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 – 20250678NX000000D317 **Date of Order: 18.06.2025**

F. No. S/10-71/2023-24/COMMR/CAC/NS-V/JNCH **Date of Issue: 18.06.2025**

SCN No.: 648/2023-24/COMMR/NS-V/CAC/JNCH

SCN Date: 20.06.2023

Passed by: Sh. Anil Ramteke
Commissioner of Customs, NS-V, JNCH

Order No: 94/2025-26/COMMR/NS-V/CAC/JNCH

Name of Noticee: M/s. General Motors India Private Limited

ORDER-IN-ORIGINAL
मूल - आदेश

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

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

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

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

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

3. अपील दाखिल करने संबंधी मुख्य मुद्दे:-

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

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

Time Limit - Within 3 months from the date of communication of this order.

समय सीमा - इस आदेश की सूचना की तारीख से 3 महीने के भीतर

Fee -फीस-

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

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

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

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

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

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

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

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

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

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

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

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

Subject: Adjudication of Show Cause Notice No. 648/2023-24/Commr/NS-V/CAC/JNCH dated 20.06.2023 in case of M/s. General Motors India Private Limited (0894004921) - reg.

BRIEF FACTS OF THE CASE

1.1 On the basis of an advisory received from ADG/DGARM-NCTC, Mumbai, issued vide Analytics Report/42/2021-22 dated 01.10.2021 vide F. No. RMCC//RRA/12/2021-DD/AD-V-O/o Pr. ADG-RMCC-Mumbai on the issue of less payment of IGST by way of wrong claim of a lower IGST rate @18% on import of goods covered under CTH 8708 under Sr. No. 402 and 452E to 452O of schedule-III of IGST levy notification no. 01/2017-Integrated Tax (Rate) dated 28.06.2017, data pertaining to imports made by various importers through JNCH (INNSAI) was analysed in detail. It was observed that M/s. General Motors India Pvt. Ltd, (IEC- 0894004921) situated at Off. No. 4 109B 4-110 4-103, 4th Floor, Wework Blue One Square, 246 Phase IV, Udyog Vihar, Gurugram, Haryana- 122 016 have imported goods falling under the aforesaid CTH as detailed in Annexure- 'A' through Bills of Entry from June 2017 to March 2020.

1.2 Goods falling under heading 8708 attract different IGST rates, as follows, under Schedule-III and schedule-IV of IGST levy notification no. 01/2017- Integrated Tax (Rate) dated 28.06.2017-

Schedule- III

S. No.	Chapter/Heading/Subheading/ Tariff item	Description of goods	IGST Rate
402	8708	Following Parts of Tractor namely: Rear Tractor wheel rim, Tractor centre housing, Tractor housing transmission, Tractor support front axle	18%

Schedule- IV

S. No.	Chapter/ Heading/ Subheading/ Tariff item	Description of goods	IGST Rate
170	8708	Parts and accessories of the motor vehicles of heading 8701 to 8705 [other than specified parts of tractors]	28%

1.3 Subsequently vide Notification no. 19/2017- Integrated Tax (Rate) dated 18.08.2017, the following serial nos. and entries have been inserted w.r.t CTH 8708 in Schedule-III in the said Notification no. 01/2017-Integrated Tax (Rate) dated 28.06.2017:

S. No.	Chapter/Heading/ Subheading /Tariff item	Description of goods	IGST Rate
452E	87081010	Bumpers and parts thereof for tractors	18%
452F	87083000	Brakes assembly and its parts thereof for tractors	18%
452G	87084000	Gear boxes and parts thereof for tractors	18%
452H	87085000	Transaxles and its parts thereof for tractors	18%
452I	87087000	Road wheels and parts and accessories thereof for tractors	18%
452J	87089100	(i) Radiator assembly for tractors and parts thereof (ii) Cooling system for tractor engine and parts	18%
452K	87089200	Silencer assembly for tractors and parts thereof	18%

452L	87089300	Clutch assembly and its parts thereof for tractors	18%
452M	87089400	Steering wheels and its parts thereof for tractors	18%
452N	87089900	Hydraulic and its parts thereof for tractors	18%
452O	87089900	Fender, hood, wrapper, grill, side panel, extension plates, fuel tank and parts thereof for tractors	18%

1.4 Subsequent to the above notifications, it is amply clear that sr. no. 170 of schedule- IV (IV-170) levying IGST rate of 28%, excludes the description of goods 'specified parts of tractors. After going through the description of the BE items under deliberation, it is observed that the goods do not appear to be specified parts of tractors as mentioned against 402 and 452E to 452O of Notification no. 01/2017- Integrated tax (Rate) dated 28.06.2017 and notification no. 19/2017-Integrated tax (Rate) dated 18.08.2017 respectively and appears to attract IGST @28% against sr. no. 170 of Notification no. 01/2017- Integrated tax (Rate) dated 28.06.2017.

1.5 On the basis of import data retrieved from ICES, Bills of Entry were analysed and scrutinised. It was observed that the goods under import were having description 'for motor vehicle', by which it cannot be inferred that the same were meant for/ are Tractor Parts. From the description of goods as declared in the respective Bills of Entry in the ICES system, it is not clear about the end use of the articles imported, as pointed out by NCTC in their advisory as to whether they are for manufacturing of tractor parts or otherwise, Therefore, the imported goods do not seem to justify clearance claiming a lower IGST rate @18% under sr. nos. 402 and 452B to 4520 of Notification no. 01 (2017- Integrated tax (Rate) dated 28.06.2017 and Notification no. 19/2017-Integrated tax (Rate) dated 18.08.2017 respectively instead of applicable IGST rate @28% as per sr. no, 170 of the Notification no. 01/2017- Integrated tax (Rate) dated 28.06.2017.

1.6 The total assessable value of the B/Es items so imported was Rs. 8,79,54,660.88/- and it appears that a short levy of IGST @10% (28% - 18%) amounting to Rs. 1,00,42,410.03/- (as detailed in Annexure- 'A' to the SCN) is recoverable from the importer along with. applicable interest and penalty.

1.7 In view of the above, a Consultative letter No. 470 dated 07.06.2023 vide F. No. S/2-Audit-Gen-347/2021-22/JNCH-C3 was issued to importer to clarify the issue raised by the department and if agreed to the observations/ findings of the department, the importer was advised to pay the differential duty along with applicable interest and penalty. A reminder was also issued vide letter dated 21.09.2022. However, there was no response from the importer.

1.8 Show Cause Notice relied upon various legal provisions viz. Section 17, 28(4), 46, 111(o), 112 and 114A of the Customs Act, 1962.

1.9 Whereas, consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011. 'Self-assessment' has been introduced in customs clearance. Section 17 of the Customs Act, effective from 08.04.2011 [CBEC's (now CBIC) Circular No. 17/2011 dated 08.04.2011], provides for self-assessment of duty on imported goods by the importer himself by filing a bill of entry, in the electronic form. Section 46 of the Customs Act, 1962 makes it mandatory for the importer to make entry for the imported goods by presenting a bill of entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Declaration) Regulation, 2011 (issued under Section 157 read with Section 46 of the Customs Act, 1962), the bill of entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) either through ICEGATE or by way of data entry through the service centre, a bill of entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under self-assessment, it is the importer who has to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the bill of entry. Thus, with the introduction of self-assessment by amendments to Section 17, since 08.04.2011, it is the added and enhanced

responsibility of the importer more specifically the RMS facilitated Bill of Entry, to declare the correct description, value, notification, etc., and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

1.10 Therefore, in view of the above facts, it appears that the importer has deliberately not paid the duty by wilful misstatement 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. 1,00,42,410.03/- (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 Ac.t, 1962 and for their acts of omission/ commission.

1.11 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. It appears that. the importer has failed to comply with the conditions mentioned above; therefore, it also appears that the imported goods are liable to confiscation under Section 111 (o) of the Customs Act, 1962.

1.12 It further appears that the Importer for their acts of omission and commissions mentioned above have rendered themselves liable for penal action under section 112(a) and/ or 114A of the Customs Act, 1962.

2. In view of the above, in terms of Section 28(4) of the Customs Act, 1962, importer M/s. General Motors India Pvt. Ltd, (IEC- 0894004921) was called upon to show cause (Show Cause Notice No. 648/2023-24/Commr/NS-V/CAC/JNCH dated 20.06.2023) to the Commissioner of Customs, NS-V, JNCH, Nhava Sheva, Distt. Raigad, Maharashtra- 400707, within 30 days of the receipt of the SCN, as to why:

i) The IGST rate claimed under Schedule- Ill Sr. No. 402 and 452E to 452o of IGST levy Notification No, 01/2017-lntegrated Tax (Rate) dated 28.06.2017 for the subject goods should not be rejected and IGST rate under Schedule- IV Sr. No. 170 of the said notification should not be levied.

ii) The differential/ short paid duty amounting to Rs. 1,00,42,410/- (Rs. One Crore Forty-Two Thousand Four Hundred and Ten Only) for the subject goods imported vide Bills of Entry as detailed in Annexure - 'A' should not be demanded under Section 28(4) of the Custom Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.

iii) The said subject goods imported vide Bills of Entry as detailed in Annexure- 'A' having assessable value of Rs. 8,79,54,661/- (Rs. Eight Crore Seventy-Nine Lakh Fifty-Four Thousand Six Hundred and Sixty-One Only) should not be held liable to confiscation under Section 111 (o) of the Customs Act, 1962.

iv) Penalty should not be imposed on them under Section 112(a) and/ or 114A of the Customs Act, 1962 for their acts of omission and commission, in rendering the goods liable to confiscation.

WRITTEN REPLY OF THE NOTICEE IN RESPONSE TO THE SHOW CAUSE NOTICE:

3. Noticee submitted written submissions dated 28.05.2025. In their written submission, it is inter-alia submitted that:

3.2 Noticee submitted that they were engaged in the manufacture of passenger motor vehicles classifiable under Chapter 87 of the 1st Schedule of the Customs Tariff Act, 1975, where the last

production of the vehicle in India was undertaken in December 2020. They were regularly importing parts and components required for manufacture of Motor vehicles from JNCH customs and were one of the highest duty payers at JNCH customs. Since 2017, the Noticee had discontinued its domestic vehicle sale business and were 100% manufacture and exporter of passenger motor vehicles from India to Central and Latin American markets.

3.3 Noticee submitted that the SCN is factually as well as legally incorrect and they do not agree with the allegations in the SCN and counters such allegation contained therein. The SCN proceeds on incorrect footing and has not taken into consideration the pending litigation on the same set of bills of entries. Hence, it is bad in law and is liable to be dropped in toto.

3.4 Noticee submitted that the demand of IGST differential duty is duplicate/ identical when compared with previously issued SCN No 456/2020-21/SIIB(I) JNCH dated 29.11.2020 by the Commissioner of Customs, NS-V, JNCH customs. The said SCN included 745 Bills of Entry. The said 745 Bills of Entry includes entire 16 Bills of Entry which are mentioned in the present SCN. Noticee submitted that the noticee has filed reply to SCN on 30 July 2021, wherein the noticee had also offered to pay the differential demand arising on account of incorrect exemption being claimed subject to amendment of the underlying Bills of Entry. Further, the Commissioner of Customs NS-V, JNCH customs issued OIO No. 281/2023-24/CC/NS-IV/CAC/ JNCH dated March 2024, confirming the demand raised. Noticee submitted that they had challenged the captioned OIO issued in March 2024 by way of a writ petition dated June 28, 2024 before the Hon'ble Bombay High Court inter alia seeking appropriate relief.

3.5 Noticee submitted that basis the well-established and settled legal principle that a single subject matter cannot be subjected to adjudication by the revenue authorities more than once. Such repeated adjudication leads to unnecessary harassment of taxpayers and undermines the principles of justice. Furthermore, the act of multiple adjudications is legally impermissible and untenable, as it violates the fundamental principles of natural justice. This principle is enshrined to ensure that taxpayers are protected from arbitrary or capricious actions and are guaranteed a fair and impartial decision-making process. It is a well-settled rule of law that no person shall be subjected to the same issue or matter more than once by the same authority without a valid and justifiable reason, as such actions would constitute an abuse of process and an interference with the proper administration of justice. Noticee relied on the below mentioned judicial precedents which confirm that once a matter has been adjudicated, it should not be reopened or re-examined by the same authority without lawful cause:

- HARIHAR COLLECTIONS V. UNION OF INDIA [2020] 14 GSTR-OL 294 (BOM)
- VIJAY ENTERPRISES & ANR. VERSUS THE PRINCIPAL COMMISSIONER OF CUSTOMS & ANR., ADDITIONAL DIRECTOR GENERAL DIRECTORATE OF REVENUE INTELLIGENCE AND ORS. - 2025 (1) TMI 1313 - DELHI HIGH COURT
- NEERAJ SHARMA VERSUS COMMISSIONER OF CUSTOMS, KANDLA - 2023 (8) TMI 204 - CESTAT AHMEDABAD

3.6 Noticee stated that such dual issuance of SCN for the same Bills of Entry are contrary to the intention and scheme of the customs regime especially given the fact that the Bills of Entry under consideration are already pending in dispute before the Hon'ble Bombay High Court. Adjudicating such SCN would hamper the principle comity of courts, which implies that a court or an authority will not pass an order that would conflict with an order passed by another competent court or authority of law. This principle also derives its basis from Article 20(2) of the Constitution of India, 1950, which accords protection against 'double jeopardy' whereby a person cannot be prosecuted or punished twice for the same offence. Similarly, it reflects the Civil Law doctrine of 'res judicata', which prevents a party from litigating the same issue or claim before different authorities, having concurrent jurisdiction, after it has been decided by one authority. Accordingly, the differential IGST demand made in the present SCN should be dropped in toto.

3.7 The Noticee submitted that there was an inadvertent error in applying the incorrect IGST rate under serial number 402 of the Notification has occurred due to an inadvertent bonafide error at the time of filing the Bills of Entry. Incorrect serial number of IGST notification was declared due to an error in judgement and interpretation, i.e., inadvertently applying Sr. No. 402 and 452E

to 452O of the Notification. This has resulted in a short payment of IGST amounting to Rs. 1,00,42,410/-. Noticee submitted that during the analysis of Annexure A to the SCN, the Noticee observed a computation error in differential duty. As regard to certain Bills of Entry the customs duty and IGST was paid using MEIS scrip, which is completely overlooked while computation of the differential duty in the Annexure A to SCN.

3.8 Interest cannot be collected of differential IGST: Noticee submitted that there are no substantive provisions of law available under Customs tariff Act ('CTA') to levy and collect interest for the differential IGST demanded in this case. The noticee argued that interest on the differential IGST cannot be imposed, as the CTA lacks specific provisions for levying such interest. They further contended that there are no referential provisions linking the Customs Act's interest provisions to the CTA. Although Section 3(12) of the CTA adopts provisions of the Customs Act for the purpose of duties, it does not extend to interest. The noticee contends that no provision exists in the Customs Tariff Act to either adopt interest provisions from the Customs Act or independently authorize the levy of interest. While the Act includes provisions on levy, drawbacks, refunds, and exemptions, the borrowing clause—limited by the phrase "so far as may be"—applies only to duties and taxes, not to interest.

3.8.1 The noticee contended that while specific amendments were made via the Finance Act, 2009 to retrospectively apply interest and penalty provisions of the Customs Act to duties under Sections 9 and 9A of the CTA, no such amendments were made for additional duties under Section 3. This indicated a legislative intent to exclude penal consequences for breaches under Section 3. In this context, the Hon'ble Supreme court in the case of Orient Fabrics (2003 (158) E.L.T. 545 (SC) has held that in the absence of specific provision enabling levy of penalty in the respective legislation, penalty cannot be levied for the period when such provisions are not available in the law, despite the power to levy such penalty is borrowed from related legislation in a later period. Following the decision of the Orient Fabrics case, the Hon'ble Bombay High Court has quashed imposition of interest and penalty on differential liability of CVD, SAD and Customs surcharge in the case of Mahindra and Mahindra [TS-446-HC2022(BOM)-CUST]. It was held that the liability to pay interest cannot be assumed and there should be a specific provision under the law levying such interest and penalty. The said judgement by the Hon'ble Bombay High Court has been affirmed by the Hon'ble Supreme Court recently [2023-VIL-72-SC-CU] by way of dismissal of the special leave petition filed by the Department on the basis that there was no merit in the special leave petition.

3.8.2 Noticee submitted that there is ample jurisprudence on this issue wherein Courts have enunciated that no liability can be fastened without a substantive provision and provision in a statute for charging interest and imposition of the same must be construed as substantive law and not adjectival law. Noticee further rely on following case law:

- Orient Fabrics (2003 (158) E.L.T. 545 (SC))
- Indo Swiss Embroidery Industries (2017 (356) E.L.T. 226 (Bom.))

3.8.3 Noticee submitted that interest cannot be imposed and cannot be collected in the instant case in the absence of substantive provisions. Accordingly, the existing provisions lack authority to collect interest and penalty on additional duties levied under Section 3 of Customs Tariff Act. Noticee submitted that, in the instant case, interest and penalty with respect to differential IGST shall not be payable or eligible to paid.

3.8.4 The noticee asserted that all material particulars in the Bills of Entry—including description, classification, and value—were correctly disclosed in good faith. An inadvertent clerical error occurred in quoting the exemption notification's serial number, stemming from a bona fide misunderstanding rather than any intent to evade duty. Since the details were transparently declared and there was no mens rea, the error should not attract penalty. The SCN was based solely on Bills of Entry information provided by the noticee. Citing M/s Ceramic Tableware Pvt. Ltd. v. Commissioner of Customs, the noticee contended that such clerical mistakes do not warrant fines or penalties.

3.9 IGST payable on imports is revenue neutral and therefore there is no loss to the revenue authorities: The noticee contends that the IGST demand raised is **revenue neutral**, as

the differential IGST would be available as input tax credit and eligible for refund due to the noticee's export-oriented operations. Since there is no actual loss to the revenue, the imposition of interest and penalties is unjustified, in line with established legal principles.

3.9.1 The noticee submitted that the position advanced is well-supported by various judicial pronouncements of the Hon'ble Supreme Court and High Courts. In *CCE & Customs, Vadodara v. Narmada Chematur Pharmaceuticals Ltd.* [2005 (179) ELT 276 (SC)], the Supreme Court held that where the tax paid and the credit availed are identical, no liability arises, as such a scenario is revenue-neutral. Similarly, in *Nirlon Ltd. v. CCE, Mumbai* [2005 (179) ELT 276 (SC)], the Hon'ble Apex Court ruled that when an assessee is entitled to full input credit, the transaction remains revenue-neutral, and thus, no intention to evade or suppress can be inferred. Further, the Hon'ble Gujarat High Court in *Vadilal Gases Ltd. v. Union of India* [2015 (10) TMI 1922 (Guj.)] held that when the recipient is eligible to avail of CENVAT credit on taxes paid, the transaction constitutes a revenue-neutral situation. In addition to the above, noticee relied on following case laws:

- Commissioner of C. Ex., Chennai-IV v. Tenneco RC India Private Limited [2015 (323) E.L.T. 299 (Mad.)]
- Jay Yuhshin Ltd. v. Commissioner of Central Excise, New Delhi [2000 (119) E.L.T. 718 (Tribunal - LB)]
- British Airways v. Commissioner of Central Excise (Adjn), Delhi [2014 (36) S.T.R. 598 (Tri. - Del.)]

3.9.2 Noticee submitted that as from tax liability point of view, there is no impact to the exchequer and any changes in re-classification of imported goods to chapter 8708 is merely procedural. Moreover, the entire differential duty is available as tax credit under the GST laws and hence, there is no loss to exchequer and creates a case of revenue neutrality. In such scenario, no interest is payable by the Noticee considering the concept of revenue neutrality. Noticee submitted that they rely on the decision in the case of Jai Balaji Industries Limited v. Commissioner of Central Excise, Bolpur [2023 (6) TMI 1102 - CESTAT KOLKATA] – where demand of interest on differential duty has been set aside by observing that where the differential duty paid by the assessee is available as CENVAT credit to the Assessee's sister concern then it is a revenue neutral situation. Similar decision was held by the Hon'ble Gujarat High Court in CCE & C. v. Indeo Abs Ltd. [2010 (254) ELT 628 (Guj.)]

3.10 The Noticee should be allowed to amend the Bills of Entry for payment of differential IGST: Noticee submitted that being a law-abiding taxpayer and bonafide importer, they are duly eligible for the input tax credit under GST laws for the IGST paid on imports which are used in the business operations of the Noticee. Noticee submitted they are willing to pay the differential tax amount upon amendment of the Bills of Entry, since the Noticee would be eligible to avail such ITC only if the same is reflected in the Bills of Entry.

3.10.1 Noticee submitted that they are duly eligible for amendment under Section 149/154 of the Customs Act. From the combined reading of the Section 149 and 154 of the Customs Act, it emerges that there is a mechanism prescribed for the importer to get the Bills of Entry amended for clerical and arithmetical errors. The only condition in this regard is that such amendment must be supported by documents available at the time of clearance for home consumption.

3.10.2 Noticee submitted that the present case is also squarely covered in the case of Mohit Overseas v. Commr. Of Customs, [2016 (335) E.L.T. 18 (Del.)]. It was held that the relevant invoices, the insurance contract and the shipping contract were all available at the time of filing the Bill of Entry and therefore, reliance on the same can be made for the purposes of amendment of the Bills of Entry. Similarly, in the present case, all the relevant documents were available at the time of filing of Bills of Entry and the Noticee is not adducing any additional document to apply for the amendment Bills of Entry BOE. In the present case, they mistakenly applied the wrong serial number of the IGST notification and the same is clearly a clerical error committed by the Noticee. The Noticee is not proposing to amend the classification of the products, rather, the Noticee only intends to input the correct rate of IGST, which was presented mistakenly. Therefore, the present case is squarely covered by the amendment sections under the Customs Act. In this

regard, the Noticee has already made the request for amendment of Bills of Entry vide previous proceedings and submission made against the SCN dated 29 September 2020, however, even after the expiry of a period of more than ~ 4.5 years, the department has not responded to the requests made by the Noticee. Therefore, they are willing to pay the differential duty along with interest provided they are allowed to do the same by re-assessment of subject Bills of Entry in system after cancellation of out of charge. Noticee requested to allow the amendment of the Bills of Entry post which the differential duty amount as calculated in the sheet above would be duly paid along with interest.

3.11 Penalty under Section 114A, and Section 112(a) of the Customs Act is not imposable upon the Noticee for any misclassification: Noticee submitted that the penal provisions under Section 114A of the Customs Act, there must be intention to evade payment of duty by the Assessee as the words 'collusion', 'wilful mis-statement' have been used in the said provisions. However, in the instant case, as stated above, there is no evidence to prove or substantiate that the Noticee had any intent to evade duties.

3.11.1 Noticee submitted that the custom authorities have failed to establish presence of wilful misstatement, suppression of facts or contravention on part of the Noticee. It was only on account of a clerical mistake in claiming the wrong exemption by the Noticee, there was a short payment of IGST. Thus, by no stretch of imagination can it be said that the Noticee was indulged in any wilful misstatement or suppression of fact with an intent to evade payment of duty. Noticee submitted that 'bonafide' essentially denotes 'acting in good faith' and it would be relevant to note that the expression "good faith" has not been defined under Customs Act. In this regard, reference can be made to Section 3(22) of the General Clauses Act, 1897, which stipulates that "a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not". Relying on case law- N. Subramania Aiyar Vs. Official Receiver [AIR 1951 SC 1]; Madhav Rao Vs. Ram Krishan [AIR 1958 SC 767]; Harbhajan Singh Vs. State of Punjab [AIR 1966 SC 97], noticee submitted that a careless person is not a dishonest person and no amount of argument will prove that he is one.

3.11.2 Noticee further submitted that the fact that the Noticee was entitled to claim the input tax credit of the differential IGST paid which would have been anyway available as a refund, the question of there being any mala fide intention on the part of the Noticee does not arise. The entire exercise of duty demand is revenue neutral and thus penalty cannot be invoked in the absence of there being a mala fide intention. Noticee submitted that in the event there has been any infraction, the same is completely bona fide and without any intent to evade duty. It is settled principle of law by the judgments of the Hon'ble Supreme Court in Hindustan Steel Limited vs. State of Orissa [1978 (2) ELT 159 (SC)] and Akbar Badruddin Jiwani vs CC [1990 (47) ELT 161 (SC)], that any technical or venial breach of the law without the intention to evade duty does not invite the levy of penalty. Noticee submitted that they inadvertently claimed a wrong exemption entry and there was no willful misstatement, suppression or contravention has been committed by them. Hence, imposition of penalty under Section 114A without any mala fide intent on the part of the Noticee cannot sustain. Noticee relied on the following cases:

- Sri Chidzhavadzhe, Ancheril Agencies vs. CC [2008 (222) ELT 306 (Tri. – Bang)]
- Essar Oil Limited vs. CC (Prev.)[MANU/CESTAT Mumbai/1074/2005]

3.11.3 Noticee submitted that the penal provisions can be invoked only in case where the Assessee has deliberately attempted to evade payment of duty on account of account of any collusion, willful misstatement or suppression of facts. In the instant case, there is no iota of evidence to suggest that the Noticee had will fully suppressed facts with an intent to evade duties, accordingly, the penalty is not imposable in the absence of any intention to evade duties. Noticee submitted that applying the rationale held in above said decisions, there is no proven mala fide intention to evade taxes in the instant case and, hence, levy of penalty is unwarranted. Therefore, the Impugned Notice needs to be set aside.

3.11.4 Noticee submitted that penalty cannot be imposed under Section 112(a) of the Customs Act as penalty under Section 112 of the Customs Act is linked to confiscation of goods under Section 111 of the Customs Act. Thus, when the goods are not liable for confiscation under Section

111(o) of the Customs, the Impugned Notice cannot proceed to demand penalty from the Noticee. A clerical mistake of inadvertently claiming a wrong exemption under a revenue neutral situation does not attract any penalty. Noticee submitted that applying the rationale held in above said decisions, there is no proven mala fide intention to evade taxes in the instant case, hence levy of penalty is unwarranted, therefore the Impugned Notice levying penalty on the Noticee is liable to be set aside. Noticee further submitted that since the demand to the extent of IGST is revenue neutral, the Impugned SCN levying penalty to the said extent is liable to be set aside.

3.12 Impugned Goods are not liable for confiscation under Section 111 (o) of the Customs Act: Noticee submitted that the impugned goods are not liable for confiscation under Section 111(o) of the Customs Act. Noticee further submitted that it is not reasoned in the SCN as to how the Noticee has indulged in wilful mis-declaration rendering the Impugned goods liable to confiscation. Given that there has been a clerical error on the part of Noticee and there is no failure to comply with any condition for claiming exemption, the said Section 111(o) of the Customs Act is not applicable in the first place and the confiscation sought to be undertaken is liable to be set aside.

3.13 Noticee further requested to drop the proceedings initiated vide the present SCN or pass an order with no demand and drop the interest and penalty demanded in respect of the goods where the Noticee has already accepted the IGST duty demand and as it is duplicate / identical in nature.

4. RECORD OF PERSONAL HEARINGS

Following the principal 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. Shri Ketan Bindra on behalf of noticee attended the personal hearing on 30.05.2025 and argued the case and reiterated the written submission dated 28.05.2025. He further stated that case is regarding the claim of wrong IGST schedule/Sr. No. in respect of the imported goods and they agree with the IGST schedule/Sr. No. as warranted in the SCN. He further added that the bills of entry included in the instant SCN, were also included in SCN No 456/2020-21/SIIB(I) JNCH dated 29.09.2020 which has already been adjudicated vide OIO No 281/2023-24/CC/NS-IV/CAC/ JNCH dated March 2024 and demand has been confirmed. He further requested to drop the proceedings in the instant SCN as the demand has already been confirmed vide above said OIO.

DISCUSSION AND FINDINGS

5. The fact of the matter is that a Show Cause Notice (SCN) No. 648/2023-24/Commr/NS-V/CAC/JNCH dated 20.06.2023 was issued to M/s. General Motors India Pvt. Ltd, (IEC-0894004921) alleging that the goods imported by them have been cleared under wrong claim of a lower IGST rate @18% on import of goods covered under CTH 8708 under Sr. No. 402 and 452E to 452O of schedule-III of IGST levy notification no. 01/2017-Integrated Tax (Rate) dated 28.06.2017. The SCN was served for said non-payment of applicable differential duty of Rs. 1,00,42,410/- (Rs. One Crore Forty-Two Thousand Four Hundred and Ten Only) as detailed in Annexure-A to the SCN invoking extended period under Section 28 of the Customs Act, 1962 along with interest in terms of section 28AA of the Customs Act, 1962 and consequential penalties under section 112(a) and/or 114A of the Customs Act,1962. Show cause Notice also proposed liability to confiscation of imported goods having assessable value of Rs. 8,79,54,661/- (Rs. Eight Crore Seventy-Nine Lakh Fifty-Four Thousand Six Hundred and Sixty-One Only) under Section 111(o) of the Customs Act, 1962.

5.1 I find that the subject Show Cause Notice was issued on 20.06.2023. On 13.06.2024, the Chief Commissioner of Customs, JNCH, Mumbai Zone-II has granted extension of time limit to adjudicate the case up to 19.06.2025 as per the first proviso to Section 28(9) of the Customs Act, 1962. Therefore, the case has now been taken for adjudication proceedings within the time limit as per Section 28(9) of the Customs Act, 1962.

5.2 I have gone through the subject Show Cause Notice, charges levelled against the importer, Relied upon documents, the written submission of the Noticees and material on record. and accordingly, I proceed to decide the case on merit.

6. On going through the description of the imported goods as detailed in the annexure-A to the SCN, I find that goods imported as part No. for motor vehicle (captive consumption) and goods has been classified under CTI 87082900, 87089900, 87088000, 87084000, 87083000 and 87083000 paying BCD @15% and IGST @18%. The IGST has been paid @18% by availing the Sr. No. 402 and 452E to 452O of Schedule-III of Notification no. 01/2017- Integrated tax (Rate) dated 28.06.2017 and the said Sr. No. includes various parts of tractor. Further, noticee has submitted in his written submissions that they were engaged in the manufacture of passenger motor vehicles only.

6.1 I find that the goods mentioned in Annexure-A to the SCN are parts of motor vehicle and noticee has claimed benefit of Sr. No. 402 and 452E to 452O of Schedule-III of the said Notification and paid IGST @18%. To avail clearance under this schedule and serial number, the goods should fall under the description mentioned therein. Further, Sr. No. 402 and 452E to 452O of Schedule-III of the said Notification includes various tractor parts as detailed in above para 1.2 and 1.3, however, the subject goods are not tractor parts. Hence, the goods mentioned in Annexure-A to the SCN cannot claim benefit of Sr. No. 402 and 452E to 452O of Schedule-III of the said Notification as none of these goods can fall under the description allowed under the said Sr. Nos. The imported goods are specifically covered and classified in 8708 by the importer and tariff heading 8708 include '*Parts and accessories oi the motor vehicles of heading 8701 to 8705 [other than specified parts of tractors]'* which are classified under Sr. No. 170 of Schedule IV of IGST Notification No. 01/2017 dated 28.06.2017 and attract IGST @ 28%. Therefore, I find that the impugned goods self-assessed under sr. no. Sr. No. 402 and 452E to 452O of Schedule III of the said notification @18% IGST in respect of Bill of Entry detailed in Annexure-A to the SCN is liable to be rejected and the duty (IGST) need to be levied under Sr. No. 170 of Schedule IV of Notification No. 01/2017 dated 28.06.2017 (as amended) @28% IGST.

6.2 Further, following a detailed calculation, I have arrived at a differential duty amounting to Rs. 1,02,44,857/-, corresponding to the goods listed in Annexure-A of the SCN, however, in the SCN, the differential duty has been mentioned as Rs. 1,00,42,410/-. I find that noticee has also submitted that in the SCN the duty demand is not calculated properly as the duty against some items was paid using MEIS scrip. Hence, actual differential duty is Rs. 1,02,44,857/- against the goods as detailed in Annexure-A to the SCN. Further, I find that noticee has also agreed that they have wrongly paid the duty and they are ready to pay the said differential duty.

6.3 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 as detailed in Annexure-A to the SCN, were cleared by them by wilfully and deliberately indulging themselves in mis-declaration of goods by self-assessing wrong Sr. No. 402 and 452E to 452O of Schedule III of IGST Notification No. 01/2017 dated 28.06.2017 (as amended) & cleared the goods by paying IGST @ 18% only with the clear intention to evade duty by claiming incorrect and lower rate of IGST of the said Notification instead of correct Sr. No. 170 of Schedule IV of IGST Notification No. 01/2017 dated 28.06.2017 (as amended).

6.4 In view of the above, I find that the noticee had evaded correct Customs duty by intentionally avoiding the specific and the correct IGST Schedule and Sr. No. of the imported product at the time of filing of the Bills of Entry. By resorting to this deliberate and wilful mis-classification under IGST Schedule and Sr. No., 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.**

6.5 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 willfully mis-classified under wrong IGST Schedule and Sr. No., 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 willfully 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.

6.6 I find that in the instant case, as elaborated in the foregoing paras, the Noticee had wilfully mis-declared the correct IGST Schedule and Sr. No. of 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 IGST Schedule and Sr. No. of the impugned goods, and also fraudulently claimed ineligible notification benefit. 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 bonafide wrong IGST Schedule and Sr. No. Instead, in the instant case, the Noticee deliberately chose incorrect IGST Sr. No. to claim lower rate of duty and ineligible notification benefit, being fully aware of the correct IGST Schedule and Sr. No. of the imported goods. This wilful and deliberate act clearly brings out their 'mens rea' in this case. Once the 'mens rea' is established on the part of the Noticee, the extended period of limitation, automatically get attracted.

6.7 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:-

2013(294) E.L.T.222(Tri.-LB): 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]

> *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.*

6.8 I find that the Noticee contended that the issue is entirely revenue neutral as they can take input tax credit on payment of tax paid. In this regard, I find that the argument of revenue neutrality, if accepted as a defence, the entire scheme of payment of taxes on reverse charge basis will become futile.

6.8.1 In the instant case, I rely upon the following case laws & Rulings:- Shreenath Polyplast Pvt. Ltd. ((2019 (24) G.S.T.L. 133 (App. A.A.R. - GST)), wherein the Hon'ble Bench has held at Para 61 of their Order that,

> *"Further, with respect to the plea of applicant to consider the transaction as Revenue Neutral', it is submitted that this plea is not legal and tenable in the eyes of law, as the whole indirect tax administration run on the principle of credit flow and value addition. Such utilization of ITC should not be treated as Revenue Neutral'. Further, by the logic of 'Revenue Neutrality', almost every Business-to-Business transaction transfer the credit and cannot be taken as revenue neutral as it is against the basic principle of indirect taxation."*

6.8.2 Further in the case of ICICI Econet Internet & Technology Fund V/s Commr. of Central Tax, Bangalore North 2021 (51) G.S.T.L. 36 (Tri. - Bang.) wherein the Hon'ble Tribunal has held at Para 50 of their Order that,

> *"50. Regarding the submissions of the appellants on revenue neutrality, we find that payment of service tax by one entity and availment of Cenvat credit by another entity on the basis of such payment is not a criteria to determine the eligibility of a particular service rendered. The argument goes against the general scheme of service tax and Cenvat credit. If one entity has to pay service tax, it has to pay the same notwithstanding the fact that credit will be availed by a subsequent user. The scheme of Cenvat credit is to lessen the cascading effect of taxation and cannot be a reason for not paying taxes. We find that the appellant's submissions on revenue neutrality are not convincing."*

6.8.3 The said point of the noticee is not meritorious as the availability of Input Tax Credit is not related to payment of GST under reverse charge mechanism. The provisions of payment of GST under RCM are different from the provisions of Input Tax Credit as both are different and are governed by different Sections of GST Act, 2017. The eligibility of the tax payer to avail the ITC and utilization thereof is governed by the provision of Act related to ITC. Hence, it cannot be construed that the payment of GST under RCM is not required if they are eligible for ITC. In view of this, the plea of the noticee regarding revenue neutrality cannot be accepted as it was not supported by any provision of the GST Act, 2017.

6.9 Accordingly, the differential duty resulting from correct classification of goods under Sr. No. 170 of Schedule IV of Notification No. 01/2017 dated 28.06.2017 against the goods mentioned in Annexure-A to the SCN, is recoverable from importer under extended period in terms of the provisions of Section 28(4) of the Customs Act, 1962.

6.10 Under Section 28AA of the Customs Act, interest becomes payable on duty becoming payable in the set of cases as set out under the said section, which duty has not been levied or paid or has been short levied or short paid or erroneously refunded by reasons of collusion or wilful misstatement or suppression off facts. In the case of M/s Kamat Printers Pvt. Ltd., Hon'ble Bombay High 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.

6.11 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 to 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. v. 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. Secondly, when there is dispute as to whether there is breach of the notification, then section 28 can be resorted to.

6.12 In *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. Similarly, under section 28AA on duty being ascertained as under section 28 interest is payable by operation of law.

6.13 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.

6.14 I find that the SCN proposes confiscation of goods under the provisions of Section 111(o) of the Customs Act, 1962. Provisions of Section 111(o) of the Customs Act, 1962 states that,

> *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;*

I find that as per Section 111(o) when goods are exempted from duty subject to a condition and the same is not observed against the imports as mentioned Annexure-A to the SCN. Claiming the ineligible IGST Schedule and Sr. No. during import of the impugned goods, amounts to mis-declaration and shall make the goods liable to confiscation. As this act has resulted in short levy and short payment of duty, I find that the confiscation of the imported goods invoking Section 111(o) is justified & sustainable.

6.15 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 Act 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.

6.16 From the discussions above, I find that that the importer had failed to assess and discharge the customs duty correctly on the imported goods under Bills of entry as shown in the Annexure-A to the SCN, under wrong notification benefit by suppressing the facts and thereby contravened the provisions of Section 46 the Customs Act, 1962. Thus, I hold that the subject goods are liable for confiscation under Section 111(o) of the Customs Act, 1962.

6.17 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)."*

6.17.1 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.).

6.17.2 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.

6.17.3 In view of above, I find that any goods improperly imported as provided in any sub-section (m) of the Section 111 of the Customs Act, 1962, the impugned goods become liable for confiscation. I opine that merely because the importer was not caught at the time of clearance of the imported goods, cannot be given different treatment. Accordingly, I observe that the present case also merits imposition of Redemption Fine having held that the impugned goods having assessable value amounting to **Rs. 8,79,54,661/- (Rs. Eight Crore Seventy-Nine Lakh Fifty-Four Thousand Six Hundred and Sixty-One Only)** are liable for confiscation under Section 111(o) of the Customs Act, 1962.

6.18 I find that the impugned SCN proposes imposition of penalty on the Noticee under Section 112(a) and/or 114A of the Customs Act, 1962. Regarding imposition of penalty under Section 112(a), the Noticee has contended that there is no mis-declaration, therefore, the goods are not liable to confiscation under Section 111; and since the goods are not liable to confiscation, penalty under Section 112(a) cannot be imposed on them. Further, regarding imposition of penalty under Section 114A, the Noticee has contended that the same cannot be imposed on them as there is no collusion, willful mis-statement or suppression of facts on their part.

6.19 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 IGST Schedule/Sr.No. Consequently, the importer has paid less duty by

non-payment of applicable duty on the subject goods, which tantamount to suppression of material facts and willful 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 duty thereon, amply points towards their '*mens rea*' to evade the payment of duty. Thus, I find that the demand of differential duty is rightly invoked in the present case by invoking Section 28(4) of the Customs Act, 1962. Taking all the issues relating to the subject imports into account and in view of my findings that goods were mis-declared in the fashion discussed above, I find that the importer by his acts of omission have rendered the goods liable for confiscation and thus made themselves liable for penalty under Section 114A of the Customs Act, 1962. Further in terms of proviso to 114A, once penalty under section 114A has been imposed, no penalty can be imposed under section 112.

6.20 Further, I find that the importer, has mis-declared the subject goods by classifying it under wrong IGST Schedule and Sr. No, as discussed supra, by deliberately and knowingly giving inappropriate declaration on importation of the goods. I find that the importer has furnished documents such as Bill of Entry and its invoices, packing lists containing false or incorrect material particular with respect to notification for the purpose of clearance of the imported goods. As the demand under Section 28(4) is found to be sustainable in terms of discussion made in Paras above in respect of impugned goods mentioned in Annexure-A to the SCN, therefore penalty under Section 114A is imposable / sustainable in respect of said goods on the importer.

7. In view of the above discussions, I find that: importer is liable to pay differential duty under section 28(4) of the Customs Act,1962 along with applicable interest under section 28AA; the subject goods as detailed in annexure-A to the SCN are liable to confiscation under section 111(o) of the Customs Act,1962; penalty is imposable on the importer under Section 114A of the Customs Act, 1962.

7.1 Further, I find that noticee has submitted that the differential duty demanded in the instant SCN, has already been included in SCN No 456/2020-21/SIIB(I) JNCH dated 29.11.2020. The SCN dated 29.11.2020 included 745 Bills of Entry, which included entire 16 Bills of Entry which are mentioned in the present SCN. The same was adjudicated vide OIO No. 281/2023-24/CC/NS-IV/CAC/ JNCH dated March 2024 confirming the demand. Noticee contended that a single issue cannot be subjected to repeated adjudication by revenue authorities, as such multiplicity of proceedings is legally unsustainable and violative of the fundamental principles of natural justice. The issuance of multiple Show Cause Notices (SCNs) for the same Bills of Entry runs contrary to the legislative intent and framework of the customs regime, particularly given that the same Bills of Entry are already sub-judice before the Hon'ble Bombay High Court. Proceeding with adjudication on the present SCN would undermine the principle of *comity of courts*, which restrains authorities from issuing orders that may conflict with those of courts of concurrent jurisdiction. This doctrine is further reinforced by Article 20(2) of the Constitution of India, 1950, which prohibits double jeopardy, ensuring that no person is punished more than once for the same offence. Additionally, the doctrine of *res judicata* precludes parallel litigation on the same subject matter once adjudicated by a competent authority. In view of the above, the differential IGST demand raised in the present SCN is legally untenable and liable to be set aside

7.2 On studying the SCN No 456/2020-21/SIIB(I) JNCH dated 29.11.2020, I find that the SCN included a total of 745 Bills of Entry and 16 Bills of Entry of the instant SCN were also included. The assessable value of the goods mentioned against 56 entries (Sr. No. 1 to 56 of the Annexure-A to the SCN) under 16 Bills of Entry is Rs. 8,79,54,661/- in both the SCN. I find that both the SCNs propose that duty need to be levied @28% under Sr. No. 170 of Schedule IV of Notification No. 01/2017 dated 28.06.2017 and duty has been paid by the importer against these goods @18%. The differential duty in the instant SCN is mentioned as Rs. 1,00,42,410/-, however, the

differential duty of these Bills of Entry in the SCN No. 456/2020-21/SIIB(I) JNCH dated 29.11.2020 is Rs. 1,02,44,857/-. In view of this observation and above discussions in Para 6.2, I find that actual differential duty against these goods is Rs. 1,02,44,857/-. Further, I find that in the SCN No 456/2020-21/SIIB(I) JNCH dated 29.11.2020 also, differential duty was proposed to be demanded under section 28(4) along with applicable interest under section 28AA of the Customs Act, 1962 and confiscation was proposed under section 111 and penalty was proposed under Section 112 and/or 114A of the Customs Act, 1962.

7.3 Further, I find that the said SCN dated 29.11.2020 was adjudicated vide OIO No. 281/2023-24/CC/NS-IV/CAC/ JNCH dated March 2024 and whole of the differential duty proposed to be demanded in the SCN was confirmed and demanded under section 28(4) along with applicable interest under section 28AA of the Customs Act, 1962 and confiscated the goods under section 111 & redemption fine was imposed. Further, penalty was also imposed under section 114A of the Customs Act, 1962. I find that the differential duty amounting to Rs. 1,02,44,857/- pertaining to the goods which are detailed in Annexure-A to SCN has already been confirmed vide OIO No. 281/2023-24/CC/NS-IV/CAC/ JNCH dated March 2024.

8. In view of the above discussions, I find that both the SCN are identical in respect of 56 entries against the 16 Bills of Entry in respect of duty as both the SCN are based on the short payment of IGST @18% instead of 28% and both the SCN has been issued under section 28(4) along with Section 28AA of the Customs Act, 1962. Further, both the SCN proposes confiscation under section 111 of the Customs Act, 1962 and penalty was proposed under Section 112 and/or 114A of the Customs Act, 1962. I find that the duplication of proceedings on an identical factual and legal matrix is not only procedurally flawed but also legally unsustainable.

8.1 It is a settled principle of law that a single cause of action cannot be subjected to multiple adjudications, as this would violate the doctrines of res judicata and double jeopardy. The doctrine of res judicata, codified under Section 11 of the Code of Civil Procedure, 1908, bars the re-litigation of issues that have already been directly and substantially decided between the same parties by a competent authority. Moreover, the issuance of multiple SCNs on the same issue violates the principle of natural justice, which mandates that a person must not be subjected to repeated proceedings for the same alleged offence. This principle is further reinforced by Article 20(2) of the Constitution of India, which enshrines the protection against double jeopardy—that is, no person shall be prosecuted or punished for the same offence more than once. While this constitutional safeguard is primarily applicable to criminal proceedings, its underlying rationale has been extended to quasi-judicial proceedings by various courts to prevent harassment and ensure fairness.

8.2 Furthermore, the principle of finality in adjudication is a cornerstone of administrative law. Once a matter has been adjudicated and the parties have either accepted the decision or pursued appellate remedies, the same issue cannot be reopened through a fresh SCN. In the present case, the second SCN does not bring forth any new facts, evidence, or legal grounds that would justify a fresh adjudication. The allegations, legal provisions invoked, and the reliefs sought are verbatim repetitions of the earlier SCN.

8.3 In conclusion, the issuance of a second SCN on the same set of Bills of Entry, based on identical allegations and legal provisions, is procedurally flawed, legally impermissible, and constitutionally suspect. It violates the doctrines of res judicata, double jeopardy, and undermines the principles of natural justice and finality in adjudication. In the absence of any fresh cause, evidence, or justification, the present SCN is liable to be dropped in its entirety as being devoid of legal merit and contrary to settled jurisprudence.

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

ORDER

I drop all the proceeding initiated against M/s. General Motors India Pvt. Ltd (IEC-0894004921) by the impugned Show Cause Notice No. 648/2023-24/Commr/NS-V/CAC/JNCH dated 20.06.2023, on the grounds as discussed supra.

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

18/6/25

(ANIL RAMTEKE)
Commissioner of Customs (NS-V),
JNCH, Nhava Sheva

To,

M/s. General Motors India Pvt. Ltd,
Off. No. 4 109B 4-110 4-103, 4th Floor,
Wework Blue One Square, 246 Phase IV,
Udyog Vihar, Gurugram, Haryana- 122 016.

Copy to :-

1. The Addl. Commissioner of Customs, Group VB, JNCH, Nhava Sheva, Mumbai-II.
2. The AC/DC, Audit, JNCH.
3. The AC/DC (Review Cell), Chief Commissioner's Office, JNCH.
4. The AC/DC, Centralized Revenue Recovery Cell, JNCH.
5. The AC/DC, EDI, JNCH
6. Supdt.(P), CHS Section, JNCH – For display on JNCH Notice Board.
7. Office Copy.