

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 – 20251078NX000055655F	Date of Order: 15.10.2025
F. No. S/10-136/2024-25/Commr/Gr.VA/CAC/JNCH	Date of Issue: 15.10.2025
SCN No.: 1387/2024-25/COMMISSIONER/Gr.VA/CAC/ JNCH	
SCN Date: 14.11.2024	
Passed by: Sh. Anil Ramteke	
Commissioner of Customs, NS-V, JNCH	
Order No: 230 /2025-26/COMMR/NS-V/CAC/JNCH	
Name of Noticee: M/s KRISHNA ISHIZAKI AUTO LIMITED. (IEC: 0595062806)	

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 -फ़ीस-

(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. 1387/2024-25/COMMISSIONER/Gr.VA/CAC/ JNCH dated 14.11.2024 issued to M/s KRISHNA ISHIZAKI AUTO LIMITED. (IEC: 0595062806)– reg.

1. BRIEF FACTS OF THE CASE

1.1 A SCN No. 1387/2024-25/COMMISSIONER/Gr.VA/CAC/ JNCH dated 14.11.2024 issued to M/s. KRISHNA ISHIZAKI AUTO LIMITED (IEC: 0595062806), having address at 58th Milestone, Delhi Jaipur Highway, Village Binola, Gurugram, Haryana-122413 (hereinafter referred to as 'the importer') had cleared their imported items viz "(i) ACT-FOLDING ASSY LH (BM F540 600) (PART NO-(KIAL) (ii) BM F531 600D)(PART NO-(IH) (iii) BM F531 500D)(PART NO-(IH) (iv) ACT-FOLDING ASSY RH (PART NO-(KIAL) BM F540 500)(PART NO-(IH) (v) TSV POWER FOLDING (PART NO-(KIAL) BMF512500) (PART NO-(IH)-BMF512500)" etc. (hereinafter referred to as "the subject goods"), vide three Bills of Entry as mentioned in Annexure-A to the subject SCN and the same were cleared under Customs Tariff Item (CTI) 8501 10 19 on payment of Basic Customs Duty (BCD) @ 7.5% and IGST @ 18%.

1.2 From the description declared in the said Bills of Entry as detailed in Annexure-A to the subject SCN, it appeared that the importer had vaguely declared the goods in such a manner that their exact nature could not be ascertained. However, as per the relevant Bills of Lading, the goods were declared as "Automotive Parts." Automotive parts are classifiable under Heading 8708 and attract BCD @ 15% + Social Welfare Surcharge (SWS) @ 10% of BCD + IGST @ 28%. Instead, the importer cleared these goods under CTI 8501 10 19 and paid BCD @ 7.5% + SWS @ 10% of BCD + IGST @ 18% only. Thus, it appeared that the importer had mis-declared the description to misclassify the goods with an intent to evade customs duty.

1.3 The goods imported are automotive parts solely and principally used in vehicles only. Section Note 1(l) of Section XVI, restricts the classification of Articles of Section XVII (Chapter 86 to 89) in Section XVI (Chapter 84 & 85). The above goods were declared by the consignor as automotive parts in relevant Bills of lading of these 3 Bills of Entry. In most of the cases, the importer themselves cleared the goods as automotive parts under CTI 87082900 where the same is leviable to BCD @15% + SWS 10% of BCD + IGST @ 28% under serial no. 170 of Schedule IV of IGST Notification No. 01/2017-(Integrated Tax (Rate) dated 28.06.2017 but they had misclassified goods in 3 Bills of Entry a mentioned in Annexure-A to the subject SCN consciously under CTI 85011019 to avoid the due payment of Customs duty.

1.4 Accordingly, it appeared that the subject goods as detailed in Annexure-A to the subject SCN were misclassified under CTI 8501 10 19 to avail the benefit of lower BCD and IGST, which resulted in short payment of duty. The goods, being solely and principally used in motor vehicles classifiable under Chapter 87, were liable to classification under CTH 8708 29 00, attracting BCD @ 15%, SWS @ 10% of BCD and IGST @ 28% under Sl. No. 170 (part of vehicles classifiable under 8702 to 8705) of Schedule IV of IGST Notification No. 01/2017-(Integrated Tax Rate) dated

28.06.2017. Thus, the importer had short-paid Basic Customs duty and IGST amounting to Rs. 62,93,451/- (Rupees Sixty-Two Lakh Ninety-Three Thousand Four Hundred Fifty-One only), which is liable to be recovered from the Importer/Noticee along with applicable interest and penalty in terms of Section 28(4) of the Customs Act, 1962.

1.5 A Consultative Letter No. 443/2024-25/(B2) dated 10.09.2024 vide F. No. CADT/CIR/ADT/TBA/944/2024-PBA-CIR-B2-O/o COMMR-CU dated 10.09.2024 was issued to the importer, advising them to pay the short-levied duty along with interest and penalty in terms of Section 28(4) of the Act. They were also informed that they could avail the benefit of lower penalty in terms of Section 28(5) of the Customs Act, 1962, by early payment of short paid BCD & IGST duty and interest along with penalty @ 15%. However, no reply was received from the importer.

1.6 It is pertinent to note that after the introduction of self-assessment under the Finance Act, 2011, the onus is on the Importer to make true and correct declaration in all aspects including Classification and calculation of duty, but in the instant case the subject goods had been misclassified and IGST amount has not been paid correctly by vaguely declared the goods in such a manner that their exact nature could not be ascertained,

1.7 The relevant provisions of law relating to import of goods in general, the Policy and Rules relating to imports, the liability of the goods to confiscation and the persons concerned are liable to penalty for illegal importation under the provisions of the Customs Act, 1962 and the other laws were mentioned in the subject SCN. The same are not reproduced in this Order in Original for the sake of brevity.

(i) Section 46 - Entry of goods on importation

(ii) Section 17 - Assessment

(iii) Section 111 - Confiscation of improperly imported goods etc.

(iv) Section 112 - Penalty for improper importation of goods etc.

(v) Section 114 – Penalty for short-levy or non-levy of duty in certain cases

(vi) Section 28 - Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded

(vii) Section 125 - Option to pay fine in lieu of confiscation

1.8 Acts of omission and commission by the importer:

1.8.1 As per section 17(1) of the Act, “An Importer entering any imported goods under section 46, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.” Thus, in this case the importer had self-assessed the Bills of Entry and appears to have misclassified the items under CTH 8501 10 19 resulting in payment of BCD @ 7.5%, SWS @ 10% and IGST @ 18% only. As the importer got monetary benefit due to said act, it is apparent that the

same was done deliberately by with an intention to avail undue benefit of wrong IGST Schedule on the said goods in the Bills of Entry during self-assessment. Therefore, differential Duty amount is recoverable from the importer under Section 28(4) of the Customs Act, 1962 along with applicable interest as per Section 28AA of the said Act.

1.8.2 It appeared that the Importer has given a declaration under section 46(4) of the Act, for the truthfulness of the content submitted at the time of filing Bill of Entry. However, the items were misclassified under different CTH to avoid paying the correct duty at the time of clearance of goods. It also appeared that the Importer had submitted a false declaration under section 46(4) of the Act. By the act of presenting goods in contravention to the provisions of section 111(m), it appeared that the Importer had rendered the subject goods liable for confiscation under section 111(m) of the Act. For the above act of deliberate omission and commission that rendered the goods liable to confiscation. Accordingly, the Importer also appeared liable to penal action under Section 112 (a) and /or 114 A of the Customs Act, 1962.

1.9 From the foregoing, it appeared that the Importer has deliberately not paid the duty by wilful mis-statement as it was his duty to declare correct applicable rate of duty in the entry made under Section 46 of the Customs Act, 1962, and thereby has attempted to take undue benefit amounting to **Rs. 62,93,451/- (Rupees Sixty Two Lakh Ninety Three Thousand Four Hundred Fifty One only)** (as detailed in Annexure-A). Therefore, the differential duty, so not paid, is liable for recovery from the Importer under Section 28 (4) of the Customs Act, 1962 by invoking extended period of limitation, along with applicable interest at the applicable rate under section 28AA of the Customs Act, 1962 and for their acts of omission/commission.

1.10 Section 111(o) of Customs Act, 1962 provides for confiscation of the goods if any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which condition is not observed unless the non-observance of the condition was sanctioned by the proper officer. Section 111(m) of Customs Act, 1962 provides for confiscation of the goods if any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54. It appears that the Importer has failed to comply with the conditions mentioned in Section 111(m) and/or 111(o) therefore, it also appears that the imported goods are liable for confiscation under Section 111(m) and/or 111(o) of the Customs Act, 1962.

1.11 Therefore, the importer M/s. KRISHNA ISHIZAKI AUTO LIMITED. (IEC: 0595062806) was called upon to show cause to the **Commissioner of Customs (Import), NS-V, Jawaharlal Nehru Custom House, Nhava Sheva, Raigad, Maharashtra – 400 707 (Adjudicating Authority)**, as to why:

- (i) Differential Duty amounting to **Rs. 62,93,451/- (Rupees Sixty Two Lakh Ninety Three Thousand Four Hundred Fifty One only)** with respect to the items covered under Bills of entry as mentioned in Annexure-A to this notice should not be demanded under Section 28 (4) of the Customs Act, 1962 along with applicable interest as per Section 28AA of the Customs Act, 1962.
- (ii) The subject goods as detailed in Annexure-A to this notice having a total assessable value of **Rs. 2,94,29,284/- (Rs. Two Crore Ninety Four Lakh Twenty Nine Two Hundred Eighty Four Only)** should not be held liable for confiscation under Section 111(m) and/or 111(o) of the Customs Act, 1962.
- (iii) Penalty on the duty should not be recovered under the provisions of section 28(5) of the Customs Act, 1962.
- (iv) Penalty should not be imposed on the importer under Section 112 (a) and /or 114 A of the Customs Act, 1962.

1.12 It was also advised that the importer may avail the benefit of reduced penalty @15% of duty an interest so specified in the notice in terms of Section 28(5) of Customs Act 1962 by payment of duty and interest within 30 days of receipt of this notice, failing which importer may be subject to higher penalty equal to the duty and interest so determined.

PERSONAL HEARING AND WRITTEN SUBMISSIONS

2. There is one Noticee in the subject SCN namely, M/s Krishna Ishizaki Auto Limited (IEC: 0595062806)

2.1 In compliance with the provisions of Section 28(8) read with Section 122A of the Customs Act, 1962, and in terms of principle of natural justice, the Noticee was granted opportunities for personal hearing (PH) in terms of Section 28(8) read with Section 122A of the Customs Act, 1962.

2.2 An opportunity for PH was granted to the Noticees on 22.09.2025. In response of the PH, Shri Abhishek Aggarwal, Consultant & Shri Binoy B. George, Sr. Engineer-Purchase (Employee) of M/s Krishna Ishizaki Auto Limited in behalf of the Noticee appeared before me through video conferencing on 22.09.2025. During the PH, they reiterated the submissions dt. 22.09.2025 that:

- (i) They reiterated that the Noticee has paid all differential duty, penalty, and interest vide Challan No. HCM 420 dated 15.01.2025.
- (ii) They requested to grant 2–3 days for submission of a detailed reply in the matter of the above-mentioned SCN and to drop the proceedings initiated vide SCN No. 1387/2024-25/Commissioner/Gr.VA/CAC/JNCH dated 14.11.2024, in view of the fact that the Noticee has already paid the differential duty, penalty and interest.

2.3 Further, the noticee submitted additional reply dated 30.09.2025 wherein they submitted a chronological summary of the events and actions taken in respect of this SCN, as given below :

Date	Event/Action Taken
2 December 2024	Receipt of SCN dated 14.11.2024 for underpayment of IGST.
18 December 2024	We submitted our letter (dated 16.12.2024) to your office, requesting a reassessment of the relevant Bill(s) of Entry through the online mechanism, and cancellation of the Out-of-Charge (OOC) order.
24 December 2024	Received Acknowledgement of submission of above letter from your office for reassessment
31 December 2024	The Additional Director (Customs) rejected our reassessment request and directed us to pay the differential IGST, along with interest and penalty, during our visit to your office (via CHA).
30 December 2024- 5 January 2025	Our operations (plant/office) remained under a scheduled holiday shutdown; limited availability of staff and digital infrastructure.
3 January 2025	We attempted to pay via ICEGATE but encountered digital signature verification failure (as the SCN reference was not correctly aligned in the system)- ICEGATE flagged an error.
15 January 2025	We submitted the differential duty via Demand Draft (DD) along with TR-6 challan, duly referencing the SCN number. The same was accepted and acknowledge by your office.
6 March 2025	We formally requested issuance of a closure letter/no demand certificate from your office in respect of the SCN.
20 September 2025	We received your communication for a virtual personal hearing dated 22.09.2025. In hearing, it had been instructed us to furnish this detailed event-wise reply.

(ii) further, they requested for formal closure of this SCN against the challan paid on 15.01.2025.

DISCUSSION AND FINDINGS

3. I have carefully gone through the entire records of the case, the subject SCN dated 14.11.2024, the relied upon documents, evidence/material on record, facts of the case, as well as written and oral submissions made by the Noticee/authorized representative on behalf of the Noticee in response to the subject SCN.

3.1 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 22.09.2025. Accordingly, the PH on 22.09.2025 was held before me. 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/representative and facts of the case.

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

- (i) Whether differential Duty amounting to **Rs. 62,93,451/- (Rupees Sixty Two Lakh Ninety Three Thousand Four Hundred Fifty One only)** with respect to the items covered under Bills of entry as mentioned in Annexure-A to the subject SCN to this notice 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.
- (ii) Whether the subject goods as detailed in Annexure-A to the subject SCN having a total assessable value of **Rs. 2,94,29,284/- (Rs. Two Crore Ninety Four Lakh Twenty Nine Two Hundred Eighty Four Only)** should be held liable for confiscation under Section 111(m) and/or 111(o) of the Customs Act, 1962.
- (iii) Whether penalty on the duty should be recovered under the provisions of section 28(5) of the Customs Act, 1962.
- (iv) Whether Penalty should be imposed on the importer under Section 112 (a) and /or 114 A of the Customs Act, 1962.

4. I now proceed to deal with each of the issues individually for analysis in light of facts, circumstances of the case, provision of the Customs Act, 1962 and nuances of various judicial pronouncements.

4.1 Whether differential Duty amounting to Rs. 62,93,451/- (Rupees Sixty Two Lakh Ninety Three Thousand Four Hundred Fifty One only) with respect to the items covered under Bills of entry as mentioned in Annexure-A to the subject SCN to this notice 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.

4.1.1 I find that the department has alleged that the Noticee had imported the impugned goods having description as (i) ACT-FOLDING ASSY LH (BM F540 600) (PART NO-(KIAL) (ii) BM F531 600D)(PART NO-(IH) (iii) BM F531 500D)(PART NO-(IH) (iv) ACT-FOLDING ASSY RH (PART NO-(KIAL) BM F540 500)(PART NO-(IH) (v) TSV POWER FOLDING (PART NO-(KIAL) BMF512500) (PART NO-(IH)-BMF512500) vide three Bills of Entry as mentioned in Annexure-A to the subject SCN and the same were cleared under Customs Tariff Item (CTI) 8501 10 19 on payment of Basic Customs Duty (BCD) @ 7.5% and IGST @ 18%.

4.1.2 I find that the importer had vaguely declared the goods in the said Bills of Entry as detailed in Annexure-A to the subject SCN in such a manner that their exact nature could not be ascertained.

4.1.3 I find that as per the relevant Bills of Lading of the Bills of Entry as detailed in Annexure-A to the subject SCN, the goods were declared as **“Automotive Parts.”** Automotive parts are classifiable under Heading 8708 and attract BCD @ 15% + Social Welfare Surcharge (SWS) @ 10% of BCD + IGST @ 28%. Instead, the importer cleared these goods under CTI 8501 10 19 and paid BCD @ 7.5% + SWS @ 10% of BCD + IGST @ 18% only. Thus, it appeared that the importer had mis-declared the description to misclassify the goods with an intent to evade customs duty.

4.1.4 The goods imported are automotive parts solely and principally used in vehicles only. Section Note 1(l) of Section XVI restricts the classification of Articles of Section XVII (Chapter 86 to 89) in Section XVI (Chapter 84 & 85). The above goods were declared by the consignor as automotive parts in relevant Bills of lading of these 3 Bills of Entry as detailed in Annexure- ‘A’ to the subject SCN. Since, e-sanchit of Bills of lading of Bills of Entry as detailed in Annexure-A to the subject SCN, it is found that the goods were declared by the consignor as **Automotive Parts**. In most of the cases, the importer themselves cleared the goods as automotive parts under CTI 87082900 where the same is leviable to BCD @15% + SWS 10% of BCD + IGST @ 28% under serial no. 170 of Schedule IV of IGST Notification No. 01/2017-(Integrated Tax (Rate) dated 28.06.2017 but they had misclassified goods in 3 Bills of Entry a mentioned in Annexure-A to the subject SCN consciously under CTI 85011019 to avoid the due payment of Customs duty.

4.1.5 In view of the above discussion and as per the records, it is evident that the goods in question, being identifiable parts and accessories of motor vehicles, are expressly excluded from classification under Section XVI by virtue of Section Note 1(l) of the said Section. This Note specifically provides that articles of Section XVII (covering Chapters 86 to 89) shall not be classified under Section XVI (covering Chapters 84 and 85). Accordingly, the classification of the impugned goods under CTI 8501 10 19 is legally untenable, and the correct classification under CTI 8708 stands fully justified as per the tariff structure and documentary evidence available on record.

4.1.6 Further, on detailed scrutiny of import documents and the description declared by the foreign supplier in the relevant Bills of Lading, it is clear that the impugned goods were supplied as “Automotive Parts” meant solely for fitment in motor vehicles. The imported items, such as “ACT-FOLDING ASSY” and “POWER FOLDING,” are mirror-folding actuator mechanisms that form an integral part of the vehicle’s side mirror assembly. As such, these items are correctly classifiable under Heading 8708, which covers “Parts and Accessories of the Motor Vehicles. Consequently, the applicable rate of Basic Customs Duty (BCD) is 15%, along with Social Welfare Surcharge (SWS) @10% on BCD, and Integrated Goods and Services Tax (IGST) @28%, as prescribed under Serial No. 170 of Schedule IV to Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017.

4.1.7 I find that the Noticee was well aware of the usage and correct classification of the imported goods, however, they did not declare the correct classification of the imported goods in the Bills of Entry and the importer had vaguely declared the goods in such a manner that their exact nature could not be ascertained. Had the department not raised the issue and initiated procedure under the

Customs Act, 1962 in this case, the duty so evaded might have gone unnoticed & unpaid. The Noticee evaded duty by mis-classification of goods and availing lower BCD & IGST. This shows willful suppression, mis-statement and malafide intention of the Noticee to evade payment of appropriate Customs duty. As the Noticee got monetary benefit due to their willful mis-classification and evasion of applicable Customs Duty on the subject goods, hence, I find that duty was correctly demanded under Section 28(4) of the Customs Act, 1962 by invoking extended period.

4.1.8 The instant case is not a mere instance of bona fide mis-declaration of the Customs Tariff Heading or availing of an exemption notification under a bona fide belief. On the contrary, it is evident that the Noticee has deliberately mis-classified the imported goods and vaguely described them in such a manner that their true nature could not be ascertained at the time of import. This deliberate act resulted in the evasion of duty by way of availing lower rates of BCD and IGST. Such willful mis-declaration and suppression of facts clearly establish the *mens rea* on the part of the Noticee. Once the element of mens rea is established, the extended period of limitation under the proviso to Section 28(4) of the Customs Act, 1962 is rightly invocable in the present case.

4.1.9 In view of the foregoing, I find that, due to deliberate suppression and willful mis-classification, duty demand against the Noticee 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 court decision in Union Quality Plastic Ltd. Versus Commissioner of C.E. & S.T., Vapi [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] reported as 2013(294) E.L.T.222(Tri.-LB), which states that:

“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.”

4.1.10 Accordingly, the differential duty resulting from re-classification of the imported goods under heading 8501 and denial of wrongly availed lower rate of BCD & IGST as per the subject Show Cause Notice, is recoverable from M/s Krishna Ishizaki Auto Limited under extended period in terms of the provisions of Section 28(4) of the Customs Act, 1962.

4.1.11 Further, as per Section 28AA of the Customs Act, 1962, the person, who is liable to pay duty in accordance with the provisions of Section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2) of Section 28AA, whether such payment is made voluntarily or after determination of the duty under that section. From the above provisions, it is evident that regarding demand of interest, Section 28AA of the Customs Act, 1962 is unambiguous and mandates that where there is a short payment of duty, the same along with interest shall be recovered from the person who is liable to pay duty. The interest under the Customs Act,

1962 is payable once demand of duty is upheld and such liability arises automatically by operation of law. In an umpteen number of judicial pronouncements, it has been held that payment of interest is a civil liability and interest liability is automatically attracted under Section 28AA of the Customs Act, 1962. Interest is always accessory to the demand of duty as held in case of Pratibha Processors Vs UOI [1996 (88) ELT 12 (SC)].

4.1.12 Accordingly, I hold that the differential Customs Duty amounting to **Rs. 62,93,451/- (Rupees Sixty Two Lakh Ninety Three Thousand Four Hundred Fifty One Only)** as detailed in Annexure-A to the subject SCN should be demanded and recovered from the Noticee under Section 28(4) of the Customs Act, 1962 along with applicable interest as per Section 28AA of the Customs Act, 1962.

4.2 Whether the subject goods as detailed in Annexure-A to the subject SCN having a total assessable value of **Rs. 2,94,29,284/- (Rs. Two Crore Ninety Four Lakh Twenty Nine Two Hundred Eighty Four Only)** should be held liable for confiscation under Section 111(m) and/or 111(o) of the Customs Act, 1962.

4.2.1 The SCN proposes confiscation of goods imported vide Bills of Entry listed in Annexure-A to the SCN, having total assessable value of **Rs. 2,94,29,284/- (Rs. Two Crore Ninety Four Lakh Twenty Nine Two Hundred Eighty Four Only)** under the provisions of Section 111(m) and/or 111(o) of the Customs Act, 1962.

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

4.2.3 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.

4.2.4 I have already held in foregoing paras that the impugned goods imported by the Noticee was incorrectly classifiable under the Customs Tariff Head 8501 10 19. The Noticee was very well aware of the actual nature of the imported goods and the applicable correct CTH and the importer had vaguely declared the goods in such a manner that their exact nature could not be ascertained.

However, they deliberately suppressed this correct Customs Tariff Head/CTI, and instead misclassified the impugned goods under CTI 8501 10 19 in the Bills of Entry filed as detailed in Annexure-A to the subject SCN. As discussed in the foregoing paras, it is evident that the Noticee deliberately suppressed the correct CTI, vaguely declared the goods and willfully mis-classified the imported goods, resulting in short levy of duty. This deliberate suppression of facts and willful misclassification 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 has rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962.

4.2.5 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.

4.2.6 As per Section 111(o), when goods are exempted from Customs duty subject to a condition and the same is not observed, the imported goods are liable to confiscation. In the instant case, the Noticee had not claimed any exemption. Hence, I find that the confiscation of the imported goods invoking Section 111(o) is not justified and sustainable.

4.2.7 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.

4.2.8 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.

4.2.9 In view of the foregoing discussion, I hold that the imported goods declared in the Bills of Entry filed by M/s Krishna Ishizaki Auto Limited having total assessable value of Rs. 2,94,29,284/- should be held liable for confiscation under Section 111(m) of the Customs Act, 1962, on the grounds of suppression and mis-declaration of the import goods.

4.2.10 As the importer, through wilful mis-statement and suppression of facts, had mis-classified the goods and claimed ineligible notification benefit while filing Bill 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)."

4.2.11 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.).

4.2.12 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.

4.2.13 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.

4.2.14 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.

4.3 Whether penalty on the duty should be recovered under the provisions of section 28(5) of the Customs Act, 1962.

4.3.1 I have carefully gone through the facts of the case, the relied upon documents, the evidence/material on record, as well as the written and oral submissions made by the Noticee/their authorized representative in response to the subject SCN, and the provisions of the Customs Act, 1962. The short-paid/differential duty has been admitted and the Noticee has not contested the same.

4.3.2 Section 28(5) of the Customs Act, 1962 provides that Where any duty has not been levied or not paid or has been short-levied or short paid or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by the importer or the exporter or the agent or the employee

of the importer or the exporter, to whom a notice has been served under sub- section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to fifteen per cent (15%) of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.

4.3.3 I find that the Noticee has paid a total amount of Rs. 1,21,55,555/- vide HCM-420 dated 15.01.2025 (Rs. 97,27,639/-) and HCM-51 dated 15.01.2025 (Rs. 24,27,916/-) after issuance of SCN No. 1387/2024-25/COMMISSIONER/Gr.VA/CAC/JNCH dated 14.11.2024. The said payment has been duly verified by the CASH Section vide F.No.S/10-Gen-03/2017-18/CASH/JNCH Pt.III dated 09.10.2025.

4.3.4 Further, I find that the SCN was issued on 14.11.2024 and as per their reply dated 30.09.2025 was received by the Noticee on 02.12.2024. The statutory provision under Section 28(5) of the Customs Act, 1962 mandates that the benefit of reduced penalty at 15% of the duty is available only if the duty, along with applicable interest and penalty, is discharged within thirty days from the date of receipt of the notice. In the present case, the Noticee has admittedly made payment on 15.01.2025, which falls well beyond the permissible period of thirty days from the date of receipt of the SCN. Accordingly, the condition precedent for availing the benefit under Section 28(5) is not satisfied.

4.3.5 Therefore, I hold that the Noticee is not entitled to the benefit of reduced penalty under Section 28(5) of the Customs Act, 1962, and penalty equal to the duty demanded is liable to be imposed in terms of Section 114A of the Customs Act, 1962.

4.3.6 I also take note of the fact that the importer has an intent to make the payment of duty alongwith interest and penalty of 15%, as communicated by the importer vide letter dated 16.12.2024. However, the payment could only be made only on 15.01.2025. Since, they have discharged the duty liability, alongwith interest and penalty amount of Rs. 1,21,55,555/-, it is prudent to discount this amount from the penalty imposed under Section 114A of the Customs Act, 1962 and accordingly appropriated.

4.3.7 As discussed in paras above, I find that the paid amount i.e Rs. 1,21,55,555/- by the Noticee in respect of duty, penalty, IGST and interest should be appropriated against the duty, penalty, IGST & interest so confirmed.

4.4 Whether Penalty should be imposed on the importer under Section 112 (a) and /or 114A of the Customs Act, 1962.

4.4.1 The subject SCN proposes penal action on the Noticee M/s Krishna Ishizaki Auto Limited under Section 112 (a) and or/114A of the Customs Act, 1962. Evidently, the Noticee had mis-classified and vaguely declared the imported goods in such a manner that their exact nature could not be ascertained with a malafide intent, despite being fully aware of its actual nature and the correct classification. I have already elaborated in the foregoing paras that the Noticee has willfully suppressed the facts and deliberately mis-classified the goods and availed lower rate of BCD &

IGST, with an intent to evade the applicable higher Customs duty as well IGST. I find that in the self-assessment regime, it is the bounden duty of the importer to correctly assess the duty on the imported goods. In the instant case, the willful mis-classification and suppression of correct CTI and vaguely declared the imported goods by the Noticee tantamount to suppression of material facts and willful mis-statement. As held by me above, this willful and deliberate suppression of facts and mis-classification of the goods amply points towards the “mens rea” of the Noticee to evade the payment of legitimate duty. The willful and deliberate acts of the Noticee to evade payment of legitimate duty, clearly brings out their ‘mens rea’ in this case. Once the ‘mens rea’ is established, the extended period of limitation, as well as confiscation and penal provision will automatically get attracted.

4.4.2 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 v. 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.

4.4.3 As I have held above, 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 M/s Krishna Ishizaki Auto Limited in the impugned SCN. Accordingly, the Noticee is liable for a penalty under Section 114A of the Customs Act, 1962 for wilful mis-statement and suppression of facts, with an intent to evade duty.

4.4.4 Further, as 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(a) ibid. However, I find that the penalty under Section 114A and Section 112 of the Customs Act, 1962 are 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(a) ibid.

4.4.5 Accordingly, I agree with the proposal made in the subject SCN and hold that penalty should be imposed on M/s Krishna Ishizaki Auto Limited in terms of Section 112(a)/ and or 114A of the Customs Act, 1962.

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 reject the classification of the goods as detailed in Annexure-A of the subject SCN, imported by M/s Krishna Ishizaki Auto Limited under Tariff Item 8501 10 19 and re-determined under Tariff Head 8708 of the Customs Tariff Act, 1975.
- b) I confirm the differential Customs duty amounting to **Rs. 62,93,451/- (Rupees Sixty Two Lakh Ninety Three Thousand Four Hundred Fifty One only)** as detailed in Annexure-A to the subject SCN, and the same be recovered from M/s Krishna Ishizaki Auto Limited under Section 28(4) of the Customs Act, 1962, **along with applicable interest under Section 28AA of the Customs Act, 1962 ibid.**
- c) I confiscate the import goods declared in the Bills of Entry as detailed in Annexure-A to the subject SCN filed by M/s Krishna Ishizaki Auto Limited having total Assessable Value of **Rs. 2,94,29,284/- (Rs. Two Crore Ninety Four Lakh Twenty Nine Two Hundred Eighty Four Only)** under Section 111(m) of the Customs Act, 1962.

Further, I impose a redemption fine of **Rs. 25,00,000 /- (Rupees Twenty Five Lakh Only)** on M/s Krishna Ishizaki Auto Limited in lieu of confiscation under Section 125(1) of the Customs Act, 1962.

- d) I impose a penalty equivalent to differential duty of **Rs. 62,93,451/- (Rupees Sixty Two Lakh Ninety Three Thousand Four Hundred Fifty One only)** **along with applicable interest** under Section 28AA of the Customs Act, 1962, on M/s Krishna Ishizaki Auto Limited 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**. Further, the benefit of reduced penalty of 25% shall be available subject to the condition that the amount of penalty is also paid within the period of thirty days of communication of this order.

As penalty is imposed under Section 114A of the Customs Act, 1962, I refrain to impose penalty under Section 112(a) in terms of the fifth proviso to Section 114A ibid.

- e) I order to appropriate the aforesaid differential / short paid duty/penalty/redemption fine and interest liability recoverable from the Noticee, from the total amount of Rs. 1,21,55,555/- vide HCM-420 dated 15.01.2025 (Rs. 97,27,639/-) and HCM-51 dated 15.01.2025 (Rs. 24,27,916/-) paid by the Noticee after due verification of the Challans.

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.

Anil Ramteke
- 15/11/25

(अनिल रामटेके / ANIL RAMTEKE)

सीमा शुल्क आयुक्त / Commissioner of Customs

एनएस-V, जेएनसीएच / NS-V, JNCH

To,

M/s. KRISHNA ISHIZAKI AUTO LIMITED (0595062806)

58th Milestone, Delhi Jaipur Highway

Village Binola, Gurugram, Haryana- 122413

Copy to:

1. The Addl. Commissioner of Customs, Group VA, JNCH
2. AC/DC, Audit Circle B-2, JNCH
3. AC/DC, Chief Commissioner's Office, JNCH
4. The 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