



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

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

चौथी मंज़िल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड़ Ishwar Bhuvan Road

नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009

दूरभाष क्रमांक Tel. No. 079-26589281

DIN – 20250571MN0000000E06

क	फ़ाइल संख्या FILE NO.	S/49-400/CUS/AHD/23-24
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	AHD-CUSTOM-000-APP-051-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	30.05.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order – In – Original No. 21/DC/ICD/IMP/SATKUL/2023, dated 31.10.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	30.05.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Satkul Enterprises Ltd, Plot No. 124, Sub Plot No. 03, B/s. Rajni Estate, Rakhial, Ahmedabad – 380 023





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





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





## ORDER-IN-APPEAL

M/s Satkul Enterprises Ltd, Ahmedabad, Plot No. 124, Sub Plot No. 03, B/s. Rajni Estate, Rakhial, Ahmedabad [hereinafter referred to as 'the Appellant'] has filed the present appeal against Order - in - Original No. 21/DC/ICD/IMP/SATKUL/2023, dated 31.10.2023 [hereinafter referred to as 'the impugned order'] passed by the Deputy Commissioner Customs, ICD-Khodiyar [hereinafter referred to as 'the impugned order']..

2. Facts of the case, in brief, Appellant had filed following 2 Bill of Entry mentioned in Table-A for clearance of the goods viz. Cobalt Base Bare Cast Rods for Home consumption at the ICD Khodiyar. Details of Bill of Entry, Assessable Value, duty paid and demanded is mentioned in the Table-A as under.

**Table-A**

SrN o.	Bill of Entry Nos	Bill of Entry date	Duty paid on self-assessment @2.5 % BCD -Rs.	Differential duty ordered paid & recovered @10 % BCD = [ @ 30.980] [10 % BCD + 1 % SWS + 18% IGST] Rs.
1	7967015	22-03-2022	20,70,852	5,80,489
2	8195089	08-04-2022	10,93,549	3,52,917
Total				9,33,406

2.1 Appellant filed Bill of Entry No. 7967015, dated 22.03.2022 and another Bill of Entry No 8195089, dated 08.04.2022 for clearance on self assessment on payment of Basic Customs Duty @ 2.5 % on Transaction value. While processing Bill of Entry by Faceless Assessment Group [FAG] duty assessed on self assessment was accepted on classification of the goods under CTH 81052010 and TR-6 challan for payment of duty were also generated in EDI system. Bill of Entry No. 7967015 dated 22.03.2022, the Appellant deposited self-assessed duty of Rs. 20,70,852/- vide TR-6 Challan No. 2038631615, dated 24.03.2022. The customs officers while allowing out of charge orally proposed to enhance duty on assessable value by changing classification under CTH 81059000, which was objected by Appellant vide their letter dated 29.03.2022 against change of classification and demand of differential duty with a request to accept self assessment and to clear goods. However, since the department did not accept self assessment, differential duty of Rs. 5,80,489/- was deposited by the Appellant "under protest" on 30.03.2022 and the goods in question were released and delivered to the Appellant.

2.2 Appellant filed another Bill of Entry No. 8195089, dated 08.04.2022 for clearance on self-assessment on payment of duty @ 2.5 % on Transaction value. While processing said Bill of Entry by Faceless Assessment Group [FAG] accepted duty assessed on self assessment on classification of the goods under CTH 81052010 and TR-6 challan for payment of duty was generated. The Appellant deposited self-assessed duty of Rs. 10,93,549/- vide the TR-6 Challan No. 2038829716, dated 09.04.2022. The customs officers while allowing out of charge orally proposed to enhance duty on assessable value by changing classification under CTH 81059000, which was objected





by Appellant vide their letter dated 16.04.2022 against change of classification and demand of differential duty with a request to accept self assessment of duty and to clear goods. However, since the department did not accept self assessment, differential duty of Rs. 3,52,917/- was deposited by the Appellant "under protest" on 19.04.2022, goods were released and delivered to the Appellant.

2.3 The Appellant preferred appeal before the Commissioner of Customs (Appeals), Ahmedabad against both Bill of Entry dated 22.03.2022 and 08.04.2022. The matter was remanded to the adjudicating authority with direction that proper officer shall examine available facts, documents, submission and provisions and issue speaking order following natural justice vide O-I-A No. AHD-CUSTOM-000-APP-633 to 634-2022-23, dated 31.03.2023.

2.4 In remand proceedings also the Appellant has furnished required information and filed written submissions in support of their contentions, which are not accepted or correctly considered by the adjudicating authority, despite clearly directed by Commissioner (Appeals) to examine facts and apply legal provision in such facts in accordance with the law.

2.5 The adjudicating authority, vide the impugned order dated 31.10.2023 ordered that "Cobalt Base Bare Cast Rod" imported by the Appellant under the Bill of Entry No. 7967015 dated 22.03.2022 and Bill of Entry No 8195089, dated 08.04.2022 is classifiable under CTH 81059000 and that benefit of Sr. No. 390A of Notification No.50/2017-Cus dated 30.06.2017 is not available to the Appellant who is required to discharge liability of Customs Duty @ 30.980 % (BCD @ 10 % + SWS @ 1 % + IGST @ 18 %).

3. Being aggrieved with the O-I-O NO. 21/DC/ICD/IMP/SATKUL/2023, dated 31.10.2023 for the Bills of Entry No. 7967015, dated 22.03.2022 and No 8195089, dated 08.04.2022 changing classification and against order of recovery of differential duty of Rs. 5,80,489/- and Rs. 3,52,917/- deposited "under protest", the Appellant has preferred this appeal on various ground as mentioned in the grounds of Appeal.

#### **PERSONAL HEARING:-**

4. Personal hearing in the matter was held on 23.04.2025. Shri P. P. Jadeja, Consultant and Shri Kulbir Singh Bagga, Director of Appellant firm appeared for personal hearing. They reiterated submissions made in Appeal, filed synopsis and argued during the personal hearing. They also stated that impugned order is passed on assumptions and presumption. It is not sustainable in law in absence of the evidence for change of classification. Revenue has not discharged the burden cast on it for changing the classification. Classification is changed to CTH 81059000, as it attracted higher duty @ 10% Adv. Consequently, the differential duty of Rs. 5,80,489/- and Rs. 3,52,917/-





confirmed is not justified / sustainable in this case. They requested to set aside differential duty demands and to allow appeal with consequential reliefs, in the interest of justice.

### **DISCUSSION & FINDINGS:-**

5 I have carefully gone through the Appeal Memorandum as well as records of the case and submissions made on behalf of Appellant during hearing. The issues to be decided in this Appeal is whether the impugned Order passed by adjudicating authority is legal and proper or otherwise for changing classification of Goods from declared CTH 81052010 to CTH 81059000 and confirmation of the differential Customs duty Rs. 5,80,489/- and Rs. 3,52,917/-.

5.1 Being aggrieved, the Appellant has filed the present appeal on 26.12.2023. In the Form C.A.-1, the date of communication of the Order-In-Original dated 31.10.2023 has been shown as 02.11.2023. Thus, the appeal has been filed within normal period of 60 days, as stipulated under Section 128 (1) of the Customs Act, 1962. The Appellant has paid the entire differential duty under protest, thereby fulfilling the requirement of pre-deposit of filing the appeal as envisaged under the Section 129 E of the Customs Act, 1962. As the appeal has been filed within the stipulated time-limit and with the mandatory pre-deposit, it has been admitted and being taken up for disposal on merits.

6. It is observed that the Appellant had imported goods i.e. "Cobalt Base Bare Cast Rods" with various sizes (GLC06 and GLC021 3.2 MMx1000MM/4.0 MMx1000MM) as mentioned in documents submitted and classified the goods under CTH 81052010. The goods imported by the Appellant are "Freely Importable" into India. There is no dispute on description, quality, quantity and value of imported goods, in question. The dispute is on classification of Goods whether under CTH 81052010, as claimed by Appellant or under CTH 81059000, as held in the impugned order. There is no disputed also that goods in question are covered under the Chapter 8105. The entry under chapter 8105 is reproduced for reference as under:-

CTH	Description of goods	unit	BCD
8105	COBALT MATTES AND OTHER INTERMEDIATE PRODUCTS OF COBALT METALLURGY; COBALT AND ARTICLES THEREOF, INCLUDING WASTE AND SCRAP		
810520	- Cobalt mattes and other intermediate products of cobalt metallurgy; unwrought cobalt; powders	Kg	5 %
<b>8105 20 10</b>	<b>--- Cobalt mattes and other intermediate products of cobalt metallurgy</b>	Kg	2.5% **
8105 20 20	--- Cobalt unwrought	Kg	5 %
8105 20 30	--- Powders	Kg	5 %
8105 30 00	- Waste and scrap	Kg	5 %
8105 90 00	- Other	Kg	10 %

**\*\* Effective rates of Basic Customs duty revised @ 2.5% vide entry No. 390A inserted in Notification No. 50/2017-Cus vide Notification No. 25/2019-Cus., dated 06-07-2019.**





6.1 It has been observed from the case records that the Appellant entered into a Sales Contract with an overseas supplier for the import of "Cobalt Base Bare Cast Rods" of various sizes. The terms and conditions of this contract, including the agreed price, categorize these goods as intermediate goods. The agreement between the Appellant and the supplier is documented in the proforma invoices, and the Bill of Entry submitted for clearance on self-assessment. The applicable Basic Customs Duty (BCD) of 2.5% was duly paid on the declared value.

6.2 The appeals were filed against the two Bills of Entry, which were addressed in the Order-in-Appeal No. AHD-CUSTOM-000-APP-633 to 634-2022-23, dated 31.03.2023, issued by the Commissioner (Appeals), Ahmedabad. In this order, the re-assessment was not upheld, and the case was remanded to the Assistant Commissioner (AC), ICD, with directions for a fresh examination of the facts, documents, submissions, and relevant legal provisions. The AC was also instructed to issue a speaking order in compliance with the principles of natural justice. The remand order, No. 21/DC/ICD/IMP/SATKUL/2023, dated 31.10.2023, passed by the Deputy Commissioner of Customs, ICD - Khodiyar, is currently in dispute. Additionally, the same two Bills of Entry were included in a Show Cause Notice (SCN) dated 06.01.2023 for recovery of duty, which was confirmed by another Order-in-Original (O-I-O) No. 68/ADC/VM/O&A/2023-24, dated 08.06.2023. The contention that duty has been demanded twice for the same Bills of Entry by two separate orders is valid and cannot be sustained.

6.3 It is observed that the Appellant has submitted reply dated 18.08.2023 and appeared for personal hearing before adjudicating authority in remand proceedings. The impugned order dated 31.10.2023 has appropriated differential duty amounting to Rs. 9,33,406/- deposited "under protest" by the Appellant at the time of clearance of imported goods. The Appellant has objected the re-assessment for violation of Principles of Natural Justice in grounds mentioned in the appeal memorandum. The appellant has contended that the adjudicating authority was directed in the Order in Appeal that the proper officer shall examine the facts, documents, submissions and issue speaking order following Principles of Natural Justice and legal Provisions and that the submissions made by Appellant in this regards shall be independently examined by the officer. However, adjudicating authority has ignored these directions by Commissioner (Appeals) and has passed this impugned order dated 31.10.2023.

6.4 It is observed that the present case, is based on (1) Chartered Engineer Certificate Ref No. BB/B-15.2/22/SEL/Khodiyar dated 19.02.2022 by Shri Bhasker G. Bhatt and (2) Order No. 18/DC/ICD/IMP/Satkul/2022 dt. 25.03.2022 passed by Deputy Commissioner of Customs, ICD, Khodiyar in Bill of Entry No. 7381329 dated 05.02.2022.

6.5 As regards the Chartered Engineer Report No. BB/B-15.2/22/SEL/Khodiyar dated 19.02.2022 given by Chartered Engineer Shri Bhasker G. Bhatt, relied upon by adjudicating authority, shows that:-





*"COBALT BASE BARE CAST ROD' are finished end product suitable for the usage as a welding rod and has direct application as a Welding Rod".*

6.6 However, Appellant has contended that the Chartered Engineer (CE) Shri Bhaskar Bhatt has relied upon "Alibaba site" for coming to his opinion, but Shri Bhasker Bhatt has not considered full article relied upon. The Appellant has produced full version of the said online Article, which also clarifies further its details and uses for making valves, seal inserts, rotating sealing rings, drill heads cutter edge etc. This also shows that Cobalt Base Bare Rods are also in the intermediate phase. The goods in question are correctly declared by Appellant as Cobalt Base Bare Rods, which are intermediate goods being used by the industrial users to manufacture their other final products. This CE opinion that product suitable for usage as a welding rod, having application as a Welding Rod cannot be considered as "Article of Cobalt" of CTH 81059000. This Opinion is not against Appellant per se, but, the officers have incorrectly read or interpreted for changing the classification from CTH 81052010 to 81059000. Further I find that Appellant has on its own, after clearance of goods of Bill of Entry, obtained and produced another opinion after physical verification of goods from another independent Chartered Engineer Shri Atanu Kundu, which shows that :-

*"I am of the opinion that the Cobalt Base Bare Cast Rod is an intermediate product of cobalt metallurgy ....."*

6.7 I also find that Appellant has produced another Report of the same Charter Engineer Shri Bhaskar G. Bhatt given to the Customs at ICD - Khodiyar on 30.03.2024 in import of "Cobalt Base Bare Cast Rod" imported by M/s P J SUROTIA & CO for the similar goods, which shows that :-

*"These imported Cobalt Base Bare Rods are an intermediate phase; because the application of these Cobalt based alloy rod is to offer hardening on the surface by Tungsten Inert Gas (TIG) brazing process."*

6.8 I note that, in addition to the three separate independent reports from Chartered Engineers submitted in this case, the Appellant has contended that the term "Intermediate Goods" is not defined under the Customs Act or its Rules. However, a review of the term "Intermediate Goods" as found on various online sources, including Google, reveals that it generally refers to products used in the production of final goods or finished products, which are also termed consumer goods. For example, intermediate goods like salt can themselves be considered finished products, as they are consumed directly by consumers but are also used by producers to manufacture other food items. Intermediate goods are typically sold between industries for resale or for further production of other goods. These goods are often referred to as semi-finished products, as they serve as inputs in the manufacturing process to become part of a finished product. Intermediate goods are products that are used in the production process to make other goods, which are ultimately sold to consumers.





- The intermediate goods are sold industry-to-industry for resale or to produce other products.
- Intermediate goods are typically used directly by a producer, sold to another company to make another intermediary good, or sold to another company to make a finished product.
- When calculating GDP, economists use the value-added approach with intermediate goods to guarantee that they are not counted twice—once when purchased, and once when the final good is sold.
- Intermediate goods are vital to the production process, which is why they are also called producer goods. Industries sell these goods to each other for resale or to produce other goods. When they are used in the production process, they are transformed into another state.
- There are typically three options for use of intermediate goods. A producer may make and use their own intermediate goods. The producer may also produce the goods and then sell them, which is a highly common practice between industries. Companies buy intermediate goods for specific use in creating either secondary intermediate product or in producing finished good. Inevitably, all intermediate goods are either a component of the final product or are completely reconfigured during the production process.
- There are many intermediate goods that can be used for multiple purposes. Steel is an example of an intermediate good. It can be used in the construction of homes, cars, bridges, planes, and countless other products. Wood is used to make flooring and furniture, glass is used in the production of windows and eyeglasses, and precious metals like gold and silver are used to make decorations, housing fixtures, and jewelry. Intermediate goods can be used in production, but they can also be consumer goods. How it is classified depends on who buys it. If a consumer buys a bag of sugar to use at home, it is a consumer good. But if a manufacturer purchases sugar to use during the production of another product, it becomes an intermediate good.

6.9 In the facts and circumstances of the present case, the opinion dated 19.02.2022, as relied upon by the adjudicating authority, loses its evidentiary value since it was not subjected to the process of cross-examination during the adjudication proceedings. Furthermore, the samples in question were not drawn in accordance with the prescribed legal procedure, and the findings have not been appropriately interpreted. Accordingly, I find that the Chartered Engineer's report dated 19.02.2022 cannot serve as the sole basis for differential duty demand. The denial of cross-examination of the Chartered Engineer, Shri Bhaskar G. Bhatt, renders the report inadmissible for the purposes of duty confirmation, as per the provisions of Section 138B of the Customs Act, 1962. It is also pertinent to note that the report, in any case, does not appear to be adverse to the Appellant's position.

6.10 With regard to Speaking Order No. 18/DC/ICD/IMP/Satkul/2022, dated 25.03.2022 passed by the Deputy Commissioner of Customs, ICD, Khodiyar in connection with Bill of Entry No. 7381329, dated 05.02.2022, it is noted that this order





constitutes another relied upon document (RUD) which, however, cannot be treated as admissible "evidence" in the present case. The said speaking order reflects the unapproved views of an individual adjudicating authority and is currently under judicial scrutiny. Notably, it has not been upheld in the appellate process. Order-in-Appeal No. AHD-CUSTOM-000-APP-388-2023-24, dated 19.01.2024, issued by my predecessor, has not sustained the aforementioned speaking order dated 25.03.2022. Instead, the matter was remanded to the Deputy/Assistant Commissioner, ICD, Khodiyar for fresh consideration of the Appellant's submissions and for issuance of a reasoned order, in accordance with the principles of natural justice and applicable legal provisions. As of now, the remanded matter remains pending. It is a settled position that the views expressed by an individual adjudicating officer, unless upheld by higher appellate forums, do not attain finality and hence lack evidentiary value for altering the declared classification. In the Indian legal framework governing taxation, any adjudication order is subject to challenge up to the Hon'ble Supreme Court. The evidences cited in the impugned order, including the above two RUDs, are therefore untested, unilateral, and lack probative value. Consequently, the impugned order, being primarily based on such documents, cannot be sustained, as the charges framed against the appellant are not supported by cogent, verified evidence established on merits by the investigating customs authorities.

7. The Settled law also is that classification of goods in question can be determined considering various factors including the following aspects:-

- (a) HSN with Explanatory Notes provide safe guide for interpretation of an entry for classification.
- (b) Importance to be given to the Act, Rules of Interpretation of the Tariff
- (c) Functional utility, design, shape and predominant usage have also to be taken into consideration
- (d) How the product is known in the market and its actual use will also be a relevant factor to be taken into account.

7.1 It is observed that the Hon'ble Supreme Court decision in the case of *CCE v/s D.L. STEELS - 2022 (381) E.L.T. 289 (S.C.)* has held that when Revenue challenges classification made by assessee, the onus is on Revenue to establish that item in question falls in taxing category as claimed by Revenue. It is observed that for the purpose of classification of any product important factors are what the product is, what its composition is, how it is used and how the product is known and marketed. Rules for interpretation have to be considered. Rule 3 (a) of General Rules of Interpretation provides that a specific entry shall prevail over a general entry. In this case, specific classification of product is under CTH 81052010 as "intermediate products of cobalt metallurgy", which cannot be changed as "Articles of Cobalt" under CTH 81059000, without adducing evidence to prove it. The expression "Article of cobalt" is a very wide and general terminology, which cannot be adopted. "Article of Cobalt" mean something made out of base metal Cobalt, which has its own distinct identity and function known in the market. However, the goods in question are consumed in industrial use for surfacing





of base metal to increase its wear-resistance properties and hardness in order to lengthen the service life of the final component like valves, valve seats, valve pins etc. Applying chapter notes, section notes and General Rules of interpretation, actual composition and uses of goods in question, it would not be appropriate to hold the goods to be "Article of Cobalt". The adjudicating authority has erred in holding that Cobalt Base Bare Cast Rod is an Articles of Cobalt classifiable as 'others' under the CTH 81059000. The Appellant has contended that goods in question are intermediate product of cobalt metallurgy which is being used in industrial purposes like alloying, surfacing etc by melting the rods. The process has to be carried on goods before its actual use for industrial purpose. The Sub-Heading Note under Chapter 81 at the material time was that Note 1 to Chapter 74, defining "Bars and Rods", applies mutatis mutandis, to this Chapter [81]. However, now Note 1 is merged into Notes of SECTION XV of THE CUSTOM TARIFF ACT 1975. The Notes 3, 5(a) and 9(a) to Section XV of Customs Tariff Act 1975 apply in this case. Alloy of base metals is to be classified as an alloy of metal which predominates by weight over each of other metals. Similarly Note 9 ibid shows that for purposes of Chapters 74 to 76 and 78 to 81, the following expressions shall have the meanings hereby assigned to them:

*9(a) :- Bars and rods*

*.....  
Wire-bars and billets of Chapter 74 with their ends tapered or otherwise worked simply to facilitate their entry into machines for converting them into, for example, drawing stock (wire-rod) or tubes, are however to be taken to be unwrought copper of heading 7403. This provision applies mutatis mutandis to the products of Chapter 81.*

7.2 I find that the impugned order has referred to Chapter heading 81.05 of Explanatory notes (sixth edition-2017) to Harmonized Commodity Description and coding system issued by World Customs Organization. However, the impugned order has not correctly considered Notes of SECTION XV of THE CUSTOM TARIFF ACT 1975. Notes 3, 5(a) and 9(a) to Section XV of the Customs Tariff Act clears the identity and classification of the goods in question under CTH 81052010. The Explanatory notes relied upon in O-I-O shows that there are many cobalt alloys, those which may fall in the heading in accordance with Note 5 to Section XV include:

*"(1) The cobalt-chromium-tungsten ("Stellite") group (often containing small proportions of other elements). These are used in the manufacture of Valves and Value seats, tools etc. because of their resistance to wear and corrosion at high temperatures."*

7.3 The Appellant has contended that Cobalt base alloys are known as "Stellites" which are used as corrosion and oxidation resistance coatings on various applications. Cobalt Base Bare Rods (Stellite) provides resistance to many forms of chemical and mechanical degradation over wide temperature range. These goods have outstanding anti-galling properties, high temperature hardness and high resistance to cavitations erosion that results in its wide use in the Industrial activities. It bonds well to



*[Handwritten signature]*



all weldable grade steels and stainless Articles. Cobalt Base Bare Rods are specially formulated to resist wide range of hostile environments including abrasion, corrosion, galling, oxidation and erosion of goods. They are able to maintain their hardness at temperatures of upto 1500°F (800°C) and proven useful in industries.

7.4 The Appellant has also contended that a similar issue has already been decided in case of M/s. Sri Murugan Enterprises by the Order-in-Appeal C. Cus. I No. 336/2023, dated 15.11.2023 passed by Commissioner of Customs (Appeals-I), Chennai, wherein he has set aside the differential duty demand, under CTH 81059000, in dispute on classification of goods whether under CTH 81052010 or 81059000. The Appellant has produced copy of the said O-I-A dated 15.11.2023 and perusal thereof shows that it is squarely applicable in this case to set aside differential duty demands under CTH 81059000 in facts of this similar case.

7.5 The Appellant has also contended that they have been provided generic information of consignments cleared under CTH 81052010 by Office of Directorate General of Valuation, Mumbai in respect of the imports made under CTH 81052010. The information provided by DG Valuation, Mumbai shows that all over India clearance of goods under CTH 81052010 includes clearances includes Rods, Welding wires, Bars, Powder, Article of Cobalt, pieces of cobalt, etc which were cleared uninterruptedly under CTH 81052010 all over in India. The information under RTI Act 2005 related to CTH 81052010 provided by DG Valuation shows that similar goods were cleared undisputedly under CTH 81052010. This factor supports Appellant's contention to set aside the impugned order on the parity principle.

7.6 It is a settled principle of law that the burden of proof lies upon the taxing authorities to establish that a particular item is taxable in the manner claimed by the Department. The Hon'ble Courts have consistently held that the Department must place on record sufficient material to support such a finding. It is incumbent upon the taxing authority to produce relevant evidence, even at the stage of adjudication before the original authority. In the present case, the burden cast upon the Revenue has not been discharged, as no substantive evidence has been adduced to support the proposed classification. It is further noted that the clearances of "Cobalt Base Bare Cast Rod" under CTH 81052010 were allowed after due consideration of classification queries and clarifications regarding the nature of the goods as "intermediate goods." The said consignments were assessed and released without any further objection from the Department. A mere assertion, without supporting evidence, is insufficient to warrant a change in classification. It is also well established that where entries in the Harmonized System of Nomenclature (HSN) are not aligned with the entries in the Customs Tariff, reliance on the HSN for classification purposes is misplaced. Notably, one of the primary grounds on which the impugned order bases its conclusion is the HSN Explanatory Notes, which, in the absence of alignment with the Tariff and binding legal provisions, cannot be determinative of classification.





7.7 It is observed that the Appellant has claimed the benefit of exemption under Notification No. 50/2017-Cus [Sr. No. 390A]. The effective rate of Basic Customs Duty (BCD) was revised to 2.5% through the insertion of entry No. 390A, which was unconditionally added to Notification No. 50/2017-Cus vide Notification No. 25/2019-Cus., dated 06.07.2019. It is a well-settled principle that the onus of establishing eligibility for exemption under a notification lies upon the claimant. The Appellant must demonstrate that the goods in question are unambiguously covered within the scope of the exemption. In the present case, the Appellant has successfully established, through documentary evidence, that the goods imported classified under CTH 81052010 are intermediate goods eligible for the benefit of the claimed exemption. Once the Appellant has discharged this initial burden, the onus shifts to the Department to rebut the claim with cogent and credible evidence, should it wish to deny the exemption. However, in the present case, the adjudicating authority has failed to discharge this shifted burden. The conclusions drawn in the impugned order are unsupported by any contrary evidence on record. The Appellant's submissions, supported by verifiable documentation, cannot be disregarded in the absence of rebuttal evidence from the Revenue. Accordingly, the impugned order also deserves to be set aside on this ground.

7.8 I am of the considered view that the classification of goods under one tariff heading or another is a question of law and not merely a statement of fact. Consequently, the act of claiming a particular classification under the Customs Tariff Act cannot, by itself, amount to misstatement let alone wilful misstatement. It is a settled principle that choosing a classification is based on the bonafide belief of the taxpayer or importer. In *Raj Television Network v. CCE, Chennai* [2007 (215) ELT 71 (Tri.-Chennai)], the Hon'ble Tribunal held that classification is a function of the Department, and an importer cannot be accused of misclassification where the description of the goods is correctly provided. Similarly, in *Northern Plastics Ltd. v. CCE* [1998 (101) ELT 549 (SC)], the Hon'ble Supreme Court held that where the description of goods is correctly and fully stated in the Bill of Entry and the importer claims an exemption whether admissible or not the same constitutes a belief held by the assessee and does not amount to misdeclaration. Further, in *CCE, Delhi v. Ishaan Research Lab (P) Ltd.* [2008 (230) ELT 7 (SC)], the Hon'ble Apex Court ruled that when a genuine dispute exists regarding the classification of goods, the charge of suppression or misstatement cannot be sustained. In light of the above judicial pronouncements, and considering the facts of the present case where the dispute pertains solely to the classification of the imported goods, the allegation of intentional misclassification or misdeclaration is unsustainable. The Appellant cannot be faulted for having adopted a classification based on a bonafide understanding, especially in the absence of any contrary evidence pointing to wilful suppression or fraudulent intent.

7.9 I am also of the considered view that the classification of goods cannot be altered merely on the implicit or undisclosed premise that the proposed classification results in a higher rate of customs duty than the classification declared by the importer.



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7.10 The impugned order has erred in concluding that the product imported by the Appellant is merely an alloy of cobalt, manufactured by the Chinese supplier in specific elemental proportions fused with cobalt, and that it should consequently be classified as an article of cobalt.

7.11 The Appellant has produced Analytical Report No.39/2022-23, dated 09.03.2023 provided to Appellant by department for another Bill of Entry at ACC, regarding classification of "Article of Titanium" whether under CTI 81089010 or under CTI 81089090. The Appellant rely Para 5 of Analytical Report No.39/2022-23 dated 09.03.2023 which shows as under :-

*"Wrought Titanium is classifiable under CTH 81089010, if such imported products are in the form of beaten shapes such as plates, bars, tubes, rods, billets etc. For manufacturing the final Product, one of the prerequisites is that the titanium should be in wrought form so that it could be further processed by processes like cutting, forming machining and joining and made into necessary shape and dimension, as may be required Such final product becomes an Article of Titanium', and hence classifiable under CTH 81089090."*

7.12 I find that the above paragraph illustrates how the classification of imported goods may be determined under CTH 8108.90.10 or 8108.90.90. The guiding principle is that if titanium products are presented in primary forms such as plates, bars, tubes, rods, billets, etc., they are considered as "unwrought titanium" and are classifiable under CTH 8108.90.10. While that instance pertains to titanium, the same legal reasoning, by the principle of parity, applies to cobalt in the present case. In this matter, the goods in question are composed of cobalt and are described as "intermediate products of cobalt metallurgy," intended for use in industrial processes. Such products are appropriately classifiable under CTH 81052010. The classification declared by the Appellant was accepted by the proper officer after due examination and final assessment, and the goods were accordingly cleared in accordance with law. In view of the overall facts and the documentary evidence provided by the Appellant, the classification under CTH 81052010 merits approval and should be upheld.

7.13 The Appellant has contended that when department has not produced any reliable evidences which would support change of classification from CTH 81052010 to 81059000. The RUD mentioned O-I-O are not evidences reliable in this case. The impugned order not having any evidence warranting change of classification is devoid of merits and deserves to be set aside.

7.14 The Appellant has also produced copy of a Bill of Entry No. 9726413, dated 26-04-2025 by M/s P J Surotia & Co, with a clarification wherein Out of Charge (OOC) is allowed on 03.05.2025, after a specific query on classification under CTH 81052010 and its clarification submitted by the importer. This is additional evidence showing that "Cobalt Base Bare Cast Rod" are being cleared at ICD - Khodiyar undisputedly on payment of duty on import under the CTH 81052010, which this Appellant claims.





8. In view of the above findings, I am of the considered view that the principles of natural justice were violated at various stages during the adjudication proceedings. The adjudicating authority has failed to adduce reliable and substantive evidence on record to justify a change in the declared classification from CTH 81052010 to CTH 81059000. Taking into account the nature of the product, its composition, its industrial usage, its market identity, and the relevant documentary evidence furnished by the appellant during the course of these proceedings, it is evident that the goods in question "Cobalt Base Bare Cast Rod" are appropriately classifiable under CTH 81052010, as originally declared by the Appellant. Accordingly, the impugned order changing the classification to CTH 81059000 is not legally or factually sustainable. Consequently, Order-in-Original No. 21/DC/ICD/IMP/SATKUL/2023, dated 31.10.2023, issued by the Deputy Commissioner of Customs, ICD – Khodiyar seeking recovery of differential Customs Duty amounting to ₹5,80,489/- and ₹3,52,917/-, and denying the benefit of unconditional exemption under Notification No. 50/2017-Cus. [Sr. No. 390A] dated 30.06.2017 is also not sustainable. The said Order-in-Original dated 31.10.2023 is therefore liable to be set aside, both on factual and legal grounds, and I hereby set it aside.

9. In view of the above, the Appeal filed by the Appellant is allowed with consequential reliefs, if any, in accordance with the law.



સત્યાપિત/ATTESTED  
*R. Pulla*  
 અધીક્ષક/SUPERINTENDENT  
 સીમા શુલ્ક (અવોલ્સ), અમદાવાદ.  
 CUSTOMS (APPEALS), AHMEDABAD

*(Amit Gupta)*  
 Commissioner (Appeals),  
 Customs, Ahmedabad

F. No. S/49-400/CUS/AHD/23-24

Date: 30.05.2025

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By Registered post A.D

To,

✓ M/s Satkul Enterprises Ltd,  
 Plot No. 124, Sub Plot No. 03,  
 B/s. Rajni Estate,  
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 Ahmedabad – 380 023

Shri P. P. Jadeja  
 (Consultants & Practitioners)  
 53 – Sarovar Complex,  
 Off. C. G. Road,  
 B/h. Jain Derasar,  
 Navrangpura,  
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Copy to:-

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House, Ahmedabad.
3. The Deputy Commissioner, Customs, ICD – Khodiyar, Ahmedabad
4. Guard File.

