सीमाशुल्कआयुक्त (न्हावाशेवा– II)काकार्यालय,
OFFICE OF THE COMMISSIONER OF CUSTOMS, NS- II,
जवाहरलालनेहरूसीमाशुल्कभवन, न्हावाशेवा,
JAWAHAR LAL NEHRU CUSTOM HOUSE, NHAVA -SHEVA,
ता.उरण,जिला–रायगड-400707, महाराष्ट्र.
TAL. URAN DIST- RAIGAD - 400 707, MAHARASHTRA.

F. No. S/10-568/2024-25/ADC/Gr.3/NS-III/CAC/JNCH Date of Order: 20.08.2025
S/26-Misc-433 (144)/2024-25/Gr.3/JNCH Date of issue: 20.08.2025
SCN No. 1062/2024-25/ADC/Gr.III/NS-III/CAC/JNCH dated 10.09.2024

Order passed by: **Shri , Venkatesh. S**
Additional Commissioner of Customs,
Appraising Gr. III (NS-III), JNCH, Nhava Sheva.

Order-in-Original No: 697 /2025-26/ADC/NS-III/CAC/JNCH
DIN: 20250878NV000000DA82

Name of the Parties/Noticees: M/s. Dolly Import & Export (IEC No. AVWPK8480H)

मूल आदेश

1. यह प्रति जिस व्यक्ति को जारी कीजाती है, उसके उपयोग के लिए नि:शुल्क दी जाती है।

2. इस आदेश के विरुद्ध अपील सीमा शुल्क अधिनियम 1962 की धारा 128 (1) के तहत इस आदेश की संसूचना की तारीख से साठ दिनों के भीतर सीमाशुल्क आयुक्त) अपील (, जवाहर लाल 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 संलग्नकमें की जानी चाहिए।अपील परन्यायालय फीस के रूपमें 2.00 रुपये मात्र का स्टांप लगाया जायेगा और साथ में यह आदेश या इसकी एक प्रति लगायी जायेगी।यदि इस आदेश की प्रतिसंलग्न की जाती है तो इस पर न्यायालय फीस के रूपमें 2.00 रुपये का स्टांप भी लगाया जायेगा जैसा कि न्यायालय फीस अधिनियम 1870 की अनुसूची 1, मद 6 के अंतर्गत निर्धारित किया गया है।

3. इस निर्णय या आदेश के विरुद्ध अपील करने वाला व्यक्ति अपील अनिर्णीतरहनेतक, 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 शास्तिका 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 (Appeals), Jawaharlal Nehru Custom House, Sheva, Taluka :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 annexed to the Customs (Appeals) 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, Item 6 of the Court Fees Act, 1870.

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

The adjudication proceedings in the present case is drawn to adjudicate a Show Cause Notice No. 1062/2024-25/ADC/Gr.3/NS-III/CAC/JNCH dated 10.09.2024issued by the Addl. Commissioner of Customs, Appraising Gr. 3,NS-III, JNCH, Nhava Sheva vide F. No. S/26-Misc-433 (144)/2024-25/Gr.3/JNCH (hereinafter referred to as '**the said SCN**') issued to **M/s. Dolly Import & Export** (IEC: **AVWPK8480H**) having their registered address at New sangeetha CHS Ltd., Flat No. 202, 7th Cross Road, Near Diamond Garden, Behind Yogi Hotel, Chembur, Mumbai-400071, (hereinafter referred to as '**the Importer**' or '**M/s. DIE**' for sake of brevity) for wrong selection of IGST Schedule at lower rate which resulted in short levy of applicable Customs Duty.

2. M/s. DIE had imported goods declared as "Embroidery Fabrics" (hereinafter referred to as "**the imported goods**") vide Bills of Entry as detailed in Annexure-A enclosed to the SCN dated 10.09.2024). The said imported goods were classified under CTH 5810. The IGST on the said goods was paid under Sl. No. 220 of Schedule-I of IGST Levy Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 as amended (hereinafter referred to as "**the said Notification**").

3. Goods falling under Heading 5810 attract different IGST rates, as follows, under Schedule-I and schedule-II. The relevant parts of the IGST Levy Notification No. 01/2017-ITR dated 28.06.2017 are tabulated below:

IGST Schedule	Sl. No.	Description	Rate of IGST
I	220	Embroidery or Zari Articles, that is to say, -Imi, Zari, Kasab, Saima, Dabka, Chumki, Gota Sitara, Naqsi, Kora, Glass Beads, Badla, Gizai.	5%
II	156	Embroidery in the piece, in strips or in motifs, Embroidered badges, motifs and the like [other than Embroidery or Zari articles, that is to say, -Imi, Zari, Kasab, Saima, Dabka, Chumki, Gota Sitara, Naqsi, Kora, Glass Beads, Badla, Gizai].	12%

4. During the course of Post Clearance Audit ("**PCA**" in short) of Bs/E, it has been *prima facie* noticed that the Importer has imported "Embroidery Fabrics" under CTH 5810 and paid IGST @ 5% under Sl. No. 220 of Schedule-I of Notification No. 01/2017-ITR instead of applicable Sl. No. 156 of Schedule-II of the said notification wherein rate of IGST is 12%. The details of description of goods, Bills of Entry, applicability of correct IGST amount is given in **Annexure-A** enclosed to the SCN dated 10.09.2024.

5. The IGST @ 12% as per Sl. No. 156 of Schedule-II of IGST Notification No. 01/2017-ITR dated 28.06.2017 is applicable on "Embroidery in the Piece, in Strips or in Motifs, Embroidered Badges, Motifs and the like [other than Embroidery or Zari Articles, that is to say,- Imi, Zari, Kasab, Saima, Dabka, Chumki, Gota Sitara, Naqsi, Kora, Glass Beads, Badla, Gizai]". Therefore, it appears that the Importer had wilfully mis-declared the imported goods by way of incomplete description, declaring IGST @ 5% as per Sl.No. 220 of Schedule-I instead of 12% as per Sl. No. 156 of Schedule-II of IGST Notification No.

01/2017-ITR dated 28.06.2017, thereby, paying lower duty than applicable. Thus, the provisions of Section 28 (4) of Customs Act, 1962 are invokable in this case.

6. 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 imported goods have been mis-declared and IGST amount has not been paid correctly.

7. Relevant legal provisions for recovery of duty that appear to have been evaded are reproduced below:

A. ***Section 17(1) of the Customs Act, 1962: 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.

B. ***Section 28 of the Customs Act, 1962: (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.

(6) Where the importer or the exporter or the agent or the employee of the importer or the exporter, as the case may be, has paid duty with interest and penalty under sub-section (5), the proper officer shall determine the amount of duty or interest and on determination, if the proper officer is of the opinion-

(i) that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub- section (4), shall, without prejudice to the provisions of sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein; or

(ii) that the duty with interest and penalty that has been paid falls short of the amount actually payable, then, the proper officer shall proceed to issue the notice as provided for in clause (a) of sub-section (1) in respect of such

amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of two years shall be computed from the date of receipt of information under sub-section (5).

C. ***Section 28AA of the Customs Act, 1962: Interest on delayed payment of duty:***
(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28,shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2),whether such payment is made voluntarily or after determination of the duty under that section.

(2) Interest, at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

D. ***Section 46 of the Customs Act, 1962: Entry of goods on importation**, Sub-section 46(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.

E. ***Section 111 of the Customs Act, 1962: (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……..;

F. ***Section 112 of the Customs Act, 1962: (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 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 greater;

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

G. ***SECTION 114A of the Customs Act, 1962: Penalty for short-levy or non-levy of duty in certain cases**. –*
Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:

Provided that where such duty or interest, as the case may be, as determined under sub-section (8) of section 28, and the interest payable thereon under section 28AA, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

Provided also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:

Provided also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 28AA, and twenty-five percent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect:

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

Explanation. - For the removal of doubts, it is hereby declared that -

(i) the provisions of this section shall also apply to cases in which the order determining the duty or interest under sub-section (8) of section 28 relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;

(ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.

H. ***Section 114AA of the Customs Act, 1962: Penalty for use of false and incorrect material.***

If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.]

I. ***Section 117 of the Customs Act, 1962: Penalties for contravention, etc., not expressly mentioned.***

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

8. Acts of omission and commission by the Importer:

8.1 As per section 17(1) of the Customs Act, 1962,"*An importer entering any imported goods under section 46, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods*". In this case, the Importer had self-assessed the Bs/E

and appears to have short-paid the IGST due to wrong selection of IGST Schedule. As the Importer got monetary benefit due to said act, it is apparent that the same was done deliberately with wilful mis-declaration of the said goods in the Bills of Entry during self-assessment. Therefore, differential duty is recoverable from the importer u/s. 28(4) of the Customs Act, 1962 along with applicable interest as per Section 28AA of the said Act.

8.2. It appears that the Importer has given a declaration u/s. 46(4) of the Customs Act, 1962, for the truthfulness of the content submitted at the time of filing B/E. However, the applicable IGST on the imported goods was not paid by the importer at the time of clearance of goods. It also appears that the Importer has submitted a false declaration u/s. 46(4) of the Customs Act, 1962. By the act of presenting the goods in contravention of the provisions of Section 111(m), it appears that the Importer has rendered the imported goods liable for confiscation u/s. 111(m) of the Customs Act, 1962. The above act of deliberate omission and commission has rendered the imported goods liable to confiscation. Therefore, the Importer also appears liable to penal action u/s. 112 (a) and/or 114A and/or 114AA of the Customs Act,1962. \

9. The Audit Department, JNCH on the basis of above facts prepared an Audit Report and forwarded the same to the concerned Appraising Gr. 3, JNCH for issuance of SCN and subsequent adjudication to recover the duty short paid along with applicable interest.

10. On the basis of subject Audit Report and in terms of powers conferred under Section 124 r/w. Section 28 of the Customs Act, 1962, the Addl. Commissioner of Customs, Gr. 3, JNCH issued subject SCN No. 1062/2024-25/ADC/Gr.3/NS-III/CAC/JNCH dated 10.09.2024 to the Importer, M/s. Dolly Import & Export, whereby, they were called upon to show cause to the Additional Commissioner of Customs, Appraising Group 3, Centralized Adjudication Cell, JNCH, Nhava Sheva, Taluka - Uran, District - Raigad, Maharashtra–400707 (Adjudicating Authority in present case), within 30 days of receipt of this notice, as to why:

(i) The IGST Rate claimed under Sl. No. 220 of Schedule-II of IGST Levy Notification No. 01/2017-ITR dated 28.06.2017 for the imported goods, as detailed in Annexure-A, should not be rejected and IGST Rate under Sl. No. 156 of Schedule-II of the said Notification should not be levied;

(ii) Differential IGST amount of **Rs. 16,03,335/-** (Rupees Sixteen Lakh Three Thousand Three Hundred Thirty Five only)in respect of the goods covered under subject Bs/E(as detailed in Annexure-A enclosed to the SCN) should not be demanded u/s. 28 (4) of the Customs Act, 1962 along with applicable interest as per Section 28AA of the said Act;

(iii) The imported goods, as detailed in Annexure-A, having total Assessable Value of **Rs.2,06,34,942/-** (Rupees Two Crore Six Lakh Thirty Four Thousand Nine Hundred Forty Two only) should not be held liable for confiscation u/s. 111(m) of the Customs Act, 1962; and

(iv) Penalty should not be imposed on the Importer u/s. 112 (a) and/or 114A and/or 114AA of the Customs Act, 1962.

11. Vide said SCN it was advised to the Importer that they may avail the benefit of reduced penalty @ 15% of duty specified in this notice in terms of Section 28(5) of the Customs Act, 1962 by payment of duty and interest within 30 days of receipt of the subject SCN dated 10.09.2024, failing which the Importer may be liable to higher penalty equal to the duty and interest so determined.

WRITTEN SUBMISSIONS OF THE IMPORTER

12. Vide SCN dated 10.09.2024, the Importer was directed to submit written reply in their defence within 30 days of the receipt of the SCN. In response, Shri Anil Balani, Advocate submitted letter dated 24.12.2024, whereby, written reply to the SCN has been submitted on behalf of the Importer. The contentions of the Importer are re-produced herein below:

1. My clients imported 38 consignments in the period 17.09.2019 up to15.06.2024.

2. The goods were described as 'Embroidery Fabrics (with visible ground).

3. The goods were classified under CTH 5810 and IGST was paid at the rate of 5% under Sr. No.220 of Schedule-I of Notification No.01/2017-Integrated Tax(Rate) dated 28.06.2017.

4. The instant SCN dated 10.09.2024 under Section 28(4) of the Customs Act seeks recovery of IGST @12% under Sr. No. 156 of Schedule-II of the said Notification No.01/2017.

5. At the outset my clients deny all the allegations and charges contained in the Notice. The following submissions may kindly be noted:

(A) CTH 5810 reads as under:-

The imported goods were classified under CTH 58109290.

(B) Goods of CTH 58109210 'Embroidered Badges Motif and the like' are specifically covered by Sr. No.156 of Schedule-II of the said NotificationNo.1/2017. In the instant case however, the goods were not classified under CTH 58109210. Hence they are not covered by the said Sr. No.156 of Schedule-II of the said Notification No. 1/2017.

(C) Over a period of five years the goods were classified by the Department under Sr. No.220 of Schedule-I of the said Notification 1/2017, after physical examination and perusal of the import documents.

(D) The notice does not offer any reasons for the sudden change of classification. In such cases the burden is always on the Department. In the following cases it was held as under:-

(a) Garware Nylons Ltd.- 1996 (87) ELT 12 (SC):The burden of proof is on the taxing authorities to show that the particular case or item in question, is taxable in the manner claimed by them. Mare assertion in that regard is of no avail. It has been held by this Court that there should be material to enter appropriate finding in that regard and the material may be either oral or documentary. It is for the taxing authority to lay evidence in that behalf even before the first adjudicating authority.

(b) Hindustan Ferodo Ltd. - 1997 (89) ELT 16 (S.C.):Classification of goods - Onus of establishing that goods are classifiable under a particular tariff entry lays upon the Revenue.

(c) H.P.L. Chemicals Ltd. - 2006 (197) ELT 324 (S.C.):Classification of goods is a matter relating to chargeability and burden of proof is squarely upon Revenue - If Department

intends to classify goods under a particular heading or sub-heading different from claimed by assessee, Department has to adduce proper evidence and discharge burden of proof.

(d) Hewlett Packard India Sales Pvt.Ltd.-2023 (383) ELT241(S.C.):Since customs authorities wanted to classify goods differently, burden of proof to showcase same was on them, which they failed to discharge -Therefore, under self assessment procedure, classification submitted by assessee must be accepted.

(e) Jai Kunkan Foods – 2023 (385) ELT 738 (Tri.-Del.):If department intends to classify goods under a particular heading or sub-heading different from that claimed by assessee, Department is required to adduce proper evidence and thereby discharge the burden of proof.

(E) As the Department has failed to discharge the burden, the instant proceedings deserve to be dropped.

(F) Without prejudice to the above, the extended period of five years under Section 28(4) of the Customs Act is available to the Department only in cases of suppression or collusion or wilful mis-statement with intent to evade duty. IGST was levied as per the practice followed by the Department. Thus there was no intent to evade duty. The goods were accurately declared and described. Hence there was no suppression or misdeclaration. In the circumstances the extended period under Section28(4) is not available to the Department. The proceedings are therefore barred by time and hit by limitation.

(G) Without prejudice to the above, if IGST was recovered from inception at the rate of 12%, the importer would be eligible for Input Tax Credit(ITC). Thus it is a revenue neutral situation and no loss was caused to the Exchequer.

(H) Without prejudice to the above, the Custom authorities do not have the jurisdiction or the authority to raise demand for IGST. The proceedings are misconceived and void ab-initio. In the case of Ortho Clinical Diagnostics India Pvt Ltd. [2022 (9) TMI 1109 - CESTAT MUMBAI] the Hon'ble CESTAT has held as under:

"12. The scheme of rule 3(7) of Customs Tariff Act, 1975, therefore, imposes 'integrated tax' on imported goods, at a rate as prescribed under the authority of section 5 of Integrated Goods and Services Tax(IGST) Act, 2017, on value as prescribed in section 3(8) therein which is the arithmetical addition of duties of customs to value for assessment of imported goods and posing no discretionary authority therein. In the light of this being a distinct 'integrated tax', and not an additional duty of customs equal to another duty charged and collected under a scheme of assessment, the adoption of rate claimed by an importer can be disputed only by such officers conferred with authority to do so. Such officers with jurisdiction to intrude into self-assessment are central tax officers. The enabling of levy of 'integrated tax' in Customs Tariff Act, 1975 does not confer any power to intrude upon rate claimed in the bill of entry and 'proper officer', invoking power of assessment or power of recovery under Customs Act, 1962, would be in excess of jurisdiction to venture in to determination of rate of duty under a law that is outside jurisdictional competence. This perspective on the enabling provision is not prejudicial to revenue for reasons discussed supra and it is only such prejudice that may prompt an alternative perspective. Learned Authorized Representative has not been able to demonstrate so."

(I) The goods were correctly described. There is no misdeclaration of any kind. Hence the goods are not liable for confiscation under Section111(m). As per the settled law, when the goods are correctly described and declared, mere claim for a particular classification or exemption by the importer does not constitute wilful mis-statement or suppression of facts merely because the department subsequently took a different view in respect of the classification/notification. The following Judgments lay down this principle:-

(a) Northern Plastic Ltd. [1998 (101) ELT 549 (SC)];

(b) Lewek Altair Shipping Pvt. Ltd. - 2019 (366) ELT 318 (Tri.), upheldby the Supreme Court in 2019 (367) E.L.T. A328 (S.C.);

(c) Midas Fertichem Impex Pvt.Ltd. -2023 (384) ELT 397(Tri. Del.)

(d) Sirthai Superware India Ltd.-2020 (371) ELT 324 (Tri.)

(e) S. Rajiv & Co. - 2014 (302) ELT 412 (Tri.).

(J) Without prejudice to the above, as the goods were already cleared unconditionally and they are not physically available for confiscation, redemption fine cannot be imposed. The following judgements are relied upon in support of this:

(a) Finesse Creation Inc. [2009 (248) ELT 122(Bom.)] affirmed by the Hon'ble Supreme Court [2010 (255) ELT A120(SC)].

(b) Air India Ltd. - 2023 (386) E.L.T. 236 (Bom.)

(c) Shiv Kripa Ispat Pvt.Ltd. - 2009 (235) ELT 623 (Tribunal-Larger Bench) and affirmed by the Bombay High Court [2015 (318) ELTA259(Bom.)];

(d) Hem Chand Gupta & Sons - 2015 (330) ELT 161 (Tribunal),affirmed by the Delhi High Court in 2017 (354) ELT A201 (Del.)];

(e) Raja Impex Pvt.Ltd. -2008 (229) ELT 185 (P&H);

(f) U.M. Cables Ltd. – 2022 (381) ELT 98 (Tri.-Mum.).

(K) As the goods are not liable for confiscation under Section 111(m) and my clients have not committed any act rendering the goods liable to confiscation under Section 111, they are not liable for penalty under Section 112(a).

(L) As the Notice under Sections 28(4) is not sustainable, my clients are also not liable for Penalty under Section 114A.

(M) Section 114AA is not applicable to the instant case for the following reasons:-

(a) My clients did not knowingly or unknowingly make any false declaration.

(b) As per 27th Report of the Standing Committee on Finance (2005-2006),Section 114AA applies only in cases of fraudulent exports. Further, in the following judgements also it is held that Section 114AA is only applicable in cases of fraudulent exports and not in import cases:

i. A.V.Global Corporation P.Ltd.-2024 (10) TMI 159-CESTAT New Delhi

ii. Suresh Kumar Aggarwal -2024 (6) TMI 779 -CESTAT Mumbai;

iii. Interglobe Aviation Ltd. - 2022 (379) ELT 235 (Tri.-);

iv. Access World Wide Cargo -2022 (379) ELT 120 (Tri.);

v. Bosch Chassis Esystems India Ltd.- 2015 (325) ELT 372(T);

vi. Sri Krishna Sounds and Lightings - 2019 (370) ELT 594(T).

(c) Without prejudice to the above, in the following judgements it is heldthat Section 114AA cannot be invoked when penalty under Section112 is already imposed for the same offence:

(i) Dharmendra Kumar – 2019 (370) ELT 1199 (Tri.-All.)

(ii) Arya International – 2016 (332) ELT 726 (Tri.-Ahmd.)

(iii) Buhler India Pvt. Ltd.-2014 (310) ELT 593 (Tribunal)

(iv) Govt. of India Order dated 31.8.2020 in R. A. File No.151/2020-CUS(WZ)/ASRA/MUMBAI issued vide F.No.371/17/B/16/RA 5760 dated30.9.2020;

(v) Order dated 11.12.2020 of Gujarat High Court in Special Civil Application No.15689/2020 of Abdul Hussain Saifuddin Hamid.

N. In these circumstances, it is prayed that the proceedings against his client kindly be dropped.

RECORDING OF PERSONAL HEARING

13. In adherence of the Principles of Natural Justice, the Importer was granted with an opportunity to appear before the undersigned for Personal Hearings fixed on 17.06.2025 vide personal hearing memo dated 29.05.2025. Shri Anil Balani, Authorized Representative appeared virtually for PH before the undersigned on behalf of the Importer. He informed that they have submitted letter dated 24.12.2024 and re-iterated the contents of the said letter orally.

DISCUSSION AND FINDINGS

14. I have carefully gone through the facts of the case depicted in SCN dated 10.09.2024, records available, written/oral submissions of the Importer during the course of present adjudication proceedings. Accordingly, I proceed to adjudicate the said SCN on merits on the basis of facts and evidences available on records.

15. I find that in the instant case, the Importer had filed Bs/E No as detailed in Annexure-A of the SCN for import of variety of Fabrics including the goods in question viz. "Embroidery Fabric". In this Order, I am considering and discussing the issue of import of Embroidery Fabric only in terms of the subject SCN dated 10.09.2024.

15.1. I find that in the subject Bs/E the Importer classified the impugned goods, viz. Embroidery Fabrics under CTH 5810 9290. I find that the declared Assessable Value of the subject goods was **Rs. 2,06,34,942/-**(as detailed in Annexure-A to the SCN). I find that the Importer had declared the Schedule and Rate of IGST under Sr. No. 220 of Schedule-I of IGST Levy Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 and paid IGST @ 5%.

15.2. I find that during the course of PCA of the subject Bs/E, it has been *prima facie* noticed by the Audit Officers that the Importer has imported "Embroidery Fabrics" under CTH 5810 and paid IGST @ 5% under Sl. No. 220 of Schedule-I of Notification No. 01/2017-ITR instead of applicable Sl. No. 156 of Schedule-II of the said Notification wherein rate of IGST is 12%. The Audit Officers accordingly quantified the IGST payable @ 12% on the subject goods and differential IGST (short levied) amounting to **Rs. Rs. 16,03,335/-** respectively (as detailed in Annexure-A to the SCN).

15.3. I find that the Audit Department had issued a Consultative Letter to the Importer sensitizing them about the mis-declaration of the IGST Rate and advising them to make payment of differential Customs Duty (IGST) along with interest and concessional penalty u/s. 28 (5) of the Customs Act, 1962. I find that the Importer did not respond to the subject Consultative Letter, therefore, the Audit Section, JNCH prepared an Audit Report depicting the above facts and forwarded the same to the concerned Appraising Gr. 3, JNCH with recommendations to: (i) recover the differential IGST u/s. 28 (4) a/w. interest u/s. 28AA; (ii) confiscate the goods u/s. 111 (m); and (iii) imposed penalty on the Importer u/s. 112 (a) and/or 114A and/or 114AA.

15.4. I find that on the basis of said Audit Report, the Addl. Commissioner of Customs (NS-II), Gr. 3, JNCH issued the subject SCN dated 10.09.2024, whereby, the Importer was called upon to show cause to the undersigned as to why: (i) the declared IGST rate should not be rejected and assessed under IGST @ 12% under Sr. No. 156 of Schedule-II of the Notification No. 01/2017-ITR; (ii) the differential IGST should not be demanded and recovered u/s. 28 (4) alongwith applicable interest u/s. 28AA; (iii) goods should not be held liable for confiscation u/s. 111 (m); (iv) penalty should not be imposed u/s. 112 (a) and/or 114A and/or 114AA.

15.5. I find that the Importer has submitted written reply to the SCN vide their letters dated 24.12.2024 and 16.06.2025, which has been taken on record and will consider the same on merits.

16. On careful perusal of case records, I find that the following main issues are involved in this case which is required to be decided:

(i) Whether the impugned goods, viz. Embroidery Fabrics is leviable with 12% IGST under Sl. No. 156 of Schedule-II of Notification No. 01/2017-ITR?

(ii) Whether the differential IGST amount of **Rs. 16,03,335/-** is recoverable u/s. 28 (4) of the Customs Act, 1962 along with applicable interest as per Section 28AA *ibid*?

(iii) Whether the impugned goods having total Assessable Value of **Rs. 2,06,34,942/-** are liable confiscation u/s. 111(m) of the Customs Act, 1962? and

(iv) Whether penalty should be imposed on the Importer u/s. 112 (a) and/or 114A and/or 114AA of the Customs Act, 1962?

16.1. In the proceeding Paras, I am discussing the subject issues sequentially.

17. Before, coming to any conclusion w.r.t. rejection of declared IGST rate, i.e. 5% under Sr. No. 220 of Schedule-I of Notification No. 01/2017-ITR and re-determine the same under proposed IGST @ 12% under Sr. No. 156 of Scheule-II of the said Notification, I would like to discuss about the CTHs of the goods under which the goods are classified vis-à-vis IGST Rate declared by the Importer at the time of clearance of the goods.

17.1. I find that the Importer has classified the imported goods, viz. Embroidery Fabrics under CTH 5810 9290. The contents of the subject CTHs are re-produced herein below:

CHAPTER 58		**Special woven fabrics; tufted textile fabrics; lace; tapestries; trimmings; embroidery.**			
5810		**EMBROIDERY IN THE PIECE, IN STRIPS OR IN MOTIFS**			
5810 10 00	-	Embroidery without visible ground whichever is higher	kg.	10% or Rs. 200 per kg., whichever is higher	-
	-	Other embroidery :			
5810 91	--	Of cotton:			
5810 91 10	---	Embroidered with LucknowChikan Craft	kg.	10%	-
5810 91 90	---	Other	kg.	10%	-
5810 92	--	Of man made fibres :			
5810 92 10	---	Embroidered badges, motifsand the like	kg.	10%	-
5810 92 20	---	Embroidered with Lucknow Chikan Craft	kg.	10%	-
5810 92 90	**---**	**Other**	**kg.**	**10%**	**-**
5810 99	--	Of other textile materials:			
5810 99 10	---	Embroidered with LucknowChikan Craft	kg.	10%	-
5810 99 90	**---**	**Other**	**kg.**	**10%**	

17.2. The contents of the respective Schedules and Sr. Nos. declared by the Importer and proposed by the Department. The details of goods covered under two corresponding Sr. Nos. of two different Schedules of Notification No. 01/2017-ITR dated 28.06.2017, is as follows:

IGST Schedule	Sl. No.	Chapter Heading/Sub-Heading/Tariff Item	Description	Rate of IGST
I	220	5809 & 5810	Embroidery or Zari Articles, that is to say, -Imi, Zari, Kasab, Saima, Dabka, Chumki, Gota Sitara, Naqsi, Kora, Glass Beads, Badla, Gizai.	5%
II	156	5810	Embroidery in the Piece, in Strips or in Motifs, Embroidered badges, motifs and the like [other than Embroidery or zari articles, that is to say, -imi, Zari, Kasab, Saima, Dabka, Chumki, Gota Sitara, Naqsi, Kora, Glass Beads, Badla, Gizai].	12%

17.3. On perusal of the above tables, I find that the Chapter 58 of Indian Tariff covers goods, viz. "Embroidery in the Piece, in Strips or in Motifs". It is also pertinent to mention here that the UQC declared for the imported goods was "Kgs". Therefore, it is apparent that the imported goods are nothing but Embroidery in the Pieces/Strips/Motifs only. I find that normally UQC for any fabrics is "Meters", however, in the present case it is in Kgs., therefore, the goods in question appeared to be arrived in Pieces/Strips/Motifs only.

17.4. Now coming to IGST Rate as per Notification No. 01/2017-Cus dated 28.06.2017, wherein, applicable Rates of IGST under various CTHs are categorized in Four different Schedules levying IGST @ 5%, 12%, 18% & 28%. I find that Sr. No. 220 of Schedule-I is applicable for goods viz. Embroidery or Zari Articles attracting IGST @ 5%, whereas, Sr. No. 156 of Schedule-II is applicable for Embroidery Articles in Pieces, Strips or Motifs, Badges etc. In the instant case, on perusal of available import documents, viz. Invoices & Packing Lists it appeared that the declared description of the goods as Embroidery Fabrics, however, the UQC declared in the import documents were in "Kgs." and not in

"Meters", therefore, it is apparent that the imported goods in question are not running length Fabrics but the articles of Embroidery in form of Pieces/Strips/Motifs only the Importer failed to produce cogent documentary evidence to establish the fact that the imported goods are Embroidery Fabrics only. Therefore, it appeared that the impugned imported goods were in the form of Pieces, Strips, Motifs or Badges only and not a running length Fabric with Embroidery on it. On perusal of contents of both Sr. Nos. of different Schedules, it is apparent that the goods in question merits IGST to be leviable under Sr. No. 156 of Schedule-II of Notification No. 01/2017-ITR dated 28.06.2017 @ 12% only, however, the Importer has mis-declared the said IGST Rate of 5% under Sr. No. 220 of Schedule-I of the said Notification, which is applicable for goods other than Embroidery Pieces/Strips/ Motifs/Badges. Hence, it is apparent that the Importer has deliberately misstated the IGST Sr. No. & Schedule with an intent to evade the legitimate Customs Duty in form of IGST to the extent of 7% resulted in short levy of Customs Duty (IGST) to the extent of Rs. **16,03,335/-**

17.5. I find that in the instant case, on perusal of documents available on record, it is pertinent to mention here that the UQC for the goods in question here were declared in "Kgs." only and not in "Meters". Therefore, it is cogent and clear that the goods in question are in form of Pieces/Strips/Motifs/Badges and not in running length Fabrics.

17.6. On perusal of Audit Report vis-à-vis SCN dated 10.09.2024, I find that both the issuing Authorities kept emphasize on the fact that the imported goods are not Fabrics in running length, therefore, the claimed IGST Rate @ 5% under Schedule-I of Notification No. 01/2017-ITR is not applicable, whereas, being the goods imported in Kgs. it appeared that the same must be in form of Pieces/Strips/Motifs/Badges only, which attracted higher rate of IGST under Sr. No. 156 of Schedule-II of the same Notification. On plain reading of both the IGST Rates, viz. 5% under Sr. No. 220 of Schedule-I and 12% under Sr. No. 156 of Schedule-II of the subject Notification, I am of firm opinion that the goods in question being imported in form of Pieces/Strips/Motifs/Badges and not running length Fabric, the same merits IGST Rate @ 12% under Sr. No. 156 of Scheule-II of the Notification No. 01/2017-ITR dated 28.06.2017.

17.7. I find that the Importer in its written submission contended that the impugned goods, viz. Embroidery Fabrics are assessed with 5% IGST on Pan India level uniformly across the country in local supplies as well as in import after inception of the IGST in the year 2017.In this regard, I find that the Importer failed to produce any contemporaneous import details where Embroidered Pieces/Strips/Motifs/Badges were assessed to 5% IGST. Therefore, the contention of the Importer is baseless and not acceptable.

17.8. In view of the above discussions, I find and hold that the Importer has mis-declared the IGST Rate for the goods under Sr. No. 220 of Schedule-I of Notification No. 01/2017-ITR dated 28.06.2017 attracting IGST @ 5%. However, owing to the above discussions I find and hold that the goods are correctly leviable with 12% IGST under Sr. No. 156 of

Schedule-II of the said Notification. Therefore, I find and hold that the declared IGST is required to be re-determine @ 12% under Sr. No. 156 of Schedule-II of Notification No. 156 of Schedule-II of Notification No. 01/2017-ITR dated 28.06.2017.

18. After having determined the correct IGST Rate of the subject goods, it is imperative to determine whether the demand of differential duty as per the provisions of Section 28(4) of the Customs Act, 1962, in the subject SCN is sustainable or otherwise. The relevant legal provision of Section 28 (4) is produced in Para 11 (H) *supra*.

18.1 I find that consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-assessment' has been introduced in customs clearance. Section 17 of the Customs Act, effective from 08.04.2011 [CBEC's (now CBIC) Circular No 17/2011 dated 08.04.2011] provides for self-assessment of duty on imported goods by the Importer himself by filing a bill of entry, in the electronic form. Section 46 of the Customs Act, 1962 makes it mandatory for the Importer to make entry for the imported goods by presenting a bill of entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Declaration) Regulation, 2011 (issued under Section 157 read with Section 46 of the Customs Act, 1962), the bill of entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service 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. In the instant case, the importer had self-assessed the impugned goods and declared the lower rate of IGST @ 5% under Sr. No. 220 of Schedule-II of Notification No. 01/2017-ITR dated 28.06.2017, which is applicable for Embroidery Articles other than Pieces/Strips/Motifs/Badges etc. instead of correct and appropriate IGST @ 12% under Sr. No. 156 of Schedule-II of the said Notification, which are applicable for Embroidery in the Piece, in Strips or in Motifs, Embroidered badges, motifs and the like.

18.2. The importer had self-assessed the Bills of Entry and by mis-declaring the IGST Rate for the impugned goods @ 5% under Sr. No. 220 of Schedule-I of Notification NO. 01/2017-ITR date28.06.2017 instead of correct IGST @ 12% under Sr. No. 156 of Schedule-II of the said Notification has evaded legitimate Customs Duty to the extent of **Rs. 16,03,335/-** as against Bs/E (as detailed in Annexure-A enclosed to the SCN). As the Importer got monetary benefit due to the said act, it is apparent that the same was done

deliberately by wilful mis-statement and mis-classification of the said goods. The "*mens rea*" can be deciphered only from "*actus-reus*". Thus, providing the wrong declaration w.r.t. applicable rate of IGST as per relevant Notification for the imported goods by the said Importer, took a chance to clear the goods by mis-classifying it, amply points towards their "*mens rea*" to evade the payment of duty.

18.3. I find in the instant case, as elaborated in the above paras, the Importer had wilfully suppressed the correct Schedule and Sr. No. of the IGST Rate by mis-declaring the same at the time of filing of the Bs/E. Further, to evade payment of correctly leviable duty, they mis-stated and suppressed the correct IGST Rate under correct Schedule of Notification No. 01/2017-ITR for the impugned goods. Therefore, I find that in the instant case, there is an element of '*mens rea*' involved. The instant case is not a normal case of *bona fide* wrong classification of goods being almost 7 consignments cleared during the period August, 2019 to January, 2020. Instead, in the instant case, it is apparent that the Importer has deliberately chose to mis-declare the IGST Rate for the imported goods, being fully aware that the impugned goods are correctly attracted IGST @ 12%.This wilful and deliberate act clearly brings out their '*mens rea*' in this case. Once the '*mens rea*' is established on the part of the Importer, the extended period of limitation, automatically get attracted.

18.4. In view of the foregoing, I find that, due to deliberate/wilful mis-statement w.r.t. classification of goods, differential duty demand against the Importer has been correctly proposed u/s. 28(4) of the Customs Act, 1962 by invoking the extended period of limitation. In support of my stand of invoking extended period, I rely upon the following court decisions:

(a) **2013(294) E.L.T.222(Tri.-LB): Union Quality Plastic Ltd. Versus Commissioner of C.E. & S.T., Vapi [Misc. Order No.M/12671-12676/2013-WZB/AHD**, dated 18.06.2013 in Appeal Nos. E/1762-1765/2004 and E/635- 636/2008]

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

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

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

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

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

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

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

18.5. Accordingly, I find and hold that the differential Customs Duty (IGST) amounting to **Rs. 16,03,335/-** (Rupees Sixteen Lakh Three Thousand Three Hundred Thirty Five only) pertains to subject Bs/E (as detailed in Annexure-A enclosed to the SCN)resulting from re-assessing of the imported goods under correct IGST Rate of 12% under Sr. No. 156 of Schedule-II of Notification NO. 01/2017-ITR, as proposed in the subject SCN, is recoverable from M/s. DIE under extended period in terms of the provisions of Section 28(4) of the Customs Act, 1962.

19. Further, I find that since the demand of duty is sustainable in the instant case, the interest being accessory to principal, the same is liable to be paid in accordance with Section 28AA of the Customs Act, 1962. In this regard, the ratio laid down by Hon'ble Supreme Court in the case of ***CCE, Pune Vs SKF India Ltd. [2009(239)ELT 385 (SC)]*** is aptly applicable in the instant case.

20. Now coming to the question as to whether the impugned goods are liable for confiscation. It is alleged that the importer has cleared the impugned goods imported vide subject Bs/E (as detailed in Annexure-A enclosed to the SCN), by resorting to mis-declaration of IGST Rate in terms of wrong Sr. No. & Schedule of the Notification No. 01/2017-ITR resulting in evasion of legitimate total Customs duty amounting to **Rs. 16,03,335/-**(as detailed in Annexure-A to the SCN), therefore, the said goods appear to be liable for confiscation u/s. 111(m) of the Customs Act, 1962.

20.1. I find that Section 111(m) provides for confiscation in cases where imported goods do not correspond in respect of value or in any other particular with the entry made under the Customs Act, 1962 which includes particulars like wrong classification and notification benefit claimed and self-assessed in the B/E wrongly. In the instant case, the Importer mis-declared the IGST Sr. No. 220 of Schedule-I of Notification No. 01/2017-Cus attracting lower rate of IGST (5%) with an intent to evade the legitimate IGST as against correct IGST Sr. No. 156 of Schedule-II attracting higher Rate of IGST (12%). As discussed in the above paras, it is evident that the goods in question are **"Embroidered Pieces/Strips/Motifs/ Badges"** and merit IGST Rate @ 12%, therefore, I find that the Importer has intentionally mis-declared the IGST Rate under Sr. No. 220 of Schedule-I attracting 5% IGST, with an intention to evade Customs Duty.

20.2. As, there is deliberate mis-declaration of the impugned goods w.r.t. IGST Rate resulting in evading of legitimate Customs Duty (IGST) and therefore, I find and hold that the confiscation of the imported goods invoking Section 111(m)of the Customs Act, 1962 is justified & sustainable.

20.3. However, I find the goods imported vide subject Bs/E (as detailed in Annexure-A to the SCN), are physically not available for confiscation. There are numerous cases where it has been held that if the goods are not available physically, Redemption Fine u/s. 125 of

the Customs Act, 1962 cannot be imposed on them. In this regard, I rely upon the order of Hon'ble Madras High Court in case of ***M/s. Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142(Mad.).*** The Hon'ble Madras High Court in case of ***M/s. Visteon Automotive Systems India*** in para 23 of the judgment observed as below:

> *"23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularized, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorized by this Act....", brings out the point clearly. The power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. When once power of authorization for confiscation of goods gets traced to the said Section III of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing the payment of the redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (i)."*

20.4. I further find that the above view of Hon'ble Madras High Court in case of ***M/s. Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L 142 (Mad)***, has been cited by ***Hon'ble Gujarat High Court in case of M/s. Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L 513(Guj***) and the same has not been challenged by any of the parties in operation. Hence, I find that any goods improperly imported as provided in any sub-section of the Section 111 of the Customs Act, 1962 are liable to confiscation and merely because the importer was not caught at the time of clearance of the imported goods, can't be given differential treatment. In view of the above, I find that the decision of Hon'ble Madras High Court in case of ***M/s. Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. I42 (Mad.)***, which has been passed after observing decision of Hon'ble Bombay High Court in case of ***M/s. Finesse Creations Inc reported vide 2009 (248) EIT 122 (Bom)-upheld by Hon'ble Supreme Court in 2010(255) ELT A.120 (SC)***, is squarely applicable in the present case.

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

21. Now coming to the issue of penalties, I find that the SCN proposes a penalty under Section 112(a) and/or 114A and 114AA of the Customs Act, 1962, for the act of deliberate omission and commission that rendered the goods liable to confiscation. I have already

elaborated in the foregoing paras that the Importer has wilfully suppressed the facts with regard to correct declaration of IGST Rate prescribed under Notification No. 01/2017-ITR and deliberately declared the wrong Sr. No. & Schedule of the IGST attracting lower rate of IGST for the imported goods with an intent to evade the legitimate Customs Duty (IGST). Further, I find that the Importer has given a declaration u/s. 46 of the Act, for the truthfulness of the content submitted at the time of filing Bill of Entry. Further, as per Section 17(1) of the Customs Act, 1962 "*An Importer entering any imported goods under section 46, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods*".

21.1 I find in the instant case that the importer had self-assessed the subject Bs/E (as detailed in Annexure-A to the SCN) and mis-declared the IGST Rate for the impugned goods under Sr. No. 220 of Schedule-I of Notification No. 01/2017-ITR attracting IGST @ 5% instead of correct IGST under Sr. No. 156 of Schedule-I of the said Notification attracting IGST @ 12%,which has resulted in loss of legitimate total duty to the Exchequer amounting to **Rs. 16,03,335/-** (as detailed in Annexure-A to the SCN). As the importer got monetary benefit due to said act, it is apparent that the same was done deliberately by wilful mis-statement and wilful mis-declaration of IGST Rate for the said goods. The mis-declaration of IGST Rate for the impugned goods, by the Importer of such repute having access to all legal aid, tantamount to suppression of material facts and for this act of omission and commission, the importer has rendered himself liable to penal action u/s. 112(a) of the Customs Act, 1962.

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

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

21.4. I find that as per Proviso to Section 114A of the Customs Act, 1962, penalty under Section 112 (a) and 114A cannot be imposed simultaneously, therefore, I refrain myself from imposing any penalty on the Importer u/s. 112 (a) *ibid* and inclined to impose penalty on the Importer under the provisions of Section 114A *ibid*.

21.5. I find that the SCN proposed imposition of penalty on the Importer u/s. 114AA of the Customs Act, 1962. In this regard, I find that the provisions of Section 114AA provides for

imposition of penalty on a person responsible for mis-statement or suppression of facts in the import documents. I find that the importer M/s. DIE, who is instrumental in declaring the wrong IGST Rate in the Bs/E which resulted in short levy of applicable Customs Duty (IGST) amounting to **Rs. 16,03,335/-**(as detailed in Annexure-A to the SCN). Therefore, the acts of omission and commission on the part of the Importing firm rendered the provisions of Section 114AA of the Customs Act, 1962 invocable. Therefore, I find and hold the importer M/s. DIE liable for penal action u/s. 114AA *ibid*.

22. In this regard, I find that the Advocate, in their written reply to the SCN submitted on behalf of the Importer has placed reliance on various case laws in their defence. However, it is submitted that the Hon'ble Supreme Court of India in case of **M/s. Ambica Quarry Works V/s. State of Gujarat & Others [1987 (1) S.C. C.213]** observed that "*the ratio of any decision must be understood in the background of the facts of the case. It has been long time ago that a case is only an authority for what it actually decides and not what logically follows from it*".

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

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

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

22.3. Hon'ble Supreme Court in the Westinghouse Saxby judgement itself, has acknowledged the complexity of the issue and has pointed to the undesirability of generalising the decisions of one case to others. The Hon'ble Court, has referred to the observations made in its own judgement in the case of "A. Nagaraju Bros Vs. State of A.P, thus- "*…..there is no one single universal test in these matters. The several decided cases drive home this truth quite eloquently……There may be cases, particularly in the case of new products, where this test may not be appropriate. In such cases, other tests like the test of predominance, either by weight of value or on some other basis may have to be*

applied. It is indeed not possible, nor desirable, to lay down any hard and fast rules of universal application".

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

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

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

ORDER

24.(i) I order to re-assess the impugned goods, viz. 'Embroidery Fabrics' imported vide 07 Bs/E as detailed in Annexure-A to the SCN filed by the Importer, M/s. Dolly Import & Export by applying IGST @ 12% under Sr. No. 156 of Schedule-II of Notification No. 01/2017-ITR dated 28.06.2017, and reject the declared IGST Rate of 5% under Sr. No. 220 of Schedule-I of the same Notification.

(ii) I confirm the demand and order to recover the differential duty amounting to **Rs. 16,03,335/-** (Rupees Sixteen Lakh Three Thousand Three Hundred Thirty Five only) against subject Bs/E(as detailed in Annexure-A to the SCN), under the provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest u/s. 28AA *ibid* from the Importer, M/s. Dolly Import & Export

(iii) I order to confiscate the imported goods having Assessable Value of **Rs. 2,06,34,942/-** (Rupees Two Crore Six Lakh Thirty Four Thousand Nine Hundred Forty-Two only), as detailed in Annexure-A to the SCN, imported by M/s. Dolly Import & Export u/s. 111(m) of the Customs Act, 1962. Since the impugned goods stand released, I impose Redemption Fine of **Rs. 40,00,000 /- (Rupees Fourty Lakhs only)** u/s. 125(1) *ibid* in lieu of confiscation of the goods imported by the said importer, M/s. Dolly Import & Export for the reasons as discussed above.

(iv) I impose Penalty equal to the Differential duty amounting to **Rs. 16,03,335/-** (Rupees Sixteen Lakh Three Thousand Three Hundred Thirty-Five only) and the applicable interest thereon as mentioned in Para (ii) above u/s. 114A of the Customs Act, 1962 on M/s. Dolly Import & Export in relation to Bs/E as detailed in Annexure-A above. However, such penalty would be reduced to 25% of the total penalty imposed u/s. 114A of

the Customs Act, 1962 if the amount of duty as confirmed above, the interest and the reduced penalty is paid within 30 (thirty) days of communication of this Order, in terms of the first proviso to Section 114A of the Customs Act, 1962.

(v) I do not impose any penalty u/s. 112(a) of the Customs Act, 1962 since penalty u/s. 114A of the Customs Act, 1962 already imposed as above.

(vi) I impose penalty of **Rs. 40,00,000 /- (Rupees Fourty Lakhs only)** on the Importer, M/s. Dolly Import & Export under the provisions of Section 114AA of the Customs Act, 1962.

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

20/58

(Venkatesh. S)
Addl. Commissioner of customs,
Apprg. Gr. III, NS-III JNCH.

To,

M/s. Dolly Import & Export,
New sangeetha CHS Ltd., Flat No. 202,
7th Cross Road, Near Diamond Garden,
Behind Yogi Hotel, Chembur, Mumbai-400071

Copy for information and necessary action to:

1. The Commissioner of Customs, NS-III, JNCH, Nhava Sheva.
2. The Addl. Commissioner of Customs, NS-III, JNCH, Nhava Sheva
3. The Dy. Commissioner of Customs, Audit Circle C-1, JNCH, Nhava Sheva.
4. The Dy. Commissioner of Customs, Review Cell (CRAC-I), NS-III, JNCH, Nhava Sheva.
5. The Dy. Commissioner of Customs, CRRC,JNCH, Nhava Sheva.
6. The Superintendent, CHS, JNCH – For display on Notice Board.
7. The Dy. Commissioner of Customs, EDI, JNCH for uploading on website
8. Office Copy.