

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

DIN – 20250978NX0000006E6F

Date of Order:11.09.2025

F. No. S/10-011/2024-25/COMMR/NS-V/CAC/NS-V/JNCH **Date of Issue: 11.09.2025**

SCN No.: 69/2024-25/COMMR/GR.V/NS-V/CAC/JNCH

SCN Date: 16.04.2024

Passed by: Sh. Anil Ramteke

Commissioner of Customs, NS-V, JNCH

Order No:190/2025-26/COMMR/NS-V/CAC/JNCH

Name of Noticees: M/s. YAPP-INDIA AUTOMOTIVE SYSTEMS PRIVATE LIMITED(IEC-408017317)

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 निःशुल्क 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 रुपये 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. 69/2024-25/COMMR/GR. V/NS-V/CAC/JNCH dtd. 16.04.2025 issued to M/s YAPP-INDIA AUTOMOTIVE SYSTEMS PRIVATE LIMITED (IEC-408017317) – 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 **M/s. YAPP-INDIA AUTOMOTIVE SYSTEMS PRIVATE LIMITED, (IEC -408017317)** (herein after referred to as “Importer”) having their Office at FORD NEW SUPPLIERS PARK, MELROSAPURAM, CHITTAMANNUR VILLAGE, S.P. KOIL POST, CHENNAI, TAMIL NADU – 603204 and Plot No. A-3/A, Chakan Industrial Area, Phase II, Village Khalumbre, Taluka Khed, Chakan, Off. Chakan-Talegaon Road, District Pune, Maharashtra – 410 501, is a manufacturer of **Plastic Fuel Tank System** for automobiles. A letter dated 31.10.2023 from the Audit Commissionerate, Chennai was sent to the Importer with a Intimation for Conducting Premise Based Audit (Onsite Post Clearance Audit) in terms of Section 99A of the Customs Act, 1962 read with Customs Audit Regulations, 2018 and PCA Manual and to submit the accounts/ records of the unit for the period from 2018-19 to 2023-24. The Importer submitted Annexure-1B & Annexure-3 duly filled as per the Post Clearance Audit Manual, 2018.

1.2. Thereafter, permission for conducting Audit was granted by the competent authority and during the course of Audit from 14.02.2024 to 16.02.2024, discrepancies were noticed in classification of Tariff Heading in respect of multiple imported items as detailed below:

(i) Mis-classification of Inlet Check Valve Assembly under CTH 84813000/ 84814000/ 84818090:-

The Importer imported goods ICV (Inlet Check Valve Assembly), vide 21 Bills of entry, classifying them under CTH 8481 3000/ 8481 4000/ 8481 8090. The Importer was asked as to what and where the goods are used for and the Importer replied that the goods are used in manufacturing of Plastic Fuel Tank System for car/passenger vehicle. It is used as entry point of fuel in plastic fuel tank. The fuel filler pipe of plastic fuel tank is connected to this ICV and it allows fuel to enter into the fuel tank during refueling and prevents fuel from flowing out of the fuel tank through the refueling pipe. It is made of plastic and welded to the fuel tank by plate welding method and it is customised to be used in Plastic fuel tank of automobile sectors only and cannot be used anywhere else.

So, as per Importer it appears to be an essential component of plastic fuel tank system and without it tank system cannot function, which was found to be correct on physical verification and seeing the function of the goods at the time of premises visit.

Further, the Importer in their written reply dated 15.03.2024 has stated that they find difference in point of view between their selection of classification and department observation. After proper study and expert opinion the classification selected by them for their products falling under this point is concluded to be as per customs hand book. Based on this conclusion

their duty payment is right. However, it was also noticed that the Importer had imported these goods under CTH 8708 9900 several times and had paid BCD @15%, IGST @28% along with applicable SWS.

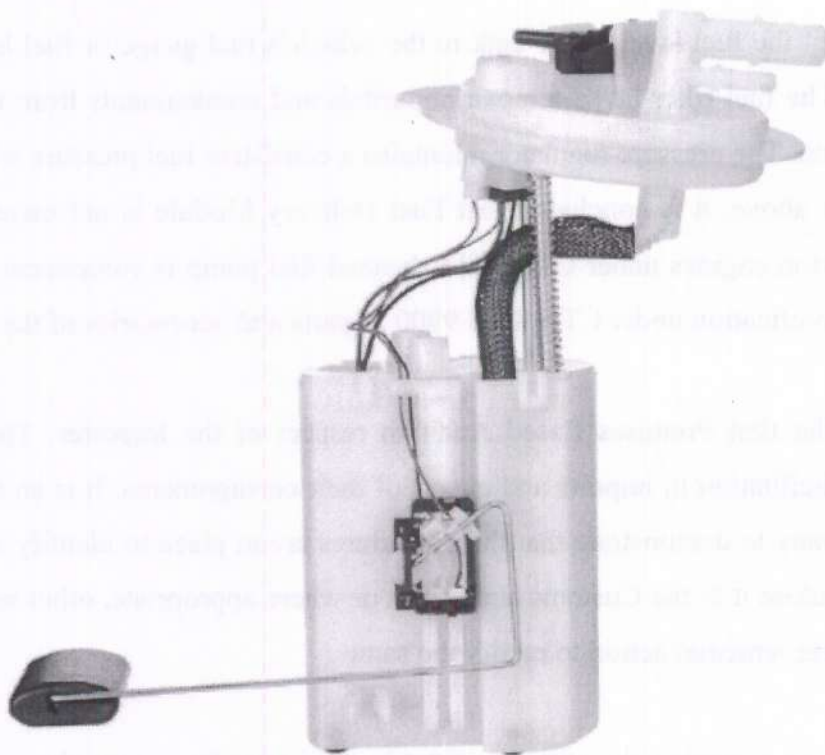
Explanatory notes, although, are not legally binding but it gives a good insight about the classification of the goods. As per explanatory notes under CTH 8481 -----*However, certain machinery parts which incorporate a complete valve, or which regulate the flow of a fluid inside a machine although not forming a complete valve in themselves, are classified as parts of the relative machines, for example, inlet or exhaust valves.* Accordingly, the Inlet Check Valve (ICV) Assembly is rightly classifiable under CTH 8708 9900 since it is an essential component of **Plastic Fuel Tank System** which is classified under CTH 8708.

Even an Audit Consultative Letter was issued by TBA-II (INMAA4), Audit Commissionerate, Custom House, Chennai vide F.No. CHE/263/C-II/TBA-106/2020-AUDIT dated 29.06.2020 with respect to the classification of the goods under CTH 8708 9900 and for the payment of differential duty amounting to Rs.21,33,961/-. The Importer had accepted the Audit objection and they paid the differential duty along with interest amounting to Rs.23,78,586/-voluntarily for INMAA4 port but the differential duty arising due to this misclassification in Bills of Entry of other ports viz. INMAA1, INBOM4, INNSA1 were not rectified and paid by the Importer. Eventually, this discrepancy was noticed during premises visit and audit objection was raised for all these 15 Bills of Entry for the short payment of duty totally amounting to **Rs.40,70,695/- (RUD-I).**

It appears that the Importer was aware of the correct classification of the impugned goods and thus they deliberately misclassified the impugned goods to evade correct payment of duty. In view of the above, it appears that the Importer willfully misclassified the impugned goods. Hence, the extended period for demand of duty under section 28(4) is correctly invocable in present case. Hence, Importer is liable to pay differential duty along with applicable interest and penalties under section 28(4) of the Customs Act, 1962.

(ii) Misclassification of Fuel Delivery Module (FDM) under CTH 8413 3090/ 8413 1199:-

The Importer imported goods namely **Fuel Delivery Module (FDM)**, vide 17 Bills of Entry, classifying them under CTH **8413 3090/8413 1199**. The Importer was asked as to what and where the goods are used for and the Importer replied that the goods are used in manufacturing of Plastic Fuel Tank System for car/passenger vehicle. The Importer has imported these goods several times under CTH 8708 9900 and has paid BCD @15%, IGST @28% along with applicable SWS. It was noticed that the Importer had changed the description of the goods from Fuel Delivery Module (FDM) to Fuel Dispensing Pump and had misclassified the goods under CTH **8413 3090/ 8413 1199**. The duty short paid totally for all these 17 bills of entry is **Rs.86,78,333/- (RUD-II)**



The Importer in their written reply dated 15.03.2024 has stated that they find difference in point of view between their selection of classification and department observation. After proper study and expert opinion the classification selected by them for their products falling under this point is concluded to be as per customs hand book. Based on this conclusion their duty payment is right.

From the information available in the internet, it is found that the Fuel Delivery Module is a very important part on the vehicle. During the driving process, fuel supply must be in-time, sufficient, stable, and should provide an accurate amount of remaining fuel to remind driver when to fill the fuel tank. Fuel delivery modules are located in the fuel tank. They consist of the flange cover, the fuel pump in the reservoir (swirl pot) and other attachments such as the sender unit, filter, non-return valve, supply line to the engine, return side, suction jet pump or pressure regulator. The Fuel Delivery Module includes three parts: fuel supply pump, fuel pump controller and liquid level sensors of fuel tank. Fuel pumps lead fuel to pipes, sending fuel to the engine, and fuel tank liquid surface sensor gets fuel volume by floats which monitor height change, and sends signals to the engine ECU.

A fuel pump and a fuel pump module are both components of a vehicle's fuel delivery system, but they serve different functions. A fuel pump is a device responsible for pumping fuel from the fuel tank to the engine. It is typically an electric pump located inside the fuel tank or mounted externally on the frame or body of the vehicle. The primary purpose of the fuel pump is to generate sufficient pressure to deliver fuel to the engine at the required flow rate. It draws fuel from the tank and pushes it through the fuel lines to the engine, where it is used for combustion.

On the other hand, a fuel pump module, also known as a fuel pump assembly, consists of not only the fuel pump itself but also various other components integrated into a single module. These additional components may include the fuel level sensor, fuel filter, pressure regulator, and sometimes the fuel tank sending unit. The fuel level sensor is responsible for providing

information about the fuel level in the tank to the vehicle's fuel gauge or fuel level indicator on the dashboard. The fuel filter helps remove impurities and contaminants from the fuel before it reaches the engine. The pressure regulator maintains a consistent fuel pressure within the system.

From the above, it is concluded that Fuel Delivery Module is not mere fuel pumps for internal combustion engines under CTH 8413. Instead fuel pump is component of the assembly which merits classification under CTH 8708 9900 as parts and accessories of the motor vehicles.

1.3 This is the first Premises Based Audit in respect of the Importer. They are accorded higher level of facilitation in imports and export of their consignments. It is an obligation on the part of the company to demonstrate that the procedures are in place to identify any irregularities or errors and disclose it to the Customs authorities or where appropriate, other regulatory bodies; to take appropriate remedial action to rectify the same..

1.4 In order to sensitize the people of trade (Importer/Exporter) above its benefit and consequences of mis-use, Government of India has issued Customs Manual on Self Assessment 2011. The publication of the Customs Manual on Self Assessment, 2011 was required because prior to enactment of the provision of the 'self-assessment', mis-classification or misstatement or wrong availment of duty exemption, etc. in normal course of import, was not considered as mis-declaration or mis-statement. Under para 1.3 of Chapter 1 of the above manual, Importer/Exporter who are unable to do their self-assessment because of any complexity, lack of clarity, lack of information, etc., may exercise the following options: (a) seek assistance from Help Desk located in each Custom House or (b) refer to information on CBIC/ICEGATE web portal or (c) Apply in writing to the Assistant/ Deputy Commissioner in charge of Appraising Group to allow provisional assessment. Para 3(a) of Chapter 1 of the above manual further stipulates that the importer/exporter is responsible for self-assessment of duty on imported/exported goods and for filing all declaration and related documents and confirming these are true, correct and complete. Under para 2.1 of Chapter I of the above manual, Self-assessment can result in assured facilitation for compliant importers. However, delinquent and habitually non-compliant importers could face penal action on account of wrong self-assessment made with intent to evade duty or avoid compliance of conditions of notifications, Foreign Trade Policy or any other provision under the Customs Act, 1962 or the Allied Acts.

1.5 As per the Customs Act, 1962, the importer of any goods is required to file a Bill of Entry under Section 46 of the Customs Act, 1962 in the proforma prescribed under Bill of Entry (Form) Regulations, 1976 or Bill of Entry (Electronic Declaration) Regulations, 1995 before the proper officer. In terms of the said provisions, the importer who presents the Bill of Entry shall ensure (a) the accuracy and completeness of information given therein, (b) authenticity and validity of any document supporting it.

1.6 With the introduction of RMS and Self Assessment, the importers are required to rightly assess the imported goods to correct Customs Duty and the importers are placed with great trust and responsibility to follow the procedures.

1.7 Having availed all the prerogative facilities, the importer is duty bound to rectify the errors and pay the differential duty even before the audit team notifies the same. However, the importer did not come forward to rectify the wrong classification done in previous Bills of Entries and pay the differential duty.

1.8 In view of the foregoing, the Importer, is liable to pay the total differential duty demand of **Rs.1,27,49,028/- (Rupees One Crore Twenty Seven Lacs Forty Nine Thousand Twenty Eight Only)** under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of Customs Act, 1962.

1.9 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 28(4)- 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) - Confiscation of improperly imported goods, etc.
- Section 112(a) - Penalty for improper importation of goods etc.
- Section 114A - Penalty for short-levy or non-levy of duty in certain cases.

1.10. Invocation of extended period of demand under Section 28(4) of the Customs Act, 1962.

1.10.1 Whereas, the Government of India had introduced the concept of self-assessment way back in 2011 for all import consignments and it is the bounden duty of the importer to verify thoroughly whether they are eligible for claiming any duty benefits/exemption under any Notification before claiming and submitting the Bill for Customs clearance. The Customs department can scrutinize the documents after the clearance of goods for any short levy/non-levy as per section 28 of Customs Act, 1962 and take appropriate action to safeguard the revenue. It appears that the importer in this case had willfully mis-classified the imported goods with a malafide intention to evade applicable custom duty by wrongfully classifying as explained in para 2.

1.10.2 The Importer is in the business dealing in automobile goods for a long period and very well conversant with the Tariff codes. The Importer has imported the above said goods under CTH 87089900 several times. Even, in the case of Fuel Delivery Module, the Importer changed the description of the goods as Fuel Dispensing Pump and started importing under CTH 8413. However, it appears that the Importer was aware of the correct classification of the impugned goods and thus, they deliberately misclassified the impugned goods to evade correct payment of

duty. Hence, it appears that the importer have willfully/intentionally misclassified the goods as detailed in para 2 above and suppressed the relevant facts from department with an intent to evade the applicable customs duties. For their willful suppression of facts and misstatement, the provisions under Section 28(4) of the Customs Act 1962 appear to be rightly invocable in this case for demanding duty for the extended period.

1.10.3 From perusal of the import data of the importer it is seen that, at some point of time, identical goods have been classified by the importer under correct CTHs as proposed above and duty has been paid appropriately. The Importer was aware of the correct classification for the imported goods as detailed in para 2 above from the fact that majority of the imported goods imported have been subjected to the higher rate of the duty. However, the Importer has willfully mis-classified the goods under multiple CTHs and paid lower duty and the wrong classification resulted in loss of revenue.

1.10.4 Further, the Importer did not submit any explanation for adoption of different classification for same set class of goods. It also shows that the Importer was aware of the existence of correct classification of the goods. Hence, it appears that the Importer deliberately mis-classified the goods with intention to pay lower duty.

1.10.5 Further, the Importer has not replied comprehensibly to the Paras raised. Therefore, from analysis of the circumstantial evidences and previous imports made by the Importer, it is observed that Importer had deliberately mis-classified the impugned goods as mentioned in the Audit Report. Therefore, department is well within their right to demand customs duty for extended period as stipulated under Section 28 (4) of the customs act, 1962.

1.11. It is the bounden duty of the importer to ascertain correctness of the duty paid by him. In this case, Importer failed to correctly self-assess the duty on the impugned goods. Further, it was the responsibility of the Importer to ascertain correctness of the declaration made by him. Therefore, the impugned goods appear to have been imported in contravention of the Section 17(1) as well as Section 46(4) of the Customs Act, 1962.

1.12. In view of the above discussion, it appears that the importer has deliberately mis-classified the imported goods as discussed in para 1.2 above, the importer is liable to pay the differential duty demand of **Rs.1,27,49,028/- (Rupees One Crore Twenty Seven Lacs Forty Nine Thousand Twenty Eight Only)** (as worked out in the RUD-I and RUD-II to the notice) and the same appears to be liable to be recovered from the importer under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the said Act.

1.13. Since the Importer was aware of the correct classification of the goods and there was deliberate attempt to misclassify the goods in order to pay lower amount of customs duty. Therefore, it appears that the Importer is liable to penalty under section 114A of the Customs Act, 1962.

1.14. In view of the above, vide Show Cause Notice No. 69/2024-25/COMMR/GR.V/CAC/JNCH, **M/s. YAPP-INDIA Automotive Systems Pvt. Ltd. (IEC -408017317)** was hereby called upon to show cause to the Commissioner of Customs, NS-V, JNCH, Taluka - Uran, District - Raigad, Maharashtra – 400707, as to why:

- (i) The classification of goods imported vide Bills of Entry, as mentioned in RUD-I (to the subject SCN under CTH 84813000/ 84814000/ 84818090) and in RUD-II (to the subject Notice under CTH 8413 3090/ 8413 1199), should not be rejected and re-classified under the CTH 8708 9900.
- (ii) Differential duty amounting **Rs.1,27,49,028/- (Rupees One Crore Twenty Seven Lacs Forty Nine Thousand Twenty Eight Only)** for Bills of Entry as mentioned in RUD-I & RUD-II to the subject SCN should not be recovered from the importer under Section 28(4) of Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962;
- (iii) The subject goods total valued at **Rs.10,12,16,473/- (Rupees Ten Crore Twelve Lacs Sixteen Thousand Four Hundred Seventy Three Only)** should not be confiscated under Section 111(m) of the Customs Act, 1962.
- (iv) The applicable Interest on the Differential Duty amount specified above should not be recovered from them in terms of section 28AA of the Customs Act, 1962;
- (v) Penalty should not be imposed on them under Section 112(a) and / or Section 114(A) of the Customs Act, 1962.

2. RECORD OF PERSONAL HEARINGS

2.1 There is single Noticee in the subject SCN viz. **M/s. YAPP-INDIA Automotive Systems Pvt. Ltd. (IEC -408017317)**. 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 28.03.2025, 09.04.2025 and 19.08.2025 and PH intimation letter was issued by speedpost. On 19.08.2025, Sh. Ashok B. Nawal, authorised representative appeared virtually before the Adjudicating Authority on behalf of the Noticee, **M/s. YAPP-INDIA Automotive Systems Pvt. Ltd. (IEC -408017317)**. During the PH, he reiterated the submissions made vide their letter dated 23.07.2025 and further submitted that:

- (i) They denied the allegations made in SCN. They imported two items viz. 'Inlet Check Valve Assembly' and 'Fuel Delivery Module' and had correctly classified them under CTH 84813000/84814000/84818090 and 84133090/84131199, respectively.

- (ii) All the Bs/E were assessed, which is appealable order as held by Hon'ble SC in the case of ITC Vs. CCE, Kolkata. No re-assessment done in this case. The subject SCN has been issued under Section 28 without filing appeal against the assessment done by the importer.
- (iii) If the department is alleging misclassification, then the onus is on the department to prove why the goods should be classified under CTH 87089900. In the whole SCN, this onus has not been discharged by the department.
- (iv) Both the items imported by them are parts of fuel tank and cannot be fitted in vehicle as such, therefore, they are not part of motor vehicle.
- (v) No grounds have been mentioned in the SCN for invoking larger period of limitation under Section 28(4). Accordingly, the issue of extended limitation period does not arise and the SCN is hit by limitation.
- (vi) In disputes relating to classification, no penalty and confiscation can be imposed on the importer.
- (vii) The SCN does not stand either on merit or technical ground, therefore, they request for dropping of the SCN.
- (viii) Submitted Case Compilation via mail dated 19.08.2025
- (ix) They have also provided technical reasons and requested for withdrawn of SCN

3. WRITTEN SUBMISSION OF THE NOTICEE

3.1 The Noticee, M/s. YAPP-INDIA Automotive Systems Pvt. Ltd. (IEC -408017317) vide their letter dated 15.05.2024 gave written reply to the subject SCN. Vide the above reply, they interalia submitted as under:

3.1.1 Issuance of Show Cause Notice Without Appeal-

The importer argues that the Show Cause Notice (SCN) under Section 28 of the Customs Act, 1962 was issued without first appealing the self-assessed Bill of Entry as per Sections 17 and 128 of the Act, which is not permissible according to established legal precedents.

They cite relevant Supreme Court judgments, such as Priya Blue Industries Ltd. and ITC v. CCE, Kolkata, underscoring that self-assessment orders are appealable and must first be challenged through appeal before any SCN is issued for reassessment or recovery.

3.1.2 Classification of Inlet Check Valve Assembly

The importer asserts that the Inlet Check Valve Assembly is specifically classifiable under CTH 84813000 as "Check (non-return) valves" and not as parts and accessories of motor vehicles under Chapter 8708.

They refer the structure of Chapter 84 and the Explanatory Notes, arguing that such valves are correctly covered under Chapter 84 due to their general application and a specific provision in the tariff.

3.1.3 Classification of Fuel Delivery Module

The Fuel Delivery Module (FDM) is classified under CTH 84133090/84131199 (pumps for liquids), not under CTH 87089900 (parts and accessories of motor vehicles).

The submission points out that as per Section Note 2 of Section XVII Notes, parts classified under Chapters 8401–8479 are excluded from being considered as vehicle parts in Chapter 87.

Reference was made to judicial precedents and CBIC instructions supporting classification under Chapter 84, highlighting that FDM functions as a fuel pump with a specific heading in the tariff structure.

3.1.4 Penalty, Interest, and Confiscation

The importer contended that no penalty or confiscation is warranted under Sections 112 or 114A, as there has been no misdeclaration or suppression of facts—only a difference in classification, which is a question of law and not a ground for penalty.

It is emphasized that mere misclassification is not equivalent to misdeclaration, citing relevant judicial decisions such as *S.S. Enterprises v. CC Hyderabad-II* and *Akbar Badruddin Jiwani v. CC*. The importer further argued that all technical information was duly disclosed, and the self-assessment was accepted by Customs, negating any allegation of willful suppression or fraud.

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 The Chief Commissioner of Customs, Mumbai Zone-II has granted extension of time limit to adjudicate the SCN up to 15.10.2025 as provided under Section 28(9) of the Customs Act, 1962, and the same was intimated to the noticee vide letter dated 09.04.2025, therefore, the case has been taken up for adjudication proceedings within the time limit as per Section 28(9) of the Customs Act, 1962.

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 28.03.2025, 09.04.2025 and 19.08.2025. Availing the said opportunity, the Noticee attended the PH on 19.08.2025. 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. YAPP-INDIA Automotive Systems Pvt. Ltd. (IEC -408017317) had imported goods having description as “*Inlet Check Valve Assembly*” under the CTH 84813000/84814000/84818090 and “*Fuel Delivery Module*”

under the CTH 84133090/84131199. However, as per the SCN, the imported goods are more appropriately classifiable under CTH 87089900 which attracts duty @ 15% BCD + 10% SWS (10% of BCD) + 28% IGST. Thus, the SCN proposes re-classification of the goods under CTH 8708 9900 and the differential duty amounting to Rs.1,27,49,028/- (Rupees One Crore Twenty Seven Lacs Forty Nine Thousand Twenty Eight 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 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) The classification of goods imported vide Bills of Entry, having description Inlet Check Valve Assembly as mentioned in RUD-I (to the subject SCN under CTH 84813000/ 84814000/ 84818090) should not be rejected and re-classified under the CTH 8708 9900.
- (ii) The classification of goods imported vide Bills of Entry, having description Fuel Delivery Module (FDM) as mentioned in RUD-II (to the subject Notice under CTH 8413 3090/ 8413 1199), should not be rejected and re-classified under the CTH 8708 9900.
- (iii) Whether the Differential duty amount of **Rs.1,27,49,028/- (Rupees One Crore Twenty Seven Lacs Forty Nine Thousand Twenty Eight Only)** should be demanded under Section 28(4) of the Customs Act, 1962 along with applicable interest as per Section 28AA of the Customs Act, 1962.
- (iv) Whether the subject goods as detailed in RUD- I & II to the subject SCN having a total assessable value of **Rs.10,12,16,473/- (Rupees Ten Crore Twelve Lacs Sixteen Thousand Four Hundred Seventy Three 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)/114A of the Customs Act, 1962.

4.5 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.

4.6 The classification of goods imported vide Bills of Entry, having description Inlet Check Valve Assembly as mentioned in RUD-I (to the subject SCN under CTH 84813000/ 84814000/ 84818090) should not be rejected and re-classified under the CTH 8708 9900.

4.6.1 I note that the Noticee, M/s. YAPP-INDIA Automotive Systems Pvt. Ltd. (IEC - 408017317) vide the impugned Bills of Entry as detailed in RUD-I to the subject SCN, had imported goods having description “*Inlet Check Valve Assembly*”. The Noticee had classified the said goods under the CTH 84813000/84814000/84818090. However, as per the SCN, the imported goods are more appropriately classifiable under CTH 8708 9900 which attracts duty @ 15% BCD + 10% SWS (10% of BCD) + 28% IGST.

4.6.2 As per the SCN, when the Importer was asked as to what and where the goods are used for and the Importer replied that the goods are used in manufacturing of Plastic Fuel Tank System for car/passenger vehicle. It is used as entry point of fuel in plastic fuel tank. The fuel filler pipe of plastic fuel tank is connected to this ICV and it allows fuel to enter into the fuel tank during refueling and prevents fuel from flowing out of the fuel tank through the refueling pipe. It is made of plastic and welded to the fuel tank by plate welding method and it is customised to be used in Plastic fuel tank of automobile sectors only and cannot be used anywhere else.

4.6.3 The Customs Tariff Heading covers the goods of broad description ‘*TAPS, COCKS, VALVES AND SIMILAR APPLIANCES FOR PIPES, BOILER SHELLS, TANKS, VATS OR THE LIKE, INCLUDING PRESSURE-REDUCING VALVES AND THERMOSTATICALLY CONTROLLED VALVES*’. The relevant entries of CTH 8481 are as under:

8481 TAPS, COCKS, VALVES AND SIMILAR APPLIANCES FOR PIPES, BOILER SHELLS, TANKS, VATS OR THE LIKE, INCLUDING PRESSURE-REDUCING VALVES AND THERMOSTATICALLY CONTROLLED VALVES

8481 30 00	-	Check (non-return) valves
8481 40 00	-	Safety or relief valves
8481 80	-	Other appliances :

8481 80 90	---	Others

4.6.4 Relevant extract of explanatory notes to heading 8481 are as under:

Taps, cocks, valves, etc., remain in this heading even if specialized for use on a part machine or apparatus, or on a vehicle or aircraft. However, certain machinery parts incorporate a complete valve, or which regulate the flow of a fluid inside a machine although not forming a complete valve in themselves, are classified as parts of the relative machine for example, inlet or exhaust valves for internal combustion engines (heading 84.09), valves for steam engines (heading 84.12), suction or pressure valves for air or other compressors (heading 84.14), pulsators for milking machines (heading 84.34) non-automatic greasing nipples (heading 84.87).

4.6.5 It is evident from the explanatory notes that if certain machinery parts incorporate a complete valve, or which regulate the flow of a fluid inside a machine altogether not forming a complete valve in themselves, are classified as parts of the relative machine. From the submissions made by the noticee during the audit that the goods are used in manufacturing of Plastic Fuel Tank System for car/passenger vehicle. It is used as entry point of fuel in plastic fuel tank. The fuel filler pipe of plastic fuel tank is connected to this ICV and it allows fuel to enter into the fuel tank during refueling and prevents fuel from flowing out of the fuel tank through the refueling pipe. It is made of plastic and welded to the fuel tank by plate welding method and it is customised to be used in Plastic fuel tank of automobile sectors only and cannot be used anywhere else. Accordingly, I am of the opinion that the subject goods falls outside the purview of the CTH 8481.

4.6.6 On perusal of Chapter 87, the heading itself is very clear and unambiguous, which mentions that "Vehicles other than Railway or Tramway Rolling-Stock and Parts & Accessories thereof", hence, it means that all parts & accessories meant for motor vehicles are covered under Chapter 87. Only parts of general use are excluded from Chapter 87 and the same are to be classified as per constituent material. However, I find that in the instant case, it is an admitted fact that the imported items are solely meant for automobile manufacturing and are not to be used elsewhere.

4.6.7 Further, as per Explanatory Notes to Section XVII of the HSN, parts and accessories of the vehicles, aircraft or equipment concerned should be classified under headings of Section XVII, only if they comply with following conditions:

- (a) They must not be excluded by the terms of Note 2 to Section XVII, and
- (b) They must be suitable for use solely or principally with the articles of Chapters 86 to 88, and
- (c) They must not be more specifically included elsewhere in the Nomenclature.

4.6.8 Section Notes 2 and 3 of Section XVII of Customs Tariff Act (Chapter 86 to 89) read as under:

2. The expressions "parts" and "parts and accessories" do not apply to the following articles, whether or not they are identifiable as for the goods of this Section:

- (a) Joints, washers or the like of any material (classified according to their constituent material or in heading 8484) or other articles of vulcanised rubber other than hard rubber (heading 4016);

- (b) *Parts of general use, as defined in Note 2 to Section XV, of base metal (Section XV), or similar goods of plastics (Chapter 39);*
- (c) *Articles of Chapter 82 (tools);*
- (d) *Articles of heading 8306;*
- (e) *Machines and apparatus of headings 8401 to 8479, or parts thereof, other than the radiators for the articles of this Section, articles of heading 8481 or 8482 or, provided they constitute integral parts of engines and motors, articles of heading 8483;*
- (f) *Electrical machinery or equipment (Chapter 85);*
- (g) *Articles of Chapter 90;*
- (h) *Articles of Chapter 91;*
- (ij) *Arms (Chapter 93);*
- (k) *Lamps or lighting fittings and parts thereof of heading 9405; or*
- (l) *Brushes of a kind used as parts of vehicles (heading 9603)*

3. *References in Chapters 86 to 88 to “parts” or “accessories” do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part of accessory.*

4.6.9 I find that on the basis of legal position as laid down by Hon’ble Supreme Court in the cases of M/s. Asian Paints India Ltd. [1988 (35) ELT 31 (SC)], M/s. GS Auto International Ltd. [2003 (152) ELT 3 (SC)] and M/s. Cast Metal Industries Pvt. Ltd., [2015(325) E.L.T.471 (S.C.)], the parts & accessories of motor vehicles, which have not been otherwise excluded and are specially/specifically designed to be used for/with a motor vehicle of particular model and make should be classified under Chapter 87. Therefore, I find that the goods imported by the importer under the various Bills of Entry (details as per RUD-I) are solely and principally used for manufacture of motor vehicles, and hence, these part/accessories/components do not qualify as parts of general use.

4.6.10 As explained above, I find that Note 2 of Section XVII, which excludes certain goods from being covered under Section XVII, does not include the impugned goods. Consequently, the impugned imported goods are not excluded from Section XVII by virtue of the said Note. Hence, I find that Note 2 of Section XVII is not applicable in the instant case.

4.6.11 The goods which are used (meant for) solely & principally with goods falling under Chapters under Section XVII and more importantly meant to be solely & principally used with goods falling under these Chapters cannot be considered as “parts of general use” and are therefore, required to be classified under appropriate Chapter’s headings & sub-headings of parts & accessories of these chapters. In the present case, the goods imported by the importer are

unquestionably parts of motor vehicles, which are further to be solely used with automobiles of particular brands and models and therefore, are correctly classifiable under Chapter Heading 8708 (Parts & accessories of Motor Vehicles of heading 8701 to 8705).

4.6.12 I find that the onus is on the importer to declare and establish that the goods are other than parts and accessories of motor vehicles of CTH 87, however, the importer in present case themselves have accepted in their submissions that the goods are used in manufacturing of Plastic Fuel Tank System for car/passenger vehicle. It is used as entry point of fuel in plastic fuel tank. The fuel filler pipe of plastic fuel tank is connected to this ICV and it allows fuel to enter into the fuel tank during refueling and prevents fuel from flowing out of the fuel tank through the refueling pipe

4.6.13 Note 3 of Section XVII on the other hand provides for exclusion of 'parts' and 'accessories' that are not suitable for use solely or principally with the articles of Chapters 86 to 88. This exclusion in terms of Note 3 of Section XVII, by extension, would also mean that parts and accessories which are suitable for use solely or principally with the articles of Chapters 86 to 88 are to be classified under these Chapters only. This argument is further strengthened by the Hon'ble Bombay High Court in *Kirloskar Pneumatic Co. Ltd. Vs. State of Maharashtra* [(1987) 64 STC 420] wherein the court opined that one has to look to the primary use of the article in question in the absence of any evidence of trade or common parlance and that the classification of any given type of goods depends upon its main or primary use. Hence, as prescribed by Note 3 to Section XVII, I find that the condition of "sole or principal use" will play a crucial role in determining the classification of any parts or accessories.

4.6.14 It is admitted that imported goods are to be used in manufacturing of Plastic Fuel Tank System for car/passenger vehicle. The item is not suitable to be used for any other purpose. The item is commercially known as part of car manufactured by the importer as well as the item is exclusively used in the car. Hence, these items as per said Section Note are appropriately classifiable under CTH 8708 of the CTA, 1975.

4.6.15 The same ratio has been laid by the Hon'ble Supreme Court in its Order dated 08.03.2021 in Civil Appeal No.37 of 2009, in the matter of *Westinghouse Saxby Farmer Ltd. Versus Commissioner of Central Excise, Kolkata*, wherein it was held that "those parts which are suitable for use solely or principally with an article in Chapter 86 cannot be taken to a different Chapter as the same would negate the very object of group classification". Though the Apex Court's order was in respect of parts for use with article in Chapter 86, the same ratio is squarely applicable in the instant case as any Section Note to Section XVII is applicable for Chapters 86 to 89. The court also held that overlooking the "sole or principal use test" indicated in Note 3 to Section XVII is not justified. A review petition, Review Petition (Civil) D. No.802/2022, against the said order was filed and the same was dismissed by the Apex Court vide its order dated 10.08.2022. Thus, I find that the condition of "sole or principal use" in determining the classification of the impugned goods is paramount.

4.6.16 I find that the purpose of importing the impugned goods is to solely or principally use them exclusively as components and parts of the motor vehicles falling under CTH 8701 to 8705. The parts imported by the importer for manufacture of motor vehicles, can only be used for manufacture of specific model of vehicles. The parts and accessories of automobiles which are meant to be used solely & principally with/for the motor vehicles of CTH 8701 to 8705 cannot be considered as “parts of general use” and are therefore, required to be classified under appropriate headings of parts & accessories under Chapter 87. The SCN has also emphasized on the fact the importer itself has imported the same goods under CTH 8708 on several occasion.

4.6.17 Effect of Note 3 of Section XVII is that when any part or accessory can fall in Section XVII as well as in another Section, its classification has to be determined by its sole or principal use. For example if a part can fall in Chapter 87 as well as Chapter 39, if it is suitable for use solely or principally with vehicle of Chapter 87, its classification shall be under Chapter 87 (8708) and not under Chapter 39. Conjoint reading of Section Note 1(g) of Section XV and Note 2(b) and Note 3 of Section XVII makes it clear that once a part is suitable for use solely or principally with articles of Chapter 87, there is no question of considering entries under Chapter 39. This is in line with Hon’ble Supreme Court’s judgment in the case of M/s. G. S. Auto International [2003 (152) E.L.T. 3 (S.C.)] and M/s. Cast Metal Industries [2015 (325) E.L.T. 471 (S.C.)]. Without prejudice to above, in fact, even if Note 1(g) to Section XV is not considered, the classification will be under heading 8708 only because the Hon’ble Supreme Court in the case of M/s. Cast Metal Industries [reported as 2015(325)ELT 471 (SC)] held that the expression “parts of general use” would not apply to parts or accessories which are suitable for use solely or principally with articles of 8708. The ratio of the judgement of Hon’ble Supreme Court in M/s. Cast Metal Industries is directly applicable to items classified as ‘parts of general use’ by the importer.

4.6.18 As regards the point that the goods must not be more specifically included elsewhere in the Nomenclature, I find that the importer had claimed classification of the items under Tariff item 84813000/ 84814000/ 84818090. Since there are no specific entries for the item having description ‘Inlet Check Valve Assembly’ under heading 8481, the importer still resorted to classify the items under Tariff item 84813000/ 84814000/ 84818090. It is observed that the Tariff items 84813000/ 84814000/ 84818090 under which the importer has claimed classification of the impugned imported items are general entries for certain goods, and are not for the imported goods which are for specific use in motor vehicle whereas, the Chapter Heading 8708 specifically covers parts of motor vehicle. In the light of the fact that the imported goods are suitable for use solely or principally as parts of motor vehicle, considering above Section Notes and the ratio of judgment in the case of G.S. Auto International, there is no need to consider the entries of Chapters 39 for their classification.

4.6.19 On careful consideration of the facts of the case, the subject SCN, importer’s submission and the application of the ratios laid down under the case-laws cited by the Noticee and the case

laws relied upon by me, I arrive at the conclusion that the impugned goods can clearly be construed as the 'parts and accessories' of the vehicles (falling under the Chapter Headings from 8701 to 8705) and will merit classification under the Chapter Heading 8708, which covers the parts and accessories of the vehicles.

4.6.20 Thus, I find that it has been established beyond doubt that the impugned goods are suitable for use solely or primarily with articles of Chapter Heading Nos. 87.01 to 87.05, and therefore, applying the principle laid down by the Hon'ble Supreme Court in the case of G.S. Auto International Ltd. (Supra), it is manifest that the impugned products will be construed as parts of motor vehicles falling under Chapter Headings 87.01 to 87.05, and will merit classification under the Tariff Item 8708.

4.7 The classification of goods imported vide Bills of Entry, having description Fuel Delivery Module (FDM) as mentioned in RUD-II (to the subject Notice under CTH 8413 3090/ 8413 1199), should not be rejected and re-classified under the CTH 8708 9900.

4.7.1 I note that the Noticee, M/s. YAPP-INDIA Automotive Systems Pvt. Ltd. (IEC - 408017317) vide the impugned Bills of Entry as detailed in RUD-II to the subject SCN, had imported goods having description "Fuel Delivery Module". The Noticee had classified the said goods under the CTH 8413 3090/ 8413 1199. However, as per the SCN, the imported goods are more appropriately classifiable under CTH 8708 9900 which attracts duty @ 15% BCD + 10% SWS (10% of BCD) + 28% IGST.

4.7.2 As per the SCN, the Fuel Delivery Module is a very important part of the vehicle. During the driving process, fuel supply must be in-time, sufficient, stable, and should provide an accurate amount of remaining fuel to remind driver when to fill the fuel tank. Fuel delivery modules are located in the fuel tank. They consist of the flange cover, the fuel pump in the reservoir (swirl pot) and other attachments such as the sender unit, filter, non-return valve, supply line to the engine, return side, suction jet pump or pressure regulator. The Fuel Delivery Module includes three parts: fuel supply pump, fuel pump controller and liquid level sensors of fuel tank. Fuel pumps lead fuel to pipes, sending fuel to the engine, and fuel tank liquid surface sensor gets fuel volume by floats which monitor height change, and sends signals to the engine ECU.

4.7.3 A fuel pump and a fuel pump module are both components of a vehicle's fuel delivery system, but they serve different functions. A fuel pump is a device responsible for pumping fuel from the fuel tank to the engine. It is typically an electric pump located inside the fuel tank or mounted externally on the frame or body of the vehicle. The primary purpose of the fuel pump is to generate sufficient pressure to deliver fuel to the engine at the required flow rate. It draws fuel from the tank and pushes it through the fuel lines to the engine, where it is used for combustion.

4.7.4 On the other hand, a fuel pump module, also known as a fuel pump assembly, consists of not only the fuel pump itself but also various other components integrated into a single module. These additional components may include the fuel level sensor, fuel filter, pressure regulator, and sometimes the fuel tank sending unit. The fuel level sensor is responsible for providing information about the fuel level in the tank to the vehicle's fuel gauge or fuel level indicator on the dashboard. The fuel filter helps remove impurities and contaminants from the fuel before it reaches the engine. The pressure regulator maintains a consistent fuel pressure within the system. From the above, it is concluded that Fuel Delivery Module is not mere fuel pumps for internal combustion engines under CTH 8413. Instead fuel pump is component of the assembly which merits classification under CTH 8708 as parts and accessories of the motor vehicles.

4.7.5 I find that the arguments and rationale provided in the paragraphs 4.6.6 to 4.6.20 apply *mutatis mutandis* to the subject case. Accordingly, the subject goods viz. 'Fuel Delivery Module' merits classification under CTH 8708.

4.8 Whether the Differential duty amount of Rs.1,27,49,028/- (Rupees One Crore Twenty Seven Lacs Forty Nine Thousand Twenty Eight Only) should be demanded under Section 28(4) of the Customs Act, 1962 along with applicable interest as per Section 28AA 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 8708 9900. I find that the importer has imported identical goods under CTH 8708 9900 several times in the past also, 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, when knowing that the imported goods were rightly classifiable under CTH 8708 9900.

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 RUD-I & II to SCN were cleared by them by wilfully and deliberately indulging in mis-declaration of goods by self-assessing 'Inlet Check Valve Assembly' under CTH 84813000/ 84814000/ 84818090 and 'Fuel Delivery Module' under CTH CTH 8413 3090/ 8413 1199, with the intent to evade duty by claiming incorrect heading instead of correct CTH 8708 9900 wherein BCD @15% & IGST @28% was applicable.

4.8.5 I find that in the present case, imported goods were found ineligible to be considered under the declared CTH for the reasons mentioned in paras *supra*, and are appropriately classifiable under CTH 8708 9900. Moreover, for the imported goods, CTH 8708 9900 is far more specific than the one in which the importer has mischievously declared. As the importer has wrongfully assessed the goods 'Inlet Check Valve Assembly' under CTH 84813000/ 84814000/ 84818090 and 'Fuel Delivery Module' under CTH CTH 8413 3090/ 8413 1199 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 avilment 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(1) 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.1,27,49,028/- (Rupees One Crore Twenty Seven Lacs Forty Nine Thousand Twenty Eight Only), resulting from correct classification of goods followed by placing them under chapter heading CTH 8708 9900, is recoverable from M/s. YAPP-INDIA AUTOMOTIVE SYSTEMS PRIVATE LIMITED, (IEC - 408017317) 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.1,27,49,028/- (Rupees One Crore Twenty Seven Lacs Forty Nine Thousand Twenty Eight Only), as detailed in the RUD-I & II 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 RUD-I & II to the subject SCN having a total assessable value of Rs.10,12,16,473/- (Rupees Ten Crore Twelve Lacs Sixteen Thousand Four Hundred Seventy Three 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 RUD-I & II to the SCN, having total assessable value of Rs.10,12,16,473/- (Rupees Ten Crore Twelve Lacs Sixteen Thousand Four Hundred Seventy Three 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 8708 9900. 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 'Inlet Check Valve Assembly' under CTH 84813000/ 84814000/ 84818090 and 'Fuel Delivery Module' under CTH 8413 3090/ 8413 1199 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. YAPP-INDIA AUTOMOTIVE SYSTEMS PRIVATE LIMITED, (IEC -408017317) 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. YAPP-INDIA AUTOMOTIVE SYSTEMS PRIVATE LIMITED, (IEC -408017317) having total assessable value of Rs.10,12,16,473/- (Rupees Ten Crore Twelve Lacs Sixteen Thousand Four Hundred Seventy Three 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. YAPP-INDIA AUTOMOTIVE SYSTEMS PRIVATE LIMITED, (IEC -408017317) 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 'Inlet Check Valve Assembly' under CTH 84813000/ 84814000/ 84818090 and 'Fuel Delivery Module' under CTH CTH 8413 3090/ 8413 1199 instead of applicable CTH 3926 90 99 wherein BCD @15% and IGST @ 28% 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 misclassified 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. YAPP-INDIA AUTOMOTIVE SYSTEMS PRIVATE LIMITED, (IEC -408017317) 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. YAPP-INDIA AUTOMOTIVE SYSTEMS PRIVATE LIMITED, (IEC -408017317), 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 goods imported vide Bills of Entry, as mentioned in RUD-I (to the subject SCN under CTH 84813000/ 84814000/ 84818090) and in RUD-II (to the subject Notice under CTH 8413 3090/ 8413 1199), should be rejected and the goods should be re-classified under CTH 8708 9900.
- b) I order that the differential/short paid duty amounting to **Rs.1,27,49,028/- (Rupees One Crore Twenty Seven Lacs Forty Nine Thousand Twenty Eight Only)** for the subject goods imported vide Bills of Entry as detailed in RUD- I & II 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 RUD I & II to the subject SCN having assessable value of **Rs.10,12,16,473/- (Rupees Ten Crore Twelve Lacs Sixteen Thousand Four Hundred Seventy Three 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.1,00,00,000/- (Rupees One Crore Only)** on M/s. YAPP-INDIA AUTOMOTIVE SYSTEMS PRIVATE LIMITED, (IEC -408017317) in lieu of confiscation under Section 125(1) of the Customs Act, 1962.
- d) I impose a penalty equivalent to differential duty of **Rs.1,27,49,028/- (Rupees One Crore Twenty Seven Lacs Forty Nine Thousand Twenty Eight Only)** and applicable interest under Section 28AA of the Customs Act, 1962, on M/s. YAPP-INDIA AUTOMOTIVE SYSTEMS PRIVATE LIMITED, (IEC -408017317) 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.

 11/9/25

(अनिल रामटेके / ANIL RAMTEKE)

सीमा शुल्क आयुक्त / Commissioner of Customs

एनएस-V, जेएनसीएच / NS-V, JNCH

To,

1. **M/s. YAPP-INDIA AUTOMOTIVE SYSTEMS PRIVATE LIMITED,**
(IEC -408017317)
FORD NEW SUPPLIERS PARK, MELROSAPURAM,
CHITTAMANNUR VILLAGE, S.P. KOIL POST,
CHENNAI, TAMIL NADU – 603204
and
Plot No. A-3/A, Chakan Industrial Area, Phase II,
Village Khalumbre, Taluka Khed, Chakan, Off.
Chakan-Talegaon Road, District Pune, Maharashtra – 410 501

Copy to:

1. The Pr. Commissioner of Customs, Audit Commissionerate, Chennai Customs House, No. 60, Rajaji Salai, Chennai-600 001
2. The Commissioner of Customs, NS-V, Nhava Sheva.
3. AC/DC, Chief Commissioner's Office, JNCH
4. AC/DC, Centralized Revenue Recovery Cell, JNCH
5. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
6. EDI Section.
7. Office copy.