



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमा शुल्क भवन,” पहली मंजिल, पुराने हाईकोर्ट के सामने, नवरंगपुरा, अहमदाबाद – 380 009.

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PREAMBLE

A	फाइल संख्या/ File No.	:	VIII/10-105/ICD-Khod/O&A/HQ/2023-24
B	कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date	:	F.No. VIII/10-105/ICD-Khod/O&A/HQ/2023-24 dated 29.09.2023
C	मूलआदेशसंख्या/ Order-In-Original No.	:	33/ADC/VM/O&A/2024-25
D	आदेशतिथि/ Date of Order-In-Original	:	17.05.2024
E	जारीकरनेकीतारीख/ Date of Issue	:	17.05.2024
F	द्वारापारित/ Passed By	:	Vishal Malani, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानाम और पता / Name and Address of Importer / Passenger	:	M/s. Sofarsolar Renewable Energies (OPC) Private Limited, 11th Floor, A-1108, Sakar – 9, Near Old Reserve Bank, Opp. Times of India, Ashram Road, Ahmedabad – 380009.
(1)	यह प्रति व्यक्ति के उपयोग के लिए निःशुल्क प्रदान किया जाता है जिन्हे यह जारी किया जाता है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्त किया तारीख के ६० दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क) अपील, ४वीं मंजिल, हुड़को भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच) ५.००) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथकेवल पांच) ५.००) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को ७.५ % अधिकतम १० करोड़ शुल्क हम करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, १९६२ के धरा १२९ के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

BRIEF FACTS OF THE CASE:-

M/s. Sofarsolar Renewable Energies (OPC) Private Limited, 11th Floor, A-1108, Sakar – 9, Near Old Reserve Bank, Opp. Times of India, Ashram Road, Ahmedabad – 380009 (herein after referred to as "M/s. Sofarsclar" for the sake of brevity), is registered with Goods and Services Tax Department with GSTIN 24ABFCS8865G1ZY and is engaged in import of "Transformer less PV Inverters", "Waaree Solar on Grid Inverter" etc. falling under Chapter 85 of the First Schedule to the Customs Tariff Act, 1975.

2. The office of the Director General of Audit (Central), Indian Audit and Accounts Department, Ahmedabad, vide Audit Para 2, Reference No. 379/231 of LAR 7/2022-23 has made observation regarding short levy of Duty due to application of incorrect rate of IGST.

2.1 It has been observed vide aforesaid Audit Para and Sl. No. 201A of Schedule-II of Notification No. 1/2017-Integrated Tax (Rate), as amended from time to time, IGST at the rate of 12 per cent is applicable on "Following renewable energy devices and parts for their manufacture:- (a) Bio-gas plant; (b) Solar power based devices; (c) Solar power generator; (d) Wind mills, Wind Operated Electricity Generator (WOEG); (e) Waste to energy plants / devices; (f) Solar lantern / Solar lamp; (g) Ocean waves/tidal waves energy devices/plants; (h) Photo voltaic cells, whether or not assembled in modules or made up into panels" falling under chapters 84,85 or 94. Vide Notification No. 8/2021-Integrated Tax (Rate) dated 30.09.2021, above goods, earlier falling under IGST Schedule-I (Sl. No. 234A), were omitted and these entries were inserted in above Schedule-II (Sl. No.201A). It has further been observed that Sl. No. 234B of Schedule-I of the said Notification covered "Charger or charging station for Electrically operated vehicles" where IGST is payable at 5 percent.

3. The aforesaid observations were communicated to M/s. Sofarsolar, vide letter F.No. VIII/22-01/ICD/Audit/2021/1477 dated 08.06.2023, with request to pay the differential IGST along with applicable interest and to submit the payment particulars. However, M/s. Sofarsolar has not responded to the aforesaid communication.

4. As per Section 3 sub-section (7) of the Customs Tariff Act, 1975, any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty per cent, as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (8) or sub-section (8A), as the case may be.

4.1 The relevant entries at Sl. No. 234B of Schedule – I and Sl. No. 201A of Schedule – II of Notification No. 1/2017-Integrated Tax (Rate) dated 28/06/2017, as amended, are as follows –

SCHEDULE – I @ 5%

Sl. No.	Chapter / Heading / Sub- heading/ Tariff item	Description of Goods
234B	8504	Charger or charging station for Electrically operated vehicles

SCHEDULE – II @ 12%

Sl. No.	Chapter / Heading / Sub- heading/ Tariff item	Description of Goods
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201A	84, 85 or 94	<p><i>Following renewable energy devices and parts for their manufacture:—</i></p> <ul style="list-style-type: none"> (a) Bio-gas plant; (b) Solar power based devices; (c) Solar power generator; (d) Wind mills, Wind Operated Electricity Generator (WOEG); (e) Waste to energy plants/devices; (f) Solar lantern/solar lamp; (g) Ocean waves/tidal waves energy devices/plants; (h) Photo voltaic cells, whether or not assembled in modules or made up into panels. <p><i>Explanation:—If the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S. No. 38 of the Table mentioned in the Notification No. 8/2017-Integrated Tax (Rate), dated 28th June, 2017 [G.S.R. 683(E)], the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent of the gross consideration charged for all such supplies, and the remaining thirty per cent of the gross consideration charged shall be deemed as value of the said taxable service.</i></p>
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4.2 The goods imported by M/s. Sofarsolar vide following Bills of Entry are not "Charger or charging station for Electrically operated vehicles", and therefore, the said goods are not entitled for concessional rate of IGST of 5%.

Sl. No.	Bill of Entry No. and Date	Description of Goods
1	5669589 dated 01.10.2021	Transformer Less PV Inverters
2	8191014 dated 08.04.2022	Transformer Less PV Inverters
3	8329441 dated 19.04.2022	Waaree Solar on Grid Inverter

4.3 The said imported goods viz. "Transformer Less PV Inverters" and "Waaree Solar on Grid Inverter", falling under Tariff Item 85044090 of the First Schedule to the Customs Tariff Act, 1975, imported by M/s. Sofarsolar vide aforesaid Bills of Entry, are covered under Sl. No. 201A of Schedule – II of Notification No. 1/2017-Integrated Tax (Rate) dated 28/06/2017, as amended, and attract IGST rate of 12%.

5. After the introduction of self-assessment through amendment in Section 17 of the Customs Act, 1962 vide Finance Act, 2011, it is the responsibility of the importer to correctly declare the description, classification, applicable exemption Notification, applicable duties, rate of duties and its relevant Notifications with appropriate Serial number of the Notification etc., in respect of imported goods and pay the appropriate duty accordingly.

5.1 In the present case, M/s. Sofarsolar had intentionally and knowingly claimed the inadmissible benefit of IGST of 5% under Sl. No. 234B of Schedule – I of Notification No. 1/2017-Integrated Tax (Rate) dated 28/06/2017, as amended, for the products imported under the aforesaid 3 Bills of Entry, though the said products are appropriately covered under Sl. No. 201A of Schedule – II of Notification No. 1/2017-Integrated Tax (Rate) dated 28/06/2017, as amended, and attract IGST

rate of 12%. The deliberate attempt to evade payment of duty is evident from the fact that M/s. Sofarsolar has correctly mentioned Sl. No. 201A of Schedule – II of Notification No. 1/2017-Integrated Tax (Rate) dated 28/06/2017 for the products imported under Bill of Entry No. 9754425 dated 28.07.2022 and has paid appropriate IGST @ 12%.

5.2 Therefore, M/s. Sofarsolar had willfully contravened the provisions of Section 17(1) of the Customs Act, 1962 inasmuch as they have failed to correctly self-assess the impugned goods and have also contravened the provisions of sub-sections (4) and (4A) of Section 46 of the Customs Act, 1962 inasmuch as they have failed to ensure the accuracy and completeness of the information given therein.

5.3 M/s. Sofarsolar indulged themselves in willful mis-statement and suppression of facts inasmuch as they have filed Bills of Entry mentioning Sl. No. 234B of Schedule – I of Notification No. 1/2017-Integrated Tax (Rate) with IGST @ 5%, which is applicable to "Charger or charging station for Electrically operated vehicles" whereas the goods imported by them were "Transformer Less PV Inverters" and "Waaree Solar on Grid Inverter" which are covered under Sl. No. 201A of Schedule – II of Notification No. 1/2017-Integrated Tax (Rate) dated 28/06/2017, with IGST @ 12%, and thereby short paid Customs duty (IGST) of **Rs. 11,54,408/- (Rupees Eleven Lakh, Fifty Four Thousand, Four Hundred and Eight Only)**, as mentioned in **Annexure – A** to the Show Cause Notice. The Customs duty (IGST), thus short levied and short paid by M/s. Sofarsolar is recoverable from them under sub-section (4) of Section 28 of the Customs Act, 1962, by invocation of extended period of five years, along with interest at applicable rate under Section 28AA of the Customs Act, 1962.

5.4 As per clause (m) of Section 111 of the Customs Act, 1962, any goods brought from a place outside India which do not correspond in respect of value or in any other particular with the entry made under this Act, shall be liable to confiscation. As the goods imported by M/s. Sofarsolar under aforesaid Bills of Entry did not correspond with Sl. No. 234B of Schedule – I of Notification No. 1/2017-Integrated Tax (Rate) dated 28/06/2017, as amended, mentioned in the said Bills of Entry filed by M/s. Sofarsolar, the said goods totally valued at **Rs. 1,35,17,664/- (Rupees One Crore, Thirty Five Lakh, Seventeen Thousand, Six Hundred and Sixty Four Only)**, as mentioned in **Annexure – A** to the Show Cause Notice, are liable for confiscation under Section 111(m) of the Customs Act, 1962.

5.5 The aforesaid acts of omission and commission on the part of M/s. Sofarsolar have rendered them liable to penalty as provided under Section 112(a) of the Customs Act, 1962.

5.6 As discussed, the Customs duty (IGST) in the present case has been short levied and short paid by reason of willful mis-statement and suppression of facts on the part of M/s. Sofarsolar, which made them liable for penalty under Section 114A of the Customs Act, 1962.

SHOW CASUE NOTICE:

6. Thus, a Show Cause Notice File No. VIII.10-105/ICD-Khod/O&A/HQ/2023-24 dated 29.09.2023 was issued to M/s. Sofarsolar Renewable Energies (OPC) Private Limited, calling upon them to show cause to the Joint/Additional Commissioner of Customs having his office at 2nd Floor, Custom House, Near All India Radio, Navrangpura, Ahmedabad – 380009, as to why –

- (i) The goods viz. "Transformer Less PV Inverters" and "Waaree Solar on Grid Inverter" imported by them, as detailed in **Annexure-A** to the Show Cause Notice, should not be held to be covered under Sl. No. 201A of Schedule – II of Notification No. 1/2017-Integrated Tax (Rate) dated 28/06/2017, with IGST @ 12% and not under Sl. No. 234B of

Schedule – I of Notification No. 1/2017-Integrated Tax (Rate) dated 28/06/2017, with IGST @ 5%;

- (ii) The goods viz. "Transformer Less PV Inverters" and "Waaree Solar on Grid Inverter" valued at **Rs. 1,35,17,664/- (Rupees One Crore, Thirty Five Lakh, Seventeen Thousand, Six Hundred and Sixty Four Only)** imported and self-assessed by them, should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962, and as the said goods had already been cleared, Redemption Fine in lieu of confiscation should not be imposed under Section 125 of the Customs Act, 1962.
- (iii) The Customs duty (IGST) amounting to **Rs. 11,54,408/- (Rupees Eleven Lakh, Fifty Four Thousand, Four Hundred and Eight Only)** short levied and short paid by them should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962;
- (iv) Interest at applicable rate under Section 28AA of the Customs Act, 1962, on the aforesaid amount of short levied and short paid Customs duty (IGST), should not be charged and recovered from them;
- (v) Penalty should not be imposed on them under Section 112(a) of the Customs Act, 1962;
- (vi) Penalty should not be imposed on them under Section 114A of the Customs Act, 1962.

SUBMISSIONS:

7. From records available, I find that M/s Sofar Solar, made no submission in response to the Show Cause Notice dated 29.09.2023.

PERSONAL HEARING:

8. I find that opportunity to be heard in person was given to M/s. Sofar Solar on 11.01.2024, 15.03.2024 and 01.05.2024. However, no representative or council of M/s Sofar solar appeared to present their viewpoints in the incident case.

DISCUSSION AND FINDINGS:

9. I have carefully gone through the entire case material available on record. I find that importer did not appear for personal Hearing, though enough opportunities were given to them. Under the circumstances, there appears no option except to proceed to decide the case ex-parte. In this regard, I rely upon the case of Saketh India Ltd Versus Union of India 2002 (143) ELT 274 (Del.) of the Hon'ble Tribunal wherein it was held that-

"Thus, it is a clear case where a proper opportunity was given to the appellant to reply to show cause notice and to make oral submission, if any. However, fault lies with the appellant in not availing of these opportunities. For this appellant has to blame itself. The appellant cannot turn around and blame the respondents by alleging that the ADDI. DGFT violated principles of natural justice or did not give sufficient opportunity to the appellant to present its case."

10. I also find that Hon'ble Tribunal in the case of V.K. Thampi v/s CCE, Cochin 1988(33) ELT 424 (Tri.), relying on the decision of the Apex Court reported in (AIR 1962 SC 646 and AIR 1957 SC 842) have held that an adjudicating authority is entitled to proceed ex-parte if the person concerned does not appear before it in response to notice issued by it. In view thereof, I have to proceed to decide the case in hand ex-parte based upon the evidence available on record.

11. I find that under the cover of some 03 Bills of Entry filed during the period from 01/10/2021 to 19/04/2022 at ICD Khodiyar (INSBI6), the noticee have imported "Transformer Less PV Inverters" and "Waaree Solar on Grid Inverter" by classifying under CTH 85044090 of the First Schedule to the Customs Tariff Act, 1975. In the Show Cause Notice, the investigation has contended "Transformer Less PV Inverters" and "Waaree Solar on Grid Inverter" were though correctly classified under CTH 85044090 however, the benefit of integrated tax notification was wrongly availed under Sl. No. 234B of Schedule - I of Notification No. 1/2017-Integrated Tax (Rate) dated 28/06/2017, as the same was available to 'Charger or charging station for Electrically operated vehicles' only and not to "Transformer Less PV Inverters" and "Waaree Solar on Grid Inverter" and that "Transformer Less PV Inverters" and "Waaree Solar on Grid Inverter" are distinct goods. In respect of said items imported, it was contended that these are 'renewable energy devices and parts for their manufacture' and thus appeared to be appropriately classifiable under CTH 85044090 and chargeable to 12% Integrated tax under Sl. No. 201A of Schedule - II of Notification No. 1/2017-Integrated Tax (Rate) dated 28/06/2017 and not 5% as paid by the notice.

12. Firstly, it is important to settle the classification issue. The Heading 85.04 of the Customs Tariff Act, 1975 reads as under:

Tariff Item		Description of goods	Unit	Policy	Rate of duty
-1	-2	-3	-4	-5	-6
8504		ELECTRICAL TRANSFORMERS, STATIC CONVERTERS (FOR EXAMPLE, RECTIFIERS) AND INDUCTORS			
8504 10	-	<i>Ballasts for discharge lamps or tubes :</i>			
8504 10 10	---	Conventional type	u	Free	7.50%
8504 10 20	---	For compact fluorescent lamps	u	Free	7.50%
8504 10 90	---	Other	u	Free	7.50%
	-	<i>Liquid dielectric transformers:</i>			
8504 21 00	--	Having a power handling capacity not exceeding 650 kVA	u	Free	10%
8504 22 00	--	Having a power handling capacity exceeding 650 kVA but not exceeding 10,000 kVA	u	Free	10%
8504 23	--	<i>Having a power handling capacity exceeding 10,000 kVA:</i>			
8504 23 10	---	Having a power handling capacity exceeding 10,000 kVA but not exceeding 50,000 kVA	u	Free	10%
8504 23 20	---	Having a power handling capacity exceeding 50,000 kVA but not exceeding 1,00,000 kVA	u	Free	10%
8504 23 30	---	Having a power handling capacity exceeding 1,00,000 kVA but not exceeding 2,50,000 kVA	u	Free	10%
8504 23 40	---	Having a power handling capacity exceeding 2,50,000 kVA	u	Free	10%
	-	<i>Other transformers:</i>			
8504 31 00	--	Having a power handling capacity not exceeding 1 kVA	u	Free	10%
8504 32 00	--	Having a power handling capacity exceeding 1 kVA but not exceeding 16 kVA	u	Free	10%
8504 33 00	--	Having a power handling capacity exceeding 16 kVA but not exceeding 500 kVA	u	Free	10%
8504 34 00	--	Having a power handling capacity exceeding 500 kVA	u	Free	10%
8504 40	-	Static converters:			
8504 40 10	---	Electric inverter	u	Free	20%
	---	<i>Rectifier:</i>			
8504 40 21	---	Dip bridge rectifier	u	Free	20%
8504 40 29	---	Other	u	Free	20%
8504 40 30	---	Battery chargers	u	Free	20%
8504 40 40	---	Voltage regulator and stabilizers (other than automatic)	u	Free	20%
85044090	---	Other	u	Free	20%

8504 50	-	<i>Other inductors:</i>				
8504 50 10	---	<i>Choke coils (chokes)</i>	u	Free	7.50%	
8504 50 90	---	<i>Other</i>	u	Free	7.50%	
8504 90	-	<i>Parts:</i>				
8504 90 10	---	<i>Of transformers</i>	kg.	Free	10%	
8504 90 90	---	<i>Other</i>	kg.	Free	15%	

13. Furthermore, relevant extracts of the HSN Explanatory Notes of CTH 850440 are as under:

(II) ELECTRICAL STATIC CONVERTERS

The apparatus of this group are used to convert electrical energy in order to adapt it for further use. They incorporate converting elements (e.g., valves) of different types. They may also incorporate various auxiliary devices (e.g., transformers, induction coils, resistors, command regulators, etc.). Their operation is based on the principle that the converting elements act alternately as conductors and non-conductors. The fact that these apparatus often incorporate auxiliary circuits to regulate the voltage of the emerging current does not affect their classification in this group, nor does the fact that they are sometimes referred to as voltage or current regulators. This group includes:

- (A) *Rectifiers by which alternating current (single or polyphase) is converted to direct current, generally accompanied by a voltage change.*
- (B) *Inverters by which direct current is converted to alternating current.*
- (C) *Alternating current converters and cycle converters by which alternating current (single or polyphase) is converted to a different frequency or voltage.*
- (D) *Direct current converters by which direct current is converted to a different voltage.*

Electrical static converters may be divided into the following principal categories according to the type of converting element with which they are equipped:

(1) Semiconductor converters based on the one-way conductivity between certain crystals. Such converters consist of a semiconductor as the converting element and various other devices (e.g., coolers, tape conductors, drives, regulators, control circuits).

These include:

- (a) *Monocrystalline semiconductor rectifiers using, as a converting element, a device containing silicon or germanium crystals (diode, thyristor, transistor).*
- (b) *Polycrystalline semiconductor rectifiers using a selenium disc.*

(2) Gas discharge converters, such as:

(a) Mercury arc rectifiers. Their converting element consists of a glass envelope or a metal tank having a vacuum and containing a mercury cathode and one or more anodes through which the current to be rectified passes. They are equipped with auxiliary devices, e.g., for priming, charging, cooling, and sometimes to maintain the vacuum.

There are two categories of gas discharge rectifiers identifiable according to the mechanism of the primer, viz., "excitrons" (with charging anodes) and "ignitrons" (with igniters).

(b) Thermo-ionic rectifiers with incandescent cathodes. Their converting element (e.g., a thyratron) is similar to that of mercury arc rectifiers except that it contains an incandescent cathode in place of the mercury cathode.

(3) Converters with a mechanical converting element based on the one-way conductivity of various contacts, such as:

- (a) Contact rectifiers (e.g., those using camshafts) with a device whose metal contacts open and close in synchronization with the frequency of the alternating current to be rectified.
- (b) Mercury-jet turbine rectifiers with a rotating jet of mercury, synchronized with the frequency of the alternating current, which strikes a fixed contact.
- (c) Vibrator rectifiers with a thin metal tongue, oscillating at the frequency of the alternating current, which touches a contact so placed that the current is drawn from the source.

(4) Electrolytic rectifiers based on the principle that the combination of certain products used as electrodes in combination with certain liquids used as electrolytes will only allow current to flow in a single direction.

Electrical static converters may be used for different purposes, e.g.:

- (1) Converters to supply electricity to drive stationary machines or electric traction vehicles (e.g., locomotives).
- (2) Supply converters, such as accumulator chargers (which consist essentially of rectifiers with associated transformer and current control apparatus), converters for galvanizing and electrolysis, emergency power packs, converters for installations which supply high-tension direct current, converters for heating purposes and for the current supply to electro-magnets.

Also classified here are converters known as high-tension generators (used particularly with radio apparatus, emission tubes, microwave tubes, ion-beam tubes) which convert the current from any source, usually the mains, into the direct high-tension current necessary for feeding the equipment concerned by means of rectifiers, transformers, etc.

This heading also includes stabilized supplies (rectifiers combined with a regulator), e.g., uninterruptible power supply units for a range of electronic equipment.

However, high-tension generators (or transformers) specifically designed for supplying radiological apparatus fall in heading 90.22. Automatic voltage regulators are classified in heading 90.32.

14. From the above, in so far as the classification of "Transformer Less PV Inverters" and "Waaree Solar on Grid Inverter" is concerned, it is very evident that the imported goods merits classification under CTH 85044090. I agree with the same as the items are Static converters (Solar) and clearly explained in the above Explanatory notes and have been classified under CTH 8504 40.

15. Now, I may examine the rate at which IGST shall be leviable on the items imported (Inverters) and for this purpose principal Notification No 01/2017-Integrated Tax (Rate) dated 28/06/2017 shall needs to be examined. The noticee has classified the items imported (Inverters) in the entry Sl. No. 234B of Schedule – I and paid duty @ 5% thereon. Having held that the correct classification of the items imported (Inverters) under 85044090, relevant entries of impugned Notification needs to be examined.

15.1 The relevant entry at Sl. No. 234B of Schedule – I of the Notification No. 01/2017-Integrated Tax covered goods namely 'Charger or charging station for Electrically operated vehicles' and chargeable to 5%. The relevant entries at Sl. No. 234B of Schedule – I of the Notification No. 01/2017-Integrated Tax are reproduced herein for ease of reference: -

SCHEDULE – I (IGST - @5%)

Sl. No.	Chapter / Heading / Sub- heading/ Tariff item	Description of Goods
234B	8504	Charger or charging station for Electrically operated vehicles

However, I find that the goods imported by M/s. Sofarsolar vide said Bills of Entry were not "Charger or charging station for Electrically operated vehicles", and therefore, the said goods do not appear to be entitled for concessional rate of IGST of 5%.

15.2 Further, I find that, the entries at Sl. No. 201A of Schedule – II of Notification No.1/2017-Integrated Tax (Rate) dated 28/06/2017 covered goods namely 'renewable energy devices and parts for their manufacture' and chargeable to 12%. The relevant entries at Sl. No. 201A of Schedule – II of Notification No. 1/2017-Integrated Tax (Rate) dated 28/06/2017 are reproduced herein for ease of reference: -

SCHEDULE – II (IGST - @12%)

Sl. No.	Chapter / Heading / Sub- heading/ Tariff item	Description of Goods
201A	84, 85 or 94	<p><i>Following renewable energy devices and parts for their manufacture: -</i></p> <ul style="list-style-type: none"> (a) Bio-gas plant; (b) Solar power based devices; (c) Solar power generator; (d) Wind mills, Wind Operated Electricity Generator (WOEG); (e) Waste to energy plants/devices; (f) Solar lantern/solar lamp; (g) Ocean waves/tidal waves energy devices/plants; (h) Photo voltaic cells, whether or not assembled in modules or made up into panels. <p><i>Explanation:—If the goods specified in this entry are supplied, by a supplier, along with supplies of other goods and services, one of which being a taxable service specified in the entry at S. No. 38 of the Table mentioned in the Notification No. 8/2017-Integrated Tax (Rate), dated 28th June, 2017 [G.S.R. 683(E)], the value of supply of goods for the purposes of this entry shall be deemed as seventy per cent of the gross consideration charged for all such supplies, and the remaining thirty per cent of the gross consideration charged shall be deemed as value of the said taxable service.</i></p>

In view of above entry, I categorically find that the goods imported by M/s. Sofarsolar vide said Bills of Entry were "parts of renewable energy devices" and therefore, the said goods attracted rate of IGST of 12%.

15.3 M/s. Sofarsolar Renewable Energies (OPC) Private Limited had imported "Transformer Less PV Inverters" and "Waaree Solar on Grid Inverter" ('renewable energy devices and parts for their manufacture') but not the "Charger or charging

station for Electrically operated vehicles". Therefore, goods imported (Inverters) were not covered within the scope of Sl. No. 234B of Schedule – I of the Notification No. 01/2017-Integrated Tax. In other words, only "Charger or charging station for Electrically operated vehicles" falling under tariff 85044090 were chargeable to 5% (Sl. No. 234B of Schedule – I of the Notification No. 01/2017-Integrated Tax) and "parts of *renewable energy devices*" items falling under 85044090 (Inverters) fall under Sl. No. 201A of Schedule – II of Notification No. 1/2017-Integrated Tax (Rate) dated 28/06/2017 and chargeable to 12%. There was no iota of doubt that all the goods of CTH 8504, other than "Charger or charging station for Electrically operated vehicles", are covered under Sl. No. 201A of Schedule – II of Notification No. 1/2017-Integrated Tax (Rate) dated 28/06/2017 and chargeable to Integrated Tax @12%.

16. I find that the observations made in regard to M/s. SofarSolar were communicated to M/s. Sofarsolar vide letter F. No. VIII/22-01/ICD/Audit/2021/1477 dated 08.06.2023, with request to pay the differential IGST along with applicable interest and to submit the payment particulars. However, M/s. Sofarsolar did not respond to the aforesaid communication.

17. I find that the importer M/s. Sofarsolar had imported identical goods viz. inverter by classifying under CTH 85044090 vide Bill of Entry No. 9754425 dated 28.07.2022 and had self-assessed the Duty and paid appropriate IGST @12% under Sl. No. 201A of Schedule – II of Notification No. 1/2017-Integrated Tax (Rate) dated 28/06/2017.

18. I find that as per Section 3 sub-section (7) of the Customs Tariff Act, 1975, any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty per cent, as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (8) or sub-section (8A), as the case may be.

19. I find that vide Finance Act, 2011 w.e.f. 08.04.2011 "Self Assessment" has been introduced under the Customs Act, 1962. Section 17 of the said Act provides for self-assessment of duty on import and export goods by the importer or exporter himself by filing a bill of entry or shipping bill as the case may be, in the electronic form, as per Section 46 or 50 respectively. Thus, under self-assessment, it is the importer or exporter who will ensure that he declares the correct classification, applicable rate of duty, value, benefit or exemption notification claimed, if any in respect of the imported/exported goods while presenting Bill of Entry or Shipping Bill. In the present case, M/s. Sofarsolar have deliberately contravened the above said provisions with an intention to wrongfully avail the benefit under Sl. No. 234B of Schedule – I of the Notification No. 01/2017-Integrated Tax by suppressing the fact that the goods imported were not the part of "Charger or charging station for Electrically operated vehicles" in order to evade the payment of Customs Duty.

20. I find that in the present case, M/s. Sofarsolar has intentionally and knowingly claimed the inadmissible benefit of IGST of 5% under Sl. No. 234B of Schedule – I of Notification No. 1/2017-Integrated Tax (Rate) dated 28/06/2017, as amended, for the products imported under the aforesaid 3 Bills of Entry, though the said products are appropriately covered under Sl. No. 201A of Schedule – II of Notification No. 1/2017-Integrated Tax (Rate) dated 28/06/2017, as amended, and attract IGST rate of 12%. The deliberate attempt to evade payment of duty is evident from the fact that M/s. Sofarsolar has correctly mentioned Sl. No. 201A of Schedule – II of Notification No. 1/2017-Integrated Tax (Rate) dated 28/06/2017 for the products imported under Bill of Entry No. 9754425 dated 28.07.2022 and has paid appropriate IGST @ 12%.

21. I thus find that M/s. Sofarsolar had willfully contravened the provisions of Section 17(1) of the Customs Act, 1962 inasmuch as they have failed to correctly self-assess the impugned goods and have also contravened the provisions of sub-sections (4) and (4A) of Section 46 of the Customs Act, 1962 inasmuch as they have failed to ensure the accuracy and completeness of the information given therein.

22. I find that M/s. Sofarsolar had indulged in willful mis-statement and suppression of facts inasmuch as they have filed Bills of Entry mentioning Sl. No. 234B of Schedule – I of Notification No. 1/2017-Integrated Tax (Rate) with IGST @ 5%, which is applicable to "Charger or charging station for Electrically operated vehicles" whereas the goods imported by them were "Transformer Less PV Inverters" and "Waaree Solar on Grid Inverter" which are covered under Sl. No. 201A of Schedule – II of Notification No. 1/2017-Integrated Tax (Rate) dated 28/06/2017, with IGST @ 12%, and thereby short paid Customs duty (IGST) of **Rs. 11,54,408/-**.

23. On going through the above facts, I find that the Noticee was well aware about the imposition of IGST @12% on the goods imported by them and also aware that the exemption under Sl. No. 234B of Schedule – I of Notification No. 1/2017-Integrated Tax (Rate) to pay IGST @ 5% was not available to the said goods, despite knowing this fact, they did not pay the IGST @12% leviable on the goods imported by them under Sl. No. 201A of Schedule – II of Notification No. 1/2017-Integrated Tax (Rate) dated 28/06/2017. Thus, the deliberate availment of wrong benefit of Notification No. 1/2017-Integrated Tax (Rate) dated 28/06/2017 under Sl. No. 234B by the importer has resulted in short levy and short payment of Customs Duty (IGST) and therefore, I find that Customs Duty (IGST) totally amounting to Rs. 11,54,408/-, which had been evaded by way of willful misstatement and with intention to evade duty, is required to be demanded and recovered from M/s. Sofarsolar Renewable Energies (OPC) Private Limited under the provisions of Section 28 (4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962.

24. Now, I take up the proposal for confiscation of the imported goods. Section 111(m) of the Customs Act, 1962, provides as under: -

"SECTION-111- *Confiscation of improperly imported goods, etc. – The following goods brought from a place outside India shall be liable to confiscation:*

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 [in respect thereof or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54]."

25. Taking the above observations into consideration, I find that the Noticee, despite being aware regarding the leviability of IGST @12% on the goods imported by them during the period from 01/10/2021 to 19/04/2022 at ICD Khodiyar (INSBI6), failed to declare the applicable entry of Sl. No. 201A of Schedule – II of Notification No. 1/2017-Integrated Tax (Rate) dated 28/06/2017 in the Bills of Entry filed by them and deliberately availed the inadmissible exemption under Sl. No. 234B of Schedule – I of Notification No. 1/2017-Integrated Tax (Rate) to pay IGST @ 5%. Hence, I find that impugned imported goods, having assessable value of **Rs. 1,35,17,664/-** (Rupees One Crore, Thirty Five Lakh, Seventeen Thousand, Six Hundred and Sixty Four Only), are liable for confiscation under Section 111(m) of the Customs Act, 1962.

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

"125 Option to pay fine in lieu of confiscation –

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation

whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit..."

25.2 I further find that even in the case where goods are not physically available for confiscation, redemption fine is imposable in light of the judgment in the case of **M/s. Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad)** wherein the Hon'ble High Court of Madras has observed as under:

The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).

25.3 In view of the above, I find that redemption fine under Section 125 (1) is liable to be imposed in lieu of confiscation of subject goods having assessable value of **Rs. 1,35,17,664/-** imported through ICD Khodiyar port.

26. Now, I proceed to consider the proposal for penalty on the importer. Imposition of penalty has been proposed on the importer under Section 112 (a) and 112(b) or Section 114A of the Customs Act, 1962. In this regard, I find that the investigation have established that M/s. Sofarsolar Renewable Energies (OPC) Private Limited wrongly availed the benefit under Sl. No. 234B of Schedule – I of Notification No. 1/2017-Integrated Tax (Rate) to pay IGST @ 5% and failed to pay the IGST @12% leviable on the goods imported by them during the period from 01/10/2021 to 19/04/2022 under Sl. No. 201A of Schedule – II of Notification No. 1/2017-Integrated Tax (Rate) dated 28/06/2017, by recourse to willful misstatement and intention to evade payment of duty, which has rendered the said imported goods liable for confiscation under Section 111(m) of the Customs Act, 1962. Thus, I find that in the instant case, Customs Duty (IGST) was not levied on the imported goods by reason of collusion, willful misstatement and suppression of facts by the importer and consequently, the importer M/s. Sofarsolar Renewable Energies (OPC) Private Limited is liable for penalty under Section 114A of the Customs Act, 1962. As it is provided under Section 114A that if penalty is imposed under this section, then no penalty shall be levied under Section 112, therefore, I refrain from imposing penalty under Section 112 (a) of the Customs Act, 1962.

27. In view of above, I pass the following order:

ORDER

- (i) I order that the goods viz. "Transformer Less PV Inverters" and "Waaree Solar on Grid Inverter" imported by M/s. Sofarsolar Renewable Energies (OPC) Private Limited liable to pay IGST at the rate of 12% as per Sl. No. 201A of Schedule – II of Notification No. 1/2017-Integrated Tax (Rate) dated 28/06/2017. The said goods were not covered under the Sl. No. 234B of Schedule – I of Notification No. 1/2017-Integrated Tax (Rate) and thus chargeable to integrated tax @12% under Sl. No. 201A of Schedule – II of Notification No. 1/2017-Integrated Tax (Rate) dated 28/06/2017.
- (ii) I order that the goods viz. "Transformer Less PV Inverters" and "Waaree Solar on Grid Inverter" valued at **Rs. 1,35,17,664/- (Rupees One Crore, Thirty Five Lakh, Seventeen Thousand, Six Hundred and Sixty Four Only)** imported and self-assessed by M/s. Sofarsolar Renewable Energies (OPC) Private Limited, should be held liable for confiscation under Section 111(m) of the Customs Act, 1962.
- (iii) I find that as the said goods had already been cleared, a Redemption Fine in lieu of confiscation should be imposed under Section 125 of the Customs Act, 1962. I thus, give an option to M/s. Sofarsolar Renewable Energies (OPC) Private Limited to redeem the said goods on payment of redemption fine of **Rs. 10,00,000/- (Rupees Ten Lakh only)** under the provisions of section 125(1) of the Customs Act, 1962.
- (iv) I order the recovery of the Customs Duty (IGST) amounting to **Rs. 11,54,408/- (Rupees Eleven Lakh, Fifty Four Thousand, Four Hundred and Eight Only)** that has been short levied and short paid by M/s Sofar Solar, under Section 28(4) of the Customs Act, 1962;
- (v) I order to recover interest at applicable rate under Section 28AA of the Customs Act, 1962, on the aforesaid amount of short levied and short paid Customs duty (IGST) from M/s Sofar Solar;
- (vi) I impose penalty equal to sum of Rs. **11,54,408/- (Rupees Eleven Lakh, Fifty Four Thousand, Four Hundred and Eight Only)** and the amount of interest payable under section 28AA of the Customs act, 1962, on M/s. Sofarsolar Renewable Energies (OPC) Private Limited under Section 114A of the Customs Act, 1962. However, in view of the first and second proviso to Section 114A of the Customs Act, 1962, if the amount of Customs Duty confirmed and interest thereon is paid within a period of thirty days from the date of the communication of this Order, the penalty shall be twenty five percent of the Duty, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days;
- (vii) I refrain from imposing penalty under Section 112(a) of the Customs Act, 1962 on M/s. Sofarsolar Renewable Energies (OPC) Private Limited.

28. The Show Cause Notice No. VIII/10-105/ICD-Khod/O&A/HQ/2023-24 dated 29.09.2023 is disposed-off in above terms.


17/05/24
(Vishal Malani)
Additional Commissioner

BY SPEED POST / E-MAIL / HAND DELIVERY / THROUGH NOTICE BOARD

To:

M/s. Sofarsolar Renewable Energies (OPC) Private Limited,
11th Floor, A-1108, Sakar – 9,
Near Old Reserve Bank,
Opp. Times of India, Ashram Road,
Ahmedabad – 380009.
(E-Mail : brijesh.p@sofarsolar.com)

Copy to:

- (i) The Principal Commissioner of Customs, Customs-Ahmedabad
- (ii) The Deputy Commissioner of Customs, ICD – Khodiyar, Ahmedabad.
- (iii) The Deputy Commissioner of Customs, Task Force, Ahmedabad.
- (iv) The Superintendent, Customs, H.Q. (Systems), Ahmedabad, in PDF format for uploading on website of Customs Commissionerate, Ahmedabad.
- (v) Guard File.