

**OFFICE OF THE COMMISSIONER OF CUSTOMS, NS-I**

सीमा-शुल्क आयुक्त का कार्यालय, एनएस-1

CENTRALIZED ADJUDICATION CELL, JAWAHARLAL NEHRU CUSTOM HOUSE,

केंद्रीकृत अधिनिर्णयन प्रकोष्ठ, जवाहरलाल नेहरू सीमा-शुल्क भवन,

NHAVA SHEVA, TALUKA-URAN, DIST- RAIGAD, MAHARASHTRA 400707

न्हावाशेवा, तालुका-उरण, जिला- रायगढ़, महाराष्ट्र -400 707

Date of Order: 31.10.2025

आदेश की तिथि : 31.10.2025

Date of Issue: 31.10.2025

जारी किए जाने की तिथि:

31.10.2025**31.10.2025****DIN: 20251078NW000000E32D****F. No. S/10-139/2024-25/CC/Gr. IIG/NS-I/CAC/JNCH****SCN No. 1388/2024-25/Commr/Gr. II G/NS-I/CAC/JNCH dated 14.11.2024****Passed by: Shri Yashodhan Wanage**

पारितकर्ता: श्री यशोधन वनगे

Principal Commissioner of Customs (NS-I), JNCH, Nhava Sheva

प्रधानआयुक्त, सीमाशुल्क (एनएस-1), जेएनसीएच, न्हावाशेवा

Order No.: 255/2025-26 /Pr. Commr./NS-I /CAC /JNCH

आदेशसं. : 255/2025-26/प्र. आयुक्त/एनएस-1/ सीएसी/जेएनसीएच

Name of Party/Noticees: M/s Tata Steel BSL Limited

पक्षकार (पार्टी)/ नोटिसीकानाम: मेसर्स टाटा स्टील बीएसएल लिमिटेड

ORDER-IN-ORIGINAL

मूलआदेश

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 निः 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 सीमा-शुल्क अधिनियम 1962 की धारा 129(ए) के तहत इस आदेश के विरुद्ध सी ई एस टी ए टी, पश्चिमी प्रादेशिक न्याय पीठ (वेस्टरीजनलबेंच), ३४, पी. डी. मेलो रोड, मस्जिद (पूर्व), मुंबई- ४००००९ 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 - फार्म नं. सी ए ३, 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 ३ महीने के भीतर

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

फीस- (क) (एक हजार रुपये—जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम ५ लाख रुपये या उससे 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 lakhs.

(ख) पाँच हजार रुपये— जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम ५ लाख रुपये से अधिक परंतु ५० 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 ५० लाख रुपये से अधिक है।

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

भुगतान की रीति— क्रॉस बैंकड्राफ्ट, जो राष्ट्रीयकृत बैंक द्वारा सहायक रजिस्ट्रार, सीईएसटीएटी, 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 संबंधि तमाम लों के लिए, सीमा-शुल्क अधिनियम, १९९२, सीमा-शुल्क (अपील) नियम, १९८२ सीमा-शुल्क, उत्पादन शुल्क एवं सेवा कर अपील अधिकरण (प्रक्रिया) नियम, १९८२ 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 129 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 उद्धृतिशास्ति का

७.५% जमा करेगा और ऐसे भुगतान का प्रमाण प्रस्तुत करेगा, ऐसा न किये जाने पर अपील सीमा-शुल्क अधिनियम, १९६२ की धारा १२८ के उपबंधों की अनुपालना न किये जाने के लिए नामंजूर किये जाने की दायी होगी।

1. BRIEF FACTS OF THE CASE

1.1. M/s Tata Steel BSL Limited (IEC No 0593012496) (Now merged with Tata Steel Ltd. w.e.f. 11th Nov 2021) located at Ground Floor Mira Corporate Suite, Plot No.1&2, Ishwar Nagar, Mathura Road, New Delhi-110065 is engaged in manufacturing of Hot Rolled/Cold Rolled Sheet, Coil and Strips and imports mainly PCI Coal, Coking Coal and Non-Coking Coal through various ports namely INSAA1, INMAA1, CCU, INVTZ1, DELHI etc.

1.2. The Customs Premises Based Audit (PBA) (at office premises of Custom Audit Commissionerate, New Customs House, New Delhi) of records of the auditee covering the period from F.Y. 2019-2020, 2020-21 & 2021-22 [(upto 11.11.2021 as it was merged with M/s Tata Steel Limited (IEC Code 0388039124)] was conducted under Section 99A of the Customs Act, 1962. The auditee was requested to provide the documents for the audit vide this office letter no. CADT/CIR/ADT/PBA/87/2023-PBA-Cir-B1-O/o Commr-Cus-Adt-Delhi dated 17.10.2023. The entry conference of the audit was held on 01.03.2024.

During the course of audit and on examination of records, observations were raised and the same were communicated to the auditee. The auditee agreed to the 05 Observations (i.e. observation no. 01, 02, 03, 06 & 07) and deposited the differential duty alongwith applicable interest. However, the auditee did not agree with the other 02 observations (para 4 & 5) and for payment of mandatory penalty under section 114A of the Customs Act, 1962.

1.3. Para-1 (Observation No. 4 as per FAR): Wrong classification of goods “ME0420 ADHESIVE (LDPE) ME0420 ADHESIVE (LDPE)” under CETSH 39019000

During the audit, it was observed that the auditee was importing goods “ME0420 ADHESIVE (LDPE) ME0420 ADHESIVE (LDPE)” under CETSH 39019000 and paid **BCD @ 7.5% and IGST @ 18%**. Since, the imported goods are “*Adhesive based on polymers of heading 3901*”, the correct classification of the impugned goods is covered under CETSH 35069190 which attracts **BCD @10% and IGST @18%**.

1.3(b) Auditee vide their letter dated 20.05.2024, informed that it is a non-pigmented maleic anhydride grafted polyethylene. It is being used by them as one of the layer in 3 layer Polyethylene (3LP coating) done in the steel pipes. 3LP coating is done to prevent steel pipe from corrosion, build chemical resistance properties and resistance to cathodic disbandment and resistance to moisture permeability. The process of 3-LPE is as under:

Layer 1: This is the corrosion protective layer. This layer is of fusion bonded epoxy which offers very good corrosion protection. The fusion bonded epoxy has a very good bonding with the blasted steel surface. This provides anticorrosion quality to the pipes;

Layer 2: This layer is the copolymer bonding of Low Density Polyethylene (LDPE) i.e. Impugned product. The copolymer bonding is a maleic anhydride grafted polyethylene compound. This material has good chemical bonding to the fusion bonded epoxy and the top

layer polyethylene;

Layer 3: This layer is for physical protection and consists of polyethylene/Polypropylene i.e. High Density Polyethene (HDPE). Since the copolymer and polyethylene are similar, they bond well with each other.

Thus, impugned product acts as a bond or intermediate layer between Layer-1 and Layer-3 during the process of 3-layer Polyethylene coating of steel pipes when heated under 180 degree Celsius to 210 degree Celsius.

It cannot be used as Adhesive. Additionally, they are using this for coating as explained above. As LDPE (Polymers) is specifically covered under 3901, the auditee claimed that they had correctly classified the same.

Further, they submitted that imported product not being in nature of prepared adhesives and exceeding a weight of 1 kg in any case cannot be classified under 3506.

1.3 (c) **Audit Observation:**

(i) Product data available in the website of manufacturer/supplier i.e. M/s Borealis(<https://www.borealisgroup.com/products/product-catalogue/borcoat-me0420>), clearly mentions that the imported item “*Borcoat ME0420 is Grafted polyethylene **adhesive** for steel pipe coating*” which is intended to be **used as an adhesive** in three-layer-PE based anti-corrosion coatings for steel pipes.

(ii) Chapter heading 3506 of Import Tariff provides – “*Prepared glues and other prepared adhesives, not elsewhere specified or included; put up for retail sale as glues or adhesives, not exceeding a net weight of 1 Kg*”.

Since, the imported item is “***Maleicanhydride grafted polyethylene adhesive***” and it is “*Adhesive based on polymers of heading 3901 to 3913*”, it appeared to be appropriately classifiable under sub-heading 3506 9190 with BCD 10%.

(iii) Further, the Chemical formula of Polyethene is $(C_2H_4)_n$; whereas Chemical formula of Maleic Anyhydride Grafted Polyethylene is **C₄H₂O₃**;

(iv) Explanatory Note to CTH 3506 provides that –

The heading covers:

- A. Products suitable for use as glues or adhesives and put up for retail sales as glues or adhesives, not exceeding a net weight of 1 kg.

This group covers the prepared glues and adhesives of **(B)** below and other products suitable for use as glues or adhesives, provided they are put up in a retail sale as glues or adhesives in packages the content of which does not exceed 1 kg.

B.-Prepared glues and other prepared adhesives, not covered by a more specific heading in a Nomenclature, for example: -

1.-----

2.----

3.----

4. *Preparations specially formulated for use as adhesives, consisting of polymers or blends thereof of headings 3901 to 3913 which, apart from any permitted additions to the products of Chapter 39 (fillers, plasticisers, solvents, pigments etc.) contain other added substances not falling in that Chapter (e.g. waxes, rosin esters, unmodified natural shellac).*

It is to be noted that certain of the products included in this heading are usable as glues or adhesives in the form in which they are sold, while others must be dissolved or dispersed in water before use.

Thus, the imported goods declared as “ME0420 ADHESIVE (LDPE) ME0420 ADHESIVE (LDPE)” is *Adhesive based on polymers of heading 3901*”, - and intended to be **used as an adhesive** in three-layer-PE based anti-corrosion coatings for steel pipes.

Hence, it appeared to be appropriately classifiable under CTSH 35069190 and attracts **BCD @ 10% and IGST @ 18%**.

The differential duty of **Rs.81,25,378/-** (Rupees Eighty One Lakhs Twenty Five Thousand Three Hundred and Seventy Eight only) is demandable under Section 28(4) of the Customs Act, 1962 for knowingly/intentionally suppressing the facts that the imported goods are adhesive based on polymers of heading 3901 which are intended to be used as an adhesive and despite knowing all these facts, the auditee has cleared the goods under incorrect CTH 3901 instead of correct CTH 35069190.

1.4. Para-2 (Observation No. 5 as per FAR): Wrong classification of goods “MAGSOL 115 (BB 1250KG) (REFRACTORY DRY RAMMING MASS” under CETSH 25199030.

During the audit, it was observed that the auditee was importing goods “MAGSOL 115 (BB 1250KG) (REFRACTORY DRY RAMMING MASS” under CETSH 25199030 and paid BCD @ 5% and IGST @ 5%. As the imported goods are “*Refractory material*”, the correct classification of the impugned goods covers under CETSH 38160000 which attracts BCD @ 7.5% and IGST @ 18%.

1.4(b). The auditee vide their letter dated 20.05.2024 informed that MAGSOL is supplied by Magna MagnesitasNavarras. From its publicly available website <https://www.magnesitasnavarras.es/en/magnesite-products/steelmaking/>

Following transpires: - It has its application in furnace as bottom material;

It is made up of raw magnesite, which has low silica (SiO₂) and high lime [CA (OH)₂], content and then it is processed to high density, dead burned Magnesia. *Attached technical details downloaded from supplier website.* Also attached supplier declaration to this effect;

From video available publicly it is clear that it is processed to **dead burned magnesia**. For ease of reference, relevant video photograph depicted below shows it to be dead burned magnesia.

Being Magnesia, accordingly supplier has classified the same under 2519 90;

Further, the General Rules for the Interpretation of Import Tariff which in clause 3(a) provides classification principle that "*The heading which provides the most specific description shall be preferred to headings providing a more general description*". Here reference is made to decision of Hon'ble Supreme Court in case of Moorco (India) Ltd. 1994 (74) E.L.T. 5 (S.C.) wherein Para 3 it has been held that "Specific excludes general". Applying the above principle, it is prayed that MAGSOL have been rightly classified by us.

Additionally in any case, 3816 covers "**Refractory Cements**". Product not being in nature of Refractory Cement. Chapter 38 is a residual Chapter covering Miscellaneous Chemical Products, whereas product is mineral in nature and therefore Specific heading of Mineral has to be preferred to residual one.

1.4(c). **Audit Observation: -**

As per the website of "MAGNA magnesitas Navarras" (manufacturer/supplier)- MAGNA has become an important player on the world refractories market. The company produces **refractory masses of MgO** for the steelmaking sector and supplies its customers with the machinery required for its application.

As per video available in MAGNA magnesitas Navarras (manufacturer/supplier) the MAGNA *extracts the raw magnesite for bottom material from its deposit Navarras in Spain. Magsol is a premium EAF bottom material. It is **processed & sintered** to high density dead burn magnesia into a 80-meter-long rotary kiln, it is **further processed** in the mixing plant into EAF bottom material with a very specific grain size distribution. **Magsol is a dry ramming mix**; it is applied in a cold condition; it is of natural origin and processed to become **a premium refractory material**.*

As per the website of MAGNA, the imported item MAGSOL 115 (refractory ramming mass) is a material based on MgO. The product has unbeatable balance of **Magnesium, calcium, iron and silica**.

(ii). **What is refractory ramming mix/mass-** as per the website of "termorefractories.com/products/monolithic-refractories/ramming-refractories.html" another Turkish manufacture of Ramming mass- "Refractory ramming mass is produced by using ramming method during construction from refractory aggregate (fire clay based, high alumina based, mullite-corundum based, silica based, **magnesia based**, carborundum based) and

powder, binders (phosphoric acid and phosphates, sodium silicate, aluminium sulphate, binding clays and organic binders) and **additives** proportionally.

(iii). Further, as per the details available on internet- the refractory is a material that can resist heat, pressure, or chemical corrosion and decomposition, and maintain its strength and shape at high temperatures. The main raw materials used to produce refractories are usually oxides of silicon, aluminium, **magnesium**, calcium, and zirconium. Refractory materials are made **from natural and artificial materials** (usually non-metals) or **a mixture of compounds and minerals**, like as alumina, refractory clay, bauxite, chromite, dolomite, silicon carbide, and zirconia. Refractories come in various shapes and sizes. *The production of refractory materials begins with the processing of raw materials. Raw material **processing** includes crushing and grinding, sorting by size, calcination, and drying of raw materials. The processed raw materials can then be **dry blended** with other minerals and chemicals for packaging and transportation as products. After **the mixing process**, the raw materials are formed into the desired shape. This process usually occurs under moist or humid conditions. Once the refractory material is formed, the material is fired. Firing includes heating the refractory material in a continuous or batch tunnel kiln to make a ceramic bond. This process makes the raw material fire-resistant.* The final processing stage consists of milling, grinding, and sandblasting of the finished product.

(iv). In the instant case the auditee themselves have declared the imported items “**Magsol 115**” as “**Refractory ramming mass/mix**” while filing bills of entry for Customs clearance. The “Refractory ramming mass/mix” is nothing but **refractory lining material for furnaces** to prevent it from anti coating, corrosion & erosion. Ramming mass are made by calcination of magnesite at very high temperature, in association with dead burn magnesite clinker and alumina or chrome specially bonded with clay and other chemical binders to achieve the desired sintering character. The presence of SiO₂, Iron Oxide and CaO acts as binders in this case.

(v). The auditee vide their email dated 20/05/2024 has stated that the imported item is made up of raw magnesite, and it is processed to high density, dead burn magnesia. Being Magnesia it is rightly classified under CTH 251990.

Further, they submitted a letter from their supplier M/s MAGNA magnesitas Navarass, wherein it was stated that- *Magsol 115 (DBM material **for** dry ramming mass) is granulated Monolithic material, no shaped, for being used in the condition and repair of the electric arc furnace (EAF) bottom. It is based on dead burn magnesite (sinter magnesia) with no addition of any additive or chemical binder for its use or conformation in the customer. So, it is considered as Dead Burned Magnesite (Sintered magnesite), 25199030.*

(vi). The auditee has classified the imported goods “MAGSOL 115 (refractory dry ramming mass)” under CTSH 25199030; whereas this CTSH is for “Magnesium calcined (other than dead burnt) not elsewhere specified or included”.

Further, Note-1 to Chapter 25 provides that- ***Except where their context or Note 4 to this***

*Chapter otherwise requires, the headings of this Chapter cover **only products which are in the crude state** or which have been washed (even with chemical substances eliminating the impurities without changing the structure of the product), crushed, ground, powdered, levigated, sifted, screened, concentrated by flotation, magnetic separation or other mechanical or physical processes (except crystallization), **but not products** that have been roasted, calcined, obtained by mixing or subjected to processing beyond that mentioned in each heading.*

(vii). **Rule- 1 of General Rule for the Interpretation of Harmonized System** provides that- “The titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; **for legal purposes**, classification shall be determined according to the terms of the headings and any relative **Section or Chapter Notes** and, provided such headings or Notes do not otherwise require, according to the following provisions”.

Therefore, before proceeding to any other rule, the first Rule is to be considered in classifying any product. This rule is paramount and takes precedence over all other rules.

(viii). The auditee has not denied the fact that the Magsol 115 is actually “**Refractory ramming mix**” as shown in the website or video of manufacturer/supplier M/s MAGNA magnesitas Navarass; further, the definition of Refractory ramming mass readily available in internet states that the raw Magnesite has to undergo the processing of calcination, addition of additive and mixing for obtaining the premium refractory material. Hence, any kind of mixing, processing beyond that mentioned at Chapter note 25, does not qualify the classification under CTH 2519.

In the email dated 20/05/2024 it has been mentioned as MAGSOL 115 as “Dead Burned Magnesia material **for** a dry ramming mass” whereas as per video available in the website of manufacturer (MAGNA), its premium refractory ramming mix. Hence, the product is not “for ramming mix” but it is a “premium refractory ramming mix” obtained by various processing of raw magnesite such as calcination, sintering and mixing etc. Therefore, the email dated 20/05/2024 cannot be accepted as it is in contradiction to the auditee’s declaration in Bills of Entry & data available in MAGNA magnesitas Navarass’s website, the auditee themselves also declared the goods as MAGSOL 115 (Refractory ramming mix). Hence, the imported item MAGSOL 115 (Refractory Ramming Mix) cannot be classified under CTH-2519.

(ix). CTH-38160000 covers- “Refractory Cements, Mortars, Concretes and similar Compositions, including Dolomite ramming Mix, other than products of Heading 3801”. Since, the imported items is “refractory material” for use in furnace lining, they are appropriately classifiable under CTH 3816.

(x). Further, the Auditee themselves have cleared the goods MAGSOL 115 (refractory ramming mix) by classifying the same under CTH 3816 during the period 2019 to 2022 except the two Bills of Entry No.(i) 7517359 dated 24.04.2020 and (ii) BoE no. 7723809 dated 22.05.2020. After the merger of Auditee M/s TATA Steel BSL Ltd., (IEC No 0593012496) with M/s TATA Steel Ltd., the same products are being imported by M/s TATA Steel Ltd., under CTH-3816. All other importers are also classifying this item MAGSOL 115 under CTH

3816. However, the auditee in the instant case is not agreeing with the facts and stating that they had rightly classified this under CTH 2519.

(xi). Hence, the imported goods “MAGSOL115 (Refractory Ramming Mix)” imported vide Two (02) Bills of Entry i.e. (i) BoE no. 7517359 dated 24.04.2020 and (ii) BoE No. 7723809 dated 22.05.2020 are appropriately classifiable under CTH 38160000 instead of CTH 25199030;

Accordingly, the exemption notification 50/2017 (Sl. No. 120) available for CTH 2519 is not available for above mentioned impugned Bills of Entry; and the BCD @ 7.5% is chargeable instead of BCD @ 5%; with exemption Notfn. No. 50/2017 (Sl. No. 250) the differential duty of **Rs 25,76,544/-** (Rupees Twenty Five Lakhs Seventy Six Thousand Five Hundred and Forty Four Only) is demandable under Section 28(4) of the Customs Act 1962, from the auditee alongwith applicable interest and penalty for contravention of Section 46 of Customs Act, 1962 and Customs Self-Assessment Scheme 2011 and by wilfully suppressing the facts and for mis-statement; that despite the fact that in subsequent imports of MAGSOL 115 (Refractory ramming mix) the auditee themselves classified the imported item under CTH 3816000 but for the impugned goods covered under above mentioned two Bills of Entry they knowingly suppressed this facts and did not pay the appropriate Customs Duty.

1.5. Hence, it appeared that in the case of two paras (i.e. Para 4 & 5) the total short levy of duty of **Rs.1,07,01,922/- (One Crore Seven Lakhs One Thousand Nine Hundred and Twenty-Two Only)** appeared to be recoverable from the auditee under Section 28(4) of the Customs Act, 1962 along with applicable interest as applicable under Section 28AA of the Act, ibid and penalty u/s 114A of the Act, ibid for such act/omissions.

1.6. The auditee has accepted the observations no. 01, 02, 03, 06 & 07 of the audit team and deposited the total differential duties of Rs.4,87,752/- (Rs. Four Lakh Eighty-Seven Thousand Seven Hundred and Fifty-Two only) and applicable interest of Rs.3,27,297/- (Rs. Three Lakh Twenty-Seven Thousand Two Hundred and Ninety-Seven only) (totalling to Rs.8,15,049/-) under Section 28AA of the Customs Act, 1962 vide TR6 Challan no.4777 dated 20.06.2024 However, the auditee did not agree to deposit the mandatory penalty under Section 114A of the Act, ibid.

1.7. In the case of Para 01 & 02 of Audit Report no. 151/B1/DELHI/2024-25 the auditee knowingly claimed the wrong IGST schedule benefit and short paid IGST duty by suppressing the facts that the impugned goods of above two paras are not “STEAM” and “Compositing machines” and accordingly, in the case of Para 03 to 07 the auditee intentionally misclassified the imported goods and short paid the Customs Duty; Further, in the case of para 5, it is imperative to mention here that after the merger of Auditee M/s TATA Steel BSL Ltd., (IEC No 0593012496) with M/s TATA Steel Ltd., the same products (MAGSOL 115) are being imported by M/s TATA Steel Ltd., under CTH-3816. All other importers are also classifying this item MAGSOL 115 under CTH 3816. However, the auditee in the instant case is not agreeing with the facts and stating that they had rightly classified this under CTH 2519.

From the above it is evident that the auditee has knowingly suppressed the facts and

intentionally misclassified the goods and contravened the provisions of Section 46(4) and Section 17 of the Customs Act, 1962 for which the auditee is liable to pay mandatory penalty under Section 114A of the Act *ibid* in the case of all 07 paras.

1.8. In view of the above, it appeared that the auditee has contravened the provisions of Section 17, Section 46(4A) of the Customs Act, 1962 during self-assessment with an intent to evade Customs duties in respect of impugned goods by mis-classifying the impugned goods in the subject Bills of Entry by deliberate suppression and wilful misstatement of facts. Thus, M/s. TATA Steel BSL Ltd. had not correctly self-assessed the Customs duty in terms of Section 17 of the Customs Act, 1962 and not ensured the accuracy and completeness of the contents of the Bills of Entry in terms of Section 46(4A) of the Customs Act, 1962. All the acts of misclassification & suppression of facts by auditee had resulted in wrong availment of concessional customs duty benefit and, therefore, it appeared to have liable for penal action under **Section 114A** of the Customs Act, 1962.

1.9. Based on audit observation No. 4, it appeared that the subject goods “ME0420 ADHESIVE (LDPE) ME0420 ADHESIVE (LDPE) is classifiable under CTI 35069190 which attracts **BCD @ 10% and IGST @ 18%** and accordingly liable to **BCD @10%** The differential duty of **Rs.81,25,378/-** (Rupees Eighty-One Lakhs Twenty-Five Thousand Three Hundred and Seventy-Eight only).

1.10. Based on audit observation No. 5, it appeared that the subject goods “MAGSOL 115 (BB 1250KG) (REFRACTORY DRY RAMMING MASS” are classifiable under CETSH 38160000 which attracts BCD @ 7.5% and IGST @18%. with exemption Notfn. No. 50/2017 (Sl. No. 250) the differential duty of **Rs. 25,76,544/-** (Rupees Twenty-Five Lakh Seventy-Six Thousand Five Hundred and Forty-Four only).

1.11. Thus, it appeared that M/s. TATA Steel BSL Ltd. is liable to pay differential liability of **Rs.1,07,01,922/-** as worked out in the Annexure B. However, the importer has not made payment of differential duty as result of which the same is recoverable under the provisions of Section 28(4) of the Customs Act, 1962.

1.12. It appeared that auditee had wilfully mis-stated the facts and mis-classified the imported goods, in contravention of the provisions of Section 111(m) of the Customs Act, 1962. Hence, impugned goods are liable for confiscation. M/s. TATA Steel BSL Ltd. also appeared to be liable for imposition of penalty under Section 114A of the Customs Act, 1962.

1.13. Circular No.17/2011-Customs dated 08.04.2011 issued by Ministry of Finance, Department of Revenue, Central board of Excise & Customs vide F. No.450/26/2011-Cus.IV, Section 17 of the Customs Act, 1962 provides for self-assessment of duty by the importer by filing a Bill of Entry in the electronic form. The importer at the time of self-assessment is required to ensure that he declares the correct description of the goods, 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. It is seen that the auditee has resorted to

incorrect self-assessment, by failing to adopt the correct classification, thereby violated provisions of Section 17 of the Customs Act, 1962.

1.14. Further, as per Section 46(4) and 46(4A) of the Customs Act, 1962, the importer is required to furnish a declaration as to the truth of the contents of Bill of entry and shall ensure accuracy and completeness of information, authenticity and validity of documents submitted. The importer is required to declare the full accurate details relating to the goods description, quantity, duties payable etc. It was noticed from the facts and the Statements of the key person and legal position that the impugned goods are classifiable under CTH 39206220 instead of 39206290 as declared by the importer in the bills of entry.

1.15. CBIC vide Notification. 28/2022-Customs (N.T.) dated, 31.03.2022 had held that in cases of multiple jurisdictions as referred in Section 110AA of the Customs Act, 1962 the report in writing, after causing the inquiry, investigation or audit as the case may be along with relevant documents, shall be transferred to officers described in Column (2) of the said Notification. Since, present case involves multiple jurisdictions, hence, Nhava Sheva-I (INNSAI) being the port involving highest revenue, this Show Cause Notice is answerable to the Commissioner of Customs, Nhava Sheva-I, Jawahar Lal Nehru Customs House, Nhava Sheva, Tal. Uran, Dist. -Raigad, Maharashtra – 400707.

1.16. Therefore, M/s Tata Steel BSL Limited (IEC No 0593012496) (Now merged with M/s Tata Steel Ltd. w.e.f. 11th Nov 2021) was called upon to Show Cause to the Pr. Commissioner of Customs/Commissioner of Customs, Nhava Sheva –I, as to why: -

- a) The subject imported goods “ME0420 ADHESIVE (LDPE) ME0420 ADHESIVE (LDPE)” classified under CETSH 39019000 should not be re-classified under CETSH 35069190.
- b) The subject imported goods “MAGSOL 115 (BB 1250KG) (REFRACTORY DRY RAMMING MASS)” classified under CETSH 25199030 should not be re-classified under CETSH 38160000.
- c) An amount of Rs. 1,11,89,678 /- (One Crore Eleven Lakhs Eighty-Nine Thousand Six Hundred and Seventy-Eight Only) as detailed in Annexure-B, should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962;
- d) Interest should not be demanded and recovered from them, on the amount demanded at (c) above, under Section 28AA of the Customs Act, 1962;
- e) The amount of Rs. 8,15,049/- (Rupees Eight Lakh Fifteen Thousand and Forty Nine only) paid by the auditee as admitted duty of Rs.4,87,752/- (Rupees Four Lakh Eighty Seven Thousand Seven Hundred and Fifty Two only) and Rs.3,27,297/- (Rupees

Three Lakh Twenty Seven Thousand Two Hundred and Ninety Seven only) as applicable interest thereupon under Section 28AA of the Customs Act, 1962 paid vide TR6 no.4777 dated 20.06.2024 should not be appropriated against the duty so demanded, as detailed in (c) above;

- f) The goods valued at Rs.27,29,28,957/- (Rupees Twenty-Seven Crore Twenty-Nine Lakh Twenty-Eight Thousand Nine Hundred and Fifty-Seven only) imported as detailed in Annexure-B should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962;
- g) Penalty should not be imposed on them under Section 114A of the Customs Act, 1962.
- h) Penalty should not be imposed on them under Section 114AA of the Customs Act, 1962.

2. SUBMISSIONS MADE BY THE NOTICEE

The Noticee M/s Tata Steel Limited (Earlier M/s Tata Steel BSL Limited) has made submissions vide letter which has been received on 30.07.2025. Submissions are as follows:

2.1. ME0420 Adhesive (LPDE) is correctly classifiable under CTH 3901 9000

It is submitted that the product ME0420 Adhesive (LPDE) is correctly classifiable under CTH 3901 9000. The ME0420 Adhesive (LPDE) is pellet form. The item is imported in bags containing 25 Kgs of the product in a single bag. The product is a non-pigmented maleic anhydride grafted polyethylene. It is used by the Noticee as one of the layers in the 3-layer Polyethylene (3LP Coating) done in steel pipes manufactured by the Noticee. The 3LP coating is done to prevent steel pipe corrosion, build chemical resistance properties and resistance to cathodic disbandment and resistance to moisture permeability. The process of 3-LPE is explained as under:-

Layer 1: This is the corrosion protective layer. This layer is of fusion bonded epoxy which offers very good corrosion protection. The fusion bonded epoxy has a very good bonding with the blasted steel surface. This provides anti-corrosion quality to the pipes.

Layer 2: this layer is the copolymer bonding of Low Density Polyethylene (LDPE) i.e the impugned product. The copolymer bonding is a maleic anhydride grafted polyethylene compound. This material has good chemical bonding to the fusion bonded epoxy and the top layer polyethylene.

Layer 3: this layer is for physical protection and consists of polyethylene/Polypropylene i.e High Density Polyethylene (HDPE). Since copolymer and polyethylene are similar, they bond well with each other.

2.2. Thus, the impugned product acts as a bond or intermediate layer between layer 1

and layer 3 during the process of 3-layer polyethylene coating of steel pipes when heated under 180 degree Celsius to 210 degree Celsius. Thus, for all intents and purposes the impugned product acts as a coating material in the manufacturing process of the noticee. The steel pipes coated using the aforementioned 3LP process are commonly used for petroleum pipes as well as water pipes.

2.3. It is submitted that the invoice issued by the foreign supplier as enclosed above clearly shows that the product has been classified under CTH 3901 9000. Further the invoice, packing list and the commercial tax invoices clarifies that the goods are sold in bags of 25KG weight and the item imported is a polymer of Ethylene. Further, it is submitted that the pellet form in which the goods are being imported cannot be used as an adhesive. As explained above, the item is used as coating which helps in bonding two layers and also provides anticorrosive properties to the steel pipes. The relevant portions of the invoices and packing lists are reproduced below for the sake of convenience:



Packaging of ME0420 Adhesive (LPDE) in 25 KG Bags

nn-2110

INVOICE



Page 1

Customer name/address
TATA STEEL BSL LIMITED
VIII Nifin & Savroli Kharbada Savro
Khopoli Pen Rd Isamba Phata, Post
Sajagaon Tal Khalapur, Distt Raigad
Maharashtra 410203
India

Delivery address
TATA STEEL BSL LIMITED
VIII Nifin & Savroli Kharbada Savro
Khopoli Pen Rd Isamba Phata, Post
Sajagaon Tal Khalapur, Distt Raigad
Maharashtra 410203
India

Customer number	Invoice number/date	Your reference	Our reference
107249	8010018081/17.10.2019	4150000127	Seenia Mandal
Terms of payment	Currency	Due date	
L/C 60 days from B/L date	USD	16.12.2019	
Terms of delivery	Place of Dispatch	Order number	
CIF Nhava Sheva	Finland	8000503780	

Material	Quantity	Unit	Price per unit	Value
MeO420 Adhesive (LDPE)	24.750	MT	2,500.00	61,875.00

Country of Origin: Finland
Commodity code: 39019090

Total net weight	24.750 MT
Net value	61,875.00
Total USD	61,875.00

GOODS:

ADHESIVE GRADE ME-0420, 24.750MT
AS PER TATA STEEL BSL PO NO 4150000127 DATED 05-JUN-2019, ORDER CONFIRMATION NO
8000503780 DATED 24-JUL-2019
TERMS OF DELIVERY CIF NHAVA SHEVA SEAPORT, INDIA (AS PER INCOTERMS 2010)

DOCUMENTARY CREDIT NO. 003LC01192590011 AND ISSUE DATE 16SEP19
BOROUGE Order Number 8000503780 referencing with BOREALIS Order Number 2800158481

@918514 = 4445805.32

Please quote our Invoice Number and IBAN Number when making the payment

Order subject to Borouge General Sales Terms and Conditions

Borouge Pte Ltd
1 George Street, #18-01, Singapore 049145
Tel +65 6275 4100 Fax +65 6377 1233 www.borouge.com
Borouge is part of the ADNOC and Borealis group of companies
Company Registration No. :199801755H

INSPIRING TOMORROW

Commercial Invoice of the Supplier

2.4. As per the general interpretative rules, if a product is classifiable under a specific heading then the same shall prevail over the general heading. In the present case the noticee has sought to classify the imported product under CTH 3901. However, the SCN has sought to reclassify the product under CTH 3506 on the ground that the item is intended to used as an adhesive in three-layer PE based anti-corrosion coatings for steel pipes. Further images of the product, test certificate from the supplier is collectively enclosed as Annexure-8.

2.5. For an item to be classifiable under CTH 3506, it must fulfil the conditions of the heading and description of the classification. CTH 3506 of the 1st schedule of the Customs Tariff Act, 1975 describes the heading as "prepared glues and other prepared adhesives, not elsewhere specified or include; put up for retail sale as glues or adhesives, not exceeding a net

weight of 1 KG". Therefore, for a product to qualify for classification under CTH 3506 the following parameters have to be met:

- Must be a prepared glue or adhesive
- Not elsewhere specified or included
- Must be put for sale as glue or adhesive
- And must be sold in retail packages NOT exceeding a net weight of 1 Kg.

2.6. In the present case, the item in question although has been described as an adhesive for steel pipe coating, the literature also specifies that the item is made using polymers of polyethylene and that the product is supplied in 25 KG bags in pellet form which has to be processed via extrusion. Cambridge dictionary defines extrusion as a process "the process of forming something by forcing or pushing it out, especially through a small opening". In other words the pellets as imported have to be put through the process of extrusion to melt them and make them usable as a coating on the steel pipes.

2.7. In light of the above, it can be safely said that the basic conditions of heading 3506 are not met by the imported product in as much as (a) the item is specifically described as a polymer of ethylene and therefore finds a specific classification under CTH 3901 (b) is not put up as a glue or adhesive for retail sale directly as the process of extrusion is involved for converting the pellets into a molten layer capable of being applied on the steel pipes and (c) is not sold in retail packages to direct customers not exceeding the weight of 1 Kg. Therefore, for all intents and purposes, the imported item is incapable of being classified under CTH 3506 by virtue of the restriction mentioned in the heading itself.

2.8. Further the CBIC vide Circular No. 47/1990 dated 31.08.1990 in relation to Poly Vinyl Acetate Emulsion has already clarified this aspect. The circular has categorically held that even if a product has an adhesive quality, it will be classified under 3901 provided it exceeds 1KG. If the weight is below 1 Kg, only then classification under CTH 3506 can come into picture. The relevant portion of the circular is reproduced below:

A doubt has been raised as to whether Poly Vinyl Acetate Emulsion is covered under Heading No. 35.06 as "prepared glues and prepared adhesives not elsewhere specified or included" or under Heading No.39.05 as polymers of vinyl acetate in primary forms.

3. The classification problem of Poly Vinyl Acetate has mainly arisen due to the fact that Poly Vinyl Acetate Emulsion containing additives such as protective colloid, initiator, surfactant and buffers etc. can be used as adhesive. This adhesive property has given rise to doubts that it could also be classified as prepared glues and adhesives falling under Chapter 35. It is a recognised fact that polymers of Chapter 39 which contain additives such as protective colloids, catalyst, initiators, surfactant and buffers etc. have adhesive properties, and sparingly they are used as such also. However, HSN Explanatory Notes make a distinction between polymers having adhesive properties and polymers specially formulated for

use as glues or adhesives, and polymers itself, put up for retail sale as glues or adhesives not exceeding net weight of 1 kg. In this connection, exclusion clause (b) under General Explanatory Notes of Chapter 39 (p. 555) is very relevant. According to that note preparation of polymers under Heading 39.01 to 39.13 specially formulated for use as glues or adhesives and products of Heading No. 39.01 to 39.13 put up for retail sale as glues or adhesives not exceeding net weight of 1 kg. are excluded from Chapter 39. This would other wise mean that polymers of Heading No. 39.01 to 39.13 though having adhesive property could not be treated as adhesives or glues unless they satisfy exclusion Note (b) of the Explanatory Notes under Chapter 39 (HSN 555).

4. The Chief Chemist who has given his opinion in this regard after visiting the production unit has stated that Poly Vinyl Acetate Emulsion with additives such as protective colloids, initiator, surfactants and buffers etc. and having inherent adhesive property does not cease to be a polymer of Vinyl Acetate in primary (emulsion) form, and therefore it would be liable for classification under Heading No. 39.05 of CET unless its usage and mode of presentation for sale is such that by virtue of exclusion Note (b) of the Explanatory Notes under Chapter 39 (p. 555), it merits classification under H.No.35.06 of the CET, 1985.

5. Accordingly, it is clarified that Poly Vinyl Acetate Emulsion containing additives such as protective colloids, initiators, surfactant and buffers etc. would squarely be covered by H. No. 39.05 of the CETA, 1985 unless its usage and mode of presentation for sale is such that by virtue of exclusion Note (b) of the Explanatory Notes under Chapter 39 (p. 555); it merits classification under H.No.35.06 of the CET, 1985.

2.9. Following the aforementioned Circular the Tribunal in the following cases has conclusively held that Adhesives put up for retail sale not exceeding net weight of 1 kg. are classifiable under Chapter 39 of Central Excise Tariff Act, 1985 as claimed by the assessee and not under Heading No. 3506.00 as proposed by the department:

- **CHANDRAS CHEMICAL INDUSTRIES PVT. LTD - 2000 (122) E.L.T. 268 (Tribunal)**
- **N.G. ADHESIVES INDUSTRIES PVT. LTD - 2006 (198) E.L.T. 414 (Tri. - Bang.)**

2.10. This position is further buttressed by the fact that HSN Explanatory Notes for Chapter 39 expressly excludes adhesives consisting of polymers or blends of headings 39.01 to 39.13 only when they are put up for sale as glues or adhesives, not exceeding a net weight of 1 Kg. The relevant portion of the HSN Explanatory notes pertaining to Chapter 39 is reproduced below:

In addition to the exclusions mentioned in Note 2, the Chapter excludes :
(b) Preparations specially formulated for use as adhesives, consisting of polymers or blends thereof of headings 39.01 to 39.13 which, apart from any

permitted additions to the products of this Chapter (fillers, plasticisers, solvents, pigments, etc.), contain other added substances not falling in this Chapter (e.g., waxes, rosin esters, unmodified natural shellac) and products of headings 39.01 to 39.13 put up for retail sale as glues or adhesives, not exceeding a net weight of 1 kg (heading 35.06).

2.11. Further the HSN Explanatory Note for Chapter 3506 expressly excludes any glues or adhesives which are sold in packages exceeding 1 KG in net weight. A copy of the HSN Explanatory Notes for Chapter 35 is enclosed as Annexure-9. The relevant portion of the HSN Explanatory Notes of CTH 3506 is reproduced below:

35.06 - Prepared glues and other prepared adhesives, not elsewhere specified or included; products suitable for use as glues or adhesives, put up for retail sale as glues or adhesives, not exceeding a net weight of 1 kg.

3506.10 - Products suitable for use as glues or adhesives, put up for retail sale as glues or adhesives, not exceeding a net weight of 1 kg

- Other :

3506.91 - - Adhesives based on polymers of headings 39.01 to 39.13 or on rubber

3506.99 - - Other

This heading covers :

(A) Products suitable for use as glues or adhesives and put up for retail sale as glues or adhesives, not exceeding a net weight of 1 kg.

This group covers the prepared glues and adhesives of (B) below and other products suitable for use as glues or adhesives, **provided** they are put up for retail sale as glues or adhesives in packages the content of which does not exceed 1 kg.

The packages in which glues or adhesives are usually put up for retail sale include glass bottles or jars, metal boxes, collapsible metal tubes, cartons, paper bags, etc.; sometimes the "packaging" is merely a paper band wrapped round, for example, a slab of bone glue. A small brush of the appropriate type is sometimes packed with glues or adhesives (e.g., those put up in jars or tins ready for direct use). Such brushes are classified with the glues or adhesives if packed therewith.

Products having other uses in addition to use as glues or adhesives (e.g., dextrins, methyl cellulose in granules) are classified in this heading **only** if there is some indication on the packages that they are intended for sale as glues or adhesives.

2.12. It is submitted that the Supreme Court in the case of Wood Craft Products Ltd – 1995 (77) ELT 23 (SC) has held that considering the tariff has been written based on the HSN, the interpretation of the tariff must rely upon the explanation provided by the HSN. The relevant portion of the decision is reproduced below:

18. *We are of the view that the Tribunal as well as the High Court fell into the error of overlooking the fact that the structure of the Central Excise Tariff is based on the internationally accepted nomenclature found in the HSN and, therefore, any dispute relating to tariff classification must, as far as possible, be resolved with reference to the nomenclature indicated by the HSN unless there be an express different intention indicated by the Central Excise Tariff Act, 1985 itself. The definition of a term in the ISI Glossary, which has a different purpose, cannot, in case of a conflict, override the clear indication of the meaning of an identical expression in the same context in the HSN. In the HSN, block board is included within the meaning of the expression "similar laminated wood" in the same context of classification of block board. Since the Central Excise Tariff Act, 1985 is enacted on the basis and pattern of the HSN, the same expression used in the Act must, as far as practicable, be construed to have the meaning which is expressly given to it in the HSN when there is no indication in the Indian Tariff of a different intention.*

2.13. In light of the above, it is submitted that the department is bound by the interpretation provided by the HSN explanatory notes as extracted above and also the CBIC Circular No. 47/1990 dated 31.08.1990 along with the relevant chapter notes of Chapter 35. Further, the classification done by the Noticee is further corroborated by the invoice, packing list and literature provided by the supplier which leaves no doubt that the product is incapable of being classified under CTH 3506 and therefore following the rules of general interpretation has to be classified under a more specific heading of CTH 3901 9000. In light of the above, the proposal of the SCN for reclassification of ME0420 Adhesive (LPDE) under CTH 3506 is unsustainable in view of the submissions made herein above, and therefore the demand on this ground is liable to be dropped and set aside on this ground alone.

MAGSOL 115 is correctly classifiable under CTH 2519 9030

2.14. It is submitted that the imported product MAGSOL 115 is correctly classifiable under CTH 2519 9030. The supplier of the product M/s MAGNA Magnesitas Navarass vide their letter dated 15.05.2024 have clarified that "MAGSOL 115 (DBM material for dry ramming mass) is granulated Monolithic material, no shaped, for being used in the condition and repair of the electric arc furnace (EAF) bottom. It is based on dead burned magnesite (sinter magnesite) with no addition of any additive or chemical binder for its use or confirmation in the customer. So, it is considered as Dead Burned Magnesite (sintered magnesite), 2519 9030. According to all of these commented chemical nature and application considerations, MAGNA R&D Dpt. Considers and confirm that the mentioned MAGSOL 115 product is classified under the code which chemically corresponds to it: 2519 9030". A copy of the supplier's declaration dated 15.05.2024 is enclosed herewith as Annexure-10.

2.15. Therefore, as clarified by the supplier itself, the imported product is a sintered magnesite which is used for repair of construction of electric arc furnace bottoms and is made purely of magnesium which further contains no additives or chemical binders. Therefore, for intents and purposes the product is sintered or burnt magnesite and therefore the product is directly classifiable under CTH 2519. The relevant portion of CTH 2519 is reproduced below:

2519		NATURAL MAGNESIUM CARBONATE (MAGNESITE); FUSED MAGNESIA; DEAD-BURNED (SINTERED) MAGNESIA, WHETHER OR NOT CONTAINING SMALL QUANTITIES OF OTHER OXIDES ADDED BEFORE SINTERING; OTHER MAGNESIUM OXIDE, WHETHER OR NOT PURE			
2519 10 00	-	Natural magnesium carbonate (magnesite)	kg.	5%	-
2519 90	-	<i>Other:</i>			
2519 90 10	---	Fused magnesia (natural)	kg.	5%	-
2519 90 20	---	Dead-burnt (sintered) magnesia	kg.	5%	-
2519 90 30	---	Magnesium calcined (other than dead-burnt) not elsewhere specified or included	kg.	5%	-
2519 90 40	---	Magnesium oxide	kg.	5%	-
2519 90 90	---	Other	kg.	5%	-

2.16. From a bare perusal of CTH 2519 as provided in the 1st Schedule of the Customs Tariff Act, 1975, it becomes clear that dead-burnt (sintered) magnesia and Magnesium calcined finds specific place in the chapter sub-heading and corresponds directly with the description of the product as provided by the supplier of the material. It is a well settled principle of law and of general interpretation that the heading which provides the most specific description shall be preferred to the headings providing a more general description. In this regard the Noticee places reliance of the decision of the Supreme Court in the case of Moorco (India) Ltd – 1994 (74) ELT 5 (SC).

2.17. Further, upon perusal of the HSN explanatory notes for CTH 2519 it becomes even more clear that dead burnt sintered magnesia categorically used in electric ovens and in manufacture of refractory bricks is classifiable under CTH 2519. A copy of the HSN Explanatory Notes for Chapter 25 is enclosed as Annexure-11. The relevant portion of the HSN explanatory notes is reproduced below for the sake of convenience:

25.19 - Natural magnesium carbonate (magnesite); fused magnesia; dead-burned (sintered) magnesia, whether or not containing small quantities of other oxides added before sintering; other magnesium oxide, whether or not pure.

2519.10 - Natural magnesium carbonate (magnesite)

2519.90 - Other

This heading covers magnesite (or giobertite) which is a naturally occurring magnesium carbonate with impurities in various proportions.

The heading also covers various types of magnesia (magnesium oxide) obtained from natural magnesium carbonate, basic magnesium carbonate, magnesium hydroxide precipitated from sea water, etc. The main types are :

- (1) **Fused magnesia**, obtained by fusion. It is usually colourless but may be slightly yellowish or greenish. It is less soluble than other types of magnesia and is used, for example, in the manufacture of crucibles or heating elements for electric ovens.
- (2) **Dead-burned (sintered) magnesia**, obtained by high temperature (about 1400-1800 °C) calcination. Sintered magnesia may contain small quantities of other oxides (e.g., iron oxide or chromium oxide), added before sintering in order to lower the sintering temperature. It is used in the manufacture of refractory bricks.
- (3) **Caustic-burned magnesia**, usually obtained from magnesite by relatively low temperature (lower than 900 °C) calcination. It is more chemically reactive than fused or sintered magnesia and is used, for example, in the production of magnesium compounds, decolouring agents or oxychloride cement.

Light and heavy magnesium oxides are usually obtained by calcination of pure precipitated magnesium hydroxide or basic carbonate at temperatures from 600 °C to 900 °C. These magnesium oxides are practically insoluble in water but are readily soluble in dilute acids and are more chemically reactive than other types of magnesia (i.e., sintered magnesia and fused magnesia). They are used in the manufacture of medicaments, cosmetics, etc.

The heading **does not cover** :

- (a) Hydrated basic magnesium carbonate, sometimes known as “ pharmacist’s white magnesia ” (heading 28.36).
- (b) Cultured crystals (other than optical elements), of magnesium oxide, weighing not less than 2.5 g each (heading 38.24); optical elements of magnesium oxide (heading 90.01).

2.18. As submitted earlier, the Supreme Court in the case of Wood Craft (Supra) has categorically held that since the tariff is based on HSN, the HSN Explanatory Notes must be used as a tool for interpretation of the tariff headings. Upon perusal of HSN Explanatory Notes for CTH 2519 there remains no doubt that the imported product MAGSOL 115 is correctly classifiable under CTH 2519.

2.19. However, the department has sought to classify the imported product under CTH 3816 which covers “Refractory cements, mortars, concretes and similar compositions, including dolomite ramming mix, other than products of heading 3801.” The sub-heading specifically covers cements, mortars or concrete which are used for construction of furnaces, coke ovens etc. The HSN Explanatory Note for CTH 3816 further clarifies that This heading covers certain preparations (e.g., for furnace linings) with a basis of such refractory materials as chamotte and dinas earths, crushed or ground corundum, powdered quartzites, chalk, calcined dolomite, with an added refractory binder (for example, sodium silicate, magnesium

or zinc fluosilicates). Many of the products of this heading also contain non-refractory binders such as hydraulic binding agents. A copy of the HSN Explanatory Notes for Chapter 38 is enclosed as Annexure-12. The relevant portion of the HSN Explanatory Note is reproduced below:

38.16 - Refractory cements, mortars, concretes and similar compositions, including dolomite ramming mix, other than products of heading 38.01.

This heading covers certain preparations (e.g., for furnace linings) with a basis of such refractory materials as chamotte and dinas earths, crushed or ground corundum, powdered quartzites, chalk, calcined dolomite, with an added refractory binder (for example, sodium silicate, magnesium or zinc fluosilicates). Many of the products of this heading also contain non-refractory binders such as hydraulic binding agents.

The heading also covers refractory compositions with a basis of silica for the manufacture of dental or jewellery moulds by the lost wax process.

This heading further includes dolomite ramming mixes which are used as refractory materials (e.g., for furnace lining). These products are traded in powder or granular form consisting predominantly of crushed sintered dolomite. Depending on the field of application or temperature at which the mix will be used, different non-hydraulic binding agents (e.g., tar, pitch, resins) are used.

The heading further covers refractory concretes consisting of mixtures of heat-resistant hydraulic cements (e.g., aluminous cements) and refractory aggregates, used for the foundation of furnaces, coke ovens, etc., or for patching furnace linings as well as the following :

2.20. Therefore, a simple perusal of the explanatory note clarifies that CTH 3816 is a more general heading which covers construction material used in furnaces and ovens such as cement and concrete and dolomite ramming mix. However, there is no mention of dead-burned sintered magnesite in the explanation as the same already stands covered specifically under CTH 2519 on account of the fact that 73% of the imported item is made of Magnesium and therefore finds a specific classification under goods made from Magnesium. In this regard a copy of the test certificate showing the quantity of Magnesium in the imported product is enclosed as Annexure-13.

2.21. It is a well settled principle of interpretation as codified under the General Rule of Interpretation under the Customs Tariff Act under Rule 3 that if goods are described under more than two headings then the more specific description prevails. Therefore, in the present case the more specific description of the imported goods will be polymers of ethylene meriting classification under CTH 2519.

2.22. Therefore, the product merits classification under the specific heading of CTH 2519 instead of the general heading of CTH 3816 as proposed by the SCN, and therefore the demand raised on this ground is liable to be quashed on this ground alone.

2.23. The SCN has been issued on the basis of Audit Objection without any independent investigation or testing done by the Adjudicating Authority.

It is submitted that the present SCN has been issued wholly and solely on the basis of the audit objection which has also been quoted in the SCN. The adjudicating authority has not applied his mind independently or adduced any independent evidence or test reports to show that the

alleged imported goods merit classification under different chapter headings as alleged or at all.

2.24. Further, if the adjudicating authority would have applied his mind, he would have seen that the imported LDPE products were imported in pellet form in bags more than 1KG in weight and therefore the same could not be classified under CTH 3506. Similarly, the product MAGSOL 115 was essentially dead burnt (sintered) magnesia which would merit classification under CTH 2519 instead of CTH 3816 which is a more general heading. This shows the absolute non-application of mind on the part of the adjudicating authority while issuing the present SCN.

2.25. It is a settled position of law that an SCN based wholly on the basis of audit observations is not sustainable and liable to be quashed as there SCN issuing authority has not applied his mind independently. In this regard the Noticee places reliance on the case of Swastik Tin Works - 1986 (25) E.L.T. 798 wherein it was held that if the only basis of changing a classification in an SCN is the audit objection then such SCN is liable to be quashed and set aside. The relevant portion of the decision is reproduced below:

14. We have carefully considered the facts of the case and the submissions made by both sides. At the outset, it is quite clear that both the show cause notices seem to be based only on audit objections. There is no claim that there has been any further inquiry or investigation by the Department which has helped to establish that the actual identity of the impugned goods is other than that claimed by the assessee and earlier approved by the Department itself. After all, the classification lists themselves declared that the items were in the nature of cut-to-size sheets and for years together these were being cleared as such. It is shown also that during these years, they were held by different Excise officers as non-excisable sheets cut-to-size. In the absence of any subsequent evidence to the contrary, it is not at all clear as to how the Department could have raised demand merely in view of audit objections holding that the goods were metal containers in unassembled form. In reply to show cause notices, the Noticees have unassailably urged this point of view and this is not answered at the level of either the Assistant Collector or the Collector (Appeals). In this connection, we have seen the two decisions of the Delhi High Court cited by the Noticees in the cases of Poona Bottling Co. Ltd. and another v. Union of India and Others - 1981 E.L.T. 389, and Indian Aluminium Company Ltd. and another v. Union of India and Others - 1983 E.L.T. 349, in which it was held that show cause notices issued on the basis of advice or directive by the Central Government of the Central Board of Excise and Customs, were illegal and void, as directives could not be issued to subordinate authorities exercising quasi-judicial functions. In this particular case, there have been no such advice or directives by higher authorities. It would have been perfectly in order if the local Central Excise officers were to undertake further inquiries on the receipt of audit objection; and after further examination and necessary investigation, if they were to come to the conclusion on the basis of evidence collected that the goods in question were liable to duty or further duty, they would be well within their jurisdiction to issue a show cause notice to the assessee, explaining to him the grounds and the evidence on the basis of which the Excise has come to the tentative view that the assessee has not discharged his liability to duty. However, this, in the present matters, the Department has failed to do. The show cause notices are veritably based on audit objection only and no other reason is given for the Department changing its stand as regards the classification

of goods. On this ground, the show cause notice is liable to be quashed.

2.26. In this regard, the Noticee further places reliance on:

- ***Ram Steel Rolling & Forging Mills - 2006 (204) E.L.T. 87***
- ***Kirloskar Pneumatic Co Ltd. - 2010 (254) E.L.T. 328***
- ***Innovative Technological Learning Services Pvt. Ltd - (2024) 17 Centax 247 (Tri.-Bom)***
- ***M/s CONTINENTAL CHEMICAL LIMITED - 2025-VIL-777-CESTAT-DEL-ST***

2.27. In all of the above cited cases, the High Courts and Tribunals have consistently held that any SCN issued merely following the dictate of the Audit Authority without any independent application of mind is liable to be quashed and set aside and the department must conduct independent investigation to level charges or allegations against the assessee. The ratio of the above cited cases is squarely applicable on the present case, and therefore the impugned SCN is liable to be quashed and set aside on this ground alone.

2.28. **Demand not sustainable as the assessment of the involved BOEs have not been challenged by the department.**

The Noticee submits that the present SCN seeks to re-determine the classification of the which were imported and cleared during the period from November 2019 to November 2021 by re-opening the assessment of the Bills of entry under which the same were imported. The subject BOEs involved in the present case were finally assessed and the duty on the imported goods was paid accordingly. The assessment of the bills of entry has already attained finality and was not challenged by the department.

Section 17 of the Customs Act, 1962 reads as under-

“SECTION 17. Assessment of duty – (1) After an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 the imported goods or the export goods, as the case may be, or such part thereof as may be necessary may, without undue delay, be examined and tested by the proper officer.

(2) After such examination and testing, the duty, if any, leviable on such goods shall, save as otherwise provided in section 85, be assessed.

(3) For the purpose of assessing duty under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any contract, broker's note, policy of insurance, catalogue or other document whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained, and to furnish any information required for such ascertainment which it is in his power to produce or furnish, and thereupon the importer, exporter or such other person shall produce such document and furnish such information.

(4) Notwithstanding anything contained in this section, imported goods or export goods may, prior to the examination or testing thereof, be permitted by the proper officer to be assessed to duty on the basis of the statements made in the entry relating thereto and the documents produced and the information furnished under sub-section

(3); but if it is found subsequently on examination or testing of the goods or otherwise that any statement in such entry or document or any information so furnished is not true in respect of any matter relevant to the assessment, the goods may, without prejudice to any other action which may be taken under this Act, be re-assessed to duty.”

2.29. The Assessing Authority also examined classification and assessment of the goods under import. The goods have, thereafter, been cleared by the Noticees out of Customs charge and taken to the factory for use in the manufacture. In the above factual position, the Noticees submit that no demand under Section 28 can be raised due to the following reasons.

2.30. The Hon’ble Supreme Court in the case of ***CCE Vs. Cotspun Ltd. reported in 1999 (113) E.L.T 353 (S.C.)*** dealing with a question as to whether a demand of duty under Section 11A of the Central Excise Act, 1944 could be raised notwithstanding the order of assessment already made in respect of the goods in question.

2.31. It would be useful to refer in the form of a table, the provisions of Section 11A as it stood in the year 1999 and the pari-materia provisions of Section 28 of the Customs Act, 1962.

Section 11A of the Central Excise Act, 1944 as it stood in the year 1999	Section 28 of the Customs Act, 1962 as it stood in the year 1999
<i>SECTION 11A. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. –</i> <i>When any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, a Central Excise Officer may, within six months from the relevant date, serve notice on the person chargeable with the duty which has not been levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:</i> <i>Provided that where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any willful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty by such person or his agent, the provisions of this sub-section shall have effect, as if, for the words “six months”, the words “five years” were substituted.</i>	<i>SECTION 28. Notice for payment of duties, interest etc. –</i> <i>When any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, or when any interest payable has not been paid, part paid or erroneously refunded, the proper officer may, -</i> <i>in the case of any import made by any individual for his personal use or by Government or by any educational, research or charitable institution or hospital, within one year;</i> <i>in any other case, within six months, from the relevant date, serve notice on the person chargeable with the duty or interest which has not been levied or charged or which has been so short-levied or part paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:</i> <i>Provided that where any duty has not been levied or has been short-levied or the interest has not been charged or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts by the importer or the exporter or the agent or employee of the</i>

<i>importer or exporter, the provisions of this sub-section shall have effect as if for the words “one year” and “six months”, the words “five years” were substituted.</i>
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2.32. The Hon’ble Supreme Court in the case of CCE Vs. Cotspun Ltd. (supra) held that no demand of duty can be made for the past period if the goods have been cleared during that period pursuant to an approval or order of assessment made by the proper officer. The decision of the Supreme Court in the case of CCE Vs. Cotspun Ltd. (supra) laid down that if a demand has to be raised contrary to an approved classification or assessment already done, then such a demand could be raised only prospectively and, therefore, could not be sustained for the past period without challenging or upsetting the classification or assessment already done in respect of the goods. In other words, no demand could be raised even within the normal period of limitation contrary to an approved classification or assessment.

2.33. This judgment of the Supreme Court in the case of Cotspun (supra) was overcome by retrospectively amending Section 11A of the Central Excise Act, 1944 vide Section 110 of the Finance Act, 2000. This amendment was carried out retrospectively with effect from the year 1992 and also validated the actions taken under Section 11A of the Central Excise Act, 1944 notwithstanding any approval or assessment done by the Department.

2.34. The Noticees submit that effectively the Department could raise a demand within the normal time limit in respect of clearance of excisable goods made even within the normal period of limitations since the decision of the Supreme Court in the case of Cotspun (supra) was overcome by the retrospective validation given under Section 11A of Central Excise Act, 1944.

However, no such amendment was carried out to Section 28 of the Customs Act, 1962.

2.35. The Noticees wish to submit in the form of a table below, Section 11A of the Central Excise Act, 1944 as it stands after the amendment carried out in the year 2000 and provisions of Section 28 of the Customs Act, 1962-

SECTION 11A OF THE CENTRAL EXCISE ACT, 1944	SECTION 28 OF THE CUSTOMS ACT, 1962
SECTION 11A. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. – <i>When any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, whether or not such non-levy or non-payment, short-levy or short payment or erroneous refund, as the case may be, was on the basis of any approval, acceptance or assessment relating to the rate of duty on or valuation of excisable goods under any other provisions of this Act or the rules made thereunder, a</i>	SECTION 28. Notice for payment of duties, interest etc. – <i>When any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, or when any interest payable has not been paid, part paid or erroneously refunded, the proper officer may, -</i> <i>in the case of any import made by any individual for his personal use or by Government or by any educational, research or charitable institution or hospital, within one year;</i>

Central Excise Officer may, within one year from the relevant date, serve notice on the person chargeable with the duty which has not been levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

Provided that where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any willful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, by such person or his agent, the provisions of this sub-section shall have effect, as if, for the words one year, the words "five years" were substituted.

in any other case, within six months, from the relevant date, serve notice on the person chargeable with the duty or interest which has not been levied or charged or which has been so short-levied or part paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

Provided that where any duty has not been levied or has been short-levied or the interest has not been charged or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts by the importer or the exporter or the agent or employee of the importer or exporter, the provisions of this sub-section shall have effect as if for the words "one year" and "six months", the words "five years" were substituted

2.36. As can be seen from the comparative table given above, no such retrospective validation has been carried out to Section 28 of the Customs Act, 1962 and the retrospective validation has been carried out only to Section 11A of the Central Excise Act, 1994, specifically with a view to overcome the Hon'ble Supreme Court decision in the case of Cotspun Ltd., supra.

2.37. In view of the law laid down by the Hon'ble Supreme Court in case of Cotspun Ltd. supra, a situation involving short payment will not arise, if any clearance of goods is made pursuant to an assessment done under Section 17 of the Customs Act, 1962. In other words, short payment or non-payment of duty can be alleged against an importer, only if no assessment has taken place originally at the time of clearance of imported goods. On the contrary, if an assessment had been done, and pursuant to such assessment, if the goods are classified under a particular Customs Tariff heading and levied to duty at the rate applicable to that Customs Tariff heading read with any relevant notification which was in force during the material time, then the question of the importer having short paid or not paid any duty would not arise.

2.38. The Noticees further submit that the allegations of short payment or non-payment of duty can be made against an importer only if the assessment, already done on the bill of entry by the appropriate officer, is either challenged or upset through an appropriate process of review and appeal, if undertaken by the Department.

2.39. Since no review in the nature of an appeal has been undertaken and since the assessments originally carried out in the bill of entry have not been either upset or challenged by a process known to law, then the assessment as done at the time of clearance, is deemed to have attained finality and consequently, no short payment or non-payment can be alleged with

reference to the same bill of entry at a later date.

2.40. The Noticees further submit that it is now the settled law that an assessment done on a bill of entry is appealable order. In this regard, the Noticees rely on the decision of the Larger Bench of the Tribunal in the case of *CC Vs. Arvind Exports Pvt. Ltd.* reported in 2001 (130) ELT 54.

2.41. The Noticees further submit that in view of the decision of the Larger Bench of the Tribunal in the case of *Arvind Exports Pvt. Ltd.* supra holding that the assessment done on the bill of entry is an appealable order and that the appealable order, having not been challenged by the Department, has attained finality. Consequently, applying the ratio of the decision of the Hon'ble Supreme Court in the case of *Cotspun Ltd.*, supra, it would not be open to the Department to issue show cause notice under Section 28 of the Customs Act, 1962 alleging short levy or non-levy in respect of the goods imported under the same bill of entry. The impugned order is liable to be set aside on this ground also.

2.42. The Noticees submit that the Revenue has always been taking a view that an importer could not claim refund of excess duty paid until or unless the importer challenges the assessment done in the bill of entry and that such an assessment is required to be set aside by the Appellate Authority. The Revenue has been taking this view on the ground that unless an assessment done by a proper officer under Section 17 of the Customs Act, 1962, is challenged and set aside by the Appellate Authority, grant of refund on the bill of entry, according to the revenue, was not permissible in Law. The above stand of the Department has been upheld by the Hon'ble Supreme Court in the case of *CC Vs. Priya Blue Industries* reported in **2004 (172) ELT 145** in which the Hon'ble Supreme Court has held that the importer would not be entitled to claim refund of excess duty paid, until and unless he challenges the assessment done on the bill of entry through a process known to Law. The judgment of the Hon'ble Supreme Court was followed by the Hon'ble Appellate Tribunal in the case of *Jai Hind Overseas Vs. CC* reported in **2009 (90) RLT 48 (CESTAT-Bang.)** The noticee also places reliance on the Supreme Court's decision in the case of *ITC Limited - 2019 (368) E.L.T. 216 (S.C.)* wherein the court held that a self-assessed bill of entry is also an appealable order under Section 128 of the Customs Act, and therefore same is required to be challenged.

2.43. The Noticees submit that the same logic should apply to the demands proposed under Section 28 of the Customs Act also inasmuch as the demand for short payment or non-payment in this case would amount to an effective review of the order of assessment without recourse to Section 129D of the Customs Act, 1962 and would tantamount to bypassing the provisions of Section 129D of the Customs Act, 1962, by invoking the provisions of Section 28 of the Customs Act. The Noticees submit that the logic of the Hon'ble Supreme Court's decision should be equally applicable to the demand raised under Section 28 of the Customs Act and this argument has been upheld by the Tribunals in a number of cases already cited supra. The Noticees, therefore, submit that since in this case the assessments done in the bill of

entry have attained finality due to the fact that no appeal has been filed by the Department against the order of assessment and such finality was attained due to non-filing of appeal, the same cannot be overcome by issue of a demand under Section 28 of the Customs Act. Such a SCN raised, if any, is clearly unsustainable in law for the reasons mentioned above.

2.44. NO ESTOPPEL IN TAX LAWS

The SCN has tried to allege that the Noticee themselves have imported and cleared MAGSOL 115 under CTH 3816 during the period of 2019 to 2022 and after merger of TSBSL with M/s Tata Steel Limited (Noticee), the noticee has also imported the same product under CTH 3816 and therefore the product is correctly classifiable under CTH 3816 and not under CTH 2519. It is submitted that though the noticee were initially claiming classification of the goods in dispute under CTH 3816, they are not estopped from claiming the classification under CTH 2519. It is submitted that as it is a settled law that there is no estoppel in tax laws and the Noticee can claim reclassification of the product keeping in view the correct classification of the product. In support of the above submission that there is no estoppel in claiming the correct classification and for changing the classification, reliance is placed on the following decisions which have consistently held that there is no estoppel in tax laws:-

- **Crompton Greaves Ltd. vs. CCE- 1996 (87) ELT 414**, affirmed by the Supreme Court in **2002 (142) ELT A85 (SC)** review application dismissed in **2002 (142) ELT A182**

It is not the case of the appellants that the equipment under consideration consists merely of two switches. The impugned goods are panels equipped with Bulk Oil Circuit Breakers or Vacuum Circuit Breakers and equipped also with other apparatus falling either under Item 85.35 or 85.36. While Bulk Oil Circuit Breaker or Vacuum Circuit Breaker falls under Heading 8535.00, fuses attract classification under 85.36, over current relays under 85.36, earth fault relay again under 85.36, instantaneous earth fault relay under 86.36, Amperemeter under Chapter 90, Voltameter under Chapter 90, etc. In other words, the impugned goods are panels equipped with two or more apparatus of Heading 85.35 or Heading 85.36. HSN notes 85.37 clarify that goods under this heading consist of assembly apparatus of the kind referred to in Heading 85.35 and 85.36 (e.g. Switches and fuses) on a Board, Panel, console etc. or mounted in a cabinet, desk, etc. They usually also incorporate meters and sometimes also, subsidiary apparatus such as transformers, relays, voltage regulators etc. It is difficult to see how the impugned goods which admittedly are panels, equipped with circuit breaker classifiable under tariff Heading 8535.00" and equipped with also fuses, over current relays, earth fault relays, etc. classifiable under Heading 85.35 or 85.36, would not [attract] 85.37. The language of the Tariff Heading 85.37 is unambiguous. It covers the panels equipped with two or more apparatus of Heading 85.35 or 85.36 and the impugned goods should be such goods as are meant for electric control and distribution of electricity. The function of circuit breakers he maintained was not to control or distribute electricity but to switch on or protect the circuit. The first question is whether the impugned goods are panels, consoles, etc. which are equipped with two or more apparatus under Heading 85.35 or 85.36 including those incorporating instruments or apparatus of Chapter 90. Admittedly Bulk Oil Circuit Breaker and Vacuum Circuit Breaker is a panel equipped with the circuit breakers classifiable under Heading 85.35 and is also equipped with goods classifiable under Heading 85.36. Over current relays classifiable under 85.36 Earth Fault Relay, Classifiable under 85.36, and Amperemeter classifiable under Chapter 90 etc. The condition of goods being a panel and equipped with one

or more apparatus of Heading 85.35 or 85.36 or Chapter 90 is satisfied. The case of *Havel's Industries v. C.C.E.* (supra) does not help the appellants. Interestingly that was the case where appellants sought classification of switches under 85.37 on the ground that it is in the form of steel cabinet and is equipped with two sets of switches of Heading 85.36 mounted on a panel. It was also contended that the expression two or more apparatus under Heading 85.35, 85.36 in Heading 85.37, cannot be interpreted to read as two or more different apparatus of Heading 85.35 or 85.36. Tribunal, however, held that apparatus containing two switches in a cabinet cannot be considered two or more such apparatus to attract classification under Heading 85.37 and therefore held that goods are classifiable under Heading 85.36. The appellants also at an earlier stage appear to have sought classification of these very good under 85.37. The plea of changed classification now however cannot be held against the appellants for there can be no estoppel against law. Panels in case of the appellants are not merely equipped with two switches. Unlike the case of *Havel's Industries* (supra) as indicated earlier, the panels are equipped with fuses, Ampermeter, Voltameter, instantaneous earth fault relays, fuses, or current relays, etc. The condition of panel being equipped with two or more apparatus of Heading 85.35 or 85.36 therefore is fully satisfied.

- ***Shon Ceramics Pvt. Ltd. vs. CCE- 1991 (52) ELT 608* affirmed in *1996 (83) ELT A179 (SC)***

We have considered the arguments advanced on both sides and perused the records. On going through the impugned order, it is evident that Collector mainly has proceeded to classify the item in question based on the declaration filed by the appellants at the first instance. There is no estoppel in law against a party in taxation matters for claiming change of classification as it was rightly argued by the appellants' counsel. Revised classification list was filed and claimed accordingly. Next the Collector has taken description and properties of the product as basis while determining the classification. The item was described by the appellants as ceramic vitreous mosaics and declared that Shon Mosaics are made of hardened permanently coloured Vitrified body. Relying upon meaning and expressions of the terms 'Vitreous', vitrefication and vitrify used in the *Condensed Chemical Dictionary*, 9th Edition, Revised by Gessner G. Hawley and the *Webster's Third New International Dictionary (Unabridged)* as 'that the item changed into glass or a glassy substance by heat'. We have come to the conclusion that product manufactured by the appellant was a porcelain ware. But Tariff Item 23D clearly lays down the condition into the explanation below the main heading that for the purpose of classification, tiles known as Mosaic tiles commercially should be considered mosaic tiles. It means Chemical contents of mosaic tiles are not to be considered while deciding the classification under Item 23D. The appellants have also produced evidence to establish that the product manufactured by them are considered to be mosaic tiles in trade parlance. The Department has not produced any material evidence to rebut it. Further this aspect was well considered by the Appellate Collector for the subsequent period with reference to explanation under T.I. 23D. The same view was expressed by the Tribunal in the case of *Mridul Enterprises* (supra) while deciding the issue of classification in respect of glass mosaic tiles it was held that they were not classifiable as glass and glasswares under Item 23A but the same were classifiable under Item 23D emphasising on the usage of trade parlance with reference to explanation under Item 23D.

- ***Birla 3M Ltd. vs. CCE- 2005 (187) ELT 101***

We have carefully considered the submissions made by both sides. We find that the assessee has taken a view that merely because they had earlier accepted the classification order, it does not estop them from challenging the correctness of the order and taking the plea that the process of

cutting and slitting of jumbo rolls of Scotch Brite does not amount to a process of manufacture as there is no change in the character and the product remains the same. In this regard, they have relied on the judgments already cited above. On a careful consideration, we agree with the Counsel that the appellants have the liberty to raise the question of manufacture at a later stage and, therefore, the view taken by the Commissioner that the appellants had earlier accepted the order and that they cannot raise the issue is not a correct finding. The appellants are at liberty to raise the issue by filing fresh classification list and the authorities are required to have given a finding thereon.

- ***CCE vs. Perfect Refractories - 2005 (185) ELT 163***
- ***CCE vs. Mahakoshal Potteries- 2005 (183) ELT 289***

In light of the above, it is submitted that the Show Cause Notice cannot claim that since the classification was changed by the noticee subsequently, the noticee was actively involved in suppression of facts. As there is no estoppel in tax laws for changing classification, the same cannot be held against the noticee to allege suppression and misstatement and invoke the extended period of limitation. Since the entire demand in the present Show Cause Notice is time barred, the proposed demand should be dropped on this ground alone.

2.45. DISPUTE REGARDING CLASSIFICATION- DEPARTMENT CANNOT ALLEGE SUPPRESSION.

The Show Cause Notice alleges that the noticee deliberately suppressed the facts and intentionally misclassified the goods and contravened provisions of Section 46(4) and Section 17 and therefore the SCN takes recourse to Section 28 of the Customs Act, 1962 in order to invoke the extended period of limitation of five years in terms of Section 28(4), along with the applicable interest under Section 28AA of the Customs Act, 1962. As stated supra, the imported goods have been classified by the Noticee based on bonafide documents such as the supplier's invoice, declaration and technical literature provided by the supplier. Therefore, the question of suppression does not arise. Further, with regard to the audit points were in the Noticee paid the duty along with interest the same was done with a view to avoid protracted litigation was in no way an admission of guilt by the noticee. Further it is clear that the department had access to all the evidence, and they had clearly approved of the classification at the time of finalization of the assessment. It was later on the basis of the audit objection that the department has sought to change its mind and issue the present SCN. Thus, it does not lie in the teeth of the department to now allege suppression and invoke the extended period. In support of the above submission, the noticee places reliance upon the following case laws:

- *The Supreme Court in the case of **Pahwa Chemicals Pvt. Ltd. v. CCE 2005 (189) E.L.T. 257 (S.C.)** has clearly held that when classification lists have been approved and the Department is fully aware of all facts, there can be no suppression of facts leave alone suppression with intent to evade duty and the extended period of limitation cannot be invoked.*
- ***Densons Pultretaknik v CCEx - 2003 (155) E.L.T. 211 (S.C.)**, where the Hon'ble Supreme Court held as under:*

“Next question is - whether the Tribunal was justified in invoking first proviso to sub-section (1) of Section 11A. Prima facie, it is apparent that there was no justifiable reason for invoking larger period of limitation. There is no suppression on the part of the appellant-firm in mentioning the goods manufactured by it. The appellant claimed it on the ground that the goods manufactured by it were other articles of plastic. For the insulating fittings manufactured by it, the tariff entry was correctly stated. The concerned officers of the Department, as noted above, after verification approved the said classification list. This Court has repeatedly held that for invoking extended period of limitation under the said provision duty should not have been paid, short-levied or short-paid by suppression of fact or in contravention of any provision or rules but there should be wilful suppression. [Re : M/s. Easland Combines, Coimbatore v. The Collector of Central Excise, Coimbatore, C.A. No. 2693 of 2000 etc. decided on 13-1-2003]. By merely claiming it under heading 3926.90 it cannot be said that there was any wilful misstatement or suppression of fact. Hence, there was no justifiable ground for the Tribunal for invoking the first proviso to sub-section (1) of Section 11A of the Act.”

- **Collector of Central Excise v. Muzaffarnagar Steels 1989 (44) E.L.T. 552 (Tri.)**, where the Hon'ble Tribunal held as under:

“Rule 173 providing for the filing of classification list clearly shows that what is required of the Assistant Collector is the approval "after such enquiry as he deems fit. The approval of classification list is an important part of the process of assessment and, therefore, the Assistant Collector is required to be very careful and is expected to apply his mind before according approval. He is entitled to and indeed required to make such inquiries and summon such information as may be called for in order to arrive at the correct decision. In other words the act of approval was not merely a passive act of concurrence but involves an active decision making and the Assistant Collector was required to fully satisfy himself about the particulars of goods being manufactured and the process of manufacture wherever necessary and the relevant facts and then only determine the classification and pass appropriate orders; and once the Assistant Collector has approved the classification the Department has to bear the consequences thereof.

Therefore, it does not lie in the teeth of the adjudicating authority to allege suppression and invoke the extended period on the ground that no evidence was put forth by the Noticees that they have been mentioning the technical literature or the facts of the compounding ingredients. In the light of the above discussion, we hold that the entire demand is barred by limitation.

- **Steel Authority of India Ltd. Vs. Collector of Central Excise 1985 (22) E.L.T. 487**, where the Tribunal ruled as under:

“Collector's observation, which the learned SDR endeavored to support, that there was no indication in the classification list of machining processes having been undergone or that there was no reference to TI 68 goods is, in fact, begging the question because that is the real controversy, and in case the appellants entertained a bonafide belief that their goods were falling under TI 26AA(ia), which belief the Department endorsed by going on to approve the classification lists, till as late as May, 1979, and issued the show cause notice for the first time only in April 1980; it does not lie in the mouth of the Department to even suggest that there was suppression on the part of appellants, much less mis-statement, or

that it was a case of any clandestine removal. We also find justification in the plea of the appellants that in case they were obliged to pay duty, they could pass it on to the customers who could claim set off under Rule 56A and, as such, there could be no intention to evade duty, nor any loss of revenue to the Department, and that it was apparently a case of genuine belief as to classification. We are, therefore, of our considered view that there is absolutely no justification in invoking or applying the extended period of limitation of 5 years. (Emphasis Supplied)

2.46. The noticee further submits that the dispute is an issue of classification. Simply because the noticee quotes a different chapter heading, it does not mean that the noticee has suppressed vital information. In a problem relating to classification, the noticee submits that the department cannot allege suppression in the first place. The noticee places reliance on the following case laws to prove the same:-

- **Bharat Bijlee Ltd. Vs. Commissioner of Central Excise 2014 (309) ELT 129**

(Tri. - Mumbai), where the Hon'ble Tribunal held as under:

Further this is a pure dispute regarding classification. It is well settled that in a dispute regarding classification the Department cannot allege suppression with intent to evade duty or invoke the longer period of limitation. In the circumstances it is submitted that this demand in any case is liable to be set-aside.

(Emphasis Supplied)

- **Kerala State Electronics Development Corpn. Ltd. Vs. CCE 1998 (74) ECR**

138 (Tri-Bangalore), where the Hon'ble Tribunal ruled as under:

"In the show cause notice all that has been stated is that the appellants had mis-classified the goods. Showing a particular classification in the classification list cannot by itself constitute a basis for holding suppression against the assessee, unless it could be shown that the appellant had tried to misguide the authorities by mis-describing the goods or they had held back some relevant information which was required to be furnished and in the absence of which the authorities could not classify the goods correctly, no suppression has been shown to exist in this regard. We are, therefore, of the view that in the facts and circumstances of this case the charge of suppression against the appellants has not been made out. We, therefore, hold that the longer period of limitation could not be invoked. The period that could be taken, therefore, into reckoning would be only six months prior to the issue of show cause notice. We, therefore, allow the plea of the assessee so far as the limitation is concerned.

(Emphasis Supplied)

2.47. The Show Cause Notice clarifies that the department had access to all Bills of Entry and connected Certificates of Quality, submitted by the noticee. Thus, the department was well aware of the fact that the of the nature of the imported goods. Therefore, the notice issued invoking the extended period of limitation under Section 28 (5) *ibid* is clearly not justified and the entire demand is clearly hit by limitation. In view of the above submissions, the above show cause notice needs to be dropped forthwith on the grounds of limitation.

2.48. EXTENDED PERIOD OF LIMITATION CANNOT BE INVOKED AND THE ENTIRE DEMAND IS BARRED BY LIMITATION

Without prejudice to the submissions in the foregoing paragraphs that the demand confirmed by the impugned order is not sustainable on merits, it is further submitted that the present demand is entirely barred by limitation. The demand in the present case has been confirmed under Section 28 of the Customs Act, 1962. It is submitted that the demand in the present case pertains to the period from November 2019 to November 2021. The show cause notice was issued on 14.11.2024. As per the said provisions, the Show Cause Notice is required to be issued within 2 years of the relevant date. Therefore, the entire demand is barred by limitation.

2.49. For the sake of convenience, the provisions of Section 28 is reproduced below:

28. Recovery of duties not levied or short-levied or erroneously refunded —

[(1) Where any duty has not been levied or has been short-levied or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any wilful misstatement or suppression of facts, —

(a) the proper officer shall, within two years from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice;

(4) Where any duty has not been levied or has been short-levied or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,—

(a) collusion; or

(b) any wilful mis-statement; or

(c) suppression of facts,

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

It is submitted that the extended period of 5 years as per the proviso to Section 28 is invokable only in cases where the duty of customs has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made there under with intent to evade payment of duty.

2.50. There was no suppression on the part of the Noticee, all the facts were in the knowledge of the Department.

It is submitted that there has been no fraud, collusion, suppression or wilful misstatement on the part of the Noticee. The Noticee has not contravened any provisions of the Act or the Rules made thereunder with intent to evade payment of duty, hence extended period of demand is not invokable.

The present Show Cause Notice has alleged that the noticee had wilfully imported the impugned goods under the wrong heading. On this ground it was alleged that the noticee has willfully suppressed the correct classification to derive benefit of exemption. The department always had the necessary documents and evidence to conduct an inquiry and ascertain the facts. However, the department did not act timely and are not attempting to invoke the extended period of limitation without any conclusive proof of suppression. From the above facts it can be said that the Department was well aware of the classification claimed by the Noticee from its initiation and therefore, there is no suppression of facts as no objection whatsoever was raised by the department at any point of time.

2.51. It is submitted that all the relevant particulars which formed the basis of the demand in the present case were available and were in the knowledge of the departmental authorities earlier also. Hence, there is no question of suppression of facts or mis-declaration etc. so as to invoke the extended period of limitation. It is submitted that since all the relevant facts were known to the departmental authorities and were verified by them from time to time, failure on the part of the Department in issuing any SCN for demanding duty during the relevant period cannot be used against the Noticee for invoking the extended period of limitation.

2.52. Even if it is presumed that the classification is incorrect it does not amount to misrepresentation on the part of the noticee. The Noticee relies upon the recent decision in the case of **Rana Udyog (P) Ltd. v. CCE, Kolkata-II- 2014 (314) ELT 269 (Tri-Kol)**, wherein it has been held that once the declaration of the goods are not changed, then for wrong classification suppression cannot be alleged against the assessee. The Noticee also relies on the decision in the case of **Komal Trading Company v. CCE, Mumbai- 2014 (301) ELT 506**

(Tri-Mum), wherein it has been held that assessee may claim a wrong classification based on his understanding of Tariff and that per se would not amount misdeclaration or suppression. The Noticee relies upon the judgement of the Hon'ble Supreme Court in the case of **Densons Pultretaknik Vs CCE** reported at **2003 (155) ELT 211 (SC)**, where it has been held that wrong claim of classification does not amount to suppression.

2.53. The Noticee relies upon the judgement of **GV Exim Pvt. Ltd vs. Commissioner of Customs**, reported at **2003 (160) ELT 900**, where it has been held that wrong claim of classification does not amount to misstatement. In another case, **Unique Plastics vs. Commissioner of Central Excise**, reported at **2002 (145) E.L.T. 604 (Tri. - Kolkata)** it has been held that it is well settled law that wrong claiming of classification or the benefit of an exemption notification by itself does not amount to suppression or mis-declaration. The Noticee also submits that when all the information regarding name of product, classification claimed, etc., was available on record and the same was available to the Department at all times through statutory records and where the Department had access to and was provided with all the information regarding payment of duty and availment of various benefits, no suppression can be alleged. It is a settled law that extended period cannot be invoked when the Department was aware of the facts. In the case of **Anand Nishikawa Co. Ltd. v.CCE, 2005 (188) ELT 149 (SC)**, the Hon'ble Supreme Court held as under:

“27. Relying on the aforesaid observations of this Court in the case of Pushpam Pharmaceutical Co. v. Collector of Central Excise, Bombay [1995 Suppl. (3) SCC 462], we find that “suppression of facts” can have only one meaning that the correct information was not disclosed deliberately to evade payment of duty, when facts were known to both the parties, the omission by one to do what he might have done not that he must have done would not render it suppression. It is settled law that mere failure to declare does not amount to willful suppression. There must be some positive act from the side of the assessee to find willful suppression.....”

(Emphasis supplied)

2.54. In this regard, the Noticee also places reliance on the following judgments of the Hon'ble Supreme Court :-

- **Pahwa Chemicals Ltd. v. CCE, 2005 (189) ELT 257 (SC)**
- **Continental Foundation Vs CCE, 2007 (216) ELT 177 (SC)**
- **CCE Vs Damnet Chemicals Ltd., 2007 (216) ELT 3 (SC)**
- **Jaiprakash Industries Vs CCE, 2002 (146) ELT 481 (SC)**

2.55. Department has failed to show any positive act on the part of the Noticee to mis-representation information.

It is submitted that except making a bald allegation of misrepresentation, the show cause notice does not bring out any evidence to show any positive act of misrepresentation on the

part of the Noticee. The Show Cause Notice has relied the audit objection and the response of the noticee to the same but has failed to adduce any reason of evidence to actually show that there was suppression or misdeclaration on the part of the Noticee. Therefore, just for the sake of alleging representation the Department has made allegation without citing any valid reason against the Noticee. Similarly, in the case of **Pushpam Pharmaceuticals Company v. Collector of Central Excise, Bombay, 1995 (78) ELT 401 (SC)**, the Hon'ble Supreme Court held as under:

“4. Section 11A empowers the Department to re-open proceedings if the levy has been short-levied or not levied within six months from the relevant date. But the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts. The meaning of the word both in law and even otherwise is well known. In normal understanding it is not different than what is explained in various dictionaries unless of course the context in which it has been used indicates otherwise. A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or wilful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression.”

(Emphasis Supplied)

2.56. Proviso to be construed strictly

Similarly, in the case of **Commissioner of Central Excise, Chandigarh v. Punjab Laminates Pvt. Ltd., 2006 (202) ELT 578 (SC)**, Hon'ble Supreme Court held that proviso provides for an exception, and it is not the rule. Therefore, a strong case has to be made out for attracting the same.

2.57. Issue involves interpretation of the different chapter headings under Tariff

It is submitted that, as demonstrated above, the present issue involves **interpretation** of different chapter headings under tariff. The provisions of the Customs Act and Customs Tariff Act are required to be interpreted in order to ascertain the correctness of the duty demanded by the impugned order. In this regard the Noticee places reliance on the case of **NIRMALA DYECHEM - 2011 (267) E.L.T. 504 (Tri. - Ahmd.)** and **BHAGYALAKSHMI POHA INDUSTRIES - 2008 (231) E.L.T. 627 (Tri. - Bang.)**. That the issue involves interpretation of law is also evident from the fact that Department itself holds different views as to what will be the correct classification of the goods in dispute. As already submitted, proceedings have not been initiated by the Department within the required time limit.

2.58. Noticee was under bona fide belief that the product in dispute will be classified under CTH 3901 and CTH 2519 respectively as per the provisions of law and relevant judicial pronouncements.

Further the Noticee was the *bona fide* belief that the product in dispute would be rightly classifiable under CTH 3901 and CTH 2519 respectively on the basis of the classification **provided** by the Foreign Supplier. The belief is strengthened when the Department did not raise an issue when the Noticee was classifying the same product under same headings earlier and also when the bills of entry were being continuously filed. The noticee was following the classification adopted by the Foreign Manufacturer under *bona fide* belief and the department had not raised any objection in this regard. This *bona fide* belief of the Noticee was further strengthened by the various case laws and submissions made in the earlier paragraphs. It is therefore submitted that in case of *bona fide* belief the extended period of limitation cannot be invoked. In view of the above, it is the humble submission of the Noticee that extended period of limitation is not invocable in the present case and the entire period is time barred; hence, the impugned order is liable to be set aside on this ground alone.

2.59. SECTION 111(M) OF THE CUSTOMS ACT, 1962 CANNOT BE INVOKED IN THE PRESENT CASE.

The Show Cause Notice alleges that the noticee evaded/short paid the customs duties by resorting to suppression and mis-declaration of facts making the goods liable to confiscation under the provision of 111(m) of the Customs Act, 1962. In the present case, the SCN proposes to confiscate the imported goods under Section 111 (m). As already stated above the noticee has not violated any of the conditions of the extant Notifications. The imported goods have been correctly classified under the respective chapter headings based on cogent evidence such as the technical literature available from the supplier and also on the basis of the supplier's invoice. Therefore, there could be no case to hold that the imported goods did not correspond in any manner with the entry made under the Customs Act, 1962. Hence, Section 111(m) is not applicable. It is submitted that the Noticee in the present case has stated the value, quality and description of the goods in dispute correctly and the same has not been disputed vide the SCN. All the information available with the Noticee was fully disclosed at the time of import of said goods. In this regard, it is submitted that on this basis, mens rea cannot be attributed upon the Noticee. The noticee was merely following the classification adopted by the foreign manufacturer and classifying its imported products. It shows that in fact it was bona fide belief of the Noticee at the time of subsequent import that it has rightly classified the goods in dispute. Therefore, in light of such factual scenario, this basis of alleging intentional mis-declaration and misclassification is devoid of any merits, factual or legal.

2.60. It is submitted that in fact all the information available with the Noticee was correctly provided to the Custom authorities at the time of import of the goods. It is pertinent to note that the value, quantity and description of the printers were correctly mentioned in the BoE by the Noticee. Therefore, even if the classification sought by the Noticee is held to be

wrong, it cannot be said that there was misrepresentation on the part of Noticee as it was a bona fide belief of the Noticee that the goods are rightly classifiable under the respective chapter headings mentioned in the impugned BOEs. Therefore, it is submitted that Section 111(m) of the Act cannot be invoked in the present case to confiscate the imported goods.

2.61. Provisions of Section 111 of the Customs Act not invokable for goods already cleared.

Without prejudice to the above, it is respectfully submitted that Section 111 of the Act provides for liability for confiscation of the **improperly imported** goods. It is therefore, respectfully submitted that only imported goods can be confiscated under Section 111. Section 2(25) defines the imported goods as under:

*“imported goods means any goods brought into India from a place outside India **but does not include goods which have been cleared for home consumption**”*

2.62. In the case of **Bussa Overseas & Properties P. Ltd. vs. C.L. Mahar, Assistant Commissioner of Customs, Bombay [2004 (163) ELT 304 (Bom.)]**, the Hon’ble Bombay High Court held that once the goods are cleared for home consumption, they cease to be imported goods as defined in Section 2(25) of the Customs Act, 1962 and consequently are not liable to confiscation under Section 111 of the Customs Act, 1962. The Hon’ble High Court held as under:

*“7..... The learned counsel urged that once the goods are cleared for home consumption, then the goods covered by the consignments cease to be imported goods in accordance with the definition of expression ‘imported goods’ under Section 2 of the Act and consequently such goods are not liable for confiscation. There is considerable merit in the submission of the learned counsel. **The goods lose its character of imported goods on being granted clearance for home consumption and thereafter the power to confiscate can be exercised only in cases where the order of clearance is revised and cancelled...**”*

(Emphasis Supplied)

In view of the above it is also submitted that since the goods are not liable for confiscation under Section 111(m) is not sustainable in law. It is submitted that the Noticee in the foregoing paragraphs have amply proved their case on merits and limitation and hence, redemption fine cannot be imposed on the Noticee.

2.63. Penalty under Section 114A is not leviable.

Penalty under Section 114 A ibid could be invoked only in such cases where the short levy could be attributed to collusion or wilful misstatement or suppression of facts. The Noticee elsewhere in the reply had clearly shown that the allegation of suppression or willful misstatement cannot be attributed to the actions of the Noticee. Therefore, the proposal to levy

penalty under Section 114A *ibid* also cannot be justified. Further, with regards to amount of Rs. 4,87,756/- which was paid by the noticee along with interest, since same has been paid before Notice and there being no suppression as explained above, proceedings should have been closed without penalty in view of provisions of Section 28(2) of Act which is reproduced below:

(2) The person who has paid the duty along with interest or amount of interest under clause (b) of sub-section (1) shall inform the proper officer of such payment in writing, who, on receipt of such information, shall not serve any notice under clause (a) of that sub-section in respect of the duty or interest so paid or any penalty leviable under the provisions of this Act or the rules made thereunder in respect of such duty or interest:

It is relevant to note that Section 28(1)(b) states that the person chargeable with duty or interest, may pay before service of notice under clause (a) on the basis of,-

(i) his own ascertainment of such duty; or

(ii) the duty ascertained by the proper officer,

the amount of duty along with the interest payable thereon under section 28AA or the amount of interest which has not been so paid or part-paid.

2.64. In the present case the **Noticee** has paid the duty along with interest on the basis of the ascertainment done by the audit objection which is akin to an officer ascertaining the amount of duty payable and the same was paid before the issuance of the SCN. If the payment is not considered and penalty is levied irrespective, then the purpose of Section 28(2) becomes otiose. Without prejudice, the Noticee also places reliance on the decision of Hon'ble Supreme Court in case of **Mahindra and Mahindra Ltd- 2023 (386) E.L.T. 11 (S.C.)** where High Court decision was upheld and it was held that Interest and penalty cannot be imposed on short payment of Additional duties of Customs i.e. CVD/SAD in absence of enabling provisions under Customs Tariff Act. This position of law will equally apply to IGST and that being so on duty amount of Rs. 120305 which pertains to IGST out of total amount of duty of Rs. 487751/- in any case, interest and penalty is not imposable. Section 3(12) of the Customs Tariff Act was amended By Finance No. (2) Act, 2024 and before that there cannot be any levy of Interest and penalty on IGST Amount. In this regard the Noticee also places reliance on the decision of Bombay High Court in the case of **A.R Sulphonates Pvt Ltd - WRIT PETITION NO.19366 OF 2024.**

2.65. Penalty under Section 114AA is unsustainable.

The notice also proposes to impose penalty on the noticee under Section 114AA. The aforesaid penalty is imposable on a person who is guilty of furnishing false or incorrect data/document. It is submitted that the present notice contains no allegation that the Noticee had knowingly or intentionally made, signed or used any statement or document which contains any false or incorrect details in respect of any material particular. There are no false or incorrect particulars furnished by the Noticee in any document submitted to the customs. Hence it is submitted that the proposal to impose penalty under Section 114AA is completely unjustified.

2.66. INTEREST IS NOT SUSTAINABLE

The show cause notice has demanded interest under the provisions of Section 28AA of the Customs Act, 1962, as applicable on the Customs duties demanded. It is submitted that the demand of interest is not sustainable in present case as the duty is also not payable as demonstrated in the foregoing paragraphs. It is a cardinal principle of law that when the principal demand is not justified, there is no liability to pay ancillary demands. In view of the above, the proposal to demand interest is not sustainable and the merits to be dropped.

2.67. In view of the above it is humbly prayed that the proceedings initiated by the present SCN may kindly be dropped.

3. PERSONAL HEARING

3.1 Following the principal of natural justice and in terms of Section 28(8) read with Section 122A of the Customs Act, 1962, the Noticee was granted opportunity for personal hearing (PH) on 10.10.2025.

3.2. Shri Tanmoy Chakravarty, Sr. Legal Counsel, Indirect Taxation, Legal, Tata Steel Limited appeared for Personal Hearing in virtual mode before the Principal Commissioner of Customs, NS-1, JNCH on the 10.10.2025 and the following submissions were made by him, during the course of the personal hearing.

- a) The Authorized Representative (AR) reiterated the arguments advanced in the Reply dated 30.07.2025. He also submitted a compilation of case laws which he relied upon.
- b) The AR submitted that the product ME0420 Adhesive is correctly classifiable under CTH 3901, and placed reliance on the HSN Explanatory notes and case laws.
- c) The AR submitted that the product Magsol 115 is correctly classifiable under CTH 2519 and he relied upon HSN Explanatory notes to support his contention.
- d) He submitted that the SCN has been issued without challenging the impugned BOEs which are appealable orders and therefore the demand proposed in the SCN is not sustainable.
- e) He submitted that since the present case is a classification dispute, extended period of limitation under Section 28 of the Customs Act, 1962 cannot be invoked.
- f) He relied upon the remain arguments mentioned in the reply dated 30.07.2025 and requested the Ld. Adjudicating Authority to consider the same and drop the demand.

4. DISCUSSION AND FINDINGS

4.1 I have carefully gone through the Show Cause Notice, material on record and facts of the case, as well as written and oral submissions made by the Noticee. Accordingly, I proceed to decide the case on merit.

4.2. The adjudicating authority has to take the views/objections of the noticee on board and

consider before passing the order. In the instant case, the personal hearing was granted to the noticee's on 10.10.2025 by the Adjudicating Authority which was attended Shri Tanmoy Chakravarty, Tata Steel Limited. The submissions made by the noticees during the personal hearing have been taken on record in para 3 above.

4.3. I find that in compliance to the provisions of Section 28(8) and Section 122A of the Customs Act, 1962 and in terms of the principles of natural justice, opportunities for Personal Hearing (PH) were granted to the Noticee. Thus, the principles of natural justice have been followed during the adjudication proceedings. Having complied with the requirement of the principle of natural justice, I proceed to decide the case on merits, bearing in mind the allegations made in the SCN as well as the submissions / contentions made by the Noticee.

4.4. The present proceedings emanate from Show Cause Notice No. SCN No. 1388/2024-25/Commr./Gr. IIG/NSI/CAC/JNCH dated 14.11.2024 to M/s Tata Steel BSL Limited (Now merged with Tata Steel Ltd.) which was based on audit observations made during Premises Based Audit. I find that Premises Based Audit of M/s Tata Steel BSL Limited (hereinafter referred to as "the Noticee") was conducted by Custom Audit Commissionerate, New Customs House, New Delhi for the of records covering the period from F.Y. 2019-2020, 2020-21 & 2021-22 [(to 11.11.2021 under Section 99A of the Customs Act, 1962. During the course of audit and on examination of records, 07 observations were raised. The Noticee agreed to the 05 out of total 07 observations and deposited the differential duty alongwith applicable interest. However, the Noticee did not agree with the other 02 observations which pertain to classification goods bearing description "*ME0420 ADHESIVE (LDPE)*" and "*MAGSOL 115 (BB 1250 KG) (REFRACTORY DRY RAMMING MASS)*". The SCN alleges that the 07 audit observations made have collectively resulted in short payment of duty amounting to Rs. 1,11,89,678/- and therefore proposed demanding the same under section 28 (4) of the Customs Act, 1962 alongwith applicable interest under Section 28AA *ibid*. The SCN further proposes holding the goods valued at Rs. 27,29,28,957/-liable for confiscation under Section 111(m) of the Act and seeks imposition of penalties upon M/s Tata Steel BSL Limited under Sections 114A and 114AA of the Customs Act, 1962.

4.5. I find that the importer, M/s. Tata Steel BSL Limited, has contended that the product ME0420 Adhesive is correctly classifiable under CTH 3901 and Magsol 115 is correctly classifiable under CTH 2519 according to HSN Explanatory notes and case laws. It has also been submitted that the SCN has been issued without challenging the impugned BOEs which are appealable orders and therefore the demand proposed in the SCN is not sustainable. Furthermore, it has also been contended that since the present case is a classification dispute, extended period of limitation under Section 28 of the Customs Act, 1962 cannot be invoked in the Show Cause Notice.

4.6. On careful perusal of the Show Cause Notice, reply filed by the Noticee, and the case records, I find that the following main issues arise for determination in this case:

A. Whether the goods bearing description "*ME0420 ADHESIVE (LDPE)*" are classifiable under CTH 39019000 as per contentions of the noticee or under CTH

35069190 as per the allegation of the Show Cause Notice

B. Whether the goods bearing description “*MAGSOL 115 (BB 1250 KG) (REFRACTORY DRY RAMMING MASS)*” are classifiable under CTH 25199030 as per contentions of the noticee or under CTH 3816000 as per the allegation of the Show Cause Notice.

C. Whether or not the differential duty amount of ₹1,11,89,678/- is recoverable from the importer M/s. Tata Steel BSL Limited under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA.

D. Whether or not an amount of Rs. 8,15,049/- (Rupees Eight Lakh Fifteen Thousand and Forty Nine only) paid by the Noticee as admitted duty of Rs 4,87,752/- (Rupees Four Lakh Eighty Seven Thousand Seven Hundred and Fifty Two only) and Rs.3,27,297/- (Rupees Three Lakh Twenty Seven Thousand Two Hundred and Ninety Seven only) as applicable interest thereupon under Section 28AA of the Customs Act, 1962 paid vide TR6 no.4777 dated 20.06.2024 should not be appropriated against the duty so demanded.

E. Whether or not the imported goods valued at Rs. 27,29,28,957 covered under the Bills of Entry in question are liable to confiscation under Section 111(m) of the Customs Act, 1962.

F. Whether or not penalty is imposable on the importer M/s. Tata Steel BSL Limited under Sections 114A and 114AA of the Customs Act, 1962.

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

Whether the goods bearing description “*ME0420 ADHESIVE (LDPE)*” are classifiable under CTH 39019000 as per contentions of the noticee or under CTH 35069190 as per the allegation of the Show Cause Notice

4.8. In the present case, the issue for determination is the **correct classification** of the imported goods described as “*ME0420 ADHESIVE (LDPE)*” — whether the same merit classification under **Customs Tariff Heading (CTH) 39019000**, as claimed by the Noticee, or under **CTH 35069190**, as contended by the Department, for the purpose of appropriate levy of duties. It is observed that the goods bearing the description “*ME0420 ADHESIVE (LDPE)*” were declared and assessed by the Noticee under CTH 39019000, whereas the Show Cause Notice proposes classification under CTH 35069190.

4.9. I note that the goods should be classified under respective chapter headings duly following the General Rules of Interpretation keeping in mind the material condition and basic details of the goods. Relevant extract of General Rules of Interpretation (GRI) provides as follows:

“General Rules for the interpretation of this schedule

Classification of goods in this Schedule shall be governed by the following principles:

1. The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

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.”

4.10. I find that the classification of goods under Customs Tariff is governed by the principles as set out in the General Rules for the Interpretation of Import Tariff. As per General Rules for the Interpretation of the Harmonised System, classification of the goods in the nomenclature shall be governed by **Rule 1 to Rule 6** of General Rules for Interpretation of Harmonised System. Rule 1 of General Rules for Interpretation is very important Rule of interpretation for classification of goods under the Customs Tariff which provides that classification shall be determined according to the terms of headings and any relative Section

or Chapter Notes. It stresses that relevant Section/Chapter Notes have to be considered along with the terms of headings while deciding classification. **It is not possible to classify an item only in terms of heading itself without considering relevant Section or Chapter Notes.**

In this connection, I rely upon the judgment passed by the Hon'ble Supreme Court in case of OK Play (India) Ltd. Vs. CCE, Delhi-III, Gurgaon [2005 (180) ELT-300 (SC)] wherein it was held that for determination of classification of goods, three main parameters are to be taken into account; first HSN along with Explanatory notes, second equal importance to be given to Rules of Interpretation of the tariff and third Functional utility, design, shape and predominant usage. These aids and assistance are more important than names used in trade or in common parlance.

I also put reliance upon the judgement of the Hon'ble Tribunal in case of Pandi Devi Oil Industry Vs. Commissioner of Customs, Trichy [2016 (334) ELT-566 (Tri-Chennai)] wherein it was held that it is settled law that for classification of any imported goods, the principles and guidelines laid out in General Interpretative Rules for classification should be followed and the description given in chapter sub-heading and chapter notes, section notes should be the criteria.

In view of the above, I proceed to decide the classification of the impugned goods by referring to the Custom Tariff and chapter and Heading notes etc. CTH 3506 of Customs tariff is quoted below:-

3506	PREPARED GLUES AND OTHER PREPARED ADHESIVES, NOT ELSEWHERE SPECIFIED OR INCLUDED; PRODUCTS SUITABLE FOR USE AS GLUES OR ADHESIVES, PUT UP FOR RETAIL SALE AS GLUES OR ADHESIVES, NOT EXCEEDING A NET WEIGHT OF 1 kg.
3506 10 00	- Products suitable for use as glues or adhesives, put up for retail sale as glues or adhesives, not exceeding a net weight of 1 kg.
	- Other:
3506 91	-- Adhesives based on polymers of headings 3901 to 3913 or on rubber:
3506 91 10	--- Based on latex, phenol formaldehyde (PF), urea formaldehyde (UF) and polyvinyl alcohol (PVA)
3506 91 90	--- Other
3506 99	-- Other:
3506 99 10	--- Synthetic glue with phenol urea or cresol (with formaldehyde) as the main component
	--- Prepared glues and other prepared adhesives not elsewhere specified or included:
3506 99 91	---- Based on starch, gum, latex, PF, UF and PVA
3506 99 99	---- Other

4.11. Further explanatory notes of CTH 3506 are as below:-

(A) Products suitable for use as glues or adhesives and put up for retail sale as glues or

adhesives, not exceeding a net weight of 1 kg.

This group covers the prepared glues and adhesives of (B) below and other products suitable for use as glues or adhesives, provided they are put up for retail sale as glues or adhesives in packages the content of which does not exceed 1 kg.

The packages in which glues or adhesives are usually put up for retail sale include glass bottles or jars, metal boxes, collapsible metal tubes, cartons, paper bags, etc.; sometimes the “packaging” is merely a paper band wrapped round, for example, a slab of bone glue. A small brush of the appropriate type is sometimes packed with glues or adhesives (e.g., those put up in jars or tins ready for direct use). Such brushes are classified with the glues or adhesives if packed therewith.

Products having other uses in addition to use as glues or adhesives (e.g., dextrans, methyl cellulose in granules) are classified in this heading only if there is some indication on the packages that they are intended for sale as glues or adhesives.

(B) Prepared glues and other prepared adhesives, not covered by a more specific heading in the Nomenclature, for example :

(1) Gluten glues (“Vienna glues”) normally obtained from gluten rendered soluble by partial fermentation. These glues are usually in the form of flakes or powders and vary in colour from yellowish to brown.

(2) Glues or other adhesives obtained by chemically treating natural gums.

(3) Adhesives based on silicates, etc.

(4) Preparations specially formulated for use as adhesives, consisting of polymers or blends thereof of headings 39.01 to 39.13 which, apart from any permitted additions to the products of Chapter 39 (fillers, plasticizers, solvents, pigments, etc.), contain other added substances not falling in that Chapter (e.g., waxes, rosin esters, unmodified natural shellac).

(5) Adhesives consisting of a mixture of rubber, organic solvents, fillers, vulcanizing agents and resins.

4.12. Further relevant portion of explanatory notes of Chapter 39 is quoted below:-

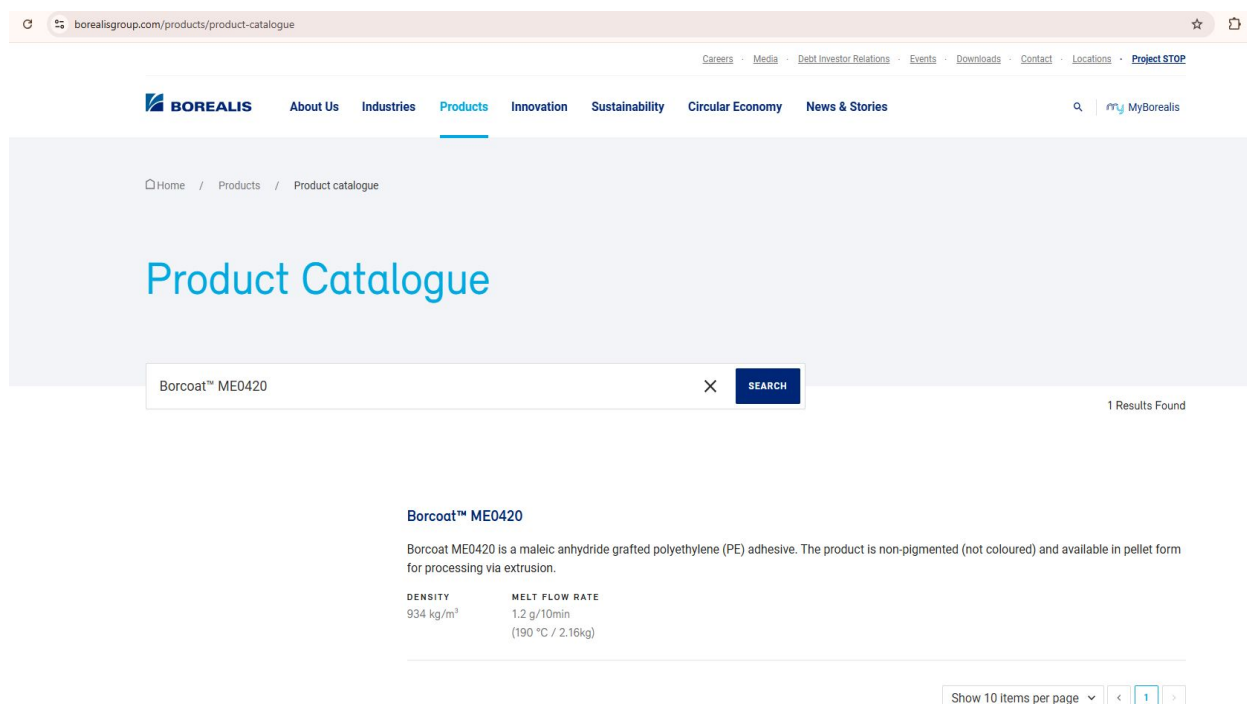
*“In addition to the exclusions mentioned in Note 2, the Chapter **excludes** :*

*(a) Concentrated dispersions of colouring matter in plastics having the character of products of **Chapter 32**; see, for example, the Explanatory Notes to **heading 32.04** (paragraph (I) (C) regarding concentrated dispersions of colouring matter in plastics, and paragraph (II) (2) concerning organic luminophores, e.g., rhodamine B in plastics), **heading 32.05** (seventh paragraph concerning concentrated dispersions of colour lakes in plastics) and **heading 32.06** (Part A), sixth paragraph, subparagraph (I) concerning concentrated dispersions of other colouring matter in plastics).*

*(b) Preparations specially formulated for use as adhesives, consisting of polymers or blends thereof of headings 39.01 to 39.13 which, apart from any permitted additions to the products of this Chapter (fillers, plasticisers, solvents, pigments, etc.), contain other added substances not falling in this Chapter (e.g., waxes, rosin esters, unmodified natural shellac) and products of headings 39.01 to 39.13 put up for retail sale as glues or adhesives, not exceeding a net weight of 1 kg (**heading 35.06**).*

*(c) Plastics and articles thereof (**other than** the goods of heading 39.18 or 39.19), printed with motifs, characters or pictorial representations, which are not merely subsidiary to the primary use of the goods (**Chapter 49**).”*

It is pertinent to note that the **Show Cause Notice itself draws reference from the official website of the manufacturer/supplier**, wherein it has been specifically indicated that the impugned goods are intended for use as an **adhesive layer in a three-layer polyethylene coating system**. This has been **re-verified**, and it is confirmed that the manufacturer's product description states as follows: *"Borcoat ME0420 is a maleic anhydride grafted polyethylene (PE) adhesive. The product is non-pigmented and is available in pellet form, designed for processing through extrusion."* The said product description unequivocally establishes that the goods are **adhesive in nature**, formulated and marketed as such by the manufacturer. The Screenshot of the webpage is as below:-



4.13. It is also observed that the **Noticee themselves, in their written submissions**, have acknowledged that the impugned goods function as an **adhesive** in the three-layer polyethylene coating process. Furthermore, the **commercial invoice** submitted at the time of importation clearly describes the goods as *"ME0420 ADHESIVE (LDPE)"*, thereby reaffirming their **adhesive nature** as declared by the importer and recognized in commercial documentation. This consistent description across the importer's own declaration, supporting documents, and manufacturer's literature leaves no ambiguity regarding the **functional identity** of the product as an adhesive preparation. Hence, both the importer's submission and the invoice evidence substantiate that the product is understood and traded in **commercial and common parlance** as an adhesive, which is a decisive factor for classification under **Heading 3506**.

Further, I find that the **Explanatory Notes to Heading 3506** of the Harmonized System further clarify the scope and coverage of this heading. As per the said Notes, Heading 3506 encompasses **two distinct groups** of products. The first group, covered under clause (A), includes **products suitable for use as glues or adhesives which are put up for retail sale** in packages not exceeding **1 kg**, such as glass bottles, collapsible metal tubes, cartons, or paper bags. These typically include small retail packs of glues and adhesives meant for direct use by consumers. The second and broader group, covered under clause (B), pertains to **prepared**

glues and other prepared adhesives not covered by any more specific heading in the Nomenclature. This category includes, inter alia, **gluten glues, chemically treated natural gums, silicate-based adhesives, and preparations specially formulated for use as adhesives consisting of polymers or blends thereof of Headings 39.01 to 39.13**, which contain added substances (such as waxes, rosin esters, or natural shellac) imparting adhesive properties. It also includes **adhesive mixtures composed of rubber, organic solvents, fillers, vulcanizing agents, and resins**. The Notes make it explicit that once a polymer or resin preparation is **specially formulated and presented for use as an adhesive**, it ceases to be classifiable under Chapter 39 as a raw polymer and appropriately falls within **Heading 3506**. This explanatory guidance thus reinforces the position that the impugned product, being a **polymer-based adhesive formulation**, is squarely covered under the scope of Heading 3506.

4.14. Further, I find that the **Explanatory Notes to Chapter 39** provide important interpretative guidance regarding the scope and exclusions applicable to that Chapter. In addition to the exclusions specified in Note 2 thereto, the Explanatory Notes expressly clarify that **preparations specially formulated for use as adhesives**, consisting of **polymers or blends thereof of Headings 39.01 to 39.13**, which, apart from any permitted additives (such as fillers, plasticizers, solvents, or pigments), contain **other added substances not falling within Chapter 39** (for example, waxes, rosin esters, or unmodified natural shellac), are **excluded from Chapter 39** and are **specifically classifiable under Heading 3506**. The Notes further emphasize that even products of Headings 39.01 to 39.13, when **put up for retail sale as glues or adhesives** in packages not exceeding 1 kg, fall under Heading 3506. This clarification draws a clear demarcation between **primary polymer materials of Chapter 39**, which are raw or base substances, and **prepared adhesive formulations**, which, though polymer-based, have been compounded or chemically modified to impart adhesive characteristics. Accordingly, the Explanatory Notes to Chapter 39 themselves **exclude adhesive preparations** from the purview of that Chapter and direct their classification under **Heading 3506**, thereby reinforcing that polymer-based adhesive products like *Borcoat ME0420 ADHESIVE (LDPE)* cannot be classified as polymers under Chapter 39.

4.15. The submissions of the Noticee, as recorded above, do not hold merit either in law or on facts. The argument that the impugned goods cannot fall under Heading 3506 on the ground that they are polymer-based and supplied in 25 kg bags is **factually and legally untenable**. Firstly, as per the **Harmonized System Explanatory Notes (HSN) to Heading 3506**, the heading is divided into **two independent parts**, separated by a semicolon. The **first part** covers “*prepared glues and other prepared adhesives, not elsewhere specified or included*”, while the **second part** applies only to “*products suitable for use as glues or adhesives, put up for retail sale as glues or adhesives, not exceeding a net weight of 1 kg.*” The condition relating to retail packing size, therefore, applies **only to the second part**, and not to the first. Industrial adhesives in bulk packaging — such as 25 kg bags — clearly fall under the **first limb** of the heading, provided they are prepared for adhesive use, which is the case here. Secondly, the **Explanatory Notes to Chapter 39** explicitly exclude “*preparations specially formulated for use as adhesives, consisting of polymers or blends thereof of*

headings 39.01 to 39.13...” and direct their classification under Heading 3506. This means that once a polymer of ethylene (such as LDPE) is **chemically modified or compounded with other substances** to impart adhesive properties — as is the case with *Borcoat ME0420*, which is a **maleic anhydride-grafted polyethylene adhesive** — it **ceases to be classifiable as a raw polymer under Heading 3901** and rightly falls under Heading 3506. Thirdly, the process of **extrusion** mentioned in the literature is merely a **mode of application** of the adhesive layer during coating, not a manufacturing transformation that alters its essential character. The product, even in its imported form, is *prepared and marketed as an adhesive* by the manufacturer, as evidenced by its description, invoice, and technical datasheet. Therefore, the contention that the impugned goods do not satisfy the conditions of Heading 3506 due to their form or packing size is **misconceived and contrary to HSN guidance and trade understanding**.

4.16. The reliance placed by the Noticee on **CBIC Circular No. 47/90-Cus., dated 31.08.1990**, in support of the argument that the impugned goods merit classification under Chapter 39, is **misplaced and inapplicable** to the present case. The said circular dealt specifically with the classification of **Poly Vinyl Acetate Emulsion**, which, although possessing certain adhesive properties, was essentially a **polymer emulsion in primary form** and not a product *specially formulated or marketed* as an adhesive. The circular merely clarified that where a polymer exhibits adhesive properties incidentally due to its chemical composition, but is **not specially prepared or compounded for use as a glue or adhesive**, it would remain classifiable under Chapter 39, unless presented in small retail packs (≤ 1 kg) as an adhesive. However, the facts of the present case are **fundamentally different**. The impugned goods, namely “*Borcoat ME0420 ADHESIVE (LDPE)*”, are not mere polymers in primary form, but are **maleic anhydride-grafted polyethylene adhesives**, specifically designed, compounded, and marketed as **bonding agents** in a three-layer polyethylene coating system for steel pipes. This formulation, as confirmed by the manufacturer’s technical literature and the product’s trade description, is a **prepared adhesive based on a modified polymer**, squarely falling within the scope of Heading 3506 as per the **HSN Explanatory Notes and the exclusion clause (b) under Chapter 39**. Hence, the circular cited by the Noticee is distinguishable both on **facts and context**, and does not govern the classification of the present goods, which are clearly covered under **CTH 3506**.

4.17. In view of the foregoing discussion, it is evident that the impugned product “*Borcoat ME0420 ADHESIVE (LDPE)*” is **not a mere polymer in primary form**, but a **chemically modified adhesive preparation** — a maleic anhydride-grafted polyethylene compound, specifically designed and marketed as an adhesive layer in a three-layer polyethylene coating system for steel pipes. The product’s essential character, as well as its declared use, manufacturer’s literature, and invoice description, all confirm that it is **formulated and intended for adhesive application**, and not for use as a generic polymer material. The **Explanatory Notes to Heading 3506** and the **exclusion clause (b) of Chapter 39** unequivocally provide that such polymer-based adhesive preparations, specially formulated for adhesive use, are **excluded from Chapter 39** and are appropriately classifiable under **Heading 3506**. The argument regarding packing size is without legal basis,

as the 1 kg limitation applies only to retail adhesives under the second limb of the heading and not to industrial adhesive preparations covered under the first limb. Accordingly, after considering the chemical composition, functional use, trade understanding, and relevant legal provisions, I conclude that the impugned goods "*Borcoat ME0420 ADHESIVE (LDPE)*" merit classification under **Customs Tariff Heading 35069190** as "*other prepared adhesives*", and not under **CTH 39019000** as claimed by the Noticee.

Whether the goods bearing description "*MAGSOL 115 (BB 1250 KG) (REFRACTORY DRY RAMMING MASS)*" are classifiable under CTH 25199030 as per contentions of the noticee or under CTH 38160000 as per the allegation of the Show Cause Notice.

4.18. I now proceed to examine the **second issue for consideration**, namely, the correct classification of the imported goods described as "*MAGSOL 115 (BB 1250 KG) (REFRACTORY DRY RAMMING MASS)*" — whether the same merit classification under **Customs Tariff Item (CTI) 25199030**, as claimed by the Noticee, or under **CTI 38160000**, as contended by the Department, for determining the appropriate levy of duties. The **Show Cause Notice** alleges that the goods declared as "*MAGSOL 115 (BB 1250 KG) (REFRACTORY DRY RAMMING MASS)*" have been **misclassified under CTI 25199030**, attracting **Basic Customs Duty (BCD) @ 5% and IGST @ 5%**, whereas the impugned goods, being **refractory materials** intended for use in **furnace lining applications**, are appropriately classifiable under **CTI 38160000**, attracting **BCD @ 7.5% and IGST @ 18%**.

4.19. The **Noticee**, on the other hand, has contended that the imported goods are made from **raw magnesite**, which has been **processed into high-density dead burnt magnesia (DBM)**, and therefore, by virtue of being magnesia, the same are rightly classifiable under **CTH 25199030**. In support of this contention, the Noticee has submitted a letter from their foreign supplier, *M/s Magna Magnesitas Navarras*, wherein it has been stated that "*MAGSOL 115 (DBM material for dry ramming mass) is granulated Monolithic material, no shaped, for being used in the condition and repair of the electric arc furnace (EAF) bottom. It is based on dead burned magnesite (sinter magnesia) with no addition of any additive or chemical binder for its use or confirmation in the customer. So, it is considered as Dead Burned Magnesite (sintered magnesite), 2519 9030. According to all of these commented chemical nature and application considerations, MAGNA R&D Dpt. Considers and confirm that the mentioned MAGSOL 115 product is classified under the code which chemically corresponds to it: 2519 9030*" The Noticee has thus argued that, since the product is based solely on dead burnt magnesite and does not contain any chemical additives or binders, it should be classified under CTH 2519 and not under Chapter 38.

4.20. I note that the **Show Cause Notice** draws reference to the official website and technical materials of *M/s MAGNA Magnesitas Navarras*, the manufacturer and supplier of the impugned goods, as well as other publicly available industrial literature on refractory ramming masses. The same has been duly examined and taken into consideration while determining the correct classification of the imported product. As per the information

available on the manufacturer's website, M/s MAGNA Magnesitas Navarras is a globally recognized producer of refractory masses of magnesia (MgO) for the steelmaking sector, and also supplies the equipment necessary for their application. It is stated that the company extracts raw magnesite from its deposit at Navarra, Spain, and that MAGSOL is a premium EAF bottom material produced by processing and sintering the magnesite into high-density dead-burnt magnesia in rotary kilns, which is thereafter further processed in a mixing plant to obtain a product with a specific grain size distribution. The material, identified as MAGSOL 115 (Refractory Dry Ramming Mass), is described of natural origin, applied in cold condition for furnace lining and repairs, and is marketed as a processed refractory material possessing an optimized balance of magnesium, calcium, iron, and silica for superior performance.

4.21. Further as per the website of "termorefractories.com/products/monolithic-refractories/ramming-refractories.html" another Turkish manufacture of Ramming mass- "Refractory ramming mass is produced by using ramming method during construction from refractory aggregate (fire clay based, high alumina based, mullite-corundum based, silica based, magnesia based, carborundum based) and powder, binders (phosphoric acid and phosphates, sodium silicate, aluminium sulphate, binding clays and organic binders) and additives proportionally.

4.22. Further, as per the details available on internet- the refractory is a material that can resist heat, pressure, or chemical corrosion and decomposition, and maintain its strength and shape at high temperatures. The main raw materials used to produce refractories are usually oxides of silicon, aluminium, magnesium, calcium, and zirconium. Refractory materials are made from natural and artificial materials (usually non-metals) or a mixture of compounds and minerals, like as alumina, refractory clay, bauxite, chromite, dolomite, silicon carbide, and zirconia. Refractories come in various shapes and sizes. The production of refractory materials begins with the processing of raw materials. Raw material processing includes crushing and grinding, sorting by size, calcination, and drying of raw materials. The processed raw materials can then be dry blended with other minerals and chemicals for packaging and transportation as products. After the mixing process, the raw materials are formed into the desired shape. This process usually occurs under moist or humid conditions. Once the refractory material is formed, the material is fired. Firing includes heating the refractory material in a continuous or batch tunnel kiln to make a ceramic bond. This process makes the raw material fire-resistant. The final processing stage consists of milling, grinding, and sandblasting of the finished product.

4.23. It is also relevant to note that the Noticee themselves, in their Bills of Entry, have described the imported goods "MAGSOL 115" as "Refractory Ramming Mass/Mix." This self-declaration clearly establishes the functional nature and intended use of the product as a refractory lining material employed in furnaces to prevent coating, corrosion, and erosion of the furnace bottom and walls. Technically, ramming masses are manufactured by calcining magnesite at very high temperatures, in association with dead-burnt magnesite clinker, alumina, or chrome, and are specially bonded with clay and other chemical binders to impart the desired sintering and adhesion properties. The presence of silica (SiO₂), iron oxide

(Fe₂O₃), and calcium oxide (CaO) in the composition acts as natural binders, enabling the material to develop the required high-temperature strength and chemical resistance. These characteristics confirm that the imported goods are not mere mineral oxides but engineered refractory mixtures, specifically formulated for furnace lining applications.

4.24. For ready reference, the description of Heading 2519 as appearing in the First Schedule to the Customs Tariff Act, 1975 is reproduced below.

2519		NATURAL MAGNESIUM CARBONATE (MAGNESITE); FUSED MAGNESIA; DEAD-BURNED (SINTERED) MAGNESIA, WHETHER OR NOT CONTAINING SMALL QUANTITIES OF OTHER OXIDES ADDED BEFORE SINTERING; OTHER MAGNESIUM OXIDE, WHETHER OR NOT PURE			
2519 10 00	-	Natural magnesium carbonate (magnesite)	kg.	5%	-
2519 90	-	Other:			
2519 90 10	---	Fused magnesia (natural)	kg.	5%	-
2519 90 20	---	Dead-burnt (sintered) magnesia	kg.	5%	-
2519 90 30	---	Magnesium calcined (other than dead-burnt) not elsewhere specified or included	kg.	5%	-
2519 90 40	---	Magnesium oxide	kg.	5%	-
2519 90 90	---	Other	kg.	5%	-

4.25. Further Note 1 of Chapter 25 is reproduced below for the sake of convenience

"1.- Except where their context or Note 4 to this Chapter otherwise requires, the headings of this Chapter cover only products which are in the crude state or which have been washed (even with chemical substances eliminating the impurities without changing the structure of the product), crushed, ground, powdered, levigated, sifted, screened, concentrated by flotation, magnetic separation or other mechanical or physical processes (except crystallisation), but not products which have been roasted, calcined, obtained by mixing or subjected to processing beyond that mentioned in each heading.

The products of this Chapter may contain an added anti-dusting agent, provided that such addition does not render the product particularly suitable for specific use rather than for general use."

4.26. Further, the relevant portion of the HSN Explanatory Note of CTH 2519 is reproduced below:

25.19 - Natural magnesium carbonate (magnesite); fused magnesia; dead-burned (sintered) magnesia, whether or not containing small quantities of other oxides added before sintering; other magnesium oxide, whether or not pure.

2519.10 - Natural magnesium carbonate (magnesite)

2519.90 - Other

This heading covers magnesite (or giobertite) which is a naturally occurring magnesium carbonate with impurities in various proportions.

The heading also covers various types of magnesia (magnesium oxide) obtained from natural magnesium carbonate, basic magnesium carbonate, magnesium hydroxide precipitated from sea water, etc. The main types are :

- (1) **Fused magnesia**, obtained by fusion. It is usually colourless but may be slightly yellowish or greenish. It is less soluble than other types of magnesia and is used, for example, in the manufacture of crucibles or heating elements for electric ovens.
- (2) **Dead-burned (sintered) magnesia**, obtained by high temperature (about 1400-1800 °C) calcination. Sintered magnesia may contain small quantities of other oxides (e.g., iron oxide or chromium oxide), added before sintering in order to lower the sintering temperature. It is used in the manufacture of refractory bricks.
- (3) **Caustic-burned magnesia**, usually obtained from magnesite by relatively low temperature (lower than 900 °C) calcination. It is more chemically reactive than fused or sintered magnesia and is used, for example, in the production of magnesium compounds, decolouring agents or oxychloride cement.

Light and heavy magnesium oxides are usually obtained by calcination of pure precipitated magnesium hydroxide or basic carbonate at temperatures from 600 °C to 900 °C. These magnesium oxides are practically insoluble in water but are readily soluble in dilute acids and are more chemically reactive than other types of magnesia (i.e., sintered magnesia and fused magnesia). They are used in the manufacture of medicaments, cosmetics, etc.

The heading **does not cover** :

- (a) Hydrated basic magnesium carbonate, sometimes known as “ pharmacist’s white magnesia ” (heading 28.36).
- (b) Cultured crystals (**other than** optical elements), of magnesium oxide, weighing not less than 2.5 g each (heading 38.24); optical elements of magnesium oxide (heading 90.01).

4.27. Further, the relevant portion of the HSN Explanatory Note of CTH 3816 is reproduced:

38.16 - Refractory cements, mortars, concretes and similar compositions, including dolomite ramming mix, other than products of heading 38.01.

This heading covers certain preparations (e.g., for furnace linings) with a basis of such refractory materials as chamotte and dinas earths, crushed or ground corundum, powdered quartzites, chalk, calcined dolomite, with an added refractory binder (for example, sodium silicate, magnesium or zinc fluosilicates). Many of the products of this heading also contain non-refractory binders such as hydraulic binding agents.

The heading also covers refractory compositions with a basis of silica for the manufacture of dental or jewellery moulds by the lost wax process.

This heading further includes dolomite ramming mixes which are used as refractory materials (e.g., for furnace lining). These products are traded in powder or granular form consisting predominantly of crushed sintered dolomite. Depending on the field of application or temperature at which the mix will be used, different non-hydraulic binding agents (e.g., tar, pitch, resins) are used.

The heading further covers refractory concretes consisting of mixtures of heat-resistant hydraulic cements (e.g., aluminous cements) and refractory aggregates, used for the foundation of furnaces, coke ovens, etc., or for patching furnace linings as well as the following :

- (a) **Compositions known as refractory “plastics”**, which are products sold as a dampened mass often consisting of a refractory aggregate, clay and minor additives.
- (b) **Ramming mixes**, which are similar which are similar in composition to the products mentioned in (a) above and which, when applied by handheld pneumatic rammers, form a dense coating or filling.
- (c) **Gunning mixes**, which are refractory aggregates mixed with hydraulic setting or other binders, applied to furnace linings, sometimes even when these are hot, by special guns which project the mix through a nozzle using compressed air.

The heading **does not cover** carbonaceous pastes of heading 38.01.

4.28. It is pertinent to refer to Chapter Note 1 to Chapter 25 of the First Schedule to the Customs Tariff Act, 1975, which limits the scope of that Chapter to natural mineral products in crude or physically processed form. The Note expressly provides that, except where otherwise stated, the headings of Chapter 25 cover only products which are in the crude state or have been subjected to simple mechanical or physical processes such as washing, crushing, grinding, or magnetic separation, but exclude products which have been roasted, calcined, obtained by mixing, or subjected to processing beyond those mentioned. In the present case, the impugned goods “MAGSOL 115 (Refractory Dry Ramming Mass)” have been calcined, sintered, and further processed in a mixing plant to obtain a formulated refractory composition with specific grain size distribution, intended for use as a furnace lining material. Therefore, by virtue of Chapter Note 1 itself, such a product is excluded from the purview of Chapter 25, as it has undergone processing beyond that permissible for classification therein.

4.29. I find that the HSN Explanatory Notes to Heading 3816 provide detailed guidance on the scope of this heading and clearly establish that it covers a broad range of prepared refractory compositions. The Notes specify that Heading 3816 includes preparations used for furnace linings, made from refractory materials such as chamotte, dinas earths, corundum, quartzite, chalk, calcined dolomite, etc., often with added refractory or hydraulic binders like sodium silicate, magnesium or zinc fluosilicates. It further clarifies that the heading covers refractory compositions with a basis of silica, as well as dolomite ramming mixes and other refractory materials traded in powder or granular form and composed mainly of crushed sintered refractory minerals. The Explanatory Notes also identify several types of products included within this heading—namely,

- (a) refractory plastics, which are dampened masses of refractory aggregates and clays;
- (b) ramming mixes, which when applied by pneumatic or manual rammers form dense refractory coatings or linings; and
- (c) gunning mixes, which are refractory aggregates mixed with hydraulic or other binders and applied to furnace linings through nozzles using compressed air.

Importantly, the Notes make it evident that Heading 3816 is intended to encompass refractory ramming masses and similar mixtures, whether based on dolomite, magnesia, alumina, or other refractory materials, used for the lining, patching, or maintenance of furnaces and other high-temperature installations. Accordingly, magnesia-based ramming mixes such as MAGSOL 115 fall squarely within the ambit of this heading as prepared refractory compositions.

4.30. The reliance placed by the Noticee on the supplier's clarification is misplaced in light of the factual and technical evidence available on record. The mere declaration of the supplier that MAGSOL 115 is "dead burnt magnesite" cannot by itself determine the correct tariff classification, which must be decided based on the composition, processing, and functional characteristics of the goods vis-à-vis the scope of the competing tariff headings and the relevant HSN Explanatory Notes. It is not disputed that magnesite is one of the principal raw materials used in the manufacture of MAGSOL 115; however, the product, as imported, is not simply sintered magnesite in crude or powdered form. The technical literature clearly shows that the raw magnesite extracted from their mines is first calcined and sintered at high temperatures to produce dead burnt magnesia and is thereafter further processed in a mixing plant to achieve a specific grain size distribution and physical properties suitable for use as a refractory ramming mass in furnace bottom lining. This additional processing, involving mixing, granulation, and preparation for a specific industrial application, takes the product beyond the scope of Chapter 25, which, as per Chapter Note 1, covers only natural mineral products subjected to limited physical operations like crushing or grinding, and excludes products obtained by calcination or mixing. The fact that the product does not contain added binders or chemicals is immaterial, as the very act of formulation into a ramming mass gives it the character of a prepared refractory composition. Accordingly, the supplier's declaration that it "chemically corresponds" to dead-burnt magnesite is not determinative of tariff classification, since classification is governed by the HSN structure and functional identity of the goods. Therefore, considering its nature, manufacturing process, and end use, the product "MAGSOL 115 (Refractory Dry Ramming Mass)" is correctly classifiable under CTH 38160000 as a refractory composition, and not under CTH 25199030 as claimed by the Noticee.

4.31. The argument advanced by the Noticee that the impugned goods merit classification under CTH 2519 on the ground that dead-burnt (sintered) magnesia is specifically mentioned in the tariff description, and that such a specific heading should prevail in terms of the principle laid down in *Moorco (India) Ltd – 1994 (74) ELT 5 (SC)*, is misconceived and not applicable to the facts of the present case. The principle of specific description over general description applies only when two headings equally describe the same goods in their actual

state. In the instant case, however, the impugned product “MAGSOL 115 (Refractory Dry Ramming Mass)” is not merely dead-burnt magnesite, but a formulated refractory composition made using dead-burnt magnesia as the base material, which has been sintered, processed, and further blended in a mixing plant to achieve a specific grain size distribution and performance characteristics suitable for use as furnace-lining material. Such processing and formulation take the product beyond the scope of Heading 2519, which covers only natural mineral products in crude or simply processed form, as clarified by Chapter Note 1 to Chapter 25.

4.32. Moreover, the HSN Explanatory Notes to Heading 2519, though they mention dead-burnt or sintered magnesia used in electric ovens or refractory brick manufacture, refer to magnesia as a raw refractory mineral, not to ready-to-use refractory mixtures or masses. Once a material based on magnesia is compounded, graded, or prepared for direct use in furnace lining, it loses the character of a mineral product and assumes that of a refractory composition of Heading 3816.. In the present case, the functional identity, processing level, and intended application of MAGSOL 115 conclusively establish it as a refractory ramming mass, correctly classifiable under CTH 38160000, and not as a simple mineral oxide under CTH 25199030.

4.33. Further, the reliance placed by the notice on the HSN Explanatory Notes to Heading 2519 and the argument invoking the principle of specific description under Rule 3(a) of the General Rules for Interpretation (GRI) are misplaced in the context of the present goods. While Heading 2519 does include dead-burnt (sintered) magnesite (magnesia) as a mineral product, the coverage of that heading is limited to natural or simply processed mineral oxides, as clarified by Chapter Note 1 to Chapter 25, which specifically excludes products that have been calcined, obtained by mixing, or subjected to processing beyond simple mechanical or physical treatment. The impugned goods, namely “MAGSOL 115 (Refractory Dry Ramming Mass)”, are not merely dead-burnt magnesia; they are prepared refractory compositions made by processing, sintering, and blending magnesia into a product having a defined grain size distribution and performance characteristics for use as a furnace-lining material. Such processing takes the product beyond the permissible scope of Chapter 25, excluding it therefrom.

4.34. The HSN Explanatory Notes to Heading 3816 specifically cover “refractory cements, mortars, concretes and similar compositions, including dolomite ramming mix, other than products of heading 38.01.” The Notes further clarify that this heading includes “ramming mixes, which are similar in composition to refractory plastics and which, when applied by handheld pneumatic rammers, form a dense coating or filling.” The Notes also recognize that these refractory compositions may be based on various refractory materials, such as chamotte, dinas earths, corundum, quartzite, calcined dolomite, or magnesia, and may or may not contain hydraulic or non-hydraulic binders. Therefore, the heading clearly encompasses refractory ramming masses consisting of sintered or calcined refractory materials, irrespective of whether they are dolomite-based or magnesia-based.

4.35. Consequently, the absence of a specific mention of “magnesia” in the illustrative examples of Heading 3816 cannot exclude magnesia-based ramming mixes from its scope, as the examples given in the HSN are illustrative and not exhaustive. The functional identity of MAGSOL 115 as a refractory dry ramming mass, designed and marketed for direct furnace-lining application, aligns completely with the description in Heading 3816. The argument based on chemical composition (73% magnesium) is also irrelevant, since classification is governed by essential character and use, not by elemental content. Thus, applying the HSN framework, Chapter Note 1 to Chapter 25, and the rule of functional specificity, I hold that the impugned product is excluded from Heading 2519 and is correctly classifiable under CTH 38160000 as a refractory ramming mix.

4.36. My finding regarding the classification of the goods “MAGSOL 115 (BB 1250 KG) (Refractory Dry Ramming Mass)” under CTH 3816 is further reinforced by the fact that the Noticee themselves have consistently classified and cleared identical goods under the same heading during the period 2019 to 2022, except for two Bills of Entry, namely (i) No. 7517359 dated 24.04.2020 and (ii) No. 7723809 dated 22.05.2020, wherein the classification was shown under CTH 2519. Furthermore, it is observed that subsequent to the merger of M/s Tata Steel BSL Ltd. (IEC No. 0593012496) with M/s Tata Steel Ltd., the same product continues to be imported and assessed under CTH 3816. Although the Noticee has argued that there is no estoppel in tax matters, and that they are entitled to seek a reclassification based on their interpretation of the tariff, the pattern of their own import declarations shows that the classification under CTH 3816 has been consistently accepted by the noticee. It is therefore difficult to comprehend why the Noticee chose to depart from that position only in respect of the above two consignments. This inconsistent conduct indicates that the classification under CTH 2519 in those two instances was an isolated deviation. Such conduct further strengthens the Department’s contention that the impugned goods are appropriately classifiable under CTH 38160000 as refractory ramming mixes and similar compositions.

4.37. In conclusion, after careful consideration of the submissions made by the Noticee, the product literature, and the relevant provisions of the Customs Tariff Act, 1975, along with the HSN Explanatory Notes, I am of the view that the imported goods “MAGSOL 115 (Refractory Dry Ramming Mass)” are not a mere mineral product of Chapter 25 but a formulated refractory composition designed for direct use in the lining and maintenance of electric arc furnace bottoms. The process of manufacture involving calcination, sintering, grading, and controlled mixing of dead-burnt magnesia to produce a ramming mix with specific grain distribution and thermal characteristics takes the product beyond the scope of Chapter 25, as expressly restricted by Chapter Note 1 thereto, which excludes products obtained by calcination or mixing from its coverage. The HSN Explanatory Notes to Heading 3816 specifically encompass refractory ramming mixes consisting of refractory materials such as magnesia, dolomite, or alumina, whether or not containing binders, used for furnace-lining applications. Therefore, applying the interpretative rules and the HSN framework, I hold that the impugned product “MAGSOL 115 (Refractory Dry Ramming Mass)” is correctly classifiable under Customs Tariff Heading 38160000 and not under Heading

25199030, as claimed by the Noticee.

Whether or not the differential duty amount of ₹1,11,89,678/- is recoverable from the Noticee M/s. Tata Steel BSL Limited under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA.

4.38. I find that the during Premise Based Audit of the Noticee, a total of 07 observations were made. Out of those 07 audit observations, the Noticee has agreed to 05 and deposited differential duty alongwith applicable interest. Noticee did not agree with the other 02 observations which pertained to misclassification of goods Adhesive (LDPE) ME0420 and “MAGSOL 115 (BB 1250 KG) (REFRACTORY DRY RAMMING MASS). The differential duty demand in these 02 cases of misclassification is Rs. 1,07,01,922/- alongwith applicable interest. And for all 07 audit observations, I find a combined duty demand of Rs. ₹1,11,89,678/- has been raised in the Show Cause Notice under section 28(4) of the Customs Act, 1962 along with applicable interest under section 28AA of the Customs Act, 1962. I find that it has been established that the goods bearing description “Adhesive (LDPE) ME0420” have been mis-classified under CTH 39019000 instead of correct CTH 35069190 and that the goods bearing description “MAGSOL 115 (BB 1250 KG) (REFRACTORY DRY RAMMING MASS)” for which it has been established that have been mis-classified under CTH 25199030 instead of correct CTH 38160000.

4.39. In view of the discussion in the foregoing paras, I find that the Show Cause Notice has brought on record enough evidence to discharge its burden to prove that the imported goods bearing description “Adhesive (LDPE) ME0420” and “MAGSOL 115 (BB 1250 KG) (REFRACTORY DRY RAMMING MASS)” have been misclassified. In view of the facts and evidence on record, it has been conclusively proven that the Noticee has engaged in a deliberate misclassification which has resulted in short payment of duty amounting to more than 1 crore rupees. By virtue of Section 17 of the Customs Act, 1962, the Noticee was duty bound to ensure that he declares the correct description of the goods, 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. It is seen that the Noticee has resorted to incorrect self-assessment, by failing to adopt the correct classification, thereby violated provisions of Section 17 of the Customs Act, 1962. Furthermore, as per Section 46(4) and 46(4A) of the Customs Act, 1962, the Noticee was required to furnish a declaration as to the truth of the contents of Bill of entry and should have ensured accuracy and completeness of information, authenticity and validity of documents submitted. The Noticee was required to declare the full accurate details relating to the goods description, quantity, duties payable etc. However, it has been noticed that the Noticee has resorted to misdeclassification of goods bearing description “Adhesive (LDPE) ME0420” under CTH 3901900 instead of correct CTH 35069190 and that the goods bearing description “MAGSOL 115 (BB 1250 KG) (REFRACTORY DRY RAMMING MASS)” under CTH 25199030 instead of correct CTH 38160000. In view of the foregoing, I find that, due to deliberate misclassification of the goods, duty demand against the Noticee has been correctly proposed under Section 28(4) of the Customs Act, 1962 by invoking the extended period of limitation. In support of my stand

of invoking extended period, I rely upon the following court decisions:

(a) 2013(294) E.L.T.222 (Tri.-LB): Union Quality Plastic Ltd. Versus Commissioner of C.E. & S.T., Vapi [Misc. Order Nos.M/12671-12676/2013-WZB/AHD, dated 18.06.2013 in Appeal Nos. E/1762-1765/2004 and E/635- 636/2008]

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

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

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

(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;

4.40. Further, the noticee is also liable to pay applicable interest under the provisions of Section 28AA of the Customs Act, 1962. In this regard, the ratio laid down by Hon'ble Supreme Court in the case of CCE, **Pune V/s. SKF India Ltd. [2009 (239) ELT 385 (SC)]** wherein the Apex Court has upheld the applicability of interest on payment of differential duty at later date in the case of short payment of duty though completely unintended and without element of deceit. The Court has held that

"....It is thus to be seen that unlike penalty that, is attracted to the category of cases in which the non-payment or short payment etc. of duty is "by reason of fraud, collusion or any wilful lmis-statement or suppression of facts, or contravention of any of the provisions of the Act or of Rules made thereunder with intent to evade payment of duty", under the scheme of the four Sections (11A, 11AA, 11AB & 11AC) interest is leviable on delayed or deferred payment of duty for whatever reasons."

Thus, interest leviable on delayed or deferred payment of duty for whatever reasons, is aptly applicable in the instant case.

4.41. In view of the facts and findings in above paras, I hold that total differential duty of Rs. 1,11,89,678/- should be demanded under Section 28 (4) of the Customs Act, 1962 and the same should be recovered from M/s. Tata Steel BSL Limited along with applicable interest in terms of section 28AA of the Customs Act, 1962 as proposed in the Show Cause Notice.

Whether or not an amount of Rs. 8,15,049/- (Rupees Eight Lakh Fifteen Thousand and Forty Nine only) paid by the Noticee as admitted duty of Rs 4,87,752/- (Rupees Four Lakh Eighty Seven Thousand Seven Hundred and Fifty Two only) and Rs.3,27,297/- (Rupees Three Lakh Twenty Seven Thousand Two Hundred and Ninety Seven only) as applicable interest thereupon under Section 28AA of the Customs Act, 1962 paid vide TR6 No. 4777 dated 20.06.2024 should not be appropriated against the duty so demanded.

4.42. I find that The Show Cause Notice proposed the demand and recovery of differential duty of amount Rs. ₹1,11,89,678/- based on 07 audit observations. Out of those 07 audit observations, the Noticee has agreed to 05 observations. Further I find that M/s. Tata Steel BSL Limited had made payment of Rs. 8,15,049/- (Rupees Eight Lakh Fifteen Thousand and Forty Nine only) as admitted duty of Rs 4,87,752/- (Rupees Four Lakh Eighty Seven Thousand Seven Hundred and Fifty Two only) and Rs.3,27,297/- (Rupees Three Lakh Twenty Seven Thousand Two Hundred and Ninety Seven only) as applicable interest thereupon under Section 28AA of the Customs Act, 1962 vide TR6 no.4777 dated 20.06.2024. Accordingly, I find that the payment of **Rs. 8,15,049/-** should be appropriated and adjusted towards the total duty demand of ₹1,11,89,678/- and its applicable interest.

Whether or not the imported goods valued at Rs. 27,29,28,957 covered under the Bills of Entry in question are liable to confiscation under Section 111(m) of the Customs Act, 1962.

4.43. I find that, the Noticee had subscribed to a declaration as to the truthfulness of the contents of the bills of entry in terms of Section 46(4) of the Customs Act, 1962 in all their import declarations. Section 17 of the Act, w.e.f 08.04.2011, provides for self-assessment of duty on imported goods by the importer themselves by filing a bill of entry, in the electronic form. Thus, under the scheme of self-assessment, it is the importer who has to diligently ensure that he declares the correct description of the imported goods, its correct classification, the applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported goods while presenting the bill of entry. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 8th April, 2011, there is an 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.

4.44. I also find that, it is very clear that w.e.f. 08.04.2011, the importer must self-assess the

duty under Section 17. Such onus appears to have been deliberately not discharged by M/s. Tata Steel BSL Limited in terms of the provisions of Section 46(4) of the Customs Act, 1962. The Noticee while presenting a bill of entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such bill of entry and in support of such declaration, produce to the proper officer the invoice, of any, relating to the imported goods. In terms of the provisions of Section 47 of the Customs Act, 1962, the importer shall pay the appropriate duty payable on imported goods and then clear the same for home consumption. In the instant case, the impugned Bills of Entry being self-assessed were substantially mis-declared by the importer in respect of the classification of the goods while being presented to the Customs.

4.45. I find that the SCN proposes confiscation of goods under the provisions of Section 111(m) of the Customs Act, 1962. Provisions of this Section of the Act, are re-produced herein below:

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

(m) [any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 3 [in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54];

4.46. I find that the Noticee M/s. Tata Steel BSL Limited by way of misclassification, imported the goods by mis-classifying the goods with intent to clear goods at lower rate of duty. I, therefore, find that the said import of goods by mis-declaring the classification of the goods, squarely falls within the ambit of 'illegal import' as defined in section 11 of the Customs Act, 1962 in as much as the same was done in contravention of various provisions of the Customs Act, 1962.

4.47. In view of the intentional misclassification of the imported goods, the goods covered under the Bills of Entry as listed in Annexure B to the SCN having assessable value of Rs. 27,29,28,957/-, are liable for confiscation under Section 111(m) of the Customs Act, 1962, as goods have been mis-classified in these Bills of Entry. Further the goods imported vide Bills of Entry as listed in Annexure B to the SCN are not available for confiscation, but I rely upon the order of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) wherein the Hon'ble Madras High Court held in para 23 of the judgment as below:

“23. The penalty directed against the importer under Section 112 and the fine

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

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

4.49. In view of the above, I find that the decision of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), which has been passed after observing decision of Hon'ble Bombay High Court in case of M/s Finesse Creations Inc reported vide 2009 (248) ELT 122 (Bom)-upheld by Hon'ble Supreme Court in 2010(255) ELT A. 120 (SC), is squarely applicable in the present case.

4.50. In view of above facts, findings and legal provisions, I find that that the Noticee has wilfully mis-classified the impugned goods. Therefore, I hold that the acts and omissions of the Noticee, by way of collusion, wilful misstatement, mis-declaration and suppression of facts, of the imported goods, have rendered the goods liable to confiscation under section 111 (m) of the Customs Act, 1962. Accordingly, I observe that the present case also merits imposition of Redemption Fine, regardless of physical availability, once the goods are held liable for confiscation.

Whether or not penalty is imposable on the importer M/s. Tata Steel BSL Limited under Sections 114A and 114AA of the Customs Act, 1962.

4.51. It is a settled law that fraud and justice never dwell together (Fraus et Jus nunquam cohabitant). Lord Denning had observed that “no judgement of a court, no order of a minister can be allowed to stand if it has been obtained by fraud, for, fraud unravels everything”. There are numerous judicial pronouncements wherein it has been held that no court would allow getting any advantage which was obtained by fraud. The Hon’ble Supreme Court in case of CC, Kandla vs. Essar Oils Ltd. reported as 2004 (172) ELT 433 SC at paras 31 and 32 held as follows:

*“31. ”Fraud” as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. **It is also well settled that misrepresentation itself amounts to fraud.** Indeed, innocent misrepresentation may also give reason to claim relief against fraud. **A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood.** It is a fraud in law if a party makes representations, which he knows to be false, although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (Ram Chandra Singh v. Savitri Devi and Ors. [2003 (8) SCC 319].*

32. ”Fraud” and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. Principle Bench of Tribunal at New Delhi extensively dealt with the issue of Fraud while delivering judgment in Samsung Electronics India Ltd. Vs commissioner of Customs, New Delhi reported in 2014(307) ELT 160(Tri. Del). In Samsung case, Hon’ble Tribunal held as under.

“If a party makes representations which he knows to be false and injury ensues there from although the motive from which the representations proceeded may not have been bad is considered to be fraud in the eyes of law. It is also well settled that misrepresentation itself amounts to fraud when that results in deceiving and leading a man into damage by wilfully or recklessly causing him to believe on falsehood. Of course, innocent misrepresentation may give reason to claim relief against fraud. In the case of Commissioner of Customs, Kandla vs. Essar Oil Ltd. - 2004 (172) E.L.T. 433 (S.C.) it has been held that by “fraud” is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill-will towards the other is

immaterial. "Fraud" involves two elements, deceit and injury to the deceived.

Undue advantage obtained by the deceiver will almost always cause loss or detriment to the deceived. Similarly a "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (Ref: S.P. Chengalvaraya Naidu v. Jagannath [1994 (1) SCC 1: AIR 1994 S.C. 853]. It is said to be made when it appears that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly and carelessly whether it be true or false [Ref: Roshan Deenv. Preeti Lal [(2002) 1 SCC 100], Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education [(2003) 8 SCC 311], Ram Chandra Singh's case (supra) and Ashok Leyland Ltd. v. State of T.N. and Another [(2004) 3 SCC 1].

Suppression of a material fact would also amount to a fraud on the court [(Ref: Gowrishankarv. Joshi Amha Shankar Family Trust, (1996) 3 SCC 310 and S.P. Chengalvaraya Naidu's case (AIR 1994 S.C. 853)]. No judgment of a Court can be allowed to stand if it has been obtained by fraud. Fraud unravels everything and fraud vitiates all transactions known to the law of however high a degree of solemnity. When fraud is established that unravels all. [Ref: UOI v. Jain Shudh Vanaspati Ltd. - 1996 (86) E.L.T. 460 (S.C.) and in Delhi Development Authority v. Skipper Construction Company (P) Ltd. - AIR 1996 SC 2005]. Any undue gain made at the cost of Revenue is to be restored back to the treasury since fraud committed against Revenue voids all judicial acts, ecclesiastical or temporal and DEPB scrip obtained playing fraud against the public authorities are non est. So also no Court in this country can allow any benefit of fraud to be enjoyed by anybody as is held by Apex Court in the case of Chengalvaraya Naidu reported in (1994) 1 SCC 1 : AIR 1994 SC 853. Ram Preeti Yadav v. U.P. Board High School and Inter Mediate Education (2003) 8 SCC 311.

A person whose case is based on falsehood has no right to seek relief in equity [Ref: S.P. Chengalvaraya Naidu v. Jagannath, AIR 1994 S.C. 853]. It is a fraud in law if a party makes representations, which he knows to be false, and injury ensues there from although the motive from which the representations proceeded may not have been bad. [Ref: Commissioner of Customs v. Essar Oil Ltd., (2004) 11 SCC 364 = 2004 (172) E.L.T. 433 (S.C.)].

When material evidence establishes fraud against Revenue, white collar crimes committed under absolute secrecy shall not be exonerated as has been held by Apex Court judgment in the case of K.I. Pavunnyv.AC, Cochin - 1997 (90) E.L.T. 241 (S.C.). No adjudication is barred under Section 28 of the Customs Act, 1962 if Revenue is defrauded for the reason that enactments like Customs Act, 1962, and Customs Tariff Act, 1975 are not merely taxing statutes but are also potent instruments in the hands of the Government to safeguard interest of the economy. One of its measures is to prevent deceptive practices of undue claim of fiscal incentives.

It is a cardinal principle of law enshrined in Section 17 of Limitation Act that fraud nullifies everything for which plea of time bar is untenable following the ratio laid down by Apex Court in the case of CC. v. Candid Enterprises - 2001 (130) E.L.T. 404 (S.C.). Non est instruments at all times are void and void instrument in the eyes of law are no instruments. Unlawful gain is thus debarred."

4.52. I find that in the instant case, the impugned imports under the ambit of the subject SCN were effected in the name of M/s. Tata Steel BSL Limited. I note that the importer had mis-classified the goods in the Bills of Entry as listed in Annexure B to the SCN with intention to evade the Customs Duty for the imported goods. In view of the provisions discussed above, I find that the correct applicable duty had not been levied by reasons of collusion, wilful mis-statement and suppression of facts. Accordingly, I hold that M/s. Tata Steel BSL Limited is liable to penalty under Section 114A of the Customs Act, 1962 in respect of Bills of Entry as mentioned in Annexure-B. However, in view of fifth proviso to Section 114A, no penalty is liable to be imposed on M/s. Tata Steel BSL Limited under Section 112 *ibid*, of the Customs Act, 1962.

4.53. With regard to Section 114 AA of the Customs Act, I note that, The Hon'ble CESTAT, New Delhi in the case of M/s S.D. Overseas vs The Joint Commissioner of Customs in Customs Appeal No. 50712 OF 2019 had dismissed the appeal of the petitioner while upholding the imposition of penalty under Section 114 AA of the Customs Act, wherein it had held as under:

28. As far as the penalty under Section 114AA is concerned, it is imposable if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act. We find that the appellant has misdeclared the value of the imported goods which were only a fraction of a price the goods as per the manufacturer's price lists and, therefore, we find no reason to interfere with the penalty imposed under Section 114AA.

4.54. There are several judicial decisions in which penalty on Companies under section 114AA of the Customs Act, 1962 has been upheld. Following decisions are relied upon on the issue,-

- i. M/s ABB Ltd. Vs Commissioner (2017-TIOL-3589-CESTAT-DEL)
- ii. Sesa Sterlite Ltd. Vs Commissioner (2019-TIOL-1181-CESTAT-MUM)
- iii. Indusind Media and Communications Ltd. Vs Commissioner (2019-TIOL-441-SC-CUS)

4.55. I find that it has already been established that M/s. Tata Steel BSL Limited has willfully engaged themselves in misclassification in order to evade higher rate of duty. They

have knowingly and wilfully made a false declaration regarding the classification of the imported goods in the Bills of Entry with an intent to evade customs duty. Such conduct amounts to knowingly or intentionally making, signing, or using, or causing to be used, a false declaration, statement, or document in the transaction of any business relating to the Customs. Therefore, the provisions of Section 114AA of the Customs Act, 1962 squarely apply to the importer, warranting imposition of penalty commensurate with the gravity of the offence.

5. In view of the facts of the case, the documentary evidences on record and findings as detailed above,

I pass the following order:

ORDER

- i. I order that the subject imported goods “ME0420 ADHESIVE (LDPE) ME0420 ADHESIVE (LDPE)” to be re-classified under CETSH 35069190 instead of CETSH 39019000.
- ii. I order that the subject imported “MAGSOL 115 (BB 1250KG) (REFRACTORY DRY RAMMING MASS)” to be re-classified under CETSH 38160000 instead of CETSH 25199030.
- iii. I confirm and demand differential duty amount of Rs. 1,11,89,678 /- (One Crore Eleven Lakhs Eighty-Nine Thousand Six Hundred and Seventy-Eight Only) as detailed in Annexure-B of the Show Cause Notice, under Section 28(4) of the Customs Act, 1962 and order recovery of the same from the Noticee M/s Tata Steel BSL Limited. I also order demand and recovery of applicable interest from the Noticee M/s Tata Steel BSL Limited under Section 28AA of the Customs Act, 1962.
- iv. I order appropriation of the amount of Rs. 8,15,049/- (Rupees Eight Lakhs Fifteen Thousand and Forty Nine only) paid by the Noticee vide TR6 No.4777 dated 20.06.2024 as admitted duty of Rs.4,87,752/- (Rupees Four Lakh Eighty Seven Thousand Seven Hundred and Fifty Two only) and Rs.3,27,297/- (Rupees Three Lakh Twenty Seven Thousand Two Hundred and Ninety Seven only) as applicable interest thereupon under Section 28AA of the Customs Act, 1962, against the duty demand of Rs. 1,11,89,678 /- (One Crore Eleven Lakhs Eighty-Nine Thousand Six Hundred and Seventy-Eight Only) and its applicable interest.
- v. I order confiscation of the goods valued at Rs. 27,29,28,957/-(Rupees Twenty-Seven Crore Twenty-Nine Lakhs Twenty-Eight Thousand Nine Hundred and Fifty-Seven only) imported as detailed in Annexure-B of the Show Cause Notice under Section 111(m) of the Customs Act, 1962, even though the goods are not physically available. However, in lieu of confiscation, I impose a redemption fine of Rs. 1,35,00,000/- (Rupees One crore Thirty-Five lacs) on M/s. Tata Steel BSL Limited under Section 125(1) of the Customs Act, 1962.

- vi.** I impose a penalty of Rs. 1,11,89,678 /- (Rupees One Crore Eleven Lakhs Eighty-Nine Thousand Six Hundred and Seventy-Eight Only) along with applicable interest, on M/s. Tata Steel BSL Limited Section 114A of the Customs Act, 1962, in respect of the Bills of Entry mentioned in Annexure-B to the Show Cause Notice.
- vii.** If the duty and interest are paid within thirty days from the date of communication of this order, the amount of penalty liable to be paid shall be twenty-five percent of the duty, provided that the reduced penalty amount is also paid within the same thirty-day period, in terms of the first proviso to Section 114A of the Act.
- viii.** I impose a penalty of Rs. 25,00,000/- (Rupees Twenty-Five lakhs only) on M/s. Tata Steel BSL Limited under Section 114AA of the Customs Act, 1962.

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

(यशोधन वनगे /Yashodhan Wanage)
प्रधान आयुक्त, सीमा शुल्क/ Pr. Commissioner of Customs
एनएस-I, जेएनसीएच / NS-I, JNCH

To,

Tata Steel BSL Limited (IEC-0593012496) (Now merged with Tata Steel w.e.f. 11th Nov 2021)
Ground Floor, Mira Corporate Suite,
Plot No. 1&2, Ishwar Nagar,
Mathura Road,
New Delhi-110065

Copy to:

1. AC/DC, Chief Commissioner's Office, JNCH
2. AC, Customs Audit (OSPCA1), New Customs House, Near IGI Airport, New Delhi-110037
3. AC/DC, Group II G
4. , JNCH
5. AC/DC, Centralized Revenue Recovery Cell, JNCH
6. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
7. Office Copy.