



OFFICE OF THE COMMISSIONER

CUSTOM HOUSE, KANDLA

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A	File No.	GEN/ADJ/ADC/624/2026-Adjn-O/o Commr-Cus-Kandla
B	Order-in-Original No.	KDL/ADC/MR/22/2025-26
C	Passed by	Mukesh Rathore, Additional Commissioner, Custom House, Kandla.
D	Date of Order	30.03.2026
E	Date of Issue	30.03.2026
F	SCN No. & Date	S/10-SIIB/SCN-04/ADC/2017 dated 10.02.2017
G	Noticee / Party / Importer / Exporter	M/s. Akash Industries

1. यह मूल आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

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

2. यदि कोई व्यक्ति इस मूल आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 12 8A के अंतर्गत प्रपत्रसीए- 1 में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“सीमा शुल्क आयुक्त(अपील),

वीं 7मंजिल, मृदुलटावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड़,अहमदाबाद 380 009”

“THE COMMISSIONER OF CUSTOMS (APPEALS),

Having his office at 7th Floor, Mridul Tower, Behind Times of India,

Ashram Road, Ahmedabad-380009.”

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इस के साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by -

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule - I, Item 6 of the Court Fees Act, 1870.

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

6. अपील प्रस्तुत करते समय, सीमा शुल्क अपील (नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5 % भुगतान करना होगा।

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

BRIEF FACTS OF THE CASE:

An intelligence regarding mis-declaration of imported cargo was collected/gathered by the SIIB Officers, Custom House, Kandla. The intelligence so received suggested that one of the importers namely M/s. Mantri Industries, Survey No. 281, Pakki, N.H. 8/A, Nani Chirai, Taluka: Bhachau, Kutch, Gujarat-370140, had filed Bill of Entry No. 4754669 dated 30.03.2016 for import of "Sawn New Zealand Pine Logs (bark off)" falling under CTH 4407 which attracts duty @ 10% BCD and 4% Additional duty, by mis-declaring the goods as "Roughly Squared New Zealand Pine Logs (Bark off)" under CTH 4403 @ 5%% BCD and claimed exemption of additional duty vide SI. No. 56 of the Notification No. 21/2012-Customs dated 17" March, 2012 to evade higher rate of duty.

2. The said B/E was brought for examination on 07.04.2016 by Custom Broker and it was revealed that there were 14 more Bs/E filed by six other importers were passed through RMS. On verification, it is observed that M/s. Akash Industries ("the Noticee" or "the Importer" for the sake of brevity), Survey No. 281, N.H. No. 8/A, Nani Chirai, Taluka-Bhachau, Kutch-370140 had filed two Bs/E having No. 4754666 and 4754672 both dated 30.03.2016 for clearance of 100.248 CBM and 99.154 CBM respectively declaring the goods as "Roughly Squared New Zealand Pine Logs (Bark Off)" under CH 4403.

3. The goods were thereafter detained and on request the goods were released provisionally on acceptance of Bond and cash security. Examination of the subject goods revealed that they were in extremely accurate dimensions without having rough areas or bark traces on the edges.

4.1 The HSN explanatory notes of CTH 4403 is as under:

"The heading also includes roughly squared wood which consists of trunks or sections of trunks of trees, the round surfaces of which have been reduced to flat surfaces by means of axe or adze, or by coarse sawing, to form wood of roughly rectangular (including square) cross-section; roughly squared wood is characterized by the presence of rough areas or bark traces. Half-squared wood, which is wood prepared in this manner on two opposite faces only, is also classified here. Timber is prepared in these forms for sawmills or may be used as such, e.g., as roofing timber. "

4.2 The HSN explanatory notes of CTH 4407 is as under:

"With a few exceptions, this heading covers all wood and timber, of any length but of thickness exceeding 6 mm, sawn or chipped along the general direction of

the grain or cut by slicing or peeling. Such wood and timber includes sawn beams, planks, flitches, boards, laths, etc., and products regarded as the equivalent of sawn wood or timber. which are obtained by the use of chipping machines and which have been chipped to extremely accurate dimensions, a process which results in a surface better than that obtained by sawing and which thereby renders • subsequent planing unnecessary. It also includes sheets of sliced or peeled (rotary cu) wood, and wooden blocks, strips and friezes for flooring, other than those which have been continuously shaped along any of their edges, ends or faces (heading 44.09)."

4.3 The subject goods were in the form of beams with accurate dimensions as declared in the import documents and they were smoothly squared dry pine logs of standard dimensions kept in bunches/lots. In view of the nature and characteristics of the goods, the goods merited classification under CTH 44071020 and are liable to be assessed @ 10% BCD plus 4% Additional duty.

5. The Noticee had imported timber and had cleared it by mis-classifying and undervaluing them which was established in the investigation and the value declared by them was also not the correct transaction value. The Valuation Rules provide that when there is reasonable doubt that the declared value does not represent the transaction value and the value is rejected, the value shall then be determined by proceeding sequentially in accordance with Rules 4 to 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Considering the nature of goods, it appeared inappropriate to establish the identical nature of goods imported with any other goods, therefore, the application of Rule 4 did not appear to be appropriate. Therefore, as per Rule 3(4) *ibid*, the correct value was required to be determined as per Rule 5 *ibid* for determination of the correct value. The valuation of the imported goods in question appeared to be done on the basis of value *c.f.* "similar goods" sold for export to India and imported at or about the same time as the goods being valued.

6. ISSUANCE OF SCN NO. F. No. S/10-SIIB/SCN-04/ADC/2017 DATED 10.02.2017.

The above investigation against the importer M/s Akash Industries had resulted into issuance of Show Cause Notice F. No. S/10-SIIB/SCN-04/ADC/2017 dated 10.02.2017 issued by the Additional Commissioner of Customs, Custom House, Kandla.

7. ORDER IN ORIGINAL NO. KDL/ADC/PMR/03/2018-19 DATED 02.05.2018

7.1 Whereas, after observing the due process of law, the Additional Commissioner (Adjudication), Custom House, Kandla had decided the issue *vide* Order in Original bearing no. KDL/ADC/PMR/03/2018-19 dated 02.05.2018 wherein the Adjudicating Authority had dropped the proceedings initiated under the above referred Show Cause Notice dated 10.02.2017, on the grounds that the importer had filed Into Bond Bill of

Entry and the goods were shifted to the Bonded Warehouse as they were not in a position to open the LC for the said cargo. The supplier, M/s. MGA International PTE Ltd., meanwhile, had sold the subject cargo to M/s Mukesh Kumar & Co., Gandhidham and requested to transfer the ownership documents in favour of new buyer i.e. M/s Mukeshkumar & Co, Gandhidham. The respondent-claimant namely M/s Akash Industries had transferred the ownership of the consignment to M/s. Mukesh Kumar & Co., Gandhidham, who had filed Ex-bond B/E and cleared the goods. In case of sale of imported goods deposited in warehouse under the provisions of the Customs Act, 1962, the purchaser is liable to file an Ex-bond bill of entry and pay requisite duty, but in the instant case the overseas supplier had sold the goods to M/s Mukesh Kumar & Co., Gandhidham, so the adjudicating authority had refrained from holding the goods liable for confiscation as there was no seizure of goods. The adjudicating authority dropped the demand along with interest under Section 28 and consequently the penal action under Section 112(a) and Section 114A of the Customs Act, 1962 and imposition of redemption fine were also dropped as proposed in the Show Cause Notice dated 10.02.2017.

7.2 Accordingly, the adjudicating authority had dropped the proceedings initiated vide Show Cause Notice bearing no. F.No. S/10-SIIB/SCN-04/ADC/2017 dated 10.02.2017 in respect of M/s. Akash Industries vide OIO No. KDL/ADC/PMR/03/2018-19 dated 02.05.2018.

8. REVIEW PROCEEDINGS AND FILING OF APPEAL BY DEPARTMENT.

8.1 Subsequently, during the course of review of the aforesaid OIO dated 02.05.2018, upon examination of the said Order-in-Original regarding its legality and propriety, it appeared that the said Order-in-Original was not legal, correct and proper and an Appeal before the Commissioner of Customs (Appeal), Ahmedabad was preferred as the following points were noticed during the review of said Order-in- Original:

- i. *the subject goods were provisionally released under a Bond with security for seeking release of goods pending investigation and on condition that the owner of any such warehoused goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force;*
- ii. *the adjudicating authority failed to give any finding on the aspect of provisional release of goods to the appellant for non-adherence of the condition of the bond, and as to how the goods could be transferred to another entity; when the goods were provisionally released the party cannot transfer the goods to escape the rigors of law;*

- iii. *the adjudicating authority confirmed in his findings that the goods are misclassified and undervalued, hence, it is not proper to drop the demand of differential duty under Section 28 of the Customs Act, 1962, along with interest;*
- iv. *there is deliberate mis-declaration both in terms of classification and valuation in filing the Into Bond bill of entry and the subject goods should be held liable for confiscation under Section 111(m) of the Customs Act, 1962 and penalty is imposable being natural corollary under Section 112(a) of the Customs Act, 1962;*
- v. *there is willful misdeclaration to evade Customs Duty hence penalty under Section 114A of the Customs Act is warranted;*
- vi. *Revenue therefore requested to set aside the impugned order and order for demand of differential Customs duty as proposed in the show cause notice and order holding the goods liable for confiscation under Section 111(m) of the Customs Act, 1962 and imposing penalty as proposed in the show cause notice under Section 112(a)/114A of the Customs Act, 1962.*

8.2 In view of the above, an Appeal bearing no. CA2-02/2018-19 was preferred by the Department against the aforesaid OIO No. KDL/ADC/PMR/03/2018-19 dated 02.05.2018 passed by the Additional Commissioner (Adjudication), Kandla Customs Commissionerate before the Commissioner of Customs (Appeals), Ahmedabad. Shri Vikas Mehta, Consultant had appeared on behalf of the Noticee/respondent and had submitted his cross objection, where in it was submitted that:

- i. *the revenue has not challenged the decision of the Asst./Dy. Commissioner allowing transfer of ownership and permission to file Ex-bond bill of entry to clear the goods which were warehouse through In-bond bill of entry;*
- ii. *Ex-bond bill of entry can be filed by anyone other than the person who has filed In-bond Bill of entry after following due procedure ending with permission of the Asst./Dy. Commissioner, so the charge of clandestine transfer of goods by the respondent-claimant to M/s. Mukesh Kumar & Co. is not tenable;*
- iii. *No legal provision cited in the appeal to demand duty from the filer of Into-bond Bill of entry where clearance have been permitted to the filer of Ex-bond Bill of entry. The duty has already been recovered on the goods and appeal amounts to demanding duty for second time on the same goods*

without authority of law;

- iv. *Proviso to Section 114A of the Customs Act, 1962 states that where any penalty has been levied under this section, no penalty shall be levied under Section 112 or Section 114. So, simultaneous proposition for invocation of penalty under Section 112(a) and Section 114A of the Customs Act, 1962 is not tenable in the eyes of law.*

9. ORDER IN APPEAL PASSED BY COMMISSIONER OF CUSTOMS (APPEALS)

9.1 Whereas, after having carefully gone through the Appeal Memorandum filed by the Department and the Cross Objection filed by the Noticee/respondent, the Commissioner of Customs (Appeal), Ahmedabad vide Common Order-in-Appeal No. KDL-CUSTM-000-APP-008 to 012-19-20 dated 17.06.2019 had observed that;

- (i) *the respondent-claimant/Noticee had imported "Swan New Zealand Pine Logs (bark off)" falling under CTH 4407 which attracts duty @ 10% BCD and 4% Additional duty by mis-declaring the goods as "Roughly Squared New Zealand Pine Logs (bark off)" under CTH 4403 @ 5% BCD and claimed exemption of additional duty vide Sl. No. 56 of Notification No.21/2012-Cus dated 17.3.2012 to evade higher rate of duty and filed Bills of entry as mentioned at column no. 3 of the Table-1 (of above referred OIA dated 17.06.2019) for clearance of goods mentioned at column no. 7 of the Table-1. Therefore, the goods were detained and on request by the respondent-claimant the goods were released provisionally on acceptance of Bond and cash security. The goods were examined by the Customs officers which revealed that these woods were in extremely accurate dimensions without having rough areas or bark traces on the edges.*
- (ii) *The subject goods were in the form of beams with accurate dimensions as declared in the import documents and they were smoothly squared dry pine logs of standard dimensions kept in bunches/lots. The nature and characteristics of the goods merits classification under CTH 44071020 and are liable to be assessed @ 10% BCD plus 4% Additional duty. I find that the respondent-claimant had filed Into-Bond Bill of Entry as mentioned in column no. 3 of the Table-1 and goods were shifted to the Bonded Warehouse as they were not in a position to open the LC for the said cargo. The supplier, M/s. MGA International PTE Ltd., meanwhile, had sold the subject cargo to M/s. Mukesh Kumar & Co., Gandhidham and requested to*

transfer the ownership documents in favour of new buyer i.e. M/s. Mukesh Kumar & Co., Gandhidham. The respondent-claimant transferred the ownership of the consignment to M/s. Mukesh Kumar & Co., Gandhidham, who filed Ex-bond Bills of entry as mentioned in column no. 6 of Table-1 and cleared the goods. In case of sale of imported goods deposited in warehouse under the provisions of the Customs Act, 1962, the purchaser is liable to file an Ex-bond bill of entry and pay requisite duty, but in the instant case the overseas supplier sold the goods to M/s. Mukesh Kumar & Co., Gandhidham, so the adjudicating authority refrained from holding the goods liable for confiscation as there was no seizure of goods. The adjudicating authority dropped the demand along with interest under Section 28 and consequently the penal action under Section 112(a) and Section 114A of the Customs Act, 1962 and imposition of redemption fine is also dropped.

- (iii) the subject goods were provisionally released under a Bond with security for seeking release of goods pending investigation and on condition that the owner of any such warehoused goods shall not be allowed to relinquish his title to such goods. Proviso to Section 68 of the Customs Act, 1962, provides

"Provided also that the owner of any such warehoused goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force."

The respondent-claimant were well aware of the fact that a case has been booked against them but still they had clandestinely transferred the said goods to M/s. Mukesh Kumar and Co., thereby dishonoring the condition (a) of the bond furnished by them at the time of provisional release, thus violating the proviso to Section 68 of the Customs Act, 1962. I find that the adjudicating authority failed to give any finding on the aspect of provisional release of goods to the appellant for non-adherence of the condition of the bond. Further, I find that the adjudicating authority confirmed in his findings that the goods are misclassified and undervalued; therefore, it was not proper to drop the demand of differential duty under Section 28 of the Customs Act, 1962, along with interest.

9.2 In view of the above, the Commissioner of Customs (Appeal), Ahmedabad had found that there was deliberate mis-declaration both in terms of classification and valuation in filing the Into Bond bill of entry so the subject goods were liable for confiscation under Section 111(m) of the Customs Act, 1962 and penalty was imposable

being natural corollary under Section 112(a) of the Customs Act, 1962. The Appellate Authority had also observed that there was willful mis-declaration to evade Customs duty and accordingly penalty under Section 114A of the Customs Act, 1962 was also imposable. Therefore, it was held by the Appellate Authority vide the above referred Common Order-in-Appeal No. KDL-CUSTOM-000-APP-008 to 012-19-20 dated 17.06.2019 that the impugned Order-in-Original No. KDL/ADC/PMR/03/2018-19 dated 02.05.2018 passed by the Additional Commissioner (Adjudication), Kandla Customs Commissionerate suffered from serious legal infirmities.

9.3 The Appellate Authority had also observed that, at this stage, the veracity of the claims made by the Noticee without having material evidence on record was not possible. Therefore, vide the above referred common OIA No. KDL-CUSTOM-000-APP-008 to 012-19-20 dated 17.06.2019, the Appellate Authority had held that the impugned OIO No. KDL/ADC/PMR/03/2018-19 dated 02.05.2018 was required to be set aside and the case was required to be remitted with suitable directions for de novo decision, as it had become sine qua non to meet the ends of justice. In this regard, the Appellate Authority had relied upon the case of Prem Steels P. Ltd. - 2012-TIOL-1317-CESTAT-DEL and the case of Hawkins Cookers Ltd. -2012 (284) E.L.T. 677 (Tri. -Del), which had also relied upon the case of Medico Labs - 2004(173) ELT 117 (Guj.), wherein it was held that the Commissioner of Customs (Appeals) continue to have power of remand even after the amendment of Section 35(A) of the Central Excise Act, 1944 by Finance Act, 2001 w.e.f. 11.05.2001.

9.4 In view of the above, the Commissioner of Customs (Appeals) vide Common OIA No. KDL-CUSTOM-000-APP-008 to 012-19-20 dated 17.06.2019 had set aside the impugned order No. KDL/ADC/PMR/03/2018-19 dated 02.05.2018 passed by the Additional Commissioner (Adjudication), Kandla Customs Commissionerate and the matter was remanded to the Adjudicating Authority with directions to examine all the facts, documents, submissions and case laws relied by the appellant and then pass an Order afresh expeditiously in this case following the principles of natural justice and legal provisions.

10. ACCEPTANCE OF OIA DATED 17.06.2019

Subsequently, the above referred Common Order-in-Appeal No. KDL-CUSTOM-000-APP-008 to 012-19-20 dated 17.06.2019 was accepted by the Department and it was directed to take up the subject case for de-novo adjudication in accordance with the directions passed by the Commissioner (Appeals).

11. REQUEST MADE BY THE NOTICEE TO KEEP DENOVO ADJUDICATION IN ABEYANCE

Meanwhile, M/s Akash Industries vide their letter dated 06.12.2019 had informed the Department that they had challenged the Common Order-in-Appeal No. KDL-CUSTM-000-APP-008 to 012-19-20 dated 17.06.2019 before the Hon'ble Tribunal at Ahmedabad vide Application No. C/12452/2019 (C/COD/10758/2019) and had requested the Department to keep the de-novo adjudication in abeyance until a final decision is arrived at by Hon'ble Tribunal at Ahmedabad.

12. CASE TRANSFERRED TO CALL BOOK.

In view of the above, as an appeal was preferred by M/s. Akash Industries before the Hon'ble Tribunal at Ahmedabad against the Common Order-in-Appeal No. KDL-CUSTM-000-APP-008 to 012-19-20 dated 17.06.2019 issued by the Commissioner of Customs (Appeals), the subject Show Cause Notice F.No.S/10-SIIB/SCN-04/ADC/2017 dated 10.02.2017 (Order-In-Original No. KDL/ADC/PMR/03/2018-19 dated 02.05.2018) issued by the Additional Commissioner, Custom House, Kandla, could not be de-novo adjudicated till the outcome of the appeal preferred by the Noticee before the Hon'ble Tribunal in this case. Accordingly, in view of Section 28 (9A) (a) of the Customs Act, 1962, the above referred Show Cause Notice dated 10.02.2017 was transferred into callbook on 20.01.2020 after approval of the Competent Authority and the Noticee was also informed regarding the above.

13. FINAL ORDER DATED 26.09.2024 PASSED BY THE HON'BLE TRIBUNAL AND SUBSEQUENT RETRIEVAL FROM CALL BOOK FOR ADJUDICATION.

Whereas, in the matter of the above referred Appeal filed by M/s. Akash Industries before Hon'ble Tribunal, Ahmedabad bearing no. Customs Appeal No. 12448 of 2019 had passed Common Final Order No. 12163-12170/2024 dated 26.09.2024 as discussed in subsequent paragraph. As the said Order dated 26.09.2024 was subsequently accepted by the Department, the Show Cause Notice F.No. S/10-SIIB/SCN-04/ADC/2017 dated 10.02.2017 which was kept in call book was retrieved after approval of the Competent Authority and the same has been taken up for adjudication.

14. GIST OF FINAL ORDER DATED 26.09.2024 PASSED BY THE HON'BLE TRIBUNAL.

Whereas, vide Common Final Order No. 12163-12170/2024 dated 26.09.2024 passed by the Hon'ble CESTAT, Ahmedabad, the learned Tribunal had held that they did not find any merit in holding the goods classifiable under Customs Tariff Head 4407. It was also held that the goods are correctly classifiable under Customs Tariff Head 440399. Finally, it was held that as classification issue was at the core of controversy and the same had been decided as above in favour of the Noticee, other issues for decision are relegated to redundancy. As such the prayer made by the Noticee to set aside the impugned OIA No. KDL-CUSTM-000-APP-008 to 012-19-20 dated 17.06.2019 and to allow their appeal has been granted by the Hon'ble Tribunal vide the Common Final Order No. 12163-12170/2024 dated 26.09.2024.

15. DISCUSSION AND FINDINGS.

15.1 I have carefully gone through the Show Cause Notice F. No. S/10-SIIB/SCN-04/ADC/2017 dated 10.02.2017, Order-In-Original No. KDL/ADC/PMR/03/2018-19 dated 02.05.2018, Common Order-in-Appeal No. KDL-CUSTM-000-APP-008 to 012-19-20 dated 17.06.2019 and Common Final Order No. 12163-12170/2024 dated 26.09.2024 issued by the Hon'ble CESTAT, Ahmedabad.

15.2 I observe that this proceeding arises out of the above referred Show Cause Notice dated 10.02.2017 alleging mis-classification and undervaluation in respect of timber imported vide Bill of Entry No. 4754669 dated 30.03.2016 by the Noticee and proposing demand of differential duty under Section 28 of the Customs Act, 1962, confiscation under Section 111(m) and penalties under Sections 112(a) and 114A. The matter was earlier adjudicated by the then Additional Commissioner (Adjudication), Customs Kandla wherein the adjudicating authority had dropped the proceedings initiated vide Show Cause Notice bearing no. F.No. S/10-SIIB/SCN-04/ADC/2017 dated 10.02.2017 issued to the Noticee vide OIO No. KDL/ADC/PMR/03/2018-19 dated 02.05.2018. The said OIO dated 02.05.2018 was reviewed by the Department and an Appeal was filed before the Commissioner of Customs (Appeals), Ahmedabad wherein the said Appellate Authority vide Common OIA No. KDL-CUSTM-000-APP-008 to 012-19-20 dated 17.06.2019 had remanded the case for de-novo adjudication. Thereafter, the proceedings were kept in Call Book during pendency of the matter before the Hon'ble CESTAT at Ahmedabad. Pursuant to Common Final Order No. 12163-12170/2024 dated 26.09.2024 issued by the Hon'ble CESTAT, Ahmedabad the case has been retrieved from Call Book for adjudication.

15.3 I find that the Hon'ble Tribunal in the above referred Common Final Order No. 12163-12170/2024 dated 26.09.2024 has *interalia*, made the following observations:

"8.3 We find that on record there is no expert opinion obtained by the department about accuracy of dimensions or about the process involved in making the logs obtain the shape of cuboids. 10% logs were apparently having the bark and statement of A.R of the appellant recorded by the department denies cutting to be proper or accurate. Further, the decisions relied upon by A.R. of the department, on Central Excise side are in a different context and do not advance their case.

9. The department has ordered classification of goods under CTH 44.07 on the basis of following allegation contained in the Show Cause Notice (page 8 of Synopsis, internal page 6 of 9 of show cause notice):

*"Explanatory notes of CTH 44.07 states that the heading covers all wood and timber of any length but of a thickness exceeding 6 mm, sawn or chipped along the general direction of the grain or cut by slicing or peeling, It is also stated that such wood and timber includes sawn beams, planks, flitches, boards, laths, etc. It is seen that the subject goods are in the form of beams with accurate dimensions as detailed in the import documents, It was also found that the goods were smoothly squared dry Pine logs of standard dimensions kept in bunches/lots. The dimensions have been re-verified at the time of Panchnama proceedings and matched with dimensions as declared by the importer. In view of the nature and characteristics of the goods observed during examination, the subject goods merits classification under CTH 44071020. Therefore, the goods are liable to be assessed @ 10% BCD + 4% Additional duty." To classify the goods under CTH 44.07, department has to show that goods were found cut in standard length with extremely accurate dimensions. **Burden of proof is on the department, as it has sought to re-classify the product.***

10. The photographs taken in presence of panchas that are scanned and reproduced on page 25 to 27 of impugned order reveal that the goods are having dimensions of cuboids but it cannot be considered to be of extremely accurate dimensions, as is the requirement of the note. The terms used by Panchnama of "goods being were not found to be squared logs, but were found to be of standard cut lengths with extremely accurate dimensions" are as per H.S.N. Panchnama also indicates that 10% logs showed presence of bark traces. It was indicated that dimensions were not extremely accurate. Further the photos on records, as under

also do not reveal 'extremely' accurate dimensions.

10.1 Further Para 7 of the order passed by Ld. Commissioner (Appeals) is reproduced below for the ease of reference (page 27 of appeal memo) reads as follows: -

"7 As per HSN explanatory notes of CTH 44.07 it is mentioned that:

"With a few exceptions, this heading covers all wood and timber, of any length but of a thickness exceeding 6 mm, sawn or chipped along with the general direction of the grain or cut by slicing or peeling. Such wood and timber includes town beams, planks, flitches, boards, laths, etc. and products regarding as the equivalent of sawn wood or timber, which are obtained by the use of chipping machines and which have been chipped to extremely accurate dimensions, a process which results in a surface better than that obtained by sawing and which thereby renders subsequent planning unnecessary..."

10.2 From a bare reading of the panchnama, it is clear that the following requirements are not satisfied for classification under CTH 44.07:

- i) There is no record that the goods have been sawn or chipped along with the general direction of the grain or cut by slicing or peeling.
- ii) In the photographs reproduced in the order-in-original (page 25. to 27), goods appear to be somewhat of accurate dimensions but not "extremely" accurate dimensions. The word "extremely" employed in HSN cannot be rendered otiose or redundant.
- iii) The expression "extremely accurate dimensions" for classification under CTH 44.07 is also defined in the HSN. According to this, chipping machines must have been used and the process of chipping must have resulted in a surface better than that obtained by sawing **so as to render subsequent planning unnecessary**. Neither panchas nor the lower authorities have found that surface of logs was such that subsequent planning was unnecessary. Further, logs with traces of bark, in any case cannot be considered as having extremely accurate dimensions. Department has also not shown that process of chipping was used to obtain better surface than sawing. Benefit of Conflicting and in complete statements of panchas, C.H.A and A.R of the appellants in the absence of any expert opinion by the

department as chipping having been involved also has to be construed in favour of the appellant, as burden of proof in classification matters is on the department.

11. *In view of the foregoing, we find merit in the submissions made that the impugned goods deserve classification under 44.03 and not under T.H. 4407."*

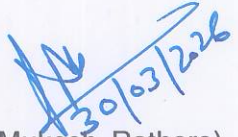
15.4 Thus, I find that the learned Tribunal has held that the burden of proving re-classification lies on the Department, which was not discharged in absence of technical or expert evidence as no expert opinion was obtained by the Department to establish that the logs were cut to "extremely accurate dimensions" or that any chipping process was used, as required by the HSN notes for classification under CTH 44.07 and further that even the photographs on record showed cuboid shapes but did not establish extremely accurate dimensions further they had also taken note of the presence of bark traces on 10% logs. **Therefore, the Hon'ble Tribunal did not find any merit in holding the goods classifiable under Customs Tariff Head 4407. It was also held that the goods are correctly classifiable under Customs Tariff Head 440399. Finally, it was held that as classification issue was at the core of controversy and the same had been decided as above in favour of the Noticee, therefore, other issues for decision are relegated to redundancy.** As such the prayer made by the Noticee to set aside the impugned OIA No. KDL-CUSTOM-000-APP-008 to 012-19-20 dated 17.06.2019 and their appeal has been allowed by the learned Tribunal.

16. I finally find that the aforesaid Common Final Order No. 12163-12170/2024 dated 26.09.2024 issued by the Hon'ble CESTAT, Ahmedabad has been accepted by the Department on 20.12.2024 and hence I find that the present issue regarding mis-classification of the import goods and other issues as highlighted under the subject SCN No. F. No. S/10-SIIB/SCN-04/ADC/2017 dated 10.02.2017 which have been relegated to redundancy have attained finality in view of the said Order dated 26.09.2024. In view of the above, I pass the following order.

-:ORDER:-

As the alleged mis-classification of the import goods in the Show-Cause-Notice bearing F. No. S/10-SIIB/SCN-04/ADC/2017 dated 10.02.2017 has been decided in favour of the Noticee and other issues have been relegated to redundancy which were otherwise required to be adjudicated under remand back proceedings, have already been decided by the Hon'ble CESTAT, Ahmedabad vide their Common Final Order No. 12163-12170/2024 dated 26.09.2024 and giving due credence to the fact that the said Order

dated 26.09.2024 has been accepted by the Department, I hold that the case has attained finality. In view of the above, I hold that no further action is required to be undertaken in the matter of Show-Cause-Notice bearing F. No. S/10-SIIB/SCN-04/ADC/2017 dated 10.02.2017 issued to M/s Akash Industries, Survey No. 281, N.H. No. 8/A, Nani Chirai, Taluka-Bhachau, Kutch-370140 for the reasons as stated in the foregoing paragraphs.


(Mukesh Rathore)

Additional Commissioner,
Custom House, Kandla.

F.No. GEN/ADJ/ADC/624/2026-Adjn-O/o Commr-Cus-Kandla

DIN-20260371ML000041974E

To:

M/s. Akash Industries,
Survey No. 281, N.H. No. 8/A,
Nani Chirai, Taluka-Bhachau,
Kutch-370140.

Copy to: -

- 1) The Additional Commissioner, Customs Kandla for Review
- 2) The Assistant Commissioner (EDI) for uploading on the website.
- 3) The Assistant Commissioner (TRC) for necessary action.
- 4) Guard File.

