

O/C

1608 to 1609 - 1610

F. No.: GEN/ADJ/COMM/208/2024-Adjn  
DIN-20240571MO000081338C

	<p>कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा, सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- <b>370421</b></p> <p><b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS:</b> <b>CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421.</b></p> <p><b>PHONE : 02838-271426/271423 FAX :02838-271425</b></p>	
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DIN: 20240571MO000081338C

**SHOW CAUSE NOTICE:**

[Under Section 28 (4) read with Section 124 of the Customs Act, 1962]

Whereas, based on the intelligence developed it appears that **M/s Electrothem (India) Ltd.**, Survey No 325, Village Samkhiyali, Near Toll Tex Booth, Bhachau, Kutch, Gujarat- 370140 (IEC- 0889000093) (*hereinafter referred to as M/s. Electrotherm for the sake of brevity*) is engaged in import of e-scooters/e-bikes in CKD condition by declaring the imported goods as parts/spare parts and components of e-scooters/e-bikes and classifying the same under Chapter Tariff Heading (CTH) 8714 and others of Custom Tariff Act, 1975. The said goods appear to be classified under CTH 8711 attracting duty @ 50% ad-valorem, as per Rule 2(a) of General Rules of interpretation for Import Tariff.

**1.1** Rule 2(a) of General Rules of Interpretation for Import Tariff of the First Schedule to the Customs Tariff Act, 1975 reads as under:

In terms of Rule 2(a) of General Rules of Interpretation for Import Tariff which reads as, *"Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or /finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled."*

**2.** Accordingly, search was conducted at the factory premises of M/s Electrothem (India) Ltd situated at Survey No 325, Village Samkhiyali, Near Toll Tex Booth, Bhachau, Kutch, Gujarat- 370140 under Panchnama dated 03.06.2022 (**RUD-01**).

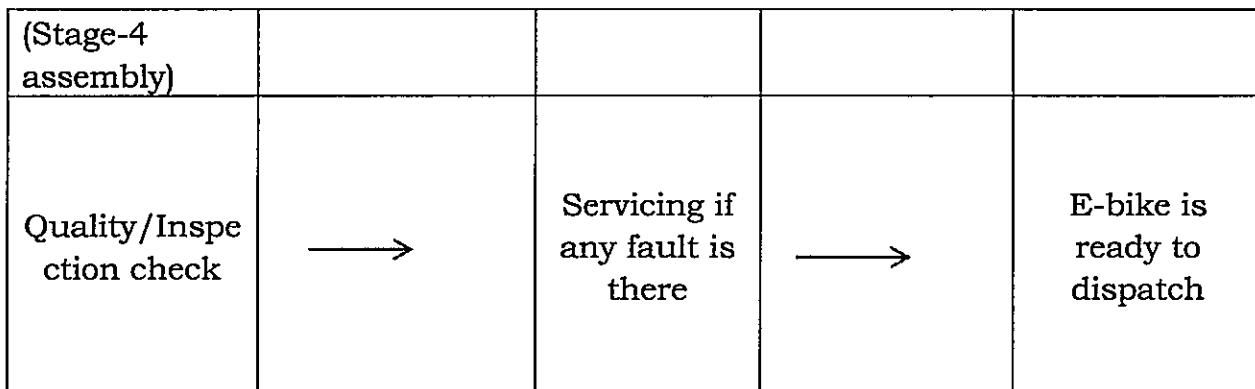
**2.1** During the Panchnama proceedings, Shri Rajesh Hariprasad Trivedi, Vice President (Commercial) of M/s. Electrotherm (India) Pvt. Ltd informed that the procurement/purchase/customs, sales and accounting departments operate in their office at Survey No. 72, Palodia, Near Shilaj, Ahmedabad, and that staff related to operations and dispatch operates from the plant in Samkhiali.

**2.2** Shri Himanshu Sharma, Production Co-ordinator of e-bike plant informed that they have two models of e-bikes by the name 'Yo Drift DX' and 'Yo Edge DX'. Shri Himanshu Sharma, Production Co-ordinator explained the whole work of assembling of e-scooter and informed that there are two separate assembly lines in the same shed, divided with a partition. Shri Himanshu Sharma further informed that first of all, chassis is punched/embossed with VIN/Chassis Number, after punching VIN, the parts namely rear fender, rear reflector, round reflector, rear fork, shock absorber, side stand, main stand, ignition lock, controller, converter, horn, seat lock plate and seat lock cable. Thereafter, the assembled chassis is brought to the conveyor line and in conveyor line, rear wheel fitment, front fork fitment, front wheel fitment, handle fitment, harness fitment and battery fitment are done. Thereafter, glove box, floor panel, paddle cover, side body parts, front mould and headlight cover are fitted on the vehicle. Thereafter, the vehicle is brought down from the conveyor line and seat fitment, rear carrier and swing arm cover are fit on the vehicle to make it a complex vehicle. Thereafter, quality check is done and the e-bikes are ready for dispatch.

**2.3** Shri Himanshu Sharma explained the flow chart of assembling process of e-bikes which is as under:

						(Stage-1 assembly)
Chassis	→	Chassis is punched/embossed with VIN/Chassis Number. Then the parts namely rear fender, rear reflector, round reflector, rear fork, shock absorber, side stand, main stand, ignition lock, controller, converter, horn, seat lock plate and seat lock cable are fitted on chassis.	→	Ready Chassis to take up on conveyor/assembly line	→	Rear wheel fitment, front fork fitment, front wheel fitment, handle fitment, harness fitment and battery fitment are done.

	(Stage-2 assembly)		(Stage-3 assembly)	
→	Glov box, floor panel, paddle cover, side body parts, front mould and headlight cover are fitted on the vehicle.	→	The vehicle is brought down from the conveyor line and seat fitment, rear carrier and swing arm cover are fit on the vehicle.	→



Shri Himanshu Sharma further informed that **all the parts of e-bikes are imported except Lithium Ion Battery, Tyres and Battery Charger** and he also informed that in Batteries, **all Lead Acid Batteries are imported**.

**3.** Another search was conducted at office of M/s Electrothem (India) Ltd situated at Survey No. 72, Village- Palodia, Ahmedabad (Gujarat), and relevant documents were withdrawn under the Panchnama dated 03.06.2022 (**RUD-02**).

**4.** Statement of **Shri Himanshu Sharma, Production Co-ordinator of M/s. Electrotherm India Ltd. (Auto Division)** was recorded under Section 108 of Customs Act, 1962 on 03.06.2022 (**RUD-03**), wherein he inter-alia, stated that:

- He is a Diploma holder in Mechanical Engg.
- He joined M/s. Electrotherm India Ltd. in the month of November, 2015 as Production Co-ordinator. He is reporting to Shri Parag Vaja, Plant Head. He is looking after the assembly line in the production department of Electric bikes- "Yo Bikes". There are two models of "Yo bikes" namely, "Yo Drift Dx" and "Yo Edge Dx".
- Most of the parts of these bikes are imported from China. Two types of battery, namely Lithium and Lead acid are being used in the bikes, as per the requirement of the dealers. Lithium batteries are being procured from the domestic market and Lead Acid batteries are being procured from the suppliers from China as well as India. The supplier of Lithium as well as Lead Acid batteries in India is M/s. Amptek. Further, tyres are also being purchased locally only.
- The orders for purchase are placed to the suppliers, by their purchase department at Palodia, Ahmedabad office. The parts are normally imported, as per the number of bikes ordered, in Knock Down Condition.
- First they punch Chasis Number on each of the chassis, serially, which indicates the month and year of production and the model number. Last five digits of the chassis number (VIN Number-Vehicle Identification Number) are given serially.

- After punching the VIN Number on the chassis, the parts, namely rear fender, rear reflector, round reflector, rear fork, shock absorber, side stand, main stand ignition lock, controller converter, horn, seat lock plate and seat lock cable are fitted during chassis assembly. **All these parts are imported from China.** Thereafter, the assembled chassis is brought to the Conveyor line.
- In the conveyor line, rear wheel fitment, front fork fitment, front wheel fitment, handle fitment, harness fitment and battery fitment are done. Thereafter, glow box, floor panel, paddle cover, side body parts, front mould and headlight cover are fit on the vehicle. They put the same last five serial number of the VIN of a bike on the controller and converter of the said bike. Further they also put their code numbers on the batteries as well. Thereafter, the vehicle is brought down from the conveyor line and seat fitment, rear carrier and swing arm cover are fit on the vehicle to make it a complete vehicle. After initial testing at the production unit, the bike is sent for final Quality Inspection. After inspection of the bike the same is ready for dispatch.
- In the case of lithium battery operated bike, only one lithium battery is used in one bike, whereas in the case of lead acid battery operated bike, they use four or five lead acid batteries in one bike, as per the requirement of the dealers. They also purchase chargers from Indian local market and supply along with the bikes.
- **All the parts except battery and tyre are imported from China. The brand logo of their bike- "ET" is affixed on the big front panel connecter (Front Mould) by the supplier themselves before exporting the same from China, and the said part is brought to the factory, along with the logo on it, duly affixed. No other logo is affixed on the bike from their factory.** After the Final Quality Inspection, the dispatch staff does the packing of the bikes and dispatches as per the sales invoice.

5. Statement of **Shri Shivkumar Amar Singh, Manager (Purchase), Auto Division, M/s.Electrotherm (India) Ltd.** was recorded under Section 108 of Customs Act, 1962 on 27.07.2022 (**RUD-04**), wherein he inter-alia, stated that:

- He is a B.Tech. Graduate. He joined M/s.Electrotherm (India) Ltd. in the year 2004 and working as Manager (Purchase), Auto Division in the company.
- He is reporting to Shri Joji John, Business Head. **He is looking after import purchase and domestic purchase relating to Auto Division.**
- M/s Electrotherm (India) Ltd. is engaged in the manufacturing of Induction Furnace, Induction heating and hardening equipments, Continuous Cast Machine, transformers at their Palodia factory. They have a plant at Samkhyali, where the manufacturing of TMT Iron rods, DI pipes and Electric bikes is done.

- **Shri Shailesh Bhandari is the Managing Director** and around 6 to 7 other Directors in the company.
- Electrotherm (India) Ltd. started manufacturing E-bikes in the year 2006. The manufacturing takes place at their Samkhiali factory.
- They sell the E-bikes under their brand name "Yo". They are manufacturing two models of E-bikes, namely, Driftdx, Edgedx. They are having variants of these models with lead acid battery fitted and Lithium battery fitted. Driftdx and Edgedx are manufactured having 60volt capacity with lithium as well as Lead acid batteries. Edgedx is having another variant with 78 volt capacity with Lead Acid variant.
- He produced a duly signed list of all the parts imported and used for assembling E-bikes. Apart from these items, they use electronic components, tyre, paint used for powder coating of the chassis, and lithium battery. **(RUD-05)**
- They import most of the items, as per list given by him from two vendors in China, namely M/s.Peerless Automotive Co. Ltd., Zhejiang Province and M/s.Mega Enterprise Co. Ltd., Zhejiang.
- They are importing parts of E-bikes from Mundra Port, since 2019. Prior to that they used to import the same at Nhava Sheva Port.
- They themselves file the BoEs for import of parts of E-bikes; and at times they use the services of the CHA M/s.Navigators.
- They are classifying the parts of E-bikes under CTH 8714 of the Customs Tariff.
- **They prepare purchase orders for parts of E-bikes corresponding to the number of vehicles planned to manufacture**, but do not send the purchase orders to their vendor abroad. Against their message sent by wechat (earlier) and whatsapp to the vendor, the vendor send them Proforma Invoice quoting the price of all the parts of E-bikes as requested. On receipt of Proforma Invoice, they make full payment to the vendor abroad and after that Vendor ship the material to them. The purchase orders are prepared for their record and for SAP accounting purpose.
- He produced a file containing copies of all the Purchase Orders for 2021-22 during the statement **(RUD-06)**
- Having perused the Proforma Invoice-PI No.PAUTO-EX20211004, dated 02-Nov-2021 issued by M/s.Peerless Automotive Co., Ltd., Zhejiang Province, China, available at pages 231-233 of File No.3, withdrawn vide Panchnama dated 03-06-2022 drawn at the office premises of M/s.Electrotherm (India) Ltd., Palodia, Ahmedabad, he agreed that the order is for parts of E-bikes corresponding to 120 E-bikes. **(RUD-07)**

- Having perused Proforma Invoice-PI No.PAUTO-EX20211003, dated 02-Nov-2021 issued by M/s.Peerless Automotive Co., Ltd., Zhejiang Province, China, available at pages 235-237 of File No.3, withdrawn vide Panchnama dated 03-06-2022 drawn at the office premises of M/s.Electrotherm (India) Ltd., Palodia, Ahmedabad, he agreed that the order is for parts corresponding to **180** E-bikes, without battery and tyres. **(RUD-07)**
- Having perused the email correspondences between Shri Jignesh Patva and Shri Joji John dated 17 November, 2021 available at page 249 of File No.3, withdrawn vide Panchnama dated 03-06-2022 drawn at the office premises of M/s.Electrotherm (India) Ltd., Palodia, Ahmedabad, he stated that the said email was sent by Shri Jignesh Patva regarding Auto Division payment planning relating of M/s.Electrotherm (India) Ltd. to M/s.Peerless Automotive Co. Ltd., against PI Nos. PAUTO-EX20211003 & PAUTO-EX20211004 for 180 Nos. driftdx & 120 Nos. Edgedx parts import (USD 40849.20 + 27499.20 – 68348.40 \* 75) for an amount of Rs.51,26,130/- via swift mode, Shri Joji John has given approval by reply email dated 17 November 2021 12.24hrs by saying OK. **(RUD-07)**
- **He further agreed that the abovementioned payment planning shows that the payments are made for the parts meant for 180 Nos. Driftdx & 120 Nos. Edgedx.**
- Having perused the Proforma Invoice-PI No.MAUTO-EX20211002, dated 02-Nov-2021 issued by M/s.Mega Enterprise Co. Ltd., Zhejiang, China, available at pages 253-255 of File No.3, withdrawn vide Panchnama dated 03-06-2022 drawn at the office premises of M/s.Electrotherm (India) Ltd., Palodia, Ahmedabad he agreed that the order is for meant for manufacturing **300** E-bikes. **(RUD-08)**
- Having perused the Proforma Invoice-PI No.PAUTO-EX20220403, dated 07-Apr-2022 issued by M/s.Peerless Automotive Co., Ltd., Zhejiang Province, China, available at pages 289-290 of File No.3, withdrawn vide Panchnama dated 03-06-2022 drawn at the office premises of M/s.Electrotherm (India) Ltd., Palodia, Ahmedabad he agreed that the order is for parts correspond to **300** E-bikes, without battery and tyres. Further he also agreed with the fact that w.r.t the email correspondences between Shri Pratik Joshi and Shri Joji John dated 19-04-2022 confirms the payment of total Rs.58,04,387/- including payment against 300 Nos. Driftdx imported parts against PIs No. PAUTO-EX20220403. **(RUD-09)**
- Having perused the Proforma Invoice No. PI No.PAUTO-EXP20220101, dated 29-Nov-21 available at page No.331-333 of File No.3 withdrawn vide Panchnama dated 03-06-2022 drawn at the office premises of M/s.Electrotherm (India) Ltd., Palodia, Ahmedabad, he agreed that the said PI is for parts correspond to **300** E-bikes. **(RUD-10)**
- Further having perused the payment planning confirmation email dated 20-01-2022 between Shri Jignesh Patva and Shri Joji John, available at page 339 of File No.3 withdrawn vide Panchnama dated 03-06-2022 drawn at the office premises of M/s.Electrotherm (India) Ltd., Palodia,

Ahmedabad, which speaks about 300 Ns. Driftdx parts import against PI No. PAUTO-EXP20220101, and the Bank debit voucher dated 01-02-2022 (page 341 of the same file) in respect of the said payment which speaks about payment against USD 70299.00 @ 74.86 300 Drift PAUTO-EXP20220101 he agreed that these payment confirmation are for purchase of parts meant for assembling **300** E-bikes. **(RUD-10)**

- Having perused the Proforma Invoice PI No.PAUTO-EX20220201, dated 10-Mar-22 issued by M/s.Peerless Automotive Cp. Ltd., Zhejiang Province, China, available at page 347-349 of File No.3 withdrawn vide Panchnama dated 03-06-2022 drawn at the office premises of M/s.Electrotherm (India) Ltd., he confirmed that this proforma Invoice is showing the price in respect of parts meant for **900** driftdx E-bikes. **(RUD-11)**
- Further having perused the email correspondences between Shri Jignesh Patva and Shri Joji John dated 21-03-2022; seeking payment planning approval and confirmation, available at page 353 of File No.3 withdrawn vide Panchnama dated 03-06-2022 drawn at the office premises of M/s.Electrotherm (India) Ltd., he agreed that said email from Shri Jignesh Patva is regarding seeking approval for part payment planning against import of parts in respect of **900** nos. driftdx model E-bikes each against PIs No.PAUTO-EX20220201, MAUTO-EX20220202 and PAUTO-EX20220203. **(RUD-11)**
- Having perused Proforma Invoice No.PAUTO-EX20220404, dated 07-Apr-22 issued by M/s.Peerless Automotive Co. Ltd., Zhejiang Province, China, available at page 361-363 of File No.3 withdrawn vide Panchnama dated 03-06-2022 drawn at the office premises of M/s.Electrotherm (India) Ltd.. and also the corresponding Bank debit voucher dated 05-May-2022 issued for payment against USD 71460 @ 76.37 300 Drift PAUTO-EX20220404, which is available at page 369 of the same File, he agreed that these are documents relating to purchase of parts meant for **300** Drift E-bikes. **(RUD-12)**
- Having perused Proforma Invoice No.MAUTO-EX20211201, dated 07-Apr-22 issued by M/s.Mega Enterprise Co. Ltd., Zhejiang, China, available at page 397, 403 of File No.3 withdrawn vide Panchnama dated 03-06-2022 drawn at the office premises of M/s.Electrotherm (India) Ltd. and also the corresponding Bank debit voucher dated 21-Dec-2021 issued for payment against USD 70101 @ 75.90 300 Drift PI MAUTO/EX20211201, which is available at page 411 of the same File he agreed that these are documents relating to purchase of parts correspond to **300** Drift E-bikes. **(RUD-13)**
- He used to send messages in a whatsapp group naming “ORA CAP Group”. One of the member in the said whatsapp group is Ms. Echo Rui of China (Mob.+86 13646790215), who is the owner of both the main suppliers firm for M/s Electrotherm for parts of E-Bike i.e. M/s.Peerless Automotive Co. Ltd. and M/s. Mega Enterprise Co. Ltd. both based at China.

- He exported the entire chat messages to his own email account and submitted print of the entire chat messages running into 1 to 72 pages under his initials on each odd pages. **(RUD-14)**
- He perused *and put his dated signature on* Explanatory notes of First Schedule to Chapter 87 of the Customs Tariff with regard to "*incomplete or unfinished vehicle*", wherein it is mentioned that-

*An incomplete or unfinished vehicle is classified as the corresponding complete or finished vehicle provided it has the essential character of the latter (see Interpretative Rule 2 (a)), as for example :  
A motor vehicle, not yet fitted with the wheels or tyres and battery.  
A motor vehicle not equipped with its engine or with its interior fittings.  
A bicycle without saddle and tyres.*
- *He perused and put his dated signature on Rule 2(a) of the General Rules for the interpretation of first Schedule to the Customs Tariff, wherein the principles governing classification of goods in the said schedule is given as 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."*
- After going through the above Rules of Interpretation and the Explanatory Notes of Chapter 87 of the first Schedule to the Customs Tariff, **he agreed that if a vehicle is imported in a dismantled condition, even without tyres and battery, the same has to be classified as the corresponding finished or complete vehicle.**
- He perused and put his dated signature on the item description given in First Schedule to Customs Tariff, against CTH 8711 and 8711.60 which reads as

The item description against the sub-heading 8711 is -  
*"Motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side cars"*

The item description against the sub-heading 8711.60 is "*With electric motor for propulsion*".
- **He further agreed that the E-bikes imported by M/s.Electrotherm (India) Ltd. in knock down condition merits classification under 8711.60 of the First Schedule to the Customs Tariff.**
- He perused the Sl. No.531A of the Customs Notification. No.50/2017-Cus, dated 30-06-2017, amended vide Not. No.01/2020-Cus, dated 02-

02-2020, effective from 01-04-2020 under which the effective rates applicable for the goods under CTH 8711 are as under:

Sl. No.	Customs CTH	Description of Goods	Standard rate
“531 A.	8711	<p>Electrically operated motor cycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side cars, and side cars, if imported, -</p> <p>(1) As a knocked down kit containing all the necessary components, parts or sub-assemblies, for assembling a complete vehicle, with,-</p> <p>(a) disassembled Battery Pack, Motor, Motor Controller, Charger, Power Control Unit, Energy Monitor Contractor, Brake system, Electric Compressor not mounted on chassis;</p> <p>(b) pre-assembled Battery Pack, Motor, Motor Controller, Charger, Power Control Unit, Energy Monitor Contractor, Brake System, Electric compressor not mounted on a chassis or a body assembly</p> <p>(2) in a form other than (1) above</p>	<p>15%</p> <p>25%</p> <p>50%</p>

- **He agreed that the classification done by M/s.Electrotherm (India) Ltd. for import of parts of E-bikes in sets under CTH 8714 is wrong.**
- **He agreed that Customs duty has been short-paid on import of parts of E-bikes in sets.**
- They have been classifying this product under CTH 8714 since 2006. Hence, they continued the same till now. However, **ultimate decision with regard to all matters of the company lies with their Managing Director Shri Shailesh Bhandari. The final decision with regard to Customs Tariff classification of parts of E-bikes in sets meant for vehicles on import in their case also will be taken by their Managing Director only.**

#### **6. Relation between M/s. Electrotherm (India) Ltd. and Shri Shailesh Bhandari.**

It appears that Shri Shailesh Bhandari was the main person in the company M/s. Electrotherm (India) Ltd. Shri Shailesh Bhandari is Managing Director in M/s. Electrotherm (India) Ltd. Shri Shivkumar Amar Singh, Manager (Purchase), Auto Division, M/s.Electrotherm (India) Ltd. in his statement dated 27.07.2022 accepted that the company is being managed by Shri Shailesh Bhandari alone and all other directors are/ were not looking after any business related activities in the company M/s. Electrotherm (India) Ltd. Shri Shiv Kumar further accepted that they have been classifying this product under CTH 8714 since 2006. However, ultimate decision with regard to all matters of the company lies with their Managing Director Shri Shailesh

Bhandari. The final decision with regard to Customs Tariff classification of parts of E-bikes in sets meant for vehicles on import in their case also will be taken by their Managing Director only. Accordingly it appears that being Managing director of the import company M/s Electrotherm, all decisions related to purchase, sales, procurement, international business related to the E bike/ E scooter business of the company are being taken by Shri Shailesh Bhandari.

**EVIDENCES OF IMPORT OF ALL NECESSARY PARTS IN CKD FROM THROUGH IMPORT PATTERN**

7. From the discussion hereinabove and from the Statements of Shri Himanshu Sharma Engineer-Service, Production Co-ordinator of M/s. Electrotherm India Ltd. (Auto Division) and Shri Shivkumar Amar Singh, Manager (Purchase), Auto Division, M/s.Electrotherm (India) Ltd., it appears that M/s Electrotherm had hatched a conspiracy to evade Customs Duty on import of e-bike/ e-scooters in CKD condition.

7.1. M/s.Electrotherm (India) Ltd. had declared imported goods as "Parts of E-Bike (Model name) (Parts' Name)" under Customs Tariff Heading 8714 and others at Mundra, Nhava Sheva, ICD Sabarmati and ACC Ahmedabad port. They were importing goods under CTH 8714 and others. A sample list of some Bills of Entry showing pattern of import by M/s.Electrotherm (India) Ltd. wherein same/similar number of sets/pieces have been imported are shown below:

**Table-1 (Import by M/s. Electrotherm (India) Ltd.)**

BE NUMBER & Date	ITEM DESCRIPTION	CTH	QUANTITY	BCD_Rate
4844919/10-09-19	PART OF E-BIKE (YO DRIFT)-<Part Name> (400 PCS) DTLS AS PER INV & P.LIST ,BL)	87141090	400 numbers	15
8407124/07-08-20	PARTS OF E-BIKE (YO DRIFT DX) <Part name>	87141090	280 numbers	15
	PARTS OF E-BIKE(YO EDGE DX) <Part Name>	87141090	120 numbers	15
8504109/17-08-20	PARTS OF E-BIKE (YO DRIFT DX) <Part name>	87141090	280 numbers	15
	PARTS OF E-BIKE(YO EDGE DX) <Part Name>	87141090	120 numbers	15
9128218/10-10-20	PARTS OF E-BIKE (YO EDGE DX) <Part Name>	87141090	300 numbers	15

To further demonstrate, how goods imported by M/s. Electrotherm (India) Ltd. consist of all the essential parts required to assemble e-bike/e-scooter, description of the parts imported vide above said Bills of Entry are reproduced as under:

**Table-2**

**Description of goods under BE No. 9128218 dated 10-10-20 imported by M/s. Electrotherm (India) Ltd.**

S. No.	ITEM DESCRIPTION	QUANTITY	UQC
1	PARTS OF E-BIKE (YO EDGE DX) FRONT HANDLE COVER	300	Pcs

2	PARTS OF E-BIKE (YO EDGE DX) FRONT PANEL COVER	300	Pcs
3	PARTS OF E-BIKE (YO EDGE DX) FRONT PANEL	300	Pcs
4	PARTS OF E-BIKE (YO EDGE DX) SIDE LOWER COVER (LH & RH)	300	Pcs
5	PARTS OF E-BIKE (YO EDGE DX) SIDE BODY COVER (LH & RH)	300	Pcs
6	PARTS OF E-BIKE (YO EDGE DX) FRONT MUDGUARD	300	Pcs
7	PARTS OF E-BIKE (YO EDGE DX) BACKREST	300	Pcs
8	PARTS OF E-BIKE (YO EDGE DX) REAR CONNECTOR	300	Pcs
9	PARTS OF E-BIKE (YO EDGE DX) LUGGAGE BOX	300	Pcs
10	PARTS OF E-BIKE (YO EDGE DX) SWING ARM COVER (LH & RH)	300	Pcs
11	PARTS OF E-BIKE (YO EDGE DX) REAR HANDLE COVER	300	Pcs
12	PARTS OF E-BIKE (YO EDGE DX) TOOLBOX UPPER	300	Pcs
13	PARTS OF E-BIKE (YO EDGE DX) TOOLBOX LOWER	300	Pcs
14	PARTS OF E-BIKE (YO EDGE DX) FRONT MOULD	300	Pcs
15	PARTS OF E-BIKE (YO EDGE DX) BOTTOM FLOOR COVER	300	Pcs
16	PARTS OF E-BIKE (YO EDGE DX) FOOT BOARD	300	Pcs
17	PARTS OF E-BIKE (YO EDGE DX) CENTRE COVER	300	Pcs
18	PARTS OF E-BIKE (YO EDGE DX) CONTROLLER COVER	300	Pcs
19	PARTS OF E-BIKE (YO EDGE DX) FOOT BOARD COVER	300	Pcs
20	PARTS OF E-BIKE (YO EDGE DX) REAR FENDOR	300	Pcs
21	PARTS OF E-BIKE (YO EDGE DX) REAR MUDGUARD LOWER	300	Pcs
22	PARTS OF E-BIKE (YO EDGE DX) SMALL COVER OF LUGGAGE BOX	300	Pcs
23	PARTS OF E-BIKE (YO EDGE DX) BAG HOOK	300	Pcs
24	PARTS OF E-BIKE (YO EDGE DX) HEADLIGHT	300	Pcs
25	PARTS OF E-BIKE (YO EDGE DX) FRONT INDICATORS	300	Pcs
26	PARTS OF E-BIKE (YO EDGE DX) TAILLIGHT	300	Pcs
27	PARTS OF E-BIKE (YO EDGE DX) FRONT FORK	300	Pcs
28	PARTS OF E-BIKE (YO EDGE DX) REAR SHOCK ABSORBERS	300	Pcs
29	PARTS OF E-BIKE (YO EDGE DX) DIGITAL SPEEDOMETER	300	Pcs
30	PARTS OF E-BIKE (YO EDGE DX) MAIN WIRING HARNESS	300	Pcs
31	PARTS OF E-BIKE (YO EDGE DX) D C MOTOR CONTROLLER	300	Pcs
32	PARTS OF E-BIKE (YO EDGE DX) D C MOTOR 250 W	300	Pcs
33	PARTS OF E-BIKE (YO EDGE DX) CHARGING SOCKET	300	Pcs
34	PARTS OF E-BIKE (YO EDGE DX) SWITCH SET	300	Pcs
35	PARTS OF E-BIKE (YO EDGE DX) CABLE TIES	300	Pcs
36	PARTS OF E-BIKE (YO EDGE DX) FASTENERS	300	Pcs
37	PARTS OF E-BIKE (YO EDGE DX) THROTTLE	300	Pcs
38	PARTS OF E-BIKE (YO EDGE DX) BACK COVER	300	Pcs
39	PARTS OF E-BIKE (YO EDGE DX) REAF REFLECTOR (RED)	300	Pcs
40	PARTS OF E-BIKE (YO EDGE DX) REAR VIEW MIRRORS	300	Pcs
41	PARTS OF E-BIKE (YO EDGE DX) FOOT MAT	300	Pcs
42	PARTS OF E-BIKE (YO EDGE DX) BATTERY WIRING HARNESS	300	Pcs
43	PARTS OF E-BIKE (YO EDGE DX) FRONT WHEEL	300	Pcs
44	PARTS OF E-BIKE (YO EDGE DX) BACKREST SPONGE	300	Pcs
45	PARTS OF E-BIKE (YO EDGE DX) BACKREST BRACKET	300	Pcs
46	PARTS OF E-BIKE (YO EDGE DX) USB CHARGING SOCKET	300	Pcs
47	PARTS OF E-BIKE (YO EDGE DX) HANDLEBAR	300	Pcs
48	PARTS OF E-BIKE (YO EDGE DX) O RING	300	Pcs
49	PARTS OF E-BIKE (YO EDGE DX) CONVERTER	300	Pcs
50	PARTS OF E-BIKE (YO EDGE DX) FRONT DISC BRAKE PUMP	300	Pcs
51	PARTS OF E-BIKE (YO EDGE DX) FRONT BRAKE DISC	300	Pcs

52	PARTS OF E-BIKE (YO EDGE DX) FRONT AXLE	300	Pcs
53	PARTS OF E-BIKE (YO EDGE DX) BRAKE LEVER (LHS)	300	Pcs
54	PARTS OF E-BIKE (YO EDGE DX) HORN	300	Pcs
55	PARTS OF E-BIKE (YO EDGE DX) MCB	300	Pcs
56	PARTS OF E-BIKE (YO EDGE DX) FLASHER	300	Pcs
57	PARTS OF E-BIKE (YO EDGE DX) BRAKE CABLE	300	Pcs
58	PARTS OF E-BIKE (YO EDGE DX) ALARM	300	Pcs
59	PARTS OF E-BIKE (YO EDGE DX) SEAT LOCK PLATE	300	Pcs
60	PARTS OF E-BIKE (YO EDGE DX) SEAT LOCK CABLE	300	Pcs
61	PARTS OF E-BIKE (YO EDGE DX) IGNITION LOCK	300	Pcs
62	PARTS OF E-BIKE (YO EDGE DX) BALL RACE SET	300	Pcs
63	PARTS OF E-BIKE (YO EDGE DX) HEADLIGHT LED	300	Pcs
64	PARTS OF E-BIKE (YO EDGE DX) REAR BRAKE PLATE ASSEMBLY	300	Pcs
65	PARTS OF E-BIKE (YO EDGE DX) FRONT FORK CUP	300	Pcs
66	PARTS OF E-BIKE (YO EDGE DX) REAR CARRIER	300	Pcs
67	PARTS OF E-BIKE (YO EDGE DX) SEAT	300	Pcs
68	PARTS OF E-BIKE (YO EDGE DX) FRAME	300	Pcs
69	PARTS OF E-BIKE (YO EDGE DX) MAIN STAND	300	Pcs
70	PARTS OF E-BIKE (YO EDGE DX) REAR FORK	300	Pcs
71	PARTS OF E-BIKE (YO EDGE DX) SIDE STAND	300	Pcs
72	PARTS OF E-BIKE (YO EDGE DX) PANEL SUPPORT	300	Pcs
73	PARTS OF E-BIKE (YO EDGE DX) SMALL METAL PARTS	300	Pcs
74	PARTS OF E-BIKE (YO EDGE DX) BATTERY CLAMP	300	Pcs
75	PARTS OF E-BIKE (YO EDGE DX) AIR VALVE (FRONT)	300	Pcs
76	PARTS OF E-BIKE (YO EDGE DX) AIR VALVE (REAR)	300	Pcs
77	PARTS OF E-BIKE (YO EDGE DX) FOOT REST	300	Pcs
78	PARTS OF E-BIKE (YO EDGE DX) SWING ARM DECORATION	300	Pcs

**7.2.** Similar pattern also emerges for other Bills of Entries filed by the importer M/s. Electrotherm (India) Ltd.

**7.3.** From all the parts/components/assemblies/sub-assemblies imported by M/s. Electrotherm (India) Ltd. (under Bills of Entry as listed in Annexure-A) and comparing the same with the list of Goods submitted by Shri Shiv Kumar under his statement dated 27.07.2022 (**RUD-05**), and also the main parts mentioned in the assembling process explained by Shri Himanshu Sharma, Production Co-ordinator of e-bike plant of M/s.Electrotherm (India) Ltd. under Panchnama dated 03.06.2022, it appears that their import results in import of all the necessary components, parts or sub-assemblies, for assembling a complete vehicle i.e. e-bike/e-scooter which fulfil the essential character of the complete or finished e-bike/e-scooter.

**EVIDENCES OF IMPORT OF ALL NECESSARY PARTS IN CKD FROM THROUGH STATEMENT OF SHRI HIMANSHU SHARMA, SHRI SHIVKUMAR AMAR SINGH AND PANCHNAMA**

**8.** During the Panchnama dated 03.06.2022 drawn at factory premises of M/s. Electrotherm (India) Limited, Shri Himanshu Sharma, Production Co-ordinator of e-bike plant informed that **all the parts of e-bikes are imported except Lithium Ion Battery, Tyres and Battery Charger** and he also informed that in Batteries, **all Lead Acid Batteries are imported by their**

company.

**8.1.** Shri Himanshu Sharma, Production Co-ordinator of M/s. Electrotherm India Ltd. (Auto Division) in his statement dated 03.06.2022 accepted that **most of the parts of these bikes are imported from China**. Lithium batteries are being procured from the domestic market and Lead Acid batteries are being procured from the suppliers from China as well as India. **These parts are normally imported, as per the number of bikes ordered, in Knock Down Condition. All the parts except battery and tyre are imported from China**. From his statement it emerges that **the brand logo of their bike- "ET" is already affixed on the big front panel connecter (Front Mould) by their supplier** themselves before exporting the same from China, and the said part is brought to the factory, along with the logo on it, duly affixed.

**8.2.** Shri **Shivkumar Amar Singh**, Manager (Purchase), Auto Division, M/s.Electrotherm (India) Ltd. was directly involved in the purchase process of the imported goods related to the E-Bike/ E-scooter as the same is evident from his statement dated 27.07.2022. Further it emerges from the said statement that M/s Electrotherm imports majority of the parts of E-bike from China in Sets (CKD Consition). Shri Shiv Kumar further stated that he used to place order through a whatsapp group naming "ORA CAP Group" to his Chinese Supplier Ms. Echo Rui of China (Mob.+86 13646790215), who is the owner of M/s.Peerless Automotive Co. Ltd. and M/s. Mega Enterprise Co. Ltd. He accepted that **they prepare purchase orders for parts of E-bikes corresponding to the number of vehicles planned to manufacture** He also agreed that the E-bikes imported by M/s.Electrotherm (India) Ltd. **in knock down condition merits classification under 8711.60 of the First Schedule to the Customs Tariff**. He agreed that the classification done by M/s.Electrotherm (India) Ltd. for import of parts of E-bikes in sets under CTH 8714 is **wrong**. **He agreed that Customs duty has been short-paid on import of parts of E-bikes in sets**. Further on perusal of the various Performa Invoices, Email Correspondence perused withdrawn under Panchnama dated 03.06.2022 it is evident that the orders under those Performa invoices and approval of payment under the those Email communications were being made for a particular set of E Bike Parts in CKD Conditions without battery and tyres. This clearly indicates that M/s Electrotherm was importing E Bike in CKD condition as the order of the parts of E- bike were being placed by M/s Electrotherm through Shri Shiv Kumar were being placed in no. of Sets of E-bike.

**8.3.** Shri Himanshu Sharma in his statement dated 03.06.2022, stated that Most of the parts of these bikes are imported from China.

**DOCUMENTARY EVIDENCES IN SUPPORT OF IMPORT OF ALL NECESSARY PARTS IN CKD FROM BY M/S. ELECTROTHERM (INDIA) LTD.**

During the recording of the statement dated 27.07.2022 Shri Shiv Kumar had perused following Performa Invoices and Email Communications etc.

**9.1.** The Proforma Invoice-PI No.PAUTO-EX20211004, dated 02-Nov-2021 issued by M/s.Peerless Automotive Co., Ltd., Zhejiang Province, China, available at pages 231-233 of File No.3, withdrawn vide Panchnama dated 03-

06-2022 drawn at the office premises of M/s.Electrotherm (India) Ltd., Palodia, Ahmedabad, which indicates that the order is for parts E-bikes correspond to 120 E-bikes. (RUD-7)

**9.2.** The Proforma Invoice-PI No.PAUTO-EX20211003, dated 02-Nov-2021 issued by M/s.Peerless Automotive Co., Ltd., Zhejiang Province, China, available at pages 235-237 of File No.3, withdrawn vide Panchnama dated 03-06-2022 drawn at the office premises of M/s.Electrotherm (India) Ltd., Palodia, Ahmedabad, which indicates that the order is for parts corresponding to **180** E-bikes, without battery and tyres. (RUD-7)

**9.3.** The email correspondences between Shri Jignesh Patva and Shri Joji John dated 17 November, 2021 available at page 249 of File No.3, withdrawn vide Panchnama dated 03-06-2022 drawn at the office premises of M/s.Electrotherm (India) Ltd., Palodia, Ahmedabad, which was sent by Shri Jignesh Patva regarding Auto Division payment planning relating of M/s.Electrotherm (India) Ltd. to M/s.Peerless Automotive Co. Ltd., against PI Nos. PAUTO-EX20211003 & PAUTO-EX20211004 for 180 Nos. driftdx & 120 Nos. Edgedx parts import (USD 40849.20 + 27499.20 – 68348.40 \* 75) for an amount of Rs.51,26,130/- via swift mode. Shri Joji John has given approval by reply email dated 17 November 2021 12.24hrs by saying OK. Shri Shiv Kumar confirmed that that vide PI Nos. PAUTO-EX20211003 & PAUTO-EX20211004 order for import of Parts of 180 Nos. driftdx & 120 Nos. Edgedx parts were placed and approval of an amount of Rs.51,26,130/- via swift mode was given by Shri Joji John by reply email dated 17 November 2021 12.24hrs by saying OK. Shri Shiv Kumar further categorically agreed that the abovementioned payment planning shows that the payments are made for the parts meant for 180 Nos. Driftdx & 120 Nos. Edgedx. (RUD-7)

**9.4.** The Proforma Invoice-PI No.MAUTO-EX20211002, dated 02-Nov-2021 issued by M/s.Mega Enterprise Co. Ltd., Zhejiang, China, available at pages 253-255 of File No.3, withdrawn vide Panchnama dated 03-06-2022 drawn at the office premises of M/s.Electrotherm (India) Ltd., Palodia, Ahmedabad, clarifies that the order is meant for manufacturing **300** E-bikes. (RUD-8)

**9.5.** The Proforma Invoice-PI No.PAUTO-EX20220403, dated 07-Apr-2022 issued by M/s.Peerless Automotive Co., Ltd., Zhejiang Province, China, available at pages 289-290 of File No.3, withdrawn vide Panchnama dated 03-06-2022 drawn at the office premises of M/s.Electrotherm (India) Ltd., Palodia, shows that the order is for parts correspond to **300** E-bikes, without battery and tyres. Further Shri Shiv Kumar agreed that the email correspondences between Shri Pratik Joshi and Shri Joji John dated 19-04-2022 confirms that the payment of total Rs.58,04,387/- was against 300 Nos. Driftdx imported in Sets against PIs No. PAUTO-EX20220403. (RUD-9)

**9.6.** The Proforma Invoice No. PI No.PAUTO-EXP20220101, dated 29-Nov-21 available at page No.331-333 of File No.3 withdrawn vide Panchnama dated 03-06-2022 drawn at the office premises of M/s.Electrotherm (India) Ltd., Palodia, Ahmedabad, clearly shows that the said PI is for parts corresponding to **300** E-bikes. Further the payment planning confirmation email dated 20-01-2022 between Shri Jignesh Patva and Shri Joji John, available at page 339 of File No.3 withdrawn vide Panchnama dated 03-06-2022 drawn at the office

premises of M/s.Electrotherm (India) Ltd., Palodia, Ahmedabad, speaks about 300 Nos. Driftdx parts imported against PI No. PAUTO-EXP20220101, and the Bank debit voucher dated 01-02-2022 (page 341 of the same file) in respect of the said payment which speaks about payment against USD 70299.00 @ 74.86 300 Drift PAUTO-EXP20220101. Shri Shiv Kumar agreed that these payment confirmation are for purchase of parts meant for assembling **300** E-bikes. (RUD-10)

**9.7.** The Proforma Invoice PI No. PAUTO-EX20220201, dated 10-Mar-22 issued by M/s.Peerless Automotive Cp. Ltd., Zhejiang Province, China, available at page 347-349 of File No.3 withdrawn vide Panchnama dated 03-06-2022 drawn at the office premises of M/s.Electrotherm (India) Ltd., clearly shows that this proforma Invoice is showing the price in respect of parts meant for **900** driftdx E-bikes. Further the email correspondences between Shri Jignesh Patva and Shri Joji John dated 21-03-2022; seeking payment planning approval and confirmation, available at page 353 of File No.3 withdrawn vide Panchnama dated 03-06-2022 drawn at the office premises of M/s.Electrotherm (India) Ltd., shows that said email from Shri Jignesh Patva is regarding seeking approval for part payment planning against import of parts in respect of **900** nos. driftdx model E-bikes each against PIs No.PAUTO-EX20220201, MAUTO-EX20220202 and PAUTO-EX20220203. (RUD-11)

**9.8.** The Proforma Invoice No. PAUTO-EX20220404, dated 07-Apr-22 issued by M/s.Peerless Automotive Co. Ltd., Zhejiang Province, China, available at page 361-363 of File No.3 withdrawn vide Panchnama dated 03-06-2022 drawn at the office premises of M/s.Electrotherm (India) Ltd. and also the corresponding Bank debit voucher dated 05-May-2022 issued for payment against USD 71460 @ 76.37 300 Drift PAUTO-EX20220404, which is available at page 369 of the same File, again clearly shows that these are documents relating to purchase of parts meant for **300** Drift E-bikes. (RUD-12)

**9.9.** The Proforma Invoice No.MAUTO-EX20211201, dated 07-Apr-22 issued by M/s. Mega Enterprise Co. Ltd., Zhejiang, China, available at page 397, 403 of File No.3 withdrawn vide Panchnama dated 03-06-2022 drawn at the office premises of M/s.Electrotherm (India) Ltd. and also the corresponding Bank debit voucher dated 21-Dec-2021 issued for payment against USD 70101 @ 75.90 300 Drift PI MAUTO/EX20211201, which is available at page 411 of the same file, clearly shows that these are documents relating to purchase of parts correspond to **300** Drift E-bikes. (RUD-13)

**9.10.** On perusal of these above mentioned Performa Invoices/ commercial invoices/ email correspondences etc., Shri Shiv Kumar himself agreed that the order is being placed by the importer company M/s Electrotherm in no. of sets and the payment confirmation for those many number of sets is also being done to the overseas suppliers. Thus, it appears that the entire E-bike in CKD condition is being imported by the importer M/s Electrotherm. There are various other Performa Invoices/ commercial invoices which have been issued by both the Chinese Supplier of Parts of E Bike to M/s Electrotherm (India) Limited which were withdrawn vide Panchnama dated 03-06-2022 drawn at the office premises of M/s.Electrotherm (India) Ltd. Performa Invoices/ commercial invoices/ email correspondence clearly indicates that the order of these parts of E Bikes have been placed by the Importer M/s Electrotherm in

Sets (CKD) condition. Mere perusal of the said Performa Invoices/ commercial invoices/ Email communications shows that the order are being placed by M/s Electrotherm in no of E-bikes and not w.r.t. Parts of E-bike. For illustration one such Performa invoice is affixed as under:

金华米高企业管理有限公司

MEGA ENTERPRISE CO., LTD

No.5-2216 Wanda Plaza, Jinhua, Zhejiang, China

TEL: 0086-579-82665383 FAX: 0086-579-82665383

COMMERCIAL INVOICE

TO: ELECTROTHERM (INDIA) LTD INVOICE NO.: M/AUTO-2034  
SURVEY NO 325, NEAR TOLL TAX BOOTH, NATIONAL HIGHWAY NO.8A DATE: Nov.12th, 2020  
VILLAGE: SAMKHIAU, TA: BHACHAU, M/AUTO-  
DIST: KUTCH, PIN: 370 140 P/I NO.: EX20200811/20  
201102/202031

FROM: SHANGHAI, CHINA

TO: MUNDRA, INDIA

N/M MARK

Sl.no	DESCRIPTION & SPECIFICATION	QTY (pc)	UNIT PRICE FOB Shanghai	AMOUNT USD
<b>PARTS OF E-BIKE (YO DRIFT DX)</b>				
26	Front Fork	400	\$ 3.85	\$ 1,540.00
27	Rear Shock Absorber	400	\$ 2.42	\$ 968.00
28	Digital Speedmeter	400	\$ 3.67	\$ 1,468.00
29	Main Wiring Harness	400	\$ 1.94	\$ 776.00
30	Controller	400	\$ 44.65	\$ 17,860.00
31	Motor	400	\$ 68.13	\$ 27,252.00
33	Switch Set	400	\$ 0.45	\$ 180.00
34	Cable Tie	400	\$ 0.09	\$ 36.00
35	All Screw Sets	400	\$ 0.40	\$ 160.00
36	Back Cover	400	\$ 0.21	\$ 84.00
37	Throttle	400	\$ 1.43	\$ 572.00
38	Rear Reflector (Red)	400	\$ 0.09	\$ 36.00
39	Rear View Mirror	400	\$ 0.58	\$ 232.00
40	Battery Wire Harness	400	\$ 0.07	\$ 28.00
41	Front Wheel	400	\$ 4.47	\$ 1,788.00
42	Backrest Sponge	400	\$ 0.36	\$ 144.00
43	Backrest Bracket	400	\$ 1.34	\$ 536.00
44	USB Charging Port	400	\$ 0.27	\$ 108.00
45	O Ring	400	\$ 0.11	\$ 44.00
46	Converter	400	\$ 1.07	\$ 428.00

Mega Enterprise Co., LTD

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47	Front Disc Brake Pump	400	\$ 3.51	\$ 1,416.00
48	Front Brake Disc	400	\$ 1.34	\$ 536.00
49	Front Axle	400	\$ 0.36	\$ 144.00
50	Brake Lever (LHS)	400	\$ 0.76	\$ 304.00
51	Horn	400	\$ 0.36	\$ 144.00
52	MCB	400	\$ 0.36	\$ 144.00
53	Flasher	400	\$ 0.27	\$ 108.00
54	Rear Brake Cable	400	\$ 0.22	\$ 88.00
55	Alarm	400	\$ 1.34	\$ 536.00
56	Seat Lock Plate	400	\$ 0.27	\$ 108.00
57	Seat Lock Cable	400	\$ 0.18	\$ 72.00
58	Ignition Lock	400	\$ 1.13	\$ 552.00
59	Ball Race Set	400	\$ 0.63	\$ 252.00
60	Rear Brake Plate	400	\$ 1.36	\$ 520.00
61	Rear Carrier	400	\$ 1.51	\$ 604.00
62	Floor Mat	400	\$ 0.43	\$ 172.00
63	Seat	400	\$ 2.15	\$ 860.00
74	Air Valve(Front)	400	\$ 0.05	\$ 20.00
75	Air Valve(Rear)	400	\$ 0.05	\$ 20.00
76	Charging Socket	400	\$ 0.36	\$ 144.00
77	foot rest	400	\$ 0.99	\$ 396.00
PARTS OF E-BIKE(YO DRIFT DX)				
1	Seat cask	100	\$ 3.81	\$ 381.21
				<b>\$ 61,840.10</b>

SAY TOTAL US DOLLARS SIXTY ONE THOUSAND EIGHT HUNDRED AND FORTY POINT TEN ONLY

金利来商业有限公司  
K. L. G. Enterprises Co., LTD

Y. M. Y.

**9.11.** Further the Bill of Lading No NB2012B85523 dated 14.12.2020 issued by Zhejiang Jet Logistics Corporation Limited for the Exporter M/s Peerless Automobiles Co.. Ltd having consignee M/s Electrotherm (India) Limited for 586 packages of Parts of E Bike, available at page 401 of File No.1 was withdrawn vide Panchnama dated 03-06-2022 drawn at the office premises of M/s.Electrotherm (India) Ltd. The **HS code for the said parts of E Bike has been mentioned in the said Bill of Lading by the supplier is 8711600090**. However, to evade the payment of the Customs Duty, in the corresponding Bill of Entry against the said Bill of Lading, having BE number 2214143 dated 02.01.2021 filed by the importer, the CTH has been declared by M/s Electrotherm as 8714. This clearly indicates that the importer has intentionally been mis classifying the imported goods in order to avail the duty benefit and

mislead the exchequer. (RUD-15)

For illustration one such Performa invoice is affixed as under:

**9.12.** Similar to Performa Invoices/ commercial invoices/ email correspondences etc, the Purchase Orders placed to the overseas Suppliers based at China submitted by Shri Shiv Kumar during the statement dated 27.07.2022 (**RUD- 06**) clearly indicates that these Purchase orders have been placed by the Importer M/s Electrotherm in Sets (CKD) condition. Mere perusal of the said purchase orders shows that the order are being placed by M/s Electrotherm in no of E-bikes and not w.r.t. Parts of E-bike. For illustration

first two pages of one such Purchase order No 6102000818 dated 18.12.2021 placed to Supplier M/s Peerless Automotice Co Ltd China is affixed as under:

AUTO DIVISION Electrotherm India Ltd., Auto		PURCHASE ORDER (Import)				
CH90413 Peerless Automotice Co Ltd Room 2115, Building 3, Wanda Plaza, Jiabao City, Jilin 136003 Jilin, China	Ref No PO Date Amendment No. Amendment Date: Ptn No Ptn Date	6102000818 18.12.2021 0 18.12.2021 / / / /	Delivery Address Surya No # 225, Near Toll Tax Booth, National Highway No.8 - A, Sankhdihal, Kutch (Gujarat) - 371141 Delivery Terms: C.I.F. Doc/Memo Number: 310-AUTO/STORE			
Dear Sirs, Please supply under mentioned goods/services, in accordance with the terms & conditions as per this purchase order and rates agreed by you. Each auto component to carry warranty of Please mention our p.o.number and material code invariably in all your future correspondence, delivery challan & invoices with us						
Sr. No.	Material Code/Description of Material/Indent No. Ref/Delivery Date	P.O. No. U/F	P.O.Qty U/M	Rate USD. / /	Discnt 0.00	Net Amount.
1	41050019100000 Handle Cover Indent No & Date: 4003099613 17.12.2021 Sch/Deli.Date & Qty. 1/30.12.2021/300,000	300,000 EA	300,000 EA	1.31	0.00	403.00
2	41050020000000 Front Panel Connector Indent No & Date 4003099613 17.12.2021 Sch/Deli.Date & Qty. 1/30.12.2021/300,000	300,000 EA	300,000 EA	0.64	0.00	192.00
3	41050030000000 Front Panel Indent No & Date. 4003099613 17.12.2021 Sch/Deli.Date & Qty. 1/30.12.2021/300,000	300,000 EA	300,000 EA	1.21	0.00	372.00
4	41050040000000 Side Body Cover (Left & Right) Indent No & Date: 4003099613 17.12.2021 Sch/Deli.Date & Qty. 1/30.12.2021/300,000	300,000 SET	300,000 SET	1.37	0.00	511.00
5	41050050000000 Production Board (Left & Right) Indent No & Date: 4003099613 17.12.2021 Sch/Deli.Date & Qty. 1/30.12.2021/300,000	300,000 SET	300,000 SET	1.74	0.00	522.00
Prepared By SHIVKUMAR SINGH Contact No: 9879396448		Checked By GSTN No: 24AAAC1266LAXI		FOR ELECTROTHERM (INDIA) LTD. Authorised by (I.O.O. Purchase/ Director)		

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Vendee Name (Prestige Automotive Co. Ltd  
P.O. No. 61030008118  
P.O. Date: 18.12.2021

Sr. No.	Material Code/Description of Material/Indent No.	P.O. Qty U/S	P.O. Qty U/H	Rate USD.	Discnt	Net Amount.
6	41050060AD0000 Backrest	300,000 EA	300,000 EA	0.50	0.00	163,00
	Indent No & Date: 4003099613 17.12.2021 Sch/Deli.Date   Qty. 1 30.12.2021 300,000					
7	41050070A00000 Front Mudguard	300,000 EA	300,000 EA	1.54	0.00	552,00
	Indent No & Date: 4003099613 17.12.2021 Sch/Deli.Date   Qty. 1 30.12.2021 300,000					
8	41050080A00000 Rear Tail Connector	300,000 EA	300,000 EA	0.10	0.00	30,00
	Indent No & Date: 4003099613 17.12.2021 Sch/Deli.Date   Qty. 1 30.12.2021 300,000					
9	41050090A00000 Front Mould	300,000 EA	300,000 EA	0.46	0.00	138,00
	Indent No & Date: 4003099613 17.12.2021 Sch/Deli.Date   Qty. 1 30.12.2021 300,000					
10	41050100A00000 Controller Cover	300,000 EA	300,000 EA	0.46	0.00	138,00
	Indent No & Date: 4003099613 17.12.2021 Sch/Deli.Date   Qty. 1 30.12.2021 300,000					
11	41050110A00000 Panel Decoration	300,000 EA	300,000 EA	0.56	0.00	168,00
	Indent No & Date: 4003099613 17.12.2021 Sch/Deli.Date   Qty. 1 30.12.2021 300,000					
12	41050120A00000 Tool Box	300,000 EA	300,000 EA	2.31	0.00	693,00
	Indent No & Date: 4003099613 17.12.2021 Sch/Deli.Date   Qty. 1 30.12.2021 300,000					
13	41050130A00000					

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Thus, it appears that the entire E-bike in CKD condition is being imported by the importer M/s Electrotherm. There are various other such purchase orders which have been issued by the importer in the name of both the Chinese Supplier of Parts of E Bike, which were submitted by ShriShiv Kumar under his statement dated 27.07.2022.

**9.13.** Shri Shiv Kumar submitted the printout of WhatsApp chat of the whatsapp group naming “ORA CAP Group”chat during his statement dated 27.07.2022 (**RUD-14**). It is clear that from the said whatsapp chat that the orders are being placed on behalf of M/s. Electrotherm in sets condition.

**9.13.1** One part of the said Whatsapp chat between Ms. Echo Rui of China and Shri Shiv Kumar is affixed herein below:

26/04/21, 10:58 am -Echo Rui China: (Red/Black 70sets+ Blue/Black 40sets + White/Grey 60sets+ Black/Grey 70sets + Dark green/Grey 60sets)

It is clear that from the above chat dated 26.04.2018 (10.58 am) that the supplier Ms. Echo Rui of China is referring to Red /black 76 sets+ blue/

black 40 sets+ white /grey 60 sets +Black/ Grey 70Sets+ Dark Green/Grey 60 sets.

**9.13.2** Further one such WhatsApp chat between Shiv Kumar and China supplier is affixed as under:

05/05/21, 5:54 pm - Echo Rui China: Electron DX  
05/05/21, 5:54 pm - Echo Rui China: 300sets  
- 06/05/21, 2:06 pm - Echo Rui China: 300Driftdx can be loaded on 9th, please arrange forwarder to do booking  
- 06/05/21, 2:26 pm - Shiv Kumar Singh: Ok  
07/05/21, 7:47 pm - Shiv Kumar Singh: You deleted this message  
07/05/21, 7:47 pm - Echo Rui China: waiting for forwarder  
07/05/21, 7:48 pm - Echo Rui China: <Media omitted>  
07/05/21, 7:48 pm - Echo Rui China: can you help them to do the booking?  
07/05/21, 7:49 pm - Shiv Kumar Singh: Ok  
07/05/21, 7:49 pm - Shiv Kumar Singh: Good

The above dated 06.05.21 clearly shows that the supplier is here referring to loading of 300 drift DX model on 9<sup>th</sup> and asking the importer to arrange forwarder for the booking, and Shiv Kumar is saying okay for the same vide his reply.

**9.13.3** Further one such WhatsApp chat between Shiv Kumar and China supplier is affixed as under:

02/07/21, 11:09 am - Echo Rui China: yes, ready to dispatch  
02/07/21, 11:18 am - Shiv Kumar Singh: Okay  
02/07/21, 11:18 am - Shiv Kumar Singh: I am giving you forwarder details kindly dispatch  
02/07/21, 11:19 am - Shiv Kumar Singh: I also want to speak for other then electrotherm businesses  
02/07/21, 11:23 am - Echo Rui China: OK  
- 02/07/21, 11:25 am - Echo Rui China: 300 Driftdx and 300 Electrondx load together?  
02/07/21, 11:25 am - ChiTu HRS: No  
02/07/21, 11:26 am - Shiv Kumar Singh: Only electron 300 load  
02/07/21, 11:26 am - Echo Rui China: OK  
02/07/21, 11:41 am - Echo Rui China: we can discuss now if you free  
02/07/21, 11:41 am - Shiv Kumar Singh: Yes I m free  
- 02/07/21, 11:43 am - Echo Rui China: today loading 180+120, the CTN number is more than actual we load

From the above chat dated 02.07.2021, it is clear that the supplier is confirming to load 300 sets of drift model.

These Whatsapp chats again re-confirms that the entire E-bike in CKD condition is being imported by the importer M/s Electrotherm. There are various other chats between Shri Shivkumar Amar Singh and Ms. Echo Rui of China which clearly indicates that the order of these parts of E Bikes have been placed by the Importer M/s Electrotherm in Sets (CKD) condition. Mere perusal of the complete chat of the whatsapp group submitted by Shi Shiv Kunar under his statement shows that the order are being placed by M/s Electrotherm in no of E-bikes and not w.r.t. Parts of E-bike.

**10.** From the above discussion it appears that few items which are not being imported by these importers independently viz. Battery, Charger, Tyres etc., are not at all essential for giving e-scooter its essential character in terms of Rule2(a) of General Rules of Interpretation for Import Tariff. Attention is invited

to HSN explanatory notes for Chapter 87. The relevant part of the explanatory notes of chapter 87 is as under: -

**"An incomplete or unfinished vehicle is classified as the corresponding complete or finished vehicle provided it has the essential character of the latter** (see General Interpretative Rule 2 (a)), as for example:

- (A) ***A motor vehicle, not yet fitted with the wheels or tyres and battery.***
- (B) ***A motor vehicle not equipped with its engine or with its interior fittings.***
- (C) ***A bicycle without saddle and tyres."***

From Para (A) above to HSN explanatory notes for Chapter 87, it is amply clear that the import in CKD form would be considered import of complete/finished vehicle by application of General Interpretative Rule 2 (a) even if wheels, tyres, battery are not imported.

**11.** It appears from the above discussion that M/s Electrotherm (India) Ltd. had imported all the major/essential parts required to make complete e-scooters/e-bikes from China and paid import duty on the same by classifying them as parts/spare parts under chapter heading 8714 and other headings. However, Rule 2(a) of General Rules of Interpretation for Import Tariff reads as, *"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"*. Therefore, the said goods imported by M/s. Electrotherm (India) Ltd. appears to be a complete e-scooter/e-bike in CKD condition, which appears to be classifiable under Chapter Heading 8711.

**12. LEGAL PROVISIONS IN RESPECT OF GOODS IMPORTED UNDER CKD FORM & CLASSIFICATION OF IMPORTED GOODS:**

**(A) Rule 2(a) of General Rules of Interpretation for Import Tariff of the First Schedule to the Customs Tariff Act, 1975:**

In terms of Rule 2(a) of General Rules of Interpretation for Import Tariff which reads as, *"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."*

It appears that as per Rule 2(a) of General rules of interpretation for Import Tariff, any heading for a particular article should include reference to such goods whether unfinished/incomplete if such unfinished/incomplete goods give essential characteristics of the complete article of that heading. For instance, if a mobile phone is imported without a battery, it appears that such a mobile phone would be classified under the Chapter heading as a complete

mobile phone as that unfinished mobile phone would give essential characteristics of a mobile phone even without a battery. Similarly, it appears that automobiles without their battery or without wheels belong in Chapter Heading 8703 appeared to be classified as automobiles only. Therefore, the said goods imported by M/s. Electrotherm (India) Ltd. **appeared to be a complete e-scooter/e-bike in CKD condition, which appears to be classifiable under Chapter Heading 8711.**

**(B)** Further, it appears that HSN explanatory notes for Chapter 87 also specifically focus on the unassembled/incomplete article, which gives essential characteristics of a finished article falling under the chapter heading of a finished article only. The relevant part of the explanatory notes of chapter 87 is as under: -

**"An incomplete or unfinished vehicle is classified as the corresponding complete or finished vehicle provided it has the essential character of the latter** (see General Interpretative Rule 2 (a)), as for example:

- (A) A motor vehicle, not yet fitted with the wheels or tyres and battery.**
- (B) A motor vehicle not equipped with its engine or with its interior fittings.**
- (C) A bicycle without saddle and tyres."**

**(C)** From the goods imported by M/s. Electrotherm (India) Ltd. (under Bills of Entry as listed in Annexure-A), it appears that all the essential parts like Chassis, Motor, Controller, etc. have been imported and very few parts like battery, charger, tyres etc. are locally procured. Further, the parts which had been imported from China were essential parts of the e-scooter/e-bike. **Hence, the imported parts constitute the majority of the e-scooter/e-bike and when assembled together, they appear to give the essential character of an e-scooter/e-bike.** Therefore, the said goods imported by the importer **appeared to be a complete e-scooter/e-bike in CKD condition, which appears to be classifiable under Chapter Heading 8711.**

**12.1.** It appears that the **electrically operated motor cycles (including mopeds)** and cycles fitted with an auxiliary motor, with or without side cars, and side cars, if imported, fall under CTH 8711 and attract effective rate of duty in terms of Sr. 531A of the Notification No. 50/2017 dated 30/06/2017, as amended by Notification No. 03/2019-Cus dated 29/01/2019. After this said amendment, Sr. No. 531A was inserted in Notification No. 50/2017-Cus for electrically operated vehicles. The following duty structure was made applicable: -

S. No.	Chapter or Heading or sub-heading or tariff item	Description of Goods	Standard rate
"531 A.	8711	Electrically operated motor cycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side cars, and side cars, if imported, - (1) As a knocked down kit containing all the necessary components, parts or sub-	

	assemblies, for assembling a complete vehicle, with,-  (a) disassembled Battery Pack, Motor, Motor Controller, Charger, Power Control Unit, Energy Monitor Contractor, Brake system, Electric Compressor not mounted on chassis;  (b) pre-assembled Battery Pack, Motor, Motor Controller, Charger, Power Control Unit, Energy Monitor Contractor, Brake System, Electric compressor not mounted on a chassis or a body assembly  (2) in a form other than (1) above	10% 15% 50%
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**12.2.** From the above, it can be seen that Sr. No. 531A of Notification No. 50/2017-Cus mentions about electrically operated vehicles. In the instant case, it appears from the list of the imported goods that the importer has not imported parts in form as specified in condition 1(a) and 1(b), hence condition 1(a) and 1(b) as mentioned above are not applicable in the instant case. In view of the above, it appears that imports of e-bike/e-scooter in CKD condition by the importer in the instant case falls under the category "*in a form other than (1) above*" where standard rate of Customs Duty is 50%.

**12.3** The serial number 531A was further amended vide Notification No. 01/2020-Cus dated 02/02/2020 and Sr. No. 531A was modified as given below after this amendment. However, this change was made effective from 01/04/2020. **The rate of 50% is still applicable on sub-entry (2) and only the rates against the sub-entry (1) were changed vide the said Notification No. 01/2020-Cus.**

S. No.	Chapter or Heading or sub-heading or tariff item	Description of Goods	Standard rate
"531 A.	8711	<p>Electrically operated motor cycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side cars, and side cars, if imported, -</p> <p>(1) As a knocked down kit containing all the necessary components, parts or sub-assemblies, for assembling a complete vehicle, with,-</p> <p>(a) disassembled Battery Pack, Motor, Motor Controller, Charger, Power Control Unit, Energy Monitor Contractor, Brake</p>	15%

		system, Electric Compressor not mounted on chassis;  (b) pre-assembled Battery Pack, Motor, Motor Controller, Charger, Power Control Unit, Energy Monitor Contractor, Brake System, Electric compressor not mounted on a chassis or a body assembly  (2) in a form other than (1) above	25%
			50%

**13.** Hence, it appears that in the instant case, the duty structure on e-bike/e-scooter in CKD condition imported is to be considered as goods falling under the category "*(2) in a form other than (1) above*" where standard rate of Customs Duty is 50%.

**13.1** Further, in the instant case, as the Importer is engaged in import of e-scooters/e-bikes in CKD condition by declaring the imported goods as parts and components of e-scooters/e-bikes appears to be classified under CTH 8711 attracting duty @ 50% ad-valorem, as per Rule 2(a) of General Rules of interpretation for Import Tariff, The IGST duty applicable on the same is 5% in terms of Sl. No. '242 A' of 'Schedule I' of Integrated Goods and Services Tax Act, 2017, inserted vide Notification No. 12/2019-Integrated Tax (Rate) dated 31.07.2019, effective from 1st August, 2019.

The Sl. no 242A of the said notification reads as under-

Sl No	Chapter Heading	Description of Goods
242A	87	Electrically operated vehicles, including two and three wheeled electric vehicles. Explanation .- For the purposes of this entry, "Electrically operated vehicles" means vehicles which are run solely on electrical energy derived from an external source or from one or more electrical batteries fitted to such road vehicles and shall include E-bicycles.";

Before 01.08.2019, the IGST duty applicable on the same would be 12% in terms of Sl. No. '206' of 'Schedule II' of Integrated Goods and Services Tax Act, 2017, omitted vide Notification No. 12/2019-Integrated Tax (Rate) dated 31.07.2019, effective from 1st August, 2019 (since few Bills of entry have been filed by M/s Electrotherm before 01.08.2019 as mentioned in Annexure A of the IR the IGST payable would be 12%).

The Sl. no 206 of Schedule II of Integrated Goods and Services Tax Act, 2017 reads as under (Effective till 31.07.2019)-

Sl No	Chapter Heading	Description of Goods

206	87	Electrically operated vehicles, including two and three wheeled electric motor vehicles.
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Hence the rate of IGST before 01.08.2019 would be 12% and rate of IGST 01.08.2019 onwards would be 5%.

**14. DIFFERENTIAL DUTY CALCULATION:**

**PORT WISE SUMMARY OF DIFFERENTIAL DUTY CALCULATION: As detailed in "Annexure A"**

**TABLE – 3 (Value in Rs.)**

Port Name	Total Ass. Value of the imported Goods	Differential Duty
Ahmedabad Air Cargo	2,98,314/-	1,14,850/-
Mundra	33,98,55,691/-	14,33,72,113/-
Nhavasheva	8,41,00,708/-	3,77,89,256/-
ICD Sabarmati	6,41,470/-	2,46,966/-
Total	<b>42,48,96,182/-</b>	<b>18,15,23,185/-</b>

**15. MAIN LEGAL PROVISIONS UNDER CUSTOMS ACT, 1962 APPLICABLE IN THE CASE**

The following legal provisions appear applicable in the instant case:

**SECTION 28(4) OF THE CUSTOMS ACT, 1962:**

*"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 willful 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."*

**SECTION 28AA OF THE CUSTOMS ACT, 1962:**

Interest on delayed payment of duty

(1) *Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made there under, the person, who is liable to pay duty in accordance with the provisions of Section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-Section (2), whether such payment is made voluntarily or after determination of the duty under that section.*

(2) *Interest at such rate not below ten per cent and not exceeding thirty-six per cent per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of Section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such*

*erroneous refund, as the case may be, up to the date of payment of such duty.*

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

- a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under Section 151A; and*
- b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.*

#### **SECTION 46 (4) OF THE CUSTOMS ACT, 1962:**

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

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

- a) the accuracy and completeness of the information given therein;*
- b) the authenticity and validity of any document supporting it; and*
- c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.*

#### **RULE 2(a) OF GENERAL RULES OF INTERPRETATION FOR IMPORT TARIFF:**

*"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."*

#### **SECTION 111 OF CUSTOMS ACT, 1962**

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

.....

*(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-Section (1) of Section 54;*

.....

#### **SECTION 112 OF CUSTOMS ACT, 1962:**

**Penalty for improper importation of goods, etc.**-

*Any person -*

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

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

#### **SECTION 114A OF THE CUSTOMS ACT, 1962.**

**Penalty for short-levy or non-levy of duty in certain cases. –**

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under <sup>22</sup>[sub-Section (8) of Section 28] shall also be liable to pay a penalty equal to the duty or interest so determined

**Provided** that where such duty or interest, as the case may be, as determined under [sub-Section (8) of Section 28], and the interest payable thereon under Section [28AA], is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:

**Provided** further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

**Provided** also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:

**Provided** also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under Section <sup>25</sup>[28AA], and twenty-five percent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect:

**Provided** also that where any penalty has been levied under this Section, no penalty shall be levied under Section 112 or Section 114.

#### **SECTION 114AA OF CUSTOMS ACT, 1962:**

**Penalty for use of false and incorrect material. -** If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

### **SECTION 117 OF CUSTOMS ACT, 1962:**

***Penalties for contravention, etc., not expressly mentioned: - Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding [four lakh rupees].***

### **CHAPTER NOTES TO CHAPTER 87 ITC (HS)**

*An incomplete or unfinished vehicle is classified as the corresponding complete or finished vehicle provided it has the essential character of the latter (see General Interpretative Rule 2 (a)), as for example:*

- (A) ***A motor vehicle, not yet fitted with the wheels or tyres and battery.***
- (B) ***A motor vehicle not equipped with its engine or with its interior fittings.***
- (C) ***A bicycle without saddle and tyres."***

### **16. MAIN LEGAL PROVISIONS UNDER FOREIGN TRADE LAWS APPLICABLE IN THIS CASE:**

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

##### **SECTION 3. Powers to make provisions relating to imports and exports.—**

- (1) *The Central Government may, by Order published in the Official Gazette, make provision for the development and regulation of foreign trade by facilitating imports and increasing exports.*
- (2) *The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology]*
- (3) *All goods to which any Order under sub-Section (2) applies shall be deemed to be goods the import or export of which has been prohibited under Section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.*

##### **SECTION 11. Contravention of provisions of this Act, rules, orders and foreign trade policy. —**

- (1) *No export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force.*

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

**RULE 11 - Declaration as to value and quality of imported goods:** *On the importation into, or exportation out of, any customs ports of any goods, whether liable to duty or not, the owner of such goods shall, in the bill of entry or the shipping bill or any other documents prescribed under the Customs Act, 1962, state the value, quality and description of such goods to the best of his knowledge and belief and in case of exportation of goods, certify that the quality and specification of the goods as stated in those documents are in accordance with the terms of the export contract entered into with the buyer or consignee in pursuance of which the goods are being exported and shall subscribe to a declaration of the truth of such statement at the foot of such bill of entry or*

*shipping bill or any other documents.*

**17. WILFUL MISSTATEMENT AND SUPPRESSION OF FACTS BY  
M/S.ELECTROTHERM (INDIA) LTD. AHMEDABAD**

**17.1.** Section 17 of the Customs Act, 1962 provides for self-assessment of duty on import and export goods by the importer or exporter himself by filing a Bill of Entry or Shipping Bill, as the case may be, in the electronic form, as per Section 46 or 50 of the Customs Act, 1962, respectively. Thus, under self-assessment, it is the importer or exporter who will ensure that he declares the correct classification, applicable rate of duty, value, benefits of exemption notifications claimed, if any, in respect of the imported / export goods while presenting Bill of Entry or Shipping Bill.

**17.2.** From the discussion hereinabove, it has been established that M/s. Electrotherm (India) Ltd. was being managed by Shri Shailesh Bhandari the Managing director of the company in association with Shri Shivkumar Amar Singh, Manager (Purchase), Auto Division, M/s.Electrotherm (India) Ltd. who used to place order to the overseas suppliers. Accordingly, M/s.Electrotherm (India) Ltd. was being managed and controlled by Shri Shailesh Bhandari the Managing director of the company. And all the communication regarding the purchase and supply of the Parts in CKD condition were being managed by Shri Shivkumar Amar Singh, Manager (Purchase), Auto Division, M/s.Electrotherm (India) Ltd.

**17.2.1** In terms of Section 46 (4) of Customs Act, 1962, the importer is required to make a declaration as to truth of the contents of the Bills of Entry submitted for assessment of Customs duty. **The willfull mis-statement by M/s. Electrotherm (India) Ltd.** is evident from their Bills of Entry itself. From various documentary and oral evidences as discussed above, it is clear that M/s. Electrotherm (India) Ltd. was all the time aware of the correct classification as well as correct rate of Duty to be paid by them. However, with willfull intention and suppression of facts they evaded the customs duty and paid reduced duty by declaring the e-bike in CKD condition as individual parts of E- Bike.

Thus, the duty appears to have been short levied and short paid by wilfully mis-declaring the description of goods as "E-Scooter Spare parts and accessories" and misstating the Customs Tariff heading as 8714 and other CTH as against the applicable Customs Tariff Heading of 8711 for the discharge of duty payable.

It is pertinent to mention that Sr. No. 531A of Notification No. 50/2017-Cus dated 30.06.2017, mentions about electrically operated vehicles. In the instant case, it appears from goods imported by M/s. Electrotherm (India) Ltd. that they have not imported parts in form as specified in condition 1(a) or 1(b), hence condition 1(a) or 1(b) will not be applicable to the imports done under CTH 8711 by M/s. Electrotherm (India) Ltd. In view of the same, it appears that imports of e-bike/e-scooter in CKD condition by M/s. Electrotherm (India) Ltd. in the instant case falls under the category "*in a form other than (1) above*" where standard rate of Customs Duty is 50%.

Hence it appears that the duty short levied and short paid is liable to be recovered in terms of Section 28 (4) of the Customs Act 1962 w.r.t M/s.

Electrotherm (India) Ltd.

**17.2.2** Further in terms of Section 46 (4) of Customs Act, 1962, the importer is required to make a declaration as to truth of the contents of the Bills of Entry submitted for assessment of Customs duty. M/s. Electrotherm (India) Ltd. had wilfully mis-declared the goods as "E-Scooter Spare parts and accessories" whereas the goods were "E-Bikes / E-Scooters in CKD form" and also misstated the Tariff Classification of the said goods imported by them as 8714 and other CTH instead of 8711.

Thus, the duty appears to have been short levied and short paid by wilfully mis-declaring the description of goods as "Parts of E-Scooter" and misstating the Customs Tariff heading as 8714 and other CTH as against the applicable Customs Tariff Heading of 8711 for the discharge of duty payable by M/s. Electrotherm (India) Ltd. Hence it appears that the duty short levied and short paid is liable to be recovered in terms of Section 28 (4) of the Customs Act 1962.

**17.3.** It thus appears that the classification of the goods under the Customs tariff head (CTH) 8714 and other CTH, declaring the goods as individual parts claimed by M/s. Electrotherm (India) Ltd. is required to be rejected and the said goods covered under Bills of Entry filed by the importer are required to be correctly re-classified under Customs Tariff Heading 87116020 and charged to duties accordingly. Accordingly, the differential Customs Duty amounting to **Rs. 18,15,23,185/- (Rupees Eighteen Crore Fifteen Lakh Twenty Three Thousand One Hundred Eighty Five Only)** as summarised in Table 3 above (read with Annexure A) appears liable to be recovered from M/s. Electrotherm (India) Ltd. by invoking the extended period of five years as per Section 28 (4) of the Customs Act, 1962, in as much as the duty is short paid on account of wilful mis-statement and suppression as narrated above. Further the interest at the prescribed rate is also liable to be recovered from them in terms of Section 28 AA of Customs Act, 1962. Also, the importer M/s. Electrotherm (India) Ltd. has rendered itself liable to penalty under Section 114A of the Customs Act, 1962.

**17.4.** It further appears that the goods i.e., 'E-Bikes / E-Scooters in CKD form' as covered under Bills of Entry filed by M/s. Electrotherm (India) Ltd. (as detailed in Annexure- A respectively) were imported by resorting to mis-declaration and mis-classification by way of wilful mis-statement in the Bills of Entry filed under Section 46 of the Customs Act, 1962, before the designated authority of Customs. The goods having assessable Value of **Rs. 42,48,96,182/- (Rupees Forty Two Crores Forty Eight Lakh Ninety Six Thousand One Hundred Eighty Two Only)** as detailed in Bills of Entry filed by M/s. Electrotherm (India) Ltd. (as detailed in Annexure-A respectively), appears liable to confiscation under the provisions of Section 111(m) of the Customs Act, 1962.

**17.5.** Further, on account of their above said acts of omission and commission, which have rendered the goods liable to confiscation under Section 111 (m) of the Customs Act, 1962, M/s. Electrotherm (India) Ltd. is also liable for penalty under Section 112 (a) and (b) of the Act ibid.

**17.6.** M/s. Electrotherm (India) Ltd. appears to have mis-declared the description of the goods imported by them as parts of e-bike/e-scooter. Further, it appears that the importers deliberately devised fraudulent modus

to mis-declare the CKD condition parts of e-bikes/e-scooters and tried to get these goods cleared from the port to hide the actual import of an e-bike/e-scooter. Thus, it appears that M/s. Electrotherm (India) Ltd. knowingly or intentionally made, signed or used false declaration, statement or document which appears to be false or incorrect in material particular, in the transaction of above import business for the purposes of the Customs Act in the Bills of Entry filed by them before the Indian Customs. By their acts of omission and commission it appears that they have rendered the goods imported by them under the Bills of Entry mentioned in Annexure- A liable for confiscation under Section 111(m) of the Customs Act, 1962. Further, they appear to have rendered themselves liable for penalty under the provisions of Section 112 (a) and (b) or Section 114A and Section 114AA of the Customs Act, 1962.

## 18. ROLE OF THE PERSONS

**18.1. Shri Shivkumar Amar Singh:** It appears that Shri Shivkumar Amar Singh, Manager (Purchase), Auto Division, M/s.Electrotherm (India) Ltd is the person in the company who was designated to communicate with the overseas Chinese suppliers. Even on various Bills of Lading the name of the concerned person has been mentioned by the supplier as Shri Shiv Kumar which means that he was handling all the affairs related import of E-bikes on behalf of M/s Electrotherm. Shri Shiv Kumar used to place orders if no. of vehicle (E-bike Model) required to be produced to Chinese Suppliers. Shri Shiv Kumar has accepted in his statement that he used to place order to the owner of the supplier firms through Whatsapp group. It appears that Shri Shiv Kumar was managing the affairs of the company related to overseas purchase of all the essential Parts in CKD form.

**18.1.1** Shri Shiv Kumar supervised all purchase related activities of M/s. M/s.Electrotherm (India) Ltd. Ahmedabad. He agreed that the company is engaged in import of all parts of E-bike except Battery, Tyre and charger. They assemble the same in their premises situated at Samakhiali, Kutch, Gujarat. It appears that Shri Shiv Kumar was placing order according to the E- Vehicle as per requirement of the company and was accordingly was responsible for importing goods under CTH 8714 claiming lower rate of duty as discussed above. The same is corroborated by the Statement of Shri Himanshu Sharma Engineer-Service, Production Co-ordinator of M/s. Electrotherm India Ltd. (Auto Division) wherein he categorically accepted they are importing import most of the components used in the manufacturing of electric vehicles, except Lithium Ion Battery, tyre and Charger.

**18.1.2** Shri Shiv Kumar in his statement has accepted categorically that they import most of the items, for assembling of E- bike. They prepare purchase orders of E-bikes correspond to the number of vehicles planned to manufacture. He used to place order through a whatsapp group "ORA CAP Group" to his Chinese Supplier Ms. Echo Rui of China (Mob.+86 13646790215), who is the owner of M/s.Peerless Automotive Co. Ltd. and M/s. Mega Enterprise Co. Ltd. He further agreed that the E-bikes imported by M/s.Electrotherm (India) Ltd. in knock down condition merits classification under 8711.60 of the First Schedule to the Customs Tariff. He agreed that the classification done by M/s.Electrotherm (India) Ltd. for import of parts of E-bikes in sets under CTH 8714 is wrong. He agreed

that Customs duty has been short-paid on import of parts of E-bikes in sets.

**18.1.3** It appears that Shri Shiv Kumar was aware of the provisions of the Customs Act, 1962 as well and fully aware of the goods being imported and could have easily declared the correct classification of the goods imported by M/s. Electrotherm India Ltd under CTH 8711. Therefore, it appears that prior to import of goods he was aware that they are importing complete/finished e-scooters/e-bikes in CKD form. However, he chose to mis-declare the said imports as spare Parts and accessories of E- vehicle and mis-classify the goods under CTH 8714, so that the company could enjoy the benefits by paying lower rate of Customs duties, thereby resulting in evasion of Customs Duties. It therefore appears that by his acts of omission and commission, he has rendered the goods imported under Bills of Entry mentioned in Anenexure-A liable for confiscation under Section 111 (m) of the Customs Act, 1962 and consequently, he appears to have rendered himself liable for penalty under Section 112(a) and 112 (b) of the Customs Act, 1962 and Section 114AA and 117 of the Customs Act, 1962.

**18.2. Shri Shailesh Bhandari:** Shri Shailesh Bhandari is Managing Director in M/s. Electrotherm (India) Ltd. When summon vide DIN Number CBIC-DIN 202207DDZ1000000EE99 dated 17.07.2022 (**RUD-16**) was issued to the Director of M/s Electrotherm (I) Ltd, Ahmedabad, Shri Shailesh Bhandari being Managing director of the company, had authorised Shri Shiv Kumar to present before the Directorate of Revenue, Ahmedabad to tender statement on behalf of the Company vide letter dated 26.07.2022 (**RUD-17**). Therefore the statement of Shri Shivkumar is binding on the company. Shri Shivkumar Amar Singh, Manager (Purchase), Auto Division, M/s.Electrotherm (India) Ltd. in his statement dated 27.07.2022 accepted that the company is being managed by Shri Shailesh Bhandari alone and all other directors are/ were not looking after any business related activities in the company M/s. Electrotherm (India) Ltd. He accepted that they have been classifying this product under CTH 8714 since 2006. However, ultimate decision with regard to all matters of the company lies with their Managing Director Shri Shailesh Bhandari. The final decision with regard to Customs Tariff classification of parts of E-bikes in sets meant for vehicles on import in their case also will be taken by their Managing Director only. Accordingly it is evident that all decisions related to purchase, sales, procurement, international business related to the E bike/ E scooter business of the company are being taken by Shailesh Bhandari.

**18.2.2** It appears that Shri Shailesh Bhandari was aware of the provisions of the Customs Act, 1962 as well and fully aware of the goods being imported and could have easily declared the correct classification of the goods imported by M/s. Electrotherm India Ltd under CTH 8711. Therefore, it appears that prior to import of goods he was aware that they are importing complete/finished e-scooters/e-bikes in CKD form. However, he chose to mis-declare the said imports as spare Parts and accessories of E- vehicle and mis-classify the goods under CTH 8714, so that the company could enjoy the benefits by paying lower Customs duty, thereby resulting in evasion of Customs Duty. It therefore appears that by his acts of omission and commission, he has rendered the goods imported under Bills of Entry mentioned in Anenexure-A liable for confiscation under Section 111 (m) of the Customs Act, 1962 and

consequently, he appears to have rendered himself liable for penalty under Section 112(a) and 112 (b) of the Customs Act, 1962 and Section 114AA and 117 of the Customs Act, 1962.

**19.** This show cause notice pertains to demand of duty involved in the goods imported through multiple ports/Air cargo Complex viz. Ahmedabad Air Cargo Complex (INAMD4), ICD Sabarmati (INSBI6) falling under the jurisdiction of Commissioner/Pr. Commissioner or Commissioner of Customs, Ahmedabad, Nhava Sheva (INNSA1) falling under the jurisdiction of Pr. Commissioner or Commissioner of Customs, NhavaSheva V Commissionerate, JNCH and Mundra Port falling under the jurisdiction of Pr. Commissioner or Commissioner of Customs, Mundra Commissionerate, Mundra. Therefore in terms of Section 110AA read with Notification no. 28/2022 customs (NT) dated 31.03.2022 issued by Central Board of Indirect Taxes and Customs (CBIC), New Delhi, the proper officer in the instant case is the Pr. Commissioner / Commissioner of Customs, Mundra, Commissionerate, Mundra (As per table 3 Above) as the highest duty demand arises for the import done through Mundra Port.

**20.** Now, therefore, M/s. Electrothem (India) Ltd, Survey No 325, Village Samkhiyali, Near Toll Tex Booth, Bhachau, Kutch, Gujarat- 370140 (IEC-0889000093) are hereby called upon to show cause to the Pr. Commissioner/ Commissioner of Customs, Mundra Commissionerate, Mundra having his office at Port User Building, Mundra Port, Mundra, Kutch Gujarat, within thirty days from the receipt of this notice as to why:-

- i. The goods imported vide Bills of Entry mentioned in **Annexure A** should not be re-classified under Customs Tariff Heading 87116020 of the First Schedule to the Customs Tariff Act, 1975 and Customs Duty amount payable be re-assessed and differential total Customs duty may be determined at **Rs. 18,15,23,185/- (Rupees Eighteen Crore Fifteen Lakh Twenty Three Thousand One Hundred Eighty Five Only)** as per Annexure A accordingly, under Serial No. 531A (2) of Notification No. 50/2017-Customs dated 30.06.2017 as amended;
- ii. The goods imported valued at **Rs. 42,48,96,182/- (Rupees Forty Two Crores Forty Eight Lakh Ninety Six Thousand One Hundred Eighty Two Only)** as detailed in **Annexue-A** should not be held liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962;
- iii. Differential Customs Duty amounting to **Rs. 18,15,23,185/- (Rupees Eighteen Crore Fifteen Lakh Twenty-Three Thousand One Hundred Eighty-Five Only)**, on the imported goods as detailed in **Annexue-A**, should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962.
- iv. Interest should not be recovered from them on the said Customs duty, as at Sl. No. (iii) above, under Section 28 AA of the Customs Act, 1962.
- v. Penalty should not be imposed upon them under the provisions of Section 114A / 112 (a) and (b) of the Customs Act, 1962 for acts of commission and omission discussed hereinabove.
- vi. Penalty should not be imposed upon them under Section 114AA of the Customs Act, 1962.

**20.1. Further, Shri Shivkumar Amar Singh, Manager (Purchase), Auto Division, M/s.Electrotherm (India) Ltd., is hereby called upon to show cause to the Pr. Commissioner / Commissioner of Customs, Mundra Commissionerate, Mundra having his office at Port User Building, Mundra Port, Mundra, Kutch Gujarat, within thirty days from the receipt of this notice as to why:-**

- (i) Penalty should not be imposed upon him under the provisions of Section 112(a) and (b) of the Customs Act, 1962 with respect to duty demanded from the importer M/s. Electrotherm (India) Ltd. as discussed herein above;
- (ii) Penalty should not be imposed upon him under the provisions of Section 114AA of the Customs Act, 1962 in respect of Value of goods pertaining to M/s. Electrotherm (India) Ltd. as discussed herein above;
- (iii) Penalty should not be imposed upon him under the provisions of Section 117 of the Customs Act, 1962 for his acts of commission and omission as discussed hereinabove.

**20.2 Further, Shri Shailesh Bhandari, Managing Director in M/s. Electrotherm (India) Ltd., is hereby called upon to show cause to the Pr. Commissioner/ Commissioner of Customs, Mundra Commissionerate, Mundra having his office at Port User Building, Mundra Port, Mundra, Kutch Gujarat, within thirty days from the receipt of this notice as to why:-**

- (i) Penalty should not be imposed upon him under the provisions of Section 112(a) and (b) of the Customs Act, 1962 with respect to duty demanded from the importer M/s. Electrotherm (India) Ltd. as discussed herein above;
- (ii) Penalty should not be imposed upon him under the provisions of Section 114AA of the Customs Act, 1962 in respect of Value of goods pertaining to M/s. Electrotherm (India) Ltd. as discussed herein above;
- (iii) Penalty should not be imposed upon him under the provisions of Section 117 of the Customs Act, 1962 for his acts of commission and omission as discussed hereinabove.

**21. The above Noticees are required to submit their reply in writing to the Adjudicating Authority, as above, within 30 days from the date of receipt of this notice. In their written reply, the Noticee(s) may also state as to whether they would like to be heard in person. In case, no reply is received within the time limit stipulated above or any further time which may be granted to them by the Adjudicating Authority and/or if they fail to appear for personal hearing, when the case is posted for the same, the case will be decided ex-parte on the basis of evidence on record and without any further reference to the noticee(s).**

**22. This notice is issued without prejudice to any other action that may be taken in respect of the above goods and / or the persons / firms mentioned in the notice under the provisions of the Customs Act, 1962 and / or any other law for the time being in force, in the Republic of India.**

**23. The department reserves the right to add, amend, modify, delete any part or the portion of this notice any such addendum, amendment, modification, deletion, if made, shall be deemed to be part and parcel of this notice.**

**24.** The importer/noticee(s) have an option to make an application under Section 127(B) of the Customs Act, 1962 prior to adjudication of this notice, to the Settlement Commission to have the case settled, in such form and in such manner, as specified in the Rules

**25.** The list of documents relied upon for the issuance of this notice are attached as **ANNEXURE-R** to this notice. Copies of the same are being supplied, wherever not already available with the Noticees.

**Encl: All the RUDs as per Annexure-R.**

*(K. Engineer)*

Principal Commissioner of Customs,  
Custom House, Mundra

*O/C*

Date-22.05.2024.

**DIN-20240571M0000081338C**

F. No.: GEN/ADJ/COMM/208/2024-Adjn-O/o Pr Commr-Cus-Mundra  
**By Speed Post/E Mail/Notice Board**

To,

- 1. M/s. Electrotherm (India) Ltd,**  
Survey No 325, Village Samkhiyali, Near Toll Tex Booth, Bhachau, Kutch,  
Gujarat- 370140 (IEC- 0889000093) (email-  
bankat.somani@electrotherm.com)
- 2. Shri Shrivkumar Amar Singh,** Manager (Purchase), Auto Division,  
M/s.Electrotherm (India) Ltd, residing at 21-Samarpan Bunglows, Nr.  
Judges Bunglows, Satellite, Ahmedabad-380015, (email-  
shrivkumar.singh@electrotherm.com)
- 3. Shri Shailesh Bhandari,** Managing Director in M/s. Electrotherm (India)  
Ltd.,  
Residing at 8, Vraj Gopi bungalow, Palodia, Near electrotherm India limited,  
Ahmedabad -382115 (email-Shailesh.bhandari@electrotherm.com)

**COPY TO:-**

- (1) The Additional Director General, Directorate of Revenue Intelligence,  
Zonal Unit, 15, Magnet Co-operate Park, Near Sola Bridge, S.G. Highway,  
Thaltej, Ahmedabad-380054, for information.
- (2) The Deputy Commissioner of Customs (EDI), Custom House, Mundra.
- (3) The Deputy/ Asstt. Commissioner of Customs (Legal/Prosecution),  
Customs House, Mundra.
- (4) Office Notice Board.
- (5) Guard File.