

	<p>कार्यालय: प्रधान आयुक्त सीमा शुल्क, मुन्द्रा, सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT-370421 PHONE:02838-271426/271423 FAX:02838-271425 Email: adj-mundra@gov.in</p>	 आयुक्तीक अमृत महोत्सव
A. File No.	:	GEN/ADJ/COMM/127/2024-Adjn-O/o Pr Commr-Cus-Mundra
B. Order-in-Original No.	:	MUN-CUSTM-000-COM- 045 - 24-25.
C. Passed by	:	K. Engineer, Principal Commissioner of Customs, Customs House, AP & SEZ, Mundra.
D. Date of order and Date of issue:	:	28.02.2025 28.02.2025
E. SCN No. & Date	:	SCN F.No. F.No. GEN/ADJ/COMM/127/2024-Adjn-O/o Pr Commr-Cus-Mundra, dated 04.03.2024.
F. Noticee(s) / Party / Importer	:	M/s Saatvik Green Energy Private Limited, 1, Sub Tehsil Saha, Village Dubli, Tehsil Barara, Ambala (IEC No.-2215003421)
G. DIN	:	DIN-20250271MO000042424F

1. यह अपील आदेश संबंधित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पष्टिम जोनल पीठ, 2nd फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004”

“Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”

3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within three months from the date of communication of this order.

4. उक्त अपील के साथ -/ 1000 रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, ब्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो 5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, ब्याज, शास्ति या दंड पाँच लाख रूपये से अधिक कितू पचास लाख रूपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड ब्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ देंचआहरितद्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक हाफ्ट के माध्यम से भुगतान किया जाएगा।

Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs.10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मद्दसं-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ छप्टि/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.

7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.

8. इस आदेश के विरुद्ध अपील हेतु जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE:

M/s Saatvik Green Energy Private Limited, 1, Sub Tehsil Saha, Village Dubli, Tehsil Barara, Ambala (IEC No.2215003421) (hereinafter referred to as '**M/s Satvik**') has filed Bills of Entries (BEs) for import of Aluminium Solar Frame classifying the goods under CTH-76042100 through their Customs Broker M/s Express Cargo Movers at Mundra port.

2.1. Whereas, specific information was gathered by Officers of Customs, SIIB Section, Custom House, Mundra that M/s Saatvik have imported consignment under Bill of Entry No.2196747 dated 27.08.2022 wherein goods declared as "Aluminium Solar Frame" (Quantity 24000 kgs.; Value Rs. 71,28,693/-) were wrongly classified under CTH 76042100, attracting BCD @ 7.5% instead of correct classification of goods under CTH 76109020 attracting BCD @ 10%, which resulted in short payment/evasion of duty.

2.2. For ease of reference, description of the goods covered under both CTH are produced herein under:

Description under chapter 7604 (having BCD @ 7.5%) is as under:

7604 ALUMINIUM BARS, RODS AND PROFILES

7604 10 - *Of aluminum, not alloyed:*

7604 10 10 — Wire rods

7604 10 20 -- Bars and rods, other than wire rods

— Profiles :

7604 10 31 --- Hollow

7604 10 39 -- Other

- Of aluminium alloys

7604 21 00 – Hollow profiles

Description under chapter 7610 (having BCD@10%) is as under:

7610 ALUMINIUM STRUCTURES (EXCLUDING PREFABRICATED BUILDINGS OF HEADING 9406) AND PARTS OF STRUCTURES (FOR EXAMPLE, BRIDGES AND BRIDGE-SECTIONS, TOWERS, LATTICE MASTS, ROOFS, ROOFING FRAMEWORKS, DOORS AND WINDOWS AND THEIR FRAMES AND THRESHOLDS FOR DOORS, BALUSTRADES, PILLARS AND COLUMNS); ALUMINIUM PLATES, RODS, PROFILES, TUBES AND THE LIKE, PREPARED FOR USE IN STRUCTURES

7610 10 00 -- *Doors, windows and their frames and thresholds for doors*

7610 90 -- *Doors, windows and their frames and thresholds for doors*

Other :

7610 90 10 -- *Structures*

7610 90 20 -- *Parts of structures, not elsewhere specified*

7610 90 30 -- *Aluminium plates, rods, profiles, tubes and the*

7610 90 90 -- *like, prepared for use in structure*

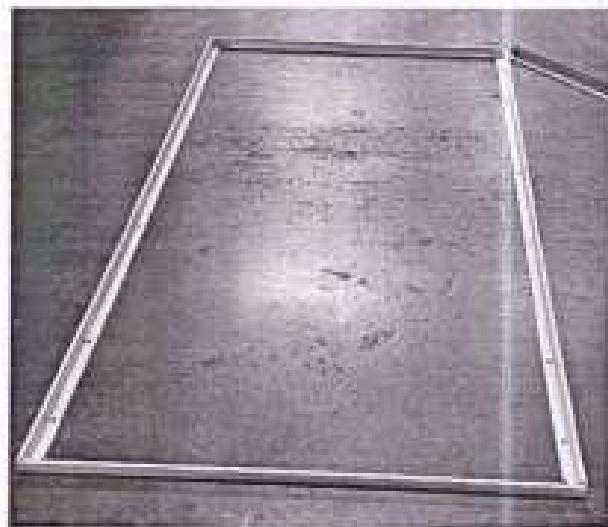
2.3. On a concurrent reading of the heading 7604 and 7610, it appeared that the heading 7604 is for the hollow profiles of Aluminum that don't have character of an article while 7610 is for the goods that have been converted into an article and/or a part of it.

INVESTIGATION OF THE LIVE BILL OF ENTRY

3. On the basis of input received, the SIIB Section, Mundra held the consignment covered under Bill of Entry No.2196747 dtd.27.08.2022 for further examination. The goods were examined under panchnama dated 02.09.2022 (RUD-1) drawn at TG Terminal CFS, Mundra. During examination of the imported goods, it was found that

- The goods were packed in 11 big and 18 small size pallets containing goods of 2278 mm and 1134 mm dimension respectively which were sides of frames.
- The big pallets contained big sides (2278mm) of L shaped and their edges were cut in a slanted manner.
- One side of the L shape was hollow while other side was solid.
- Thus edges (along length) were slanted and have holes in them.
- There was total 06 big holes in the solid side of this structure and one small hole at center.
- There was an electric grounding sign near small hole. Hollow sides of the L shape had groove of uniform thickness (approx.6mm).
- The small side (1134 mm) also has L shape and slant. One side of the L shape was hollow while other side was solid (in the same manner similar to that in big side). Edges at hollow side (along length) of small sides were fitted with similar L shapes which exactly fit into holes present at edges of big sides.
- Small sides also had groove of exactly same size (approx.6mm) as that in big sides.
- By fitting 2 big and 2 small sides, it became a complete rectangular frame (2278 mm X 1134 mm), image of which is re-produced as under:

SCAN IMAGE-1



4. From the examination of the goods under import it appeared that these were not just the hollow profiles of the Aluminium but part of specific structures i.e. solar frames. Therefore, for further investigation and recording of Statement, summon dated 09.09.2022 was issued to the importer and Statement of Shri Bhupinder Singh, Authorized Representative of M/s. Saatvik recorded under Section 108 of the Customs Act, 1962 on 16.09.2022 (RUD-2) wherein he stated inter-alia that:

- M/s. Saatvik were importing goods viz. PV cells, Aluminium Frames, Junction Box, Sealants. The products were being imported from different countries, majorly from China. Their company was engaged in the manufacture of P.V. Modules at Ambala and registered under GST having GSTIN No.06AAVCS8142B1Z6. They were not doing any trading activity. There were three directors in the said company viz. Shri Nilesh Garg and Mr. Manik Garg and Pramod Garg. He looks after the purchase and logistics in the said company.
- Bill of Entry No.2196747 dated 27.08.2022 for M/s Saatvik was filed by M/s Express Cargo Movers Private Limited, CB, Mundra on the basis of details provided by their company.
- On being asked, he stated that the details were given by the company to the Customs Broker and then after, the CB filed the details in B.E. based on the details provided.
- That they provided the documents related to import i.e. Commercial Invoice, Packing List and Bill of Lading to the C.B.
- That he completely agreed with the details in panchnama dated 02.09.2022 and that he also agrees that the complete frames will be made after fitting these profiles.
- On being asked he stated that the frames were to be used to manufacture Photovoltaic modules. The photovoltaic modules (PV modules) were made after fitting PV cells in these frames. The PV cells were placed over tempered glass which is fitted in the groove of the frame. They manufacture solar Panels for sale.
- On being asked to give details of the Bills of Entry filed for Aluminum Frames during last 5 years, he stated that he will provide the detail over email as the same was not available with him at that time.
- On being asked to clarify whether Aluminium Frames were classified under

sub heading 7604 and whether the goods were identical in previous Bills of Entry, he replied in conformity and categorically stated that the goods and classification in the previous imports were same as that in present Bill of Entry, though sizes of frames may be different.

- *On being informed that the goods under the BE No. 2196747 dtd 27.08.2022 have been classified under chapter 76042100 and asked to offer comments as to whether it is correct classification of goods, he stated that as per their understanding, they have classified the goods correctly.*
- *He was informed that the description of goods under Customs TSH 7604 is as given below:*

7604 ALUMINIUM BARS, RODS AND PROFILES

7604 10 - Of aluminium, not alloyed :

7604 10 10 — Wire rods

7604 10 20 — Bars and rods, other than wire rods

— Profiles :

7604 10 31 --- Hollow

7604 10 39 — Other

- Of aluminium alloys :

7604 21 00 — Hollow profiles

He was further informed that in the description the profiles that can be classified under chapter 7604 are clubbed with bars and rods which means for a lay man that profiles are simple profiles and have not been worked upon to make it an article should be classified under chapter 7604.

Further, his attention was also invited to Customs TSH 7610 which is as below:

7610 ALUMINIUM STRUCTURES (EXCLUDING PREFABRICATED BUILDINGS OF HEADING 9406) AND PARTS OF STRUCTURES (FOR EXAMPLE, BRIDGES AND BRIDGE-SECTIONS, TOWERS, LATTICE MASTS, ROOFS, ROOFING FRAMEWORKS, DOORS AND WINDOWS AND THEIR FRAMES AND THRESHOLDS FOR DOORS, BALUSTRADES, PILLARS AND COLUMNS; ALUMINIUM PLATES, RODS, PROFILES, TUBES AND THE LIKE, PREPARED FOR USE IN STRUCTURES

7610 10 00 - - Doors, windows and their frames and thresholds for doors

7610 90 - - Doors, windows and their frames and thresholds for doors
Other :

7610 90 10 --- Structures

7610 90 20 --- Parts of structures, not elsewhere specified

7610 90 30 --- Aluminium plates, rods, profiles, tubes and the

7610 90 90 --- like, prepared for use in structure

- *On being informed that it appeared that that the structures or parts thereof should be classified under sub-heading 7610 and to offer comments, he stated that they were of the opinion that sub heading 7610 was for structures or its parts. These imported goods were frames wherein the solar cells, glass etc. are fitted. These frames cannot be called a structure.*

Therefore, their classification is correct as per their understanding of things.

➤ He further stated that in their previous Bill of Entry No. 8541275 dated 04.05.2022 the classification was changed from sub heading 7604 to 7610 against which they have filed an appeal against the speaking order before Commissioner (Appeals), Ahmedabad, Customs. He undertook to submit the appeal filed through email.

5. Whereas, from the examination of the goods and statement of Shri Bhupinder Singh, Authorized Representative of M/s. Saatvik, it appeared that the goods were found to be aluminium frames and the importer also admitted that in these frames, they were for fitting solar panels which becomes a "structure" and fitted at various places (roof tops/open fields etc.) to generate solar electricity. Therefore, the imported goods were found parts of structures and hence, the item imported were found to be misclassified under CTH-7604 instead of correct classification under CTH-7610 and hence also mis declared. Therefore, the goods imported vide BE No. 2196747 dated 27.08.2022 were found liable to confiscation under Section 111 of the Customs Act, 1962 in and hence placed under seizure vide seizure Memo dated 20.09.2022 (RUD-3) under Section 110 of the Customs Act, 1962, for further enquiry. The seized goods were handed over to the TG Terminals, CFS, Mundra for safe custody under Supratnama dated 20.09.2022 (RUD-4).

6. Whereas, M/S Saatvik vide letter dated 27.09.2022 (RUD-5) requested for clearance of goods at the earliest. The importer was informed vide letter dated 04.10.2022 (RUD-6), that the goods were seized on account of misdeclaration under Section 110 of Customs Act, 1962 and it was suggested to them to opt for provisional release of seized goods under Section 110A of Customs Act 1962. Further, M/s Saatvik vide letter dated nil (submitted on 11.10.2022) (RUD-7), requested for provisional release of goods and that they were ready to furnish bond apart from payment of duty.

7. Whereas, vide letter dated 20.10.2022 (RUD-8), the Gr. IV, Custom House, Mundra was informed to consider the request of the importer for provisional release of seized goods under Section 110A of Customs Act 1962 and accordingly, the goods were allowed for provisional release and the Bill of entry was assessed on provisional basis on 15.11.2022 on furnishing of Bond and bank guarantee.

8. Whereas, it appeared that the misclassification of the imported goods under CTH 7604 (BCD @ 7.5%) instead of correct CTH 7610 (BCD @ 10%) of the Aluminum Solar frame imported vide BE No. 2196747 dated 27.08.2022 resulted in short payment of customs duty of Rs. 2,31,326/- . Since, the goods were already assessed provisionally on submission of Bond and BG and accordingly released, a Show Cause Notice bearing SCN No. GEN/ADJ/ADC/1506/2023-Adjn dated 28.07.2023 has been issued to M/s Saatvik proposing therein rejection of classification under CTH-76042100 and reclassification under CTH-76109020 and confiscation of the imported goods valuing at Rs. 71,28,693/- . Penalty under Section 112 of the Act, ibid on the importer and under section 117 on the CB has been proposed in the said SCN.

INVESTIGATION OF THE PREVIOUS BILLS OF ENTRY:

9.1. Whereas, it was noticed that in past also, M/s Saatvik had imported the similar item, i.e. Aluminum Solar Frame and had classified the same under CTH-

76042100. Therefore, separate inquiry was initiated to examine the past imports of M/s Saatvik.

9.2. Whereas, Shri Bhupinder Singh, Authorized Representative of M/s. Saatvik in his statement dated 16.09.2022 assured to submit the details of Bills of Entry filed by them for Aluminium Frames during last five years but he has not submitted any such detail to the department. Furthermore, Summons dated 13.12.2023 & 27.12.2023 (RUD-9) has been issued to M/s Saatvik for submission of all detail and documents of import from Mundra port related to Aluminum Solar Frame during the period 01.01.2019 to 31.11.2023, but no such detail has been received from M/s Saatvik.

9.3.1. Thereafter, the past imports of M/s Saatvik from Mundra Port have been checked from the EDI system and it appeared that M/s Saatvik has imported Aluminium Frames under cover of following Bills of Entry by classifying the same under CTH-76042100 during the period 01.12.2018 to 31.12.2023.

TABLE-1

Sr. No.	BE No.	Date	CTH Declared	Item Declared
1	2272135	02.03.2019	76042100	Aluminium Solar Frame
2	2776079	09.04.2019	76042100	Aluminium Solar Frame
3	3108164	04.05.2019	76042100	Aluminium Solar Frame
4	4693549	29.08.2019	76042100	Aluminium Solar Frame
5	4712410	30.08.2019	76042100	Aluminium Solar Frame
6	4838324	10.09.2019	76042100	Aluminium Solar Frame
7	5006748	23.09.2019	76042100	Aluminium Solar Frame
8	5121062	30.09.2019	76042100	Aluminium Solar Frame
9	5121129	30.09.2019	76042100	Aluminium Solar Frame
10	5211078	09.10.2019	76042100	Aluminium Solar Frame
11	5506737	20.09.2019	76042100	Aluminium Solar Frame
12	5596700	27.09.2019	76042100	Aluminium Solar Frame
13	5902602	19.10.2019	76042100	Aluminium Solar Frame
14	6040657	28.10.2019	76042100	Aluminium Solar Frame
15	6394924	24.11.2021	76042100	Aluminium Solar Frame
16	6428038	27.11.2021	76042100	Aluminium Solar Frame
17	6639710	11.12.2021	76042100	Aluminium Solar Frame
18	6641440	11.12.2021	76042100	Aluminium Solar Frame
19	6777587	21.12.2021	76042100	Aluminium Solar Frame
20	7069192	13.01.2022	76042100	Aluminium Solar Frame
21	7070156	13.01.2022	76042100	Aluminium Solar Frame
22	7070820	13.01.2022	76042100	Aluminium Solar Frame
23	7236575	26.01.2022	76042100	Aluminium Solar Frame
24	7322558	01.02.2022	76042100	Aluminium Solar Frame
25	7323694	01.02.2022	76042100	Aluminium Solar Frame
26	7410517	08.02.2022	76042100	Aluminium Solar Frame
27	7411371	08.02.2022	76042100	Aluminium Solar Frame
28	7454776	11.02.2022	76042100	Aluminium Solar Frame
29	7538975	17.02.2022	76042100	Aluminium Solar Frame
30	7543388	18.02.2022	76042100	Aluminium Solar Frame
31	7571526	19.02.2022	76042100	Aluminium Solar Frame
32	7571872	19.02.2022	76042100	Aluminium Solar Frame
33	7571953	19.02.2022	76042100	Aluminium Solar Frame
34	7606229	22.02.2022	76042100	Aluminium Solar Frame

35	7607037	23.02.2022	76042100	Aluminium Solar Frame
36	7607039	23.02.2022	76042100	Aluminium Solar Frame
37	8178934	07.04.2022	76042100	Aluminium Solar Frame
38	8203546	09.04.2022	76042100	Aluminium Solar Frame
39	8303635	16.04.2022	76042100	Aluminium Solar Frame
40	8304769	16.04.2022	76042100	Aluminium Solar Frame
41	8304770	16.04.2022	76042100	Aluminium Solar Frame
42	8350179	20.04.2022	76042100	Aluminium Solar Frame
43	8350843	20.04.2022	76042100	Aluminium Solar Frame
44	8353653	20.04.2022	76042100	Aluminium Solar Frame
45	8540891	20.04.2022	76042100	Aluminium Solar Frame
46*	8541275	04.05.2022	76042100	Aluminium Solar Frame
47	8546464	05.05.2022	76042100	Aluminium Solar Frame
48	8743020	19.05.2022	76042100	Aluminium Solar Frame
49	9233532	22.06.2022	76042100	Aluminium Solar Frame
50	9456436	07.07.2022	76042100	Aluminium Solar Frame
51	9802361	30.07.2022	76042100	Aluminium Solar Frame
52	9989512	12.08.2022	76042100	Aluminium Solar Frame
53**	2196747	27.08.2022	76042100	Aluminium Solar Frame
54***	2490549	17.09.2022	76109010	Aluminium Solar Frame

* CTH was proposed to be changed to 76109030 during assessment

** CTH was proposed to be changed to 76109030 on the basis of the SIIIB investigation.

*** CTH was declared as 76109010 by the importer himself.

9.3.2. Whereas, from the scrutiny of these 54 BEs (all RUD-10 as available in the EDI System), it appeared that in most of the cases, M/s Saatvik had classified the imported goods, i.e. Aluminium Solar Frame under CTH-76042100. However, in case of BE No. 8541275 dated 04.05.2022 (mentioned at Sr. No. 46 of the table above), during the assessment, the classification of the imported goods has been changed to the CTH-76109030. In this context, Shri Bhupinder Singh, Authorized Representative of M/s. Saatvik in his statement dated 16.09.2022 has stated that the classification was changed from sub heading 7604 to 7610 against which they have filed an appeal against the speaking order before Commissioner (Appeals), Ahmedabad, Customs. He undertook to submit the appeal filed through email but failed to do so.

9.3.3. Whereas, it appeared that after examination of the consignment covered under BE No. 2196747 dated 27.08.2022 (mentioned at Sr. No. 53 of the table above) and provisional assessment of the goods under CTH-76109020, M/s Saatvik has filed another BE No. 2490549 dated 17.09.2022 (mentioned at Sr. No. 54 of the table above), wherein they on their own volition classified the identical goods under import, i.e. Aluminium Solar Frame under CTH-76109010 as 'Other Aluminium Structure'.

9.3.4. In view of the above, it appeared that apart from the above discussed 3 BE (BE No. 8541275 dated 04.05.2022/ BE No. 2196747 dated 27.08.2022 and BE No. 2490549 dated 17.09.2022) in remaining 51 BEs, the imported goods are still remained classified under CTH-76042100.

9.4. Whereas, Shri Bhupinder Singh, Authorized Representative of M/s. Saatvik in his statement dated 16.09.2022 has categorically stated that the

frames (imported by them) are to be used to manufacture Photovoltaic modules. The photovoltaic modules (PV modules) are made after fitting PV cells in these frames. The PV cells are placed over tempered glass which is fitted in the groove of the frame. They manufacture solar Panels for sale. Further, he has categorically admitted that the goods in the previous imports were same as that in present Bill of Entry, though sizes of frames may be different.

9.5. Whereas, from the examination of the goods and statement of Shri Bhupinder Singh, Authorized Representative of M/s. Saatvik, it appeared that the goods were found to be aluminium frames and the importer also admitted that in these frames, they were fitting solar panels which becomes a "structure" and fitted at various places (roof tops/open fields etc.) to generate solar electricity.

9.6. Whereas, the Explanatory notes of HSN-7604 & 7610 published in the Harmonized Commodity Description and Coding System- Explanatory notes (7th edition-2022) are reproduced hereinunder for more appreciation of the facts:

7604 - ALUMINIUM BARS, RODS AND PROFILES

- *Of aluminium alloys :*

7604 21 00 - Hollow profiles

These products, which are defined in Notes 9 (a) and 9 (b) to section XV, correspond to similar goods made of copper.

Whereas, as per Section Note 9 (b) of the section XV- **Profiles** means

Rolled, extruded, drawn, forged or formed products, coiled or not, of a uniform cross section along with their whole length, which do not conform to any of the definition of bars, rods, wire, plates, sheets, strip, foil. Tubes or pipes. The expression also covers cast or sintered products, of the same forms, which have been subsequently worked after production (otherwise than by simple trimming or de-scaling), provided that they have not thereby assumed the character of articles or products of other headings.

In view of the above, it appeared that the products which assumed the character of articles or products of other headings on subsequently worked after production are out of ambit of this heading, i.e. CTH-7604.

Similarly,

7610 ALUMINIUM STRUCTURES (EXCLUDING PREFABRICATED BUILDINGS OF HEADING 9406) AND PARTS OF STRUCTURES (FOR EXAMPLE, BRIDGES AND BRIDGE-SECTIONS, TOWERS, LATTICE MASTS, ROOFS, ROOFING FRAMEWORKS, DOORS AND WINDOWS AND THEIR FRAMES AND THRESHOLDS FOR DOORS, BALUSTRADES, PILLARS AND COLUMNS); ALUMINIUM PLATES, RODS, PROFILES, TUBES AND THE LIKE, PREPARED FOR USE IN STRUCTURES

7610 90 20 -- Parts of structures, not elsewhere specified

The provisions of the Explanatory Note to heading 73.08 apply, mutatis mutandis, to this heading.

Whereas, as per Explanatory Note to heading 73.08, this heading covers complete or incomplete metal structure, as well as parts of structure. For the purpose of this heading, these structures are characterized by the fact that once they are put in position, they generally remain in that position. These are usually made up from the bars, rods, tubes

angles, shapes, sections, sheets, plates, wide flats including so called universal plates, hoop, strip, forging or castings by reverting bolting, welding etc.

9.7. In view of the above, it appeared that the CTH-7610 cover complete/incomplete metal structure and parts of structure. In the present case, while on examination of the live cargo, it was noticed that by fitting 2 big and 2 small sides of the item (profile) imported, it became a complete rectangular frame (2278 mm X 1134 mm) as shown in Scan Image- 1 above. Therefore, the imported items were not just the hollow profiles of the aluminium but part of the specific structures, viz. solar frames. The imported goods were aluminium frames and the importer also admitted that in these frames, they were fitting solar panels which becomes a "structure" and fitted at various places (roof tops/open fields etc.) to generate solar electricity. Therefore, the imported goods under previous bills of entry are also found parts of structures and hence, the item imported under previous Bills of Entry as tabulated in Table-1 above are also found to be misclassified under CTH-7604 instead of correct classification under CTH-7610 and hence also mis declared.

10.1. Whereas, it appeared that initially, M/s Saatvik was availing exemption from payment of Custom duty provided under Sr. No. 39 of the Notification No. 24/05-Customs dated 01.03.2005, as amended. Relevant portion of the Notification is being reproduced herein under:

Notification No. 24/2005 - Customs dated 1st March, 2005.

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the following goods, falling under the heading, sub-heading or tariff-item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and specified in column (2) of the Table below, when imported into India, from the whole of the duty of customs leviable thereon under the said First Schedule, namely:-

<i>Sr. No.</i>	<i>Heading, sub-heading or tariff item</i>	<i>Description</i>
<i>1</i>	<i>2</i>	<i>3</i>
23*	8541 (except 8541 42 00 or 8541 43 00)	All goods other than Photovoltaic cells whether or not assembled in modules or made up into panels.
39	Any Chapter except Chapter 74	All goods for the manufacture of goods covered by S.No. 1 to 38 above, provided that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017

The Entry against Sr. no. 23 has been substituted vide Notification No. 15/2022-Customs dated 01.02.2022 w.e.f. 01.04.2022. Before it was read as

<i>Sr. No.</i>	<i>Heading, sub-heading or tariff item</i>	<i>Description</i>
<i>1</i>	<i>2</i>	<i>3</i>
23	8541	All goods

From the synchronized reading of the Notification No. 24/2005- Customs dated 01.03.2005 along with its subsequent amendments, it appeared that the exemption provided under the said notification was available to all goods falling under CTH-8541 which have been used for manufacture of goods covered by S. No. 1 to 38 above, provided that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.

10.2. Whereas, from scrutiny of the documents uploaded in E-Sanchit and statement of Shri Bhupinder Singh, Authorized Representative of M/s. Saatvik, it appeared that the Solar Frame imported by the importer were used to manufacture Photovoltaic modules (PV Modules) classifiable under CTH-8541. The PV modules are made after fitting PV cells in these frames and these PV Cells are placed over tempered glass which is fitted in the grove of the frame. Therefore, the importer was availing benefit of exemption provided vide Sr. No. 39 of the Notification No. 24/2005- Customs dated 01.03.2005, as amended being the imported goods were used to manufacture of goods mentioned at Sr. No. 23 (CTH-8541) of the said notification.

10.3. Whereas, Sr. No. 23 of the Notification No. 24/2005- Customs dated 01.03.2005 was amended vide Notification No. 15/2022-Customs dated 01.02.2022 w.e.f. 01.04.2022 and the exemption was made limited to the goods used for manufacture of goods of CTH 8541 except the goods of CTH- 8541 42 00 or 8541 43 00. Here, it is pertinent to mention that the sub heading CTH-85414200 & CTH-85414300 was introduced in the Customs Tariff w.e.f. 01.02.2022 as under:

8541	<ul style="list-style-type: none"> - <i>SEMICONDUCTOR DEVICES (FOR EXAMPLE, DIODES, TRANSISTORS, SEMICONDUCTOR BASED TRANSDUCERS); PHOTOSENSITIVE SEMICONDUCTOR DEVICES, INCLUDING PHOTOVOLTAIC CELLS WHETHER OR NOT ASSEMBLED IN MODULES OR MADE UP INTO PANELS; LIGHT-EMITTING DIODES (LED), WHETHER OR NOT ASSEMBLED WITH OTHER LIGHT-EMITTING DIODES (LED); MOUNTED PIEZO-ELECTRIC CRYSTALS</i> - <i>Photosensitive semi-conductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes (LED);</i>
8541 42 00	<ul style="list-style-type: none"> - <i>Photovoltaic cells not assembled in modules or made up into panels</i>
8541 43 00	<ul style="list-style-type: none"> - <i>Photovoltaic cells assembled in modules or made up into panels</i>

10.4. In view of the above, it appeared that w.e.f. 01.04.2022, by virtue of amendment in Notification No. 24/2005- Customs dated 01.03.2005, vide Notification No. 15/2022-Customs dated 01.02.2022, the exemption benefit provided under Sr. No. 39 was not available to the imported goods used to manufacture of goods falling under CTH-85414200 (Photovoltaic cells not assembled in modules or made up into panels) and CTH- 8541 43 00 (Photovoltaic cells assembled in modules or made up into panels). From the scrutiny of the BEs filed by the importer, it appeared that the importer has on their volition stopped availing the benefit of said exemption from BE No. 8303635 dated 16.04.2022 onwards (from the BEs mentioned at Sr. No. 39 in Table-1

above). However, it also appeared that the importer has availed the benefit of aforesaid notification in the BE No. 8178934 dated 07.04.2022 and 8203546 dated 09.04.2022 (Sr. No. 37 & 38 of the table above) even after implementation of the revised conditions the effective date of amendment in Notification No. 24/2005- Customs dated 01.03.2005, i.e. 01.04.2022.

10.5. Whereas, it appeared that importer has misclassified their imported goods, i.e. Aluminium Solar Frame under CTH-76042100 which attracts BCD @ 7.5% instead of CTH-76109020 which attracts BCD @ 10% since march, 2019 (as detailed in the **Annexure-A**, attached to this Notice). Further, it appeared that the importer has availed benefit of exemption from BCD provided vide Notification No. 24/2005- Customs dated 01.03.2005 which was available for all goods used to manufacture in the goods falling under CTH-8541 as in the present case even after change of CTH of the imported goods from CTH-7604 to CTH-7610. Furthermore, it appeared that the said exemption was not available to them w.e.f. 01.04.2022 due to amendment in the notification but the importer has availed ineligible benefit of exemption from payment of BCD under the said Notification on the two BEs filed after 01.04.2022. However, the importer continued to classifying their imported goods under wrong CTH-76042100 instead of correct classification CTH-76109020 but discontinued availment of benefit of exemption notification.

11. Therefore, in view of the above it appeared that

(i) In case of following 36 BEs, M/s Saatvik has wrongly classified their imported goods under CTH -76042100 instead of correct classification CTH-76109020. In these cases, M/s Saatvik was availing exemption from payment of Custom duty provided under Sr. No. 39 of the Notification No. 24/2005- Customs dated 01.03.2005, as amended which was available for all goods used to manufacture in the goods falling under CTH-8541 as in the present case. Therefore, it appeared that in these cases, the issue is limited to the change in **CTH from 76042100 to CTH-76109010**.

TABLE-2

Sr. No.	BE No.	Date	Total Value	TOTAL Duty Declared (BCD- Exemption+ SWS+ IGST)	Duty as per Investigation (BCD- Exemption +SWS+IGST)	Differential Duty
1	2272135	02.03.2019	3830034	689406	689406	0
2	2776079	09.04.2019	12410434	2233878	2233878	0
3	3108164	04.05.2019	5294662	953039	953039	0
4	4693549	29.08.2019	4318682	777363	777363	0
5	4712410	30.08.2019	4318682	777363	777363	0
6	4838324	10.09.2019	8742681	1573683	1573683	0
7	5006748	23.09.2019	4400302	792054	792054	0
8	5121062	30.09.2019	4396475	791365	791365	0
9	5121129	30.09.2019	4383477	789026	789026	0
10	5211078	09.10.2019	4380802	788544	788544	0
11	5506737	20.09.2019	6434262	1158167	1158167	0
12	5596700	27.09.2019	6604024	1188724	1188724	0
13	5902602	19.10.2019	7700277	1386050	1386050	0
14	6040657	28.10.2019	6684647	1203236	1203236	0

15	6394924	24.11.2021	14700048	2646009	2646009	0
16	6428038	27.11.2021	7536732	1356612	1356612	0
17	6639710	11.12.2021	1531923	275746	275746	0
18	6641440	11.12.2021	15854673	2853841	2853841	0
19	6777587	21.12.2021	15452594	2781467	2781467	0
20	7069192	13.01.2022	7407670	1333381	1333381	0
21	7070156	13.01.2022	6439923	1159186	1159186	0
22	7070820	13.01.2022	6439923	1159186	1159186	0
23	7236575	26.01.2022	13220715	2379729	2379729	0
24	7322558	01.02.2022	13167196	2370095	2370095	0
25	7323694	01.02.2022	7128029	1283045	1283045	0
26	7410517	08.02.2022	6730986	1211578	1211578	0
27	7411371	08.02.2022	13317903	2397223	2397223	0
28	7454776	11.02.2022	7260956	1306972	1306972	0
29	7538975	17.02.2022	7261602	1307088	1307088	0
30	7543388	18.02.2022	6742397	1213631	1213631	0
31	7571526	19.02.2022	6742397	1213631	1213631	0
32	7571872	19.02.2022	7290340	1312261	1312261	0
33	7571953	19.02.2022	7290360	1312265	1312265	0
34	7606229	22.02.2022	6742416	1213635	1213635	0
35	7607037	23.02.2022	6742397	1213631	1213631	0
36	7607039	23.02.2022	6742396	1213631	1213631	0
			27,56,43,01 4/-	4,96,15,743/-	4,96,15,743/-	0

(ii) In case of following 2 BEs, it appeared that along with misclassification of the imported goods, M/s Saatvik has also availed ineligible benefit of exemption from payment of BCD under the said Notification No. 24/2005- Customs dated 01.03.2005 in as much as w.e.f. 01.04.2022, by virtue of amendment in Notification No. 24/2005-Customs, vide Notification No. 15/2022-Customs dated 01.02.2022, the exemption benefit provided under Sr. No. 39 was not available to the imported goods, Aluminium Solar Frame. By doing so, it appeared that M/s Saatvik has not paid Customs Duty to the tune of Rs. 21,25,750/- on these two BEs as under.

TABLE-3

Sr. No.	BE No.	Date	Total Value	TOTAL Duty Declared (BCD @ Exemption- +SWS+ IGST)	Duty as per Investigation (BCD @ 10%+SWS+ IGST)	Differential DUTY (BCD+SWS+ IGST)
1	8178934	07.04.2022	8234267	1482168	2550976	1068808
2	8203546	09.04.2022	8142851	1465713	2522655	1056942
			1,63,77,119	29,47,881	50,73,631	21,25,750/-

On being questioned, the noticee has agreed to the fact that benefit of the Notification No. 24/2005-Customs was not available to them w.e.f. 01.04.2022 and agreed to pay the Customs Duty @ 7.50% BCD under **CTH -76042100** as declared in the BEs. Accordingly, vide letter dated 12.02.2024/ received on 13.02.2024 (**RUD-11**), the importer has submitted challans no. 2267 dated 12.02.2024 and 2268 dated 12.02.2024 vide which duty of **Rs. 15,94,313/-**

along with interest of **Rs. 4,38,983/-** has been paid by the noticee on these two BEs as under:

TABLE-4

Sr. No.	BE No.	Date	Total Value	TOTAL Duty Declared (BCD (Exemption +SWS+ +GST)	Duty calculated by the party during investigation (BCD @ 7.5%+SWS+ +GST)	Differential DUTY (BCD+ SWS+ +GST)	Interest Paid	Total amount paid during the investigation
				IGST)	(BCD @ 7.5%+SWS+ +GST)			
				IGST)	IGST)			
1	8178934	07.04.2022	8234267	1482168	2283774	801606	220717	1022323
2	8203546	09.04.2022	8142851	1465713	2258420	792707	218266	1010973
			1,63,77,119	2947881	4542194	1594313	438983	2033296

(iii) In case of remaining following 13 BEs, the importer has wrongly classified their imported goods under CTH -76042100 and paid BCD @ 7.5% instead of correct classification CTH-76109020 on which BCD @ 10% was payable. It appeared that by doing so, M/s Saatvik has short paid Customs duty amounting to **Rs. 34,87,970/- on these BEs as under:**

TABLE-5

Sr. No.	BE No.	Date	Total Value	TOTAL Duty Declared (BCD @ 7.5%+SWS+ +GST)	Duty as per Investigation (BCD @ 10%+SWS+ +GST)	Differential DUTY
1	8303635	16.04.2022	15616305	4331182	4837931	506749
2	8304769	16.04.2022	13155962	3648806	4075717	426911
3	8304770	16.04.2022	5807464	1610700	1799152	188452
4	8350179	20.04.2022	8274691	2294986	2563499	268514
5	8350843	20.04.2022	8121732	2252562	2516113	263550
6	8353653	20.04.2022	8142852	2258420	2522656	264236
7	8540891	20.04.2022	8156816	2262293	2526982	264689
8	8546464	05.05.2022	5547187	1538512	1718519	180006
9	8743020	19.05.2022	2805159	778011	869038	91027
10	9233532	22.06.2022	16070270	4457089	4978570	521480
11	9456436	07.07.2022	5310252	1472798	1645116	172318
12	9802361	30.07.2022	2757613	764824	854308	89485
13	9989512	12.08.2022	7721231	2141484	2392037	250554
			10,74,87,535/-	2,98,11,668/-	3,32,99,638/-	34,87,970/-

Thus, in view of the above, it appeared that in total there was short payment of Customs duty amounting to **Rs. 56,13,720/- (BCD+SWS+IGST)** by way of misclassification of the goods under import and availment of inadmissible benefit of duty exemption notification. Out of this, the importer has paid an amount of **Rs. 15,94,313/-** during the investigation, as discussed above.

12. LEGAL PROVISION:

The Legal provisions of the Customs Act, 1962 ('Act' for the short) and Rules made thereunder relevant to the present matter are discussed herein under:

12.1. Whereas **SECTION 17** of the Act, prescribes that an importer entering any imported goods under section 46, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

12.2. Whereas **SECTION 46** of the Act prescribes that 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.

12.3. Whereas **SECTION 28** of the Act, ibid prescribes that *recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. As per Sub Section (4) Of the said Section,*

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

- (a) collusion; or*
- (b) any willful mis-statement; or*
- (c) suppression of facts,*
- (d)*

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.

Explanation- For the purposes of this section, "relevant date" means,-

- (a) in a case where duty is not levied or not paid or short-levied or short-paid, or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;*
- (b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;*
- (c) in a case where duty or interest has been erroneously refunded, the date of refund*
- (d) in any other case, the date of payment of duty or interest.*

12.4. Further, **Section 28 AA** of the Act, provides the recovery of interest on delayed payment of duty. According to which

(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to paid 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.

12.5. Further, **Section 111 of the Act**, prescribes the Confiscation of improperly imported goods, etc. as under

- The following goods brought from a place outside India shall be liable for 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 transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54.

(o) any good exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer.

12.6 Further, **Section 112** of the Act provides the penal provisions for improper importation of goods, etc. which read as under:

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, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding the value of the goods or five thousand rupees], whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:

Provided that where such duty 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 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 penalty so determined;]

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to

a penalty [not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;]

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty [not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty [not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.]

12.7. Whereas **SECTION 114A** of the Act enjoins the penal provision in case of short-levy or non-levy of duty in certain cases as under –

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 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 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.

Explanation. - For the removal of doubts, it is hereby declared that-

(i) the provisions of this section shall also apply to cases in which the order determining the duty or interest under sub-section (8) of section 28 relates to notices issued prior to the date* on which the Finance Act, 2000 receives the assent of the President;

(ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.

12.8. Whereas, **SECTION 124** prescribes the mandatory issuance of show cause notice before confiscation of goods, which read as under:

No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -

(a) is given a notice in ¹/writing with the prior approval of the officer of Customs not below the rank of ²/an Assistant Commissioner of Customs, informing/ him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter :

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

³/Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.]

12.9. Whereas, **SECTION 125** provides the Option to pay fine in lieu of confiscation as under:

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

*² / **Provided** that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, ³ [no such fine shall be imposed];*

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

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

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

Explanation. -For removal of doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date** on which the Finance Bill, 2018 receives the assent of the President and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received./

OUTCOME OF INVESTIGATION:

13.1. Whereas, on the basis of the investigation conducted as discussed in para supras, it appeared that M/s Saatvik has imported Aluminum Solar Frame at Mundra port by mis-classifying the same under CTH-76042100 which attract BCD @7.5%.

13.2. Whereas, on investigation of live consignments containing of Aluminium Solar frame covered under BE No. 2196747 dated 27.08.2022 it appeared that these goods were not just hollow profiles of Aluminium but part of specific structures-solar frames. Further, the importer also admitted that in these frames, they were fitting solar panels which becomes a "structure" and fitted at various places (roof tops/open fields etc.) to generate solar electricity. Therefore, the imported goods were found parts of structures and hence, the item imported were found to be misclassified under CTH-76042100 instead of correct classification under CTH-76109020 and hence also found mis declared which resulted into short payment of customs duty of Rs. 2,31,326/- . Since, the goods were already assessed provisionally on submission of Bond and BG by the importer and accordingly released, a Show Cause Notice bearing SCN No. GEN/ADJ/ADC/1506/2023-Adjn dated 28.07.2023 has been issued to M/s Saatvik proposing therein rejection of classification under CTH-76042100 and reclassification under CTH-76109020 and confiscation of the imported goods valuing at Rs. 71,28,693/-.

13.3. Meanwhile, investigation was extended towards previous import of Aluminium Solar Frame of M/s Saatvik and total 54 BEs (**Table-1, above**) filed for import of Aluminum Solar Frame during the period 01.12.2018 to 31.12.2023 has been scrutinized. From scrutiny of these BEs, it appeared that out of these 54 BEs, in case of two BEs No. 8541275 dated 04.05.2022 & 2196741 dated 27.08.2022 (Sr. No. 46 & 53 of the table-1 above), the CTH of the imported goods have been corrected to 7610 by the department on the basis of examination/assessment and whereas, in case of BE No 2490549 dated 17.09.2022 (Sr. No. 54 of the table-1 above), the importer on their own volition have classified the identical goods under import, i.e. Aluminium Solar Frame under CTH-76109010 as Other Aluminium Structure.

13.4. Whereas, Shri Bhupinder Singh, Authorized Representative of M/s. Saatvik in his statement dated 16.09.2022 has categorically stated that the frames (imported by them) are to be used to manufacture Photovoltaic modules. The photovoltaic modules (PV modules) are made after fitting PV cells in these frames. The PV cells are placed over tempered glass which is fitted in the groove of the frame. They manufacture solar Panels for sale. Further, he has categorically admitted that the goods in the previous imports were same as that in present Bill of Entry, though sizes of frames may be different.

13.5. Whereas, from the examination of the similar goods covered under live consignment and statement of Shri Bhupinder Singh, Authorized Representative of M/s. Saatvik, it appeared that the goods were found to be aluminium frames and the importer also admitted that in these frames, they were fitting solar panels which becomes a "structure" and fitted at various places (roof tops/open fields etc.) to generate solar electricity. Further, from the explanatory notes of respective chapter and Section, as discussed above, it also appeared that **that the products which assumed the character of articles or products of other headings on subsequently worked after production are out of ambit of this chapter heading, i.e. CTH-7604.** Further, the CTH-7610 covers the complete/incomplete metal structure and parts of structure. Since, the imported items were not just the hollow profiles of the Aluminium but part of the specific structures, *viz.* solar frames and by fitting solar panels in these frames these are fitted at various places (roof tops/open fields etc.) to generate solar electricity. Therefore, the imported goods under these 51 previous bills of entry are also found parts of structures and hence, the item imported under previous Bills of Entry as tabulated in Table-2, 3 & 5 above are also found to be misclassified under CTH-76042100 instead of correct classification under CTH-76109020 and hence also mis declared, which is now required to be corrected.

13.6. Whereas, it appeared that initially, M/s Saatvik was availing exemption from payment of Custom duty provided under Sr. No. 39 of the Notification No. 24/05-Customs dated 01.03.2005, as amended which was available for all goods used to manufacture in the goods falling under CTH-8541. However, w.e.f. 01.04.2022, by virtue of amendment in Notification No. 24/2005- Customs dated 01.03.2005 vide Notification No. 15/2022-Customs dated 01.02.2022, the exemption benefit provided under Sr. No. 39 was not available to the imported goods used to manufacture of goods falling under CTH-85414200 (Photovoltaic cells not assembled in modules or made up into panels) and CTH- 8541 43 00 (Photovoltaic cells assembled in modules or made up into panels). The importer on their volition stopped availing the benefit of said exemption from BE No. 8303635 dated 16.04.2022 onwards. However, the importer has availed ineligible benefit of exemption from payment of BCD under the said Notification on the two BEs filed after 01.04.2022 (**Table-3 above**). Though, thereafter also the importer continued to classifying their imported goods under wrong CTH-76042100 instead of correct classification CTH-76109020.

13.7. In view of the above it appeared that

- (i) In case of **36 BEs (Table-2 above)**, M/s Saatvik has wrongly classified their imported goods under CTH -76042100 instead of correct classification CTH-76109020. In these cases, M/s Saatvik was availing exemption from payment of Custom duty provided under Sr. No. 39 of the Notification No. 24/05-Customs dated 01.03.2005, as amended which was available for all goods used to manufacture in the goods falling under CTH-8541 as in the present case. Therefore, it appeared that in these cases, the issue is limited to the change in CTH from 76042100 to CTH-76109010. The Assessment value of the goods imported vide these 36 BEs is Rs. **27,56,43,014/-**.
- (ii) In case of **2 BEs (Table-3 above)**, along with misclassification of the imported goods, M/s Saatvik has also availed ineligible benefit of exemption from payment of BCD under the said Notification No. 24/2005- Customs dated 01.03.2005 in as much as w.e.f. 01.04.2022,

by virtue of amendment in the said notification vide Notification No. 15/2022-Customs dated 01.02.2022, the exemption benefit provided under Sr. No. 39 was not available to the imported goods, Aluminium Solar Frame. It appeared that by doing so, M/s Saatvik has not paid Customs Duty to the tune of **Rs. 21,25,750/- (BCD@10%+SWS+IGST)** on the imported goods having assessable value of **Rs.1,63,77,119/-**. Out of this duty amount, the importer has paid an amount of **Rs. 15,94,313/- by calculating the BCD @ 7.5%** during the investigation, as discussed above.

- (iii) In case of remaining **13 BEs (Table-5 above)**, the importer has wrongly classified their imported goods under CTH -76042100 and paid BCD @ 7.5% instead of correct classification CTH-76109020 on which BCD @ 10% was payable. By doing so, M/s Saatvik has short paid Customs duty amounting to **Rs. 34,87,970/- (BCD+SWS+IGST)** on the imported goods having assessable value of **Rs.10,74,87,535/-**.

Thus, in view of the above, it appeared that in total there was non/short payment of Customs duty amounting to **Rs.56,13,720/- (BCD+SWS+IGST)** on the imported goods by way of misclassification of and availment of inadmissible benefit of duty exemption notification which is now required to be recovered from them under Section 28 (4) of the Customs Act, 1962 along with interest under Section 28AA of the Act, as applicable. The differential duty amounting to **Rs.15,94,313/- along with interest of Rs.4,38,983/-** paid during the investigation is required to be appropriated against the said demand.

CONTRAVENTIONS:

14. Whereas, based on investigations conducted in the matter, as discussed above it is noticed that M/s Saatvik has mis-declared the imported items, i.e. Aluminum Solar Frame in terms of description & classification in as much they have imported parts of structure (Solar Frame) classifiable under CTH-7610 90 20 but classified the same under CTH-76042100 as Hollow profiles of Aluminum Alloys. Furthermore, in some cases, as discussed in Paras supra, it appeared that M/s Saatvik has availed inadmissible benefit of exemption notification No. 24/2005- customs as amended. By doing this, M/s Satvik has contravened the provisions of Section 17 and Section 46 of the Act, in as much as the failed to declare description and classification of the imported goods which led to the revenue loss to the government exchequer.

INVOKING OF EXTENDED PERIOD:

15.1. After introduction of self-assessment vide Finance Act, 2011, the onus lies on the importer for making true and correct declaration with respect to all aspects of the Bill of Entry and to pay the correct amount of duty. In the instant matter, in many cases Assessment and Examination were not prescribed for their Bills of entry and therefore, entire onus is on the said importer to make truthful declarations and assess and pay their government dues correctly.

15.2. In light of the discussions in the preceding paragraphs, it becomes evident that the importer had imported goods classifiable under CTH-76109020 in guise of CTH-76042100. It was only when the detailed examination was done by the department, the said fact came to notice and thereafter, the importer himself classified the goods under import under correct CTH. Furthermore, the importer has also availed inadmissible benefit of customs duty exemption

notification. This intentional alteration seems to be an attempt to evade Customs Duty, constituting willful misstatement and suppression of facts on the part of M/s Saatvik, leading to the evasion of duty. It is noteworthy that M/s Saatvik was fully cognizant of the technical specifications of their product, which warranted classification under CTH-7610 90 20. Despite this awareness, they persistently misclassified their product under an incorrect CTH, presumably with the motive of reducing the rate of customs duty applicable on the imported goods. This intentional misclassification would likely have gone unnoticed if not brought to light through a customs department inquiry. Given the gravity of the situation, the provision of an extended period of five years, as stipulated under Section 28(4) of the Customs Act, 1962, appeared applicable in the present case.

15.3. Whereas, it appeared that M/s Saatvik had resorted to wilful mis-declaration of correct classification of goods in the Bills of Entry of the imported goods by suppressing the said material facts, which shows the ulterior motive of the importer to evade payment of applicable Customs Duty in respect of said imported goods cleared for home consumption. It further appeared that these acts of omission and commission on the part of importer in as much as mis-declaration of CTH and availment of inadmissible benefit of exemption notification led to evasion of payment of Customs Duty amounting to **Rs.56,13,720/- (BCD+SWS+IGST)**.

15.4. Further, as discussed above, the goods valuing at **Rs. 27,56,43,014/- imported under 36 BEs** are liable to confiscation under Section 111(m) of Customs Act, 1962 in as much as in these cases, the goods were imported by resorting to misdeclaration and misclassification. Further, the goods valuing at **Rs.12,38,64,654/- imported vide 15 BEs (Rs. 1,63,77,119/- for 2 BEs in the Table-3 above + Rs. 10,74,87,535/- for 13 BEs in Table-5 above)** are also liable to confiscation under Section 111 (m) of the Customs Act, 1962, in as much as in these cases, the goods were imported with misdeclaration and misclassification which resulted into non/short payment of Customs Duty to the government exchequer. It further appeared that M/s Saatvik has rendered themselves liable for imposition of penalty under Section 112 (a)(ii) of the Customs Act, 1962 for the goods being liable for confiscation. It further appeared that M/s Saatvik is also liable for penalty under Section 114A of the Customs Act, 1962 for their act of omission and commission to evade duty on account of any will-full mis-statement and/or suppression of facts.

16. Therefore, a notice was issued to **M/s Saatvik Green Energy Private Limited, 1, Sub Tehsil Saha, Village Dubli, Tehsil Barara, Ambala (IEC No.- 2215003421)** to show cause within thirty days from the receipt of the notice to **the Commissioner of Customs, Customs House, Mundra** having his office situated at 1st Floor, Custom House, PUB, Mundra, as to why :

- i) In the **51 Nos. of BEs (tabulated in Table-2, 3 & 5 above)**, the classification of imported items "Aluminum Solar Frame" under CTH 76042100 should not be rejected and the said goods should not be classified under CTH- 7610 90 20 under the Customs Tariff Act, 1975.
- ii) the goods imported vide above **36 Nos. of BEs (Table-2 above)**, having assessable value of Rs. 27,56,43,014/- should not be confiscated under Section 111(m) of the Customs Act, 1962 for the reasons discussed in para supra;
- iii) the goods imported vide above **15 Nos. of BEs (Table-3 & 5 above)**, having assessable value of Rs. 12,38,64,654/- should not be

confiscated under Section 111(m) of the Customs Act, 1962 for the reasons discussed in para supra.

- iv) The benefit of exemption from customs duty availed in terms of Notification No. 24/2005- customs dated 01.03.2005 as amended should not be disallowed in case of **2 Nos. of BEs as discussed in Table-3 above.**
- v) Differential duty of **Rs. 21,25,750/- (BCD@ 10% +SWS+IGST) (Rupees Twenty One Lakhs Twenty Five Thousand Seven Hundred Fifty only)** should not be demanded and recovered from them under Section 28 (4) of the Customs Act, 1962 on these **two BEs**;
- vi) Amount of **Rs. 15,94,313/- (BCD @ 7.5% +SWS+IGST)** paid during the investigation in these two BE (Table-3) should not be appropriated against the above demand in para (v) above.
- vii) Differential duty of **Rs. 34,87,970/- (BCD @ 2.5% +SWS+IGST) (Rupees Thirty Four Lakhs Eighty Seven Thousand Nine Hundred Seventy only)** should not be demanded and recovered from them under Section 28 (4) of the Customs Act, 1962 on the **13 Nos. of BEs mentioned in Table-5 above;**
- viii) Interest at appropriate rates should not be levied and recovered from them under Section 28AA of the Customs Act, 1962 on the demand under para (v) & (vii) above.
- ix) Penalty should not be imposed upon them under the provisions of Section 112 (a)(ii) or 114 A of the Customs Act, 1962.

17. DEFENCE SUBMISSION

17.1 M/s Saatvik Green Energy Private Limited, Ambala (Noticee) vide his counsel Shri Navin Bindal (Noticee No.-1), submitted their defence reply dated 03.02.2025 against impugned SCN, which is reproduced below:

Para 1 to 7 – Reproduced brief facts as stipulated in the notice.

“8. That captioned notice has been issued without appreciating the factual and legal position of the case. At the outset, it is submitted that captioned notice is bad, illegal, erroneous, against the facts and law and same is liable to be quashed.

Regarding issuance of Show-cause notice:

9 That the Noticee is a victim of department's vice as the department has issued different show cause notices in respect of different imports by classifying the same product under different chapter entry which is unjust, unfair and arbitrary and violative of Article 14, 19 & 21 of the Constitution of India. In light of no independent investigation, no change in circumstance & no change in tariff, the Office of the Principal Commissioner of Customs has been classifying the same imported goods under different CTH. The Asst. Commissioner of Customs (Gr. IV), Customs House, MP & SEZ, Mudra, vide order dated 09.06.2022 has classified a consignment of "Aluminium Solar Frame" with bill of entry no. 8541275 dated 04.05.2022 under CTH 7610 90 30 which has been appealed before the Commissioner of Customs (Appeals), Mundra. Further, Additional Commissioner, CH, Mudra vide order dated 20.03.2024 has classified a consignment of "Aluminium Solar Frame" with bill of entry no. 2196747 dated

27.08.2024 under **CTH 7610 90 20** which also has been appealed before Commissioner of Customs (Appeals), Mudra.

9.1 That the Noticee submits, by relying upon *J. K. Synthetics Ltd. vs. Union of India* that a change in classification should only be done in certain circumstances; "(i) where facts are different, (ii) if fresh facts are brought on record, (iii) if the process of manufacture has changed and (iv) if the relevant tariff entries have undergone a modification and (v) if subsequent to the earlier decision, there has been a pronouncement of a superior court which necessitates reconsideration of the issue". Firstly, the facts of both order dated **09.06.2022** and order dated **20.03.2024** deal with same product i.e. a consignment of "Aluminium Solar Frame". Secondly, the exact same statement and evidence were used while passing abovementioned order dated **09.06.2022** and order dated **20.03.2024**, though, resulting in adverse rulings with different classifications every time. Further, there have been no changes to the manufacturing and no "modifications to the tariff entries". The Noticee asserts that the department has no justification in law to adjudicate on this issue vide Show cause notice F. No. GEN/ADJ/COMM/127/2024-Adjn-O/o Pr. Commr-Cus-Mundra dated 04.03.2024 when the previous two adjudications are already pending.

9.2 In *Samsung India Electronics (P.) Ltd. vs. State of U.P.*, it is substantiated that consistency is essential to taxation and similar factual and legal circumstances must get uniform treatment. The Noticee's consignment of "Aluminium Solar Frame" have undergone no change and it has been well substantiated above that the legal circumstances, classification under Customs Act are uniform. In *Birla Corpn. Ltd. v. CCE*, it was recognised that the revenue cannot be permitted to take a different stance where the issues are identical. The Noticee submits that the department has erred in issuing show-cause notice alleging change in classification when the same product has been previously under challenge.

9.3 It is well-known that *res judicata* does not apply to tax matters. However, the Supreme court in *Bharat Sanchar Nigam Ltd. v. Union of India*, stated that while the principle of *res judicata* does not apply, the theory of precedent does apply when there is no material change in a factual position. Without consistency, there is no "fairness, transparency and predictability" and public trust is eroded. The Noticee is an Indian businessman that has been burdened by the repeated attempts by the Revenue to reclassify its consignment of "Aluminium Solar Frame" and compel tax, interest and penalty. It is the case of the Noticee that, owing to multiple orders, the Department has created an atmosphere where there is no fairness or predictability in the orders. The Petitioner submits such inconsistency erodes faith in the tax system's integrity.

Regarding classification:

10. That in the present case, precise issue involved is as to whether the goods i.e. hollow aluminium profile imported by the Appellant are classifiable under chapter heading 7610 9020 or elsewhere. For ready reference, both the chapter headings 7604 and 7610 are reproduced below:

Description of heading 7604 declared by Importer

7604	Aluminium Bars, Rods and Profiles		
7604 10	<i>Of aluminium, not alloyed:</i>		
7604 10 10	Wire rods	kg.	7.5%
7604 10 20	Bars and rods, other than wire rods	kg.	7.5%
<i>Profiles:</i>			
7604 10 31	Hollow	kg.	7.5%
7604 10 39	Other	kg.	7.5%
<i>Of aluminium alloys:</i>			
7604 21 00	<i>Hollow profiles</i>	kg.	7.5%
7604 29	<i>Other:</i>		
7604 29 10	Hard drawn bare aluminium conductors steel	kg.	7.5%
	Re-inforced (A.C.S.R.)		
7604 29 20	Wire rods	kg.	7.5%
7604 29 30	Bars and rods, other than wire rods	kg.	7.5%
7604 29 90	Other	kg.	7.5%

Description of heading 7610, contended by revenue

7610	<i>Aluminium Structures (Excluding Prefabricated Building of Heading 9406) And Parts of Structures (For Example, Bridges and Bridge-Sections, Towers, Lattice Masts, Roofs, Roofing Frameworks, Doors and Windows And Their Frames and Thresholds For Doors, Balustrades, Pillars And Columns); Aluminium Plates, Rods, Profiles, Tubes and The Like, Prepared For Use In Structures</i>		
7610 10 00	<i>Doors, windows and their frames and thresholds for doors</i>		
7610 90	<i>Other:</i>	kg.	10%
7610 90 10	Structures	kg.	10%
7610 90 20	<i>Parts of structures, not elsewhere specified</i>		
7610 90 30	Aluminium plates, rods, profiles, tubes and the like, prepared for use in structure	kg.	10%
7610 90 90	Other	kg.	10%

10.1 That the revenue department wants to classify the goods in question under Chapter Heading 7610 9020 which talks about "parts of structures, not elsewhere specified". Chapter heading 7610 talks about Aluminium Structure and 7610 90 talks about other aluminium structures and its parts etc. other than classifiable under Chapter Heading 7610 1000. Thus, 7610 9020 would cover only those items which are used in preparation of aluminium structure. Thus, it is

essential to be classified under Chapter Heading 7610 9020 that it has to be used as part of Aluminium Structure.

10.2 That now for this purpose, it is pertinent to examine end use of the product and has to be seen as to whether the goods in question gave rise to any aluminium structure.

10.3 That in the present case, the Noticee has imported aluminium hollow profiles, which are used in manufacturing/ making of 'Solar Photovoltaic Module'. During the making of Solar Photovoltaic Module, these hollow profiles are used to hold the panel with the help of glass sheet. Thus, the goods in question are part of Solar Photovoltaic Module which is not the item classifiable under chapter heading 7610 and not at all, can be called as aluminium structure. Thus, no aluminium structure came into existence by using this 'aluminium hollow profile' and therefore, the goods clearly cannot be classified under Chapter heading 7610 9020.

As goods in question are not aluminium structure or part of aluminium structure, goods are rightly classified under chapter heading 7604 which specifically covers aluminium hollow profile.

11. That without prejudice to the above argument and in alternative, on a close reading of CTH 76.04 read with Chapter note 1(e) of Chapter 74, it can be deciphered that that 'Profiles' that do not assume the character of articles or products of other headings will be classified CTH 7604 21 00. The department has issued in the captioned show-cause notice and all other notices against the imported items on the premise that the imported items are not just hollow profiles of the aluminium but part of the specific structure viz solar frames (para 9.7 of the impugned show-cause notice). The same was derived from the fact that the imported items were used to manufacture Photovoltaic modules. The Photovoltaic modules were made after fitting PV cells in these frames. The PV cells are placed over tempered glass which is fitted in the groove of the frame.

11.1 That the Grund norm of the argument is that the Solar frame are structure. Assuming but not conceding to the deduction that the Solar Frame are aluminium structure, the classification made by Asst. Commissioner of Customs (Gr. IV), Customs House, MP & SEZ, Mudra vide order dated 09.06.2022 classifying a consignment of "Aluminium Solar Frame" with bill of entry no. 8541275 dated 04.05.2022 under CTH 7610 90 30 would be more feasible than the one proposed in impugned Show-cause notice i.e. classification under CTH 7610 90 20.

11.2 That CTH 7610 90 20 is 'Parts of structures, not elsewhere specified', due regard must be paid to not elsewhere specified. CTH 7610 90 30 covers aluminium plates, rods profiles, tubes prepared for use in structure. Thus, the profiles which are prepared specifically for use in structure can only be classified under CTH 7610 90 30 and not under CTH 7610 90 20. CTH 7610 90 30 is more specific entry and it is thumb rule of classification that specific entry prevails over general heading.

Order dated 09.06.2022 in detail explains how the hollow profiles when assembled form a solar frame which is defined as "The aluminium solar panel frame and mounting bracket are used to seal and fix solar battery components. They provide the structural stability for the overall combination of glass, EVA

encapsulates, the cell and the back sheet. Enhancing components strong support and increasing the battery service life." Assistant Commissioner of Customs (Gr. IV) vide Order dated 09.06.2022 applied Rule 4 of General Rules of Interpretation and held the hollow Profiles most akin to CTH 7610 90 30. Hence as established, the product can only be classified under **CTH 7610 90 30** and not under **CTH 7610 90 20**.

12. Furthermore, without prejudice to the above argument and in the alternative, assuming the impugned product as not just hollow profiles of the aluminium but part of the specific structure viz solar frames it can still not be classified under CTH 7610 90 20 since the impugned product is carved out of the CTH 76.10 by exception (a) of Chapter 76.10 of Explanatory notes to Harmonized System of Nomenclature (hereinafter referred to as HSN). The exception (a) 'excludes assemblies identifiable as parts of article of Chapter 84 to 88'.

12.1 The definition of the word assemblies can be incorporated from Chapter 73.08 of Explanatory notes to HSN. Assemblies refers to structures that are once put in position, they generally remain in position. As delineated in Order of Assistant Commissioner of Customs (Gr. IV) dated 09.06.2022 and impugned show-cause notice, the Profiles when put in position are Solar frames. This assembly of hollow profile is identifiable as part of article of Chapter 85. The Photovoltaic modules were made after fitting PV cells in these frames. The PV cells are placed over tempered glass which is fitted in the grove of the frame. The frames will be complete only after fitting these profiles.

12.2 It is an undisputed fact that the department has accepted the exemption claimed by the Noticee under Notification No. 24/2005 – Custom. It is pertinent to mention here that the exemption was available to all goods used for the manufacture of goods falling under CTH 8541. Therefore, it is undisputed that the impugned goods are required for the manufacture of Photovoltaic modules which is a product of CTH 8541 42 00. Henceforth Solar Frames being identifiable as parts of article i.e. Photovoltaic modules of Chapter 85 cannot fall under CTH 76.10. As noticed in para 10, 'Profiles' that do not assume the character of articles or products of other headings will be classified CTH 7604 21 00, therefore the impugned goods are to be classified under **CTH 7604 21 00**.

12.3 In the alternative, it is submitted that term '**parts of article of Chapter 85**' found in exception (a) of Chapter 76.10 of Explanatory notes. It is undisputed fact even in the show cause notice that the goods in question were exclusively used in manufacturing of solar panel falling under Chapter Heading 8541. Parts of Solar Panel are classified under Chapter 8541 90 00. Thus, goods falling under chapter entry 8541 90 00 are excluded from Chapter Heading 7610. Further, Parts classified under Chapter Heading 8541 9000 are to be classified subject to explanatory notes to Chapter XVI and more specifically, by application of Note 2 of Section XVI of Customs Tariff Act 1975. Note 2 is reproduced below:

- (a) parts which are goods included in any of the headings of Chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;
- (b) other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that

kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate.

However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517, and parts which are suitable for use solely or principally with the goods of heading 8524 are to be classified in heading 8529;

(c) *all other parts are to be classified in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate or, failing that, in heading 8487 or 8548.*

12.4 *That clause (a) is certainly not applicable in the present case. Solar frame or Hollow Profile is indisputably suitable for solely or principally with a particular kind of machine i.e. Photovoltaic cell whether or not assembled in modules or made up into panels. Therefore, the impugned product is to be classified under Chapter Entry 8541 90 00 and not under CTH 7610 90 20.*

In view of above, it is submitted that goods in question cannot be classified under Chapter Heading 7610 both on the basis of Section/Chapter Notes and on commercial parlance test.

12.5 *That in the light of the above arguments, the Noticee also contends that since the show cause notice has proposed classification under CTH 7610 9020, the department cannot at this stage classify the goods under any other chapter heading. The Noticee refers to Warner Hindustan Ltd. v. Collector of Central Excise, Hyderabad [1999 (113) E.L.T. 24 (S.C.) wherein goods falling under Chapter Heading 3003.30 as per the assessee therein were sought to be classified under Chapter Heading 3003.19 as per the Revenue. The goods were, however, classified by the Tribunal under Chapter Heading 17.04. The Hon'ble Supreme Court expressed the view that the Tribunal was wrong in allowing the appeal of the Revenue and classifying the goods as items of confectionery under Heading 17.04. The correct course for the Tribunal to have followed was to have dismissed the appeal of the Revenue making it clear that it was open to the Revenue to issue a fresh show cause notice on the basis that the goods were classifiable under Heading 17.04.*

12.6 *The Noticee also draws attention to Commissioner of Central Excise, Nagpur v. Ballarpur Industries Ltd. [2007 (215) E.L.T. 489 (S.C.)] wherein the Supreme Court has held in Para 21 that it is well settled that the show cause notice is the foundation in the matter of levy and recovery of duty, penalty and interest. This view was reiterated in Commissioner of Central Excise v. Gas Authority of India Ltd. [2008 (232) E.L.T. 7 (S.C.)] in Para 7 of the order. Therefore, the Adjudicating Authority cannot go beyond the show-cause notice.*

Regarding seizure/confiscation of the goods:

13. *That in the present case, the Noticee had declared correct description of goods while filing bill of entry. The Noticee declared the goods under Chapter Heading 7604 2100 and self-assessed the duty under Section 17(1) of the Act. As per Section 17(2), (3) and (4), the Assessing Authority had the power to verify the assessment and can ask any documents from the importer. On the basis of documents, the Assessing Authority could re-assess the goods. It is not even a case of revenue that the Noticee has mis-stated or suppressed any fact from the*

knowledge of the department. It is not a case that any fact later on came in the knowledge of the department which effects the classification. It is the case of bonafide belief and not a case of malafide intention. It is a pure case of classification dispute and not where declaration was found to be wrong and therefore, seizure and confiscation is not sustainable as there was no malafide intention on the part of the Noticee.

The goods in question had not been imported in concealed manner and goods were also examined by the customs authorities which fact may be verified from the record. Thus, it is a case of change of opinion on the basis of interpretation made by the department. Thus, action of seizure and now confiscation is unwarranted and hence, not sustainable.

14. *That in the present notice, it is proposed to confiscate the goods under Section 111(m), (o) of the Act. Section 111(m) & (o) is reproduced below for ready reference:*

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

- (m) any goods which do not correspond in respect of value or 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;*
- (o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;*

In the present case, Section 111(m) has been invoked but reason for invoking Section 111(m) has not been stated in the notice. Anyhow, the Noticee has not mis-declared the goods in any manner and classification has been done on the basis of bonafide belief and nothing was kept concealed while filing bills of entry. Thus, Section 111(m) is not invokable in the present case and confiscation is not sustainable.

Section 111(o) is also not available as the goods in question were never exempted in any manner. The dispute is between rate of duty and not exemption and therefore, Section 111(o) is not attracted in the present case.

15. *That in view of above submissions, it is evident that confiscation/seizure was not sustainable and therefore, penalty as proposed in present notice is also mis-conceived and hence, not imposable.*

Regarding Burden of Proof:

16. *The Supreme court in catena of cases (to mention a few: Hewlett Packard India Sales (P.) Ltd. v Commissioner of Customs, (2023) 2 Centax 236; Mega Plastics Ltd. v UOI, (2023) 3 Centax 238 (Cal.)) has held that in case the Department contests to change the classification of the goods which classified earlier by the assessee of its own, the burden of proof lies upon the Department to*

prove that the goods are to be classified differently. In *Union of India v Garware Nylons Ltd.*, (1996) 87 E.L.T. 12 (S.C.), Hon'ble Apex Court has held that mere assertion in that regard is of no avail. The Department has issued and adjudicated the show-cause notices based on a Solar Frame theory which has been held inconclusive and contradictory. In light of no independent investigation, no change in circumstance, no change in tariff the Department has failed to discharge its burden of proof.

Regarding Bills of entry no. 8178934 & 820354

17. That the Noticee had committed a bona fide mistake by availing ineligible benefit of exemption from payment of BCD under Notification No. 24/2005-Customs dated 01.03.2005 in as much as w.e.f. 01.04.2022 by virtue of amendment in Notification No. 24/2005-Customs vide Notification No. 15/2022-Customs dated 01.02.2022.

17.1 That after realising that the benefit of the Notification No. 24/2005-Customs was not available to the Noticee w.e.f. 01.04.2022, the Noticee paid the due Customs Duty @7.5% BCD under CTH 76042100 as declared in BEs. Accordingly vide letter dated 12.02.2024 received by Department on 13.02.2024 (RUD-11), the Noticee submitted challans no. 2267 dated 12.02.2024 and 2268 dated 12.02.2024 vide which duty of Rs. 15,94,313/- along with interest of Rs. 4,38,983/- has been paid by the Noticee.

17.2 The Department vide impugned show cause notice has demanded further differential duty @ 2.5% owing to classification dispute. The Noticee humbly submits that as contested above the import goods are rightly classified by the Noticee, therefore no differential duty demand remains.

Regarding invocation of extended period of limitation:

18. That in the present case, demand has been raised by invoking extended period of limitation. As per Section 28 of the Customs Act, 1962, Extended period of Limitation can be invoked in case of collusion or wilful mis-statement or suppression of facts. There exists sufficient evidence to turn down the revenue's contention about the existence of wilful suppression of facts or deliberate mis-statement on behalf of the appellant as:

18.1 That the law on invocation of extended period of limitation is well settled. Mere omission or merely classifying the goods/services under incorrect head does not amount to fraud or collusion or wilful statement or suppression of facts and therefore the extended period of limitation is not invocable. Reliance is placed on the decision of the Tribunal in *Incredible Unique Buildcon Private Ltd. 2022 (65) G.S.T.L. 377.*

"17. We are unable to find any proof of show cause notice or from the impugned order, intent to evade either from the Mere omission or merely classifying its services under an incorrect head does not amount to fraud or collusion or wilful misstatement or suppression of facts. The intention has to be proved to invoke extended period of limitation. Supreme Court has delivered the judgment in the case of *Larsen & Toubro* dated 20 August, 2015, prior to which there was no clear ruling that services which involved supply or deemed supply of goods could only be classified under WCS. The appellant had been classifying its services (which also involved supply/use of goods) under the CICS and Revenue never objected to it and, therefore, the appellant could have reasonably believed it to be the correct head and continued to file returns accordingly and paying duty. Once the returns are filed, if Revenue was of the opinion

that the self-assessment of service tax and the classification was not correct, it could have scrutinized the returns and issued notices within time. The show cause notice was issued on 30 September, 2015 for the period covered October, 2010 to June, 2012, which is clearly beyond the normal period of limitation. Therefore, although Revenue is correct on merits, the demand is time barred and, therefore, cannot sustain. For the same reason, the penalties imposed upon the appellant under sections 77 and 78 also cannot be upheld."

18.2 Furthermore, the Supreme Court in *Nizam Sugar Factory* 1995 (78) E.L.T. 401 has categorically laid down that where facts are known to both the parties, the omission by one to do what he might have done, and not that he must have done, does not render it suppression. Thus, when all the facts are before the department as in the present case then there would be no wilful mis-declaration or wilful suppression of facts with a view to evade payment of duty. The relevant para from the judgement in *Nizam Sugar Factory* (supra) is quoted below:

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

18.3 Without multiplying too many decisions on the principle justifying or rejecting the invocation of the extended period of limitation, The Noticee would just refer to the citations:

2004 (166) E.L.T. 151 (SC) - *Hyderabad Polymers (P) Ltd., v. Commissioner of Central Excise, Hyderabad*

2006 (197) E.L.T. 465 (SC) - *Nizam Sugar Factory v. Collector of Central Excise, Andhra Pradesh*

2004 (164) E.L.T. 236 (SC) - *ECE Industries Ltd., v. Commissioner of Central Excise, New Delhi*

2003 (153) E.L.T. 14 (SC) - *P&B Pharmaceuticals (P) Ltd., v. Collector of Central Excise*

2015 (324) E.L.T. 8 (SC) - *Caprihans India Ltd., v. Commissioner of Central Excise, Surat*

18.4 For these reasons, the revenue was not justified in invoking the extended period of limitation to fasten the liability on the appellant when the revenue is aware of the litigation with the appellant on the issue of classification of the very same products and taking steps to contest the challenge before the higher forum. Thus, it cannot be said that the appellant has in any manner,

suppressed or mis-stated the facts wilfully to evade the payment of duty. Therefore, the demand with respect to 36 BEs is unsustainable and bad in law.

Regarding Interest and Penalty:

19. In *J.K. Synthetics Limited v. Commercial Taxes Officer*, while deciding the issue whether the appellant should pay interest on the additional sales tax it was held that the information to be furnished in the return 'must be 'correct and complete', that is, true and complete to the best of knowledge and belief, without the dealer being guilty of wilful omission.' The dealer, according to *J. K. Synthetics Limited*, must deposit the full tax due, based on the information furnished and that information must be correct and complete to the best of the dealer's knowledge and belief. If the dealer has furnished full particulars regarding his business, without wilfully omitting or withholding any particular information affecting the assessment of tax, and if he honestly believes to be 'correct and complete', the dealer is said to have acted 'bona fide' in depositing the tax due and filing the return. Of course, the tax so deposited is to be deemed to be provisional and subject to necessary adjustments under the final assessment. And it has finally held that if the assessee pays the tax, which according to him is due based on the Information supplied in his return, there would be no default on his part to meet his statutory obligation. Therefore, it would be difficult to hold that the 'tax payable by him is not paid' and that he is liable for consequences.

19.1. In the present instance, the Department cannot impose interest and penalty because the declaration already made does not suit the proper officer's notion of what the product is. The Noticee trading in the same product i.e. Hollow Profiles has had many rounds of litigation, eventually, as seen from order dated 09.06.2022 and order dated 20.03.2024, the Office of the Principal Commissioner of Customs has classified both under different Tariff headings, both of which have been challenged by the Noticee. Therefore, being a bona-fide taxpayer the interest and penalty imposed due to change in opinion is egregious.

19.2 Additionally, as per the Judgment of Kerala High Court in the case *Chakkiath Brothers v. Assistant Commissioner*, on the basis of a mere dispute in classification, no penalty proceedings can be initiated. In the present case also, there is a dispute of classification. In the impugned show-cause notice the authority had not considered the judgment of this Court in the case *Chakkiath Brothers (supra)*. The Kerala High court has set aside order passed by CGST authorities in light of *Chakkiath Brothers (supra)* in the case of *Atlantic Care Chemicals Pvt. Ltd. v Superintendent, Central Tax & Central Excise*. The demand in the *Atlantic Care (supra)* was under Section 74 of CGST and the same was set aside and remanded back to decide afresh.

20. That the Noticee craves leave to add/amend/elaborate/substitute/modify the aforesaid submissions by way of raising additional grounds or otherwise.

PRAAYER:

In view of above submissions, it is respectfully prayed that captioned show cause notice may kindly be dropped in the interest of justice as same is devoid of any merit".

18. PERSONAL HEARING:

18.1 I observe that 'Audi alteram partem', is an important principal of natural justice that dictates to hear the other side before passing any order. Therefore, personal hearing in the matter was granted to the noticee on 23.12.2024 and 18.02.2025. The noticee vide letter dated 19.12.2024 sought adjournment from the first hearing dated 23.12.2024, but attended the 2nd hearing on 18.02.2025. Details of the PH are as under:

"Shri Aman Garg, Advocate, representing M/s Saatvik Green Energy Private Limited, Ambala (IEC No.: 2215003421) appeared before me for scheduled Personal hearing on today, i.e. 18.02.2025, at 12.00 PM. Shri Aman Garg, Advocate during the hearing, relied upon and reiterated their defence submission dated 03.02.2025 and prayed to drop the proceedings in view of the submissions made in the defence reply dated 03.02.2025".

19. DISCUSSION AND FINDINGS:

I have carefully gone through the SCN bearing F. No. GEN/ADJ/COMM/127/2024-Adjn, dated 04.03.2024 issued by the Commissioner of Customs, Custom House, Mundra, facts of the case, the relied upon documents, submissions made by the Noticees, relevant legal provisions and the records available before me. The issues before me to decide are as under:

- (i) Whether the classification of imported items "Aluminum Solar Frame" under CTH 76042100, in the **51 Nos. of BEs (tabulated in Table-2, 3 & 5 of the notice) is liable to** be rejected and the said goods are liable to be re-classified under CTH- 7610 90 20 under the Customs Tariff Act, 1975.
- (ii) Whether the goods imported vide above **36 Nos. of BEs (Table-2 above)**, having assessable value of Rs. 27,56,43,014/- are liable for confiscation under Section 111(m) of the Customs Act, 1962.
- (iii) Whether the goods imported vide above **15 Nos. of BEs (Table-3 & 5 above)**, having assessable value of Rs. 12,38,64,654/- are liable for confiscation under Section 111(m) of the Customs Act, 1962.
- (iv) Whether the benefit of exemption from customs duty availed by the noticee, in terms of Notification No. 24/2005- customs dated 01.03.2005 as amended, is liable to be disallowed in case of **2 Nos. of BEs as discussed in Table-3 of the notice.**
- (v) Whether differential duty amounting to **Rs. 21,25,750/- (BCD@ 10% +SWS+IGST) (Rupees Twenty-One Lakhs Twenty-Five Thousand Seven Hundred Fifty only)** on these two BEs (Table-3 of the Notice) is liable to be demanded and recovered from the noticee under Section 28(4) of the Customs Act, 1962.
- (vi) Whether the amount of **Rs. 15,94,313/- (BCD @ 7.5% +SWS+IGST)** already paid by the noticee during the investigation in these two BEs (Table-3 of the Notice) is liable to be appropriated against the above demand in para (v)
- (vii) Whether differential duty amounting to **Rs. 34,87,970/- (BCD @ 2.5% +SWS+IGST) (Rupees Thirty Four Lakhs Eighty Seven Thousand**

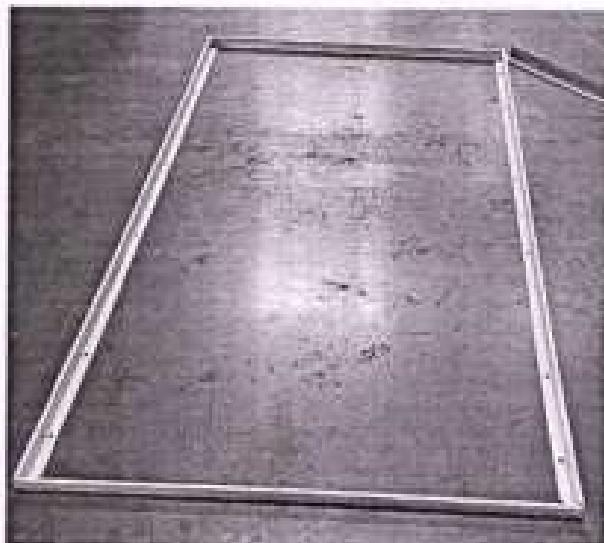
Nine Hundred Seventy only on the 13 Nos. of BEs mentioned in **Table-5 of the Notice**, is liable to be demanded and recovered from the noticee under Section 28(4) of the Customs Act, 1962.

- (viii) Whether interest at an applicable rate is required to be demanded and recovered from them, on the demand under para (v) & (vii) above, under Section 28AA of the Customs Act, 1962.
- (ix) Whether penalty is liable to be imposed upon them under Section 112(a)(ii) or 114A of the Customs Act.

19.1 I find that the instant case arises out of specific information gathered by Officers of Customs, SIIB Section, Custom House, Mundra that M/s Saatvik Green Energy Private Limited, Ambala, have imported consignment under Bill of Entry No.2196747 dated 27.08.2022, wherein goods declared as "Aluminium Solar Frame" (Quantity 24000 kgs.; Value Rs. 71,28,693/-), [later described as Other Aluminium Structure] were wrongly classified under CTH 76042100, attracting BCD @ 7.5% instead of correct classification of goods under CTH 76109020, attracting BCD @ 10%, which resulted in short payment/evasion of duty.

19.2 On the basis of above said information, the goods imported under Bill of Entry No. 2196747 Date 27.08.2022 were put on hold by the officers of SIIB Section, Mundra for further examination. The goods were examined under panchnama dated 02.09.2022 drawn at TG Terminal CFS, Mundra. During examination of the goods imported vide said bill of entry, it has been found as under –

- The goods were packed in 11 big and 18 small size pallets containing goods of 2278 mm and 1134 mm dimension respectively which were sides of frames.
- The big pallets contained big sides (2278mm) of L shaped and their edges were cut in a slanted manner.
- One side of the L shape was hollow while other side was solid.
- Thus edges (along length) were slanted and have holes in them.
- There was total 06 big holes in the solid side of this structure and one small hole at center.
- There was an electric grounding sign near small hole. Hollow sides of the L shape had groove of uniform thickness (approx.6mm).
- The small side (1134 mm) also has L shape and slant. One side of the L shape was hollow while other side was solid (in the same manner similar to that in big side). Edges at hollow side (along length) of small sides were fitted with similar L shapes which exactly fit into holes present at edges of big sides.
- Small sides also had groove of exactly same size (approx.6mm) as that in big sides.
- By fitting 2 big and 2 small sides, it became a complete rectangular frame (2278 mm X 1134 mm), image of which is re-produced as under:



From above image, I observe that a complete aluminum frame is made out by assembling all aluminium profiles. I also observe that this frame is a common aluminum frame and have no relevance to being a part of solar frame. This type of structure is a common frame also used in a variety of other products, such as doors, windows or any other structure.

19.3 During the investigation, statement of Shri Bhupinder Singh, Authorized Representative of M/s. Saatvik Green Energy Private Limited, Ambala (Haryana) recorded under Section 108 of the Customs Act, 1962, on 16.09.2022 wherein he stated inter-alia that: -

- *M/s. Saatvik were importing goods viz. PV cells, Aluminium Frames, Junction Box, Sealants. The products were being imported from different countries, majorly from China. Their company was engaged in the manufacture of P.V. Modules at Ambala and registered under GST having GSTIN No.06AAVCS8142B126. They were not doing any trading activity. There were three directors in the said company viz. Shri Nilesh Garg and Mr. Manik Garg and Pramod Garg. He looks after the purchase and logistics in the said company.*
- *Bill of Entry No.2196747 dated 27.08.2022 for M/s Saatvik was filed by M/s Express Cargo Movers Private Limited, CB, Mundra on the basis of details provided by their company.*
- *On being asked, he stated that the details were given by the company to the Customs Broker and then after, the CB filed the details in B.E. based on the details provided.*
- *That they provided the documents related to import i.e. Commercial Invoice, Packing List and Bill of Lading to the C.B.*
- *That he completely agreed with the details in panchnama dated 02.09.2022 and that he also agrees that the complete frames will be made after fitting these profiles.*
- *On being asked he stated that the frames were to be used to manufacture Photovoltaic modules. The photovoltaic modules (PV modules) were made after fitting PV cells in these frames. The PV cells were placed over tempered glass which is fitted in the groove of the frame. They manufacture solar Panels for sale.*
- *On being asked to give details of the Bills of Entry filed for Aluminum Frames during last 5 years, he stated that he will provide the detail over email as the same was not available with him at that time.*

- On being asked to clarify whether Aluminium Frames were classified under sub heading 7604 and whether the goods were identical in previous Bills of Entry, he replied in conformity and categorically stated that the goods and classification in the previous imports were same as that in present Bill of Entry, though sizes of frames may be different.
- On being informed that the goods under the BE No. 2196747 dtd 27.08.2022 have been classified under chapter 76042100 and asked to offer comments as to whether it is correct classification of goods, he stated that as per their understanding, they have classified the goods correctly.
- He was informed that the description of goods under Customs TSH 7604 is as given below:

7604 ALUMINIUM BARS, RODS AND PROFILES

7604 10 - Of aluminium, not alloyed :

7604 10 10 -- Wire rods

7604 10 20 -- Bars and rods, other than wire rods

--- Profiles :

7604 10 31 --- Hollow

7604 10 39 --- Other

- Of aluminium alloys :

7604 21 00 - Hollow profiles

He was further informed that in the description the profiles that can be classified under chapter 7604 are clubbed with bars and rods which means for a lay man that profiles are simple profiles and have not been worked upon to make it an article should be classified under chapter 7604.

Further, his attention was also invited to Customs TSH 7610 which is as below:

7610 ALUMINIUM STRUCTURES (EXCLUDING PREFABRICATED BUILDINGS OF HEADING 9406) AND PARTS OF STRUCTURES (FOR EXAMPLE, BRIDGES AND BRIDGE-SECTIONS, TOWERS, LATTICE MASTS, ROOFS, ROOFING FRAMEWORKS, DOORS AND WINDOWS AND THEIR FRAMES AND THRESHOLDS FOR DOORS, BALUSTRADES, PILLARS AND COLUMNS); ALUMINIUM PLATES, RODS, PROFILES, TUBES AND THE LIKE, PREPARED FOR USE IN STRUCTURES

7610 10 00 -- Doors, windows and their frames and thresholds for doors

7610 90 -- Doors, windows and their frames and thresholds for doors
Other :

7610 90 10 -- Structures

7610 90 20 -- Parts of structures, not elsewhere specified

7610 90 30 -- Aluminium plates, rods, profiles, tubes and the

7610 90 90 -- like, prepared for use in structure

- On being informed that it appeared that that the structures or parts thereof should be classified under sub-heading 7610 and to offer comments, he stated that they were of the opinion that sub heading 7610 was for structures or its parts. These imported goods were frames wherein the solar

cells, glass etc. are fitted. These frames cannot be called a structure. Therefore, their classification is correct as per their understanding of things.

➤ He further stated that in their previous Bill of Entry No. 8541275 dated 04.05.2022 the classification was changed from sub heading 7604 to 7610 against which they have filed an appeal against the speaking order before Commissioner (Appeals), Ahmedabad, Customs. He undertook to submit the appeal filed through email.

19.4 From the examination of the goods and statement of Shri Bhupinder Singh, Authorized Representative of M/s. Saatvik, I find that the goods were found to be aluminium frames and the importer also admitted that in these frames, they were fitting solar panels which becomes a "structure" and fitted at various places (roof tops/open fields etc.) to generate solar electricity. However, I observe that these type of aluminium frames are a common feature in all type various aluminium structures. In other words, these type of frames cannot be said to be used solely and principally for the purpose of manufacturing Solar panels only. Further, he has categorically admitted that the goods in the previous imports were same as that in present Bill of Entry, though sizes of frames may be different. Further, on perusal of both Tariff Headings as mentioned above, I find that the CTH 7604 is for "ALUMINIUM BARS, RODS AND PROFILES" and 7604 21 00 -covers the product Hollow profiles Of aluminium alloys. Whereas chapter 7610 is for ALUMINIUM STRUCTURES (EXCLUDING PREFABRICATED BUILDINGS OF HEADING 9406) AND PARTS OF STRUCTURES (FOR EXAMPLE, BRIDGES AND BRIDGE-SECTIONS, TOWERS, LATTICE MASTS, ROOFS, ROOFING FRAMEWORKS, DOORS AND WINDOWS AND THEIR FRAMES AND THRESHOLDS FOR DOORS, BALUSTRADES, PILLARS AND COLUMNS); ALUMINIUM PLATES, RODS, PROFILES, TUBES AND THE LIKE, PREPARED FOR USE IN STRUCTURES. Further, CTH 7610 90 20 covers Parts of structures, not elsewhere specified of aluminium.

19.4.1 Further, looking at the Explanatory notes of HSN-7604 & 7610 published in the Harmonized Commodity Description and Coding System- Explanatory notes (7th edition-2022), which are reproduced hereinunder for more appreciation of the facts:

7604 - ALUMINIUM BARS, RODS AND PROFILES

- Of aluminium alloys:

7604 21 00 - Hollow profiles

These products, which are defined in Notes 9 (a) and 9 (b) to section XV, correspond to similar goods made of copper.

Whereas, as per Section Note 9 (b) of the section XV- **Profiles** means

Rolled, extruded, drawn, forged or formed products, coiled or not, of a uniform cross section along with their whole length, which do not conform to any of the definition of bars, rods, wire, plates, sheets, strip, foil. Tubes or pipes. The expression also covers cast or sintered products, of the same forms, which have been subsequently worked after production (otherwise than by simple trimming or de-scaling), provided that they have not thereby assumed the character of articles or products of other headings.

I find that the products which assumed the character of articles or products of other headings on subsequently worked after production are out of ambit of this heading, i.e. CTH-7604.

19.5 I therefore find that the product is most akin of being a frame, which is nowhere classified in Chapter 7604 and hence importer's submission that the impugned goods are rightly classified under chapter heading 7604 by them, is not sustainable as the heading 7604 is for the hollow profiles that don't have character of an article while 7610 is for the goods that have been converted into an article and a part of it.

19.6 Regarding the plea of the Noticee, that different SCNs have been issued to them proposing to classify their same products under different heading, I find that CTH 76109030 and 76109020 are fundamentally one and same, being parts of Aluminium Structure, having same duty leviability. Further, I observe that CTH-7610 cover the complete/ incomplete metal structure and parts of structure. I find that the noticee has filed a Bill of Entry no. 2490549 dated 17.09.2022, wherein they have declared the CTH as 76109010 for the same product description Aluminium Solar Frame. Hence, the contention of the Noticee is not sustainable that department has taken different stand for classifying the same product under different chapter entry. Further, I observe that the appeal of the Noticee filed against OIO passed by the AC (Group Assessment) has been rejected by Commissioner (Appeals) vide OIA MUN-CSTM-000-APP-171-24-25 dated 28.11.2024 and also as no stay on subsequent proceedings has been granted by Commissioner (Appeals), hence, I observe that adjudication proceedings can be carried out without any hinderance, in the present matter. Hence, case laws referred to by the noticee on this point cannot be relied upon in these circumstances.

I further observe that OIO passed by the AC (Group Assessment) was issued in respect of BE no. 8541275 dtd. 04.05.2022, whereas OIO dated 20.03.2024 has been passed by Additional Commissioner, C.H. Mundra in respect of Seizure portion only. The current adjudication proceedings have been initiated for demand of duty on same issue in respect of current as well as past Bill of Entries, but excluding the BE no. 8541275 dtd. 04.05.2022. Hence, I find that there is no inconsistency in the stand of the revenue that imported goods described as Aluminium Solar Panels imported by the Noticee are to be classified under CTH 7610.90. It is pertinent to mention here that M/s Saatvik have filed another BE No. 2490549 dated 17.09.2022 (mentioned at Sr. No. 54 of the table-1 in the SCN), wherein they on their own volition classified the identical goods under import, i.e. Aluminium Solar Frame under CTH-76109010 as 'Other Aluminium Structure'.

19.7 In view of the above discussion, I find that the goods "Aluminium Solar Frame" imported vide Bill of Entry No. 2196747 dated 27.08.2022 are rightly classifiable under CTH 7610.9020 which attracts BCD @10% instead of declared CTH 76042100 wherein BCD is 7.5%. In support of above view, I also rely on the decisions of various tribunals as detailed hereunder -

In Rana Enterprises Vs Commissioner of Customs, Mumbai, the CESTAT, Mumbai, vide order dated 8th Feb. 2011, held that Aluminium Composite Panels will be classified under CTH 7610.90. The CESTAT observed that - "Heading

76.10, as it stood during the material period, covers Aluminium plates, rods, profiles, tubes and the like, prepared for use in structures. Sub-heading 7610.10 covers doors, windows and their frames and thresholds for doors. The residuary sub-heading 7610.90 (Other) covers the commodity in question".

The same view was held by CESTAT Chennai, in Commissioner of Customs, Chennai Vs. Allufit (I) Pvt. Ltd.

Similarly, in M/S. D&M BUILDING PRODUCT PVT LTD., & Ors. Vs THE COMMISSIONER OF CUSTOMS, 2019 ACR 324 CESTAT Bangalore, the CESTAT observed as under -

"It is seen that the impugned goods are identifiable as items prepared for use in structure as the supplier himself identifies the same with code numbers corresponding to a particular partition system and supplies them as such. Therefore, the only conclusion that can be drawn is that the impugned goods are prepared for use in structures which are known to the foreign supplier, importer and their customers. Therefore, going by the spirit of the Supreme Court's decision above (Dunlop India Ltd.), it is to be seen that the impugned goods are traded as useful only to particular structures and therefore, are to be treated as "prepared for use" in such structures. We further find that the end-use i.e., the articles "prepared for use" being specially finding a mention in the Tariff are required to be classified accordingly. In the result, we find that the goods are classifiable under CTH 7610.9030 as contended by the Revenue. We find that Tribunal placed reliance literature and catalogues for classification in the case of Chaya graphics (India) Pvt. Ltd. Vs CC, Bangalore 2018 (362) ELT 911 (Tri. - Bang.)

Classification of the previous Bills of Entry

20.1 I find that in the past also, M/s Saatvik had imported the similar item, i.e. Aluminium Solar Frame and had classified the same under CTH-76042100. During investigation, the past imports of M/s Saatvik from Mundra Port have been checked from the EDI system and it is observed that M/s Saatvik has imported Aluminium Frames under cover of following Bills of Entry by classifying the same under CTH-76042100 during the period 01.12.2018 to 31.12.2023, as per details in below table -

TABLE-1

Sr. No.	BE No.	Date	CTH Declared	Item Declared
1	2272135	02.03.2019	76042100	Aluminium Solar Frame
2	2776079	09.04.2019	76042100	Aluminium Solar Frame
3	3108164	04.05.2019	76042100	Aluminium Solar Frame
4	4693549	29.08.2019	76042100	Aluminium Solar Frame
5	4712410	30.08.2019	76042100	Aluminium Solar Frame
6	4838324	10.09.2019	76042100	Aluminium Solar Frame
7	5006748	23.09.2019	76042100	Aluminium Solar Frame
8	5121062	30.09.2019	76042100	Aluminium Solar Frame
9	5121129	30.09.2019	76042100	Aluminium Solar Frame
10	5211078	09.10.2019	76042100	Aluminium Solar Frame
11	5506737	20.09.2019	76042100	Aluminium Solar Frame
12	5596700	27.09.2019	76042100	Aluminium Solar Frame
13	5902602	19.10.2019	76042100	Aluminium Solar Frame

14	6040657	28.10.2019	76042100	Aluminium Solar Frame
15	6394924	24.11.2021	76042100	Aluminium Solar Frame
16	6428038	27.11.2021	76042100	Aluminium Solar Frame
17	6639710	11.12.2021	76042100	Aluminium Solar Frame
18	6641440	11.12.2021	76042100	Aluminium Solar Frame
19	6777587	21.12.2021	76042100	Aluminium Solar Frame
20	7069192	13.01.2022	76042100	Aluminium Solar Frame
21	7070156	13.01.2022	76042100	Aluminium Solar Frame
22	7070820	13.01.2022	76042100	Aluminium Solar Frame
23	7236575	26.01.2022	76042100	Aluminium Solar Frame
24	7322558	01.02.2022	76042100	Aluminium Solar Frame
25	7323694	01.02.2022	76042100	Aluminium Solar Frame
26	7410517	08.02.2022	76042100	Aluminium Solar Frame
27	7411371	08.02.2022	76042100	Aluminium Solar Frame
28	7454776	11.02.2022	76042100	Aluminium Solar Frame
29	7538975	17.02.2022	76042100	Aluminium Solar Frame
30	7543388	18.02.2022	76042100	Aluminium Solar Frame
31	7571526	19.02.2022	76042100	Aluminium Solar Frame
32	7571872	19.02.2022	76042100	Aluminium Solar Frame
33	7571953	19.02.2022	76042100	Aluminium Solar Frame
34	7606229	22.02.2022	76042100	Aluminium Solar Frame
35	7607037	23.02.2022	76042100	Aluminium Solar Frame
36	7607039	23.02.2022	76042100	Aluminium Solar Frame
37	8178934	07.04.2022	76042100	Aluminium Solar Frame
38	8203546	09.04.2022	76042100	Aluminium Solar Frame
39	8303635	16.04.2022	76042100	Aluminium Solar Frame
40	8304769	16.04.2022	76042100	Aluminium Solar Frame
41	8304770	16.04.2022	76042100	Aluminium Solar Frame
42	8350179	20.04.2022	76042100	Aluminium Solar Frame
43	8350843	20.04.2022	76042100	Aluminium Solar Frame
44	8353653	20.04.2022	76042100	Aluminium Solar Frame
45	8540891	20.04.2022	76042100	Aluminium Solar Frame
46*	8541275	04.05.2022	76042100	Aluminium Solar Frame
47	8546464	05.05.2022	76042100	Aluminium Solar Frame
48	8743020	19.05.2022	76042100	Aluminium Solar Frame
49	9233532	22.06.2022	76042100	Aluminium Solar Frame
50	9456436	07.07.2022	76042100	Aluminium Solar Frame
51	9802361	30.07.2022	76042100	Aluminium Solar Frame
52	9989512	12.08.2022	76042100	Aluminium Solar Frame
53**	2196747	27.08.2022	76042100	Aluminium Solar Frame
54***	2490549	17.09.2022	76109010	<u>Other Aluminium Structure</u>

* CTH was proposed to be changed to 76109030 during assessment

** CTH was proposed to be changed to 76109030 on the basis of the SIIB investigation.

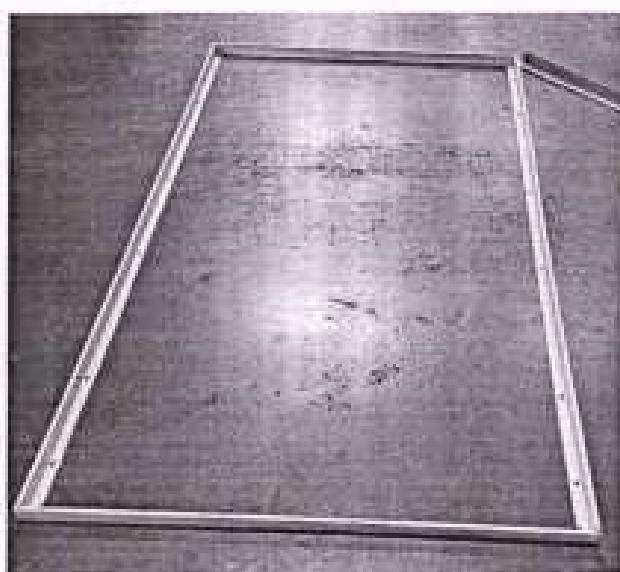
*** CTH was declared as 76109010 by the importer himself.

20.2 I find that, Shri Bhupinder Singh, Authorized Representative of M/s. Saatvik in his statement dated 16.09.2022 has categorically admitted that the goods in the previous imports were same as that in present Bill of Entry, though sizes of frames may be different. Further, I find that in BE No. 2490549 dated 17.09.2022 (mentioned at **Sr. No. 54** of the table above), M/s Saatvik, on their

own volition classified the identical goods under import, i.e. Aluminium Solar Frame under CTH-76109010 as 'Other Aluminium Structure'.

20.2.1 I find that as the imported goods were aluminium frames and the importer also admitted that in these frames, they were fitting solar panels which becomes a "structure" and fitted at various places (roof tops/open fields etc.) to generate solar electricity. Therefore, I find that the imported goods under previous bills of entry are also parts of structures and hence, the item imported under previous Bills of Entry as tabulated in Table-I above are also misclassified under CTH-7604 instead of correct classification under CTH-7610 and hence also misdeclared. Consequently, from the Scrutiny of these 54 BEs, I find that where, M/s Saatvik had classified the imported goods, i.e. Aluminium Solar Frame under CTH-76042100, the goods being similar to the goods imported in current Bill of Entry no. Bill of Entry No. 2196747 dated 27.08.2022, the same are rightly classifiable under CTH 7610.9020 which attracts BCD @10% instead of declared CTH 76042100 wherein BCD is 7.5%.

20.3 I observe that the noticee has taken a plea that alternatively the assuming the impugned product as not just hollow profiles of the aluminium but part of the specific structure viz solar frames it can still not be classified under CTH 7610 90 20 since the impugned product is carved out of the CTH 76.10 by exception (a) of Chapter 76.10 of Explanatory notes to Harmonized System of Nomenclature (hereinafter referred to as HSN). The exception (a) 'excludes assemblies identifiable as parts of article of Chapter 84 to 88'. I find that Exclusion in the explanatory notes is for the goods which are identifiable as parts of the goods of chapter 8541. However, for a goods to be considered as parts and to be classified in the heading of principle machine, the said goods should be identified as being suitable for used solely and principally with the main machine. In this case, looking at the scanned image of the assembled Aluminium Solar Frame, I find that, an aluminium frame emerges, which is a common type of frame in all types of aluminium structure and may not necessarily be used in manufacturing Solar Panels only, under CTH 8451. In other words, use of such structure in other parts of windows, doors, panels cannot be ruled out. The scanned image of assembled aluminium structure is reproduced as under -



From the scanned image as provided in the SCN, I find that the aluminium solar frame when assembled into an aluminium structure, cannot be said to be solely and exclusively be used as parts of Solar panel. I find that at this stage only a

complete aluminium structure can be made out but it cannot be ruled out that this structure may also be used for purposes, other than for assembling solar panels. The noticee has also not provided any proof in their defence submission to substantiate this point. The notice alleges that "w.e.f. 01.04.2022, by virtue of amendment in Notification No. 24/2005- Customs dated 01.03.2005, vide Notification No. 15/2022-Customs dated 01.02.2022, the exemption benefit provided under Sr. No. 39 was not available to the imported goods used to manufacture of goods falling under CTH-85414200 (Photovoltaic cells not assembled in modules or made up into panels) and CTH- 8541 43 00 (Photovoltaic cells assembled in modules or made up into panels)." Further, I observe that the notice proposes to deny the exemption benefit of Notification no. 15/2022-Customs dated 01.02.2022, w.e.f. 01.04.2022, as the benefit of exemption notification was not available to the noticee thereafter. However, it does not imply that before 01.4.2022, the department is accepting the classification of the imported goods under CTH 8541, rather the notice proposes to classify the goods under CTH 7610, being an aluminium structure. Further, I find that, in later Bill of Entry no. 2490549 dated 17.09.2022, the noticee on their own volition classified the identical imported goods i.e. Aluminium Solar Frame under CTH-76109010 as 'Other Aluminium Structure'. From the above, I find that the goods are rightly classifiable under CTH 7610 and not under 7604 or 8541, and hence, the benefit of exemption notification availed vide amended Notification No. 15/2022-Customs dated 01.02.2022, in respect of two Bills of Entry, as detailed in **Table-3** of the Notice, as reproduced below, is liable to be denied to the noticee. Hence I find that differential duty amounting to Rs.21,25,750/- (Rs. Twenty-One Lakhs Twenty-five thousand seven hundred and fifty only) as detailed in Table-3 of the Notice is liable to be recovered from the Noticee, by denying the benefit of amended exemption notification No. 15/2022-Customs dated 01.02.2022. I hold so.

TABLE-3

Sr. No.	BE No.	Date	Total Value	TOTAL Duty Declared (BCD (Exemption- +SWS+ IGST))	Duty as per Investigation (BCD @ 10%+SWS+ IGST)	Differential DUTY (BCD+SWS+ IGST)
1	8178934	07.04.2022	8234267	1482168	2550976	1068808
2	8203546	09.04.2022	8142851	1465713	2522655	1056942
			1,63,77,119	29,47,881	50,73,631	21,25,750/-

20.3.1 I find that on being pointed out by the Investigating officers, the noticee agreed to the fact that benefit of the Notification No. 24/2005-Customs was not available to them w.e.f. 01.04.2022 and agreed to pay the Customs Duty @ 7.50% BCD under **CTH -76042100** as declared in the BEs. Accordingly, vide letter dated 12.02.2024, the importer submitted challans no. 2267 dated 12.02.2024 and 2268 dated 12.02.2024 vide which duty of **Rs. 15,94,313/-** along with interest of **Rs. 4,38,983/-** has been paid by the noticee on these two BEs as under:

TABLE-4

Sr. No	BE No.	Date	Total Value	TOTAL Duty Declared (BCD (Exemption +SWS+ +GST))	Duty calculated by the party during investigation	Differential Duty	Interest Paid	Total amount paid during the investigation
				(BCD @ 7.5%+SWS+ +GST)	(BCD+ SWS+ +GST)			
				(BCD @ 10%+SWS+ +GST)	(BCD+ SWS+ +GST)			
1	8178934	07.04.2022	8234267	1482168	2283774	801606	220717	1022323
2	8203546	09.04.2022	8142851	1465713	2258420	792707	218266	1010973
			1,63,77,119	2947881	4542194	1594313	438983	2033296

20.4 As discussed in the foregoing paras, I have held that the goods are misclassified under CTH 7604 instead of correct classification under CTH 7610. I find that Shri Bhupinder Singh, Authorized Representative of M/s. Saatvik in his statement dated 16.09.2022 has categorically stated "that the goods and classification in the previous imports were same as that in present Bill of Entry, though sizes of frames may be different". Hence, I find that differential duty as calculated in Table-5 of the Notice amounting to **Rs. 34,87,970/-**, in case of 13 Bills of Entry, wherein the importer has wrongly classified their imported goods under CTH -76042100 and paid BCD @ 7.5% instead of correct classification CTH-76109020, on which BCD @ 10% was payable, is liable to be recovered from the noticee, as detailed hereunder –

TABLE-5

Sr. No.	BE No.	Date	Total Value	Total Duty Declared (BCD @ 7.5%+SWS+ +GST)	Duty as per Investigation (BCD @ 10%+SWS+ +GST)	Differential DUTY
1	8303635	16.04.2022	15616305	4331182	4837931	506749
2	8304769	16.04.2022	13155962	3648806	4075717	426911
3	8304770	16.04.2022	5807464	1610700	1799152	188452
4	8350179	20.04.2022	8274691	2294986	2563499	268514
5	8350843	20.04.2022	8121732	2252562	2516113	263550
6	8353653	20.04.2022	8142852	2258420	2522656	264236
7	8540891	20.04.2022	8156816	2262293	2526982	264689
8	8546464	05.05.2022	5547187	1538512	1718519	180006
9	8743020	19.05.2022	2805159	778011	869038	91027
10	9233532	22.06.2022	16070270	4457089	4978570	521480
11	9456436	07.07.2022	5310252	1472798	1645116	172318
12	9802361	30.07.2022	2757613	764824	854308	89485
13	9989512	12.08.2022	7721231	2141484	2392037	250554
			10,74,87,535/-	2,98,11,668/-	3,32,99,638/-	34,87,970/-

21. Invocation of extended period

21.1 The present Show Cause Notice has been issued under the provisions of Section 28(4), therefore it is imperative to examine whether the section 28(4) of Customs Act, 1962 has been rightly invoked or not. The relevant legal provisions of Section 28(4) of the Customs Act, 1962 are reproduced below: -

"28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.—

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

- (a) collusion; or*
- (b) any 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.

21.2 After introduction of self-assessment vide Finance Act, 2011, the onus lies on the importer for making true and correct declaration with respect to all aspects of the Bill of Entry and to pay the correct amount of duty. In the instant matter, in many cases Assessment and Examination were not prescribed for their Bills of entry and therefore, entire onus is on the said importer to make truthful declarations and assess and pay their government dues correctly.

21.3 As discussed in the foregoing paras, I observed that the importer had imported goods classifiable under CTH-76109020 in guise of CTH-76042100. It was only when the detailed examination was done by the department, the said fact came to notice and thereafter, the importer himself classified the goods under import under correct CTH. Furthermore, the importer has also availed inadmissible benefit of customs duty exemption notification. This intentional alteration is an attempt to evade Customs Duty, constituting willful misstatement and suppression of facts on the part of M/s Saatvik, leading to the evasion of duty. I observe that M/s Saatvik was fully cognizant of the technical specifications of their product, which warranted classification under CTH-7610 90 20. Despite this awareness, they persistently misclassified their product under an incorrect CTH, with the motive of reducing the rate of customs duty applicable on the imported goods. This intentional misclassification would likely have gone unnoticed if not brought to light through a customs department inquiry. Further, in view of above facts, I find that the case laws referred to by the notice in their defence submission cannot be relied upon in the present matter before me, being of different set of facts and circumstances. Given the gravity of the situation, I find that the provisions of an extended period of five years, as stipulated under Section 28(4) of the Customs Act, 1962, is rightly invokable in the present case. I hold so.

22. Confiscation of improperly imported goods

22.1 In respect of proposal of penalty and confiscation of the imported goods, the importer has taken a plea that they had declared the goods under Chapter Heading 7604 2100 and self-assessed the duty under Section 17(1) of the Act.

As per Section 17(2), 17(3) and 17(4), the Assessing Authority has power to verify the assessment and can ask any documents from the importer. On the basis of documents, the Assessing Authority can reassess the goods. As discussed in the foregoing paras, I find that M/s Saatvik had imported "Aluminium Solar Frame" by mis-classifying the same under CTH-76042100 instead of correct classification under CTH-76109020, with a view to evade payment of applicable duty thereon. They had thus failed to make correct declaration before the Customs authority in respect of the goods imported by them.

22.2 In terms of Section 46(4) of the Customs Act, 1962, the importer has to certify the truth of the contents of the Bills Entry. In the instant case, M/s Saatvik had deliberately mis-classified the goods under CTH 7604 instead of correct classification under CTH 7610 to evade applicable duty causing a loss of Government revenue. Thus, in view of the facts discussed in the foregoing paras and material evidences available on records, I find that M/s Saatvik, have contravened the provisions of Section 46(4) of the Customs Act, 1962, in as much as they had intentionally mis-classified the CTH of the goods imported by them to take benefit of lesser rate of duty on the declared CTH.

22.3 I further find that in terms of Section 17 of the Customs Act 1962, an importer entering any imported goods under Section 46, shall, self-assess the duty, leviable on such goods. Whereas the importer, M/s Saatvik in the instant case has failed to assess the true duty leviable on "Aluminium Solar Frame" classifiable under CTH 76109020 by resorting to mis-classification of the imported goods under CTH 76042100. Therefore, I find that -

- (i) In case of following 36 BEs, M/s Saatvik has wrongly classified their imported goods under CTH -76042100 instead of correct classification CTH-76109020. I observe that, in these cases, M/s Saatvik was availing exemption from payment of Custom duty provided under Sr. No. 39 of the Notification No. 24/2005- Customs dated 01.03.2005, as amended which was available for all goods used to manufacture in the goods falling under CTH-8541 as in the present case. Therefore, I find that in these cases, the issue is limited to the change in **CTH from 76042100 to CTH-76109010**, and hence the goods as detailed hereunder are liable to confiscation under Section 111(m) of the Customs Act, 1962.

TABLE-2

Sr. No.	BE No.	Date	Total Value	TOTAL Duty Declared (BCD- Exemption+ SWS+ IGST)	Duty as per Investigation (BCD- Exemption +SWS+IGST)	Differential Duty
1	2272135	02.03.2019	3830034	689406	689406	0
2	2776079	09.04.2019	12410434	2233878	2233878	0
3	3108164	04.05.2019	5294662	953039	953039	0
4	4693549	29.08.2019	4318682	777363	777363	0
5	4712410	30.08.2019	4318682	777363	777363	0
6	4838324	10.09.2019	8742681	1573683	1573683	0
7	5006748	23.09.2019	4400302	792054	792054	0
8	5121062	30.09.2019	4396475	791365	791365	0

9	5121129	30.09.2019	4383477	789026	789026	0
10	5211078	09.10.2019	4380802	788544	788544	0
11	5506737	20.09.2019	6434262	1158167	1158167	0
12	5596700	27.09.2019	6604024	1188724	1188724	0
13	5902602	19.10.2019	7700277	1386050	1386050	0
14	6040657	28.10.2019	6684647	1203236	1203236	0
15	6394924	24.11.2021	14700048	2646009	2646009	0
16	6428038	27.11.2021	7536732	1356612	1356612	0
17	6639710	11.12.2021	1531923	275746	275746	0
18	6641440	11.12.2021	15854673	2853841	2853841	0
19	6777587	21.12.2021	15452594	2781467	2781467	0
20	7069192	13.01.2022	7407670	1333381	1333381	0
21	7070156	13.01.2022	6439923	1159186	1159186	0
22	7070820	13.01.2022	6439923	1159186	1159186	0
23	7236575	26.01.2022	13220715	2379729	2379729	0
24	7322558	01.02.2022	13167196	2370095	2370095	0
25	7323694	01.02.2022	7128029	1283045	1283045	0
26	7410517	08.02.2022	6730986	1211578	1211578	0
27	7411371	08.02.2022	13317903	2397223	2397223	0
28	7454776	11.02.2022	7260956	1306972	1306972	0
29	7538975	17.02.2022	7261602	1307088	1307088	0
30	7543388	18.02.2022	6742397	1213631	1213631	0
31	7571526	19.02.2022	6742397	1213631	1213631	0
32	7571872	19.02.2022	7290340	1312261	1312261	0
33	7571953	19.02.2022	7290360	1312265	1312265	0
34	7606229	22.02.2022	6742416	1213635	1213635	0
35	7607037	23.02.2022	6742397	1213631	1213631	0
36	7607039	23.02.2022	6742396	1213631	1213631	0
			27,56,43,014/-	4,96,15,743/-	4,96,15,743/-	0

(ii) In case of following 2 BEs, I observe that along with misclassification of the imported goods, M/s Saatvik has also availed ineligible benefit of exemption from payment of BCD under the said Notification No. 24/2005- Customs dated 01.03.2005 in as much as w.e.f. 01.04.2022, by virtue of amendment in Notification No. 24/2005-Customs, vide Notification No. 15/2022-Customs dated 01.02.2022, the exemption benefit provided under Sr. No. 39 was not available to the imported goods, Aluminium Solar Frame. By doing so, it appeared that M/s Saatvik has not paid Customs Duty to the tune of Rs. 21,25,750/- on these two BEs as under and rendered the goods liable to confiscation under Section 111(m) of the Act, ibid.

TABLE-3

Sr. No.	BE No.	Date	Total Value	TOTAL Duty Declared (BCD (Exemption- +SWS+ IGST)	Duty as per Investigation (BCD @ 10%+SWS+ IGST)	Differential DUTY (BCD+SWS+ IGST)
1	8178934	07.04.2022	8234267	1482168	2550976	1068808
2	8203546	09.04.2022	8142851	1465713	2522655	1056942
			1,63,77,119	29,47,881	50,73,631	21,25,750/-

(ii) In case of remaining following 13 BEs, I observe that the importer has wrongly classified their imported goods under CTH -76042100 and paid BCD @ 7.5% instead of correct classification CTH-76109020 on which BCD @ 10% was payable. I find that by doing so, M/s Saatvik has short paid Customs duty amounting to **Rs.34,87,970/-** on these Bills of Entry and by their acts of commission they have rendered the goods liable to confiscation under Section 111(m) of the Act ibid.

TABLE-5

Sr. No.	BE No.	Date	Total Value	TOTAL Duty Declared (BCD @ 7.5%+SWS+ IGST)	Duty as per Investigation (BCD @ 10%+SWS+ IGST)	Differential DUTY
1	8303635	16.04.2022	15616305	4331182	4837931	506749
2	8304769	16.04.2022	13155962	3648806	4075717	426911
3	8304770	16.04.2022	5807464	1610700	1799152	188452
4	8350179	20.04.2022	8274691	2294986	2563499	268514
5	8350843	20.04.2022	8121732	2252562	2516113	263550
6	8353653	20.04.2022	8142852	2258420	2522656	264236
7	8540891	20.04.2022	8156816	2262293	2526982	264689
8	8546464	05.05.2022	5547187	1538512	1718519	180006
9	8743020	19.05.2022	2805159	778011	869038	91027
10	9233532	22.06.2022	16070270	4457089	4978570	521480
11	9456436	07.07.2022	5310252	1472798	1645116	172318
12	9802361	30.07.2022	2757613	764824	854308	89485
13	9989512	12.08.2022	7721231	2141484	2392037	250554
			10,74,87,535/-	2,98,11,668/-	3,32,99,638/-	34,87,970/-

22.4 As the impugned goods are found to be liable for confiscation under Section 111(m) of the Customs Act, 1962, I find that it necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the goods imported under Bills of Entry as mentioned in tables above. The Section 125 ibid reads as under:-

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

A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods, by paying redemption fine.

In the case of M/s Venus Enterprises vs CC, Chennai 2006(199) E.L.T. 661(Tri-Chennai) it has been held that:

"We cannot accept the contention of the appellants that no fine can be imposed in respect of goods which are already cleared. Once the goods are held liable for confiscation, fine can be imposed even if the goods are not available. We uphold the finding of the misdeclaration in respect of the parallel invoices issued prior to the date of filing of the Bills of Entry. Hence, there is misdeclaration and suppression of value and the offending goods are liable for confiscation under Section 111(m) of the Customs Act. Hence the imposition of fine even after the clearance of the goods is not against the law."

Further in case of VISTEON AUTOMOTIVE SYSTEMS INDIA LIMITED Versus CESTAT, CHENNAI, 2018 (9) G.S.T.L. 142 (Mad.) Hon'ble High Court of Madras has passed the landmark judgement contrary to the judgement of tribunal passed earlier. In the said judgement it has been held that:

"The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act."

In view of above discussions, based on the judgement of M/s Venus Enterprises vs CC, Chennai 2006(199) E.L.T. 661(Tri-Chennai), M/s Asia Motor Works vs Commissioner of Customs 2020 (371) E.L.T. 729 (Tri. - Ahmd.) & Visteon Automotive Systems India Limited Versus CESTAT, CHENNAI, 2018 (9) G.S.T.L. 142 (Mad.), I find that goods in the current case, are liable for confiscation under Section 111 (m) of the Customs Act, 1962 and redemption fine is liable to be imposed on the said confiscated goods. I hold accordingly.

23. Liability of Penalty on the importer under Section 112(a)(iii) or 114A of Customs Act, 1962

23.1 As regards penalty under Section 114A of the Customs Act, 1962, I find that section 114A stipulates that the person, who is liable to pay duty by reason of collusion or any wilful mis-statement or suppression of facts as determined under section 28 ibid, is also be liable to pay penalty under section 114A.

23.2 I find that in the instant case the Noticee had contravened the provisions of Section 17 (1) of the Customs Act, 1962 as they did not declare the correct classification of the imported item as 76109020, instead classified under 76042100, by resorting to misdeclaration and misclassification of the imported goods with intention to evade the higher rate of customs duty. In as much as they made false and incorrect submissions while subscribing to the truthfulness of declarations made to customs regarding the classification of the imported goods, therefore, I find that the noticee is liable to penalty the Customs Act, 1962, as applicable.

23.3 I find that the importer has contravened the provisions of Section 17 and Section 46 of the Customs Act, 1962 as they failed to rightly classify the imported

goods under Self-Assessment as per Section 17 and Section 46 of the Customs Act, 1962 and therefore, made the impugned goods i.e. "**Aluminium Solar Panels**", which are mis-classified by them, liable for confiscation under Section 111(m) of the Customs Act, 1962, and hence the importer has rendered themselves liable for penalty under Section 112(a)(ii) of the Customs Act, 1962 for the acts or omission on their part as discussed supra. However, I find that in a number of judgments, it has been laid down that penalty under section 114(A) and 112 are mutually exclusive and cannot be invoked simultaneously. Therefore, I find that penalty under 114A is imposable on M/s Saatvik, being the importer. Further, penalty under Section 112(a) cannot be invoked under the Act, being mutually exclusive from Section 114A.

24. In view of discussion and findings in the paras supra, I pass the following order:

ORDER

- (a) I order to reject the declared classification of "Aluminium Solar Frame" classified under 76042100 in respect of **51 Nos. of BEs (tabulated in Table-2, 3 & 5 of the notice)** and order to re-classify the same under CTH 76109020 of the Customs Tariff Act, 1975;
- (b) I order for confiscation of the goods "Aluminium Solar Frame" imported vide above **36 Nos. of BEs (Table-2 above)**, having assessable value of **Rs.27,56,43,014/-** under Section 111(m) of the Customs Act 1962. However, the goods are not physically available for confiscation, I give an option to the importer to redeem the confiscated goods, on payment of redemption fine of **Rs 30,00,000/- (Rs. Thirty Lakh Only)** under Section 125 of the Customs Act, 1962;
- (c) I order for confiscation of the goods "Aluminium Solar Frame" imported vide above **15 Nos. of BEs (Table-3 & 5 above)**, having assessable value of **Rs. 12,38,64,654/-** under Section 111(m) of the Customs Act 1962. However, the goods are not physically available for confiscation, I give an option to the importer to redeem the confiscated goods, on payment of redemption fine of **Rs15,00,000 / - (Rs Fifteen Lakhs Only)** under Section 125 of the Customs Act, 1962;
- (d) I order to disallow the benefit of exemption from customs duty availed by M/s Saatvik Green Energy Private Limited, Ambala, in terms of Notification No. 24/2005- customs dated 01.03.2005 as amended in case of **2 Nos. of BEs as discussed in Table-3 of the notice**;
- (e) I confirm the demand of differential duty amounting to **Rs. 21,25,750/- (BCD@ 10% +SWS+IGST) (Rupees Twenty-One Lakhs Twenty-Five Thousand Seven Hundred Fifty only)** on the **two BEs (Table-3 of the Notice)** and order to recover the same from the noticee under Section 28(4) of the Customs Act, 1962;

(f) I order to appropriate the amount of **Rs. 15,94,313/- (BCD @ 7.5% +SWS+IGST)** already paid by the noticee during the investigation in these two BEs (Table-3 of the Notice) against the demand confirmed at (e) above;

(g) I confirm the demand of differential duty amounting to **Rs. 34,87,970/- (BCD @ 2.5% +SWS+IGST) (Rupees Thirty Four Lakhs Eighty Seven Thousand Nine Hundred Seventy only)** on the **13 Nos. of BEs mentioned in Table-5 of the Notice** and order to recover the same from the noticee under Section 28(4) of the Customs Act, 1962;

(h) I order to recover interest at applicable rates on the demand confirmed at (e) and (g) above, under Section 28AA of the Customs Act, 1962;

(i) I Impose a penalty of **Rs. 56,13,720/- Rupees Fifty Six Lakhs Thirteen Thousand Seven Hundred and Twenty only** on M/s Saatvik Green Energy Private Limited, Ambala (IEC No.-2215003421), under Section 114A of the Customs Act, 1962, however, I refrain from imposing penalty upon them under Section of Section 112(a)(ii) of the Customs Act, 1962, since as per 5th proviso of Section 114A, penalties under Section 112 and 114A are mutually exclusive, hence, when penalty under Section 114A is imposed, penalty under Section 112(a)(ii) is not imposable.;

This order is issued without prejudice to any other action which may be required to be taken against any person as per the provision of the Customs Act, 1962 or any other law for the time being in force. S.C.N. issued under F.No. GEN/ADJ/COMM/127/2024-Adjn dated 04.03.2024, is accordingly disposed off.



(K. Engineer)

Pr. Commissioner of Customs,
Custom House, Mundra.

F.No. GEN/ADJ/COMM/127/2024-Adjn

Date: - 28.02.2025

To (The Noticee),

M/s Saatvik Green Energy Private Limited,
1, Sub Tehsil Saha,
Village Dubli, Tehsil Barara,
Ambala (IEC No.-2215003421).

Copy to:

- (i) The Additional Commissioner (Import), Customs House, Mundra.
- (ii) The Additional Commissioner (SIIB), Customs House, Mundra.
- (iii) The Additional Commissioner (RRA), Customs Zone, CCO Ahmedabad.
- (iv) The Superintendent (EDI), Custom House, Mundra, to upload on website.
- (v) Notice Board.
- (vi) Guard file/Office Copy.