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 – 20251278NX000000B005 **Date of Order: 03.12.2025**

F. No. S/10-143/2024-25/COMMR/GR.VA/CAC/JNCH **Date of Issue: 03.12.2025**

SCN No.: 1449/2024-25/COMMR/Gr.VA/CAC/JNCH

SCN Date: 04.12.2024

Passed by: Sh. Anil Ramteke
Commissioner of Customs, NS-V, JNCH

Order No: 283/2025-26/COMMR/NS-V/CAC/JNCH

Name of Noticees: M/s. PV Renewable(IEC:AAXFP2273P)

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. डी'मेलो 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. 1449/2024-25/COMMR./GR.VA/CAC/ JNCH dtd. 04.12.2024 issued to M/s PV Renewable (IEC: AAXFP2273P) – reg.

1. BRIEF FACTS OF THE CASE

1.1 It is mentioned in the Show Cause Notice (SCN) No. 1449/2024-25/COMMR./GR.VA/CAC/JNCH dtd. 04.12.2024 that M/s PV Renewable (IEC: AAXFP2273P) having address at A-15/1, Zaveri Industrial Estate, Kathwada Gids Road, Ahmedabad, Gujarat - 382415 (hereinafter referred to as the 'Importer' or 'Noticee') had cleared their imported items as per Annexure-A to the subject SCN (hereinafter referred to as 'the subject goods') vide various Bills of Entry mentioned in the Annexure -A, filed by CHA, M/s Sri Paaddam Logistics, by classifying the same under CTI 85044090. The IGST paid on the subject goods was @5% as per Serial No. 234 of Schedule-I of Notification No. 01/2017- Integrated Tax (Rate) dtd. 28.06.2017.

1.2 As per the SCN, however, it was noticed that the said Sr. No. provides 5% IGST for the goods classifiable under Chapter 84, 85 or 90. Further, the benefit of IGST for the goods described at Sr. No. I-234 of Notification No. 01/2017- Integrated Tax (Rate) dated 28.06.2017 is available to the following goods:

Following renewable energy device & parts for their manufacture-

(a) Bio-gas plant
(b) Solar power-based devices
(c) Solar power generating system
(d) Wind mills, Wind Operated Electricity Generator (WOEG)
(e) Waste to energy plants / devices
(f) Solar lantern / solar lamp
(g) Ocean waves/tidal waves energy devices/plants

1.3 It was further noticed that importer is not involved in manufacturing process and still the importer had claimed IGST Sr. No. I-234 of Notification No. 01/2017-Integrated Tax (Rate) dtd. 28.06.2017, instead of IGST on the imported goods to be paid @ 18% as per Serial No. 375 of Schedule- III of aforesaid Notification. Therefore, the goods imported by the importer attracts levy of IGST @18% as per Serial No. 375 of Schedule- III of Notification No. 01/2017- Integrated Tax (Rate) dtd. 28.06.2017. The details of description of goods, Bills of Entry, applicability of correct IGST amount, are as per Annexure-A to the subject SCN.

1.4 Hence, it appeared that the importer had wilfully mis-declared IGST @5% as per Sr. No. 234 of Schedule-I instead of correct IGST @18% as per Serial No. 375 of Schedule- III of Notification No. 01/2017- Integrated Tax (Rate) dtd. 28.06.2017, thereby paying lower duty than applicable and thus, the provisions of Section 28(4) are invokable in this case.

1.5 Accordingly, a Consultative Letter No. 26/24-25 (DIN No. 20240478NY000000E203) issued vide F. No. Audit-Gen-128/2023-24/JNCH/ADMN dated 23.04.2024 was issued to the importer for payment of short levied duty along with applicable interest and penalty. Vide the aforementioned Consultative letter, the importer was advised to pay the Differential IGST along with interest and penalty in terms of Section 28(4) of the Customs Act 1962. The importer was further advised to avail the benefit of lower penalty in terms of Section 28(5) of the Customs Act, 1962, by early payment of short paid IGST duty and interest along with penalty@15%. The Consultative letter was issued considering the Pre-Notice Consultation Regulations, 2018.

1.6 In reply of the Consultative Letter (CL), the importer made their submission vide letter dated 10.07.2024. Vide the said letter, the importer submitted that:

"IGST Sr. No. I-234 of Notification No. 01/2017- Integrated Tax (Rate) dated 28.06.2017 was amended vide Notification No. 8/2021-I.T.(Rate) dated 30.09.2021 with the following entry:

(a) Bio-gas plant;
(b) Solar power-based devices;
(c) ***Solar power generator;***
(d) Wind mills, Wind Operated Electricity Generator (WOEG);
(e) Waste to energy plants / devices;
(f) Solar lantern / solar lamp;
(g) Ocean devices/plants; waves/tidal waves energy devices/plants;
(h) Photo voltaic cells, whether or not assembled in modules or made up into panels.

On a bare perusal of the above entry, it is important that the following two conditions are required to be satisfied for claiming concessional rate of duty:

- *That the goods must be covered under Chapter Heading 84, 85 or 94;*
- *That the goods shall satisfy the description 'renewable energy devices & parts for their manufacture i.e. 'Solar Power Generating System'.*

In the present case, the importer has imported the renewable energy devices which are covered under Chapter Heading 84, 85 or 94 and the imported goods are used for the manufacture of 'Solar Power Generator'. In the present case, both of the said conditions are satisfied and therefore, the importer had rightly filed the bill of entry by paying the IGST @ 5%.

The Importer submits that the imported goods are used for manufacturing 'Solar Power Generating System'. It is submitted that the Notification No. 1/2017-IGST(Rate) (Supra) does not provide that the importer is required to be engaged in manufacturing of 'Solar Power Generating System'. Rather, it provides that the concessional rate of duty would be applicable if the renewable energy devices & parts are used for manufacturing of 'Solar Power Generating System'. In other words, the only requirement of said Notification is that the renewable energy devices should be used only in the manufacturing process. It is nowhere provided that the importer should be engaged in the manufacturing activity. In the present case, the imported goods are used for manufacturing of 'Solar Power Generating System' and therefore, the benefit of concessional rate of duty would be available to the importer.

It is a settled law that the entry of Notification is required to be read strictly and no new condition can be added in the notification thereby restricting or whittling the scope of notification. In the present case, the said Notification clearly stipulates that the concessional rate of duty would be available if the renewable energy devices and parts are used for manufacturing of "Solar Power Generating System". In the present case, the importer has supplied the goods to the entities who are engaged in manufacturing of "Solar Power Generating System" and therefore, the importer is eligible for the concessional rate of duty. A specimen copy of letter issued by the buyer certifying the fact that the imported goods are used for manufacturing of "Solar Power Generating System" along with Chartered Engineer certificate certifying the fact that the imported goods are supplied to entity/entities who have used it for manufacturing of "Solar Power Generating System" are attached herewith for your ready reference.

Without prejudice to above, it is submitted that if the Notification No. 1/2017-IGST (Rate) is interpreted in a way that only a manufacturer who is filing Bill of Entry for import of items specified under Chapter 84, 85 or 94 is eligible for concessional rate of duty then the entire purpose of the said entry would be redundant and otiose. It is the intention of the

Government to promote solar energy and to reduce country's dependence on fossil fuels to transition towards a greener future. In such a scenario, restricting the scope of concessional rate only to manufacturers who file Bill of entry would be against the government intention for promoting solar energy more particularly in a situation wherein ultimately the imported goods are used only for manufacturing of Solar Power Generating System.

In view of the above submission, it is requested that the allegations and charges levelled in the Consultative Notice may kindly be dropped in the interest of justice and hold that the importer has rightly paid the concessional duty @5% on the goods imported by them which is used for manufacturing of "Solar Power Generating System"."

1.7.1 In reply to the submission made by the importer it was again mentioned that IGST Sr. No. I-234 of Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 provide 5% IGST for the goods classified under Chapter 84, 85 or 90 and the same is available to following goods:

Following renewable energy device & parts for their manufacture-

(a) Bio-gas plant
(b) Solar power-based devices
(c) Solar power generating system
(d) Wind mills, Wind Operated Electricity Generator (WOEG)
(e) Waste to energy plants / devices
(f) Solar lantern / solar lamp
(g) Ocean waves/tidal waves energy devices/plants

In this case, the importer is not involved in manufacturing process hence, they cannot claim IGST Sr. No. I-234 of Notification No. 01/2017 dated 28.06.2024. In their reply, the importer is silent on this point. The benefit is not available for the supplier of manufacturing unit.

1.7.2 In view of Para 1.7.1, it appeared that the importer had wilfully mis-declared the subject goods by way wrong IGST Schedule for the purpose of importing the same, declaring IGST @5% as per Sr. No. 234 of Schedule-I thereby paying lower duty which cause the loss of government revenue as mentioned in Annexure-A to the subject SCN.

1.8 Relevant Legal Provisions: After the introduction of self-assessment vide Finance Act, 2011, the onus is on the Importer to make true and correct declaration in all aspects including classification and calculation of duty, but in the instant case the subject goods were mis-classified and IGST amount was not paid correctly.

The extracts of the relevant provisions of following laws relating to self-assessment, import of goods in general, the liability of the goods to confiscation and person concerned to penalty for illegal importation under the Customs Act, 1962 and other laws for the time being in force, were mentioned in the subject SCN. The same are not reproduced in this Order-in-Original for the sake of brevity:

- Section 17 - Assessment of duty.
- Section 28 - Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.
- Section 28AA - Interest on delayed payment of duty.
- Section 46 - Entry of goods on importation.
- Section 111(m) - Confiscation of improperly imported goods, etc.
- Section 112 - Penalty for improper importation of goods etc.
- Section 114A - Penalty for short-levy or non-levy of duty in certain cases.

1.9 Acts of omission and commission by the Importer:

1.9.1 As per Section 17(1) of the Customs Act, 1962 "*An Importer entering any imported goods under section 46, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.*" Thus, in this case the importer had self-assessed the Bills of Entry and appeared to have short-levied IGST due to wrong selection of IGST Schedule. As the importer got monetary benefit due to said act, it appeared that the same was done deliberately by wilful mis-classification of the said goods in the Bills of Entry during self-assessment. Therefore, differential duty is recoverable from the importer under Section 28(4) of the Customs Act, 1962, along with applicable interest as per Section 28AA of the said Act.

1.9.2 It appeared that the importer has given a declaration under Section 46(4) of the Act, for the truthfulness of the content submitted at the time of filing Bill of Entry. However, the applicable IGST rate on the subject goods was not paid by the Importer at the time of clearance of goods. It also appeared that the Importer had submitted a false declaration under Section 46(4) of the Act. By the act of presenting goods in contravention to the provisions of Section 111(m), it appeared that the importer had rendered the subject goods liable for confiscation under Section 111(m) of the Act. For the above act of deliberate omission and commission that rendered the goods liable to confiscation, the Importer also appeared liable to penal action under Section 112(a) and /or 114A of the Customs Act, 1962.

1.10 From the foregoing, it appeared that the Importer had wilfully mis-classified the goods; that the Importer had submitted a false declaration under Section 46(4) of the said Act. Due to this act of omission of Importer, there has been loss to the government exchequer equal to the differential duty.

1.11 Therefore, in exercise of the powers conferred by Section 124 read with Section 28(4) and Section 28AAA of the Customs Act, 1962, vide Show Cause Notice No. 1449/2024-25/COMMR./ GR.VA/CAC/JNCH dtd. 04.12.2024, M/s PV Renewable (IEC: AAXFP2273P) having address at A-15/1, Zaveri Industrial Estate, Kathwada Gids Road, Ahmedabad, Gujarat – 382415, was called upon to show cause to the Commissioner of Customs, Nhava Sheva-V, JNCH (the Adjudicating Authority), as to why:

(i) The IGST rate claimed under Schedule-I, Sr. No. 234 of IGST levy Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 for the subject goods should not be rejected.

(ii) The IGST rate @18% as per Serial No. 375 of Schedule- III of Notification No. 01/2017-Integrated Tax (Rate) dtd. 28.06.2017 should not be levied.

(iii) Differential IGST amount of Rs. 2,06,96,998/- (Rupees Two Crore Six Lakh Ninety Six Thousand Nine Hundred Ninety Eight Only) with respect to the items covered under Bills of Entry as mentioned in Annexure-A to the subject SCN should not be demanded under Section 28(4) of the Customs Act, 1962, along with applicable interest as per Section 28AA, ibid.

(iv) The subject goods as detailed in Annexure-A to the subject SCN having a total assessable value of Rs. 13,94,76,760/- (Rupees Thirteen Crore Ninety Four Lakh Seventy Six Thousand Seven Hundred Sixty Only) should not be held liable for confiscation under Section 111(m), ibid.

(v) Penalty should not be imposed under Section 112(a) and/or 114A, ibid.

2. RECORD OF PERSONAL HEARINGS

2.1 There is single Noticee in the subject SCN viz. M/s PV Renewable. 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 was granted opportunity of Personal Hearing (PH) on

25.09.2025, 16.10.2025 and 06.10.2025 and PH intimation letters were issued by Speedpost. However, the Noticee did not attend any of the PH opportunity provided to them.

3. WRITTEN SUBMISSION OF THE NOTICEE

The Noticee, M/s PV Renewable vide their email dated 02.12.2025 gave written reply to the subject SCN. Vide the above reply, they denied all the allegations made in the SCN and stated interalia as under:

3.1 M/s PV Renewables is engaged in the business of supplying equipment and parts exclusively for solar power generating systems and other renewable energy projects. The imports covered by the Notice are "On-Grid Solar Inverters / parts of solar inverters" falling under Chapters 84, 85 or 90, on which IGST @ 5% was paid by availing Sr. No. 201A (earlier 234) of Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017, as amended.

3.2 Legal position and eligibility of 5% IGST

Entry 201A of Notification No. 1/2017-IGST (Rate), as amended by Notification No. 8/2021-IT (Rate) dated 30.09.2021, prescribes IGST @ 5% for "*renewable energy devices and parts for their manufacture*" covered under Chapters 84, 85 or 94, including "solar power generator / solar power based devices" and "photovoltaic cells whether or not assembled in modules or made up into panels."

The goods imported by them are grid-connected solar inverters which are indispensable and integral components of a solar power generating system, used for converting DC output of solar PV modules into AC power suitable for evacuation to the grid or for use by consumers.

Technical catalogues, CE conformity certificates and test reports submitted clearly establish that the imported products are "On Grid Solar Inverters" designed and certified specifically for use in solar PV systems, and not for any generic or unrelated application.

In view of the above, the imported inverters squarely qualify as "renewable energy devices / parts for manufacture of solar power generators" under the said notification, and the IGST @ 5% was correctly discharged at the time of import.

3.3 Use of imported goods in manufacture of solar power generating systems

The Show Cause Notice proceeds on the allegation that the concessional notification is available only when the importer himself is engaged in manufacturing renewable energy devices, and that a trader-importer cannot claim the benefit.

The plain language of Entry 201A only requires that the goods must be renewable energy devices or parts "for their manufacture"; it does not mandate that the importer must be the actual manufacturer or EPC contractor.

In the present case, the imported inverters have been supplied exclusively to entities engaged in setting up and operating solar power generating systems, as evidenced by:

- Purchase orders and confirmations from buyers indicating use in solar PV power plants/rooftop solar systems.
- Buyer certificates confirming that the inverters imported and supplied by us have been used in solar power generating systems.
- Chartered Engineer's certificate certifying that the imported inverters are essential components of solar power generating systems and have been supplied to entities using them in such systems.

Thus, the condition that the goods are "for manufacture of renewable energy devices / solar power generators" is fully satisfied.

3.4 Technical necessity as part of "solar power generating system"

The earlier detailed representation dated 10.07.2024, already on record with the department, explains that a solar power generating system is a combination of several essential components such as solar PV modules, inverters, meters, racking, grid interface equipment and, where applicable, batteries. Inverters perform the critical function of converting DC power from solar modules into AC power and form an inseparable part of the system; without an inverter, a grid-connected solar power plant cannot function. Considering the wide and commonly accepted meaning of the term "system" and the consistent treatment of similar components as eligible parts under earlier excise and customs exemptions for non-conventional energy devices, solar inverters necessarily fall within the scope of "solar power generating system" covered by the notification.

3.5 Bona fide conduct and inapplicability of extended period and penalty

All Bills of Entry were filed declaring correct description, classification under Chapters 84 / 85 / 90, and claiming the concessional IGST rate by quoting the relevant notification entry on the face of the documents; there was no mis-declaration or suppression of facts.

The issue involved is one of interpretation of an exemption entry applicable across the renewable energy sector, on which there has been industry-wide practice of extending the benefit to solar inverters and other essential system components.

Further, after receipt of the consultative letter from the Audit Commissionerate, they responded in detail vide representation dated 10.07.2024 explaining the legal and technical basis of their claim and promptly furnished all supporting documents, which demonstrates complete transparency and co-operation with the department.

In these circumstances, the pre-requisites for invoking the extended period and for alleging wilful mis-statement or suppression under Section 28(4) of the Customs Act are not satisfied, and consequently no penalty under Section 114A or interest under Section 28AA should be imposed.

4. DISCUSSION AND FINDINGS

4.1 I have carefully gone through the subject Show Cause Notice (SCN), material on record and facts of the case, as well as written submissions made by the Noticee.

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. The adjudicating authority may, if sufficient cause is shown, at any stage of proceeding, grant time, from time to time, to the parties or any of them and adjourn the hearing, provided that no such adjournment shall be granted more than three times to a party during the proceeding.

4.3 I find that in the instant case, 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, opportunity for Personal Hearing (PH) on 25.09.2025, 16.10.2025 and 06.10.2025 was granted by the Adjudicating Authority to the Noticee. It is observed that PH letters were sent on the address given in the SCN via speedpost. However, the Noticee did not appear before the Adjudicating Authority in the Personal Hearings granted to them nor submitted any letter or email in response to the Personal Hearing intimation letters. From the aforesaid facts, it is observed that sufficient

opportunities have been given to the Noticee but they chose not to join the adjudication proceedings.

4.4 The Noticee did not participate in the adjudication proceedings inspite of the fact of service of letters for personal hearings in terms of Section 153 of Customs Act, 1962. Section 153 of the Customs Act, 1962 reads as under:

> *SECTION 153. Modes for service of notice, order, etc. - (1) An order, decision, summons, notice or any other communication under this Act or the rules made thereunder may be served in any of the following modes, namely: -*
> ---
> *(b) by a registered post or speed post or courier with acknowledgement due, delivered to the person for whom it is issued or to his authorised representative, if any, at his last known place of business or residence;*
> ---

Therefore, in terms of Section 153 of the Customs Act, 1962, it is observed that PH letters were duly served to the Noticee, but they did not respond. From the aforesaid facts, it is observed that sufficient opportunities have been given to the Noticee but they chose not to join the adjudication proceedings. As the matter pertains to recovery of government dues, so even in absence of the Noticee from adjudication proceedings, I am compelled to decide the matter in the interest of revenue in time bound and logical manner.

4.5 In this regard, it is pertinent to refer to the case of ***Sumit Wool Processors Vs. CC, Nhava Sheva [2014(312) E.L.T. 401 (Tri.-Mumbai)]*** wherein Hon'ble CESTAT, Mumbai has observed that natural justice not violated when opportunity of being heard given and notices sent to addresses given by the Noticee. If appellants fail to avail such opportunity, mistake lies on them - Principles of natural justice not violated.

> *"8.3 We do not accept the plea of Mr. Sanjay Kumar Agarwal and Mr. Parmanand Joshi that they were not heard before passing of the impugned orders and principles of natural justice has been violated. The records show that notices were sent to the addresses given and sufficient opportunities were given. If they failed in not availing of the opportunity, the mistake lies on them. When all others who were party to the notices were heard, there is no reason why these two appellants would not have been heard by the adjudicating authority. Thus, the argument taken is only an alibi to escape the consequences of law. Accordingly, we reject the plea made by them in this regard." 2014 (312) E.L.T. 401 (Tri. - Mumbai)"*

4.6 Considering the aforesaid scenario and the fact that the Noticee has not participated in the adjudication proceedings, I take up this SCN for discussion on the merit of the case. With regard to proceeding to decide the case following the principle of natural justice, reliance is placed on the decision of the Hon'ble High Court of Allahabad in the case of ***Modipon Ltd. Vs. CCE, Meerut [reported in 2002(144) ELT 267 (All.)]*** effectively dealing with the issue of natural justice and personal hearing. The extract of the observations of Hon'ble Court is reproduced herein below for reference:

> *"Natural justice - Hearing - Adjournment - Adjudication - Principle of audi alteram partem does not make it imperative for the authorities to compel physical presence of the party for hearing and go on adjourning proceedings so long as party does not appear before them - What is imperative for the authorities to afford the opportunity- If the opportunity afforded is not availed of by the party concerned, there is no violation of the principles of natural justice. The fundamental principles of natural justice and fair play are safeguards for the*

flow of justice and not the instruments for delaying the proceedings and thereby obstructing the flow of justice.

Natural justice - Hearing - Adjudication - Requirement of natural justice complied with if person concerned afforded an opportunity to present his case before the authority - Any order passed after taking into consideration points raised in such application not invalid merely on ground that no personal hearing had been afforded, all the more important in context of taxation and revenue matters. [1996 (2) SCC 98 relied on][para 22]".

In view of the above, it is observed that sufficient opportunities have been given to the Noticee but they chose not to join the adjudication proceedings. Having complied with the requirement of the principle of natural justice and having granted Personal Hearings, I proceed to decide the matter, being time bound in terms of Section 28(9) of the Customs Act, 1962.

4.7 It is alleged in the Show Cause Notice that the Noticee, M/s PV Renewable had imported goods having description as "ON GRID SOLAR INVERTER" under the CTI 85044090 & paid IGST @ 5% as per Serial No. 234 of Schedule- I of Notification No. 01/2017- Integrated Tax (Rate) dtd. 28.06.2017. However, the imported goods are more appropriately classifiable under Sr. No. 375 of Schedule-III of IGST Notification No. 01/2017 attracting IGST @18%. Thus, the SCN proposes re-classification of the goods under Sr. No. 375 of Schedule-III of IGST Notification No. 01/2017 and the differential IGST duty amounting to **Rs. 2,06,96,998/- (Rupees Two Crore Six Lakh Ninety Six Thousand Nine Hundred Ninety Eight only)** short paid by the importer is proposed to be recovered under Section 28(4) of the Customs, 1962, along with applicable interest. Further, the SCN proposes confiscation of the impugned goods and imposition of penalty on the Noticee under Section 112(a) and / or 114A of the Customs, 1962.

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

(i) Whether the IGST rate claimed under Schedule-I, Sr. No. 234 of IGST levy Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 for the subject goods should be rejected.

(ii) Whether the IGST rate @18% as per Serial No. 375 of Schedule-III of Notification No. 01/2017-Integrated Tax (Rate) dtd. 28.06.2017 should be levied.

(iii) Whether differential IGST amount of Rs. 2,06,96,998/- (Rupees Two Crore Six Lakh Ninety Six Thousand Nine Hundred Ninety Eight Only) with respect to the items covered under Bills of Entry as mentioned in Annexure-A to the subject SCN should be demanded under Section 28(4) of the Customs Act, 1962, along with applicable interest as per Section 28AA, ibid.

(iv) Whether the subject goods as detailed in Annexure-A to the subject SCN having a total assessable value of Rs. 13,94,76,760/- (Rupees Thirteen Crore Ninety Four Lakh Seventy Six Thousand Seven Hundred Sixty Only) should be held liable for confiscation under Section 111(m), ibid.

(v) Whether penalty should be imposed under Section 112(a) and/or 114A, ibid.

4.9 After having identified and framed the main issues to be decided, I now proceed to examine each of the issues 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 written submissions and documents / evidences available on record.

4.10 Whether the IGST rate claimed under Sr. No. 234 of Schedule-I of IGST levy Notification No. 01/2017-Integrated Tax (Rate) dtd. 28.06.2017 should be rejected and the IGST rate @18% as per Serial No. 375 of Schedule-III of the above Notification, should be levied on the subject goods.

4.10.1 I note that the Noticee, M/s PV Renewable had imported goods having description "On Grid Solar Inverter" as detailed in Annexure-A to the subject SCN. The Noticee had availed the benefit of concessional rate of IGST under Serial No. 234 of Schedule-I of Notification No. 01/2017-Integrated Tax (Rate) dtd. 28.06.2017 and paid IGST @ 5%. As per the SCN, the above items imported by the Noticee are more appropriately classifiable under Serial No. 375 of Schedule-III of the aforesaid Notification, which attracts IGST @18%. Thus, I find that the main issue involved here is the determination of the correct IGST Notification Schedule/Sr. No. of the impugned imported goods.

4.10.2 I find that the subject goods having description "On Grid Solar Inverter" are basically electric invertors having a basic function of converting Direct Current (DC) electricity generated by the solar panels into usable Alternating Current (AC) electricity. It is essential for powering standard household appliances and electronic devices from DC power sources like solar panels, batteries, or a vehicle's power system. Inverters are used in applications such as home power backup (UPS), solar energy systems etc. On-Grid means that they have additional functionality wherein they are tied with the grid, so that not only do they provide power to the installed area (home/property) but also send excess electricity back to the grid or draw power from the grid when solar panel is not producing enough electricity. Thus, I find that "On Grid Solar Inverter" are basically electric inverter or rectifier used in Solar Power Generating System.

4.10.3 I note that the Noticee had classified the subject imported goods "On Grid Solar Inverter" under CTI 85044090. Therefore, it would be worthwhile to look at the Customs Tariff Heading 8504 40, which cover the goods of broad description as under:

Tariff Item	Description of goods
8504 40	- Static Converters
8504 40 10	--- Electric Inverter
	--- Rectifier
8504 40 21	---- Dip bridge rectifier
8504 40 29	---- Other
8504 40 30	--- Battery Chargers
8504 40 40	--- Voltage regulator and stabilizers (other than automatic)
8504 40 90	--- Other

I find that the impugned goods have been classified under residual entry '*Other*' available under sub-heading 8504.40. Even the SCN does not contest the classification done by the Noticee. Thus, I find that in the instant case there is no dispute regarding classification of the goods imported by the Noticee under CTI 85044090.

4.10.4 I find that the Serial No. 234 of Schedule-I of Notification No. 01/2017-Integrated Tax (Rate) dtd. 28.06.2017 provides 5% IGST for the following goods classifiable under Chapter 84, 85 or 90:

Following renewable energy device & parts for their manufacture:

(a) Bio-gas plant
(b) Solar power-based devices
(c) Solar power generating system
(d) Wind mills, Wind Operated Electricity Generator (WOEG)
(e) Waste to energy plants / devices
(f) Solar lantern / solar lamp
(g) Ocean waves/tidal waves energy devices/plants

4.10.5 Further I find that electric inverter or rectifier classifiable under CTH 8504 attracts IGST @18% under Serial No. 375 of Schedule-III of Notification No. 01/2017-Integrated Tax (Rate) dtd. 28.06.2017. The said Sr. No. is reproduced below:

S. No.	*HSN*	*Description*
375	*8504*	*Electrical Transformers, static converters (for example rectifiers) and inductors other than charger or charging station for Electrically Operated vehicles*

4.10.6 From the perusal of Serial No. 234 of Schedule-I of Notification No. 01/2017-Integrated Tax (Rate) dtd. 28.06.2017, I find that for classification of the goods under the said Sr. No., they should fulfil the following two conditions:

a) Should be classifiable under Chapter 84, 85 or 90, and;
b) Should fall under description *"Following renewable energy device & parts for their manufacture"* mentioned in the Sr. No.

4.10.7 As discussed in the foregoing para 4.10.3, I find that in the instant case there is no dispute regarding classification of the subject goods under CTI 85044090. Thus, I find that the goods fulfil the first of the aforementioned condition that they should be classifiable under Chapter 84, 85 or 90.

4.10.8 As regards fulfillment of the aforesaid second condition i.e. *"Following renewable energy device & parts for their manufacture"*, as discussed in the foregoing para 4.10.2, I find that the subject goods "On Grid Solar Inverter" are basically electric inverter or rectifier used in Solar Power Generating System. Thus, I find that "On Grid Solar Inverter" are part of Solar Power Generating System.

4.10.9 The importer in his submissions has mentioned that they are in the business of supplying equipment and parts for solar power generating systems and other renewable energy projects. Thus, I find that admittedly the importer is not a manufacturer of Solar Power Generating System, but is a trader supplying equipment and parts for solar power generating systems.

4.10.10 Further, I find that in Serial No. 234 of the Notification, ibid, no end use condition or end use verification of the goods has been prescribed. Thus, the Department has no mechanism to verify the use to which the goods are put to, after they are cleared for home consumption. Thus, the goods have to be assessed to duty as per the conditions applicable at the time of import. It is a settled legal principle that imported goods have to be classified and assessed to duty in the form and condition in which they are presented at the time of import and the classification and assessment is not dependent on nor can it vary based on the actual use to which the same are put after clearance. In support of this principle, I place reliance on the decision of the Hon'ble Supreme Court in the case of *CC Vs Sony India Ltd. [2008 (231) ELT 385 (SC)]* in which in Para 11, the Hon'ble Supreme Court has held that it is settled position in law that the goods would have to be assessed in the form and state in which they are imported and presented to customs and not based on the subsequent use of the goods after their import and clearance.

4.10.11 The Serial No. 234 of the Notification, ibid, is applicable for therein mentioned renewable energy device & parts for their manufacture. Thus, I find that the said Sr. No. is applicable to parts of mentioned renewable energy devices only if those parts are used for manufacturing of mentioned renewable energy devices. Further, as discussed above, no end use condition or end use verification of the goods has been prescribed in the said Serial No. 234 of the Notification, ibid. Thus, imported goods have to be assessed as per the form in which they are presented and the conditions applicable at the time of import. Admittedly, the importer is a trader and not a manufacturer of Solar Power Generating System, therefore, they will not be manufacturing any

Solar Power Generating System from the imported goods. They will only be selling the imported goods to other buyers who can be in the field of further trading or repair & servicing or manufacturing of the complete Solar Power Generating System or its parts. Thus, I find that at the time of import i.e. when the goods are getting cleared by the Department for home consumption, the goods are not fulfilling the condition *".....for their manufacture*" mentioned in the Serial No. 234 of the Notification, ibid, that the same should be used for manufacture of Solar Power Generating System. In view of the above, as the subject goods are not fulfilling the conditions for getting classified under Serial No. 234 of the Notification, ibid, I find that the same are not eligible for classification under the said Serial No. In view of the non-eligibility of classification under Serial No. 234, I find that the subject goods are rightly classifiable under Serial No. 375 of Schedule-III of Notification No. 01/2017-Integrated Tax (Rate) dtd. 28.06.2017 attracting IGST @18%.

4.10.12 It is pertinent to mention that exemption notification has to be strictly and narrowly construed. It is settled law that, in an exemption notification, there is no room for any change in the intendment which envisages the clear meaning of the words used therein. Therefore, the sense in which the law understands or interprets the true intention of the notification should remain intact. In other words, the admissibility of exemption, under a notification, from payment of duty / or availability of payment of duty at reduced rate on specified goods is governed wholly by the language of the notification.

4.10.12.1 I find that it is well established that any exemption notification has to be strictly interpreted and in the case of doubt the benefit should go to the department. Hon'ble Apex Court in the case of *Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar & Company [2018 (361) E.L.T. 577 (S.C.)]* has held that exemption notification should be interpreted strictly and ambiguity in exemption notification must be interpreted in favour of the Revenue. The relevant paras, para 41 and 52 of the said order are reproduced below:

> *"41. After thoroughly examining the various precedents some of which were cited before us and after giving our anxious consideration, we would be more than justified to conclude and also compelled to hold that every taxing statute including, charging, computation and exemption clause (at the threshold stage) should be interpreted strictly. Further, in case of ambiguity in a charging provisions, the benefit must necessarily go in favour of subject/assessee,* ***but the same is not true for an exemption notification wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State."***
>
> *"52. To sum up, we answer the reference holding as under -*
> *(1)* ***Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee*** *to show that his case comes within the parameters of the exemption clause or exemption notification."*
> *(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the* ***benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue."***

4.10.12.2 In the case of *Saraswati Sugar Mills Vs. Commissioner of C. Ex., Delhi-III* reported at [*2011 (270) E.L.T. 465 (S.C.)*], it was held that an exemption notification has to be strictly construed and that when the wordings of notification are clear, then the plain language of the notification must be given effect to. Relevant portion of the judgment is extracted below:

> *"7. The Tariff Act prescribes the rate of duty for each chapter head and sub-head. The Tariff Act has authorized the Central Govt. to modify the rates/duty by issuing notifications. Since exemption notifications are issued under delegated legislative power, they have full statutory force. The Notification No. 67/95-C.E., dated 16-3-1995 specifically exempts capital goods as defined in Rule 57Q of the Rules. The other condition that is envisaged in*

the Notification is that the "capital goods' should be manufactured in a factory and used within the factory of production. If these twin conditions are satisfied, the capital goods are exempt from payment of excise duty. A party claiming exemption has to prove that he/it is eligible for exemption contained in the notification. ***An exemption notification has to be strictly construed. The conditions for taking benefit under the notification are also to be strictly interpreted. When the wordings of notification is clear, then the plain language of the notification must be given effect to. By way of an interpretation or construction, the Court cannot add or substitute any word while construing the notification either to grant or deny exemption. The Courts are also not expected to stretch the words of notification or add or subtract words in order to grant or deny the benefit of exemption notification.*** *In Bombay Chemicals (P) Ltd. v. CCE - (1995) Supp (2) SCC 64 = 1995 (17) E.L.T. 3 (S.C.), a three Judge Bench of this Court held that an exemption notification should be construed strictly, but once an article is found to satisfy the test by which it falls in the notification, then it cannot be excluded from it by construing such notification narrowly"*

4.10.12.3 I also find that it is a settled law that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession and the exemption has to be construed based upon the settings on which the provision has been placed in the statute and the object and purpose to be achieved. In this regard, I place reliance on the judgement of the Hon'ble Supreme Court in the case of *CCE, New Delhi Vs Hari Chand Shri Gopal and Others [2010 (260) ELT 3 (SC)]*, wherein, the issue of grant and claim of exemption has been clarified by holding as under:

"a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. ***A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the statute and the object and purpose to be achieved.*** *If exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption."*

4.10.12.4 Similarly, the Hon'ble Supreme Court of India in the case of *M/s Novopan India Ltd Vs. Collector of C. Ex and Customs, Hyderabad 1994 (73) E.L.T.769 (SC)*, has held that:

"a person, invoking an exception or exemption provisions, to relieve him of tax liability must establish clearly that he is covered by the said provisions and, in case of doubt or ambiguity, the benefit of it must go to the State."

4.10.12.5 In view of the above legal position and after having gone through the provisions of the subject Serial No. 234 of Schedule-I and Serial No. 375 of Schedule-III of Notification No. 01/2017-Integrated Tax (Rate) dtd. 28.06.2017, I find that when the words used in the exemption notification are plain and clear in meaning and do not admit of any doubt or ambiguity, such words, represent the legislative intent, leaving no room for any construction of the words to gather any other intention therefrom.

4.10.13 I find that the importer in support of his stand has submitted letter from their buyers and Chartered Engineer's certificate regarding use of the goods in manufacturing Solar Power Generating System. In this regard, as discussed in the above para, I reiterate that since the classification and assessment have to be done at the time of import based on the state of the goods and conditions applicable at the time of import, the same cannot be made dependent on production

of evidence of a future event of actual use subsequent to the clearance of the goods. Therefore, I am legally restrained from taking any cognizance of those submissions made by the importer.

4.10.14 In view of the foregoing discussion, taking in view the importer's submission and above referred judgement, I am of the opinion that the subject goods are more appropriately classifiable under Serial No. 375 of Schedule-III of Notification No. 01/2017-Integrated Tax (Rate) dtd. 28.06.2017 which attracts IGST @18%. Accordingly, I reject the classification of the impugned imported goods under Sr. No. I-234 of Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 and hold that the subject goods should be re-classified under Serial No. 375 of Schedule-III of Notification No. 01/2017- Integrated Tax (Rate) dtd. 28.06.2017.

4.11 Whether the differential/short paid duty amounting to Rs. 2,06,96,998/- (Rupees Two Crore Six Lakh Ninety Six Thousand Nine Hundred Ninety Eight Only) for the subject goods imported vide Bills of Entry as detailed in Annexure-A to the subject SCN, should be demanded under Section 28(4) of the Custom Act, 1962, along with applicable interest under Section 28AA of the Custom Act, 1962.

4.11.1 After having determined the correct classification of the impugned imported goods, it is imperative to determine whether the demand of differential/short paid duty as per the provisions of Section 28(4) of the Customs Act, 1962, in the subject SCN is sustainable or otherwise. In this regard, 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.*

4.11.2 I have determined in the preceding paras that the impugned imported goods are correctly classifiable under Serial No. 375 of Schedule-III of Notification No. 01/2017-Integrated Tax (Rate) dtd. 28.06.2017 which attracts IGST @18%. I find that being a regular importer, the Noticee must be well aware of the type of equipment, their parts and accessories, correct classification and leviability of IGST thereon. However, in the instant case, they did not declare the correct leviability of IGST on the imported goods in the Bills of Entry. I find that the Noticee wilfully mis-classified the goods under wrong IGST Schedule, when knowing that the imported goods were rightly classifiable under Serial No. 375 of Schedule-III of Notification No. 01/2017-Integrated Tax (Rate) dtd. 28.06.2017 which attracts IGST @18%. Had the department not raised the issue and initiated procedure under the Customs Act, 1962 in this case, the duty so evaded might have gone unnoticed & unpaid. The Noticee has paid less duty by non-payment of applicable IGST on the subject goods, which tantamount to suppression of material facts and wilful mis-statement. The Noticee mis-classified the goods and suppressed the correct IGST schedule and leviability of correct IGST on the goods to evade duty. This shows wilful suppression, mis-statement and malafide intention of the Noticee to evade payment of legitimately payable duty. As the Noticee

got monetary benefit due to their wilful mis-declaration and evasion of applicable duty on the subject goods, hence, I find that duty was correctly demanded under Section 28(4) of the Customs Act, 1962, by invoking extended period.

4.11.3 I find that the Noticee evaded correctly payable duty by intentionally suppressing the correct classification of the imported product by not declaring the same at the time of filing of the Bills of Entry. Further, they wilfully mis-classified the goods under wrong Sr. No. I-234 of Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 when knowing that the imported goods were rightly classifiable under Serial No. 375 of Schedule-III of Notification No. 01/2017-Integrated Tax (Rate) dtd. 28.06.2017 which attracts IGST @18%. By resorting to this deliberate suppression of facts and wilful mis-classification, the Noticee has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer. Thus, this wilful and deliberate act was done with the fraudulent intention to claim ineligible lower rate of duty.

4.11.4 Regarding the larger period of limitation attracted in this case, I find that in the instant case, as elaborated in the foregoing paras, to evade payment of correctly leviable duty, the Noticee mis-classified and suppressed the correct IGST Schedule of the impugned goods, and also fraudulently claimed lower rate of duty at the time of filing of the Bills of Entry. Therefore, I find that in the instant case there is an element of 'mens rea' involved. The instant case is not a simple case of bonafide wrong declaration of IGST Sr. No. and claiming lower rate of duty. Instead, in the instant case, the Noticee deliberately chose to mis-classify the goods imported to claim lower rate of duty, being fully aware of the correct nature and 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 the Noticee, the extended period of limitation, automatically get attracted.

4.11.5 In view of the foregoing, I find that, due to deliberate / wilful mis-classification of goods, 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 following court decisions:

(a) 2013(294)E.L.T.222(Tri.-LB): 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]

> *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.*

(b) 2013(290)E.L.T.322 (Guj.): Salasar Dyeing & Printing Mills (P) Ltd. Versus C.C.E. & C., Surat-I; Tax Appeal No. 132 of 2011, decided on 27.01.2012.

> *Demand - Limitation - Fraud, collusion, wilful misstatement, etc. - Extended period can be invoked up to five years anterior to date of service of notice - Assessee's plea that in such case, only one year was available for service of notice, which should be reckoned from date of knowledge of department about fraud, collusion, wilful misstatement, etc., rejected as it would lead to strange and anomalous results;*

4.11.6 I note that the Noticee has classified the imported goods under Sr. No. I-234 of Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 paying IGST @ 5%, whereas the goods should fall under Sl. No. 375 of Schedule-III of the above notification attracting IGST @ 18%. Accordingly, the differential duty resulting from re-classification of the imported goods after imposing of higher rate of IGST as per the IGST Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 as proposed in the subject Show Cause Notice, is recoverable from M/s PV

Renewable under extended period in terms of the provisions of Section 28(4) of the Customs Act, 1962.

4.11.7 Therefore, I hold that the differential/short paid duty amounting to **Rs. 2,06,96,998/- (Rupees Two Crore Six Lakh Ninety Six Thousand Nine Hundred Ninety Eight only)** for the subject goods imported vide Bills of Entry as detailed in Annexure-'A' to the subject SCN should be demanded and recovered from M/s PV Renewable, under the provisions of Section 28(4) of the Customs Act, 1962 by invoking extended period.

4.11.8 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.

4.11.9 I have already held in the above paras that the differential/short paid duty amounting to **Rs. 2,06,96,998/- (Rupees Two Crore Six Lakh Ninety Six Thousand Nine Hundred Ninety Eight only)** should be demanded and recovered from the Noticee under the provisions of Section 28(4) of the Customs Act, 1962 by invoking extended period. Therefore, in terms of the provisions of Section 28AA of the Customs Act, 1962, interest on the aforesaid amount of differential/short paid duty is also liable to be recovered from M/s PV Renewable.

4.12 Whether the subject goods imported vide Bills of Entry as detailed in Annexure-A to SCN, having assessable value of Rs. 13,94,76,760/- (Rupees Thirteen Crore Ninety Four Lakh Seventy Six Thousand Seven Hundred Sixty Only) should be held liable to confiscation under Section 111(m) of the Custom Act, 1962.

4.12.1 The SCN proposes confiscation of goods imported vide Bills of Entry listed in Annexure-A to the SCN, having total assessable value of **Rs. 13,94,76,760/- (Rupees Thirteen Crore Ninety Four Lakh Seventy Six Thousand Seven Hundred Sixty Only)** under the provisions of Section 111(m) of the Customs Act, 1962.

4.12.2 Section 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*;

4.12.3 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.

4.12.4 I have already held in foregoing paras that the goods imported by the Noticee were correctly classifiable under the Serial No. 375 of Schedule-III of Notification No. 01/2017-Integrated Tax (Rate) dtd. 28.06.2017 which attracts IGST @18%. The Noticee was very well aware of the actual nature of the imported goods and the applicable correct IGST Schedule. However, they deliberately suppressed this correct IGST Schedule, and instead mis-classified the impugned goods under Sr. No. I-234 of Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 in the Bills of Entry to claim lower rate of duty. As discussed in the foregoing paras, it is evident that the Noticee deliberately suppressed the correct IGST Schedule and wilfully mis-classified the imported goods, resulting in short levy of duty. This deliberate suppression of facts and wilful mis-classification resorted by the Noticee, therefore, renders the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962. Accordingly, I find that acts of omission and commission on part of the Noticee have rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962.

4.12.5 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. 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.

4.12.6 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.

4.12.7 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.

4.12.8 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;

4.12.9 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 PV Renewable has deliberately failed to discharge this statutory responsibility cast upon them.

4.12.10 Besides, as indicated above, in terms of the provisions of Section 46(4) of the Customs Act, 1962 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018, the importer while presenting a Bill of Entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such Bill of Entry. In terms of the provisions of Section 47 of the Customs Act, 1962, the importer shall pay the appropriate duty payable on imported goods and then clear the same for home consumption. However, in the subject case, the importer while filing the Bill of Entry has resorted to deliberate suppression of facts and wilful mis-classification to claim lower rate of duty. Thus, the Noticee has failed to correctly assess

and pay the appropriate duty payable on the imported goods before clearing the same for home consumption. Therefore, I find that by not self-assessing the true and correct rate of Customs duty applicable on the subject goods, the importer wilfully did not pay the applicable duty on the impugned goods.

4.12.11 In view of the foregoing discussion, I hold that the impugned imported goods declared in the Bills of Entry filed by M/s PV Renewable having total assessable value of **Rs. 13,94,76,760/- (Rupees Thirteen Crore Ninety Four Lakh Seventy Six Thousand Seven Hundred Sixty Only)** should be held liable for confiscation under Section 111(m) of the Customs Act, 1962, on the grounds of suppression and mis-classification of the imported goods.

4.12.12 As the importer, through wilful mis-statement and suppression of facts, had mis-classified the goods while filing the Bills of Entry with intent to evade the applicable Customs duty, resulting in short levy and short payment of duty, I find that the confiscation of the imported goods under Section 111(m) is justified & sustainable in law. However, I find that the goods imported are not available for confiscation. But I rely upon the order of Hon'ble Madras High Court in case of *M/s Visteon Automotive Systems India Limited [reported in 2018 (9) G.S.T.L. 142 (Mad.)]* wherein the Hon'ble Madras High Court held in para 23 of the judgment as below:

> *"23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act ....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii)."*

4.12.12.1 I further find that the above view of Hon'ble Madras High Court in case of *M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.),* has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd. reported in 2020 (33) G.S.T.L. 513 (Guj.).

4.12.12.2 I also find that the decision of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) and the decision of Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd. reported in 2020 (33) G.S.T.L. 513 (Guj.) have not been challenged by any of the parties and are in operation.

4.12.12.3 I find that the declaration under Section 46(4) of the Customs Act, 1962 made by the importer at the time of filing Bill of Entry is to be considered as an undertaking which appears as good as conditional release. I further find that there are various orders passed by the Hon'ble CESTAT, High Court and Supreme Court, wherein it is held that the goods cleared on execution of Undertaking/ Bond are liable for confiscation under Section 111 of the Customs Act, 1962 and Redemption Fine is imposable on them under provisions of Section 125 of the Customs Act, 1962.

4.12.12.4 In view of above, I find that any goods improperly imported as provided in any sub-section of the Section 111 of the Customs Act, 1962, the impugned goods become liable for confiscation. Hon'ble Bombay High Court in case of *M/s Unimark reported in 2017(335) ELT (193) (Bom)* held Redemption Fine (RF) imposable in case of liability of confiscation of goods under provisions of Section 111(o). Thus, I also find that the goods are liable for confiscation under other sub-sections of Section 111 too, as the goods committing equal offense are to be treated equally. I opine that merely because the importer was not caught at the time of clearance of the imported goods, can't be given different treatment.

4.12.12.5 In view of the above, I find that the decision of Hon'ble Madras High Court in case of *M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.),* which has been passed after observing decision of Hon'ble Bombay High Court in case of *M/s Finesse Creations Inc. reported vide 2009 (248) ELT 122 (Bom)*- upheld by Hon'ble Supreme Court in 2010(255) ELT A. 120 (SC), is squarely applicable in the present case. I observe that the present case also merits imposition of Redemption Fine having held that the impugned goods are liable for confiscation under Section 111(m) of the Customs Act, 1962. Accordingly, since the impugned goods are not prohibited goods, the said goods are required to be allowed for redemption by the owner on payment of fine in lieu of confiscation under Section 125(1) of the Customs Act, 1962.

4.13 Whether penalty should be imposed on M/s PV Renewable under Section 112(a) and/or Section 114A of the Customs Act, 1962.

4.13.1 I find that in the era of self-assessment, the Noticee had wrongly self-assessed the Bills of Entry and evaded the payment of correctly leviable IGST in respect of the impugned imported goods covered under Bills of Entry mentioned in Annexure-A to the subject SCN. As the Noticee got monetary benefit due to their wilful mis-declaration and evasion of applicable IGST on the aforesaid goods, I find that duty was correctly demanded under Section 28(4) of the Act by invoking extended period.

4.13.2 As discussed above, I find that the subject Bills of Entry were self-assessed by the Noticee, M/s PV Renewable. They were aware of the true nature and characteristics of the imported goods and accordingly, were knowing about the correctly leviable IGST thereon. However, still they wilfully suppressed this fact and evaded payment of legitimately payable IGST 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. They suppressed the fact before the Customs Department regarding correctly leviable IGST thereon, to claim the undue duty benefit at the time of clearance of the said imported goods. This wilful and deliberate suppression of facts 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 Section 111(m) of the Customs Act, 1962, thereby making themselves liable for penalty under Section 112(a) ibid.

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

4.13.4 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)].

4.13.5 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.*

4.13.6 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 PV Renewable, in the impugned SCN. 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.

4.13.7 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 imposed 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 subject goods under Sr. No. 234 of Schedule-I of IGST levy Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 and order to re-assess the same under Serial No. 375 of Schedule-III of the said Notification.

(ii) I confirm the demand of differential/short paid duty amounting to **Rs. 2,06,96,998/- (Rupees Two Crore Six Lakh Ninety Six Thousand Nine Hundred Ninety Eight Only)** for the subject goods imported vide Bills of Entry as detailed in Annexure-A to the subject SCN and order to recover the same under Section 28(4) of the Custom Act, 1962 along with applicable interest under Section 28AA of the Custom Act, 1962.

(iii) I order to confiscate the subject goods imported vide Bills of Entry as detailed in Annexure-A to the subject SCN having assessable value of **Rs. 13,94,76,760/- (Rupees Thirteen**

Crore Ninety Four Lakh Seventy Six Thousand Seven Hundred Sixty Only) under Section 111(m) of the Custom Act, 1962.

I also impose a redemption fine of **Rs. 65,00,000/- (Rupees Sixty Five Lakh Only)** on M/s PV Renewable in lieu of confiscation under Section 125(1) of the Customs Act, 1962.

(iv) I impose a penalty equivalent to differential duty of **Rs. 2,06,96,998/-(Rupees Two Crore Six Lakh Ninety Six Thousand Nine Hundred Ninety Eight only)** along with applicable interest under Section 28AA of the Customs Act, 1962, on M/s PV Renewable 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.

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

To,

1. **M/s PV Renewables,**
A-15/1, Zaveri Industrial Estate,
Kathwada Gids Road, Ahmedabad, Gujarat - 382415

Copy to:

1. The Addl. Commissioner of Customs, Group VA, JNCH
2. AC/DC, Chief Commissioner's Office, JNCH
3. AC/DC, Centralized Revenue Recovery Cell, JNCH
4. AC/DC, Circle-D3, Audit Commissionerate, JNCH
5. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
6. EDI Section.
7. Office copy.