सीमाशुल्क (अपील) आयुक्तका कार्यालय, अहमदाबाद
OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD
चौथी मंज़िल 4th Floor, हडको बिल्डिंग HUDCO Building, ईश्वर भुवन रोड़ Ishwar Bhuvan Road,
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009.
दूरभाष क्रमांक Tel. No. 079-26589281
DIN-20251171MN000000F2CE

क	फ़ाइल संख्या FILE NO.	(1) S/49-235/CUS/AHD/2024-25 (2) S/49-216/CUS/AHD/2024-25
ख	अपीलआदेश संख्या **ORDER-IN-APPEAL No.** (सीमाशुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	**AHD-CUSTM-000-APP-360 & 361-25-26**
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	26.11.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER - IN - ORIGINAL NO.	(1) Order – In – Original No. 52/ADC/ACC/OIO/ Tata Capital/2024-25 dated 03.09.2024 passed by the Additional Commissioner of Customs (in-charge Air Cargo Complex), Ahmedabad. (2) Order – In – Original No. 163/ADC/VM/O&A/ 2024-25 dated 20.09.2024 passed by the Additional Commissioner of Customs (in-charge ICD-Khodiyar), Ahmedabad.
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	26.11.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Tata Capital Ltd. (formerly known as M/s. Tata Capital Financial Services Ltd.) Tower A 1101, Peninsula Business Park, Ganpatrao Kadam Marg, Lower Parel, Mumbai – 400013.

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 imported on baggage.
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट,1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध 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 (यथासंशोधित) में निर्धारित फीस जोअन्य रसीद,फीस,दण्ड,जब्तीऔर विविध मदों के शीर्षके अधीन आता है में रु. 200/-(रूपए दो सौ मात्र)या रु.1000/- (रूपए एक हज़ार मात्र),जैसा भी मामला हो,से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दोप्रतियां. यदि शुल्क,मांगा गया ब्याज,लगाया गया दंड की राशिऔर 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 अपीलियअधिकरण, 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 के10 % 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

1. M/s. Tata Capital Ltd. (formerly known as M/s. Tata Capital Financial Services Ltd.) (hereinafter referred as 'the appellant') has filed the present appeals under Section 128 of the Customs Act, 1962, against the Order-In-Original No. 52/ADC/ACC/OIO/ Tata Capital/2024-25 dated 03.09.2024 and Order-In-Original No. 163/ADC/VM/O&A/ 2024-25 dated 20.09.2024 (hereinafter referred to as the 'impugned orders') both passed by Additional Commissioner of Customs (in-charge Air Cargo Complex; and in-charge ICD-Khodiyar, respectively), Ahmedabad (hereinafter referred to as 'the adjudicating authority' in respective cases).

2. Facts of the case, in brief, are that during the period from 08.01.2019 to 12.06.2020, vide the Bills of Entry as detailed in Table-1 and Table-2 below, the appellant has imported **Optical Network Terminals ('ONT')** through Air Cargo Complex, Ahmedabad and ICD-Khodiyar. The particulars are as under:

Table-1

Import through Air Cargo Complex Ahmedabad

Sr. No.	Bill of Entry No. & Date	Description of goods in BoE
1	9568810 dt. 08.01.2019	ZXHN-F602W (import LIC No. WR – 2018100898/1890 dtd 02.01.2019) (transceiver **optical network terminal**)
2	6605684 dt. 23.01.2020	Earth-1010 1G 300 Mbps Wifi **ONT** with power adaptor (MOEL No. EARTH-1010) (ETA No. ETA-SD-20191207129 dated 06.12.19)
3	6573555 dt. 21.01.2020	
4	6669627 dt. 28.01.2020	

Table-2

Import through ICD-Khodiyar

Sr. No.	Bill of Entry No. & Date	Description of goods in BoE
1	7893610 dt. 12.06.2020	Earth-1010 1G 300 Mbps Wifi **ONT** with power adaptor (MOEL No. EARTH-1010) (ETA No. ETA-SD-20191207129 dated 06.12.19)

3. The appellant had classified the imported goods under **Tariff Item 8517 69 50** as ***"Subscriber End Equipment"***, which is amenable to Nil rate of BCD. The appellant had also availed the claimed benefit of Sr. No. 13P of Notification No.24/2005-Cus dated 01.03.2005,

which exempts goods falling under Tariff Item 8517 69 50. Later, Customs Department has adopted a view that the imported goods are correctly classifiable under **Tariff Item 8517 62 90** as ***"Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus; Other"*** and leviable to BCD @ 20%.

4. Therefore, following two Show Cause Notices have been issued to the appellant for change of classification of goods, holding the goods liable for confiscation under Section 111(m), demand of differential duty with interest under Section 28(4) and Section 28AA, and for imposition of penalties under Section 112/114A and Section 114AA of the Customs Act, 1962.

Table-3

Sr. No.	Name of Customs Formation	Period/Date of Bill(s) of Entry	Show Cause Notice F.No. & Date	Duty demanded (Rs.)
1	Air Cargo Complex	08.01.2019 to 28.01.2020	F.No. VIII/ 10-16/ ACC/ O&A/ HQ/ 2022-23 dated 21.12.2023	42,15,245
2	ICD-Khodiyar	12.06.2020	F.No. VIII/ 10-190/ ICD-Khod/ O&A/ HQ/ 2023-24 dated 18.03.2024	6,69,817

5. The aforesaid SCNs have been adjudicated vide the impugned orders. As the issue involved, findings of the adjudicating authority and grounds of appeal raised by the appellant are similar in respect of both cases, such contentions in respect of imports through Air Cargo Complex, Ahmedabad, are reproduced below as a lead matter and for sake of brevity.

6. The adjudicating authority inter alia observed that there is no dispute about classification at Customs Tariff Heading level, i.e. classification under the Heading 8517. The relevant tariff entries are as under:

Table-4

8517		**TELEPHONE SETS, INCLUDING SMARTPHONES AND OTHER TELEPHONES FOR CELLULAR NETWORKS OR FOR OTHER WIRELESS NETWORKS: OTHER APPARATUS FOR THE TRANSMISSION OR RECEPTION OF VICE, IMAGES OR OTHER DATA, INCLUDING APPARATUS FOR COMMUNICATION IN A WIRED OR WIRELESS NETWORK (SUCH AS A LOCAL OR WIDE AREA NETWORK), OTHER THAN TRANSMISSION OR RECEPTION APPARATUS OF HEADING 8443, 8525, 8527 OR 8528**

	-	**Telephone sets, including smartphones and other telephones for cellular networks or for other wireless networks:**
851718	-	**Other:**
	-	**Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network):**
85176100	--	Base stations
851762	--	**Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus:**
85176210	---	PLCC equipment
85176220	---	Voice frequency telegraphy
85176230	---	Modems (modulators-demodulators
85176240	---	High bit rate digital subscriber line system (HDSL)
85176250	---	Digital loop carrier system (DLC)
85176260	---	Synchronous digital hierarchy system (SDH)
85176270	---	Multiplexers, statistical multiplexers
85176290	---	**Other**
851769	--	**Other:**
85176910	---	ISDN System
85176920	---	ISDN terminal adaptor
85176930	---	Routers
85176940	---	X 25 Pads
85176950	---	**Subscriber end equipment**
85176960	---	Set top boxes for gaining access to internet
85176970	---	Attachments for telephones
85176990	---	Other
8517 70	-	**Parts:**

7. He observed that the core dispute of classification is between the Sub-Headings 851762 and 851769 at the double dash (--) level. It has been further observed that Sub-Heading 851762 covers *"Machines for the reception, conversion and transmission or regeneration of voice, images or other data including switching and routing apparatus."* That ONT equipment connect to Fiber Optical Network, convert information available in optical fibers in form of optical signals to electrical signals and transmit it through Ethernet cables to computers, TVs and other devices. Therefore, the adjudicating authority observed that the imported goods being Optical Network Terminals are appropriately covered under Sub Heading 851762. That since the goods are classifiable under Sub Heading 851762, there is no further option of the said goods being relegated to 851769 which cover the remaining items, under the category of others, which are not covered under Sub Heading 851761 and 851762.

8. In view of the above, the adjudicating authority has held that the subject imported goods are classifiable under CTI 8517 6290 and not under CTI 8517 6950. That therefore, he held that the imported goods are not eligible for exemption from BCD under Sr. No. 13P of Notification No. 24/2005-Cus dated 01.03.2005.

9. In the impugned orders, it has been further observed and held that the importer has deliberately misclassified the subject goods and have wrongly availed the benefit of Notification No. 24/2005-Cus dated 01.03.2005 by suppressing the technical details and projecting them to be classified under CTI 8517 6950 with a malafide intention to evade payment of duty. Therefore, it has been held by the adjudicating authority that the goods are liable for confiscation under Section 111(m), the importer is liable to pay the differential duty with interest under Section 28(4) & Section 28AA; and redemption fine and penalties are imposable.

10. With the above findings, the adjudicating authority has passed the following order in respect of imports through **Air Cargo Complex, Ahmedabad** (gist):

(i) Rejected the classification of goods viz. Optical Network Terminal (ONTs) declared under CTH 8517 6950 and ordered to re-classify them under CTH 8517 6290 and to reassess the subject Bills of Entry accordingly.

(ii) Confirmed the demand of differential Customs Duty of Rs. 42,15,245/- and ordered recovery thereof in terms of the provisions of Section 28(4) along with applicable interest under Section 28AA of the Customs Act, 1962.

(iii) Held the imported goods liable to confiscation under Section 111(m) and imposed redemption fine of Rs. 16,23,746/- under Section 125 of the Customs Act, 1962, in lieu of confiscation.

(iv) Imposed penalty of Rs. 42,15,245/- on the appellant under Section 114A of the Customs Act, 1962.

(v) Imposed penalty of Rs 16,23,746/- on the appellant under Section 114AA of the Customs Act, 1962.

(vi) Refrained from imposing penalty on the appellant under Section 112(a) of the Customs Act, 1962.

11. Similarly, the adjudicating authority has passed the following order in respect of import through **ICD-Khodiyar** (gist):

(i) Rejected the classification of goods viz. Optical Network Terminal (ONT)

devices declared under CTH 8517 6950 and ordered to re-classify them under CTH 8517 6290 and to reassess the subject Bills of Entry accordingly.

(ii) Denied the benefit of exemption from Basic Customs Duty as per Sr. No. 13P of Notification No. 24/2005-Customs dated 01.03.2005, as amended.

(iii) Confirmed the demand of differential Customs Duty of Rs. 6,69,817/- and ordered recovery thereof in terms of the provisions of Section 28(4) of the Customs Act, 1962.

(iv) Ordered to charge and recover interest under Section 28AA of the Customs Act, 1962.

(v) Held the imported goods liable to confiscation under Section 111(m) and imposed redemption fine of Rs. 2,59,000/- under Section 125 of the Customs Act, 1962 in lieu of confiscation.

(vi) Imposed penalty of Rs. 6,69,817/- plus penalty equal to interest on the appellant under Section 114A of the Customs Act, 1962.

(vii) Imposed penalty of Rs. 2,50,000/- on the appellant under Section 114AA of the Customs Act, 1962.

(viii) Refrained from imposing penalty on the appellant under Section 112(a) of the Customs Act, 1962.

12. Being aggrieved against the above-mentioned two orders, the appellant has filed the present appeals. In the appeal memorandums, the appellant has contended, inter alia, as under.

13. The appellant submitted that the imported goods are correctly classifiable under Tariff Item 8517 69 50 as *"subscriber end equipment"*. Further, the imported goods being installed at the customers' premises, which is their home, office, college, etc., are all subscriber end equipment. Thus, the appellant submitted that the imported goods are specifically covered under Tariff Item 8517 69 50.

14. The appellant placed reliance on the Ruling No. CAAR/MUM/ARC/03/2022 dated 20.01.2022 issued by the Customs Authority for Advance Rulings, Mumbai, in the matter of ***Netlink ICT Private Limited*** [2022 (381) ELT 116 (AAR-CUS-Mum)].

15. The appellant referred Rule 3(a) of General Rules of Interpretation ('GRI'), which provides that ***the heading which provides the most specific description shall be preferred***

to headings providing a more general description and by application of Rule 6, the same is applicable to Tariff Items as well.

16. The appellant further submitted that TRAI's recommendation dated 22.04.2020 on "Network Testing before Commercial Launch of Services for Wireline Access Service" provides examples of equipment at subscriber's end as "landline telephone set, ONT (Optical Network Terminal), ISDN TA (Terminal Adapter), Broadband modem, PABX". Thus, from the said recommendation dated 22.04.2024 of TRAI, it is evident that the imported goods are subscribers end equipment and therefore, the imported goods are correctly classifiable under Tariff Item 8517 69 50 and they have correctly availed the benefit of Sr. No.13P of Notification No. 24/2005 – Cus.

Gist of contentions of the appellant regarding invoking extended period of limitation

17. The appellant submitted that in terms of Section 28(4) of the Customs Act, an SCN can be issued within an extended period of five years from the relevant date in cases where the duty has not been levied or has been short-levied, etc. **by reason of collusion or any wilful mis-statement or suppression of facts by the importer**.

18. It has been frequently held by the Apex Court that Section 28(4) of the Act cannot be invoked for mere non-payment or short payment of duty and can only be invoked when the duty was not paid or short paid with intention to evade payment of duty.

19. The appellant placed reliance on the decision of ***Aban Lloyd Offshore Ltd. vs. Commissioner of Customs, 2006 (200) ELT 370 (SC)***, wherein the Hon'ble Supreme Court held as under:

> *"20. The proviso to Section 28 can be invoked where the payment of duty has escaped by reason of collusion or any willful mis-statement or suppression of facts. So far as 'mis-statement or suppression of facts' are concerned, they are qualified by the word "willful".* ***The word "willful" preceding the words "mis-statement or suppression of facts" clearly spells out that there has to be an intention on the part of the Assessee to evade the duty."***
>
> *(Emphasis Supplied)*

20. Further, in the case of ***Maruti Udyog Ltd. vs. Commissioner of C. Ex., Delhi, 2002 (147) ELT 881 (Tri. - Del.)***, the Hon'ble Tribunal has held that the duty of an Assessee is to make a true and full disclosure of the primary facts and does not extend beyond it to advising

the assessing officer as to what inference he should draw from such facts.

21. Thus, in order to demand duty under Section 28(4) of the Act, it is necessary to prove an act or omission on the part of the appellant equivalent to collusion or wilful misrepresentation or suppression of facts to evade customs duty.

22. The Impugned Order held that the appellant had deliberately withheld from disclosing to the Department the technical nature of the imported goods and had mis-declared the goods in the Subject Bills of Entry. It is submitted by the appellant that they had correctly declared the imported goods in the Subject Bills of Entry. This is evident that the description provided in the Subject Bills of Entry corresponds to the description on the Commercial Invoice and other Import documents.

23. The appellant therefore reiterated that they have not suppressed or mis-declared or mis-classified the imported goods for the reasons stated *infra* and further, the appellant did not have any intention to evade payment of duty. Therefore, extended period of limitation is not invokable in the present case. Thus, the entire duty demand being outside the normal period of limitation of two years is barred by time. The appellant has further contended as follows.

Without prejudice, mere incorrect classification cannot be a basis to invoke Section 28(4) of the Act.

24. Further, it is settled legal position that in the era of self-assessment, mere declaration of classification different from the view of the Department cannot be a basis to fasten demand of differential duty under Section 28(4) of the Act.

25. Reliance is placed on the decision of the Hon'ble Supreme Court in ***Densons Pultretaknik Vs CCE, 2003 (155) ELT 211 (SC)*** wherein it was held that claiming wrong classification of the goods cannot be considered as wilful mis-statement or suppression of facts.

26. Reliance is also placed on the decision in ***Sirthai Superware India Ltd. v. CC, 2019 (10) TMI 460-CESTAT Mumbai,*** wherein the Hon'ble Tribunal has been held that misdeclaration/suppression cannot be alleged merely because imports with incorrect classification have been made in the self-assessment regime. Specifically rebutting the Department's argument of self-assessment, the Bench held as follows:

> *"**5.5** When Commissioner has himself in the para 33 of his order for holding the classification under the Heading 392410, referred to description made in the Bill of Entries/invoices he cannot be justified in holding the charge of misdeclaration against appellant. For that reason we are of the view that by giving the correct description on the documents relating to import clearance appellant have discharge the burden of making correct declaration on the Bill of Entry. Hence any error in classification or the exemption claimed on Bill of Entry cannot be misdeclaration with the intention to evade payment of duty for the purpose of invoking extended period of limitation. Hence demand made by invoking extended period of limitation needs to be set aside."*

27. In the present case also, the imported goods have been correctly declared in the Subject Bills of Entry. Given the same, no misdeclaration/misclassification can be alleged on part of the appellant. Therefore, extended period of limitation cannot be invoked merely because the appellant has allegedly claimed benefit of incorrect classification.

Suppression cannot be alleged when the issue of classification of ONTs is an industry wide issue

28. The appellant also submitted that the issue of classification of the imported goods i.e. ONTs has been a contentious industry wide issue and thus, the same has been in knowledge of the Department. Hence it is submitted that in such a situation suppression cannot be alleged on the part of the appellant. Therefore, even on this ground, the extended period of limitation cannot be invoked.

All material facts were duly declared at the time of import of the imported goods and therefore, was known to the Department all along. Thus, the allegation of misdeclaration with intention to evade payment of duty cannot be sustained.

29. It is submitted that the appellant, at the time of import, had correctly declared the description of the imported goods in the import documents. It is not the case of the Department that the imported goods do not correspond to the description given in the import documents. This being the case, there is no question of suppression or wilful misstatement of facts by the appellant warranting invocation of extended period of limitation.

30. Further, the above fact also clearly shows that the Department was aware of the fact of imported goods being classified under Tariff Item 85176950. This being the case, it cannot be alleged that the appellant had suppressed material facts. It is settled legal position that when the facts are known to both the parties, then the allegation of suppression cannot

sustain. Reliance is placed on the decision of ***Nizam Sugar Factories v. CCE - 2006 (197) E.L.T. 465 (S.C.)*** in this regard.

31. It is submitted that the present case pertains to classification of the imported goods, which the appellant had classified under the Tariff 8517 69 50. Disputes involving classification of goods are purely legal in nature and involve interpretation of complex legal provisions. Hence, there is no question of suppression or wilful misstatement on the part of the appellant as far as the classification adopted is concerned.

32. In view of the above, the appellant submitted that invocation of extended period of limitation in the impugned orders is incorrect and the entire demand is barred by limitation.

Gist of contentions of appellant to the effect the imported goods are not liable for confiscation under Section 111(m) of the Customs Act, 1962

33. The appellant submitted that the provisions of Section 111(m) of the Act are not invokable in the present case as there is no mis-declaration by the appellant.

34. As already submitted *supra*, the imported goods had been correctly declared in the Subject Bills of Entry and thus, the description of the imported goods corresponds to the goods imported. The Impugned Order has only alleged mis-declaration on the ground that the imported goods are correctly classifiable under Tariff Item 8517 62 90 whereas, in the preceding grounds, the appellant have already established that the imported goods are correctly described in the Subject Bills of Entry. There was no mis-declaration or suppression either in respect of value or in any other particular with the entry made under the Customs Act.

35. For the above reasons, it is submitted that confiscation of the imported goods under Section 111(m) of the Customs Act, 1962 is not sustainable in law.

Adoption of classification different from Department's view does not render the goods liable for confiscation.

36. Without prejudice to the above, the appellant rely on the case of ***Northern Plastic Ltd. vs. Collector of Customs & Central Excise, 1998 (101) E.L.T. 549 (S.C.)***, wherein the Hon'ble Supreme Court has held that merely claiming a particular classification or availing an exemption under the Bill of Entry does not amount to mis-declaration under Section

111(m) of the Act. The relevant extract of the decision is reproduced below:

> *"22... While dealing with such a claim in respect of payment of customs duty we have already observed that the* ***declaration was in the nature of a claim made on the basis of the belief entertained by the appellant and therefore, cannot be said to be a misdeclaration as contemplated by Section 111(m)*** *of the Customs Act. As the appellant had given full and correct particulars as regards the nature and size of the goods, it is difficult to believe that it had referred to the wrong exemption notification with any dishonest intention of evading proper payment of countervailing duty.*
>
> *23.* ***We, therefore, hold that the appellant had not mis-declared the imported goods either by making a wrong declaration as regards the classification of the goods or by claiming benefit of the exemption notifications which have been found not applicable to the imported goods....*** *"*
>
> ***(Emphasis Supplied)***

37. In view of the aforesaid decision of the Apex Court, even if it is assumed that the imported goods are not correctly classified, they cannot be held liable for confiscation under Section 111(m) of the Customs Act for this reason.

Once goods are cleared for home consumption, Section 111 does not apply.

38. Without prejudice to the above, the appellant submitted that Section 111 provides for liability for confiscation of the improperly imported goods. It is, therefore, respectfully submitted that only imported goods can be confiscated under Section 111. Imported goods have been defined under Section 2(25) as:

> *"imported goods means any goods brought into India from a place outside India* ***but does not include goods which have been cleared for home consumption"***
>
> ***(Emphasis Supplied)***

39. In the case of ***Bussa Overseas & Properties P. Ltd. vs. C.L. Mahar, Assistant Commissioner of Customs, Bombay [2004 (163) ELT 304 (Bom.)]***, the Hon'ble Bombay High Court held that once the goods are cleared for home consumption, they cease to be imported goods as defined in Section 2(25) of the Customs Act, 1962 and consequently are not liable to confiscation under Section 111 of the Customs Act, 1962. The Hon'ble High Court held as under:

> *"7...The learned counsel urged that once the goods are cleared for home consumption, then the goods covered by the consignments cease to be imported goods in accordance with the definition of expression 'imported goods' under Section 2 of the Act and consequently such goods are not liable for confiscation. There is considerable merit in the submission of the learned counsel.* ***The goods lose its character of imported***

goods on being granted clearance for home consumption and thereafter the power to confiscate can be exercised only in cases where the order of clearance is revised and cancelled..."

(Emphasis Supplied)

40. The above cited decision was maintained by the Hon'ble Supreme Court reported in ***2004 (163) ELT A160***. Further, this view has also been reiterated by the Hon'ble Tribunal in the case of ***Southern Enterprises vs. Commissioner of Customs, 2005 (186) ELT 324 (T)*** wherein it has held as follows:

"6. ... Furthermore, Revenue cannot confiscate the goods which have already been cleared for home consumption as they ceased to be imported goods as defined in Section 2 of the Customs Act and as held by the Bombay High Court in the case of Bussa Overseas & Properties P. Ltd. (cited supra)."

(Emphasis Supplied)

41. Even in the facts of the present case, the imported goods have been cleared for home consumption and therefore, the question of confiscation under the provisions of Section 111 does not arise. Thus, the finding in the Impugned Orders for confiscation of the imported goods is not sustainable in law. As the goods are not liable for confiscation, redemption fine is not imposable in lieu of confiscation of goods and also due to non-availability of goods.

42. The appellant placed reliance upon the decision of the Hon'ble Bombay High Court in **CC vs. Finesse Creations – 2009 (248) ELT 122 (Bom.)** in this regard. In the said case, the Hon'ble Court held that no redemption fine is imposable if the goods are not physically available. The relevant portion of the decision is extracted below:

"5. In our opinion, the concept of redemption fine arises in the event the goods are available and are to be redeemed. If the goods are not available, there is no question of redemption of the goods. Under Section 125 a power is conferred on the Customs Authorities in case import of goods becoming prohibited on account of breach of the provisions of the Act, rules or notification, to order confiscation of the goods with a discretion in the authorities on passing the order of confiscation, to release the goods on payment of redemption fine. Such an order can only be passed if the goods are available, for redemption. The question of confiscating the goods would not arise if there are no goods available for confiscation nor consequently redemption. Once goods cannot be redeemed no fine can be imposed. The fine is in the nature of computation to the state for the wrong done by the importer/exporter.

6. In these circumstances, in our opinion, the tribunal was right in holding that in the absence of the goods being available no fine in lieu of confiscation could have been imposed."

43. The above decision was also affirmed by the Apex Court in **CC Vs. Finesse Creation Inc. – 2010 (255) ELT A120 (SC)**.

44. It is, therefore, submitted that the imported goods are not available for confiscation and therefore, they cannot be confiscated. Consequently, when the confiscation itself is not possible, redemption fine is also not imposable.

Gist of contentions of the appellant to the effect no penalty is imposable under section 114A of the Customs Act, 1962

45. The appellant submitted that the penalty under Section 114A can only be imposed in cases where duty has not been paid or short/part paid because of **collusion or willful mis-statement or suppression of facts**.

46. As laid down in ***CC vs. Videomax Electronics, 2011 (264) ELT 0466 (Tri.-Bom)***, if the extended period of limitation under Section 28 is not invokable, penalty under Section 114A of the Customs Act, 1962 cannot be imposed.

Contention of the appellant that penalty is not imposable under section 114AA of the Customs Act, 1962

47. The appellant submits that they have made bona fide declarations in all the import documents. Given the same, Section 114AA cannot be invoked against the appellant.

48. It is further submitted that penalty under Section 114AA is imposable only in those situations where exports benefits are claimed without exporting the goods and by presenting forged documents. In support of this argument, reliance is placed on the **Twenty Seventh Report of the Standing Committee of Finance** wherein insertion of Section 114AA was discussed at para 62. Section 114AA has been inserted in the Customs Act with the purpose is to punish those people who avail export benefits from the Indian Exchequer without exporting anything from India. Such cases involve serious criminal intent and it cannot be equated with the cases of duty evasion.

49. It is further submitted that penalty under Section 114AA can be imposed when the goods have been exported by forging the documents knowingly or intentionally. As has been

established herein above, no forged document was ever presented qua the imported goods. Thus, penalty is not imposable under Section 114AA of the Customs Act.

50. In this regard, the appellant rely upon the case of ***Commissioner of Customs, Sea Chennai vs. Sri Krishna Sounds and Lightings, 2018 (7) TMI 867-CESTAT Chennai*** wherein penalty under Section 114AA was set aside on the ground that the transaction was in relation to imports and not a situation of paper transaction.

51. Reliance is also placed on the decision of Hon'ble Tribunal in the case of **Bosch Chassis Esystems India Ltd. vs. Commissioner of Customs, New Delhi (ICD TKD) - 2015 (325) ELT 372 (Tri.-Del.)**, where while setting aside the penalties imposed under Section 114A and Section 114AA of the Customs Act, the Hon'ble Tribunal held the imposition of penalty as unsustainable since there was no mala fide intention or wilful misrepresentation on the part of the assessee.

52. Further, the appellant also placed reliance on the following cases wherein it has been held that no penalty can be imposed under Section 114AA of the Act in the absence of any mala fide on the part of the assessee:

- *Parag Domestic Appliances vs. Commissioner of Customs, Cochin, 2017 (10) TMI 812-CESTAT Bangalore-*
- *Premax Logistics vs. Commissioner of Customs, Chennai, 2017 (4) TMI 483-CESTAT Chennai-*

53. Thus, the appellant contended that the impugned Orders are incorrect in imposing penalty on them under Section 114AA of the Customs Act, 1962.

54. In view of the above submissions, the appellant has requested to set aside the impugned orders with consequential relief.

PRE-DEPOSIT AND ADMISSION OF APPEALS

Appeal against Order-In-Original No. 52/ADC/ACC/OIO/Tata Capital/2024-25 dated 03.09.2024 in respect of imports through Air Cargo Complex, Ahmedabad:

55. The appellant has submitted a copy of the T.R.6 Challan No. 3752 dated 30.10.2024, bank receipted on 04.11.2024, towards pre-deposit of Rs. 3,16,144/- under the provisions of Section 129E of the Customs Act, 1962.

56. In the Form No. C.A.-1, the appellant has shown the date of communication of the impugned order dated 03.09.2024, as '03.09.2024 (Date of order)'. Whereas, the appeal has been received in this office on 05.11.2024. Thus, this appeal has been received after 63 days from the date of communication of the impugned order and so, there is a delay of 03 days beyond the normal period of 60 days, as prescribed for filing of appeal under Section 128. The appellant has applied for condonation of delay in filing of appeal.

57. As regards condonation of delay up to a period of 30 days in filing appeals, I refer the Judgment of Hon'ble Supreme Court in the case of *Collector, Land Acquisition Anantnag and Another vs. Mst. Katiji and Others reported in 1987 (28) ELT 185 (SC),* wherein it has been held that a justifiable liberal approach should be adopted in cases of condonation of delay. In view of the above position, I condone the delay of 03 days in filing the Appeal, as per the first proviso to Section 128(1) of the Customs Act, 1962

Appeal against Order-In-Original No. 163/ADC/VM/O&A/2024-25 dated 20.09.2024 in respect of imports through ICD-Khodiyar:

58. The appellant has submitted a copy of the T.R.6 Challan No. 3751 dated 30.10.2024, bank receipted on 04.11.2024, towards pre-deposit of Rs. 50,237/- under the provisions of Section 129E of the Customs Act, 1962.

59. In the Form No. C.A.-1, the appellant has shown the date of communication of the impugned order dated 20.09.2024, as '20.09.2024 (Date of order)'. Whereas, the appeal has been received in this office on 05.11.2024. Thus, this appeal has been filed within the normal period of 60 days, as prescribed for filing appeal under Section 128 of the Customs Act, 1962.

60. In view of the above, both appeals have been admitted and being taken up for disposal.

61. One set of both appeal memorandums have forwarded to the adjudicating authority for comments vide this office this office letters dated 04.12.2024, but no reply thereof has been received. So, I proceed to decide the appeals on the basis of documents submitted by the appellant.

PERSONAL HEARING

62. Personal Hearing in respect of both appeals was held on 10.09.2025, which has been attended by Shri Kedar Kokatay, Advocate, and Shri Bharath Menon, Advocate, on behalf of the appellant. They reiterated the submissions made at the time of filing of appeals. The gist of the arguments advanced at the time of hearing are as under:

a. That ONTs are rightly classifiable under CTI 8517 6950 as subscriber end equipment as supported by the TRAI recommendation as well.

b. That ONTs are not classifiable under CTI 8517 6290 when there is a specific entry for subscriber end equipment. Reliance was placed on the principal laid down in Swarup Fibre Industries case law.

c. That in the alternative the ONTs are classifiable as Modems under CTI 85176290 as ONTs are essentially modems used in optic fibre networks.

d. That ONTs being networking equipment are eligible to NIL duty benefit even as per the Information Technology Agreement of which India is a signatory.

e. Extended period of limitation cannot be invoked in the present case as the company has not mis-stated in the Subject Bills of Entry and that the company had bona fides to classify the goods under Tariff Item 8517 6950 as 'subscriber-end equipment' as ONTs being subscriber-end equipment were specifically covered under the aforesaid Tariff Item.

FINDINGS

63. I have carefully gone through the impugned orders and written as well as oral submissions made by or on behalf of the appellant viz. M/s. Tata Capital Ltd. The dispute involved in both appeals is regarding classification of Optical Network Terminal ('ONT') devices as well as sustainability of extended period of limitation for demand of duty.

64. The particulars of the Bills of Entry covered in the present cases have mentioned in the Table-1 & Table-2; and relevant tariff entries have been mentioned in Table-4 hereinabove. The appellant importer has classified Optical Network Terminal ('ONT') devices under **CTI 8517 6950**; whereas, in the impugned orders, it has been ordered to classify the imported goods under **CTI 8517 6290**. The appellant has contested the impugned orders on merits as well as on the grounds of limitation.

65. I find substantial force in the arguments of the appellant to the effect that the demand confirmed in the impugned orders by invoking extended period of limitation under Section 28(4) is not sustainable, as the issue involved is merely classification of goods. Therefore, I

shall examine whether demands of duty, which are raised beyond the normal period of limitation of two years, as prescribed under Section 28(1), are barred by limitation or not.

Imports through Air Cargo Complex, Ahmedabad

65.1 The four Bills of Entry covered in the impugned order dated 03.09.2024 have been filed on the dates **08.01.2019, 23.01.2020, 21.01.2020 and 28.01.2010**, as shown in the above Table-1. Whereas, the Show Cause Notice F.No. VIII/10-16/ACC/O&A/HQ/2022-23 has been issued on **21.12.2023**, as shown in Table-3. Thus, entire demand of duty for all the four Bills of Entry falls under extended period of limitation as prescribed under Section 28(4); and demand for none of the Bills of Entry is covered under normal period of limitation of two years, as prescribed under Section 28(1) of the Customs Act, 1962.

Import through ICD-Khodiyar

65.2 The Bill of Entry covered in the impugned order dated 20.09.2024 has been filed on the date **12.06.2020**, as shown in the above Table-2. Whereas, the Show Cause Notice F.No. VIII/10-190/ICD-Khod/O&A/HQ/2023-24 has been issued on **18.03.2024**, as shown in Table-3. Thus, the demand of duty for the Bill of Entry falls under extended period of limitation as prescribed under Section 28(4); and demand for the said Bill of Entry is not covered under normal period of limitation of two years, as prescribed under Section 28(1) of the Customs Act, 1962.

66. From the statutory provisions of Section 28 of the Customs Act, 1962, it is very clear that for issuing SCN under Section 28(4), there should be "collusion" or "wilful mis-statement" or "suppression facts" on part of the appellant. In the present case, there is no charge of any "collusion" or "wilful mis-statement" on part of the appellant. Neither any Statement has been recorded nor any investigation has been conducted before invoking extended period of limitation. I am of the view that merely claiming different classification than the classification later adopted by Customs Department, does not amount to suppression of facts and/or willful mis-statement, so far as description and other particulars of goods are correctly declared.

67. Further, I find that the Customs Authority for Advance Rulings, Mumbai, in the matter of ***Netlink ICT Private Limited*** [2022 (381) ELT 116 (AAR-CUS-Mum)], vide Ruling No. CAAR/MUM/ARC/03/2022 dated 20.01.2022 ruled that the imported goods viz. Optical Network Terminals (ONTs), are classifiable under sub-heading 8517 69 50 and would be eligible to avail benefit of Sr. No. 13P of the Notification No. 24/2005-Customs, as amended. In terms of Section 28J of the Customs Act, 1962, the advance ruling is binding only on the

applicant who had sought it; in respect of any matter referred to in sub-section (2) of section 28H; and on the Principal Commissioner / Commissioner of Customs and authorities subordinate to him, in respect of the applicant. Thus, I am of the view that the said Advance Ruling cannot be directly applied to the present case on merits. However, after pronouncement of the said Advance Ruling, it can be said that the issue involved in the present appeals is regarding interpretation of tariff entries and it cannot be said that appellant the mis-classified the impugned goods with intend to evade payment of duty, inasmuch as *prima facie* the said Advance Ruling supports the classification adopted by the appellant. Therefore, I am of the view that extended period of limitation under Section 28(4) is not invokable in the present case.

68. On the issue of invoking extended period of limitation on account of mis-classification of goods, I rely upon the following Orders of Hon'ble Supreme Court (**gist**):

68.1 **NORTHERN PLASTIC LTD. Versus COLLECTOR OF CUSTOMS & CENTRAL EXCISE [1998 (101) E.L.T. 549 (S.C.)]** [Civil Appeal No. 4196 of 1989 with C.A. No. 3325 of 1990, decided on 14-7-1998]

> Exemption - Description of goods given correctly and fully in bill of entry/classification declaration - Laying claim to some exemption, whether admissible or not, is a matter of belief of assessee and does not amount to mis-declaration - Sections 25(1) and 111(m) of Customs Act, 1962.

68.2 **DENSONS PULTRETAKNIK Versus COMMISSIONER OF CENTRAL EXCISE [2003 (155) E.L.T. 211 (S.C.)]** [Civil Appeal No. 9516 of 1995 with C.A. Nos. 7635 of 1995 and 2461, 2463-65 & 2471 of 1996, decided on 15-1-2003]

> Demand - Limitation - Classification claimed by appellant on the ground of goods manufactured by it being other articles of plastic - However, merely claiming classification under sub-heading 3926.90 of Central Excise Tariff Act, 1985 not amounts to suppression of facts - Extended period of limitation not invocable - Section 11A(1) of Central Excise Act, 1944.

69. Further, in the **self-assessment regime**, following decisions of higher forums are squarely applicable to the present case.

69.1 **SIRTHAI SUPERWARE INDIA LTD. Versus COMMR. OF CUSTOMS, NHAVA SHEVA-III [2020 (371) E.L.T. 324 (Tri. - Mumbai)]** [Final Order No. A/86791/2019-WZB, dated 10-10-2019 in Appeal No. C/85603/2017]

Demand - Limitation - Extended period - Misdeclaration of facts - By giving correct description on the documents relating to import clearance, burden of making correct declaration on the Bill of Entry discharged by appellants - Any error in classification or exemption claimed on Bill of Entry cannot be misdeclaration with the intention to evade payment of duty - Extended period of limitation not invocable - Demand which falls within the normal period of limitation only needs to be upheld - Matter remanded back to Commissioner for re-determination and re-quantification of demand which can be made by denying the exemption under Notification No. 46/2011-Cus. to the appellants within the normal period as provided by Section 28(1) of Customs Act, 1962. *[paras 5.5, 5.1]*

Confiscation and penalty - Customs - Fact that the goods correspond to declaration in respect of the description and value is sufficient to take the imported goods away from the application of Sections 111(m) and 111(o) of Customs Act, 1962 - Confiscation of goods and imposition of penalty under Section 112(a) ibid cannot be sustained - appellant not having made any mis-declaration with intent to evade payment of duty, penalty not imposable under Section 114A of Customs Act, 1962. *[paras 4.9, 4.10]*

69.2 **MIDAS FERTCHEM IMPEX PVT. LTD. Versus PRINCIPAL COMMISSIONER OF CUSTOMS, ACC (IMPORT), NEW DELHI [(2023) 4 Centax 73 (Tri.-Del)]** [Final Order Nos. 50027-50031 of 2023 in Appeal Nos. C/52239/2021 with C/52240-52243/2021, decided on 13-1-2023]

Self-assessment - Scope of - There is no separate mechanism - It is also a form of assessment - As importer is not expert in assessment and can make mistakes, there is provision for reassessment by officer - Although Bill of Entry requires importer to make true declaration and confirm its contents as true and correct, columns for classification, exemption notifications claimed and valuation are matters of self-assessment and are not matters of fact - Claim of wrong classification, ineligible exemption or valuation not fully as per law, or wrong self-assessment by importer will not amount to mis-declaration, mis-statement or suppression - Section 17 of Customs Act, 1962. [para 50]

69.3 **LEWEK ALTAIR SHIPPING PVT. LTD. Versus COMMISSIONER OF CUS., VIJAYAWADA [2019 (366) E.L.T. 318 (Tri. - Hyd.)]** [Final Order Nos. A/30053-30056/2019, dated 9-1-2019 in Appeal Nos. C/30608-30609/2017, C/30230 & 30234/2016]

Confiscation and penalty – Mis-description of goods - Mention of wrong tariff or claiming benefit of an ineligible exemption notification cannot form the basis for confiscation of goods under Section 111(m) of Customs Act, 1962 - Therefore, confiscations and redemption fines set aside - Consequently no penalties imposable under Section 112(a) of Customs Act, 1962. *[para 7]*

Penalty under Section 114AA of Customs Act, 1962 - Claiming an incorrect classification or the benefit of an ineligible exemption notification not amounts to

making a false or incorrect statement, it being not an incorrect description of goods or their value but only a claim made by assessee - Thus, even if the appellant makes a wrong classification or claims ineligible exemption, he will not be liable to penalty under Section 114AA of Customs Act, 1962. *[para 7]*

Further, I find that the Civil Appeal Diary No. 19639 of 2019 filed by Commissioner of Customs, Vijayawada against the above-mentioned Order of Hon'ble CESTAT has been dismissed by the Hon'ble Supreme Court on 05.07.2019 by holding that there is no legal infirmity in the impugned judgment and order warranting Supreme Court's interference under Section 130E(b) of the Customs Act, 1962. ***[Commissioner v. Lewek Altair Shipping Pvt. Ltd. - 2019 (367) E.L.T. A328 (S.C.)].***

69.4 I also rely upon the order of Hon'ble jurisdictional CESTAT, Ahmedabad, in the case of ***Hindustan Unilever Ltd. Vs. Commissioner of Customs, Mundra [(2023) 12 Centax 171 (Tri-Ahmd)]***, wherein it has observed and held as follows (underline supplied):

> *"**4.4** We also find that no conduct or intent of the appellant is found to be malafide as they submitted all the information and also the information required during assessment. Hence the demand raised for the period 26-11-2013 to 4-8-2015 covered under 106 Bill of Entry out of 886 are barred by limitation and considered to be assessed finally. The goods were not found to be different than declared and the value was based on transfer pricing and hence provisions of Section 111 (m) is also not applicable. The remaining BEs were cleared by the customs after verification and scrutiny of goods and import documents and hence the same also do not come under the purview of Section 111 (m)."*

Against the above-mentioned Final Order, the Commissioner of Customs, Mundra, had filed a Civil Appeal Diary No. 32747 of 2023 with Hon'ble Supreme Court. Vide Order 22.09.2023, reported as ***Commissioner of Customs, Mundra Vs. Hindustan Unilever Ltd. [(2023) 12 Centax 172 (SC)]***, Hon'ble Supreme Court has dismissed the said Civil Appeal by observing that they are not inclined to interfere with the order impugned in that appeal.

70. I also rely upon the decision of Hon'ble CESTAT, Mumbai in the case of ***Metro Tyres Ltd. Vs. Collector of Central Excise, Chandigarh [1994 (74) E.L.T. 964 (Tribunal)]***. In the said Order, it has been held as under:

> *"**9.** ... ... In fact, merely claiming the benefit of a particular heading or sub-heading or a notification does not by itself amount to a mis-declaration; And in this case furthermore, no mala fides have been proved or established. The interpretation of a notification of course was a different matter and the parties and the departments could*

differ but merely because the departments' interpretation on view point was different from that of an assessee, it could not be said that the assessee had mis-declared.

10. *Hence, we hold that the charge of section 111(m) is not established and the appellants were not liable to confiscation and penalty on that score."*

I note that the Civil Appeal No. 6177 of 1995 filed by Department against the above-mentioned Order has been dismissed by Hon'ble Supreme Court vide Order dated 02.01.1999 [***Collector* v. *Metro Tyres Ltd.* - 2000 (116) E.L.T. A71 (S.C)**]. Thus, the issue attained finality.

71. **In the cases on hand**, the appellant has declared and submitted all the information required for assessment and there is no allegation that any of the said information was false, fabricated or mis-leading. The appellant has declared the goods as per the description given in the Invoices issued by foreign supplier. The impugned orders do not change description of the goods. Thus, there is no dispute about description of the impugned goods. If at the time of imports, Customs Department was of the view that the imported goods were classifiable under different Tariff Item, the Bills of Entry could have been re-assessed under the provisions of Section 17(4) of the Customs Act, 1962, as amended w.e.f. 08.04.2011, which are as under:

"(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the Proper Officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods."

In view of the above statutory provision, I find that the proper officer could have re-assessed the duty under Section 17(4) of the Customs Act, 1962, but it was not done. If the re-assessment was not done due to any reason, the Customs Department could have issued Show Cause Notice within normal period of limitation of two years under the provisions of Section 28(1) of the Customs Act, 1962. But, merely for the reason that the normal period of two years had been passed when the short-payment was detected, it is not proper to allege suppression facts and/or willful mis-declaration on part of the appellant just to cover the extended period of limitation.

72. In view of the above discussion and findings, I am of the considered view that when description and other particulars of imported goods have been declared correctly, merely due to the reason of adopting different classification of goods by the importer, the extended period of limitation under Section 28(4) cannot be invoked; and goods cannot be confiscated

under Section 111(m) of the Customs Act, 1962. Thus, the orders towards confiscation of goods and imposition of penalties in this cases are not sustainable. As the goods are not liable for confiscation, redemption fine under Section 125 is not imposable.

73. Though invocation of extended period of limitation under Section 28(4) is not sustainable in the present cases, demand of duty to the extent it relates to the Bills of Entry filed within two years from the date of SCN, **if any**, is not time-barred by applying provisions of Section 28(10B) of the Customs Act, 1962. The said Section 28(10B) states that a notice issued under sub-section (4) shall be deemed to have been issued under sub-section (1), if such notice demanding duty is held as not sustainable in any proceeding under this Act, including at any stage of appeal, for the reason that the charges of collusion or any wilful misstatement or suppression of facts to evade duty has not been established, the amount of duty and the interest thereof shall be computed accordingly, i.e. as per provisions of Section 28(1). However, in the present case, all the Bills of Entry have been filed and cleared before two years from the date of issuance of respective Show Cause Notices. Thus, the demand of duty under the provisions of Section 28(4) is not sustainable as time-barred. When demand of duty itself is not sustainable, interest and penalties are also not sustainable.

74. I find that the Judgments and Orders relied upon by the appellant and also as discussed hereinabove are applicable to the facts of the present appeals. Therefore, I am of the view that the impugned orders are liable to be set aside on the ground that these cases are not fit for invoking extended period of limitation under the provisions of Section 28(4); not fit for confiscation under Section 111(m); and not fit for imposing penalties under Section 114A and Section 114AA of the Customs Act, 1962, in absence of any ingredients required for invoking the said provisions.

75. In view of the above findings, both demands are unsustainable on limitation alone. So, examination of the cases on merits, i.e. in respect of proper classification of goods, will become academic. Therefore, I am not going to decide proper classification of impugned goods in the present order, as the demand is liable to be set aside on the ground of limitation only.

76. In view of the above discussion and findings, I pass the following order.

Order

I set aside the Order-In-Original No. 52/ADC/ACC/OIO/Tata Capital/2024-25 dated 03.09.2024 passed by the Additional Commissioner of Customs (in-charge Air Cargo Complex), Ahmedabad; and the Order-In-Original No. 163/ADC/VM/O&A/2024-25 dated 20.09.2024 passed by the Additional Commissioner of Customs (in-charge ICD-Khodiyar), Ahmedabad; and allow both the appeals filed by M/s. Tata Capital Ltd. with consequential relief, in accordance with law.

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

F.Nos. S/49-235/CUS/AHD/2024-25, S/49-216/CUS/AHD/2024-25 Date: 26.11.2025

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

To
M/s. Tata Capital Ltd. (formerly known as M/s. Tata Capital Financial Services Ltd.)
Tower A 1101, Peninsula Business Park, Ganpatrao Kadam Marg, Lower Parel,
Mumbai – 400013. (email: leena.pandhye@tatacapital.com)

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad. (email: ccoahm-guj@nic.in)

2. The Principal Commissioner of Customs, Custom House, Ahmedabad. (email: cus-ahmd-guj@nic.in rra-customsahd@gov.in)

3. The Additional Commissioner of Customs (in-charge Air Cargo Complex), Ahmedabad (email: cus-ahmd-adj@gov.in)

4. The Additional Commissioner of Customs (in-charge ICD-Khodiyar), Ahmedabad (email: cus-ahmd-adj@gov.in)

5. The Deputy/Assistant Commissioner of Customs, Air Cargo Complex, Ahmedabad. (email: aircargo-amd@gov.in)

6. The Deputy/Assistant Commissioner of Customs, ICD-Khodiyar. (email: icdkhd-ahd@gov.in)

7. Shri Kedar Kokatay, Advocate and Shri Bharath Menon, Advocate. (email: kedar.k@lakshmisri.com,bharath.menon@lakshmisri.com,lsbom@lakshmisri.com)

8. Guard File.

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