



F.No. GEN/ADJ/COMM/56/2026-Adjn-O/o Commr-Cus-Kandla Date:09-03-2026

DIN:- 20260371ML0000111B5F

SHOW CAUSE NOTICE

BRIEF OF THE CASE:-

Whereas M/s GP Global Energy Pvt Ltd. (**here-in-after referred to as “the importer/Noticee” for the sake of brevity**) is a private limited company situated at Office No. 203, 2nd Floor, Arihant Complex, Plot No. 341, Ward 12-B, Gandhidham, Gujarat- 370201 having IEC 0510046380 and engaged in import of Fuel Oil classified under the CTH 27101950 & 27101969.

GENESIS OF THE CASE:-

2.1 Whereas, Audit of Customs Kandla Commissionerate for the periods Jan-2019 to March-2019, April-2019 to June-2019, July-2019 to Sep-2019, October 2019 to December-2019, January-2020 to March-2020 and April-2020 to Sept-2020 were conducted by the Office of the Principal Director of Audit (Central) teams and the audit observations noted by the Audit team were shared in the form of Local Audit Report (LAR) with the Kandla Customs Vide their letter No./C.R.A./L.A.R.-05/2018-19/198 dated 19.07.2018 (**RUD-1**), letter No./C.R.A./L.A.R.-14/2019-20/O.W.-336 dated 13.09.2019 (**RUD-2**), letter No./C.R.A./L.A.R.-32/2019-2020/O.W.608 dated 08.01.2020 (**RUD-3**), letter No./C.R.A./L.A.R.11/CH Kandla/2021-22/321 dated 29.09.2021 (**RUD-4**), letter No.C.R.A-L.A.R.-17/2021-22 OW-413/18/11/2021 dated 18.11.2021 (**RUD-5**) and letter No./C.R.A/L.A.R.21/2021-22/O.W.685 dated 01.02.2022 (**RUD-6**).

2.2 Whereas, the audit team from the office of the Principal Director of Audit (Central) under para 03 of the Local Audit Report No. 05/2018-19 dated 19.07.2018 (**RUD-1**), para 01 of the Local Audit Report No. 14/2019-20 dated 13.09.2019 (**RUD-2**), para 02 of the Local Audit Report No. 32/2019-20 dated 08.01.2020 (**RUD-3**), para 01 of the Local Audit Report No. 11/2021-22 dated 29.09.2021 (**RUD-4**), para 02 of the Local Audit Report No. 17/2021-22 dated 18.11.2021 (**RUD-5**) and para 06 of the Local Audit Report No. 21/2021-22

dated 01.02.2022 (**RUD-6**) made observations that M/s GP Global Energy Pvt. Ltd. imported Fuel Oils falling under CTH 2710 1950/2710 1969 on which BCD @ 5%, SWS @ 0.5% and IGST @ 18% (Schedule-III of Sr. No. 33) total effective duty @ 24.49% was levied/paid, however in some of the Bills of Entry, the B/Es were assessed on duty @ 10.775% (BCD-5%, SWS-0.5% and IGST- 5%) as per Sr. No. 164 of schedule-I and Importer paid the same, which means they adopted two rates of duty resulted into short levy of IGST/Customs Duty. Further, while filing one Bill of Entry, the Importer adopted another rate of duty under which BCD @ NIL (Sr. No. 139 of Notification 50/2017-Cus., dated 30.06.2017), SWS @ 10% of BCD (i.e. NIL) and IGST @ 5% (Schedule I Sl No. 164 of IGST Notification 1/2017) i.e. effective rate of duty @ 5%.

2 . 3 The details of the Bills of Entry under which the Importer adopted different rate of duty i.e. @ 10.775% and 5%, as per observation raised by the Audit Officers alongwith LARs, are details below in TABLE-I:-

TABLE-I

| S. No | BE No | BE Date | Description in BE | Assessable Value | Quantity (MTS) | Total Duty levied (Rs) @ 10.775%/ 5% | LAR No. |
|-------|---------|----------|-------------------|------------------|----------------|--------------------------------------|-------------|
| 1 | 9648089 | 15.01.19 | Fuel Oil- | 73,42,962 | 270 | 7,91,204 | 05/ 2018-19 |
| 2 | 2567277 | 25.03.19 | Fuel Oil- | 1,08,84,367 | 350 | 11,72,791 | |
| 3 | 2913997 | 20.04.19 | Fuel Oil | 92,67,261 | 298 | 9,98,547 | 14/ 2019-20 |
| 4 | 3006696 | 26.04.19 | Fuel Oil | 31,09,819 | 100 | 3,35,083 | |
| 5 | 3035769 | 29.04.19 | Fuel Oil | 14,64,725 | 47.1 | 1,57,824 | |
| 6 | 3346559 | 22.05.19 | Fuel Oil | 48,79,318 | 150 | 5,25,747 | |
| 7 | 3918805 | 03.07.19 | Fuel Oil- | 1,68,47,217 | 600 | 18,15,288 | 32/ 2019-20 |
| 8 | 4037981 | 12.07.19 | Fuel Oil- | 64,58,100 | 230 | 6,95,860 | |
| 9 | 4121476 | 18.07.19 | Fuel Oil- | 6,03,580 | 21.496 | 65,036 | |
| 10 | 4127496 | 19.07.19 | Fuel Oil- | 95,46,756 | 340 | 10,28,663 | |
| 11 | 4155679 | 20.07.19 | Fuel Oil- | 68,79,280 | 245 | 7,41,242 | |
| 12 | 4199395 | 24.07.19 | Fuel Oil- | 1,06,69,904 | 380 | 11,49,682 | |
| 13 | 5030669 | 24.09.19 | Fuel Oil- | 48,47,112 | 184 | 5,22,276 | |
| 14 | 5079224 | 27.07.19 | Fuel Oil- | 52,68,600 | 200 | 5,67,692 | |
| 15 | 4156075 | 20.07.19 | Fuel Oil- | 42,11,804 | 150 | 2,10,590 (@5%) | |
| 16 | 5672501 | 14.11.19 | Fuel Oil (FO) | 57,07,861 | 270 | 6,15,022 | 11/ 2021-22 |
| 17 | 5803821 | 25.11.19 | Fuel Oil | 13,94,100 | 70 | 1,50,214 | |
| 18 | 5859605 | 28.11.19 | Fuel Oil | 79,26,978 | 450 | 8,54,132 | |
| 19 | 5922075 | 03.12.19 | Fuel Oil | 8,80,775 | 50 | 94,904 | |
| 20 | 6117011 | 17.12.19 | Fuel Oil | 4,36,220 | 25 | 47,003 | |
| 21 | 5538904 | 04.11.19 | Fuel Oil (FO) | 1,70,06,006 | 765 | 18,32,397 | |
| 22 | 6379989 | 07.01.20 | Fuel Oil | 26,17,322 | 150 | 2,82,016 | 17/ 2021-22 |
| 23 | 6771513 | 05.02.20 | Fuel Oil (FO) | 1,23,94,334 | 300 | 13,35,489 | |
| 24 | 6883769 | 14.02.20 | Fuel Oil (FO) | 1,65,25,779 | 400 | 17,80,653 | |
| 25 | 7242608 | 16.03.20 | Fuel Oil (FO) | 82,62,889 | 200 | 8,90,326 | |

| | | | | | | | |
|----|--------------|----------|---------------|---------------------|--------|--------------------|-------------|
| 26 | 7294967 | 19.03.20 | Fuel Oil (FO) | 67,15,105 | 300 | 7,23,553 | |
| 27 | 7294967 | 19.03.20 | Fuel Oil | 1,58,94,922 | 710.11 | 17,12,678 | |
| 28 | 7311492 | 20.03.20 | Fuel Oil | 56,31,398 | 250 | 6,06,783 | |
| 29 | 7787020 | 30.05.20 | Fuel Oil | 1,64,94,842 | 775.31 | 17,77,319 | 21/ 2021-22 |
| | Total | | | 21,28,26,373 | | 2,32,69,424 | |

2.4 The audit team observed that in respect of Fuel Oil, imported by the Importer, they adopted 3 rates of duty for the same goods. The details of the same are hereunder:-

CASE-I

In respect of most of the cargo i.e. Fuel Oil classifiable under CTH 27101950, the importer filed Bills of Entry for home consumption declaring following leviable duties:

- i. BCD @ 5 % of assessable value (Sl. No. 147 of Notification 50/2017 Cus. dated 30.06.17),
- ii. SWS @ 10 % of BCD and
- iii. IGST @ 18 % of BCD + SWS + Assessable value (Schedule III SI No 33 of IGST Notification 1/2017).
- iv. Thus total effective rate of Customs Duty @ 24.49%

| S. No | Chapter or Heading or Sub-Heading or tariff item | Description of Goods | Standard Rate | IGST | Condition No. |
|---|--|---|---------------|------|---------------|
| 147 of Notif 50/2017- Cus dated 30.06.2017 | 2710, 2711, 2712, 2713, 2714 or 2715 | All Goods (excluding Naptha), other than the goods mentioned in S. No. 150, 151, 153 petroleum coke falling under sub-heading 271311 or 271312 | 5% | - | - |
| GST Schedule III (for levy of IGST)-18% | | | | | |
| 33 of Notif 01/2017- IGST (Rate) dated 28.06.2017 | 2710 | Petroleum Oil and oil obtained from bituminous minerals, other than petroleum Crude, preparations not elsewhere specified or included, containing by weight 70% or more of oils obtained from bituminous minerals, these oils being the basis constituents of the preparations, waste oils, avgas [other than kerosene PDS, petrol, diesel and ATF, mot in GST] | | | |

CASE-II:-

In some of the Bills of Entry filed by the Importer for the same cargo i.e. Fuel Oil (CTH-27101950), the importer filed Bills of Entry (as detailed in TABLE-I Supra, except B/E No. 4156075 dated 20.07.2019) for home consumption declaring following leviable duties:-

- i. BCD @ 5 % of assessable value (Sl. No. 147 of Notification 50/2017 Cus. dated 30.06.17),
- ii. SWS of 10 percent of BCD and
- iii. IGST @ of 5 % of assessable value + BCD + SWS (Schedule I Sl No 164 of IGST Notification 1/2017 dated 28.06.2017 as amended vide Entry A-(v) of Notification 35/2017 dated 13.10.2017).
- iv. Thus total effective rate of Customs Duty @ 10.775%

| S. No | Chapter or Heading or Sub-Heading or tariff item | Description of Goods | Standard Rate | IGST | Condition No. |
|--|--|---|---------------|------|---------------|
| 147 | 2710, 2711, 2712, 2713, 2714 or 2715 | All Goods (excluding Naptha), other than the goods mentioned in S. No. 150, 151, 153 petroleum coke falling under sub-heading 271311 or 271312 | 5% | - | - |
| GST Schedule I (for levy of IGST)-5% | | | | | |
| 164 of Notif No. 01/2017-IGST (Rate) dated 28.06.2017 as amended vide Notif No. 35/2017-IGST (Rate) dated 13.10.2017 | 2710 | a. Kerosene oil PDS b. The following bunker fuels for use in ships namely: <ol style="list-style-type: none"> i. IFO 180 CST* ii. IFO 380 CST* iii. Marine Fuel 0.5% (FO) # *-{added vide Serial No. A-(v) of Notification No. 35/2017-IGST (Rate) dated 13.10.2017} #-{added vide Serial No. A-(ii) of Notification No. 14/2019-IGST (Rate) dated 30.09.2019} | | | |

CASE-III:-

While filing Bill of Entry No. 4156075, dated 20.07.2019 for home consumption, the Importer adopted following leviabale rate of duty for the same cargo i.e. Fuel Oil (CTH- 27101950):-

- i. BCD @ NIL (Sl. No. 139 of Notification 50/2017 Cus. dated 30.06.17),
- ii. SWS of 10 percent of BCD and
- iii. IGST @ of 5 % of assessable value + BCD + SWS (Schedule I Sl No 164 of IGST Notification 1/2017 dated 28.06.2017 as amended vide Entry A-(v) of Notification 35/2017 dated 13.10.2017).
- iv. Thus total effective rate of duty @ 5%.

| S. No | Chapter or Heading or Sub-Heading or tariff item | Description of Goods | Standard Rate | IGST | Condition No. |
|-------|--|--|---------------|------|---------------|
| 139 | 27 | The following bunker fuels for use in ships or vessels, namely:- | NIL | - | 13 |

| | | | | | |
|--|------|--|--|--|--|
| | | i. IFO 180 CST; ii. IFO 380 CST | | | |
| GST Schedule I (for levy of IGST)-5% | | | | | |
| 164 of Notif No. 01/2017-IGST (Rate) dated 28.06.2017 as amended vide Notif No. 35/2017-IGST (Rate) dated 13.10.2017 | 2710 | c. Kerosene oil PDS d. The following bunker fuels for use in ships namely: iv. IFO 180 CST* v. IFO 380 CST* vi. Marine Fuel 0.5% (FO) # *-{added vide Serial No. A-(v) of Notification No. 35/2017-IGST (Rate) dated 13.10.2017} #-{added vide Serial No. A-(ii) of Notification No. 14/2019-IGST (Rate) dated 30.09.2019} | | | |

Condition No. 13, in respect of above Notification for claiming concessional rate of Customs Duty is as under:-

| Condition No. | Condition |
|---------------|---|
| 13 | <p>If,- (i) the bunker fuels are imported for use in ships or vessels which are registered under the Merchant Shipping Act, 1958 (44 of 1958) and fly the Indian flag only;</p> <p>(ii) such ships or vessels carry cargo between two or more Indian ports (including an intermediate foreign port);</p> <p>(iii) (iv) such ships or vessels carry containerised cargo namely, export-import cargo or empty containers or domestic cargo, between such ports;</p> <p>(iv) such ships or vessels file an import manifest (IGM) or an export manifest (EGM), as the case may be, in each leg of the voyage</p> <p>(v) such ships or vessels do not file any cargo related documentation under the Customs Act, 1962 (52 of 1962) with the Customs authorities, other than an import manifest (IGM) or an export manifest (EGM), as the case may be;</p> <p>(vi) the Master of the vessel or his authorised agent and the importer submit a declaration-cum-undertaking stating the quantity of bunker fuels required under this notification to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, based on a document certifying the consumption rate of fuel issued by any classification society which is a member of the International Association of Classification Societies (IACS) and the distance proposed to be covered by the vessel during its voyage;</p> <p>(vii) the Master of the vessel or his authorised agent and the importer submit an undertaking to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, to pay, in the event of his failure to comply with any of the aforesaid conditions, an amount equal to the duty leviable on such goods but for the exemption contained therein, along with the applicable interest thereon.</p> |

2.5 It was further observed that the Importer filed Warehouse Bill of Entry with leviable rate of duty @ 24.49 % (BCD-5%, SWS- 10% of BCD and IGST-18% of BCD & SWS), however at the time of filling of Bill of Entry for Home Consumption, they filed B/Es with leviable rate of duty @ 10.775%/5% claiming concessional rate of duty. Further, it was observed that in the Bills of Entry, the description of the goods was mentioned as “Fuel Oil only and nowhere the description of the goods specify the commodity as IFO 180 CST or as IFO 380 CST. Further, the condition stipulated under Sr. No. 139 of Notification No. 50/2017-Cus., dated 30.06.2017 has also not been fulfilled. Accordingly, the concessional rate of duty is not eligible to the Importer.

Legal Provisions:

- Fuel oil is classifiable under HSN 27101951 to 27101969 depending on the Indian Standard it conforms to. The scheme of classification as per Customs Tariff Act, 1975 is as below:

| SECTION-V | | CHAPTER-27 | | |
|------------|---|------------|------|-----|
| (1) | (2) | (3) | (4) | (5) |
| | as specified under standard IS 1745 | | | |
| | --- Kerosene intermediate and oils obtained from kerosene intermediate: | | | |
| 2710 19 31 | ---- Kerosene intermediate | kg. | 5% | - |
| 2710 19 32 | ---- Kerosene conforming to standard IS 1459 | kg. | 5% | - |
| 2710 19 39 | ---- Aviation turbine fuels, kerosene type conforming to standard IS 1571 | kg. | 5% | - |
| | --- Gas oil and oils obtained from gas oil: | | | |
| 2710 19 41 | ---- Gas oil | kg. | 5% | - |
| 2710 19 42 | ---- Vacuum gas oil | kg. | 5% | - |
| 2710 19 43 | ---- Light diesel oil conforming to standard IS 15770 | kg. | 5% | - |
| 2710 19 44 | ---- Automotive diesel fuel, not containing biodiesel, conforming to standard IS 1460 | kg. | 2.5% | - |
| 2710 19 49 | ---- High flash high speed diesel fuel conforming to standard IS 16861 | kg. | 2.5% | - |
| | --- Fuel oils conforming to standard IS 1593: | | | |
| 2710 19 51 | ---- Grade LV | kg. | 5% | - |
| 2710 19 52 | ---- Grade MV1 | kg. | 5% | - |
| 2710 19 53 | ---- Grade MV2 | kg. | 5% | - |
| 2710 19 59 | ---- Grade HV | kg. | 5% | - |
| | --- Fuels (Class F) or marine fuels conforming to standard IS 16731: | | | |
| 2710 19 61 | ---- Distillate oil | kg. | 5% | - |
| 2710 19 69 | ---- Residual oil | kg. | 5% | - |

| | | | | |
|------------|------|---|-----|----|
| | --- | Base oil and lubricating oil: | | |
| 2710 19 71 | ---- | Base oil | kg. | 5% |
| 2710 19 72 | ---- | Engine oil (internal combustion engine crankcase oils) conforming to standard IS 13656 | kg. | 5% |
| 2710 19 73 | ---- | Engine oil conforming to standard IS 14234 | kg. | 5% |
| 2710 19 74 | ---- | Automotive gear oil conforming to standard IS 1118 | kg. | 5% |
| 2710 19 75 | ---- | Industrial gear oil conforming to standard IS 8406 | kg. | 5% |
| 2710 19 76 | ---- | General purpose machinery and spindle oils conforming to standard IS 493 | kg. | 5% |
| 2710 19 77 | ---- | Turbine lubricating oil conforming to standard IS 1012 | kg. | 5% |
| 2710 19 78 | ---- | Other lubricating oil, conforming to any other BIS standard | kg. | 5% |
| 2710 19 79 | ---- | Other lubricating oil, not conforming to any BIS standard | kg. | 5% |
| | --- | Cuttingoil, hydraulic oil, industrial white oil, jute batching oil, mineral oil for cosmetic industry, transformer oil: | | |
| 2710 19 81 | ---- | Cutting oil conforming to standard IS 1115 | kg. | 5% |
| 2710 19 82 | ---- | Cutting oil (neat) conforming to standard IS 3065 | kg. | 5% |
| 2710 19 83 | ---- | Hydraulic oil conforming to standard IS 3098 or IS 11656 | kg. | 5% |

3. Further, as per Serial No. 33 of the Schedule-III of the Notification No. 01/2017-IGST (Rate) dated 28.06.2017, IGST @ 18% is leviable on the Petroleum Oil and oil obtained from bituminous minerals, classifiable under chapter head 2710 and BCD @ 5% as per Serial No. 147 of Notification 50/2017 Cus. dated 30.06.2017.

4. Further, Serial No. 164 of Notification No. 01/2017-IGST (Rate) dated 28.06.2017 was amended vide Serial No. A-(v) of the Notification No. 35/2017-IGST (Rate) dated 13.10.2017 to include bunker fuels for use in ships namely (i) IFO 180 CST and (ii) IFO 380 CST. Therefore, the IGST rate on bunker Fuels of the aforementioned specification was reduced from 18% to 5%. Another amendment in the Serial No. 164 of the Notification No. 01/2017-IGST (Rate) dated 28.06.2017 was done to include Marine Fuel 0.5% (FO) vide Serial No. A-(ii) of the Notification No. 14/2019-IGST (Rate) dated 30.09.2019. Therefore, the IGST rate on the following items falling under chapter Head 2710 apart from Kerosene oil PDS (which already attracted IGST @5%) was reduced from 18% to 5% vide Notification No. 35/2017-IGST (Rate) dated 13.10.2017 and Notification No. 14/2019-IGST (Rate) dated 30.09.2019:

The following bunker fuels for use in ships namely:

- i. *IFO 180 CST*
- ii. *IFO 380 CST*
- iii. *Marine Fuel 0.5% (FO)*

5. Therefore, on combined reading of the Notification No. 01/2017-IGST (Rate) dated 28.06.2017 as amended vide Notification No. 35/2017-IGST (Rate) dated 13.10.2017 and Notification No. 14/2019-IGST (Rate) dated 30.09.2019 provides that Fuel Oil imported by the importer is leviable to BCD @ 5% in terms of S. No. 147 of Notification No. 50/2017-Cus. dated 30.06.2017 and IGST @ 18% in terms of S. No. 33 of Notification No. 01/2017-IGST (Rate).

5.1 S. No. 164 of Notif No. 01/2017-IGST (Rate) dated 28.06.2017 as amended vide Notif No. 35/2017-IGST (Rate) dated 13.10.2017 IGST provides that IGST @ 5% will be leviable on the bunker Fuels (i) IFO 180 CST, (ii) IFO 380 CST and (iii) Marine Fuel-0.5% (FO). However, the description provided by the importer while filing the BE nowhere mention that the Fuel oil is of the afore stated three categories. Therefore, BCD @ 5% and IGST @ 18% is leviable on the import of Fuel oil made by the importer during the said period.

5.2 Sr. No. 139 of Noti. No.50/2017-Cus. dated 30.06.2017 provides that BCD @ NIL will be leviable on bunker fuels for use in ships or vessels namely (i) IFO 180 CST, (ii) IFO 380 CST subject to fulfillment of conditions No. 13 of the aforesaid Notification. Further, Condition No. 13 prescribes various conditions which is as under:-

| Condition No. | Condition |
|---------------|--|
| 13 | <p>If,- (i) the bunker fuels are imported for use in ships or vessels which are registered under the Merchant Shipping Act, 1958 (44 of 1958) and fly the Indian flag only;</p> <p>(ii) such ships or vessels carry cargo between two or more Indian ports (including an intermediate foreign port);</p> <p>(iii) (iv) such ships or vessels carry containerised cargo namely, export-import cargo or empty containers or domestic cargo, between such ports;</p> <p>(iv) such ships or vessels file an import manifest (IGM) or an export manifest (EGM), as the case may be, in each leg of the voyage</p> <p>(v) such ships or vessels do not file any cargo related documentation under the Customs Act, 1962 (52 of 1962)with the Customs authorities, other than an import manifest (IGM) or an export manifest (EGM), as the case may be;</p> <p>(vi) the Master of the vessel or his authorised agent and the importer submit a declaration-cum-undertaking stating the quantity of bunker fuels required under this notification to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, based on a document certifying the consumption rate of fuel issued by any classification society which is a member of the International Association of Classification Societies (IACS) and the distance proposed to be covered by the vessel during its voyage;</p> <p>(vii) the Master of the vessel or his authorised agent and the importer submit an undertaking to the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, to pay, in the event of his failure to comply with any of the aforesaid conditions, an amount equal to the duty leviable on such goods but for the exemption contained therein, along with the applicable interest thereon.</p> |

6. The importer imported "Fuel Oil" (as per description mentioned in the Bills of Entry) and no further description like (i) IFO 180 CST, (ii) IFO 380 CST and (iii) Marine Fuel- 0.5% (FO) was mentioned by them in the Bills of Entry. Therefore, while

the IGST rate was reduced only for the three types of Fuel Oils namely (i) IFO 180 CST, (ii) IFO 380 CST and (iii) Marine Fuel- 0.5% (FO); no such description was mentioned by the importer in their Bills of Entry filed for the import of goods. Therefore, the Fuel Oil imported by the importer does not qualify for reduced rate of IGST @ 5% as it was none among the bunker fuels used in ships namely (i) IFO 180 CST, (ii) IFO 380 CST and (iii) Marine Fuel- 0.5% (FO) as provided under Sl. No. 164 of the Notification No. 01/2017-IGST (Rate) dated 28.06.2017 as amended vide Notification No. 35/2017-IGST (Rate) dated 13.10.2017 and Notification No. 14/2019-IGST (Rate) dated 30.09.2019. Therefore, the import of "Fuel Oil" by the importer M/s GP Global Energy Pvt Ltd. should have been levied BCD @ 5% and IGST @ 18% instead of BCD @ nil (only in case of BE No. 4156075 dt. 20.07.19) and IGST @ 5% levied by them.

7. Therefore, while an effective duty of 24.49% should have been paid by the importer on all such imports, it paid an effective duty of 5% (only in case of BE No. 4156075 dt. 20.07.19) and 10.775% on the following bills of entries (TABLE-II):

TABLE-II

| S. No | BE No | BE Date | Description in BE | Assessable Value | Quantity (MTS) | Total Duty (Rs) levied | Total Duty % of Assessable Value |
|-----------|----------------|-----------------|-------------------|------------------|----------------|------------------------|----------------------------------|
| 1 | 2913997 | 20.04.19 | Fuel Oil | 92,67,261 | 298 | 9,98,547 | 10.775 |
| 2 | 3006696 | 26.04.19 | Fuel Oil | 31,09,819 | 100 | 3,35,083 | 10.775 |
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| 14 | 9648089 | 15.01.19 | Fuel Oil- | 73,42,962 | 270 | 7,91,204 | 10.775 |
| 15 | 2567277 | 25.03.19 | Fuel Oil- | 1,08,84,367 | 350 | 11,72,791 | 10.775 |
| 16 | 5672501 | 14.11.19 | Fuel Oil (FO) | 57,07,861 | 270 | 6,15,022 | 10.775 |
| 17 | 5803821 | 25.11.19 | Fuel Oil | 13,94,100 | 70 | 1,50,214 | 10.775 |
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| 19 | 5922075 | 03.12.19 | Fuel Oil | 8,80,775 | 50 | 94,904 | 10.775 |
| 20 | 6117011 | 17.12.19 | Fuel Oil | 4,36,220 | 25 | 47,003 | 10.775 |
| 21 | 5538904 | 04.11.19 | Fuel Oil (FO) | 1,70,06,006 | 765 | 18,32,397 | 10.775 |
| 22 | 6379989 | 07.01.20 | Fuel Oil | 26,17,322 | 150 | 2,82,016 | 10.775 |
| 23 | 6771513 | 05.02.20 | Fuel Oil (FO) | 1,23,94,334 | 300 | 13,35,489 | 10.775 |
| 24 | 6883769 | 14.02.20 | Fuel Oil (FO) | 1,65,25,779 | 400 | 17,80,653 | 10.775 |
| 25 | 7242608 | 16.03.20 | Fuel Oil (FO) | 82,62,889 | 200 | 8,90,326 | 10.775 |
| 26 | 7294967 | 19.03.20 | Fuel Oil (FO) | 67,15,105 | 300 | 7,23,553 | 10.775 |

| | | | | | | | |
|----|---------|----------|----------|--------------|--------|-------------|--------|
| 27 | 7294967 | 19.03.20 | Fuel Oil | 1,58,94,922 | 710.11 | 17,12,678 | 10.775 |
| 28 | 7311492 | 20.03.20 | Fuel Oil | 56,31,398 | 250 | 6,06,783 | 10.775 |
| 29 | 7787020 | 30.05.20 | Fuel Oil | 1,64,94,842 | 775.31 | 17,77,319 | 10.775 |
| | Total | | | 21,28,26,373 | | 2,32,69,424 | |

Calculation of Differential Duty:

8. The differential duty on the above stated BEs as pointed out by the audit team is calculated as below TABLE-III:

TABLE-III

| S. No | BE No | BE Date | Description in BE | Assessable Value | Total Duty levied (Rs) @ 10.775%/5% | Duty payable @ 24.49% | Differential Duty short levied |
|-------|---------|----------|-------------------|------------------|-------------------------------------|-----------------------|--------------------------------|
| 1 | 2913997 | 20.04.19 | Fuel Oil | 92,67,261 | 9,98,547 | 22,69,552 | 12,71,005 |
| 2 | 3006696 | 26.04.19 | Fuel Oil | 31,09,819 | 3,35,083 | 7,61,595 | 4,26,512 |
| 3 | 3035769 | 29.04.19 | Fuel Oil | 14,64,725 | 1,57,824 | 3,58,711 | 2,00,887 |
| 4 | 3346559 | 22.05.19 | Fuel Oil | 48,79,318 | 5,25,747 | 11,94,945 | 6,69,198 |
| 5 | 3918805 | 03.07.19 | Fuel Oil- | 1,68,47,217 | 18,15,288 | 41,25,883 | 23,10,596 |
| 6 | 4037981 | 12.07.19 | Fuel Oil- | 64,58,100 | 6,95,860 | 15,81,589 | 8,85,728 |
| 7 | 4121476 | 18.07.19 | Fuel Oil- | 6,03,580 | 65,036 | 1,47,817 | 82,781 |
| 8 | 4127496 | 19.07.19 | Fuel Oil- | 95,46,756 | 10,28,663 | 23,38,001 | 13,09,338 |
| 9 | 4155679 | 20.07.19 | Fuel Oil- | 68,79,280 | 7,41,242 | 16,84,736 | 9,43,493 |
| 10 | 4199395 | 24.07.19 | Fuel Oil- | 1,06,69,904 | 11,49,682 | 26,13,059 | 14,63,377 |
| 11 | 5030669 | 24.09.19 | Fuel Oil- | 48,47,112 | 5,22,276 | 11,87,058 | 6,64,781 |
| 12 | 5079224 | 27.07.19 | Fuel Oil- | 52,68,600 | 5,67,692 | 12,90,280 | 7,22,588 |
| 13 | 4156075 | 20.07.19 | Fuel Oil- | 42,11,804 | 2,10,590 | 10,31,471 | 8,20,881 |
| 14 | 9648089 | 15.01.19 | Fuel Oil- | 73,42,962 | 7,91,204 | 17,98,291 | 10,07,087 |
| 15 | 2567277 | 25.03.19 | Fuel Oil- | 1,08,84,367 | 11,72,791 | 26,65,582 | 14,92,791 |
| 16 | 5672501 | 14.11.19 | Fuel Oil (FO) | 57,07,861 | 6,15,022 | 13,97,855 | 7,82,833 |
| 17 | 5803821 | 25.11.19 | Fuel Oil | 13,94,100 | 1,50,214 | 3,41,415 | 1,91,201 |
| 18 | 5859605 | 28.11.19 | Fuel Oil | 79,26,978 | 8,54,132 | 19,41,317 | 10,87,185 |
| 19 | 5922075 | 03.12.19 | Fuel Oil | 8,80,775 | 94,904 | 2,15,702 | 1,20,798 |
| 20 | 6117011 | 17.12.19 | Fuel Oil | 4,36,220 | 47,003 | 1,06,830 | 59,828 |
| 21 | 5538904 | 04.11.19 | Fuel Oil (FO) | 1,70,06,006 | 18,32,397 | 41,64,771 | 23,32,374 |
| 22 | 6379989 | 07.01.20 | Fuel Oil | 26,17,322 | 2,82,016 | 6,40,982 | 3,58,966 |
| 23 | 6771513 | 05.02.20 | Fuel Oil (FO) | 1,23,94,334 | 13,35,489 | 30,35,372 | 16,99,883 |
| 24 | 6883769 | 14.02.20 | Fuel Oil (FO) | 1,65,25,779 | 17,80,653 | 40,47,163 | 22,66,511 |
| 25 | 7242608 | 16.03.20 | Fuel Oil (FO) | 82,62,889 | 8,90,326 | 20,23,582 | 11,33,255 |
| 26 | 7294967 | 19.03.20 | Fuel Oil (FO) | 67,15,105 | 7,23,553 | 16,44,529 | 9,20,977 |
| 27 | 7294967 | 19.03.20 | Fuel Oil | 1,58,94,922 | 17,12,678 | 38,92,666 | 21,79,989 |
| 28 | 7311492 | 20.03.20 | Fuel Oil | 56,31,398 | 6,06,783 | 13,79,129 | 7,72,347 |
| 29 | 7787020 | 30.05.20 | Fuel Oil | 1,64,94,842 | 17,77,319 | 40,39,587 | 22,62,268 |
| | Total | | | 21,28,26,373 | 2,32,69,424 | | 3,04,39,458 |

9. Therefore, the importer has short paid duty amounting to Rs.3,04,39,458/- on the above mentioned 29 Bills of Entry filed during the audit period.

10. As the Notification No 50/2017-Cus dated 30.06.2017, Notification No. 01/2017-IGST (Rate) dated 28.06.2017 as amended vide Notification No. 35/2017-IGST (Rate) dated 13.10.2017 and Notification No. 14/2019-IGST (Rate) dated 30.09.2019 are available on the CBIC Website as well as GST Council Website and the importer being in the business of import of Fuel Oil is supposed to be knowing the regulatory framework of import of the goods, it appears that the importer knowingly misstated the applicable BCD as NIL (only in case of BE. No. 4156075 dated 20.07.19) instead of 5% and IGST @ 5% instead of 18% in order to get wrongful gain of lower BCD and IGST Rate on the imported goods in order to evade Customs Duties amounting to Rs.3,04,39,458/-. Moreover, if the issue was not pointed out by the audit team, the importer would not have himself come up to the department to inform and to pay the differential duty evaded by them. Therefore, this act of knowingly mis-stating the applicable rate of IGST in the Bills of Entry amounts to willful mis-statement on the part of importer which has led to loss of exchequer amounting to Rs.3,04,39,458/-. Therefore, the differential duty amounting to Rs.3,04,39,458/- willingly evaded by the importer requires to be recovered under Section 28 (4) of the Customs Act, 1962.

INVOCATION OF EXTENDED PERIOD

11. Section 46 (4) of the Customs Act, 1962, mandates the importer, presenting a bill of entry, to make a declaration as to the truth of the contents of such bill of entry. Further, Section 46 (4A) of the Customs Act, 1962 mandates that it is the responsibility of the Importer who presents a bill of entry to ensure the accuracy, completeness, authenticity, validity etc. of the documents/ information given. For the sake of Reference, the same is re-produced hereunder:-

46. Entry of goods on importation:-

(1)...(3)

(4) The importer while presenting a bill of entry shall¹² [* *] 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,¹³ [and such other documents relating to the imported goods as may be prescribed].*

¹⁴ [(4A) The importer who presents a bill of entry shall ensure the following, namely:-

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

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

(c) compliance with the restriction or prohibition, if any, relating to the goods under

this Act or under any other law for the time being in force.]

12. In the subject case, the importer has violated the provisions of the Customs Act 1962 in as much as they wrongly claimed concessional rate of duty, as discussed in para-supra, thereby short-paid applicable duty of BCD, SWS and IGST

13. Whereas, in context of the above, it is pertinent to mention here that the provisions pertaining to Self-Assessment under the Customs Act 1962 which were implemented w.e.f. 08.04.2011 under the Finance Act 2011, ushers in a trust-based Customs-Trade partnership leading to greater facilitation of compliant trade. Board's Circular no. 17/2011 dated 08.04.2011 specifies that the responsibility for assessment has been shifted to the importer/exporter; that Section 17 of the Customs Act 1962 provides for self-assessment of duty on imported 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 (Section 46 or 50); that the importer or exporter at the time of self-assessment will ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported/export goods while presenting Bill of Entry or Shipping Bill. However, it is viewed that non-compliant importers/exporters could face penal action on account of wrong Self-Assessment made with intent to evade duty or avoid compliance of conditions of notifications, Foreign Trade policy or any other provision under the Customs Act, 1962 or the Allied Acts. From the above-mentioned facts, it is clearly evident that the importer has not exercised due diligence in respect of self-assessing the subject goods on their importation and has thus violated the provisions of the Self-Assessment procedures.

14. It appears that the benefit of an exemption notification can be extended only when the conditions prescribed therein are strictly fulfilled by the claimant. In this regard, it is a settled principle of law that the burden of proving eligibility to claim exemption lies upon the assessee/importer who seeks to avail the benefit of such notification. The Hon'ble Supreme Court in Commissioner of Customs (Import) v. Dilip Kumar and Company has held that exemption notifications must be interpreted strictly and the burden of establishing that the case falls within the parameters of the exemption lies on the assessee claiming such benefit. The Court further observed that in case of ambiguity in an exemption notification, the benefit of such ambiguity cannot be claimed by the assessee and the same must be interpreted in favour of the revenue. In view of the above settled legal position, it appears that the Noticee was required to establish, with documentary evidence, that the conditions of the relevant notification were fully satisfied in the present case. However, from the facts available on record, it appears that the Noticee has failed to discharge the said burden of proof and therefore the benefit of the exemption notification appears to be inadmissible.

15. Whereas, as the importer appears to have wrongly availed the benefits of Schedule I Sl No 164 of IGST Notification 1/2017 dated 28.06.2017 as amended vide Entry A-(v) of Notification 35/2017 dated 13.10.2017 and Sl. No. 139 of Notification 50/2017 Cus. dated 30.06.17, which was not admissible to them, they appear to have contravened the provisions of Section 46 of the Customs Act, 1962 and evaded payment of duties of customs/IGST amounting to Rs.3,04,39,458/-, as discussed above by way of improper self-assessment in the Bills of entries filed under Section 46 of the Customs Act, 1962, thus resorting to wilful mis-statement and suppression of facts and rendered themselves liable for action as envisaged under Section 28(4) of the Customs Act, 1962 for recovery of duties short-paid amounting to

Rs.3,04,39,458/-, along with interest as stipulated under section 28AA of the Customs Act, 1962 and the importer has rendered themselves liable to penalty under Section 114A of the Customs Act,1962.

16. Whereas, it has been observed that the Importer have adopted three different rates of Customs Duty for the same products i.e. Fuel Oil without assigning any concrete evidence to claim concessional rates of duty and fulfilment of conditions for claiming concessional rate of duty, thereby their claims appear to be untenable. Accordingly, it appears that they are not eligible to claim concessional rates of duty, thereby makes them liable to pay short pay Customs duty of Rs.3,04,39,458/-. Thus, the extended period as envisaged under Section 28(4) of the Customs Act, 1962 for recovery of the BCD, SWS and IGST not paid by M/s. GP Global Energy Pvt. Ltd. by resorting to wilful mis-statement and suppression of facts appears to be invocable in the instant case.

17. Further, as discussed in the foregoing paragraphs, the acts of omission and commission on part of M/s. GP Global Energy Pvt. Ltd. wherein the applicable BCD, SWS and IGST has not been paid on the imported goods by wrongly claiming concessional rate of duty has led the goods to be liable for confiscation under Section 111(m) and 111(o) of the Customs Act, 1962 in as much as the exemption of BCD & IGST on the imported goods was wrongly availed by the said importer as explained in details at Para supra. Further, such contravention also appears to have rendered M/s. GP Global Energy Pvt. Ltd. liable for penalty u/s 112 of the Customs Act, 1962. It further appears that penalty as provided under section 114A of the Customs Act is also leviable on the said importer in as much as they appear to have not paid the BCD, SWS and IGST leviable on the goods imported by them.

18. Whereas, the time period to demand any tax liability under section 28(4) is 5 years from the relevant date i.e the date the proper officer orders clearance of goods (the "out-of-charge" date). However, the Hon'ble Supreme Court vide order dated 10.01.2022 in SUO MOTU WRIT PETITION (C) NO.3 OF 2020, MISCELLANEOUS APPLICATION NO. 21 OF 2022 and MISCELLANEOUS APPLICATION NO. 665 OF 2021 ordered that the period from 25.03.19 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. Therefore, the demand of differential duty amounting to Rs. 3,04,39,458/- for the 29 Bills of Entry filed during the period 15.01.2019 to 30.05.2020 is not time barred within the meanings of Section 28(4) read with the afore stated order of the Hon'ble Supreme Court.

19. Therefore, now M/s GP Global Energy Pvt. Ltd. (IEC-0510046380) situated at Office No. 203, 2nd Floor, Arihant Complex, Plot No. 341, Ward 12-B, Gandhidham, Gujarat- 370201, is hereby called upon to show cause as to why:

- i. Differential BCD, SWS & IGST amounting to **Rs.3,04,39,458/- (Rupees Three Crore Four Lakh Thirty Nine Thousand Four Hundred Fifty Eight Only)**, as detailed in Para 8 supra, not-paid/short-paid on the imported goods having total assessable value of **Rs.21,28,26,373/-**, should not be recovered from them under section 28(4) of the Customs Act, 1962.
- ii. Interest at the applicable rate should not be demanded/recovered from them under Section 28AA of the Customs Act, 1962 on the amount mentioned at (i) above.
- iii. The Impugned imported goods with the total assessable value of

Rs.21,28,26,373/-, imported vide various Bills of Entry, as mentioned in TABLE-I Supra, should not be held liable for confiscation under Section 111(m) and 111(o) of the Customs Act, 1962;

- iv. Penalty should not be imposed upon them under the provision of Section 112 of the Customs Act, 1962 for rendering imported goods liable for confiscation under Section 111(m) and 111(o) of the Customs Act, 1962;
- v. Penalty under Section 114A of the Customs Act, 1962 should not be imposed upon them for the reasons as discussed in para 15 above.

20. The noticee should state in their written reply to this notice as to whether they desire to be heard in person. If no reply to this notice is received from them within 30 days from the date of receipt of this notice or if they fail to appear for the personal hearing on the date and time intimated to them, the case is liable to be decided on the basis of evidences available and merits, without any further reference to them.

21. This notice is issued without prejudice to any other action that may be taken against the noticee under the provisions of the Customs Act, 1962 and the Rules & Regulations made there under or any other law for the time being in force.

22. The Department reserves its right to amend, modify or supplement this notice at time on the basis of available/further evidences prior to the adjudication of the case.

(Nitin Saini)
Commissioner of Custom
Custom House, Kandla

By Speed Post/ By Hand / By E-mail

To,

M/s. GP Global Energy Pvt. Ltd,
Office No. 203, 2nd Floor,
Arihant Complex, Plot No. 341,
Ward 12-B, Gandhidham,
Gujarat- 370201

Copy to:

- (i) The Assistant Commissioner, Adjudication, Customs Kandla.
- (ii) The Assistant Commissioner, Review, Customs Kandla.
- (iii) Guard File.

Annexure R**(List of Relief Upon Documents)****Show Cause Notice issued vide F.No. GEN/ADJ/COMM/56/2026-Adjn-O/o Commr-Cus-Kandla in respect of M/s. GP Global Energy Pvt. Ltd.**

| Sr. No. | Description | RUD no. |
|----------------|---|----------------|
| 1 | Para 03 of the Local Audit Report No. 05/2018-19 dated 19.07.2018 | RUD 1 |
| 2 | Para 01 of the Local Audit Report No. 14/2019-20 dated 13.09.2019 | RUD 2 |
| 3 | Para 02 of the Local Audit Report No. 32/2019-20 dated 08.01.2020 | RUD 3 |
| 4 | Para 01 of the Local Audit Report No. 11/2021-22 dated 29.09.2021 | RUD 4 |
| 5 | Para 02 of the Local Audit Report No. 17/2021-22 dated 18.11.2021 | RUD 5 |
| 6 | Para 06 of the Local Audit Report No. 21/2021-22 dated 01.02.2022 | RUD 6 |