सत्यमेव जयते

सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,

चौथी मंज़िल **4th Floor,** हडको भवन **HUDCO Bhawan,** ईश्वर भुवन रोड़ **Ishwar Bhuvan Road**
नवरंगपुरा **Navrangpura,** अहमदाबाद **Ahmedabad – 380 009**
दूरभाष क्रमांक **Tel. No. 079-26589281**

DIN - 20250871MN0000914239

क	फ़ाइल संख्या FILE NO.	S/49-104/CUS/MUN/2024-25
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	MUN-CUSTM-000-APP-153-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	08.08.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original no. MCH/146/AC/ROJ/GRP-V/2024-25 dated 31.05.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	08.08.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Krishna Spares and Machinery Parts, H. No. 219 P, Sector 6, Panchkula Haryana

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

	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.	
4.	मद सं. **2** के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बंन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम **1962** की धारा **129** ए **(1)** के अधीन फॉर्म सी.ए.-**3** में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केंद्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	**Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench**
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, **1962** की धारा **129** ए **(6)** के अधीन, सीमाशुल्क अधिनियम, **1962** की धारा **129** ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रुपए.	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रुपए	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रुपए.	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	उक्त अधिनियम की धारा **129** (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal- (a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or (b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	

ORDER-IN-APPEAL

Appeal has been filed by M/s. Krishna Spares and Machinery Parts (IEC: AXFPS746OJ) located at House No. 219 P, Sector 6, Panchkula Haryana, formerly at Plot No. 382, Ward 2B, Village Gandhidham, Taluka Gandhidham, Gujarat – 370201 (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/146/AC/ROJ/GRP- V/2024-25 dated 31.05.2024 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Customs House, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the appellant had filed the Bills of Entry as detailed in Table-A below, through their CB, M/s. Hemjyot Agency (AAAFH2124ECH003) for importation of goods i.e. GREASE BUCKET (PUMP) etc by paying the IGST @5% (Schedule-I Sr. No.231). The details of said goods are as under:

Table-A

BE No. & Date	Item No.	Inv No.	Description of goods	Classification	Assessable value (in Rs.)	IGST SNo @5%
5522671 dated 01.11.2019	47	01	GREASE BUCKET (PUMP)6L(EARTMOVING MACHINE PARTS) NT/WT-1500Kgs 500KgsNT/WT-1500KGS	84131110	258746	1-231
5522671 dated 01.11.2019	49	01	GREASE BUCKET SPARE PART (RUBBER) EARTMOVING MACHINE PARTS) NT/WT-2.5KGS	84131110	366	1-231
5522671 dated 01.11.2019	48	01	GREASE BUCKET (PUMP) 10L (FARTMOVIN MACHINE PARTS) NTWT-684 KGS	84131110	113450	1-231

814381 dated 11.07.2020	25	01	GREASE BUCKET 10L NET WT- 516 KGS	84131110	48549	1-231
392694 dated 13.05.2021	26	01	GREASE BUCKET (DECEXCAVATOR MACHINE PARTS) NTWT-550 KGS	84131110	48217	1-231
6857136 dated 28.12.2021	12	01	GREASE BUCKET (DEC EXCAVATOR MACHINE PARTS) NTWT-500 KGS	84131110	47024	I-231

2.1 An analysis of data (ANALYTICS REPORT 032020-21) in respect of Import of goods classified under the sub-heading 8413 with regard to wrong claim of IGST rate (@5% (Schedule-1, 231) instead of IGST rate 18% applicable for such goods under Schedule-III. Sr. No 453 of Notification No.01 2017-Integrated Tax (Rate) dated 28 06 2017, resulting in short levy of IGST, was carried out by the National Customs Targeting Centre (NCTC), Mumbai. Based on the analysis, it is observed that as per entry 231 of Schedule-I (5%), refers certain specified goods, namely, Hand pumps and parts thereof, attract a lower IGST rate @ 5%. On scrutiny of the data by the officers of Customs, Mundra of the imports made by the said importer, M/s. Krishna Spares and Machinery Parts under CTH 8413, it was noticed that the said importer had imported the goods i.e. GREASE BUCKET (PUMP) etc which is other than Hand pumps and parts thereof.

2.2 The said Importer had filed the Bills of Entry for home clearance of the goods (as mentioned in Table-A) under sub-heading 8413 of the first schedule of the Customs Tariff Act, 1975. The Importer discharged the tax of IGST in terms of Serial No. 231 of Schedule- of IGST Notification 01/2017-IGST (Rate). The CTH-8413 applies to "Pumps for liquids, whether or not fitted with a measuring device: Liquid Elevators". Depending on the type of pump and its usage, the "Pumps" are further classified under 8-digit CTHs. The IGST rate applicable to the goods of CTII 8413 is prescribed vide Notification No. 01/2017-Integrated Tax (Rate) dated 28/06.2017, as amended. The relevant entries of the rate of IGST under Schedule-1 and Schedule-III of IGST Notification 01 2017-1GST(Rate) dated 28.06.2017 for Heading 8413 are reproduced as under:

Table-B

Sr No of Schedule of IGST Notification no. 01/2017	IGST Rate	Chapter Tariff Item as per Schedule	Description of Goods
I-231	5%	8413	Hand pumps and parts thereof;
III-453	**18%**	**Any Chapter**	**Goods which are not specified in Schedule I, II, IV, V and VI**

2.3 From the above table, it is apparent that except for "Hand Pumps and Parts Thereof", listed at serial no.231 of Schedule-1 of the said Notification. no other items of CTH 8413 is entitled for IGST Rate of 5%. Thus, "Description of Goods", as declared by the importers in their BFs as "Hand Pumps and Parts Thereof" i.e. the items that are actually entitled to Serial No. 1-231. It, therefore, appears that the imported goods i.e. 'GREASE BUCKET (PUMP) etc' of CTH-84131110 (not expressly falling under Schedule -I. i.e., other than "Hand pumps and parts thereof "), actually merits a levy of IGST at the rates specified in Schedule-III of Notification No. 01/2007 Integrated Tax (Rate). The goods are liable to a higher IGST rate @ 18% under entry III-453 (18%).

2.4 The appellant had cleared said goods at a lower IGST @5% under the aforementioned Serial number of Schedule-I, instead of paving a higher IGST rate @ 18% applicable for said goods under Schedule-III. Sr. No.453 of Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017 (amended). The short-levy of IGST 13 (i.c. 18% minus 5%) of goods classified under 84131110 is calculated as under in Table-C:-

Table-C

BE No. & Date	Item No.	Description of goods	Assess able value (in Rs.)-	IGST Paid 5%	IGST Payable 18%	Short Levied of IGST (18%-5%)
5522671 dated 01.11.2019	47	GREASE BUCKET (PUMP)6L (EARTMOVING MACHINE PARTS) NT/WT-1500KGS	258746	14360	51232	36871
5522671 dated 01.11.2019	49	GREASE BUCKET SPARE PART (RUBBER) EARTMOVING MACHINE PARTS) NT/WT-2.5KGS	366	20	73	52
5522671 dated 01.11.2019	48	GREASE BUCKET (PUMP)(FARTMOVIN MACHINE PARTS) NTWT-684 KGS	113450	6297	22463	16167
814381 dated 11.07.2020	25	GREASE BUCKET 10L NET WT- 516 KGS	48549	2695	9613	6918
392694 dated 3.05.2021	26	GREASE BUCKET (DECEXCAVATOR MACHINE PARTS) NT WT.-550 KGS	42816.63	2376.3	8554.76	6178.44
6857136 dated 28.12.2021	12	GREASE BUCKET (DEC EXCAVATOR MACHINE PARTS) NT WT.-500 KGS	47024	2609.83	9395.39	6785.56
Total			510952	28358	91936	72,972

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Hence, as detailed in Table-C, Importer has short paid Rs. 72,972/- IGST duty.

2.5 In light of the documentary evidences, as brought out above and the legal provisions, it appeared that the appellant had willfully suppressed the facts and deliberately misclassified the imported goods with a malafide intention to evade the duty by wrongly taxing the said goods under Serial No. 231 of Schedule-I of IGST Notification 01/2017-IGST(Rate) of the goods leading to short payment of Customs duty. It was apparent that the importer/Appellant was in complete knowledge of the correct nature of the goods nevertheless, the importer claimed undue notification benefit for the said goods in order to clear the goods by wrongly paying Customs duty on a lower side under Serial No. 231 of Schedule-1 of IGST Notification (01 2017-1GST(Rate) which prescribes IGST 5%. Therefore, it appeared that the appellant had wilfully violated the provisions of Section 17(1) of the Act in as much as the appellant had failed to correctly self assess the impugned goods and has also willfully violated the provisions of Sub section (4) and (4A) of Section 46 of the Act.

2.6 It appeared that the appellant had willfully mis-stated the facts & wrongly paid IGST on lower side by categorizing its goods under Serial No. 231 of Schedule-1 of IGST Notification (01/2017-IGST(Rate) which prescribes IGST duty a 5% whereas, the goods attract IGST @ 18% under Serial No. 453 of Schedule-III of Notification No. 01 2017 Integrated Tax (Rate). The import of goods has been defined in the IGST Act, 2017 as bringing goods in India from a place outside India. All import shall be deemed as inter-state supplies and accordingly integrated tax shall be levied in addition to the applicable Custom duties. The IGST Act, 2017 provides that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of Customs are levied on the said goods under Section 12 of the Customs Act, 1962. It appeared that the importer willfully listed in a Schedule which did not pertain to the impugned goods resulting into short levy of duty. Further, it appeared that in respect of the Bill of Entry as detailed in above Table-A, such wrong claim of notifications benefit on the part of the importer has resulted into short levy of duty of Rs.72,972/- (Rupees Seventy-Two Thousand Nine Hundred Seventy-Two Only) which is recoverable from the importer under the provisions of Section 28(4) of the Customs Act, 1962 read with Section 5 of the Integrated Goods and Service Tax Act, 2017 along with interest as applicable under Section 28AA of the Act read with Section 50 of the Central Goods and Service Tax Act, 2017. Also, the said goods totally valued at Rs.5,10,952/- imported under above-mentioned Bills of Entry appeared to be liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962 in as much as the same have been imported by mis-declaring Sr No. 231 of Schedule-I in place of Sr. No. 453 of Schedule-III of the Notification No. 01/20171GST(Rate). For such act of omission and commission, the appellant also appeared to have rendered themselves liable to penalty under Section 114A/112(a) of the Customs Act, 1962.

2.7 In the present case, Customs Broker M/s. Hemjyot Agency, who was authorised by the appellant M/s. Krishna Spares and Machinery Parts, is bestowed upon to file correct Bills of Entry on behalf of the Importer. Here in the material case, inspite of knowing the facts that goods imported by the appellant required to be listed in Sr. No. 453 of Schedule-III of the Notification No. 01/2017-IGST(Rate), the Customs Broker filed Bills of Entry by declaring Sr No. 231 of Schedule-I of the Notification No. 01 2017-IGST(Rate). It is the obligation of the Customs Broker to exercise due diligence to ascertain the correctness of any information which he imparts to his client with reference to any work related to clearance of cargo. It is the obligation of the Customs Broker to advise his client to comply with the provisions of the Act and in case of noncompliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs. However, in the material case, the Customs Broker i.e. M/s Hemjyot Agency failed to comply with their obligations mentioned at 10(d), 10(e) and 100m) of the Customs Broker Licensing Regulations, 2018. In the present case, the C'HA has failed to perform his duties/obligation as provided in terms of Customs Broker Licensing Regulations, 2018 by which they rendered themselves liable for penalty in terms of the provisions of Section 117 of the Customs Act, 1962.

2.8 Accordingly, a Show Cause Notice dated 26.04.2024 was issued to the appellant requiring them to show cause in writing to the Deputy/Assistant Commissioner of Customs, as to why:-

i. The imported goods having declared assessable value of Rs.5,10,952/- (Rupees Five Lakh Ten Thousand Nine Hundred Fifty-Two Only) should not be held liable to confiscation under Section 111(m) of the Customs Act, 1962 for the act of mis-declaring Sr No. 231 of Schedule-1 in place of Sr. No. 453 of Schedule-III of the Notification No. 01/2017-GST(Rate) dated 28.06.2017.

ii. the Serial No. 231 of Schedule-1 of IGST Notification 01 2017-IGST(Rate) on the goods should not be dented and the same should not be taxed and re-assessed at correct rate of IGST @18% under Sr. No. 453 of Schedule III of IGST Notification No. 01/2017 as detailed in Table-C above:

iii. the differential duty worked out to Rs. 72,972/- (Rupees Seventy-Two Thousand Nine Hundred Seventy-Two Only) in respect of Bills of Entry as detailed in above table, should not be recovered under Section 28(4) of the Customs Act, 1962 read with Section 5 of the Integrated Goods and Service Tax Act, 2017 along with applicable interest thereon as per Section 28AA of the Customs Act, 1962 read with Section 50 of the Central Goods and Service Tax Act, 2017 as applicable;

iv. penalty should not be imposed upon them under Section 112(a)(ii) & 114A of the Customs Act, 1962.

2.8.1 Show Cause Notice dated 26.04.2024 was also issued to M/s Hemjyot Agency, calling upon them to Show Cause to the Assistant Commissioner of Customs, Group-V, Custom House, Mundra , as to why penalty should not be imposed upon them under Section 117 of the Customs Act, 1962.

2.9 The Adjudicating Authority recorded that the demand of Rs 6786/- in respect of B/E No.6857136 dated 28.12.2021 has already been adjudicated vide OIO No. MCH/496/DC/LP/GR V/2022 dated 17.10.2022 (SCN No. CUS/APR/SCN/92/2022-Gr5-6-O/o-PR-COMMR-CUS-MUNDRA dated 18.05.2022) and the said duty along with interest has been paid vide Challan No. 224 dated 29.04.2022 prior to issuance of SCN dated 18.05.2022 and penalty has been paid by the importer vide Challan No. 4260 dated 04.11.2022. The adjudicating authority has further noted that there was no need to adjudicate this portion of the demand as well as the consequent issues of interest and penalty. The adjudicating authority therefore adjudicated the remaining demand of Rs. 66,186/- and the aspects concerning interest and penalty and passed the following order:

i. He denied the listing and taxing of the imported goods under Sr. No. 231 (Schedule-1) of Notification No 1/ 2017-Integrated Tax (rate) dated 28.06.2017 as amended and ordered to re-assess the said imported goods under Sr. No. 453 (Schedule-III) of IGST Notification No. 1/2017-Integrated Tax (rate) dated 28.06.2017 as amended accordingly:

ii. He confirmed and ordered to recover the total differential duty amounting to Rs.66,186/- (Rupees Sixty six thousand one hundred and eighty six only) as detailed in Table-C above, from the appellant in respect of the goods covered under Bills of Entry as detailed in Table-C above as accepted by the appellant under Section 28(5) of the Customs Act, 1962. Differential duty of Rs. 66,186/- paid by the importer vide challan no.334 dated 16.05.2024 (as verified from Cash Section, CH, Mundra) shall be appropriated against the recovery of confirmed demand of Rs.66.186/- under section 28(5) read with section 28(6)(i) of the Customs Act, 1962;

iii. He ordered to charge and recover interest from the appellant on the confirmed duty amount at Sr. No. (ii) as accepted by the importer under Section 28(5) of the Customs Act, 1962. Interest of Rs. 61,314 (Rupees Sixty one thousand three hundred and fourteen only) paid by the importer vide challan No. 334 dated 16.05.2024 (as verified from Cash Section, CH, Mundra) shall be appropriated against the recovery of interest on confirmed demand of Rs.66,186/- at (ii) above under section 28(5) read with section 28(6)(1) of the Customs Act, 1962;

iv. He ordered to appropriate penalty of Rs.10,950/- (Rupees Ten thousand nine hundred and fifty only) which is equal to 15% of differential duty at (n) above, accepted and paid by the importer vide challan no. 377 dated 28.05.2024 (as verified from Cash Section, CH, Mundra) under section 28(5) read with section 28(6)(i) of the Customs Act. 1962;

v. He vacated the proposal for imposition of penalty on the Customs Broker. M/s. Hemjyot Agency under Section 117 of the Customs Act, 1962 for the reasons discussed above:

vi. He ordered to conclude the proceedings for demand of Rs.66,186/- initiated vide SCN F. No. CUS/APR/RPTS/10/2023-Gr 5-6 dated 26.04.2024 under section 28(6)(i) of the Customs Act, 1962 without prejudice to the provisions of sections 135, 135A and 140 of the Customs Act, 1962.

SUBMISSIONS OF THE APPELLANT:

3. Being aggrieved with the impugned order, the Appellant has filed the present appeal wherein they have submitted grounds which are as under:-

3.1 The appellant has submitted that the impugned order is absolutely cryptic in nature and is made on the wrong factual premises and presumptions and hence, is liable to be set-aside. The Adjudicating Authority has not properly considered and appreciated the facts of the case and has grossly erred in understanding and interpreting the facts on record vis-a-vis the legal provisions and thus, arrived at a totally wrong conclusion, which is evident from the impugned order and imposition of penalty as mentioned therein. Accordingly, the Appellant has made the following submissions, on the following grounds, which are mutually exclusive and without prejudice to each other:-

3.2 The impugned OIO/ SCN, is based on mere assumptions, presumptions, conjectures and surmises in as much as that the entire prejudicial action has been proposed against the Appellant on the ground that the Appellant had mis-declared the goods and had imported old and used electronic goods, the fact of the matter is that the Appellant never made any declarations by way of filing any kind of document. It is a settled principle of law that the OIO/ SCN is required to be issued on categorical allegations clearly spelling out the case of the Adjudication Authority allegations against the Appellant vis-à-vis the alleged resultant contravention of the legal provisions and that mere assumptions and presumptions cannot be made as legs to stand the OIO/ SCN. Since, the impugned OIO/ SCO fails to fulfill such basic requirements of law related to the issuance of OIO/ SCN, hence, the impugned OIO/ SCN is liable to be quashed on this ground alone.

3.3 The Appellant has further submitted that even the allegations leveled upon the Appellant based upon assumptions and presumptions, vide the impugned OIO/ SCN, are vague, ambiguous and unclear. Based on such vague allegations, no case can reasonably be made out against the Appellant; nor the Appellant herein be expected to make any submissions in respect of such vague and unclear allegations. It is further submitted that it is a settled principle of law that the OIO/SCN should clearly spell out the allegations against the Appellant vis-à-vis the documents being relied upon by the Adjudication Authority to prove such allegations vis-à-vis the applicable legal provisions. Further, the burden of proof of not only making categorical allegations but proving the same as well rests upon the Adjudication Authority; and apparently such burden does not stand discharge in the instant case, thus, the impugned OIO/ SCN is liable to be set-aside on this ground alone.

3.4 Without prejudice to the aforesaid submissions, at this juncture, the Appellant herein would further like to submit that the present case involves demand of Customs duty and interest thereon based upon the subject Bills of Entry, which already stand cleared by the Customs Authority for home consumption at the relevant time of imports itself. The permission of clearance, as given by the Customs authority under Section 47 of the Customs Act, 1962 is an Order issued by him after satisfying himself with respect to all aspects of importation of goods which inter alia includes the verification of Certificate of Origin and also the issue of extending benefits of any exemption Notification, if any and payment of Customs duty thereof. The fact that the permission for clearance of goods under Section 47 of the Customs Act, 1962 is an Order issued by the Customs Authority under the said Section, makes it obligatory on the part of the Department that in case of any disagreement, the said Order can be challenged only by way of an appeal since the Assessment Order is itself a speaking Order, which is an appealable Order and against which the appeal lies under Section 128 of the Customs Act, 1962; implying thereby, that no SCN/ OIO can be issued in respect of the same, i.e. in respect of the said already assessed and cleared Bills of Entry. Hence, issuance of the impugned SCN/ OIO in the instant case is not a proper course of action and needs to be set aside on this ground alone.

3.5 In support of the aforesaid contention, the Appellant herein relies upon the following case laws and judgements: -

a. Priya Blue Industries Ltd. v. Commissioner of Customs (Preventive), 2004 (172) ELT 145 (SC)

b. Ruchi Soya Industries Ltd ve. Commissioner of Customs, Jamnagar, 2013 (296) ELT 114 Tri Ahmd.)

3.6 More importantly, the issue pertains to an opinion only with reference to the classification vis-a-vis the exemption notification 01/2017-Integrated tax (Rate) dated 28.06.2017 (S.No 453) and not with reference to any other particulars on record namely, value, quantity, description etc. Equally important is that Custom Authorities had examined, assessed and cleared the goods only after their satisfaction in terms of classification, valuation, quantity, description etc. Hence, there is no malafide or intentional declaration of any item under the said Bills of Entry. Before adventuring on to the other issues on merits, it is necessary to point out here that all the bills of entry have been duly examined, processed, verified, finally assessed by the Customs Authorities and gave clearance after confirmation of the assessed duty by Customs Authorities. Hence, it is never the case that the Appellant had at any point of time had suppressed any material facts on record, which included description of the goods, invoices, value of the goods and other details as required under Section 46 of the Customs Act, 1962, while filing the bill of entry. The classification of the goods is only an opinion on the part of the importer under self-assessment, which is always subjected to processing and then later to examination at the shed. In both the cases, i.e. at the time of processing and at the time of examination and clearance, there had never been any query with reference to the classification. On the contrary, whenever the goods have been declared or filed the respect to bills of entry, there was no issue regarding classification at all at any point of time. Thus, it is humble submission of the importer Appellant that the Appellant does not fulfil the requirements of Section 28(4) of the Act. The detailed submissions in this regard have already are being provided in the ensuing paragraphs.

3.7 Having observed so, the impugned SCN/ OIO has been issued on dated 26.04.2024, whereas the bills of entry under reference start from 01.11.2019 till 28.12.2021, hence keeping in view the provisions of Section 28(4) of the Act ibid and since there is no suppression with any intent to evade payment due custom duty, the bills of entry pertaining to the period 01.11.2019 till with reference to Bills of entry No. 5522671 till Bills of entry No.6857136 dated 28.12.2021, the allegations should be considered as non-est.

3.8 The Appellant has submitted that in the entirety of the present case, it is quite apparent and evident that there has been no mis-declaration in terms of description, quantity, quality, value, etc. in the referred Bills of Entry filed by the Appellant for import of the subject goods. The Appellant has submitted that indeed the subject Bills of Entry were self-assessed but at the same time, physical examination of the goods was also undertaken by the Department. In any case, it may be noted that irrespective of self-assessment by the Appellant, the Bills of Entry were indeed scrutinised by the Customs through software/ by the Customs Authorities and physical examination of the goods was also undertaken and it is only after the due approval by the Customs that the Customs Duty was paid and the Bills of Entry were cleared.

3.9 In the impugned SCN/ OIO, demand for extended period of limitation of 5 years has been raised by invoking the provisions of Section 28(4) of the Act ibid. Further, notice under Section 28(4) can be issued only if where the non-payment/ short payment of tax is on account of collusion, or any wilful misstatement or suppression of facts, to evade tax by the Appellant. It is, therefore, mandatory for the SCN/ OIO to ensure that any of the ingredients of aforementioned provision are present for issuance of notice. For the argument sake, even if there is any liability arising out of the alleged investigations, the same should have been demanded under Section 28(1) of the Act ibid. The said Section provides that the proper officer shall, within two years from the relevant date, serve notice on the person chargeable with the duty, requiring him to show cause why he should not pay the amount specified in the notice. Hence, it is necessary to determine the time period of 2 years to issue the notice, if required, which is to be calculated from the "relevant date" as provided under the said Section 28(1) and the same has been reproduced below:-

Explanation 1 . - For the purposes of this section, "relevant date" means,-
(a) in a case where duty is not levied or not paid or short-levied or short-paid], or interest is not charged, the date on which the proper officer makes an order for the clearance of goods,

3.10 It is submitted here that the impugned SCN has been issued beyond stipulated time of 2 years, as provided in the above referred Section 28(1) of the Customs Act, 1965. In this regard, it is submitted that: -

Relevant Dates	Gap	Remarks
Subject Assessment/ Bills of Entry Date of receipt of SCN: 26.04.2024	3 years, 4 months	The assessment of goods and the date of the impugned Bills of Entry were 01.11.2019, 11.07.2020, 13.05.2021 & 28.12.2021. In this case, if the referred assessment dates / bills of entry dates are to be considered as the relevant date for application of the said Section 28, then the impugned SCN had exceeded the limit of 3 years by 4 Months, when calculated from the last subject bill of entry i.e 28.12.2021

3.11 As detailed above, the Customs Act, 1962 under Section 28(1) does not permit issuance of any SCN demanding customs duty beyond a period of 2 years from the relevant date as already explained above. Thus, the impugned SCN lacks jurisdiction of SCN issuing authority and also Adjudicating Authority, which is evidently beyond the intent of legislature. With reference to the submissions made in the paras supra, it is submitted that the said Section 28(4) was not applicable in the instant case for the reasons explained below: -

a. The said Section 28 (4) is applicable in the cases where the duty is payable by reason of collusion; or any wilful mis-statement; or suppression of facts.

b. The contents of the impugned SCN and the subsequent impugned OIO had failed to explain as to how there was any collusion by the Appellant; there was any wilful mis-statement; there was suppression of facts by the Appellant.

c. It is reiterated here that there was no requirement to invoke the extended period in the impugned SCN and impugned OIO for the reasons that there is no element of will-full misstatement on the part of the Appellant; that there is no suppression of facts by the Appellant in the instant case.

3.12 In the context of the terms 'willful mis-statement', the Hon'ble Supreme Court has discussed the meaning of these terms in detail in the case of M/s Uniworth Textiles Ltd. v. Commissioner of Central Excise, Raipur 2013 (1) TMS 616-SUPREME COURT, wherein it was observed by the High Court that the terms denote deliberate action (or omission) and the presence of an intention.

"The use of the word "willful" introduces a mental element and hence, requires looking into the mind of the appellant by gauging its actions, which is an indication of one's state of mind. Black's Law Dictionary, Sixth Edition (pp 1599) defines "willful" in the following manner.'-
"Willful. Proceeding from a conscious motion of the will; voluntary, knowingly: deliberate. Intending the result which actually comes to pass... An act or omission is "willfully" done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done..."

ii. Similarly, the Supreme Court in the case of Oban Loyd Chiles Offshore Limited and Ors. v. Commissioner of Customs, Maharashtra [(2006) 6 SCC 482] observed as under:

"The proviso to Section 28(I) can be invoked where the payment of duty has escaped by reason of collusion or any willful misstatement or suppression of facts. So far as "misstatement on suppression of facts" are concerned, they are qualified by the word "willful". The word "willful" preceding the words "misstatement or suppression of facts" clearly spells out that there has to be an intention on the part of the assessee to evade the duty."

iii. In view of the foregoing principles, it is clearly evident on record that there has never been any willful mis-statement by the Appellant so as to merit invocation of provisions of Section 28(4) of the Customs Act, 1962.

3.13 The Appellant further submits that another condition prescribed under Section 28(4) for invoking extended period is that there must be suppression of facts. The term "suppression" is not defined under Customs Act, 1962. In this regard, GST Law may be referred to understand the term "suppression". Moreover, it is submitted that the Hon'ble Supreme Court in Anand Nishikawa Company Limited v. CCE [(2005) 188 ELT 149], had held that the term 'suppression' must be strictly construed. It does not mean any omission and the act must be deliberate and willful to evade payment of duty. It was further observed that in taxation, 'suppression' can have only one meaning that the correct information was not disclosed deliberately to escape payment of duty. The relevant extract of the judgment has been reproduced hereunder:

> *"we find that "suppression of act" can have only one meaning that the correct information was not disclosed deliberately to evade payment of duty, when facts were known to both the parties, the omission by one to do what he might have done not that he must have done would not render it suppression. It is settled law that mere failure to declare does not amount to willful suppression. There must be some positive act from the side of the assessee to find willful suppression..."*

3.14 In this regard, it is submitted that the Appellant has been meticulously complying with the provisions of the Customs Act, 1962 and undertaking all compliances on a regular basis. At the time of customs clearance, the Appellant submitted all the requisite documents (viz. supplier invoice, packing list and Bill of Entry & Bill of Lading) along with the description of the imported products. It has provided all the information/ documents from time to time to the jurisdictional departments and disclosed all material facts, wherever applicable, which clearly demonstrates that, there was never an intention to suppress any information. In view of the above, it is submitted that the details and particulars as disclosed by the Appellant in the requisite documents by no means suggest any concealment of facts or mis- declaration. Accordingly, it would be fair to assume and interpret that the authorities were always in possession of all the necessary information/documents pertaining to classification adopted by the Appellant.

3.15 Given the above, the Appellant has paid import duties under Customs law by furnishing the relevant details and the basis of its self-assessments to the Department on regular basis as per the approved and assessed bill of entry by the assessing officer. It is further submitted in line with the Customs Law that the Appellant has submitted the requisite details at the time of import of impugned goods. It is pertinent to note that the Appellant is not required to submit any additional details with respect to reason for adopting a particular classification or basis for classification, etc. in any manner (either generally or specifically). Therefore, the allegation in the impugned SCN/ OIO regarding suppression is entirely misplaced and invalid.

3.16 In the above context, it is submitted that it is settled judicial principle that it should not be the Department's case that if the officers of the audit team had not conducted the audit, non- payment of tax would not have been unearthed. In Gannon Dunkerly & Co. Ltd. vs Commissioner (Adjudication) [2021 (42) GSTL 35 (Tri. - Del.)], it was held by the Hon'ble Delhi Tribunal, that it is correct that in a self-assessment regime, the taxpayer is himself liable to self-assess the tax and furnish the return, but at the same time, a duty is casted upon the assessing officers to effectively scrutinize the returns.

3.17 The Appellant has submitted that the terms 'intent to evade' denote existence of cogent and reliable evidence that proves beyond doubt the existence of 'culpable mental state'. In this regard, the Appellant has submitted that the impugned OIO/ SCN nowhere states as to how the 'mens rea' of the Notice is proven beyond doubt, no reasons or evidence was provided in the impugned OIO/ SCN to substantiate the claim of intention to evade payment of tax. The Appellant has submitted that it is a well-settled proposition in law that imposition of penalty is the result of quasi-criminal adjudication. It is not a mechanical process or cannot be imposed just because it is legitimate to levy penalty. The element of mens rea or mala fide intent must be necessarily present, in order to justify imposition of penalty, which has also been laid down in following decisions-

- In Hindustan Steel Lid. v. State of Orissa [(1978)2 ELT J159 (SC)], Akbar Badruddin Jiwani v. Collector of Customs [1990 (47) ELT 161 (SC)], Supreme Court has categorically held that the discretion to impose a penalty must be exercised judicially. A penalty will be ordinarily imposed in cases where the party acts deliberately in defiance of the law, or is guilty of contumacious or dishonest conduct, or acts in conscious disregard of its obligation; but not, in cases where there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute.

3.18 Drawing inference from the above cases, it is submitted that an element of positive action to evade tax or mens-rea is essential to prove "intention to evade tax'. In the instant case, the Appellant had no intention to evade payment of tax which is evident from the fact that classification of impugned goods is a manner of interpretation. Therefore, it is submitted that in the absence of any intention to evade payment of tax, Section 28(4) of the Customs Act is not invokable. Further, none of the elements/ingredients of Section 28(4) of the Customs Act has triggered in the present case as discussed above, for initiating recovery and imposition of penalty. Thus, it is a matter of fact now that nothing has been mis-stated, or that any fact has been suppressed by the Appellant in any manner at any point of time during the period under consideration and with respect -o the referred Bills of Entry. It is further submitted that the Appellant did not submit any false or incorrect declaration at the time of import clearances. The only dispute in the instant case is with regard to classification of the subject imported goods, which is a matter of interpretation and cannot be termed as mis-statement or suppression of facts. It is worthwhile to note that Customs Authorities have not ever challenged the classification of the subject goods at any point in the past.

3.19 It is also pertinent to mention here that in all the cases, the Customs Authorities had assessed the goods after self-assessment by the importer, i.e. the Appellant herein, which is not a disputed matter. Hence, the issue of mis-statement or suppression is no longer res integra.

3.20 The Appellant has submitted that the impugned OIO/ SCN proposes to recover interest under Section 28AA of the Customs Act, 1962 which is not sustainable since the demand for the Customs Duty itself is not chargeable at the first instance and the Appellant has not contravened any of the provisions of the Act ibid. The purpose of levying interest is to ensure that the Department is not at a loss due to any late payment of duty or tax. Therefore, what emerges is that interest is payable when there exists a liability to pay duty and the same has not been paid within the prescribed time limit. In the present case, since there exist no liability to pay Customs Duty, the question of imposing interest does not arise. The Appellant has further submitted that 'interest' being a civil liability, can also be understood in popular parlance. In Concise Oxford Dictionary, interest has been defined as "money paid for the use of money lent". Black's Law Dictionary defines interest as "the compensation allowed by law or fixed by the parties for the use or forbearance or detention of money". The aforesaid definition has also been quoted by the Hon'ble Bombay High Court in the case of Union Bank of India v. Dalpat, AIR 1992 Bom 482. Therefore, it is evident that interest and penalty are independent and separate. In light of this proposition, it is submitted that in the present scenario, interest is not payable under the Act. The Appellant has further submitted that from the above, it is clear that interest is compensatory in character and it is imposed or the actual amount of tax withheld, and to the extent tax is "due and payable". Thus, when the Government Exchequer has not suffered any loss and the principal amount has not been wrongfully taken, the charge of interest is erroneous. Therefore, it is submitted that in interest is not payable and the SCN/ OIO is liable to dropped on the grounds mentioned above.

3.21 It is now a well-settled principle that if a party bonafidely believes in a legal position and if there is a scope for such belief and doubt, penal provisions will not apply. In the instant case also, the Appellant had a reasonable bonafide belief that the Appellant has adopted correct classification of the subject imported goods. Hence, in such a situation wherein the Appellant was under a 6onafde reasonable belief, it is unjust and unfair to invoke penal provisions and impose penalty on the Appellant. In this context, the Appellant relies upon the following judgments:

a. Padmini Products Vs. CPE 1989 (43) ELT 195
b. Hindustan Steel Ltd. Vs. State of Orissa 1978 (2) ELT J 159

3.22 As a matter of trite law, in cases involving genuine interpretational issues, a view may be drawn against an assessee, however, it cannot be alleged that the assessee had deliberately suppressed information, with an intent to evade payment of tax.

3.23 The appellant has submitted that they never requested for invoking the provisions of Section 28(6) (i) of the Customs Act, 1962 vide our letter dated 10.05.2024. On the contrary, it was requested for issuance of Order under Section 17 of the Act ibid.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 17.06.2025, following the principles of natural justice wherein Shri T. Chakrapani, Consultant, appeared for the hearing and he re-iterated the submission made at the time of filing the appeal. He also filed additional submissions as under :-

➢ The Appellant is relying upon the judgment in case of Challenger Cargo Carriers Pvt. Principal Commissioner of Customs Respondent (Import), ICD, TKD, N. Delhi, the CESTAT, New Delhi vide its Final Order No. 51168/2022 dated 01.12.2022, which a states that: -

"21. To sum up:

a) Self-assessment of duty (including classification of goods) under section 17 (1) by the importer or on its behalf by the Customs Broker is subject to re-assessment by the proper officer under section 17(4) and incorrect self-assessment is not mis-declaration.

b) The fact that the Customs RMS cleared the goods without passing the Bill of Entry through the proper officer for reassessment makes no difference to this legal position. As the name suggests, through RMS, Revenue takes a calculated risk of some duty escaping assessment while balancing between facilitation and ensuring compliance. Even when the goods are cleared based on self-assessment, the Bills of Entry are subject to post-clearance audit and if self-assessment is found to be not correct, Revenue can appeal against the self-assessment before Commissioner (Appeals) or issue an SCN demanding duty under section 28.

In this case, nine of the ten Bills of Entry in dispute were filed before the Final Order of this Tribunal as per the order of the Commissioner (Appeals) which was holding the field at that relevant time. The last one was filed after the Final Order of this Tribunal and there is no evidence that the Customs Broker was made aware of the Final Order during those few days. Therefore, the self-assessment of duty (including classification of the imported goods) in the Bills of Entry was correct and proper and so was the clearance of the goods for home consumption by the proper officer in the ten Bills of Entry.

d) Penalty under section 112 (a) (ii) is imposable on any person for acts or omissions which render any goods liable to confiscation under section 111. The finding in the impugned order that the goods cleared through the ten Bills of Entry were liable to confiscation under section 111(d) and 111(m) is not correct. The goods were not confiscated even in the impugned order under section 111(d). Section 111(m) applies if goods do not correspond to an entry made under section 46 and there is no allegation, let alone evidence in this case that the goods were not as per declaration. The allegation of mis-classification of goods, even if it is true, will not attract 111(m). Therefore, the penalty under section 112 imposed on the appellant is not sustainable and needs to be set aside.

e) Penalty under section 114AA is imposable 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 under the Act. There is no allegation or evidence that the goods were wrongly declared and the allegation of mis-classification or incorrect assessment of duty, even if it is true, will not attract penalty under section 114AA. Therefore, penalty under section 114AA imposed on the appellant is not sustainable and needs to be set aside.

22. For all the above reasons, the appeal is allowed and the penalties under section 112 and 114AA imposed on the appellant in the impugned order are set aside."

The ratio of the abovesaid judgement is squarely applicable in the instant case also irrespective of the fact whether the goods were subjected to physical examination or were cleared RMS and more.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Assistant Commissioner, Customs House, Mundra and the defense put forth by the Appellant in their appeal.

5.1 On going through the material on record, I find that following issues required to be decided in the present appeal which are as follows:

i. Whether the classification of "GREASE BUCKET (PUMP) etc." under CTH 84131110 with IGST at 5% (Sr. No. 231 of Schedule-I) was correct, or if it should be under Sr. No. 453 of Schedule-III with IGST at 18%.

ii. Whether the Show Cause Notice issued for recovery of differential duty, interest, and penalty is legally sustainable, particularly concerning the invocation of the extended period of limitation under Section 28(4) of the Customs Act, 1962.

iii. Whether the Appellant's actions constitute "collusion," "wilful mis-statement," or "suppression of facts" to evade duty.

5.2 The core of the Revenue's case is that "GREASE BUCKET (PUMP) etc." should be classified under a heading attracting 18% IGST, not 5%. Sr. No. 231 of Schedule-I (5% IGST) specifically refers to "Hand pumps and parts thereof" under CTH 8413. Sr. No. 453 of Schedule-III (18% IGST) covers "Any Chapter Goods which are not specified in Schedule I, II, IV, V or VI." The imported goods are "GREASE BUCKET (PUMP) etc.". A "Grease Bucket Pump" is a device for dispensing grease, typically used with machinery (e.g., earthmoving machines, as mentioned in the Bill of Entry description). It is distinct from a general "hand pump" used for water or other common liquids. The adjudicating authority's finding that "GREASE BUCKET (PUMP) etc. which is other than Hand pumps and parts thereof" is a factual determination based on the nature of the goods. Given that the specific description for 5% IGST is limited to "Hand pumps and parts thereof," and the imported goods are "Grease Bucket Pumps" for machinery, they would not fall under the specific entry for 5% IGST. Consequently, they would fall under the residuary entry for CTH 8413 at 18% IGST. This re-classification and differential duty demand are factually and legally correct based on the specific wordings of the notifications. Therefore, the classification of "GREASE BUCKET (PUMP) etc." under CTH 84131110 attracting 18% IGST (Sr. No. 453, Schedule-III) is legally correct.

5.3 The Appellant's argument that the classification is merely "an opinion on the part of the importer under self-assessment" which is "always subjected to processing and then later to examination at the shed" and that "there had never been any query with reference to the classification" does not absolve them of the responsibility of correct classification. Self-assessment inherently places the initial onus on the importer, and subsequent lack of immediate query does not validate an incorrect classification. As held in numerous cases, proper officers have the power to re-assess or demand duties short-levied even after clearance, provided the conditions of Section 28 of the Customs Act, 1962 are met.

5.4 The Appellant argues that the SCN is based on assumptions and presumptions, vague, and the extended period under Section 28(4) of the Customs Act, 1962 is not applicable, asserting no collusion, willful mis-statement, or suppression of facts. They contend that the SCN was issued beyond the normal two-year limitation period. Section 28(4) allows for the invocation of a five-year limitation period where the short-levy is "by reason of:

(a) collusion; or (b) any wilful mis-statement; or (c) suppression of facts". The burden of proving these elements lies with the department.

5.5 The SCN explicitly states the basis of its allegations: an "ANALYTICS REPORT" from NCTC, Mumbai, which identified the goods as not being "Hand pumps and parts thereof" despite being classified under a CTH that has a specific sub-entry for hand pumps at 5% IGST. This is not a vague allegation but a specific discrepancy identified through data analysis. The SCN also clearly refers to the Bills of Entry and the relevant notifications. The Appellant cites M/s. Uniworth Textiles Ltd. v. Commissioner of Central Excise, Raipur and Aban Loyd Chiles Offshore Limited and Ors. v. Commissioner of Customs, Maharashtra to argue that "wilful" denotes a deliberate intention to evade duty. While the legal interpretation of "wilful" indeed requires a mental element, the department's contention is that by classifying "GREASE BUCKET (PUMP) etc." under an entry specifically for "Hand pumps," the Appellant knowingly made a declaration that was incorrect, leading to a lower tax liability. The SCN states, "It appears that the importer has willfully mis-stated the facts & wrongly paid IGST on lower side by categorizing its goods under Serial No. 231 of Schedule-I... whereas, the goods attract IGST @ 18% under Serial No. 453 of Schedule-III." This directly alleges a wilful mis-statement of classification, not just a mere error. The fact that the Appellant continued to classify these goods similarly across multiple Bills of Entry over a period from 2019 to 2021 strengthens the argument that it was not an isolated mistake but a conscious practice.

5.6 The Appellant refers to Anand Nishikawa Company Limited v. CCE to argue that "suppression" requires a deliberate and willful act to evade duty, not just an omission. The Appellant suppressed the true nature of the goods that would attract a higher duty. The SCN alleges that the "importer has willfully suppressed the facts and deliberately misclassified the imported goods with a malafide intention to evade the duty by wrongly taxing the said goods under Serial No. 231 of Schedule-I". In a self-assessment regime, the importer is expected to correctly declare the goods. The non-declaration of the correct classification, especially when it leads to a lower duty, can be construed as suppression of the actual liability. The argument that "the authorities were always in possession of all the necessary information/documents pertaining to classification adopted by the Appellant" is weakened if the information provided was itself misleading regarding the classification's specific application. The fact that the department unearthed the discrepancy through an "ANALYTICS

REPORT" further suggests that the correct classification, and thus the higher duty liability, was not readily apparent from the Appellant's declarations.

5.7 In the present case, the repeated misclassification across multiple Bills of Entry over a period, coupled with the fact that it resulted in a lower IGST payment, suggests a possibility of willful mis-statement or suppression. The Adjudicating Authority's finding that the importer "willfully mis-stated the facts & wrongly paid IGST on lower side by categorizing its goods" directly supports the invocation of Section 28(4).

5.8 The Appellant cited Priya Blue Industries Ltd. v. Commissioner of Customs (Preventive), 2004 (172) ELT 145 (SC) and Ruchi Soya Industries Ltd vs. Commissioner of Customs, Jamnagar, 2013 (296) ELT 114 (Tri.Ahmd.) to argue that clearance under Section 47 is an appealable order and cannot be re-opened by SCN/OIO. However, these judgments pertain to re-assessment powers when there is no element of fraud, collusion, willful mis-statement, or suppression of facts. The Supreme Court in Priya Blue Industries Ltd. itself acknowledges that if the assessment is provisional or subject to fraud, then re-assessment/demand can be initiated. Section 28(4) specifically provides for situations where duties are short-levied due to wilful mis-statement or suppression of facts, thereby allowing for re-opening of assessments even if they were deemed final. The Adjudicating Authority has found elements of "wilful mis-statement" and "suppression of facts," which, if proven, would circumvent the bar of Priya Blue in this context.

5.9 Based on the above discussion, it is clear that the Adjudicating Authority's findings regarding the incorrect classification and the consequent short-levy of IGST are sustainable. The invocation of the extended period under Section 28(4) is also supported by the findings of "wilful mis-statement" and "suppression of facts," which are sufficiently articulated in the impugned OIO and the SCN. The Appellant's voluntary payment of the differential duty, interest, and reduced penalty under Section 28(5) further strengthens the department's case. The Appellant's arguments regarding the vagueness of the SCN, the finality of Section 47 clearances, and bona fide belief, while generally valid legal principles, are not sufficient to overturn the specific findings of "wilful mis-statement" and "suppression of facts" which are the basis for invoking the extended period and imposing a reduced penalty in this particular case. Therefore, the decision of the Adjudicating Authority, based on the facts and circumstances of the case and the provisions of the Customs Act, 1962, and the IGST Act, 2017, is found to be in order.

6. In view of the above discussions, I agree with the observations and findings of the adjudicating authority and do not find any justification to interfere with the findings of the adjudicating authority.

7. The appeal filed by M/s. Krishna Spares and Machinery Parts is hereby rejected

सत्यापित/ATTESTED
अधीक्षक/SUPERINTENDENT
सीमा शुल्क (अपील), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD.

(AMIT GUPTA)
Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-104/CUS/MUN/2024-25 3134 Date: 08.08.2025

By Registered post A.D/E-Mail

To,
M/s Krishna Spares and Machinery
H. No. 219 P, Sector 6, Panchkula
Haryana

Copy to:

1. The Chief Commissioner of Customs, Ahmedabad zone, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House , Mundra.
3. The Asstt Commissioner of Customs, Custom House, Mundra.
4. Guard File.