



प्रधानआयुक्तकाकार्यालय, सीमाशुल्क, अहमदाबाद  
सीमाशुल्कभवन, आलइंडीयारेडीअकेबाजुमे, नवरंगपुरा, अहमदाबाद 380009  
दूरभाष (079) 2754 46 30 फैक्स (079) 2754 23 43  
**OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, AHMEDABAD**  
**CUSTOMS HOUSE, NEAR ALL INDIA RADIO, NAVRANGPURA, AHMEDABAD**  
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निबन्धितपावतीडाकद्वारा / By SPEED POST A.D.

फा. सं./F. No.: VIII/10-42/Commr./O&A/2022-23

DIN-20240571MN0000816758

आदेशकीतारीख/Date of Order :10.05.2024

जारीकरनेकीतारीख/Date of Issue :10.05.2024

द्वारापारित :-  
Passed by :-

शिव कुमार शर्मा, प्रधान आयुक्त  
Shiv Kumar Sharma, Principal Commissioner

मूलआदेशसंख्या :

**Order-In-Original No: AHM-CUSTM-000-PR.COMMR-14-2024-25 dated 10.05.2024** in the case of **M/s. MG Motor India Pvt. Ltd.** Block – B, GIDC Indl. Estate, Halol, Vadodara, Gujarat 389351.

1. जिसव्यक्ति(यों) कोयहप्रतिभेजीजातीहै, उसेव्यक्तिगतप्रयोगकेलिएनिःशुल्कप्रदानकीजातीहै।
1. This copy is granted free of charge for private use of the person(s) to whom it is sent.
2. इस आदेशसे असंतुष्ट कोईभी व्यक्ति इस आदेशकी प्राप्तिसे तीनमाहके भीतरसीमाशुल्क, उत्पादशुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठको इस आदेशके विरुद्ध अपील कर सकताहै। अपील सहायकरजिस्ट्रार, सीमाशुल्क, उत्पादशुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, दुसरीमंजिल, बहुमालीभवन गिरिधरनगर पुलके बाजुमे, गिरिधरनगर, असारवा, अहमदाबाद-380 004 को सम्बोधित होनी चाहिए।
2. Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, Ahmedabad - 380004.
3. उक्त अपील प्रारूपसं. सी.ए.3 में दाखिल की जानी चाहिए।उसपरसीमाशुल्क (अपील) नियमावली, 1982 केनियम 3 के उपनियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपीलको चारप्रतियोंमें दाखिल किया जाए तथा जिस आदेशके विरुद्ध अपीलकी गईहो, उसकीभी उतनीही प्रतियाँ संलग्न कीजाएँ (उनमेंसे कमसे कम एकप्रति प्रमाणित होनी चाहिए)। अपीलसे सम्बंधित सभी दस्तावेज भी चारप्रतियोंमें अग्रेषित किए जाने चाहिए।

3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.
4. अपील जिसमें तथ्योंका विवरण एवं अपीलके आधार शामिलहैं, चारप्रतियोंमें दाखिलकी जाएगी तथा उसके साथ जिस आदेशके विरुद्ध अपील की गईहो, उसकीभी उतनीही प्रतियाँ सलगनकी जाएंगी (उनमेंसे कमसे कम एक प्रमाणित प्रति होगी)।
4. The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)
5. अपीलका प्रपत्र अंग्रेजी अथवा हिन्दीमें होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरणके बिनाअपीलके कारणोंके स्पष्टशीर्षके अंतर्गत तैयार करना चाहिए एवं ऐसे कारणोंको क्रमानुसार क्रमांकित करना चाहिए।
5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.
6. केंद्रीय सीमाशुल्क अधिनियम, 1962 की धारा 129 ऐ के उपबन्धोंके अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसीभी राष्ट्रीयकृत बैंककी शाखासे न्यायाधिकरणकी पीठके सहायक रजिस्ट्रारके नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपीलके प्रपत्रके साथ संलग्न किया जाएगा।
6. The prescribed fee under the provisions of Section 129A of the Customs Act, 1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.
7. इस आदेशके विरुद्ध सीमाशुल्क, उत्पादशुल्क एवं सेवाकर अपीलीयन्यायाधिकरणमें शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुर्मानाका विवादहै अथवा जुर्माना जहां शीर्ष जुर्मानाके बारेमें विवादहै उसका भुक्तान करके अपील कीजा सकतीहै।
7. 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".
8. न्यायालयशुल्क अधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न कि एगए आदेश की प्रतिपर उपयुक्त न्यायालयशुल्क टिकट लगा होना चाहिए।
8. The copy of this order attached therein should bear an appropriate court fee stamp as prescribed under the Court Fees Act, 1870.

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Subject: Show Cause Notice No. F.No. VIII/10-42/Commr./O&A/2022-23  
 dated 25.05.2023 issued by the Commissioner of Customs, Ahmedabad  
 to M/s. MG Motor India Pvt. Ltd. Block - B, Survey Nos., GIDC Indl.  
 Estate, Halol, Vadodara, Gujarat

### **Brief facts of the case:**

M/s. MG Motor India Pvt. Ltd. (IEC – AAKCM8110E)(hereinafter referred to as “the Importer” or “the Noticee”), having address at Block – B, GIDC Indl Estate, Halol, Vadodara, Gujarat – 389351 has filed Bill of Entry No. 3189326 dated 06.11.2022 through Custom Broker M/s Kerry Indev Logistics Pvt. Ltd. for clearance of miscellaneous items as declared in the Bill of Entry.

2. Bill of Entry No. 3189326 dated 06.11.2022 was under RMS facilitation, hence, **“examination has not been prescribed for this B/E”**, therefore, **examination was not conducted** but on scrutiny of the declared description at time of RMS out of charge, the classification of the imported goods at **Item No.4 – “Display Unit (Display ASM Video) (Automotive Parts)”** appeared to be incorrect.

3. The Importer has declared the Item No.4 – “Display Unit (Display ASM Video) (Automotive Parts)” under Customs Tariff Heading No. 85437099, which is for *“Electrical machines and apparatus having individual functions, not specified or including elsewhere in this Chapter”*. As per importer’s website (<https://www.mgmotor.co.in/>), they are in the business of manufacturing of Motor Cars, therefore, on scrutiny of the description, *prima facie*, goods appear to be *Display Panels* (for car audio system) of Customs Tariff Heading 8524, as per discussion in the subsequent paragraphs.

4. The classification is to be decided as per General Rules of Interpretation of the Schedule-I of Customs Tariff Act, 1975 and in the instant case, Rule 1, read with Chapter Note 7 of Chapter 85, is applicable. Rule 1 of the General Rules of Interpretation is reproduced below:

*“Classification of goods in this Schedule shall be governed by the following principles:*

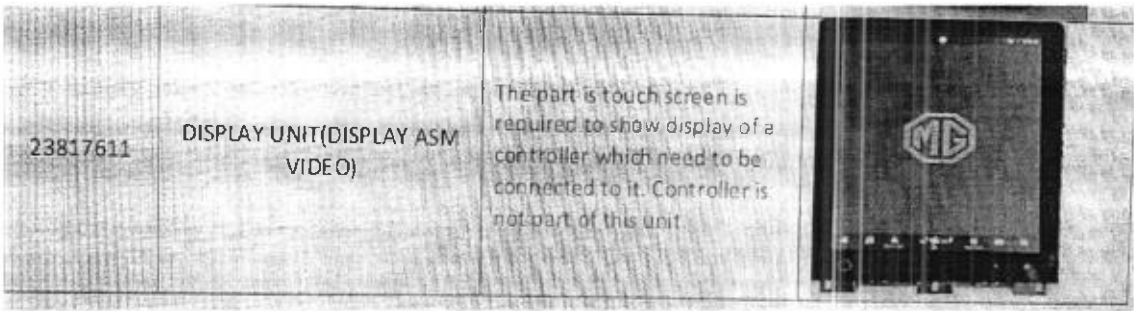
*“Rule 1 - The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require,.....”*

4.1 Further, as per the above rule, Chapter Note and Section Note decide the classification. In the instant case, Chapter Note 7 of Chapter 85 of Schedule 1 of Customs Tariff Act, 1975 is relevant. Chapter Note 7 of Chapter 85 is reproduced below:

*“For the purposes of heading 8524, –flat panel display modules refer to devices or apparatus for the display of information, equipped at a minimum with a display screen, which are designed to be incorporated into articles of other headings prior to use. Display screens for flat panel display modules include, but are not limited to, those which are flat, curved, flexible, foldable or stretchable in form. Flat panel display modules may incorporate additional elements, including those necessary for receiving video signals and the allocation of those signals to pixels on the display. However, heading 8524 does not include display modules which are equipped with components for converting video signals (e.g., a scaler IC, decoder IC or application processor) or have otherwise assumed the character of goods of other headings.*

*For the classification of flat panel display modules defined in this Note, heading 8524 shall take precedence over any other heading in the Nomenclature.”*

5. As per the above discussion, there was doubt regarding classification of Item No.4, hence, queries were raised to the Importer for justification of the declared classification i.e. Customs Tariff Heading No.85437099 with pictorial catalogue; screenshot of the Importer's reply is reproduced below:



6. On perusal of the Importer's reply, it appears that goods are **"Flat Panel Touch Screen Display Units of kind to be used for Car Audio System"**, therefore, it appears that the declared classification under Customs Tariff Heading No.85437099 is incorrect. As per General Rules for the Interpretation (GRI) rule -1 read with Chapter Note 7 of Chapter 85 of Schedule 1 of the Customs Tariff Act, 1975, **"Flat Panel Touch Screen Display Units"** are specifically included under Heading 8524, hence, it appears that the merit classification for item No.4 should be under Customs Tariff Heading No. 85249900 having Duty structure 15%(BCD)+10%(SWS)+18%(IGST). Further, the Importer has agreed to the departmental view of classification i.e. under Customs Tariff Heading 8524.

7. In view of the mis-declaration of **Item No.4 - "Display Unit (Display ASM Video) (Automotive Parts)"** of the Bill of Entry No.3189326 dated 06.11.2022, the competent authority has adjudicated the matter vide OIO No.-Mis-declaration/ADC/ICD-Dashrath/07/MGM/22-33 dated 13.12.2022. Also, the Importer has agreed to the Departmental view of classification of the said item under Customs Tariff Heading No.85249900 instead of declared Customs Tariff Heading No.85437099. Accordingly, Bill of Entry No.3189326 dated 06.11.2022 was re-assessed &the Importer has paid the differential Duty alongwith the redemption fine & penalty, as imposed, on dated 24.12.2022.

8. Therefore, in pursuance of OIO No. Mis-declaration/ADC/ICD-Dashrath/07/MGM/22-33 dated 13.12.2022, the Importer's previous import data (i.e. from 01.01.2022) was scrutinized and it has been observed that the Importer has cleared 4 Bills of Entry, since the Customs Tariff Heading No. 85249900 came into existence (i.e. from 01.01.2022), having identical/similar items by mis-declaring under Customs Tariff Heading No. 85437099 instead of merit Customs Tariff Heading No.85249900.

9. Thus, the Importer has mis-declared/mis-classified the said items, which has resulted into short payment of Duty. Accordingly, a Consultative Letter No.6/2022-23/PCA was issued vide F.No.V(A)/CL-6/PCA/ICD-Dashrath/2022-23 on dated 19.12.2022 to the Importer and they were asked to pay the differential amount of Duty for the Bills of Entry mentioned in Table-I along with the applicable interest & penalty as per Section 28(4) of Customs Act, 1962.However, importer has not paid the pending dues till date.

10. Details of 4 Bills of Entry are as below:

Table-I							(in Rs.)		
BE No	BE Date	Declared CTH	Merit CTH	Item No.	Item Description	Assess Value	Total Duty Paid/debited @ 7.5% of BCD (due to mis-	Total Merit Duty (under CTH 85249900) Applicable @ 15% of BCD	Differential Amount to be Paid

							declaration under CTH 85437099 )		
9528831	13-07-2022	85437099	85249900	4	DISPLAY UNIT DISPLAY ASM VIDEO (PART NO 23817611) (AUTOMOTIVE PARTS)	9870272.64	2737520	3698391	960871
2152717	25-08-2022	85437099	85249900	4	DISPLAY UNIT(DISPLAY ASM VIDEO) (PART NO 23817611) (AUTOMOTIVE PARTS)	54977554.11	15248025	20600090	5352065
2620957	27-09-2022	85437099	85249900	4	DISPLAY UNIT (DISPLAY ASM VIDEO) (PART NO 23817611) (AUTOMOTIVE PARTS)	1339812716	37159706	50202782	13043077
3477305	26-11-2022	85437099	85249900	101	DISPLAY ASM VIDEO (PART NO 23838231) (AUTOMOTIVE PARTS)(For R&D Purpose)	764179.74	211945	286338	74393
Total						199593278	55357196	74787601	19430406

11. After introduction of self-assessment vide Finance Act, 2011, the onus lies on the Importer for making true and correct declaration in all aspects in the Bill of Entry and to pay the correct amount of Duty. In the instant case, the Importer has self-assessed all the 4 Bills of Entry (at Table-I above) but the Importer has not paid the correct Duty by way of mis-declaration/mis-classification of Customs Tariff Heading of the goods identical/similar to Item No.- 4 of Bill of Entry No.- 3189326 dated 06.11.2022. Thus, it appears that the Importer has mis-classified/mis-declared the identical/similar items with intent to evade legitimate Customs Duty. Accordingly, the Importer has violated the provisions of Section 46 (4) of the Customs Act, 1962.

12. The Importer has declared the description of the items either as “**Display Unit (Display ASM Video) (Automotive Parts)**” or “**Display ASM Video (Automotive Parts)**”. However, these items are “**Flat Panel Touch Screen Display Units**”(of the kind to be used for Car Audio System) of Customs Tariff Heading 8524 as discussed in Para 6 & 7 above. Therefore, description provided

by the Importer does not bring out this fact clearly and is thus incomplete/misleading. This act on the part of the Importer resulted in short levy of Duties, which led to undue monetary benefit to the Importer. Also, in case of Bill of Entry No.3189326 dated 06.11.2022, the Importer has agreed to the Departmental view in query reply dated 23.11.2022 but even after acceptance, the Importer has again mis-declared the said item with respect to classification & description while filing Bill of Entry No.3477305 dated 26.11.2022, which clearly establishes that the importer has intentionally/wilfully/knowingly mis-declared the said item by misclassifying & by providing incomplete description. Thus, the act of intentionally/wilfully/knowingly mis-declaring the said item by misclassifying & by providing incomplete description by the Importer squarely falls under the purview of Section 28(4) as wilful mis-statement & suppression of facts with intent to evade legitimate Customs Duty. Therefore, in terms of the provisions of Section 28(4) of the Customs Act, 1962 read with Section 12 of the Customs Act, 1962 and Section 3(7) of Customs Tariff Act, 1975, it appears that the differential Duty amounting to Rs. 1,94,30,406/- (Rupees One Crore Ninety Four Lakhs Thirty Thousand Four Hundred and Six only) (at Table-I), is recoverable from the Importer along with applicable interest & penalty.

**13.** Further, as the goods did not correspond in respect of classification & description, which was incomplete and misleading, provided by the Importer, therefore, these goods become liable for confiscation under Section 111(m) of the Customs Act, 1962.

**14.** For the sake of brevity, the relevant provisions of the Customs Act, 1962 are reproduced as under:-

SECTION 17. Assessment of duty -

*(1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.*

SECTION 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 wilful mis-statement; or*
- (c) suppression of facts,*

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

*(5) Where any duty has not been levied or not paid or has been short-levied or short paid or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub-section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to fifteen per cent. of the duty specified in the*

notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.

**Explanation 1.** - 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.

**SECTION 28AA. Interest on delayed payment of duty—**

(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made 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 pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

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

**SECTION 46. Entry of goods on importation -**

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

**SECTION 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 trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54;

**SECTION 114A. Penalty for short-levy or non-levy of duty in certain cases.**

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful 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 sub-section (8) of section 28 relates to notices issued prior to the date (12th May, 2000) 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.

**15.** Therefore, in view of the above, Show Cause Notice No.VIII/10-42/Commr./O&A/2022-23 dated 25.05.2023 issued to M/s.MG Motor India Private Limited. (IEC – AAKCM8110E), Block – B, GIDC Indl. Estate, Halol, Vadodara, Gujarat -389351 calling upon to show cause to the Commissioner of Customs, Ahmedabad as to why:

- a. The imported goods having total assessable value of Rs. 19,95,93,278/- (as at Table-I of para-10 above) should not be held liable to confiscation under Section 111(m) of the Customs Act, 1962 and why redemption fine should not be imposed in lieu of confiscation under the provisions of Section 125 of the Customs Act, 1962;
- b. The classification of the goods 'DISPLAY UNIT/ DISPLAY ASM VIDEO (AUTOMOTIVE PARTS)' imported by M/s. MG Motors India Private



Limited by declaring it under Customs Tariff Heading No.85437099 should not be rejected and why it should not be classified under Customs Tariff Heading No. 85249900;

- c. Total Differential Duty amounting to Rs.1,94,30,406/-(Rupees One Crore Ninety Four Lakhs Thirty Thousand Four Hundred and Six only) for the Bills of Entry mentioned in Table-I of para-10 above should not be demanded and recovered under Section 28(4) of the Customs Act, 1962;
- d. Applicable interest should not be demanded for the differential Duty (demanded at(c) above) for the Bills of Entry as mentioned in Table-I under Section 28AA of the Customs Act, 1962;
- e. Penalty should not be imposed under Section 114A of the Customs Act, 1962.

**16. Written submission by the importer:**

**16.1** The importer vide their letter dated 20.02.2024 submitted their written submission wherein they inter alia stated as under:

- That Show Cause Notice is invalid in the absence of valid appeal against the out of charge/Bills of Entry and placed the reliance on the case laws of ITC Limited Vs. Commissioner of Central Excise, 2019 (368\_ ELT 216 (SC), Jairath International Vs. Union of India 2019 (10)TMI 642, Vittese Export Import Vs. Commissioner of Customs (EP), Mumbai 2008 (224) ELT241 (Tri. Mumbai);
- That the impugned goods are correctly classifiable under CTH 85249900 and they identified their bonafide mistake and had suo moto made an application for amendment of the bill of entry filed after making payment of differential duty;
- That payment of differential duty alongwith interest has already made;
- That impugned goods are not available for confiscation under Section 111 (m) of the Customs Act, 1962 and submitted that there was no mis-declaration or in any other particular with the entry made under the Customs Act; that they had declared an incorrect classification due to the human mistake and had suo motto corrected the same, therefore, the proposal for confiscation of the impugned goods under Section 111(m) of the Customs Act is not sustainable in law; that they placed reliance on case law of Northern Plastics Ltd. Vs. Commissioner of Central Excise, Ace Kargoways Vs. Commissioner of Customs 2003 (158) ELT 505 (T) , Commissioner of Customs Vs. Maruti Udyog Ltd. 2002 (141) ELT392 (T) and Hindustan Lever Ltd. Vs. Commissioner of Customs 1996 (83) ELT 520 and Metro Tyres Ltd. Vs. Commissioner of Central Excise 1994 (74)ELT 964; that provisions of Section 111 of the Customs Act, not invocable for goods already cleared and placed reliance on decision of Bussa Overseas & Properties Vs. C.L. Mahar, Assistant Commissioner of Customs, Bombay 2004 (163) ELT304 (Bom.) maintained by Hon'ble Supreme Court reported at 2004 (163)ELTA160(SC);
- That the subject goods are not liable for confiscation under Section 111 (m) of the Customs Act, 1962, therefore Redemption fine not imposable;
- That no interest can be demanded when duty demand is not sustainable;

- That no penalty can be imposed on the noticee under Section 114A of the Customs Act and placed reliance on case laws of Collector of Central Excise Vs. H.M.M. Ltd 1995 (76) ELT 497 (SC), Bahar Agrochem & Feeds Pvt. Ltd Vs. Commissioner of Central Excise, Pune 2012 (277) ELT 382 (Tri. Mum) and Digital Systems Vs. Commissioner of Customs 2003 (154) ELT 71;

**16.2** The importer vide their letter dated 27.02.2024 submitted their additional submission wherein they interalia stated as under:

- That the referred four bills of entry were provisionally assessed and final assessment is pending in absence of an SVB order;
- That there was no deliberate mis-declaration or malafide intention on their part and corrective measures were taken promptly upon the identification of the error;
- That they have full amount of the demanded differential duty of Rs. 1,94,30,406/- through TR-6 Challan dated 04.03.2023 alongwith interest of Rs. 13,62,404/- and hence rendering the demand under Section 28 (4) of the Customs Act, 1962 is not required;
- That they prayed for dropping of demand penalty and confiscation proposed in the Show Cause Notice.

**17 Personal Hearing:** Personal hearing in the matter was fixed on 31.01.2024. However, since nobody turned up for hearing, next date of personal hearing was fixed on 20.02.2024. DGM of the importer vide E mail dated 20.02.2024 stated that they have already paid the differential duty alongwith interest, hence they may be exempted from personal Hearing. However, personal hearing was held on 27.02.2024 wherein Shri Mukesh Soni, Deputy General Manager (Finance) of importer reiterated the submission as detailed in their written submission dated 20.02.2024 and 27.02.2024.

**18. Findings:** I have carefully gone through the Show Cause Notices dated 25.05.2023 and written submissions dated 20.02.2024 and 27.02.2024 filed by the importer as well as the records of Personal Hearing held on 27.02.2024.

**19.** The issues for consideration before me in these proceedings are as under:-

(a) Whether classification of the goods 'DISPLAY UNIT/ DISPLAY ASM VIDEO (AUTOMOTIVE PARTS)' imported by M/s. MG Motors India Private Limited by declaring it under Customs Tariff Heading No.85437099 should be rejected and it should be classified under Customs Tariff Heading No. 85249900?

(b) Whether Differential Duty amounting to Rs.1,94,30,406/- (Rupees One Crore, Ninety Four Lakh, Thirty Thousand, Four Hundred and Six only) for the Bills of Entry mentioned in Table-I to Show Cause Notice should be demanded and recovered under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28 AA of the Customs Act, 1962?

(c) Whether the imported goods having total assessable value of Rs. 19,95,93,278/- (as mentioned at Table-I of Show Cause Notice) should be held liable for confiscation under Section 111(m) of the Customs Act, 1962 and whether redemption fine should be imposed in lieu of confiscation under the provisions of Section 125 of the Customs Act, 1962?

(d) Whether Penalty should be imposed under Section 114A of the Customs Act, 1962?

**20.** I find that Points at Sr. No. (b), (c) and (d) in Para 19 viz. Duty liability with interest, Confiscation, Redemption fine and penal liabilities would be relevant only if the basic issue mentioned at Sr. No. (a) of Para 19 is answered in the affirmative. Thus, the basic issue of Para 19 (a) is taken up first for examination.

**21. The basic issue in the instant case is whether classification of the goods 'DISPLAY UNIT/ DISPLAY ASM VIDEO (AUTOMOTIVE PARTS)' imported by M/s. MG Motors India Private Limited merits classification under Customs Tariff Item No. 85437099 as claimed by the importer or the same merits classification under Customs Tariff Item No. 85249900 as claimed by the department?**

**21.1** I find that the importer had declared imported goods "Display Unit (Display ASM Video) (Automotive Parts)" under Customs Tariff Heading No. 85437099, which is for "Electrical machines and apparatus having individual functions, not specified or including elsewhere in this Chapter". Further, as the importer is in the business of manufacturing of Motor Cars, therefore, on scrutiny of the description, the imported goods is found to be 'Display Panels (for car audio system)'.

**21.2** I find that Hon'ble Supreme Court in case of O.K. Play (India) Ltd. Vs. CCE, Delhi-III, Gurgaon 2005 (180) ELT 300 (SC) has held that "for determination of classification of goods, three main parameters are to be taken into account: first HSN along with the explanatory notes provide a safe guide for interpretation of an Entry, second equal importance is required to be given to the Rules of Interpretation of the Tariff and third functional utility, design, shape and predominant usage have also got to be taken into account while determining the classification. These aids and assistance are more important than names used in trade or in common parlance."

**21.3** I find that in case of Pandi Devi Oil Industry Vs. Commissioner of Customs, Trichy 2016 (334) ELT 556 (Tri. Chennai), the Hon'ble Tribunal has held that "it is settled law that for classification of any imported goods, the principles and guidelines laid down in General Interpretative Rules for classification should be followed and the description given in chapter sub heading and chapter notes, section note should be the criteria'

**21.4** The classification is decided as per General Rules of Interpretation of the Schedule-I of the Customs Tariff Act, 1975. Rule 1 of the General Rules of Interpretation is reproduced below:

*"Classification of goods in this Schedule shall be governed by the following principles:*

*"Rule 1 - The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require,.....".*

**21.5** As per the above Rule-1, Chapter Note and Section Note decide the classification. In the instant case, Chapter Note 7 of Chapter 85 of Schedule 1 of Customs Tariff Act, 1975 is relevant. Chapter Note 7 of Chapter 85 is reproduced below:

*"For the purposes of heading 8524, -flat panel display modules refer to devices or apparatus for the display of information, equipped at a minimum with a display screen, which are designed to be incorporated into articles of*

other headings prior to use. Display screens for flat panel display modules include, but are not limited to, those which are flat, curved, flexible, foldable or stretchable in form. Flat panel display modules may incorporate additional elements, including those necessary for receiving video signals and the allocation of those signals to pixels on the display. However, heading 8524 does not include display modules which are equipped with components for converting video signals (e.g., a scaler IC, decoder IC or application processor) or have otherwise assumed the character of goods of other headings.

For the classification of flat panel display modules defined in this Note, heading 8524 shall take precedence over any other heading in the Nomenclature.”

**21.6** I find that vide Section 104 (iii) of the Finance Act, 2021, after tariff item 85238090, entry related to CTH 8524 have been inserted which is re produced as under:

**FINANCE ACT, 2021:**

**104. (iii) Amendment of First Schedule.** — In the Customs Tariff Act, the First Schedule shall -

(iii) with effect from the 1st January, 2022, be also amended **in the manner specified in the Fourth Schedule.**

(xii) after tariff item 8523 80 90, the following shall be inserted, namely :—

“8524	FLAT PANEL DISPLAY MODULES, WHETHER OR NOT INCORPORATING TOUCH-SENSITIVE SCREENS			
	- Without drivers or control circuits :			
8524 11 00	--Of liquid crystals			
8524 12 00	- -Of organic light-emitting diodes (OLED)	u	15%	-
8524 19 00	- -Other	u	15%	-
	- Other :			
8524 91 00	- -Of liquid crystals	u	15%	-
8524 92 00	- -Of organic light-emitting diodes (OLED)	u	15%	-
8524 99 00	- -Other	u	15%	-”;

I find that after the inclusion of “Flat Panel Display Modules, whether or not incorporating touch- sensitive screen” of CTH 8524 vide the Finance Act, 2021, it is crystal clear that impugned imported goods “Display Unit (Display ASM Video) (Automotive Parts)” imported by the importer merit classification under Customs Tariff Item No. 85249900.

**21.7** I find that in past, the importer had imported similar goods. In respect of Bill of Entry No. 3189326 dated 06.11.2022 for clearance of “Display Unit (Display ASM Video) (Automotive Parts)” under Customs Tariff Heading No. 85437099, the Department had raised query dated 18.11.2022 to the importer that “ For item No. 4, as goods appears to be “Flat Panel Display Unit. Therefore, it appears that the merit classification of the imported goods is to be under CTH 8524. Please justify the declared classification with pictorial catalogue”. The importer vide reply dated 17.11.2022 uploaded the catalogue wherein it is stated that “Display Unit (Display ASM Video) –The part is touch screen is required to show display of a controller which need to be connected to it. Controller is not of this unit”. On harmonious reading of said reply dated 17.11.2022, the amendment made in the First Schedule to the Customs Tariff vide Section 104 (iii) of the Finance Act, 2021 and Chapter Note 7 of the Chapter 85 of the Customs Tarff, the merit classification of imported good viz. ‘Display Unit/ Display ASM

Video (Automotive Parts)' is Customs Tariff Item No. 85249900 and not Custom Tariff Item No. 85437099 as classified by the importer.

Further, importer vide their reply dated 23.11.2022 agreed with the Department's view for classification of impugned goods under Custom Tariff Item No. 85249900 and requested to reassess the said Bill of Entry No. 3189326 dated 06.11.2022 by changing Custom Tariff Item No. 85432099 to Customs Tariff Item No. 85249900. Accordingly, Additional Commissioner of Customs vide Order In Original No. Mis-Declaration/ADC/ICD Dasharath/07/MGM/22-23 dated 13.12.2022 have changed the classification of impugned goods from Customs Tariff Item No. 85437099 to Customs Tariff Item No. 85249900 in respect of aforesaid Bill of Entry No. 3189326 dated 06.11.2022. and the importer has paid the differential duty alongwith interest, fine and penalty.

**21.8** Further, I find that a consultative letter dated 19.12.2023 was issued by the department informing the importer regarding mis classification of impugned goods under Custom Tariff Item No. 85437099 in respect of Bills of Entry as mentioned in Table-I of the Show Cause Notice. The importer, vide their letter dated 11.01.2023 have interalia stated that 'they have already agreed with the classification suggested by the department and they were bound to change CTH for all the historical shipments' and importer paid the entire amount of differential duty along with interest in respect of Bills of Entry covered in the Table-I to the Show Cause Notice vide Challan No. 602/04.03.2023. Further, in their written submission dated 20.02.2024, they have specifically stated that due to bonafide error and human mistake, it continued to be declared under old CTH 85437099, for the Bill of Entry No. 3477305 dated 26.11.2022 filed subsequent to acceptance of classification of impugned goods under Customs Tariff Item No. 85249900. Thus, I find that importer is not disputing the facts that "Display Unit (Display ASM Video) (Automotive Parts)" merit classification under Custom Tariff Item No. 85249900.

**22. Whether the imported goods having total assessable value of Rs. 19,95,93,278/- (as mentioned at Table-I of the Show Cause Notice) should be held liable for confiscation under Section 111(m) of the Customs Act, 1962 and whether redemption fine should be imposed in lieu of confiscation under the provisions of Section 125 of the Customs Act, 1962?**

**22.1** Show Cause Notice proposes confiscation of the impugned imported goods under Section 111(m) of the Customs Act, 1962. If the goods have been described wrongly or the value of the goods has been incorrectly declared, such goods would come under the purview of Section 111(m) of Customs Act, 1962. It is to reiterate that in the present case, it is an admitted fact that the classification of the product are mis-declared in the concerned Bills of Entry with an intention to avoid higher rate of Customs Duty applicable to the "Flat Panel Touch Screen Display Units"(of the kind to be used for Car Audio System)" falling under Customs Tariff Item No. 85249900. They mis-classified the impugned goods either as "Display Unit (Display ASM Video) (Automotive Parts)" or "Display ASM Video (Automotive Parts)" under Custom Tariff Item No. 85437099. By way of adopting this modus in respect of impugned goods, importer had cleared goods valued at **Rs. 19,95,93,278/-** by paying Customs Duty at the rate of **27.735% (7.5% BCD + 10% SWS + 18% IGST)** in place of paying Duty at the appropriate rate i.e. **37.47% (15% BCD + 10% SWS + 18% IGST)**. Thus Importer has deliberately and knowingly indulged in wilful misstatement and suppression of facts in respect of their imported product and has wilfully mis-classified the goods with intent to evade payment of higher rate of Customs Duty and also contravened the provisions of Section 46(4) of the Customs Act, 1962. In terms of Section 46(4) of the Customs Act, 1962, the Importer is required to make and subscribe to a declaration as to truth of the contents of the Bills of Entry submitted for

assessment of Customs Duty. Section 111 (m) of the Customs Act, 1962 provides for confiscation of any imported goods which do not correspond in respect of value or in any other particular with the entry made under this Act. In this case, Importer has resorted to mis-classification of the goods by wrongly classifying it under Customs Tariff Item No. 85437099 instead of Customs Tariff Item No. 85249900 in the Bills of Entry filed by them as detailed in Table-I to the Show Cause Notice with an intention to avoid higher Duty liability that would have accrued to them if they had correctly classified the same. Thus, provisions of Section 111(m) of the Customs Act, 1962 would come into picture. I thus find that willful mis-declaration of classification of the impugned goods and suppression of correct classification of the impugned goods by the importer has rendered the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962.

**22.2** I find that the importer has contended that Section 111 is not applicable to goods already cleared after import; that in the present case, Section 111(m) cannot be invoked as there has been no mis-declaration in terms of the value or material particulars in relation to the goods as discussed under the preceding grounds. They have also relied upon few judgements to support their contention. In this regard, I find that the applicability of Section 111(m) of the Customs Act, 1962 in the present case as well as the reason as to why the provisions of Section 111(m) have been invoked has already been discussed in details in para 22.1 supra which is self explanatory. In view of the above, the contention of importer is not worth considering and not tenable. Resultantly, the ratio of the judgements relied upon by them are not applicable in the present case.

**22.3** As the impugned goods are found liable to confiscation under Section 111 (m) of the Customs Act, 1962, I find it necessary to consider as to whether redemption fine under Section 125(1) of Customs Act, 1962 is liable to be imposed in lieu of confiscation in respect of the imported goods, which are not physically available for confiscation. Section 125 (1) of the Customs Act, 1962 reads as under:-

**“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...”

**22.4** The importer has contested that the Provisions of Section 111 of the Customs Act, 1962 are not invokable for the goods already cleared. I find that though, the goods are not physically available for confiscation and in such cases redemption fine is imposable in light of the judgment in the case of **M/s. Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad)** wherein the Hon’ble High Court of Madras has observed as under:

*“The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the*

goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. 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. We accordingly answer question No. (iii)."

**22.5** Hon'ble High Court of Gujarat by relying on this judgment, in the case of **Synergy Fertichem Ltd. Vs. Union of India, reported in 2020 (33) G.S.T.L. 513 (Guj.)**, has held interalia as under:-

**174.** ..... In the aforesaid context, we may refer to and rely upon a decision of the Madras High Court in the case of *M/s. Visteon Automotive Systems v. The Customs, Excise & Service Tax Appellate Tribunal*, C.M.A. No. 2857 of 2011, decided on 11th August, 2017 [2018 (9) G.S.T.L. 142 (Mad.)], wherein the following has been observed in Para-23;

"23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. 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. We accordingly answer question No. (iii)."

**175. We would like to follow the dictum as laid down by the Madras High Court in Para-23, referred to above."**

**22.6** In view of the above, I find that redemption fine under Section 125 (1) is liable to be imposed in lieu of confiscation of imported goods having assessable value of **Rs. 19,95,93,278/-** as mentioned in Table-I of Show Cause Notice.



**23. Whether Differential Duty amounting to Rs.1,94,30,406/- (Rupees One Crore, Ninety Four Lakh, Thirty Thousand, Four Hundred and Six only) for the Bills of Entry mentioned in Table-I of the Show Cause Notice should be demanded and recovered under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28 AA of the Customs Act, 1962?**

**23.1** Keeping the aforesaid discussion in mind, I proceed to examine the applicability of Section 28 (4) of the Customs Act, 1962. The importer had declared the description of the items either as "Display Unit (Display ASM Video) (Automotive Parts)" or "Display ASM Video (Automotive Parts)". However, these items were "Flat Panel Touch Screen Display Units" (of the kind to be used for Car Audio System) of Customs Tariff Item No. 85249900. I find that in case of past import of similar item, in respect of Bill of Entry No.3189326 dated 06.11.2022, the importer had classified the impugned goods under Custom Tariff Item No. 85437099. The said Bill of Entry No.3189326 dated 06.11.2022 was under RMS facilitation and under the RMS facilitation, examination had not been prescribed for the said B/E, however, on scrutiny of the declared description at the time of out of charge, it was noticed that importer had mis-classified the impugned imported goods under Custom Tariff Item No. 85437099 instead of merit classification under Custom Tariff Item No. 85249900. Therefore, query dated 18.11.2022 was raised to the importer that "For item No. 4, as goods appears to be "Flat Panel Display Unit. Therefore, it appears that the merit classification of the imported goods is to be under CTH 8524. Please justify the declared classification." The importer vide reply dated 23.11.2022 stated that "We are agree with the department view for CTH. Please re-assess BOE by changing CTH from 85437099 to 85249900". However, in subsequent import of similar goods, importer filed Bill of Entry No. 3477305 dated 26.11.2022 and mis classified the imported goods under Customs Tariff Item No. 85437099 and short paid the Customs duty which proves their *mens rea* that with clear intent to evade the payment of Customs Duty, the importer had mis-classified their imported goods under CTI 85437099 instead of merit classification under CTI 85249900. Therefore, differential duty is rightly demanded invoking the provision of extended period as envisaged under Section 28 (4) of the Customs Act, 1962.

**23.2** Further, I find that in case of past import of similar item, the Additional Commissioner of Customs vide Order In Original No. Mis-Declaration/ADC/ICD Dasharath/07/MGM/22-23 dated 13.12.2022 have changed the classification of impugned goods from Customs Tariff Item No. 85437099 to Customs Tariff Item No. 85249900 in respect of Bill of Entry No. 3189326 dated 06.11.2022. Accordingly, The importer has paid the differential duty of Rs.1,46,00,039/-, Interest Rs. 2,76,001 Redemption Fine Rs. 50,00,000/- and Penalty Rs.14,60,000/- on 24.12.2022. Further, The importer has not produced any evidence to the effect that any appeal has been filed by the importer against the above referred Order-In-Original No. Mis-Declaration/ADC/ICD Dasharath/07/MGM/22-23 dated 13.12.2022.

**23.3** Further, I find that only after the issuance of the consultative letter dated 19.12.2023 by the department informing the importer regarding mis classification of impugned goods under Custom Tariff Item No. 85437099 in respect of Bills of Entry mentioned in Table-I at Para 10 of the Show Cause, the importer paid the differential duty of Rs. 1,94,30,406/- alongwith interest of Rs. 13,62,404/- on 04.03.2023 vide Challan No. 602/04.03.2023. Thus, I find that importer had clear intent to evade the Customs Duty and had it been not detected by the Department, importer would have never come forward and paid the differential duty. Therefore, I find that differential duty demanded invoking the extended period under Section 28 (4) of the Customs Act, 1962 is just and proper as they



have knowingly mis-stated the classification in the Bills of Entry with malafide intention to evade payment of duty.

**23.4** It has also been proposed in the Show Cause Notices to demand and recover interest on the aforesaid differential Customs Duty under Section 28AA of the Customs Act, 1962. Section 28AA *ibid* provides that when a person is liable to pay Duty in accordance with the provisions of Section 28 *ibid*, in addition to such Duty, such person is also liable to pay interest at applicable rate as well. Thus the said Section provides for payment of interest automatically along with the Duty confirmed/determined under Section 28 *ibid*. I have already held that Customs Duty amounting to Rs. 1,94,30,406/- is liable to be recovered under Section 28(4) of the Customs Act, 1962, therefore, I hold that interest on the said Customs Duty determined/confirmed under Section 28(4) *ibid* is to be recovered under Section 28AA of the Customs Act, 1962.

I find that differential duty of Rs. 1,94,30,406/- alongwith interest paid on 04.03.2023 vide Challan No. 602/04.03.2023 by the importer is required to be appropriated against their Duty and interest liability demanded under Section 28 (4) and Section 28AA respectively of the Customs Act, 1962.

**24. Whether the Importer is liable for penalty under Section 114A of the Customs Act, 1962:**

**24.1** Now, I proceed to consider the proposal of penalty under Section 114A of the Customs Act, 1962 against the importer. I find that demand of differential Custom Duty amounting to Rs. 1,94,30,406/- has been made under Section 28(4) of the Customs Act, 1962, which provides for demand of Duty not levied or short levied by reason of collusion or wilful mis-statement or suppression of facts. Hence as a naturally corollary, penalty is imposable on the Importer under Section 114A of the Customs Act, which provides for penalty equal to Duty plus interest in cases where the Duty has not been levied or has been short levied or the interest has not been charged or paid or has been part paid or the Duty or interest has been erroneously refunded by reason of collusion or any wilful mis statement or suppression of facts. In the instant case, the ingredient of wilful mis-statement and suppression of facts by the importer has been clearly established as discussed in foregoing paras and hence, I find that this is a fit case for imposition of quantum of penalty equal to the amount of Duty plus interest in terms of Section 114A of the Customs Act, 1962.

**24.2** I find that the importer has contended that in terms of various judgments of the Hon'ble Supreme Court, various High Courts and Tribunals, penalty cannot be imposed on the Noticee in the absence of mensrea on part of the Noticee and it is a settled law that when the Noticee is under a bona fide belief that a particular article is classifiable under a particular entry, penalty cannot be imposed on the Noticee, if ultimately it is found that the particular article is classifiable under some other entry. The Noticee has relied on few judgements in support of their contention. In this regard, the mens rea on the Part of the Noticee i.e. knowingly and intentionally mis-classifying the impugned imported goods with an intent to avoid payment of applicable rate of Customs Duty has already been discussed in detail in the foregoing paras which needs no repetition. For this very reason, I find the contentions of the importer are not tenable. I, therefore, find that ratio of the judgements referred to by importer are not applicable in the present case.

**25.** Importer has contended that the present Show Cause Notice is invalid in the absence of valid appeal against the out of charge/Bills of Entry; that assessment orders being quasi-judicial orders cannot be sought to be set aside by mere issuance of a Show Cause Notice, which has proposed to modify the assessment orders in the instant case. The Noticee has relied upon few judgements to support

their contention. In this regard, I find that the provisions for order for assessment and permitting clearance of goods for home consumption are governed under Section 47 of the Customs Act, 1962. In the case of **M/s Jain Shudh Vanaspati Ltd. reported at 1996 (86) ELT 460 (SC)**, the Hon'ble Apex Court has held that demand under Section 28 of the Customs Act, 1962 can be issued without revising the order passed under Section 47 of the Customs Act, 1962 and the relevant text of the said judgment reads as under:

***It is patent that a show cause notice under the provisions of Section 28 for payment of Customs duties not levied or short-levied or erroneously refunded can be issued only subsequent to the clearance under Section 47 of the concerned goods. Further, Section 28 provides time limits for the issuance of the show cause notice thereunder commencing from the "relevant date"; "relevant date" is defined by sub-section (3) of Section 28 for the purpose of Section 28 to be the date on which the order for clearance of the goods has been made in a case where duty has not been levied; which is to say that the date upon which the permissible period begins to run is the date of the order under Section 47. The High Court was, therefore, in error in coming to the conclusion that no show cause notice under Section 28 could have been issued until and unless the order under Section 47 had been first revised under Section 130.***

The above order has been followed in a number of judicial pronouncements by the CESTAT out of which the relevant text of the case of **M/s Asia Motor Works reported at 2020 (371) ELT 729 (T)** is reproduced under:

***It has been argued by the Ld. Counsel for AMW that since the assessment has not been challenged, demand under Section 28 cannot be raised. In this regard Ld. AR had relied on decision of Ld. Apex Court in case of Jain Shudh Vanaspati Ltd. (supra) wherein it has been held that the demand can be raised under Section 28 even if challenging assessment. Consequently this argument of Ld. Counsel for AMW is rejected.***

In view of the express order of the Hon'ble Apex Court, I find that the contentions of the importer is not tenable.

26. In view of my findings in the paras *supra*, I pass the following order:

**:ORDER:**

**26.1.** I reject the declared classification of 'DISPLAY UNIT/ DISPLAY ASM VIDEO (AUTOMOTIVE PARTS)' imported by M/s. MG Motor India Private Limited vide Bills of Entry as detailed in Table-I of the Show Cause Notice under Customs Tariff Item No. 85437099 and order to re-classify the same under Customs Tariff Item No. 85249900 and re-assess the same at the rate of Customs Duty of 37.47 % (15% BCD + 10% SWS + 18% IGST), in place of assessed rate of Customs Duty of 27.735% (7.5% BCD + 10% SWS + 18% IGST) under Section 17 of the Customs Act, 1962.

**26.2** I hold the subject goods having assessable value of Rs. 19,95,93,278/- (Rupees Nineteen Crore, Ninety Five Lakh, Ninety Three Thousand, Two Hundred and Seventy Eight only) imported by M/s. M.G. Motors India Pvt. Ltd. (as detailed in Table-I of the Show Cause Notice) by mis-classifying the said goods, liable to confiscation under Section 111 (m) of the Customs Act, 1962. However, I give them the option to redeem the goods on payment of Fine of Rs.50,00,000/- (Rupees Fifty Lakh only) under Section 125 of the Customs Act, 1962.

**26.3** I confirm the demand of differential duty of Rs.1,94,30,406/- (Rupees One Crore, Ninety Four Lakh, Thirty Thousand, Four Hundred and Six only) alongwith interest for the Bills of Entry mentioned in Table-I of Show Cause Notice, and order recovery of the same in terms of the provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28 AA of the Customs Act, 1962. I order to appropriate the duty of Rs.1,94,30,406/- and interest of Rs. 13,62,404/- already paid by M/s. M.G. Motors India Pvt. Ltd on 04.03.2023 vide Challan No. 602/04.03.2023.

**26.4** I impose penalty of Rs. 1,94,30,406/- (Rupees One Crore, Ninety Four Lakh, Thirty Thousand, Four Hundred and Six only) plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed above on M/s. M.G. Motor India Pvt. Ltd. under Section 114A of the Customs Act, 1962 in respect of Bills of Entry detailed in Table-I of the Show Cause Notice. However, in view of the first and second proviso to Section 114A of the Customs Act, 1962, if the amount of Customs Duty confirmed and interest thereon is paid within a period of thirty days from the date of the communication of this Order, the penalty shall be twenty five percent of the Duty, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days.

**27.** This order is issued without prejudice to any other action that may be taken against the importer or any other person under the provisions of the Customs Act, 1962 and Rules/Regulations framed thereunder or any other law for the time being in force.

**28.** The Show Cause Notices F. No. VIII/10-42/Commr./O&A/2022-23 dated 25.05.2023 is disposed off in above terms.

  
**(Shiv Kumar Sharma)**  
Principal Commissioner

**DIN-20240571MN0000816758**

F.No. VIII/10-42/Commr./O&A/2022-23

Date:10.05.2024.

To,  
**M/s. MG Motor India Private Limited.,**  
**Block – B, GIDC Indl. Estate,**  
**Halol, Vadodara, Gujarat -389351.**

**Copy to:**

1. The Chief Commissioner of Customs, Gujarat Zone, Ahmedabad, for information please.
2. The Deputy/Assistant Commissioner of Customs, ICD, Dashrath, Vadodara.
3. The Superintendent of Customs (Systems), Ahmedabad in PDF Format for uploading on the website of Customs Commissionerate, Ahmedabad.
- ✓ 4. Guard File.