



सीमा शुल्क आयुक्त का कार्यालय
OFFICE OF THE COMMISSIONER OF CUSTOMS
केंद्रीय अधिनिर्णय प्रकोष्ठ, एन एस-V
CENTRAL ADJUDICATION CELL, NS-V
जवाहरलाल नेहरू कस्टम हाउस, न्हावा-शेवा,
JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA-SHEVA,
ताल-ऊरण, डिस्ट-राइगड, महाराष्ट्र-४०० ७०७.
TAL. URAN, DIST. RAIGAD, MAHARASHTRA - 400 707.

DIN : 20250778NX000000D816

Date of Order: 25/07/2025

F.No. S/10-346/2024-25/ADC/Gr.VA/NS-V/CAC/JNCH

Date of issue: 25/07/2025

SCN No.: 849/2024-25/ADC/Gr.VA/CAC/JNCH

SCN Date: 31/07/2024

Passed By: Shri Mazid Khan

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

Order-In-Original No. : 557/2025-26/JC/GR.VA/NS-V/CAC/JNCH

Name of Party/Noticee :- M/s ESCORTS LTD. (IEC- 0588095001)

मूल आदेश

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 भुगतान करेगा।

ORDER-IN-ORIGINAL

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.

Date of generation of DIN	25/07/2025
Name of the office issuing the document	Mumbai(Nhava Sheva-V) Customs Commissionerate
Name of the officer generating the DIN	Prabhat Ranjan
Designation of the officer generating the DIN	Superintendent / Appraiser / Senior Intelligence Officer
File number	S/10-346/2024-25/ADC/Gr.VA/NS-V/CAC/JNCH
Date of issuing document	25/07/2025
Subject of the communication (document)	OIO in the matter of M/s Escorts Ltd SCN No. 849/2024-25/ADC/GR.VA/N
Category of the communication (document)	Orders
Selected Adjudication Order	
Adjudication Order Number *	557/2025-26/JC/GR.VA/NS-V/CAC/JNCH
Authority Issuing Adjudication Order *	Shri Mazid Khan, JC, CAC, NS-V
Date of Issue *	25/07/2025

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BRIEF FACTS OF THE CASE

1. On the basis of the Alert Circular No. 11/2019 dated 30.03.2019 issued by the Commissioner of Customs (Audit), Mumbai, Zone-I vide F. No. S/16-Misc-75/2018-19 Audit (P&C), on the issue of "Short Levy of Customs Duty by way of clearance of goods covered under CTH 8507 at lower rate of IGST" and by way of claiming incorrect Schedule and Serial number of IGST Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017, data pertaining to imports made by various importers through JNCH (INNSA1) during 01.07.2017 to 13.11.2019 was analyzed in detail.
2. While analyzing the data, it was observed that **M/s. ESCORTS LTD.(IEC-0588095001)** (herein after referred as "importer) having address as CORPORATE CENTRE, 15/5, MATHURA ROAD, FARIDABAD, HARYANA-121003 had imported goods having description as "Battery" under the aforestated CTH as detailed in Annexure-'A'. The imported goods attract IGST @ 28% under Sl. No. 139 of Schedule IV. Accordingly, SCN No. 849/2024-25/ADC/Gr.VA/CAC/JNCH dated 31.07.2024 was issued to the importer, which inter-alia stated:
- 2.1 The Bills of Entry (as per Annexure-A) wherein goods have been classified under CTH 8507 attract levy of IGST as per Table-A. However, they have been cleared under lower rate of IGST.

Table-A

Notification No.	Schedule / S. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods	IGST Rate
01/2017-Integrated Tax (Rate) dated 28.06.2017 w.e.f. 01.07.2017	IV / 139	8507	Electric accumulators, including separators therefor, whether or not rectangular (including square) other than [Lithium-ion batteries] ¹ and [Lithium-ion accumulators (other than battery) including Lithium-ion power bank] ² . 1. Inserted by Ntn. 19/2018-IT (Rate) dated 26.07.2018 w.e.f. 27.07.2018. 2. Inserted by Ntn. 25/2018-IT (Rate) dated 31.12.2018 w.e.f. 01.01.2019.	28%
19/2018-IT (Rate) dt. 26.07.18 w.e.f. 27.07.18	III / 376AA	8507 60 00	Lithium-ion Batteries	18%
25/2018-IT (Rate) dt. 30.12.18 w.e.f. 01.01.19	III / 376AAA	8507	Lithium-ion accumulators (other than battery) including lithium-ion power bank	18%
01/2017-Integrated Tax (Rate) dated 28.06.2017	II / 203	85	Part for manufacture of telephones for cellular networks or for other wireless networks	12%

w.e.f. 01.07.2017				
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- 2.2** Consequent upon the above notifications, it is amply clear that imported goods attract Sl. No. 139 of Schedule IV (IV-139) levying IGST rate of 28% for the CTH 8507 i.e. Electric accumulators, including separators therefor, whether or not rectangular (including square). Further, Sl. No. 203 of Schedule II (II-203 of IGST Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 levying IGST rate of 12% for the CTH 85 i.e. Parts for manufacture of telephones for cellular networks or for other wireless networks, Sl. No. 376AA of Schedule III of IGST Notification No. 19/2018-Integrated Tax (Rate) dated 27.07.2018 levying IGST rate of 18% for the CTH 85076000 i.e. Lithium-ion Batteries & Sl. No. 376AAA of Schedule III of IGST Notification No. 19/2018-Integrated Tax (Rate) dated 27.07.2018 levying IGST rate of 18% for the CTH 8507 i.e. Lithium-ion accumulators (other than battery) including lithium-ion power bank Lithium-ion accumulators (other than battery) including lithium-ion power bank are not applicable to the imported goods. The importer has imported goods having description as Battery. After going through the description of the BE items under deliberation, it has been observed that the imported goods appears to attract IGST @28% against sr. no. 139 of Schedule IV of notification no. 01/2017- Integrated tax (Rate) dated 28.06.2017 and does not seem to justify clearance claiming a lower IGST rate @12% under sr. nos. 203 of Schedule II of IGST notification no. 01/2017- Integrated tax (Rate) dated 28.06.2017 and/or @18% under sr. nos. 376AA or 376AAA of Schedule III of IGST notification no. 19/2018- Integrated tax (Rate) dated 27.07.2018 or a lower IGST rate in other Schedule.
- 2.3** On scrutiny of the import data, it was observed that goods covered under CTH 8507 were cleared by declaring lower rate of IGST under Sl. No. 203 of Schedule II of IGST Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 @ 12% and/or @18% under sr. nos. 376AA or 376AAA of Schedule III of IGST notification no. 19/2018- Integrated tax (Rate) dated 27.07.2018 or a lower IGST rate in other Schedule, however, the imported goods falling under CTH 8507 are to be correctly covered under Sl. No. 139 of Schedule IV of the IGST Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 and attract higher rate of IGST @28%.
- 2.4** The total assessable value of the BE items so imported is ₹33,25,663.03/- and it appears that a short levy of IGST amounting to ₹9,82,400.86/- (as detailed in Annexure-'A') is recoverable from the Importer along with applicable interest and penalty.
- 2.5** In view of the above, Consultative letter No. 4722 was issued to 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, as per available records, 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 mis-classified 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:

(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 77³ [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;'

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 **₹9,82,400.86/-** (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(m) 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.

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) 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, **M/s. ESCORTS LTD.** (IEC- 0588095001) was called to show cause, as to why;

- (i) Differential/short paid Duty amounting to **₹9,82,400.86/-** 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;
- (ii) 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;

- (iii) The said subject goods imported vide Bills of Entry as detailed in Annexure-'A' having assessable value of ₹33,25,663.03/- should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962;
- (iv) 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;
- (v) Penalty should not be imposed under Section 114A of Customs Act, 1962 for short levy of duty.

RECORDS OF PERSONAL HEARING

- 4. In order to comply the principal of natural justice, opportunities for personal hearing in the matter was provided to the notice/importer on 17.06.2025 on virtual mode vide letter F. No. S/10-346/2024-25/ADC/Gr.VA/CAC/JNCH dated 27.05.2025, however, the importer vide e-mail dated 17.06.2025 informed that they are in the process of finalizing the reply to the subject show cause notice and requested for grant of 30 days' time.
- 4.1 The adjudicating authority acceded to the above request of the importer and provide another opportunity for personal hearing on 08.07.2025 in virtual mode, which was communicated to the importer vide e-mail dated 17.06.2025. The said personal hearing on 08.07.2025 was attended virtually by Ms. Manpreet Kaur, General Manager, Indirect Taxation and authorized representative of the importer, who, during the personal hearing, submitted that they have correctly paid IGST @ Nil, by availing benefit of exemption notification no. 51/96-Customs as amended by notification no.24/2007 and 43/2007. She further submitted that they had imported Li-ion battery for Hybrid Tractor for research & development purpose. She requested to take their written submission dated 08.07.2025 on record and further requested to grant one week time to submit additional written submissions.

WRITTEN SUBMISSION OF THE IMPORTER

- 5. The importer vide their e-mail dated 08.07.2025 submitted their written submission, wherein they inter-alia stated that:
- 5.1 That the noticee having Import Export Code (IEC) 0588095001, located at Corporate Centre, 15/5, Mathura Road, Faridabad, Haryana-121001, is an Indian multinational conglomerate engaged in manufacture of tractors, automotive components, railway equipment, construction and material handling equipment.
- 5.2 That the noticee was engaged in the research and development activities and was duly registered with the Department of Scientific and Industrial Research ('DSIR'), Ministry of Science and Technology, New Delhi. According to the DSIR registration certificate, the Noticee was eligible to avail the benefit of exemption of duties of customs along with additional duties vide Notification no. 51/96-customs dated

23.07.1996, as amended by Notification no. 24/2007 dated 01.03.2007 and Notification No. 43/2017 dated 30.06.2017, subject to fulfilment of prescribed conditions.

5.3 That the noticee had imported the high voltage li-on battery (hereinafter referred to as “**impugned goods**” or “**subjected goods**”), for build and exhibition of hybrid tractor for the research and development center vide the following 2 Bill of Entry (hereinafter referred to as “BOEs”):

S. No.	Bill of Entry No.	Bill of Entry date	BCD	SWS (% of BCD)	IGST	Differential duty demand
1.	4569497	20.08.2019	5%	10%	0%	5,07,303.55
2.	7528898	06.08.2018	5%	10%	0%	4,75,097.33

5.4 The Noticee classified the impugned goods under Customs Tariff Head (hereinafter referred to as “CTH”) 85076000 with BCD 5 % and availed the benefit of 100% exemption of IGST under Notification no. 51/96-customs dated 23.07.1996, as amended by Notification no. 24/2007 dated 01.03.2007 (sr.no. 2) and Notification No. 43/2017 dated 30.06.2017 (sr.no.19). The said Notification grants exemption of the custom duty on the specified goods imported for research purposes by research institutions other than hospital. The Noticee falls squarely within the class of eligible importers specified in column 2 of the notification and has duly complied with the stipulated requirements of the notification, including:

- a. The Noticee is registered at the time of import with the Department of Scientific and Industrial Research (‘DSIR’), Ministry of Science and Technology, New Delhi.
- b. The Noticee has produced certificate from the Head of the institution, in each case of import, certifying that the said goods are essential for research purposes and will be used for the stated purpose only.
- c. The Noticee has produced an undertaking that the goods will not be sold or transferred for a period of five years from the date of importation.

5.5 That in the present SCN, the department has completely overlooked the fact that the Noticee had availed the benefit of the exemption under Notification no. 51/96-customs dated 23.07.1996, as amended by Notification no. 24/2007 dated 01.03.2007 (sr.no. 2) and Notification No. 43/2017 dated 30.06.2017 (sr.no.19), which is clearly mentioned in the Bill of Entry. Despite this, there is no reference or discussion in the Show Cause Notice regarding the specific exemption notification under which the benefit was claimed. The very foundation of the SCN appears to be based on assumptions, without considering the documents already available on record. The mention of the exemption benefit of the notification in the Bill of Entry itself shows that there was complete disclosure by the Noticee, and hence, there was no suppression

or misstatement of fact and the Noticee has rightly availed exemption benefit under aforementioned notification in accordance with the applicable provisions and on fulfillment of relevant conditions.

5.6 That, at the outset, the Noticee would like to object and deny all the allegations made in SCN dated 31.07.2024 further submit that is alleged in the notice that nothing is admitted or deemed to have been admitted. Moreover, the submissions below are without prejudice to each other, and the Noticee reserves the right to add, amend, alter, or delete any/ all the submissions as per exigencies at the appropriate stage.

5.7 Exemption benefit of IGST has been correctly claimed.

5.7.1 That in the present SCN, it has been alleged that the noticee has short paid IGST on import of impugned goods (i.e. nil instead of 28%) and consequently proposed a demand of tax amounting to **Rs. 9,82,400.86/-** under Section 28(4) of the Customs Act, 1962. In this regard, the Noticee wishes to submit that the Noticee has correctly assessed IGST as Nil as the Noticee has rightly availed exemption benefit under Notification no. 51/96-customs dated 23.07.1996, as amended by Notification no. 24/2007 dated 01.03.2007 (sr.no. 2) and Notification No. 43/2017 dated 30.06.2017 (sr.no.19) in accordance with the applicable provisions and on fulfillment of relevant conditions.

5.7.2 That the Noticee had imported the high voltage lithium ion batteries vide BOE nos. 4569497 dated 20.08.2019 and 5321063 dated 16.10.2019. These imports were intended for the build and exhibition of a hybrid tractor at the company's Research and Development Centre, and the impugned goods were accordingly classified under Customs Tariff Heading (CTH) 85076000 with, attracting Basic Customs Duty (BCD) at 5 %. The imports that were made specifically imported were exclusively for research purposes and not for commercial use.

5.7.3 That in respect of IGST on the impugned goods, the Noticee availed the benefit of exemption of IGST under Notification no. 51/96-customs dated 23.07.1996, as amended by Notification no. 24/2007 dated 01.03.2007 (sr.no. 2) and Notification No. 43/2017 dated 30.06.2017 (sr.no.19). The said Notifications if read together, exempts the basic customs duty in excess of 5% and whole of IGST when imported by eligible research institutions, subject to conditions laid out in the said notifications.

5.7.4 That the noticee wishes to submit that the exemption benefit under aforementioned notification shall be available to imports made by research institutions other than hospitals, subject to the fulfillment of certain conditions mentioned in Column 4 under sr.no. 2 of the Notification no. 51/96-customs dated 23.07.1996, as amended by Notification no. 24/2007 dated 01.03.2007.

5.7.5 The relevant portion of the Notification no. 51/96-customs dated 23.07.1996, as

amended by Notification no. 24/2007 dated 01.03.2007 reads as follows:

“....hereby exempts goods falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and specified in column (3) of the Table hereto annexed, from **so much of that portion of the duty of customs** leviable thereon which is specified in the said First Schedule as in excess of the amount calculated at the rate of five percent ad valorem, when imported into India, by importers specified in column (2) of the said Table, subject to the conditions specified in the corresponding entry in column (4) of the said Table.”

“The relevant extract of the table of the notification:

S.no.	Name of the Importer	Description of the goods	Conditions
(1)	(2)	(3)	(4)
2.	Research institutions, other than a hospital	a) Scientific and technical instruments, apparatus equipment (including computers); b) Accessories, parts, consumables and live animals (for experimental purposes); Computer software, compact Disc- Read Only Memory(CD- ROM), Recorded magnetic tapes, microfilms, microfiches; c) d) Prototype, the CIF value of which does not exceed rupees fifty thousand in a financial year.	1) The Importer- i. is registered with the government of India in Department of Scientific and Industrial Research; ii. produces a certificate from the Head of the institution, in each case of import, certifying that the said goods are essential for research purposes and will be used for the stated purpose only; iii. in the case of import of live animals for experimental purposes, produces, at the time of importation, a certificate from the Head of the institution that the live animals are required for research purposes and encloses a no objection certificate issued by the committee for the purpose of control and supervision of experiments on animals. 2) The goods falling under (i) above shall not be transferred or sold for a period of five years from the date of importation

5.7.6 That in the present case, the Noticee has fully complied with the following conditions applicable to the Noticee to avail the exemption benefit.

5.7.7 That the noticee is registered with the Department of Scientific and Industrial Research ('DSIR'), Ministry of Science and Technology, New Delhi, at the time of import as 'In-house Research and development unit'. Thus, the Noticee falls squarely within the ambit of "research institutions other than hospitals" as envisaged in the notification.

5.7.8 The Noticee furnished the requisite certificate from the Head of the institution (i.e. Escorts Kubot Ltd. formerly known as 'Escorts Ltd.'), certifying that the said goods were essential for research purposes and will be used for the stated purpose only.

5.7.9 The Noticee submitted an undertaking that the goods will not be sold or transferred for a period of five years from the date of importation.

5.7.10 The goods in question (technical equipment including batteries) fall within the specified eligible goods under clause (a) of column (3).

5.7.11 It is further submitted that the department has failed to appreciate the fact that the noticee has availed the benefit of aforesaid exemption notification and has fulfilled all the applicable conditions and SCN fails to refer to the exemption benefit availed by the Noticee. There has been no suppression of facts or misstatements or intent to evade duty on the part of the noticee. All relevant documents, including DSIR registration, institutional certificate from Head institution, and undertaking were submitted at the time of import along with BOEs. The transactions were entirely transparent and made in good faith. Therefore, the Noticee has correctly paid BCD 5% along with SWS 10% and nil IGST. Hence, the IGST as nil has been correctly assessed by the Notice and there is no short payment of IGST.

5.7.12 In the light of the above facts and compliance with the applicable exemption notification, the demand on the alleged short payment of IGST is factually incorrect and unsustainable. Therefore, the proposed demand of tax of **Rs. 9,82,400.86/-** is liable to be dropped.

5.8 The present demand is not sustainable in the absence of challenge against out of charge order/Bills of Entry.

5.8.1 It is submitted that the impugned SCN raises demand from BoE which is finally assessed. The impugned goods imported by the Noticee were cleared for home consumption on the strength of duly assessed BoEs and the out of charge orders issued by the proper officer under Section 17 read with Section 47 of the Customs Act. There is no dispute on this factual position. It is submitted that the order was passed upon the satisfaction of the proper officer that the impugned goods have been properly assessed before clearance for home consumption. Consequently, in absence of any order challenging these assessments by the department, there can be no SCN issued to the Noticee. Detailed submissions to substantiate these arguments are made in the following paras.

5.9 Absence of appeal against the out of charge order/ bill of entry renders the demand invalid.

5.9.1 It is submitted that the assessment orders being quasi-judicial orders can only be set aside by an order of the competent appellate authority in appellate proceedings. It is submitted that quasi-judicial orders cannot be sought to be set aside by mere issuance of a show cause notice, which has proposed to modify the assessment orders in the instant case.

5.9.2 The noticee relied on the following case laws:-

- ITC Limited vs. Commissioner of Central Excise, 2019 (368) ELT 216 (Supreme Court)
- Vitesse Export Import vs. Commissioner of Customs (EP), Mumbai, 2008 (224) ELT 241 (Tribunal-Mumbai)
- Ashok Khetrapal vs. Commissioner of Customs, Jamnagar, 2014 (304) ELT 408 (Tribunal-Ahmedabad)

- 5.9.3** It is submitted that the ratio of the aforesaid judgments is equally applicable to the present case. In the present case also, the department sought to confirm duty demand without challenging the bills of entry and the resultant out of charge orders. In the absence of any appeal against the said out of charge orders/ bills of entry which have been assessed by proper officers, it must be understood that the assessment has gained finality, which cannot be challenged or negated by issuance of the SCN. Hence, on this ground, the impugned SCN should be dropped.
- 5.10** Refund provisions under Section 27 and recovery provisions under Section 28 of the Customs Act are separate remedies available to the assessee and to the Department, respectively.
- 5.10.1** It is submitted that Section 27 of the Customs Act is a remedy available to the assessee for the refund of excess duty paid by him.
- 5.10.2** On the other hand, Section 28 of the Customs Act is a remedy available to the department for the recovery of duty not levied, short-levied or erroneously refunded. Thus, both the provisions provide separate remedies to the assessee as well as to the department. To that extent, both are mirror image of each other.
- 5.10.3** Section 28(1) of the Customs Act prescribes a period of 2 years for recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. In such cases of normal period of limitation, there is no requirement on part of the department to prove any collusion or wilful misstatement or suppression of facts with the intention to evade payment of duty. Such recovery proceedings can be initiated by issuance of a notice for demand in the form of a show cause notice.
- 5.10.4** The extended period of limitation of 5 years under Section 28(4) of the Customs Act is invokable where any duty of customs has not been levied or paid or has been short levied or short paid by reason of collusion or any wilful misstatement or suppression of facts. It is a settled law that in order to invoke extended period of limitation, an assessee should have engaged in collusion or wilful misstatement or suppression of facts.
- 5.10.5** It is submitted that right to appeal is available to any person, that is, the department as well as to the assessee against an order of assessment. It is pertinent to note that even though the Apex Court in the case of *ITC Ltd. (Supra)* has extracted the provision of Section 28 of the Customs Act, but the Hon'ble Court has not given any findings on this provision.
- 5.10.6** The Apex Court has held that an order of self-assessment is nonetheless an assessment order passed under the Customs Act, so it would be appealable by any person aggrieved thereby. The Department, as well as the assessee can prefer an appeal aggrieved by such order of assessment.

5.10.7 In view of the above, it can be said that as much as the judgment in the case of *ITC Ltd. (Supra)* applies to the assessee as regards refunds under Section 27 of the Customs Act, the same would be applicable to the department while exercising their remedy under Section 28 of the Customs Act. Therefore, even the department has to first challenge an assessment order by filing an appeal under Section 128 within two months, before issuing a SCN under Section 28 of the Customs Act.

5.10.8 In this regard, the noticee has placed reliance on the cases

- *Axiom Cordages Ltd. vs. Commissioner of Customs, Nhava Sheva-II, 2020 (9) TMI 478 - CESTAT MUMBAI*
- *Jairath International vs. Union of India, 2019 (10) TMI 642.*
- *M/S S.K. Timber & Company vs. Commissioner of Customs (Port), Kolkata, 2021 (6) TMI 170 - CESTAT Kolkata,*
- *Ashok Khetrapal vs. Commissioner of Customs, Jamnagar, 2014 (304) ELT 408 (Tri.-Ahmd.)*
- *Tripura Ispat vs. Union of India, Commissioner, Central Goods & Service Tax, Assistant Commissioner, Central Goods & Service Tax, 2021 (1) TMI 753*

5.10.9 It is submitted that the ratio of the aforesaid judgments is equally applicable to the present case. In the present case also, the department has sought to confirm duty demand without challenging the impugned BoEs and the resultant out of charge order. In the absence of any appeal against the said out of charge orders which have been assessed by a proper officer, it must be understood that the assessment has gained finality, which cannot be challenged or negated by issuance of the impugned SCN. Therefore, in the present case also, in the absence of any appeal by the department, the proceedings initiated *vide* the impugned SCN is liable to be dropped.

5.11 Extended period of limitation under Section 28(4) of The Customs Act is not invocable in the present case.

5.11.1 The impugned SCN at para 7 alleges that the Noticee appears to have resorted to suppression of facts and therefore, provisions relating to extended period were liable to be invoked to recover the customs duty short-paid by the Noticee. The Noticee, however submits that the allegations made in the SCN are legally un-tenable.

5.11.2 Section 28 of the Customs Act is only invocable in case of wilful misstatement or suppression of facts or intent to evade duty. In present case, the Noticee has not suppressed any information from the department as all the relevant facts were already within the knowledge of the department. Further, the Noticee wishes to submit that the proceedings initiated by the department was solely based on our BOEs, which was duly filed by the Noticee. There was no element of suppression of facts, as all relevant details were already within the knowledge of the department at the time of clearance.

5.11.3 Section 28(1) of the Customs Act provides a limitation period of two years from the relevant date (or the date of import) for issuance of notice demanding payment of customs duty. Any Notice issued on expiry of the said two-year period is not

maintainable. Section 28(4) of the Customs Act provides for an extended period of five years for raising the 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 by the importer.

5.11.4 Reliance is placed on the decision of the Hon'ble Tribunal Delhi in the case of In Unitech Machines Ltd. v. Commissioner of Customs [2014 (305) E.L.T. 321 (Tri.-Del.)].

5.11.5 In the instant case, since the demand is beyond the period of two years, the department has invoked a larger period in terms of Section 28(4) of the Customs Act. However, a perusal of the impugned SCN would reveal that there is no evidence/ explanation regarding suppression, collusion or any willful misstatement. The allegations made in the impugned SCN are not backed by evidence.

5.11.6 It is submitted that in absence of any evidence/ explanation regarding suppression/ willful misstatement etc., extended period of limitation cannot be invoked, as these requirements are essential for invoking the larger period.

5.11.7 Reliance is placed on the following case laws:

- *CCE vs. Chemphar Drugs and Liniments*, [1989 (40) ELT 276 (SC)]
- *Padmini Products vs. CCE*, 1989 (43) ELT 195 (SC);
- *Gopal Zarda Udyog vs. CCE*, 2005 (188) ELT 251 (SC);
- *Lubri-Chem Industries Ltd. vs. CCE*, 1994 (73) ELT 257 (SC); &
- *Cosmic Dye Chemical vs. CCE*, 1995 (75) ELT 721 (SC).
- *Pushpam Pharmaceuticals Company vs. Collector of Central Excise, Bombay*, 1995 (78) ELT 401 (SC)

5.11.8 In view of the afore-stated judgments and the facts of the case of the Noticee, it is humbly submitted that, notwithstanding that the impugned SCN does not indicate any evidence/ explanation against the positive act of suppression on the part of the Noticee apart from a mere allegation, the extended period of limitation is not invocable. It is also not the case where the Noticee was in possession of certain information which it has suppressed or failed to produce to the Department.

5.11.9 Further, the Noticee submits that both two BOEs pertain to the period FY 2019-20 which has become time barred in line with Section 28(4) which states that a limitation period of two years from the date of import for issuance of notice demanding payment of customs duty.

5.12 All facts are within the knowledge of the department; extended period cannot be invoked.

5.12.1 Without prejudice to above, it is submitted that the Noticee has not suppressed any information from the department. All the relevant facts were already within the knowledge of the department.

5.12.2 The Noticee humbly submits that extended period of limitation is not invocable in the present case since no misclassification/ suppression can be attributed to it, especially

when all facts were known to the department.

5.12.3 It is a settled position in law that when a show cause notice is issued based on a set of facts and based on same or similar set of facts another show cause notice cannot be issued invoking extended period of limitation under the plea of suppression of facts. Reliance in this regard is placed on the judgement of the Hon'ble Supreme Court in the case of **Nizam Sugar Factory vs. Collector of Central Excise, AP, 2006 (4) TMI 127 – Supreme Court.**

5.12.4 Further, the settled position of law may be referred to that provides that when the department has knowledge about a transaction and yet there is a delay in issuance of a Notice, extended period of limitation cannot be invoked. In support of the above contention the Noticee relies on the case of **Orissa Bridge & Construction Corpn. Ltd., vs. CCE, Bhubaneswar, 2011 (264) ELT 14 (SC)** wherein the Hon'ble Supreme Court held that the extended period of limitation would not be invocable when the Notice was issued two years after the activities of the assessee were detected.

5.12.5 Reliance is also placed on the following case laws:

- Commissioner of Central Excise, Indore vs. Syncom Formulation (I) Ltd., 2004 (172) E.L.T. 77 (Tri. - Del.)
- Gammon India Ltd. vs. CCE, 2002 (146) ELT 173 (Tri.), and affirmed by the Hon'ble Supreme Court in 2002 (146) E.L.T. A313;
- Lovely Food Industries vs. CCE, 2006 (195) ELT 90 (Tri.);
- Jalla Industries vs. CCE, 2000 (117) ELT 429 (Tri.); and
- Rivaa Textile Inds. Ltd. vs. CCE, [2006 (197) ELT 555 (Tri.)] as affirmed in 2015 (320) ELT A110 (Gujarat High Court)

5.13 Noticee was under a bona fide belief and therefore extended period cannot be invoked.

5.13.1 Reliance in this regard is placed on the following judgements:-

- *Commissioner of Central Excise, Surat vs. Surat Textile Mills Ltd., 2004 (167) E.L.T. 379 (S.C.).*
- *3M India Ltd. vs. Commissioner of Customs, Bangalore-I, 2020 (373) E.L.T. 385 (Tri. – Bang.)*
- *Commissioner of C. Ex., Chandigarh vs. Satyam Digital Photo Lab, 2012 (27) S.T.R. 64 (Tri. – Del.)*

5.13.2 Therefore, in view of the foregoing paragraphs, it is humbly submitted that extended period of limitation shall not be invoked in the present case.

5.14 *The provisions of Section 28(4) must be construed strictly.*

5.14.1 It is respectfully submitted that extended period is invocable only under Section 28(4) of the Customs Act, which is an exception to the provisions of Section 28(1), providing for a period of two years for issue of Noticee in a normal case. It is settled law that an exception is required to be construed strictly.

5.14.2 In the context of the erstwhile proviso to Section 11A(1) of Central Excise Act, 1944,

which also was an exception to the main provision of Section 11A(1) providing a period of one year for issue of Noticee, in the case of **Pushpam Pharmaceuticals (Supra)**, the Hon'ble Supreme Court held that the proviso being an exception to the main section, it has to be construed strictly. The noticee also relied upon the decisions of Hon'ble Supreme Court in the case of Tamil Nadu Housing Board vs. CCE, 1994 (74) ELT 9 (SC) and CCE, Chandigarh vs. Punjab Laminates Pvt. Ltd., 2006 (202) ELT 578 (SC).

5.14.3 Since, no such case has been made out in the impugned SCN, the extended period of limitation is not invocable.

5.15 Extended period not invokable as the issue involves an interpretation of the law.

5.15.1 Further, the Noticee also submits that the extended period cannot be invoked as the present issue involves an interpretation of the law i.e., of entry, HSN, availability of exemption, etc. The issues raised in the impugned SCNs are one of classification and availability of exemption involving interpretation of law. The Noticee also places reliance on the following in support of the contention that extended period cannot be invoked in cases of interpretation of the law:

- a) Singh Brothers vs. Commissioner of Customs & Central Excise, Indore, 2009 (14) STR 552 (Tri.-Del.);
- b) Steelcast Ltd. vs. Commissioner of Central Excise, Bhavnagar, 2009 (14) STR 129 (Tri.-Del.); and
- c) K.K. Appachan vs. Commissioner of Central Excise, Palakkad, 2007 (7) STR 230 (Tri.-Bang.).

5.15.2 In the light of the foregoing, since no *mala fide* can be attributed to the Noticee, extended period of limitation has wrongly been invoked.

5.15.3 Therefore, in the light of the foregoing submissions and the cases cited, it is most respectfully submitted that the proposal to invoke Section 28(4) of Customs Act in the impugned SCN is without any reason. Hence, the impugned SCN is liable to be dropped on this ground.

5.16 Impugned goods are not liable to confiscation.

5.16.1 The impugned SCNs at para 9 have alleged that the impugned goods appear to be liable for confiscation under Section 111(m) of the Customs Act. The Noticee humbly submits that impugned goods are not liable for confiscation under Section 111(m) of the Customs Act. Section 111(m) of the Customs Act provides for confiscation of imported goods when they do not correspond in respect of value or in any other particular with the entry made under this Act. The Noticee submits that Section 111(m) of the Customs Act is not invokable in the present case for the reason that in the there is no mis-declaration in the impugned BoEs. The Noticee has made consistent disclosure of the impugned goods imported *vide* impugned BoEs which were also examined the Department at the time of clearance of the impugned goods for home

consumption. Consequently, the proposal to confiscate the consignment in question is wholly untenable.

5.16.2 The term mis-declaration under the Section 111(m) of the Customs Act would primarily include the following situations:

- a) Mis-declaration in terms of value- This would include both undervaluation and overvaluation.
- b) Mis-declaration in terms of other particulars- This would mean that the description and other details pertaining to the goods as provided in the bills of entry is different from that of the real description and details of the goods. This can be in terms of quantity, quality, nature etc of goods.

5.16.3 On the basis of the aforementioned, it can be said that Section 111(m) of the Customs Act provides for confiscation of goods, which do not correspond in respect of value or in any other particular with the entry made under the Customs Act. In terms of the provisions of Section 2(16) of the Customs Act, 'entry' in relation to goods means an 'entry' made in a bill of entry. It is submitted that for the reasons given in the foregoing paragraphs, there was no mis- declaration either in respect of value or in any other particular with the entry made under the Customs Act. The Noticee had declared correct particulars about the impugned goods in the impugned BoEs. It is therefore, respectfully submitted that the Noticee has not mis-declared the particulars of the impugned goods.

5.16.4 In this regard, reliance is placed on the following case laws:

- *P.A. Footwear Pvt. Ltd. vs. Commissioner of Cus. (Export), Chennai, 2009 (245) E.L.T. 310 (Tri. - Chennai),*
- *Kirti Sales Corp. vs. CCU, 2008 (232) ELT 151 (Tri.-Del),*
- *P Ripakumar and Company vs. Union of India, 1991 (54) ELT 67*
- *Porcelain Crafts and Components Exim Ltd. vs. CC, Calcutta, 2001 (198) ELT 471*
- *Rudra Vyaparchem Pvt. Ltd. vs. Commissioner of Cus. (Port), Kolkata, 2019 (370) E.L.T. 412 (Tri. – Kolkata)*
- *Ajanta Ltd. vs. Commissioner of Customs, Kandla, 2019 (370) E.L.T. 308 (Tri. – Ahmd.)*
- *Satron vs. Commissioner of Customs (Imports), JNCH, Nhava Sheva, 2020 (371) E.L.T. 565 (Tri. – Mumbai)*

5.16.5 It is humbly submitted that the impugned SCN does not adduce any shred of evidence to prove any sort of positive evidence on part of the Noticee in the alleged misdeclaration. The impugned SCN is silent in this regard.

5.16.6 In the light of the above it is most respectfully submitted that the impugned SCN for confiscation of the impugned goods under Section 111(m) of the Customs Act is not sustainable in law and is consequentially liable to be dropped.

5.17 Goods already cleared for home consumption are not liable for confiscation.

5.17.1 It is respectfully submitted that Section 111 of the Customs Act provides for liability for confiscation of the improperly imported goods. It is therefore respectfully submitted

that only 'imported goods' can be confiscated under Section 111 of the Customs Act. Section 2(25) of the Customs Act, defines 'imported goods' as under:

"2 (25). "imported goods" means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption"

5.17.2 In the case of *Bussa Overseas & Properties P. Ltd. vs. C.L. Mahar, Assistant Commissioner of Customs, Bombay, 2004 (163) ELT 304 (Bom.)*, the Hon'ble Bombay High Court held that once the goods are cleared for home consumption, they cease to be 'imported goods' as defined in Section 2(25) of the Customs Act and consequently are not liable to confiscation under Section 111 of the Customs Act. This judgment has been maintained by the Hon'ble Supreme Court of India 2004 (163) E.L.T. A160 (S.C.).

5.17.3 Relying upon the aforesaid judgment, Hon'ble Tribunal in the case of *Southern Enterprises vs. Commissioner of Customs, Bangalore, 2005 (186) E.L.T. 324 (Tri. - Bang.)*, held that imported goods having already been cleared for home consumption, cannot be confiscated as they cease to be imported goods.

5.17.4 Further, reliance is placed on the Tribunal judgment in the case of *Shiv Kripa Ispat Pvt. Ltd. vs. Commissioner of Central Excise and Customs, Nasik, 2009 (235) E.L.T. 623 (Tri. - LB)*, wherein it was held that when the goods are not available for confiscation, no confiscation can be made under Section 111 of the Customs Act.

5.17.5 In light of the aforesaid submissions, it is humbly prayed that in the present case since the impugned goods have been cleared for home consumption, they have lost the character of being 'imported goods' under the Customs Act and therefore cannot be held liable for confiscation under the provisions of Section 111(m) of the Customs Act.

5.17.6 The Noticee further submits that the provisions of Section 111(m) of the Customs Act are not invocable in the present case for the reason that in the impugned BoEs the Noticee has not mis-declared any material particulars. Consequently, the proposal in the impugned SCN to confiscate the impugned goods is liable to be dropped.

5.18 Penalty not imposable in the present case.

5.18.1 The impugned SCN at para 10 propose to impose penalty on the Noticee under Section 112(a) and Section 114A of the Customs Act. In this regard, the Noticee submits that *Penalty not liable to be imposed where duty demand is not sustainable*.

5.18.2 In the foregoing paragraphs, it has been submitted in detail that the duty demand is not payable as the impugned BoEs were not challenged by the Department. In this regard, it is submitted that no penalty can be imposed on the Noticee. In the case of *Collector of Central Excise vs. H.M.M. Limited, 1995 (76) ELT 497 (SC)*, the

Hon'ble Supreme Court has held that the question of penalty would arise only if the Department is able to sustain the demand. Similarly, in the case of **Commissioner of Central Excise, Aurangabad vs. Balakrishna Industries, 2006 (201) ELT 325 (SC)**, the Hon'ble Supreme Court has held that penalty is not imposable when differential duty is not payable.

5.18.3 For the sake of brevity and to avoid unnecessary repetition, it is requested that the submissions made regarding the duty portion may be considered as part of the submissions relating to the imposition of penalty. Thus, since no demand is sustainable, for the same reason no penalty is imposable on the Noticee.

Penalty cannot be imposed on the Noticee as there was no intention to evade duty.

5.18.4 Without prejudice to the above submissions, it is submitted that in terms of various judgments of the Hon'ble Supreme Court, various High Courts and Tribunals, penalty cannot be imposed on the Noticee in the absence of *mens rea* on part of the Noticee.

5.18.5 The Hon'ble Supreme Court in the landmark case of **Hindustan Steel Ltd. vs. State of Orissa, [1978 (2) E.L.T. (J159)]** has held that no penalty should be imposed for technical or venial breach of legal provisions or where the breach flows from the *bona fide* belief that the offender is not liable to act in the manner prescribed by the statute.

5.18.6 The Noticee submits that the element of *mens rea* is absent in the present case. The Noticee has correctly availed the benefit of Notification No. 51/1996-cus as amended at the time of the import of impugned goods. Therefore, the proposal to impose penalty on the Noticee under the Customs Act is not sustainable.

5.18.7 It is submitted that the decision of the Hon'ble Supreme Court in **Hindustan Steel Ltd. (Supra)**, is apposite. The Hon'ble Supreme Court has held that penalty will not ordinarily be imposed unless the Noticee either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligations. This decision was followed by the Apex Court under the Customs law in the case of **Akbar Badruddin Jiwani vs. Collector of Customs, 1990 (47) ELT 161** wherein the Hon'ble Supreme Court has specifically held that penalty is not imposable in the absence of *mens rea*.

5.18.8 In view of the above settled position of law and considering the fact that there is complete absence of *mens rea* in the present case, it is submitted that penalty proposed to be imposed by the impugned SCNs is not sustainable and is thus, liable to be dropped.

5.18.9 *No penalty can be imposed in case relating to classification.*

5.18.10 The Noticee submits that it has been held in a catena of judgments that no penalty is imposable on an assessee when the issue involved is classification of goods.

5.18.11 The Noticee further submits that there are a number of judgments wherein Hon'ble Tribunal has held that if there is difference of opinion about classification between the importer and department, penalty is not imposable. The Noticee places reliance on the following:

- a. *Bahar Agrochem & Feeds Pvt. Ltd vs. Commissioner of C.Ex., Pune, 2012 (277) E.L.T. 382 (Tri-Mum);*
- b. *Digital Systems vs. Commissioner of Customs, 2003 (154) ELT 71;*
- c. *Goodyear (India) vs. CCE, 2003 (157) ELT 560;*
- d. *Anand Metal Industries vs. CCE, 2005 (187) ELT 119.*
- e. *Commissioner of Customs (Air), Meenambakam vs. Wipro Ltd. and Ors., 2019 (368) E.L.T. 901 (Mad.)*

5.18.12 Thus, it is humbly submitted that the present case also involves classification issue of impugned goods and therefore no penalty is imposable upon the Noticee. In view of the above settled position of law and considering the fact that present case deals with importation of impugned goods which are already cleared for home consumption and there is complete absence of *mens rea* on the part of Noticee, it is prayed that the SCN proposing imposition of penalty on the Noticee cannot be sustained and needs to be dropped.

5.18.13 Penalty under Section 112(a) of the Customs Act cannot be imposed in the present case.

5.18.14 The impugned SCN has proposed to impose penalty under Section 112(a) of the Customs Act on the Noticee. The Noticee disagrees with such a proposal.

5.18.15 That Section 112(a) imposes penalty on any person who does or omits or abets any act/ omission which would render the goods imported, liable for confiscation.

5.18.16 In view of the above, penalty under 112(a) of the Customs Act is contingent upon the goods being confiscated under Section 111 of the Customs Act. In this regard, the Noticee relies on the submissions made in the foregoing ground wherein it has been stated that the impugned goods are not liable for confiscation under Section 111 of Customs Act. In such a case, the question of penalty under Section 112(a) of the Customs Act does not arise. Further, the Noticee has neither done nor omitted to do any act which would render the subject goods liable to confiscation. For these reasons, the penalty under Section 112(a) is not imposable.

5.18.17 The second limb of Section 112(a) of the Customs Act covers the abetment of commission/omission of any act which would render the goods liable to confiscation under Section 111 of the Customs Act. In the instant case, the Noticee did not abet the commission or omission of any act which rendered the subject goods liable for confiscation.

5.18.18 As the words 'abet' or 'abetment' are not defined in the Customs Act, it is pertinent to refer to the General Clauses Act, 1897. Section 3(1) of the General Clauses Act, 1897

defines "Abet" as under:

"Abet" with its grammatical variations and cognate expressions, shall have the same meaning as in the Indian Penal Code (45 of 1860)"

5.18.19 Furthermore, in the case of ***Tata Oil Mills Company Ltd. and Another vs. Union of India and Another, 1986 (26) ELT 931 (Bom.)***, the Hon'ble High Court applied the definition of 'abetment' as appearing in the Indian Penal Code, 1860 while deciding whether the petitioners could be said to have abetted the unauthorized import of tallow wherein the petitioners merely acted as bona fide purchasers.

5.18.20 The judicial precedents have also held the presence of *mens rea* as an essential prerequisite for establishing abetment and for imposition of penalty under Section 112 of the Customs Act. In this regard, reliance is placed on the following case laws:

- *Harbhajan Kaur vs. Collector of Customs, 1991 (56) ELT 273 (Tri-Del)*
- *V. Lakshmipathy vs. Commissioner of Customs, 2003 (153) ELT 640 (Tri-Bang)*
- *Owens Corning Enterprises (I) P. Ltd. vs. Commissioner of Customs (Export), Nhava Sheva, 2011 (270) ELT 547 (Tri.- Mumbai)*

5.18.21 As per the aforesaid judgments, an act/omission which aids in the commission of an offence cannot be straightaway categorized as abetment, but the same has to be supported by knowledge of offence as well as *mens rea* for proving abetment. There is no whisper in impugned SCN regarding how the Noticee has abetted in rendering the goods liable for confiscation nor is any evidence adduced to prove *mens rea* on the part of the Noticee.

5.18.22 Therefore, the Noticee submits that penalty under Section 112 of the Customs Act cannot be attracted to present case.

5.18.23 No penalty can be imposed under Section 114A of the Customs Act.

5.18.24 That penalty under Section 114A of the Customs Act can be imposed in cases when the duty demand has not been paid or short- paid/part-paid by the reason of collusion or any willful misstatement or suppression of facts.

5.18.25 For the sake of brevity and in order to avoid unnecessary repetition, it is submitted that the submissions made with regard to the extended period may be considered as part of the submissions relating to the imposition of penalty as well. As mentioned in those submissions, there has been no *mala fide* on the part of the Noticee. For this reason alone, penalty under Section 114A is not sustainable.

5.18.26 In this regard, reliance is placed on the following case laws:

- *Commissioner of Customs vs. Videomax Electronics, 2011 (264) ELT 0466 (Tri.-Bom.)*,
- *Union of India vs. Rajasthan Spinning & Weaving Mills, 2009 (238) ELT 3 (SC)*

5.18.27 Hence, in view of the above submissions, it is humbly submitted that no penalty shall

be imposed under Section 114A of the Customs Act and the impugned SCN to this extent is liable to be dropped.

5.19 Interest under Section 28AA of The Customs Act is not recoverable from the noticee.

5.19.1 The impugned SCN proposes to recover interest under Section 28AA of the Customs Act. However, the Noticee is not in agreement with the said proposal.

5.19.2 It has been demonstrated in the above submissions that the demand of customs duty is not maintainable. It is a cardinal principle of law that when the principal demand is not justified, there is no liability to pay ancillary demands. Since there is no liability to pay duty, no interest is chargeable from the Noticee.

5.19.3 Interest cannot be levied when the duty itself is not payable.

5.19.4 The Hon'ble Supreme Court in the case of *Prathibha Processors vs. UOI, 1996 (88) E.L.T. 12 (S.C.)*, 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.

5.19.5 Thus, it is evident from the above referred principle that interest is necessarily linked to the duty payable. The Noticee humbly submits that once the duty itself cannot be demanded, the corresponding interest is also held to be not payable. The above referred-to case has been followed by the Hon'ble Supreme Court in the case of *CC, Chennai vs. Jayathi Krishna & Co., 2000 119 ELT 4 SC*. That interest cannot be demanded when duty demand is not sustainable has also been upheld by several High Courts and Tribunal decisions.

5.19.6 It is therefore submitted that when demand for recovery of customs duty is not sustainable, levying interest the same is not sustainable. On this view, the proposal in the impugned SCN for levying interest under Section 28AA is liable to be dropped.

5.20 PRAYER: In view of the above submissions, the noticee prayed the following:

- i. Drop the proceedings initiated against the Noticee *vide* Show Cause Notice No. 849/2024-25 /ADC/Gr. VA/CAC/JNCH dated 31.07.2024
- ii. Hold that differential duty of Rs. 9,82,400.46/- in respect of imports as quantified in impugned SCN is not payable;
- iii. Hold that extended period of limitation is not invokable under Section 28(4) of the Customs Act, 1962; Drop the proposal for demand and recovery of interest under Section 28AA of the Customs Act, 1962;
- iv. Drop the proposal for confiscation of impugned goods under Section 111(m) of the Customs Act, 1962;
- v. Drop the proposal for imposition of penalty under Section 112(a) and Section 114AA of the Customs Act, 1962; and
- vi. Grant an opportunity of personal hearing before a final decision is taken in the

matter.

- vii. Pass such other Order as deemed fit in accordance with the present facts and circumstances of the case of the Noticee.

6. The importer vide e-mail dated 22.07.2018 submitted their additional written submission, which inter-alia stated :

6.1 M/s Escorts Kubota Limited (herein after referred to as "**Noticee**") is engaged in the manufacture & supply of Tractors, mobile cranes, railway equipment, and spare parts/components thereof.

6.2 That the Noticee was in receipt of a show cause notice (SCN') no. 849/2024-25/ADC/GR.VA/CAC/JNCH dated 31.07.2024 which has proposed to confirm the total tax demand of Rs.9,82,400/- along with appropriate interest & penalty. The Noticee has submitted the reply on 08.07.2025 along with the documents/information in response to the discrepancies intimated by the department in the impugned SCN.

6.3 That the Noticee was granted Personal hearing (PH) on 08.07.2025. During the course of Personal hearing, Noticee has been asked to produce the following information/documents.

6.3.1 Whether the Lithium-ion batteries under notice have been sold with in the period of 5 years from the date of Import: The Noticee submits that the Company had imported the high voltage lithium-ion battery (hereinafter referred to as "**impugned goods**" or "**subjected goods**"), for building and exhibition of hybrid tractor in its research and development center (R&D). The said batteries were installed in the hybrid tractor and are still in possession of the Company located in the R&D Centre at 15/5 Mathura Road, Faridabad-Haryana.

6.3.2 In this respect, the Noticee further submits that such batteries have been capitalized in the cost of Hybrid Tractor in the books of account and have not been disposed off till date. Recent pictures of the hybrid tractors along with videos evidencing installation of lithium-ion batteries in such tractors has been enclosed.

6.3.3 Under which clause of the exemption notification such batteries have been imported: The Noticee submits that the lithium-ion battery imported for experimental purpose and is an integral/key part of the Hybrid tractor. Therefore, the said battery falls under clause (b) of

Entry No. 2 which is "accessories, parts, consumables and live animals (for experimental purposes). The Noticee would like to re-iterate that the Company has its own research & development centre in Faridabad which is registered with the Department of Scientific and Industrial Research ('DSIR'), Ministry of Science and Technology, New Delhi.

- 6.4 Therefore, the Noticee would like to submit that the Company has correctly availed the benefit of exemption notification. Thus, we humbly request to drop the enquiry initiated by captioned notice to avoid duplicity of proceedings.

DISCUSSIONS AND FINDING

7. I have gone through the facts of the case, material on record and written & oral submissions of the said importer. I find that the Show Cause Notice proposes a recovery of differential IGST amounting to **₹9,82,400.86/- rounded off to ₹9,82,401/- (Rupees Nine Lakh Eighty-two Thousand Four Hundred One only)** under Section 28(4) of Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962. The Show Cause Notice also proposes imposition of penalty on the importer under Section 112(a) and 114A of the Customs Act, 1962 and confiscation of impugned goods under Section 111(m) of the Customs Act, 1962 of subject imported goods totally valued at **₹33,25,663.03/- (Rupees Thirty-three Lakh Twenty-five Thousand Six Hundred Sixty-three and Three Paise only)**.
8. I find that the description of the impugned goods in the body of the impugned Show Cause Notice is mentioned as "Battery", whereas, the description in Annexure- 'A' attached to the impugned Show Cause Notice is **"Li-ion BATTERY"**. The description of the imported goods is verified from ICES and has been found same as mentioned in Annexure- 'A' attached to the impugned Show Cause Notice. The importer, in his written submission, has inter alia submitted that they had imported Li-ion Battery under HSN Code 85076000. I find that the SCN has not contested the classification of the subject imported goods i.e. Li-ion Battery under CTH 85076000. Hence, it is clear that the imported goods are Li-ion Battery under CTI 85076000.
9. Now, coming to the benefit of notification no. 01/2017-IT(Rate) dated 28.06.2017 (w.e.f. 01.07.2017), which the SCN alleged to, have been availed by the importer. I observe that the SCN has alleged that the importer has wrongly covered the goods i.e. Battery by declaring lower rate of IGST under Sl. No. 203 of Schedule II of IGST Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 @12% and/or @18% under sr. nos. 376AA or 376AAA of Schedule III of IGST notification no.

19/2018- Integrated tax (Rate) dated 27.07.2018 or a lower IGST rate in other Schedule and proposed to classify the same under Sl. No. 139 of Schedule IV having applicable IGST @ 28%.

9.1 I find that vide principal Notification No. 01/2017-IT (Rate) dated 28.06.2017 (w.e.f. 01.07.2017) **“Electric Accumulators, including separators therefor, whether or not rectangular (including square) other than (Lithium-ion batteries) accumulators and (Lithium-ion) other than battery including Lithium-ion power bank”** falls under Schedule-IV Sr. No. 139 with applicable IGST@28%, however, after amendment in the said notification vide Notification No. 19/2018-IT (Rate) dated 26.07.2018 **“Lithium-ion battery”** falls under **Sr. No. 376AA** of **Schedule-III** with applicable IGST @18%. Vide further amendment in the principal notification vide notification no. 25/2018-IT(Rate) dated 30.12.2018 (w.e.f. 01.01.2019) **Lithium-ion accumulators (other than battery) including lithium-ion power bank** falls under **Sr. no. 376AAA** of **Schedule III** with applicable IGST@18%.

9.2 The relevant part of said notification dt. 28.06.2017 of IGST and its subsequent amendment are reproduced below for ease of reference:-

Notification No.	Schedule / S. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods	IGST Rate
01/2017- Integrated Tax (Rate) dated 28.06.2017 w.e.f. 01.07.2017	IV / 139	8507	Electric accumulators, including separators therefor, whether or not rectangular (including square) other than [Lithium-ion batteries] ¹ and [Lithium-ion accumulators (other than battery) including Lithium-ion power bank] ² . 1. Inserted by Ntfn. 19/2018-IT (Rate) dated 26.07.2018 w.e.f. 27.07.2018. 2. Inserted by Ntfn. 25/2018-IT (Rate) dated 31.12.2018 w.e.f. 01.01.2019.	28%
19/2018-IT (Rate) dt. 26.07.18 w.e.f. 27.07.18	III / 376AA	8507 60 00	Lithium-ion Batteries	18%
25/2018-IT (Rate) dt. 30.12.18 w.e.f. 01.01.19	III / 376AAA	8507	Lithium-ion accumulators (other than battery) including lithium-ion power bank	18%
01/2017- Integrated Tax (Rate) dated 28.06.2017 w.e.f. 01.07.2017	II / 203	85	Part for manufacture of telephones for cellular networks or for other wireless networks	12%

9.3 I observe that the impugned goods i.e. “Li-ion Battery”, imported vide Bills of Entry no 4569497 dt. 20.08.2019 and 5321063 dt. 16.10.2019 were cleared by the importer by classifying them under Sr. No. 376AA of Schedule-III of IGST Notification no. 01/2017-IT (Rate) dated 28.06.2017 with applicable IGST @18%. However, I observe that the importer has paid Nil IGST by availing benefit of sr. no.

2 of exemption notification no. 51/96. The importer, vide his written submission dated 07.07.2025 has submitted that they had imported high voltage Lithium-ion Battery for building and exhibition of hybrid tractor for the research and development center under CTH 85076000 and avail the benefit of exemption of duties of customs along with additional duties vide Notification no. 51/96-Customs dated 23.07.1996, as amended by notification no. 24/2007 dated 01.03.2007 and Notification 43/2017 dtd 30.06.2017, by fulfilling the prescribed conditions.

9.4 In this regard, the relevant portion of Notification no. 51/96 dated 23.07.1996 is reproduced as under:-

Notification no. 51/96-Customs, dated 23.07.1996

“..... hereby exempts goods falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and specified in column (3) of the Table hereto annexed, from so much of that portion of the duty of customs leviable thereon which is specified in the said First Schedule as is in excess of the amount calculated at the rate of five percent advalorem and from the whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act, when imported into India, by importers specified in column (2) of the said Table, subject to the conditions specified in the corresponding entry in column (4) of the said Table.

2. This notification shall come into force with effect from the 1st day of September,1996.

Table

Sr. No.	Name of the importer	Description of goods	Conditions
(1)	(2)	(3)	(4)
2.	Non-commercial research institutions, other than a hospital	(a) Scientific and technical instruments, apparatus, equipment (including computers; (b) accessories, parts, consumables and live animals (for experimental purposes) (c) computer software, Compact Disc-Read Only Memory (CD-ROM), recorded magnetic tapes, microfilms, Microfiches; (d) proto-types.	(i) The importer is registered with the Government of India in the Department of Scientific and Industrial Research; (ii) an officer not below the rank of a Deputy Secretary to the Government of India in the said Department certifies, in each case, that the importer is not engaged in any commercial activity and that the said goods are required for research purposes only; (iii) in the case of import of live animals for experimental purposes, the importer produces, at the time of importation, a no objection certificate for the said import from the Committee for the purpose of Control and Supervision of Experiments on Animals and a certificate from an officer not below the rank of Deputy Secretary to the Government of India in the said Department stating that live animals are required for research purposes; (iv) the goods are covered by a Pass-Book issued by the said Department; (v) the aggregate C.I.F. value of imports under this exemption does not exceed rupees two crores in the case of consumables, rupees fifty thousand in the case of proto-types and rupees five crores in other cases, in a financial year.

9.5 Further, the above notification was amended vide notification no. 24/2007-Customs dated 01.03.2007, which is reproduced below for ease of reference:

NOTIFICATION
No.24/2007-CUSTOMS

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 51/96-Customs, dated the 23rd July, 1996 which was published vide number G.S.R. 303(E) of the same date, namely:-

In the said notification, in the TABLE, for S.No.2 and the entries relating thereto, the following S.No. and entries shall be substituted, namely:-

TABLE			
S.No.	Name of the importer	Description of goods	Conditions
(1)	(2)	(3)	(4)
"2.	Research institutions, other than a hospital	(a) Scientific and technical instruments, apparatus, equipment (including computers); (b) accessories, parts, consumables and live animals (for experimental purposes); (c) computer software, Compact Disc-Read Only Memory (CD-ROM), recorded magnetic tapes, microfilms, microfiches; (d) prototypes, the C.I.F. value of which does not exceed rupees fifty thousand in a financial year	(1) The importer - (i) is registered with the Government of India in the Department of Scientific and Industrial Research; (ii) produces a certificate from the Head of the institution, in each case of import, certifying that the said goods are essential for research purposes and will be used for the stated purpose only; (iii) in the case of import of live animals for experimental purposes, produces, at the time of importation, a certificate from the Head of the institution that the live animals are required for research purposes and encloses a no objection certificate issued by the Committee for the Purpose of Control and Supervision of Experiments on Animals. (2) The goods falling under (1) above shall not be transferred or sold for a period of five years from the date of importation."

9.6 Furthermore, vide Notification no. 43/2017-Customs dated 30.06.2017, the following amendment was made in the notification no. 51/1996-Customs dated 23.07.1996.

19	51/1996-Customs, dated the 23rd July, 1996	In the said notification, for the words and figures "additional duty leviable thereon under section 3," the words, brackets and figures, "integrated tax leviable thereon under sub-section (7) of section 3," shall be substituted.
----	--	--

- 9.7 From the combined reading of above notifications, I observe that there is an exemption of IGST on imports of certain goods fallen under the category of **scientific and technical instruments, apparatus, equipment (including computers), accessories, parts, consumables etc.** and are imported for **research purposes by research institutions** subject to the conditions that (1) The importer (i) is registered with the Government of India in the Department of Scientific and Industrial Research, (ii) produces a certificate from the Head of the Institution, in each case, of import, certifying that the said goods are essential for research purposes and will be used for the stated purpose only; (iii)..... (2) The goods falling under (1) above shall not be transferred or sold for a period of five years from the date of importation.
- 9.8 I observe that the importer in his written submission dated 08.07.2025 has stated that they were registered with the Department of Scientific and Industrial Research (DSIR), Ministry of Science & Technology, New Delhi at the time of import as 'In-house Research and development unit' and has submitted the 'Certificate of Registration' vide F.No. TURV-RD/522/2016 dated 21st April 2016, issued by Scientist 'G', Min. of Science & Technology, New Delhi in this regard.
- 9.9 The importer has furnished the copy of the letters/certificates dated 3rd Aug, 2019 and 21st Aug 2019 signed by Head-R&D Centre, Escort Limited addressed to Dy. Commissioner of Customs, JNCH Nhava Sheva, Mumbai certifying that the imported goods i.e. high voltage Li-ion battery/SN:1900088475 (D11161500) have been procured to build HYBRID Tractor for R&D and the same will be used at their R&D Centre for Research & Development purpose only. I also find that the importer had undertaken that they will re-export the battery back to the supplier after completion of the research work and if not found fit for use the same will be destroyed through Government approved destroying/Recycling agency only as per law and submit proof of same to the department, if required.
- 9.10 I observe that the importer was registered with the Department of Science & Technology, Government of India during the period of subject import, however as per **Notification No. 51/96-Cus, as amended**, the import of the following goods in column 3 of Sl. No. 2 of said, are eligible of duty exemption:
- “(a) Scientific and technical instruments, apparatus, equipment (including computers);
 - (b) accessories, parts, consumables and live animals (for experimental purposes);
 - (c) computer software, compact disc-CD-ROM, recorded magnetic tapes, microfilms, microfiches;

(d) proto-types;”

8.11 I observe that the impugned goods is Lithium-ion Battery, which, do not qualify under any of the specified categories above. The Noticee submitted that the impugned goods were imported for experimental purpose and are an integral/key part of the Hybrid tractor and hence, falls under clause (b) of Entry No. 2 of the said notification. However, I observe that **Lithium-ion Battery** is a complete product with **commercial and industrial application** and is **not a scientific or technical instrument**, nor has it been proven to be a **part/accessory** of any such instrument. Further, the importer has not submitted any evidence to substantiate a **direct functional connection** with any scientific instrument used by a **public-funded R&D institution**, as per the terms of the notification. I also observe that

- A **battery** is not a “scientific or technical instrument” or “equipment.”
- The battery is also **not established as a direct accessory or part** of a qualified instrument or equipment under the notification.
- No conclusive evidence was produced to prove that the imported item is **a prototype** or is covered under the list of **eligible consumables** meant for scientific purposes.
- Even if intended for R&D, the **product itself** (Lithium-ion Battery) is a **complete functional product**, not a prototype or research tool.

8.12 Furthermore, I am of the view that the **intent and scope of the exemption** under Sl. No. 2 is to facilitate imports **essential for research infrastructure**, not general-purpose batteries which have **commercial utility and wide market use**.

8.13 Hence, it is amply clear that the importer was not eligible for the exemptions of the above said notification, which they claimed during the material period of time. Hence, I reject the benefit of the exemption claimed by the importer vide Notification no. 51/96-Customs dated 23.07.1996, as amended by notification nos. 24/2007 dated 01.03.2007 and 43/2017 dtd 30.06.2017.

9 In this regard, I rely upon the decision of Hon'ble Supreme Court in the matter of **Commissioner of Customs (Import), Mumbai vs M/s. Dilip Kumar & Company in CIVIL APPEAL NO. 3327 OF 2007 dated 30.07.2018**, wherein the Apex court held that :

“(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes with the parameters of the exemption clause or exemption notification.

(2) *When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assesse and it must be interpreted in favour of the revenue.*

10 In view of the above, I find that the importer has failed to establish that the batteries qualify under **any category of Sl. No. 2 of Notification No. 51/96-Cus** and hence their claim of exemption of above said notification is **unjustified and not admissible**. Therefore, I am of the considered view that the subject Bill of Entry nos. 4569497 dt. 20.08.2019 and 5321063 dt. 16.10.2019, vide which the impugned goods were imported, are required to be re-assessed without granting benefit of exemption notification **No. 51/96-Cus, as amended**, claimed by the importer.

11 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 and/ or description of goods. The relevant sections of Customs Act are reproduced below for ease of reference:-

11.1 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.

11.2 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.

12 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 duty 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. Thus, I hold that the demand of duty under Section 28(4) of the Customs Act, 1962 is sustainable and I hold the same.

- 13 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.
- 14 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.
- 15 Since the importer, intentionally by suppressing the facts and willfully mis-statement, had wrongly availed 'Nil' rate of BCD under Notification No. 24/2005 dtd 01.03.2005 and evaded legitimate Customs Duty, resulting in short levy and short payment of duty, I find that the confiscation of the imported goods invoking Section 111(m) is justified & sustainable. However, I find the goods imported vide bills of entry, as detailed in Table-A above, are not available for confiscation and hence 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)."

16 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 hold that the impugned goods are liable for confiscation under Section 111(o) of Customs Act, 1962 and I hold the same.

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

ORDER

(i) I order to reassess the subject Bill of Entry nos. 4569497 dt. 20.08.2019 and 5321063 dt. 16.10.2019 without benefit of exemption notification no 51/96-Customs dated 23.07.1996, as amended by notification nos. 24/2007 dated 01.03.2007 and 43/2017 dtd 30.06.2017, claimed by **M/s Escort Limited (Now M/s Escorts Kubota Limited) (IEC No. 0588095001)**.

(ii) I order to recover differential duty, so calculated after re-assessment of subject Bill of Entry nos. 4569497 dt. 20.08.2019 and 5321063 dt. 16.10.2019, 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 total assessable value at **₹33,25,663.03/- (Rupees Thirty-three Lakh Twenty-five Thousand Six Hundred Sixty-three and Three Paise Only)** imported vide Bills of Entry, as detailed in Annexure-A of the subject SCN, under Section 111(m) of the Customs Act, 1962, but since the same stood released, I impose

redemption fine of ₹3,30,000/- (Rupees Three Lakhs Thirty Thousand only) under Section 125(1) of the Customs Act, 1962 upon M/s Escort Limited (Now M/s Escorts Kubota Limited).

(iv) I impose penalty equal to differential duty, so calculated, as ordered in Para 14(i) above plus applicable interest, under Section 114A of Customs Act, 1962 on M/s Escort Limited (Now M/s Escorts Kubota 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 do not impose any penalty under Section 112 (a) of Customs Act, 1962 since penalty under Section 114A of the Customs Act, 1962 has been imposed.

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


25.07.25

(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 Escort Limited
(Now M/s Escorts Kubota Limited) (IEC- 0588095001)
CORPORATE CENTRE, 15/5, MATHURA ROAD FARIDABAD,
FARIDABAD, HARYANA - 121003

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 D-1, JNCH
5. The Dy./Astt. Commissioner of Customs, EDI, JNCH..for uploading on website.
6. Notice Board (CHS Section), JNCH.
7. Office Copy.

Annexure-A

Sr. No.	IEC Name	BE Number	BE Date	CTH	Item Description	Total Assessable Value - Assessed	Total Duty - Assessed	IGST Amount - Assessed	IGST Amount - Assessed	IGST Assessable Value - Assessed	IGST PAID RATE	IGST APPLICA BLE RATE	IGST SHORT PAID
1	ESCORTS LTD.	4569497	20/08/2019	8507	Li-on BATTERY/SN:1900088475 (011161500)(COMPONENT PARTS FORHYBRID TRACTOR FOR R&D & FOR EXHIBITION/EXPORT)(CERT # TU/IV	1717344.38	0	0	369122	1811798.32	0	28	507303.53
2	ESCORTS LTD.	5321053	16/10/2019	8507	Li-on BATTERY/SN:1900088477 (011161500)(COMPONENT PARTS FORHYBRID TRACTOR FOR R&D & FOR EXHIBITION/EXPORT)(CERT # TU/IV	1608318.65	0	0	289497.4	1696776.12	0	28	475097.33
ESCORTS LTD. Total						3325663.03		0	598619.4	3508574.5			982400.86

PRATIK P. HINGANKAR
SUPERINTENDENT OF CUSTOMS
14/02/20

