



सीमाशुल्क (अपील) आयुक्तका कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD  
 चौथी मंजिल 4th Floor, हड्डों बिल्डिंग HUDCO Building, ईश्वर भुवन रोड Ishwar Bhuvan Road,  
 नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009.

दूरभाष क्रमांक Tel. No. 079-26589281

DIN-20251171MN000001594E

क	फाइल संख्या FILE NO.	(1) F.No. S/49-150/CUS/AHD/2024-25 (2) F.No. S/49-151/CUS/AHD/2024-25
ख	अपीलआदेश संख्या ORDER-IN- APPEAL No. (सीमाशुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	AHD-CUSTM-000-APP-311 & 312-25-26
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	07.11.2025
ड	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER - IN - ORIGINAL NO.	(1) & (2) O.I.O. No. 77/ADC/VM/O&A/2024-25 dated 28.06.2024 passed by the Additional Commissioner of Customs, Ahmedabad.
	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	07.11.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	(1) Viertric Motors Pvt. Ltd., Plot No. 3204, Phase-III, GIDC, Chhatral, Taluka-Kalol, Dist. Gandhinagar – 382129.  (2) Shri. Arun Dave, Director, Viertric Motors Pvt. Ltd., Plot No. 3204, Phase-III, GIDC, Chhatral, Taluka-Kalol, Dist. Gandhinagar – 382129.

1.	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है.
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस (असहमति) हो तो इस आदेश



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



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



ORDER-IN-APPEAL

**M/s. Viertric Motors Pvt. Ltd.**, Plot No. 3204, Phase-III, GIDC, Chhatral, Taluka-Kalol, Dist. Gandhinagar - 382129 (hereinafter referred to as 'the appellant-1') and **Shri. Arun Dave, Director of M/s. Viertric Motors Pvt. Ltd.**, Plot No. 3204, Phase-III, GIDC, Chhatral, Taluka-Kalol, Dist. Gandhinagar - 382129 (hereinafter referred to as 'the appellant-2'), both have filed the present appeals against Order-In-Original No. 77/ADC/VM/O&A/2024-25 dated 28.06.2024 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner of Customs, Ahmedabad (hereinafter referred to as 'the adjudicating authority').

2. Facts of the case, in brief, are that the appellant-1 has filed various Bills of Entry during the period of **September-2019 to June-2021** for import of spare parts of e-scooters and cleared the same on Customs duty at rate(s) lower than the rate(s) applicable for import of e-scooters/e-bikes. It appeared that parts of e-scooters/e-bikes were being imported as sets of equal quantities required for assembling a particular quantity/number of e-scooters/e-bikes. It further appeared that all the parts lend the essential character of the e-scooter/e-bike. It appeared that majority of goods like motors, controller, frame, DC converter etc. were being imported; whereas only few parts like battery, tyres, clamps, nuts etc. were purchased locally.

3. A search was carried out in the premises of the appellant-1 on 22.11.2022 and Statements of Shri Hardik Rania, Manager of the appellant-1 have been recorded. He informed that M/s. Viertric Motors Pvt. Ltd. was engaged in assembling of e-scooters/e-bikes and parts of the same were being imported from China; however, few parts like rubber tyre, battery, charger and some nuts & bolts were purchased domestically. He also informed that Shri. Arun Dave, Director (appellant-2) was looking after overall business of the company.

4. On completion of investigation, a Show Cause Notice bearing F.No. VII/10-04/PI/HQ/2022-23 dated 13.10.2023 was issued to the appellant-1 and the appellant-2. The said SCN has been adjudicated vide the impugned order dated 28.06.2024 under which the adjudicating authority has ordered as under (gist):



Adjudication Order in respect of appellant-1

- Rejected the declared classification of goods viz. Parts of e-bikes / e-scooter, and ordered to classify the same under CTH 87116020. He also disallowed the benefit of concessional rate of duty availed under various notifications declaring the goods as parts of e-vehicles/scooters.
- Ordered for confiscation of imported goods having value of Rs.2,19,01,979/- under Section 111(m) and gave an option to redeem the goods on payment of fine of Rs.21,90,000/- under Section 125.
- Confirmed the demand of differential Basic Customs Duty of Rs.18,94,692/- and Social Welfare Surcharge of Rs.1,89,470/- and ordered recovery of the same with interest in terms of Section 28(4) and 28AA.
- Imposed penalty of Rs.20,84,162/- under Section 114A, penalty of Rs.20,00,000/- under Section 114AA and penalty of Rs.1,00,000/- under Section 117.

Adjudication Order in respect of appellant-2

- Imposed penalty of Rs.2,00,000/- under Section 112(b)(ii) and penalty of Rs.2,00,000/- under Section 114AA.

Being aggrieved with the above order, the appellant-1 and the appellant-2 have filed the present appeals, mainly on the following grounds.

**5. GROUNDS OF APPEAL BY APPELLANT-1 (Gist)**

- 5.1. That the appellant filed various Bill of Entry (As per Annexure X of SCN) during the 04.10.2019 to 05.06.2021 with ICD, Sabarmati, Ahmedabad for clearance of parts and accessories of electric two-wheeler vehicles by classifying them under CTH 87141090, 85013119 and 85044030, of the First Schedule to Customs Tariff Act,1975.
- 5.2. That the goods were duly cleared by the officers with reference to Invoice, Packing list provided by the appellant and officers verified description, quantity, specifications and use in the manufacture of electrically operated vehicles, including two and three wheeled electric motor vehicles.



5.3. That after due examination and verification with reference to description, quantity, specification and use in the manufacture of electric two-wheeler, clearance of goods was duly permitted by the Custom officers as the goods were found tallying with the declarations made by the appellant.

5.4. That on 22.11.2022, i.e. after over one and half years of clearance, a search was carried out at the factory and office premise of appellant. Statements of Shri Hardik Raninga Director & Production in-charge of appellant was recorded under Section 108 of Customs Act,1962.

5.5. That on completion of inquiry, the appellant was issued one Show Cause Notice F. No. VIII/10-04/PI/HQ/22-23 dated 13.10.2023.

5.6. That the appellant could not give reply of Show cause notice because the business premises was shut down and show cause notice was not served at the premises and email also was missed to see by the appellant therefore no any submission was produced and no any hearing notice served to the appellant. That however, Ld. Adjudicating Authority has decided the case passed an ex-parte order.

5.7. It is a matter of record that the goods were examined by Custom officers with reference to description, quantity, specifications and use in the manufacture of electrically operated vehicles, including two and three wheeled electric motor vehicles and the same were not found such that the same must be considered as E-scooters in CKD condition. Based on this, the assessing officer accepted the classification made by the appellant and accordingly, clearance was permitted. The department never challenged the assessment order. Hence, the impugned order demanding differential duty in the face of assessment order having already attained finality is not tenable in the eyes of law being contrary to the following amongst other decisions:

- ITC Ltd. v/s Commissioner of Central Excise, Kolkata-IV, 2019 (368) E.L.T. 216 (S.C.)
- Axiom Cordages Ltd. v/s Commissioner of Customs, Nhava Sheva- II, 2020 (9) TMI - CESTAT Mumbai.
- Tripura Ispat, 2021 (1) TMI 753 - Tripura HC.

5.8. The appellant says and submits that Ld. Adjudicating Authority has erred in failing to appreciate that there is no specific reference to Bill of Entry as per annexure "X" of SCN in the statements that were recorded in the course of inquiry. Ld. Adjudicating Authority has also not given any categorical findings about how the various items



covered by the aforesaid bill of entry would constitute essential characters of e-scooter so as to attract provisions of Rule 2 (a) of the General Rules for interpretation for the purpose of classification under CTH 8711 60 20 that is meant for scooters in SKD and CKD condition. Hence, duty is demanded on the basis of a non-speaking order, which is not permissible in the eyes of law.

- 5.9. The appellant says and submit that there is no dispute over the fact that the most essential items like battery, charger, tyres and certain other parts have not been imported. The impugned order also, except for making a general observation, does not give any reason to conclude that the balance items that were covered by the bill of entry when put together would give essential character of a finished e-scooter. The appellant hereby says and submits that items imported by them, assembled or otherwise, are not sufficient to give essential character of an e-scooter. Hence, the impugned order rejecting the classification on merit and classifying all the items under CTH 8711 60 20 of the First Schedule to Customs Tariff Act,1975 as e-scooter in SKD and CKD condition is not tenable in the eyes of law.
- 5.10. The appellant says and submit that Ld. Adjudicating Authority has erred in failing to appreciate that the appellant had declared each and every item under consideration in the bill of entry and presented the same before the officers for assessment and/or examination. As such, there is no collusion or wilful mis-statement or suppression of facts so as to justify invocation of extended period of limitation provided in Section 28 (4) for demanding duty. Moreover, the issue involved is interpretation of Rule 2 (a) of General Rules of Interpretation. Hence, demand of duty by invoking Section 28 (4) of Customs Act,1962 is time-barred and therefore, not tenable in the eyes of law. On this basis, it is submitted that demand of interest under Section 28AA and levy of penalty under Section 114A of Customs Act,1962 is also not tenable in the eyes of law.
- 5.11. The appellant says and submit that Ld. Adjudicating Authority has erred in imposing penalty under Section 114AA of Customs Act,1962 without pointing out any declaration, statement or document knowingly or intentionally made, signed or used by appellant, which was found false or incorrect in any material particular. Hence, imposition of penalty under Section 114AA of Customs Act,1962 is not tenable in the eyes of law.
- 5.12. The appellant says and submit that Ld. Adjudicating Authority has erred in imposing penalty on appellant under Section 117 of Customs Act,1962 inasmuch as Section 117, being a residuary provision cannot be invoked once specific penal provisions under



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Section 112, 114A and 114AA of Customs Act,1962 were invoked in the Show Cause Notice.

5.13. The appellant says and submit that Ld. Adjudicating Authority has erred in failing to appreciate that the dispute involved in this case is regarding classification and not about description and value. Hence, it is submitted that goods are not liable to confiscation under the provisions of Section 111 (m) of Customs Act,1962.

5.14. The appellant says and submit that Ld. Adjudicating Authority has erred in imposing redemption fine in the facts and circumstances where goods are physically not available for confiscation, having already been cleared at the material time. Reliance is placed on the decision of larger Bench of Hon'ble Tribunal in the case of Shiv Kripa Ispat Pvt. Ltd., 2009 (235) ELT 623 where it is held that goods cannot be confiscated when not available and redemption fine is not imposable.

5.15. The appellant says and submit that Ld. Adjudicating Authority was in violation of the principles of natural justice in as much as the officer who made the order had not given a personal hearing to the appellant. The appellant could have been able to put forward his view on demand raised by the authority. The appellant Relied on the judgment of Bharat Mint and Allied Chemicals versus Commissioner Commercial Tax and 2 others - 2022 (2) TMI 350- Allahabad High court wherein, it was held that a person/assessee is not required to request for "Opportunity of personal hearing" and it remained mandatory upon the respondent to afford such opportunity before passing an adverse order.

#### 6. GROUND OF APPEAL BY APPELLANT-2 (Gist)

Shri Arun Dave, Director of M/s. Viertric Motors Pvt. Ltd. (appellnat-2) has also submitted written submissions, which are similar to submissions made by the appellant-1. He further submitted that the Ld. Adjudicating Authority has erred in imposing penalty under Section 114AA of Customs Act,1962 without pointing out any declaration, statement or document knowingly or intentionally made, signed or used by appellant, which was found false or incorrect in any material particular. Further, Section 112 (a) and (b) operate in different fields and simultaneous and a common penalty is not imposable on appellant under both the sub-clauses. He also submitted that the order made by the Ld. Additional Commissioner of Customs was in violation of the principles of natural justice in as much as the officer who made the order had not given a personal hearing to the appellant.




7. One set of both appeal memorandums have been sent to the Additional Commissioner of Customs, Ahmedabad, vide this office letters F.No. S/49-150/CUS/AHD/2024-25/3388 dated 08.11.2024 and F.No. S/49-151/CUS/AHD/2024-25/3387 dated 08.11.2024 for comments on these appeals. However, no reply thereof has been received. So, I proceed to decide the appeals on the basis of documents submitted by the appellants.

#### **ADMISSION OF APPEALS**

8. The appellant-1 has submitted a self-certified copy of T.R.6 Challan dated 27.08.2024 towards pre-deposit of Rs.1,56,400/- calculated @7.5% of the duty demanded. The appellant-2 has submitted a self-certified copy of T.R.6 Challan dated 27.08.2024 towards pre-deposit of Rs.30,000/- calculated @7.5% of the penalty amount.

9. In the Form No. C.A.-1 filed by both appellants, the date of communication of the impugned order dated 28.06.2024 has been shown as "12.07.2024 by email". Whereas, both the appeals have been filed on 02.09.2024. Thus, both appeals have been filed within normal period of 60 days, as per the provisions of Section 128(1) of the Customs Act, 1962. So, the appeals have been admitted and being taken up for disposal.

#### **PERSONAL HEARING:**

10. Opportunities for Personal Hearing through video conference were granted to both the appellants on 24.06.2025, 08.08.2025 and 27.10.2025, but no reply was received from the appellants. However, a Personal Hearing for both appeals was held on 27.10.2025 in virtual mode, i.e. through video conference, which was attended by Shri. Indranil Banerjee, Advocate and Shri. Anupam Kumar Jha, Consultant and Authorised Representative of the appellants. They reiterated the written submissions made at the time of filing of appeal. They relied upon recent decisions of Hon'ble CESTAT and also submitted a Certificate of Chartered Engineer. In the Certificate dated 27.10.2025 issued by Mr. Profulla Kumar Pal, Chartered Engineer, a list of 126 imported items and 5 domestically procured items has been given. The Chartered Engineer certified that the imported components do not include key elements such as battery and cabinet for battery, which are manufactured and sourced locally; that similarly the charger and tyres are also procured domestically; that hence, the imported items alone do not constitute a complete e-bike or e-scooter.



11. The appellants have also submitted copies of the following case law by email dated 27.10.2025:

- i) Commissioner of Customs (Port) Vs. Twinkle Tradecom Private Limited - Final Order No. 75722/2024 dated 21.03.2024 passed by Hon'ble CESTAT, Kolkata [2024 (5) TMI 472 - CESTAT KOLKATA]
- ii) Commissioner of Customs (Port) Vs. Vani Electric Vehicle Private Limited - Final Order No. 77187/2024 dated 08.10.2024 passed by Hon'ble CESTAT, Kolkata [2024 (11) TMI 17 - CESTAT KOLKATA]
- iii) Commissioner of Customs (Port) Vs. Jade Korea Spine Life - Final Order Nos. 75061-75062 / 2025 dated 16.01.2025 passed by Hon'ble CESTAT, Kolkata [2025 (1) TMI 835 - CESTAT KOLKATA]
- iv) Baba Baidyanath Trading Company, Bill Bull Traders Pvt. Ltd. Vs. Commissioner of Customs (Port), Kolkata - Final Order Nos. 75811-75813/2023 dated 23.06.2023 passed by Hon'ble CESTAT, Kolkata [2023-TIOL-1204-CESTAT-KOL].

### **FINDINGS**

12. I have gone through the impugned order as well as written and oral submissions made by or on behalf of both appellants. The issue involved in the present appeal is whether the goods imported by appellant-1 merits classification as e-scooter/e-bike in CKD condition as held by the adjudicating authority; or they are parts of e-scooter/e-bikes as declared by the appellant-1. However, before deciding this issue, I have to examine as to whether the impugned order has been passed after observance of principles of natural justice or not. Both appellants have claimed that they have not been given opportunity of being heard and so, the impugned order has been passed in violation of principles of natural justice.

13. As regards Personal Hearing before the adjudicating authority, i.e. Additional Commissioner of Customs, Ahmedabad, it has been mentioned in the impugned order that the opportunity to be heard was given to the noticee and co-noticee on 08.04.2024, 28.05.2024 and 24.06.2024; however, neither the noticee nor the co-noticee appeared in person or through their authorised representative to present their views and so, the impugned order had been passed ex-parte. In this regard, I refer to the statutory provisions of Section 122A of the Customs Act, 1962, which are as under:



**"122A. Adjudication procedure.**

(1) *The adjudicating authority shall, in any proceeding under this Chapter or any other provision of this Act, give an opportunity of being heard to a party in a proceeding, if the party so desires.*

(2) *The adjudicating authority may, if sufficient cause is shown, at any stage of proceeding referred to in sub-section (1), grant time, from time to time, to the parties or any of them and adjourn the hearing for reasons to be recorded in writing:*

***Provided that no such adjournment shall be granted more than three times to a party during the proceeding."***

The Proviso to Section 122A prescribes that not more than three adjournments shall be granted to a party during the adjudication proceedings. Whereas, in the present case, three hearings have been granted, which means the proceedings have been adjourned two times only. Therefore, while adjourning adjudication proceeding third time on 24.06.2024, the adjudicating authority could have granted a final opportunity of hearing on any other subsequent date, but it was not done.

14. In this regard, I rely upon the Judgment dated 01.03.2017 passed by Hon'ble High Court of Gujarat in SCA No. 10563 of 2016 in the case of ***Regent Overseas Pvt. Ltd. Vs. Union of India*** [2017 (6) G.S.T.L. 15 (Guj.)]. Relevant Paragraphs of the said Judgment are as under (underline supplied):

***"8. Thus, under clause (a) of sub-section (1) of Section 37C of the Act, in case of service of notice by speed post, the same has to be with proof of delivery. To put it differently, service by speed post is valid provided there is proof of delivery. In the present case, it is an admitted position that the letter of personal hearing was sent to the petitioners through speed post; however, though details of date of despatch, etc., have been produced on record by the learned counsel for the respondents, including tracking number, there is no material by way of proof of delivery to the petitioners; whereas, on the other hand, it is the specific case of the petitioners that they have not received the notice for personal hearing. Thus, in view of the mandate of Section 37C of the Act, which provides for notice by speed post with proof of delivery, it is incumbent upon the respondents to furnish proof of delivery. In the absence of any proof of delivery, it cannot be said that there is effective service of notice, as contemplated under Section 37C of the Act. In the absence of service of notice of personal hearing, the petitioners or their representative could not remain present before the adjudicating authority during the course of personal hearing and hence, the impugned order which has been passed ex parte is clearly in breach of principles of natural justice.***



9. Another aspect of the matter is that by the notice of personal hearing, the adjudicating authority has given a choice of three dates of personal hearing as mentioned hereinabove. In view of the fact that the petitioners or their representatives did not remain present on any of the dates, the adjudicating authority has proceeded further with the matter and has passed the order-in-original ex parte. In this regard, reference may be made to Section 33A of the Act, which reads thus:

**"33A. Adjudication procedure. -** (1) The adjudicating authority shall, in any proceeding under this Chapter or any other provision of this Act, give an opportunity of being heard to a party in a proceeding, if the party so desires.

(2) The adjudicating authority may, if sufficient cause is shown, at any stage of proceeding referred to in sub-section (1), grant time, from time to time, to the parties or any of them and adjourn the hearing for reasons to be recorded in writing :

Provided that no such adjournment shall be granted more than three times to a party during the proceeding."

10. Section 33A of the Act provides for giving an opportunity of hearing to a party in a proceeding by the adjudicating authority. Sub-section (2) thereof, provides for granting time to the parties and for adjourning the hearing for reasons to be recorded in writing. The proviso thereto circumscribes the power to grant time conferred under sub-section (2) of Section 33A of the Act, by providing that no such adjournment shall be granted more than three times to a party during the proceeding.

11. Thus, by virtue of the provisions of sub-section (2) of Section 33A of the Act, when a personal hearing is fixed, it is open to a party to seek time by showing sufficient cause and in such a case, the adjudicating authority may grant time and adjourn the hearing by recording the reasons in writing. However, in view of the proviso thereto not more than three such adjournments can be granted. On a plain reading of sub-section (2) of Section 33A of the Act and the proviso thereto, what the same envisages is fixing a date of hearing and in case if a party asks for time and makes out sufficient cause, then to adjourn the hearing. Since the number of such adjournments is limited to three, the hearing would be required to be fixed on each such occasion, and on every occasion when time is sought and sufficient cause is made out, the case would be adjourned to another day. However, the adjudicating authority is required to give one date at a time and record his reasons for granting adjournment on each occasion. It is not permissible for the adjudicating authority to issue one consolidated notice fixing three dates of hearing, whether or not the party asks for time, as has been done in the present case. Thus, apart from the fact that the notice of hearing has not been served in the manner contemplated under Section 37C of the Act, the notice itself suffers from a legal infirmity inasmuch as it fixes three dates of hearing at a time, which is not in consonance with the proviso to Section 33A of the Act.

12. Another aspect of the matter is that by the notice for personal hearing three dates have been fixed and absence of the petitioners on those three dates appears to have been considered as grant of three adjournments as contemplated under the proviso to sub-



section (2) of Section 33A of the Act. In this regard it may be noted that sub-section (2) of Section 33A of the Act provides for grant of not more than three adjournments, which would envisage four dates of personal hearing and not three dates, as mentioned in the notice for personal hearing. Therefore, even if by virtue of the dates stated in the notice for personal hearing it were assumed that adjournments were granted, it would amount to grant of two adjournments and not three adjournments, as grant of three adjournments would mean, in all four dates of personal hearing.

**13.** As discussed hereinabove, in view of the fact that the notice for personal hearing was not served upon the petitioners in accordance with law, no one could remain present for personal hearing on behalf of the petitioners on the dates specified in the notice and the adjudicating authority has proceeded on the footing that three adjournments have been granted and has passed and the impugned ex parte order. Such order is, therefore, clearly in breach of the principles of natural justice warranting interference by this court in exercise of powers under Article 226 of the Constitution of India.

**14.** For the foregoing reasons, the petition succeeds and is, accordingly, allowed. The impugned order dated 29-1-2016 passed by the Commissioner of Customs and Central Excise, Surat-II (Annexure-A to the petition) is hereby quashed and set aside and the matter is restored to the file of the adjudicating authority to decide the same in accordance with law after affording adequate opportunity of hearing to the petitioners. Rule is made absolute accordingly with no order as to costs."

**15.** Provisions of Section 33A of the Central Excise Act, 1944 are pari materia with the provisions of Section 122A of the Customs Act, 1962, as both Sections prescribed adjudication procedure in identical manner. Therefore, the aforesaid Judgment of Hon'ble High Court of Gujarat, is applicable to the present case. In the case on hand also, only three hearings were offered. The appellants contended that they could not give reply of Show cause notice because the business premises was shut down and show cause notice was not served at the premise. Therefore, no submission was produced and no hearing notice was served to the appellant. No comments on this contention have been received from the office of the adjudicating authority. Under this situation, the adjudicating authority had no occasion to examine and give findings on the case law relied upon by the appellants in this appeals. Therefore, no findings of the adjudicating authority are available in respect of the contentions raised by the appellant in these appeals. Under this situation, I am of the view that it would be proper to remit the matters back to the adjudicating authority for de novo adjudication, who shall pass speaking order on the issues of merits as well as limitation.

**16.** As per the provisions of Section 128A(3)(b)(i) of the Customs Act, 1962, where an order or decision has been passed without following the principles of natural justice, the



Commissioner (Appeals) may refer the matter back to the adjudicating authority with directions for fresh adjudication or decision. Therefore, I find that remitting the cases to the adjudicating authority for passing fresh order becomes *sine qua non* to meet the ends of justice.

17. In view of the above discussion, I pass the following order:

**ORDER**

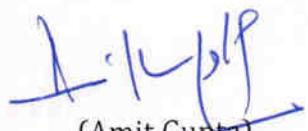
17.1 I set aside the Order-In-Original No. 77/ADC/VM/0&A/2024-25 dated 28.06.2024 and direct the adjudicating authority to pass a de novo adjudication order after considering the submissions to be made by both the appellants and following principles of natural justice.

17.2 The appellants are also directed to submit written submissions before the adjudicating authority, i.e. the Additional Commissioner of Customs (in-charge ICD-Khodiyar), 2<sup>nd</sup> floor, Custom House, Navrangpura, Ahmedabad - 380009, within 15 days from the date of receipt of this order. The appellants should mention their present address, email id and contact number of responsible persons in the written submissions.

17.3 Both appeals are allowed by way of remand.

17.4 While passing this order, no opinion or views have been expressed on merits of the case.



  
(Amit Gupta)

Commissioner (Appeals),  
Customs, Ahmedabad

F.No. S/49-150/CUS/AHD/2024-25

Date: 07.11.2025

F.No. S/49-151/CUS/AHD/2024-25

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

To

**(1) Viertric Motors Pvt. Ltd.,**

**Address-1:** Plot No. 3204, Phase-III, GIDC, Chhatral,  
Taluka-Kalol, Dist. Gandhinagar – 382129.

**Address-2:** 184, Regent Estate, Kolkata – 700092.  
(email: [vierindia@gmail.com](mailto:vierindia@gmail.com) [info@viertric.com](mailto:info@viertric.com) )

**(2) Shri. Arun Dave, Director,  
Viertric Motors Pvt. Ltd.,**

**Address-1:** Plot No. 3204, Phase-III, GIDC, Chhatral,  
Taluka-Kalol, Dist. Gandhinagar - 382129.

**Address-2:** 184, Regent Estate, Kolkata - 700092.  
(email: [vierindia@gmail.com](mailto:vierindia@gmail.com) [info@viertric.com](mailto:info@viertric.com))

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.  
(email: [ccohm-guj@nic.in](mailto:ccohm-guj@nic.in))
2. The Principal Commissioner of Customs, Custom House, Ahmedabad.  
(email: [cus-ahmd-guj@nic.in](mailto:cus-ahmd-guj@nic.in) [rra-customsahd@gov.in](mailto:rra-customsahd@gov.in))
3. The Additional Commissioner of Customs, Ahmedabad (in-charge ICD-Khodiyar), **for initiating de-novo adjudication.** (email: [cus-ahmd-adj@gov.in](mailto:cus-ahmd-adj@gov.in))
4. The Deputy/Assistant Commissioner of Customs, ICD-Khodiyar.  
(email: [icdkhd-ahd@gov.in](mailto:icdkhd-ahd@gov.in))
5. Shri. Indranil Banerjee, Advocate, Kolkata  
(email: [banerjee.indranil6@gmail.com](mailto:banerjee.indranil6@gmail.com))
6. Shri. Anupam Kumar Jha, Consultant & Authorised Representative  
(email: [anupamkrjha@hotmail.com](mailto:anupamkrjha@hotmail.com))
7. Guard File.

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