. 25/1999-Cus dated 28.02.1999 were mentioned in Annexures-A, B & C to the SCN dated 29.02.2024 along with the calculation of the respective customs duty evaded.

**27.** The differential Customs duty aggregating to Rs. 14,35,31,477/- leviable on the imported goods and cleared under Bills of Entry mentioned in Annexures-A, B & C and

not paid by M/s Goldi Sun Private Limited was, therefore, liable to be demanded and recovered from them as per provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.

**28.** For the above acts and commissions, M/s Goldi Sun Private Limited had rendered themselves liable to penalty under Section 114A and/or 112 of the Customs Act, 1962. The importer had knowingly and willfully made declarations that were false and incorrect in material particular and had willfully mentioned the subject Notification in the Bills of Entry, in the transaction of business for the purposes of the Customs Act, 1962, and therefore, the importer had also rendered themselves liable to penalty under Section 114AA of the Customs Act, 1962.

**29.** Shri Alpesh Dave was working as Senior General Manager in M/s Goldi Sun Private Limited. He stated that he was responsible for import-export-related work including classification and any Notification-related compliance. He also mentioned that he headed the EXIM team and under his supervision, the EXIM team used to look after the finalization of import/export documents, their classification, and the application of exemption Notifications. The fact that at several occasions they decided to make payment of applicable duty without seeking benefit of Notifications under consideration, and in certain cases they availed the benefit of Notification by willfully misstating that the goods were covered under the Notifications vindicates his malafide intent to evade customs duty. These acts on the part of Shri Alpesh Dave had rendered the subject imported goods liable to confiscation as per provisions of Section 111 (m) of the Customs Act, 1962, and thus, by these acts and commissions, he had rendered himself liable to penalty under Section 112(a)(ii) and Section 114AA of the Customs Act, 1962.

**Voluntary payments made during the investigation:**

**30.** During the investigation, M/s Goldi Sun Private Limited had made a payment of Rs.11,42,34,416/- towards differential duty (BCD+SWS+IGST) and interest. Therefore, the payment made by the importer was required to be appropriated against the demand of differential duty and interest. The details of payments made in respect of BoEs of solar cells were attached as Annexure-D. The details of payments made in respect of BoEs of the aluminium frame were attached as Annexure-E.

**31.** It was pertinent to mention that in terms of the provisions of Section 110AA of the Customs Act, 1962 read with Notification No. 28/2022-Customs (N.T.) dated 31.03.2022, the officers of Customs had been appointed as the proper officer for the purpose of exercising of powers under Section 28, Section 28AAA or Chapter X of the Customs Act, 1962 with jurisdiction over the whole of India with all the powers under the said Act. Further, in the case of multiple jurisdictions, the show cause notice was to be issued by the proper officer of jurisdiction having the highest amount of duty. The instant case involves the import of goods from multiple ports viz INNSA1, INSAJ6, INBOM4 &INHZA1, wherein total customs duty and IGST not paid/ short paid had come to Rs. 14,35,31,477/-, out of which the differential Customs duty for a single port viz. ICD Tumb (INSAJ6), Valsad, Gujarat, had been worked out to Rs. 7,29,95,238/-, which was the highest amongst all ports at which imports have taken place. Therefore, the Principal Commissioner of Customs, Ahmedabad having jurisdiction over ICD Tumb was the competent authority to issue show cause notice as well as adjudicating authority in terms of Section 110AA of the Customs Act, 1962 read with Notification No. 28/2022-Customs (N.T.) dated 31.03.2022, issued by CBIC.

**32.** In view of the above Show Cause Notice No. VIII/10-12/Commr./OA/ 2023-24 dated 29.02.2024 was issued to M/s. Goldi Sun Private Limited (IEC-AAICG2951R) having registered address: 1009, 10th floor, Infinity Tower, Nr. Railway Station, Surat,

Gujarat-395003 calling upon to show cause in writing to the Principal Commissioner of Customs, Ahmedabad within 30 days of the receipt of Notice as to why:

- (i) the duty exemption benefit of Sr. No. 38A of Notification No. 24/2005-Customs dated 01.03.2005-as amended vide Notification No. 15/2022-Customs dated 01.02.2022 (w.e.f. 01.04.2022) with respect to the import of 'solar cells' covered under Bills of Entry listed in the Annexure-A to this notice, should not be denied;
- (ii) the duty exemption benefit of Sr. No. 18 of Notification No.25/1999-Customs dated with respect to the import of 'Aluminium Frame' and 'Back sheet' covered under Bills of Entry listed in the Annexure-B and C to this notice, should not be denied;
- (iii) the differential amount of Customs duty aggregating to **Rs.14,35,31,477/- [(Rs.7,71,74,197/- (BCD) + Rs.77,17,420/- (SWS) + Rs.5,86,39,860/- (IGST)] (Rupees Fourteen Crore, Thirty Five Lakh, Thirty One Thousand, Four Hundred and Seventy Seven only )** as detailed in Annexures- A, B & C to this notice leviable on the imported goods covered under Bills of Entry as listed in Annexures- A, B & C, should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962;
- (iv) Rs. 11,41,70,981/- (Duty) & Rs. 63,436/- (interest) already paid/deposited by the importer during the course of the investigation, as summarized in Annexure-D and Annexure-E, should not be adjusted and appropriated against differential duty & interest respectively demanded from them at sub-para 32(iii) above;
- (v) Imported subject goods totally valued at **Rs.40,97,30,305/- (Rupees Forty Crore, Ninety Seven Lakh, Thirty Thousand, Three Hundred and Five only)** imported vide Bills of Entry as listed in Annexures- A, B & C, should not be held liable to confiscation as per provisions of Section 111(m) of the Customs Act, 1962;
- (vi) Penalty should not be imposed on them under Section 114A and/or 112 of the Customs Act, 1962, for the reasons discussed above;
- (vii) Penalty should not be imposed on them under Section 114AA of the Customs Act, 1962, for the reasons discussed above.

33. Shri Alplesh Dave, Senior General Manager, M/s. Goldi Sun Private Limited, 1009, 10th Floor, Infinity Tower, Nr. Railway Station, Surat, Gujarat-395003 was also called upon to show cause in writing to the Principal Commissioner of Customs, Ahmedabad having his office at Customs House, Nr. All India Radio, Income Tax Circle, Navrangpura, Ahmedabad within 30 (Thirty) days from the receipt of this notice, as to why:

- (a) Penalty should not be imposed on him under Section 112(a)(ii) and Section 114AA of the Customs Act, 1962, for the reasons discussed above.

## DEFENSE SUBMISSIONS

34. The importer vide letter dated 05.07.2024 submitted their reply to the Show Cause Notice wherein they interalia stated as under:

- The Noticee is a private limited Company registered under the Companies Act, 1956. The **Noticee is in the business of manufacture of Solar Photovoltaic Modules** and is registered under MOOWR-19 scheme having license No. PWL/AHM/GOLDI /AMD/25 dated 09.12.2021 (Warehouse code: SBI6R021) issued by the Commissioner Customs Ahmedabad. The Noticee regularly imports raw materials such as solar cells, tempered glass, aluminum frames, backsheets, and other components used in its manufacturing of the Solar Modules/ panels.
- It had not availed the benefit under Notification No. 24/2005, on import of solar cells as alleged in the impugned SCN. The impugned SCN and Annexure A referred to the Bills of Entry for Warehouse filed by the Noticee. They further clarified that the Customs duty becomes payable only when the goods are cleared for home consumption. The Customs duty is typically paid at the time of filing the 'Bill of Entry for Home Consumption' when goods are imported and cleared for use within the country.
- When goods are imported and a 'Bill of Entry for Warehousing' is filed, the goods are stored in a bonded warehouse without immediate payment of customs duty. Accordingly, In the present case, while filing warehouse Bills of Entry, it had inadvertently availed the benefit of Notification No.24/2005, but no duty was payable at that stage since warehouse Bills of Entry are revenue-neutral.
- Further, at the time of filing bills of entry for home consumption (corresponding to the warehouse bills of entry referred to in Annexure A to SCN), Noticee did not take the benefit of Notification 24/2005 (other than 2 Bill of Entry wherein duty was paid with applicable interest after clearance) and paid applicable customs duty. Therefore, it could be seen that the assessments in respect of these Bills of Entry had been completed under Section 17 of the Customs Act, 1962, without making any claim for concessional duty benefit under Notification No. 24/2005.
- That non-levy or short levy of duty cannot be alleged vis a vis assessment shown in the warehouse bills of entry since no duty becomes payable basis the warehouse bills of entry. The impugned SCN read with Annexure A thereto has captured the Bill of Entry details of imported Solar Cells that were filed for warehousing of the imported goods. The duty on such imports were paid at the time of clearance of the goods for home consumption, which has not been captured.
- The duty becomes payable only with respect to home consumption bills of entry and in the home consumption bills of entry filed by the Noticee (corresponding to the warehouse bills of entry) the benefit of Notification No.24/2005 has not been claimed by the Noticee and goods have been cleared upon payment of merit rate of duty.
- Therefore, the allegation of short payment of duty in the impugned SCN for Solar Cells is based on the entries appearing in the warehouse bills of entry and such demand cannot be countenanced since no duty becomes payable in respect of such bills of entry and duty on merits have been paid when the goods have been subsequently cleared for home consumption.
- Therefore, there was no non-levy or short levy of customs duties in respect of these bills of entries and consequently there could be no case for demand of any differential duty in terms of Section 28 of the Customs Act, 1962.
- They further submitted that for 2 Bills of Entry (Bill of Entry No.8662506 dated 13.05.2022 and Bill of Entry No.8777169 dated 21.05.2022) it initially claimed for benefit of concessional rate of duty under Notification No. 24/2005, however

subsequently the claim was withdrawn and Noticee *suo motu* made payment of differential duty vide manual challan no. 2039252190 and 2039357948 resulting in reassessment of the bill of entry without any claim of concessional rate of duty under Notification No.24/2005. Therefore, the assessment / reassessment in respect of these two bills of entry had been done under Section 17 of the Customs Act, 1962, without any claim for concessional rate of duty under Notification No. 24/2005 and goods had been cleared upon making payment of merit rate of duty. Therefore, even in respect of these two Bills of Entry there was no short-levy or non-levy of customs duties and consequently there could be no demand of any differential duty in terms of Section 28 of the Customs Act, 1962.

- Assuming without admitting that there is short-levy in respect of these two bills of entry, the same has been made good and should be treated as payments made in terms of Section 28(1)(b) of the Customs Act, 1962. Thus, no differential duty demand can arise under Section 28.
- Further, the impugned SCN has incorrectly applied Integrated Goods and Services Tax ('IGST') at the rate of 18% for computing duty on import of Solar cells. Further, the SCN has not provided the Schedule entry under which the solar cells have been classified for computation of duty. The applicable rate of GST on 'Solar Cells' (CTH 8541 4200) is 12% under Schedule II entry 201A of the GST Act as per **Notification No. 001/2017- as amended by Notification No. 08/2021- dated 30-09-2021**. The relevant extract of the schedule entry is produced below:

**Schedule II – 12%**

<b>Sr. No</b>	<b>Chapter Heading</b>	<b>Description of goods</b>
201A	84, 85 or 94	<p>Following renewable energy devices and parts for their manufacture:-</p> <p>(a) Bio-gas plant;</p> <p>(b) Solar power based devices;</p> <p>(c) Solar power generator;</p> <p>(d) Wind mills, Wind Operated Electricity Generator (WOEG);</p> <p>(e) Waste to energy plants / devices;</p> <p>(f) Solar lantern / solar lamp;</p> <p>(g) Ocean waves/tidal waves energy devices/plants;</p> <p><b>(h) Photo voltaic cells, whether or not assembled in modules or made up into panels.</b></p>

- Accordingly, the applicable duty paid by the Noticee on import of 'Solar Cells' at the time of home consumption:

<b>Description</b>		<b>Amount in Rs.</b>
Assessable Value	A	24,13,41,111
Basic Customs Duty @ 25%	B	6,03,35,277
SWS @ 10 of BCD	C	6,033,527
IGST @ 12%	D	3,69,25,189
Total Duty payable	$E = B+C+D$	10,32,93,996
Interest	F	27,815
<b>Total Duty + Interest</b>	<b>E+F</b>	<b>10,33,21,811</b>

- The exemption benefit under Notification No. 24/2005- Customs was availed by the Noticee while importing Solar Cells classified under CTH 8541 4200 prior to

issue of Notification 15/ 2022 dated 01.02.2022 (hereinafter referred as 'Notification 15/2022'). Post issuance of Notification 15/2022, Sr. No 23 was substituted and the Photovoltaic cells whether or not assembled in modules or made up into panels was excluded from exemption. As a result, solar cells imported by the Noticee were no longer exempted under the Notification.

- The impugned SCN has alleged that the Noticee, by availing the benefit under Notification 24/2005, has evaded customs duty amounting to Rs. 12,16,74,560/. However, as can be seen from the facts narrated hereinbefore, the allegation of short payment of duty in respect of Solar Cells stems from the assumption that the Noticee has availed the benefit of Notification No.24/2005, when the fact of the matter is that in the bills of entry for home consumption, no such benefit was availed by the Noticee and clearance has been made on payment of merit rate of duty. The differential amount of IGST is on account of wrong application of rate in the impugned SCN and therefore the entire demand on this count deserves to be quashed and set aside.
- Regarding the import of aluminum frames, the noticee submitted that it had not availed benefits under Notification No. 25/1999, as alleged in the SCN. The noticee admitted that the benefit of Notification 25/1999 was not applicable on import of Aluminium Frame and affirms that all applicable customs duties have been duly remitted to the appropriate authorities at the time of clearance. It submitted evidence, including relevant Bills of Entry and duty payment details, showing that it had paid Rs. 2,61,56,411/- (including differential duty with interest of Rs. 1,09,94,635/-), on the import of aluminum frames without claiming benefits under Notification No. 25/1999. In view of the same, the noticee asserted that the assessment under Section 17 of the Customs Act, 1962, had been done without availing/extending the benefit of exemption Notification No. 25/1999 and therefore there was no short levy or non-levy of duty in the present case and therefore the demand and recovery from the Noticee of differential duty amount of Rs. 1,09,59,013/- under Section 28(4) of the Customs Act, along with applicable interest under Section 28AA of the Customs Act is devoid of any substantive foundation and therefore deserves to be dropped forthwith.
- For solar backsheets, the Noticee defended its classification of the imported goods as "multilayered sheets with Tedlar base," qualifying for benefits under Serial No. 18 of Notification No. 25/1999. The Noticee highlighted that the SCN fails to provide evidence supporting its restrictive interpretation, rendering its claim baseless. The impugned SCN is deficient in establishing a *prima facie* case against the Noticee regarding the classification of the imported Backsheets. In this connection, reliance is placed on:
  - **Srinivasa Trading Company v. Commissioner of Customs, Chennai, 2013 (295) E.L.T 614;**
  - **Ample Industries v. Commissioner of Central Excise, 2007 (218) E.L.T. 456 (Tri. - Ahmd.).**
- The imported backsheets fall under CTH 3920 1099, covered by the Notification, and this classification is not disputed in the impugned SCN. The Noticee argued that its imported goods, classified as "multilayered sheets with Tedlar base," qualify for benefits under Serial No. 18 of Notification No. 25/1999. It challenged the SCN's assumption that only products bearing the DuPont trademark were eligible for this exemption.
- Tedlar® is a brand name for a type of durable, weather-resistant film made from polyvinyl fluoride (PVF) produced by DuPont. It is known for its excellent

resistance to UV radiation, moisture, and various environmental conditions, making it an ideal material for use in solar panel backsheets. The Noticee further submitted that the term "Tedlar base" is commonly understood to refer to polyvinyl fluoride (PVF)-based backsheets, which include products from various manufacturers and not exclusively DuPont. It submitted that the interpretation suggesting that only DuPont products qualify for the exemption would favor one manufacturer, contrary to the intent of the government.

- The Noticee submitted that backsheets are commonly referred to as "multilayered sheets with Tedlar base" in ordinary parlance. In the solar panel industry, a backsheets is the protective layer on the backside of solar modules, and a "multilayered sheet with Tedlar base" describes a PVF-based backsheets used in photovoltaic solar panels. Consequently, the exemption under the Notification is applicable to the backsheets imported by the Noticee, as detailed in the bills of entry listed in Annexure-C of the SCN. In this regard, reliance is placed on the decision of the Hon'ble Supreme Court in **Collector of C.E., Kanpur v/s. Krishna Carbon Paper Co.** reported in **1988 (37) E.L.T. 480 (S.C.)** wherein it is held that where a word has a scientific or technical meaning and also an ordinary meaning according to common parlance, then it is in the latter sense that in a taxing statute the word must be held to have been used, unless contrary intention is clearly expressed by the legislature.
- Further, exemption Notifications are not intended to favor specific companies. Denying the benefit of the Notification on the grounds that the imported backsheets do not bear the DuPont Tedlar trademark is baseless. Therefore, the denial of exemption based solely on the absence of the DuPont trademark is devoid of logic and reason.
- In view of the submissions made hereinbefore, the demand and recovery from the Noticee of amount of Rs. 1,08,77,904/- under Section 28(4) of the Customs Act, along with applicable interest under Section 28AA of the Customs Act is devoid of any substantive foundation and deserves to be dropped forthwith.
- In any event, Section 28(4) of the Customs Act cannot be invoked and hence the differential duty of Rs. 14,35,31,477/- needs to be set aside on this ground itself. The Noticee submitted that it had paid the duty on importation of Solar Panels and Aluminium Frame at the time of clearance of the goods. In instances where a discrepancy in duty payable arose due to an error, the Noticee had, of their own volition, remitted the outstanding differential duty along with the applicable interest.
- Similarly, for the Aluminium Frame, the Noticee maintains that the department ought to have taken cognizance of the fact that the assessment in the Bills of Entry (assessed / reassessed) under Section 17 of the Customs Act, 1962 was done without availing benefit of any concessional rate of duty Notification in general or Notification No.25/99 in particular and thereby it cannot be said that there has been any short levy in such Bills of Entry.
- When full duty had been paid at the time of clearing the goods for home consumption, the allegation of suppression of fact with intent to evade duty could not survive. Therefore, there was no case to invoke the extended period of limitation in the facts of the present case and therefore the demand of duty for the extended period should not survive and deserves to be quashed and set aside. They have also relied on the following judgements:
  - **Anand Nishikawa Co. Ltd. v CCE, Meerut 2005 (188) ELT 149 (SC);**

- **CCE v. Chemphar Drugs & Liniments, 1989 (40) ELT 276 (SC) and Padmini Products v. CCE, 1989 (43) ELT 195 (SC);**
- **Aban Loyd Chiles Offshore Ltd. v. Commissioner of Customs 2006 (200) ELT 370 (SC);**
- In the present case, there is no wilful suppression or wilful misstatement on part of the Noticee in any manner whatsoever. The Noticee has paid the applicable customs duty and has not availed exemption benefit on import of Solar Cells and Aluminium Frame as alleged in the SCN. With regard to the Backsheet, Noticee believes that the same is exempted from duty under Notification 25/1999. In any case, there has been no suppression of fact or wilful mis-statement from the Noticee.
- Further, the initial burden is on the department to show that the situations of fraud, wilful-misstatement, or suppression of facts to evade payment of duty existed [**Tamil Nadu Housing Board v. CCE 1994 (74) E.L.T. 9 (SC)**]. This burden has to be discharged by positive evidence and findings from the facts of the case and it is obligatory on the part of the adjudicating authority to set out the circumstances which have led the authorities to infer that there was intention to evade payment of duty [**D.D. Industries Ltd. v. CCE (2002 (142) E.L.T. 256 (Tri. - Del.) and Singareni Collieries Co. Ltd. v. CCE (1988) 37 ELT 361(Tri- New Delhi)**].
- Since the tax has already been paid by the Noticee prior to the issuance of the SCN, the benefit of Section 28(2) of the Act should have been extended and no SCN should have been issued.
- There was no malafide intention as tax has already been paid on the part of the Noticee. Since the tax amount has been paid before the clearance of goods and issuance of SCN, the Noticee has not suppressed/ wilfully mis-declared any facts. Therefore, impugned SCN ought not to have been issued by the department.
- Interest under Section 28AA become payable where a person is liable to pay any duty in accordance with the provisions of Section 28. The Noticee is not required to pay any duty under the provisions of Section 28 of the Act, for reasons mentioned hereinbefore, therefore, the provisions of Section 28AA will not apply in the present case.
- The amount of differential duty (Rs. 11,41,70,981/-) and interest (Rs. 63,436/-) paid by the Noticee were remitted towards import of solar cells and aluminium frame. Consequently, the claim presented in the impugned SCN suggesting that these payments were made or deposited by the Noticee during the investigation lacks foundation. The proposal of adjusting and appropriating the alleged differential duty and interest in the impugned SCN is without any basis whatsoever as the amount was paid towards the duty payment on import of Solar Cells and Aluminium Frame.
- There has been no misdeclaration in the documents such as Bills of Entry filed by it at the time of clearance of the goods. In the matter of Solar Cells, where the impugned SCN asserted that the Noticee had falsely declared and sought exemption under Notification 24/2005 to avoid paying customs duty, the Noticee had demonstrated that the claim is based on the warehouse bills of entry filed by the Noticee and not the home consumption bills of entry. Noticee has submitted the Bills of Entry filed at the time of domestic consumption, which clearly shows that the Noticee did not take advantage of any exemption and that the appropriate duty was indeed paid. Similarly, in case of Aluminium Frame, assessment was

done and BoE were filed wherein duty was paid without availing the exemption benefit.

- Therefore, the allegation of mis-declaration amounting to contravention of Section 111(m) of the Customs Act, is wholly misconceived. **Without admitting but assuming** that the Noticee had claimed some exemption benefit on the import of Solar Cells and Aluminum Frame in question, such claim of itself cannot lead to an inference of misdeclaration. It had been held by the Hon'ble Apex Court in a case of claim of concessional rate of duty that a claim to a concessional rate of duty ipso facto will not amount to mis-declaration with intent to evade duty and therefore the goods do not become liable for confiscation. They refer and rely on the decision of the Hon'ble Supreme Court in the case of **Northern Plastics, (1998 (101) E.L.T. 549).**
- Without prejudice to the above, it is submitted that confiscation under Section 111(m) of the Act can be done only of the improperly "imported goods". The "imported goods" have been defined under Section 2(25) of the Act as under:

*"Imported goods means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption."*

- Thus, the goods which have been cleared from home consumption does not qualify as "imported goods" and therefore, cannot be confiscated. Admittedly, in the present case, all the imported goods which are the subject matter of dispute in the present appeal have already been cleared for home consumption and thus, cannot be confiscated under Section 111(m) of the Act. In this connection, reliance is placed on the following judgements:

- **Bussa Overseas and Properties P. Ltd. v/s. C.L. Mahar, Asstt. C.C., Bombay reported in 2004 (163) E.L.T. 304 (Bom);**
- **Southern Enterprises v. Commissioner of Customs, Bangalore, 2005 (186) E.L.T. 324 (Tri-Bang).**
- In view of the above, in the present case, since the goods had already been cleared for home consumption, they did not fall within the ambit of "imported goods" and therefore, fall outside the ambit of Section 111(m) of the Act. Therefore, in any case the provisions of Section 111(m) of the Act could not have been invoked in the facts and circumstances of the present case. In the instant case, it had already been submitted in detail in the above paras that the goods were not liable for confiscation. Hence, the provisions of Section 125 of the Act are not attracted in the present case.
- In any case, it is submitted that redemption fine arises in the event the goods are available and are to be redeemed. If the goods are not available, there is no question of redemption of the goods. Such an order can only be passed if the goods are available, for redemption. The question of confiscating the goods would not arise if there are no goods available for confiscation nor consequently redemption. Once goods cannot be redeemed no fine can be imposed. To support this, reliance is placed upon the decision of the Hon'ble Bombay High Court in the case of **Commissioner of Customs (Import) Vs Finesse Creation Inc 2009 (248) ELT 122 (Bom)**, wherein the Hon'ble High Court held that the provisions of Section 125 of the Act warranting imposition of Redemption Fine cannot be invoked if there are no goods available for confiscation. This judgement of the Hon'ble Bombay High Court has been maintained by the Hon'ble Supreme Court in **Commissioner v. Finesse Creation Inc. - 2010 (255) E.L.T. A120 (S.C.).**

- Noticee has already demonstrated in the preceding paras that there has been no collusion or any wilful mis-statement or suppression of facts while importing the goods. Further, there is no short levy of duty on import of Solar Cells and Aluminium Frame as duty computed in the impugned SCN has already been paid by the Noticee at the time of import of goods. The sole legal issue remaining for discussion is the applicable rate of IGST on the import of Solar Cells and whether the Backsheet qualifies for exemption under Notification 25/1999. The Noticee has thoroughly addressed both matters in the preceding paragraphs. Consequently, there is no basis for a penalty under the provisions of Section 114A of the Customs Act.
- With regard to imposition of penalty under Section 112 of the Customs Act, they submitted that the department has not made any case for confiscation of goods under Section 111, as addressed in preceding paragraphs. Hence, there is no basis for penalty under Section 112 of the Customs Act. Reliance is placed on the following judgements:
  - **Hindustan Steel Ltd Vs State of Orissa 1978 (002) ELT 0159 SC;**
  - **Cement Marketing Co. of India Ltd. v. Assistant Commissioner of Sales Tax, 1980 (6) E.L.T. 295 (S.C.).**
- It is evident that the provisions of Section 114AA of the Act provide for imposition of penalty upon a person only when the person caused to file forged/ fake documents for clearance of goods. It is submitted that there is no evidence of any forgery committed by the Noticee nor the representative of the Company. Noticee submits that the onus is on department to substantiate with documentary evidence that forgery has been committed. On the contrary, Noticee and the representative have voluntary submitted all the documents as and when DRI, Jaipur sought the information. Thus, the question of forgery/ mis-declaration/ mis-statement/ suppression does not arise. Hence, penalty alleged to be imposed under Section 114AA and/or under Section 112(a)(ii) to be set aside.

#### **PERSONAL HEARING:**

**35.** Personal hearing was held on 18.11.2024 through video conferencing wherein Shri Sanjiv Nair, Advocate of the Noticee, Shri Alpesh Dave, Senior General Manager of M/s. Goldi Sun Private Limited and Shri Rahul Tiwari, representative of the Noticee appeared on behalf of the importer wherein Shri Sanjiv Nair reiterated the contents of their written submission dated 05.07.2024 and further submitted that they will make additional submission by 25.11.2024. They vide letter dated 21.11.2024 (received on 25.11.2024) submitted that a mere claim for a particular classification or exemption would not be construed as “mis-declaration” leading to contravention of Section 111(m) of the Customs Act, 1962. and reliance was placed on the following decisions:

- Hon'ble Supreme Court judgement in case of **Northern Plastics Ltd Vs Collector of Customs & Central Excise, (1998 (101) E.L.T. 549);**
- Hon'ble Gujarat High Court judgement in case of **Baboo Ram Harichand Vs Union of India, 2011 (270) E.L.T. 356 (Guj.);**
- Lewek Altair Shipping Private Limited Vs Commissioner of Customs, 2019 (366) ELT 318 (Tri. Hyd.), which was affirmed by the Hon'ble Supreme Court in 2019 (367) ELT A328.

**35.1** They further submitted that claiming the benefit of exemption filed in the Bill of Entry does not amount to suppression/ mis-declaration on the part of the Noticee and therefore penalty is not imposable. In support of their contention, they relied on the following judgements:

- **Whiteline Chemicals Vs Commissioner of Central Excise, Surat, 2008 (229) ELT 95 (Tri. Ahmd.) and Vadilal Industries Limited Vs Commissioner of Central Excise, Ahmedabad, 2007 (213) ELT 157 (Tri. Ahmd.);**
- **Commissioner of Customs Vs Gaurav Enterprises, 2006 (193) ELT 532;**
- **Hindustan National Gas & Industries Vs Commissioner of Customs, Calcutta, 2002 (145) ELT 162 (Tri. Kolkata);**
- **Saint Goben Glass India Limited Vs Commissioner of Customs, Chennai, 2014 (313) ELT 680 (Tri. Chennai);**
- **John Deere India Pvt Ltd Vs Commissioner of Custom (Preventive), Amritsar, 2018 (363) ELT 509 (Tri. Chan.).**

**35.2** They have also submitted that as goods are not available for confiscation and since no Bond was given for the release of such goods, redemption fine in lieu of confiscation can not be imposed. Further, the crux of the allegation in the SCN is that the importer has claimed benefit of Exemption Notification No. 25/1999-Cus dated 28.02.1999 and Notification No. 24/2005-Cus dated 01.03.2005 and none of these Notifications require furnishing of Bond by the importer. Since the goods have been released without furnishing any Bond for the purpose of availing benefit of the said Notifications, no Redemption Fine could be imposed since the goods are not available for confiscation. They also relied upon the judgement of Hon'ble Bombay High Court in case of **National Leather Cloth Manufacturing Co, 2015 (321) ELT 135 (Bom.)** and **Finesse Creation Inc, 2009 (248) ELT 122 (Bom.).**

## **DISCUSSION AND FINDINGS:**

**36.** I have carefully gone through the relevant records, the written submission dated 05.07.2024 & 21.11.2024 made by the Noticee M/s. Goldi Sun Private Limited as well as compilation of statutory provisions and case laws submitted by their advocate during the personal hearing held on 18.11.2024.

**36.1** I find that the case of the department is that M/s. Goldi Sun Private Limited were availing benefits of exemption of Customs duty under Sr. No. 38A of Notification No. 24/2005-Customs dated 01.03.2005-as amended vide Notification No. 15/2022-Customs dated 01.02.2022 (w.e.f. 01.04.2022) while importing the **solar cells** to be used for manufacturing of solar panels/modules and also availing the benefits under Sr. No. 18 of Notification No. 25/1999-Customs dated 28.02.1999 while importing the **aluminium frame, and back sheet** to be used for manufacturing of solar panels/modules, which was actually not available to them and was liable to pay the duty not paid/short paid under Section 28(4) of the Customs Act, 1962 (hereinafter referred to as "the Act") along-with applicable interest under Section 28AA of the Act.

Further, it appeared that as the subject goods were imported by reason of willful mis-statement resulting in misuse of Notification benefit, the subject goods were liable for confiscation under Section 111(m) of the Act and M/s. Goldi Sun Private Limited had rendered themselves liable to applicable penalty under Section 112, 114A and 114AA of the Act. Further, Shri Alpesh Dave, Senior General Manager of M/s. Goldi Sun Private Limited for his acts had also rendered himself liable to penalty under Section 112(a)(ii) and Section 114AA of the Customs Act, 1962.

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

- (i) Whether the exemption benefit of Sr. No. 38A of Notification No. 24/2005- Customs dated 01.03.2005-as amended vide Notification No. 15/2022- Customs dated 01.02.2022 (w.e.f. 01.04.2022), availed for clearance of imported goods viz. '**solar cells**' under various Bill of Entry for the period April, 2022 to August, 2022 is rightly claimed by the Importer;
- (ii) Whether the exemption benefit of Sr. No. 18 of Notification No. 25/1999- Customs dated 28.02.1999, as amended, availed for clearance of imported goods viz. '**Aluminium Frame**' and '**Back sheet**' under various Bill of Entry for the period April, 2022 to October, 2023 is rightly claimed by the Importer;
- (iii) Whether the Impugned goods viz. 'solar cells', 'Aluminium Frame' and 'Back sheet' imported vide various Bills of Entry as mentioned in Annexure-A, B & C to Show Cause Notice having assessable value of **Rs. 40,97,30,305/- (Rupees Forty Crore, Ninety Seven Lakh, Thirty Thousand, Three Hundred and Five only)** are liable to confiscation;
- (iv) Whether the differential Customs Duty of **Rs. 14,35,31,477/- [(Rs. 7,71,74,197/- (BCD) + Rs. 77,17,420/- (SWS) + Rs. 5,86,39,860/- (IGST)] (Rupees Fourteen Crore, Thirty Five Lakh, Thirty One Thousand, Four Hundred and Seventy Seven only)** arises due to reasons mentioned in para 37 (i) & (ii) above is liable to be demanded and recovered under Section 28(4) of the Customs Act, 1962, along with applicable interest in terms of Section 28AA of the Customs Act, 1962;
- (v) Whether the amount of **Rs. 11,41,70,981/- (Duty) & Rs. 63,436/- (interest)** already paid/deposited by the importer for import of goods mentioned in para 37 (i) & (ii) above should not be adjusted and appropriated against the demand above;
- (vi) Whether the Importer is liable for penalty under Section 112, 114A & 114AA of the Customs Act, 1962;
- (vii) Whether Shri Alpesh Dave, Senior General Manager of M/s. Goldi Sun Private Limited is liable for penalty under Section 112(a)(ii) and Section 114AA of the Customs Act, 1962.

**38.** I find that Duty liability with interest and penal liabilities would be relevant only if the bone of contention that whether the Importer has wrongly claimed the benefit of Sr. No. 38A of Notification No. 24/2005- Customs dated 01.03.2005-as amended vide

Notification No. 15/2022- Customs dated 01.02.2022 (w.e.f. 01.04.2022) and benefit of Sr. No. 18 of Notification No. 25/1999-Customs dated 28.02.1999, as amended is answered in the affirmative. Thus, the main point is being taken up firstly for examination.

**39. Whether the exemption benefit of Sr. No. 38A of Notification No. 24/2005- Customs dated 01.03.2005, as amended, availed for clearance of Imported goods viz. 'Solar Cells' under various Bill of Entry is rightly claimed by the Importer.**

**39.1** I find that the noticee, M/s. Goldi Sun Private Limited is engaged in manufacturing of solar panels/modules, engineering procurement and construction of solar projects. The Noticee were importing 'Solar Cells (for solar panels/modules)', and availing exemption of BCD as per Sr. No. 38A of Notification No. 24/2005-Customs dated 01.03.2005. I also note that earlier the impugned goods were exempted under Sr. No. 23 of Notification No. 24/2005 dated 01.03.2005, however, I find that once the Notification No. 24/2005-Cus was amended vide Notification No. 15/2022-Cus dated 01.02.2022 and goods i.e. the Photovoltaic Cells whether or not assembled in Modules or made up into panels were excluded from the exemption. For better understanding of the facts, the relevant entries of the Notification No. 24/2005-Cus 01.03.2005 as amended by Notification No. 15/2022-Customs dated 01.02.2022, is appended hereunder:

<b>Sl. No.</b>	<b>Notification number and Date</b>	<b>Amendments</b>						
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>						
2.	Notification No. 24/2005- Customs, dated the 1st March, 2005, vide number G.S.R. 122(E), dated the 1st March, 2005	<p><i>In the said Notification, in the TABLE, -</i></p> <p>ii. <i>for Sr. No. 23 and the entries relating thereto, the following Sr. No. and entries shall be substituted with effect from the 1<sup>st</sup> day of April 2022, namely:</i></p> <p><i>-</i></p> <table border="1"> <tr> <td>"23.</td><td>8541 (except 8541 42 00 or 8541 43 00)</td><td>All goods other than Photovoltaic cells whether or not assembled in modules or made up into panels.";</td></tr> </table> <p>iii. <i>after Sr.No.38, the following Sr. No. and entries shall be inserted with effect from the 1<sup>st</sup> day of April 2022, namely:</i></p> <table border="1"> <tr> <td>"38A.</td><td>8541 42 00 or 8541 43 00</td><td>All goods for use solely and exclusively with goods covered under S. Nos. 1 to 38.".</td></tr> </table>	"23.	8541 (except 8541 42 00 or 8541 43 00)	All goods other than Photovoltaic cells whether or not assembled in modules or made up into panels.";	"38A.	8541 42 00 or 8541 43 00	All goods for use solely and exclusively with goods covered under S. Nos. 1 to 38.".
"23.	8541 (except 8541 42 00 or 8541 43 00)	All goods other than Photovoltaic cells whether or not assembled in modules or made up into panels.";						
"38A.	8541 42 00 or 8541 43 00	All goods for use solely and exclusively with goods covered under S. Nos. 1 to 38.".						

From a plain reading of the entry mentioned at Sr. No. 38A of Notification 24/2005-Cus dated 01.03.2005, I find that the exemption benefit was available to "All goods for use solely and exclusively with goods covered under S. Nos. 1 to 38".

Further, on going through the entries of Sr. No 1 to 38 of Notification No. 24/2005 dated 01.03.2005 and goods mentioned therein, I find that the imported goods i.e. solar cells (for manufacturing of solar modules) do not appear to be used for the manufacture of goods covered under Sr. No.1 to 38 of Notification No. 24/2005-Cus 01.03.2005, as amended.

**39.2** Further, I note that the Noticee themselves in their submission dated 05.07.2024 accepted this fact that the benefit of Notification No. 24/2005-Cus dated 01.03.2005 was not available to their imported goods i.e. "**Solar Cells**", falling under Tariff Item 85414200 of first Schedule to the Customs Tariff Act, 1975.

**39.3** I note that Shri Alpesh Dave, Senior General Manager of M/s Goldi Sun Private Limited, in his statements dated 06/07.10.2022 admitted that the Noticee had availed the benefits of Notification No. 24/2005-Customs dated 01.03.2005, as amended by Notification No. 15/2022-Customs dated 1st February 2022, even after the effective date of implementation of the amended Notification, i.e., 1st April 2022, and when specifically questioned about the eligibility of goods related to the manufacturing of solar panels/modules imported by M/s Goldi Solar Private Limited (sic M/s Goldi Sun Private Limited) for exemption under Sr. No. 38A of Notification No. 24/2005-Customs as amended, Shri Alpesh Dave stated that the imported goods were used in the manufacturing of solar photovoltaic modules/panels. He further explained that the Noticee was under the impression that the Indian government's policy aimed to promote the use of renewable energy sources to manage power requirements. On this basis, they believed that such imported goods would qualify for exemption under the said Notification. However, Shri Alpesh Dave also unequivocally admitted and confirmed that the imported goods, specifically "**Solar Cells**," were not eligible for exemption benefits under Serial No. 38A of Notification No. 24/2005-Customs, as amended. I find that he admitted that the exemption for solar photovoltaic cells was explicitly withdrawn through ~~Notification No. 15/2022-Customs dated 1st February 2022~~. I further find that he accepted the duty liability on import of solar cells and in his statement he confirmed that during the investigation they have paid an amount of Rs. 10,32,11,966/- towards their duty liability.

**39.4** In this regard, I also rely on the decision of **Hon'ble CESTAT, Mumbai Branch in case of M/s Amee Electronics Vs Commissioner of Customs, Mumbai** reported in 2014 (303) E.L.T. 115 (Tri. - Mumbai), wherein the Hon'ble Tribunal held that "*the admitted facts need not be proved*".

**39.5** I also note that they have not disputed the duty liability in case of import of "Solar Cells". In light of the above facts and the unequivocal statement of the Senior General Manager of the noticee, I hold that there is no ambiguity in this regard that the benefits of Notification No. 24/2005-Customs dated 1st March 2005 were not applicable to the imported goods, i.e., "Solar Cells," following the withdrawal of the exemption through

Notification No. 15/2022-Customs and they were liable to pay the applicable Customs duty on these imported goods.

**40. Whether the exemption benefit of Sr. No. 18 of Notification No. Notification No. 25/1999-Customs dated 28.02.1999, as amended, availed for clearance of Imported goods viz. 'aluminium frame & back sheet' under various Bill of Entry is rightly claimed by the Importer.**

**40.1** I note that the Noticee were also importing goods i.e. aluminium frame & back sheet (for manufacturing of solar panels/modules) by availing benefit of Sr. No. 18 of Notification No. 25/1999-Customs dated 28.02.1999 (for the sake of brevity hereinafter referred to as "*the said Notification*"). For better understanding of the facts, relevant entry of Notification No. 25/1999-Customs dated 28.02.1999 is reproduced hereunder:

Sr. No	Heading, sub- heading, or tariff item	Description of imported goods	Description of finished goods
(1)	(2)	(3)	(4)
18	28,38,39,70, 74,76	<b>Aluminium paste</b> , ethylene vinyl acetate sheets (EVA); primer for EVA; crane glass; <b>tedlar coated aluminium sheet</b> ; phosphorous oxychloride; halo carbon (CF4)/ freon gas; tinned copper interconnect; toughened glass with low iron content and transmissivity of min. 90% and above; multilayered sheets with Tedlar base; Fluro polymer resin; ultra-high purity (UHP) silane in UHP nitrogen; UHP silane; diborane in UHP silane; MOCVD grade phosphine in UHP silane; silver sputtering target; high purity tin tetrachloride; nitrogen trifluoride of 99 % purity and above.	Solar Cells/Modules.

The importer, M/s Goldi Sun Private Limited, imported two distinct items i.e. Aluminium Frame and Backsheet (used in the manufacturing of solar panels/modules), while claiming the benefit of Serial No. 18 of Notification No. 25/1999-Customs dated 28.02.1999. Since these items are classified under different HSN codes, the applicability of the exemption Notification must be assessed for each item individually. I will first address the applicability of the exemption Notification to the imported item "Aluminium Frame".

**40.2** I find that the Noticee has imported goods namely "Aluminium Frame" intended for use in the manufacturing of solar panels, with a total assessable value of Rs. 8,44,29,992/-, as reflected in various Bills of Entry (BoEs), details of which are provided in Annexure-B to the Show Cause Notice (SCN) dated 29.02.2024.

**40.2.1** Upon a plain reading of Serial No. 18 of Notification No. 25/1999-Customs dated 28.02.1999, it is observed that only a limited number of items are explicitly covered under this entry. Among these, only two items containing the term "Aluminium"

are mentioned: "**Aluminium Paste**" and "**Tedlar Coated Aluminium Sheet**." I further note that there is no specific mention of "**Aluminium Frame**" in the said Notification. As per established principles of statutory interpretation, benefits under an exemption Notification can only be availed if the specific goods are expressly listed in the Notification. Judicial precedents, including a catena of decisions, affirm that when the language of a statute is clear, plain, and unambiguous, it must be interpreted according to its natural and ordinary meaning. In this context, I find that since "**Aluminium Frame**" is not explicitly listed in the Notification, the benefit of exemption under Serial No. 18 of Notification No. 25/1999-Customs cannot be extended to the imported Aluminium Frames.

**40.2.2** I further find that the Noticee imported "**Aluminium Frames**" under both circumstances i.e. by availing the benefit of Serial No. 18 of Notification No. 25/1999-Customs dated 28.02.1999 in some cases and by not availing the benefit of said Notification in other cases. For instance, the importer paid the applicable customs duty for "**Aluminium Frames**" imported under Bills of Entry Nos. 7424114 dated 09.02.2022, 8069215 dated 30.03.2022, 8314861 dated 18.04.2022, and 8361743 dated 21.04.2022, among others. This demonstrates that the Noticee was well aware that the benefit of the exemption Notification was not available to their imported goods viz. "**Aluminium Frames**". I find that the act of selectively claiming the exemption benefit in some cases while paying the full customs duty in others strengthens this conclusion.

**40.2.3** I also find that Shri Alpesh Dave, Senior General Manager of M/s Goldi Sun Private Limited, in his statement dated 06/07.10.2022, on being asked specifically about the BoEs filed by claiming the benefits of Notification No. 25/1999-Customs dated 28.02.1999, as amended, stated that they had filed the BoEs claiming benefits of this Notification for the import of **aluminium frame**. He further admitted that the wrong availment of Notification benefits had happened due to lack of clarity on the issue, however, when they got clarity, they were of the opinion that the benefits of the said Notification did not apply to the aluminium frame and admitted the corresponding duty liability. I find that there is no ambiguity that benefit of the said Notification was not available to their imported goods i.e. "**Aluminium Frame**". I further find that the importer during the investigation has paid the differential duty liability of Rs. 1,09,59,014/- alongwith applicable interest of Rs. 35,621/-.

**40.2.4** Further, I note that the importer has not contested the inapplicability of Sr. No. 18 of Notification No. 25/1999-Customs dated 28.02.1999 to "**Aluminium Frames**", instead, they admitted to having availed the benefit of the said Notification erroneously. Therefore, I find that the importer was fully aware of the said Notification and the Notification No. 25/1999-Customs dated 28.02.1999 was in the public domain too, however, despite being fully aware of the subject Notification and imposition of applicable Customs duties on the impugned goods, the importer had intentionally filed the BoEs claiming benefits of the said Notification. From the above discussion, admissions of Shri Alpesh Dave, submission of the importer and the evidence on record,

I hold that the benefit of exemption Notification No. 25/1999-cus dated 28.02.1999 was not available to the imported Aluminium Frames.

**40.3** I note that the importer had imported “Backsheet” (for manufacturing of solar panels/modules) by availing benefit of Sr. No. 18 of Notification No. 25/1999-Customs dated 28.02.1999 (for the sake of brevity hereinafter referred to as “*the said Notification*”). I find that the Noticee has imported goods namely “Backsheet” for manufacturing of solar panels having assessable value of Rs. 8,39,59,201/- vide various Bills of Entries as detailed in Annexure-C to the SCN dated 29.02.2024.

**40.3.1** I find that the importer has imported the “Backsheet”, by classifying under Custom Tariff Item 39201099, from their overseas supplier namely M/s. Cybrid Technologies Inc. and M/s. Jolywood (Suzhou) Sunwatt Co. Ltd. and declared the description of the imported goods in Bills of Entry as under:

Sr. No.	BE NUMBER	BE DATE	SUPPLIER NAME	ITEM DESCRIPTION	ITEMWISE ASS VALUE
1	8778354	21/05/2022	CYBRID TECHNOLOGIES INC.	SOLAR BACKSHEET WHITE KPF CYNAGARD205A(R) 1133MM X 0.315MM 200M/ROLL	43441
2	8800053	23/05/2022	JOLYWOOD (SUZHOU) SUNWATT CO.,LTD	SOLAR BACKSHEET KFB-30PLUS (WHITE) 0.315MMT X 1133MMW X 200ML (216 ROLLS, 48945.6 SQM)	8253071
3	8799851	23/05/2022	CYBRID TECHNOLOGIES INC.	SOLAR BACKSHEET WHITE KPF CYNAGARD205A(R) 1133MM X 0.315MM 200M/ROLL	16312122
4	8800054	23/05/2022	JOLYWOOD (SUZHOU) SUNWATT CO.,LTD	SOLAR BACKSHEET KFB-30PLUS (WHITE) 0.315MMT X 1133MMW X 200ML (216 ROLLS, 48945.6 SQM)	8762922
5	9787979	30/07/2022	CYBRID TECHNOLOGIES INC.	SOLAR BACKSHEET WHITE KPF CYNAGARD205A(R) 1133MM X 0.315MM 200M/ROLL	8329409
6	2757221	10-06-2022	JOLYWOOD (SUZHOU) SUNWATT CO.,LTD	BACKSHEET, JOLYWOOD KFB-30(PLUS) (WHITE) 0.315MMT X 1133MMWX 200ML (216 ROLLS, 48945.6 SQM)	7639872
7	3431533	23/11/2022	JOLYWOOD (SUZHOU) SUNWATT CO.,LTD	BACKSHEET, JOLYWOOD KFB-30PLUS (WHITE) 0.315MMT X 1133MMW X200ML (432 ROLLS, 97891.2 SQM)	13328341
8	3524969	29/11/2022	JOLYWOOD (SUZHOU) SUNWATT CO.,LTD	BACKSHEET, JOLYWOOD KFB-30PLUS (WHITE) 0.315MMT X 1133MMW X200ML (432 ROLLS, 97891.2 SQM)	15020413
9	4119558	01-10-2023	JOLYWOOD (SUZHOU) SUNWATT CO. LTD	SOLAR TRANSPARENT BACKSHEET JOLYWOOD(FFC-JW30MPLUS) (50PCS)(FOR MANUFACTURING OF SOLAR PV MODULE)	32376

10	6077812	23/05/2023	JOLYWOOD (SUZHOU) SUNWATT CO., LTD	SOLAR BACKSHEET KFB- 30PLUS (WHITE) 0.315MMT X 1133MMW X 200ML (216 ROLLS, 48945.6 SQM) (FOR MFRG OF SOLAR PANELS)	6237235
<b>Grand Total</b>				<b>83959201</b>	

From the description of the imported goods as mentioned in the above table, I note that nowhere it has been mentioned that back sheet are of 'tedlar base' as the Notification is very clear and precise that 'multilayered sheet with tedlar base' is only eligible for the Exemption Notification No. 25/1999- Cus dated 28.02.1999.

**40.3.2** I find that Shri Alpesh Dave, Senior General Manager of M/s Goldi Sun Private Limited, in his statement dated 10.04.2023 has stated that impugned goods viz. Backsheet/Solar Backsheet as declared by them in the Bills of Entry is known as 'multi layered sheet with Tedlar base' which has a specific entry at Sr. No. 18 of the Notification No. 25/1999- Customs dated 28.02.1999 however, importer has not produced any evidence that the goods they imported were with Tedlar base. Further, 'Tedlar' is registered trademark of Dupont and the importer has neither imported the goods from Dupont nor they have submitted the NOC from Dupont that they have used Tedlar®. Further, the importer has procured the impugned goods from M/s. Cybrid Technologies Inc. and M/s. Jolywood (Suzhou) Sunwatt Co. Ltd. using their native trademark technology other than Tedlar®.

**40.3.3** I note that the importer had also imported "Backsheet/ Solar Backsheet" by not availing the benefit of Sr. No. 18 of Notification-25/1999 vide BoEs No. 7720572 dated 03.03.2022, 7915410 dated 18.03.2022, 8102288 dated 01.04.2022, 8365156 dated 21.04.2022, etc. I find that the importer has on its own in some bill of entries availed the benefit of exemption and in some bill of entries they have paid the applicable customs duty. Therefore, I find that the importer was fully aware of the said Notification and the Notification No. 25/1999-Customs dated 28.02.1999 was in the public domain, however, despite being fully aware of the subject Notification and imposition of applicable Customs duties on the impugned goods, the importer had intentionally filed the BoEs with the claim of benefits of Notification No. 25/1999-Customs.

**40.3.4** I find that wording of Sr. No. 18 of the Exemption Notification No. No. 25/1999- Customs dated 28.02.1999 is unambiguous which categorically says that multi layered sheet with Tedlar base' is only eligible for the exemption of said Notification. In the cetera of the decisions, it has been held that words in a statute when clear, plain and unambiguous then only one meaning can be inferred. I rely on the ratio of decision of Hon'ble Supreme Court rendered in the case of Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar & Company reported in 2018 (361) E.L.T. 577 (S.C.) wherein it has been held as under:

**19.** *The well-settled principle is that when the words in a statute are clear, plain and unambiguous and only one meaning can be inferred, the Courts are bound to give effect to the said meaning irrespective of consequences. If the words in the statute are plain and unambiguous, it becomes necessary to expound those words in their natural and ordinary*

sense. The words used declare the intention of the Legislature. In *Kanai Lal Sur v. Paramnidhi Sadhukhan*, AIR 1957 SC 907, it was held that if the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.

**40.3.5** Further, I rely on the ratio of decision of Hon'ble Delhi High Court rendered in the case of *Kultar Exports Vs. Commissioner of Central Excise, Delhi-I* reported in 2020 (36) G.S.T.L. 208 (Del.) wherein it has been held as under:

**17.** *It is trite, that while interpreting exemption Notifications, such Notifications have to be interpreted, stricto sensu [Commissioner of Customs (Import), Mumbai v. Dilip Kumar & Co. (2018) 9 SCC 1 = 2018 (361) E.L.T. 577 (S.C.); Commissioner of Central Excise v. Hari Chand Shri Gopal & Others (2011) 1 SCC 236 = 2010 (260) E.L.T. 3 (S.C.); Commissioner of Central Excise v. Mahaan Dairies (2004) 11 SCC 798 = 2004 (166) E.L.T. 23 (S.C.)].*

**18.** *The Supreme Court in Saraswati Sugar Mills [2011 (270) E.L.T. 465 (S.C.)], has affirmed this principle, assailing in paragraph 7, as follows :*

*"7. ... A party claiming exemption has to prove that he/it is eligible for exemption contained in the Notification. An exemption Notification has to be strictly construed. The conditions for taking benefit under the Notification are also to be strictly interpreted. When the wordings of Notification is clear, then the plain language of the Notification must be given effect to. By way of an interpretation or construction, the Court cannot add or substitute any word while construing the Notification either to grant or deny exemption. The Courts are also not expected to stretch the words of Notification or add or subtract words in order to grant or deny the benefit of exemption Notification. In *Bombay Chemicals (P) Ltd. v. CCE* - (1995) Supp (2) SCC 646, a three Judge Bench of this Court held that an exemption Notification should be construed strictly, but once an article is found to satisfy the test by which it falls in the Notification, then it cannot be excluded from it by construing such Notification narrowly".*

**40.3.6** I find that the benefit of exemption Notification should not be extended to circumvent any goods and should not be elastically stretched to cover goods that may not fall under its scope. The decision of the Hon'ble Apex Court in the case of ***Commissioner of Customs (Import), Mumbai vs. Dilip Kumar & Company, reported as 2018 (361) ELT 577 (SC)***, is relied upon, wherein it has been held that exemption Notifications should be interpreted strictly. The burden of proving applicability lies with the assessee, who must show that their case falls within the parameters of the exemption clause or exemption Notification. In cases of ambiguity, the benefit shall favor the state; however, in a taxing statute, any ambiguity generally benefits the assessee. In a prior decision, in ***Tata Iron & Steel Co. Ltd. vs. State of Jharkhand, reported as (2005) 4 SCC 272***, the two-judge bench of the Hon'ble Supreme Court established that eligibility clauses related to exemption Notifications must be interpreted strictly. Following ***Novopan India Ltd. vs. Collector of C. Ex. and Customs, Hyderabad, reported as 1994 (73) ELT 769 (SC)***, it was held that "the principle that if a provision of fiscal statute is unclear, an interpretation favoring the assessee may be adopted, does not apply to exemption Notifications; it is for the assessee to demonstrate that they fall within the purview of the exemption." This view was recently affirmed by the Hon'ble Apex Court in the case of ***L.R. Brothers Indo Flora Ltd. vs. Commissioner of Central***

**Excise, reported as 2020 (373) ELT 721 (SC).** Summarizing, it is evident that the importer has wrongly availed the benefit of the exemption from basic customs duty by incorrectly claiming the benefit under Notification No. 25/1999.

**40.3.7** Further, I find that the importer in their submission dated 05.07.2024 and during the statement dated 10.04.2023 have submitted that impugned goods viz. Backsheet/Solar Backsheet as declared by them in the Bills of Entry is known as 'multi layered sheet with Tedlar base' but no evidence is produced by the importer that the impugned goods is having Tedlar base. Onus always remain on the assessee who want to avail the benefit of exemption Notification. Importer failed to satisfy that their goods falls within four corner of description as mentioned in Table 3 of the Notification No. 25/1999-Cus dated 28.02.1999. I rely on the ratio of decision of Hon'ble Supreme Court rendered in case of **B.P.L. Limited Vs. Commissioner reported in 2015 (324) E.L.T. A79 (S.C.)** wherein it has been held that "*exemption Notification require strict interpretation with onus on assessee to establish that he has fulfilled all conditions mentioned in Notification*". The review petition filed by M/s BPL Ltd. was dismissed by the Supreme Court, as reported in 2015 (324) ELT A79 (S.C.).

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

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

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

**40.3.9** Further, I also rely on the decision of Hon'ble Supreme Court in **V.L.S. Finance Ltd. v. Union of India, reported in (2013) 6 SCC 278**, wherein at Paragraph 18, the Hon'ble Supreme Court, held as follows :

*"As is well settled, while interpreting the provisions of a statute, the court avoids rejection or addition of words and resort to that only in exceptional circumstances to achieve the purpose of Act or give purposeful meaning. It is also a cardinal rule of interpretation that words, phrases and sentences are to be given their natural, plain and clear meaning. When the language is clear and unambiguous, it must be interpreted in an ordinary sense and no addition or alteration of the words or expressions used is permissible. As observed earlier, the aforesaid enactment was brought in view of the need of leniency in the*

*administration of the Act because a large number of defaults are of technical nature and many defaults occurred because of the complex nature of the provision."*

**40.4.** In their defense, the Noticee contended that in case of "Solar Cells", the SCN dated 29.02.2024 was issued based on warehouse Bills of Entry and customs duty becomes payable only at the time of filing Ex-bond Bills of Entry for home consumption. The Noticee also asserted that, in their corresponding home consumption Bills of Entry, they had not claimed the benefit of Notification No. 24/2005-Customs dated 01.03.2005, instead, the goods were cleared upon payment of the applicable duty at the merit rate; that the assessments in respect of these Bills of Entry had been completed under Section 17 of the Customs Act, 1962, without making any claim for duty benefit under Notification No. 24/2005. The noticee also contended that in case of import of "Aluminium Frame", they had not availed benefits under Notification No. 25/1999-Cus dated 18.02.1999; the assessment in the Bills of Entry (assessed / reassessed) under Section 17 of the Customs Act, 1962 was done without availing benefit of Notification No. 25/1999. From the contentions raised by the Noticee, I note that there is no ambiguity that the benefit of Sr. No. 38A of Notification No. 24/2005-Cus dated 01.03.2005 and benefit of Sr. No. 18 of Notification No. 25/1999-Cus dated 18.02.1999 was not available to them and moreover, they have also not disputed the applicability of the duty liability on the imported Solar Cells & Aluminium frames. With respect to the noticee's contention that they have not availed the benefit of Sr. No. 38A of Notification No. 24/2005-Cus dated 01.03.2005, from the Annexure-A to the Show Cause Notice, I find that the importer had imported "Solar Cells" under the Customs Tariff Heading 85414200 and filed 9 Bill of Entries for warehouse as well as for home consumption. I further find that out of these 09 bills of entries, there are two ex-bond bills of entries i.e. 8662506 dated 13.05.2022 and 8777169 dated 21.05.2022, which have already been cleared by the importer after availing benefit of exemption Notification No. 24/2005-Cus dated 01.02.2005. Further, the Noticee on these two bills of entries paid the differential customs duty during the course of investigation. I find that in case of ex-bond bill of entry No. 8847863 dated 26.05.2022, the importer also initially availed the benefit of the said Notification. Notably, in this instance as well, the importer made payment of the differential duty only after the DRI initiated the investigation. Further, from Annexure-A to the Show Cause Notice, I find that the Noticee has filed the warehouse bills of entries by availing benefit of exemption Notification No. 24/2005-Cus dated 01.02.2005. I also note that these bills of entries were filed prior to the initiation of the investigation by the DRI against the Noticee and the noticee in their home consumption bill of entries have paid the applicable customs duties. I find that the Noticee themselves admitted that they claimed the benefit of exemption Notification No. 24/2005-Cus dated 01.02.2005 in their warehouse bills of entries. Therefore, it is clear that the noticee with intent to evade customs duty has availed the benefit of Notification No. 24/2005-Cus dated 01.02.2005 in respect to import of "Solar Cells", which was actually not available to them, however, as the DRI has initiated the investigation against the Noticee, they paid the applicable duties. Further, from Annexure-B to the Show Cause Notice (SCN), I find that the importer had imported "Solar Aluminium

Frames" under the Customs Tariff Heading 76109010 and filed following 04 Bills of Entry for home consumption.

Sr. No.	BE Number	BE Date	Quantity	UQC	Unit Price	Itemwise Ass Value (Rs)	Duty already paid (In Rs)			
							BCD	SWS	IGST	TOTAL
1	8778310	21/05/2022	200	PCS	3.92	64352	0	0	11583	11583
2	8778310	21/05/2022	200	PCS	1.53	25117	0	0	4521	4521
3	8811798	24/05/2022	16800	PCS	3.92	5405536	0	0	972997	972997
4	8811798	24/05/2022	16800	PCS	1.53	2109814	0	0	379767	379767
5	9017028	08/06/2022	51000	PCS	4.52	18562322	0	0	3341218	3341218
6	9017028	08/06/2022	51000	PCS	1.93	7925947	0	0	1426671	1426671
7	9159107	17/06/2022	100000	PCS	4.341	35238268	0	0	6342888	6342888
8	9159107	17/06/2022	100000	PCS	1.86	15098636	0	0	2717755	2717755
						84429992			15197399	15197399

From the above facts, it is evident that the importer filed all the aforementioned Bills of Entry for import of "Aluminium Frame", prior to the initiation of the investigation, which commenced on 27.06.2022, the date when the first summons was issued to the importer. I further find that under Section 17 of the Customs Act, 1962, it is stipulated that an importer entering any goods under Section 46 of the Act is required to self-assess the duty, if any, leviable on such goods. In compliance with this provision, the importer self-assessed the duty for the above-mentioned Bills of Entry and filed ex-bond Bills of Entry, availing the benefits of Notification No. 25/1999-Cus dated 28.02.1999. Through this Notification, the importer availed the exemption from customs duty as well as Social Welfare Surcharge (SWS) for the goods mentioned in these Bills of Entry. Furthermore, from the examination of the Bills of Entry, I find that the importer paid the self-assessed duty, prior to the initiation of the investigation and differential duty during the investigation. Further, I find that once the Bills of Entry for home consumption are filed in accordance with Regulation 4(2) of the Electronic Integrated Declaration and Paperless Processing Regulations, 2018 (referred to as "the said Regulations"), the process of self-assessment is deemed complete, and the duty becomes payable as per Section 15(1)(a) or (b) of the Customs Act, 1962. In this regard, I rely on the decision of Hon'ble Supreme Court in ***Union of India & Ors. v. M/s G.S. Chatha Rice Mills & Anr. 2020 as reported in SCC Online SC 770 = 2020 (374) E.L.T. 289 (S.C.).*** Relevant para of the said judgement is reproduced hereunder:

*"41. The Regulations of 2018 have made provisions for submission of a declaration and generation of the bill of entry in an electronic form on the automated platform provided by the Central Board of Indirect Taxes and Customs. Sub-regulation (2) of Regulation 4 embodies a legal fiction. Regulation 4(2) stipulates that the bill of entry is deemed to have been filed and self-assessment completed when after the entry of the electronic integrated declaration on the customs automated system (or by data entry through a service centre) a bill of entry number is generated by the Indian Customs Electronic Data Interchange ("EDI") System. The self-assessed copy of the bill of entry may be electronically transmitted to the authorized person under the deeming fiction which is created by Regulation 4(2). Hence, the bill of entry is deemed to be filed and the self-assessment completed when the requirements of Regulation 4(2) are fulfilled namely by the (i) entry of the declaration on the customs automated system; and (ii) generation of a bill of entry number by the EDI*

system. Following this, the self-assessed copy of the bill of entry is electronically transmitted to the authorized person.

From the above, I note that the assessment of the bills of entries were deemed completed at the time of filing of ex-bond bills of entries and the importer has availed the benefit of the said Notification in these bills of entry. I further find that in case of import of "Aluminium Frame", the importer in various other bill of entry Nos. 7424114 dated 09.02.2022, 8069215 dated 30.03.2022, 8314861 dated 18.04.2022, and 8361743 dated 21.04.2022, did not claim the benefit of the said exemption Notification, instead, they cleared the goods on payment of applicable duties. The inconsistency in the Noticee's approach, where they chose not to claim the benefit of the exemption Notification No. 25/1999-Cus dated 28.02.1999 in some instances but availed it for similar goods in other instances, demonstrates a deliberate intention to evade payment of due customs duty. I find that this dual standard raises doubts about the bona fides of the importer and undermines their argument.

**40.5.** The Noticee, in their defense reply submitted via letter dated 05.07.2024 and reiterated during the personal hearing, contended that the impugned Show Cause Notice (SCN) has incorrectly applied Integrated Goods and Services Tax (IGST) at the rate of 18% for computing the duty on the import of solar cells. Additionally, the SCN failed to specify the Schedule entry under which the solar cells were classified for IGST duty computation. The Noticee further argued that the applicable IGST rate on solar cells (classified under CTH 8541 4200) is 12%, as provided under Schedule II, entry 201A of the GST Act, in accordance with **Notification No. 001/2017, as amended by Notification No. 08/2021 dated 30.09.2021**. For better understanding of the facts, I would like to reproduce the relevant extract of the schedule entry hereunder:

**Notification No. 8/2021-Central Tax (Rate) New Delhi, the 30th September, 2021**

G.S.R. ....(E).- In exercise of the powers conferred by sub-section (1) of section 9 and subsection (5) of section 15 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the Notification of the Government of India in the Ministry of Finance (Department of Revenue), No.1/2017-Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 673 (E), dated the 28th June, 2017, namely:-

In the said Notification, -

(b) in Schedule II – 6%, -

(iv) after S. No. 201 and the entries relating thereto, the following S. No. and entries shall be inserted, namely: -

**Table-I (Schedule II – 12%)**

<b>Sr. No</b>	<b>Chapter Heading</b>	<b>Description of goods</b>
201A	84, 85 or 94	Following renewable energy devices and parts for their manufacture:- (a) Bio-gas plant; (b) Solar power based devices; (c) Solar power generator;

		(d) Wind mills, Wind Operated Electricity Generator (WOEG); (e) Waste to energy plants / devices; (f) Solar lantern / solar lamp; (g) Ocean waves/tidal waves energy devices/plants; (h) <b>Photo voltaic cells, whether or not assembled in modules or made up into panels.</b>
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From the above, I find that the GST was applicable @12% on import of solar cells. I further find that in the Show Cause Notice in Annexure-A, the duty is calculated as under:

**Table-II (Calculation of duty liability on import of Solar Cells)**

Sr No	BE Number	BE Date	Quantity	Unit Price	Ass Value	Duty Payable			
						BCD (25%)	SWS (0.10%)	IGST (18%)	TOTAL
1	8662506	13/05/2022	73	1.18	6760	1690	169	1551	3410
2	8714433	17/05/2022	8690	1.16	782489	195622	19562	179581	394766
	8714433	17/05/2022	5033	1.17	454987	113747	11375	104420	229541
	8714433	17/05/2022	16720	1.17	1517583	379396	37940	348285	765621
	8714433	17/05/2022	85052	1.18	7759861	1939965	193997	1780888	3914850
	8714433	17/05/2022	153314	1.18	14043629	3510907	351091	3223013	7085011
	8714433	17/05/2022	17820	1.19	1638664	409666	40967	376073	826706
	8715597	17/05/2022	72710	1.22	7087781	1771945	177195	1626646	3575786
3	8715597	17/05/2022	89760	1.22	8749818	2187454	218745	2008083	4414283
	8715597	17/05/2022	91520	1.22	8921383	2230346	223035	2047457	4500838
	8715597	17/05/2022	114400	1.22	11151728	2787932	278793	2559322	5626047
	8715597	17/05/2022	27135	1.22	2645124	661281	66128	607056	1334465
	8724316	18/05/2022	158070	1.26	15428543	3857136	385714	3540851	7783700
5	8747919	19/05/2022	82720	1.25	7975717	1993929	199393	1830427	4023749
	8747919	19/05/2022	126720	1.25	12282824	3070706	307071	2818908	6196684
	8747919	19/05/2022	29920	1.24	2862287	715572	71557	656895	1444024
	8747919	19/05/2022	51040	1.24	4902075	1225519	122552	1125026	2473097
	8747919	19/05/2022	3520	1.25	341206	85302	8530	78307	172139
	8747919	19/05/2022	122352	1.26	11907339	2976835	297683	2732734	6007253
6	8777169	21/05/2022	7200	1.19	676829	169207	16921	155332	341460
7	8847863	26/05/2022	692800	1.19	65125979	16281495	1628149	14946412	32856057
8	8856309	27/05/2022	184320	1.20	17748041	4437010	443701	4073175	8953887
9	9471518	08-07-2022	403127	1.18	37330464	9332616	933262	8567342	18833219
Total				241341112	60335278	6033528	55387785	121756591	
Already Paid					0	0	82031	82031	
Total Payable					60335278	6033528	55305754	121674560	

From the above table, I observe that the differential IGST duty was calculated at the rate of 18%. However, I note that the Government, through Notification No. 08/2021 dated

30.09.2021, amended the applicability of IGST on solar cells as indicated in Table-I above. Accordingly, IGST at the rate of 12% became applicable on the import of solar cells with effect from 01.10.2021. Since all the bills of entry pertain to a period after 01.10.2021, I find that IGST was payable at the rate of 12%, not 18%, as alleged in the SCN. Taking this into consideration, I note that the actual IGST applicable in the present case is summarized as per the table below:

**Table-III (Calculation of duty liability on import of Solar Cells)**

<b>Description</b>		<b>Amount in Rs.</b>
Assessable Value	A	24,13,41,111
Basic Customs Duty @ 25%	B	6,03,35,277
SWS @ 10 of BCD	C	6,033,527
IGST @ 12%	D	3,69,25,189
Total Duty payable	E = B+C+D	10,32,93,996
IGST paid prior to investigation	F	82,031
<b>Total Payable</b>	<b>G = E-F</b>	<b>10,32,11,965</b>

From the Table-II & III above, I find that there is an excess demand of IGST of Rs. 1,84,62,595/- (IGST of Rs. 5,53,87,785/- calculated @ 18% - IGST of Rs. 3,69,25,190/- calculated @ 12%) in the SCN and the same is liable to be dropped.

**40.6.** The Noticee also contended that they paid the duty *suo motu*. In this regard, I note that the importer paid the differential duty on the said imported goods only after the initiation of the investigation. This fact was corroborated by the confirmatory statement of the Senior General Manager of the Noticee, who admitted that the differential customs duty, along with applicable interest, was paid after the initiation of the investigation by the Directorate of Revenue Intelligence (DRI). This clearly indicates that the differential payment was not made voluntarily but rather in response to the DRI investigation and the claim of the Noticee is not sustainable. I further note that if there had been no intent to evade duty, the Noticee would have consistently claimed or refrained from claiming the exemption under the Notification across all Bills of Entry, rather than selectively doing so. Therefore, I reject the contention of the noticee.

**40.7.** From the facts discussed above, I find that it is clear and discernible that the Noticee has availed the benefit of Sr. No. 38A of Notification No. 24/2005-Cus dated 01.03.2005 on import of "Solar Cells" and benefit of Sr. No. 18 of Notification No. 25/1999-Customs dated 28.02.1999 on import of "Aluminium Frame" and it is only after the investigation initiated by the DRI, that the Noticee has withdrawn this claim and paid the applicable duty. I, therefore, find and hold that the importer is not eligible to avail the benefit of Sr. No. 38A of Notification No. 24/2005-Cus dated 01.03.2005 on import of "Solar Cells", and the applicable Customs Duty of Rs. 10,32,11,965/- is liable to be recovered alongwith applicable interest and penalty, as the exemption Notification was not applicable to the importer for the said impugned goods vi "Solar Cells". Further, as the Noticee has paid the amount of Rs. 10,32,11,965/- alongwith applicable interest of Rs. 27,815/-, the same is liable to be appropriated. I, therefore, find and hold that

the importer is not eligible to avail the benefit of Sr. No. 18 of Notification No. 25/1999- Customs dated 28.02.1999 in this case, and the applicable Customs Duty of Rs. 1,09,59,014 is liable to be recovered alongwith applicable interest and penalty, as the exemption Notification was not applicable to the importer for the said imported goods. Further, as the Noticee has paid the amount of Rs. 1,09,59,014/- alongwith applicable interest of Rs. 35,621/-, the same is liable to be appropriated.

**40.7.1** From the facts discussed above, I find that it is clear and discernible that M/s Goldi Sun Private Limited is directly considering their imported goods under column 3 of Sr. No. 18 in Notification No. 25/1999-Cus dated 28.02.1999, which provides an exemption from Basic Customs Duty for "**tedlar coated aluminium sheet; multilayered sheets with tedlar base**" only, however, their product i.e. "Backsheet" is other than the goods exempted by the said Notification. I, therefore, find and hold that the importer is not eligible to avail the benefit of Sr. No. 18 of Notification No. 25/1999-Cus dated 28.02.1999 for the goods covered under Bills of Entry as mentioned in Annexure-C to the Show Cause Notice dated 29.02.2024, and the applicable Customs Duty of Rs. 1,08,97,904/- is liable to be recovered alongwith applicable interest and penalty, as the exemption Notification was not applicable to the importer for the said imported goods.

**40.8.** I also find that Shri Alpesh Dave, Senior General Manager of M/s Goldi Sun Private Limited, in his statement dated 10.04.2023, on being specifically questioned, admitted that they had availed the benefits of Notification No. 24/2005-Customs as amended vide Notification No. 15/2022-Customs dated 01.02.2022, even after its effective date of implementation of amending Notification i.e., 01.04.2022. I also find that he agreed and confirmed that the imported goods i.e. "Solar Cells" were not eligible for the exemption benefits on solar photovoltaic cells, as the exemption on these items was withdrawn vide Notification No. 15/2022-Customs dated 01.02.2022. I further find that in his statement, he accepted the duty liability on import of solar cells and during investigation they have paid an amount of Rs. 10,32,11,966/- towards their duty liability alongwith applicable interest of Rs. 27,815/- on import of Solar Cells. Shri Aplesh Dave further on being asked specifically about the BoEs filed by claiming the benefits of Notification No. 25/1999-Customs dated 28.02.1999, as amended, accepted that they had filed the BoEs claiming benefits of this Notification for the import of **aluminium frame**. He further admitted that the wrong availment of Notification benefits had happened due to a lack of clarity on the issue, however, when they got clarity, they were of the opinion that the benefits of Notification No. 25/1999-Customs did not apply to the aluminium frame and admitted the corresponding duty liability. I further find that in his statement he confirmed that during the investigation and after discussion with the DRI authorities they have paid the differential duty liability of Rs. 1,09,59,014/- alongwith applicable interest of Rs. 35,621/-. In light of the facts admitted by the Senior General Manager of the importer, it transpires that there is no ambiguity that benefit of the said Notifications were not available to their imported goods, and they had wrongly availed the benefit of the said Notifications.

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

**40.10.** As regard proposal in the show cause notice for demand of differential Customs Duty along with applicable interest, I find that the Senior General Manager of the Noticee in his statement admitted that they were not eligible for the benefit of Sr. No. 18 of Notification No. 25/ 1999-Customs dated 28.02.1999 for import of "Aluminium Frame" and benefit of Sr. No. 38A of Notification No. 24/2005-Cus dated 01.03.2005 for import of "Solar Cells". The Noticee randomly in their bills of entries filed for import of "Aluminium Frame" has taken benefit of the said Notification and in some bills of entries, they have made payment of applicable custom duties, which clearly indicates that they were not eligible to claim the benefit of the said Notification. Further, as the noticee admitted their duty liability and paid the same, I find that it is crystal clear that there is no ambiguity that the benefit of Sr. No. 38A of Notification No. 24/2005-Cus dated 01.03.2005 was not available to import of "Solar Cells" and benefit of the Sr. No. 18 of Notification No. 25/1999-Customs dated 28.02.1999 was not available to import of "Aluminium Frame". Further, I find that the noticee was fully aware about the facts that the 'backsheet/ Solar backsheet', are different articles from tedlar coated aluminium sheet; multilayered sheets with tedlar base and exemption benefit of Sr. No. 18 of Notification No. 25/1999-Cus dated 28.02.1999, as amended, was not admissible to 'backsheet/ Solar backsheet' imported by them. From the facts available on record and the deposition of the concerned persons of the importer, the facts reveal that the noticee has knowingly and deliberately availed the benefit of exemption Notification No. 24/2005-Cus dated 01.03.2005 for import of "Solar Cells", Notification No. 25/1999-Cus dated 28.02.1999, as amended on import of "Aluminium Frame" as well as "Backsheet/Solar Backsheet". I, therefore, find and hold that the total differential Duty

amounting to Rs. 12,50,68,882/- is recoverable from M/s. Goldi Sun Private Limited under the provisions of Section 28 of the Customs Act, 1962.

**40.11.** The importer has contended that when they are not liable to pay any duty under the provisions of Section 28 of the Customs Act, 1962 for the reasons mentioned already in detail, then the question to pay the interest does not arise. In this regard, I find that, as elaborated in the preceding paragraphs, I have already held that the duty in the present case is recoverable from the importer under the provisions of Section 28(4) of the Customs Act, 1962. Further, Section 28AA of the Customs Act, 1962, provides that where a person is liable to pay duty in accordance with the provisions of Section 28, such person shall, in addition to the duty, be liable to pay interest at the applicable rate. The said section mandates automatic payment of interest along with the duty confirmed or determined under Section 28. In light of the foregoing paras, I have already held that the customs duty amounting to Rs. 12,50,68,882/- (Rs. 10,32,11,965/- on Solar Cells + Rs. 1,08,97,904/- on backsheet) is recoverable under Section 28(4) of the Customs Act, 1962. Therefore, I hold that the differential customs duty of Rs. 12,50,68,882/- is to be demanded and recovered as determined under Section 28(8) of the Customs Act, 1962, along with applicable interest, as provided under Section 28AA of the Customs Act, 1962.

**41.** In the present case, M/s. Goldi Sun Pvt. Ltd. has contended that invocation of Section 28(4) of the Customs Act, 1962, is not applicable on the grounds that there was no suppression of facts or collusion on their part; that they have paid the duty on importation of Solar Panels and Aluminium Frame at the time of clearance of the goods; that in instances where a discrepancy in duty payable arose due to an error, the Noticee has, of their own volition, remitted the outstanding differential duty along with the applicable interest; that the allegations stem from the department's reliance on incorrect documents i.e. warehouse bills of entries; that with regard to the Backsheet, Noticee believes that the same is exempted from duty under Notification 25/1999; that when full duty has been paid at the time of clearing the goods for home consumption, the allegation of suppression of fact with intent to evade duty cannot survive. They also contended that they have paid the duty with applicable interest and therefore there is no willful or malafide intention to evade the duty in the present case, which is mandatory condition in case of Section 28(4) of the Customs Act, 1962. Upon examination of the facts, I note that the importer had subscribed to a declaration as to the truthfulness of the contents of the Bills of Entry in terms of Section 46(4) of the Customs Act, 1962 in all their import consignments. Further, consequent upon the amendments to Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-Assessment' has been introduced in Customs. Section 17 of the Customs Act, 1962 effective from 08.04.2011, provides for self-assessment of duty on imported goods by the importer by filing a Bill of Entry, in the electronic form. Section 46 of the Customs Act, 1962 makes it mandatory for the importer to make an entry for the imported goods by presenting a Bill of Entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulation, 2018 (issued under Section 157 read with Section 46 of the Customs Act, 1962), the Bill of Entry shall be

deemed to have been filed and self-assessment of duty completed when, after entry of the electronic declaration in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service center, a Bill of Entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under the scheme of self-assessment, it is the importer who has to doubly ensure that he declares the correct description of the imported goods, their correct classification, the applicable rate of duty, value, and benefit of exemption Notification claimed, if any, in respect of the imported goods while presenting the Bill of Entry. I note that with the introduction of self-assessment by amendment to Section 17, w.e.f. 8<sup>th</sup> April 2011, it is the added and enhanced responsibility of the importer to declare the correct description, value, Notification, etc. and to correctly determine and pay the duty applicable in respect of the imported goods. Further, in the self-assessment regime, the onus is on the importer to correctly mention the applicable Notifications and pay applicable duties. In the instant case, it is apparent that the importer was aware that they were not eligible to claim the benefit of Sr. No. 38A of Notification No. 24/2005-Cus dated 01.03.2005 for import of "Solar Cells", Sr. No. 18 of Notification No. 25/1999-Cus dated 28.02.1999, as amended on import of "Aluminium Frame" as well as "Backsheet/Solar Backsheet". The inconsistency in the Noticee's approach, where they chose not to claim the benefit of the exemption Notification No. 25/1999-Cus dated 28.02.1999 in some instances but availed it for similar goods in other instances, demonstrates a deliberate intention to avoid customs duty. I find that this dual standard confirms that the noticee was very well aware about the non-applicability of the said Notification on the "Aluminium Frame" as well as "Backsheet/Solar Backsheet". I also note that in some cases, prior to the investigation initiated by the DRI, the importer has cleared the imported goods i.e. "Solar Cells" by availing benefit of Sr. No. 38A of Notification No. 24/2005-Cus dated 01.03.2005, however, which was actually not applicable to their imported goods. I further find that they have also filed warehouse bill of entries by mis-declaring the details in their bills of entries regarding availment of exemption Notification, which was actually not available to them. I note that there is no ambiguity that the benefit of the exemption under Sr. No. 18 of Notification No. 25/1999-Cus dated 28.02.1999, as amended, for import of "Aluminium Frame" and Sr. No. 38A of Notification No. 24/2005-Cus dated 01.03.2005 for import of "Solar Cells" was not available to the Noticee. Notwithstanding this, I find that the importer knowingly and deliberately availed the benefit of the said Notifications, by mis-declaring in their bills of entries regarding applicability of the said Notifications with malafide intention to evade payment of customs duty at the appropriate rate. This constitutes a willful mis-declaration and suppression of facts with an intent to evade duty, thereby justifying the invocation of the extended period of limitation under Section 28(4) of the Customs Act, 1962. In view of the above, I find that in the present case, the contentions raised by the importer are devoid of merit, and extended period under Section 28(4) has been rightly invoked in the SCN. Consequently, I find that the ratio of judicial precedents relied upon by the Noticee are inapplicable to the facts of the present case.

**42. Whether the goods valued at Rs. 40,97,30,305/- imported by M/s. Goldi Sun Private Limited are liable for confiscation under Section 111(m) of the Customs Act, 1962?**

**42.1** The present Show Cause Notice also proposes for the confiscation of the imported goods valued at Rs. 40,97,30,305/- under the provisions of Sections 111(m) of the Customs Act, 1962.

**42.2** As discussed in paras supra, the noticee has imported the impugned goods i.e. "Backsheet/Solar Backsheet" by wrongly availing the benefit of Sr. No. 18 of Notification No. 25/1999-Cus dated 28.02.1999, as amended, (by paying NIL BCD) instead of paying Customs Duty at the rate of 25% BCD and 10% SWS and by way of adopting this modus in respect of impugned goods, they had got cleared goods valued at **Rs. 8,39,59,201/-** from various ports without paying Customs Duty at applicable rate. Further, they have also imported the impugned goods i.e. "Aluminium Frame" by wrongly availing the benefit of Sr. No. 18 of Notification No. 25/1999-Cus dated 28.02.1999, as amended, in their ex-bond bill of entries with an intention to evade payment of duty, however, after initiation of the investigation they have cleared the goods amounting to **Rs. 8,44,29,992/-** with payment of applicable duty with interest. The importer also imported goods i.e. "Solar Cells" by wrongly availing the benefit of Sr. No. 38A of Notification No. 24/2005-Cus dated 01.03.2005, as amended, (by paying NIL BCD) instead of paying Customs Duty at the rate of 25% BCD and 10% SWS and by way of adopting this modus in respect of impugned goods, they had got cleared goods valued at **Rs. 6,83,589/-** from various ports without paying Customs Duty at applicable rate. I find that the importer, in their warehouse bills of entry, claimed the benefit of Notification No. 24/2005-Cus dated 01.03.2005. However, after the initiation of investigation by the Directorate of Revenue Intelligence (DRI), the importer subsequently did not claim this benefit in their ex-bond bills of entry. Merely stating that they did not claim the benefit of the Notification in their subsequent ex-bond bills of entry does not absolve the Noticee of their intent to evade Customs duty. The timing of their payment, which occurred only after the initiation of the investigation by the DRI, strongly supports the conclusion that the payment was not voluntary but rather a result of enforcement action. This further underscores their mala fide intention to evade Customs duty by deliberately availing themselves of a benefit to which they were not entitled. They have cleared the impugned goods i.e. "Solar Cells" amounting to **Rs. 24,06,57,523/-** through various ports and paid the applicable duty only after initiation of the investigation by the DRI. Thus M/s. Goldi Sun Private Limited has deliberately and knowingly indulged in suppression of facts in respect of their imported goods and has wilfully and wrongly availed the benefit of specific entries of the aforementioned Notifications which were not available to them, with an intent to evade payment of Customs Duty. Section 111 (m) of the Customs Act, 1962 provides for confiscation of any imported goods which do not correspond in respect of value or in any other particular with the entry made under this Act. In this case, the importer has resorted to wrong availment of benefit of the specific entry of the Notification as mentioned above in the Bills of Entry filed by them with an

intention to avoid Customs Duty liability that would have otherwise accrued to them. Thus, provisions of Section 111(m) of the Customs Act, 1962 would come into picture. I thus find that wilful and wrong availment of the benefit of the specific entries of the aforementioned Notifications by M/s. Goldi Sun Private Limited has rendered the impugned goods liable for confiscation under Sections 111(m) of the Customs Act, 1962. I, therefore, hold the goods valued at **Rs. 40,97,30,305/- (Rupees Forty Crore, Ninety Seven Lakh, Thirty Thousand, Three Hundred and Five only)** liable to confiscation under the provisions of Sections 111(m) *ibid*. Further, the aforementioned goods are not physically available for confiscation, and in such cases, redemption fine is imposable in light of the judgment in the case of **M/s. Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad) wherein the Hon'ble High Court of Madras** has observed as under:

*The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act ....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).*

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

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

“23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section

(2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii)."

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

**42.4** The Importer, M/s. Goldi Sun Private Limited, has contended that the impugned goods are not liable for confiscation under Section 111(m) of the Customs Act, 1962, on the grounds that there has been no miss-declaration in the documents such as Bills of Entry filed by them at the time of clearance of goods; that in the present case, since the goods had already been cleared for home consumption, they did not fall within the ambit of "imported goods" and therefore, fall outside the ambit of Section 111(m) of the Act; that the question of confiscating the goods would not arise if there are no goods available for confiscation nor consequently redemption; that once goods cannot be redeemed no fine can be imposed. The Importer has also relied on judicial decisions to support their contention. In this regard, I find that as discussed in the preceding paragraphs, it is clear that the importer was fully aware that they were not eligible to avail the benefit of Notification No. 24/2005-Cus dated 01.03.2005 and Customs Notification No. 25/1999-Cus dated 28.02.1999, as amended. Despite this, they willfully availed the full exemption from Basic Customs Duty (BCD) by importing "Backsheet/Solar Backsheet" under the guise of "Tedler Backsheet." They have also availed the benefit of the exemption Notification in their warehouse bills of entries filed for import of "Solar Cells". They have also availed the benefit of exemption Notification on import of "Aluminium Frames", however, they have left this claim only after initiation of the investigation by the DRI. Furthermore, it is pertinent to note that misuse of the said Notifications would not have come to light had the departmental officers not initiated an investigation into the matter. M/s. Goldi Sun Private Limited suppressed material facts by mis-declaring that the imported "Solar Cells," "Aluminium Frame," and "Backsheet/Solar Backsheet" were exempt from customs duty, which clearly establishes *mens rea* on the part of the Importer to evade payment of Customs Duty. As elaborated earlier, Section 111(m) of the Customs Act, 1962, is rightly applicable in this case, as M/s. Goldi Sun Private Limited wrongfully availed the benefit of Sr. No. 38A of Notification No. 24/2005-Cus dated 01.03.2005 and Sr. No. 18 of Notification No. 25/1999-Cus dated 28.02.1999, as

amended and, which was not available to them, with intent to evade the customs duty otherwise payable. In view of the foregoing, I find that the contentions raised by M/s. Goldi Sun Private Limited are devoid of legal merit, and the judicial precedent relied upon by them is not applicable to the facts and circumstances of the present case.

**43. Whether M/s. Goldi Sun Private Limited is liable for penalty under Section 114A of the Customs Act, 1962 ?**

The Show Cause Notice proposes penalty under the provisions of Section 114A of the Customs Act, 1962 on the noticee. The Penalty under Section 114A can be imposed only if the Duty demanded under Section 28 *ibid* by alleging wilful mis-statement or suppression of facts etc. is confirmed/determined under Section 28(4) of the Customs Act, 1962. As discussed in the foregoing paras, M/s. Goldi Sun Private Limited has deliberately and knowingly indulged in suppression of facts in respect of their imported product and has wilfully and wrongly availed the benefit of specific entry of Notification No. 25/1999-Cus dated 28.02.1999, as amended and Notification No. 24/2005-Cus dated 01.03.2005 (by paying NIL BCD) which was not available to them with an intention to avoid the Customs Duty liability that would have otherwise accrued to them. I have already held that the differential Customs Duty of **Rs. 12,50,68,882/- (Rs. 10,32,11,965/- on Solar Cells + Rs. 1,08,97,904/- on backsheet) (Rupees Twelve Crore, Fifty Lakh, Sixty Eight Thousand, Eight Hundred and Eighty Two Only)** is to be demanded and recovered from M/s. Goldi Sun Private Limited under the provisions of Section 28(4) of the Customs Act, 1962. As the provision of imposition of penalty under Section 114A *ibid* is directly linked to Section 28(4) *ibid*, I find that penalty under Section 114A of the Customs Act, 1962 is to be imposed upon M/s. Goldi Sun Private Limited.”

**44. Whether M/s. Goldi Sun Private Limited is liable for penalty under Section 112 of the Customs Act, 1962:**

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

**45. Whether M/s. Goldi Sun Private Limited is liable for penalty under Section 114AA of the Customs Act, 1962?**

**45.1** The Show Cause Notice also proposes Penalty under Section 114AA of the Customs Act, 1962 on M/s. Goldi Sun Private Limited. The importer contended that Section 114AA is not applicable on the importer because the importer had no intention to hide

the facts or to evade the payment of custom duty. They further contended that the penalty under section 114AA ibid can be invoked only when the person knowingly or intentionally makes any declaration which is false or incorrect. As discussed in the foregoing paras, it is evident that despite knowing the actual facts of the imported goods, the noticee had knowingly and intentionally made, signed or used the declaration, statements and/or documents and presented them to the Customs Authorities which were found incorrect in as much as the exemption Notification was not available to the imported goods. Therefore, contention of the noticee does not hold water and I reject the same. I therefore find and hold that for this act on the part of M/s. Goldi Sun Private Limited, they are liable for penalty in terms of the provisions of Section 114AA of the Customs Act, 1962.

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

**46.** The SCN also propose penalty on Shri Alpesh Dave under Section 112(a)(ii) and Section 114AA of the Customs Act, 1962. The Noticee in his defence submitted that there is no evidence of any forgery committed by him in the present case. Further, he submitted that he has voluntarily submitted all the documents as and when DRI, Jaipur sought the information, thus the question of forgery/ mis-declaration/ mis-statement/ suppression does not arise and penalty is not applicable under Section 112(a)(ii) and Section 114AA of the Customs Act, 1962 on the noticee. In this regard, I note that Shri Alpesh Dave was working as Senior General Manager in M/s Goldi Sun Private Limited and he was responsible for import-export-related work including classification and any Notification-related compliance. I also find that he was the main person under whose supervision the EXIM team used to look after the finalization of import/export documents, their classification, and the application of exemption Notifications. I find that at several occasions they have made the payment of applicable import duties on their imported goods and in some cases, they have decided to avail the benefit of the said Notifications by willfully misstating that the goods were covered under the Notifications to evade the customs duty. I find that the responsibility for availing the benefit of exemption Notifications correctly was with Shri Alpesh Dave. As I have already held the subject goods are liable for confiscation under Section 111 of the Customs Act, 1962, therefore, I hold that for his acts and commissions, Shri Alpesh Dave is liable for penalty under Section 112(a)(ii) and Section 114AA of the Customs Act, 1962.

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

**:ORDER:**

- a) I deny the benefit of Customs Notification No. 24/2005-Cus dated 01.03.2005 (Sr. No. 38A) as claimed by them for exemption from payment of Customs Duty for import of "Solar Cells";
- b) I confirm the demand of differential Duty amounting to **Rs. 10,32,11,965/- (Rupees Ten Crore, Thirty Two Lakh, Eleven Thousand, Nine Hundred and Sixty Five Only)**, as discussed above in foregoing paras for wrong availment of exemption Notification no. 24/2005-Cus dated 01.03.2005 (Sr. No. 38A) as detailed in Annexure-A to the Notice with respect to the impugned goods imported through various ports under Section 28(4) of the Customs Act, 1962 and as the amount of differential duty of Rs. 10,32,11,965/- already paid by the importer, I order to appropriate the same towards their duty liability.
- c) I confirm the demand of interest of Rs. 27,815/- on the aforesaid demand of Duty confirmed at para 47 (b) above and order to appropriate the amount of Rs. 27,815/- already paid by the importer towards their interest liability in terms of Section 28AA of the Customs Act, 1962;
- d) I drop the demand of IGST of **Rs. 1,84,62,595/- (One Crore, Eighty Four Lakh, Sixty Two Thousand, Five Hundred and Ninety Five Only)** excess calculated @ 18% in place of @ 12% on import of Solar Cells as detailed in Annexure-A to the Notice;
- e) I deny the benefit of Customs Notification No. 25/1999-Cus dated 28.02.1999 (Sr. No. 18) as claimed by them for exemption from payment of Customs Duty for import of "Aluminium Frame";
- f) I confirm the demand of differential Duty amounting to **Rs. 1,09,59,013/- (Rupees One Crore, Nine Lakh, Fifty Nine Thousand, Thirteen Only)**, as discussed above in foregoing paras for non-applicability of exemption Notification no. 25/1999-Cus dated 28.02.1999 (Sr. No. 18) as detailed in Annexure-B to the Notice with respect to the impugned goods imported through various ports under Section 28(4) of the Customs Act, 1962 and as the amount of differential duty of Rs. 1,09,59,013/- already paid by the importer, I order to appropriate the same towards their duty liability
- g) I confirm the demand of interest of Rs. 35,621/- on the aforesaid demand of Duty confirmed at para 47 (f) above and order to appropriate the amount of Rs. 35,621/- already paid by the importer towards their interest liability in terms of Section 28AA of the Customs Act, 1962;
- h) I deny the benefit of Customs Notification No. 25/1999-Cus dated 28.02.1999 (Sr. No. 18) as claimed by them for exemption from payment of Customs Duty for import of "Backsheet";
- i) I confirm the demand of differential Duty amounting to **Rs. 1,08,97,904/- (Rupees One Crore, Eight Lakh, Ninety Seven Thousand, Nine Hundred and Four Only)**, as discussed above in foregoing paras for wrong availment of exemption Notification no. 25/1999-Cus dated 28.02.1999 (Sr. No. 18) as detailed in Annexure-C to the Notice with respect to the impugned goods imported through various ports and order recovery of the same from M/s Goldi Sun Private Limited under Section 28(4) of the Customs Act, 1962;

- j) I order to recover the interest on the aforesaid demand of Duty confirmed at para 47 (i) above as applicable in terms of Section 28AA of the Customs Act, 1962;
- k) I hold the goods imported during the period under consideration valued at Rs. **40,97,30,305/- (Rupees Forty Crore, Ninety Seven Lakh, Thirty Thousand, Three Hundred and Five only)** liable to confiscation under the provisions of Section 111(m) of the Customs Act, 1962. However, as the goods are not physically available for confiscation, I impose redemption fine of Rs. 4,00,00,000/- (Rupees Four Crore only) in lieu of confiscation under Section 125 of the Customs Act, 1962;
- l) I impose a penalty of **Rs. 10,32,11,965/- (Rupees Ten Crore, Thirty Two Lakh, Eleven Thousand, Nine Hundred and Sixty Five Only)** on M/s. Goldi Sun Private Limited plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed at 47 (b) above under Section 114A of the Customs Act, 1962. However, in view of the first and second proviso to Section 114A of the Customs Act, 1962, if the amount of Customs Duty confirmed and interest thereon is paid within a period of thirty days from the date of the communication of this Order, the penalty shall be twenty five percent of the Duty, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days;
- m) I impose a penalty of **Rs. 1,09,59,013/- (Rupees One Crore, Nine Lakh, Fifty Nine Thousand, Thirteen Only)** on M/s. Goldi Sun Private Limited plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed at 47 (f) above under Section 114A of the Customs Act, 1962. However, in view of the first and second proviso to Section 114A of the Customs Act, 1962, if the amount of Customs Duty confirmed and interest thereon is paid within a period of thirty days from the date of the communication of this Order, the penalty shall be twenty five percent of the Duty, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days;
- n) I impose a penalty of **Rs. 1,08,97,904/- (Rupees One Crore, Eight Lakh, Ninety Seven Thousand, Nine Hundred and Four Only)** on M/s. Goldi Sun Private Limited plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed at 47 (i) above under Section 114A of the Customs Act, 1962. However, in view of the first and second proviso to Section 114A of the Customs Act, 1962, if the amount of Customs Duty confirmed and interest thereon is paid within a period of thirty days from the date of the communication of this Order, the penalty shall be twenty five percent of the Duty, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days;
- o) I refrain from imposing any penalty on M/s. Goldi Sun Private Limited under Section 112 of the Customs Act, 1962;
- p) I impose a penalty of Rs. 25,00,000/- (Rs Twenty Five Lakh only) on M/s. Goldi Sun Private Limited under Section 114AA of the Customs Act, 1962;
- q) I impose a penalty of Rs. 10,00,000/- (Rs. Ten Lakh Only) on Shri Alpesh Dave, Senior General Manager of M/s Goldi Sun Private Limited under Section 112 (a) (ii) of the Customs Act, 1962.

r) I impose a penalty of Rs. 10,00,000/- (Rs. Ten Lakh Only) on Shri Alpesh Dave, Senior General Manager of M/s Goldi Sun Private Limited under Section 114AA of the Customs Act, 1962.

**48.** This order is issued without prejudice to any other action that may be taken under the provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.

**49.** The Show Cause Notice VIII/10-12/Commr./OA/ 2023-24 dated 29.02.2024 is disposed off in above terms.



24.12.2024

**(Shiv Kumar Sharma)**  
Principal Commissioner,  
Customs, Ahmedabad

**DIN- 20241271MN000055155F**  
F.No. VIII/10 - 12/Commr/OA/2023-24

Date: 24.12.2024

To,

1. M/s. Goldi SunPrivate Limited (IEC-AAICG2951R)  
1010, 10<sup>th</sup> floor, Infinity Tower, Nr. Railway Station, Lal Darwaja Surat, Gujarat-395008.
2. Shri Alpesh Dave, Senior General Manager, M/s. Goldi Sun Private Limited, 1009, 10th Floor, Infinity Tower, Nr. Railway Station, Surat, Gujarat-395003

**Copy to:**

- (1) The Chief Commissioner of Customs, Gujarat Customs Zone, Ahmedabad.
- (2) The Additional Director, Directorate of Revenue Intelligence, Plot No. S-10, Bhawani Singh Lane, Bhawani Singh Road, C-Scheme, Jaipur.
- (3) The Additional Commissioner, Customs, TRC, HQ, Ahmedabad.
- (4) The Deputy Commissioner of Customs, ICD Tumb
- (5) The Superintendent of Customs (Systems) in PDF format for uploading on the website of Customs Commissionerate, Ahmedabad.
- (6) The RRA, HQ, Ahmedabad Customs.
- (7) Guard File.