

		OFFICE OF THE COMMISSIONER CUSTOM HOUSE, KANDLA NEAR BALAJI TEMPLE, NEW KANDLA Phone : 02836-271468/469 Fax: 02836-271467 e-mail: adj.kandla-customs@gov.in
E-office dispatched		
A	File No.	GEN/ADJ/ADC/1295/2025-ADJN
B	Order-in-Original No.	KND-CUSTM-000-COM-04-2026-27
C	Passed by	Dinesh Singh, Commissioner of Customs, Custom House, Kandla.
D	Date of Order	01.10.2026
E	Date of Issue	01.10.2026
F	SCN No. & Date	GEN/ADJ/ADC/1295/2025-Adjn-O/o Commr-Cus-Kandla dated 31.10.2025 (DIN 20251071ML000000A23D)
G	Noticee / Party / Importer / Exporter	M/s. GE India Industrial Private Limited

1. This Order-in-Original is granted to the concerned free of charge.
2. Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench,
2nd Floor, Bahumali Bhavan Asarwa,
Nr. Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad-380004
3. Appeal shall be filed within three months from the date of communication of this order.

4. Appeal should be accompanied by a fee of Rs.1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/-in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh(Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs. 10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs(Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.
5. The appeal should bear Court Fee Stamp of Rs.5/-under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paise only) as prescribed under Schedule-I, Item 6 of the CourtFees Act, 1870.
6. Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
7. While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules, 1982 should be adhered to in all respects.
8. An appeal against this order shall lie before the Appellate Authority on payment of 7.5% of the duty demanded wise duty or duty and penalty are in disupte, or penalty wise if penalty alone is in dispute.

BRIEF FACTS OF THE CASE

1. M/s GE India Industrial Private Limited (IEC Code 0393001962), having its address at Plot No. A-22/1, MIDC Chakan, Industrial Area, Phase-II, Khalumbre, Pune, Maharashtra – 410501 (hereinafter referred to as 'the Noticee' or 'the importer'), imported "Shipping Fixture For Tower Kit etc" falling under CTH 73269099 of the Customs Tariff Act, 1975, vide 08 Bills of Entry filed at Custom House, Kandla, during the period April 2020 to March 2022, through their Customs Broker M/s Agility Logistics Private Limited.
2. While filing the said Bills of Entry, the Noticee availed exemption from Basic Customs Duty (BCD), Social Welfare Surcharge (SWS) and Integrated Tax (IGST) under Notification No. 104/94-Cus. dated 16.03.1994, which exempts containers of durable nature, subject to the condition that the importer, by execution of a bond, binds himself to re-export the said containers within six months from the date of importation and to furnish documentary evidence thereof to the satisfaction of the Assistant/Deputy Commissioner of Customs, failing which the duty leviable becomes payable. The Notification further permits extension of the six-month period by the said officer on sufficient cause being shown.
3. During Audit conducted by the office of the Principal Director of Audit (Central), Audit Bhavan, Ahmedabad, for the period April 2020 to March 2022, it was observed that no documentary evidence was on record to establish that the goods imported on availment of the above exemption had been re-exported within six months, and that re-export details/cancellation of Re-Export (RE) bonds were not available in the EDI system even after lapse of the permissible period. The observations were communicated vide LAR No. 21/21-22 dated 01.02.2022 (Para 8), LAR No. 4/22-23 dated 20.06.2022 (Para 5) and LAR No. 05/22-23 dated 15.07.2022 (Para 10), pointing out non-levy/short-levy of Customs duty aggregating to Rs. 4,33,01,838/-.
4. Pursuant to the said audit observations, the Noticee was called upon, vide this office letters dated 05.07.2024, 05.02.2025 and 04.04.2025, to furnish documentary evidence of re-export (Shipping Bill No. & date, date of re-export etc.) failing which to deposit the duty with applicable interest. The Noticee, vide letter dated 12.02.2025, sought 30 days' time stating that the records being 3-4 years old required tracing, but did not thereafter furnish any document/evidence of re-export despite the reminder

dated 04.04.2025. A personal hearing was also offered prior to issuance of the Show Cause Notice, vide letter dated 12.02.2025, fixing hearing on 19.02.2025, but neither the Noticee nor any authorised representative appeared, nor was any document submitted.

5. Since the Noticee neither re-exported the goods, nor produced proof thereof, nor sought extension of the six-month period from the competent authority, it appeared that the exemption availed under Notification No. 104/94-Cus. was not admissible, resulting in non-levy/short-levy of Customs duty of Rs. 4,33,01,838/- (BCD @10% + SWS @10% + IGST @18%) on the 08 Bills of Entry detailed in Table-A below.

Table-A

Sr. No.	BE No. & Date	Description of Goods	CTH	Item No.	Assessable Value (Rs.)	Short Levy of Duty (Rs.)
1	7607964 07.05.2020	Shipping Fixture For (Import Returnable Basis)	7326909 9	1	1,09,44,246	30,09,668
2	7983187 23.06.2020	Shipping Fixture For (Goods Import on Re-export Purpose)	7326909 9	1	90,93,194	25,00,629
3	8043188 30.06.2020	Shipping Fixture for Tower Kit, 130M HH, 50Hz, STW, C5, W/Service Lift (Imp. on Re-export purpose)	7326909 9	1	1,06,37,453	31,13,172
		Refurbishment Charges (For Tower Shipping Fixture Accessories) (Imp. on Re-export basis)	7326909 9	1 (Inv.2)	6,83,174	
4	8083598 06.07.2020	Shipping Fixture For (Goods Import on Re-export Purpose)	7326909 9	1 (Inv.2)	90,02,541	24,75,699
5	3571228 15.04.2021	Shipping Fixture for 10 Set of Tower Kit, 130M HH 50Hz, STW, C5, W/Service	7326909 9	1 (Inv.2)	5,80,91,323	1,79,96,692

Sr. No.	BE No. & Date	Description of Goods	CTH	Item No.	Assessable Value (Rs.)	Short Levy of Duty (Rs.)
		Lift (Import on Returnable Basis)				
6	6508170 02.12.2021	Shipping Fixture of Tower - Top Boot	73269099	1	28,75,329	8,90,777
		Shipping Fixture of Tower - Bottom Boot	73269099	2	62,33,821	19,31,238
		Shipping Fixture of Tower - H Beam	73269099	3	27,37,777	8,48,163
7	7109064 17.01.2022	Shipping Fixture of Tower - Top Boot	73269099	1	40,16,095	12,44,186
		Shipping Fixture of Tower - Bottom Boot	73269099	2	79,33,079	24,57,668
		Shipping Fixture of Tower - H Beam	73269099	3	38,23,972	11,84,667
		Shipping Fixture of Tower - Lashing Padeye	73269099	4	11,15,726	3,45,652
8	7396862 07.02.2022	Shipping Fixture of Tower - Top Boot	73269099	1	39,17,362	12,13,599
		Shipping Fixture of Tower - Bottom Boot	73269099	2	83,04,256	25,72,659
		Shipping Fixture of Tower - H Beam	73269099	3	37,29,962	11,55,542
		Shipping Fixture of Tower - Lashing Padeye	73269099	4	11,67,936	3,61,827
		TOTAL			14,43,07,246	4,33,01,838

6. Accordingly, a Show Cause Notice No. GEN/ADJ/ADC/1295/2025-Adjn-O/o Commr-Cus-Kandla dated 31.10.2025 (DIN 20251071ML000000A23D) was issued to the Noticee under Section 28(4) of the Customs Act, 1962, calling upon them to show cause as to why:

- (i) the goods imported vide the 08 Bills of Entry tabulated above should not be re-assessed at the correct rate of duty (BCD@10% + SWS@10% + IGST@18%);
- (ii) the differential duty of Rs. 4,33,01,838/- should not be demanded and recovered under Section 28(4) along with interest under Section 28AA of the Customs Act, 1962;
- (iii) the goods should not be confiscated under Section 111(o) of the Customs Act, 1962; and
- (iv) penalty should not be imposed under Sections 114A and 114AA of the Customs Act, 1962.

7. DEFENCE REPLY SUBMITTED BY THE NOTICEE

7.1 The Noticee filed a written reply dated 28.01.2026, denying all allegations in the SCN as fallacious, presumptuous and devoid of merit, factually as well as legally. The Noticee made their defence on the followings points in their submission:

A. Extended period of five years not invokable / SCN barred by limitation

- (i) The audit observing non-fulfilment of the re-export condition was communicated to the Department's own officers vide LARs dated 01.02.2022, 20.06.2022 and 15.07.2022; the Department was thus admittedly aware of the relevant facts as early as February 2022, whereas the SCN was issued only on 31.10.2025 — after a gap of over three years — which is claimed to be fatal to invocation of the extended period.
- (ii) Mere non-payment of duty / bona fide availment of an exemption does not amount to collusion, wilful mis-statement or suppression of facts within the meaning of Section 28(4) of the Act, relying upon *Uniworth Textiles Ltd. v. CCE, Raipur* (2013) 288 E.L.T. 161 (S.C.), *Nizam Sugar Factory v. CCE, Hyderabad* 1999 (114) E.L.T. 429 (Tri.-LB), and *Chirpal Poly Films Ltd. v. Commissioner of Customs, Ahmedabad* (2024) 22 Centax 245 (Tri.-Ahmd.).
- (iii) The bar of limitation is a substantive right which cannot be enlarged, relying on *Balwant Singh (Dead) v. Jagdish Singh*, AIR 2010 SC 3043; *N. Balakrishnan v. M. Krishnamurthy*, AIR 1998 SC 3222; and *P.K. Ramachandran v. State of Kerala*, AIR 1998 SC 2276.
- (iv) Claiming a particular exemption under a Bill of Entry cannot, by itself, amount to mis-statement, relying on *Swastik Glass Traders v. Commissioner of*

Customs (2024) 228 (Tri.-Mad.); *Easland Combines v. Collector of Central Excise*, C.A. No. 2693 of 2000; and *Daxen Agritech India Pvt. Ltd. v. Pr. Commissioner of Customs* (2024) 20 Centax 467 (Tri.-Del.).

B. Interest, penalty and confiscation not sustainable

(i) Since the demand itself is time-barred, the consequential proposals for interest, penalty and confiscation do not survive.

(ii) Penalty requires proof of collusion, wilful mis-statement or suppression, which is absent, relying on *Northern Plastic Ltd. v. Collector of Customs & Central Excise*, 1998 (101) E.L.T. 549 (S.C.).

(iii) Once goods are cleared for home consumption, they cease to be 'imported goods' under Section 2 of the Act and are not liable to confiscation, relying on *Bussa Overseas & Properties Pvt. Ltd. v. C.L. Mahar, Asstt. Collector*, 2004 (163) E.L.T. 304 (Bom.).

(iii) Where there is nothing on record to show that the Department made efforts to enforce compliance of a post-import condition on receipt of complaints of non-compliance, demand, confiscation and penalty cannot be upheld, relying on *Jaslok Hospital & Research Centre v. Commissioner of Customs, Mumbai*, 2004 (163) E.L.T. 449 (Tri.-Mumbai), affirmed by the Supreme Court, 2015 (320) E.L.T. A336 (S.C.).

8. RECORD OF PERSONAL HEARING

8.1 In compliance with the principles of natural justice and the Noticee's request for a personal hearing, a virtual personal hearing was granted and held on 03.09.2026 at 1700 Hrs, in terms of Instruction F. No. 390/Misc/3/2019-JC dated 05.11.2024.

8.2 Shri Siddharth Srivastava, Advocate, appeared on behalf of the Noticee and submitted that the Noticee had already filed its written reply dated 28.01.2026 to the SCN, and reiterated the same. No additional submission, document or evidence — including any evidence of re-export of the goods — was placed on record during the course of the hearing.

9. Relevant Legal Provisions:

(i) *The Customs Tariff Act, 1975*

(ii) Section 46 of the Customs Act, 1962 provides for filing of Bill of Entry upon importation of goods, which casts a responsibility on the importer to declare truthfully, all contents in the Bill of Entry.

Relevant portion of Section 46 (4) is reproduced below:-

“(i)The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed”.

(iii) Section 28(4) of the Customs Act, 1962 provides that *“Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-*

(a) collusion; or

(b) any willful mis-statement; or

(c) . suppression of facts,

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

(iv)Section 28(AA) of Customs Act, 1962 provides interest on delayed payment of duty-

1. Where any duty has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person who is liable to pay the duty as determined under sub-Section (2), or has paid the duty under sub-Section (2B), of Section 28, shall, in addition to the duty, be liable to pay interest at such rate not below ten per cent and not exceeding thirty-six per cent per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first day of the month succeeding the month in which the duty ought to have been paid under this Act, or from the date of such erroneous refund, as the case may be,

but for the provisions contained in sub-Section (2), or sub-Section (2B), of Section 28, till the date of payment of such duty:

*(v) **Section 111 (o) of Customs Act, 1962** provides confiscation of improperly imported goods, etc. –*

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

*(vi) **Section 114A of the Customs Act, 1962** deals with penalty for short-levy or non-levy of duty in certain cases. The relevant provision is reproduced below:-*

114A - Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis- statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-Section (8) of Section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:

Provided that where such duty or interest, as the case may be, as determined under sub-Section (8) of Section 28, and the interest payable thereon under Section 28AA, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this Section shall be twenty-five percent of the duty or interest, as the case may be, so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

*(vii) **Section 114AA of the Customs Act, 1962** : Penalty for use of false and incorrect material – If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or documents which is false or incorrect in any material particular, in the transaction of any business for the purpose of this Act, shall be liable to a penalty not exceeding five times of the value of goods.*

(viii) Section 125 of the Customs Act, 1962 (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,] [Inserted by Act 80 of 1985, Section 9 (w.e.f. 27.12.1985).] an option to pay in lieu of confiscation such fine as the said officer thinks fit:

[Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, the provisions of this section shall not apply:

Provided further that] [Substituted by Finance Act, 2018 (Act No. 13 of 2018), dated 29.3.2018.] without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2)[Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges, payable in respect of such goods.] [Substituted by Act 80 of 1985, Section 9, for sub-Section (2) (w.e.f. 27.12.1985).]

(3)[Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

Explanation. - For removal of doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date on which the Finance Bill, 2018 receives the assent of the President and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received.] [Inserted by Finance Act, 2018 (Act No. 13 of 2018), dated 29.3.2018.]

(ix) Customs Notification No. 104/94 dated 16.03.1994;

NOTIFICATION NO. 104/94-CUS.

**EXEMPTION TO CONTAINERS OF DURABLE NATURE
NOTIFICATION NO. 104/94-CUS., DATED 16-3-1994**

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts containers which are of durable nature, falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India, from, -

*(a) the **whole of the duty of customs** leviable thereon under the said First Schedule; an*

*(b) the **whole of the [integrated tax]** leviable thereon under subsection (7) of section 3];*

***Provided** that the importer, by execution of a bond in such form and for such sum as may be specified by the 2[Assistant Commissioner of Customs or Deputy Commissioner of Customs] binds himself to re-export the said containers within six months from the date of their importation and to furnish documentary evidence thereof to the satisfaction of the said Assistant Commissioner and to pay the duty leviable thereon in the event of the importer's failure to do so :*

***Provided further** that in any particular case, the aforesaid period of six months may, on sufficient cause being shown, be extended by the said Assistant Commissioner for such further period, as he may deem fit.*

[Explanation.- A device such as tag, tracking device or data logger already affixed on the container at the time of import shall also be eligible for exemption from the duty of customs and the integrated tax as is available to the said container under this notification.]

10. DISCUSSION & FINDINGS

10.1 I have carefully gone through the Show Cause Notice, the written defence reply dated 28.01.2026 filed by the Noticee, the submissions made at the personal hearing held on 03.09.2026, and the documents/RUDs forming part of the case record. The core issue for determination in the present case are:

(i) Whether the Noticee was entitled to the exemption claimed under Notification No. 104/94-Cus. dated 16.03.1994 on the 08 Bills of Entry tabulated in Table-A; and, if

not, whether the demand of duty, interest, confiscation and penalty as proposed in the SCN is sustainable, including on the question of limitation raised by the Noticee.

10.2 On the question of limitation

10.2.1 The Noticee's principal defence is that the extended period of five years under Section 28(4) is not invocable because the Department had knowledge of the alleged short-levy as early as the LARs dated 01.02.2022, 20.06.2022 and 15.07.2022, and the SCN dated 31.10.2025 was issued belatedly thereafter. This contention is not tenable, for the following reasons.

10.2.2 The exemption under Notification No. 104/94-Cus. is a conditional exemption in which the condition — re-export within six months (or such extended period as may be permitted) — is a post-clearance obligation cast squarely upon the importer, who is additionally bound by an executed bond to furnish proof of re-export to the satisfaction of the Assistant/Deputy Commissioner. Unlike cases of mis-classification or mis-valuation where the relevant facts are ascertainable by the Department from the Bill of Entry and accompanying documents at the time of assessment itself, the fact of actual re-export (or its absence) is a fact peculiarly within the knowledge of the importer alone, and the Department has no independent means of verifying it except through EDI records of cancellation of the RE bond or documents furnished by the importer. The audit at best flagged the absence of such evidence on record — it did not, and could not, establish the fact of default; that fact could only be conclusively established after the Department called upon the Noticee to produce documentary proof and gave it full and fair opportunity to do so.

10.2.3 The 'relevant date' for the purpose of Section 28(4), in a case of non-fulfilment of a post-importation condition of a conditional exemption Notification of this kind, is the date on which the condition was required to be fulfilled and was breached, i.e., the date of expiry of the six-month re-export period (or the extended period, where granted) reckoned from the date of each import. On this basis, the six-month period for the earliest Bill of Entry (No. 7607964 dated 07.05.2020) expired on or about 07.11.2020, and five years therefrom expires only on 07.11.2025; for the remaining Bills of Entry the corresponding five-year period expires even later. The present SCN, issued on 31.10.2025, is thus well within the five-year period prescribed under Section 28(4) of the Act for the 08 Bills of Entry as mentioned in Table-A, and the plea of the Noticee that the SCN is time-barred on these facts does not survive.

10.2.4 Even otherwise, ingredients of suppression/wilful mis-statement, which alone attract the extended period, are clearly made out on record. The Noticee, having executed a bond binding itself to re-export the goods within six months and to furnish proof thereof, neither re-exported the goods, nor sought extension of the period from the Assistant/Deputy Commissioner as permitted under the second proviso to the Notification, nor volunteered at any stage — either at the time of default or thereafter — to inform the Department of its inability to fulfil the condition. This continuing, affirmative non-disclosure of a material fact that it alone was obliged and positioned to disclose, coupled with continued availment of the very same exemption on subsequent Bills of Entry filed as late as February 2022 (i.e., well after the six-month re-export period for the earliest consignments of 2020 had already lapsed without compliance), demonstrates a deliberate and continuing suppression of facts with an intent to evade payment of duty, and not a case of mere omission or bona fide default of the kind considered in the decisions relied upon by the Noticee.

10.2.5 Furthermore, even after the default was flagged in audit, the Noticee was afforded repeated and specific opportunities through department's letter(s) dated 05.07.2024, 05.02.2025 and 04.04.2025, and a personal hearing notice dated 12.02.2025 for hearing on 19.02.2025 — to produce evidence of re-export. The Noticee, vide its letter dated 12.02.2025, itself acknowledged the requirement and undertook to furnish the documents within 30 days, but thereafter neither furnished any document nor appeared for the personal hearing offered. This Noticee on being granted an opportunity for Personal Hearing attended the same on 03.09.2026 wherein again no evidence of re-export was placed on record which confirms the grounds of the suppression alleged in the SCN.

10.2.6 In view of the findings made in above Para, I am of the view that the extended period of five years has been correctly invoked in the SCN, and that the SCN dated 31.10.2025 is not barred by limitation, and that the same has been correctly issued covering the extended period under Section 28(4) of the Customs Act, 1962.

10.3 Inadmissibility of exemption availed by the Noticee and subsequent confirmation of demand:

10.3.1 On merits, it is an admitted position which has not been disputed anywhere in the Noticee's reply dated 28.01.2026 to the demand notice dated 31.10.2025 or during the personal hearing held on 03.09.2026, that the Noticee has till date not produced any document evidencing re-export of the goods covered under the subject 08 Bills of

Entry, despite being called upon by the department's letter(s) dated 05.07.2024, 05.02.2025, 04.04.2025 and through SCN dated 31.10.2025. Further, the Noticee have themselves undertaken vide their letter dated 12.02.2025 to furnish such documents within 30 days. The Noticee has also not placed any material to show that extension of the six-month re-export period was ever sought from, or granted by, the jurisdictional Assistant/Deputy Commissioner, as contemplated under the second proviso to Notification No. 104/94-Cus.

10.3.2 The Noticee's reply is confined entirely to the question of limitation and the consequential non-sustainability of interest, penalty and confiscation; it does not clarify if the subject goods were re-exported, nor does it seek to place any shipping bill, export general manifest, foreign inward remittance certificate or any other corroborative document on record. In the absence of any evidence of re-export, and read with the specific finding recorded in the audit that re-export details/cancellation of RE bonds were not available on the EDI system even after lapse of the permissible period, I find that the condition precedent for availment of exemption under Notification No. 104/94-Cus. i.e. re-export within six months, or the extended period thereof, has not been fulfilled by the Noticee in respect of any of the 08 Bills of Entry tabulated in Table-A.

10.3.3 Consequently, the benefit of exemption from BCD, SWS and IGST claimed by the Noticee under Notification No. 104/94-Cus. dated 16.03.1994 on the said Bills of Entry is not admissible, and the goods are liable to be re-assessed at the applicable rate of duty, i.e., BCD@10% + SWS@10% + IGST@18%. The differential duty on this basis, as worked out on the basis of the CRA audit and Table-A above, comes to Rs. 4,33,01,838/- (Rupees Four Crores Thirty-Three Lakh One Thousand Eight Hundred and Thirty-Eight Only), and the same is liable to be demanded and recovered from the Noticee under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962.

10.4 Confiscation of the Goods under Section 111(o) of the Customs Act, 1962.

10.4.1 Since the exemption availed by the Noticee was subject to a condition (re-export within the stipulated/extended period) which admittedly stands unfulfilled, and there is nothing on record to show that such non-observance was sanctioned by the proper officer, the goods covered under the 08 Bills of Entry in Table-A are goods in respect of which the condition of exemption has not been observed, and are, therefore, liable to confiscation under Section 111(o) of the Customs Act, 1962. The plea that

goods cleared for home consumption cease to be 'imported goods' and are consequently outside the purview of Section 111 is misconceived, since Section 111(o) is specifically enacted to cover precisely such goods, i.e., goods cleared under a conditional exemption where the post-clearance condition is subsequently found to be unfulfilled; the decision in Bussa Overseas as relied upon by the Noticee does not deal with Section 111(o) and is distinguishable on facts.

10.4.2 As the impugned goods are found to be liable for confiscation under Section 111 of the Customs Act, 1962, I find that it is necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation. I find that, in the present case, the subject goods are not physically available for confiscation at this stage. The goods have already been cleared and are no longer under the control of Customs. Therefore, physical confiscation of the goods is not feasible. However, I note that the Hon'ble CESTAT, Ahmedabad, in the case of M/s. Van Oord India Pvt. Ltd. vs. Commissioner of Customs, Ahmedabad [Customs Appeal No. 10679 of 2024-DB], has held that redemption fine can be imposed even when the goods are not physically available for confiscation. Further, the issue has already been settled by the Judgment dated 11.08.2017 of Hon'ble High Court of Madras in C.M.A. No. 2857 of 2011 in the case of Visteon Automotive Systems India Ltd. Vs. CESTAT, Chennai [2018 (9) G.S.T.L. 142 (Mad.)]. Para 23 of the said Judgment is as follows: "The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated.

By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, I am 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.”

I further find that the above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad), has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.) I also find that a similar view has been held by the Hon'ble CESTAT Ahmedabad in Van Oord India Pvt Ltd, Umesh Kale Versus Commissioner of Customs, Ahmedabad [2025(11) TMI 878-CESTAT AHMEDANAD] wherein the learned Tribunal while relying upon the aforesaid judicial precedents has held that that non availability of goods physically does not impact their confiscation and imposition of redemption fine. Hence, from the above discussion and relying on the above judgments, I conclude that in the present case, the redemption fine in lieu of confiscation of the goods under Section 125 of the Customs Act, 1962 is required to be imposed.

10.5 Penalty under Sections 114A and 114AA of the Customs Act, 1962

10.5.1 In view of the findings recorded above that the short/non-levy of duty of Rs. 4,33,01,838/- has occurred by reason of wilful suppression of facts on the part of the Noticee with intent to evade payment of duty, the ingredients of Section 114A of the Customs Act, 1962, stand attracted, and the Noticee is liable to penalty equal to the duty determined.

10.5.2 I further find that the Noticee, while presenting the Bills of Entry and claiming the benefit of Notification No. 104/94-Cus., made and subscribed to a declaration under Section 46(4) of the Customs Act, 1962, as to fulfilment of the conditions of the said Notification, which declaration has been found to be false and incorrect in a material particular, inasmuch as the goods were never re-exported nor was extension of time ever sought. This attracts penal liability under Section 114AA of the Customs Act, 1962.

11. In light of the facts and circumstances, discussed hereinabove, I pass the following order.

ORDER

(i) I order for re-assessment of the goods imported vide the 08 Bills of Entry tabulated in Table-A above at the applicable rate of duty, i.e., BCD@10% + SWS@10% + IGST@18%, denying the benefit of exemption Notification No. 104/94-Cus. dated 16.03.1994.

(ii) I confirm the demand of differential Customs duty of Rs. 4,33,01,838/- (Rupees Four Crore Thirty-Three Lakh One Thousand Eight Hundred and Thirty-Eight only) against M/s GE India Industrial Private Limited under Section 28(4) of the Customs Act, 1962, and order recovery of the same along with applicable interest under Section 28AA of the Customs Act, 1962.

(iii) I hold the goods viz. Shipping Fixture For Tower Kit etc., falling under CTH 73269099, imported vide the 08 Bills of Entry in Table-A, liable to confiscation under Section 111(o) of the Customs Act, 1962; I impose redemption fine of Rs. 5,00,00,000/- (Rupees Five Crores only) Under Section 125(1) of the Customs Act, 1962, in lieu of confiscation.

(iv) I impose a penalty of Rs. 4,33,01,838/- (Rupees Four Crore Thirty-Three Lakh One Thousand Eight Hundred and Thirty-Eight only) (equal to the duty confirmed at (ii) above) upon M/s GE India Industrial Private Limited under Section 114A of the Customs Act, 1962.

(v) I further impose a penalty of Rs. 14,43,07,246/- (Rupees Fourteen Crores Forty-Three Lakhs Seven Thousand Two hundred and Forty Six only) upon M/s GE India Industrial Private Limited under Section 114AA of the Customs Act, 1962.

12. This order is issued without prejudice to any action that can be taken under any section of the Customs Act, 1962 including Section 132 of the Customs Act, 1962 or any other law for the time being in force.

(Dinesh Singh)
Commissioner of Customs
Custom House, Kandla

To,

M/s GE India Industrial Private Limited, Plot No. A-22/1, MIDC Chakan, Industrial Area, Phase-II, Khalumbre, Pune, Maharashtra – 410501

Copy to:-

1. The Chief Commissioner, Customs Zone, Gujarat for the purpose of review.
2. The Deputy/Assistant Commissioner, Gr-IV, Kandla.
3. The Deputy/Assistant Commissioner, PCA,CH Kandla for necessary action.
4. The Superintendent, EDI, CH Customs Kandla, for necessary action.
5. Guard File.