

Date of Order: 04/12/2025

Date of issue: 04/12/2025

**SCN Date:** 11/12/2024

**Joint Commissioner of Customs, CAC, NS-V, JNCH**

**Name of Party/Noticee :- M/s ROOFSOL ENERGY PRIVATE LIMITED**

મૂલ આદેશ

1. यह प्रति जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए निःशुल्क दी जाती है।
2. इस आदेश के विरुद्ध अपील सीमाशुल्क अधिनियम 1962 की धारा 128 (1) के तहत इस आदेश की संसूचना की तारीख से साठ दिनों के भीतर सीमाशुल्क आयुक्त (अपील), जवाहरलाल नेहरू सीमाशुल्क भवन, शेवा, ता. उरण, जिला - रायगढ़, महाराष्ट्र -400707 को की जा सकती है। अपील दो प्रतियों में होनी चाहिए और सीमाशुल्क (अपील) नियमावली, 1982 के अनुसार फॉर्म सी.ए. 1 संलग्नक में की जानी चाहिए। अपील पर न्यायालय फीस के रूप में 2.00 रुपये मात्र का स्टॉप लगाया जायेगा और साथ में यह आदेश या इसकी एक प्रति लगायी जायेगी। यदि इस आदेश की प्रति संलग्न की जाती है तो इस पर न्यायालय फीस के रूप में 2.00 रुपये का स्टॉप भी लगाया जायेगा जैसा कि न्यायालय फीस अधिनियम 1970 की अनुसूची 1, मद 6 के अंतर्गत निर्धारित किया गया है।
3. इस निर्णय या आदेश के विरुद्ध अपील करनेवाला व्यक्ति अपील अनिर्णीत रहने तक, शुल्क या शास्ति के संबंध में विवाद होने पर माँगे गये शुल्क के 7.5% का, अथवा केवल शास्ति के संबंध में विवाद होने पर शास्ति का भगतान करेगा।

1. This copy is granted free of charge for the use of the person to whom it is issued.
2. An appeal against this order lies with the Commissioner of Customs (Appeal), Jawaharlal Nehru Custom House, Nhava Sheva, Tal : Uran, Dist : Raigad, Maharashtra – 400707 under section 128(1) of the Customs Act, 1962 within sixty days from the date of communication of this order. The appeal should be in duplicate and should be filed in Form CA-1 Annexure on the Customs (Appeal) Rules, 1982. The Appeal should bear a Court Fee stamp of Rs.2.00 only and should be accompanied by this order or a copy thereof. If a copy of this order is enclosed, it should also bear a Court Fee Stamp of Rs. 2.00 only as prescribed under Schedule 1, items 6 of the Court Fee Act, 1970.
3. Any person desirous of appealing against this decision or order shall, pending the appeal, make payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.





**BRIEF FACTS OF THE CASE**

1. On the basis of the Analytics Report 18/2021-22 dated 01/06/2021 issued by the NCTC, Mumbai, on the issue of *"wrong availment of concessional BCD rate and lower IGST rates on certain imported INVERTERS of sub-heading 8504 40 "* the data pertaining to imports under CTH 8504 made by the importer M/s ROOFSOL ENERGY PRIVATE LIMITED , through JNCH (INNSA1) was analysed in detail.
  2. While analysing the data, it was observed that **M/s ROOFSOL ENERGY PRIVATE LIMITED (IEC - 0 ) having address as UNIT NO. 1008, 10TH FLOOR, LODHA SUSAKI VIHAR ROAD, ANDHERI EAST, MUMBAI 400072**, have imported goods having description as *"(I) GRID CONNECTED INVERTER GROWATT 60000TL3-HE (II) GRID CONNECTED INVERTER GROWATT MAX 70KTL LV (6MPPT) WITH ACCESSORIES and paid IGST @ 5% as per serial no. 234B of Schedule -I of IGST levy Notification No. 01/2017 -Integrated Tax (Rate) dated 28.06.2017 (as amended by Notification No. 12/2019-Integrated Tax (Rate) dated 31/07/2019). Accordingly, **SCN no.1470/2024-25/ADC/Gr.VA/CAC/JNCH dated 11.12.2024** was issued to the above importer, which inter-alia stated that :-*
    - 2.1 The Bills of Entry (as per Annexure-A) wherein goods have been classified under CTH 8504 4090 by paying IGST @ 5%. However, the said goods attract rate of IGST @ 18% from 01/08/2019 (as per Notification No. 12/2019-Integrated Tax (Rate) dated 31/07/2019). Therefore, the said goods were liable to be assessed at the IGST @ 18% instead of IGST @ 5%, which resulted in short payment of Customs duty.
    - 2.2 The entry 234B of Schedule -I ( @ 5%) or I-234 B ( @ 5%) has been introduced with effect from 01.08.2019 (Notfn. No. 12/2019- Integrated Tax (Rate) dated 31.07.2019). Accordingly, certain specified goods, namely, charger or charging station for electrically operated vehicles falling under 8504 attract a lower IGST @ 5%.
- IGST entry I-234 B (@5%) is reproduced below:
- |       |      |  |
|-------|------|--|
| 234 B | 8504 | Charger or charging station for electrically operated vehicles |
|-------|------|--|
- 2.3 Goods "other than charger or charging station for electrically operated vehicles ", falling under heading 8504, attract a higher IGST rate @ 18% under serial No. 375 of Schedule- III (18%), as amended by (Notfn. No. 12/2019- Integrated Tax (Rate) dated 31.07.2019).



The description of this entry is given below:

375	8504	Electrical Transformer, Static converters (for example, rectifiers) and inductors other than charger or charging station for electrically operated vehicles	18%
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2.4 The total assessable value of the BE items so imported is ₹ 1726740.00 /- and it appears that a short levy of duty amounting to ₹ 249169.00/- (as detailed in Annexure-‘A’) is recoverable from the Importer along with applicable interest and penalty.

Annexure-A

S r N o	BE Number/ Date	Description of Goods	Total BCD Amount- Assesse d	Total Assessa ble Value - Assesse d	Total Duty - Assesse d	IGST Amount - Assesse d	Cess @10 %	IGST @18%	Difference in IGST
1	6136903/ 18.12.19	GRID CONNECTED INVERTER GROWATT 60000TL3-HE	154212	1542120	255220.9	85587.7	15421 .2	308115.57	222527.88
2	6136903/ 18.12.19	GRID CONNECTED INVERTER GROWATT MAX 70KTL LV (6MPPT) WITH ACCESSORIES	18462	184620	30554.6	10246.4	1846. 2	36887.07	26640.68
								Total=	249168.55

2.5 In view of the above, Consultative letter bearing No. 2791/2021-22/23-12-2021was issued to the importer to clarify the issue raised by the department and if agreed to the observation/finding of the department, the importer was advised to pay the differential duty along with applicable interest and penalty. However, no reply or submission is given by importer in this regard.

2.6 Relevant legal provisions for recovery of duty that appears to be evaded are reproduced here for the sake of brevity which are applicable in this instant case:



2.7 After the introduction of self-assessment vide Finance Act, 2011, the onus is on the importer to make true and correct declaration in all aspects including classification and calculation of duty, but in the instant case the subject goods have been misclassified and duty amount has not been paid correctly.

2.8 **Section 17 (Assessment of duty)**, subsection (1) reads as:

*'An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.'*

2.9 **Section 28 (Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded)** reads as:

*'(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.*

*(5) Where any duty has not been levied or not paid or has been short-levied or short paid or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub- section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to fifteen per cent of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing. '*

2.10 **Section 46 (Entry of goods on importation)**, subsection (4) reads as:



'(4) The importer while presenting a bill of entry 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.'

**2.11 Section 111 (Confiscation of improperly imported goods etc.) reads as:**

'The following goods brought from a place outside India shall be liable to confiscation:

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;'

**2.12 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, shall be liable, -

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

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. Of the duty sought to be evaded or five thousand rupees, whichever is higher.'

**2.13 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.'



**2.14** Whereas, consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-assessment' has been introduced in customs clearance. Section 17 of the Customs Act, effective from 08.04.2011 [CBEC's (now CBIC) Circular No 17/2011 dated 08.04.2011] provides for self-assessment of duty on imported goods by the Importer himself by filing a bill of entry, in the electronic form. Section 46 of the Customs Act, 1962 makes it mandatory for the Importer to make entry for the imported goods by presenting a bill of entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Declaration) Regulation, 2011 (issued under Section 157 read with Section 46 of the Customs Act, 1962), the bill of entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a bill of entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under self-assessment, it is the Importer who has to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the bill of entry. Thus, with the introduction of self-assessment by amendments to Section 17, since 08.04.2011, it is the added and enhanced responsibility of the Importer to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

**2.15** Therefore, in view of the above facts, it appears that the importer has deliberately not paid the duty by wilful mis-statement as it was his duty to declare correct applicable rate of duty in the entry made under Section 46 of the Customs Act, 1962, and thereby has attempted to take undue benefit amounting to ₹ 249169.00/- (as detailed in Annexure-'A'). Therefore, the differential duty, so not paid, is liable for recovery from the Importer under Section 28 (4) of the Customs Act, 1962 by invoking extended period of limitation, along with applicable interest at the applicable rate under section 28AA of the Customs Act, 1962 and for their acts of omission/commission.

**2.16** Section 111(o) of Customs Act, 1962 provides for confiscation of the goods if any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which condition is not observed unless the non-observance of the condition was sanctioned by the proper officer. Section 111(m) of Customs Act,



1962 provides for confiscation of the goods if 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 transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54.

**2.17** It appears that the Importer has failed to comply with the conditions mentioned above; therefore, it also appears that the imported goods are liable for confiscation under Section 111(m) and/or 111(o) of the Customs Act, 1962.

**2.18** It further appears that the Importer for the acts of omission and commissions mentioned above has rendered themselves liable for penal action under section 112(a) and 114A of the Customs Act. 1962.

**3.** In view of the above, the importer was called to show cause as to why:

**3.1** The IGST rate @5% as per serial no. **234B of Schedule -I** of IGST levy Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017(*as amended by Notification No. 12/2019-Integrated Tax (Rate) dated 31/07/2019*), in respect of the goods discussed in Annexure-A should not be denied for the reasons stated therein and the merit IGST rate @ 18% under serial No. **375 of Schedule- III** (18%), as amended by (Notfn. No. 12/2019- Integrated Tax (Rate) dated 31.07.2019) should not be applied.

**3.2** Total differential/short paid Duty amounting to ₹ ₹ 249169.00 /- for the subject goods imported vide Bills of Entry as detailed in Annexure-'A' should not be demanded under Section 28(4) of the Custom Act, 1962.

**3.3** In addition to the duty short paid, interest on delayed payment of Custom Duty should not be recovered from the Importer under section 28AA of the Customs Act. 1962.

**3.4** The said subject goods imported vide Bills of Entry as detailed in Annexure-'A' having assessable value of ₹ 1726740.00 /- should not be held liable for confiscation under Section 111(m) and/or 111(o) of the Customs Act, 1962.

**3.5** Penalty should not be imposed on them under Section 112(a) of the Customs Act. 1962 for their acts of omission and commission, in rendering the goods liable for confiscation, as stated above.



- 3.6 Penalty should not be imposed under Section 114A of Customs Act, 1962 for short levy of duty.

#### **4. PERSONAL HEARING & WRITTEN SUBMISSION**

- 4.1 In order to comply with the principals of natural justice, opportunity of personal hearing in the matter was provided to the noticee vide letter F.No. S/10-737/2024-25/ADC/Gr.VA/NS-V/CAC/JNCH dated 24.07.2025 to appear before the adjudicating authority on 21.08.2025. In response, the importer, vide email dated 20.08.2025 requested to adjourn the said personal hearing.
- 4.2 Another opportunity for personal hearing was provided to the noticee on 23.09.2025 vide letter dated 25.08.2025. The said personal hearing was attended by Shri Yogiraj Naik, Authorised Signatory who, during the personal hearing requested 15 days for submission and written reply which had been granted.

#### **5. WRITTEN SUBMISSION OF THE IMPORTER**

The importer submitted their written submission dated 03.10.2025 in connection with the Show cause notice-1470/2024-25/ADC/Gr.VA/CAC/JNCII dated 11.12.2024, which inter alia stated that:-

- 5.1 That they had imported Electrical Transformers, Static Converter (for examples Rectifiers) and inductors other than Charger or Charging Station for electrically operated vehicles declaring under Heading No. 8504 and had paid IGST @ of 5%.
- 5.2 That the Noticee is supplier of Solar Power Generating System and for which he is empanelled member for supply of Solar Power Generating System with implementing agency.
- 5.3 He submitted that the allegation made against noticee for import of "Electrical Transformers, Static Converter (for examples Rectifiers) and inductors other than Charger or Charging Station for electrically operated vehicles declaring it under Heading No. 8504" attracting IGST@ 18% vide Sr. No. 375 of Notification No. 1/2017-Integrated Tax (Rate) amended vide Notification No. 12/2019-Integrated Tax Rate is not correct and further submitted that "Grid Connected Inverter having different models and having Brand name "Growatt" and classified the under-



Chapter Sub Heading No. 85044090. The said goods i.e. "Grid Connected Inverter" is a part of Solar Generating Power System and accordingly it will attract IGST @of 5% as per Sr. No. 234 of Schedule-1 of Notification No.1/2017 as amended from time to time.

S. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
234	[84, 85 or 94]	Following renewable energy devices & parts for their manufacture  (a) Bio-gas plant  (b) Solar power-based devices  (c) Solar power generating system  (d) Wind mills, Wind Operated Electricity Generator (WOEG)  (e)Waste to energy plants/devices  (f)Solar lantern/solar lamp  g) Ocean waves/tidal waves energy devices/plants

- 5.4 He submitted that the they are supplier of Solar power Generator wherein the goods imported by them viz. Grid Connected Inverter are used.
- 5.5 Importer also submitted past litigation and GST Classification references of Solar Power Generating System i.e Ruling given by Advance Ruling Authority in case of Fermi Solar Farm Pvt Ltd, Giriraj Renewable Pvt. Ltd and Hero Solar Energy Private Limited in this matter.

**DISCUSSIONS AND FINDINGS**

6. I have gone through the facts of the case and material on records. I find that the Show Cause Notice proposes for demand of differential/short-paid Duty amounting to **Rs.2,49,169/- (Rupees Two Lakhs Forty-nine Thousand One Hundred Sixty-nine only)** under Section 28(4) of the Customs Act, 1962 and applicable interest under Section 28AA of the Customs Act,1962. The SCN also



proposes for confiscation of the impugned goods total valued at **Rs.17,26,740/- (Rupees Seventeen Lakhs Twenty-six Thousand Seven Hundred Forty only)** under Section 111(m) and/or 111(o) of the Customs Act, 1962 and imposition of penalty on the importer under Section 112 (a) and 114 A of the Customs Act, 1962.

7. I have gone through the subject **Bills of Entry 6136903 dt. 18.12.2019** and observe that the description of impugned goods in the said Bill of Entry are (i) **GRID CONNECTED INVERTER GROWATT 60000TL3-HE** (ii) **GRID CONNECTED INVERTER GROWATT MAX 70KTL LV (6MPPT) WITH ACCESSORIES**, imported under CTH 8504 4090.
8. I find that the core issue of the SCN is that the importer has paid lower rate of IGST @5% as per Sl. no. 234 of Schedule-I of Notification no. 01/2017-Integrated Tax (Rate) dated 28.06.2017(as amended by Notification no. 12/2019- Integrated Tax (Rate) dated 31.07.2019), whereas the said goods attract IGST @18% from 01/08/2019 (as per Notification No. 12/2019-Integrated Tax (Rate) dated 31/07/2019).
9. Coming to the question of IGST leviable on the impugned goods, I observe that as per Sr. No. 234 of Schedule-I of Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017, as amended from time to time, IGST @5% is applicable on the following renewable energy devices & parts for their manufacture:
  - (a) Bio-gas plant
  - (b) Solar power-based devices
  - (c) Solar power generating system
  - (a) Wind mills, Wind Operated Electricity Generator (WOEG)
  - (e) Waste to energy plants / devices
  - (f) Solar lantern / solar-lamp
  - (g) Ocean waves/tidal waves energy devices/plants
- 9.1 However, I observe that IGST @5% on the above goods is applicable only when these goods are procured for the manufacture or if the importer is a manufacturer. I find that the importer, in his written submission, has submitted that they are supplier of Solar Power Generating System and Grid Connected inverters are part of Solar Power Generating System. Further, I observe that the importer has not submitted any documentary proof to establish that impugned goods were used only for manufacturing purpose and not for trading. Therefore, I am of the opinion



that IGST benefit as per Sr. No. 234 of Schedule-I was not available to said importer.

9.2 I observe that as per Sr. no. 375 of Schedule-III of Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 (w.e.f. 01.07.2017), goods falling under CTH 8504 attracts IGST @18%. I find that since the CTH of the impugned goods i.e. CTH 8504 has not been challenged and the applicable IGST on the goods under CTH 8504, during the material time of import, was @18%, hence I am of the considered view that IGST@18% was applicable on the impugned goods and I hold the same.

10. I find that after the introduction of self-assessment vide Finance Act, 2011, the onus is on the importer to make true and correct declaration in all aspects including calculation of duty. The relevant sections of the Customs Act, 1962 are reproduced below for ease of reference: -

**10.1 Section 17(1) Assessment of duty**, reads as:

*An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.*

**10.2 Further Section 28 (Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded)** reads as:

*'(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 willful 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.*

11. Thus, from material facts of the case, it is evident that the said importer, purportedly mis-classified the impugned goods with the intent to pay lower IGST and thereby caused loss to the govt. exchequer. The said act of the importer is nothing but wilful mis-statement with clear mens rea to pay lower duty at material time. By doing so, the importer evaded a total duty of **Rs. 2,49,169/- (Rupees Two Lakhs Forty-nine Thousand One Hundred Sixty-nine only)**. Thus I hold that the demand of duty under Section 28(4) of the Customs Act, 1962 is sustainable and I hold the same.
12. Further, since the demand of duty is sustainable in the instant case, the interest being accessory to the principal, the same is liable to be paid in accordance with Section 28AA of the Customs Act, 1962.
13. As I have already hold that the demand of duty for extended period under Section 28(4) of Customs Act, 1962 is sustainable in the case, I observe that the importer is liable for penal action under Section 114A of the Customs Act, 1962 and I hold the same.
14. I find that, on the basis of the facts and circumstances mentioned herein above, the importer has knowingly and deliberately indulged themselves in wilful mis-statement and alleged suppression of facts with regard to the Sr. No./Schedule of the relevant notification, with an intent to evade the applicable duty. Thus, I am of considered view that by their aforesaid acts of omission and commission, the impugned goods are liable for confiscation under Section 111 (m) of the Customs Act, 1962 and I hold the same. However, I find the goods imported vide bills of entry as detailed above 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 regularized, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorized by this Act....", brings out the point clearly. The power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. When once power of authorization for confiscation of goods gets traced to the said Section III of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing the payment of the redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (i)."*

15. I further find that the above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad), has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.) and the same have not been challenged by any of the parties in operation. Hence, I find that any goods improperly imported as provided in any sub-section of Section 111 of the Customs Act, 1962 are liable to confiscation and merely because the importer was not caught at the time of clearance of the imported goods, can't be given differential treatment. In view of the above, I find that the decision of the Hon'ble Madras High Court in the 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 the decision of Hon'ble Bombay High Court in case of M/s Finesse Creations Inc reported vide 2009 (248) ELT 122 (Bom)-upheld by Hon'ble Supreme Court in 2010(255) ELT A.120(SC), is squarely applicable in the present case. Accordingly, I observe that the present case also merits the imposition of a Redemption Fine.
16. Now coming to the issue of penalties, I find that the impugned notice proposes a penalty under Section 112(a) and 114A of the Customs Act, 1962 on the importer. In this regard, I find that the importer has wrongly evaded legitimate customs duty. I find that, in the self-assessment regime, it is the bounden duty of the Importer to correctly assess the duty on the imported goods. In the instant case wrongly availed the benefits of IGST notification by the importer of such repute having access to all legal aid, tantamount to suppression of material facts and willful mis-



classification. The "mens rea" can be deciphered only from "actus-reus". Thus, providing the suppression of fact and claiming undue benefit by the said Importer taking a chance to clear the goods by misclassifying it, amply points towards their "mens rea" to evade the payment of duty. Thus, I find the Importer is liable for a penalty under Section 114A of the Customs Act, 1962.

17. In view of the above facts, I pass the following order.

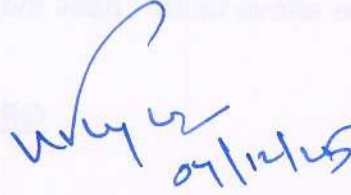
**ORDER**

- i. I reject the IGST claimed under Schedule-I Sr. no. 234 of IGST levy Notification no. 01/2017-Integrated Tax (Rate) dated 28.06.2017 for the impugned goods and order to re-asses the said Bill of Entry by applying IGST @18% under Schedule-III, Sl. No. 375 of said notification dated 28.06.2017 applicable for CTH 8504.
- ii. I order to recover differential duty amount of **Rs.2,49,169/- (Rupees Two Lakhs Forty-nine Thousand One Hundred Sixty-nine only)** under the provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962;
- iii. I order to confiscate the imported goods, having assessable value of **Rs.17,26,740/- (Rupees Seventeen Lakhs Twenty-six Thousand Seven Hundred Forty only)**, covered under Bill of Entry as detailed in Annexure-A, under Section 111(m) of the Customs Act, 1962, but since the same stood released, I impose redemption fine of **Rs. 1,72,000/- (Rupees One Lakh Seventy-two Thousand Only) under Section 125(1)** of the Customs Act, 1962 upon M/s Roofsol Energy Private Limited.
- iv. I order to impose penalty of **Rs. 2,49,169/- (Rupees Two Lakhs Forty-nine Thousand One Hundred Sixty-nine only) plus applicable interest**, under Section 114A of Customs Act, 1962 on M/s Roofsol Energy Private Limited. However, such penalty would be reduced to 25% of the total penalty imposed under Section 114A of the Customs Act, 1962 if the amount of duty as confirmed above, the interest and the reduced penalty is paid within 30 (thirty) days of communication of this Order, in terms of the first proviso to Section 114A of the Customs Act, 1962.



v. I refrain from imposing any penalty under Section 112(a) of the Customs Act, 1962 on the Importer for the reason as discussed above.

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



(माजिद खान / MAZID KHAN)

संयुक्त आयुक्त सीमा शुल्क/ JT. COMMISSIONER OF CUSTOMS

सीएसी, एनएस-5, जेएनसीएच/ CAC, NS-V, JNCH

Encl:- Annexure-A

To:

**M/s ROOFSOL ENERGY PRIVATE LIMITED**

Address: - UNIT NO. 1008, 10TH FLOOR, LODHA  
SUSAKI VIHAR ROAD, ANDHERI EAST, MUMBAI-400072

Copy to:

1. The Dy./Asstt Commissioner of Customs, Review Cell, JNCH.
2. The Dy./Asstt Commissioner of Customs, Recovery Cell, JNCH.
3. The Dy./Asstt. Commissioner of Customs, Group VA, JNCH.
4. The Dy./Asstt. Commissioner of Customs, Audit, Circle-D1, JNCH
5. The Dy./Astt. Commissioner of Customs, EDI, JNCH.....for uploading on website.
6. Notice Board....through Superintendent (CHS Section), JNCH.
7. Office Copy.



IO.	BE Number	BE Date	Description of goods	Total BCD Amount - Assessed	Total Assessable Value - Assessed	Total Duty - Assessed	IEC Code	IGST Amount - Assessed	BCD Notification Number	Cess @ 10%	IGST @ 18%	Difference in Ru.
	6136903	Dec 18, 2019	GRID CONNECTED INVERTER GROWATT 60000T13-HE	1,54,212	15,42,120	2,56,220.9	0316929611	85,587.7	057/2017	15421.2	308115.576	2,22,527.88
	6136903	Dec 18, 2019	GRID CONNECTED INVERTER GROWATT MAX 70KTL LV (6MPT) WITH ACCESSORIES	18,462	1,94,620	30,554.8	0316929611	10,246.4	057/2017	1846.2	36887.076	26,640.58
												2,49,168.55

Verified  
 Mahesh Singh  
 12/10/19  
 PO, Co.



