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 – 20251278NX0000624025	**Date of Order: 18.12.2025**
F. No. S/10-181/2024-25/CC./Gr.VB/NS-V/CAC/JNCH	**Date of Issue: 18.12.2025**
SCN No.: 1616/2024-25/Commr./Gr.VB/NS-V/CAC/JNCH	
SCN Date: 15.01.2025	
Passed by: Sh. Anil Ramteke	
Commissioner of Customs, NS-V, JNCH	
Order No: 301/2025-26/COMMR/NS-V/CAC/JNCH	
Name of Noticee: M/s. Fiat India Automobiles Pvt. Ltd. (IEC: 0398020400)	

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. 1616/2024-25/Commr./Gr.VB/NS-V/CAC/JNCH dated 15.01.2025 issued to M/s Fiat India Automobiles Pvt. Ltd. (IEC: 0398020400) - reg.

BRIEF FACTS OF THE CASE

1. It is stated in the Show Cause Notice (SCN) No. 1616/2024-25/Commr./Gr.VB/NS-V/CAC/JNCH dated 15.01.2025 that Fiat India Automobiles Private Limited ("FIAPL" in short) (IEC: 0398020400) (hereinafter referred as 'Importer' or the 'Noticee') having address at B-19, Ranjangaon MIDC Industrial Area, Ranjangaon, Taluka - Shirur, Pune - 412210 had presented Bills of Entry, as mentioned in Annexure-A to the subject SCN at Air Cargo Complex, Sahar, Andheri (E), Mumbai-400099 and Nhava Sheva Port (INNSA1) for clearance of goods having description as "Sensor Assy, Wheel Speed ABS", "Sensor Module Rain", "Control Module Engine GPE", "Sensor Module" etc. (herein referred as the impugned goods) and classified the same under different CTI viz. 85437099, 85371000, 90319000 and 90329000 etc. through their authorized Custom Broker M/s. Babaji Shivram Clearing & Carriers Pvt. Ltd., wherein the Importer has paid BCD @7.5% and IGST @18%. The total Assessable value of the impugned goods imported through said ports is **Rs. 2,96,52,323/- (Rupees Two Crore Ninety Six Lakh Fifty Two Thousand Three Hundred Twenty Three Only)**. The details of the Bills of Entry are enclosed in Annexure-A to the subject SCN.

2. As per the SCN, during Post Clearance Audit ("PCA" in short), conducted in accordance with the provisions of Section 99A of the Customs Act, 1962 read with Section 157(k) *ibid* and Customs Audit Regulation, 2018; it was found that the Importer had imported the impugned goods describing them as "Auto Parts".

3. It appeared that the impugned goods are complex instruments which uses combination of different principles to work. These goods work by gathering the information/data of diverse variables, processing the data, making decisions, and providing actionable feedback. Also, it appeared that, they are not specifically classified in the CTIs claimed as mentioned above, which are discussed in next para and re-produced as under:

3.1. Sensor Module - Rain: The Importer had classified the goods namely "Sensor Module Rain", under CTI 8543 7099 (BCD @ 7.5%, IGST @ 18%) and mentioned them under "Others" as a residual entry. As per Section Note 1(1) of Section XVI (Chapter 84 & 85), this Section does not cover articles of Section XVII (Chapter 86 to 89). Further, in some Bs/E, the said goods were classified under CTI 9031 9000, which are 'Parts and Accessories of Laser Land Leveller and Other Automatic Regulating or Controlling Instrument and Apparatus'. These goods use variety of principles for completing the task given. This item is not specifically mentioned under the claimed CTI. Since, Sensor Module Rain as a part of vehicles are used in Motor vehicles, it appeared that the said goods are rightly classified under CTI 8708 9900, which attracts BCD @ 15% and IGST @28%.

3.2. Sensor Assy: Wheel Speed ABS: The Importer had classified the goods namely Sensor Assy: Wheel Speed ABS under CTI 85437099 (BCD @ 7.5%, IGST @ 18%) and mentioned them under "Others" as a residual entry. This item is not specifically mentioned under the claimed CTI. As per Section Note 1(1) of Section XVI (Chapter 84 & 85), this Section does not cover articles of Section XVII (Chapter 86 to 89). Further, 'Sensor Assy: Wheel Speed ABS System' as a part of vehicle are used in Motor Vehicles, hence, it appeared that the said goods are correctly classifiable under CTI 8708 9900 which attracts BCD @ 15% and IGST @ 28%.

3.3. Control Module Generic Engine GPE: The Importer had classified these goods under CTI 8537 1000 (BCD @ 7.5% and IGST @ 18%). As per Section Note 1(1) of Section XVI (Chapter 84 & 85), this Section does not cover articles of Section XVII (Chapter 86 to 89). A Control Module for an engine is crucial part of a Motor Vehicle's Engine System. Whereas, CTH 8708 specifically includes all components essential for Vehicle Operation. Since, the Control Module manages critical

engine functions, it fits perfectly as a Vehicle Part under Sub-heading 8708 99, which covers 'Other Parts and Accessories not listed elsewhere'. These goods are specifically used in Motor Vehicles c heading 8703. Further, it appeared that the said goods as parts of Vehicle are used in Motor Vehicles and rightly classifiable under CTI 8708 9900, which attracts BCD @ 15% and IGST @ 28%. It is pertinent to mention here that in various Bs/E, they classified these goods under CTI 8708 9900.

4. The analysis in paragraphs 3.1 to 3.3 indicates that the impugned goods are correctly classifiable under CTI 8708 99 00. Consequently, the applicable duties should have been BCD @ 15% and IGST @ 28%, as outlined in Schedule IV, Serial No. 170 of Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017. For clarity, an excerpt of Sr. No. IV-170 is provided below:

Schedule IV-28%

Sr. No.	Chapter/Heading/Sub-heading/Tariff item	Description of goods
170	8708	Parts and accessories of the motor vehicles of heading 8701 to 8705 (other than specified parts of tractors)

5. It appeared that the Importer intentionally mis-classified the impugned goods in the relevant Bs/E. These goods, imported through Nhava Sheva Port (INNSA1) and Air Cargo Complex (INBOM4), were cleared under CTI 8543 7099, 8537 1000, 9031 9000 and 9032 9000, resulting in the payment of BCD @ 7.5% and IGST @ 18%. Upon scrutiny, it appeared that the correct classification for these goods is CTI 8708 9900, attracting BCD @ 15% and IGST @ 28%. This deliberate mis-classification in the Bs/E by the Importer appeared to be an attempt to evade legitimate Customs duties. Consequently, the Importer's actions of wilful mis-statement and suppression of facts to evade applicable BCD and IGST render them liable for payment of the short-paid duty as per Section 28(4) of the Customs Act, 1962, and also subject to penal action under the same Act.

6. Considering above, a Consultative Letter No. 1177/2024 dated 29.08.2024 vide F. No. CADT/CIR/ADT/PBA/173/2023-THBA-CIR-C2 was issued to the importer. The Importer, in response to above Consultative Letter submitted letter dated 03.12.2024. In this letter, the importer argued that:

A. For an item to be classified as Parts and Accessories under Section XVII, it must satisfy three conditions outlined in the HSN Explanatory Notes:

(i) **Exclusion from Note 2:** The item must not be specifically excluded by the terms of Note 2 of Section XVII.

(ii) **Suitability for Use:** The item must be suitable for use solely or principally with articles belonging to Chapters 86 to 88.

(iii) **Specificity:** The item must not have a more specific classification elsewhere in the Harmonized System Nomenclature.

These conditions, as argued by the Importer, are essential for an item to be correctly classified as parts and accessories under Section XVII.

B. The proposed re-classification under Heading 87.08 contradicts the principle established in the *Uni Products* case, where classification must adhere to specific guidelines, and end-use/application cannot be the sole criterion. Reliance was placed on the decision of *CCE Vs Uni Products India Ltd. [2020(5)TMI 63-SC]* wherein while relying upon the HSN Explanatory Notes, the Hon'ble Supreme Court concluded that since the carpets are specifically excluded from Section XVII, merely because they are used in automobiles, they would not merit classification under heading 8708.

C. The demand for differential duty for the period from January 22, 2020 to November 27, 2022, is barred by the normal period of limitation. The dispute concerns mis-classification, but there was no suppression of facts, since, all import documents clearly stated the goods' nature. As per Supreme Court rulings, mis-classification based on a *bona fide* belief does not warrant an extended period of limitation.

D. The Importer had filed an appeal against a similar re-classification under Heading 87.08 in July, 2023, which is currently under adjudication. The Customs Department has been aware of the Importer's classification practices, and as per the *Nizam Sugar Factory* case, no penalty or interest should be applied as there was no suppression of facts.

E. Importer also replied on issue of IGST payment that, the IGST demand is considered revenue-neutral as the Importer can claim Input Tax Credit (ITC) for any IGST paid, and no penalty or interest should be imposed on the IGST portion.

F. The goods are excluded from classification under Heading 8708 and that the demand for differential duty as well as IGST, is not valid.

7. It appeared that the Importer's submission does not hold strong legal ground, in view of the following points.

(a). In direct opposition to the Importer's submission in paragraph 6(a), it is evident that:

- The impugned goods are not listed among the exclusions specified in Note 2 of Section XVII of the Customs Tariff.
- These goods possess specific design features, compatibility and integrated sensors, clearly indicating their suitability for exclusive or principal use in Motor Vehicles.
- Furthermore, these impugned goods constitute integral parts of Motor Vehicles and are therefore, correctly classified under CTH 8708, which encompasses Parts and Accessories of Motor Vehicles.

(b). Uni Products judgment primarily dealt with products not integrally related to a particular machine or vehicle, whereas, in this case, the goods are integral to motor vehicles. Thus, the proposed classification under heading 8708 does not contradict the guidelines established in the Uni Products case but rather adheres to the correct principles of classification under the Customs Tariff Act.

(c). In response to the Importer's argument in paragraph 6(c), it is evident that they have mis-classified the goods and mis-declared the CTI, resulting in evasion of legitimate customs duties. Under the self-assessment regime, importer bear the responsibility of accurately assessing duties on imported goods. In this instance, the Importer's mis-classification of the CTI, despite their access to legal advice, constitutes suppression of material facts and wilful misstatements. While direct proof of "*mens rea*" (guilty mind) may be challenging, it can be inferred from the "*actus reus*" (guilty act). The Importer's deliberate mis-classification of the goods to secure clearance at a lower duty rate strongly suggests an intent to evade duty payment. Therefore, the extended limitation period u/s. 28(4) of the Customs Act, 1962, is applicable in this case, and the Importer is liable for a penalty u/s. 114A of the act of suppression of facts.

(d). In contrary to importer's submission at para 6(d), it appeared that since the demand of duty is sustainable in the instant case, the interest being accessory to the principal, the same is liable to be paid in accordance with Section 28AA of the Customs Act, 1962. The facts and circumstances of the present case are different from the Nizam Sugar Factory case. Hence, the case law is not applicable to the present case.

(e). In contrary to importer's submission at para 6(e), the Importer's argument of revenue neutrality does not exempt them from timely payment of IGST. Revenue neutrality is not a defense

against tax liability, as interest compensated for delayed payment, and penalties deter non-compliance. Even if Input Tax Credit (ITC) is available, IGST must be paid on time as per law. Additionally, ITC will not be available in the case of fraud or wilful mis-statements or suppression of facts or confiscation and seizure of goods.

7.1 Hence, it appeared that the subject goods are correctly classifiable under CTI 8708 9900 where BCD payable @ 15% and IGST @ 28% and the claim of Importer for the classification of the impugned goods under CTI 8543 7099, 8537 1000, 9031 9000 and 9032 9000 is not correct.

8. Thus, the act of the Importer makes them liable for payment of the differential duty amounting to **Rs. 63,41,149/-** (Rupees Sixty Three Lakh Forty One Thousand One Hundred Forty Nine Only) along with applicable interest. Further, the impugned goods having total Assessable Value of **Rs. 2,96,52,323/-** (Rupees Two Crores Ninety Six Lakh Fifty Two Thousand Three Hundred Twenty Three Only) are liable for confiscation under Section 111(m), ibid and the importer is liable for penal action under the Customs Act, 1962.

9. Statutory Provisions

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 28 : Recovery of duties not levied or short levied or erroneously refunded
- Section 28AA : Interest on delayed payment of duty
- Section 46 : Entry of goods on importation
- Section 111 : Confiscation of improperly imported goods,
- Section 114A : Penalty for short-levy or non-levy of duty in certain cases.
- Section 117 : Penalties for contravention, etc., not expressly mentioned.

10. The short-payment of Customs duty on the impugned goods by the Importer in order to evade duty thereon appeared to have contravened the provisions of Section 46(4) and Section 46(4A) of the Customs Act, 1962 and which in turn appeared to have rendered the subject goods liable to confiscation in terms of the provisions of Section 111(m) of the Customs Act, 1962. Thus, the Importer also appeared liable for penal action in terms of the provisions of Section 114A, ibid.

10.1. All the aforesaid facts, discussed above, about the manner in which the Importer had short paid BCD and IGST amount for the subject goods, came to light only after the Audit of the imported goods. In view of the above, it appeared that in-spite of having knowledge, the importer wilfully mis-stated and suppressed facts from the Department and short paid the BCD and IGST amount which is not admissible to them. Therefore, extended period of 05 years as provided u/s. 28(4) of the Customs Act, 1962 is applicable for recovery of the Customs duty u/s. 28 *ibid* along with applicable interest thereon, u/s. 28AA *ibid.*

11. With the introduction of Self-Assessment, faith is bestowed on the Importer as the practice of routine assessment, concurrent audit etc., have been dispensed with and the Importer has been entrusted with the responsibility to correctly self-assess the duty. However, in the instant case, the Importer intentionally abused the faith placed upon it by the law of the land. It also appeared that such evasion of payment of applicable duty of impugned goods, on the part of the Importer had resulted in short levy of duty amounting to **Rs. 63,41,149/-** (Rupees Sixty Three Lakh Forty One Thousand One Hundred Forty Nine Only) which is recoverable from the Importer under the provisions of Section 28(4) of the Customs Act, 1962, along with the interest as applicable u/s. 28AA *ibid.* In view of the wilful evasion of payment of applicable duty during self-assessment by the

Importer in respect of the impugned goods, resulting into short/non-levy of duty, it appeared that the Importer has rendered the goods mentioned in Annexure-A to the SCN, liable for confiscation u/s. 111(m) *ibid.* For such acts/omission on the part of the Importer and the said deliberate wrong self-assessment of duty, the Importer also appeared to have rendered themselves liable to penalty u/s. 114A *ibid.*

12. In view of the above, vide Show Cause Notice (SCN) No. 1616/2024-25/Commr./GR. VB/ NS-V/CAC/JNCH dated 15.01.2025, Fiat India Automobiles Private Limited (IEC: 0398020400), was called upon to show cause to the Commissioner of Customs, Nhava Sheva-V, JNCH (the Adjudicating Authority), as to why:

(i) Differential duty amount of **Rs. 63,41,149/- (Rupees Sixty Three Lakh Forty One Thousand One Hundred Forty Nine Only)** with respect to the items covered under 70 Bs/E as mentioned in **Annexure-A** to the SCN should not be demanded u/s. 28(4) of the Customs Act, 1962, along with applicable interest as per Section 28AA, ibid.

(ii) The impugned goods having Assessable Value of **Rs. 2,96,52,323/-** (Rupees Two Crores Ninety Six Lakh Fifty Two Thousand Three Hundred Twenty Three Only) should not be held liable for confiscation u/s. 111(m) of the Customs Act, 1962.

(iii) Penalty should not be imposed on them u/s. 114A of the Customs Act, 1962.

WRITTEN SUBMISSION OF THE IMPORTER

13. In response to the SCN, the Importer vide letter dated 21.03.2025 submitted their written reply in their defence. The contentions of the Importer, in their words, are re-produced hereinbelow:

A. The impugned SCN is contrary to legal and factual position, and it is therefore, liable to be dropped on this ground itself without prejudice to the following submissions which are made without prejudice to each other.

B. IMPUGNED GOODS ARE CORRECTLY CLASSIFIABLE UNDER CHAPTER 85 OR CHAPTER 90, AS OPPOSED TO HEADING 87.08 PROPOSED BY THE DEPARTMENT.

B.1. The Department in the impugned SCN has proposed to re-classify the impugned goods under Tariff Item 8708 99 00. The impugned goods have been incorrectly proposed to be classified under Heading 87.08.

B.2. GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and the headings and legal notes do not otherwise require, then and only then the remaining GRIs may be applied.

B.3. In this regard, reliance is placed on the case of the Larger Bench of the Tribunal in the matter of *Saurashtra Chemical Vs. CC [1986 (23) ELT 283 (Tri-LB)]* which was upheld by the Hon'ble Supreme Court of India in 1997 (95) ELT 455 (SC). In this case, it was held that the tariff has to be interpreted in the light of relevant Section and Chapter Notes.

B.4. Further, the HSN Explanatory Notes constitute the official interpretation of the nomenclature at the international level. While not legally binding, they do represent the considered views of classification experts of the Harmonized System Committee. It is well settled that the Explanatory Notes have persuasive value and in the event of disputes, Courts in a number of cases have upheld seeking recourse to the Explanatory Notes.

B.5. Reliance in this regard was placed on following case laws:

(i) *M/s. O. K. Play (India) Vs. CCE – 2005 (180) ELT 300 (SC);*

(ii) M/s. L.M.L. Limited Vs. CC – 2010 (258) ELT 321 (SC);

(iii) M/s, Nestle India Vs. CCE – 2008 (227) ELT 631 (Tri) [maintained by the Hon'bl Supreme Court in 2009 (237) ELT 102 (SC)].

B.6. Thus, it is evident that the classification of goods should be on the basis of:

(a) Section Notes and Chapter Notes and the Interpretative Rules; and

(b) HSN Explanatory Notes.

B.7. Conditions of Section XVII are not satisfied to classify the impugned goods under Heading 87.08; that Section Note 2(f) and (g) excludes Electric Machinery or Equipment of Chapter 85 and articles of Chapter 90 from the expression 'Parts' and 'Parts and Accessories' of Chapter 87.

B.8. The importer contended that the SCN has alleged that *firstly*, the impugned goods are not excluded from Note 2 to Section XVII; *secondly*, the goods possess specific features, compatibility and integrated sensors indicating their suitability for exclusive or principal use in Motor Vehicle; and *thirdly*, the goods constitute integral parts of Motor Vehicles. Thus, the impugned goods should be classified under Heading 87.08.

B.9. In this regard, the importer submitted that Electrical Machinery or Equipment of Chapter 85 and articles of Chapter 90 are specifically excluded from Note 2 of Section XVII (which includes Chapter 87). Thus, the SCN is incorrect in alleging that the impugned goods are not excluded from Note 2 to Section XVII. Further, although the goods are suitable for use in Motor Vehicles, it does not fulfil all the three conditions to be classified as 'part and accessories' under Chapter 87, as the impugned goods are specifically excluded from Note 2 to Section XVII. Therefore, the SCN has incorrectly proposed to re-classify the impugned goods under Heading 87.08 without applying proper provisions of law.

B.10. The SCN has failed to explain how the impugned goods are integral parts of Motor Vehicles; that merely because the goods are used in Motor Vehicle, it does not mean the impugned goods become integral to its functioning. Reliance in this regard was placed on the decision of CCE Vs. Uni Products India Ltd. - 2020 (5) TMI 63- SC.

B.11. The impugned SCN at para 7(b) has contended that the decision of Uni Products supra primarily dealt with products not integrally related to a particular machine or vehicle, whereas, in this case, the goods are integral to Motor Vehicles and thus, the classification of goods under Heading 87.08 does not contradict the guidelines established in the aforesaid case. In this regard, they submitted that the classification of goods is not dependent on whether the goods are integral or otherwise. If only nature and extent of integration is relevant, then "accessories" may not be covered under CTH 8708. If the contention of the Department is accepted, then the GRI, the Section Notes and Chapter Notes would be become redundant as the sole test would be "integration" of the item.

B.12. Therefore, the impugned goods cannot be classified under Heading 87.08, as the impugned goods are specifically excluded from Section XVII. Thus, the Noticee is not liable to pay differential BCD and IGST, as the goods are not classifiable under Heading 87.08.

B.13. Rain Sensors are correctly classified under Heading 90.26 and therefore, cannot be classified under Heading 87.08. Without prejudice, Rain Sensors are correctly classified under Heading 90.31 and therefore, cannot be classified under Heading 87.08. Further, Rain Sensors are correctly classified under Heading 85.43 and therefore, cannot be classified under Heading 87.08.

B.14. Heading 85.43 of the Customs Tariff covers *"Electric machines and apparatus having individual functions, not specified or included elsewhere in this chapter"*; that the principles

for classification of such machinery of Heading 85.43 are described in the HSN Explanatory Notes under Heading 84.79 which covers machines and mechanical appliances having individual functions not specified or included elsewhere in this Chapter. These principles are equally applicable to classification of Electrical machinery under Heading 85.43.

B.15. Further, US Custom Ruling N025432 is in support of the above classification. The above US Customs Ruling further strenghtens Noticee's submissions that the product in consideration, being an electrical machinery having an individual fucntion is correctly classified under Heading 85.43.

B.16. Reliance was placed on case law of M/s. Pioma Chemicals Vs. CC – 2019 (370) ELT 301 (Tri. - Mumbai).

B.17. In view of the above, Rain Sensor cannot be classified under Heading 87.08 and is correctly classified under the competitive entries of Chapter 90 or Tariff Item 8543 70 99. Therefore, the impugned SCN is liable to be dropped and set aside to this extent.

B.18. <u>ABS sensor are correctly classifiable under heading 85.43</u>

ABS Sensor is used in conjunction with the automobile's anti-lock brake system (ABS). It comprises of a permanent magnet within a coil of wire encased in an external housing. It is connected to the ABS-ECU by a wire harness. The ABS Sensor acts as a transducer and its purpose is to assist in detecting the differences in the rotational speed of the wheels. They are mounted by the wheels or the differential in close proximity to a toothed hub and as the teeth of the toothed hub rotate past the tip of the sensor, a magnetic field builds which in turn generates a voltage pulse signal and sends it to ECU for interpretation. The sensor *per se* does not indicate the number of revolutions, speed, output etc., per unit of time. Rather, the sensor detects the change in the magnetic field and then transmits the signal. It is the ABS-ECU that measures and compares the signals received and then determines the need for ABS activation.

B.19. Reliance was placed on the US Cross rulings *N281447: The tariff classification of wheel speed sensors from Germany, Japan, and Mexico.*

B.20. In view of the above, the ABS Sensor are correctly classified under Heading 8543 70 99 and cannot be classified under Heading 87.08, as they are specifically excluded under the Section Note 2 and thus, do not fulfil all the conditions to be classified as parts and accessories of Chapter 87. Therefore, the SCN is liable to be dropped and quashed to this extent.

B.21. <u>ECU merits classification under Heading 90.32</u>, therefore, in any case the same is not classifiable under Heading 87.08.

B.22. Upon perusal of the above heading 90.32, it is evident that this heading brings within its purview instruments and apparatus which automatically regulates or controls either the flow, level, pressure or other variables of liquids or gases or controls temperature or automatically regulates electrical quantities and controls non-electric quantities the operation of which depends on an electrical phenomenon. Further, Tariff Item 9032 89 10 specifically provides for 'Electronic Automatic Regulators'. In the instant case as well, the subject goods are electronic devices used to control and regulate various other devices to achieve the desired result.

B.23. Reliance was placed on the decision of Hon'ble CESTAT, Chennai in the case of M/s. Hyundai Motors Vs. CC in Customs Appeal No. 40029 of 2024, wherein it was held that ECU is not classified under Heading 87.08 and is classified under Heading 90.32.

B.24. In view of the above circumstances, in any case, the Rain sensor does not merit classification under Heading 87.08 and will get classified under Tariff Item 9032 8910.

B.25. Without prejudice, ECU is correctly classifiable under Heading 85.37.

B.26. Reliance in this regard was placed on the case of *Intec Corporation Vs. CCE - 2003 (156) ELT 544 (Tri - Del).* Further, reliance was also placed on the case of *R.C. Projects & Systems Ltd. Vs. CCE - 2005 (183) ELT 319 (Tri - Bang).* The aforesaid cases were relied upon in the case of *M/s. Ransar Industries V/s. CCE - 2018(362) ELT 651 (Tri.-Chennai)* for classification of control panels. Further, an appeal in the said matter before the Hon'ble Supreme Court was dismissed.

B.27. In view of the above, it is submitted that the ECU cannot be classified under Heading 87.08, as it is specifically excluded from Section Note 2 of Section XVII and can be classified under either of the two competitive entries, i.e. Tariff Item 8537 10 00 or Tariff Item 9032 89 10. Thus, the SCN and differential demand is required to be dropped to this extent.

C. <u>CLASSIFICATION OF THE GOODS CANNOT BE DETERMINED ON THE BASIS OF THEIR END USE.</u>

C.1. It is a settled law that the goods are to be classified in the state in which the importation has taken place. The subsequent use of the goods cannot be a determinative factor for classification. Reliance in this regard was placed on following case laws:

(a) *Towa Ribbons Ltd. vs Collector of Customs 1993 (66) ELT 320.*
(b) Dunlop India Ltd. Vs. UOI – 1983 (13) ELT 1566 (SC)
(c) Pololight Industries Limited Vs. CCE – 2011 (270) ELT 235 (Tri. -Ahmd).
(d) Eminence Equipments Vs. CCE – 2015 (330) ELT 344 (Tri-Mum).

C.2. Hence, in light of the above, the classification of the impugned goods under Heading 87.08 basis the end use, as proposed by the Department is not sustainable and the impugned goods have been correctly classified by the Noticee.

D. <u>THE ISSUE OF CLASSIFICATION OF ACCESSORIES OR PARTS OF VEHICLE HAS BEEN DECIDED IN VARIOUS JUDICIAL PRONOUNCEMENTS AND THE CBIC VIDE INSTRUCTION NO. 01/2022- CUSTOMS</u>

D.1. The Hon'ble Supreme Court in the case of *Uni Products supra* had analysed the issue of classification of car matting and whether the same will be classified under Chapter 57 or Chapter 87 of the First Schedule to Central Excise Tariff Act, 1985. The Hon'ble Court relied upon Rule 3(a) of GRI which states that specific heading has to be preferred over headings providing general description. The Hon'ble Supreme Court concluded that since the carpets are specifically excluded from Section XVII, merely because they are being used in automobiles, they would not merit classification under Heading 87.08.

D.2. Even in the present case, the goods imported by the Noticee are specifically excluded from Section Note 2 which states that even a part which is suitable for use solely or principally with motor vehicles, will not be regarded as a part or an accessory if such a part is an article of Chapters excluded under Note 2. Further, Section Note 3 prescribes that for a part or an accessory to merit classification under Heading 87.08, it should be suitable for use solely or principally with motor vehicles. Even if these parts are being imported by the Noticee for being specifically used in the motor vehicle, the same are to be classified in their respective heading.

D.3. Thus, the impugned goods are rightly classified under the respective entry under Chapter 85 or Chapter 90 by discharging appropriate BCD and IGST.

D.4. The above issue already stands settled by the Instruction No. 01/2022-Customs dated 05.01.2022 issued by the CBIC. Vide above Instruction, it has been clarified that all the conditions prescribed under the HSN Explanatory Notes to Section XVII.

D.5. Thus, the impugned SCN has been issued without examining all aspects as referred in the instruction and hence, it is liable to be dropped on this ground alone.

D.6. It is a well settled principle that Departmental Circulars are binding on the Department and the Department cannot be allowed to take a contrary stand. The Noticee relied upon the following decisions to assert the point:

(i) *Paper Products Vs. CCE - 1999 (112) ELT 765 (SC);*
(ii) CCE Vs. Cadbury India - 2006 (200) ELT 353 (SC);
(iii) CCE Vs. Ratan Melting & Wire Industries - 2008 (12) STR 416 (SC);
(iv) CCE Vs. Dhiren Chemical Industries - (2002 (139) ELT 3 (SC); and
(v) Ranadey Micronutrients Vs. CCE – 1996 (87) ELT 19 (SC).
(vi) K P Varghese v. Income-Tax Officer, Ernakulam & Anr. - 1981 (4) SCC 173.
(vii) UCO Bank, Tamil Nadu Industrial Investment Corporation Vs. Commissioner of Income Tax - 1999 (5) TMI 3.

D.7. In light of the above, all the conditions prescribed under Section XVII are required to be cumulatively satisfied, as given in Instruction No. 1/2022-Customs and as reiterated in Instruction No. 25/2022-Customs. Therefore, the impugned SCN purporting to classify the impugned goods under Heading 87.08 is incorrect and liable to be dropped.

E. <u>BURDEN OF PROOF LIES ON THE PARTY WHICH WISHES TO RE-CLASSIFY THE SUBJECT GOODS UNDER A DIFFERENT HEADING, WHICH HAS EVIDENTLY NOT BEEN DISCHARGED BY THE REVENUE IN THE PRESENT CASE</u>:

E.1. The Department has sought to change the classification of the impugned goods to Heading 87.08. However, the Department has not adduced any evidence to prove that the impugned goods merit classification under Heading 87.08.

E.2. In this regard, reliance was placed on following case laws:

(i) *Hindustan Ferrodo Ltd. Vs. CCE, Bombay - 1997 (89) ELT 16 (SC).*
(ii) H.P.L Chemicals Vs. CCE – 2006 (197) ELT 324 (SC).
(iii) UOI Vs. Garware Nylons Limited – 1996 (87) 12 (SC).
(iv) Commissioner of C. Ex., Calcutta-I Vs. Bata India Limited - 1998 (100) ELT 179 (Tribunal).
(v) Commr. of Com. Tax, Lucknow Vs. Perfaty Wanmele India - 2018 (19) G.S.T.L. 448 (All.).
(vi) Standard Metal Works Vs. CCE - 2004 (167) E.L.T. 297 (Tri. - Mumbai);
(vii) M.P. Dyechem Industries Vs. CCE - 2002 (139) E.L.T. 656 (Tri. - Del.) approved in 2002 (144) ELT A199 (SC);
(viii) Hindustan Lever Vs. CCE - 1985 (19) ELT 562 (Tribunal);
(ix) Sindhu Ganesh Bali Vs. CCE - 1985 (22) ELT 242 (Tribunal); and
(x) Bhilai Engineering Vs. CCE - 2016 (344) ELT 649 (Tri. – Del).

E.3. Since the Department has not produced any evidence to prove that the classification of the impugned goods is under Heading 87.08, the impugned SCN is liable to be dropped on this ground alone.

F. <u>THE PRESENT DISPUTE IS LIMITED TO CLASSIFICATION, WHICH IS ALWAYS A MATTER OF BONA FIDE BELIEF. THERE IS NO MIS-STATEMENT OR</u>

SUPRESSION. ACCORDINGLY, PROPOSED DEMAND BY INVOKING THE EXTENDED PERIOD OF LIMITATION IS INCORRECT AND BAD IN LAW.

F.1. The differential duty demand has been proposed vide SCN dated 15.01.2025 by invoking extended period of limitation in terms of Section 28(4) of the Customs Act for the imports from 22.01.2020 to 29.07.2024 on the ground that the Noticee has allegedly mis-classified the imported goods with an intent to evade higher customs duty.

F.2. Section 28(1) of the Customs Act mandates that the Proper Officer shall serve notice for any short levy/non-levy within two years from the relevant date. Therefore, any demand of duty made in the present matter, in respect of imports beyond the period of two years from the relevant date, is barred by limitation and in matters of classification, extended period of limitation is not invocable. In the present case, the demand beyond 15.01.2023 is barred by normal period of limitation.

F.3. It is a settled law that claim to a classification is a matter of bona-fide belief and in such cases, extended period of limitation is not invokable as held by the Hon'ble Supreme Court in *Northern Plastic Vs. CC – 1998 (101) ELT 549 (SC).* This principle has consistently been applied and followed even in self-assessment regime.

F.4. Extended period of limitation cannot be invoked where the Department has adopted a change in view without change in facts or law. Reliance is placed on the recent decision of the Hon'ble CESTAT Mumbai in Signet Chemical Vs. CC - 2020 (10) TMI 289 - CESTAT Mumbai. Also, reliance in this regard is placed on the recent decision of Hon'ble CESTAT Delhi in the case of Shape Engineering Company Vs. Commissioner (Appeals-1) - 2025-TIOL-378-CESTAT-DEL.

F.5. In view of the above, the Department cannot at this juncture allege mis-declaration and suppression of facts of the imported goods to invoke extended period of limitation. Therefore, the extended period of limitation cannot be invoked in the present case.

F.6. Extended period cannot be invoked when the impugned goods have been examined, thus, the present SCN invoking Section 28(4) is without jurisdiction.

F.7. Extended period cannot be invoked as the Department was aware of the practice of the Noticee.

F.8. Reliance in this regard was placed on following case laws:

(i) *Nizam Sugar Factory Vs. CCE - 2008 (9) STR 314 (SC)*
(ii) ECE Industries Vs. CCE - 2004 (164) ELT 236 (SC).
(iii) Midas Fertchem Impex Vs. Principal CC – 2023 (1) TMI 998.
(iv) M/s. Challenger Cargo Carriers Vs. Principal CC – 2022 (12) TMI 621.
(v) Padmini Products Vs. CC – 1989 (43) ELT 195 (SC);
(vi) CCE Vs. Chemphar Drugs & Liniments – 1989 (40) ELT 276 (SC);
(vii) Gammon India Ltd. Vs. CCE – 2002 (146) ELT 173 (Tri.), Affirmed by the Hon'ble Supreme Court in 2002 (146) ELT A313;
(viii) Lovely Food Industries Vs. CCE – 2006 (195) ELT 90 (Tri.);
(ix) Vaspar Concepts (P) Ltd. Vs. CCE – 2006 (199) ELT 711 (Tri.), Affirmed by the Hon'ble Supreme Court in 2002 (146) ELT A313.
(x) Orissa Bridge & Construction Corp. Vs. CCE, Bhubaneshwar -- 2011 (264) ELT 14 (SC).
(xi) Jalla Industries Vs. CCE – 2000 (117) ELT 429 (Tri.);
(xii) Rivaa Textile Inds. Ltd. Vs. CCE – 2006 (197) ELT 555 (Tri.);
(xiii) Shree Renuka Sugars Vs. CCE – 2007 (210) ELT 385 (Tri. Ban.); and
(xiv) Jetex Caburettors Vs. CCE – 2007 (78) RLT 682 (CESTAT-Mum.).

F.9. In view of the above, present SCN which was issued invoking extended period of limitation is bad in law and is liable to be dropped.

F.10. Extended period cannot be invoked as there was no mis-classification/ suppression of facts. It is a settled principle of law that even if mis-classification has been adopted the same does not amount to mis-declaration and/or suppression of facts to invoke the extended period of limitation.

F.11. Reliance in this regard was placed on following case laws:

(i) *Vesuvius India Vs. CC - 2019 (11) TMI 499 - CESTAT Hyderabad.*
(ii) Suntec Agri Equipments Vs. CC - 2025-TIOL-319-CESTAT-BANG.
(iii) CCE, Aurangabad Vs. Bajaj Auto Limited – 2010 (260) ELT 17 (SC).

F.12. In light of the aforementioned precedent, the extended period of limitation cannot be invoked even if it is assumed that mis-classification of imported articles was involved in respect of the aforementioned BOEs.

F.13. Noticee was and still is under the *bona fide* belief that the impugned goods are not classified under Heading 87.08. There was no intention to evade payment of duty. Noticee places reliance on the following case laws in support of its contention that extended period of limitation is not invokable in such a scenario:

(i) *Cosmic Dye Chemical Vs. CCE, Bombay - 1995 (75) ELT 721 (SC)*
(ii) Padmini Products Vs. CCE - 1989 (43) ELT 195 (SC)
(iii) Vineet Electrical Industries Pvt. Ltd. Vs. CCE & C, BBSR-II - 2001 (136) ELT 784 (Tri - Kolkata), as maintained by the Hon'ble Supreme Court in 2002 (144) ELT A292 (SC)
(iv) Pee Jay Apparels Vs. CCE - 2001 (135) ELT 842 (Tri. - Del.).
(v) Pahwa Chemicals Vs. CCE - 2005 (189) ELT 257 (SC)
(vi) Pushpam Pharmaceuticals Company Vs. CCE - 1995 (78) ELT 401 (SC)
(vii) Continental Foundation Jt. Venture Vs. CCE - 2007 (216) ELT 177 (SC)
(viii) Accurate Chemicals Industries Vs. CCE, Noida - 2014 (300) ELT 451 (Tri. – Del.), as upheld by the Hon'ble Allahabad High Court in 2014 (310) ELT 441 (All.).

F.14. Proposed demand to the extent of IGST is available as Input Tax Credit and thus, the same is revenue neutral. In this regard, reliance was placed on following case laws:

(i) *Nirlon Ltd v CCE - 2015 (320) ELT 22 (SC).*
(ii) Chiripal Poly Films Vs. CC - 2024 (9) TMI 940 - CESTAT AHMEDABAD.
(iii) Reliance Industries v CCE [2016 (44) STR 82, (Tri. Mumbai)].
(iv) Amco Batteries Ltd v CCE - 2003 (153) ELT 7 (SC).
(v) Mafatlal Industries Vs. CCE - 2009 (241) ELT 153 (Tri Ahmedabad) as maintained by the Supreme Court in 2010 (255 ELT A77 (SC)
(vi) Commissioner v Reliance Industries - 2017 (51) STR J187 (SC)
(vii) Choice Laboratories Ltd Vs. UOI - 2016 (341) ELT 604 (Guj)
(viii) NCR Corporation Vs. Commr of C.T. Bangalore North - 2021 (55) GSTL 6 (Tri-Bang.)
(ix) Jet Airways v Comm. of ST - 2014 (36) STR 975 (Bom.)

F.15. In view of the above, since the proposed demand to the extent of IGST is revenue neutral, there can be no intent to evade duty and therefore, extended period of limitation cannot be invoked, thus, the impugned SCN is liable to be dropped on this ground alone.

G. <u>CONFISCATION OF THE GOODS IS NOT WARRANTED IN THE PRESENT CASE</u>:

G.1. In any case the impugned goods are not liable for confiscation under Section 111(m).

G.2. Since, the Noticee has not violated any of the aforesaid provisions and neither mis-declared nor suppressed any of the description in the disputed BOEs, therefore, the impugned good are not liable for the confiscation under Section 111(m) of the Act. Reliance was placed on following case laws:

(i) *Shahnaz Ayurvedics Vs. Commissioner of Central Excise, Noida - 2004 (173) ELT 337 (All.).*

(ii) CCE Vs. Shahnaz Ayurvedics - 2004 (174) ELT A34 (SC).

G.3. Misclassification does not amount to mis-declaration. It is submitted that misclassification is an act of *bona fide* mistake of erroneous classification, whereas misdeclaration is a *mala fide* act with the intention to evade Customs duty. In this regard, reliance is placed on following case laws:

(i) *CC Vs. A. Mahesh Raj - 2006 (195) ELT 261.*

(ii) Northern Plastic supra,

(iii) Sutures India Pvt. Ltd. vs. CC - 2009 (245) ELT 596 (Tri.-Bang.).

(iv) Surbhit Impex P. Ltd. Vs. CC - 2012 (283) E.L.T. 556 (Tri. - Mumbai).

(v) Allseas Marine Contractors S.A. Vs. CC – 2011 (272) ELT 619 (Tri.-Del.)

(vi) Sutures India Vs. CC – 2009 (245) ELT 596 (Tri.-Bang)
Affirmed by Hon'ble Supreme Court in 2010 (255) ELT A85 (SC)

(vii) Kirti Sales Corporation Vs. CC - 2008 (232) ELT 151 (Tri.-Del.)

G.4. Self-assessment cannot be basis to allege misdeclaration. The Noticee submits that merely because the goods are self-assessed, the same cannot be a ground for alleging misdeclaration. Reliance was placed on following case law:

(i) *Sirthai Superware India Ltd. v. CC - 2019 (10) TMI 460-CESTAT Mumbai.*

G.5. The proposal for confiscation is not sustainable as the conduct of the Noticee was *bona fide.* As submitted in the aforementioned grounds, the Noticee had acted in a *bona fide* manner. Therefore, proposal of confiscation is liable to be dropped. In this regard, reliance was placed on following case laws:

(i) *M/s. P Ripakumar and Company Vs. Union of India - 1991 (54) ELT 67.*

(ii) M/s. Porcelain Crafts and Components Exim Ltd. Vs. CC - Calcutta, 2001 (198)ELT 471.

G.6. Impugned goods are not available for confiscation. Without prejudice to the other submissions, confiscation of goods is not imposable when the goods are not available for confiscation. Reliance in this regard was placed on following case laws:

(i) *M/s. Shiva Kripa Ispat Vs. CCE – 2009 (235) ELT 623 (Tri. - LB).*

H. PENALTY IS NOT IMPOSABLE UNDER SECTION 114A OF THE CUSTOMS ACT:

H.1. As already stated in the foregoing paragraphs, the demand of differential BCD and IGST is not sustainable in law. Once the demand of duty is found to be non-sustainable, the question of levy of penalty does not arise as per the settled law. In this regard, reliance is placed on following case laws:

(i) *H.M.M. Limited supra.*

(ii) CCE Vs. Balakrishna Industries - 2006 (201) ELT 325 (SC).

(iii) CCE Vs. Cus. Vs. Nakoda Textile Industries Ltd - 2009 (240) ELT 199 (Bom.).

(iv) CC Vs. Videomax Electronics - 2011 (264) ELT 0466 (Tri. -Bom.)

(v) Union of India Vs. Rajasthan Spinning & Weaving Mills - 2009 (238) ELT 3 (SC)

(vi) CC, Mumbai Vs. M.M.K. Jewellers - 2008 (225) ELT 3 (SC)

H.2. Therefore, penalty u/s. 114A cannot be imposed since there is no intention to evade tax and there is no element of fraud, collusion, wilful-misstatement, or suppression of facts.

H.3. Penalty cannot be imposed in absence of '*mens rea*'. Without prejudice to the above, imposition of penalty is a quasi-criminal proceeding. Penalty cannot be ordinarily imposed unless and until "*mens rea*" on the part of the defaulter is proved beyond all reasonable doubts. Reliance was placed on the case law of *Union of India Vs. Rajasthan Spinning and Weaving Mills Limited – 2009 (238) ELT 3 (SC).*

H.4. Penalty not imposable in cases involving Interpretation of statutory provisions where the case involves interpretations of the provisions of the Customs Tariff Act. Reliance was placed on following case laws:

(a) *Auro Textile Vs. CCE – 2010 (253) ELT 35 (Tri. -Del.)*
(b) Hindustan Lever Ltd. Vs. CCE– 2010 (250) ELT 251 (Tri. -Del.)
(c) Whiteline Chemicals Vs. CCE– 2008 (229) ELT 95 (Tri. -Ahmd.)
(d) Delphi Automotive Systems Vs. CCE – 2004 (163) ELT 47 (Tri. -Del.)
(e) Rolex Logistics Vs. CCE – 2009 (13) STR 147 (Tri-Bang)

H.5. In light of the aforesaid submissions, the Noticee cannot not be made liable to penalty u/s. 114A of Customs Act and accordingly, the imposition of penalty in the impugned SCN should be quashed.

I. <u>INTEREST CANNOT BE DEMANDED UNDER SECTION 28AA OF THE CUSTOMS ACT, WHEN DUTY DEMAND ITSELF IS NOT SUSTAINABLE. SIMILARLY, INTEREST AND PENALTY CANNOT BE IMPOSED ON PROPOSED DEMAND OF IGST AND GOODS CANNOT BE CONFISCATED.</u>

I.1. The impugned SCN has proposed to demand interest on the differential duty in terms of Section 28AA of the Customs Act and proposed to impose penalty and confiscate the impugned goods. In this regard, reliance is placed on following case laws:

(i) *M/s. Prathibha Processors Vs. UOI – 1996 (88) ELT 12 (SC).*
(ii) Mahindra and Mahindra Vs. UOI – 2022-VIL-690-BOM-CU
(iii) Acer India Vs. CC - 2023-VIL-998-CESTAT-CHE-CU.
(iv) Philips India Ltd. Vs. CC - 2024-VIL-1531-CESTAT-MUM-CU.
(v) Chiripal Poly Films Vs. CC - 2024 (9) TMI 940 - CESTAT AHMEDABAD.
(vi) India Carbon Vs. State of Assam - (1997) 6 SCC 479.
(vii) J.K. Synthetics Vs. CTO, (1994) 4 SCC 276.
(viii) V.V.S. Sugars Vs. Govt. of A.P. & Ors. - (1999) 4 SCC 192.

J. <u>PRESENT DEMAND IS INVALID IN ABSENCE OF AN APPEAL AGAINST THE OUT OF CHARGE ORDER / BILLS OF ENTRY</u>.

J.1. The goods imported by the Noticee were cleared for home consumption on the strength of duly assessed Bs/E and 'Out of Charge' orders issued by the proper officer under the authority of the provisions of Section 17 and Section 47 of the Customs Act. There is no dispute on this factual position. These orders were passed on the satisfaction of the Proper Officer that the said goods have been properly assessed before clearance for home consumption. In this regard, reliance is placed on following case laws:

(i) *CCE Kanpur Vs. Flock (India) – 2000 (120) E.L.T 285 (S.C.), para 10.*
(ii) Priya Blue Industries Vs. CC (Preventive) – 2004 (172) ELT 145 (SC).
(iii) ITC Limited Vs. CCE, Kolkata IV – 2019 (368) ELT 216 (SC).
(iv) Jairath International Vs. UOI – 2019 (10) TMI 642.
(v) Vittesse Export Import Vs. CC (EP), Mumbai – 2008 (224) ELT 241 (Tri. -Mumbai).
(vi) Ashok Khetrapal Vs. CC, Jamnagar – 2014 (304) ELT 408 (Tri. Ahmd.)
(vii) Collector of Customs, Cochin Vs. Arvind Export – 2001 (130) ELT 54 (Tri.-LB)
(viii) Neelkanth Polymers Vs. CC, Kandla – 2009 (90) RLT 188 (Tri. -Ahmd.)

RECORDING OF PERSONAL HEARING

14. In adherence of the Principles of Natural Justice, a Personal Hearing (PH) was fixed on 21.11.2025. In response, Ms. Apoorva Parihar, authorized representative of the importer appeared for PH and made the following submissions:

a) As per Part (III) of HSN Explanatory Notes to Section XVII, goods may be classified as Parts and Accessories under this Section, which covers Chapter 87 of the Customs Tariff, only if they satisfy all the three conditions prescribed therein, simultaneously i.e.
(i) They must be excluded by the terms of Note 2 to Section XVII;
(ii) They must be suitable for use solely or principally with articles of Chapter 86 to 88, and
(iii) They must be specifically included elsewhere in the nomenclature.

In the present case, the Customs Department has failed to prove that the said three conditions have been satisfied. Therefore, the subject goods in question are not classifiable under Heading 87.08.

b) That the subject goods, namely 'Sensor Module – Rain, Sensor Assembly – Wheel Speed ABS & Engine Control Unit' are correctly classifiable under Chapter 85 of the Customs Tariff.

c) Alternatively, Sensor Module – Rain and Engine Control Unit are classifiable under Chapter 90 of the Customs Tariff.

d) The period of dispute in the present case is from 22.01.2020 to 29.07.2024, whereas, the SCN has been issued on 15.01.2025. Therefore, the duty demand for the period from 22.01.2020 to 14.01.2023 is barred by normal period of limitation.

e) That the present issue is that of classification which is a matter of bona fide belief and legal interpretation. In such cases, there cannot be any mis-statement or suppression especially when the goods have been described correctly and have also been examined routinely / repeatedly. Hence, proposal to invoke extended period of limitation is incorrect. On this count, penalty is also not impossible.

f) That it is a settled legal position that in case of any delay in issuance of a SCN by the Department, after having knowledge about the alleged transactions, extended period of limitation cannot be invoked. The Customs Department has issued SCNs on the very same issue to the Noticees as well as the other importers in the past. Thus, the present issue is an industry wide issue. Hence, the SCN could have been issued within normal period of limitation. Therefore, question of suppression or mis-statement does not arise and extended period cannot be invoked. On this count, penalty also cannot be imposed.

g) Section 3(12) of the Customs Tariff Act, 1975 does not borrow interest and penal provisions from the Customs Act. In absence of machinery provisions, no penalty can be imposed, or interest can be recovered with respect to the demand of IGST.

DISCUSSION AND FINDINGS

15. I have carefully gone through the facts of the case depicted in SCN dated 15.01.2025, records available, written/oral submissions of the Importer. The Importer has submitted written reply to the SCN as well as presented themselves before the undersigned for PH through their authorized representative. Both the written/oral submissions of the Importer are taken on record. Therefore, I take up the case for adjudication on merits on the basis of evidences available on records.

16. In compliance to provisions of Section 28(8) and Section 122A of the Customs Act, 1962 and in terms of the principles of natural justice, opportunity for PH on 21.11.2025 was granted to the Importer. Availing the said opportunity, the authorized representatives of the Importer attended the PH on 21.11.2025.

17. It is pertinent to mention here that in the present case the importer has imported the goods from more than one Ports, viz. JNCH, Nhava Sheva and ACC, Mumbai, therefore, the case falls under multiple jurisdiction. However, in terms of Section 110AA of the Customs Act, 1962 and Notification No. 28/2022-Customs (NT) dated 31.03.2022, the undersigned, viz. Commissioner of Customs (NS-V), Appraising Gr. 5B, JNCH, Nhava Sheva (INNSA1) is the Proper Officer for the issuance of the SCN and adjudicate the same.

18. The fact of the matter is that a SCN No. 1616/2024-25/Commr./GR.VB/NS-V/CAC/JNCH dated 15.01.2025 was issued by the Commissioner of Customs (NS-V), JNCH to the Importer, FIAPL, on the basis of an Audit Report received from Audit Commissionerate, issued subsequent to issuance of Consultative Letter No. 1177/2024 dated 29.08.2024.

19. I find that FIAPL imported the consignments of goods declared as "Auto Parts - Sensor Assy., Wheel Speed ABS, Sensor Module Rain, Control Module Engine GPE, Sensor Module etc." vide seventy (70) Bs/E during the period January, 2020 to July, 2024 (as detailed in Annexure-A to the subject SCN). The Importer cleared the impugned goods by self-assessing the subject Bs/E at JNCH, Nhava Sheva (INNSA1) and ACC, Mumbai (INBOM4) by classifying them under different CTIs, viz. 8543 7099, 8537 1000, 9031 9000 and 9032 9000 as 'Auto Parts' having duty structure @ 7.5% BCD + 18% IGST (under Schedule–III of Notification No. 01/2017-ITR dated 28.06.2017). The total declared Assessable Value of the goods was **Rs. 2,96,52,323/-**. Accordingly, the Importer paid the self-assessed Customs Duty and cleared the goods for Home Consumption.

20.1. I find that during the course of PCA of the subject Bs/E, the Audit Officers observed that the impugned goods are complex instruments which uses combination of different principles to work. These goods work by gathering the information/data of diverse variables, processing the data, making decisions, and providing actionable feedback. Also, it appeared that, they are not specifically classified in the CTIs claimed as mentioned above. It appeared that Sensor Module-Rain were classified under CTH 8543 7099 and 9031 9000; Sensor Assy: wheel Speed ABS were classified under CTH 8543 7099; and Control Module Generic Engine GPE were classified under CTH 8537 1000. However, the Audit Officers observed that these declared CTIs attracted lower rate of BCD @ 7.5% and IGST @ 18%, whereas, the goods in question are Parts and Accessories used in Motor Vehicles merits classification under CTI 8708 9900, which attracts BCD @ 15% and IGST @ 28% (under Sr. No. 170 of Schedule-IV of IGST Notification No. 01/2017-ITR dated 28.06.2017).

20.2. It was also observed by the Audit Officers that the correct classification for these goods is CTI 8708 9900, attracting BCD at 15% and IGST at 28%. This deliberate mis-classification in the Bs/E by the Importer appeared to be an attempt to evade legitimate Customs duties. Consequently, the Importer's actions of wilful misstatement and suppression of facts to evade applicable BCD and IGST render them liable for payment of short-paid duty as per Section 28(4) of the Customs Act, 1962, and also subject to penal action under the same Act.

20.3. I find that Heading 8708 is within Section XVII covering Chapter 87 of the Schedule-I (Import Tariff) of Customs Tariff Act, 1975, while CTH 8543 is within Section XVI, Chapter 85 of the Schedule-I (Import Tariff). There are three relevant Section Notes:

(i) Note 1(1) to Section XVI, Schedule-I (Import Tariff) of Customs Tariff Act, 1975, excludes articles of Section XVII from classification within Section XVI.

(ii) Note 2(e) to Section XVII, Schedule-I (Import Tariff) of Customs Tariff Act, 1975 excludes articles of heading 8483 from Section XVII, if the articles constitute integral parts of engines or motors.

(iii) Note 3 to Section XVII Schedule-I (Import Tariff) of Customs Tariff Act, 1975 limits the term "Parts" in Chapter 87 to include only those parts used solely or principally with the vehicles of Chapter 87.

20.4. I find that since the goods under consideration are used as Automotive Parts, they are "solely or principally" used in the vehicles of Chapter 87. Accordingly, the goods are "Parts" within th meaning of Note 3 to Section XVII. Thus, if the goods, being articles of CTH 85, are not integral parts of engines or motors, then they are articles of Section XVII and cannot be classified under Section XVI by virtue of Note 1(l) of Section XVI under CTH 8543.

20.5. I find that for tariff purposes, a Part is an integral, constituent component necessary to the completion of the article with which it is used, and which enables that article to function in the manner for which it was designed. I find that Module-Rain, Sensor Assy: Wheel Speed ABS and Control Module Generic Engine GPE are parts of Motor Vehicles and therefore, merits classification under CTH 8708 9900 only attracting higher rate of BCD and IGST.

20.6. On the basis of above observations, the Audit Commissionerate issued a Consultative Letter No. 1177/2024 dated 29.08.2024 to the Importer apprising them of clearance of the impugned goods under lower rate of duty and demanding the payment of the consequent differential duty. I find that in response, the importer submitted their reply vide letter dtd. 03.12.2024 stating that for an item to be classified as Parts and Accessories under Section XVII, it must satisfy three conditions outlined in the HSN Explanatory Notes: **(i) Exclusion from Note 2:** The item must not be specifically excluded by the terms of Note 2 of Section XVII; **(ii) Suitability for Use:** The item must be suitable for use solely or principally with articles belonging to Chapters 86 to 88; and **(iii) Specificity:** The item must not have a more specific classification elsewhere in the Harmonized System Nomenclature; that the demand for differential duty for the period from January 22, 2020, to November 27, 2022, is barred by the normal period of limitation. The dispute concerns mis-classification, but there was no suppression of facts, since all import documents clearly stated the goods' nature; that the Importer had filed an appeal against a similar re-classification under Heading 87.08 in July 2023, which is currently under adjudication; that the IGST demand is considered revenue-neutral as the Importer can claim Input Tax Credit (ITC) for any IGST paid, and no penalty or interest should be imposed on the IGST portion; that the goods are excluded from classification under Heading 8708; and that the demand for differential duty as well as IGST, is not valid.

20.7. On carefully observing the above submissions by the importer, it was observed that the subject goods were wrongly classified under: (i) CTI 8543 7099 as "*Other – Electrical Machines and Apparatus having individual functions, not Specified or Including Elsewhere in this Chapter*"; (ii) CTI 8537 1000 as "*Boards, Panels, Consoles, Desks, Cabinets And Other Bases, Equipped With Two Or More Apparatus Of Heading 8535 Or 8536, For Electric Control or the Distribution of Electricity, Including Those Incorporating Instruments Or Apparatus Of Chapter 90, And Numerical Control Apparatus, Other Than Switching Apparatus Of Heading 8517 - For a voltage not exceeding 1,000 V*"; (iii) CTI 9031 9000 as "*Parts and Accessories - Measuring Or Checking Instruments, Appliances And Machines, Not Specified Or Included Elsewhere In This Chapter; Profile Projector*"; and (iv) CTI 9032 9000 as "*Parts and Accessories - Automatic Regulating Or Controlling Instruments And Apparatus*". However, these imported items are Parts and Accessories of Motor Vehicles covered under Chapter 87 are correctly classifiable under CTI 8708 9900 which covers goods, viz. "Others - Parts and Accessories of the Motor Vehicles of Headings 8701 To 8705" and attract BCD @ 15%.

20.8. I find that on the basis of above facts, a SCN No. 1616/2024-25/Commr./GR.VB/NS-V/CAC/JNCH dated 15.01.2025 was issued to the Importer under the provisions of Section 124 r/w. Section 28(4) of the Customs Act, 1962, whereby, it is proposed to reject the declared classification of the goods, i.e. 8543 7099, 8537 1000, 9031 9000 and 9032 9000 and re-classify the same under appropriate CTH, viz. 8708 9900; proposed to demand and recover the Customs Duty short levied at the time of clearance of the goods; proposed to confiscate the goods u/s. 111(m) and imposition of penalty on the Importer u/s. 112(a) and/or 114A of the Customs Act, 1962.

21. Now, the issue before me for adjudication is to decide:

(i) Whether the items i.e. 'Auto Parts - Sensor Assy., Wheel Speed ABS, Sensor Module Rain, Control Module Engine GPE, Sensor Module etc.' are classifiable under CTI 8708 9900 on the basis of nature of goods and Chapter Notes?

(ii) Whether differential duty arise due to short payment of Customs Duty is liable for recovery u/s. 28(4) of the Customs Act, 1962 along with applicable interest u/s. 28AA *ibid*?

(iii) Whether the goods are liable for confiscation u/s. 111(m) of the Customs Act, 1962? and

(iv) Whether the Importer is liable for penal action u/s. 112(a) and/or 114A of the Customs Act, 1962?

21.1. Now, I will discuss the issues sequentially in following paras.

22. CLASSIFICATION OF GOODS:

I find that in the instant case, the Importer has declared the CTIs 8543 7099, 8537 1000, 9031 9000 and 9032 9000 for the goods imported, viz. "Auto Parts - Sensor Assy., Wheel Speed ABS, Sensor Module Rain, Control Module Engine GPE, Sensor Module etc.". However, on verification of import documents concerned with subject 70 Bs/E vis-à-vis description of goods covered under subject declared CTIs, Chapter Notes, it appeared that the Importer has mis-classified the goods under CTHs 8543 7099, 8537 1000, 9031 9000 and 9032 9000 which attracted, BCD @ 7.5% of Assessable Value and IGST @ 18% (under Schedule–III of Notification No. 01/2017-ITR dated 28.06.2017).

22.1. Before, concluding the issue of classification, the contents of declared and proposed CTIs is required to be looked into. The details of goods covered under both the CTI's are re-produced hereinbelow.

A. **Declared CTIs**:

8543		**ELECTRICAL MACHINES AND APPARATUS HAVING INDIVIDUAL FUNCTIONS, NOT SPECIFIED OR INCLUDING ELSEWHERE IN THIS CHAPTER**	
8543 70	--	Other machines and apparatus:	
8543 80 99	----	Other	7.5%\
8537		**BOARDS, PANELS, CONSOLES, DESKS, CABINETS AND OTHER BASES, EQUIPPED WITH TWO OR MORE APPARATUS OF HEADING 8535 OR 8536, FOR ELECTRIC CONTROL OR THE DISTRIBUTION OF ELECTRICITY, INCLUDING THOSE INCORPORATING INSTRUMENTS OR APPARATUS OF CHAPTER 90, AND NUMERICAL CONTROL APPARATUS, OTHER THAN SWITCHING APPARATUS OF HEADING 8517**	
8537 10 00	-	For a voltage not exceeding 1,000 V	7.5%
9031		**MEASURING OR CHECKING INSTRUMENTS, APPLIANCES AND MACHINES, NOT SPECIFIED OR INCLUDED ELSEWHERE IN THIS CHAPTER; PROFILE PROJECTORS:**	
9031 90 00	-	Parts and Accessories	7.5%

9032		**AUTOMATIC REGULATING OR CONTROLLING INSTRUMENTS AND APPARATUS:**	
9032 90 90	-	Parts and Accessories	7.5%

B. **Proposed CTI**:

8708		PARTS AND ACCESSORIES OF THE MOTOR VEHICLES OF HEADINGS 8701 TO 8705.	
8708 99 00	--	Other	15%

22.2. Owing to the declared description of the goods, I find that the imported goods are nothing but Parts used in manufacture of Motor Vehicles. I find that **Note 1(l) to Section XVI**, Schedule-I (Import Tariff) of Customs Tariff Act, 1975, excludes articles of Section XVII from classification within Section XVI as well as **Note 3 to Section XVII** Schedule-I (Import Tariff) of Customs Tariff Act, 1975 limits the term "Parts" in Chapter 87 to include only those parts used solely or principally with the vehicles of Chapter 87. I find that being the imported goods are Parts and Accessories of Motor Vehicles covered under CTH 87, the parts thereof covered under same CTH only.

22.3. The Importer through written submission as well as during the course of PH contended that they have correctly classified the goods under CTIs 8543 7099, 8537 1000, 9031 9000 and 9032 9000 on the basis of nature of goods, which attracts lower rate of BCD and IGST. However, owing to the Note 1(1) to Section XVI and Note 3 to Section XVII made it pretty clear that being the Part of Motor Vehicles the impugned goods are correctly classifiable under CTH 8708 9900. Therefore, it is pertinent to mention here that the Importer is well aware of the usage of imported goods and classification thereof, still they consciously and deliberately chose CTI attracting lower BCD and IGST with an intent to evade the legitimate Customs Duty. Therefore, it can be concluded that the imported goods used in manufacture of Motor Vehicles cannot be termed as Parts of any engine/instrument/ apparatus, therefore, the same are not classifiable under CTI 8543 7099, 8537 1000, 9031 9000 and 9032 9000 in terms of Note 1(l) to Section XVI and furthermore, Note 3 to Section XVII stipulates to include only those parts used solely or principally with the vehicles of Chapter 87.

22.4. On perusal of comparison of CTIs 8543/ 8547/ 9031/ 9032 and 8708 vis-à-vis description of imported goods, viz. Auto Parts, I find that the subject imported goods are of specifically used in manufacture of Motor Vehicles. Therefore, the same are correctly classifiable under CTI 8708 9900 only. I find that the CTIs were self-assessed by the Importer and being most of the Bs/E were cleared under RMS facilitation, under trade facilitation regime, hence, there were less or no assessment/examination ordered for the subject consignments, which resulted in clearance of goods without or less or no intervention of the Customs Officials.

22.5. Further, as per Rule 3 of the General Rules for Interpretation of Import Tariff, which stipulates that:

> *3. When by application of Rule 2 (b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:*
>
> *(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.*

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

22.6. Rule 3(a) *supra*, mandates that while classifying a product, that is capable of being classified under two or more headings, a heading that provides a specific description is to be preferred over a heading that provides a general description. In the present case, CTI 8708 9900 covers "**Others - Parts and Accessories of the Motor Vehicles of Headings 8701 to 8705**", being the impugned imported goods, viz. Sensor Assy., Wheel Speed ABS, Sensor Module Rain, Control Module Engine GPE, Sensor Module etc. are specifically used in manufacture of Motor Vehicles. Therefore, it cannot be termed as "Parts and Accessories – Measurement Instrument, Electrical Instrument etc." under CTIs 8543 7099, 8537 1000, 9031 9000 and 9032 9000 and correctly classifiable under CTI 8708 9900.

22.7. I find that the Importer in their written submissions contended that they had classified the goods under bona fide belief and the same were assessed and examined by the Customs Officer and then granted Out of Charge for the same. Also, it is contended that the Department is well aware of the classification done by the Importer as another SCNs for importation of identical goods has already been issued by the Department and same has been adjudicated by the Addl. Commissioner of Customs (NS-V) and aggrieved by the said Order, the Importer preferred appeal before Commissioner of Customs (Appeals) which is pending for disposal. In this regard, I find that the subject contravention had already been committed by the importer at the time of clearance of the goods from Customs for home consumption. Subsequently, when there is classification dispute going on, still the Importer preferred to classify the goods under wrong CTIs attracting lower BCD and IGST and cleared the goods for Home Consumption which are mostly cleared under RMS facilitation having less or no Customs intervention. The Importer should have preferred provisional release of goods until the issue is resolved. Therefore, I find that the contentions of the Importer are neither cogent nor legal and hence, merits rejection.

22.8. In view of the facts above, I agree with the proposal of rejection of declared CTIs by the Importer, i.e. CTI 8543 7099, 8537 1000, 9031 9000 and 9032 9000 and re-classification of the impugned goods, under CTI 8708 9900 and re-assess the same as per appropriate BCD/IGST.

23. <u>DEMAND AND RECOVERY OF DUTY SHORT LEVIED / EVADED</u>:

After having determined the correct classification of the subject goods, it is imperative to determine whether the demand of differential duty as per the provisions of Section 28(4) of the Customs Act, 1962, in the subject SCN is sustainable or otherwise.

23.1. I find that consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-assessment' has been introduced in customs clearance. Section 17 of the Customs Act, effective from 08.04.2011 [CBEC's (now CBIC) Circular No 17/2011 dated 08.04.2011] provides for self-assessment of duty on imported goods by the Importer himself by filing a bill of entry, in the electronic form. Section 46 of the Customs Act, 1962 makes it mandatory for the Importer to make 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 Declaration) Regulation, 2011 (issued under Section 157 read with Section 46 of the Customs Act, 1962), the bill of entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic 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 Center, Bill of Entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, 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, since 08.04.2011, 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, the importer had self-assessed the impugned goods and classified the goods under CTIs 8543 7099, 8537 1000, 9031 9000 and 9032 9000 which attracted lower rate of BCD, i.e. 7.5% & IGST @ 18% instead of correct and appropriate CTI 8708 9900 which attracted BCD @ 15% & IGST @ 28%.

23.2. On perusal of the goods covered under CTI 8543 7099, 8537 1000, 9031 9000 and 9032 9000, which is covered goods, viz. "Parts and Accessories – Measurement Apparatus Machines etc." and attracted BCD @ 7.5% + IGST @ 18%, whereas, the goods being Part of Motor Vehicles are correctly classifiable under CTI 8708 9900 which attracted higher rate of Customs duty, i.e. @ 15% BCD + 28% IGST. Therefore, it is apparent that the Importer has deliberately and consciously mis-classified the goods with an intent to evade legitimate Customs Duty.

23.3. I find that the Importer had self-assessed the Bs/E and by mis-classifying the impugned goods under CTI 8543 7099, 8537 1000, 9031 9000 and 9032 9000 instead of correct CTI 8708 9900 has short paid legitimate Customs duty to the extent of **Rs. 63,41,149/-** (Rupees Sixty Three Lakh Forty One Thousand One Hundred Forty Nine Only) (as detailed in Annexure-A to the subject SCN). As the importer got monetary benefit due to the said act, it is apparent that the same was done deliberately by willful mis-statement and mis-classification of the said goods. The "*mens rea*" can be deciphered only from "*actus-reus*". Thus, providing the wrong declaration w.r.t. classification of the goods by the said Importer, taking a chance to clear the goods by mis-classifying it, amply points towards their "*mens rea*" to evade the payment of duty.

23.4. I find in the instant case, as elaborated in the above paras, the Importer had willfully suppressed the correct classification of the imported goods by not declaring the same at the time of filing of the Bs/E. Therefore, I find that in the instant case, there is an element of '*mens rea*' involved. The instant case is not a normal case of *bona fide* wrong classification of goods being almost 70 consignments cleared during the period January, 2020 to July, 2024. Instead, in the instant case, it is apparent that the Importer has deliberately chose to mis-classify the imported goods, being fully aware that the impugned goods are correctly classifiable under CTI 8708 9900, being the Importer was issued with SCNs having identical matter for various Financial Years, which were duly adjudicated by the Competent Authority and the same are pending with Appellate Authority. This willful and deliberate act clearly brings out their '*mens rea*' in this case. Once the '*mens rea*' is established on the part of the Importer, the extended period of limitation, automatically get attracted.

23.5. In view of the foregoing, I find that, due to deliberate/willful mis-statement w.r.t. classification of goods, duty demand against the importer 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 No. 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 willful 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, willful 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, willful misstatement, etc., rejected as it would lead to strange and anomalous results;

(c) **2005 (191) E.L.T. 1051 (Tri. - Mumbai): Winner Systems Versus Commissioner of Central Excise & Customs, Pune**: Final Order Nos. A/1022-1023/2005-WZB/C-I, dated 19-7-2005 in Appeal Nos. E/3653/98 & E/1966/2005-Mum.

Demand - Limitation - Blind belief cannot be a substitute for bona fide belief - Section 11A of Central Excise Act, 1944. [para 5]

(d) ***2006 (198) E.L.T. 275 - Interscape v. CCE, Mumbai-I.***

It has been held by the Tribunal that a bona fide belief is not blind belief. A belief can be said to be bona fide only when it is formed after all the reasonable considerations are taken into account;

23.6. Accordingly, the differential duty amounting to **Rs. 63,41,149/-** (Rupees Sixty Three Lakh Forty One Thousand One Hundred Forty Nine only), resulting from re-assessing and re-classification of the imported goods under CTI 8708 9900, as proposed in the subject SCN, is recoverable from the importer under extended period in terms of the provisions of Section 28(4) of the Customs Act, 1962.

24. <u>DEMAND OF INTEREST</u>:

24.1. 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.

24.2. In the foregoing paras, I have already confirmed the demand of the differential Customs duty amounting to Rs. 63,41,149/- (Rupees Sixty Three Lakh Forty One Thousand One Hundred Forty Nine only) and ordered to recover the same from the importer 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 also be recovered from the Noticee.

25. <u>CONFISCATION OF THE GOODS</u>:

25.1. Now coming to the question as to whether the impugned goods are liable for confiscation. It is alleged that the importer has cleared the said goods as detailed in Annexure-A to the subject SCN

by resorting to mis-classification resulting in evasion of legitimate Customs duty amounting to Rs. 63,41,149/- therefore, the said goods appear to be liable for confiscation u/s. 111(m) of the Custom Act, 1962.

25.2. I find that Section 111(m) provides for confiscation in cases where imported goods do not correspond in respect of value or in any other particular with the entry made under the Customs Act, 1962, which includes particulars like wrong classification and notification benefit claimed and self-assessed in the B/E wrongly. In the instant case, the Importer mis-classified the impugned goods under CTIs 8543 7099, 8537 1000, 9031 9000 and 9032 9000 instead of correct CTI 8708 9900. As discussed in the above paras, it is evident that the goods are **"Auto Parts"** (for manufacturing of Motor Vehicles) having specific purpose products and merit classification under CTI 8708 9900 which covers "Others - Parts And Accessories of the Motor Vehicles of Headings 8701 To 8705", therefore, I find that the Importer has intentionally classified the impugned goods under the CTIs 8543 7099, 8537 1000, 9031 9000 and 9032 9000 which attracted lower rate of BCD, with the intention to evade Customs Duty.

25.3. As, there is deliberate mis-classification of the impugned goods resulting in evading of legitimate Customs duty therefore, I find that the confiscation of the imported goods invoking Section 111(m) of the Customs Act, 1962 is justified & sustainable.

26. <u>IMPOSITION OF REDEMPTION FINE</u>:

26.1. As I am inclined to hold the goods covered under subject 70 Bs/E liable for confiscation u/s. 111(m) of the Customs Act, 1962, subsequently, the Importer is liable to pay Redemption Fine in lieu of confiscation u/s. 125 *ibid.* However, I find the goods imported vide 70 Bs/E as detailed in Annexure–A to the SCN, are physically not available for confiscation.

26.2. In the present case, goods were imported in the past by resorting to mis-classifying the goods which resulted in duty evasion to the extent of **Rs. 63,41,149/-**. Impugned goods covered under past Bs/E were found to be imported and cleared for Home Consumption, so same are not physically available. In terms of Section 125 of the Customs Act, 1962, there is an option to pay fine in lieu of confiscation. Section 125 is reproduced below:

> *(1) Whenever confiscation of any goods is authorized by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit:*
>
> ***Provided** that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.*
>
> *(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods."*

26.3. In this regard, 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.).*** The Hon'ble Madras High Court in case of ***M/s. Visteon Automotive Systems India*** in para 23 of the judgment observed 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 regularized, 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 authorized by this Act....", brings out the point clearly. The power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. When once power of authorization for confiscation of goods gets traced to the said Section III 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 the payment of the 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. (i)."

26.4. 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***) and the same has not been challenged by any of the parties in operation. Hence, I find that any goods improperly imported as provided in any Sub-section of the Section 111 of the Customs Act, 1962 are liable to confiscation and merely because the importer was not caught at the time of clearance of the imported goods, can't be given differential treatment. 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. I42 (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.

26.5. I find that the declaration under Section 46(4) of the Customs Act, 1962 made by the importer at the time of filing Bs/E 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 u/s. 111 of the Customs Act, 1962 and Redemption Fine is imposable on them under provisions of Section 125 of the Customs Act, 1962. A few such cases are detailed below:

(a) M/s. Dadha Pharma h/t. Ltd. V/s. Secretary to the Govt. of India, as in 2000 (126) ELT 535 (Chennai High Court);

(b) M/s. Sangeeta Metals (India) V/s. Commissioner of Customs (Import) Sheva, as reported in 2015 (315) ELT 74 (Tri-Mumbai);

(c) M/s. Saccha Saudha Pedhi V/s. Commissioner of Customs (Import), Mu reported in 2015 (328) ELT 609 (Tri-Mumbai);

(d) M/s. Weston Components Ltd. V/s. Commissioner of Customs, New Delhi reported in 2000 (115) ELT 278 (S.C.) wherein it has been held that:

"if subsequent to release of goods import was found not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods - Section 125 of Customs Act, 1962, then the mere fact that the goods were released on the bond would not take away the power of the Customs Authorities to levy redemption fine."

(e) Commissioner of Customs, Chennai V/s. M/s Madras Petrochem Ltd. As reported in 2020 (372) E.L.T. 652 (Mad.) wherein it has been held as under:

"We find from the aforesaid observation of the Learned Tribunal as quoted above that the Learned Tribunal has erred in holding that the cited case of the Hon'ble Supreme Court in the case of Weston Components, referred to above is distinguishable. This observation written by hand by the Learned Members of the Tribunal, bearing their initials, appears to be made without giving any reasons and details. The said observation of the Learned Tribunal, with great respect, is in conflict with the observation of the Hon'ble Supreme Court in the case of Weston Components."

26.6. 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 *RF imposable in case of liability of confiscation of goods under provisions of Section 111(o).* Thus, I also find that in the instant case the goods liable for confiscation under other Sub-section (m) 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, cannot be given differential treatment.

26.7. 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. Accordingly, I observe that the present case is also merits imposition of Redemption Fine.

26.8. In view of the above, I find that the confiscation of the imported goods invoking Section 111(m) is justified & sustainable and accordingly, I observe that the present case is also merits imposition of Redemption Fine.

27. <u>IMPOSITION OF PENALTY ON THE IMPORTER</u>:

27.1. Now coming to the issue of penalty, I find that the SCN proposes a penalty under Section 114A of the Customs Act, 1962 on the Importer for the act of deliberate omission and commission that rendered the goods liable to confiscation. I have already elaborated in the foregoing paras that the Importer has willfully suppressed the facts with regard to correct classification of the goods and deliberately mis-classified the goods with an intent to evade the legitimate Customs Duty. Further, I find that the Importer has given a declaration u/s. 46 of the Act, for the truthfulness of the content submitted at the time of filing Bs/E. Further, 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*".

27.2. I find in the instant case that the Importer had self-assessed the subject 70 Bs/E and mis-classified the impugned goods under CTIs 8543 7099, 8537 1000, 9031 9000 and 9032 9000 instead of correct CTI 8708 9900 which has resulted in loss of legitimate duty to the Exchequer amounting to **Rs. 63,41,149/-**, as detailed in Annexure-A enclosed to the SCN. As the Importer got monetary benefit due to said act, it is apparent that the same was done deliberately by willful mis-statement and willful mis-classification of the said goods. The mis-classification of CTI of the impugned goods, by the Importer of such repute having access to all legal aid, tantamount to suppression of material facts and for this act of omission and commission, the importer has rendered himself liable to penal action u/s. 114A of the Customs Act, 1962.

27.3. Further, I find that in the self-assessment regime, it is the bounden duty of the importer to correctly assess the duty on the imported goods. The "*mens rea*" can be deciphered only from "*actus-reus*". Thus, providing the wrong declaration w.r.t. CTH of the goods by the said importer, taking a chance to clear the goods by mis-classifying it, amply points towards their "*mens rea*" to evade the payment of legitimate Customs duty. The importer has cleared the goods without paying the legitimate Customs duty and thus makes the goods liable for confiscation, as discussed in foregone paras and the act of omission and commission on the part of the Importer make them liable to penal action u/s. 114A of the Customs Act, 1962.

27.4. Since, the demand of duty under section 28(4) of the Customs Act, 1962 is sustainable in the instant case and Section 114A is *pari materia* to the Section 28(4) of the said act, therefore, I find the Importer, FIAPL is liable for a penalty u/s. 114A of the Customs Act, 1962.

28. I find that the Importer in its written reply to the SCN has denied all the allegations levelled against them in the SCN and contended that they had correctly declared the CTIs of the goods, the duty along with interest cannot be demanded by invoking extended period of limitation, the goods are not entitled for confiscation and they are not liable for any penal action. The Importer has kept reliance on various case laws in their defence. In this regard, I find that the Importer, in their written submission has placed reliance on various case laws in their defence. However, I find that the Hon'ble Supreme Court of India in case of **M/s. Ambica Quarry Works V/s. State of Gujarat & Others [1987 (1) S.C. C.213]** observed that "*the ratio of any decision must be understood in the background of the facts of the case. It has been long time ago that a case is only an authority for what it actually decides and not what logically follows from it*".

28.1. The facts and circumstances in the instant case and the cited case laws are different.It is a settled position in law that a ratio of a decision would apply only when the facts are identical. Thus, the case laws relied upon by the Petitioner do not support Petitioner in any manner.

28.2. In **M/s. Alnoori Tobacco Products Ltd. case reported in 2004 (170) ELT 135 (SC)**, the Hon'ble Supreme Court held as follows:

> "*….. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorams nor as provisions of the state and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgements of Courts are not be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define judges interpret statutes, they do not interpret judgements. They interpret words of statutes, their words are not to be interpreted as statutes*"

28.3. Hon'ble Supreme Court in the Westinghouse Saxby judgement itself, has acknowledged the complexity of the issue and has pointed to the undesirability of generalizing the decisions of one case to others. The Hon'ble Court, has referred to the observations made in its own judgement in the case of "A. Nagaraju Bros Vs. State of A.P, thus- "*.....there is no one single universal test in these matters. The several decided cases drive home this truth quite eloquently……There may be cases, particularly in the case of new products, where this test may not be appropriate. In such cases, other tests like the test of predominance, either by weight of value or on some other basis may have to be applied. It is indeed not possible, nor desirable, to lay down any hard and fast rules of universal application*".

28.4. Further, the Hon'ble Supreme Court, in the case of **Commissioner of Central Excise, Mumbai Versus M/s Fiat India (P) Ltd.** has observed that "*a case is only an authority for what it actually decides and not for what may seem to follow logically from it. …Each case depends on its own facts and a close similarity between one case and another is not enough because either a single significant detail may alter the entire aspect… To decide, therefore on which side of the line a case falls, the broad resemblance to another case is not at all decisive*".

28.5. Accordingly, with regards to the subject case laws relied upon by the Importer in their written reply to the SCN, it is observed that each case is unique and is to be dealt independently taking into account the facts and circumstances of each case.

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

ORDER

(i) I order to re-assess and re-classify the impugned goods, viz. 'Auto Parts - Sensor Assy., Wheel Speed ABS, Sensor Module Rain, Control Module Engine GPE, Sensor Module etc.' imported vide 70 Bs/E (as detailed in Annexure-A to the subject SCN) filed by the Importer,

Fiat India Automobiles Pvt. Ltd. under CTI 8708 9900, and reject the claimed classification under CTIs 8543 7099, 8537 1000, 9031 9000 and 9032 9000 of the First Schedule to the Customs Tariff Act, 1975.

(ii) I order to levy IGST @ 28% on the impugned goods covered under 70 Bs/E in terms of Sr. No. 170 of Schedule-IV of Notification No. 01/2017-ITR dated 28.06.2017 and re-assess the said Bs/E.

(iii) I confirm the demand and order to recover the differential duty amounting to **Rs. 63,41,149/-** (Rupees Sixty Three Lakh Forty One Thousand One Hundred Forty Nine only) from M/s. Fiat India Automobiles Pvt. Ltd., against the 70 Bs/E, as detailed in Annexure-A to the subject SCN, under the provisions of Section 28(4) of the Customs Act, 1962, along with applicable interest u/s. 28AA of the Customs Act, 1962.

(iv) I order to confiscate the imported goods having Assessable Value of **Rs. 2,96,52,323/-** (Rupees Two Crore Ninety Six Lakh Fifty Two Thousand Three Hundred Twenty Three only), as detailed in Annexure-A to the subject SCN, imported by M/s. Fiat India Automobiles Pvt. Ltd. u/s. 111(m) of the Customs Act, 1962.

Since, the impugned goods stand released, I impose Redemption Fine of **Rs. 25,00,000/- (Rupees Twenty Five Lakh Only)** under Section 125(1) of the Customs Act, 1962 in lieu of confiscation of the goods imported by the said importer, Fiat India Automobiles Pvt. Ltd. for the reasons as discussed above.

(v) I impose penalty equivalent to differential duty amounting to **Rs. 63,41,149/- (Rupees Sixty Three Lakh Forty One Thousand One Hundred Forty Nine only) along with applicable interest** under Section 28AA of the Customs Act, 1962, u/s. 114A of the Customs Act, 1962 on M/s. Fiat India Automobiles Pvt. Ltd. in relation to the 70 Bs/E as detailed in Annexure-A to the subject SCN.

However, such penalty would be reduced to 25% of the total penalty imposed u/s. 114A of the Customs Act, 1962, if the amount of duty as confirmed above, the interest and the reduced penalty is paid within 30 (thirty) days of communication of this Order, in terms of the first proviso to Section 114A of the Customs Act, 1962.

30. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or against the persons concerned or any other person, if found involved, under the provisions of the Customs Act, 1962, and/or any other law for the time being in force in the Republic of India.

ARamteke 18/03/25

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

To,

1. **M/s. Fiat India Automobiles Pvt. Ltd.,**
B-19, Ranjangaon MIDC Industrial Area,
Ranjangaon, Taluka-Shirur, Pune-412 210, Maharashtra.

EM728532391IN

Copy to:

1. The Commissioner of Customs (Import), Air Cargo Complex, Sahar, Mumbai.

EM087232626IN

2. The Addl. Commissioner of Customs, Group-VB, NS-V, JNCH.
3. AC/DC, Review Cell, Chief Commissioner's Office, JNCH
4. The Dy. Commissioner of Customs, Audit Commissionerate, Circle C-2, NCH, Mumbai.
5. AC/DC, Centralized Revenue Recovery Cell, JNCH
6. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
7. EDI Section.
8. Office copy.