



सीमाशुल्क (अपील) आयुक्तका कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,
चौथी मंजिल 4th Floor, हडको बिल्डिंग HUDCO Building, ईश्वर भुवन रोड Ishwar Bhuvan Road,
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
दूरभाष क्रमांक Tel. No. 079-26589281
DIN-20250571MN00000019E6

क	फ़ाइल संख्या FILE NO.	S/49-425/CUS/AHD/2023-24
ख	अपील आदेश संख्या ORDER-IN-APPEAL No. (सीमाशुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	AHD-CUSTM-000-APP-34-25-26
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	20.05.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER - IN - ORIGINAL NO.	O.I.O. No. 03/AR/ADC/TUMB/2023-24, dated 28.11.2023 passed by the Additional Commissioner of Customs, ICD-Tumb.
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	20.05.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Doms Industries Ltd. Plot No. 117, 52 Hector Expansion Area, New GIDC, Umbergaon, Valsad – 396171.

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.				
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.				
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.				
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.				
3.	<p>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 :</p> <p>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 :</p> <p>(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.</p> <p>(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.</p> <p>(ख) सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो</p> <p>(b) 4 copies of the Order - In - Original, in addition to relevant documents, if any</p> <p>(ग) पुनरीक्षण के लिए आवेदन की 4 प्रतियां</p> <p>(c) 4 copies of the Application for Revision.</p> <p>(घ) पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथासंशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मर्दों के शीर्षके अधीन आता है में रु. 200/- (रूपए दो सौ मात्र) या रु.1000/- (रूपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दोप्रतियां। यदि शुल्क, मांगा गया व्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-</p> <p>(d) The duplicate copy of the T.R.6 challan evidencing payment of Rs. 200/- (Rupees two Hundred only) or Rs. 1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs. 200/- and if it is more than one lakh rupees, the fee is Rs. 1000/-.</p>				
4.	<p>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</p> <p>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 :</p> <table border="1"> <tr> <td>सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td> <td>Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</td> </tr> <tr> <td>दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td> <td>2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td> </tr> </table>	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench	दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench				
दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016				
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-				
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -				

(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक 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 रूपए 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 रूपए 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.	<p>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.</p> <p>Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-</p> <p>(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or</p> <p>(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.</p>



ORDER-IN-APPEAL

1. M/s. Doms Industries Ltd., Plot No. 117, 52, Hector Expansion Area, New GIDC, Umbergaon, Valsad – 396171 (hereinafter referred to as the ‘appellant’) has filed the present appeal against the Order-In-Original No. 03/AR/ADC/TUMB/2023-24 dated 28.11.2023 (hereinafter referred to as the ‘impugned order’) passed by the Additional Commissioner of Customs, ICD-Tumb (hereinafter referred to as the ‘adjudicating authority’).

2. Facts involved in the appeal, in brief, are that the appellant had imported ‘Dark 2B Pencil Leads’ vide 6 Bills of Entry filed at ICD-Tumb. The appellant has classified the imported goods under Customs Tariff Item (‘CTI’ for short) No. 96092000 and paid IGST @12% as per the rate prescribed at Sr.No. 233 of Schedule II of Notification No. 01/2017-IT(R) dated 28.06.2017. Whereas, it appeared that the said rate of 12% IGST was not applicable to the imported goods, but 18% IGST was leviable under Sr.No. 453 of Schedule III of Notification No. 01/2017-IT(R) dated 28.06.2017. Particulars of the relevant tariff entries and competing entries of the said Notification are as under:

Entries under Customs Tariff

Tariff Item	Description of goods
9609	Pencils (other than Pencils of Heading 9608), Crayons, Pencil Leads, Pastels, Drawing Charcoals, Writing or Drawing Chalks And Tailors' Chalks
96091000	- Pencils and crayons, with leads encased in a sheath
96092000	- Pencil leads, black or coloured

Entries under Notification No. 01/2017-IT(R) dated 28.06.2017

Schedule and Entry No. (Sr.No.)	Heading	Description	Rate of IGST
Schedule II Sr.No. 233	9608, 9609	Pencils (including propelling or sliding pencils), crayons, pastels, drawing charcoals and tailor's chalk	12%
Schedule III Sr.No. 453	Any Chapter	Goods which are not specified in Schedule I, II, IV, V or VI	18%



3. In view of the above entries, it appeared that the imported Pencil Leads do not fall under the description given against Sr.No. 233 of Schedule II of Notification No. 01/2017-IT(R) dated 28.06.2017, but they are covered under Sr.No. 453 of Schedule III of the said Notification. Thus, it appeared that IGST @18% was leviable for the impugned goods, whereas the appellant had paid IGST @12%, which resulted into short payment of IGST of Rs.11,61,215/- . Therefore, a Demand Cum Less Charge Notice dated 27.01.2022 was issued to the appellant for demand of the IGST short paid along with interest under the provisions of Section 28(4) and Section 28AA of the Customs Act, 1962.

4. The said Demand Cum Less Charge Notice has been adjudicated vide the impugned order. The adjudicating authority observed that at Sr.No. 233 of Schedule II of Notification No. 01/2017-IT(R), no description of goods ‘Pencil Lead’ has been found and so, the said goods are not covered

under that Serial Number. Further, he observed that 'Pencil Leads' are covered under Sr.No. 453 of Schedule III of the said Notification.

5. In the impugned order, it has been held that the importer has mis-declared the relevant Sr.No. of the said Notification to gain lower IGST @12% and therefore suppression and mis-declaration is on record. Therefore, the adjudicating authority has confirmed the demand of differential IGST of Rs.11,61,215/- under Section 28(4) with interest under Section 28AA and imposed equal penalty of Rs.11,61,215/- under Section 114A of the Customs Act, 1962, vide the impugned order.

6. Being aggrieved, the appellant has filed the present appeal on 30.01.2024. In the Form C.A.-1, the date of communication of the Order-In-Original dated 28.11.2023 has been shown as 02.12.2023. 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 submitted self-certified copies of the T.R.6 Challan No. 273 dated 25.01.2024 for Rs.87,100/- towards payment of pre-deposit under the provisions of Section 129E 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.

The appellant has filed the present appeal mainly on the following grounds of appeal.



The appellant has submitted details of such bill of entries in respect to which demand has been raised as under:

Table-1

BOE Number	BOE Date	Description of goods	IGST Notification Schedule No. & Sr.No.	Duty IGST Rate	Differential IGST Rs.
3276442	17 May 2019	DARK 2B PENCIL LEAD DIA:2.40-2.45 MM LENGTH: 184.5+/- 1MM (79200 GROSS)	II - 233	12	2,06,432
4045507	12 July 2019	DARK 2B PENCIL LEAD DIA:2.40-2.45 MM LENGTH: 184.5+/- 1MM (79200 GROSS)	II - 233	12	1,58,285
4702903	30 Aug. 2019	DARK 2B PENCIL LEAD DIA:2.40-2.45 MM LENGTH: 184.5+/- 1MM (79200 GROSS)	II - 233	12	1,64,189
4883002	13 Sep. 2019	DARK 2B PENCIL LEAD DIA:2.40-2.45MM LENGTH: 184.5+/- 1MM (79200 GROSS)	II - 233	12	2,12,305
5694438	15 Nov. 2019	DARK 2B PENCIL LEAD DIA:2.40-2.45 MM LENGTH: 184.5+/- 1MM (79200 GROSS)	II - 233	12	2,09,001
6673327	29 Jan. 2020	DARK 2B PENCIL LEAD DIA:2.40-2.45 MM LENGTH: 184.5+/- 1MM (79200 GROSS)	II - 233	12	2,11,003
Total					11,61,215

8. The appellant has submitted chronology of events as under:

Event	Date
SCN issue	27 January 2022
SCN Reply filed by appellant	3 February 2022
Pre-consultation notice issued	21 July 2023
Personal Hearing schedule date	26 September 2023
O-I-O issue date	28 November 2023

Appellants contentions on limitation:

9. **O-I-O liable to be quashed as the same is time barred under Section 28 of Customs Act.**

9.1 The appellant submitted that sub-section (8) read with sub-section (9) of Section 28 of Customs Act, 1962 prescribes that an order against SCN issued under Section 28 is required to be passed within below time limit:

- a) In case where SCN is issued under Section 28(1) i.e. not on account of collusion/wilful mis-statement or suppression of facts, **within six months from the date of notice**;
- b) In case where SCN is issued under Section 28(4) i.e. on account of collusion/wilful mis-statement or suppression of facts, **within one year from the date of notice**.

9.2 Further, as per proviso to Section 28(9), such period can be further extended to 6 months (where SCN is issued under Section 28(1)) or 1 year (where SCN is issued under Section 28(4)), **provided** there were circumstances owing to which the proper officer was prevented from determining the amount of duty or interest leviable and the extension has been granted by a senior officer.

9.3 Herein, the appellant stated that the SCN was issued on 27 January 2022, while the impugned order has been issued on 28 November 2023 i.e. **after more than one year from the date of issuance of the SCN**. Further, the said matter is not covered under the proviso to Section 28(9) as the demand was already quantified by the Respondent during the SCN stage itself. Hence, the O-I-O issued by the respondent is barred by limitation since the impugned order has not been issued within the statutory time limit of one year prescribed under the law.

10. **O-I-O liable to be set aside and quashed as there is no presence of suppression of fact or wilful mis-statement and thus, extended period of limitation cannot be invoked.**

10.1 The Respondent vide the impugned order has alleged that:

"21..... I thus find that the said importer has mis-declared the relevant Sr. number of the said Notification to gain lower integrated tax rate of 12% at Sr. No. 233 of said Schedule II of said Notification. I hold that the subject goods are to be covered at Sr. No. 453 of Schedule III of said Notification to be taxed at 18%.

.....
The said importer has suppressed and mis-declared the serial number of the said Notification under Sr. No. 233 of Schedule II and thereby paid lower IGST at 12%

instead of IGST at 18% as notified. I hold that suppression and mis-declaration is on record in subject matter.

Order

1. I confirm the demand of differential IGST of Rs. 11,61,215/- (Rupees Eleven Lakhs Sixty One thousand Two hundred and Fifteen only) as detailed in Annexure-A to the subject **Demand cuss less Charge Notice under Section 28(4) of the Customs Act, 1962** and order recovery thereof."

10.2 In this regard, the appellant submitted that the Respondent is highly misplaced in invoking extended period of limitation in the impugned order under Section 28(4) of the Customs Act, 1962, on the premise that the importer has suppressed and mis-declared the applicable GST rate entry, which is irrational and unsustainable in the present case.

10.3 The appellant submitted that to invoke extended period of limitation, two ingredients must be present i.e.

- a) There must be either collusion, wilful misstatement or suppression of facts; and
- b) The intention should be to evade the tax.

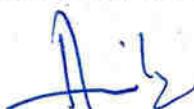
10.4 For this, the appellant relies on the decision passed by the Hon'ble Apex Court in case of **Aban Loyd Chiles Offshore Limited and Ors. v. Commissioner of Customs, Maharashtra [2006 (200) E.L.T. 370]**, the relevant extract of which is produced below:


 "The proviso to Section 28(1) can be invoked where the payment of duty has escaped by reason of collusion or any willful misstatement or suppression of facts. So far as "misstatement or suppression of facts" are concerned, they are qualified by the word "willful". The word "willful" preceding the words "misstatement or suppression of facts" clearly spells out that there has to be an intention on the part of the assessee to evade the duty."

10.5 Herein the appellant submitted that no suppression of facts or wilful mis-statement has been conducted by them. In this regard, the appellant relies on the decision passed by the Hon'ble Mumbai Tribunal in the case of **Sirthai Superware India Limited v/s Commissioner of Customs [2020 (371) E.L.T. 324]**, wherein the Tribunal relying on the decision passed by the Apex Court in case of **Northern Plastic Ltd. v. Collector [1998 (101) E.L.T. 549]** held that when correct description of goods is provided in the Bill of Entry, the importer has discharged its burden and hence, any error cannot be mis-declaration with the intention to evade payment of duty for invoking extended period of limitation.

10.6 Further, in the decision passed by the Delhi Tribunal in case of **Midas Fertchem Impex Pvt. Ltd. v/s Commissioner of Customs [2023 (384) E.L.T 397]**, it was held that where true declaration of the description of the goods and quantity are mentioned in the Bill of Entry, the extended period cannot be invoked merely on account of wrong classification or an ineligible exemption notification being availed since these are not facts but rather matters of judgement, which can be re-assessed by proper officer.

10.7 The appellant further submitted that a plethora of decisions have been passed by the Apex Court on the principle that extended period cannot be invoked unless there is a deliberate act to evade tax, few of which have been cited below:



- *CCE Vs Chemphar Drugs & Liniments - 1989 (40) ELT 276 (SC)*
- *Cosmic Dye Chemical Vs. CCE - 1995 (75) ELT 721 (SC)*
- *Lubri-Chem Industries Ltd. Vs. CCE - 1994 (73) ELT 257 (SC)*
- *Padmini Products Vs. CCE - 1989 (43) ELT 195 (SC)*

10.8 The appellant further submitted that it is no longer res integra that mere non-payment of customs duty does not mean that there is a wilful mis-statement or suppression of facts to invoke extended period. The Apex Court in case of *Uniworth Textiles Limited vs. Commissioner of Central Excise, Raipur* [(2013) 9 SCC 753 = 2013 (288) E.L.T. 161 (S.C.)] has held that:

"12. We have heard both sides, Mr. R.P. Bhatt, learned senior counsel, appearing on behalf of the appellant, and Mr. Mukul Gupta, learned senior counsel appearing on behalf of the Revenue. We are not convinced by the reasoning of the Tribunal. The conclusion that mere non-payment of duties is equivalent to collusion or willful misstatement or suppression of facts is, in our opinion, untenable. If that were to be true, we fail to understand which form of non-payment would amount to ordinary default? Construing mere non-payment as any of the three categories contemplated by the proviso would leave no situation for which, a limitation period of six months may apply. In our opinion, the main body of the Section, in fact, contemplates ordinary default in payment of duties and leaves cases of collusion or willful misstatement or suppression of facts, a smaller, specific and more serious niche, to the proviso. Therefore, something more must be shown to construe the acts of the appellant as fit for the applicability of the proviso."

11. In view of the above orders pronounced by higher authorities, the appellant submitted that merely because the appellant has adopted a lower tax rate does not empower the respondent to consider the matter as wilful mis-statement and suppression of fact and to invoke extended period of limitation. In the present case, there is not an iota of evidence to suggest, much less to prove that the appellant had suppressed any facts or had made any wilful mis-statement at any juncture. Thus, the appellant submitted that the demand under Section 28(4) of Custom Act, 1962 is bad in law and is liable to be dropped forthwith.

12. In view of the above discussion, the appellant submitted that the demand of **Rs.9,50,212** raised vide SCN dated 27.01.2022 in respect to below bill of entries **should be dropped forthwith** as the same is beyond normal period of limitation of 2 years as prescribed under Section 28(1):

Table-2

BOE Number	BOE Date	Description of goods	Differential GST(Rs.)
3276442	17 May 2019	DARK 2B PENCIL LEAD DIA:2.40-2.45 MM LENGTH: 184.5+/- 1MM (79200 GROSS)	2,06,432
4045507	12 July 2019	DARK 2B PENCIL LEAD DIA:2.40-2.45 MM LENGTH: 184.5+/- 1MM (79200 GROSS)	1,58,285
4702903	30 Aug. 2019	DARK 2B PENCIL LEAD DIA:2.40-2.45 MM LENGTH: 184.5+/- 1MM (79200 GROSS)	1,64,189

4883002	13 Sep. 2019	DARK 2B PENCIL LEAD DIA:2.40-2.45MM LENGTH: 184.5+/- 1MM (79200 GROSS)	2,12,305
5694438	15 Nov. 2019	DARK 2B PENCIL LEAD DIA:2.40-2.45 MM LENGTH: 184.5+/- 1MM (79200 GROSS)	2,09,001
Total			9,50,212

Submissions of the appellant on merits of case:

13. While deciding the GST rate applicable on the product 'pencil lead', the Respondent has read the preamble of the Notification No. 1/2017 – Integrated Tax (Rate), which prescribes that GST shall be levied based on 'Description of Goods' and the Chapter / Heading / Sub-heading / Tariff mentioned alongside in the Goods rate notification.

14. Rule 2(a) of the General Rules for Interpretation ('GRI') provides guidance for determining rate on an article in incomplete or unfinished form. The extract of the same is produced is below:

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



The above rule states that, any heading which covers an article shall also cover an article in its incomplete or unfinished form provided that, as presented, it has the essential character of the complete or finished article.

15. In the instant case, the product Pencil lead being an unfinished/incomplete form of Pencil, provides the essential character to the complete finished article being Pencil, as Pencil lead is the key component which enables writing/drawing. Also, essentially Pencil is nothing, but a Pencil lead encased in wood. Hence, it is beyond a doubt that the Pencil lead provides the essential character to the complete Pencil.

16. Further, the appellant submitted that rate to be determined based on principle use test and not merely basis nomenclature.

17. In view of the above submissions, the appellant has prayed to set aside the impugned order on merits as well as on limitation and to grant consequential relief.

Personal Hearing:

18. Personal Hearing in this matter was held on 07.05.2025, which was attended by Shri Rahul Shah, Chief Financial Officer; Shri Chintan Shah; and Shri Santosh Sonar of M/s. B B S R & Associates LLP. They reiterated their written submissions made at the time of filing of appeal.

Additional Submissions:

19. Vide email dated 13.05.2025, the appellant has also sent additional submissions, in which it has been submitted that the SCN has been issued on 27 January 2022 while the impugned order was passed on 28 November 2023 i.e. after 22 months of issuance of the SCN. Thus, the impugned order was issued after the statutory time limit of one year and there existed no circumstances which envisaged further extension of one year, the impugned order is barred by limitation and hence, should be set aside. In this regard, the appellant has relied upon following case law.

20. In the case of *Swatch Group India Pvt. Ltd. vs. Union of India* [(2023) 10 Centax 5 (Del.)], the order passed after 17 months from the date of issuance of the show cause was set aside and held as time barred. The High Court stated that, despite specific mandate in Section 28(9) of Customs Act, 1962 to adjudicate the matter within prescribed time limit of 12 months the department made no sincere efforts to adjudicate the show cause notice and slept over matter for almost period of 17 months and also did not provide any justification why it was impossible to determine custom duty within prescribed time, owing to which the SCN was lapsed and could not be adjudicated.

21. Similarly, in the case of *Gautam Spinners vs. Commissioner of Customs (Import), New Delhi* [(2023) 9 Centax 115 (Del.) / 2023 (386) E.L.T. 62 (Del.)], the Hon'ble Delhi High Court held that the Show Cause Notice issued under section 28(4) of the Customs Act, 1962 by competent jurisdictional Commissionerate is liable to be brought to a close in accordance with statutory timelines set out in sub-section (9) i.e. one year from date of notice. The proceedings would not survive in law and the impugned SCN was to be set aside as the maximum period prescribed under section 28 for adjudication of the notice has expired.

22. As regards invoking extended period of limitation, it has been submitted that Courts have consistently held that when correct description of goods is provided in the Bill of Entry, the allegation of wilful mis-statement or suppression of facts cannot be invoked. The appellant relied upon following case law:

- a) *Densons Pultretaknik v/s Commissioner of C. Ex.* [2003 (155) E.L.T. 211] [Apex Court];
- b) *Sirthai Superware India Limited v/s Commissioner of Customs* [2020 (371) E.L.T. 324] [Mumbai Tribunal];
- c) *Northern Plastic Ltd. v/s Collector* [1998 (101) E.L.T. 549] [Mumbai Tribunal]; and
- d) *Midas Fertchem Impex Pvt. Ltd. v/s Commissioner of Customs* [2023 (384) E.L.T. 397] [Delhi Tribunal].

23. In view of the above submissions, the appellant prayed to drop the instant order demanding tax, interest and penalty.



Findings:

24. I have carefully gone through the facts of the case and written as well as oral submissions made by or on behalf of the appellant. I find that two issues are to be decided in the present appeal, as under:

Issue-1. Regarding Merits:

Whether Pencil Lead imported by the appellant are eligible for 12% IGST as per Sr.No. 233 of Schedule II of Notification No. 01/2017-IT(R) dated 28.06.2017 or it attracts 18% IGST as per Sr.No. 453 of Schedule III of the said Notification.

Issue-2: Regarding Limitation:

Whether the Demand cum Less Charge Notice ('SCN') and the impugned Order-In-Original are issued within time-limit as prescribed under Section 28 of the Customs Act, 1962, or full/part demand is time-barred.

Now, I record my findings on each issue, as follows.

Issue-1. Findings regarding Merits:

25.1 At the outset, I find that classification of the impugned goods, i.e. Pencil Lead, is not under dispute. Description given under Customs Tariff Heading 9609 and Customs Tariff Items 96091000 and 96092000 are as under:

Tariff Item	Description of goods
9609	Pencils (other than Pencils of Heading 9608), Crayons, Pencil Leads, Pastels, Drawing Charcoals, Writing or Drawing Chalks And Tailors' Chalks
96091000	- Pencils and crayons, with leads encased in a sheath
96092000	- Pencil leads, black or coloured

From the above entries, it can be seen that Pencil Leads are specifically covered under CTI 96092000, as classified by the appellant, and there is not dispute regarding its classification.

25.2 However, the dispute is that whether the rate of 12% IGST, as per Sr.No. 233 of Schedule II of Notification No. 01/2017-IT(R) dated 28.06.2017, is applicable to Pencil Leads or not. The competing entries of the said Notification have been mentioned as under:

Schedule and Entry No. (Sr.No.)	Heading	Description	Rate of IGST
Schedule II Sr.No. 233	9608, 9609	Pencils (including propelling or sliding pencils), crayons, pastels, drawing charcoals and tailor's chalk	12%
Schedule III Sr.No. 453	Any Chapter	Goods which are not specified in Schedule I, II, IV, V or VI	18%

From the description given at Sr.No. 233 of Schedule II of Notification No. 01/2017-IT(R) dated 28.06.2017, it can be seen that 'Pencil Leads' are not covered under description of that entry. I find that 'Pencil' and 'Pencil Lead' are different commodities. Therefore, 12% rate of IGST, as applicable to Pencils, cannot be made applicable to Pencil Leads.

25.3 In this regard, the appellant has relied upon Rule 2(a) of the GRI, which states that any reference in a heading to an article shall be taken to include a reference to that article in incomplete or unfinished form, provided that, as presented, the incomplete or unfinished articles has the essential character of the complete or finished article. I find that this contention of the appellant is not proper because 'Pencil Lead' cannot be said to be 'Pencil in incomplete or unfinished form'. There are separate entries in Customs Tariff for 'Pencils' and 'Pencil Leads'. 'Pencils' are classifiable under CTI 96091000 whereas, 'Pencil Leads' are classifiable under CTI 96092000. Thus, both are different commodities. Further, 'Pencil' and 'Pencil Lead' are distinct commodities known to market. To prepare 'Pencil' from 'Pencil Lead' and other ingredients, substantial manufacturing process is required and thereafter a new commodity 'Pencil' emerges. Therefore, I am of the considered view that 'Pencil Lead' cannot be said to be 'Pencil in incomplete or unfinished form'.

25.4 Another of the contention of the appellant is that 'Pencil Leads' are to be used in 'Pencils' and so, they are to be treated as 'Pencils' based upon their end use. In this regard, I am of the considered view that the imported goods are to be classified and assessed as per their condition at the time of import, not on the basis of its subsequent use, unless the law prescribed end-use based

classification and assessment. In this regard, I rely upon the Judgment of the Hon'ble Supreme Court in the case of *Dunlop India Ltd. Vs. UOI*, as reported in 1983 (13) ELT 1566 (SC). In this case, it has been held that the condition of the article at the time of importing is a material factor for the purpose of classification as to under what head, duty will be leviable. Further, it has been held that the basis of the reason with regard to the end-use of the article is absolutely irrelevant in the context of the entry where there is no reference to the use or adaptation of the article.

25.5 In the case of *Towa Ribbons Pvt. Ltd. Vs. Collector of Customs*, as reported in 1993 (66) ELT 320 (Tribunal), the special Bench of the erstwhile Hon'ble CEGAT (now, CESTAT) has observed that Supreme Court's decision in the case of *Dunlop India* cited supra by the learned SDR holds that the condition of the article at the time of importation is a material factor for the purpose of determining its classification for levy of duty. This being so, the Hon'ble CEGAT did not consider the case law cited by the learned Counsel about the primary function and functional character of an article.

25.6 In view of the above judicial pronouncements, I am of the view that based upon its end-use, 'Pencil Leads' cannot be treated as 'Pencil' for the purpose of assessing rate of duty.

25.7 In view of the above discussion, I hold that 'Pencil Lead' is not specifically covered under the description given at Sr.No. 233 of Schedule II of Notification No. 01/2017-IT(R) and therefore, the impugned goods are not entitled for rate of 12% IGST. As the 'Pencil Leads' are not specified under any other Serial Number of that Notification, I am of the view that it attracts 18% rate of IGST as per Sr.No. 453 of Schedule III of the said Notification.

25.8 Thus, the appeal filed by M/s. DOMS Industries Pvt. Ltd. to the extent it seeks benefit of 12% IGST as per Sr.No. 233 of Schedule II of Notification No. 01/2017-IT(R) dated 28.06.2017 is required to be rejected.

Issue-2: Findings regarding time-limit for issuance of SCN and completion of adjudication:

26. Before starting discussion on this issue, the text of the relevant provisions Section 28 of the Customs Act, 1962, is reproduced below (underline supplied):

"SECTION 28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. — (1) Where any [duty has not been levied or not paid or has been short-levied or short-paid] or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any wilful mis-statement or suppression of facts,—

(a) the proper officer shall, within [two years] from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied [or paid] or which has been 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;

[Provided that before issuing notice, the proper officer shall hold pre-notice consultation with the person chargeable with duty or interest in such manner as may be prescribed;]

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

- (a) collusion; or
- (b) any wilful mis-statement; or
- (c) suppression of facts.

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

.....

(8) The proper officer shall, after allowing the concerned person an opportunity of being heard and after considering the representation, if any, made by such person, determine the amount of duty or interest due from such person not being in excess of the amount specified in the notice.

(9) The proper officer shall determine the amount of duty or interest under sub-section (8),—

- (a) within six months from the date of notice, [***] in respect of cases falling under clause (a) of sub-section (1);
- (b) within one year from the date of notice, [***] in respect of cases falling under sub-section (4);



[Provided that where the proper officer fails to so determine within the specified period, any officer senior in rank to the proper officer may, having regard to the circumstances under which the proper officer was prevented from determining the amount of duty or interest under sub-section (8), extend the period specified in clause (a) to a further period of six months and the period specified in clause (b) to a further period of one year:

Provided further that where the proper officer fails to determine within such extended period, such proceeding shall be deemed to have concluded as if no notice had been issued.]

(9A) Notwithstanding anything contained in sub-section (9), where the proper officer is unable to determine the amount of duty or interest under sub-section (8) for the reason that—

- (a) an appeal in a similar matter of the same person or any other person is pending before the Appellate Tribunal or the High Court or the Supreme Court; or
- (b) an interim order of stay has been issued by the Appellate Tribunal or the High Court or the Supreme Court; or

- (c) the Board has, in a similar matter, issued specific direction or order to keep such matter pending; or
- (d) the Settlement Commission has admitted an application made by the person concerned,

the proper officer shall inform the person concerned the reason for non-determination of the amount of duty or interest under sub-section (8) and in such case, the time specified in sub-section (9) shall apply not from the date of notice, but from the date when such reason ceases to exist.

.....

(10B) A notice issued under sub-section (4) shall be deemed to have been issued under sub-section (1), if such notice demanding duty is held not sustainable in any proceedings under this Act, including at any stage of appeal, for the reason that the charges of collusion or any wilful misstatement or suppression of facts to evade duty has not been established against the person to whom such notice was issued and the amount of duty and the interest thereon shall be computed accordingly.

.....

Explanation 1. - For the purpose of this section, "relevant date" means -

- (a) in a case where duty is not levied or not paid or short-levied or short-paid or interest is not charged, the date on which the proper makes an order for clearance of goods;

.....



Findings regarding limitation period / time-limit in issuance of SCN

27. From the above-mentioned statutory provisions, it is very clear that for issuing SCN under Section 28(4) of the Customs Act, 1962, there should be "collusion" or "wilful mis-statement" or "suppression facts" on part of the appellant. In the present case, there is no charge of any "collusion" on part of the appellant. Neither any Statement has been recorded nor any investigation has been conducted before invoking extended period of limitation. In the Demand Cum Less Charge Notice dated 27.01.2022, there is bald allegation in Para 8 stating that the importer was engaged in willful mis-statement and suppression of facts with intention to evade the higher rate of IGST. It is not mentioned in the notice that how the importer has made willful mis-statement and which facts have been suppressed. However, in the impugned O.I.O. dated 28.11.2023, at Para 21, it has been, inter alia, observed as under:

"The said importer has suppressed and mis-declared the serial number of the said Notification under Sr.No. 233 of Schedule II and thereby paid lower IGST at 12% instead 18% as notified. I hold that suppression and misdeclaration is on record in subject matter."

28. In this regard, I am of the view that merely claiming benefit of wrong Serial Number of any Notification does not amount to suppression of facts and willful mis-statement, so far as description and other particulars of goods are correctly declared. In this regard, I rely upon the following case law (gist):

28.1

1998 (101) E.L.T. 549 (S.C.)
IN THE SUPREME COURT OF INDIA
NORTHERN PLASTIC LTD.

Versus

COLLECTOR OF CUSTOMS & CENTRAL EXCISE

Civil Appeal No. 4196 of 1989 with C.A. No. 3325 of 1990, decided on 14-7-1998

.....
Exemption - Description of goods given correctly and fully in bill of entry/classification
declaration - Laying claim to some exemption, whether admissible or not, is a matter of belief of
assessee and does not amount to mis-declaration - Sections 25(1) and 111(m) of Customs Act,
1962 - Section 5A(1) of Central Excise Act, 1944 - Rules 173B and 173Q of Central Excise Rules,
1944.

28.2

2020 (371) E.L.T. 324 (Tri. - Mumbai)
IN THE CESTAT, WEST ZONAL BENCH, MUMBAI
SIRTHAI SUPERWARE INDIA LTD.

Versus

COMMR. OF CUSTOMS, NHAVA SHEVA-III

Final Order No. A/86791/2019-WZB, dated 10-10-2019 in Appeal No. C/85603/2017

.....
Demand - Limitation - Extended period - Misdeclaration of facts - By giving correct description
on the documents relating to import clearance, burden of making correct declaration on the Bill of
Entry discharged by appellants - Any error in classification or exemption claimed on Bill of Entry
cannot be misdeclaration with the intention to evade payment of duty - Extended period of
limitation not invocable - Demand which falls within the normal period of limitation only needs
to be upheld - Matter remanded back to Commissioner for re-determination and re-quantification
of demand which can be made by denying the exemption under Notification No. 46/2011-Cus. to
the appellants within the normal period as provided by Section 28(1) of Customs Act, 1962. [paras
5.5, 5.1]

Confiscation and penalty - Customs - Fact that the goods correspond to declaration in respect of
the description and value is sufficient to take the imported goods away from the application of
Sections 111(m) and 111(o) of Customs Act, 1962 - Confiscation of goods and imposition of
penalty under Section 112(a) ibid cannot be sustained - Appellant not having made any mis-
declaration with intent to evade payment of duty, penalty not imposable under Section 114A of
Customs Act, 1962. [paras 4.9, 4.10]

28.3

(2023) 4 Centax 73 (Tri.-Del)
IN THE CESTAT, TRIBUNALPRINCIPAL BENCH, NEW DELHI
MIDAS FERTCHEM IMPEX PVT. LTD.

Versus

PRINCIPAL COMMISSIONER OF CUSTOMS, ACC (IMPORT), NEW DELHI

Final Order Nos. 50027-50031 of 2023 in Appeal Nos. C/52239/2021 with C/52240-52243/2021, decided on 13-1-2023

.....
Self-assessment - Scope of - There is no separate mechanism - It is also a form of assessment - As importer is not expert in assessment and can make mistakes, there is provision for reassessment by officer - Although Bill of Entry requires importer to make true declaration and confirm its contents as true and correct, columns for classification, exemption notifications claimed and valuation are matters of self-assessment and are not matters of fact - Claim of wrong classification, ineligible exemption or valuation not fully as per law, or wrong self-assessment by importer will not amount to mis-declaration, mis-statement or suppression - Section 17 of Customs Act, 1962. [para 50]

.....

28.4

2019 (366) E.L.T. 318 (Tri. - Hyd.)
IN THE CESTAT, REGIONAL BENCH, HYDERABAD
[COURT NO. I]
LEWEK ALTAIR SHIPPING PVT. LTD.

Versus
COMMISSIONER OF CUS., VIJAYAWADA

*Final Order Nos. A/30053-30056/2019, dated 9-1-2019 in Appeal Nos. C/30608-30609/2017,
C/30230 & 30234/2016*

.....



Confiscation and penalty - Misdescription of goods - Mention of wrong tariff or claiming benefit of an ineligible exemption notification cannot form the basis for confiscation of goods under Section 111(m) of Customs Act, 1962 - Therefore, confiscations and redemption fines set aside - Consequently no penalties imposable under Section 112(a) of Customs Act, 1962. [para 7]

Penalty under Section 114AA of Customs Act, 1962 - Claiming an incorrect classification or the benefit of an ineligible exemption notification not amounts to making a false or incorrect statement, it being not an incorrect description of goods or their value but only a claim made by assessee - Thus, even if the appellant makes a wrong classification or claims ineligible exemption, he will not be liable to penalty under Section 114AA of Customs Act, 1962. [para 7]

.....

28.5 Further, I find that the Civil Appeal Diary No. 19639 of 2019 filed by Commissioner of Customs, Vijayawada against the above-mentioned Order of Hon'ble CESTAT has been dismissed by the Hon'ble Supreme Court on 05.07.2019 by holding that there is no legal infirmity in the impugned judgment and order warranting Supreme Court's interference under Section 130E(b) of the Customs Act, 1962. *[Commissioner v. Lewek Altair Shipping Pvt. Ltd. - 2019 (367) E.L.T. A328 (S.C.)]*

29. On the issue of sustainability of invoking extended period of limitation, I have also referred the following case law:

29.1 I rely upon the Order passed by the Hon'ble Supreme Court in the case of ***Pushpam Pharmaceuticals Company Vs. Collector of C.Ex., Bombay [1995 (78) ELT 401 (SC)]***. Para 4 of the same is as follows (underline supplied):

"4. Section 11A empowers the Department to re-open proceedings if the levy has been short-levied or not levied within six months from the relevant date. But the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts. The meaning of the word both in law and even otherwise is well known. In normal understanding it is not different that what is explained in various dictionaries unless of course the context in which it has been used indicates otherwise. A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or wilful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression.

5. In the result this appeal succeeds and is allowed. The matter is remitted back to the Authority for determining the turnover of the assessee in respect of only that period which is within six months from the date of issue of show cause notice."

29.2 I also rely upon the Judgment of the Hon'ble Supreme Court in the case of ***Collector of Central Excise Vs. Chemphar Drugs & Liniments [1989 (40) ELT 276 (SC)]***. Relevant portion of the same is as under (underline supplied):

"8. Aggrieved thereby, the revenue has come up in appeal to this Court. In our opinion, the order of the Tribunal must be sustained. In order to make the demand for duty sustainable beyond a period of six months and up to a period of 5 years in view of the proviso to sub-section 11A of the Act, it has to be established that the duty of excise has not been levied or paid or short-levied or short-paid, or erroneously refunded by reasons of either fraud or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Act or Rules made thereunder, with intent to evade payment of duty. Something positive other than mere inaction or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information when the manufacturer knew otherwise, is required before it is saddled with any liability, before the period of six months. Whether in a particular set of facts and circumstances there was any fraud or collusion or wilful misstatement or suppression or contravention of any provision of any Act, is a question of fact depending upon the facts and circumstances of a particular case. The Tribunal came to the conclusion that the facts referred to hereinbefore do not warrant any inference of fraud. The assessee declared the goods on the basis of their belief of the interpretation of the provisions of the law that the exempted goods were not required to be included and these did not include the value of the exempted goods which they manufactured at the relevant time. The Tribunal found that the explanation was plausible, and also noted that the Department had full knowledge of the facts about manufacture of all the goods manufactured by the respondent when the declaration was filed by the respondent. The respondent did not include the value of the product other than those falling under Tariff Item 14E



manufactured by the respondent and this was in the knowledge, according to the Tribunal, of the authorities. These findings of the Tribunal have not been challenged before us or before the Tribunal itself as being based on no evidence.

9. In that view of the matter and in view of the requirements of Section 11A of the Act, the claim had to be limited for a period of six months as the Tribunal did. We are, therefore, of the opinion that the Tribunal was right in its conclusion. The appeal therefore fails and is accordingly dismissed."

29.3 By relying upon the above Judgment, the Hon'ble Supreme Court in another case of *Padmini Products Vs. Collector of C.Ex. [1989 (43) ELT 195 (SC)]* has held to the effect that extended period of 5 years is not applicable for mere failure or negligence of the manufacturer to take out licence or pay duty when there was scope for doubt that the goods were not dutiable.

29.4 The above-mentioned three case law, though related to Central Excise cases, are squarely applicable to Customs cases also inasmuch the wordings of erstwhile Proviso to Section 11A(1) of the Central Excise Act, 1944, and Section 28(4) of the Customs Act, 1962, are similar.

30. On Customs side, I find that the jurisdictional CESTAT, Ahmedabad, in the case of *Hindustan Unilever Ltd. Vs. Commissioner of Customs, Mundra [2023] 12 Centax 171 (Tri-Ahmd)]*, has observed and held as follows (underline supplied):

"4.4 We also find that no conduct or intent of the Appellant is found to be malafide as they submitted all the information and also the information required during assessment. Hence the demand raised for the period 26-11-2013 to 4-8-2015 covered under 106 Bill of Entry out of 886 are barred by limitation and considered to be assessed finally. The goods were not found to be different than declared and the value was based on transfer pricing and hence provisions of Section 111 (m) is also not applicable. The remaining BEs were cleared by the customs after verification and scrutiny of goods and import documents and hence the same also do not come under the purview of Section 111 (m)."

Against the above-mentioned Final Order in the case of *Hindustan Unilever Ltd.* (supra), the Commissioner of Customs, Mundra, had filed a Civil Appeal Diary No. 32747 of 2023. Vide Order 22.09.2023, reported as *Commissioner of Customs, Mundra Vs. Hindustan Unilever Ltd. [2023] 12 Centax 172 (SC)]*. Hon'ble Supreme Court has dismissed the said Civil Appeal by observing that they are not inclined to interfere with the order impugned in that appeal.

31. The other case law relied upon by the appellant, as mentioned hereinabove, in support of their contention that extended period of limitation for issuance of SCN is not invocable in this case, are also squarely applicable.

32. **In the case on hand**, the appellant has declared the goods as **Dark 2B Pencil Lead** with its Diameter and Length in the Bills of Entry and there is no dispute about description of the impugned goods. If at the time of import, Customs Department was of the view that the benefit of 12% IGST was not available to the impugned goods, the Bills of Entry could have been reassessed under the provisions of Section 17(4) of the Customs Act, 1962, as amended w.e.f. 08.04.2011, which are as under:

"(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."

32.1 In view of the above statutory provision, I find that the proper officer could have re-assessed the duty under Section 17(4) of the Customs Act, 1962. If the re-assessment was not done due to any reason, the Customs Department could have issued a Show Cause Notice within normal period of limitation of two years under the provisions of Section 28(1) of the Customs Act, 1962. But, merely for the reason that the normal period of two years had been passed when the short-payment of IGST was detected, it is not proper to allege willful mis-statement / mis-declaration on part of the appellant just to cover the extended period of limitation.

32.2 In the present case, the appellant has declared and submitted all the information required for assessment and there is no allegation that any of the said information was false, fabricated or mis-leading. The description of goods has been properly declared by the appellant in the Bills of Entry and known to both parties.

32.3 In view of the above discussion and findings, I am of the considered that when description and other particulars of imported goods are correct, merely due to claiming benefit of wrong entry of any Notification, extended period of limitation cannot be invoked on the ground of mis-declaration of wrong serial number of Notification.

32.4 In view of the above position, I am of the view that invocation of provisions of Section 28(4) for demand of Customs duty is not sustainable in the present case.

Applicability of Section 28(10B) of the Customs Act, 1962

33. I find that as per the provisions of Section 28(10B) of the Customs Act, 1962, a notice issued under sub-section (4) shall be deemed to have been issued under sub-section (1), if such notice demanding duty is held as not sustainable in any proceeding under this Act, including at any stage of appeal, for the reason that the charges of collusion or any wilful misstatement or suppression of facts to evade duty has not been established against the person to whom such notice was issued and the amount of duty and the interest thereof shall be computed accordingly.

34. In view of the said statutory provisions of Section 28(10B), I am of the view that the impugned Show Cause Notice, i.e. Demand Cum Less Charge Notice, dated 27.01.2022 issued under the provisions of Section 28(4) is to be treated as issued under Section 28(1) of the Customs Act, 1962. Therefore, the Show Cause Notice for the Bill(s) of Entry, which were Out-of-charged within the previous period of two years from the date of SCN is required to be considered for the purpose of Section 28(1); and the SCN to the extent issued beyond the normal period of limitation of two years, is required to be treated as time-barred. In the present case, as mentioned in the above Table-2, demand of duty of Rs.9,50,212/- for the five Bills of Entry has been raised beyond the normal period of two years, whereas, the Less Charge Demand dated 27.01.2022 for duty of Rs.2,11,003/- for the BoE No. 6673327 dated 29.01.2020 has been issued within normal period of two years. Therefore, I am of the view that demand of duty of Rs.2,11,003/- can be treated as to have been issued under Section 28(1) read with Section 28(10B) of the Customs Act, 1962.

Findings on time-limit for completion of adjudication under Section 28(9)

35. The appellant has also taken a plea that the adjudication order has not been passed within the period of 1 year from the date of SCN, as prescribed under Section 28(9) of the Customs Act, 1962, and therefore, the proceedings should be treated as deemed to have been concluded as if no notice had been issued, as per the second Proviso to Section 28(9).

36. In this regard, I find that the SCN, i.e. Demand cum Less Charge Notice, in this case has been issued on **27.01.2022**. Whereas, the impugned Order-In-Original has been passed on **28.11.2023** i.e. after a period of 22 months from the date of SCN. In the impugned Order, it is nowhere mentioned that whether any officer senior in rank had extended the period of completion of adjudication, as prescribed under the first Proviso to Section 28(9) or not. It is also nowhere mentioned in the impugned order to the effect that whether it is covered under the provisions of Section 28(9A) or not. Under these situation, I am of the view that the impugned Order passed after a period of more than one year from the date of SCN, is time-barred in view of the Second Proviso to Section 28(9) and therefore, the proceedings are deemed to have been concluded as if no notice has been issued.

Summary regarding findings on limitation:

37. In view of the above discussion, I am of the view that the SCN issued by invoking extended period of limitation under Section 28(4) is not legal and proper and therefore the said SCN is to be treated as issued under normal period of limitation under Section 28(1) as per the provisions of Section 28(10B) of the Customs Act, 1962. Accordingly, demand of duty of **Rs.2,11,003/-** for the BoE No. 6673327 dated 29.01.2020, which has been issued within normal period of two years, can be considered on merits. However, adjudication for the said SCN dated 27.01.2022 has not been completed within the period of six months or one year, as prescribed under Section 28(9) and therefore, the proceedings are deemed to have been concluded as if no SCN/notice had been issued, as per the second Proviso to Section 28(9) of the Customs Act, 1962.

38. Under this situation, I hold that the impugned order confirming demand of duty against the appellant is required to be set aside on the ground of limitation, as prescribed under Section 28 of the Customs Act, 1962.

Findings regarding sustainability penalty:

39. I have gone through the Demand Cum Less Charge Notice dated 27.01.2022 issued to the appellant. In Para 9 of the said notice, the appellant has been called upon to explain why the specified amount along with applicable interest should not be recovered from them. Thus, I find that no penal provision has been invoked in the notice. Whereas, while adjudicating the notice, a penalty of Rs.11,61,215/- has been imposed on the appellant under Section 114A, which I find as not sustainable in absence of any proposal to impose penalty in the SCN. Further, as the demand of duty itself is not sustainable, the order towards imposition of interest and penalty is also not sustainable.

Order:

40. In view of the above facts, discussion and findings, I pass the following Order:

40.1 I reject the appeal filed by M/s. Doms Industries Ltd. to the extent it seeks benefit of 12% IGST for Pencil Leads under Sr.No. 233 of Schedule II of Notification No. 01/2017-IT(Rate) dated 28.06.2017.

40.2 However, on the grounds of limitation, as prescribed under Section 28 of the Customs Act, 1962 and as discussed hereinabove, I allow the appeal filed by the appellant and set aside the Order-In-Original No. 03/AR/ADC/TUMB/2023-24 dated 28.11.2023 passed by the Additional Commissioner of Customs, ICD-Tumb, with consequential relief, if any, in accordance with law.




(AMIT GUPTA)
Commissioner (Appeals)
Customs, Ahmedabad

Date: 20.05.2025

F.No. S/49-425/CUS/AHD/2023-24

By e-mail [As per Section 153(1)(c) of the Customs Act, 1962]

To

M/s. Doms Industries Ltd.
Plot No. 117, 52 Hector Expansion Area,
New GIDC, Umbergaon, Valsad – 396171.
(email: indirecttax@domsindia.com , rahul@domsindia.com , chintan@rathodshah.com)

Shri. Santosh Sonar,
M/s. B B S R & Associates LLP.
(email: santoshsonar@bsraffiliates.com)

Copy to:

1. The Chief Commissioner of Customs, Ahmedabad Zone, Customs House, Ahmedabad.
(email: ccohm-guj@nic.in)
2. The Pr. Commissioner of Customs, Ahmedabad.
(email: cus-ahmd-guj@nic.in , rra-customsahd@gov.in)
3. The Additional Commissioner of Customs, ICD-Tumb. (email: cusicd-tumb@gov.in)
4. The Deputy/Assistant Commissioner of Customs, ICD-Tumb.
(email: cusicd-tumb@gov.in)
5. Guard File.

* * * * *