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

DIN –20250878NX00000042E8	**Date of Order: 29.08.2025**
F. No. S/10-60/2025-26/COMMR/NS-V/CAC/JNCH	**Date of Issue: 29.08.2025**
SCN No.: 346/2025-26/COMMR/GR.VA/NS-V/CAC JNCH	
SCN Date: 26.06.2025	
Passed by: Sh. Anil Ramteke **Commissioner of Customs, NS-V, JNCH**	
Order No: 181/2025-26/COMMR/NS-V/CAC/JNCH	
Name of Noticee: M/s Sohoni Metal Craft Private Limited (IEC: 0393047041L)	

ORDER-IN-ORIGINAL
मूल - आदेश

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

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

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

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

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

3. अपील दाखिल करने संबंधी मुख्य मुद्दे:-

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

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

Time Limit - Within 3 months from the date of communication of this order.
समय सीमा - इस आदेश की सूचना की तारीख से 3 महीने के भीतर

Fee -फीस-

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

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

उस से कम है।

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

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

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

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

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

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

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

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

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

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

Subject: Adjudication of Show Cause Notice No. 346/2025-26/COMMR/GR. VA/NS-V/CAC/JNCH dtd. 26.06.2025 issued to M/s Sohoni Metal Craft Private Limited (IEC-0393047041) – reg.

1. BRIEF FACTS OF THE CASE

1.1 It is stated in the Show Cause Notice (SCN) No. 346/2025-26/COMMR/GR VA/NS-V/CAC/ JNCH dtd. 26.06.2025 that During the course of Audit of Bill of Entry No. 6651913 dated 13.11.2024 of M/s. Sohoni Metal Craft Pvt. Ltd. (0393047041), it was observed that the importer classified the goods ("AAA Plastic Seal Washer (OD: 10.2MM) (Parts of Dry Cell Batteries)" and "UM3 Plastic Seal Washer (OD: 13.95MM) (Parts of Dry Cell Batteries)") under CTH 85069000.The declared Assessable Value of Bill of Entry was Rs. 19,80,980/- for both the goods.

1.2. As per Section Note 1 (g) of Section XVI, Parts of general use as defined in Note 2 to Section XV, of base metal (section XV), or similar goods of plastics (Chapter 39) are excluded from Section XVI. Explanatory Note No 6 to CTH 3926 specifically includes "Screws, Bolts, washers and similar fittings of general use".

1.3. Explanatory Notes to CTH 8506 specifically mentions "Subject to the general provisions regarding the classification of parts (See the general explanatory Notes to Section XVI), the heading covers parts of primary cells or batteries including container."

From the above, it appears that 'AAA Plastics Seal Washer' or 'UM3 plastic seal washer' are articles of general use and merits classification under CTH 39269099.

1.4. AS per the SCN, the duty structure under CTH 39269099 is 15% BCD + 10% SWS (10% of BCD) + 18% IGST whereas importer has paid duty @ 10% BCD + 10% SWS (10% of BCD) + 18 % IGST under CTH 85069000.

1.5. Importer had imported consignments of these goods as mentioned in Annexure 'A' to the subject SCN during past 05 years. The total assessable value of these consignments works out at Rs. 14,50,73,629/- and it appears that importer has attempted to take undue benefit amounting to Rs.94,15,279/-.

1.6. As per the SCN the importer had imported identical item under CTH 39269099 from Jun, 2020 to Feb, 2021. This wilful act of changing the classification by the importer provides clear evidence of malafide intention and unlawful attempt to evade the payment of legitimate import duty.

1.7. Accordingly, it appears that importer has attempted to take undue benefit amounting to Rs. 94,15,279/-. (Ninety Four Lakh Fifteen Thousand Two Hundred Seventy Nine only) was

recoverable from the importer along with applicable interest and penalty. Therefore, in terms of provisions of Section 28(4) of the Customs Act, 1962, the importer was advised to pay the differential duty amount along with applicable interest and penalty vide Consultative Letter dated 24.04.2025.

1.8 As per the SCN, the importer availed and attended a personal hearing on 21.05.2025 through its authorized representative and submitted the following-

1.8.1 The importer does not dispute classifying AAA Plastic Seal Washer (OD:10.2mm) and UM3 Plastic Seal Washer (OD:13.95mm) under CTH 8506 of the Customs Tariff, 1975, though these items were earlier classified under CTH 3926.

1.8.2 Re-classification was undertaken based on industry practice and clarification that these washer parts were being allowed under CTH 8506 at other ports.

1.8.3 These parts are integral parts of batteries, used only as components in battery manufacturing—without them, the final product cannot function, nor be marketed, making classification under CTH 3926 (articles of plastics of general use) inapplicable.

1.8.4 The explanatory notes to CTH 3926 restrict that heading to general use plastic articles, while the washers' specific application is in batteries; thus, they should not be treated as general-purpose plastic articles.

1.8.5 Notes to CTH 8506 specifically cover parts of primary cells (batteries), such as containers, under which these washers fall.

1.8.6 Detailed technical function of the washers was explained: they prevent electrolyte leakage, maintain internal pressure, serve electrical insulation, and protect from contaminants—making them essential to batteries' performance.

1.8.7 Citing several rulings and judicial precedents, the importer emphasized that classification must be on primary use and argued that washers meant exclusively for batteries are "parts of specific use," hence are classifiable under the heading for batteries (CTH 8506), not plastics (CTH 3926).

1.8.8 Functionality and intended specific use in batteries—over mere material composition—determines the classification, and precedent supports this position.

1.8.9 The importer asserts bona fide conduct: there is no intent to evade duties or mislead; classification was revised based on industry standards and official guidance, with no objections or adverse assessment history from customs or GST authorities.

1.8.10 Multiple case laws and instances were cited to show that wrong classification is not fraud, with no malafide intent in classification adopted.

1.8.11 The importer's reclassification was supported by industry examples (e.g., Eveready Industries), and after seeking clarification and redressal, their petition to classify under CTH 8506 was accepted through formal communication in February 2021.

1.8.12 On this basis, the importer urged that "Plastic Seal Washer" is correctly and lawfully classifiable under CTH 85069000 as a part of primary cells (batteries), and requests acceptance of this classification in the current proceedings

1.9 As per the SCN, after going through the written submission of the importer it was observed that:

1.9.1. The importer's claim to classify plastic washers used in dry cell batteries under Chapter 85 (specifically under heading 8506 for primary cells and batteries is not sustainable based on the Section Notes, Explanatory Notes and judicial precedents.

Classification:

The classification of goods under the Customs Tariff Act, 1975, is governed by:

General Rules of Interpretation (GRI) of the Harmonized System of Nomenclature (HSN):

Rule 1 : Classification is determined by the terms of the headings and relevant Section or Chapter Notes.

Rule 3(a) : The heading providing the most specific description is preferred when goods are classifiable under multiple headings.

Common Parlance Test: Goods are classified based on their trade or market understanding unless the tariff specifies a technical definition.

1.9.2. The importer's claim to classify plastic washers under Chapter 85 is rebutted on the following grounds :

(a) Plastic Washers are Articles of Plastic (Chapter 39) : Plastic washers are manufactured from plastic materials (e.g., polyethylene, polypropylene) covered under headings 3901–3914. Heading 3926 is a specific heading for plastic articles, including washers, gaskets, and moulded components.

(b) HSN Explanatory Notes :As per Section Note 1 (g) of Section XVI, Parts of general use as defined in Note 2 to Section XV, of base metal (section XV), or similar goods of plastics (Chapter 39) are excluded from Section XVI.

(c) Explanatory Note No. 6 to CTH 3926 specifically includes "Screws, Bolts, washers and similar fittings of general use".

(d) Explanatory Notes to CTH 8506 specifically mentions "Subject to the general provisions regarding the classification of parts (See the general explanatory Notes to Section XVI), the heading covers parts of primary cells or batteries including container."

(e) Common Parlance and Trade Understanding : The common parlance test requires goods to be classified based on their recognition in the trade or market. Plastic washers are commonly traded as plastic articles, not as specialized battery components. The ingredients test supports Chapter 39, as the washers are wholly made of plastic and lack electrical functionality.

(f) Functional Test for Parts : For an article to be classified as a "part," it must be essential to the machine's operation. Plastic washers, serving ancillary functions like insulation or sealing, are not essential to the electrochemical process of dry cell batteries (unlike electrodes or separators), supporting their classification under Chapter 39.

(g) Rate of Duty Considerations: The importer's claim may be motivated by a lower duty rate under Chapter 85 compared to Chapter 39. However, classification must be based on legal and technical criteria, not duty rates.

(h) Below mentioned case law relevant to the classification dispute over plastic washers.

The Commissioner of Central Excise vs. M/s. Uni Products India Ltd.: The Supreme Court of India Issue: Classification of car mats under Chapter 57 (textiles) versus Chapter 87 (parts and accessories of motor vehicles).

Ruling: The Supreme Court upheld CESTAT's order classifying car mats under Chapter 57, as they were not exclusively designed for vehicles and were primarily textile articles. The Court relied on HSN Explanatory Notes, GRI Rule 3(a) (specific heading prevails), and the common parlance test, noting that HSN Notes have persuasive value in India. The Court rejected the Revenue's argument that usage in vehicles warranted classification under Chapter 87.

Relevance: This case directly supports classifying plastic washers under Chapter 39, as they are primarily plastic articles (heading 3926) and not exclusively designed for dry cell batteries. The emphasis on HSN Notes and the specific heading rule strengthens the Department's position.

1.9.3. The importer's claim to classify plastic washers under Chapter 85 is untenable for the following reasons:

a. Explanatory Note No. 6 to CTH 3926 specifically includes "Screws, Bolts, washers and similar fittings of general use".

b. As per Section Note 1 (g) of Section XVI, Parts of general use as defined in Note 2 to Section XV, of base metal (section XV), or similar goods of plastics (Chapter 39) are excluded from Section XVI. Section XVI, Note 1(g) excludes plastic articles from being classified as parts under Chapter 85.

c. The washers are not exclusively designed for dry cell batteries, failing the Note 2(b) criterion.

d. Judicial precedents mentioned above emphasize adherence to Section Notes, HSN Explanatory Notes, and the common parlance test, all supporting classification under Chapter 39.

e. Plastic washers are typically versatile components used across industries for insulation, spacing, or sealing. The Department's classification under Chapter 39 is legally and technically sound.

f. The re-classification accepted by the Department is required to be reviewed in terms of Explanatory Note No. 6 to CTH 3926, Section Note 1 (g) of Section XVI & Explanatory Note to CTH 8506.

1.10 After the introduction of self-assessment vide Finance Act, 2011, it is the responsibility of the importer to make true and correct declaration in all aspects like classification, valuation, including calculation of duty and claim of benefit, however in the instant case the duty amount has not been paid correctly, resulting in loss to the Govt. exchequer of Rs. 94,15,279/- (Ninety Four Lakh Fifteen Thousand Two Hundred Seventy Nine only).

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

- Section 17 - Assessment of duty.
- Section 28 - Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.
- Section 46 - Entry of goods on importation.
- Section 111(m) & 111(o) - Confiscation of improperly imported goods, etc.
- Section 112 - Penalty for improper importation of goods etc.
- Section 114A - Penalty for short-levy or non-levy of duty in certain cases.

1.12 As per the SCN, 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.

1.13. In view of the above, vide Show Cause Notice No. 346/2025-26/COMMR/ GR.VA/CAC/JNCH, M/s Sohoni Metal Craft Pvt. Ltd. (0393047041 was hereby called upon to show cause to the Commissioner of Customs,NS-V, JNCH, Taluka - Uran, District - Raigad, Maharashtra – 400707, as to why:

(i) Classification of the goods mentioned in Annexure-A enclosed to the subject notice under CTH 85069000 should not be rejected and goods should not be classified under CTH 39269099.

(ii) Differential duty amount of **Rs. 94,15,279/- (Ninety Four Lakh Fifteen Thousand Two Hundred Seventy Nine only)** should not be demanded under Section 28 (4) of the Customs Act, 1962 along with applicable interest as per Section28AA of the Customs Act, 1962.

(iii) The subject goods as detailed in Annexure-A having a total assessable value of **Rs. 14,50,73,629/- (Rupees Fourteen Crore Fifty Lakh Seventy Three Thousand Six Hundred Twenty Nine Only)** should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962.

(iv) Penalty should not be imposed on the importer under Section 112(a)/114Aof the Customs Act, 1962.

2. RECORD OF PERSONAL HEARINGS

2.1 There is single Noticee in the subject SCN viz. M/s Sohoni Metal Crafts Pvt. Ltd.In compliance of provisions of Section 28(8) read with Section 122A of the Customs Act, 1962 and in terms of the principle of natural justice, the Noticee was granted opportunity of Personal Hearing (PH) on 04.08.2025 and PH intimation letter was issued by speedpost. On 04.08.2025, Sh. K.S. Vasudevan, Advocate and SH. Dilip Sohoni, Managing Director, M/s Sohoni Metal Craft Pvt. Ltd appeared virtually before the Adjudicating Authority on behalf of the Noticee, M/s Sohoni Metal Craft Pvt. Ltd. During the PH, he reiterated the submissions made vide their letter dated 23.07.2025 and further submitted that:

(i) It is a settled matter of fact that their product, viz. Plastic Seal Washer, which is a component of dry battery cell, is appropriately classifiable under CTH 8506 and not under CTH 39269099 as alleged in the Show Cause Notice.

(ii) They had been importing 'AAA Plastic Seal Washer' or 'UM3 Plastic Seal Washer' by classifying the same under CTH 3926 upto 14.02.2021

(iii) Upon obtaining information and supporting evidence indicating that the said component is classifiable under CTH 8506 {as per M/s Everready Industries India Ltd.- Exhibit-B,

Para- N of the written submissions}, they had made a reference to the Joint Secretary (Customs), CBEC, through their letter dated 14.10.2019.

(iv) In light of the above submissions, they requested that the Show Cause Notice may kindly be dropped and that the proposed fine and penalties be waived.

3. WRITTEN SUBMISSION OF THE NOTICEE

3.1 The Noticee, M/s Sohoni Metal Craft Pvt. Ltd vide their letter dated 23.07.2025 gave written reply to the subject SCN. Vide the above reply, they interalia submitted as under:

3.1.1 Prior Classification and Precedents

The importer emphasizes that the SCN replicates earlier issued Consultative letter and ignores key defence submissions. CBIC, vide reply dated 02.02.2021 to CPGRAM No. PMOPG/E/2020/0909908 dt 12.10.2020 filed by the importer before Joint Commissioner, Customs, Dept. of Revenue, New Delhi, had clarified and approved classification of the imported plastic seal washers under CTH 85069000, which was also confirmed by the Chief Commissioner of Customs and reported on the CPGRAM website. Multiple leading battery manufacturers also classify similar products under CTH 8506 at other Indian ports, evidenced by a list of 55 Bills of Entry from 2024-2025.

3.1.2. Product-Specific Technical Grounds

The imported plastic seal washers are custom-designed specifically for use in dry cell batteries, serving functions such as sealing, preventing electrolyte leakage, maintaining internal pressure, and providing insulation. The washers are not for general use and cannot be used outside the specific battery applications., substantiated by supplier certificates and product documentation.

3.1.3. Importer cited numerous cases and rulings, including from Customs, GST, and Excise, establishing that classification follows principal use rather than material composition. Also refered to important judicial interpretations on "parts of general use" versus "parts of specific use," and points out that similar products have been consistently classified as parts of batteries (Chapter 85).

3.1.4. No Suppression or Willful Misstatement

Importer has argued that there had been no fraud, collusion, or suppression of facts that would justify invocation of the extended limitation period under Section 28(4).The importer consistently declared goods under CTH 8506 following the binding CBIC clarification and corresponding Customs assessments, and asserts that wrong classification, by itself, is neither fraud nor mis-declaration as already established by case law.

3.1.5. Limitation and Procedural Fairness

Importer has submitted that the demand is barred by limitation as they have not suppressed anything from the Customs; hence invocation of longer period of limitation as per section 28(4) is not justified. Further the importer also highlighted that the Customs authorities were always aware of the classification, and no reassessment or objection was raised until the current proceeding.

3.1.6. Equality of Law

Importer in their submission has stressed that other importers, including Eveready Industries India Ltd., have been permitted to classify similar products under CTH 8506 at other

ports, and that denying the same to Sohoni Metal Craft violates Article 14 (Equality before law) of the Indian Constitution.

3.1.7 Prayer for Relief:
Importer has requested for dropping of the proposed demand in the show cause notice, and acceptance of the submissions.

4. DISCUSSION AND FINDINGS

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

4.2 In compliance to provisions of Section 28(8) and Section 122A of the Customs Act, 1962 and in terms of the principles of natural justice, opportunity for Personal Hearing (PH) was granted to the Noticee on 04.08.2025. Availing the said opportunity, the Noticee attended the PH on 04.08.2025. Having complied with the requirement of the principle of natural justice, I proceed to decide the case on merits, bearing in mind the submission / contention made by the Noticee.

4.3 It is alleged in the Show Cause Notice that the Noticee, M/s. Sohoni Metal Craft Pvt. Ltd. (0393047041) had imported goods having description as "*AAA Plastic Seal Washer (OD: 10.MM) (Parts of Dry Cell Batteries*" and "*UM3 Plastic Seal Washer (OD: 13.95.MM) (Parts of Dry Cell Batteries*" under the CTH 85069000 & paid @10% BCD+ 10% SWS (10% of BCD) + 18% IGST). However, as per the SCN, the imported goods are more appropriately classifiable under CTH 39269099 which attracts duty @ 15% BCD + 10% SWS (10% of BCD) + 18% IGST. Thus, the SCN proposes re-classification of the goods under CTH 39269099 and the differential duty amounting to Rs. 94,15,279/- (Ninety Four Lakh Fifteen Thousand Two Hundred Seventy Nine only) short paid by the importer is proposed to be recovered under Section 28(4) of the Customs, 1962, along with applicable interest. Further, the SCN proposes confiscation of the impugned goods under section 111(m) of the Customs Act,1962 and imposition of penalty on the Noticee under Section 112(a) and / or 114A of the Customs, 1962.

4.4 Noticee has submitted that the dispute of the classification is a settled matter of law by virtue of the CBIC reply dt. F.No. S/26-Misc-1753/2015-16/Gr. II G Part-II dt. 02.02.2021, against the complaint /CPGRAM No. PMOPG/E/2020/0909908 dt. 12.10.2020, filed by them before the Joint Commissioner of Customs, Dept of Revenue, New Delhi. In terms of provision of Section 17 read with section 46 of the Customs Act,1962, it is the Asst./Dy. Commissioner, who decides the assessment including classification and value of the goods under import In this regard I hold that CPGRAM is not the proper platform for decision of Classification issue. Further, as the current issue was observed during the course of audit, I find that the issuance of SCN is justified.

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

(i) Whether the Classification of the goods mentioned in Annexure-A enclosed to the subject notice under CTH 85069000 should be rejected and be re-classified under CTH 39269099.

(ii) Whether the Differential duty amount of **Rs. 94,15,279/- (Ninety Four Lakh Fifteen Thousand Two Hundred Seventy Nine only)** should be demanded under Section 28(4) of the Customs Act, 1962 along with applicable interest as per Section28AA of the Customs Act, 1962.

(iii) Whether the subject goods as detailed in Annexure-A to the subject SCN having a total assessable value of **Rs. 14,50,73,629/- (Rupees Fourteen Crore Fifty Lakh Seventy Three Thousand Six Hundred Twenty Nine Only)** should be held liable for confiscation under Section 111(m) of the Customs Act, 1962.

(iv) Whether penalty should be imposed on the importer under Section 112(a)/114Aof the Customs Act, 1962.

4.6 After having identified and framed the main issues to be decided, I now proceed to decide the substantive issues raised in the SCN by examining each of the issues individually for detailed analysis based on the facts and circumstances mentioned in the SCN; provision of the Customs Act, 1962; nuances of various judicial pronouncements, as well as Noticee's oral and written submissions and documents / evidences available on record.

4.7 Whether the Classification of the goods mentioned in Annexure-A enclosed to the subject notice under CTH 85069000 should be rejected and be re-classified under CTH 39269099.

4.7.1 I note that the Noticee, M/s. Sohoni Metal Craft Pvt. Ltd. (0393047041) vide the impugned Bills of Entry as detailed in Annexure-A to the subject SCN, had imported goods having description "*AAA Plastic Seal Washer (OD: 10.MM) (Parts of Dry Cell Batteries*" and "*UM3 Plastic Seal Washer (OD: 13.95.MM) (Parts of Dry Cell Batteries*". The Noticee had classified the said goods under the CTH 85069000 & paid @10% BCD+ 10% SWS (10% of BCD) + 18% IGST). However, as per the SCN, the imported goods are more appropriately classifiable under CTH 39269099 which attracts duty @ 15% BCD + 10% SWS (10% of BCD) + 18% IGST.

4.7.2 The Customs Tariff Heading 8507 covers the goods of broad description *'ELECTRIC ACCUMULATORS, INCLUDING SEPARATORS THEREFOR, WHETHER OR NOT RECTANGULAR (INCLUDING SQUARE)"*. The relevant entries of CTH 8507 are as under:

8507 ELECTRIC ACCUMULATORS, INCLUDING SEPARATORS THEREFOR, WHETHER OR NOT RECTANGULAR (INCLUDING SQUARE)

8507 90 - Parts

8507 90 90 Other

4.7.3 I find that, Rule 1 of General Rules of Interpretation (GRI) of the First Schedule to the Customs Tariff Act, 1975:

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

This rule establishes supremacy of Section Notes and Chapter notes for solving classification disputes.

4.7.4 As per Section note 1(g) of section XVI of Tariff, parts of general use, as defined in Note 2 to Section XV, of base metal (Section XV), or similar goods of Chapter 39 are excluded from Section SVI viz. Chapter 84 and 85 of Tariff. Further as per Note 2 of Section XV definition for parts of general use is reproduced below:

"2. Throughout this Schedule, the expression "parts of general use" means :
**(a) articles of heading 7307, 7312, 7315, 7317 or 7318 and similar articles of other base metal, other than articles specially designed for use exclusively in implants in medical, surgical, dental or veterinary sciences (heading 9021);*
(b) springs and leaves for springs, of base metal, other than clock or watch springs (heading 9114); and
(c) articles of headings 8301, 8302, 8308, 8310 and frames and mirrors, of base metal, of heading 8306.
In Chapters 73 to 76 and 78 to 82 (but not in heading 7315) references to parts of goods do not include references to parts of general use as defined above.
Subject to the preceding paragraph and to Note 1 to Chapter 83, the articles of Chapter 82 or 83 are excluded from Chapters 72 to 76 and 78 to 81."

4.7.5 As per the definition of parts of general use articles of heading 7318 are considered as parts of general use. The relevant entry of CTH7318 is reproduced below:

*7318 SCREWS, BOLTS, NUTS, COACH-SCREWS, SCREW HOOKS, RIVETS, COTTERS, COTTER-PINS, **WASHERS (INCLUDING SPRING WASHERS)** AND SIMILAR ARTICLES, OF IRON OR STEEL*

4.7.6 On conjoint reading of para 4.7.4 and 4.7.5, it is evident that Washers are considered as parts of general use as per Note 2 to Section XV and hence are excluded from Section XVI as per Note 2 to Section XVI. Further, Note 2 to Section XVI also states that similar goods of Chapter 39 are also excluded from Section XVI. In this instance, even if the article may be committed by design and for use solely or principally for the goods included in Section XVI, if it is identified as a "part of general use", the article is excluded from classification in Section XVI.

Article covered by the expression "parts of general use" do not have to be articles for general use, but simply articles specified in the headings enumerated in Note 2 to Section XV. For example, an iron or steel article having essential character of bolt but committed by design to function as a fastening or holding device in a particular mining machine, is classified in heading 7318 and not as machine part since heading 7318 falls within a scope of the expression "parts of general use"

4.7.7 Relevant entry of CTH 3926 and Note 6 of Explanatory Notes of heading 3926 are reproduced below:

3926 OTHER ARTICLES OF PLASTICS AND ARTICLES OF OTHER MATERIALS OF HEADINGS 3901 TO 3914

--- Other:

3926 90 91 ---- Of Polyurethane Foam

3926 90 99 ---- Other

Explanatory Notes of Heading 3926-

This heading covers articles, not elsewhere specified or included, of plastics (as defined In Note 1 to the Chapter) or of other materials of heading 39.01 to 39.14.

They include

---

(6). Screws, bolts, washers and similar fittings of general use

4.7.8 I find that in the case of Commr. of Central Excise Vs. M/s Uni Products Ltd. reported in 2020(5) TMI 63- SC, Hon'ble Apex court has hold that

"26. The main argument of the appellant is that because the car mats are made specifically for cars and are used also in cars, they should be identified as parts and accessories. But if we go by that logic, textile carpets could not have been excluded from Parts and Accessories. We have referred to such exclusion in the preceding paragraph. It has also been urged on behalf of the revenue that these items are not commonly identified as carpets but are different products. The Tribunal on detailed analysis on various entries, Rules and Notes have found they fit the description of goods under chapter heading 570390.90. We accept this finding of the Tribunal. Once the subject goods are found to come within the ambit of that sub-heading, for the sole reason that they are exclusively made for cars and not for "home use" (in broad terms), those goods cannot be transplanted to the residual entry against the heading 8708. As we find the subject-goods come under the chapter-heading 570390.90, and the other entry under the same Chapter forming the subject of dispute in the second order of the Commissioner, in our opinion, there is no necessity to import the "common parlance" test or any other similar device of construction for identifying the position of these goods against the relevant tariff entries"

4.7.9. Further, the noticee in their submission have also submitted that goods such as Nails, screws, bolts, spring and similar items are considered as parts of general use. But I don't find any merit in the noticee's argument that washers are part of specific use. In tariff also washer has been considered a similar item to screws bolts and springs and hence, I am of the opinion that the subject goods are to be considered as Parts of General use. Accordingly as the subject goods are parts of general use, they are excluded to be classified under CTH 85079090.

4.7.10 In view of the above, Explanatory Notes of Heading 3926, I hold that the impugned imported goods are correctly classifiable under CTH 39269099. Accordingly, I hold that the classification of the impugned imported goods under CTH 85079090 should be rejected and the goods should be re-classified under CTH 39269099.

4.8 Whether the Differential duty amount of Rs. 94,15,279/- (Ninety Four Lakh Fifteen Thousand Two Hundred Seventy Nine only) should be demanded under Section 28(4) of the Customs Act, 1962 along with applicable interest as per Section28AA of the Customs Act, 1962.

4.8.1 After having determined the correct classification of the impugned imported goods, it is imperative to determine whether the demand of differential/short paid duty as per the provisions of Section 28(4) of the Customs Act, 1962, in the subject SCN is sustainable or otherwise. In this regard, the relevant legal provision is as under:

SECTION 28(4) of the Customs Act, 1962.

Recovery of duties not levied or not paid or short-levied or short- paid or erroneously refunded. –

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

(a) collusion; or

(b) ***any wilful mis-statement****; or*

(c) ***suppression of facts****,*

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

4.8.2 The Noticee has submitted that they had correctly declared the imported goods in the import documents, thus, there was no mis-statement or suppression of facts on their part. The Noticee has further argued that larger period of limitation is not attracted in the case as there is no suppression of facts or wilful mis-statement by them.

4.8.3 I have determined in the preceding paras that the impugned imported goods are correctly classifiable under CTH 39269099. I find that from June,2020 to February 2021 importer has imported identical goods under CTH 39269099, hence the Noticee was well aware of the correct classification of the goods and leviability of various duties thereon. However, in the instant case, they mis-classified the goods and did not declare the correct classification of the imported goods in the Bills of Entry. I find that the Noticee wilfully mis-classified the goods under wrong CTH CTH 85079090, when knowing that the imported goods were rightly classifiable under CTH 39269099.

4.8.4 In terms of Section 46(4) of the Customs Act, 1962, the importer is required to make a true and correct declaration in the Bills of Entry submitted for assessment of customs duty. In the instant case, I find that the goods cleared vide the Bills of Entry mentioned in Annexure-A to SCNs were cleared by them by wilfully and deliberately indulging in mis-declaration of goods by self-assessing under CTH 85079090 and paying BCD @10% only with the intent to evade duty by claiming incorrect heading instead of correct CTH 39269099 wherein BCD @15% was applicable.

4.8.5 I find that in the present case, imported goods were found ineligible to be considered under CTH 85079090 for the reasons mentioned in paras *supra*, and are appropriately classifiable under CTH 39269099. Moreover, for the imported goods, CTH 39269099 is far more specific than the one in which the importer has mischievously declared. As the importer has wrongfully assessed the goods under CTH 85079090 and there is no scope of goods fulfilling the eligibility for the CTH, the importer can only come clean of its liability by way of payment of duty not paid/short paid due to availment of wrong heading of classification.

4.8.6 In view of the above, I find that the Noticee had evaded correct customs duty by intentionally avoiding the specific and the correct chapter heading for the imported product at the time of filing of the Bills of Entry. By resorting to this deliberate and wilful mis-classification of the goods, the noticee has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer. Thus, this wilful and deliberate act was done with the clear intention to claim ineligible lower rate of duty.

4.8.7 Consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-assessment' has been introduced in Customs clearance. Under self-assessment, it is the importer who has to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption 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, 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, as explained in paras supra, the importer has wilfully mis-classified the goods under wrong CTH, thereby evading payment of applicable duty resulting in a loss of Government revenue and in turn accruing monetary benefit to the importer. Since the importer has wilfully mis-classified and suppressed the facts with an intention to evade applicable duty, provisions of Section 28(4) are invokable in this case and the duty, so evaded, is recoverable under Section 28(4) of the Customs Act, 1962.

4.8.8 I find that in the instant case, as elaborated in the foregoing paras, the noticee had wilfully mis-declared the correct heading for the imported goods by not declaring the same at the time of filing of the Bills of Entry. Further, to evade payment of correctly leviable duty, they mis-classified and suppressed the correct heading for the impugned goods, and also fraudulently

claimed lower duty rate. Therefore, I find that in the instant case there is an element of '*mens rea*' involved. The instant case is not a simple case of bona fide wrong classification. Instead, in the instant case, the noticee deliberately chose incorrect heading to claim lower rate of duty and ineligible duty benefit, being fully aware of the correct chapter heading for the imported goods. Once '*mens rea*' is established on the part of the noticee, the extended period of limitation, automatically get attracted.

4.8.9 The scheme of RMS wherein the importers are given so many facilitations also comes with responsibility of onus for truthful declaration. The Tariff classification of the items, are the first parameter that decides the rate of duty for the goods, which is the basis on which Customs duty is payable by any importer. However, if the importer declared the item description and picks the CTH/description of goods covered in the Bill of entry in a false manner, it definitely amounts to mis-leading the Customs Authorities, with an intent to evade payment of Customs duty leviable, on the said imported goods.

4.8.10 The noticee in its written submission has placed reliance upon various judicial pronouncements of Tribunals, High Courts and Apex Court, however, I find that the Hon'ble Supreme Court of India in case of *Ambica Quarry Works vs. State of Gujarat & Others [1987(l) S.C. C. 213]* observed that "*the ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides and not what logically follows from it.*" Further in the case of *Bhavnagar University vs. Palitana Sugar Mills (P) Ltd. 2003 (2) SCC 111*, the Hon'ble Apex Court observed "*It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.*" In the decision of the Hon'ble Supreme Court in *Ispat Industries vs. Commissioner of Customs, Mumbai [2004 (202) ELT 56C (SC)]*, wherein, the Hon'ble Court has quoted Lord Denning and ordered as under:

> *Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly reliance on a decision is not proper. The following words of Lord Denning in the matter of applying precedents have become locus classicus:*
>
> "*Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.*"

Thus, it is a settled position in law that a ratio of a decision would apply only when the facts are identical. In view of the above, the quoted case laws do not support the noticee's stand.

4.8.11 In view of the foregoing, I find that the duty demand against the importer has been correctly proposed under Section 28(4) of the Customs Act, 1962 by invoking the extended period of limitation. In support of my stand of invoking extended period, I rely upon the decision of the Tribunal in *Union Quality Plastic Ltd. Versus Commissioner of C.E. & S.T., Vapi reported*

in 2013(294) E.L.T.222(Tri.-LB) [Misc. Order Nos.M/12671-12676/2013-WZB/AHD, dated 18.06.2013 in Appeal Nos. E/1762-1765/2004 and E/635- 636/2008]:

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

4.8.12 Accordingly, the differential duty amounting to Rs. 94,15,279/- (Ninety Four Lakh Fifteen Thousand Two Hundred Seventy Nine only), resulting from correct classification of goods followed by placing them under chapter heading 3926 90 99, is recoverable from M/s. Sohoni Metal Craft Pvt. Ltd. (0393047041) under extended period in terms of the provisions of Section 28(4) of the Customs Act, 1962.

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

4.8.14 Under Section 28AA of the Customs Act, the person who is liable to pay duty in accordance with the provisions of the Section 28, shall in addition to such duty, be liable to pay interest. In case *M/s Kamat Printers Pvt. Ltd.* the Court observed that once duty is ascertained then by operation of law, such person in addition shall be liable to pay interest at such rate as fixed by the Board. The proper officer, therefore, in ordinary course would be bound once the duty is held to be liable to call on the party to pay interest as fixed by the Board.

4.8.15 I find that the Courts in various judgments pronounced that interest payable is compensatory for failure to pay the duty. It is not penal in character in that context. The Supreme Court under the provisions of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 in Collector of C. Ex., *Ahmedabad vs. Orient Fabrics Pvt. Ltd 2003 (158) E.L.T. 545 (S.C.)* was pleased to observe that when the breach of the provision of the Act is penal in nature or a penalty is imposed by way of additional tax, the constitutional mandate requires a clear authority of law for imposition for the same. The Court observed that, the law on the issue of

charge of interest, stands concluded and is no longer res integra. We may only gainfully refer to the judgment in *India Carbon Ltd. Vs State of Assam, (1997) 6 S.C.C. 497.* The Court there observed as under:-

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

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

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

4.8.18 In view of the above, I hold that the total differential duty amounting to Rs. 94,15,279/- (Ninety Four Lakh Fifteen Thousand Two Hundred Seventy Nine only), as detailed in the Annexure-A to the subject SCN along with applicable interest thereon in terms of provisions of Section 28AA of the Customs Act, 1962, should be demanded & recovered from the Noticee under Section 28(4) of the Customs Act, 1962.

4.9 Whether the subject goods as detailed in Annexure-A to the subject SCN having a total assessable value of Rs. 14,50,73,629/- (Rupees Fourteen Crore Fifty Lakh Seventy Three Thousand Six Hundred Twenty Nine Only) should be held liable for confiscation under Section 111(m) of the Customs Act, 1962.

4.9.1 The SCN proposes confiscation of goods imported vide Bills of Entry listed in Annexure-A to the SCN, having total assessable value of Rs. 14,50,73,629/- (Rupees Fourteen Crore Fifty Lakh Seventy Three Thousand Six Hundred Twenty Nine Only) under the provisions of Section 111(m) of the Customs Act, 1962.

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

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

4.9.3 Section 111(m) deals with any and all types of mis-declaration regarding any particular of Bill of Entry. Therefore, the declaration of the importer herein by mis-classification of the impugned goods, amounts to mis-declaration and shall make the goods liable to confiscation.

4.9.4 I have already held in foregoing paras that the goods imported by the Noticee were correctly classifiable under the CTH 39269099. The Noticee was very well aware of the actual nature of the imported goods and the applicable correct CTI. However, they deliberately suppressed this correct CTH, and instead mis-classified the impugned goods under CTH 85079090 in the Bills of Entry to claim lower rate of duty. As discussed in the foregoing paras, it is evident that the Noticee deliberately suppressed the correct CTH and willfully mis-classified the imported goods, resulting in short levy of duty. This deliberate suppression of facts and willful mis-classification resorted by the Noticee, therefore, renders the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962. Accordingly, I find that acts of omission and commission on part of the Noticee have rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962.

4.9.5 I find that Section 111(m) provides for confiscation even in cases where goods do not correspond in respect of any other particulars in respect of which the entry is made under the Customs Act, 1962. I have to restrict myself only to examine the words "*in respect of any other particular with the entry made under this act*" would also cover case of mis-classification. As this act of the importer has resulted in short levy and short payment of duty, I find that the confiscation of the imported goods invoking Section 111(m) is justified and sustainable.

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

4.9.7 I find that the importer while filing the Bill of Entry for the clearance of the subject goods had subscribed to a declaration as to the truthfulness of the contents of the Bill of Entry in terms of Section 46(4) of the Customs Act, 1962 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2011 in all their import declarations. Section 17 of the Act, w.e.f. 08.04.2011, provides for self-assessment of duty on imported goods by the importer themselves by filing a Bill of Entry, in the electronic form. Section 46 of the Act makes it mandatory for the importer to make an entry for the imported goods by presenting a Bill of Entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulation, 2011 (issued under Section 157 read with Section 46 of the Act), the Bill of Entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic integrated declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data

Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the Service Centre, a Bill of Entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under the scheme of self-assessment, it is the importer who has to diligently ensure that he declares all the particulars of the imported goods correctly e.g., the correct description of the imported goods, its correct classification, the applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported goods when presenting the Bill of Entry. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 8th April, 2011, the complete onus and responsibility is on the importer to declare the correct description, value, notification, etc. and to correctly classify, determine and claim correct exemption notification and pay the applicable duty in respect of the imported goods.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.9.10 Besides, as indicated above, in terms of the provisions of Section 46(4) of the Customs Act, 1962 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018, the importer while presenting a Bill of Entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such Bill of Entry. In terms of the provisions of Section 47 of the Customs Act, 1962, the importer shall pay the appropriate duty payable on imported goods and then clear the same for home consumption. However, in the subject case, the importer while filing the Bill of Entry has resorted to deliberate suppression of facts and willful mis-classification to claim lower rate of duty. Thus, the Noticee has failed to correctly assess and pay the appropriate duty payable on the imported goods before clearing the same for home consumption. Therefore, I find that by not self-assessing the true and correct rate of Customs duty applicable on the subject goods, the importer willfully did not pay the applicable duty on the impugned goods.

4.9.11 In view of the foregoing discussion, I hold that the impugned imported goods declared in the Bills of Entry filed by M/s Baxter India Private Limited having total assessable value of Rs. 14,50,73,629/- (Rupees Fourteen Crore Fifty Lakh Seventy Three Thousand Six Hundred Twenty Nine Only) should be held liable for confiscation under Section 111(m) of the Customs Act, 1962, on the grounds of suppression and mis-classification of the imported goods.

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

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

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

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

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

4.9.12.4 In view of above, I find that any goods improperly imported as provided in any sub-section of the Section 111 of the Customs Act, 1962, the impugned goods become liable for confiscation. Hon'ble Bombay High Court in case of M/s Unimark reported in 2017(335) ELT (193) (Bom) held Redemption Fine (RF) imposable in case of liability of confiscation of goods under provisions of Section 111(o). Thus, I also find that the goods are liable for confiscation

under other sub-sections of Section 111 too, as the goods committing equal offense are to be treated equally. I opine that merely because the importer was not caught at the time of clearance of the imported goods, can't be given different treatment.

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

4.10 Whether penalty should be imposed on M/s. Sohoni Metal Craft Pvt. Ltd. (0393047041) under Section 112(a) and/or Section 114A of the Customs Act, 1962.

4.10.1 I find that in the era of self-assessment, the importer had self-assessed the Bills of Entry and mis-declared the subject goods and classified the same under wrong CTH 8507 90 90 paying BCD @10% instead of applicable CTH 3926 90 99 wherein BCD @15% is applicable. As the importer got monetary benefit due to their wilful misdeclaration and evasion of applicable customs duty on the subject goods, I find that duty was correctly demanded under Section 28(4) of the Act by invoking extended period.

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

> ***Section 112*** *(Penalty for improper importation of goods etc.) reads as:*
> *"Any person,-*
> *(a) who in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act or*
> *(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,*
> *(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is greater;*

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

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

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

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

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

4.10.4 I find that in the self-assessment regime, the importer is bound to correctly assess the duty on the imported goods. In the instant case, the importer has declared the subject goods to be included under wrong Tariff Heading. Consequently, the importer has paid less duty by non-payment of applicable BCD on the subject goods, which tantamount to suppression of material facts and wilful mis-statement. The *'mens rea'* can be deciphered clearly from *'actus Reus'* and in the instant case, I find that the importer is an entity of repute and thus providing wrong information/declaration in the various documents filed with the Customs and thereby, claiming undue benefit by not paying the applicable BCD thereon, amply points towards their '*mens rea*' to evade the payment of duty. Thus, I find that the demand of differential duty is rightly invoked in the present case by invoking Section 28(4) of the Customs Act, 1962. Taking all the issues relating to the subject imports into account and in view of my findings that goods were mis-classified in the fashion discussed above, I find that the importer by their various acts of omission and commission discussed above, have rendered the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962, thereby making themselves liable for penalty under Section 112 ibid.

4.10.5 Accordingly, I agree with the proposal made in the subject SCN and hold that penalty should be imposed on the Noticee, M/s. Sohoni Metal Craft Pvt. Ltd. (0393047041) under Section 112 of the Customs Act, 1962.

4.10.6 Further, I find that as per Section 114A, imposition of penalty is mandatory once the elements for invocation of extended period is established. Hon'ble Supreme Court in *Grasim*

Industries Ltd. V. Collector of Customs, Bombay [(2002) 4 SCC 297=2002 (141) E.L.T.593 (S.C.)] has followed the same principle and observed:

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

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

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

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

4.10.7 As I have held above, that the extended period of limitation under Section 28(4) of the Customs Act, 1962 for the demand of duty is rightly invoked in the present case. Therefore, penalty under Section 114A is rightly proposed on the Noticee, M/s. Sohoni Metal Craft Pvt. Ltd. (0393047041), in the impugned SCN. Accordingly, the Noticee is liable for a penalty under Section 114A of the Customs Act, 1962 for wilful mis-declaration and suppression of facts, with an intent to evade duty.

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

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

ORDER

a) I order that the classification of the impugned goods under CTH 85079090 should be rejected and the goods should be re-classified under CTH 39269099.

b) I order that the differential/short paid duty amounting to **Rs. 94,15,279/- (Ninety Four Lakh Fifteen Thousand Two Hundred Seventy Nine only)** for the subject goods imported vide Bills of Entry as detailed in Annexure-'A' to the subject SCN should be demanded under Section 28(4) of the Custom Act, 1962 along with applicable interest under Section 28AA of the Custom Act, 1962.

c) I order that the subject goods imported vide Bills of Entry as detailed in Annexure-'A' to the subject SCN having assessable value of **Rs. 14,50,73,629/- (Rupees Fourteen Crore Fifty Lakh Seventy Three Thousand Six Hundred Twenty Nine Only)** should be held liable to confiscation under Section 111(m) of the Custom Act, 1962.However, since the goods are not available, I impose a redemption fine of **Rs.75,00,000/- (Rupees Seventy Five Lakhs Only)** on M/s. Sohoni Metal Craft Pvt. Ltd. (0393047041) in lieu of confiscation under Section 125(1) of the Customs Act, 1962.

d) I impose a penalty equivalent to differential duty of **Rs. 94,15,279/- (Ninety Four Lakh Fifteen Thousand Two Hundred Seventy Nine only) and applicable interest** under Section 28AA of the Customs Act, 1962, on M/s. Sohoni Metal Craft Pvt. Ltd. (0393047041) under Section 114A of the Customs Act, 1962. In terms of the first and second proviso to Section 114A ibid, if duty and interest is paid within thirty days from the date of the communication of this order, the amount of penalty liable to be paid shall be **twenty-five per cent of the duty and interest**, subject to the condition that the amount of penalty is also paid **within the period of thirty days** of communication of this order.

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

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

29/8/25

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

To,

1. **M/s Sohoni Metal Craft Pvt. Ltd. (0393047041),**
   Flat No. 1, First Floor, Wing-A,
   Tara Castle Masoli Dahanu Rd.,W,
   Dahanu, Palghar, Maharashtra-401602
   Contact No. 919099149492,

Copy to:

1. The Commissioner of Customs, Group VA, JNCH
2. AC/DC, Chief Commissioner's Office, JNCH
3. AC/DC, Centralized Revenue Recovery Cell, JNCH
4. AC/DC, Circle-D1, Audit Commissionerate, JNCH
5. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
6. EDI Section.
7. Office copy.