**OFFICE OF THE COMMISSIONER OF CUSTOMS (NS-V)**
**सीमाशुल्कआयुक्त (एनएस - V) काकार्यालय**
**JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA SHEVA,**
**जवाहरलालनेहरुसीमाशुल्कभवन, न्हावाशेवा,**
**TALUKA – URAN, DISTRICT - RAIGAD, MAHARASHTRA -400707**
**तालुका - उरण, जिला - रायगढ़ , महाराष्ट्र 400707**

**DIN – 20260578NX000041464A** **Date of Order:13.05.2026**
**F. No. S/10-25/2025-26/COMMR/GR-VB/NS-V/CAC/JNCH** **Date of Issue: 13.05.2026**
**SCN No.: 143/2025-26/ADC/GR-VB/NS-V/CAC/JNCH**
**SCN Date: 14.05.2025**
**Passed by: Sh. Anil Ramteke**
**Commissioner of Customs, NS-V, JNCH**
**Order No:35/2026-27/COMMR/GR-VB/NS-V/CAC/JNCH**
**Name of Noticees: M/s. ISGEC Heavy Engineering Ltd(IEC-0501013628)**

## ORDER-IN-ORIGINAL
## मूल - आदेश

1. The copy of this order in original is granted free of charge for the use of the person to whom it is issued.
1. इस आदेश की मूल प्रति की प्रतिलिपि जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए नि:शुल्क दी जाती है।
2. Any Person aggrieved by this order can file an Appeal against this order to CESTAT, West Regional Bench, 34, P D'Mello Road, Masjid (East), Mumbai - 400009 addressed to the Assistant Registrar of the said Tribunal under Section 129 A of the Customs Act, 1962.
2. इस आदेश से व्यथित कोई भी व्यक्ति सीमाशुल्क अधिनियम 1962 की धारा 129 (ए) के तहत इस आदेश के विरुद्ध सी.ई.एस.टी.ए.टी., पश्चिमी प्रादेशिक न्यायपीठ (वेस्ट रीज़नल बेंच), 34, पी. डीमेलो रोड, मस्जिद (पूर्व), मुंबई - 400009 को अपील कर सकता है, जो उक्त अधिकरण के सहायक रजिस्ट्रार को संबोधित होगी।
3. Main points in relation to filing an appeal:-
3. अपील दाखिल करने संबंधी मुख्य मुद्दे:-

Form - Form No. CA3 in quadruplicate and four copies of the order appealed against (at least one of which should be certified copy).

फार्म - सीए3, चार प्रतियों में तथा उस आदेश की चार प्रतियाँ, जिसके खिलाफ अपील की गयी है (इन चार प्रतियों में से कम से कम एक प्रति प्रमाणित होनी चाहिए).

**Time Limit -** Within 3 months from the date of communication of this order.

**समय सीमा -** इस आदेश की सूचना की तारीख से 3 महीने के भीतर

**Fee -फीस-**

(a) Rs. One Thousand - Where amount of duty & interest demanded & penalty imposed is Rs. 5 Lakh or less.

(क) एक हजार रुपय जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 5 लाख रुपये या उस से कम है।

(b) Rs. Five Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 5 Lakh but not exceeding Rs. 50 Lakh.

(ख) पाँच हजार रुपये – जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 5 लाख रुपये से अधिक परंतु 50 लाख रुपये से कम है।

(c) Rs. Ten Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 50 Lakh.

(ग) दस हजार रुपये – जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 50 लाख रुपये से अधिक है।

**Mode of Payment -** A crossed Bank draft, in favor of the Asstt. Registrar, CESTAT, Mumbai payable at Mumbai from a nationalized Bank.

भुगतान की रीति – क्रॉस बैंक ड्राफ्ट, जो राष्ट्रीय कृत बैंक द्वारा सहायक रजिस्ट्रार, सी.ई.एस.टी.ए.टी., मुंबई के पक्ष में जारी किया गया हो तथा मुंबई में देय हो।

**General -** For the provision of law & from as referred to above & other related matters, Customs Act, 1962, Customs (Appeal) Rules, 1982, Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982 may be referred.

**सामान्य -** विधि के उपबंधों के लिए तथा ऊपर यथा संदर्भित एवं अन्य संबंधित मामलों के लिए, सीमाशुल्क अधिनियम, 1962, सीमाशुल्क (अपील) नियम, 1982, सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर अपील अधिकरण (प्रक्रिया) नियम, 1982 का संदर्भ लिया जाए।

4. Any person desirous of appealing against this order shall, pending the appeal, deposit 7.5% of duty demanded or penalty levied therein and produce proof of such payment along with the appeal, failing which the appeal is liable to be rejected for non-compliance with the provisions of Section 129E of the Customs Act 1962.

4. इस आदेश के विरुद्ध अपील करने के लिए इच्छुक व्यक्ति अपील अनिर्णीत रहने तक उसमें माँगे गये शुल्क अथवा उद्गृहीत शास्ति का 7.5 % जमा करेगा और ऐसे भुगतान का प्रमाण प्रस्तुत करेगा, ऐसा न किये जाने पर अपील सीमाशुल्क अधिनियम, 1962 की धारा 129 E के उपबंधों की अनुपालना न किये जाने के लिए नामंजूर किये जाने की दायी होगी।

**Subject: Adjudication of Show Cause Notice No. 143/2025-26/ADC/Gr.VB/NS-V/CAC/JNCH dated 14.05.2025 issued to M/s. ISGEC Heavy Engineering Ltd. (IEC: 0501013628) – reg.**

## 1. BRIEF FACTS OF THE CASE

1.1 M/s. ISGEC Heavy Engineering Ltd, holding IEC: 0501013628 (hereinafter referred to as 'the Importer') having declared address at A-4, Sector-24, Noida, Uttar Pradesh - 201301 filed Bill of Entry as per Annexure-A, for clearance of "Rail Cum Road Vehicle".

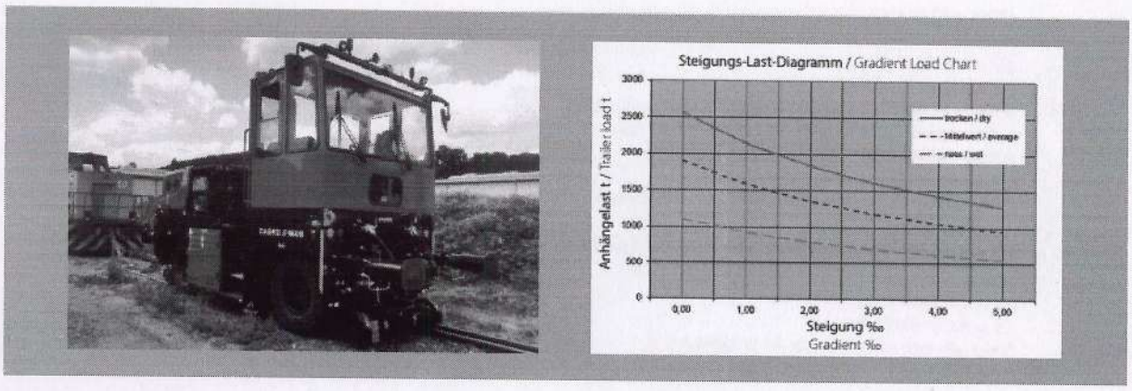
1.2. During scrutiny of online Bill of Entry for the period May 2020 to March 2025, it was observed that M/s. ISGEC HEAVY ENGINEERING LTD vide Bills of Entry as mentioned in Annexure -A has imported consignments of, "Electrically operate rail cum road vehicle" through JNCH Commissionerate NS-V. In the above said three B/E, the imported goods were classified under CTH 86012000 (Rail Locomotives Powered from an External Source of electricity or by electric accumulators: Powered by electric accumulators) and BCD @ 10% & IGST @12 % as per Notification No. 01/2017- Integrated Tax (Rate) dated 28 June 2017, Serial No. I/205A- "Rail Locomotives Powered from an External Source of electricity or by electric accumulators" was assessed by the importer.

1.3. Whereas, the details of the product imported viz "Rail Cum Road Vehicle E-maxi" as available on suppliers website https://www.zagro-group.com/en/products/shunting-vehicles/electric-railcar-movers is featured below:-


On perusal of the details from the supplier's website it appeared that the vehicle imported are shunting vehicles used for railcar moving and are capable of moving on both road and rail tracks.

1.4. As per Harmonized System of Nomenclature (HSN) explanatory note, "Road-Rail Lorries specially equipped to travel both by road and rail" are classifiable under CTH 8704. Also, as per Note 4(a) of Section XVII of the Customs Tariff, "Vehicles specially constructed to travel on both road and rail" are classifiable under the appropriate heading of Chapter 87 of the Customs Tariff. Additionally, Central Board of Excise and Customs Vide Circular No. 14/2012-Cus dated 11.06.2012, had clarified that the correct classification of "Rail cum Road Vehicle" should be in the appropriate heading under chapter 87 by application of note 4(a) to section XVII.

1.5. The details of the technical data sheet for model E-Maxi 2000 T are produced below. From the perusal of the same it can be seen that imported vehicle is used for hauling wagons/trailers for transport of goods.




# ZAGRO *E*-MAXI *XXL* 27,5 t

emission free

**Ausstattungsvarianten**

- Antriebsart: Batterie, Hybrid
- Allradlenkung: Drehen auf der Stelle, Diagonalfahrt nur Vorderrad, nur Hinterrad und Sternfahrt
- Moderne Kabine
- Aufgleiskameras und Rückfahrkamerasystem
- Pendelachse für erhöhte Gleissicherheit
- Schienengebunden mit Stahlrad
- Funkfernsteuerung auf Straße und Schiene
- Schienenführungs- und Umfeldbeleuchtung
- Verschiedene Kuppelsysteme

**Technische Daten**

- Max. Anhängelast: 2000 t in der Ebene
- Abmessungen (L x B x H in mm):
  *kurzer Radstand:* ca. 4300 x 2500 x 3300
  *langer Radstand:* ca. 5070 x 2500 x 3300
- Gesamtgewicht: 27,5 t
- Schienenspurweiten: 1435 mm bis 1520 mm
- Max. Geschwindigkeit: 15 km/h auf Schiene und Straße
- Stufenlos regelbarer Elektroantrieb,
  4 Antriebsmotoren mit je 80 V / 20 kW
- Stromerzeuger 40 kW und Bleibatterien je 1085 Ah / 80 V
- Waggonbremsanlage, Schraubenverdichter
  Förderleistung 960 l/min bei 5,1 / 10 bar

**Equipment variants**

- Drive type: Battery, hybrid
- All wheel steering: turning on the spot, diagonal drive, front wheel only, rear wheel only
- Modern cabin and camera system for on-tracking
- Swing axle for increased track safety
- Rail bound with steel wheel
- Radio remote control on road and rail
- Illumination of rail guidance system
- Various coupling systems

**Technical data**

- Towing capacity: 2000 tons on dry level-even rails
- Dimensions (L x W x H in mm):
  short wheelbase: approx. 4300 x 2500 x 3300
  long wheelbase: approx. 5070 x 2500 x 3300
- Total weight: 27,5 t
- Track gauge from 1435 mm to 1520 mm
- Max. speed: 15 km/h on rail and road
- Infinitely variable electric drive,
  4 drive motors of 80 V / 20 kW each
- Power generator 40 kW and lead-acid batteries 1085 Ah / 80 V each
- Wagon brake system with rotary screw compressor
  capacity 960 l/min at 5.1 / 10 bar

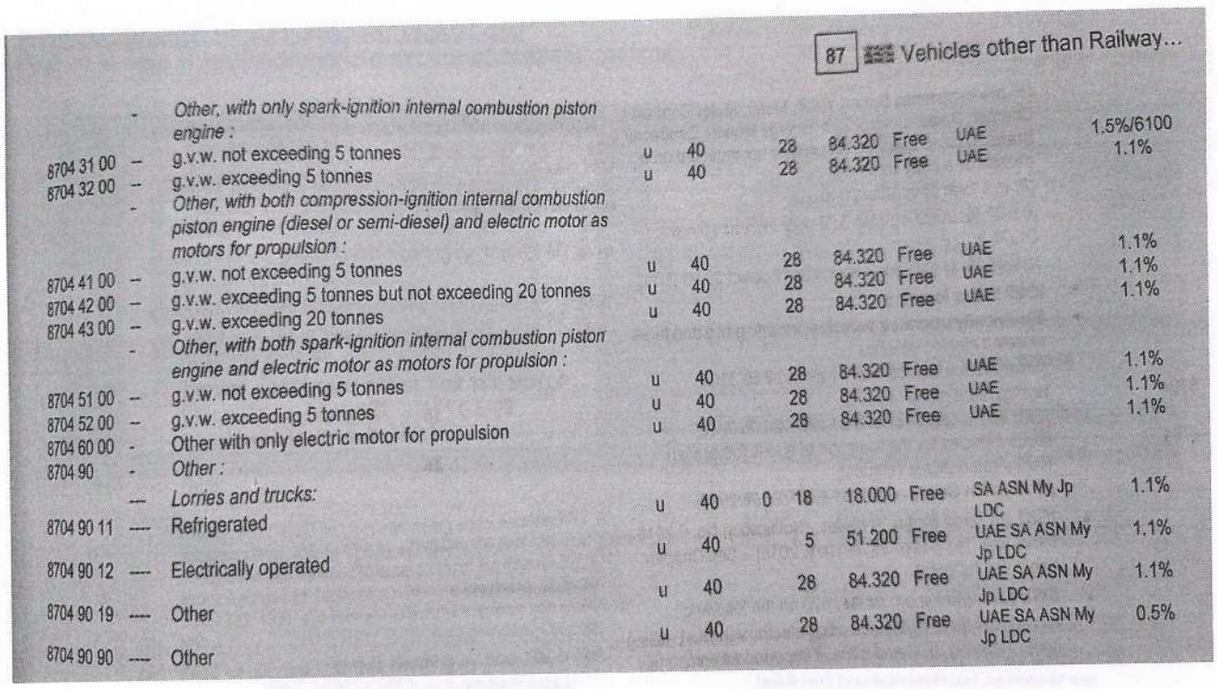
**ZAGRO Bahn- und Baumaschinen GmbH**

As seen above, the max speed for the vehicle is 15 km/hr on rail and road, which specifies that the vehicle is suitable for use on both road and rail.

1.6. Therefore, the subject goods were purported to be classified under Customs Tariff Heading (CTH) 87049012 and attracting Basic Custom Duty (BCD) at the rate of 40 per cent and Integrated Goods and Service Tax (IGST) at the rate 5% (Notification No. 1/2017 Integrated Tax Rate Schedule I, Sr.No.242A dt. 28.06.2017 as amended).

1.7. Therefore, imported goods, rail cum road vehicle (electric), are classifiable under chapter 87 heading 87049012 as per Customs Tariff Act, 1975 Section VII, sub note 4(a) & will attract BCD @ 40% & IGST@ 12% along-with other applicable cess as reproduced below:-

| 8704 | | MOTOR VEHICLES FOR THE TRANSPORT OF GOODS | | | | Import Value 2023-24 Rs. 424.57 crs | | | |
|---|---|---|---|---|---|---|---|---|---|
| 8704 10 | - | *Dumpers designed for off-highway use :* | | | | | | | |
| 8704 10 10 | --- | With net weight (excluding pay-load) exceeding 8 tonnes and maximum pay-load capacity not less than 10 tonnes | u | 40 | 28 | 84.320 | Free | UAE SA ASN My LDC | 1.1% |
| 8704 10 90 | --- | Other | u | 40 | 28 | 84.320 | Free | SA UAE ASN My LDC | 1.1% |
| | - | *Other, with only compression-ignition internal combustion piston engine (diesel or semi-diesel) :* | | | | | | | |
| 8704 21 00 | -- | g.v.w. not exceeding 5 tonnes | u | 40 | 28 | 84.320 | Free | UAE | 1.5%/9200 |
| 8704 22 00 | -- | g.v.w. exceeding 5 tonnes but not exceeding 20 tonnes | u | 40 | 28 | 84.320 | Free | UAE | 1.1% |
| 8704 23 00 | -- | g.v.w. exceeding 20 tonnes | u | 40 | 28 | 84.320 | Free | UAE | 1.1% |



87 Vehicles other than Railway...

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | - | *Other, with only spark-ignition internal combustion piston engine :* | | | | | | | | |
| 8704 31 00 | -- | g.v.w. not exceeding 5 tonnes | u | 40 | | 28 | 84.320 | Free | UAE | 1.5%/6100 |
| 8704 32 00 | -- | g.v.w. exceeding 5 tonnes | u | 40 | | 28 | 84.320 | Free | UAE | 1.1% |
| | - | *Other, with both compression-ignition internal combustion piston engine (diesel or semi-diesel) and electric motor as motors for propulsion :* | | | | | | | | |
| 8704 41 00 | -- | g.v.w. not exceeding 5 tonnes | u | 40 | | 28 | 84.320 | Free | UAE | 1.1% |
| 8704 42 00 | -- | g.v.w. exceeding 5 tonnes but not exceeding 20 tonnes | u | 40 | | 28 | 84.320 | Free | UAE | 1.1% |
| 8704 43 00 | -- | g.v.w. exceeding 20 tonnes | u | 40 | | 28 | 84.320 | Free | UAE | 1.1% |
| | - | *Other, with both spark-ignition internal combustion piston engine and electric motor as motors for propulsion :* | | | | | | | | |
| 8704 51 00 | -- | g.v.w. not exceeding 5 tonnes | u | 40 | | 28 | 84.320 | Free | UAE | 1.1% |
| 8704 52 00 | -- | g.v.w. exceeding 5 tonnes | u | 40 | | 28 | 84.320 | Free | UAE | 1.1% |
| 8704 60 00 | - | Other with only electric motor for propulsion | u | 40 | | 28 | 84.320 | Free | UAE | 1.1% |
| 8704 90 | - | *Other :* | | | | | | | | |
| | --- | *Lorries and trucks:* | | | | | | | | |
| 8704 90 11 | ---- | Refrigerated | u | 40 | 0 | 18 | 18.000 | Free | SA ASN My Jp LDC | 1.1% |
| 8704 90 12 | ---- | Electrically operated | u | 40 | | 5 | 51.200 | Free | UAE SA ASN My Jp LDC | 1.1% |
| 8704 90 19 | ---- | Other | u | 40 | | 28 | 84.320 | Free | UAE SA ASN My Jp LDC | 1.1% |
| 8704 90 90 | ---- | Other | u | 40 | | 28 | 84.320 | Free | UAE SA ASN My Jp LDC | 0.5% |

1.8. On account of the mis-classification by the importer, there appears to be a short payment of Customs duty amounting to Rs. 2,76,66,845/- (Rs. Two Crore Seventy-Six Lakh Sixty Six Thousand Eight Hundred Forty Five Only).

1.9. The various provisions of law/ rules relevant to the import of goods in general, liability of goods to confiscation and liability of the concerned persons to penalty for improper importation of goods, are enunciated in the instant SCN, and the same are only referenced herein below for the sake of brevity:

1.9.1 SECTION 46 OF CUSTOMS ACT, 1962: Entry of goods on importation-

1.9.2. SECTION 111 OF CUSTOMS ACT, 1962: Confiscation of improperly imported goods, etc.

1.9.3 SECTION 28 OF CUSTOMS ACT, 1962: Recovery of duties not levied or short levied or erroneously refunded. –

1.9.4. SECTION 28AA OF CUSTOMS ACT, 1962: Interest on delayed payment of duty-

1.9.5 SECTION 114A OF CUSTOMS ACT, 1962: Penalty for short-levy or non-levy of duty in certain cases.

1.9.6 SECTION 117 OF CUSTOMS ACT, 1962: Penalties for contravention, etc., not expressly mentioned.

1.10. Further, it appears that the importer through their acts of mis classification of the imported goods, have rendered the goods imported vide aforesaid Bills of Entry liable to confiscation under Section 111(m) of the Customs Act, 1962 and rendered themselves liable to penalty under Section 112(a) and or Section 114 A of the Customs Act, 1962.

1.11. In view of the above, the importer M/s. ISGEC HEAVY ENGINEERING LTD, is hereby called upon to show cause to the Commissioner of Customs, NS-V, JNCH, Nhava-Sheva, Distt. Raigad, Maharashtra-400707 within 30 days of the receipt of this notice as to why:

i. The classification of the impugned goods covered under Bill of Entry mentioned as per Annexure-A, under 86012000 attracting Customs duty BCD @ 10% & IGST @12 % as per Notification No. 01/2017- Integrated Tax (Rate) dated 28 June 2017, Serial No. I/205A should not be rejected and the same should be classified under CTH 87049012 and the Bills of Entry should not be assessed to merit duty accordingly.

ii. Differential duty amounting to the **Rs. 2,76,66,845/- (Rs. Two Crore Seventy-Six Lakh Sixty-Six Thousand Eight Hundred Forty-Five Only)** along with applicable interest should not be recovered from them as per provisions of Section 28 & 28AA of the Customs Act, 1962.

iii. Goods imported vide Bill of Entry as mentioned as per Annexure-A having total assessable value of **Rs. 10,29,27,250/- (Rupees Ten Crore Twenty Nine Lakh Twenty Seven Thousand Two Hundred Fifty Only)** should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962.

iv. Penalty should not be imposed on them Section 112(a) and/ or Section 114A of the Customs Act, 1962.

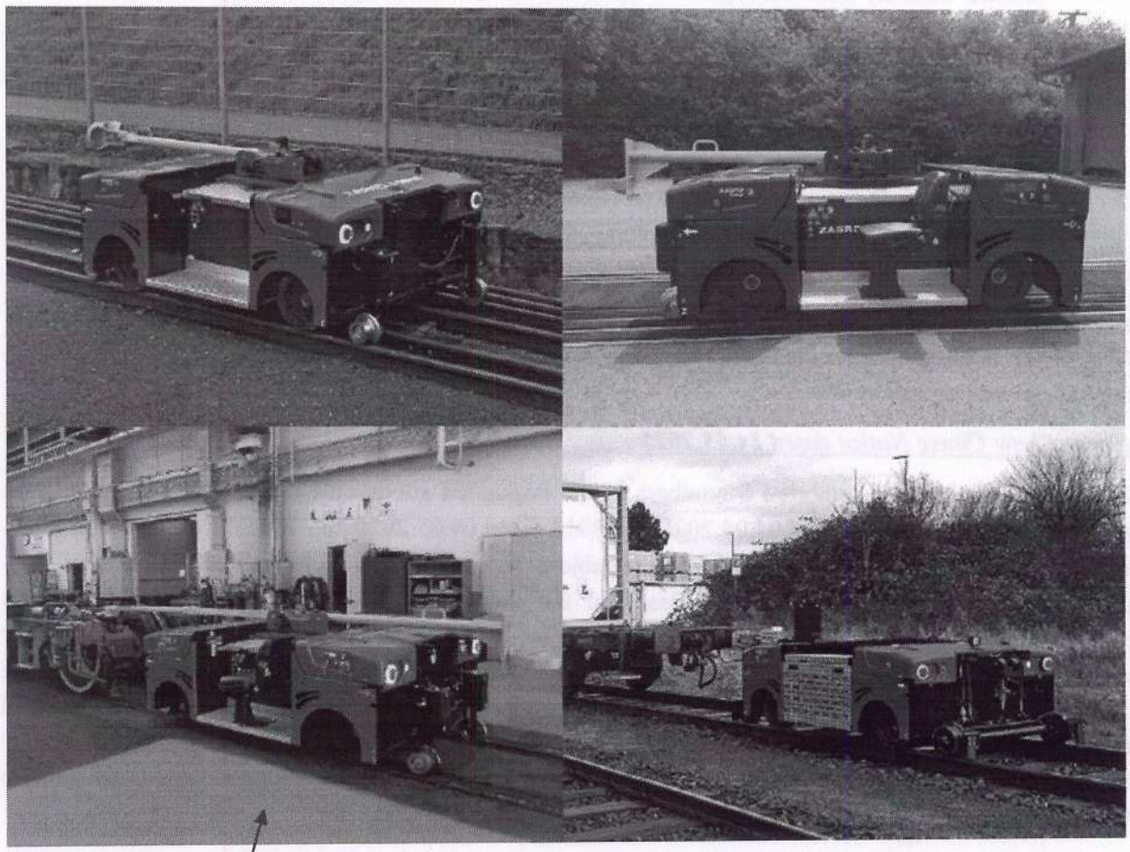
**2. WRITTEN SUBMISSIONS OF THE NOTICEE**

**STATEMENT OF FACTS**

***Brief Background***

2.1 The Noticee is engaged in various businesses such as power, oil and gas, fertilizer, steel, automobile, defence, etc. The Noticee is also engaged in setting up projects. In the present case, the products imported by the Noticee are various models of 'Rail cum Road Vehicle' of varying capacities like 100MT, 300MT and 2000MT (S. No. 80729 – 80738) (hereinafter referred to as the '**Impugned Goods**') vide the Bills of Entry mentioned in Annexure-A to the SCN (hereinafter referred to as **'Impugned BOEs'**). Copy of Impugned BOEs along with corresponding invoices is enclosed herewith as ***Annexure-2 (colly)***.

2.2 The picture of few models of the impugned goods is provided below for reference:



Function of Shunting in factory/warehouse

***Functioning of impugned goods***

2.3 Function and usage of the impugned goods is given below:

a. The impugned goods are primarily used on railway tracks for shunting (pulling) coaches/wagons. They allow shunting operation of coaches/wagons in factories, workshops, depots or loading ramps.

b. The impugned goods can be used on land also, however, that is for limited purpose of shifting the impugned goods from one track to another track at factories, depots, loading ramps, workshops, etc. The impugned goods are not recommended to run on public roads outside.

c. The impugned goods cannot perform shunting operation when moving on road.

d. The impugned goods (other than S. No. 80738) are remote driven (having a maximum range of 200 metres). The operator operates the impugned goods with the help of a remote control. The said impugned goods do not have their own steering.

e. S. No. 80738 variant of the impugned goods has a cabin wherein remote type steering is placed inside the cabin for performing various functions. Further, the impugned goods have radio remote control, interlock, ground operator safety remote control for performing remote operations.

f. Apart from pulling the wagons/ coaches on the railway tracks, the impugned goods do not have any other function.

g. The impugned goods have Acid battery and require a Battery charger. In full charge battery, the impugned goods can travel up to 9 to 12km in 3 to 4hrs *@ speed of 3km/hr*. during shunting / pulling of the wagons/ coaches of railway. Further, they can travel up to 20 km in 4hrs. *@ speed of 5-6km/hr* (when in idle mode i.e. not shunting/ pulling).

The operational manual of two model of the impugned goods bearing S. No. 80729 (this represents S. No. 80729- 80737 as the goods are identical, therefore one representative brochure is annexed) and 80738 are enclosed herewith as ***Annexure-3***.

***Issuance Show Cause Notice dated 14.05.2025***

2.4 In May 2020, the Noticee imported 8 numbers of the impugned goods vide 3 bills of entry (impugned BOEs) bearing no. 7583481 dated 04.05.2020, 7583913 dated 04.05.2020 and 7686325 dated 18.05.2020. The Noticee described the impugned goods in the subject BOEs as 'Rail Cum Road Vehicle <capacity> E-Maxi <S.No.> (Electric)'. The Noticee classified the impugned goods under Customs Tariff Item (hereinafter referred to as **'CTI'**) 8601 2000 as Rail locomotives powered by electric accumulators. After a gap of 5 long years, the Noticee received the SCN alleging mis-classification of the impugned goods. The Ld. CC vide the SCN has proposed classification under CTI 8704 9012 as Electrically Operated Lorries/Trucks under the heading 'Motor Vehicles for the transport of goods'. The sole reason provided by Ld. CC in the SCN for proposing classification under CTI 8704 9012 is that the impugned goods are suitable for use both on road and rail.

2.5 Ld. CC in Para 7 of the SCN has relied on Note 4(a) to Section VII to justify classification under CTI 8704 9012. Section VII deals with 'Plastic and articles thereof and rubbers and articles thereof'. Moreover, there is no section note 4(a) to Section VII. The Noticee assumes that the Ld. CC intends to invoke section note 4(a) to Section XVII as mentioned in Para 4 of the SCN.

2.6 At this juncture, it is important to mention that the Ld. CC has neither discussed any functioning of the impugned goods nor discussed the scope of section note 4 to section XVII to conclude that the impugned goods fall under chapter 87. On the basis of incomplete understanding of the impugned goods, the Ld. CC has alleged mis-classification, short payment of duty, proposal of confiscation under Section 111(m) of the Customs Act and penalty under section 112(a) and/ or Section 114A of the Customs Act.

***Previous proceeding on the identical issue***

**JNCH, Nhava Sheva**

2.7 During the period October 2019, the Noticee filed bill of entry no. 5461151 dated 28.10.2019 wherein it imported similar goods under CTI 8601 2000.

2.8 The Ld. Deputy Commissioner, JNCH vide Show-Cause Notice No. 232/21-22/GRVB/CAC/JNCH dated 18.06.2021 (hereinafter referred to as **'Nhava Sheva 2021 SCN'**) proposed classification under CTI 8704 9012 on identical grounds. Copy of the Nhava Sheva 2021 SCN is annexed herewith as ***Annexure- 4*** along

with operational manual of the Rail cum Road vehicle covered in the said proceedings enclosed as ***Annexure-5***.

2.9 Nhava Sheva 2021 SCN was adjudicated vide Order-in-Original No. 16/2022-23/Commr./NS-V/CAC/JNCH dated 13.06.2022 (hereinafter referred to as **'Nhava Sheva OIO'**) wherein it was held that the imported goods are classifiable under CTI 8704 9012 on the ground that the imported goods can run on both the rail and road. Copy of Nhava Sheva OIO is annexed herewith as ***Annexure – 6***.

2.10 The Noticee has filed an appeal before Hon'ble CESTAT, Mumbai (Appeal No. 86923/2022) on 09.09.2022 and the same is pending for final disposal. Acknowledgment copy of the appeal along appeal status from CESTAT website is annexed herewith as ***Annexure-7***.

2.11 It is pertinent to mention herein that at the time when Nhava Sheva 2021 SCN was issued, the impugned BOEs had already been filed however, for reasons best known to the department, these impugned BOEs have not been covered in the said SCN.

2.12 Before filing the BOE in the aforementioned proceedings, Zagro Bahn-Und Baumaschinen Gmbh, Muhlstr., Germany (hereinafter referred to as '**supplier**') confirmed on the letter head vide letter dated 14.10.2019 that the goods being supplied are classifiable under CTI 8601 2000. In the present case, the Noticee has imported identical goods from the same supplier. Copy of the letter dated 14.10.2019 written by the supplier is enclosed as ***Annexure-8***.

**Kolkata**

2.13 During the period February, 2021, the Noticee filed bill of entry no. 2799945 dated 17.02.2021 wherein it imported similar goods under CTI 8601 2000.

2.14 The Joint Commissioner of Customs, Appraising Group (5A &B), Custom House, Kolkata vide Show-Cause Notice No. KOL/CUS/JC/Port/Gr.5(A&B)/25/2023 dated 02.03.2023 (hereinafter referred to as "**Kolkata SCN**") proposed classification under CTI 8704 9012. Copy of Kolkata SCN is enclosed as ***Annexure- 9***.

2.15 The above-mentioned Show-Cause Notice was adjudicated vide Order-in-Original No. KOL/CUS/PORT/ADC/GR.V(AB)/07/2024 dated 05.02.2024 (hereinafter referred to as "**Kolkata OIO**") wherein it was held that the imported goods are classifiable under CTI 8704 9012 on the ground that the imported goods can run on both the rail and road. Copy of Kolkata OIO and the operational manual of the Rail cum Road vehicle covered in the said proceedings are enclosed as ***Annexure-10 and 11 respectively***.

2.16 The Noticee filed an appeal before Hon'ble Commissioner (Appeals), Kolkata and the same was decided vide Order-in-Appeal No. KOL/CUS(PORT)/KS/577/2024 dated 07.10.2024 (hereinafter referred to as "**Kolkata OIA**"). Ld. Commissioner (Appeals) allowed the Noticee's appeal and held that the goods covered therein were classifiable under CTI 8601 2000 as originally claimed by the Noticee and not under CTI 8704 9012 as proposed by the Department. It is the finding of Ld. Commissioner (Appeals), Kolkata that the goods are not lorry or trucks and are not used for transportation of goods, therefore not classifiable under CTI 8704 9012. Copy of the Kolkata OIA is enclosed herewith as ***Annexure- 12.***

2.17 It is pertinent to mention herein that the Kolkata OIA which upholds the classification of impugned goods under CTI 8601 2000, has not been referred to in the present SCN, for reasons best known to the Department.

2.18 At the outset, the Appellant submits that the impugned order is incorrect on law as well as on facts and is liable to be set aside. The Appellant, therefore, is filing the present appeal, *inter alia*, on the following grounds which are independent of and without prejudice to each other.

**DETAILED SUBMISSIONS**

At the outset, the Noticee denies all the allegations in the SCN and humbly submits that the proposals and allegations made in the SCN are not sustainable in law and are liable to be dropped and the SCN be discharged forthwith for the detailed submissions given herein under:

**A. THE SCN IS VAGUE AND WITHOUT ANY REASONING, THUS THE DEMAND IS LIABLE TO BE DROPPED ON THIS GROUND ALONE**

*The SCN has been issued on assumptions and presumptions, thus proposed demand is liable to be dropped*

A.1 The SCN proposes to demand duty and impose penalty on the basis of bald allegations and baseless assumptions & presumptions, without the backing of any law or supporting evidence. This has caused gross injustice to the Noticee in the present case as this not only results in violation of principles of natural justice

but also deprives the Noticee of the proper opportunity to defend its case. The SCN ought to be dropped on this ground itself. The list of assumptions and presumptions, in the absence of any reasoning, made by the Ld. CC in the SCN is provided below:

- The impugned goods are used for transportation of goods because Ld. CC has proposed to classify the same under CTH 8704. In fact there is no discussion or any allegation in the SCN if the impugned goods are at all made for transportation of goods;
- The impugned goods are lorries and trucks (refer six-digit of sub heading 8704 90) because Ld. CC has proposed to classify the same under CTI 8704 9012 as 'Electrically operated Lorries and trucks'. The nature of goods from this perspective has not been discussed at all;
- The impugned goods are specially constructed to travel on both rail and road as enunciated under section note 4(a) to Section XVII. The Ld. CC has picked up selective portion from the product brochure which mentions capability of the product to move on road as also rail tracks;
- The Brochure extracted and relied upon by Ld. CC in Para 5 of the SCN to allege mis-classification, does not pertain to the impugned goods. Ld. CC has relied upon any brochure of similar products to suit the case of the Department.

A.2 Reliance is placed on following judgments wherein Courts have held that show cause notices/ orders issued/ passed on assumptions and presumptions are bad in law and demand is liable to be dropped:

i. ***Unity Industries vs. Commissioner of Central Excise, Vadodara-II, 2006 (193) E.L.T. 314 (Tri. - Mumbai)*** *(Refer Para 9(D))* ***approved by Hon'ble Supreme Court in Commissioner of C. Ex., Vadodara-II Versus Sotex, 2007 (209) E.L.T. 9 (S.C.)***

ii. ***Indrol Lubricants and Specialities Ltd. vs. C.C.E., Calcutta-I, 1996 (83) E.L.T. 432 (Tribunal-LB)***

iii. ***Durga Trading Company vs. Commr. of C. Ex. & Service Tax, Lucknow, 2019 (366) E.L.T. 552 (Tri. - All.)***

iv. ***Honeywell Electrical Devices & Systems India Ltd. vs. Cestat, Chennai, 2019 (367) E.L.T. 916 (Mad.)***

v. ***Alps Container Pvt. Ltd. vs. Commissioner of Central Excise, Mumbai-V, 2018 (364) E.L.T. 103 (Tri. - Mumbai)***

vi. ***Mukesh Dye Works vs. Commissioner of Central Excise, Mumbai-Vi, 2006 (196) E.L.T. 237 (Tri. - Mumbai)***

vii. ***Chaudhary Steel Traders vs. Commissioner of C. Ex. & S. T., Ludhiana, 2015 (329) E.L.T. 934 (Tri. - Del.) (Single Member)***

A.3 Due to the afore-mentioned baseless assumptions, the demand proposed in the SCN is liable to be dropped and SCN is liable to be discharged forthwith on this ground alone.

*SCN is issued without giving any reason and therefore is in violation of principles of natural justice*

A.4 At the outset, it is submitted that the SCN is vague, without reasons and many of the allegations are incomprehensible. As such the SCN is against the basic principles of 'natural justice', as it has failed to provide any proper explanation or reasons for the aforesaid allegations/ proposals contained therein. The sole reason provided in the SCN for the proposed classification of the impugned goods is that the same can run both on rail as well as road. However, for being classified under CTI 8704 9012, there are other criteria which are required to be fulfilled (discussed in more detail in ground B). There is no discussion in the SCN how the said criteria are getting fulfilled by the impugned goods.

A.5 The Hon'ble Supreme Court in a plethora of cases has held that a show cause notice is the foundation for the judicial proceedings and the basic requirement for following the principles of natural justice, i.e. opportunity to defend is denied if SCN is issued without proper reasoning or without specific grounds. In this regard, reliance is placed on the following cases:

i. ***Amrit Foods vs. Commissioner of Central Excise, 2005 (190) ELT 433 (SC);***

ii. ***Kaur & Singh vs. Collector of Central Excise, New Delhi, 1997 (94) E.L.T. 289 (S.C.);***

iii. ***Royal Oil Field Private Ltd. vs. Union of India, 2006 (194) ELT 385 (Bom.);***

iv. ***Oryx Fisheries (P) Ltd. vs. Union of India, (2010) 13 SCC 42;***

v. ***Batra Hospital & Medical Research Centre vs. Commissioner of Customs, New Delhi, 2012-TIOL-683-CESTAT-DEL;***

vi. ***The Pr. Commissioner of Income Tax-I, Visakhapatnam vs. Smt. Bialetti Revathi, 2017-TIOL-1403-HC-AP-IT.***

A.6 Reliance is also placed on the case of ***M/s R.R. Financial Consultants Ltd. vs. Union of India & Ors., 2014 (33) STR 12 (Del.)***.

A.7 In the present case, the allegations in the SCN are far from being lucid, clear and compelling enough to even establish a *prima facie* case against the Noticee. It is not incorrect to state that there is no allegation in the SCN rather the SCN merely concludes that the impugned goods are classifiable under CTH 8704 and that Section note 4(a) to Section XVII applies in the present case [Refer **Para 4 and 7 of the SCN**].

A.8 Thus, in the light of the foregoing submissions and settled legal position, the demand made in the SCN is liable to be dropped as being violative of the principles of natural justice.

## B. THE IMPUGNED GOODS ARE NOT CLASSIFIABLE UNDER CTH 8704 AS PROPOSED BY THE LD. CC VIDE THE SCN

B.1 Without analysing at the first place whether the Ld. CC has rightly or wrongly invoked section note 4(a) to Section XVII, it is submitted that the proposed classification under Customs Tariff Heading (hereinafter referred to as **'CTH'**) 8704 is completely incorrect. For ease of reference, CTH 8704 is extracted below:

| **Tariff Item** | | **Description** | **Rate of Duty** |
|---|---|---|---|
| **(1)** | | **(2)** | **(3)** |
| **8704** | | **Motor Vehicles for the transport of goods** | |
| 8704 10 | - | Dumpers designed for off-highway use : | |
| | - | Other, with only compression-ignition internal combustion piston engine (diesel or semi-diesel): | |
| | - | Other, with only spark-ignition internal combustion piston engine: | |
| 870490 | - | Other : | |
| | --- | ***Lorries and trucks:*** | |
| 87049011 | ---- | Refrigerated | 40% |
| ***87049012*** | ---- | ***Electrically operated*** | ***40%*** |
| 87049019 | ---- | Other | 40% |
| 87049090 | --- | Other | 40% |

B.2 There are three requirements to fall under CTH 8704 (specifically under CTI 8704 9012) namely:

i. The vehicle must be a Motor Vehicle for *transportation of goods;*

ii. Once, a vehicle is for transportation of goods, the said vehicle must fall under the ambit of *Lorries and trucks;*

iii. The vehicle must be *electrically operated*.

B.3 That the impugned goods are used for shunting/pulling of wagons/ coaches on the railway tracks inside factories / depots / warehouses etc and are not used for transportation of goods. The scope of CTH 8704 can be understood from the explanation given in the Harmonised System of Nomenclature (hereinafter referred to as '**HSN**') and the same is extracted below for reference:

*This heading covers in particular :*

*The classification of certain motor vehicles in this heading is determined by certain features which indicate that the vehicles are designed for the transport of goods rather than for the transport of persons* ***(heading 87.03).*** *These features are especially helpful in determining the classification of motor vehicles, generally vehicles having a gross vehicle weight rating of less than 5 tonnes, which have either a separate closed rear area or an open rear platform normally used for the transport of goods, but may have rear bench-type seats that are without safety seat belts, anchor points or passenger amenities and that fold flat against the sides to permit full use of the rear platform for the transport of goods. Included in this category of motor vehicles are those commonly known as "multipurpose" vehicles (e.g., van-type vehicles, pick-up type vehicles and certain sports utility vehicles). The following features are indicative of the design characteristics generally applicable to the vehicles which fall in this heading:*

*(a) Presence of bench-type seats without safety equipment (e.g., safety seat belts or anchor points and fittings for installing safety seat belts) or passenger amenities in the rear area behind the area for the driver and front passengers. Such seats are normally fold-away or collapsible to allow full use of the rear floor (van-type vehicles) or a separate platform (pick-up vehicles) for the transport of goods;*

*(b) Presence of a separate cabin for the driver and passengers and a separate open platform with side panels and a drop-down tailgate (pick-up vehicles);*

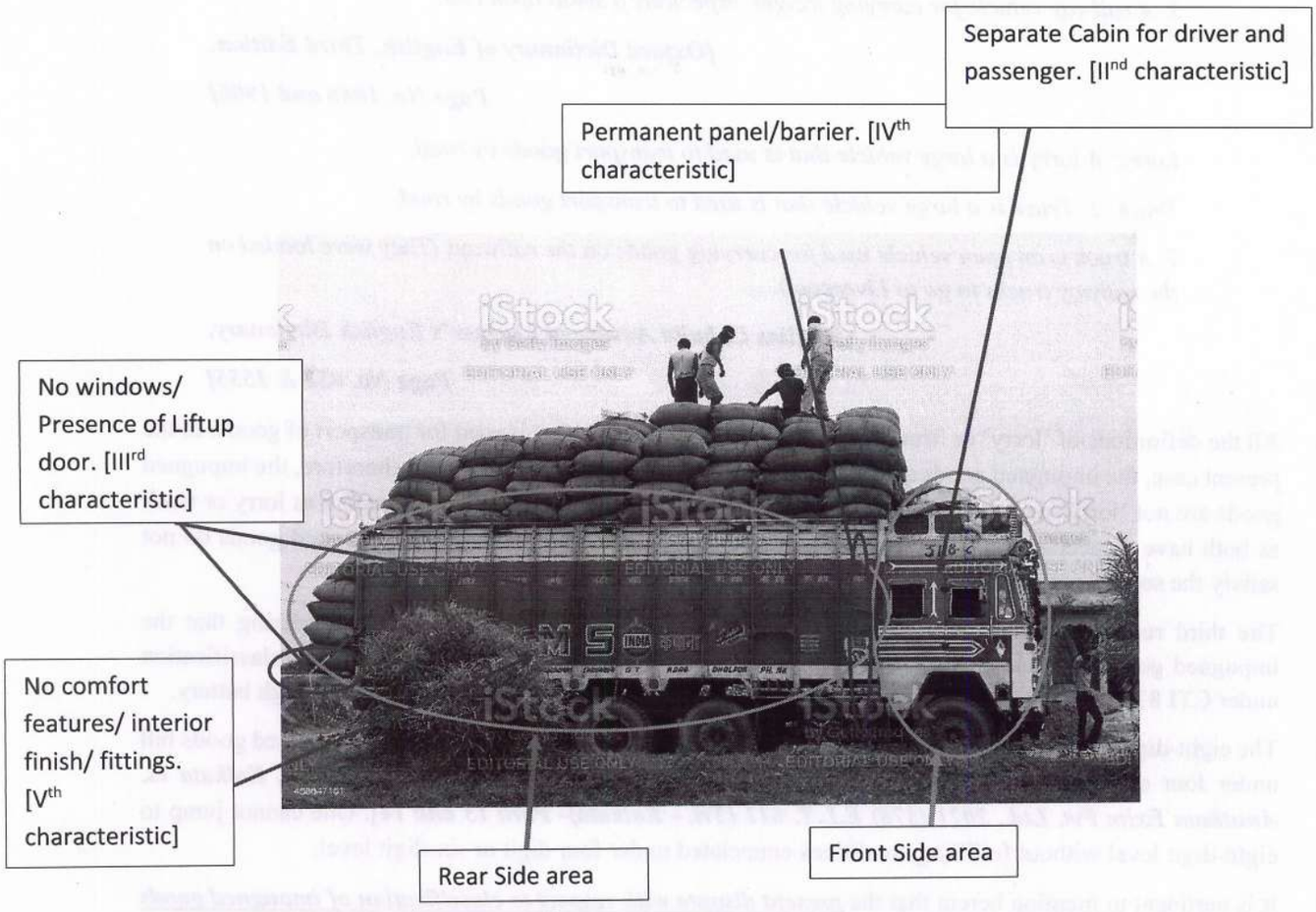
*(c) Absence of rear windows along the two side panels; presence of sliding, swing-out or liftup door or doors, without windows, on the side panels or in the rear for loading and unloading goods (van-type vehicles);*

*(d) Presence of a permanent panel or barrier between the area for the driver and front passengers and the rear area;*

(e) *Absence of comfort features and interior finish and fittings in the cargo bed area which are associated with the passenger areas of vehicles (e.g., floor carpeting, ventilation, interior lighting, ashtrays).*

B.4 The above five (5) design characteristics indicate the design characteristic which are generally present in the vehicles falling under CTH 8704. It is not necessary that any vehicle must have all the features listed here, however most of the features mentioned here should be there in a vehicle of CTH 8704.

B.5 Following is a representative image of a vehicle that fulfils the above five (5) characteristics and thus fall under the scope of CTH 8704.




B.6 In the present case, it is not the case that the impugned goods do not fulfil some characteristics as are given, the impugned goods do not fulfil any of the above characteristics, as explained below:

(a) The impugned goods do not have bench-type seats in the rear area. Infact, there is no front or rear area in the impugned goods because it is not meant for transportation of goods at all.

(b) The impugned goods do not have separate cabin for the driver and passengers. There is no provision for any passenger to sit for transport purpose.

(c) The impugned goods do not have sliding, swing-out or liftup door or doors, for loading and unloading goods.

(d) The impugned goods do not have permanent panel or barrier between the area for the driver and front passengers and the rear area.

(e) As far as comfort features in passenger area is concerned, the impugned goods do not have passenger area, therefore, the question of finishing/ comfort features do not arise.

B.7 In view of above, it is clear that the impugned goods are not used for transport of goods and thus do not fulfil first requirement (out of the total 3 requirements) to fall under the scope of CTH 8704. Since the impugned goods do not fall under the description of the heading itself, analysis of the six digit or eight-digit tariff entry is not relevant.

B.8 It is important to highlight that there is no specific finding given in the impugned order to justify classification of the impugned goods at four-digit level i.e. CTH 8704. Further, there is no specific finding on how the impugned goods are used for 'transport of goods' as mentioned in the description of CTH 8704.

B.9 Without prejudice, the impugned goods do not fulfil the second requirement namely the impugned goods are not lorry and/or truck. The dictionary meanings of Lorry and truck are provided below:

*Lorry: Large vehicle used for transporting goods.*

*Truck: 1. noun (Vehicle) (UK also lorry) a large road vehicle that is used for transporting large amounts of goods.*

*2. A part of train that is used for carrying goods or animals.*

***[Cambridge Advanced Learner's Dictionary, IV Edition, Page No. 917 and 1685]***

*Lorry: A large, heavy motor vehicle for transporting goods or troops; a truck*

*Truck: 1. A large road vehicle used for carrying goods, materials, or troops; a lorry.*

*2. A railway vehicle for carrying freight, especially a small open one.*

***[Oxford Dictionary of English, Third Edition,***

***Page No. 1046 and 1906]***

*Lorry: A lorry is a large vehicle that is used to transport goods by road.*

*Truck: 1. Truck is a large vehicle that is used to transport goods by road.*

*2. A truck is an open vehicle used for carrying goods on the railways (They were loaded on the railway trucks to go to Liverpool).*

***[Collins Cobuild Advanced Learner's English Dictionary,***

***Page No. 852 & 1555]***

B.10 All the definitions of 'lorry' or 'truck' provide that a large vehicle that is used for transport of goods. In the present case, the impugned goods are neither large nor used for transport of goods, therefore, the impugned goods are not 'lorry' or 'truck'. In trade parlance also, the impugned goods are not called as lorry or truck as both have a specific connotation with respect to transport of goods. Thus, the impugned goods do not satisfy the second requirement also.

B.11 The third requirement provides that the product has to be electrically operated. Considering that the impugned goods are neither lorry nor truck and are not meant for transportation of goods, classification under CTI 8704 9012 is incorrect, even if the impugned goods are electrically operated through battery.

B.12 The eight-digit level (i.e. CTI 8704 9012) classification can be justified only when the impugned goods fall under four digit (i.e. CTH 8704) or six-digit level [Refer ***Commissioner of Cus. (Prev.), Kolkata vs. Anutham Exim Pvt. Ltd., 2021 (378) E.L.T. 611 (Tri. - Kolkata)- Para 13 and 14***]. One cannot jump to eight-digit level without fulfilling conditions enunciated under four digit or six-digit level.

B.13 It is pertinent to mention herein that the ***present dispute with respect to classification of impugned goods is squarely covered by Kolkata OIA wherein Ld. Commissioner (Appeals), Kolkata has upheld classification of similar rail cum road vehicle under CTI 8601 2000***. It has been held as under ***(refer Para 18,19,20 and 25):***

- The goods are remote-controlled electric shunters, specifically manufactured and designed for the purpose of railcar shunting. Their primary function is to operate on railway tracks for the shunting (i.e., pulling or maneuvering) of coaches and wagons within factory premises, depots, railway workshops, loading ramps, and storehouses.
- Though these goods can operate on land, such use is strictly limited to facilitating the transfer of wagons from one railway track to another within the aforementioned premises. It is evident that these goods are not designed, intended, or permitted to be operated on public roads outside such premises.
- Further, the goods are fitted with a cabin housing a remote-type steering mechanism for operating various functions. They are also equipped with radio remote control systems, interlocking mechanisms, and ground-operator safety remote controls enabling remote operations.
- These goods are powered by an acid lead battery of 80V having a nominal capacity of 1000Ah. The maximum speed of the vehicle is 3 km/h under loaded conditions and 8 km/h under unloaded conditions. From the photographs and technical specifications on record, it is apparent that the vehicle does not possess the capability to turn right or left in the manner of conventional road vehicles such as trucks, lorries, or towing vehicles. Instead, the vehicle is programmed with minimal lateral maneuverability, thereby conferring a very restricted turning capability to its wheels, which is consistent with its specialized function for rail-based shunting operations.
- The expressions "lorry" or "truck" ordinarily refer to motor vehicles intended for the transportation of goods over roads. In this case, the goods are neither designed nor used for the transportation of goods. Consequently, they cannot be classified as either a "lorry" or a "truck."
- Although these goods are electrically operated through batteries, since they do not fall within the scope of lorries or trucks and are not intended for goods transport, their classification under CTH

8704 90 12, as adopted by the adjudicating authority, is found to be legally unsustainable and erroneous.

- Further, these goods run on a battery that is placed on the vehicle itself i.e. powered by electric accumulators carried on the vehicle. From plain reading of the extracts of CTH 8601 and Explanatory notes thereof, it is crystal clear that these goods fulfil the criteria given under CTH 86012000 i.e. Rail Locomotives powered by electric accumulators.

B.14 The aforementioned decision of Hon'ble Commissioner (Appeals), Kolkata has been accepted by the Department as the same has not been challenged till date.

B.15 Hence, classification proposed in the SCN is incorrect and the demand is liable to be dropped and SCN is liable to be discharged forthwith.

**C. AS THE CLASSIFICATION PROPOSED BY THE DEPARTMENT IS INCORRECT AND THE DEPARTMENT HAS FAILED TO DISCHARGE ITS BURDEN OF PROOF, THE DEMAND PROPOSED IN THE SCN IS LIABLE TO BE DROPPED**

C.1 As explained above, the proposal to classify the impugned goods under CTH 8704 is incorrect. It is a settled law that irrespective of whether the classification claimed by the Noticee is correct or not, if the classification proposed in the SCN is incorrect, the entire case of the Revenue shall not sustain.

C.2 Reliance in this regard is placed on the judgment of ***Sunrise Traders, vs. Commissioner of Customs-Mundra, 2022 (1) TMI 468 - CESTAT Ahmedabad*** upheld by the Hon'ble Supreme Court in ***Commissioner of Customs, Mundra vs. Sunrise Traders - 2023 (2) TMI 217 - SC ORDER*** and ***Warner Hindustan Ltd. Vs. Collector of Central Excise, Hyderabad - 1999 (8) TMI 75 - Supreme Court***,

C.3 Reliance is also placed on the following judgments to support this contention:

i. ***Pepsico Holdings Pvt Ltd. vs. Commissioner of Central Excise Pune – III - 2019 (4) TMI 320 - Cestat Mumbai***

ii. ***Larsen & Toubro Limited vs. Commissioner -Mundra, 2021 (6) TMI 4 – Cestat Ahmedabad***

iii. ***Dev Textiles and Ram Prakash vs. Commissioner -Mundra, 2022 (1) TMI 1080 - Cestat Ahmedabad***

**D. THE IMPUGNED GOODS ARE RIGHTLY CLASSIFIABLE UNDER CTH 8601 AND SECTION NOTE 4(A) TO SECTION XVII DOES NOT APPLY.**

D.1 That the appropriate classification of the impugned goods is under CTH 8601. The extract of CTH 8601 is provided below for quick reference:

| Tariff Item | | Description | Rate of Duty |
|---|---|---|---|
| (1) | | (2) | (3) |
| **8601** | | **Rail Locomotives powered from an external source of electricity or by electric accumulators** | |
| 86011000 | - | Powered from an external source of electricity | 10% |
| ***86012000*** | - | ***Powered by electric accumulators*** | ***10%*** |

D.2 The following are the undisputed facts in the present case:

i. The impugned goods exclusively work on rail tracks for shunting operation. The Impugned goods allow shunting operation of coaches/wagons in factories, workshops, depots or loading ramps.

ii. The Impugned goods are ***not able to perform shunting operation when moving on land*** in factories, workshops, depots or loading ramps.

iii. Apart from pulling the wagons/coaches on the railway tracks, the Impugned goods do not have any other function.

iv. The Impugned goods have a maximum speed of 6km/hr during shunting / pulling of the locomotives/coaches of railway.

D.3 The case of the Ld. CC in the SCN is not that the impugned goods do not fulfil the description of CTH 8601, the sole case put forth in the SCN is that the impugned goods are appropriately classifiable under Chapter 87 (CTH 8704/ CTI 8704 9012) because of applicability of Section Note 4(a) to Section XVII, as is extracted below:

*4. For the purposes of this Section:*

*(a) vehicles specially constructed to travel on both road and rail are classified under the appropriate heading of Chapter 87*

D.4 The intent and true meaning of the phrase '*vehicles specially constructed to travel on both road and rail are classified under the appropriate heading of Chapter 87*' is clear from the plain reading itself. It covers those vehicles that are specially constructed to travel to roads as well as rails. Each word in section note 4 has a specific meaning in the given context namely "*specially constructed*", "*travel*", "*on both road and rail*". The SCN has not dealt with these phrases (For instance 'travel') and has mis-interpreted the phrases (for instance 'specially constructed'). The detailed meaning is discussed below:

D.5 It is not uncommon these days to have rail vehicles that can be taken off track and which can have limited mobility on land / roads due to presence of pneumatic tyres fitted therein. It is submitted that merely because a vehicle has the capability to move on land/ surface does not *ipso facto* means that it is ***specially constructed to travel on road***.

D.6 The Section Note 4(a) cannot be read to cover all vehicles ***capable to move on both road and rail***. Further, Section Note 4(a) cannot be said to be applicable in cases of ancillary use on either road or rail. For example, if a vehicle is principally meant to travel on Rail and has ancillary or limited usage on the roads or vice versa, such vehicles cannot be considered to be specially constructed to travel on road and rail. The travel usage on both roads and rail shall be equally important. This is clear from the usage of the phrase 'specially constructed', which denotes the intention of the maker of the vehicle. The vehicle should be intended to travel on roads as also rail and accordingly shall be specially designed / constructed.

D.7 It is to be noted that the term used here is 'travel' and not 'movement' on roads and rail. The words 'travel' and 'transport'/ 'movement' can be understood from following dictionary meanings:

*Travel: Journeys, especially to places that are a long way away.*

*Movement: (Moving) (a) a change in the place or position of something or someone*

***[Longman Dictionary of Contemporary***

***Page No. 1538, 933]***

*Travel: If you travel, you go from one place to another, often to a place that is far away.*

*Movement: Movement involves changing position or going from one place to another.*

***[Collins Cobuild Advanced Learner's English Dictionary, Page No. 1547, 1545 and 936]***

*Travel: To make a journey usually over a long distance.*

***[Cambridge Advanced Learner's Dictionary, IV Edition, Page No. 1674, 1672, 1673]***

*Travel: Travel means to go from one place to another at a distance; to journey [State exrel. Leis vs. Ferguson, 80 N.E.2d 118, 120, 149 Ohio St. 555]*

***[Words and Phrases, Permanent Edition, Volume 42A by St. Paul Minn – West Publishing Co., Page No. 8]***

*Movement: An act of moving*

***[Oxford Dictionary of English, Third Edition Page No. 1891 and 1159]***

D.8 From the above definitions, it is submitted that the word 'travel' means to go from one place to another which is usually at a long distance. Whereas the word movement means merely changing position. If the interpretation of Ld. CC is considered, the scope of section note 4(a) is wide enough to include vehicles specially constructed to travel on rail and mere movement on road. This amounts to modifying the language used, which is impermissible.

D.9 Section Note 4(a) shall cover vehicles that are specially constructed / intended to travel long distances on roads as also rail, performing their function on road as also rail. The above scope of Section Note 4(a) to Section XVII can also be understood from the following articles/ examples:

I. Japan has introduced dual-mode vehicle (DMV) in its town of Kaiyo. The vehicle can run on normal rubber tyres on the road but its steel wheels, which are in its underbelly, descend when it hits the rail tracks. The DMV can carry up to 21 passengers and runs at a speed of 60km/h on rail tracks and can go as fast as around 100km/h on public roads[1].

II. The Government of India, Ministry of Railways has provided Specifications for Rail cum Road Vehicle in the year 1998[2]. The basic criteria given under the specifications for Rail cum Road Vehicle does not match with the design/ function of present impugned goods. For ease of reference, the relevant portion from Specification is extracted below:

*1. DESCRIPTION*

***The rail-cum-road vehicle shall be developed from a well established model of diesel road vehicle with chassis suitably strengthened and drive system modified, if required, so as to make it capable of running on-rails as well as on road.*** *The vehicle superstructure will be specially built for use of the vehicle to carry men and material (re-railing equipment) to attend derailment/accident at sites which may be located at stations, yards or mid-sections. The vehicle should be able by itself to transfer quickly*

[1] https://japan-forward.com/test-riding-the-worlds-first-dual-mode-vehicle-for-a-christmas-start/

[2] https://rdso.indianrailways.gov.in/uploads/files/MP-0-0800-38-Rev-00%20Sept-98%20Rail%20cum%20Road%20Vehicle.pdf

*from road to rail and vice versa. The vehicle with about 10 tonnes payload should be capable of bi-, directional movement on both road and rail.*

*2. SCOPE*

***This specification covers the performance and other requirements of the proposed rail-cum-road vehicle in completely assembled and furnished condition for operation on Broad Gauge track (1676 mm nominal gauge) of Indian Railways as well as on roads including unpaved ones as is generally obtaining in India.***

*3. BASIC REQUIREMENTS*

*The rail-cum-road vehicle* ***shall be capable of covering long distances both on rail and road.*** *The re-railing equipment normally required tole taken to site of minor to medium type of accidents are listed in the annexure*

*3.3* ***The speed potential of the vehicle shall be indicated by the tenderer but it should not be less than 70 km/h both on rails and road.*** *The vehicle shall be capable of traversing rough terrain having 1 in 20 grade on road and 1 in 33 on rail. The speed potential of the vehicle in reverse/rear direction on rail and road shall be at least 10 km/h.*

*7.5 EXTERNAL FITTINGS*

*1. DOOR OPENINGS*

*i. Two doors, one on either side of the driver's cabin, shall be provided.*

*ii. All door openings shall be such that doors open and close smoothly. When the doors are closed, the interior of the cabin shall be completely protected against rain and dust. Necessary locking arrangement shall be provided to secure the doors on the run.*

*iii. Side windows of suitable size with toughened glass shall be provided in driver cabins.*

*iv. The wind screen shall be of toughened glass and impact laminated and shall be provided with electrical wipers.*

*4. FLOORING*

*Appropriate flooring shall be provided in the driver's cab and in the loading compartment.*

*8.4 Electrical System*

*The rail cum road vehicle shall be provided with engine driven alternator to IS:2646 and a battery of adequate capacity which shall cater to:*

*1. Two head lights to IS : 3563*

*2. Four tail lights to IS : 3628*

*3. Adequate lighting arrangements inside the driver's / crew cab and in the luggage compartment*

*4. Electric horns*

*5. Electronically operated wind screen wipers.*

*6. Engine Starter motor.*

*7. Four working lights swiveling type of 250 W each (minimum) for working during night.*

Copy of the Specifications for Rail cum Road Vehicle issued by Government of India, Ministry of Railways in the year 1998 is enclosed as ***Annexure-13***.

III. The following pictures are taken from Aries Rail website[3] wherein various trucks have been shown that can run on both roads and rails:

[3] Aries Rail have designed and manufactured hyrail conversions for road rail vehicles for over 40 yrs with a range or vehicles to suit every application. Road Rail vehicles are also known as "hi-rail" or "hyrail" vehicles and regardless of the name used, are all

based on the same principle – A normally road-going or off-road vehicle has been converted into a Road Rail Vehicle to also run on railway lines. [ https://ariesrail.com.au/road-rail-vehicles-hi-rail/ ]
And https://ariesrail.com.au/heavy-vehicles/
and https://ariesrail.com.au/road-rail-cranes/

D.10 Unlike the impugned goods, the above vehicles can run on both roads and rails at a good speed and covering a long distance and have usage on both rails and roads.

D.11 In the present case, the impugned goods are battery operated rail car mover / shunting vehicle. The impugned goods are used for the purpose of shunting / pulling wagons / coaches etc on the rail tracks in locations like warehouses / depots / factories / workshops etc, used for example in maintenance operations amongst others. While performing this function, the impugned goods naturally travel on rail track.

D.12 Having said that, to fall under the scope of Section Note 4(a), it is also required that the goods are specially constructed to travel on road. It is submitted that the impugned goods are not specially constructed to travel on roads for the following reasons:

i. The impugned goods are not used for travel in workshops/warehouse/ factory/depots. At the best, one can say that the impugned goods can move on internal roads/surface in the workshops/warehouse/ factory/depots for the limited purpose of placement from one track to another track or when it has to be brought to the operation site from its parking area. The same is evident from Para 1.4 of the brochures for the impugned goods annexed herewith at Annexure 3.

ii. Refer Para 3.5 and 3.10 of the operation manual for S. no. 80729 and Para 3.9 and 3.14 of the operation manual for S. no. 80738 (Annexure-3) of the impugned goods that explains 'Driving to the site of operation' and 'Tracking off with the machine'. Once the impugned goods reach the operation site, they are taken on track, refer Para 3.7 / 3.10. This is where the operation of the impugned goods starts. During the operations, if the impugned goods are to be shifted to another track, it is taken off track and taken on the other track, the distance between the two tracks is covered through off track surface / internal roads. After the operation is over, the impugned goods are taken off track and taken back to the destined parking area, refer Para 3.10 / 3.14 of the operation manual. Thus, the usage / movement of the impugned goods on off-track surface including internal roads is limited and ancillary to the main function of shunting that ultimately happens on rail tracks.

iii. The sole function of the impugned goods is shunting or pulling wagons/ coaches that can be performed only on rail tracks and not on road. The usage on off-track surface is limited as explained above in point (i). The impugned goods, when on road, can at the most move itself from one place to another. It cannot move another vehicle / wagon when it is on road. It is to be noted that even though the impugned goods have rubber tyres, however, the wagons/ coaches do not have rubber tyres, therefore, by any stretch of imagination, the impugned goods cannot shunt such wagons/ coaches on land/surface.

iv. The impugned goods are not intended to be driven on public roads. There are multiple reasons for it like it has to be remotely operated through a remote control. It has limitation with respect to its speed, which is a meagre of maximum 5-6km/hr. It has no usage on roads considering it cannot shunt / pull vehicles / wagons on roads. The maximum distance it can cover is 9 to 12km during shunting / pulling or 20 km when in idle mode i.e. not shunting/ pulling.

v. In fact, when the impugned goods have to travel long distance on roads, the impugned goods are required to be taken on trailer/ trucks as can be seen from below photographs:

D.13 In view of the above, it is submitted that the impugned goods are not specially constructed to travel on roads, their usage on roads is very limited and ancillary to the functions to be performed on rail tracks (i.e. of shunting wagons). Their capability alone to move on road / off-track surface do not make them specially constructed to travel on road. Therefore, the impugned goods do not fall under the scope of Section Note 4(a) to Section XVII.

D.14 Further, the Noticee strongly rebuts the allegations in the SCN and submits the following:

(i) The Ld. CC has nowhere provided a single usage of the impugned goods on roads. Capability to run on road is the only factor to confirm classification under CTH 8704. The same is incorrect, as mentioned above in detail.

(ii) The phrase 'specially constructed' must denote specially constructed to work on road and not mere presence of tyres to move on road.

(iii) Going by this logic given in the impugned SCN, aircrafts can also run on roads because they have inbuilt tyres. The same is absurd and illogical observation. In the same manner, capability to move on road does not mean that the impugned goods are 'specially constructed' to run on road.

***The impugned goods squarely fall under the ambit of CTH 8601***

D.15 The impugned goods fall under CTH 8601 that covers 'Rail Locomotives powered from an external source of electricity or by electric accumulators'. In this regard, the HSN explanatory notes to Chapter 86 and CTH 8601 are extracted below:

***HSN to Chapter 86- GENERAL***

***This Chapter covers locomotives*** *and rolling-stock, and parts thereof, ...*

*These various goods are classified as follows :*

***Self-propelled railway vehicles of all types, such as locomotives****, motorised railway or tramway coaches and rail-cars (headings 86.01 to 86.03). Heading 86.02 also includes locomotive tenders. Locomotives operated by two types of power are classified in the heading corresponding to the main type of power used.*

***HSN to CTH 8601***

***This heading covers all types of electric locomotives in which the required electrical energy is derived either from powerful accumulators carried on the vehicle****, or from an external conductor which may be either a rail or an overhead cable.*

*(Emphasis supplied)*

D.16 It is submitted that impugned goods fall under the ambit of rail locomotives as they are self- propelled (powered by electric accumulators) and are used to shunt/pull wagons/ coaches on the railway tracks. Further, the impugned goods run on a battery that is placed on the vehicle itself i.e. powered by electric accumulators carried on the vehicle. Hence, the impugned goods fulfil the criteria given under CTH 8601 i.e. Rail Locomotives powered by electric accumulators. Moreover, it is not the case of the Ld. CC in the SCN that the impugned goods do not fulfil the description of CTH 8601.

D.17 In view of the above, the impugned goods squarely fall under the scope of CTH 8601 and the SCN proposing classification under CTH 8704 is incorrect and bad in law and the demand is liable to be dropped on this ground.

D.18 For the sake of argument (without admitting) and without prejudice to above ground on merits, even if it is presumed that Section Note 4(a) is applicable and the impugned goods are classifiable under Chapter 87, the same may get cover under different heading of Chapter 84 but not CTH 8704. In the present case, it is not in doubt that the impugned goods are not designed for transport of persons or goods, therefore, CTH 8704 is completely incorrect.

***Circulars are not binding on the assessee and Courts / quasi-judicial authorities.***

D.19 Ld. CC in Para 4 of the SCN has also relied on Circular No. 14/2012-Cus dated 11.06.2012 wherein it has been clarified that correct classification of 'Rail-cum-Road Vehicle' should be in the appropriate heading under Chapter 87 by application of Note 4(a) to Section XVII. In this regard, it is submitted that classification of the imported goods is to be determined on the basis of Chapter Notes, Section Notes and HSN Explanatory Notes and not on the basis of circulars or notifications. As explained above, as per HSN Explanatory Notes to CTH 8704, the impugned goods do not satisfy the requirements of CTH 8704 and thus not classifiable thereunder.

D.20 It is submitted that a circular issued by a Board of Revenue is an administrative instruction intended to guide the department for uniform administration of the statute. The same may be binding on department but not on the courts including the quasi-judicial authorities including the tribunal. Reliance in this regard is placed on the judgment of ***Commissioner of Customs, Chennai-I Vs Avenue Impex, 2014 (306) E.L.T. 69 (Mad.) (Para 18) and Commissioner of Central Excise and Customs, Central Goods And Service Tax, Jaipur-I vs M/s Century Metal Recycling Private Limited, 2024-VIL-1069-CESTAT-DEL-CU***

D.21 Further reliance is placed on the following judgments:

(i) ***Commissioner of Central Excise, Bhopal vs Minwool Rock Fibres Ltd., 2012 (278) E.L.T. 581 (S.C.) (Para 14)***

(ii) ***M/S. V3 International vs. Commissioner of Customs New Delhi (ICD TKD), 2019-VIL-2548-CESTAT-DEL-CU (Para 4.5)***

(iii) ***Logic India Trading Co. vs. Commissioner of Customs, Cochin, 2016 (337) E.L.T. 65 (Tri. - Bang.) (Para 4.5)***

(iv) ***Nikunjam Constructions Pvt. Ltd. vs Union Of India, 2022 (63) G.S.T.L. 296 (Ker.) (Para 8)***

## E. THE NOTICEE HAS NEITHER MIS-STATED THE CLASSIFICATION OF THE IMPUGNED GOODS NOR SUPPRESSED ANY FACT, THEREFORE, EXTENDED PERIOD OF LIMITATION IN TERMS OF THE SECTION 28(4) OF THE CUSTOMS ACT CANNOT BE INVOKED.

E.1. As per Section 28 (1) of the Customs Act, the period to issue a show cause notice is **two years** from the relevant date i.e. date on which the proper officer makes an order for clearance of goods (Out of Charge date). Section 28(4) provides for an extended period of five years, which can be invoked in cases of collusion or wilful mis-statement or suppression of facts.

E.2. That the demand under Section 28(4) is not sustainable in the present case since no wilful mis-statement or suppression of facts can be attributed to the Noticee.

E.3. In the present case, the ingredients under Section 28(4) are not present and therefore, the differential duty demanded for the period beyond the normal period of two years is barred by limitation. Extended period cannot be invoked in the present case for the following reasons:

***Extended period cannot be invoked when show cause notice and Order on the identical issue were passed in the years 2021 - 2024 and the department is aware about the issue since 2021.***

E.4. In the present case, the SCN was issued on 09.05.2025 in respect of the imports made by the Appellant during the relevant period, i.e. May 2020, i.e. after a long gap of 5 years.

E.5. As mentioned in the facts above, a show cause notice in the previous proceedings on the identical issue was issued on 18.06.2021 (Nhava Sheva) covering the bill of entry dated 28.10.2019 filed at Nhava Sheva port, and Show Cause Notice dated 02.03.2023 (Kolkata) covering the bill of entry dated 17.02.2021 filed at Kolkata port. Thereafter, an Order-in-Original was passed on 13.06.2022 for Nhava Sheva SCN and on

05.02.2024 for Kolkata SCN. Further, an Order-in-Appeal was also passed by Ld. Commissioner (Appeals), Kolkata on 07.10.2024.

E.6. In view of the above, once the department was aware about the transaction in the year 2021 itself, issuance of SCN in the year 2025, for bills of entry filed in the year 2020 by invoking extended period of limitation is bad in law. In fact, the impugned BOEs could very well be covered in the Nhava Sheva 2021 SCN.

E.7. It is a settled principle of law that suppressions cannot be alleged or held when the department has already issued the show cause notice for the previous bill of entry. The Appellant relies on the judgement of ***Hyderabad Polymers Pvt. Ltd. v. Commissioner- 2004 (166) E.L.T. 151 (S.C.) and Nizam Sugar Factory v. Collector of Central Excise 2006 (197) E.L.T. 465 (S.C.).***

E.8. For this purpose, reliance is place on the following case laws:

(i) ***M/s Southern Structurals Ltd, 2008-TIOL-154-SC-CX,***

(ii) ***M/s Primella Sanitary Prodts Pvt Ltd, 2005-TIOL-83-SC-CX-LB,***

(iii) ***Gujarat Ambuja Exports Ltd., 2012-37-STT-122 (Guj).***

(iv) ***Vedanta Ltd. vs. Commissioner of Central Excise, Tirunelveli 2019 (28) G.S.T.L. 258 (Tri. - Chennai).*** The same has been held in the case of ***A.R. Trading Company Versus Commr. of C. Ex. (Appeals-Ii), Bangalore 2020 (372) E.L.T. 388 (Tri. - Bang.)***

E.9. Further, reliance is also placed on the case of ***Commissioner v. Interjewel Pvt. Ltd. - 2018 (12) G.S.T.L. J87 (Bom.)*** wherein the High Court of Bombay held as follows:

***Extended period cannot be invoked in cases involving classification dispute***

E.10. That the extended period of limitation cannot be invoked in the present case as the issue is one of classification of the impugned goods. That classification is a matter of interpretation and the Noticee is entitled to adopt classification which is most appropriate as per the Noticee's understanding of the impugned goods.

E.11. That there is a difference between 'misclassification' and 'mis-declaration' under the Customs law. However, the SCN has obliterated this distinction conveniently without any legal or factual basis. The present case concerns dispute regarding classification of the impugned goods, i.e., between CTI 86012000 and CTI 87049012 (department's view). That even if the department holds a different view regarding classification of the impugned goods, it becomes a case of difference in opinion or understanding vis-à-vis applicable tariff entries. That misclassification is an act of *bona fide* mistake of erroneous classification, where mis-declaration is a *mala fide* act with the intention to evade customs duty.

E.12. As submitted in the foregoing paragraphs, the Appellant has correctly declared the impugned goods which cannot be considered as mis-declaration on the part of the Appellant.

E.13. In this regard, reliance is placed on the judgment of ***Hanon Climate Systems India Pvt. Ltd. Versus Commissioner of Customs ICD Patparganj and Other ICDs, Delhi, 2026-VIL-216-CESTAT-DEL-CU and M/s Videocon D2H Limited Vs Additional Director General, (Adjudication), Directorate of Revenue Intelligence, New Delhi, 2025-VIL-1605-CESTAT-DEL-CU, GV Exim Pvt. Ltd vs. Commissioner of*** **Customs,** ***2003 (160) ELT 900 Densons Pultretaknik vs. CCE, 2003 (155) E.L.T. 211 (S.C.), Northern Plastics Ltd [1998 (101) ELT 549 (SC)], Lewek Altair Shipping Pvt. Ltd. Vs. CC, Vijayawada, 2019 (1) TMI 1290 - Cestat Hyderabad*** affirmed by ***Commissioner of Customs -Vijayawada vs. Lewek Altair Shipping Pvt Ltd, 2019 (7) TMI 516 - SC Order, M/s Samsung India Electronics Pvt. Ltd. Vs. Commissioner of Customs Air Cargo Complex (Import) reported in 2023 (12) TMI 1155 - CESTAT NEW DELHI*** (**The** Department had filed an appeal against the order of the Hon'ble CESTAT in this case, which was dismissed by the Hon'ble Supreme Court in ***Principal Commissioner of Customs, New Delhi v. M/s. Samsung India Electronics Pvt. Ltd, 2024 (7) TMI 1220 - SC ORDER), and Soni E-vehicle Pvt. Ltd. & Ors. Vs. Principal Commissioner of Customs (Prev.), 2025 (11) TMI 1121- CESTAT Delhi.***

E.14. The Noticee places reliance on the following in support of the contention that extended period cannot be invoked in cases of interpretation of the law:

- ***Singh Brothers vs. Commissioner of Customs & Central Excise, Indore, 2009 (14) STR 552 (Tri.-Del.);***
- ***Steelcast Ltd. vs. Commissioner of Central Excise, Bhavnagar, 2009 (14) STR 129 (Tri.-Del.);***

- ***P.T. Education & Training Services Ltd. vs. Commissioner of Central Excise, Jaipur, 2009 (14) STR 34 (Tri.-Del.);*** **and**
- ***K.K. Appachan vs. Commissioner of Central Excise, Palakkad, 2007 (7) STR 230(Tri.-Bang.).***

***There is no allegation of wilful mis-statement or suppression of facts in the SCN- Ld. CC has not demonstrated any positive acts which indicate mala fide on part of the Noticee.***

E.15. That there is no allegation of any willful mis-statement or suppression of facts in the SCN. In fact, there is not even a single discussion in the SCN to justify invocation of extended period of limitation. On the basis of this only, extended period is not liable to be invoked.

E.16. The only allegation regarding one of the ingredients of the Section 28(4) is regarding mis-classification of the impugned goods, in Para 10 of the SCN. However, this allegation is with respect to confiscation of impugned goods and imposition of penalty on the Noticee.

E.17. That the extended period is not invokable since no wilful mis-classification or suppression of facts can be attributed to the Noticee. The Noticee has classified the impugned goods as rail-cum-road vehicle and classified the same under CTI 8601 2000.

E.18. In order to understand what constitutes mis-statement and suppression, reliance is placed on the judgment of Hon'ble Supreme Court in the case of **Padmini Products vs. CCE, 1989 (43) E.L.T. 195 (S.C.)**, wherein the judgment of the Supreme Court in the case of **CCE vs. Chemphar Drugs and Liniments, 1989 (40) E.L.T. 276 (S.C.)** was followed and it was held that in order to constitute suppression or misstatement attracting extended period of limitation, something positive other than mere inaction or failure on the part of the assessee or conscious or deliberate withholding of information, when the assessee knew otherwise, is required to be established. Similar propositions have also been affirmed in the following cases:

- **Aban Lloyd Chiles Offshore Ltd. vs. Commissioner of Customs, 2006 (200) ELT 370 (SC);**
- **Pahwa Chemicals Private Limited vs. Commissioner of C. Ex., Delhi, 2005 (189) E.L.T. 257 (S.C.).**

E.19. That in order to constitute willful suppression, the following needs to be established:

(i) **Knowledge**: Assessee was in possession of certain information/ documents, which the department did not have.

(ii) **Belief:** Assessee knew that if information/ documents are given to department, then the assessment will be different resulting in higher duty liability.

(iii) **Deliberate With-holding**: Still, the assessee deliberately does not give information/ documents to the department.

E.20. The Noticee has not mis-stated the description or mis-classified the impugned goods and had correctly paid the applicable rate of duty as per Customs Tariff. As already submitted in Ground D, the impugned goods are rail-cum-road vehicle used for the purpose of shunting/pulling train wagons and thus classifiable under CTI 8601 2000 and therefore the allegation of mis-classification does not hold good.

E.21. As regards the mis-statement of description of the impugned goods or suppression of facts, it is pertinent to note that there is no discussion in SCN regarding the same. It is pertinent to note that the description provided by the Noticee in the impugned BOEs is matching with the description and the CTH provided in the invoice provided by the supplier. Further, the description of the impugned goods in the impugned BOEs is also factually correct i.e. Rail cum road vehicle and complete also with model number and capacity of the impugned goods duly mentioned. The same is also not in dispute in the present SCN.

E.22. It is further important to highlight that applicability of Circular No. 14/2012- Cus was duly considered at the time of clearance of impugned goods vide the impugned BOEs. The same is evident from the impugned BOEs annexed herewith as Annexure-2. Despite the same, the impugned goods were allowed to be cleared under CTI 8601 2000. Therefore, there cannot be any mis-declaration by the Noticee.

E.23. Therefore, in the absence of wilful mis-statement of classification of the impugned goods, extended period of limitation is not invokable.

***Mis-statement or suppression of facts needs to be wilful in order to invoke extended period of limitation. The same is completely absent in the present case.***

E.24. In order to invoke extended period of limitation under the Customs Act, the act of mis-declaration or suppression has to be wilful or intentional. In the present case, the Noticee has not suppressed or mis-declared the impugned goods and further, the Noticee did not have any intention to evade payment of duty.

E.25. Ld. CC has failed to bring out instances which establish the malafide intention of the Noticee to mis-declare the impugned goods in the impugned BOEs. There is no basis or any evidence to support the case of the Department that the alleged mis-classification is wilful and intentional.

E.26. The Noticee relies on the cases of ***Stemcyte India Therapeutics Pvt. Ltd. vs. CCE & ST, 2025 SCC OnLine SC 1412 (Para 9.3-9.4), Cosmic Dye Chemical vs. Collector of Central Excise, Bombay, (1995) 6 SCC 11, and Commissioner of Central Excise, Aurangabad vs. Bajaj Auto Limited, 2010 (260) ELT 17 (SC)***,

E.27. That the wordings of the proviso to Section 11A(4) of the Central Excise Act, 1944 are in *pari-materia* with Section 28(4) of the Customs Act. Therefore, ratio of the aforementioned judgments will be applicable to the present case as well. Reliance is placed on the judgement of the Hon'ble Supreme Court in ***Uniworth Textiles Ltd. v. Commissioner of Central Excise, Raipur 2013 (288) E.L.T. 161 (S.C.)***

*The provisions of Section 28(4) must be construed strictly.*

E.28. It is respectfully submitted that extended period is invokable only under Section 28(4) of the Customs Act, which is an exception to the provisions of Section 28(1), providing for a period of two years for issue of notice in a normal case. It is a settled law that an exception is required to be construed strictly.

E.29. In the context of the erstwhile *proviso* to Section 11A(1) of Central Excise Act, 1944, which also was an exception to the main provision of Section 11A(1) providing a period of one year for issue of notice, in the case of ***Pushpam Pharmaceuticals (Supra)***, the Hon'ble Supreme Court held that the proviso being an exception to the main section, it has to be construed strictly.

E.30. Reliance is also placed on the cases of Tamil ***Nadu Housing Board vs. CCE, [1994 (74) ELT 9 (SC)]***, and ***CCE, Chandigarh vs. Punjab Laminates Pvt. Ltd., [2006 (202) ELT 578 (SC)]***.

## F. INTEREST PROPOSED TO BE DEMANDED UNDER SECTION 28AA OF THE CUSTOMS ACT IS NOT PAYABLE.

F.1. That in a case where the duty itself is not liable to be paid due, then in those cases levy of interest by the department cannot be sustained in the eyes of law.

F.2. In terms of Section 28AA of the Customs Act, the person who is liable to pay duty in accordance with the provisions of Section 28 of the Customs Act should in addition to such duty be liable to pay interest at the rate fixed under sub-section (2) of Section 28 of the Customs Act, whether such payment is made voluntarily or after determination of the duty under that Section.

F.3. It is a settled principle of law that in cases where the original demand is not sustainable, interest cannot be levied. In view of the aforesaid submissions, it is clear that the demand and interest both have been incorrectly raised against the Noticee and hence, the question of recovering interest does not arise. Reliance is placed on the cases of ***Prathibha Processors vs. Union of India, 1996 (88) E.L.T. 12 (S.C.)***, and ***Magnetix India Ltd. vs. Commissioner of Customs, Bhubneshwar, 2001 (131) E.L.T. 444 (Tri. - Kolkata).***

## G. THE IMPUGNED GOODS ARE NOT LIABLE FOR CONFISCATION UNDER SECTION 111(M) OF THE CUSTOMS ACT.

G.1 That impugned goods are not liable for confiscation under Section 111(m) of the Customs Act.

G.2 It has been alleged in the SCN that the impugned goods are liable to be confiscated under Section 111(m) of the Customs Act because the Noticee has wrongly classified the impugned goods under CTH 8601 [Refer **Para 10 of the SCN**]. It is to be noted that there is no other reason given in the SCN for invoking Section 111(m).

G.3 That the Ld. CC has not given any basis in the SCN to justify classification under CTH 8704. That CTH 8704 is incorrect classification because the impugned goods are not 'motor vehicles for transport of goods'. The Noticee has already made its submissions in detail above as to how the impugned goods are not classifiable under CTH 8704 (Refer Ground B above). That this allegation of mis-classification in the SCN is totally incorrect and the Noticee categorically denies the same.

G.4 In the instant dispute, the demand of duty has been made under Section 28(4) of the Customs Act for wilful mis-statement of correct classification and the consequent correct rate of duty in the entry made under

Section 46 of the Customs Act. As already explained above, the impugned goods are correctly described and classified under CTI 8601 2000. The Ld. CC has wrongly proposed to hold the impugned goods liable for confiscation under Section 111(m) of the Customs Act.

***Misdeclaration under 111(m) cannot be concluded in absence of any discrepancy found in declared import documents***

G.5 That there is no mis-declaration of the description of impugned goods or the applicable rate of duty.

G.6 That Section 111(m) of the Act is not invocable in the present case for the reason that in the impugned BOEs vide which the impugned goods were imported, the ***Noticee had not mis-declared any material particulars***. The description of the impugned goods, given in the impugned BOEs tallies with actual nature of the impugned goods and with other import documents such as invoice, packing list, bill of lading etc. The SCN also fails to demonstrate how the description in the impugned BOEs is mis-stated. Therefore, Section 111(m) cannot be invoked in such circumstances. Consequently, the proposal for confiscation of the impugned goods is wholly untenable.

G.7 The term misdeclaration under the Section 111(m) of the Customs Act would primarily include the following situations:

a) Misdeclaration in terms of value- This would include both undervaluation and overvaluation.

b) Misdeclaration in terms of other particulars- This would mean that the description and other details pertaining to the goods as provided in the Bill of entry is different from that of the real description and details of the goods. This can be in terms of quantity, quality, nature, etc of goods.

G.8 On the basis of the aforementioned, it can be said that Section 111(m) of the Customs Act provides for confiscation of any goods, which do not correspond in respect of value or in any other particular with the entry made under the Customs Act. In terms of the provisions of Section 2(16) of the Customs Act, "entry" in relation to goods means an 'entry' made in a bill of entry. That for the reasons given in the foregoing paragraphs, there was no mis-declaration either in respect of value or in any other particular with the entry made under the Customs Act. The Noticee had declared the correct value of the impugned goods. The same has not been disputed in the SCN. The Noticee has also declared appropriate description of the impugned goods i.e. 'Rail Cum Road Vehicle <capacity> E-Maxi <S.No.> (Electric)'. Therefore, there was no mis-declaration either in respect of value or in any other particular with the entry made under the Customs Act

G.9 With respect to the second leg i.e., 'any other particulars', it was submitted that the Noticee had disclosed correct particulars in the BOE filed by it and other import documents for clearance of impugned goods. The description of the impugned goods in the impugned BOEs matches the actual description of the impugned goods. This is not even alleged in the SCN.

G.10 The noticee placed reliance on the cases of ***Kirti Sales Corpn. vs. Commissioner*** reported at ***2008 (232) ELT 151 (Tri.-Del.),*** and ***P Ripakumar and Company vs. Union of India*** reported at ***1991 (54) ELT 67***.

***Interpretation of provision of statute/ adopting a particular classification does not amount to mis-declaration***

G.11 That the classification mentioned by the Noticee under CTI 8601 2000 is correct, as discussed in detail above. That, even if the Noticee's classification for the impugned goods was incorrect at the time of importation, the same cannot amount to mis-declaration for the purpose of Section 111(m) of the Customs Act.

G.12 The dispute in the present case relates to short payment of duty on account of alleged mis-classification of the impugned goods. That mis-classification is an act of *bona fide* mistake of erroneous classification. In the present case, even if it is assumed that the Noticee did not adopt the correct classification, this would be a case of mere 'mis-classification' of goods and no act of 'mis-declaration' can be attributed to the Noticee.

G.13 Even if there is any error in classification or exemption claimed on Bill of Entry then same cannot be equated with misdeclaration, that too with the intention to evade payment of duty. They placed reliance on the case of ***Sirthai Superware India vs. Commissioner of Customs, 2020 (371) ELT 324 (Tri.-Mum.)*** **at para 4.4,** ***Northern Plastic Ltd. (supra), Lewek Altair Shipping (supra)*** (***upheld in the Hon'ble Supreme Court as reported in 2019 (7) TMI 516)***. In the present case, the Assessing officer had all the rights and powers to appreciate at the time of import that the impugned goods can be used on road and rail both (even though it is an incorrect understanding) from the description itself i.e. Rail cum Road vehicle. Therefore, applying the ratio of ***Lewek Altair (supra),*** the proposal of confiscation is liable to be set aside.

G.14 Reliance is also placed on the case of ***Lotus Beauty Care Products Pvt. Ltd. v. CC (Imports), JNCH, Nhava Sheva, 2020-TIOL-1664-CESTAT-MUM***, ***Kirti Sales Corporation vs. Commissioner of Customs,*** Faridabad *reported at* ***2008 (232) ELT 151 (Tri.-Del.) (Para 6)***, ***M/s Samsung India Electronics Pvt. Ltd. (supra)*** and ***Sahi Trading Company v. Principal Commissioner of Customs, 2024 (7) TMI 326 – CESTAT NEW DELHI***.

***Impugned goods already cleared for home consumption are not liable for confiscation***

G.15 It is respectfully submitted that Section 111 of the Customs Act 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 of the Customs Act.

G.16 Reliance is placed on the cases of ***Bussa Overseas & Properties P. Ltd. vs. C.L. Mahar, Assistant Commissioner of Customs, Bombay,*** reported at ***2004 (163) ELT 304 (Bom.)*** (This judgment has been maintained by the Hon'ble Supreme Court of India (***2004 (163) E.L.T. A160 (S.C.)***) (Para 7)), ***Southern Enterprises vs. Commissioner of Customs, Bangalore, 2005 (186) E.L.T. 324 (Tri. - Bang.)***, ***Shiv Kripa Ispat Pvt. Ltd. vs. Commissioner of Central Excise and Customs, Nasik*** reported at ***2009 (235) E.L.T. 623 (Tri. - LB)***

G.17 In light of the aforesaid judgments, that in the present case since the impugned goods in question have been cleared for home consumption, they have lost the character of being imported goods under the Customs Act and therefore, cannot be held liable for confiscation under Section 111 of the Customs Act.

***Mis-declaration has to be deliberate or intentional.***

G.18 That mis-declaration as contemplated by Section 111(m) of Customs Act has to be 'wilful', 'deliberate' or 'intentional' act/omission on the part of the assessee, and the same has to be shown beyond a reasonable doubt which is definitely not satisfied in this present case.

G.19 The courts have very clearly and consistently, in a catena of judgements, held that the term 'misdeclaration' in the context of fiscal statute means 'intentional', 'wilful' or 'deliberate' act / omission on the part of an assessee to evade the payment of duty.

G.20 Reliance is placed on the case of ***Shahnaz Ayurveda's vs. Commissioner of Central Excise, Noida 2004 (173) E.L.T. 337 (All.) (Para 78 and 79).*** This decision of the High court has been affirmed by the Supreme court in the case of ***Commissioner of Central Excise, Noida vs. Shahnaz Ayurvedics, 2004 (174) E.L.T. A34 (S.C.).***

G.21 As already stated above, the Noticee has given accurate description in impugned BOEs corresponding with the supplier's invoice. This description *prima facie* shows that the Noticee had no intention to suppress any information thereof. The Noticee could have chosen to give some other description of the impugned goods however, it was the *bona fide* act of the Noticee to give accurate information to the department – for this reason, no mis-declaration can be attributed to the Noticee.

G.22 In light of the above submissions, the Noticee submitted that the impugned goods are not liable for confiscation under Section 111(m) of the Customs Act.

## H. PENALTY UNDER SECTION 112 AND/OR SECTIN 114A OF THE CUSTOMS ACT IS NOT LIABLE TO BE IMPOSED ON THE NOTICEE

H.1 The SCN has also proposed imposition of penalty upon the Noticee under Section 112(a) and/ or Section 114A of the Customs Act. In this regard, as already submitted, the demand raised vide the impugned SCN is unsustainable as the Noticee has rightly classified the impugned goods and paid the correct duty. That the Noticee had acted in accordance with law and had not contravened any provision of the Customs Act or any other law, hence, the proposal for imposition of penalty upon the Noticee is not sustainable. That the impugned SCN deserves to be discharged as the case on merits, is in favour of the Noticee and in such a situation penalty is not imposable. Detailed submissions in this regard are being made in the following paragraphs:

*Penalty cannot be imposed on the Noticee when demand itself is unsustainable*

H.2 In the foregoing paragraphs, That no duty is payable by the Noticee as the Noticee has rightly classified the impugned goods and paid the correct duty. Hence when no duty is payable by the Noticee, any demand for penalty will not be sustainable.

H.3 Reliance in this regard is placed upon the case of ***Collector of Central Excise vs. H.M.M. Limited, 1995 (76) ELT 497 (SC)***, ***Commissioner of Central Excise & Customs vs. Nakoda Textile Industries Ltd., 2009***

***(240) E.L.T. 199 (Bom.)***, and ***Commissioner of Central Excise, Aurangabad vs. Balakrishna Industries, 2006 (201) ELT 325 (SC)***.

***Section 112 of the Customs Act does not apply to the present case as the goods are not liable for confiscation***

H.4 Section 112 contemplates imposition of penalty on a person who has done an act or omitted to do an act which has rendered goods liable for confiscation under Section 111 of the Customs Act. Further, Section 112 states that penalty can also be imposed on a person who has dealt with goods in any manner, while having a reason to believe that said goods are liable to confiscation under Section 111.

H.5 In the light of aforesaid, it can be clearly noted that the provisions of Section 112(a) of the Customs Act can be invoked only against a person who, in relation to the goods, does or omits to do any act, which act or omission renders the goods liable to confiscation under Section 111 of the Customs Act.

H.6 As explained earlier, the impugned goods are not liable to confiscation and thus Section 112(a) cannot be invoked. Further, the Noticee in the present case have neither done nor omitted to do anything which has rendered the impugned goods liable to confiscation. Therefore, the provisions of Section 112(a) of the Customs Act are not invocable against the Noticee.

H.7 Reliance is placed in this regard on the case of ***P & B Pharmaceuticals (P) Ltd. vs. Collector of Central Excise 2003 (153) E.L.T. 14 (SC)***, ***Shri Sanjay Kumar Agarwal, Proprietor of M/s. Ocean International vs. Commissioner of Customs (Port), Kolkata., 2021-VIL-13-CESTAT-KOL-CU***

***No penalty can be imposed on the Noticee under section 114A of the Customs Act***

H.8 The SCN seeks to impose penalty on the Noticee under section 114A of the Customs Act.

H.9 That penalty under Section 114A of the Customs Act can be imposed in cases when the duty has not been paid or short-paid/part-paid by the reason of ***collusion or any willful mis-statement or suppression of facts.***

H.10 That the present case is not the case of collusion, wilful mis-statement or suppression of facts. In the present case, the dispute is regarding the correct classification of the impugned goods. That for the following reasons, penalty cannot be invoked in the present case:

***No allegation in the SCN w.r.t. collusion, wilful mis-statement or suppression of facts***

H.11 That the SCN does not allege collusion, wilful mis-statement or suppression of facts, rather the only allegation is pertaining to mis-classification (refer **para 10 of the SCN**) that is not covered under the ambit of section 114A of the Customs Act.

H.12 As can be seen above, there are only three ingredients of section 114A of the Customs Act namely collusion, wilful mis-statement or suppression of facts. None of the ingredients are alleged in the SCN, hence, on this ground alone, the extended period demand and penalty under Section 114A are liable to be dropped.

H.13 As has been demonstrated by the Noticee in its submissions made above, the extended period of limitation cannot be invoked in the present case in the absence of any willful mis-statement of description or wilful mis-classification or suppression of facts, as has been stated by the Hon'ble Supreme Court time and again. That no penalty is imposable under Section 114A of the Customs Act.

H.14 Reliance is placed on the cases of ***CC v. Videomax Electronics, 2011 (264) ELT 0466 (Tri.-Bom.), Union of India v. Rajasthan Spinning & Weaving Mills 2009 (238) E.L.T. 3 (S.C.).***

***Penalty cannot be imposed on the Noticee as there was no intention to evade payment of duty***

H.15 Tthat presence of *mens rea* is also a determining factor to make an assessee liable for penalty under the Customs Act. In the instant case, the Noticee has not committed any act which has made the impugned goods liable for confiscation. The present case merely involves classification which is purely interpretation issue and does not involve any *mens-rea*. *Mens-rea*, on the part of the Noticee, is not even alleged in the SCN.

H.16 The judicial precedents have also held the presence of *mens rea* as an essential prerequisite for establishing abetment and for imposition of penalty under Section 112(a) of the Customs Act. In this regard the Noticee have placed their reliance on the case of ***V. Lakshmipathy vs. Commissioner of Customs, 2003 (153) ELT 640 (Tri-Bang)***, ***Hindustan Steel Ltd. Vs. Commissioner, 1978 (2) E.L.T. (J159)*** and ***Akbar Badruddin Jiwani v. Collector of Customs*** reported at ***1990 (47) ELT 161.***

H.17 That the element of *mens rea* is conspicuously absent from the case in point. The Noticee correctly declared the value and description of impugned goods in the impugned BOEs and claimed the classification basis

on its *bona fide* belief that the impugned goods are mainly used in railways and hence, the impugned goods are not liable for penalty under Section 112(a).

H.18 Moreover, even the supplier also confirmed on the letter head vide letter dated 14.10.2019 that the identical goods are classifiable under CTI 8601 2000 (Refer Annexure-8). The Noticee followed the same classification as confirmed by the supplier. In such a case, *mens-rea* cannot be alleged against the Noticee for mis-classification.

***No penalty can be imposed in cases relating to classification***

H.19 Classification is a matter of interpretation and the Noticee is entitled to adopt classification which is most appropriate as per the Noticee's understanding of the impugned goods. The Noticee cannot be held responsible for wilful misstatement of classification of impugned goods, even if the clearance is under the self-assessment regime.

H.20 In a number of judgments, Hon'ble Tribunal has held that if there is difference of opinion about classification between the importer and department, penalty is not imposable. In this regard, reliance is placed on the cases of ***Commr. of Cus. (Import), JNCH, Nhava Sheva vs. Amrit Corp. Ltd., 2016 (333) E.L.T. 340 (Tri. - Mumbai)***, ***Vadilal Industries Ltd. vs. Commissioner Of C. Ex., Ahmedabad 2007 (213) E.L.T. 157 (Tri. - Ahmd.)***, ***Bahar Agrochem & Feeds Pvt. Ltd vs. Commissioner of C.Ex., Pune, 2012 (277) E.L.T. 382 (Tri-Mum)***, and ***Goodyear (India) vs. CCE, 2003 (157) ELT 560***.

H.21 As the present case does not involve any collusion, wilful mis-statement or suppression of facts and is a pure classification dispute, therefore, it is not a case of collusion, wilful mis-statement or suppression of facts. Hence, on the above grounds, penalty under Section 112 and/or 114A is also not imposable.

***Section 112 and 114A are mutually exclusive. Hence, simultaneous penalties under section 112 and 114A are legally not sustainable***

H.22 It is bad in law to invoke penalty under Sections 112 and 114A of the Customs Act simultaneously.

H.23 That in light of the fifth *proviso* to Section 114A, no penalty can be levied under Section 112 where a penalty is imposed under Section 114A. Both the provisions are mutually exclusive to each other.

H.24 This position has also been affirmed vide a catena of judgments:

i. ***Commissioner of Customs v. Shri Ashwini Kumar Alias Amanullah (Vice-Versa), 2020 (11) TMI 441 - CESTAT NEW DELHI;***

ii. ***Commissioner of Customs & Central Excise, Goa v. Bright Impex, 2017 (2) TMI 354 - CESTAT MUMBAI;***

iii. ***Commissioner of Customs & Central Excise, Goa v. Newtech Corporation, 2017 (2) TMI 292 - CESTAT MUMBAI***

H.25 The Noticee reserves its right to add, alter or amend the grounds till the adjudication of the SCN.

## I. DEMAND NOT SUSTAINABLE AS ASSESSMENT MADE IN BOE HAS NOT BEEN CHALLENGED BY THE DEPARTMENT

I.1. That for the finally assessed BOE, issuance of SCN under section 28 is bad in law unless the BOE is challenged by the department by way of preferring appeal. Therefore, the SCN is incorrect because the impugned BOEs were finally assessed by the proper officer under the Customs Act. These orders were passed on the satisfaction of the proper officer that the said goods have been properly assessed before clearance of such goods for home consumption.

I.2. That the Out of Charge orders being *quasi-judicial* orders, can only be set aside by a competent appellate authority by way of an appeal. That the *quasi-judicial* orders cannot be set aside by a mere show cause notice. A show cause notice cannot be issued unless the '*Out of charge*' order is challenged by way of appeal.

I.3. This position is clear by the decision of ***Collector Vs. Flock (India) Pvt. Ltd., 2000 (120) ELT 285 (SC)*** and ***Priya Blue Industries Ltd. Vs. Commissioner of Customs (Preventive), 2004 (172) ELT 145 (SC)*** *and* ***ITC Limited vs. Commissioner of Customs, Kolkata,*** 2019 ***(368) E.L.T. 216 (S.C.)***

I.4. The above principle has been even applied by the Hon'ble Punjab and Haryana High Court in ***Jairath International vs. UOI, 2019 (10) TMI 642***, ***Vittesse Export Import vs. CC (EP), Mumbai, 2008 (224) ELT 241 (Tri.-Mumbai)***, and ***Khetrapal vs. CC, Jamnagar, 2014 (304) ELT 408 (Tri.-Ahmd.).***

I.5. That since in this case the assessments done in the impugned BOEs have attained finality due to the fact that no appeal has been filed by the Department against the finally assessed BOEs, the same cannot be altered by issue of a demand under Section 28 of the Customs Act. Hence, it is submitted that the SCN is invalid and the demand therein is liable to be dropped on this ground alone.

*Once the duty is levied and paid as per assessment order, no SCN can be issued under Section 28 of the Customs Act.*

I.6. That if in respect of an assessee, a method of assessment is approved and consequently the assessee pays the duties or taxes based on such assessment, then it is not a case of duty 'short levied' or 'not levied' or 'short paid' or 'not paid', unless such method of assessment is challenged and held to be incorrect.

I.7. For the above, reliance is placed on the decision of ***CCE vs. Cotspun Ltd. 1999 (113) ELT 353 (SC)***

I.8. In the aforesaid judgment, the Constitution Bench approved the judgment of division bench of Supreme Court in the case of ***Rainbow Industries [1994 (74) ELT 3 (SC)]***,

I.9. In ***Mahindra & Mahindra Vs. Addl. CCE – 1998 (29) RLT 117 (T)***, the Tribunal in the context of Central Excise law, decided the issue on merits in favour of Mahindra & Mahindra. It was held that if there was suppression of facts, demand can be raised under proviso to Section 11A. However, in view of the decision on merits, the appeal of Mahindra & Mahindra was allowed by the Tribunal. The department filed an appeal to Supreme Court. By a judgment reported at ***Addl. CCE Vs. Mahindra & Mahindra Ltd. – 2000 (120) ELT 290 (SC)***, the appeal of the Revenue was dismissed by the Supreme Court. The Supreme Court did not go into the merits of the matter. Following its own decision in **Cotspun (Supra)**, the Supreme Court dismissed the appeal of the department before it.

I.10. It is significant to note that taking note of the aforementioned judicial decisions, Section 11A of Central Excise Act was amended and retrospectively validated vide Finance Act, 2000. However, Section 28 of Customs Act which is *pari materia* to Section 11A of Central Excise Act, no amendment was carried out under the Customs Act. Thus, in the absence of a legislative sanction, the ratio laid down in the **Cotspun (Supra)** and **Mahindra & Mahindra (Supra)** will squarely apply to Section 28 of the Customs Act.

I.11. In the present case also, the duty levied and paid by the Noticee was based on the approved assessment of the impugned BoEs undertaken by the Customs Department. Thus, it is submitted that when the duty has been discharged basis the out of charge given by the Customs Department, such situation cannot be considered to be falling within the ambit of duties 'not levied' or 'not paid' or 'short levied' or 'short-paid'. In view of the above same, the SCN has been incorrectly issued under Section 28 and the impugned order passed for the subject SCN is liable to be set aside.

2.19 In view of the above, it was requested to drop the proceedings initiated vide Show Cause Notice No. 143/2025-26/GR-VB/NS-V/CAC/JNCH dated 14.05.2025 and provide consequential relief to the Noticee.

## 3. RECORD OF PERSONAL HEARING

3.1 There is only one Noticee in the subject SCN, viz., M/s. M/s. ISGEC Heavy Engineering Ltd.

3.2 In compliance of provisions of Section 28(8) read with Section 122A of the Customs Act, 1962 and in terms of the principle of natural justice, the Noticee viz. M/s. M/s. ISGEC Heavy Engineering Ltd. were granted opportunities of Personal Hearing (PH) on 07.04.2026, 28.04.2026 and 30.04.2026 and for the same reasons PH intimation letters were issued by speedpost as well as official email id of the noticee/authorized representatives. On 30.04.2026, Ms. Jyoti Pal, Advocate and Ms. Anjali Gupta, Advocate, Authorised representatives on behalf of the aforesaid noticee attended Personal Hearing virtually before the Adjudicating Authority. During the PH, they made the following submissions as under:

(i) They reiterated the contents of reply to the subject SCN submitted vide letter dated 29.04.2026.

In view of the above, they requested for dropping of the charges levelled against the Noticee in the SCN.

## 4. DISCUSSION AND FINDINGS

4.1 I have carefully gone through the subject Show Cause Notice (SCN) and its enclosures, material on record and facts of the case, as well as oral submissions made during the PH and written submission made by the Noticees. Accordingly, I proceed to decide the case on merit.

4.2. Section 122A of the Customs Act, 1962, stipulates that the Adjudicating Authority shall give an opportunity of being heard to a party in a proceeding, if the party so desires.

4.3. I find that in compliance to the provisions of the Section 28(8) and Section 122A of the Customs Act,1962 and in terms of the principles of natural justice, opportunities for Personal Hearing (PH) were granted to

both the Noticees. Thus, the principles of natural justice have been followed during adjudication proceedings. Having compiled with the requirement of the principle of natural justice, I proceed to decide the case on merits, bearing in mind the allegation made in the SCN as well as the Submission/Contention made by the Noticee.

4.4. The Noticees have placed reliance on various judgments of Tribunals, High Courts and Apex Court on various issues, however, I find that the facts and circumstances involved in these judgements are not similar to facts and circumstances of the case in hand. Further, I find that the Hon'ble Supreme Court of India in case of Ambica Quarry Works Vs. State of Gujarat & Others [1987(l) S.C. C. 213] observed that *"the ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides and not what logically follows from it."* Further in the case of Bhavnagar University Vs. Palitana Sugar Mills (P) Ltd. 2003 (2) SCC 111, the Hon'ble Apex Court observed "It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."

One other reference on the situation, I have noted is the decision of the Hon'ble Supreme Court in Ispat Industries Vs. Commissioner of Customs, Mumbai [2004 (202) ELT 56C (SC)], wherein, the Hon'ble Court has quoted Lord Denning and ordered as under:

*Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly reliance on a decision is not proper.*

*The following words of Lord Denning in the matter of applying precedents have become locus classicus:*

"*Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."*

4.5 I find that noticee in their written submission has contended that the goods were imported on the basis of assessed Bills of Entry which are in themselves to be considered as appealable orders under Section 47 of the CA, 1962; that the assessment orders being quasi-judicial orders, they ought be challenged before taking recourse to Section 28 of the Customs Act; that the demand of duty is not sustainable as the assessment has not been challenged by the Department. They relied upon the case of ITC Ltd. Vs Commissioner of Central Excise, Kolkata-IV [2019 (368) ELT 216 (SC)].

4.6 In this context, I find that there are plenty of case laws of various Appellate Forums, wherein it is held that for demand of short levy of Customs Duty, assessment is not required to be challenged. In the case of M/s. ITC Ltd., the Hon'ble Supreme Court was dealing with the issue of filing Refund under Section 27 of the Customs Act, 1962 without taking recourse to modify the assessment. The Hon'ble Supreme Court observed (Para 44 and 47 of the judgment) that refund proceedings under Section 27 are in the nature of execution for refunding amount and assessment cannot be challenged by way of refund application. It is also held that any order including self-assessment can be modified under Section 128 or under other relevant provisions of the Act. Thus, the judgment was given in the backdrop of different set of facts to hold that appeal against the assessment of Bill of Entry to modify the assessment is prerequisite for sanctioning of refund and refund sanctioning authority cannot adjudicate the exigencies involved. Hence, reliance placed by the Noticee on case law of M/s. ITC Ltd. is of no avail in the case on hand.

4.7 I find that this issue has also been settled by the Hon'ble Supreme Court in the case of Union of India V/s. Jain Shudh Vanaspati Limited [reported at 1996 (86) ELT 460 (SC)] wherein it has been clearly held that Show Cause Notice under Section 28 of the Customs Act, 1962 can be issued without revising the order of assessment. The same ratio was once again pronounced by the Hon'ble Supreme Court in the case of Collector of Central Excise, Bhubaneshwar V/s. Re-Rolling Mills [reported at 1997 (94) ELT 8 (SC)]. Once again by relying the ratio of Jain Shudh Vanaspati Limited [reported at 1996 (86) ELT 460 (SC)] the Civil Appeal No. 327/1998 filed by Component Corporation was rejected by the Supreme Court as reported at Component Corporation V/s Collector – 1998 (99) ELT A228 and thus, upholding the Tribunal's order dated 19-09-1996 reported at Component Corporation V/s. Collector of Customs, New Delhi – 1997 (93) ELT 225 (Tribunal).

4.8. I further rely upon some of the judgments, the details of the same are as follows:

(i) M/s. Interglobe Aviation Ltd. V/s. Pr. Commissioner Bangalore reported in 2022 (379) ELT 235 (Tri. Bang.);

*"18. Coming to the issue as to whether the issuance of notice under section 28 of Customs Act, 1962 was correct as no appeals have been filed against the assessed bills of entry, we find that the appellants placed reliance on the decision of Hon'ble Supreme Court in the case of ITC Ltd Vs Commissioner of Central Excise, Kolkata IV, 2019 (368) ELT 216 (SC) wherein it was held that the sign/endorsement made on the bill of entry is an order of assessment under Section 17 which is an appealable order and any person including the departmental authorities who are aggrieved by order of self-assessment should challenge the assessment by way of filing an appeal against such self-assessment under Section 128 of the Customs Act, 1962; they submit that in the absence of any appeal against the Out of Charge orders for clearance of goods or the Bills of Entry passed by the proper officers of Customs, the said orders of assessment and clearance have attained finality and the same cannot be challenged or negated by issuance of the impugned order.*

*18.1. Learned Commissioner, on the other hand, finds that the case laws submitted by the appellants pertained to the era where goods were assessed duty by the officers whereas in the present case, the goods have been cleared on self-assessment basis. We find that the appellants have relied upon the recent decision of Hon'ble Supreme Court in the case of ITC Ltd. Vs CCE, Kolkata-IV, 2019 (368) ELT 216(SC). We find that the issue for consideration before Apex Court was about refund and in this context, Hon'ble Apex Court has observed that in terms of the provisions of Section 27 read with Section 17 of the Customs Act, 1962, no refund claim is maintainable unless the order of assessment is challenged. The Hon'ble Supreme Court observes that: 47. When we consider the overall effect of the provisions prior to amendment and post-amendment under Finance Act, 2011, we are of the opinion that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would not be within the ken of Section 27 to set aside the order of self-assessment and reassess the duty for making refund; and in case any person is aggrieved by any order which would include self-assessment, he has to get the order modified under Section 128 or under other relevant provisions of the Act.*

*18.2. On going through the above cited case, we find that the issue which was considered by the Hon'ble Apex Court was not "Demand" issued under Section 28 but "Refund" under Section 27. We find that the Apex Court has not, anywhere in the order, observed that for issuing a demand under Section 28, the assessment order needs to be challenged under the provisions of Section 128. We cannot read such a conclusion from the judgment. Therefore, we find that in view of the provisions of Section 17 and Section 28 of the Customs Act, 1962, the demand issued is in order. We find that learned Commissioner has rightly relied upon the order of Hon'ble Madras High Court, 2006 (199) ELT 405."*

(ii) Commissioner of Customs, C. Ex. & ST, Hyderabad-II V/s. M/s. S.V. Technologies Pvt. Ltd. reported in 2019 (369) ELT 1631 (Tri. Hyd.); wherein it has been clearly held that Show Cause Notice can be issued without challenging the assessment in view of the issue already settled by the Supreme Court in the case of Jain Shudh Vanaspati Limited. It has been further held that judgment of Priya Blue Industries - 2004 (172) ELT 145 (SC) and Flock (India) Private Limited - 2000 (120) ELT 285 (SC) are clearly distinguishable being related to refund and not demand.

4.9 I find that Show Cause Notice No. 143/2025-26/ADC/Gr.VB/NS-V/CAC/JNCH dated 14.05.2025 was issued to M/s. ISGEC Heavy Engineering Ltd. in respect of import of "Electrically Operated Rail Cum Road Vehicles / Rail Car Movers" imported through JNCH during May 2020 under various Bills of Entry, wherein the importer had classified the goods under CTH 86012000 as "Rail Locomotives powered by electric accumulators" and discharged customs duty at BCD @ 10% and IGST @ 12%; however, upon scrutiny of the Bills of Entry, supplier's website, technical literature and operational features of the imported goods, the Department formed a view that the imported vehicles were specially constructed to operate both on rail tracks and roads and therefore, by virtue of HSN Explanatory Notes, Note 4(a) to Section XVII of the Customs Tariff Act, 1975 and CBEC Circular No. 14/2012-Cus dated 11.06.2012, the goods were correctly classifiable under CTH 87049012 as "Electrically Operated Lorries and Trucks" attracting BCD @ 40% along with applicable IGST, and accordingly alleged that the importer had deliberately misclassified the goods under Chapter 86 with intent to evade payment of customs duty, resulting in short payment of customs duty amounting to Rs. 2,76,66,845/-; consequently, the notice proposed rejection of the declared classification under CTH 86012000 and reassessment of the imported goods under CTH 87049012, recovery of differential duty under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA, confiscation of the imported goods valued at Rs. 10,29,27,250/- under Section 111(m) of the Customs Act, 1962 on the ground of misdeclaration and misclassification, and imposition of penalties upon the importer under Sections 112(a) and 114A of the Customs Act, 1962 for alleged wilful misstatement, suppression of facts or improper importation of goods.

4.10 On a careful perusal of the Show Cause Notice and case records, I find that following main issues are involved in this case which are required to be decided:

(i) Whether the classification of the impugned goods covered under Bill of Entry mentioned as per Annexure-A to the notice, under 86012000, attracting Customs duty BCD @ 10% & IGST @12 % as per Notification No. 01/2017- Integrated Tax (Rate) dated 28 June 2017, Serial No. I/205A, should be rejected and the same should be classified under CTH 87049012 and the Bills of Entry should be assessed to merit duty accordingly.

(ii) Whether differential duty amounting to the Rs. 2,76,66,845/- (Rs. Two Crore Seventy-Six Lakh Sixty-Six Thousand Eight Hundred Forty-Five Only) along with applicable interest should be recovered from the importer as per provisions of Section 28 & 28AA of the Customs Act, 1962.

(iii) Whether the goods imported vide Bills of Entry as mentioned as per Annexure-A to the notice having total assessable value of Rs. 10,29,27,250/- (Rupees Ten Crore Twenty-Nine Lakh Twenty-Seven Thousand Two Hundred Fifty Only) should be held liable for confiscation under Section 111(m) of the Customs Act, 1962.

(iv) Whether penalty should be imposed on the importer under Section 112(a) and/ or Section 114A of the Customs Act, 1962.

4.11 After having framed the substantive issues raised in the SCN which are required to be decided, I now proceed to examine each of the issues individually for detailed analysis based on the facts and circumstances mentioned in the SCN; provision of the Customs Act, 1962; nuances of various judicial pronouncements, as well as Noticee's oral and written submissions and documents / evidences available on record.

4.12 **Whether the classification of the impugned goods covered under Bill of Entry mentioned as per Annexure-A to the notice, under 86012000, attracting Customs duty BCD @ 10% & IGST @12 % as per Notification No. 01/2017- Integrated Tax (Rate) dated 28 June 2017, Serial No. I/205A, should be rejected and the same should be classified under CTH 87049012 and the Bills of Entry should be assessed to merit duty accordingly.**

4.12.1 I have carefully gone through the Show Cause Notice, Bills of Entry, import invoices, packing lists, technical literature, product brochures, operation manuals, website extracts of the overseas supplier, written submissions filed by the Noticee, the relevant provisions of the Customs Tariff Act, 1975, Harmonized System of Nomenclature (HSN) Explanatory Notes and the provisions of the Customs Act, 1962. I have also considered the rival contentions advanced by the Department and the Noticee regarding the classification of the imported goods described as "Rail Cum Road Vehicle / Electrically Operated Rail Car Movers."

4.12.2 The primary issue requiring determination in the present proceedings is whether the imported goods are correctly classifiable under CTH 86012000 as "Rail locomotives powered from an external source of electricity or by electric accumulators" as claimed by the importer or whether the goods merit classification under Chapter 87, more specifically under CTH 87049012, as proposed in the Show Cause Notice. The determination of this issue requires examination of the tariff entries, statutory Section Notes, HSN Explanatory Notes and the actual nature, design, operational characteristics and functionality of the imported goods.

4.12.3 I find that the Noticee imported electrically operated rail car movers specifically designed for shunting, hauling and movement of railway wagons/coaches within industrial premises and railway environments. The technical literature available on record reveals that the imported goods are fitted with rail guidance systems enabling movement on railway tracks and are simultaneously equipped with rubber tyres enabling independent road/off-track movement. The imported goods are therefore not conventional rail-bound locomotives operating exclusively on railway tracks.

4.12.4 I further find that the importer itself consistently described the impugned goods as "Rail Cum Road Vehicles" in the Bills of Entry and import documents. The supplier's brochures and technical specifications also repeatedly describe the imported goods as road-rail vehicles capable of operation both on railway tracks and on road surfaces. Thus, the dual operational capability of the imported goods is not disputed even by the Noticee.

4.12.5 Before proceeding further, the relevant tariff entries and statutory note are reproduced below:

Heading 8601

*"Rail locomotives powered from an external source of electricity or by electric accumulators"*

Heading 8704

*"Motor vehicles for the transport of goods"*

Note 4(a) to Section XVII

*"vehicles specially constructed to travel on both road and rail are classified under the appropriate heading of Chapter 87."*

4.12.6 I find that the above Section Note is of crucial significance in the present dispute. Section Notes and Chapter Notes form an integral part of the tariff and possess statutory force. The classification of goods under the Customs Tariff is required to be determined not merely on the basis of heading descriptions but in conjunction with the relevant Section Notes and Chapter Notes. In the present case, Note 4(a) to Section XVII specifically deals with vehicles specially constructed to travel on both road and rail and expressly directs classification of such vehicles under Chapter 87.

4.12.7 I find that the language employed in Note 4(a) is plain, clear, mandatory and leaves no scope for any alternate interpretation. The statutory note does not provide any qualification that the road use should be predominant or substantial. The note also does not provide that the principal function of the vehicle should be examined before applying the note. The only statutory requirement is that the vehicle should be specially constructed to travel on both road and rail. Once this requirement is fulfilled, the note specifically mandates classification under the appropriate heading of Chapter 87.

4.12.8 I find from the technical specifications available on record that the imported vehicles are equipped with pneumatic/rubber tyres and possess independent propulsion systems enabling them to travel on road surfaces without external transportation support. The vehicles are capable of moving from one rail line to another through road movement and are not confined to continuous rail track operations alone. Thus, the imported goods clearly satisfy the statutory requirement of being "vehicles specially constructed to travel on both road and rail."

4.12.9 The Noticee has argued that the road movement capability of the imported goods is merely incidental or ancillary and that the principal function of the goods is railway shunting operations. However, I find that such argument is contrary to the express language of Note 4(a) to Section XVII. The statutory note nowhere prescribes predominant use as the determining criterion. It is a settled principle of tariff interpretation that where the statutory language is clear and unambiguous, no words can be added or substituted while interpreting the provision. Therefore, the argument of the Noticee regarding limited road use cannot override the explicit statutory mandate contained in Note 4(a).

4.12.10 I further find that the HSN Explanatory Notes also support the Department's stand. The HSN Explanatory Notes to Chapter 87 specifically recognize:

*"Road-rail lorries specially equipped to travel both by road and rail"* as classifiable under Chapter 87.

The HSN Explanatory Notes therefore specifically contemplate dual-mode rail-road vehicles and classify them under Chapter 87.

4.12.11 The Hon'ble Supreme Court in Collector of Central Excise v. Wood Craft Products Ltd. 1995 (77) E.L.T. 23 (S.C.) held that HSN Explanatory Notes provide a safe guide for interpretation of tariff entries and deserve considerable weight in classification matters. Similarly, in Collector of Customs v. Business Forms Ltd. [2002 (142) E.L.T. 18 (S.C.)], the Hon'ble Supreme Court reiterated that HSN Explanatory Notes are valuable aids in resolving classification disputes. Therefore, the HSN Explanatory Notes substantially reinforce the Department's proposed classification.

4.12.12 I also find that CBEC Circular No. 14/2012-Cus dated 11.06.2012 clarified that rail cum road vehicles are classifiable under the appropriate heading of Chapter 87 by application of Note 4(a) to Section XVII. Though circulars cannot override statutory provisions, the said circular correctly reflects the legal position emerging from the tariff note and further establishes that the classification principle regarding dual-mode vehicles was already clarified by the Board prior to the importation of the impugned goods.

4.12.13 Coming to the specific classification under Heading 8704, I find that the imported goods are self-propelled electrically operated vehicles used for hauling and movement of loaded railway wagons/coaches carrying goods/material within industrial premises, railway sidings, depots and loading/unloading areas. The imported goods facilitate movement, transportation and handling of goods-bearing railway stock and are therefore integrally connected with transport functions relating to goods.

4.12.14 Heading 8704 covers "Motor vehicles for the transport of goods." I find that the scope of Heading 8704 is not restricted only to conventional cargo trucks operating on public roads. The heading covers specialized

motor vehicles whose essential role is transport and movement of goods within industrial and operational environments. The imported vehicles move wagons/coaches carrying goods/material and therefore perform transportation-related functions in railway and industrial premises.

4.12.15 The contention of the Noticee that the imported goods do not themselves carry goods and therefore cannot fall under Heading 8704 is not acceptable. The imported goods are specifically designed for movement and handling of goods-bearing railway wagons. The functional role of the imported vehicles is therefore directly connected with transport and handling of goods. Classification under the Customs Tariff cannot be restricted by adopting an unduly narrow interpretation of the heading when the operational role and functionality of the goods clearly fall within its ambit.

4.12.16 In Fenner (India) Ltd. v. Commissioner of Customs [2004 (167) E.L.T. 145 (S.C.)], the Hon'ble Supreme Court observed that tariff classification is governed primarily by statutory notes, heading descriptions and functional characteristics of the goods. The Noticee has heavily relied upon Heading 8601 covering rail locomotives powered by electric accumulators. However, I find that Heading 8601 applies to conventional rail locomotives operating exclusively on railway tracks. The imported goods in the present case admittedly possess independent road operational capability and therefore stand specifically excluded from Chapter 86 by operation of Note 4(a) to Section XVII.

4.12.18 It is a settled principle of tariff interpretation that specific Section Notes prevail over general heading descriptions. As held by the Hon'ble Supreme Court in CCE v. Wockhardt Life Sciences Ltd. [2012 (277) E.L.T. 299 (S.C.)], the functional utility and statutory notes possess binding force. Since Note 4(a) to Section XVII specifically identifies the 'dual construction' (road and rail) as the defining characteristic for classification, this statutory mandate must prevail over the general description of locomotives under Heading 8601.

4.12.19 The Noticee has also relied upon appellate decisions of Hon'ble Commissioner (Appeals), Kolkata vide Order-in-Appeal No. KOL/CUS(PORT)/KS/577/2024 dated 07.10.2024 passed in respect of similar goods. However, I find that classification disputes are required to be decided on the basis of the statutory tariff structure, factual characteristics of the goods and applicable Section Notes. A contrary view adopted in another proceeding cannot override the clear statutory mandate contained in Note 4(a) to Section XVII.

4.12.20 I also find that the importer, despite being fully aware regarding the dual operational capability of the imported goods and despite existence of the statutory Section Note as well as CBEC Circular clarifying classification under Chapter 87, continued to classify the goods under Heading 8601 attracting substantially lower Basic Customs Duty. The classification adopted by the importer therefore cannot be accepted as legally correct.

4.12.21 In view of the foregoing discussions and findings, I hold that the imported "Rail Cum Road Vehicles / Electrically Operated Rail Car Movers" are correctly classifiable under CTH 87049012 of the Customs Tariff Act, 1975 and not under CTH 86012000 as claimed by the importer. Consequently, the benefit of lower rate of duty availed under Chapter 86 was not admissible to the Noticee.

4.13 **Whether differential duty amounting to the Rs. 2,76,66,845/- (Rs. Two Crore Seventy-Six Lakh Sixty-Six Thousand Eight Hundred Forty-Five Only) along with applicable interest should be recovered from the importer as per provisions of Section 28 & 28AA of the Customs Act, 1962.**

4.13.1 I have already held in foregoing paras that the goods viz. "Rail Cum Road Vehicles / Electrically Operated Rail Car Movers" imported by the Noticee as mentioned in the subject SCN, were mis-classified. Thus, after having determined the correct classification of the imported goods, it is imperative to determine whether the demand of differential Customs duty of Rs. 2,76,66,845/- (Rs. Two Crore Seventy-Six Lakh Sixty-Six Thousand Eight Hundred Forty-Five Only) as per the provisions of Section 28(4) of the Customs Act, 1962, in the subject SCN is sustainable or otherwise. The relevant legal provision is as under:

***SECTION 28(4) of the Customs Act, 1962.***

***Recovery of duties not levied or not paid or short-levied or short- paid or erroneously refunded. –***

*(4) 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 wilful 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.*

4.13.2 I find that the Noticee imported goods described as "Rail Cum Road Vehicles / Electrically Operated Rail Car Movers" and classified the same under CTH 86012000 as "Rail locomotives powered from an external source of electricity or by electric accumulators." However, for the reasons discussed in detail hereinabove, I have already held that the imported goods are correctly classifiable under CTH 87049012 by virtue of Note 4(a) to Section XVII of the Customs Tariff Act, 1975, since the imported goods are specially constructed vehicles capable of operating both on rail and road. Consequently, the concessional rate of duty availed by the importer under Chapter 86 was not legally admissible.

4.13.3 I find that by adopting incorrect classification under Heading 8601 instead of Heading 8704, the Noticee paid customs duty at a rate lower than what was actually leviable under law. The incorrect classification directly resulted in short levy and short payment of customs duty. The differential duty quantified in the Show Cause Notice therefore represents customs duty which was legally payable but remained unpaid at the time of importation due to incorrect self-assessment made by the importer.

4.13.4 I find that under the scheme of self-assessment introduced under the Customs Act, 1962, the importer bears the primary responsibility for correct declaration, classification and payment of customs duty. The proper officer, while facilitating clearance of goods, proceeds substantially on the basis of declarations and self-assessment made by the importer. Therefore, where the importer adopts an incorrect tariff classification resulting in short payment of duty, the liability for such short payment squarely falls upon the importer.

4.13.5 I further find that the imported goods were admittedly dual-mode rail-road vehicles. The importer itself described the goods as "Rail Cum Road Vehicles" in the Bills of Entry. The technical literature and brochures available with the importer also clearly established that the goods possessed road operational capability in addition to rail functionality. Therefore, the importer was fully aware regarding the true nature, characteristics and functionality of the imported goods at the time of importation.

4.13.6 I also find that specific Note 4(a) to Section XVII categorically provides that vehicles specially constructed to travel on both road and rail are classifiable under the appropriate heading of Chapter 87. Further, CBEC Circular No. 14/2012-Cus dated 11.06.2012 had also clarified the classification position relating to rail cum road vehicles. Despite the existence of the above statutory provisions and clarification, the importer classified the goods under Heading 8601 attracting substantially lower Basic Customs Duty. Thus, the short levy occurred directly due to the incorrect classification adopted by the importer.

4.13.7 The Noticee has contended that the issue involves interpretation of tariff entries and therefore the demand is not sustainable. I am unable to accept the said contention. Classification disputes are required to be resolved in accordance with the statutory tariff structure, Section Notes and HSN Explanatory Notes. In the present case, the classification of the imported goods under Chapter 87 flows directly from specific Note 4(a) to Section XVII. Therefore, once the imported goods admittedly possessed dual rail-road operational capability, classification under Chapter 86 became legally untenable. Consequently, the differential duty arising from the incorrect classification becomes recoverable under Section 28 of the Customs Act, 1962.

4.13.8 I further find that the importer failed to correctly declare the legal classification necessarily flowing from the admitted characteristics of the imported goods. The importer consciously adopted Heading 8601 despite the existence of a statutory note specifically directing classification under Chapter 87. Such incorrect declaration resulted in short payment of customs duty legally payable on the imported goods.

4.13.9 The Noticee has also argued that the Bills of Entry were assessed by the Department and therefore no demand can subsequently be raised. I find that such contention is legally unsustainable. It is well settled that assessment or clearance of goods by the Department does not validate an otherwise incorrect declaration made by the importer. The importer bears primary responsibility for correct assessment and payment of duty. Recovery proceedings under Section 28 are specifically intended to recover duties which escaped levy or were short levied due to incorrect declaration, misclassification or other acts leading to short payment of duty.

4.13.10 In Tamil Nadu Housing Board v. Collector of Central Excise, the Hon'ble Supreme Court held that approval or acceptance by the Department does not prevent subsequent recovery proceedings where duty has escaped levy. Similarly, in Collector of Customs v. Sneha Sales Corporation, the Hon'ble Supreme Court observed

that incorrect classification resulting in short levy is recoverable under the statutory provisions relating to recovery of duty.

4.13.11 I also find that the differential duty amount quantified in the Show Cause Notice has been worked out on the basis of the correct classification of the imported goods under CTH 87049012 and the applicable rate of duty. The Noticee has not produced any cogent evidence to rebut the duty calculation proposed in the Show Cause Notice except contesting the classification itself. Since the classification proposed in the Show Cause Notice stands upheld, the consequential duty demand also becomes sustainable.

4.13.12 In terms of Section 46(4) of the Customs Act, 1962, the importer is required to make a true and correct declaration in the Bill of Entry submitted for assessment of Customs duty. However, in the instant case, I find that the Noticee has deliberately evaded payment of applicable duty on the impugned imported goods. By resorting to this deliberate and wilful evasion of duty, the Noticee has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer. Thus, I find that this wilful and deliberate act was done with the clear intention to evade payment of due duty. As the Noticee has mis-classified the impugned goods under incorrect CTI and evaded the payment of the applicable duty thereon on the date of importation, the Noticee can only come clean of its liability by way of payment of duty not paid.

4.13.13 Consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-assessment' has been introduced in Customs clearance. **Under self-assessment, it is the importer who has to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry.** Thus, with the introduction of self-assessment by amendments to Section 17, it is the added and enhanced responsibility of the importer, to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods. In the instant case, as explained in paras supra, the Noticee/importer has wilfully evaded payment of applicable duty resulting in a loss of Government revenue and in turn accruing monetary benefit. Since the Noticee/importer has wilfully mis-declared and suppressed the facts with an intention to evade applicable duty, provisions of Section 28(4) are invokable in this case and the duty, so evaded, is recoverable under Section 28(4) of the Customs Act, 1962.

4.13.14 The scheme of RMS wherein the importers are given so many facilitations, also comes with responsibility of onus for truthful declaration. The Tariff classification and Description of the item, are the first parameters that decides the rate of duty for the goods, which is the basis on which Customs duty is payable by any importer. However, if the importer does not declare the complete details and evades payment of correctly payable duty, it definitely amounts to mis-leading the Customs authorities, with an intent to evade payment of legitimate Customs duty leviable on the said imported goods.

4.13.15 In the instance case, by declaring the goods imported under wrong CTI, the importer had an intent to evade duty in order to pay customs duty at lower rate and thereby to get financial benefits. The importer suppressed the facts by misclassifying the impugned goods and claiming undue duty benefits by mis-classification leading to short payment of customs duties. As there is wilful mis-statement and suppression of facts, extended period of 5 years can be invoked in the present case for demand of duty under Section 28(4) of the Customs Act, 1962.

4.13.16 From the above, it is evident that at the time of filing of the Bills of Entry, the Noticee had wilfully mis-classified the imported goods, with a fraudulent intention to defraud government by paying lesser duty. As the Noticee has paid the duty at a lower rate than what was legitimately payable, the differential duty so not paid is liable to be recovered from them.

4.13.17 The instant case is not a simple case of bonafide wrong declaration of CTI. Instead, in the instant case, the Noticee deliberately chose to mis-classify on the imported goods to claim lower rate of duty, being fully aware of the correct classification of the imported goods. This wilful and deliberate act clearly brings out their 'mens rea' in this case. Once the 'mens rea' is established on the part of Noticee, the extended period of limitation, automatically get attracted.

4.13.18 In view of the foregoing, I find that, due to deliberate suppression and wilful mis-classification, duty demand against the Noticee has been correctly proposed under Section 28(4) of the Customs Act, 1962 by invoking the extended period of limitation. In support of my stand of invoking extended period, I rely upon the court decision in *Union Quality Plastic Ltd. Versus Commissioner of C.E. & S.T., Vapi [Misc.*

*Order Nos.M/12671-12676/2013-WZB/AHD, dated 18.06.2013 in Appeal Nos. E/1762-1765/2004 and E/635- 636/2008] reported as 2013(294) E.L.T.222(Tri.-LB)*, which states that:

> *"In case of non-levy or short-levy of duty with intention to evade payment of duty, or any of circumstances enumerated in proviso ibid, where suppression or wilful omission was either admitted or demonstrated, invocation of extended period of limitation was justified."*

4.13.19 Accordingly, the differential duty resulting from re-classification of the imported goods under correct CTI as per the subject Show Cause Notice, is recoverable from M/s. ISGEC Heavy Engineering Ltd. under extended period in terms of the provisions of Section 28(4) of the Customs Act, 1962.

4.13.20 Therefore, I hold that the short payment of customs duty to the tune Rs. 2,76,66,845/- (Rupees Two Crore Seventy-Six Lakh Sixty-Six Thousand Eight Hundred Forty-Five Only) should be demanded and recovered from the importer, M/s. ISGEC Heavy Engineering Ltd., in terms of Section 28(4) of the Customs Act, 1962, invoking the provision of extended period for duty demand.

4.13.21 As per Section 28AA of the Customs Act, 1962, the person, who is liable to pay duty in accordance with the provisions of Section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2) of Section 28AA, whether such payment is made voluntarily or after determination of the duty under that section. From the above provisions, it is evident that regarding demand of interest, Section 28AA of the Customs Act, 1962 is unambiguous and mandates that where there is a short payment of duty, the same along with interest shall be recovered from the person who is liable to pay duty. The interest under the Customs Act, 1962 is payable once demand of duty is upheld and such liability arises automatically by operation of law. In an umpteen number of judicial pronouncements, it has been held that payment of interest is a civil liability and interest liability is automatically attracted under Section 28AA of the Customs Act, 1962. Interest is always accessory to the demand of duty as held in case of *Pratibha Processors Vs UOI [1996 (88) ELT 12 (SC)]*. In *Directorate of Revenue Intelligence, Mumbai Vs. Valecha Engineering Limited*, Hon'ble Bombay High Court observed that, in view of Section 28AA, interest is automatically payable on failure by the assessee to pay duty as assessed within the time as set out therein.

4.13.22 I have already held in the above paras that the differential Customs duty amounting to Rs. 2,76,66,845/- (Rupees Two Crore Seventy-Six Lakh Sixty-Six Thousand Eight Hundred Forty-Five Only) should be demanded and recovered from M/s. ISGEC Heavy Engineering Ltd. under the provisions of Section 28(4) of the Customs Act, 1962 by invoking extended period. Therefore, I hold that in terms of the provisions of Section 28AA of the Customs Act, 1962, interest on the aforesaid amount of differential Customs duty should also be recovered from M/s. ISGEC Heavy Engineering Ltd.

4.14 **Whether the goods imported vide Bills of Entry as mentioned as per Annexure-A to the notice having total assessable value of Rs. 10,29,27,250/- (Rupees Ten Crore Twenty-Nine Lakh Twenty-Seven Thousand Two Hundred Fifty Only) should be held liable for confiscation under Section 111(m) of the Customs Act, 1962.**

4.14.1 I note that the SCN proposes confiscation of impugned goods covered under Bills of Entry mentioned in Annexure-A to the notice, having total assessable value Rs. 10,29,27,250/- (Rupees Ten Crore Twenty-Nine Lakh Twenty-Seven Thousand Two Hundred Fifty Only) under the provisions of Sections 111(m) of the Customs Act, 1962.

4.14.2 Sections 111(m) of the Customs Act, 1962 states that 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 trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of Section 54;*

4.14.3 Section 111(m) deals with any and all types of mis-declaration regarding any particular of Bill of Entry. Therefore, the declaration of the importer herein by mis-classification of the impugned goods, amounts to mis-declaration and shall make the goods liable to confiscation.

4.14.4 I find that the Noticee imported goods described as "Rail Cum Road Vehicles / Electrically Operated Rail Car Movers" and classified the same under CTH 86012000 as "Rail locomotives powered from an external source of electricity or by electric accumulators." However, as discussed in detail hereinabove, the imported goods are correctly classifiable under CTH 87049012 by virtue of Note 4(a) to Section XVII of the Customs Tariff Act, 1975, since the imported goods are specially constructed vehicles capable of operating both on

road and rail. The importer, by adopting incorrect classification, paid customs duty at a rate substantially lower than what was legally leviable.

4.14.5 I find that the imported goods were assessed and cleared on the basis of the declarations made by the importer in the Bills of Entry. Under the scheme of self-assessment under the Customs Act, the importer bears statutory responsibility for making true, correct and complete declarations regarding classification, valuation and applicability of duty. Therefore, where an importer knowingly adopts an incorrect classification resulting in short payment of duty, the imported goods become liable to confiscation under the relevant provisions of Section 111 of the Customs Act, 1962.

4.14.6 I find that in the present case, the importer was fully aware regarding the true nature and characteristics of the imported goods. The importer itself described the goods as "Rail Cum Road Vehicles" in the Bills of Entry. The technical brochures, operational manuals and product specifications available with the importer clearly established that the imported goods possessed dual rail-road operational capability. Therefore, the importer had complete knowledge regarding the factual nature of the imported goods at the time of importation.

4.14.7 I further find that Note 4(a) to Section XVII specifically mandated classification of vehicles specially constructed to travel on both road and rail under Chapter 87. Further, CBEC Circular No. 14/2012-Cus dated 11.06.2012 had also clarified the classification position relating to rail cum road vehicles. Despite the existence of the above statutory provisions and clarification, the importer consciously classified the imported goods under Heading 8601 attracting substantially lower Basic Customs Duty. Such incorrect declaration directly resulted in evasion and short payment of customs duty legally leviable on the imported goods.

4.14.8 I find that in the present case, the importer misdeclared the classification of the imported goods by classifying the same under Heading 8601 instead of the correct Heading 87049012. Such misdeclaration was not merely technical or procedural in nature but had direct revenue implications, since the importer availed a lower rate of duty which was otherwise not admissible. The incorrect classification therefore amounts to misdeclaration of a material particular relating to assessment of imported goods and consequently attracts the provisions of Section 111(m) of the Customs Act, 1962.

4.14.9 I find that Section 111(m) provides for confiscation even in cases where goods do not correspond in respect of any other particulars in respect of which the entry is made under the Customs Act, 1962. I have to restrict myself only to examine the words "*in respect of any other particular with the entry made under this act*" would also cover case of mis-classification. The expression "any other particular" is broad enough to include misdeclaration relating to tariff classification, which directly affects the rate of duty and assessment of imported goods. As this act of the importer has resulted in short levy and short payment of duty, I find that the confiscation of the imported goods invoking Section 111(m) is justified and sustainable.

4.14.10 As per Section 46 of the Customs Act, 1962, the importer of any goods, while making entry on the Customs automated system to the Proper Officer, 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. He shall ensure the accuracy and completeness of the information given therein and the authenticity and validity of any document supporting it.

4.14.11 I find that the importer while filing the Bill of Entry for the clearance of the subject goods had subscribed to a declaration as to the truthfulness of the contents of the Bill of Entry in terms of Section 46(4) of the Customs Act, 1962 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2011 in all their import declarations. Section 17 of the Act, w.e.f. 08.04.2011, provides for self-assessment of duty on imported goods by the importer themselves by filing a Bill of Entry, in the electronic form. Section 46 of the Act makes it mandatory for the importer to make an entry for the imported goods by presenting a Bill of Entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulation, 2011 (issued under Section 157 read with Section 46 of the Act), the Bill of Entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic integrated declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the Service Centre, a Bill of Entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under the scheme of self-assessment, it is the importer who has to diligently ensure that he declares all the particulars of the imported goods correctly e.g., the correct description of the imported goods, its correct classification, the applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported goods

when presenting the Bill of Entry. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 8th April, 2011, the complete onus and responsibility is on the importer to declare the correct description, value, notification, etc. and to correctly classify, determine and claim correct exemption notification and pay the applicable duty in respect of the imported goods.

4.14.12 Prior to 08.04.2011, sub-section (2) of Section 2 of the Customs Act, 1962 read as under:

*(2) "assessment" includes provisional assessment, reassessment and any order of assessment in which the duty assessed is nil;*

Finance Act, 2011 introduced provision for self-assessment by the importer. Subsequent to substitution by the Finance Act, 2011 (Act 8 of 2011), (w.e.f. 08.04.2011) sub-section (2) of Section 2 ibid read as under:

*Section 2 - Definitions, Sub-section (2) – assessment:*

*(2) "assessment" includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;*

With effect from 29.03.2018, the term 'assessment' in sub-section (2) of Section 2 ibid means as follows:

*(2) "assessment" means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, with reference to-*

*a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;*

*b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;*

*c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;*

*d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;*

*e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods,*

*f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods,*

*and includes provisional assessment self-assessment, re-assessment and any assessment in which the duty assessed is nil;*

4.14.13 From a plain reading of the above provisions related to assessment, it is very clear that w.e.f. 08.04.2011, the importer must self-assess the duty under Section 17 read with Section 2(2) of the Customs Act, and since 2018 the scope of assessment was widened. Under the self-assessment regime, it was statutorily incumbent upon the importer to correctly self-assess the goods in respect of classification, valuation, claimed exemption notification and other particulars. With effect from 29.03.2018, the term 'assessment', which includes provisional assessment also, the importer is obligated to not only establish the correct classification but also to ascertain the eligibility of the imported goods for any duty exemptions. From the facts of the case as detailed above, it is evident that M/s. ISGEC Heavy Engineering Ltd. has deliberately failed to discharge this statutory responsibility cast upon them.

4.14.14 In view of the foregoing discussions I hold that the impugned goods imported vide Bills of Entry as mentioned in Annexure-A to the notice, by way of mis-classifying the said goods instead of correct Customs Tariff item in violation of Section 46(4) and Section 46(4A) of Customs Act, 1962 having total assessable value of Rs. 10,29,27,250/- (Rupees Ten Crore Twenty-Nine Lakh Twenty-Seven Thousand Two Hundred Fifty Only) are liable to confiscation under Section 111(m) of the Customs Act, 1962, on the grounds of suppression and mis-classification of the imported goods.

4.14.15 As regards applicability of actual confiscation and redemption fine in terms of Section 125 of the Customs Act, 1962, I find that it is a settled position in law that redemption fine under Section 125 of the Customs Act, 1962 can only be imposed where goods are physically available for confiscation and subsequent redemption. This principle has been categorically affirmed by the Bombay High Court in Commissioner of Customs (Import), Mumbai v. Finesse Creation Inc., 2009 (248) E.L.T. 122 (Bom.), wherein the Court held that the concept of redemption fine arises only if the goods are available and can be redeemed. In the

absence of the goods, no redemption fine can be imposed. The Bombay High Court distinguished the Supreme Court judgment in Weston Components Ltd. v. Commissioner of Customs, 2000 (115) E.L.T. 278 (S.C.), noting that in Weston, the goods had been released on bond and were therefore, constructively within the control of the Customs authorities. However, in Finesse Creation Inc., the goods had already been cleared and were not available for seizure, nor had they been released on any bond or undertaking. The Bombay High Court further endorsed the reasoning of the Punjab and Haryana High Court in Commissioner of Customs, Amritsar v. Raja Impex (P) Ltd., 2008 (229) E.L.T. 185 (P&H), which held that where goods are neither available nor covered by any bond, no redemption fine can be levied. This order of the High Court in Finesse Creation Inc., stands accepted by the department, as Special Leave Petition (SLP) filed in the Supreme Court (C.A. No. 66/2009) was dismissed by order dated 12.05.2010. [2010 (255) E.L.T. A120 (S.C.)]

4.14.16 I now turn to the issue of applicability of redemption fine under Section 125 of the Customs Act, 1962. It is a settled principle of law that redemption fine can be imposed only when the goods are either physically available for confiscation or are deemed to be under the constructive control of Customs authorities, such as in cases where goods are provisionally released against execution of bond.

4.14.17 In respect of the goods covered under Bills of entries mentioned in Annexure-A to the Notice, I find that the same have already been finally cleared and are not available for confiscation. Further, there is no evidence to establish that such goods were released on execution of bond or otherwise remained under the constructive control of Customs authorities. In such circumstances, the settled legal position, as laid down by various judicial pronouncements, is that redemption fine cannot be imposed where goods are neither available nor under the control of Customs.

4.14.18 Accordingly, I refrain from imposing redemption fine in respect of the goods covered under Bills of Entries as detailed in Annexure-A to the notice as the same are not available for confiscation and were not under the constructive control of Customs authorities.

4.15 **Whether penalty should be imposed on the importer under Section 112(a) and/ or Section 114A of the Customs Act, 1962.**

4.15.1 The provisions of Sections 112 and 114A the Customs Act, 1962 are reproduced as under:

***SECTION 112. Penalty for improper importation of goods, etc.*** *— Any person, -*

*(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or*

*(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,*

*Shall be liable*

*(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding the value of the goods or five thousand rupees], whichever is the greater;*

*(ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is the greater:*

**Section 114A. Penalty for short-levy or non-levy of duty in certain cases. –**

*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 wilful 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 (2) 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 orders 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 per cent*** *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:*

**Provided *also that where any penalty has been levied under this section, no penalty shall be levied under*** section 112 ***or*** section 114.

4.15.2 In the present case, I have already recorded a categorical finding that the extended period under Section 28(4) is invocable on account of wilful mis-declaration and mis-classification with intent to evade duty. The deliberate mis-classification of "Rail Cum Road Vehicles / Electrically Operated Rail Car Movers" in the Bills of Entry establish the existence of *mens rea*. As the Noticee got monetary benefit due to their wilful mis-declaration and mis-classification of the aforesaid goods, I find that duty was correctly demanded under Section 28(4) of the Act by invoking extended period.

4.15.3 In terms of Section 46 (4) of Customs Act, 1962, the importer is required to make a declaration as to truth of the contents of the Bills of Entry submitted for assessment of Customs duty. M/s. ISGEC Heavy Engineering Ltd. had wilfully mis-declared and mis-classified the impugned goods under CTI 86012000 and instead of under correct classification under CTI 87049012. They were aware of the true nature and characteristics of the imported goods and accordingly, were knowing about the correctly leviable duty thereon. However, still they wilfully suppressed this fact and evaded payment of legitimately payable duty in the Bills of Entry filed before the Customs authorities. By resorting to the aforesaid suppression and mis-declaration, they evaded legitimately payable duty. Under the self-assessment scheme, it is obligatory on the part of importer to declare truthfully all the particulars relevant to the assessment of the goods, ensuring their accuracy and authenticity, which the importer clearly failed to do with malafide intention. However, I find that the importer, by knowingly classifying the imported goods under Heading 8601 despite full knowledge regarding their dual rail-road operational capability and despite the existence of Note 4(a) to Section XVII, and tried to get these goods cleared from the port. They suppressed the fact before the Customs Department regarding correctly leviable duty thereon, to claim the undue duty benefit at the time of clearance of the said imported goods. This wilful and deliberate mis-declaration and mis-classification amply points towards the "mens rea" of the Noticee to evade the payment of legitimate duty. The wilful and deliberate acts of the Noticee to evade payment of legitimate duty, clearly brings out their 'mens rea' in this case. Once the 'mens rea' is established, the extended period of limitation, as well as confiscation and penal provision will automatically get attracted. Thus, the Noticee, by their various acts of omission and commission discussed above, have rendered the impugned goods liable for confiscation under Sections 111(m) of the Customs Act, 1962, thereby making themselves liable for penalty under Section 112(a)(ii) ibid for the subject goods imported vide Bills of Entry as detailed in Annexure-A to the Notice.

4.15.4 Accordingly, I agree with the proposal made in the subject SCN and hold that penalty should be imposed on the Noticee M/s. ISGEC Heavy Engineering Ltd. under Section 112(a) of the Customs Act, 1962.

4.15.5 I find that as per Section 114A, imposition of penalty is mandatory once the elements for invocation of extended period are established. Hon'ble Supreme Court in *Grasim Industries Ltd. V. Collector of Customs, Bombay [(2002) 4 SCC 297=2002 (141) E.L.T.593 (S.C.)]* has followed the same principle and observed:

> "*Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for Court to take upon itself the task of amending or altering the statutory provisions*." (para 10).

Hon'ble Supreme Court has again in *Union of India Vs. Ind-Swift Laboratories* has held: "*A taxing statute must be interpreted in the light of what is clearly expressed. It is not permissible to import provisions in a taxing statute so as to supply any assumed deficiency....*" [2011 (265) ELT 3 (SC)].

4.15.6 Thus, in view of the mandatory nature of penalty under Section 114A no other conclusion can be drawn in this regard. I also rely upon case reported in 2015 (328) E.L.T. 238 (Tri. - Mumbai) in the case of *SAMAY ELECTRONICS (P) LTD. Versus C.C. (IMPORT) (GENERAL), Mumbai*, in which it has been held:

> *Penalty - Imposition of - Once demand confirmed under Section 28 of Customs Act, 1962 read with Section 9A of Customs Tariff Act, 1975 on account of fraud, penalty under Section 114A ibid mandatory and cannot be waived - Therefore imposition of penalty cannot be faulted - Section 114A ibid.*

4.15.7 As I have held above, that the extended period of limitation under Section 28(4) of the Customs Act, 1962 for the demand of duty is rightly invoked in the present case. Therefore, penalty under Section 114A is rightly proposed on the Noticee, M/s. ISGEC Heavy Engineering Ltd. in the impugned SCN in respect of the impugned goods covered under Bills of Entry mentioned in Annexure-A to the Notice. Accordingly, the Noticee is liable for a penalty under Section 114A of the Customs Act, 1962 for wilful mis-declaration and suppression of facts, with an intent to evade duty.

4.15.8 Further, I have already held above that by their acts of omission and commission, the importer has rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962, making them liable for a penalty under Section 112(a) ibid. However, I find that the penalty under Section 114A and Section 112 of the Customs Act, 1962 are mutually exclusive and both cannot be imposed simultaneously. Therefore, in view of fifth proviso to Section 114A, no penalty is imposable on the Noticee under Section 112(a) ibid.

5. In view of the facts of the case, the documentary evidences on record and findings as detailed above, I pass the following order:

**ORDER**

(i) I reject the classification of the impugned goods covered under Bills of Entry mentioned in Annexure-A to the notice, under CTI 86012000 attracting Customs duty BCD @ 10% & IGST @12 % as per Notification No. 01/2017- Integrated Tax (Rate) dated 28 June 2017, Serial No. I/205A and order to re-assess the aforesaid goods under CTI 87049012 at the merit rate of duty.

(ii) I confirm the demand of Differential duty amounting to **Rs. 2,76,66,845/- (Rupees Two Crore Seventy-Six Lakh Sixty-Six Thousand Eight Hundred Forty-Five Only)** (as detailed in the Annexure-A to the Notice) and order to recover the same from the Noticee under Section 28(4) of the Customs Act, 1962 along with applicable interest thereon in terms of provisions of Section 28AA of the Customs Act, 1962.

(iii) I hold that the impugned goods covered under Bills of Entry mentioned in Annexure-A to the notice, having total declared assessable value of **Rs. 10,29,27,250/- (Rupees Ten Crore Twenty-Nine Lakh Twenty-Seven Thousand Two Hundred Fifty Only)** are liable to confiscation under Section 111(m) of the Customs Act, 1962.

However, I do not impose any redemption fine under Section 125(1) of the Customs Act, 1962, for the reasons cited supra.

(iv) I impose a penalty equivalent to differential duty of **Rs. 2,76,66,845/- (Rupees Two Crore Seventy-Six Lakh Sixty-Six Thousand Eight Hundred Forty-Five Only)** along with applicable interest under Section 28AA of the Customs Act, 1962, on M/s. ISGEC Heavy Engineering Ltd. under Section 114A of the Customs Act, 1962.

In terms of the first and second proviso to Section 114A ibid, if duty and interest is paid within thirty days from the date of the communication of this order, the amount of penalty liable to be paid shall be **twenty-five per cent of the duty and interest**, subject to the condition that the amount of penalty is also paid **within the period of thirty days** of communication of this order.

As penalty is imposed under Section 114A of the Customs Act, 1962, no penalty is imposed under Section 112 in terms of the fifth proviso to Section 114A ibid.

6. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or the persons/firms concerned, covered or not covered by this show cause notice, under the provisions of Customs Act, 1962, and/or any other law for the time being in force in the Republic of India.

18/5/26

(अनिल रामटेके/ **ANIL RAMTEKE**)
सीमाशुल्कआयुक्त/ Commissioner of Customs
एनएस-V, जेएनसीएच / NS-V, JNCH

To,

M/s. ISGEC HEAVY ENGINEERING LTD,
A-4, SECTOR-24, NOIDA,
UTTAR PRADESH – 201301

Copy to:

1. The Additional Director General, NCTC, DGARM, Mumbai.
2. The Addl. Commissioner of Customs, Group VB, JNCH
3. The Deputy/Assistant Commissioner of Customs, CAC, JNCH
4. AC/DC, Chief Commissioner's Office, JNCH.

5. AC/DC, Centralized Revenue Recovery Cell, JNCH
6. Notice Board (CHS Section for display).
7. EDI Section
8. Office Copy.