

	<p style="text-align: center;">अपर आयुक्त का कार्यालय, सीमा शुल्क Office of the Additional Commissioner of Customs आई .सी .डी - .तुम्ब Inland Container Depot (ICD) - Tumb सर्वे.न.: ४४/१/पी.के.२, गाँव - तुम्ब, तालुका-उमरगांव, जिला -वलसाड, गुजरात: -३९६१५० (S. No. 44/1/P.K. 2, Village-Tumb, Tal.: Umbergaon, Dist.: Valsad, Gujarat-396150) e-mail: cusicd-tumb@gov.in</p>
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Date: 13.01.2025

F. No.	: CUS/SHED/144/2024-ICD-UMGN-CUS-COMMRTE-AHMEDABAD
Name and Address of the Importer	1. M/s. Goldi Solar Private Limited (IEC-5211000064) 1009, 10 th floor, Infinity Tower, Nr. Railway Station, Lal Darwaja Surat, Gujarat-395008.
Order - in - Original No.	07/AR/ADC/TUMB/2024-25
DIN	20250171MN000000D714
Passed by	ARUN RICHARD Additional Commissioner, Customs.
Date of Order	13-01-2025
Date of Issue	13-01-2025

(1) जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।

(1) This copy is granted free of charge for the use of the person, to whom it is issued.

(2) इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 60 (साठ) दिन के अन्दर आयुक्त (अपील), सीमाशुल्क, चौथा तल, हुडको भवन, स्टेडियम के पास, आश्रम रोड, नवरांगपुरा, अहमदाबाद, **380009** में दाखिल कर सकता है।(2) Any person deeming himself aggrieved by this order may appeal against the order to the Commissioner of Customs (Appeal), 4th Floor, HUDCO Bhawan, Near Stadium, Navarangpura, Ahmedabad – 380 009 within sixty (60) days from the date of receipt of the order.

(3) इस अपील पर रु. 2.00 (दो रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएँ।

1. उक्त अपील की प्रति।
2. निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिस पर रु. 2.00 (दो रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

(3) The appeal should bear a Court fee stamp of Rupees Two only (Rs. 2.00/), and it must be accompanied by:

- i. A copy of the appeal and
- ii. This copy or any copy of this order will must bear a Court fee Stamp of Rupees Two only (Rs. 2.00/-).

(4) इस आदेश के विरुद्ध आयुक्त (अपील), सीमाशुल्क, में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुरमाना का विवाद है अथवा जुरमाना जहां शीर्फ़ जुरमाना के बारमें विवाद है उसका भुक्तान करके अपील की जा शकती है। ऐसा न करने पर ये अपील सीमाशुल्क अधिनियम, 1962 की धारा 129 के प्रावधारों के तहत अस्वीकार कर दिया जा सकता है।

(4). An appeal against this order shall lie before the Commissioner of Customs (Appeals) 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" and failing which, the appeal is liable to be rejected for non-compliance of the provisions of Section 129 of the Customs Act, 1962.

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FACTS OF THE CASE IN BRIEF:

M/s Goldi Solar Private Limited (IEC-5211000064) (hereinafter referred to as 'the importer' or "M/s. GSPL for the sake of brevity"), having registered address as 1009, 10th floor, Infinity Tower, Nr. Railway Station, Lal Darwaja Surat, Gujarat-395008 (formally known as M/s Goldi Green Technologies Pvt. Ltd.) is engaged in the manufacturing of solar panels/modules, engineering procurement and construction of solar projects.

2. Intelligence was developed by the Directorate of Revenue Intelligence, Regional Unit, Jaipur (hereinafter referred to as 'the DRI, Jaipur') indicating that M/s Goldi Solar Private Limited (IEC-5211000064) were availing, as it appeared, ineligible benefits of exemption of Customs duty under Sr. No. 18 of Notification No. 25/1999-Customs dated 28.02.1999 [RUD No. 1] while importing the back sheet to be used for manufacturing of solar panels/modules.

3. The imported item namely the back sheet (for manufacturing of solar panels/modules) appeared not eligible for the exemption under Sr. No. 18 of the Notification No. 25/1999-Customs dated 28.02.1999 as the subject goods appeared neither specified in column no. (3) nor falling under the chapter or heading or sub-heading or tariff items specified in the corresponding column (2) of the table provided under the said notification.

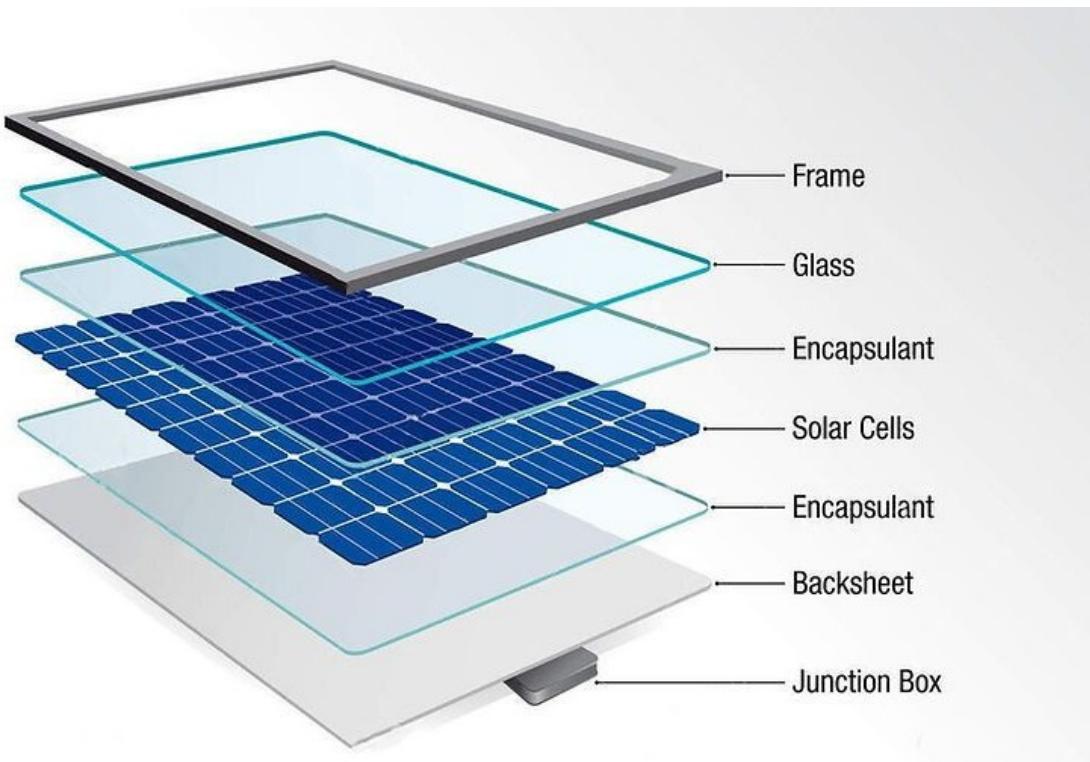
3.1 The relevant entries of the Notification No. 25/1999-Customs dated 28.02.1999 are produced as follows: -

Notification No. 25/1999-Cus dated 28.02.1999- (List-A); Serial number 18:

S No	Heading, sub-heading, or	Description of imported goods	Description of finished goods
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tariff item			
(1)	(2)	(3)	(4)
..
18	28,38,39,70,74,7 6	Aluminium paste, ethylene vinyl acetate sheets (EVA); primer for EVA; crane glass; tedlar coated Aluminium sheet; phosphorous oxychloride; halo carbon (CF4)/ freon gas; tinned copper interconnect; toughened glass with low iron content and transmissivity of min. 90% and above; multilayered sheets with Tedlar base; Fluro polymer resin; ultra-high purity (UHP) silane in UHP nitrogen; UHP silane; diborane in UHP silane; MOCVD grade phosphine in UHP silane; silver sputtering target; high purity tin tetrachloride; nitrogen trifluoride of 99 % purity and above.	Solar Cells/Modules .
..

4. Hence, it appears that these imported goods do not fulfill the conditions required to be eligible for exemption benefits under Sr. No. 18 of the Notification No. 25/1999-Customs dated 28.02.1999. So, it appears that the importer has not paid the liable Basic Customs Duty and SWS, and the short paid IGST thereof. Structure of a solar panel/module is shown below, as per information available on <https://www.scientificworldinfo.com/2021/10/best-materials-for-solar-modules-and-eva.html> :



5. Summons dated 20.03.2023 was issued to M/s Goldi Solar Private Limited to appear on 28.03.2023. However, as no one appeared on behalf of the importer; another summons dated 28.03.2023 was issued to M/s Goldi Solar Private Limited to appear on 10.04.2023. In response to the summons dated 28.03.2023, Shri Alpesh Dave S/o Shri Jagdish Chandra, Senior General Manager, M/s Goldi Solar Private Limited, 1009, 10th floor, infinity tower, Nr., railway station, Surat, Gujarat- 395003 appeared on 10.04.2023 for giving his statement. His statement was recorded under section 108 of the customs Act, 1962 on 10.04.2023, wherein he inter alia, stated that: –
 - On being asked about the eligibility of benefits of Sr. No. 18 of Notification No. 25/1999-Cus on the items namely "Backsheet", he stated that item namely Backsheet/Solar Backsheet as declared by them in the Bills of Entry is also known as "multilayered sheet with Tedlar base" which has a specific entry at Sr. No. 18 of Notification No. 25/1999 dated 28.02.1999. Therefore, they have rightly availed of the benefits of Sr. No. 18 of Notification No. 25/1999 dated 28.02.1999 on the import of the subject item. Further, in support of their claim, they would submit the technical write-up along with the datasheet within a week.
6. M/s Goldi Solar Pvt. Ltd. vide their e-mail dated 28.04.2023 submitted the technical write-up for the product namely Backsheet. As per the technical write-up provided by M/s Goldi Solar Pvt. Ltd., the subject imported goods – Backsheet is a multilayered sheet, out of which tedlar is one type of layer. However, the claim of the

importer doesn't appear justifiable as the Tedlar® is a registered trademark of Dupont TM. As per the technical writeup available on the website of Dupont company (<https://www.dupont.com/brands/tedlar-60-years-superior-protection.html>), the tedlar is a polyvinyl fluoride film product which is a registered trademark of their company. It is used in solar modules, aircraft, wall covering, etc.

SUMMARY OF THE INVESTIGATION

Non-payment of applicable Customs duties, as it appeared, by wrong availment of the exemption benefits under Sr. No. 18 of Notification No.25/1999-Customs on import of “Backsheet”

7. M/s. Goldi Solar Pvt. Ltd. had appeared to have wrongly availed of the exemption benefits of Sr. No. 18 of Notification No. 25/1999 on the import of goods namely Backsheet for solar modules as detailed in Annexure-A to this notice, as the same appeared not specified at the Sr. No. 18 of List A of the subject notification. The Sr. No. 18 of Notification No. 25/1999 dated 28.02.1999 provides for BCD exemption for the following goods viz., "Aluminium paste; ethylene vinyl acetate sheets (EVA); primer for EVA; Crane glass; tedlar coated aluminium sheet; phosphorous oxychloride; halo carbon (CF4)/Freon gas; tinned copper interconnect; toughened glass with low iron content and transmissivity of min. 90% and above; multilayered sheets with Tedlar base; fluro polymer resin; ultra-high purity (UHP) silane in UHP nitrogen; UHP silane; diborane in UHP silane,' MOCVD grade phosphine in UHP silane; silver sputtering target; high purity tin tetrachloride; nitrogen trifluoride of 99% purity and above".
8. Shri Alpesh Dave s/o Shri Jagdish Chandra, Senior General Manager, M/s. Goldi Solar Pvt. Ltd. (Importer) vide his statement dated 10.04.2023 stated that the item namely Backsheet/Solar Backsheet as declared by them in the Bills of Entry is also known as "multilayered sheet with Tedlar base" which has a specific entry at Sr. No. 18 of Notification No. 25/1999 dated 28.02.1999. However, the notification benefit appears applicable only if the subject multilayered sheets have a Tedlar base i.e., the goods should have the base sheet of Tedlar® which is a registered trademark of Dupont TM. The importer appeared that it had neither imported goods from Dupont nor they have uploaded any NOC from Dupont for using their registered trademark viz., Tedlar®. Further, on scrutiny of the technical write-up provided by the importer vide e-mail dated 28.04.2023 and available in the public domain and declaration by the importer in subject BoEs, it appears that the subject imported goods viz., "Backsheets for Solar Module/Panels", are being manufactured/supplied by M/s Cybrid Technologies Inc. or M/s. Jolywood (Suzhou) Solarwatt Co. Ltd by using their native trademark technology other than Tedlar®. Given the above, on examination of the details provided under Bills of Entry, it appears that the subject goods do not fall under the exemption given vide Sr. No. 18 of Notification No. 25/1999 dated 28.02.1999, and hence it appears that these goods are ineligible for the notification benefit and merit duty of BCD @ 10%, SWS @ 10% and IGST @ 18%. Further, from the scrutiny of import data, it appears that the importer has also imported similar goods by not availing the benefits of Sr. No. 18 of Notification-25/1999 vide BoEs other than those mentioned in Annexure-A attached with this

show cause notice viz. BoEs No. 5824652 dated 13.10.2021, 8407695 dated 25.04.2022, 3295244 dated 14.11.2022 etc. Thus, it appears that the importer was fully aware of the Notification No. 25/1999-Customs dated 28.02.1999 and the said notification was in the public domain too, however, the importer appeared to have randomly availed the undue exemption benefits of Notification No. 25/1999-Cus and thereby appeared has not paid the Basic Customs Duty (BCD) on the subject goods imported by them vide Bills of Entry listed in Annexure-A. Thus, it appears that the importer had willfully evaded the applicable Basic Customs Duty (BCD), SWS, and IGST thereof on the imported goods vide Bills of Entry as detailed in Annexure-A.

9. The importer has imported goods namely 'Solar Backsheet' by filing Bills of Entry as detailed in Annexure-A attached with this show cause notice. By non-payment of applicable customs duties (Basic Customs Duty and differential IGST), the importer appears to have evaded customs duty aggregating to Rs 29,31,557/- as detailed in the attached Annexure- A and tabled below:

TABLE - I

Sr. No.	Custom House Code	Description of Goods	Assessable Value (Rs.)	Differential Duty Payable (Rs.)
1.	INSAJ6	Back sheet	81,74,791/-	10,61,088/-
2.	INSAJ6	Back sheet	81,74,791/-	10,61,088/-
3.	INHZA1	Back sheet	62,35,601/-	8,09,381/-
		Total	2,25,85,183/-	29,31,557/-

10. The importer had subscribed to a declaration as to the truthfulness of the contents of the Bills of Entry in terms of Section 46(4) of the Customs Act, 1962 in all their import consignments. Further, consequent upon the amendments to Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-Assessment' has been introduced in Customs. Section 17 of the Customs Act, 1962 effective from 08.04.2011, provides for self-assessment of duty on imported goods by the importer by filing a Bill of Entry, in the electronic form. Section 46 of the Customs Act, 1962 makes it mandatory for the importer to make an entry for the imported goods by presenting a Bill of Entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulation, 2018 (issued under Section 157 read with Section 46 of the Customs Act, 1962), the Bill of Entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service center, a Bill of Entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under the scheme of self-assessment, it is the importer who has to ensure that he declares the correct description of the imported goods, their correct classification, the applicable rate of duty, value, and benefit of exemption notification claimed, if any, in respect of the imported goods while presenting the Bill of Entry. Thus, with the introduction of self-assessment by

amendment to Section 17, w.e.f. 8th April 2011, it is the responsibility of the importer to declare the correct description, value, notification, etc. and to correctly determine and pay the duty applies in respect of the imported goods. Further, the meaning and definition of assessment has been substituted by Finance Act, 2018 dated 29.03.2018, which states that “assessment” means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable with reference to the tariff classification of the imported goods, value of imported goods, exemption or concession of duty, tax, cess or any other sum consequent upon any notification issued in respect of imported goods, quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of imported goods, origin of imported goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods and any other specific factor which affects the duty, tax, cess or any other sum payable on imported goods and includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil, as determined in accordance with the provisions of the Customs Tariff Act. Thus, in the self-assessment regime, the onus is on the importer to correctly mention the applicable notifications and pay applicable duties, however, in the instant case, the importer appears to have failed in fulfilling its responsibility by not paying applicable Customs duties and the importer appears to have failed to maintain the accuracy and completeness of the details filed in the respective Bills of Entry for import of subject goods by wrong availment of exemption notification [Notification No. 25/1999-Cus dated 28.02.1999] and thereby appears to have evaded payment of Customs Duty.

11. The relevant provisions of law relating to the import of goods in general, the policy and rules relating to the liability of the goods to confiscation, and the persons concerned to penalty for improper importation under the provisions of Customs Act, 1962 and other relevant laws for the time being in force, are summarized as follows:

Provisions of Customs Act, 1962

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.*
2. *The proper officer may verify the 12 [the entries made under section 46 or section 50 and the self-assessment of goods referred to in the sub-section and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.*

[Provided that the selection of cases for verification shall primarily be based on risk evaluation through appropriate selection criteria.]

3. For [the purposes of verification] under sub-section (2), the proper officer may require the importer, exporter, or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce the such document or furnish such information.]
4. Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.
5. Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter 16[***] and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

Explanation – For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of section 17 as it stood immediately before the date on which such assent is received.

Section 28(4) of the Customs Act, 1962:

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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, because of,-
 - a. collusion; or
 - b. any wilful misstatement; or
 - c. suppression of facts,

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

Section 28AA of the Customs Act, 1962:

[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 by 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 a such erroneous refund, as the case may be, up to the date of payment of such duty. (3) Notwithstanding anything contained in sub-section (1), no interest shall be payable where,—*
 - a. *the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A; and*
 - b. *such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.]*

Section 46- Entry of goods on importation:

1. *The importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed:*

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in any other manner:

Provided further that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this subsection, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

2. *Save as otherwise permitted by the proper officer, a bill of entry shall*

include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

3. *The importer shall present the bill of entry under sub-section (1) before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrive at a customs station at which such goods are to be cleared for home consumption or warehousing:*

Provided that a bill of entry may be presented at any time not exceeding thirty days before the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India:

Provided further that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed.

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 the such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.*

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

- a. *the accuracy and completeness of the information given therein;*
- b. *the authenticity and validity of any document supporting it; and*
- c. *compliance with the restriction or prohibition, if any, relating to the goods under this Act or any other law for the time being in force.*
4. *If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit the substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa.*

Section 110AA. Action subsequent to inquiry, investigation or audit or any other specified purpose. -

Where in pursuance of any proceeding, in accordance with Chapter XIIA or this Chapter, if an officer of customs has reasons to believe that—

- a. *any duty has been short-levied, not levied, short-paid or not paid in a case where an assessment has already been made;*
- b. *any duty has been erroneously refunded;*
- c. *any drawback has been erroneously allowed; or*
- d. *any interest has been short-levied, not levied, short-paid or not paid, or*

erroneously refunded,

then a such officer of customs shall, after causing inquiry, investigation, or as the case may be, audit, transfer the relevant documents, along with a report in writing—

- i. *to the proper officer having jurisdiction, as assigned under section 5 in respect of assessment of such duty, or to the officer who allowed such refund or drawback; or*
- ii. *in case of multiple jurisdictions, to an officer of customs to whom such matter is assigned by the Board, in the exercise of the powers conferred under section 5,*

and thereupon, power exercisable under sections 28, 28AAA or Chapter X, shall be exercised by such proper officer or by an officer to whom the proper officer is subordinate in accordance with sub-section (2) of section 5]

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 any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment, referred to in the proviso to sub-section (1) of Section 54.

Section 112- Penalty for improper importation of goods, etc—Any person,—

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

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

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 partly paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful misstatement 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:

Section 114AA. Penalty for use of false and incorrect material. –

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

Section 125. Option to pay the 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 any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods³⁹[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:

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

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

2. Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.
3. Where any fine imposed under sub-section (1), is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

The Foreign Trade (Development and Regulation) Act, 1992

Section 11: Contravention of provision of this Act, rules, orders and exports and import policy: - (1) No export or import shall be made by any person except by the provisions of this Act, the rules and orders made thereunder and the export and import policy for the time being in force.

2. *Where any person makes or abets or attempts to make any export or import in contravention of any provision of this Act or any rules or orders made thereunder or the export and import policy, he shall be liable to a penalty not exceeding one thousand rupees or five times the value of the goods in respect of which any contravention is made or attempted to be made, whichever is more.*
3. *Where any person, on a notice to him by the Adjudicating Authority, admits any contravention, the Adjudicating Authority may, in such class or classes of cases and such manner as may be prescribed, determine, by way of settlement, an amount to be paid by that person.*
4. *A penalty imposed under this Act may, if it is not paid, be recovered as an arrear of land revenue, and the Importer-exporter Code Number of the person concerned, may, on failure to pay the penalty by him, be suspended by the Adjudicating Authority till the penalty is paid.*
5. *Where any contravention of any provision of this Act or any rules or orders made thereunder or the export and import policy has been, is being, or is attempted to be, made, the goods together with any package, covering or receptacle and any conveyances shall, subject to such requirements and conditions as may be prescribed, be liable to confiscation by the Adjudicating Authority.*

The goods or the conveyance confiscated under sub-section (5) may be released by the Adjudicating Authority, in such manner and subject to such conditions as may be prescribed, on payment by the person concerned of the redemption charges equivalent to the market value of the goods or conveyance, as the case may be Foreign Trade (Regulation) Rules, 1993

Rule 14: Prohibition regarding making, and signing of any declaration, statement or documents

1. *No person shall make, sign or use or cause to be made, signed or used any declaration, statement or document for the purposes of obtaining a license or importing any goods knowing or having reason to believe that such declaration, statement or document is false in any material particular.*
2. *No person shall employ any corrupt or fraudulent practice for the purposes of obtaining any licence or importing or exporting any goods.*
3. *Therefore, it appears that the importer had willingly and knowingly evaded the applicable Customs Duties by wrong availment of the exemption benefits under Sr. No. 18 of Notification-25/1999. During the investigation, Shri Alpesh Dave, Senior General Manager of M/s Goldi Solar Private Limited was asked about the technical write-up of its import items i.e. backsheet, in response they provided the write-up vide email dated 28.04.2023 but the same was not justifiable enough to support the contention of the importer. Moreover, from his statement, it appears that the importer was fully aware of the said notification and the same was in the public domain too. Despite being fully aware of the subject notification, the importer had wrongly availed of the exemption benefits on solar backsheets imported by them vide Bills of*

Entry listed in Annexure-A. Thus, it appears that the importer has wilfully evaded the applicable Customs Duties on the goods imported vide Bills of Entry as detailed in attached Annexure-A.

4. M/s Goldi Solar Pvt. Ltd appears to have wrongly availed the exemption benefits of Sr. No. 18 of Notification-25/1999 on import of goods namely backsheet as the same was not specified at the Sr. No. 18 of the subject notification. The Sr. No. 18 of Notification No. 25/1999 dated 28.02.1999 provides for BCD exemption for the following goods viz.,

*"Aluminium paste; ethylene vinyl acetate sheets (EVA); primer for EVA; Crane glass; tedlar coated aluminium sheet; phosphorous oxychloride; halo carbon (CF4)/Freon gas; tinned copper interconnect; toughened glass with low iron content and transmittivity of min. 90% and above; **multilayered sheets with Tedlar base**; fluro polymer resin; ultra-high purity (UHP) silane in UHP nitrogen; UHP silane; diborane in UHP silane; MOCVD grade phosphine in UHP silane; silver sputtering target; high purity tin tetrachloride; nitrogen trifluoride of 99% purity and above".*

14. Shri Alpesh Dave s/o Shri Jagdish Chandra, Senior General Manager, M/s. Goldi Solar Pvt. Ltd. (Importer) in his statement dated 10.04.2023 stated that the item namely Backsheet/Solar Backsheet as declared by them in the Bills of Entry is also known as "multilayered sheet with Tedlar base" which has a specific entry at Sr. No. 18 of Notification No. 25/1999 dated 28.02.1999. However, the notification benefit is applicable only if the subject multilayered sheets have a Tedlar base i.e., the goods should have the base sheet of Tedlar® which is a registered trademark of Dupont TM. The importer appeared neither imported goods from Dupont nor they have uploaded any NOC from Dupont for using their registered trademark viz., Tedlar®. Further, on scrutiny of the technical write-up available in the public domain and declaration by the importer in subject BoEs, it appears that the subject imported goods viz., "Backsheets for Solar Module/Panels", are being manufactured/supplied by M/s Cybrid Technologies Inc. or M/S. Jolywood (Suzhou) Solarwatt Co. Ltd by using their native trademark technology other than Tedlar®. Given the above, on examination of the details provided under Bills of Entry, it appears that the subject goods do not fall under the exemption under Sr. No. 18 of Notification No. 25/1999 dated 28.02.1999, and hence it appears that these goods are ineligible for the notification benefit and merit duty of BCD @ 10%, SWS @ 10% and IGST @ 18%. Further, from the scrutiny of import data, it appears that the importer had also imported similar goods by not availing of the exemption benefits of Sr. No. 18 of Notification-25/1999 vide BoEs other than those mentioned in Annexure-A attached with this show cause notice viz. BoEs No. 5824652 dated 13.10.2021, 8407695 dated 25.04.2022, 3295244 dated 14.11.2022 etc. Thus, it appears that the importer was fully aware of the Notification No. 25/1999-Customs dated 28.02.1999 and the said notification was in the public domain too, however, the importer appears to have randomly availed the undue benefits of Notification No. 25/1999-Cus and appears to have not paid the Basic Customs Duty (BCD) on the subject goods imported by them vide Bills of Entry listed in Annexure-A. Thus, it appears that the importer had wilfully evaded the applicable Basic Customs Duty (BCD), SWS, and IGST thereof

on the imported goods vide Bills of Entry as detailed in Annexure-A. Thus, by the above acts and commission, the importer appears to have contravened the provisions of Section 46 and Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 read with Rule 14 of the Foreign Trade (Regulation) Rules 1993, inasmuch as the importer appears to have taken wrong benefit of the Notification No. 25/1999-Customs dated 28.02.1999 while filing the Bills of Entry at the time of the importation of the subject imported goods. The same appears to have been done to evade the payment of applicable Basic Customs Duty, which appears to have resulted non-payment of Social Welfare Cess and short payment of IGST as BCD forms part of the value for computation of these duties. Thereby it appears that this act of wilful misstatement of serial number 18 of amended Notification No. 25/1999-Customs dated 28.02.1999 by M/s Goldi Solar Private Limited in the bills of entry appears to have rendered imported goods as mentioned in column 7 of the attached **Annexure-A** valued at Rs. 2,25,85,183/-, liable to confiscation as per the provisions of Section 111(m) of the Customs Act, 1962.

15. M/s Goldi Solar Private Limited was engaged in the import of various goods used in the manufacturing of solar modules/panels. The importer was aware of the correct end use of the imported goods, however, despite being fully aware of the correct end use of the imported goods, the importer appears to have wrongly availed the exemption benefits of serial no. 18 of Notification No. 25/1999 by adopting, as it appears wrong practices including making false declarations for such imports and thereby appears to evade payment of appropriate customs duty. The importer appears to have deliberately misstated the serial number 18 of the subject notification to escape from detection by customs authorities. Thus, it appears that the importer has resorted to a wilful misstatement of the serial number of Notification No. 25/1999-Customs with an ulterior motive of evading payment of the applicable duties on the imported goods. Hence, Section 28(4) of the Customs Act, 1962 for the demand of duty appears applicable in the instant case. The details of the goods imported by M/s Goldi Solar Private Limited, as it appears by wilful misstatement of serial numbers of Notification No. 25/1999 are mentioned in Annexure-A along with the calculation of the respective customs duty evaded, as it appears. The differential Customs duty aggregating to Rs. 29,31,557/- leviable on the imported goods and cleared under Bills of Entry mentioned in Annexure-A and not paid by M/s Goldi Solar Private Limited is, therefore, liable to be demanded and recovered from them as per provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.
16. The above acts and commissions, M/s Goldi Solar Private Limited appears to have rendered themselves liable to penalty under Section 114A of Customs Act, 1962. Further, for the above acts and commissions, M/s Goldi Solar Private Limited appears to have rendered themselves liable to penalty under Section 112 of Customs Act, 1962. The importer appears to have knowingly and wilfully made declarations that were false and incorrect in material particular and appears to have wilfully wrongly mentioned the subject notification in the Bills of Entry, in the transaction of business for the purposes of the Customs Act, 1962, and therefore, the importer appears to have rendered themselves liable to penalty under Section 114AA of the Customs Act, 1962.
17. Further, It is pertinent to mention that in terms of the provisions of Section 110AA of the Customs Act, 1962 read with Notification No. 28/2022-Customs (N.T.) dated 31.03.2022, the officers of Customs have been appointed as the proper officer for the

purpose of exercising of powers under Section 28, Section 28AAA or Chapter X of the Customs Act, 1962 with jurisdiction over the whole of India with all the powers under the said Act. Further, in the case of multiple jurisdictions, the show cause notice is to be issued by the proper officer of jurisdiction having the highest amount of duty. The instant case involves the import of goods from multiple ports viz INSAJ6 (ICD Tumb) and INHZA1 (Hazira port), wherein total customs duty and IGST not paid/ short paid have come to Rs 29,31,557/-, out of which the differential Customs duty for a single port viz. ICD Tumb (INSAJ6) has been worked out to Rs. 21,22,176/-, which is the highest amongst all ports at which imports have taken place. Therefore, the Additional/ Joint Commissioner of Customs, Ahmedabad having jurisdiction over ICD Tumb is the show cause notice issuing authority as well as adjudicating authority in terms of Section 110AA of the Customs Act, 1962 read with Notification No. 28/2022- Customs (N.T.) dated 31.03.2022, issued by the CBIC.

18. Thereby, a Show Cause Notice vide F. No. CUS/SHED/144/2024-ICD-UMGN dated 29.05.2024 (hereinafter referred to as “the SCN”) was issued to M/s. Goldi Solar Private Limited (IEC-5211000064) having registered address: 1009, 10th floor, Infinity Tower, Nr. Railway Station, Surat, Gujarat-395003 asking as to why: -
 - i. the benefit of Sr. No. 18 of Exemption Notification No.25/1999- Customs dated 28.02.1999 with respect to the import of ‘Back sheet’ imported vide Bills of Entries, as listed in Annexure-A, should not be denied;
 - ii. the differential amount of Customs duty aggregating to Rs. 29,31,557/- as detailed in Annexure- A to this notice leviable on the imported goods covered under Bills of Entry as listed in Annexure-A, should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962;
 - iii. Imported subject goods totally valued at Rs. 2,25,85,183/- imported vide Bills of Entry as listed Annexure-A should not be held liable to confiscation as per provisions of Section 111(m) of the Customs Act, 1962.
 - iv. Penalty should not be imposed on them under Section 112 of the Customs Act, 1962, for the reasons discussed above.
 - v. Penalty should not be imposed on them under Section 114A of the Customs Act, 1962, for the reasons discussed above.
 - vi. Penalty should not be imposed on them under Section 114AA of the Customs Act, 1962, for the reasons discussed above.

IMPORTER’S DEFENCE SUBMISSIONS:

19. The said Importer vide letter dated 27.06.2024 and 26.09.2024 submitted as follows:
 - a. No case for invocation of Section 28 of Customs Act, 1962, in respect of imports of Solar Backsheet. (Refer to Annexure A to impugned SCN) Benefit of concessional rate notification not claimed at the time of

clearance and assessment for home consumption under Section 17 of the Customs Act, 1962, and therefore there is no short-levy or non-levy of duty warranting invocation of Section 28 of the Customs Act, 1962.

- The noticee challenges the demand for differential customs duty on the import of Solar Backsheets, arguing it lacks merit under Section 28 of the Customs Act. Customs duty is usually paid at the time of filing the Bill of Entry for Home Consumption. However, goods transferred to a bonded warehouse allow deferral of duty payments. The impugned Show Cause Notice (SCN) bases its allegation of short payment on warehouse bills of entry, but these entries do not trigger immediate duty obligations. The noticee asserts that the required duty was duly paid when the goods were later cleared for home consumption. Consequently, the demand for Rs. 29,31,556.79/- along with interest under Sections 28(4) and 28AA is unjustified and should be dropped immediately.

b. The duty exemption benefit on import of 'Backsheet' under Notification 25/1999 is available to Noticee – differential duty payable of Rs.29,31,556.79 /- (as alleged in the SCN) is not payable.

- The noticee disputes the denial of duty exemption under Notification No. 25/1999 for imported Backsheets, challenging the SCN's assertion that the exemption applies only to products bearing the "Tedlar" trademark, owned by DuPont. The SCN lacks evidence to support the claim that the exemption is limited to copyrighted products, failing to establish a *prima facie* case.
- The noticee argues while citing case laws that the burden of proof lies with the department to show that the imported Backsheets do not qualify as "multilayered sheets with Tedlar base" under the notification, citing case law of, *Srinivasa Trading Company* and *Ample Industries*. Additionally, it emphasizes that the product classification under Chapter 39 aligns with the scope of the exemption.
- The term "Tedlar," used in the notification, is a common reference to polyvinyl fluoride (PVF), a material known for its durability in solar

applications, rather than an endorsement of DuPont's brand. The noticee contends that government policy aims to promote the solar sector, not favor a specific company. Thus, restricting the exemption to products branded by DuPont undermines the policy's intent. The noticee concludes that the imported Backsheets meet the criteria for exemption and requests the SCN's claims be dismissed.

- c. In any event, Section 28(4) of the Customs Act cannot be invoked and hence the differential duty of Rs. 29,31,556.79/- needs to be set aside on this ground itself – no wilful mis-statement or suppression of facts.
 - The noticee contends that issuing a notice under Section 28(4) of the Customs Act requires proving that insufficient duty payment resulted from collusion, wilful misstatement, or suppression of material facts. Referring to case laws such as *Anand Nishikawa Co. Ltd.* and *Aban Loyd Chiles Offshore Ltd.*¹, the noticee asserts that "suppression" or "misstatement" must be intentional and aimed at evading duty.
 - In this case, the noticee asserts there was no wilful suppression or misstatement, as it genuinely believed the imported Backsheet qualified for exemption under Notification 25/1999. The noticee highlights that it accurately declared all relevant details, including value and classification, at the time of import, and the SCN does not accuse it of any misdeclaration in the bills of entry.
 - The burden of proving fraud or intent to evade duty lies with the department, which must present positive evidence and specific findings. Referring to case law of *Tamil Nadu Housing Board v. CCE*², Importer asserted that since the tax was already paid before clearance, the noticee argues there was no malafide intent, and therefore, the SCN was issued without proper basis. Further, stated that since the tax was already paid before clearance, the noticee argues there was no malafide intent, and therefore, the SCN was issued without proper basis. The noticee reiterates that the Backsheet qualifies for exemption under Notification 25/1999, making the demand for differential duty unwarranted.
- d. In any event no interest can be demanded under the provisions of Section 28AA of the Customs Act.
 - The noticee argues that the interest provision under Section 28AA of

the Customs Act applies only when a person is liable to pay duty under Section 28. Since the noticee contends that no duty is payable under Section 28 for the reasons previously outlined, the applicability of Section 28AA does not arise. Consequently, no interest can be levied under this provision. The demand for both duty and interest is therefore unwarranted and should be set aside.

- e. The Noticee has not mis-declared and hence there is no contravention of Section 111(m) and consequently goods are not liable for confiscation. Further that the goods not physically available cannot be confiscated.
- The noticee asserts that it accurately declared the value and all relevant details of the imported Backsheet in the Bills of Entry and that no misdeclaration has been alleged in the SCN, apart from the claim of exemption under Notification 25/1999. The noticee argues that merely claiming an exemption, even if disputed, does not constitute misdeclaration under Section 111(m) of the Customs Act. Referring to the Supreme Court's ruling in **Northern Plastics** (1998), the noticee emphasizes that a claim for a concessional rate of duty does not amount to misdeclaration with intent to evade duty. Therefore, the goods cannot be deemed liable for confiscation under Section 111(m). The allegation of misdeclaration in the SCN is thus baseless, and no contravention of the Customs Act has occurred.
- Further, it is submitted that, as the goods have already been cleared for home consumption, they no longer qualify as "imported goods" and thus fall outside the scope of Section 111(m) of the Act. Consequently, the invocation of Section 111(m) in the present case is unwarranted. Accordingly, the impugned SCN, to this extent, merits being set aside.

f. No penalty under section 114A and/or 112 and 114AA of the Customs Act cannot be imposed on the Noticee.

- The noticee asserts that the Backsheet qualifies for exemption under Notification 25/1999, as demonstrated in the preceding paragraphs. Therefore, there is no justification for imposing a penalty under Section 114A of the Customs Act. Additionally, with regard to the imposition of a penalty under Section 112, the department has failed to establish a case for confiscation under Section 111, as discussed

earlier. In the absence of such grounds, the imposition of a penalty under Section 112 is unwarranted.

- Further that the Section 114A of the Customs Act provides that a penalty equal to the duty or interest determined can only be imposed when non-payment, short payment, or erroneous refund occurs due to collusion, wilful misstatement, or suppression of facts. The Noticee relies on the Hon'ble Supreme Court's ruling in *Hindustan Steel Ltd. v. State of Orissa*, 1978 (002) ELT 0159 (SC), which held that penalties are quasi-criminal in nature and should not be imposed unless there is deliberate defiance of the law, dishonest conduct, or conscious disregard of statutory obligations. Furthermore, the Court emphasized that penalties should not be imposed merely because it is legally permissible but only after considering all relevant circumstances. Even where a minimum penalty is prescribed, authorities are justified in not imposing it if the breach is technical, venial, or arises from a bona fide belief that no obligation existed under the statute
- the Noticee submits that there is no evidence to support the allegation of forgery or intentional misdeclaration. The Noticee and its representatives have fully cooperated with the Directorate of Revenue Intelligence (DRI), Jaipur, by voluntarily submitting all required documents whenever requested. That the department has not produced any documentary evidence to prove that the Noticee or its representatives engaged in forgery or filed fraudulent documents. As a result, there is no basis for invoking Section 114AA or Section 112(a) (ii) in the present case. The question of forgery, misstatement, or suppression does not arise. Accordingly, the penalties proposed under these sections should be dismissed.

RECORD OF PERSONAL HEARING:

20. Shri Alpesh Dave, Senior General Manager, Authorized persons of Importer appeared for hearing on 25.09.2024 and reiterated importer's written submissions dated 25.09.2024.

DISCUSSIONS AND FINDINGS:

21. I have carefully studied all the case records and considered the subject matter.
22. I find that the issues for consideration before me in the present adjudication proceeding are as follows-

- a. Whether the benefit of Sr. No. 18 of Exemption Notification No.25/1999-Customs dated 28.02.1999 with respect to the import of 'Back sheet' imported vide Bills of Entries, as listed in Annexure-A, should be denied or otherwise;
- b. Whether the differential amount of Customs duty aggregating to Rs. 29,31,557/- as detailed in Annexure- A to the SCN leviable on the imported goods covered under Bills of Entry as listed in Annexure-A, should be demanded and recovered from them under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962 or otherwise;
- c. Whether the imported goods are liable for confiscation under Section 111(m) of the Customs Act 1962 or otherwise;
- d. Whether penalty under Section 114A, 114AA and 112(a) is imposable on the importer or otherwise;
- e. Whether penalty under Section 112(a) is imposable on the Custom Broker or otherwise;

23. I find that first issue to be decided in the present case is whether the importer is eligible for the benefit of Sr. No. 18 of Exemption Notification No. 25/1999- Cus dated 28.02.1999 for the import of 'Solar Back sheet' imported vide Bill of Entry No.8854569/07.06.2022,8858464/27.05.2022 and 4861497/01.03.2023.

23.1 The wordings of Sr. No. 18 of Exemption Notification No. 25/1999- Cus dated 28.02.1999 is as follows:

S. No.	Chapter	Description of imported goods	Description of finished goods
1	2	3	4
18.	28, 38, 39, 70, 74, 76	Aluminium paste; ethylene vinyl acetate sheets (EVA); primer for EVA; Crane glass; tedlar coated aluminium sheet; phosphorous oxychloride; halo carbon (CF ₄)/Freon gas; tinned copper interconnect; toughened glass with low iron content and transmittivity of min. 90% and above; multilayered sheets with	Solar cells/modules.

	<p>tedlar base; fluro polymer resin; ultra high purity (UHP) silane in UHP nitrogen; UHP silane; diborane in UHP silane; MOCVD grade phosphine in UHP silane; silver sputtering target; high purity tin tetrachloride; nitrogen trifluoride of 99% purity and above.</p>	
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23.2 I find that importer has declared the impugned goods in Bills of Entry as “ SOLAR BACKSHEET 100MM KPF CYNAGARD 205A ® PDVF BACKSHEET-15—V 200M/ROLL” in Bill of Entry No.8854569/07.06.2022,8858464/27.05.2022 and “BACKSHEET, JOLYWOOD FFC-JW30MPLUS (TRANSPARENT BLACK MESH) 0.315 MMTX1133MMWX200ML (FOR MANUFACTURE OF SOLAR PANLES) in Bill of Entry No. 4861497/01.03.2023 imported from overseas supplier M/s. Cybrid Technologies Inc. and M/s. Jolywood (Suzhou) Sunwatt Co. Ltd. respectively; and I note that the words back sheet are of ‘Tedlar base’ as per the wordings of the said notification is not mentioned in the description of goods in subject bills of entry. Further, I hold that when the wordings of the said serial number of the Notification when clear and precise that ‘multilayered sheet with Tedlar base’ is eligible under the Exemption Notification No. 25/1999- Cus dated 28.02.1999. I find no basis for interpretation other than to enforce the exact wording of the specified serial number of the Notification.

23.3 I find that Shri Alpesh Dave S/o Shri Jagdish Chandra, Senior General Manager, M/s Goldi Solar Private Limited in his statement dated 10.04.2023 have stated that impugned goods viz. Backsheet/Solar Backsheet as declared by them in the Bills of Entry is known as ‘Multi layered sheet with Tedlar base’ which has a specific entry at Sr. No. 18 of the Notification No. 25/1999- Cus dated 28.02.1999 however, importer has not produced any evidence that the goods they imported were with Tedlar base. Further, that ‘Tedlar’ is registered trademark of Dupont and the importer has neither imported the goods from Dupont nor they have submitted the NOC from Dupont that they have used Tedlar®. Further, it is on record that the importer has procured the impugned goods from M/s. Cybrid Technologies Inc. and M/s. Jolywood (Suzhou) Sunwatt Co. Ltd. Using their native trademark technology other than Tedlar®.

23.4 I find that wording of Sr. No. 18 of the Exemption Notification No. 25/1999- Cus dated 28.02.1999 is unambiguous which categorically says that multi layered sheet with Tedlar base’ is eligible for the exemption of said notification. I hold that the wording of the Notification should be strictly interpreted. The Wording in the said Notification at serial number 18 of the said Notification, when clear, plain and unambiguous and only one meaning can be inferred, I am

bound to give effect to the said meaning. I am bound to give due Regard to the clear meaning of words and matter should be governed wholly by the language of the notification. I note that the wording of the description of the goods to said entry of the Notification and thereby I cannot allow any scope for intendment. I find that my view of strict interpretation of the wordings of the said notification is in compliance to the Hon'ble Supreme Court Judgements, to name a few as follows:

- **2015 (324) E.L.T. 656 (S.C.) [para 31]**
- **2011 (265) E.L.T. 14 (S.C.) [para 10]**
- **1989 (40) E.L.T. 239 (S.C.) [para 11]**
- **1978(2) ELT(J350) (SC) [para 5]**
- **CCE1995(77) ELT474(SC) [para 16].**

23.5 In the cetera of the decisions, it has been held that words in a Notification when clear, plain and unambiguous then only one meaning can be inferred. I rely on the ratio of decision of Hon'ble Supreme Court rendered in the case of Commissioner of Cus. (Import) , Mumbai Vs. Dilip Kumar & Company reported in 2018 (361) E.L.T. 577 (S.C.)wherein it has been held as under:

“The well-settled principle is that when the words in a statute are clear, plain and unambiguous and only one meaning can be inferred, the Courts are bound to give effect to the said meaning irrespective of consequences. If the words in the statute are plain and unambiguous, it becomes necessary to expound those words in their natural and ordinary sense. The words used declare the intention of the Legislature. In Kanai Lal Sur v. Paramnidhi Sadhukhan, AIR 1957 SC 907, it was held that if the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.”

23.6 Further, I rely on the ratio of decision of Hon'ble Delhi High Court rendered in the case of Kultar Exports Vs. Commissioner of Central Excise, Delhi-I reported in 2020 (36) G.S.T.L. 208 (Del.) wherein it has been held as under:

*“It is trite, that while interpreting exemption notifications, such notifications have to be interpreted, *stricto sensu* [Commissioner of Customs (Import), Mumbai v. Dilip Kumar & Co. (2018) 9 SCC 1 = [2018 \(361\) E.L.T. 577](#) (S.C.)]; Commissioner of Central Excise v. Hari Chand Shri Gopal & Others (2011) 1 SCC 236 = [2010 \(260\) E.L.T. 3](#) (S.C.); Commissioner of Central Excise v. Mahaan Dairies (2004) 11 SCC 798 = [2004 \(166\) E.L.T. 23](#) (S.C.)].”*

23.7 The Supreme Court in Saraswati Sugar Mills [\[2011 \(270\) E.L.T. 465](#) (S.C.)], has affirmed this principle, assailing in paragraph 7, as follows:

*“7. ... A party claiming exemption has to prove that he/it is eligible for exemption contained in the notification. An exemption notification has to be strictly construed. The conditions for taking benefit under the notification are also to be strictly interpreted. When the wordings of notification is clear, then the plain language of the notification must be given effect to. By way of an interpretation or construction, the Court cannot add or substitute any word while construing the notification either to grant or deny exemption. The Courts are also not expected to stretch the words of notification or add or subtract words in order to grant or deny the benefit of exemption notification. In *Bombay Chemicals (P) Ltd. v. CCE - (1995) Supp (2) SCC 646*, a three Judge Bench of this Court held that an exemption notification should be construed strictly, but once an article is found to satisfy the test by which it falls in the notification, then it cannot be excluded from it by construing such notification narrowly”.*

23.8 Further, I find that importer vide letters dated 10.04.2023 and 25.09.2024 have submitted that impugned goods viz. Backsheet/Solar Backsheet as declared by them in the Bills of Entry is known as 'Multi layered sheet with Tedlar base' but no evidence is produced/ submitted by the importer that the subject goods is having Tedlar base, the importer's reliance on annexures, consisting of letters from the supplier without dates or supporting evidence, lacks justification. I find that the Importer failed to satisfy that their goods fall within four corners of description as mentioned in Table 3 of the Notification No. 25/1999-Cus. dated 28.02.1999. I rely on the ratio of decision of decision of Hon'ble Supreme Court rendered in case of *B.P.L. Limited Vs. Commissioner reported in 2015 (324) E.L.T. A79 (S.C.)* wherein it has been held that "exemption notification require strict interpretation with onus on assesses to establish that he has fulfilled all conditions mentioned in notification".

23.9 Further, the investigating agency's comments were sought vide letter dated 04.11.2024 regarding the importer's submission dated 26.09.2024, to which the investigating agency replied vide letter dated 21.11.2024, the said letter is as follows:

2. Based on the records available with this office, it is noted that the submission made by the importer, including Annexures (A) and (B), were not provided to the Directorate of Revenue Intelligence (DRI) during the course of the investigation. The findings submitted by this office in the Investigation Report were based on the evidence and documents available at that time.

3. It is further observed that the annexures relied upon by the importer appear to be simple letters in the name of the supplier without any mention of:

- Date of issuance,
- Supporting documents/ evidence etc.

4. In view of the above, the submissions made by the importer do

not appear justifiable based on the available records.

However, it is respectfully submitted that the adjudicating authority may, at its discretion, call for additional documents or evidence from the importer to sustain their claims. Such submissions, if provided, may be analyzed in conjunction with the facts and evidence already submitted by this office under the Investigation Report.

5. Further, this office again re-iterates its stand as discussed in the IR/SCN-

"the subject importer was availing ineligible benefits under Sr. No. 18 of Notification No. 25/1999-Customs dated 28.02.1999 while importing the back sheet to be used for manufacturing solar panels/modules. However, the notification benefit is applicable only if the subject multilayered sheets have a Tedlar base i.e., the goods should have the base sheet of Tedlar which is a registered trademark of Dupont TM. The importer has neither imported goods from Dupont nor they have uploaded any NOC from Dupont for using their registered trademark viz., Tedlar. Further, on scrutiny of the technical write-up available in the public domain and declaration by the importer in subject BoEs, it appears that the subject imported goods viz., "Backsheets for Solar Module/ Panels", are being manufactured/supplied by M/s Cybrid Technologies Inc. or M/S. Jolywood (Suzhou) Sunwatt Co. Ltd by using their native trademark technology other than Tedlar. Given the above, on examination of the details provided under Bills of Entry, it appears that the subject goods do not fall under the exemption under Sr. No. 18 of Notification No. 025/1999 dated 28.02.1999, and hence it appears that these goods are ineligible for the notification benefit and merit duty of BCD @ 10%, SWS @ 10% and IGST @ 18%.

6. Further, from the scrutiny of import data, it appeared that the importer had also imported similar goods by not availing the benefits of Sr. No. 18 of Notification-25/1999 vide BoEs viz. BoEs No. 5824652 dated 13. 10.2021, 8407695 dated 25.04.2022, 3295244 dated 14.11.2022 etc. other than those for which the show cause notice dated 29.05.2024 has been issued. Thus, it appears that the importer was fully aware of the Notification No. 25/1999-Customs dated 28.02.1999 and the said notification was in the public domain too, however, the importer has randomly availed the undue exemption benefits of Notification No. 25/1999-Cus and has not paid the Basic Customs Duty (BCD) willfully on the subject goods imported by them."

23.10 In view of the above, I find that the importer availed ineligible benefits under Sr. No. 18 of Notification No. 25/1999-Customs, applicable only to multilayered sheets with a Tedlar base, a trademark of Dupont. The imported goods, manufactured by Cybrid Technologies

or Jolywood Sunwatt, do not meet these criteria, as no evidence of Dupont's Tedlar technology or NOC was provided.

23.11 Furthermore, it is established that Importer have cleared Bills of Entry No. 5824652 dated 13.10.2021, 8407695 dated 25.04.2022, 3295244 dated 14.11.2022 without claiming benefit of the said notification, indicating awareness of the notification's terms. However, the Importer has deliberately claimed the notification benefit to evade leviable Customs duties. In view of the aforementioned discussion and findings, I hold that importer is not eligible for the benefit of Sr. No. 18 of Exemption Notification No. 25/1999- Cus. dated 28.02.1999 for the goods covered under subject Bills of Entry as mentioned in Annexure-A to the Show Cause Notice dated 29.05.2024.

24. As per para 1.3 of Chapter-I of the Customs Manual, the Importers/Exporters, who are unable to do the Self-Assessment because of any complexity, lack of clarity, lack of information etc. may exercise the following options: (a) Seek assistance from Help Desk located in each Custom Houses, or (b) Refer to information on CBIC/ICEGATE web portal www.cbic.gov.in, or (c) Apply in writing to the Deputy/Assistant Commissioner in charge of Appraising Group to allow provisional assessment, or (d) An importer may seek Advance Ruling from the Authority on Advance Ruling, New Delhi if qualifying conditions are satisfied. Para 3(a) of Chapter 1 of the above Manual further stipulates that the Importer/Exporter is responsible for Self-Assessment of duty on imported/exported goods and for filing all declarations and related documents and confirming these are true, correct and complete. Under para 2.1 of Chapter-1 of the above manual, Self-Assessment can result in assured facilitation for compliant Importers. However, delinquent and habitually noncompliant Importers/Exporters could face penal action on account of wrong Self-Assessment made with intent to evade Duty or avoid compliance of conditions of Notifications, Foreign Trade Policy or any other provision under the Customs Act, 1962 or the Allied Acts.

24.1 After introduction of self-assessment through amendment in Section 17 of the Customs Act, 1962 vide Finance Act, 2011, it is the responsibility of the Importer to correctly declare the description, classification, applicable exemption Notification, applicable Duties, rate of Duties and its relevant Notifications etc. in respect of said imported goods and pay the appropriate Duty accordingly. It is therefore very much apparent that Importer has willfully violated the provisions of Section 17(1) of the Customs Act, 1962 in as much as they have failed to correctly self-assess the impugned goods to payment of correct custom duties and have also willfully violated the provisions of Sub-section (4) and (4A) of Section 46 of the Customs Act, 1962. Thus, Importer have indulged in wrong availment of Notification No. 25/1999-Cus dated 28.02.1999 and thereby they have evaded payment of Customs Duty at the appropriate rate. By way of adopting this modus in respect of impugned goods, Importer had short paid the Customs Duty of **Rs. 29,31,557/- (Rupees Twenty-Nine Lakh, Thirty-One Thousand, Five Hundred and Fifty-Seven only)** which merits invocation of extended period for demand of the said Customs Duty under the provisions of Section 28(4) of the Customs Act, 1962. I, therefore, find and hold that the Customs Duty of Rs. **Rs. 29,31,557/-**

(Rupees Twenty-Nine Lakh, Thirty-One Thousand, Five Hundred and Fifty-Seven only) is required to be recovered under the provisions of Section 28(4) of the Customs Act, 1962.

24.2 It has been proposed in the subject Show Cause Notice to demand and recover interest on the differential Customs Duty Rs. 29,31,557/- (Rupees Twenty-Nine Lakh, Thirty-One Thousand, Five Hundred and Fifty-Seven only) in respect of the imports 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 hold that the differential Customs Duties of Rs. 29,31,557/- (Rupees Twenty-Nine Lakh, Thirty-One Thousand, Five Hundred and Fifty-Seven only) is liable to be recovered from the Importer under Section 28(4) of the Customs Act, 1962 and I hold that the 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.

25. Whether the imported goods valued at Rs.2,25,85,183/- (Rupees Two Crore, Twenty-Five Lakh, Eighty-Five Thousand, One Hundred and Eighty-Three only) are liable for confiscation under Section 111(m) of the Customs Act 1962 or otherwise;

25.1 As discussed in paras supra, **M/s. Goldi Solar Private Ltd** have imported the subject goods by wrongly availing the benefit of Sr. No.18 of the Exemption Notification No.25/1999-Customs dated 28.02.1999 and by way of adopting this modus in respect of subject goods, **M/s. Goldi Solar Private Ltd** had got cleared goods valued at Rs.2,25,85,183/-from ICD, Tumb, and Hazira Port without paying Customs Duty at applicable rate. Thus, importer has deliberately and knowingly indulged in suppression of material facts in respect of their imported product and has willfully and wrongly availed the benefit of specific entries of the aforementioned Notifications which was not available to them, with an intent to evade payment of applicable 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.

25.2 In this case, Importer has resorted to wrong availment of benefit of the specific entries of Notifications as mentioned above in the Bills of Entry filed by them with an intention to avoid applicable Duty liabilities. Thus, provisions of Section 111(m) of the Customs Act, 1962 has been attracted in subject matter. In the present case, importer has willfully and wrongly availed the benefit of Sr. No.18 of the Exemption Notification No. 25/1999-Customs dated 28.02.1999 which was not available to them with an intent to evade payment of higher rate of Customs Duty, hence the provisions of Section 111(m) come into play. I

thus find that willful and wrong availment of the benefit of the specific entries of the aforementioned Notification by Importer has rendered the impugned goods liable for confiscation under Sections 111(m) of the Customs Act, 1962. I, therefore, hold the goods valued at Rs.2,25,85,183/- (**Rupees Two Crore, Twenty-Five Lakh, Eighty-Five Thousand, One Hundred and Eighty-Three only**) **a re** liable to confiscation under the provisions of Section 111(m) *ibid*. Further, the aforementioned 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 follows:

"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).

25.3 Further, 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 *inter alia* as follows: -

"

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."

25.4 In view of the above, I find that imported goods valued at Rs.2,25,85,183/- (**Rupees Two Crore, Twenty-Five Lakh, Eighty-Five Thousand, One Hundred and Eighty-Three only**) though not available are liable for confiscation under Section 111(m) of the Customs Act, 1962.

26. Whether the Importer is liable for penalty under Section 114A /112 and Section 114AA of the Customs Act, 1962 or otherwise:

26.1 The Show Cause Notice proposes penalty under the provisions of Section 114A of the Customs Act, 1962 on importer. The Penalty under Section 114A shall be imposed if the Duty demanded under Section 28 ibid by alleging wilful mis-statement or suppression of facts etc. is confirmed/determined under Section 28(4) of the Customs Act, 1962. As discussed in the foregoing paras, Importer has deliberately and knowingly indulged in suppression of facts in respect of their imported goods cleared vide subject bills of entry and has wilfully and wrongly availed the benefit of Sr. No.18 of the Exemption Notification No.25/1999-Customs dated 28.02.1999 which was not available to them, with an intention to avoid the applicable Duty liability. I hold that that penalty under Section 114A of the Customs Act, 1962 shall be imposed upon importer M/s. Goldi Solar Private Limited.

26.2 The Show Cause Notice proposes penalty under the provisions of

Section 112A of the Customs Act, 1962 on importer: I find that fifth proviso to Section 114A stipulates that “where any penalty has been levied under this section, no penalty shall be levied under Section 112 or Section 114” Hence, I refrain from imposing penalty on the importer under Section 112 of the Customs Act, 1962 as penalty has been imposed on the importer under Section 114A of the Customs Act, 1962.

26.3 With regard to the proposal for imposition of penalty under Section 114AA of the Customs Act, 1962, I find that importer knew that they were not eligible for the benefit exemption of duties under serial No. Sr. No.18 of the Exemption Notification No.25/1999-Customs dated 28.02.1999 however, with intent to evade the payment of Customs Duty, the importer had wrongly declared the Sr. No.18 of the Exemption Notification No.25/1999-Customs dated 28.02.1999 in the Bills of Entry and made false declaration in the Bills of Entry for the clearance of imported goods claiming exemption under said notification. Thus, they have rendered themselves liable for penal action under Section 114AA of the Customs Act, 1962.

26.4 Further, to fortify my stand on applicability of Penalty under Section 114AA of the Customs Act, 1962, I rely on the decision of Principal Bench, New Delhi in case of Principal Commissioner of Customs, New Delhi (import) Vs. Global Technologies & Research (2023)4 Centax 123 (Tri. Delhi) wherein it has been held that “*Since the importer had made false declarations in the Bill of Entry, penalty was also correctly imposed under Section 114AA by the original authority*”.

27. In conspectus of aforementioned Discussion and findings, I pass the order:

ORDER

- i. I order to disallow the benefits of Sr. No.18 of the Exemption Notification No.25/1999-Customs dated 28.02.1999 availed by M/s. Goldi Solar Private Ltd on the Bills of Entry as mentioned in Annexure-A to Show Cause Notice and order to re-assess the same accordingly.
- ii. I confirm the demand of Differential Customs Duty amounting to **Rs. 29,31,557/- (Rupees Twenty-Nine Lakh, Thirty-One Thousand, Five Hundred and Fifty-Seven only)** as detailed in Annexure- A of the Show Cause Notice leviable on the “imported goods” covered under Bills of Entry as listed in Annexure A imported by M/s. Goldi Solar Private Ltd under Section 28(4) of the Customs Act, 1962 read with the provisions of Section 28(8) of the Customs Act, 1962 and order to recover the same.
- iii. I order to confirm the Interest at the appropriate rate shall be charged and recovered from M/s. Goldi Solar Private Ltd, under Section 28AA of the Customs Act,1962 on the duty confirmed hereinabove at Para 28(ii) above.
- iv. I hold the impugned imported goods imported vide Bills of Entry as listed in Annexure- A of the Show Cause Notice

liable for confiscation under Section 111(m) of the Customs Act, 1962. However, I give M/s. Goldi Solar Private Ltd the option to redeem the goods on payment of Fine of Rs. 10,00,000/- (Rupees Ten lakh only) under Section 125 of the Customs Act, 1962.

- v. I impose penalty of **equivalent to the differential duty i.e. Rs. 29,31,557/- (Rupees Twenty-Nine Lakh, Thirty-One Thousand, Five Hundred and Fifty-Seven 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. Goldi Solar Private Ltd., under Section 114A of the Customs Act, 1962. Further, as per the proviso to Section 114A of the Customs Act, 1962, the importer has the option to pay 25% of the amount of total penalty imposed, subject to the payment of total duty amount and interest confirmed and the amount of 25% of penalty imposed within 30 days of receipt of this order.
- vi. I impose a penalty of Rs. 10,00,000 / - (Rs. Ten lakh only) on M/s. Goldi Solar Private Ltd under Section 114AA of the Customs Act, 1962.
- vii. I refrain from the imposition of penalty under Section 112 of the Custom Act for reasons discussed at para 26.2

28. The Show Cause Notice No. CUS/SHED/144/2024-ICD-UMNG-CUS-COMMRTE-AHMEDABAD dated 29.05.2024 is disposed off in above terms.

Arun Richard
Additional Commissioner
Customs

F. No. CUS/SHED/144/2024-ICD-UMGN-CUS-COMMRTE-AHMEDABAD
DIN- 20250171MN000000D714

To,

**M/s. Goldi Solar Private Limited,
1009, 10th Floor, Infinity Tower,
Nr. Railway Station,
Lal Darwaja,
Surat 395008**

Copy to:

1. The Principal Commissioner, Customs Commissionerate, Ahmedabad.

2. The Deputy Commissioner, ICD Tumb.
3. The Deputy Commissioenr, Hazira Port.
4. The Deputy Commissioner, TAR, Custom Ahmedabad.
5. The Superintendent Systems, Customs Ahmedabad with request to upload the subject Order on website.
6. Guard File.