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

DIN – 20260278NX00000028E5 **Date of Order: 13.02.2026**

F. No. S/10-187/2024-25/CC/Gr. VB/CAC/JNCH **Date of Issue: 13.02.2026**

SCN No.: 1690/2024-25/COMMR./NS-V/CAC/JNCH

SCN Date: 20.02.2025

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

Order No: 388/2025-26/COMMR/NS-V/CAC/JNCH

Name of Noticee: M/s Mercedes-Benz India Private Limited (IEC-3194008714)

ORDER-IN-ORIGINAL
मूल - आदेश

1. The copy of this order in original is granted free of charge for the use of the person to whom it is issued.

1. इस आदेश की मूल प्रति की प्रतिलिपि जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए नि:शुल्क दी जाती है।

2. Any Person aggrieved by this order can file an Appeal against this order to CESTAT, West Regional Bench, 34, P D'Mello Road, Masjid (East), Mumbai - 400009 addressed to the Assistant Registrar of the said Tribunal under Section 129 A of the Customs Act, 1962.

2. इस आदेश से व्यथित कोई भी व्यक्ति सीमाशुल्क अधिनियम 1962 की धारा 129 (ए) के तहत इस आदेश के विरुद्ध सी.ई.एस.टी.ए.टी., पश्चिमी प्रादेशिक न्यायपीठ (वेस्ट रीज़नल बेंच), 34, पी. डी'मेलो रोड, मस्जिद (पूर्व), मुंबई - 400009 को अपील कर सकता है, जो उक्त अधिकरण के सहायक रजिस्ट्रार को संबोधित होगी।

3. Main points in relation to filing an appeal: -

3. अपील दाखिल करने संबंधी मुख्य मुद्दे:-

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

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

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

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

Fee -फीस-

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

(क) एक हजार रुपय जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 5 लाख रुपये

या उस से कम है।

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

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

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

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

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

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

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

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

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

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

Subject: Adjudication of Show Cause Notice No. 1690/2024-25/COMMR/NS-V/ CAC/ JNCH dtd. 20.02.2025 issued to M/s Mercedes-Benz India Private Limited (IEC-3194008714) – reg.

1. BRIEF FACTS OF THE CASE

1.1 It is stated in the Show Cause Notice (SCN) No. 1690/2024-25/COMMR/NS-V/CAC/ JNCH dtd. 20.02.2025 that **M/s Mercedes-Benz India Private Limited (IEC-3194008714)** (hereinafter referred to as '*the importer*') having address at E 3, MIDC, Chakan Phase III, Chakan, Industrial Area, Kuruli & Nighoje, Chakan, Pune, Maharashtra-410501., had filed Bills of Entry as detailed in Annexure-A, Annexure-B, Annexure-C and Annexure-E at Nhava Sheva, JNCH, Mumbai for clearance of "Hinges, Vehicle Parts, Door Handle, Handle Recess, Handle Strip, Interior Lights, Release Handel, Propeller Shaft, Drive Shaft etc", and certain other items having total assessable value of Rs. 5,97,18,059/- (Five Crore Ninety-Seven Lakh Eighteen Thousand Fifty-Nine only) through Custom House Agent, M/s Capricon Logistics Pvt. Ltd from Nhava Sheva and M/s Man Logistics (India) Pvt. Ltd.

1.2 During the post clearance audit of the mentioned Bills of Entry conducted under Section 99A of the Customs Act, 1962 read with Section 157 (k) of the Customs Act, 1962 and the Customs Audit Regulations, 2018, it has been prima-facie noticed that importer has misclassified the goods (details mentioned in Annexure-A, Annexure-B, Annexure-C and Annexure-E) under Customs Tariff heading 8708 to the First Schedule of the Customs Tariff Act,1975 and Basic Customs Duty @ 15%, SWS @ 10% of BCD and IGST @ 18% in terms of under Sr. No. 402/452N of Schedule-III to Notification No. 01/2017-(Integrated Tax Rate) dated 28.06.2017 were paid thereon. The Imported Goods (mentioned in Annexure-A to the SCN) are parts & accessories of the Motor Vehicle of heading 8701 to 8705 (other than specified parts of tractors). Thus IGST @ 28% is applicable on the said goods in terms of Sr. No. 170 of Schedule IV of the Notification No. 01/2017-(Integrated Tax Rate) dated 28.06.2017.

1.3 The certain items i.e. Seat Belt, Shock Absorber, Air Suspension, Hose Assembly (details enclosed in Annexure-A) were imported by classifying under Chapter heading 87 and IGST paid @ 18% in terms of IGST Notfn. 01/2017 dated 28.06.2017, Sr. No. III402 and III452N thereon. For reference, the texts of above said Sr. No. are reproduced below:

402.	8708	Following parts of tractors namely: a. Rear Tractor wheel rim, b. tractor centre housing, c. tractor housing transmission, d. tractor support front axle

2. In the said notification, in Schedule III – 18%, after serial number 452 and the entries relating thereto, the following serial number and entries shall be inserted, namely:-

(1)	(2)	(3)
"452A	4011 70 00	Tyre for tractors
452B	4013 90 49	Tube for tractor tyres
452C	8408 20 20	Agricultural Diesel Engine of cylinder capacity exceeding 250 cc for Tractor
452D	8413 81 90	Hydraulic Pumps for Tractors
452E	8708 10 10	Bumpers and parts thereof for tractors
452F	8708 30 00	Brakes assembly and its parts thereof for tractors
452G	8708 40 00	Gear boxes and parts thereof for tractors
452H	8708 50 00	Transaxles and its parts thereof for tractors
452I	8708 70 00	Road wheels and parts and accessories thereof for tractors
452J	8708 91 00	(i) Radiator assembly for tractors and parts thereof (ii) Cooling system for tractor engine and parts thereof
452K	8708 92 00	Silencer assembly for tractors and parts thereof
452L	8708 93 00	Clutch assembly and its parts thereof for tractors
452M	8708 94 00	Steering wheels and its parts thereof for tractor
452N	8708 99 00	Hydraulic and its parts thereof for tractors
452O	8708 99 00	Fender, Hood, wrapper, Grill, Side Panel, Extension Plates, Fuel Tank and parts thereof for tractors".

[F.No.354/137/2017-TRU]

1.4 It is learnt that the M/s Mercedes-Benz India Private limited is engaged in Automobile sector. Therefore, it is clear that the items imported mentioned in Annexure-A to the SCN are parts & accessories of the Motor Vehicle, therefore, IGST @ 28% in terms of Sr. No 170 of the Schedule IV to the Notification No.01/2017-(Integrated Tax Rate) dated 28.06.2017 are leviable on the said imported goods in terms of Sr. No. 170 of Schedule IV of the Notification No. 01/2017-(Integrated Tax Rate) dated 28.06.2017.

1.5 The importer purposefully misclassified by way of mentioning incorrect Sr. No. 402/452N of Schedule III of Notification No. 01/2017-(Integrated Tax Rate) dated 28.06.2017 instead of Sr. No. 170 of Schedule IV of Notification No. 01/2017-(Integrated Tax Rate) dated 28.06.2017 during the period from 01/02/2021 to 14/12/2023 which has resulted in short levied/short paid duty of Rs. 34,896/- The complete details of short paid Customs duty are shown in Annexure 'A' to the SCN.

1.6 Door Handles: During the period from 01/01/2021 to 14/12/2023, the importer imported various type of Door handles specially designed for their motor vehicles (76 consignments, valued at Rs. 12,58,757/- as detailed in the enclosed Annexure-B to the SCN) and classified the said goods under Chapter 83, 39, 85 and etc. to the First Schedule of the Customs Tariff Act, 1975, and paid BCD @ 7.5%/10%/15%/25%, SWS @ 10% of BCD and IGST @ 18% in terms of under various Sr. No., as detailed in Annexure-B, of Schedule-III to Notification No. 01/2017-(Integrated Tax Rate) dated 28.06.2017 were paid thereon.

1.7 Hinges: Further, during the period from 01/02/2021 to 14/12/2023, the importer also imported various type of Hinges specially designed for their motor vehicles (2390 consignments, valued at Rs. 4,18,00,702/- as detailed in the enclosed Annexure-C) and classified the said goods under Chapter 83 to the First Schedule of the Customs Tariff Act, 1975, and paid BCD @ 10%/15%, SWS @ 10% of BCD and IGST @ 18% in terms of under Sr. No. III303A as detailed in Annexure-C to the SCN, of Schedule-III to Notification No. 01/2017-(Integrated Tax Rate) dated 28.06.2017 were paid thereon.

1.8 Door Handle & Hinges (detailed in the enclosed Annexure-B and C to the SCN) are classifiable under heading 87089900 as the said imported Door Handles & Hinges are identifiable as being suitable for use solely or principally with the motor vehicles of headings 8703 and Door Handles & Hinges are not used with other machines. The said imported items (Door Handles & Hinges) are not excluded by Note 2 of the Section XVII. It is noticed that the classification of Door Handles & Hinges is not more specifically provided for elsewhere in the Customs Tariff Acts, 1975. The Basic Customs Duty (BCD) @15 % (Tariff Rate), SWS @ 10% of BCD & IGST @28% in terms of Sr. No 170 of the Schedule IV to the Notification No.01/2017-(Integrated Tax Rate) dated 28.06.2017 are leviable on the imported Door Handle & Hinges (76 consignments, valued at Rs. 12,58,757/- as detailed in the enclosed Annexure-B to the SCN and 2390 consignments, valued at Rs. 4,18,00,702/- as detailed in the enclosed Annexure-C to the SCN) which are used in the manufacture of Motor Vehicles of heading 8703. The relevant texts of Heading 87089900 are reproduced for ease of reference as under: -

Tariff Item		Description of goods	Unit	Rate of duty	
				Standard	Preferential Areas
(1)		(2)	(3)	(4)	(5)
8708		PARTS AND ACCESSORIES OF THE MOTOR VEHICLES OF HEADINGS 8701 TO 8705			
8708 10	-	Bumpers and parts thereof :			
8708 10 10	---	For tractors	kg.	15%	-
8708 10 90	---	Other	kg.	15%	-
	-	Other parts and accessories of bodies (including cabs) :			
8708 21 00	--	Safety seat belts	u	15%	-
*8708 22 00	--	Front windscreens (windshields), rear windows and other windows specified in Sub-heading Note 1 to this Chapter	kg.	15%	-
8708 29 00	--	Other	kg.	15%	-
8708 30 00	-	Brakes and servo-brakes; parts thereof	kg.	15%	-
8708 40 00	-	Gear boxes and parts thereof	kg.	15%	-
8708 50 00	-	Drive-axles with differential, whether or not provided with other transmission components, non-driving axles; parts thereof	kg.	15%	-
8708 70 00	-	Road wheels and parts and accessories thereof	kg.	15%	-
8708 80 00	-	Suspension systems and parts thereof (including shock absorbers)	kg.	15%	-
	-	Other parts and accessories:			
8708 91 00	--	Radiators and parts thereof	kg.	15%	-
8708 92 00	--	Silencers (mufflers) and exhaust pipes; parts thereof	kg.	15%	-
8708 93 00	--	Clutches and parts thereof	kg.	15%	-
8708 94 00	--	Steering wheels, steering columns and steering boxes; parts thereof	kg.	15%	-
8708 95 00	--	Safety airbags with inflater system; parts thereof	kg.	15%	-
8708 99 00	--	Other	kg.	15%	-

*w.e.f. 1.1.2022

1.9 However, it has been noticed that the similar items were classifiable under correct CTH 8708 in the past where BCD @15%, SWS @ 10% of BCD, IGST @ 28% in terms of Sr. No 170 of the Schedule IV to the Notification No.01/2017-(Integrated Tax Rate) dated 28.06.2017 was levied. This clearly shows that you have deliberately misclassified the items viz. Door Handel, Grab Handel, Hinges to evade Customs duties and IGST.

1.10 The certain items (details enclosed in Annexure-E to the SCN) import data was further analyzed and noticed that importer has misclassified the goods i.e. Propeller Shafts/Drive Shafts (details of which are having Assessable Value Rs. 1,63,59,063.25/- mentioned in Annexure-E) from 20.02.2020 to 03.06.2023. The goods were cleared under Customs Tariff heading 8483 to the First Schedule of the Customs Tariff Act,1975 where Basic Customs Duty @ 7.5%, SWS @ 10% of BCD and IGST @ 18% in terms of under Sr. No. 369 of Schedule-III to Notification No. 01/2017-(Integrated Tax Rate) dated 28.06.2017. Chapter Heading 8483 is produced below for reference:

8483		TRANSMISSION SHAFTS (INCLUDING CAM SHAFTS AND CRANK SHAFTS) AND CRANKS; BEARING HOUSINGS AND PLAIN SHAFT BEARINGS; GEARS AND GEARING; BALL OR ROLLER SCREWS; GEAR BOXES AND OTHER SPEED CHANGERS, INCLUDING TORQUE CONVERTERS; FLYWHEELS AND PULLEYS, INCLUDING PULLEY BLOCKS; CLUTCHES AND SHAFT COUPLINGS (INCLUDING UNIVERSAL JOINTS)			
8483 10	-	*Transmission shafts (including cam shafts and crank shafts) and cranks :*			
8483 10 10	---	Crank shafts for sewing machines	u	7.5%	-
	---	*Other :*			
8483 10 91	----	Crank shaft for engines of heading 8407	u	15%	-
8483 10 92	----	Crank shaft for engines of heading 8408	u	15%	-
8483 10 99	----	Other	u	7.5%	-

1.11 Please refer to Explanatory notes of Customs Tariff, 1975 wherein Propeller Shafts/Drive Shafts are excluded from Chapter Heading 8483. The same are given below:

The heading also excludes :

(a) Pieces roughly shaped by forging, of heading 72.07.

(b) Transmission equipment of the kinds described above (gear boxes, transmission shafts, clutches, differentials, etc.), but which are designed for use solely or principally with vehicles or aircraft (Section XVII); it should, however, be noted that this exclusion does not apply to internal parts of vehicle or aircraft engines - these parts remain classified in this heading.

Thus a crank shaft or a cam shaft remains in this heading even if it is specialised for a motor car engine; but motor car transmission (propeller) shafts, gear boxes and differentials fall in heading 87.08.

It should further be noted that transmission equipment of the type described in this heading remains classified here even if it is specially designed for ships.

(c) Parts of clocks or watches (heading 91.14).

1.12 Therefore, it is evident from above point no. (b) that Propeller shafts/Drive Shafts are excluded from chapter heading 8483 and thus required to be classified under heading 8708 where Basic Customs Duty @ 15%, SWS @ 10% of BCD and IGST @ 28% in terms of under Sr. No. 170 of Schedule-IV to Notification No. 01/2017-(Integrated Tax Rate) dated 28.06.2017. Customs Tariff Heading 8708 of Customs Tariff, 1975 is given below for reference:

8708		**PARTS AND ACCESSORIES OF THE MOTOR VEHICLES OF HEADINGS 8701 TO 8705**		
8708 10	-	Bumpers and parts thereof :		
8708 10 10	---	For tractors	kg.	15%
8708 10 90	---	Other	kg.	15%
	-	Other parts and accessories of bodies (including cabs) :		
8708 21 00	--	Safety seat belts	u	15%
*8708 22 00	--	Front windscreens (windshields), rear windows and other windows specified in Sub-heading Note 1 to this Chapter	kg.	15%
8708 29 00	--	Other	kg.	15%
8708 30 00	-	Brakes and servo-brakes; parts thereof	kg.	15%
8708 40 00	-	Gear boxes and parts thereof	kg.	15%
8708 50 00	-	Drive-axles with differential, whether or not provided with other transmission components, non-driving axles; parts thereof	kg.	15%

1.13 Further, as per Explanatory Notes of Chapter Heading 8708 of Customs Tariff, 1975 , parts and accessories of motor vehicle includes:

(F) Other transmission parts and components (for example, propeller shafts, half-shafts; gears, gearing; plain shaft bearings; reduction gear assemblies; universal joints). But the heading excludes internal parts of engines, such as connecting-rods, push-rods and valvelifters of heading 84.09 and crank shafts, cam shafts and flywheels of heading 84.83.

1.14 Therefore, the imported items viz. Propeller Shaft/Drive Shaft mentioned in Annexure- E are parts & accessories of the Motor Vehicle, and being suitable for use solely and principally with the motor vehicle therefore, BCD @15%, SWS @ 10% of BCD, IGST @ 28% in terms of Sr. No 170 of the Schedule IV to the Notification No.01/2017-(Integrated Tax Rate) dated 28.06.2017 are leviable on the said imported goods in terms of Sr. No. 170 of Schedule IV of the Notification No. 01/2017-(Integrated Tax Rate) dated 28.06.2017. It is pertinent to mention that Propeller Shafts/Drive Shafts cleared vide Bills of Entry mentioned in Annexure-E were classified under 8483 where Basic Customs Duty @ 7.5%, SWS @ 10% of BCD and IGST @ 18% in terms of under Sr. No. 369 of Schedule-III to Notification No. 01/2017-(Integrated Tax Rate) dated 28.06.2017 were paid thereon. However, it has been noticed that the similar items were classifiable under correct CTH 8708 in the past where BCD @15%, SWS @ 10% of BCD, IGST @ 28% in terms of Sr. No 170 of the Schedule IV to the Notification No.01/2017-

(Integrated Tax Rate) dated 28.06.2017 was levied. This clearly shows that the importer has deliberately misclassified the items viz. Propeller Shafts/Drive Shafts to evade Customs duties and IGST. The list of the shafts viz. Propeller Shaft/Drive Shaft classified under correct CTH 8708 by the importer is enclosed herewith as Annexure-F for reference.

1.15 It is appeared that during the period from 20/02/2020 to 14/12/2023, the importer imported Hinges, Vehicle Parts, Door Handle, Handle Recess, Handle Strip, Interior Lights, Release Handel, PROPELLER SHAFT, DRIVE SHAFT (total 2603 consignments, valued at Rs. 5,97,18,059/- as detailed in the enclosed Annexure-A, Annexure-B, Annexure-C and Annexure-E to the SCN). The Importer mentioned (has declared) the said items as Parts and Accessories of motor Vehicles of HEADINGS 8703 and correctly classified them under heading 8708 of the First Schedule to the Customs Tariff Act,1975, and paid BCD @ 15%, SWS @ 10% of BCD and IGST @ 28% in terms of under various Sr.No.170 of Schedule-IV to Notification No. 01/2017-(Integrated Tax Rate) dated 28.06.2017.

1.16 The Hon'ble Supreme Court, in the case of M/s. Cast Metal Industries Pvt. Ltd., reported at 2015(325) E.L.T.471 (S.C.), has held that Door Handles and Hinges for automobiles, being specifically meant for and use in motor vehicles as its parts and accessories, are classifiable under heading 87.08 of the First Schedule to Customs Tariff Act,1975. The relevant portion of the above judgement is reproduced as under for ease of reference:

> *"The issue is squarely covered by the judgment of this Court in the case of G.S. Auto International Limited vs. CC Excise, Chandigarh[2003(2) SCC 371]. In the said judgment, following the earlier decisions of this Court, the Court specifically held that to determine the applicability of the item under particular head, the test of commercial identity of the goods would be the relevant test and not the functional test. It was also held that the expression "parts of general use" would not apply to parts or accessories which are not suitable for use solely or primarily with articles of Chapter Heading 87.08 which pertains to parts and accessories of motor vehicles of Chapter Headings 87.01 to 87.05. The Court was also categorical that in such a case the test that is to be applied is: 'whether the goods are suitable for use solely or primarily with articles of Chapter Headings 87.01 to 87.05"*

The Ratio of the above said judgment of the Hon'ble Supreme Court is squarely applicable in present case. Therefore, on the basis of legal position as laid down by Hon'ble Supreme Court in the above said cases, it is clear that the parts & accessories of motor vehicles (having unique part number) which have not been otherwise excluded and are specially/specifically designed to be used for/with a motor vehicle of particular model and make should be classified under chapter 87.

1.17 Therefore, the parts and accessories specially/specifically designed for motor vehicle for example: Motor vehicle radiators and part thereof, Hinges, Vehicle Parts, Door Handle, Handle Recess, Handle Strip, Interior Lights, Release Handel, Molding assembly for door/electric components, wire/cable & their assembly (cut to the length and equipped with end fittings), etc. are classified under CHT 8708.

1.18 In view of the above, it appears that the importer purposefully misclassified imported Door Handle & Hinges (76 consignments, valued at Rs. 12,58,757.11/- as detailed in the enclosed Annexure-B to the SCN and 2390 consignments, valued at Rs. 4,18,00,702/- as detailed in the enclosed Annexure-C to the SCN) and mentioned in applicable Sr. No. of Notification No. 01/2017-(Integrated Tax Rate) dated 28.06.2017 in the Bills of Entry which has resulted in short levied/ short paid duty of Rs. 1,72,476/- and Rs. 48,71,378/- in respect of Door Handle & Hinges respectively. The complete details are shown in enclosed Annexure-B and Annexure-C to the SCN.

1.19 In view of above, it is clear that the parts and accessories of motor vehicle (having unique part number) which have not been otherwise exclude and are specially/specifically designed to be used for/with a motor vehicle of particular model and make should be classified under chapter 87. Therefore, it is cleared that the imported goods under bills of entry detailed at Annexure-A, B, C and Annexure-E are misclassified under various chapter heads of Chapter 73, 83, 84, 85 and 87 to get the benefit of lower BCD and IGST which resulted into loss to exchequer and by this way of misclassifying the imported goods purposefully which are meant for specially/specifically used solely and principally for manufacture of motor vehicles falling under Chapter 8701 to 8705 have short paid the BCD and IGST duty and correctly chargeable to BCD @15% with IGST @ 28% under Sr. No. 170 of Schedule IV of Notification No. 01/2017dated 28.06.2017.

1.20 Based on the discussion mentioned in the above, it appears that the importer purposefully misclassified imported goods and mentioned in correct Sr. No. of Schedule III of Notification No. 01/2017-(Integrated Tax Rate) dated 28.06.2017 in order to pay/levy/lesser duties of Rs. 85,47,930/- The complete details of short paid/short levied Customs duties are shown in the enclosed Annexure-A, Annexure-B, Annexure-C and Annexure-E. The Annexure wise amount of duties are as under: -

TABLE-A

Annexure	Amount of Short Paid Duty/ Short Levied (in Rs.)
A	Rs. 34,896/-
B	Rs. 1,72,475.51/-
C	Rs. 48,71,378.08/-
E	Rs. 34,98,385.676
Total	Rs. 85,77,135.283

1.21 Accordingly, a Consultative Letter No. 809/2023-24/C1 dated 22.12.2023 and 13.02.2024 vide F. No. CADT/CIR/ADT/TBA/2362/2023-PBA-CIR-B3 was issued to the importer for payment of short levied duty along with applicable interest and penalty (for the Bills of Entry covered in period from 06.05.2020 to 14.12.2023).

1.22 As per the SCN, the extracts of the following relevant provisions of the Customs Act, 1962 for the time being in force relating to import of goods, valuation of goods, recovery of duties, liability of the goods to confiscation and the persons concerned to penalty for improper importation, were mentioned in the subject SCN. The same are not reproduced in this Order-in-Original for the sake of brevity:

- Section 17(1) – Assessment of duty
- Section 28 - Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.
- Section 28AA- Interest on delayed payment of duty
- Section 46 - Entry of goods on importation.
- Section 111 - Confiscation of improperly imported goods, etc.
- Section 112 - Penalty for improper importation of goods etc.
- Section 114A - Penalty for short-levy or non-levy of duty in certain cases.
- Section 114AA – Penalty for use of false and incorrect material
- Section 117 – Penalty for contravention, etc., not expressly mentioned.

1.23 Acts of Omission and Commission by the importer: "Self-Assessment" in Customs was implemented w.e.f. 8.4.2011 vide the Finance Act, 2011 by suitable changes to Sections 17, 18, 46 and 50 of the Customs Act, 1962 and importers/exporters are required to declare the correct description, value, classification, notification number etc. In other words, With the introduction of the Self-Assessment scheme, the onus is on the Importer to comply with the various laws,

determine their tax liability correctly and discharge the same. The Importers are required to declare the correct description, value, classification, notification number, if any, on the imported goods. Self-assessment is supported by section 17, 18 and 46 of the Customs Act, 1962 and the Bill of Entry (Electronic Declaration) Regulation, 2011. The Importer are squarely responsible for self-assessment of duty on imported goods and for filing of all declaration and related documents and confirming that these are true, correct and complete. Self-Assessment can result in assured facilitation for compliant Importers. However, delinquent Importers would face penal action on account of wrong self- assessment made with intent to evade duty or avoid compliance of conditions of notifications, Foreign Trade Policy or any other provisions under the Customs Act, 1962 or the allied Acts.

1.24 Further, it is also found that the Importer wilfully/deliberately claimed lower rate of BCD @5%, @7.5% and @10% with IGST @18% & @28% under various Serial Nos. of Schedule-III & Schedule-IV of the IGST levy Notification No. 01/2017 dated 28.06.2017 by classifying under wrong Chapter 73, 83, 84, 85 and 87 instead of the correct classification in Chapter 87 in various sub-heads which attracts BCD @15% with IGST @ 28% under Sr. No. 170 of Schedule IV of Notification No. 01/2017dated 28.06.2017 which resulted into short payment of customs duty. All the aforesaid facts, discussed above about the manner in which the Importer has misclassified and paid lower rate of BCD and IGST have come to light only after Audit of the import documents of the Importer. In view of the same, it appears that in-spite of having knowledge, the Importer wilfully mis-stated and suppressed these vital facts from the department and paid lower rate of BCD and IGST which was not admissible to them. Therefore, extended period of 5 years as provided under 28(4) of the Customs Act, 1962, is applicable for recovery of the short-paid Customs duty under Section 28(4) of the Customs Act, 1962, along with applicable interest thereon, under Section 28AA of the Customs Act, 1962. Therefore, for same reasons stated hereinabove, the Importer warrants action for recovery of duty under Section 28(4) of the Customs Act, 1962, and has also rendered themselves liable for penalty under Section 112 and/or 114A of the Customs Act, 1962.

1.25 From the foregoing Para, it appears that the Importer has not paid appropriate duty on the goods imported in respect of Bill of Entry as detailed in Annexure-A, Annexure-B, Annexure-C and Annexure-E to the SCN attached to this Notice. Consequently, differential duty amounting to **Rs. 85,77,135/- (Rupees Eighty-Five Lakh Seventy-Seven Thousand One Hundred and Thirty Five Only)** appears liable to be paid by the Importer in respect of Bill of Entry relating to the impugned goods as detailed in the Annexure-A, B, C and E to the SCN.

1.26 It, therefore, appeared that:

(i) Above mentioned goods were incorrectly levied to lower rate of BCD @5%, @7.5% and @10% with IGST @18% & @28% under various Serial nos. of Schedule-III & Schedule-IV of the IGST levy Notification No. 01/2017 dated 28.06.2017 instead of correct classification in Chapter 87 in various sub-heads which attracts BCD @15% with IGST @ 28% under Sr. No. 170 of Schedule IV of Notification No. 01/2017dated 28.06.2017. Consequently, differential duty amount of **Rs. 85,77,135/- (Rupees Eighty-Five Lakh Seventy-Seven Thousand One Hundred and Thirty Five Only)** along with applicable interest, if any, thereon appears recoverable under Section 28(4) of the Customs Act, 1962 from the Importer.

(ii) The intention of the Importer to evade duty thereon appears to have contravened the provisions of Section 46(4) and 46(4A) of the Customs Act, 1962, and which in turn appears to have rendered the subject goods liable to confiscation in terms of the provisions of Section 111(m) of the Customs Act, 1962 and also appears to have made the Importer liable for penal action in terms of the provisions of Section 112 and/or 114A of the Customs Act, 1962.

1.27. In view of the above, vide Show Cause Notice No. 1690/2024-25/COMMR/ CAC/JNCH, **M/s Mercedes-Benz India Private Limited (IEC-3194008714)** was hereby called upon to show cause to the Commissioner of Customs, NS-V, JNCH, Taluka - Uran, District - Raigad, Maharashtra – 400707, as to why:

(i) The declared CTH (classification) of goods mentioned Annexure-A, Annexure-B, Annexure-C and Annexure-E to this notice should not be rejected and the same should not be re-classified under heading 8708 in various sub-heads;

(ii) The levy of incorrect rate of BCD @5%, @7.5% and @10% and IGST @18% under various Serial nos. of Schedule-III & Schedule-IV of the IGST levy Notification No. 01/2017 dated 28.06.2017 on the impugned goods imported by them as detailed under Annexures as mentioned above, should not be rejected and be levied to the applicable rate of BCD @15% with IGST @ 28% under Sr. No. 170 of Schedule IV of Notification No. 01/2017dated 28.06.2017 IGST.

(iii) Differential duty amounting to **Rs. 85,77,135/- (Rupees Eighty-Five Lakh Seventy-Seven Thousand One Hundred and Thirty-Five Only)** (as quantified under Table-A and detailed under Annexure-A, Annexure B, Annexure C and Annexure-E attached to this notice) should not be demanded & recovered from them under Section 28(4) of the Customs Act, 1962 alongwith applicable interest thereon in terms of provisions of Section 28AA of the Customs Act, 1962.

(iv) The impugned goods covered under Bills of Entry as mentioned in Annexure-A, Annexure-B, Annexure-C and Annexure-E to this notice, valued at **Rs. 5,97,18,059/- (Five Crore Ninety-Seven Lakh Eighteen Thousand Fifty-Nine only)** should not be held liable for confiscation in terms of provisions of Section 111(m) read with provisions of Section 46(4) and Section 46(4A) of the Customs Act, 1962; and

(v) Penalty should not be imposed on the Importer under Section 112 and/or 114A,114AA and/or 117 of the Customs Act, 1962.

2. RECORD OF PERSONAL HEARINGS

2.1 There is only one Noticee in the subject SCN viz. **M/s Mercedes-Benz India Private Limited (IEC-3194008714)**. In compliance of provisions of Section 28(8) read with Section 122A of the Customs Act, 1962 and in terms of the principle of natural justice, the Noticee was granted opportunity of Personal Hearing (PH) on 11.12.2025, 19.12.2025 and 20.01.2026 and PH intimation letter was issued by speedpost. On 20.01.2026, Ms. Srinidhi Ganeshan, Advocate, Ms. Anaya Bhide, Advocate and Mr. Mahesh Gothe, Authorised Representative of the noticee attended the personal hearing before me on 20.01.2026 and reiterated the facts of written submission dated 16.10.2025 and further submitted that

2.2 They agree with the department's classification with respect to the goods detailed in Annexure- A & B of the SCN and accordingly have paid the differential duty along with interest for the same.

2.3 They submitted that for the goods detailed in Annexure-A to the SCN, IGST @18% was paid due to an inadvertent error as the subject HSN heading is covered in both Schedule-III and Schedule-IV of the IGST Act and as soon as they get to know about the issue, they have paid the entire differential duty along with applicable interest.

2.4 W.r.t. the goods having description "Propeller Shaft" they submitted that out of the total demand of Rs. 34.96 Lakhs, the demand of Rs. 31.49 Lakhs was raised vide SCN No. 695/2021-22/Gr. VB/CAC/JNCH dated 18.04.2022. Further, they submitted that they have already paid the said differential duty along with applicable interest.

2.5 W.r.t. the goods having description as "Hinges" they submitted that the noticee has correctly classified the goods as evident from HSN explanatory notes of heading 8302 which covers hinges of all type even if the same are designed for particular use such as motor vehicles/automobiles.

2.6 The extended period of limitation under section 28(4) is not invokable as there was no-mis-declaration by the noticee and requested to drop the proceedings against the noticee

3. WRITTEN SUBMISSION OF THE NOTICEE

The Noticee, M/s Mercedes-Benz India Private Limited (IEC-3194008714) vide their letter dated 16.10.2025 gave written reply to the subject SCN. Vide the above reply, they interalia submitted as under:

3.1 PRELIMINARY SUBMISSIONS

3.1.1 At the outset itself, the Noticee submit that the present SCN is ex-facie erroneous, perverse, illegal, and bad on facts and hence on this ground itself the present SCN is liable to be dropped. The SCN has failed to give any clear reason or evidence or literature to support its allegation that the imported goods are classifiable under Heading 8708. The SCN has not provided any explanation using independent technical material as to why the product in question falls under Heading 8708 but has simply put all the goods thereunder.

3.1.2 Further, the SCN has failed to consider the nature and characteristics of the imported goods and simply proposed to re-classify the same under Heading 8708, merely on the basis that the same are used in motor vehicles. Thus, on this ground itself, the present SCN is liable to be dropped.

3.2 THE NOTICEE HAVE DISCHARGED THE BCD AND IGST ON 'MOTOR VEHICLE PARTS'-(ANNEXURE-A), DOOR HANDLES-(ANNEXURE-B) AND 'PROPELLOR SHAFTS'- (ANNEXURE-E). THE SAME PROVES THAT THERE WAS NO MALAFIDE INTENTION TO EVADE DUTY, ON THEE PART OF THE NOTICEE

3.2.1 The Noticee had imported 'Motor vehicle parts (Annexure A) by classifying the same under Heading 8708 and paid IGST @18% in terms of Sr No. 452/452N of Notification No. 01/2017. However, the IGST was paid @18% due to inadvertent error and accordingly the Noticee later paid up the IGST @28% (Challan dated 28.05.2025 is enclosed as Annexure-3). The same proves that there was no malafide intention to evade duty as the Noticee paid up the correct IGST immediately on realizing the mistake.

3.2.2 Further, the Noticee had also imported Release Handles / door Handles as mentioned in Annexure B, by classifying the same under respective Headings of Chapter 39, 83, 85, 87 etc. and paid BCD @ 7.5%, 10%, 15%, 25% & IGST @18%.

3.2.3 However, as per the SCN issued the goods of Annexure B are classifiable as parts of motor vehicles under Heading 8708 and BCD is payable @15% & IGST is payable @28% in terms of Sr No. 170 of Schedule IV of Notification No. 01/2017 Even though the Noticee does not agree with the proposed classification of these goods of Annexure B, under the heading 8708 as suggested by the department, the Noticee paid up the differential duty and IGST (Combined

Challan dated 28.05.2025, for Anx-A & Anx B is enclosed as Annexure-3) to avoid further litigation.

3.2.4 The Noticee had classified the goods under a bonafide belief. However, on realizing the error, immediately paid up the duty. Thus, there is no misdeclaration or mal intention on the part of the Noticee to evade duty. Had it been so the Noticee would have not accepted their mistake.

3.3 THE DEMAND OF DIFFERENTIAL DUTY WITH RESPECT TO THE PROPELLER SHAFTS (ANNEXURE E) AMOUNTS TO DUPLICATION OF DEMAND

3.3.1 In the para 14 of the SCN Dated 20.02.2025 the department mentions that the importer has cleared the Propeller Shafts / Drive Shafts which were leviable to Basic Customs duty @ 15%, SWS @ 10% and IGST @ 28% whereas the Propeller Shafts as mentioned in the Annexure E of the SCN were cleared by classifying them under Heading 8483 & by paying the Basic Customs duty @ 7.5%, SWS @ 10% and IGST @ 18%. It further mentions that similar Items as mentioned the Annexure F, were classified by the importer under 8708 and were cleared in the past by paying Basic Customs duty @ 15 %, SWS @ 10% and IGST @ 28%. As per the department, this act shows that the importer deliberately misclassified the items to evade the Customs duty.

3.3.2 The annexure E of the SCN mentions the list of Bills of Entry and the computation where Propeller shafts /Drive shafts having Assessable Value of Rs. 1,63,59,063/- were cleared under CTH 8483 by the notice during 01.02.2019 to 14.12.2023 and differential duty of Rs. 34,98,385.68/- is demanded on the Propeller Shafts.

3.3.3 It is identified by the Noticee that for duty demand raised for the Propeller Shafts / Drive Shafts classified under 8483 and cleared against the Bills of Entry as mentioned in Annexure E of the SCN, the Department had already issued SCN No.695/2021-22 Gr. VB/ CAC/JNCH Dated 18.04.2022, whereby differential duty amounting to Rs. 31,49,229/- along with applicable interest was demanded from the Noticee in the year 2022.

3.3.4 Against the said SCN No. 695/2021-22 Gr. VB/ CAC/JNCH Dated 18.04.2022 issued for the Propeller Shafts, the Noticee has already paid the differential duty amounting to Rs. 31,49,229/- along with applicable interest of Rs. 11,23,040/- vide Challan No. 397 dated 31.03.2023 at JNCH. Copy of the Challan dated 31.03.2023 evidencing such payment is enclosed as Annexure 5

3.3.5 Subsequent to making payment towards the above-mentioned dues, the Noticee had informed the Department vide letter dated 28.04.2023 about such payment of the differential duty with applicable interest, and requested to the Department to take the payment made by the Noticee on record and close the proceedings against the said SCN. A copy of the letter dated 28.04.2023 of the Noticee is enclosed as Annexure 6.

3.3.6 However, after payment of differential duty by the Noticee, the Noticee was issued with Order-in-Original No. 16/2023-24/ADC/NS-V/CAC/JNCH Dated 06.04.2023 whereby the Ld. Authority imposed Redemption fine of Rs. 10,00,000 u/s 125 (1) of the Customs Act and Penalty of Rs. 31,49,229/- u/s 114 A of the Customs Act, 1962. It is submitted that the Noticee has already filed an Appeal against the said Order which is pending adjudication. A copy of the OIO 16/2023-24/ADC/NS-V/CAC/JNCH dated 06.04.2023 is enclosed as Annexure 7

3.3.7 The Noticee has already made the entire payment of the differential duty Rs.31,49,229/- along with the interest against the SCN dated 18.04.2022. However, it is evident that the department has not updated its records of the payment made by the Noticee and demanded the differential duty twice by issuing two separate SCNs over the years (first SCN in the year 2022

and the second in the year 2025) for the same goods cleared under the same Bills of Entry by the Noticee. (Propeller Shafts of Annexure E)

3.3.8 The duty demand of Rs.31,49,229/- as per Annexure E of SCN 1690 dated 20.02.2025 is totally invalid as the importer had already paid the differential duty Rs.31,49,229/- on the Propeller Shafts/ Drive Shafts imported against the Bills of Entry mentioned in the Annexure E of the said SCN. Further, the same demand is already subject matter of another adjudication pending before the Commissioner (Appeals). Accordingly, the demand of differential duty amounting to Rs. Rs.31,49,229/- is liable to be dropped. C.10 For the balance duty demand of Rs.3,49,157, which is payable on the remaining Bill of Entry as mentioned in the Annexure E of the SCN 1690 dated 20.02.2025, the Noticee has made the payment of Rs. 3,49,157 /- towards the differential duty along with the interest vide challan No. 2129568546 dated 29.09.2025. A copy of the duty paid challan dated 29.09.2025 is enclosed as Annexure 8

3.3.9 As the payment of the differential duty along with the applicable interest has already been made by the Noticee as explained above the demand raised against the Annexure E of SCN 1690 dated 20.02.2025 is treated as closed as no further dues are pending from the Noticee. Copy of the Annexure E detailing the Duty paid against SCN 195 dated 18.04.2022 and the Balance Differential duty paid by the importer vide Challan No. 2129568546 dated 29- 09-2025 is enclosed as Annexure E

3.4 THE IMPORTED HINGES ARE RIGHTLY CLASSIFIABLE UNDER HEADING 8302 AND IGST @18% HAS ALSO BEEN CORRECTLY DISCHARGED ON THE SAME

3.4.1 The Hinges imported are rightly classified by the Noticee under Heading 8302 and specifically under Tariff Item 83021090. The goods imported into India are to be classified appropriately under the applicable Heading of the First Schedule to the Customs Tariff Act, 1975 ('Tariff"). The Tariff is aligned, up to the 6-digit level, with the Harmonized System of Nomenclature (hereinafter referred to as "HSN") issued by the World Customs Organization (hereinafter referred to as "WCO"). The HSN Explanatory Notes released by the WCO aid in the interpretation of the Headings of the Tariff and may be used as a safe guide for the same. It has been held by the Supreme Court in the case of *Collector of Customs, Bombay v. Business Forms Ltd. Thr. O.L., 2002 (142) E.L.T. 18 (S.C.).*

3.4.2 From a perusal of heading 8302 and explanatory notes, it is evident that Heading 8302 covers:

i. Base metal accessory fittings and mountings
ii. Such fittings and mountings are covered under Heading 8302, even if the same are designed for particular use such as motor vehicles/automobiles
iii. Hinges of all types

3.4.3 In the present case, the Noticee have imported Hinges, and the same are made of base metal i.e., Alloy Steel. It is clear from the HSN Explanatory notes that the heading 8302 specifically covers hinges of all types, even those which are used in motor vehicles. In this regard, various courts in the following cases, have also held that Hinges, even if meant for motor vehicles, are classifiable under Heading 8302:

i. Belmaks Pvt Ltd Vs Commissioner of C.Ex, Delhi - 2003 (158) ELT 295 (Tri-Del)
ii. Cast Metal Industries (P) Ltd Vs Commissioner of C. Ex, Kolkata - 2008 (221) ELT 72 (Tri-Kolkata)
iii. Ahuza & Co Vs Commissioner of C.Ex, Kolkata - 2009 (248) ELT 900 (Tri-Kolkata)

3.4.4 In the present case, the imported Hinges, are made of Alloy Steel i.e., base metal, and same are squarely covered under Heading 8302 as explained above. Further, the Noticee have

discharged IGST @18% against import of Hinges (in terms of Sr No. 303A of Schedule-III of Notification No. 01/2017).

3.4.5 As already mentioned above, the Noticee have classified the goods namely Hinges under Heading 8302 which covers Base metal mountings, fittings and similar articles. Further, Hinges are specifically covered under Sub-heading 830210. Thus, as the hinges are rightly classifiable under Heading 8302, IGST has been rightly discharged @18% in terms of Sr No. 303A which covers all such base metal mountings and fittings.

3.5 THE IMPORTED GOODS ARE NOT CLASSIFIABLE UNDER TARIFF ITEM 87089900.

3.5.1 The SCN has proposed re-classification of the all the imported goods under Heading 8708 on the basis that they are part of motor cars and thus should be classified as parts of motor vehicles.

3.5.2 From a perusal of customs tariff heading 8708 and HSN Explanatory Notes to Section XVII of the tariff, it is evident that all three conditions have to be satisfied for the imported goods to fall under the ambit of parts or accessories under Heading 8708, i.e. they must not be excluded by Note 2 of Section XVII, they must be suitable for use solely or principally with the articles of Chapter 86 to 88, and they must not be more specifically included elsewhere.

3.5.3 It is a well-established principle that all the conditions have to be satisfied to merit classification under Heading 8708. Reliance for the same is placed on the case of **Suzuki Motors Gujarat Private Limited v. Commissioner of Customs, 2022 (6) TMI 1089**. In the said case, the Hon'ble CESTAT, Ahmedabad held that for classification of goods under Heading 8708 i.e., parts and accessories of motor vehicles, the conditions laid down under the HSN Explanatory Notes to Section XVII, are required to be satisfied.

3.5.4 In the present case, it is submitted that none of the conditions are satisfied in the present case as enumerated below:

3.5.4.1 Condition (a)

It is submitted that with respect to condition (a), i.e. the imported goods must not be excluded by the terms of Note 2 to Section XVII, in the present case the goods are specifically excluded from the ambit of Section XVII by virtue of Note 2.

3.5.4.2 Condition (b)

With respect to condition (b), i.e. the imported goods must be suitable for use solely or principally with the articles of Chapter 86 to 88. It is submitted that the imported goods are capable of being used in various industries and products and not suitable for use solely or principally with just motor vehicles.

3.5.4.3 Condition (c)

With respect to condition (c), i.e. the imported goods must not be more specifically included elsewhere in the Nomenclature. In this regard, as already elaborated in Grounds above, the imported goods i.e., Hinges are specifically covered under Heading 8302.

3.5.4.4 It is submitted that Rule 3(a) of the General Rules of Interpretation ('GIR') of the First Schedule of the Import Tariff it has laid down that the more specific description will be preferred to a generic one. It is thus submitted that Heading 8708 is general residuary entry for parts of vehicles whereas Heading 8302 is a specific entry squarely covering the imported goods. Reliance is placed by the Company on the decision of the Hon'ble Tribunal in the case of **Shiroki Auto Components India Pvt. Ltd. v. Commissioner of Central Excise & ST, Ahmedabad 2020 (7) TMI 706 - CESTAT Ahmedabad**.

3.5.5 It is submitted that condition (c) that the imported goods shall not be included elsewhere in the nomenclature is also not satisfied. Thus, the imported goods do not merit classification the Heading 8708. The classification of goods under Heading 8708 was recently analysed by the Hon'ble Supreme Court in the case of **CCE v. Uniproducts Limited reported as 2020 (372) E.L.T. 465 (S.C.)**. The Hon'ble Supreme Court of India in this case has affirmed the primacy of the three layer test given in Notes 2 and 3 of Section XVII.

3.5.6 The HSN Explanatory Notes to Heading 8302 specifically includes Hinges even if when they are for use in motor vehicles/ Automobiles. Thus, just because the products in question are for use in motor vehicles, that is not a sufficient reason to classify the imported goods under Heading 8708. In the present case, the SCN has failed to establish as to how the conditions (a) (b) and (c) are being cumulatively satisfied to merit classification of the imported goods under Heading 8708. In view of the above submissions, it is clear that the imported goods i.e. Hinges are not classifiable under Tariff Item 87089900.

3.6 HEADING 8708 IS A RESIDUARY ENTRY. THEREFORE, CLASSIFYING THE GOODS IN QUESTION UNDER A RESIDUARY ENTRY OVER SPECIFIC ENTRIES IS INCORRECT AND AGAINST THE LAW.

3.6.1 At the outset, it is submitted that the Hinges are excluded vide Note 2 to Section XVII of Explanatory Notes from Heading 8708, for the reasons set out in grounds above. In this regard, General Interpretative Rule (GIR) 3 is relevant as the same provides that heading which provides most specific description shall be preferred over general heading.

3.6.2 Thus, by application of Rule 3, as Heading 8302 is more specific to the imported goods, the same shall be preferred over Heading 8708 which is the one with more general description. The Tariff Item 87089900 is a residuary entry and is to be considered only if there is no specific entry available for classifying an item. It is submitted that Tariff Item 87089900 will not come into play for the classification of the imported goods, until Heading 8302 is ruled out completely, as Tariff Item 87089900 it is a residuary entry.

3.6.3 Without prejudice, even if both headings are held to be applicable, even then Chapter 83 will prevail. This is because the Hinges are specifically included under a specific heading 8302, whereas 870899 is general and only refers to "other parts". Reference in this regard is made to the case of **Mauri Yeast India Pvt. Ltd. Vs. State of UP - 2008 (225) ELT 321 (S.C.)** and **Dunlop India Ltd. & Madras Rubber Factory Vs. UOI 1983 (13) ELT 1566**.

3.6.4 Thus, it is submitted that the imported goods are more specifically covered by the description under Heading 8302. Further, as mentioned above, Heading 8708 is only residuary Heading, and classification under this ought to be resorted to only if the goods a sought to be classified doesn't specifically fall under any other Heading.

3.7 CLASSIFICATION OF THE GOODS CANNOT BE DETERMINED ON THE BASIS OF THEIR END USE.

3.7.1 It is submitted that it is a settled law that the goods are to be classified in the state in which the importation has taken place. The subsequent use of the goods cannot be determinative factor for classification. There is no requirement under law, i.e., either under any Section note or Chapter note, to classify the imported goods as per their end use. In the absence of any such requirement in the tariff itself, such a condition cannot be introduced by the Revenue. Wherever legislature intended to grant benefit based upon the actual end use, proper guidelines stand prescribed.

3.7.2 It has been demonstrated in the instant case that at the time of importation, the goods in question are Hinges. The fact that these will be used further in the manufacture of automobiles cannot be a determinative factor for the classification of goods in question. The impugned goods qualify to be articles in itself. Reliance in this regard is placed on the following cases:

(i) Towa Ribbons Ltd. Vs Collector of Customs 1993 (66) ELT 320
(iii) Dunlop India Ltd. vs. UOI - 1983 (13) E.L.T. 1566 (S.C.)
(iv) Mehar Healthcare Corporation vs. CC - 2023-TIOL-277-CESTAT-DEL
(v) Pololight Industries Limited v. Commissioner of Central Excise, Vapi, 2011- (270) ELT 235 (Tri.-Ahmd).
(vi) Eminence Equipments Pvt. Ltd. vs Commissioner of C. Ex., Pune-I - 2015 (330) E.L.T. 344 (Tri-Mum).

Hence in light of the above it is submitted that the classification of the imported goods under Heading 8708, is not sustainable and the Impugned Order is liable to be set aside.

3.8 THE DEPARTMENT HAS NOT ADDUCED ANY EVIDENCE TO PROVE THAT THE CLASSIFICATION ADOPTED FOR THE IMPORTED GOODS IS INCORRECT AND THE SAME IS RIGHTLY CLASSIFIABLE UNDER HEADING 8708.

3.8.1 The Noticee submit that the Department has sought to change the classification of the impugned goods to Heading 8708. However, the Department has not adduced any evidence to prove that the imported goods deserve classification under Heading 8708. In this regard it is submitted that it is a well settled position of law that when the customs authorities propose a change in classification, the onus is on them to produce evidence to prove their classification.

3.8.2 Reliance in this regard is placed on the following cases:

(i) Hindustan Ferrodo Ltd. v. CCE, Bombay [1997 (89) E.L.T. 16 (S.C.)
(ii) Commissioner of C. Ex., Calcutta-I vs. Bata India Limited 1998 (100) E.L.T. 179 (Tribunal)
(iii) Standard Metal Works (P) Ltd. vs. Commissioner of C. Ex., Mumbai 2004 (167) E.L.T. 297 (Tri. - Mumbai)
(iv) M.P. Dyechem Industries vs. Commissioner of Central Excise, Bhopal 2002 (139) E.L.T. 656 (Tri. - Del.) approved in 2002 (144) E.L.T. A199 (S.C.).
(v) Bhilai Engineering Corp. Ltd. Commissioner of C. EX., Raipur 2016 (344) E.L.T. 649 (Tri. - Del).

3.8.3 The Noticee submit that the Department has sought to change the classification of the imported goods to Heading 8708. However, the Department has proposed the said change blindly by putting all the products under one blanket of Heading 8708. No evidence has been adduced for the same. The Noticee humbly submit that burden of proof lies upon the party, whether plaintiff or defendant, who substantially asserts the affirmative of the issue. This rule, derived from the maxim of Roman Law, *ei qui affirmat, non ei qui negat, incumbit probatio,* is adopted partly because it is but just that he who invokes the aid of the law should be the first to prove his case; and partly because, in the nature of things, a negative is more difficult to establish than an affirmative.

3.8.4 Reliance in this regard is placed on the following cases:

(i) UOI Vs. Garware Nylons Limited - 1996 (87) ELT 12 (SC),
(ii) Hindustan Feredo Ltd. v. Collector of Central Excise, Bombay reported at 1997 (89) E.L.T. 16 (S.C.).

3.8.5 Thus, the Noticee submit that since the department has not produced any evidence to prove that the classification of the impugned goods is under Heading 8708. The Impugned Order is liable to be set aside on this ground alone.

3.9 NO WILFFUL MIS-DECLARATION/ MIS-CLASSIFICATION HAS BEEN MADE BY THE NOTICEE. THUS, NO DUTY CAN BE RECOVERED UNDER SECTION 28 (4) OF THE ACT.

3.9.1 The SCN has raised a demand of differential duty of Rs. 85,77,135/- for the imported goods by invoking the provisions of Section 28(4) of the Customs Act, 1962. As already mentioned above, the Noticee have already discharged differential duty in respect of 'Motor vehicle parts', 'Door Handles / Release Handles' and 'Propellor shafts'. Thus, amount of Rs. 37,05,848/- ought to be excluded from the calculation of differential duty payable by the noticee.

3.9.2 In any case, Section 28(1) of the Customs Act mandates that the proper officer shall serve notice for any short levy/non-levy within two years from the relevant date. Therefore, any demand of duty made in the present matter, in respect of imports beyond the period of two years from the relevant date, is barred by limitation. However, Section 28(4) of the Customs Act provides for invocation of extended period of five years for raising duty demand in cases where the duty has not been levied or has been short-levied, etc. by reason of collusion or any willful misstatement or suppression of facts.

3.9.3 The Noticee have been issued with the impugned SCN dated 20.02.2025. The imports in question in the present matter have been made during the period 20.02.2020 to 11.12.2023. Therefore, the demand raised in respect of imports made after 20.02.2023 alone will be within the normal period of limitation. In other words, only the demand of Rs. 7,52,565/- will be within limitation and the entire demand of Rs. 85,77,135/- is barred by limitation. It is submitted that the extended period of limitation under Section 28(4) can be invoked only in a case where the ingredient of suppression of facts, willful misstatement, etc. with intent to evade payment of duty is established beyond reasonable doubt.

3.9.4 Based upon the above, it is submitted that to invoke the extended period of limitation under Section 28(4) of the Customs Act, it has to be proved that there was a conscious or intentional act of collusion, willful misstatement, or suppression of fact, on the part of the importer. Merely having imported in self-assessment regime is not enough. The intention or deliberate attempt, on the part of the importer, to evade duty has to be proved beyond reasonable doubt to demand duty. No such proof had been adduced in the SCN.

3.9.5 Goods have been correctly described in the Bills of Entry. Further all details have been rightly disclosed and therefore, allegations of misrepresentation or suppression are baseless.

3.9.5.1 On import, the imported products were correctly declared by the Noticee. This fact is also evident on analysis of the Bill of Entry. Therefore, it is not a case wherein the products imported by the Noticee is different from what is declared in the Bills of Entry. Therefore, there is no willful misstatement or misdeclaration of facts on part of the Noticee. Various courts in the following cases, have interpreted the true intention and meaning behind the words and phrases 'Willful misstatement, collusion, and suppression of facts' and the same cannot be alleged in cases such as adopting a different classification:

a. Sirthai Supreware India Ltd. v. Commr of Customs, Nhava Sheva-III, 2020 (371) ELT 324 (Tri.-Mumbai);

b. Lotus Beauty Care Products Pvt Ltd v. Commissioner of Customs, 2020-TIOL1664-CESTAT-MUM;

c. Vesuvius India Ltd., v. Commissioner of Cus., Visakapatnam, 2019 (370) ELT 1134 (Tri Hyd);

d. Centaur Pharmaceuticals Pvt. Ltd. v. Commissioner of Customs, 2023 (6) TMI 74 - CESTAT MUMBAI.

3.9.5.2 Thus, no extended period of limitation can be invoked in the present case.

3.9.6 Extended period cannot be invoked when the Subject Goods had been examined

3.9.6.1 The consignments of the Noticee have been examined by Customs and clearance has been permitted, both before and after commencement of the dispute. Copies of the Bills of Entries (Six in Nos) where goods were examined prior to clearance have been enclosed collectively as Annexure-9 above.

3.9.6.2 It is a settled legal position that extended period of limitation cannot be invoked when the assessee had successfully demonstrated that it had been importing the Subject Goods for a long time and the customs authorities had been allowing the same after examination even after the introduction of self-assessment regime. In this regard, reliance is placed on the order KMS Medisurgi Pvt. Ltd. vs. Commissioner of Cus. (Import), Mumbai, 2022 (382) E.L.T. 394 (Tri.-Mumbai) and 3M India Ltd. vs. Commissioner of Customs, Bangalore-I1, 2020 (373) E.L.T. 385 (Tri.-Bang.) [Affirmed in 2021 (376) E.L.T. A106 (Supreme Court)].

3.9.6.3 Thus, it is clear that the Noticee classification has been examined and accepted by the Department also. This being the case, the Noticee cannot be alleged to have wilfully misclassified the imported goods with intention to evade payment of duty. Therefore, the extended period of limitation is not invokable.

3.9.7 Misdeclaration cannot be alleged only on the ground that imports were made during the self-assessment regime.

3.9.7.1 The Noticee submit that misdeclaration/suppression cannot be alleged merely because imports have been made in the self-assessment regime. Reliance in this regard is placed on the following cases enumerated in the table below:

(i) M/s Signet Chemical Pvt. Ltd. Vs. Commissioner of Customs, NS-I, Mumbai-II and Commissioner of Customs (Imp), Mumbai 2020(10) TMI 289- CESTAT Mumbai.
(ii) Challenger Cargo Carriers Vs. Principal CC 222(12) TMI 621- CESTAT New Delhi.
(iii) M/s. Midas Fertchem Impex Pvt. Ltd., Ms. Rashmi Jain, Director, Shri Manish Jain, Director, M/s Midas Import Coporation, Versus Principal Commissioner of Customs, Air Cargo Complex (Import) New Delhi, 2023 (1) TMI 998- CESTAT, New Delhi.

3.9.8 Claiming a particular classification does not amount to mis-declaration/mis-classification

3.9.8.1 It is a settled law that claim to a classification is a matter of bona-fide belief and in such cases, extended period of limitation is not invokable. Reliance is placed on the following decision:

(i) Densons Pultretaknik Vs CCE reported in 2003 (155) ELT 211 (SC)
(ii) Northern Plastic Vs. CC – 1998 (101) ELT 549 (SC).
(iii) Maruti Udyog Ltd. vs. Commissioner of C. Ex., Delhi, 2002 (147) ELT 881 (Tri. - Del.).

3.9.9 Extended period not invokable in cases involving interpretation of law

3.9.9.1 Without prejudice to the submissions made in the foregoing paragraphs, it is submitted that the present case involves interpretations of the tariff entries of the Customs Tariff and IGST Notification. The Noticee relies on the following judgments in support of the contention that suppression or wilful mis-statement cannot be alleged when the matter involves interpretation of legal provisions:

(i) Coastal Energy Pvt. Ltd. v. Commr. of Cus., C. Ex. & S.T., Guntur, 2014 (310) E.L.T. 97 (Tri. - Bang.), maintained in 2016 (338) ELT A159 (Supreme Court) and affirmed in 2016 (340) ELT A204 (Supreme Court)
(ii) CRI Limited v. Commr. of Customs (Airport & Administration), Kolkata, 2020 (12) TMI 805 - CESTAT Kolkata;

3.9.9.2 In view of the above, it is submitted that the allegations in the SCN that the Noticee have deliberately mis declared the imported with intention to evade payment of duty is totally incorrect. Further, it is clear that duty cannot be demanded under Section 28(4) of the Act as this is not a case of wilful misdeclaration/mis-classification etc.

3.10 NO INTEREST UNDER SECTION 28AA OF THE CUSTOMS ACT, 1962 WHEN DEMAND ITSELF IS NOT SUSTAINABLE.

3.10.1 The SCN has also proposed to impose interest under Section 28AA of the Customs Act, 1962. In this regard, it is respectfully submitted that the question of levy of interest arises only if the demand of duty is sustainable. As submitted in the foregoing paragraphs, the demand of duty is not sustainable, therefore, the question of levy of any interest under Section 28AA on such duty would not arise. The Hon'ble Supreme Court of India in the case of **Prathibha Processors Vs. UOI - 1996 (88) ELT 12 (SC)**, has held that when the principal amount (duty) is not payable due to exemption, there is no occasion or basis to levy any interest, either.

3.11 THE IMPORTED PRODUCTS ARE NOT LIABLE FOR CONFISCATION UNDER SECTION 111(m) OF THE CUSTOMS ACT.

3.11.1 The section 111(m) provides for confiscation of any goods, which do not correspond in respect of value or in any other particular with the entry made under the Act. It is submitted that for the reasons given in the foregoing paragraphs, there was no suppression or misstatement or mis-declaration either in respect of value or in any other particular with the entry made under the Customs Act and therefore, the provisions of the said section are not attracted to the case of the Noticee. Reliance is placed on the decision of Alstom Transport Ltd. Vs Commissioner Of Customs, Chennai, 2007 (220) E.L.T. 312 (Tri. - Chennai).

3.11.2 It is therefore, respectfully submitted that the goods in question are not liable to confiscation under the provisions of Section 111 of the Customs Act, 1962 merely for claiming wrong classification by the Noticee.

3.11.3 Once goods are cleared for home consumption, Section 111 does not apply

3.11.3.1 Without prejudice to the above, it is respectfully submitted that Section 111 provides for liability for confiscation of the improperly imported products. It is, therefore, respectfully submitted that only imported products can be confiscated under Section 111. 'Imported products' have been defined under Section 2(25). Reliance is placed on the following decisions

(i) Bussa Overseas & Properties P. Ltd. vs. C.L. Mahar, Assistant Commissioner of Customs, Bombay [2004 (163) ELT 304 (Bom.)
(ii) Southern Enterprises vs. Commissioner of Customs, 2005 (186) ELT 324

3.11.3.2 Even in the facts of the present case, the goods have been cleared for home consumption, and therefore, the question of confiscation under the provisions of Section 111 does not arise. In view of the aforesaid submissions, it is submitted that the goods in question are not liable to confiscation under the provisions of Section 111(m) of the Act. Hence, the proposal for confiscation of the imported products in the impugned SCN is incorrect and liable to be dropped.

3.12 PENALTY CANNOT BE IMPOSED UNDER SECTION 112 OF THE CUSTOMS ACT, 1962.

3.12.1 The present SCN proposes to impose penalty on the Noticee under Section 112 of the Act on the ground the Noticee wilfully claimed lower rate of duty. As submitted in the foregoing paragraphs, the demand of duty is not sustainable, therefore, the question of imposition of penalty under Section 112(a) would also not arise. Please refer to the decisions 33 of the Hon'ble Supreme Court in CCE Vs. H.M.M. Limited - 1995 (76) ELT 497 (SC) and CCE Vs. Balakrishna Industries - 2006 (201) ELT 325 (SC), the Hon'ble Supreme Court held that penalty is not imposable when differential duty is not payable.

3.12.2 The Noticee submit that penalty under Section 112 of the Customs Act, 1962 is leviable only if the goods are liable for confiscation under Section 111. The invocation of this provision requires presence of mens rea, knowledge of the person concerned that the goods are liable to confiscation. For the reasons stated in the foregoing submissions, the Noticee did not do anything to render the goods liable for confiscation and therefore penalty under Section 112(a) of the Act is not imposable. Section 112 (a) is invokable if any of the following two conditions are satisfied. Firstly, a person does or omits to do any act which render the goods liable for confiscation or secondly, if a person abets the doing or omission of such an act.

3.12.2.1 Reliance in support of this proposition is placed on the following:

a) Sona Casting Vs. CC - 2006 (205) ELT 249 (Tri.-Del.); and
b) Eastern Silk Industries Vs. CC – 2007 (207) ELT 714 (Tri.- Kol)
c) Sij Electronics Comp Tech Vs. CC - 2001 (129) ELT 528 (Tri)

3.12.3 Moreover, the Noticee have already paid the IGST in respect of 'Motor vehicle parts', Door Handles / Release Handles and propellor shafts, which shows that there was no malafide intention. Further, the Noticee have been importing the Hinges very same goods since 1997, and the customs authorities have always been aware about the classification adopted by the Noticee. Therefore, no intention to evade the payment of duty can be attributed to the Noticee.

3.12.4 The Noticee submit that the present case also involves interpreting the relevant tariff entries for correct classification of the goods in dispute. Therefore, no penalty is imposable on the Noticee. Reliance in this regard is placed on the decision of Hon'ble Tribunal in Vadilal Industries Vs. CCE Ahmedabad - 2007 (213) ELT 157 (Tri. - Ahmd.). In view of above, penalty under Section 112 of the Act, is not imposable on the Noticee and the present SCN is liable to be dropped forthwith.

3.13 NO PENALTY CAN BE IMPOSED ON THE NOTICEE UNDER SECTION 114A OF THE ACT

3.13.1 The Impugned SCN also proposes to impose a penalty under Section 114A of the Act on the ground that duty has been short paid. It is submitted that penalty under Section 114A can only be imposed in cases where duty has not been paid or short/part paid because of collusion or willful misstatement or suppression of facts. As laid down in CC vs. Videomax Electronics, [2011 (264) ELT 0466 (Tri.-Bom)], if the extended period of limitation under Section 28 is not invokable, penalty under Section 114A of the Customs Act, 1962 cannot be imposed. In the present case, the Noticee have rightly classified the imported goods under their respective headings and also correctly declared and described the same. That being the case, penalty cannot be imposed on the Noticee.

3.13.2 Penalty cannot-be imposed when the Noticee has acted under bonafide belief

3.13.2.1 Without prejudice to the above, the Noticee submit that penalty cannot be ordinarily imposed unless the assessee has deliberately acted in defiance of law. In this regard, reliance is placed on the following decisions:

(i) Hindustan Steel Ltd. Vs. State of Orissa - 1978 (2) ELT (J159).

(ii) Commissioner of Central Excise, Chandigarh v. Pepsi Foods Ltd. – [2010 (260) ELT 481 (SC)].

3.13.2.2 The ratio of the aforesaid decisions are squarely applicable to the facts of the present case inasmuch as the Noticee have clearly established in the foregoing grounds that they acted in bona fide manner and within the four corners of law. In the absence of any malafide on the part of the Noticee, no penalty is imposable. Therefore, it is submitted that the proposal to impose penalty under Section 114A of the Act is incorrect and not sustainable in law.

3.14 PENALTY IS NOT IMPOSABLE IN THE PRESENT CASE UNDER SECTION 114AA OF THE CUSTOMS ACT, 1962.

3.14.1 Without prejudice to the submissions in the foregoing paragraphs, the Noticee submit that the liability to penalty under Section 114AA of the Customs Act, 1962 can arise only when 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. As already submitted, the Noticee were in no way concerned in making of any false statement or document or declaration before the Customs authorities. Therefore, penalty cannot be imposed under this Section on the Noticee.

3.14.2 In other words, penalty under Section 114AA is imposable only in those situations where exports benefits are claimed without exporting the goods and by presenting forged documents. In support of this argument reliance is placed on the Twenty Seventh Report of the Standing Committee of Finance wherein insertion of section 114AA was discussed at para 62.

3.14.3 The perusal of the aforesaid report makes it clear that section 114AA was inserted to penalize in circumstances where export benefits are availed without exporting any goods. According to the legislatures, Section 114AA of the Act provided penalty for improper exportation of goods and it was not covering situations of import of goods. Therefore, penalty under section 114AA is imposable only in those circumstances where export benefits are availed without exporting any goods.

3.14.4 Even if, by any stretch of imagination, Section 114AA is held to cover imports as well, the Noticee submits that this Section would only apply to those grave and fraudulent misdemeanors where deliberate offences are committed by the importers with a view to evade customs duty. In the present case, the imports were all bona fide and all proper declarations were made. The Noticee are not involved in any manipulation or fraudulent activities and the Noticee have not raised any false invoices or made any wilful mis-statement. Therefore, penalty under Section 114AA is not imposable on the Noticee. In light of the above submissions, the present SCN is liable to be dropped forthwith.

3.15 NO PENALTY IS IMPOSABLE ON THE NOTICEE UNDER SECTION 117 OF THE CUSTOMS ACT, 1962.

3.15.1 It is the submission of the Noticee that no penalty is imposable on the Noticee under Section 117 of the Customs Act, 1962 in the present case. Penalty under Section 117 of the Customs Act can be imposed on a person who-

(a) Contravenes any provisions of this Act; or

(b) Abets any such contravention; or

(c) Who fails to comply with any provision of this Act for which penalty elsewhere is not provided for.

3.15.2 At the outset itself, it is to be pointed out that the Noticee have not contravened any provision of the Customs Act and no case in the Impugned SCN has been made as against the Noticee in that regard. Furthermore, Section 117 is specifically provided for in order to impose penalty for acts or omissions which are not penalized elsewhere, i.e. in effect it is a residuary penal provision. When the SCN itself has invoked Section112, the invocation of Section 117 is illegal to say the least.

3.15.3 As stated repeatedly above, the Noticee have not violated any provision of the Act. The SCN too does not say which provision has been violated. The Noticee have rightly and correctly declared the goods and also paid up the differential duty wherever necessary which shows the bonafide intent. There is no reason at all to doubt the same. Thus, Section 117 is not invocable. Further, it is also submitted that the Noticee have not abetted any offence. Reliance is placed on Bhola Singh v Collector of Customs (Preventive), 1993 (66) E.L.T. 105 (Tribunal), where the court held that for imposing penalty under Section 117 for abetment, it must be proven that the assessee had knowledge of the wrong doing. Therefore, the Noticee submit hat the proposal to impose penalty under section 117 of the Customs Act, 1962 in the present facts is unsustainable

3.16 THE DEMAND OF IGST MUST BE SET ASIDE AS THE DEMAND IS REVENUE NEUTRAL

3.16.1 The Noticee submit that the duty demand attributable to IGST must be set aside as the same is revenue neutral, as the Noticee are entitled to avail credit of the IGST paid. P.2. Reliance is placed on the following decisions where it was held that demand raised for differential duty is a clear revenue neutral exercise, then such demand is not sustainable:

i. CCE & C (Appeals) Vs. Narayan Polyplast - [2005 (179) ELT 20 (SC)]
ii. CCE Vs. Narmada Chematur Pharmaceuticals - [2005 (179) ELT 276 (SC)]
iii. CCE Vs. Textile Corporation - [2008 (231) ELT 195 (SC)]
iv. CCE Vs. Jamshedpur Beverages - [2007 (214) ELT 321 (SC)]
v. CCE Vs. Coca Cola India (Pvt.) Ltd - [2007 (213) ELT 490 (SC)]
vi. Commissioner v. Sterlite Industries (India) Ltd. - [2013 (297) E.L.T. A150 (Bom.)]
vii. Rapti Commission Agency Vs. State of U.P [(2006) 6 SCC 522]
viii CCE Vs. Textile Corporation - [2008 (231) ELT 195 (SC)]
ix. Hindustan Zinc Ltd. – [2008 (232) ELT 687(T)]
x. CCE Vs. Special Steel Limited - [2010-TIOL-1176-CESTATMUM],
xi. Accurate Chemicals Industries v. Commr. of C. Ex., [Noida; 2014 (300) E.L.T. 451 (Tri. - Del.)] Affirmed in Commissioner of C. Ex., Noida v. Accurate Chemical Industries; [2014 (310) E.L.T. 441 (All.)]
xii. Suntex Mercantiles (P) Ltd. v. Commissioner of C. Ex., Mumbai; [2014 (313) E.L.T. 809 (Tri. - Mumbai)]

3.16.2 The Noticee are registered under the GST law for supply of goods and discharges GST on the same. Thus, any higher IGST paid would have been available as credit to the Noticee. Therefore, no material gain would have been achieved by the Noticee by the alleged intentional misclassification of the imported goods and evasion of payment of IGST in respect of the imported goods in the present case. In view of the above, the Noticee submit that the IGST demanded is unsustainable on the ground of revenue neutrality.

3.17. NO INTEREST AND PENALTY IS LEVIABLE ON IGST IN VIEW OF THE LAW LAID DOWN BY A.R. SULPHONATES VS. UNION OF INDIA REPORTED AT 2025 (4) TMI 578 FOLLOWING THE DECISION OF HON'BLE BOMBAY HIGH COURT IN MAHINDRA & MAHINDRA LIMITED AND AFFIRMED BY HON'BLE SUPREME COURT

SINCE SECTION 3(12) OF CUSTOMS TARIFF ACT, 1975 DOES NOT BORROW CHARGING SECTION FOR LEVY OF INTEREST AND PENALTY UNDER THE CUSTOMS ACT, 1962

3.17.1 It is submitted that the Section 3 (12) of the Custom Tariff does not borrow charging section for interest and penalty from the Customs Act. Thus, interest could not be levied during the reassessment of the subject BOE, for payment of IGST chargeable under Section 3 of the Custom Tariff Act.

3.17.2 In the case of A.R. Sulphonates vs. Union of India & Ors, 2025 (4) TMI 578, relying upon the decision of Mahindra and Mahindra, Hon'ble Bombay High Court has held that the amendment to Section 3(12) of the Customs Tariff Act, 1975 to levy penalty / interest is prospective in nature and would apply only with effect from 16.08.2024. Thus, no interest and penalty on IGST can be demanded.

3.17.3 In Mahindra and Mahindra Limited (Supra), the Hon'ble Bombay High Court held that there is no substantive provision in Section 3 of the Customs Tariff Act that provides for payment of penalty or interest on duty other than basic custom duty, and therefore, in absence of such a specific provision for levy of interest or penalty, same cannot be charged.

3.17.4. A similar question relating to liability of the plant, machinery etc. to confiscation and liability of the assessee to penalty under Rule 9(2) and Rule 173Q of the Central Excise Rules, 1944, for non-payment of the additional duty in terms of the Additional Duties of Excise (Goods of Special Importance) Act, 1957, by taking recourse to the provisions of the Central Excise Rules, 1944, was decided by the Hon'ble Delhi High Court in the case of Pioneer Silk Mills Pvt. Ltd. Vs. UOI - 1995 (80) ELT 507 (Del.). Relying, inter alia, on the judgment of Khemka (supra), the Hon'ble High Court upheld the contention observing, that there is no provision in the Additional Duties Act which creates a charge in the nature of penalty and that the term "levy and collection" in Section 3(3) of the Additional Duties Act has a restricted meaning in view of the use of the words "including those relating to refund and exemptions from duty", otherwise these words were rather unnecessary. The Hon'ble High Court also rejected the contention of the Revenue that since Chapter II of the Central Excises Act deals with levy and collection of duty, and this Chapter also contains provisions for offences and penalties, all sections under that Chapter would be applicable. This judgment of the Hon'ble Delhi High Court was upheld by the Hon'ble Supreme Court in 2002 (145) ELT A74 (SC).

3.17.5 . In support of the above submissions, reliance is placed on the following decisions:

(i) Bajaj Health & Nutrition Vs. CC, Chennai - 2004 (166) E.L.T. 189

(ii) Steel Authority of India Ltd. Vs. CCE - 2019 (366) ELT 769 (SC);

(iii) Tonira Pharma Ltd. Vs. Commissioner - 2009 (237) E.L.T. 65 (Tribunal)

(iv) Siddeshwar Textile Mills Pvt. Ltd. Vs. Commissioner -2009 (248) E.L.T. 290 (Tribunal);

(v) Bripanil Industries Ltd. Vs. Commissioner -2002 (144) E.L.T. 391 (Tribunal)

3.17.6 The law laid down in Mahindra & Mahindra has been affirmed by the Hon'ble Supreme Court by way of dismissal of the Special Leave Petition filed by the Department, vide Order dated 28.07.2023. However, the department has filed a Review Petition before the Hon'ble Supreme Court against order dated 28.07.2023. The same has been affirmed by Hon'ble Supreme Court by way of dismissal of Review Petition vide Order dated 09.01.2024.

3.17.7 The decision of Mahindra and Mahindra was also followed in the case of in the case of

(i) Chiripal Poly Films Ltd. Vs. CC-Ahmedabad - 2024 (9) TMI 940- CESTAT AHMEDABAD

(ii) Sakar Industries Pvt. Ltd. v. C.C. - 2024 (10) TMI 1141- CESTAT AHMEDABAD.

(iii) Philips India Limited - Final Order No. A/86879/2024 dated 18.11.2024

Therefore, it is submitted that no interest and penalty on the IGST portion is liable to be paid by the Noticee in the present case.

3.17.8 Amendment made in Finance Act, 2024 in Section 3(12) makes it abundantly clear that provisions for levy and demand of interest and penalty did not exist earlier.

3.17.8.1 Section 3(12) of the Customs Tariff Act, 1975 has been amended vide Section 106 Finance Act, 2024. The said amendment is made prospective only and not retrospective. This view is supported by the decision of Bombay High Court in the case of AR Sulphonates supra.

3.17.9 It is also submitted that no interest and penalty is payable even though the finalisation of BOE's occurred after the introduction of substantive provision providing for levy of interest and penalty. Reliance is placed on:

i. Raj Petroleum Products Ltd. vs. Commr. of Cus. (import), Mumbai 2013 [(292) E.L.T. 125 (Tri. - Mumbai)].

ii. Sterlite Industries (India) Ltd. vs. Commissioner of Cus., Trichy [2014 (311) E.L.T. 91 (Tri-Chennai)]

iii. CC vs. Goyal Traders [2014(302) E.L.T. 529(Guj.)].

3.17.10 Thus, no interest on IGST and penalty is payable in the instant case as the relevant event i.e. import of goods occurred prior to the date of amendment in Section 3(12) of the Customs Tariff Act.

3.18 PRAYER: In light of the aforesaid submissions, the Noticee humbly pray that –

a) proceedings initiated vide the impugned Show Cause Notice be dropped in entirety;

b) any other suitable order as may deem fit may be passed so as to grant complete relief to the Noticee in the interest of justice;

4. DISCUSSION AND FINDINGS

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

4.2 In compliance to provisions of Section 28(8) and Section 122A of the Customs Act, 1962 and in terms of the principles of natural justice, opportunity for Personal Hearing (PH) was granted to the Noticee on 11.12.2025, 19.12.2025 and 20.01.2026. Availing the said opportunity, Ms. Srinidhi Ganeshan, Advocate, Ms. Anaya Bhide, Advocate and Mr. Mahesh Gothe, Authorised Representative of the noticee, attended the PH on 20.01.2026 on behalf of Noticee. Having complied with the requirement of the principle of natural justice, I proceed to decide the case on merits, bearing in mind the submission / contention made by the Noticee.

4.3 It is alleged in the Show Cause Notice that the Noticee, **M/s Mercedes-Benz India Private Limited (IEC-3194008714)** was evading applicable Customs duty on their imports of various parts/components of automobiles by mis-classifying and wrongfully availing wrong IGST s.no. for the goods imported by them. Further, SCN proposes that the differential duty amounting to ₹ 85,77,135/- short paid by the importer to be recovered under Section 28(4) of the Customs Act, 1962, along with applicable interest. Further, the SCN proposes confiscation of the impugned goods under section 111(m) of the Customs Act, 1962 and imposition of penalty on the Noticee under Section 112 and/or 114A, 114AA and/or 117 of the Customs, 1962.

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

4.5 Whether the declared CTH (classification) of goods mentioned Annexure-A, Annexure-B, Annexure-C and Annexure-E to the subject SCN should be rejected and the same should be re-classified under heading 8708 having applicable rate of BCD @15% with IGST @ 28% under Sr. No. 170 of Schedule IV of Notification No. 01/2017dated 28.06.2017 IGST

4.5.1 I note that as per the SCN, **M/s Mercedes-Benz India Private Limited (IEC-3194008714)** was evading applicable Customs duty on their imports of various parts/components of automobiles by mis-classifying and wrongfully availing wrong IGST s.no. for the goods imported by them. I find that the noticee has imported various automobile parts *viz.* goods detailed in Annexure- B, C and E of the SCN and classified them under various CTHs.

4.5.2 I find that the goods having description Propeller Shafts/Drive Shafts (details of which are having Assessable Value Rs. 1,63,59,063.25/- mentioned in Annexure-E to the SCN) were cleared under Customs Tariff heading 8483 to the First Schedule of the Customs Tariff Act,1975 where Basic Customs Duty @ 7.5%, SWS @ 10% of BCD and IGST @ 18% in terms of under Sr. No. 369 of Schedule-III to Notification No. 01/2017-(Integrated Tax Rate) dated 28.06.2017 is applicable. Chapter Heading 8483 is produced below for reference:

8483		**TRANSMISSION SHAFTS (INCLUDING CAM SHAFTS AND CRANK SHAFTS) AND CRANKS; BEARING HOUSINGS AND PLAIN SHAFT BEARINGS; GEARS AND GEARING; BALL OR ROLLER SCREWS; GEAR BOXES AND OTHER SPEED CHANGERS, INCLUDING TORQUE CONVERTERS; FLYWHEELS AND PULLEYS, INCLUDING PULLEY BLOCKS; CLUTCHES AND SHAFT COUPLINGS (INCLUDING UNIVERSAL JOINTS)**			
8483 10	-	*Transmission shafts (including cam shafts and crank shafts) and cranks :*			
8483 10 10	---	Crank shafts for sewing machines	u	7.5%	-
	---	*Other :*			
8483 10 91	----	Crank shaft for engines of heading 8407	u	15%	-
8483 10 92	----	Crank shaft for engines of heading 8408	u	15%	-
8483 10 99	----	Other	u	7.5%	-

4.5.3 Please refer to Explanatory notes of Customs Tariff, 1975 wherein Propeller Shafts/Drive Shafts are excluded from Chapter Heading 8483. The same are given below:

The heading also excludes :

(a) Pieces roughly shaped by forging, of heading 72.07.

(b) Transmission equipment of the kinds described above (gear boxes, transmission shafts, clutches, differentials, etc.), but which are designed for use solely or principally with vehicles or aircraft (Section XVII); it should, however, be noted that this exclusion does not apply to internal parts of vehicle or aircraft engines - these parts remain classified in this heading.

Thus a crank shaft or a cam shaft remains in this heading even if it is specialised for a motor car engine; but motor car transmission (propeller) shafts, gear boxes and differentials fall in heading 87.08.

It should further be noted that transmission equipment of the type described in this heading remains classified here even if it is specially designed for ships.

(c) Parts of clocks or watches (heading 91.14).

4.5.4 Therefore, it is evident from above point no. (b) that Propeller shafts/Drive Shafts which are designed for use are excluded from chapter heading 8483 and thus required to be classified under heading 8708 where Basic Customs Duty @ 15%, SWS @ 10% of BCD and IGST @ 28% in terms of under Sr. No. 170 of Schedule-IV to Notification No. 01/2017-(Integrated Tax Rate) dated 28.06.2017.

4.5.5 I find that during the period from 01/01/2021 to 14/12/2023, the importer imported various type of Door handles specially designed for their motor vehicles (76 consignments, valued at Rs. 12,58,757/- as detailed in the enclosed Annexure-B to the SCN) and classified the said goods under Chapter 83, 39, 85 and etc. to the First Schedule of the Customs Tariff Act, 1975, and paid BCD @ 7.5%/10%/15%/25%, SWS @ 10% of BCD and IGST @ 18% in terms of under various Sr.No., as detailed in Annexure-B, of Schedule-III to Notification No. 01/2017-(Integrated Tax Rate) dated 28.06.2017 were paid thereon. Further, during the period from 01/02/2021 to 14/12/2023, the importer also imported various type of Hinges specially designed for their motor vehicles (2390 consignments, valued at Rs. 4,18,00,702/- as detailed in the enclosed Annexure-C) and classified the said goods under Chapter 83 to the First Schedule of the Customs Tariff Act, 1975, and paid BCD @ 10%/15%, SWS @ 10% of BCD and IGST @ 18% in terms of under Sr. No. III303A as detailed in Annexure-C to the SCN, of Schedule-III to Notification No. 01/2017-(Integrated Tax Rate) dated 28.06.2017 were paid thereon.

4.5.6 The relevant texts of Heading 8708 is reproduced for ease of reference as under: -

Tariff Item		Description of goods	Unit	Rate of duty	
				Standard	Preferential Areas
(1)		(2)	(3)	(4)	(5)
8708		PARTS AND ACCESSORIES OF THE MOTOR VEHICLES OF HEADINGS 8701 TO 8705			
8708 10	-	Bumpers and parts thereof :			
8708 10 10	---	For tractors	kg.	15%	-
8708 10 90	---	Other	kg.	15%	-
	-	Other parts and accessories of bodies (including cabs) :			
8708 21 00	--	Safety seat belts	u	15%	-
*8708 22 00	--	Front windscreens (windshields), rear windows and other windows specified in Sub-heading Note 1 to this Chapter	kg.	15%	-
8708 29 00	--	Other	kg.	15%	-
8708 30 00	-	Brakes and servo-brakes; parts thereof	kg.	15%	-
8708 40 00	-	Gear boxes and parts thereof	kg.	15%	-
8708 50 00	-	Drive-axles with differential, whether or not provided with other transmission components, non-driving axles; parts thereof	kg.	15%	-
8708 70 00	-	Road wheels and parts and accessories thereof	kg.	15%	-
8708 80 00	-	Suspension systems and parts thereof (including shock absorbers)	kg.	15%	-
*w.e.f. 1.1.2022					
	-	Other parts and accessories:			
8708 91 00	--	Radiators and parts thereof	kg.	15%	-
8708 92 00	--	Silencers (mufflers) and exhaust pipes; parts thereof	kg.	15%	-
8708 93 00	--	Clutches and parts thereof	kg.	15%	-
8708 94 00	--	Steering wheels, steering columns and steering boxes; parts thereof	kg.	15%	-
8708 95 00	--	Safety airbags with inflater system; parts thereof	kg.	15%	-
8708 99 00	--	Other	kg.	15%	-

4.5.7 I find that Hon'ble Supreme Court, in the case of M/s. Cast Metal Industries Pvt. Ltd., reported at 2015(325) E.L.T.471 (S.C.), has held that Door Handles and Hinges for automobiles, being specifically meant for and use in motor vehicles as its parts and accessories, are classifiable under heading 87.08 of the First Schedule to Customs Tariff Act,1975. The relevant portion of the above judgement is reproduced as under for ease of reference:

> *"The issue is squarely covered by the judgment of this Court in the case of G.S. Auto International Limited vs. CC Excise, Chandigarh[2003(2) SCC 371]. In the said judgment, following the earlier decisions of this Court, the Court specifically held that to determine the applicability of the item under particular head, the test of commercial identity of the goods would be the relevant test and not the functional test. It was also held that the expression "parts of general use" would not apply to parts or accessories which are not suitable for use solely or primarily with articles of Chapter Heading 87.08*

which pertains to parts and accessories of motor vehicles of Chapter Headings 87.01 to 87.05. The Court was also categorical that in such a case the test that is to be applied is: 'whether the goods are suitable for use solely or primarily with articles of Chapter Headings 87.01 to 87.05"

4.5.8 I find that the Ratio of the above said judgment of the Hon'ble Supreme Court is squarely applicable in present case. Therefore, on the basis of legal position as laid down by Hon'ble Supreme Court in the above said cases, the parts & accessories of motor vehicles (having unique part number) which have not been otherwise excluded and are **specially/specifically designed to be used for/with a motor vehicle** of particular model and make should be classified under chapter 87.

4.5.9 In view of the above judgment of Apex Court, I hold that the subject goods as detailed in Annexure- B, C and E of the SCN are specially designed to be used in motor vehicles manufactured by the notice and accordingly I hold that the subject goods are classifiable under CTH 8708 having applicable duty structure BCD @ 15%, SWS @ 10% of BCD and IGST @28%.

4.5.10 I find that the notice has Imported Goods Seat Belt, Shock Absorber, Air Suspension, Hose Assembly (details mentioned in Annexure-A to the SCN) and classified the same under CTH 8708 and paid IGST @18% by availing IGST S. No. III402 & III452 of the Notification No. 01/2017-(Integrated Tax Rate) dated 28.06.2017. The relevant part of IGST notification are reproduced below:

402.	8708	Following parts of tractors namely: a. Rear Tractor wheel rim, b. tractor centre housing, c. tractor housing transmission, d. tractor support front axle

2. In the said notification, in Schedule III – 18%, after serial number 452 and the entries relating thereto, the following serial number and entries shall be inserted, namely:-

(1)	(2)	(3)
"452A	4011 70 00	Tyre for tractors
452B	4013 90 49	Tube for tractor tyres
452C	8408 20 20	Agricultural Diesel Engine of cylinder capacity exceeding 250 cc for Tractor
452D	8413 81 90	Hydraulic Pumps for Tractors
452E	8708 10 10	Bumpers and parts thereof for tractors
452F	8708 30 00	Brakes assembly and its parts thereof for tractors
452G	8708 40 00	Gear boxes and parts thereof for tractors
452H	8708 50 00	Transaxles and its parts thereof for tractors
452I	8708 70 00	Road wheels and parts and accessories thereof for tractors
452J	8708 91 00	(i) Radiator assembly for tractors and parts thereof (ii) Cooling system for tractor engine and parts thereof
452K	8708 92 00	Silencer assembly for tractors and parts thereof
452L	8708 93 00	Clutch assembly and its parts thereof for tractors
452M	8708 94 00	Steering wheels and its parts thereof for tractor
452N	8708 99 00	Hydraulic and its parts thereof for tractors
452O	8708 99 00	Fender, Hood, wrapper, Grill, Side Panel, Extension Plates, Fuel Tank and parts thereof for tractors".

[F.No.354/137/2017-TRU]

4.5.11 From the above para it is evident that S. No. III402 & III452 of the Notification No. 01/2017-(Integrated Tax Rate) dated 28.06.2017 are for parts of tractors and for rest of the goods falling under CTH 8708, the correct IGST S. No. is S. No. 170 of the Notification No. 01/2017-(Integrated Tax Rate) dated 28.06.2017. I find that the noticee does not sell or manufacture tractor in India, accordingly I hold that the subject goods are appropriately classifiable under S. No. 170 of the Notification No. 01/2017-(Integrated Tax Rate) dated 28.06.2017.

4.6 Whether the differential duty amounting to Rs. 85,77,135/- (Rupees Eighty-Five Lakh Seventy-Seven Thousand One Hundred and Thirty-Five Only) (as quantified under Table-A and detailed under Annexure-A, Annexure B, Annexure C and Annexure-E attached to this notice) should be demanded & recovered from them under Section 28(4) of the Customs Act, 1962 alongwith applicable interest thereon in terms of provisions of Section 28AA of the Customs Act, 1962

4.6.1 After having determined the correct classification and IGST S. No of the impugned imported goods, it is imperative to determine whether the demand of differential/short paid duty as per the provisions of Section 28(4) of the Customs Act, 1962, in the subject SCN is sustainable or otherwise.

4.6.2 The noticee in their submission has submitted the following:

(i) They have paid the differential duty w.r.t. the goods covered under Bills of Entry as detailed in Annexure-A to the SCN, vide challan dated 28.05.2025.

(ii) They have paid the differential duty w.r.t. the goods covered under Bills of Entry as detailed in Annexure-B to the SCN, vide challan dated 28.05.2025.

(iii) The Annexure-E of the SCN mentions the Bills of Entry and the computations where Propeller shafts/ Drive shafts having assessable value of Rs. 1,63,59,063/- and differential duty of Rs. 34,98,385.68/-. Noticee has submitted that the department had already issued SCN No. 695/2021-22/Gr. VB/ CAC/JNCH dated 18.04.2022 whereby differential duty amounting to Rs. 31,49,229/- along with applicable interest was demanded from the noticee in the year 2022. They further submitted that they have already paid the differential duty amounting to Rs. 31,49,229/- along with applicable interest of Rs. 11,23,040/- vide Challan No. 397 dated 31.03.2023.

(iv) For the balance duty demand of Rs. 3,49,157/-, which is payable on the remaining Bill of Entry as mentioned in the Annexure E of the SCN, the notice has made the payment of Rs. 3,49,157/- towards the differential duty along with interest vide Challan No. 2129568546 dated 29.09.2025.

4.6.3 On comparing the values of Annexure-E of the subject SCN with Annexure-A of SCN No. 695/2021-22/Gr.VB/CAC/JNCH dated 18.04.2022, I found that some of the bills of entry mentioned in both these SCNs are common and there is duplicacy in demand of differential duty of Rs. 31,49,154/-. Further, I find that the SCN No. 695/2021-22/Gr.VB/CAC/JNCH dated 18.04.2022 has been adjudicated vide O-i-O No. 16/2023-24/ADC/NS-V/CAC/JNCH dated 06.04.2023, wherein the demand of Rs. 31,49,154/- was confirmed and ordered to be recovered from the noticee. In view of the above facts, I hold that the demand of Rs. 31,49,229/- sought to be recovered vide SCN No. 1690/2024-25/COMMR./NS-V/CAC/JNCH dated 20.02.2025, demand for which had already been raised vide SCN No. 695/2021-22 Gr.VB/CAC/JNCH dated 18.04.2022 and hence, I hold that the demand of Rs. 31,49,154/- be reduced from the total differential duty. Accordingly, I hold that as per Section 28(4) of the Customs Act, 1962 only **Rs. 54,27,981/-** is liable to be recoverable.

4.6.4 Further, Section 28(4) of the Customs Act,1962 is as under:

SECTION 28(4) of the Customs Act, 1962.
Recovery of duties not levied or not paid or short-levied or short- paid or erroneously refunded. –

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

(a) collusion; or
*(b) **any wilful mis-statement**; or*
*(c) **suppression of facts**,*

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

4.6.5 Consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-assessment' has been introduced in Customs clearance. **Under self-assessment, it is the importer who has to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported goods while presenting the Bill of Entry.** Thus, with the introduction of self-assessment by amendments to Section 17, it is the added and enhanced responsibility of the importer, to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

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

4.6.7 In terms of Section 46(4) of the Customs Act, 1962, the importer is required to make a true and correct declaration in the Bill of Entry submitted for assessment of Customs duty. However, in the instant case, I find that the Noticee had evaded payment of applicable duty on the goods imported by them by mis-classification. I find that the Noticee evaded correctly payable duty by intentionally suppressing the correct CTH and IGST S.No. of the imported product by not declaring the same at the time of filing of the Bills of Entry. By resorting to this deliberate and willful evasion of duty, the Noticee has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer. Thus, I find that this willful and deliberate act was done with the clear intention to evade payment of due duty. As the importer has wrongfully assessed the impugned goods and evaded the payment of the applicable duty thereon on the date of importation, the Noticee can only come clean of its liability by way of payment of duty not paid.

4.6.8 I have determined in the preceding paras that **M/s Mercedes-Benz India Private Limited (IEC-3194008714)**, had evaded correctly payable Customs duty by intentionally mis-classifying the imported goods by not declaring the same at the time of filing of the Bills of Entry. They deliberately suppressed the actual classification and applicable IGST S. No. of the goods before Customs. By resorting to this deliberate suppression of CTH and IGST S. No., the importer has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer. This willful and deliberate act was done with the fraudulent intention to pay lower rate of duty. Thus, it is evident that the importer deliberately mis-declared the goods with an intention to evade Customs duty by declaring the wrong CTH and IGST S. No. in order to get financial benefits. Thus, the importer indulged in wilful mis-statement and suppressed the facts with intention to evade duties of customs. Therefore, the matter falls under the purview of Section 28(4) of the Customs Act, 1962.

4.6.9 I find that the Noticee was well aware of the correct CTH & IGST S. No., and leviability of duty thereon. However, in the instant case, the Noticee mis-classified the goods and wrongfully availed incorrect IGST S. No. of the imported goods in the Bills of Entry. Had the department not raised the issue and initiated procedure under the Customs Act, 1962 in this case, the duty so evaded might have gone unnoticed & unpaid. The Noticee has paid less duty by non-payment of applicable duty on the subject goods, which tantamount to suppression of material

facts and willful mis-statement. This shows willful suppression, mis-statement and malafide intention of the Noticee to evade payment of legitimately payable duty. As the Noticee got monetary benefit due to their willful mis-declaration and evasion of applicable duty on the subject goods, hence, I find that duty is correctly demandable under Section 28(4) of the Customs Act, 1962, by invoking extended period.

4.6.10 I find that in the instant case, it is evident that with malafide intention the importer had been evading Customs Duty causing loss to Government Revenue which the importer had been doing knowingly and wilfully so as to maximize monetary gains by evading customs duty. Therefore, it is apparent that **M/s Mercedes-Benz India Private Limited (IEC-3194008714)** has been deliberately contravening the provisions of the Customs Act, 1962, which shows 'mens rea' on their part. Therefore, I find that in the instant case there is an element of 'mens rea' involved. In the instant case, the Noticee deliberately chose to mis-classify the imported goods to evade duty, being fully aware of the correct classification and IGST S. No. of the imported goods. This wilful and deliberate act clearly brings out their 'mens rea' in this case. Once the 'mens rea' is established on the part of the Noticee, the extended period of limitation, automatically get attracted. Noticee in their submission have agreed that the demand w.r.t. the goods detailed in Annexure-A, B& E to the SCN is correct.

4.6.11 Further, I find that the Noticee has contended that the issue is entirely revenue neutral as they can take Input Tax Credit (ITC) on payment of IGST paid. In this regard, I find that the argument of revenue neutrality, if accepted as a defence, the entire scheme of payment of taxes on reverse charge basis will become futile. In the instant case, I rely upon the following case laws & rulings:

Shreenath Polyplast Pvt. Ltd. ((2019 (24) G.S.T.L. 133 (App. A.A.R. - GST)), wherein the Hon'ble Bench has held at Para 61 of their Order that:

> *"Further, with respect to the plea of applicant to consider the transaction as Revenue Neutral', it is submitted that this plea is not legal and tenable in the eyes of law, as the whole indirect tax administration run on the principle of credit flow and value addition. Such utilization of ITC should not be treated as Revenue Neutral'. Further, by the logic of 'Revenue Neutrality', almost every Business-to-Business transaction transfer the credit and cannot be taken as revenue neutral as it is against the basic principle of indirect taxation."*

4.6.11.1 Further in the case of *ICICI Econet Internet & Technology Fund V/s Commr. of Central Tax, Bangalore North 2021 (51) G.S.T.L. 36 (Tri. - Bang.)* wherein the Hon'ble Tribunal has held at Para 50 of their Order that:

> *"50. Regarding the submissions of the appellants on revenue neutrality, we find that payment of service tax by one entity and availment of Cenvat credit by another entity on the basis of such payment is not a criteria to determine the eligibility of a particular service rendered. The argument goes against the general scheme of service tax and Cenvat credit. If one entity has to pay service tax, it has to pay the same notwithstanding the fact that credit will be availed by a subsequent user. The scheme of Cenvat credit is to lessen the cascading effect of taxation and cannot be a reason for not paying taxes. We find that the appellant's submissions on revenue neutrality are not convincing."*

4.6.11.2 I do not find merit in the aforesaid argument of the Noticee as the availability of Input Tax Credit is not related to payment of GST under reverse charge mechanism. The provisions of payment of GST under reverse charge mechanism are different from the provisions of Input Tax Credit as both are different and are governed by different Sections of GST Act, 2017. The eligibility of the tax payer to avail the ITC and utilization thereof is governed by the provision of

Act related to ITC. Hence, it cannot be construed that the payment of GST under reverse charge mechanism is not required if they are eligible for ITC. In view of this, the plea of the Noticee regarding revenue neutrality cannot be accepted as it is not supported by any provision of the GST Act, 2017.

4.6.12 In view of the foregoing, I find that, due to deliberate suppression and wilful mis-statement, duty demand against the Importer has been correctly proposed under Section 28(4) of the Customs Act, 1962 by invoking the extended period of limitation. In support of my stand of invoking extended period, I rely upon the following court decisions:

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

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

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

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

4.6.13 Therefore, I hold that the differential duty of customs amounting to **Rs 54,27,981/- (Rupees Fifty Four Lakh Twenty Seven Thousand Nine Hundred Eighty One only)** in respect of Bills of Entry as detailed in Annexure-A, B, C and E to the subject SCN, should be demanded from **M/s Mercedes-Benz India Private Limited (IEC-3194008714)** in terms of Section 28(4) of the Customs Act, 1962.

4.6.14 With regard the interest liability of the importer under Section 28AA of the Customs Act, 1962, I find it apt to mention the scheme of assessment and collection of duty under the Customs Act, 1962. It is settled law that duty is payable only at the point when the goods leave the Customs barrier. On importation, the importer is required to file a bill of entry for home consumption under section 46(1) of the Act. The proper officer of customs then under Section 17 inspects and examines the goods and thereafter assess them. The importer then pays the assessed duty. The proper officer then passes an order for permitting clearance for home consumption in terms of Section 47(1) of the Customs Act. Further, Section 28 is a specific provision which confers power on the proper officer of customs to levy duty by issuance of show cause notice in those cases where duty has not been levied or has been short levied or erroneously refunded or when any interest payable has not been paid, part paid or erroneously refunded. Under section 28AA which was inserted by Finance Act, 2011, speaks of interest on delayed payment of duty in all cases covered by Section 28 in addition to duty, interest is liable to repaid as set out under the section for the time being, in terms of the Notification affixed by the Central Government.

4.6.15 Under Section 28AA of the Customs Act, the person who is liable to pay duty in accordance with the provisions of the Section 28, shall in addition to such duty, be liable to pay interest. In case *M/s Kamat Printers Pvt. Ltd.* the Court observed that once duty is ascertained then by operation of law, such person in addition shall be liable to pay interest at such rate as

fixed by the Board. The proper officer, therefore, in ordinary course would be bound once the duty is held to be liable to call on the party to pay interest as fixed by the Board.

4.6.16 I find that the Courts in various judgments pronounced that interest payable is compensatory for failure to pay the duty. It is not penal in character in that context. The Supreme Court under the provisions of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 in Collector of C. Ex., *Ahmedabad vs. Orient Fabrics Pvt. Ltd 2003 (158) E.L.T. 545 (S.C.)* was pleased to observe that when the breach of the provision of the Act is penal in nature or a penalty is imposed by way of additional tax, the constitutional mandate requires a clear authority of law for imposition for the same. The Court observed that, the law on the issue of charge of interest, stands concluded and is no longer res integra. We may only gainfully refer to the judgment in *India Carbon Ltd. Vs State of Assam, (1997) 6 S.C.C. 497.* The Court there observed as under:

> *"This proposition may be derived from the above: interest can be levied and charged on delayed payment of tax only if the statute that levies and charges the tax makes a substantive provision in this behalf". Therefore, once it is held that duty is due, interest on the unpaid amount of duty becomes payable by operation of law under section 28AA.*

4.6.17 In case of *Directorate of Revenue Intelligence, Mumbai vs Valecha Engineering Limited*, Hon'ble Bombay High Court observed that, in view of Section 28AA, interest is automatically payable on failure by the assessee to pay duty as assessed within the time as set out therein.

4.6.18 In view of the above, I am of the considered opinion that imposition of interest on the duty not paid, short paid is the natural consequence of the law and the importers are liable to pay the duty in respect of the said imported goods along with applicable interest.

4.6.19 I have already held in the above paras that the differential duty amounting to **Rs. 54,27,981/- (Rupees Fifty Four Lakh Twenty Seven Thousand Nine Hundred Eighty One only)** should be demanded and recovered from the Noticee, **M/s Mercedes-Benz India Private Limited (IEC-3194008714)**, under the provisions of Section 28(4) of the Customs Act, 1962 by invoking extended period. Therefore, in terms of the provisions of Section 28AA of the Customs Act, 1962, interest on the aforesaid amount of differential duty is also liable to be recovered from the Noticee.

4.6.20 I find that the notice has submitted copies of e-challan no. 1160687862 dated 28.05.2025, 1177813441 dated 28.05.2025 and 2129568546 dated 29.09.2025 and while verifying the same on the ice-gate portal it was noticed that the payments made by the above mentioned challans cannot be verified as the same cannot be cross referenced either with the Bill of entry or with SCN No. Accordingly, as the payments made by the noticee cannot be verified w.r.t. the contents of the SCN, I hold that the same cannot be appropriated against the differential duty or applicable interest.

4.7 Whether the impugned goods covered under Bills of Entry as mentioned in Annexure-A, Annexure-B, Annexure-C (Except item nos. of Bills of Entry covered in SCN No. 695/2021-22 Gr. VB/ CAC/JNCH dated 18.04.2022) and Annexure-E to this notice, valued at Rs. 5,97,18,059/- (Five Crore Ninety-Seven Lakh Eighteen Thousand Fifty-Nine only) should be held liable for confiscation in terms of provisions of Section 111(m) of the Customs Act, 1962.

4.7.1 The SCN proposes confiscation of goods imported vide Bills of Entry listed in Annexure-A to the SCN, having re-determined assessable value of **Rs. 5,97,18,059/- (Five Crore Ninety-Seven Lakh Eighteen Thousand Fifty-Nine only)** under the provisions of Section 111(m) of the Customs Act, 1962.

4.7.2 Section 111(m) of the Customs Act, 1962 states that the following goods brought from a place outside India shall be liable to confiscation:

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

4.7.3 As I have already held in the previous para that the demand of Rs. 31,49,154/- having total assessable value Rs. 1,47,25,995/- was already raised vide SCN No. 695/2021-22/Gr.VB/CAC/JNCH dated 18.04.2022 and hence, the same was reduced from the demand of total differential duty. Accordingly, the reduced total assessable value for the impugned goods amount to **Rs. 4,49,92,064/- (Rupees Four Crore Forty Nine Lakh Ninety Two Thousand and Sixty Four only)**

4.7.4 From the discussions above, I find that the importer had failed to assess and discharge the customs duty correctly by way of mis-classification and wrongful availment of IGST S. No., imported by them vide Bills of Entry as detailed in Annexure-A, B, C and E to the subject SCN, by willful mis-declaration of facts and suppressing the correct classification of goods and thereby contravened the provisions of Section 46 the Customs Act, 1962. Thus, I find that the subject goods are liable for confiscation under Section 111(m) of the Customs Act, 1962. Further, I find that Section 111(m) deals with any and all types of mis-declaration regarding any particular of Bill of Entry. Therefore, the mis-classification of the imported goods resorted to by the importer amounts to mis-declaration and shall make the goods liable to confiscation in terms of Section 111(m) of the Customs Act, 1962.

4.7.5 I have already held in foregoing paras that the importer had not declared the correct CTH and IGST S. No. of the impugned imported goods. The Noticee was well aware of the actual nature of the imported goods and their correct classification. However, they deliberately suppressed this correct classification of the imported goods, and declared wrong CTH to evade payment of legitimate duty. As discussed in the foregoing paras, it is evident that the Noticee deliberately suppressed the correct classification of the goods, resulting in short levy of duty. This deliberate suppression of facts and willful mis-declaration resorted by the Noticee, therefore, renders the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962. Accordingly, I find that acts of omission and commission on part of the Noticee has rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962.

4.7.6 As per Section 46 of the Customs Act, 1962, the importer of any goods, while making entry on the Customs automated system to the Proper Officer, shall make and subscribe to a declaration as to the truth of the contents of such Bill of Entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed. He shall ensure the accuracy and completeness of the information given therein and the authenticity and validity of any document supporting it.

4.7.7 I find that the Importer while filing the Bills of Entry for the clearance of the subject product 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 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2011 in all their import declarations. Section 17 of the Act, w.e.f. 08.04.2011, provides for self-assessment of duty on imported goods by the importer themselves by filing a Bill of Entry, in the electronic form. Section 46 of the Act makes it mandatory for the importer to make an entry for the imported goods by presenting a Bill of Entry

electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulation, 2011 (issued under Section 157 read with Section 46 of the Act), the Bill of Entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic integrated declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a Bill of Entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under the scheme of self-assessment, it is the importer who has to diligently ensure that he declares all the particulars of the imported goods correctly e.g., the correct description of the imported goods, its correct classification, the applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported goods when presenting the Bill of Entry. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 8th April, 2011, the complete onus and responsibility is on the importer to declare the correct description, value, notification, etc. and to correctly classify, determine and claim correct exemption notification and pay the applicable duty in respect of the imported goods.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.7.9 From a plain reading of the above provisions related to assessment, it is very clear that w.e.f. 08.04.2011, the importer must self-assess the duty under Section 17 read with Section 2(2) of the Customs Act, and since 2018 the scope of assessment was widened. Under the self-assessment regime, it was statutorily incumbent upon the importer to correctly self-assess the goods in respect of classification, valuation, claimed exemption notification and other particulars. With effect from 29.03.2018, the term 'assessment', which includes provisional assessment also, the importer is obligated to not only establish the correct classification but also to ascertain the correct value and eligibility of the imported goods for any duty exemptions. From the facts of the case as detailed above, it is evident that **M/s Mercedes-Benz India Private Limited (IEC-3194008714)** has deliberately failed to discharge this statutory responsibility cast upon them.

4.7.10 Besides, as indicated above, in terms of the provisions of Section 46(4) of the Customs Act, 1962 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018, the importer while presenting a Bill of Entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such Bill of Entry. In terms of the provisions of Section 47 of the Customs Act, 1962, the importer shall pay the appropriate duty payable on imported goods and then clear the same for home consumption. However, in the subject case, the importer while filing the Bill of Entry has resorted to deliberate suppression of correct CTH. Further, the above said mis-declaration was done with the sole intention to fraudulently evade the correctly payable duty. Thus, the Importer has failed to correctly assess and pay the appropriate duty payable on the imported goods before clearing the same for home consumption.

4.7.11 I find that the Importer has mis-classified the imported goods, therefore, it is apparent that the Importer has not made the true and correct disclosure with regard to the correct classification of the goods in respective Bills of Entry leading to willful mis-statement and suppression of facts. From the above discussions and findings, I find that the Importer has done deliberate suppression of value and wilful mis-declaration of the goods and has submitted misleading declaration under Section 46(4) of the Customs Act, 1962 with an intent to evade duty. Due to this deliberate suppression of facts and wilful statement, the Importer has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer. In view of the above, I find that the impugned goods having total Assessable Value of **Rs. 4,49,92,064/- (Rupees Four Crore Forty Nine Lakh Ninety Two Thousand and Sixty Four only)**, should be confiscated under Section 111(m) of the Customs Act, 1962.

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

> *"23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act ....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods*

provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii)."

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

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

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

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

4.8 Whether penalty should be imposed on the Importer under Section 112 and/ or 114A of the Customs Act, 1962.

4.8.1 I find that in the era of self-assessment, the importer had self-assessed the Bills of Entry and mis-declared the subject goods as detailed in Annexure-A, B, C and E to the SCN, and mis-classified the goods and evaded applicable duty. As the importer got monetary benefit due to their wilful misdeclaration and evasion of applicable customs duty on the subject goods, I find that duty was correctly demanded under Section 28(4) of the Act by invoking extended period.

4.8.2 Regarding the issue of imposition of penalty, it is appropriate to reproduce the provisions of Section 112 and 114A as under:

***Section 112** (Penalty for improper importation of goods etc.) reads as:*
"Any person,-
(a) who in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act or

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

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

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of Section 114A, to a penalty not exceeding ten percent of the duty sought to be evaded or five thousand rupees, whichever is higher……."

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

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

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

4.8.3 As discussed above, I find that the subject Bills of Entry as detailed in Annexure A, B, C and E were self-assessed by the noticee. They were aware of the true nature and characteristics of the imported goods and accordingly, were knowing about their correct classification and correctly leviable duty thereon. However, still they wilfully suppressed this fact and evaded payment of legitimately payable duty in the Bills of Entry filed before the Customs authorities. By resorting to the aforesaid suppression and mis-declaration, they evaded legitimately payable duty.

4.8.4 I find that in the self-assessment regime, the importer is bound to correctly assess the duty on the imported goods. In the instant case, the importer has declared the subject goods to be included under wrong Tariff Heading and IGST S.No. Consequently, the importer has paid less duty by non-payment of applicable duty on the subject goods, which tantamount to suppression of material facts and wilful mis-statement. The *'mens rea'* can be deciphered clearly from *'actus Reus'* and in the instant case, I find that the importer is an entity of repute and thus providing wrong information/declaration in the various documents filed with the Customs and thereby, claiming undue benefit by not paying the applicable BCD thereon, amply points towards their '*mens rea*' to evade the payment of duty. Thus, I find that the demand of differential duty is rightly invoked in the present case by invoking Section 28(4) of the Customs Act, 1962. Taking all the issues relating to the subject imports into account and in view of my findings that goods were mis-classified in the fashion discussed above, I find that the importer by their various acts of omission and commission discussed above, have rendered the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962, thereby making themselves liable for penalty under Section 112 ibid.

4.8.5 Accordingly, I agree with the proposal made in the subject SCN and hold that penalty should be imposed on the Noticee, **M/s Mercedes-Benz India Private Limited (IEC-3194008714)** under Section 112 of the Customs Act, 1962.

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

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

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

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

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

4.8.7 As I have held above, that the extended period of limitation under Section 28(4) of the Customs Act, 1962 for the demand of duty is rightly invoked in the present case. Therefore, penalty under Section 114A is rightly proposed on the Noticee, **M/s Mercedes-Benz India Private Limited (IEC-3194008714)**, in the impugned SCN. Accordingly, the Noticee is liable for a penalty under Section 114A of the Customs Act, 1962 for wilful mis-declaration and suppression of facts, with an intent to evade duty.

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

4.9 Whether penalty should be imposed on the Importer under Section 112 and/ or 114AA of the Customs Act, 1962.

4.9.1 I find that the importer has mis-declared the subject goods by way of mis-classification. I find that the importer has furnished documents such as Bills of Entry and its invoices containing false or incorrect material particular with the purpose of clearance of the imported goods by classifying the goods under wrong CTH. In the instant case, there is clear evidence of conspiracy, fraud and suppression of facts. I find that the importer was actively and knowingly involved in evading Customs duty by resorting to mis-declaration of imported goods before Customs authorities which rendered the goods liable for confiscation under 111(m) of Customs Act, 1962. The importer cleared the impugned imported goods by knowingly and intentionally resorting to use of false and incorrect declaration, statement and documents. In view of the above facts and credible evidences, I find that **M/s Mercedes-Benz India Private Limited (IEC-3194008714)**, has deliberately and intentionally committed the contraventions as discussed supra covered under the ambit and scope of Section 114AA of the Customs Act, 1962 and accordingly, has rendered themselves liable to penalty under Section 114AA of the Customs Act, 1962.

4.10 Whether penalty should be imposed on the Importer under Section 117 of the Customs Act, 1962.

4.10.1 I find that SCN has proposed penalty on noticee under section 117 of the Customs Act, 1962. Regarding the issue of imposition of penalty, it is appropriate to reproduce the provisions of Section 117 as under:

> ***SECTION 117****. Penalties for contravention, etc., not expressly mentioned. –*
> *Any person who contravenes any provision of this Act or abets any such contravention or who fails to* comply *with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding one lakh rupees.*

4.10.2 I find that section 117 of Customs Act provides for penalty for such contravention for which no penalty has been provided in the Customs Act,1962. I find that for all the contraventions mentioned in the subject SCN, proper penal action has been determined in the Customs Act,1962. Accordingly, I hold that no penalty is imposed on the Noticee under Section 117 ibid.

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

ORDER

(i) I reject the declared CTH (classification) of goods mentioned Annexure-A, Annexure-B, Annexure-C (Except item nos. of Bills of Entry covered in SCN No. 695/2021-22/Gr. VB/CAC/JNCH dated 18.04.2022) and Annexure-E to the subject SCN and order to classify the subject goods under heading 8708 having applicable rate of BCD @15%, SWS @10% of BCD and IGST @ 28% under Sr. No. 170 of Schedule IV of Notification No. 01/2017dated 28.06.2017 IGST

(ii) I confirm the demand of differential duty of **Rs. 54,27,981/- (Rupees Fifty Four Lakh Twenty Seven Thousand Nine Hundred Eighty One only)**, duly rounded off, as detailed in Annexure-A, Annexure-B, Annexure-C (Except item nos. of Bills of Entry covered in SCN No. 695/2021-22/Gr.VB/CAC/JNCH dated 18.04.2022) and Annexure-E of the subject Notice, and order to recover the same from **M/s Mercedes-Benz India Private Limited (IEC-3194008714)** under the provisions of Section 28(4) of the Customs Act, 1962 along with interest applicable in terms of Section 28AA of the Customs Act, 1962.

(iii) I confiscate the goods imported under Bill of Entry as detailed in Annexure-A, Annexure-B, Annexure-C (Except item nos. of Bills of Entry covered in SCN No. 695/2021-22/Gr.VB/CAC/JNCH dated 18.04.2022) and Annexure-E to the SCN having assessable value of **Rs. 4,49,92,064/- (Rupees Four Crore Forty Nine Lakh Ninety Two Thousand and Sixty Four only)** under the provisions of Sections 111(m) of the Customs Act, 1962.

However, I give **M/s Mercedes-Benz India Private Limited (IEC-3194008714)** an option to redeem these goods on payment of a fine of **Rs. 40,00,000/- (Rupees Forty Lakh Only)** under Section 125 of the Customs Act, 1962.

(iv) I impose a penalty of **Rs. 54,27,981/- (Rupees Fifty Four Lakh Twenty Seven Thousand Nine Hundred Eighty One only) alongwith interest thereon under Section 28AA**, on the importer **M/s Mercedes-Benz India Private Limited (IEC-3194008714)** under Section 114A of the Customs Act, 1962 in relation to the imported goods detailed in Annexure-A, Annexure-B, Annexure-C (Except item nos. of Bills of Entry covered in SCN No. 695/2021-22/Gr.VB/CAC/JNCH dated 18.04.2022) and Annexure-E to the SCN.

If such duty and interest is paid within thirty days from the date of the communication of this order, the amount of penalty liable to be paid shall be twenty-five per cent of the duty and interest, subject to the condition that the amount of penalty is also paid within the period of thirty days of communication of this order.

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

(v) I impose a penalty of **Rs. 10,00,000/- (Rupees Ten Lakh Only)** on **M/s Mercedes-Benz India Private Limited (IEC-3194008714)** under Section 114AA of the Customs Act, 1962.

(vi) I do not impose any penalty under Section 117 of the Customs Act, 1962 for reasons deliberated above.

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

13/2/25

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

To,

M/s. Mercedes-Benz India Private Limited,
E 3, MIDC, Chakan Phase III, Chakan, Indl. Area,
Kuruli & Nighoje, Chakan, Pune, Maharashtra-410501.

Copy to:

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