

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

DIN – 20260178NX0000222FA9

Date of Order: 09.01.2026

F. No. S/10-180/2024-25/CC/Gr.VA/NS.V/CAC/JNCH

Date of Issue: 09.01.2026

SCN No.: 1682/2024-25/COMMR/GR.VA/CAC/JNCH

SCN Date: 01.02.2025

Passed by: Sh. Anil Ramteke

Commissioner of Customs, NS-V, JNCH

Order No: 353/2025-26/COMMR/NS-V/CAC/JNCH

Name of Noticee: M/s. Varroc Engineering Ltd. (IEC: 0390019402)

**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 रीजनल बेंच), 34, पी. डी.मेलो रोड, मस्जिद (पूर्व), मुंबई - 400009 को अपील कर सकता है, जो उक्त अधिकरण के सहायक रजिस्ट्रार को संबोधित होगी।

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

3. अपील दाखिल करने संबंधी मुख्य मुद्दे:-

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

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

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

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

**Fee -फीस-**

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

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

या उस से कम है।

- (b) Rs. Five Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 5 Lakh but not exceeding Rs. 50 Lakh.
- (ख) पाँच हजार रुपये – जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 5 लाख रुपये से अधिक परंतु 50 लाख रुपये से कम है।
- (c) Rs. Ten Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 50 Lakh.
- (ग) दस हजार रुपये – जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 50 लाख रुपये से अधिक है।

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

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

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

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

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

4. इस आदेश के विरुद्ध अपील करने के लिए इच्छुक व्यक्ति अपील अनिर्णीत रहने तक उसमें माँगे गये शुल्क अथवा उदगृहीत 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. No.1682/2024-25/Comm./Gr.VA/CAC/JNCH dated 01.02.2025 issued to M/s Varroc Engineering Limited (IEC-0390019402) and M/s. SME Logistics Pvt. Ltd. – reg.**

**BRIEF FACTS OF THE CASE**

- 1.1.1. It is stated in the Show Cause Notice No. No.1682/2024-25/Comm./Gr.VA/CAC/JNCH dated 01.02.2025 that, an intelligence was developed by the officers of the Directorate of Revenue Intelligence, Raipur Regional Unit (here-in-after referred to as “the DRI”), that M/s. Varroc Engineering Ltd. having IEC No. 0390019402, registered office at L-4, MIDC, Industrial Area, Waluj, Aurangabad, Maharashtra 431136 (hereinafter referred to as ‘the importer’) have imported “LIQUID CRYSTAL DISPLAYS” (LCD) under CTH 85249100 for the period 01.01.2022 to 05.07.2022 and cleared the goods at NIL rate of BCD by wrong availment of duty exemption under Sr. No. 29 of Notification No.24/2005 dated 01.03.2005 as amended vide Notification No. 57/2021 dated 29.12.2021 w.e.f. 01.01.2022 followed by corrigendum dated 07.04.2022.
- 1.1.2 The importer had been importing the Liquid Crystal Display (LCD) under Customs Tariff Item (CTI) 85249100 and 90138000 on payment of Customs Duty @ 0% by availing benefit of exemption from payment of Customs Duty under Notification no. 24/2005 dated 01.03.2005. The importer has been declaring generic description in their import documents such as “Use For Two Wheeler Dashboard”.
- 1.1.3 The exemption under Sr. No. 29 of notification 24/2005 dated 01.03.2005 had been availed by the importer, whereas, the Sr. No. 29 of the said notification has been provided for –Liquid Crystal Devices for goods mentioned at Sr. No. 1 to 38A of the said Notification. However, none of the items from Sr. No. 1 to 38A covers Dashboard of Two Wheelers etc., for which the Liquid Crystal Display (LCD) were being imported by the importer.
- 1.2.1 Acting on the said intelligence, the officers of the DRI started the investigation in the case and had issued summons to M/s/ Varroc Engineering Ltd. having IEC No. 0390019402, registered office at L-4, MIDC, Industrial Area, Waluj, Aurangabad, Maharashtra 431136. The summons was issued on 30.03.2023 to appear on 12.04.2023 at office of the Deputy Director, DRI, Raipur Regional Unit, 30, Panchsheel Nagar, Civil Lines, Raipur to provide detailed list of Liquid Crystal Display/Devices imported from 01.01.2022 to date, wherein benefit of Notification no. 24/2005 dated 01.03.2005 has been availed from 01.01.2022, technical write-up, catalogue alongwith end use of liquid crystal display/devices imported, any other relevant documents in support of claim of notification benefit and to tender statement.
- 1.2.2 In response to the Summons issued to M/s. Varroc Engineering Limited, Shri Santosh Deepak Patel, Head Indirect Taxes and authorised representative of M/s Varroc Engineering Limited, having registered office at B-24 & 25, Chakan Industrial Area, Tal- Khed, Dist Pune 400501, appeared before DRI Raipur on 18.04.2023 and his statement was recorded under section 108 of the Customs Act, 1962, wherein he interalia stated that: -
- He is currently working as Head Indirect Taxes in Varroc Engineering Ltd., and has been working with M/s. Varroc Engineering Ltd. since Nov 2021 and his job profile is to handle the work related to indirect taxes.
  - **That M/s. Varroc Engineering Ltd. is a leading manufacturer of auto components meant to be used for 2, 3 and 4-wheeler vehicles; that major components imported by Varroc Engineering Ltd. are Dashboards, lighting units and metallic auto parts for vehicle.**
  - That he himself is responsible for compliances under GST Act, FTP, Legacy acts and litigation under these Acts including Customs and that he reports to group finance controller of the company.

- That LCD imported by M/s. Varroc Engineering Ltd. falls under CTI 85249100 and these LCD are further used in manufacturing of instrument cluster/dashboard which are then used for two-wheeler and four-wheeler motor vehicles which is classified under CTH 9029.
- After perusing Notification No. 24/2005-Customs dated 01.03.2005 as amended vide 57/2021 dated 29.12.2021, he opined that duty exemption on import of LCD is not available for M/s. Varroc Engineering Ltd. as per the amendment made vide Notification No. 57/2021 along with corrigendum dated 07.04.2022 in notification no. 24/2005-Cus. As the finished products manufactured by their company is not covered under Sr. No. 1 to 38A of principal notification no. 24/2005-Customs dated 01.03.2005.
- After issuance of Notification. No. 57/2021-Cus dated 29.12.2021 which amended Notification no. 24/2005, M/s. Varroc Engineering Limited changed the CTI of LCD from 90138010 to 85249100 and continued availing duty exemption under Notif No. 24/2005-Cus till 5<sup>th</sup> July 2022.
- From 5<sup>th</sup> July 2022 onwards, they have imported LCD without availing any exemption under Notif. No. 24/2005 in accordance with Notif. No. 57/2021-Cus dated 29.12.2021 and corrigendum dated 07.04.2022.
- **On being asked why CTI of LCD was changed from 90138010 to 85249100 after issuance of the notification no. 57/2021 dated 29.12.2021, he stated that the decision was taken by his company.**
- On being asked about their CHA (Customs House Agents) and SCM (Supply Chain Management), he informed that SME Logistics Pvt. Ltd. is their CHA and Air CARGO agency as Bluedart, DHL etc. as the CHA of M/s Varroc Engineering Company and Shri Sanjay Sharma as Chief Supply Chain Officer in Varroc Engineering Ltd.
- That Varroc Engineering Ltd has not filed any application for re-assessment of bills of entry in respect of time period for which the benefit of exemption under Notif. No. 24/2005 and no differential duty payment in this regard have been made by Varroc Engineering Ltd. till date.
- On being asked to provide the details of bills of entry against which benefit of duty exemption was availed erroneously by M/s. Varroc Engineering Ltd while import of LCDs under Notif. No. 24/2005, he states that the said data has not yet been compiled by them, however he informed that these Bills of Entry pertain to the period from 07.04.2022 to 05.07.2022.
- On being asked whether he agrees to pay the differential duty arising against import of LCD for which the benefit of duty exemption under notification no. 24/2005 has been availed erroneously, he replied that he agrees to pay the differential duty but he needs to check the legal aspects and applicability involved in this matter with their legal counsel, and further assured that M/s. Varroc Engineering Ltd. will pay the differential Customs duty.

**1.2.3** Shri Santosh D Patel (Head of Indirect Tax, Varroc Engineering Limited), in his statement dated 18.04.2023 accepted that the benefit of exemption of duty was wrongly availed by them and he further assured that they will pay the differential duty.

**1.2.4** DRI, Raipur Regional Unit, Raipur vide Letter F. No. DRI/IZU/RaRU/CI/INT-27/ENQ-17/2023/1864, dated 04.05.2023, again requested M/s. Varroc Engineering Limited to **pay the differential duty along with interest and applicable penalty** with respect to wrong utilization of benefit under Notification no. 24/2005 Customs dated 01.03.2005, for import of Liquid Crystal Displays.

1.2.5 M/s. Varroc Engineering Limited vide email dated 16.05.2023 has submitted copy of challans of Rs. 66,76,938/- deposited at Nhava Sheva Port, Mumbai vide Demand Draft No. 017460, dated 10.05.2023, with remarks payment of differential duty on import of Liquid Crystal Display against Investigation initiated by DRI Raipur Regional Unit and Challan dated 15.05.2023 of amount Rs. 13,28,321/- deposited at Mumbai Air Customs on 15.05.2023 with remarks payment of differential duty on import of Liquid Crystal Display against Investigation by DRI Raipur. Details of the payment made by the Importer are as below: -

Sr.No.	Port	Challan No./ DD No. and Date	BCD	SWS	IGST	Interest	Total
1	Mumbai Air Customs	2023-24/2664, dated 15.05.2023	8,87,581	88,758	1,75,741	1,76,242	13,28,322/-
2	Nhava Sheva Port, Mumbai	DD No. 017460, dated 10.05.2023, IDBI Bank	44,94,266	4,49,427	8,89,865	8,43,380	66,76,937/-
Total			53,81,847	5,38,185	10,65,606	10,19,622	80,05,259/-

Thus, it appeared that M/s Varroc Engineering Limited has paid an amount of ₹ 80,05,259/- towards differential duty along with interest.

1.3.1 Summons dated 06.09.2023 was issued by DRI Raipur to M/s SME Logistics Private Limited, CHA of Varroc Engineering Limited, to appear before DRI Raipur on 13.09.2023 to tender statement but nobody from SME Logistics Private Limited appeared before officer of DRI to tender statement.

1.3.2 Further Summons dated 29.09.2023 was issued to M/s. SME Logistics Private Limited, to appear before officer of DRI Raipur to tender statement.

1.3.3 M/s SME Logistics Private Limited vide email dated 02.10.2023 received from the mail id [Kailas@smekg.co.in](mailto:Kailas@smekg.co.in) informed they were unable to appear before DRI Raipur on the scheduled date 29.09.2023, and requested to provide another date.

1.3.4 Accordingly, another Summons dated 17.10.2023 under Section 108 of the Customs Act, 1962 was issued to M/s. SME Logistics Private Limited, to appear before officer of DRI to tender statement.

1.3.5 M/s. SME Logistics Private Limited, vide letter dated 13.10.2023 submitted their written submissions along with the calculation chart of differential duty payable on import of LCD by M/s. Varroc Engineering Ltd. and copies of payment made by M/s. Varroc Engineering Ltd. for an amount of Rs. 80,05,259/- and requested to dispense them with appearance before DRI Raipur to tender statement. Vide the said letter, M/s. SME Logistics Private Limited stated that:

(1) *The description on each Bill of Entry declared as 'LCD - LIQUID CRYSTAL DISPLAY (USED FOR TWO-WHEELER DASHBOARD) with the relevant Notification No.24/2005 dated 01.03.2005 bearing Serial No.29, even before and after issuance of Corrigendum dated 07.04.2022 to the Notification No.57/2021 dated 31.12.2021 (Amendment to Parent Notification No.24/2005 dated 01.03.2005). This establishes that we have declared automobile application explicitly.*

(2) *We are enclosing herewith Chart of Bill of Entries assessed after issuance of Corrigendum dated 07.04.2022. 4 (Four) Bill of Entries have been passed considering the Pre-Corrigendum Notification by the Proper Officer.*

(3) *As far as 7 Bills of Entry in the enclosed Chart are concerned, after assessment and duty was paid, the Appraiser, at the time of out-of-charge, raised a query for submission of catalogue, BIS Certificates, etc., which were duly complied by us. Even at that stage, no query or objection was raised, by the concerned officer qua any less duty payment.*

(5) *In fact, once we as Custom Broker, had knowledge in issuance of Corrigendum dated 07.04.2022 to the Notification No.57/2021 dated 31.12.2021 (Amendment to Parent Notification No.24/2005 dated 01.03.2005), 4 Bills of Entries, which were already assessed under RMS were recalled suo-moto by us and reassessed so that, there is no revenue loss. This proves our bonafide as Custom Broker.*

(6) *Be that as it may, subsequently, we are informed that the importer has attended your office and has deposited the entire duty and interest due to the aspect of bonafide mistake. It therefore, perplexes us as to why Summons has been issued to us as Custom Broker, especially when the entire duty and interest has been accepted and deposited by the Importer.*

(7) *The bonafide mistake perhaps has taken place as the Corrigendum itself was published on the CBEC Website in the list of Notifications of the Year 2021. We are enclosing herewith copy of the complete statement of all the Bill of Entries along with duty and interest payment totalling to Rs.80,05,259/- (For shipments cleared at Air Cargo and JNPT).*

**1.3.6** It appeared that the Bills of Entry filed by the importer through their CHA were filed under Second Check, wherein, the onus of declaration of correct description and CTI of import items/goods cleared by Customs authority solely lies with the Importer and Customs House Agent. The description of goods declared by the importer was incomplete in order to determine inapplicability of exemption under the Notification No. 24/2005 dated 01.03.2005 as amended. The documents submitted by the importer also appeared inappropriate to determine the inapplicability and it appeared that on the basis of declaration made by the importer, the goods were allowed for clearance. The importer having correct and complete knowledge about the characteristics of the goods under import, as responsible for correct declaration with respect of exemption benefit applicable to the item under import.

**1.3.7** M/s. SME Logistics Pvt. Ltd. vide the said letter dated 13.10.2023 has attempted to mis-represent the corrigendum dated 07.04.2023 as *amendment to Parent Notification No.24/2005 dated 01.03.2005, while the corrigendum to the Notification is to be treated as correction in the Notification instead of any amendment.* The Claim of M/s. SME Logistics Pvt. Ltd. that the mistake of wrong availment of exemption notification was made due to the corrigendum as listed in the list of Year 2021, is baseless as the corrigendum has to be listed with the Notification for which it was issued, so that it could be read collectively and correctly.

**1.4.1** Further another Summons dated 20.10.2023 under Section 108 of the Customs Act, 1962 was issued to M/s SME Logistics Private Limited, to appear before officer of DRI Raipur on 30.10.2023 to tender statement.

**1.4.2** Shri Kailash BhikajiGawade, one of the directors of M/s SME Logistics Private Limited, 513,514, Swastik Disa-Corporate Park, Opp. Shreyas Cinema, L.B.S. Marg, Ghatkopar (W), Mumbai -400086, appeared before officer of DRI Raipur on 30.10.2023. The statement dated 30.10.2023 of Shri Kailash BhikajiGawade was recorded under Section 108 of the Customs Act, 1962, wherein he interalia stated that:

- He is one of the directors of the M/s. SME Logistics Pvt. Ltd., 513,514, SwastikDisa-Corporate Park, Opp. Shreyas Cinema, L.B.S. Marg, Ghatkopar (W), Mumbai. He has been working in this company since 1988 and looks after Administration and operations in SME Logistics Pvt. Ltd., he is a G-Card holder of Customs Broker.
- There are 4 directors in M/s. SME Logistics Pvt. Ltd., he is the active director of the company and rest 3 are sleeping/inactive directors. Further he submitted that, the operations of SME

Logistics Pvt. Ltd. are running mainly in two ports Mumbai Air Port and Nhava Sheva Sea Port. The main work of their company SME Logistics Pvt. Ltd. is Customs Broking and look after all the customs related issues and file bill of Entry/Shipping bill of Importer/Exporters.

- That, in the process of filing bills of entry, they first get all the details of products i.e. Packing list, Invoice, Country of Origin Certificate etc. from the importers and after making a checklist of the details get it cross checked and after getting confirmation from the clients, file bill of entry on behalf of importer.
- On being asked he informed that the major customers of their company are M/s. Varroc Engineering Limited, M/s. Varroc Polymer Pvt. Ltd., M/s. Dhoot Electricals Pvt Ltd., M/s. Dhoot Transmission Pvt. Ltd. M/s. Keva Fragrances, Pvt. Ltd. etc. and have been working with all the companies for years.
- That, they are working with M/s. Varroc Engineering Limited for around 2009-10. They look after Customs Clearance of M/s. Varroc Engineering Limited, for Nhava Sheva Sea Port, Mumbai Airport etc. and file bill of entry on behalf of M/s. Varroc Engineering Limited and after clearances, arrange logistics/transportation, warehousing etc. for the items imported by M/s. Varroc Engineering Limited and that, M/s. Varroc Engineering Limited used to import LCD, Ferrite Magnate Connectors, IC Diode etc. for automobile parts, which are being manufactured by them.
- On being asked he submitted that, their company has appointed coordinator for each and every customer who looks after work of two to three company. They receive pre-alert from their customers along with documents such as Invoice, Packing List, Bill of lading etc. in respect of any upcoming shipment. The coordinator scrutinizes the documents. The internal job team of the Customs Filing Team prepares draft checklist for the upcoming shipment then the filing team and coordinator of the customer send the checklist to the customer for approval. After approval from customer the checklist is filed as bill of entry. Further he informed that, approval from customer is mandatory in their company and without it no bill of entry is filed by their company.
- On being asked he said that M/s. Varroc Engineering Limited decides the HS code of any import item and mostly the CTH of any item is mentioned on the shipper documents such as Invoices, Bill of Lading. In case of any doubt regarding the CTH of item or in case of new item or new customer, their company ask the customer to clarify and provide the previous Bill of Entry, Catalogue or Technical Details of the item and the draft checklist is sent to the customer for approval. Further he informed that in case of any change in Tariff their company regularly shares the tariff Notifications/Circulars to their customers. On being asked he informed that M/s. Varroc Engineering Limited used to ask for availability of exemptions against the import items and they used to inform them about available notifications but the final decision regarding availing benefit of notifications is taken by M/s. Varroc Engineering Limited only.
- He further informed that they (SME Logistics) coordinated with M/s. Varroc Engineering Limited through e-mail only.
- That, on being asked when he get to know the goods imported by their client M/s. Varroc Engineering is not falling under the purview of the notification of 24/2005 along with amendment made by notification no. 57/2021 and corrigendum dated 07.04.2022, he stated that he gets to know only after customs has raised query for Bill of Entries filed by M/s. SME Logistics Pvt Ltd. on behalf of their client M/s. Varroc Engineering Limited on July-2022. Then after they both discussed about the applicability of the corrigendum dated 07.04.2022 and paid the differential duty on said Bill of Entry on which query raised by the Customs.
- On being asked, what action was taken by M/s. Varroc Engineering Limited after knowing the non-applicability of the Notification no. 24/2005, he told that they had intimated the same to M/s. Varroc Engineering Ltd. that the Exemption benefit under notification no. 24/2005 is not available

for LCD display for speedometer imported by Varroc Engineering Limited and the applicable BCD on import of LCD by M/s. Varroc Engineering is @ 15 %, they proceeded to Import LCD after payment of BCD @ 15%.

- On being asked after being aware that exemption under notification number 24/2005 was not applicable for import of LCD for automobiles and M/s. Varroc Engineering has availed the undue benefit of exemption, why he has not paid the duty on previous bill of entries for importation of LCD Display imported by M/s. Varroc Engineering Ltd, he said that though they had intimated M/s. Varroc Engineering Ltd. about the non-applicability of the Notification No. 24/2005 as amended vide 27/2021 dated 29.12.2021 and corrigendum dated 07.04.2022, M/s. Varroc Engineering has never asked them about payment of differential duty.

**1.4.3.1** From the printouts of emails provided by Shri Kailash BhikajiGawade, director of SME Logistics Private Limited, it has been found that on 05.07.2022 email was sent by [impsea@smekg.co.in](mailto:impsea@smekg.co.in) to Mr. Aniket and Ms. Mamta of Varroc Engineering Limited as under:

*Dear Aniket Sir and Mamta Madam,*

*Find below query raise by custom regarding BCD notification*

*HREC ⇨ZZ ⇨INNSA1 ⇨ZZ ⇨SMEPL679 ⇨ICES1\_5 ⇨P ⇨⇨CHCAI05 ⇨2329 ⇨20220704 ⇨1415*

*F ⇨INNSA1 ⇨9382719 ⇨02072022 ⇨1 ⇨02072022 ⇨THE GOODS APPEAR TO BE PARTS OF SPEEDOMETER OF AUTOMOTIVE VEHICLES WHICH ARE NOT ELIGIBLE FOR BENEFIT OF S.NO.- 29 OF 24/2005.*

*PL CHECK THE CORRIGENDUM DATED 07.04.2022 IN THIS REGARD AND STAE WHY THE BENEFIT SHOULD NOT BE DENIED.;;Query Raised By : 10XXXXXX Group: 5C*

*TREC ⇨2329*

***IMPORTANT NOTE:***

***As per the Amendment in Section 46 of Customs Act 1962, Importer have to file a Bills of Entry before the END OF THE DAY (Including Holiday) PRECEDING THE DAY OF ARRIVAL of Vessel / Aircraft Carrying the Imported goods at Customs Port. IF NOT LATE NOTING CHARGES WILL BE APPLICABLE.***

*Thanks with best regards.*

***SADHANA HULE***

***SME Logistics Pvt. Ltd;***

**1.4.3.2** Vide the above email, it appears that Query regarding admissibility of exemption under Notification no. 24/2005 dated 01.03.2005 alongwith Corrigendum dated 07.04.2022 was raised by Customs Authorities, which was forwarded by employee of M/s. SME Logistics Pvt. Ltd. i.e. CHA of M/s. Varroc Engineering Limited.

**1.4.4.1** Further, on 05.07.2022 at 13:59 Hrs, another email was sent by Shri Kailash BhikajiGawade ([kailas@smekg.co.in](mailto:kailas@smekg.co.in)) to concerned persons of M/s. Varroc Engineering Limited as under:

*Dear Sir,*

*Please refer to the query raised by the customs officer in below email and customs notification No.24/2005 along with the corrigendum dated 07/04/2022 enclosed herewith for your ready reference.*

*The reply to the query is as follows -*

***"Sir,***

***The Notification No.24/2005-Cus Dated 1st March 2005 published in the Gazette of India Vide G.S.R. 122(E) dated 1st March 2005, Exempts certain goods from whole of duty of Customs, falling under the heading, Sub-heading or Tariff Heading or Tariff Item of the first schedule to the Customs tariff act 1975 and specified in column (2)of the table given in the Notification.***

*It is not mentioned in the notification that the benefit is available for ITA goods only. The notification benefit is available to all goods as mentioned above.*

*Regarding corrigendum dated 07/04/2022 mentioned in the query, Please note that from April 2022 to till date corrigendum or amendment in the Noti. No.24/2005 has not been published in the Gazette of India,*

*we therefore request you to kindly release the goods with the notification benefit as soon as possible.*

*Regards."*

*You can change or correct the reply wherever required and confirm.*

*Thanks, with best regards.*

*Kailas Gawade.*

**SME Logistics Pvt. Ltd;**

1.4.4.2 It appeared that vide the said email, Shri Kailash BhikajiGawade of M/s. SME Logistics Pvt. Ltd. has sent draft reply to M/s. Varroc Engineering Limited for approval justifying the applicability of benefit of exemption to LCD imported by them during period prior to issuance of corrigendum to Notification no. 24/2005 dated 01.03.2005. The said also reflected the intention of M/s. Varroc Engineering Limited and their CHA in evading payment of Customs Duty at appropriate rate by citing redundant reasons.

1.4.5.1 Further, on 05.07.2022 at 14:48 Hrs. Shri Kailash Bhikaji Gawade of SME Logistics Pvt. Ltd. has sent another email to Varroc Engineering Limited as under:

*Dear Sir,*

*Please find the corrigendum dated 07/04/2022 published in gazette of India for your reference. We found this corrigendum in the list of notifications in the year 2021.*

*As per the corrigendum zero duty benefit is not available to the LCD used for speedometer for motor vehicles.*

*Please send your instructions to proceed further.*

*Thanks with best regards.*

*Kailas Gawade.*

**SME Logistics Pvt. Ltd;**

1.4.5.2 Vide the said email, Shri Kailash BhikajiGawade has conveyed M/s. Varroc Engineering Limited that they have found the corrigendum to notification no. 57/2021 dated 29.12.2021 in the list of notifications to the year 2021, thus the exemption under Notification no. 24/2005 dated 01.03.2005 as amended, is not applicable to the goods being imported by them.

1.4.6 On 06.07.2022 at 11:55 Hrs. Shri Kailash BhikajiGawade of M/s. SME Logistics Pvt. Ltd. has sent further email to M/s. Varroc Engineering Limited, seeking instruction from M/s. Varroc Engineering Limited for submission of reply to the query raised by Customs:

*Dear Sirs,*

*Please send your instructions to proceed further. We have to reply to the customs query today by 1 pm.*

*Thanks with best regards.*

*Kailas Gawade.*

**SME Logistics Pvt. Ltd;**

*513-515, Swastik Disa Corporate Park, O*

1.4.7 Further, on 14.07.2022 email was sent from [pooja@smekg.co.in](mailto:pooja@smekg.co.in) to [Theanmozhi.Kaliamurthy@varroc.com](mailto:Theanmozhi.Kaliamurthy@varroc.com) and others as under

*Dear Sir/madam*

*Basic duty Benefit on LCD is not acceptable by customs. Pl. Find attached Revised checklist with Basic Duty*

*We processed for recall.*

*Thanks with best regards.*

*Pooja.*

*SME Logistics Pvt. Ltd.*

- 1.4.8 Further, email was sent from [impsea@smekg.co.in](mailto:impsea@smekg.co.in) to [gen\\_Aniket.Kosarkar@varroc.com](mailto:gen_Aniket.Kosarkar@varroc.com) and others as under

*Dear Sir*

*BE Ready today, BCD-15%*

*Find attached BE copy and relaease duty payment-INS1027/1145/1186*

*IMPORTANT NOTE:*

*As per the Amendment in Section 46 of Customs Act 1962, Importer have to file a Bills of Entry before the **END OF THE DAY (Including Holiday) PRECEDING THE DAY OF ARRIVAL of Vessel / Aircraft Carrying the Imported goods at Customs Port. IF NOT LATE NOTING CHARGES WILL BE APPLICABLE.***

*Thanks with best regards.*

*SADHANA HULE.*

*SME Logistics Pvt. Ltd.*

- 1.4.9 Both the above emails reflected that M/s. Varroc Engineering Limited were reluctant in accepting the valid query raised by Customs regarding non-applicability of exemption benefit under Notification no. 24/2005 dated 01.03.2005 as amended to the LCD imported by them.

- 1.4.10 Shri Kailash BhikajiGawade in his statement dated 30.10.2023, has informed that after the query regarding non-availability of exemption benefit under Notification no. 24/2005 dated 01.03.2005 as amended, to the LCDs imported by them, the Bills of Entry of live consignments were recalled by them and the claim of exemption benefit was withdrawn and customs duty at appropriate rate was paid by M/s. Varroc Engineering Limited.

- 1.4.11 Shri Kailash Gawade of M/s. SME Logistics Pvt. Ltd. vide email dated 07.12.2023 informed that they have requested M/s. Varroc Engineering Ltd. to pay the penalty charges at the earliest, if agreed. Also, requested them to write/contact with DRI if they have any different opinion.

- 1.5.1 The importer vide letter dated 28.12.2023 informed that they have deposited Rs, 80,05,259/- of the differential duty on account of wrong availment of exemption under notification no. 24/2005 dated 01.03.2005 in import of Liquid Crystal Display. Vide the said letter, the importer has stated that:

(2). *We Varroc Engineering Ltd. (hereafter referred to as 'We/Company'), had imported 'Liquid Crystal Display' (LCD) during the period 07.04.22 to 05.07.22, by availing the exemption benefit under Sr. No. 29 of Notification No. 24/2005 dated 01.03.2005.*

(3). *With respect to the imports made during the said period, an investigation was initiated by your goodself regarding such availment of exemption benefit, in light of the corrigendum dated 07.04.2022. We understand that the investigation was limited to the imports made after 07.04.2022.*

(4). *Basis the understanding, the Company has surrendered/forgone the exemption so availed under Notification No. 24/2005, in respect of the LCD imports for the said period and paid the differential duty alongwith interest, amounting to Rs. 80,05,259/-.*

(5). *The above payment was made in terms of Section 28(1) of the Customs Act, 1962 with an understanding that the proceeding will be closed in terms of Section 28(2) of the Customs Act, 1962.*

(7). *We submit that the entire demand of differential duty falls within normal period of limitation. Hence, we had paid the said amount of Rs. 80,05,259/-, in terms of Section 28(1) with a request for closure of the proceedings under Section 28(2) of the Customs Act, 1962.*

*As there is no demand under Section 28(4) or 28(5) of the Customs Act, 1962, penalty is not imposable.*

- 1.5.2 On going through the said letter of the importer, it appeared that the importer has self-presumed that the investigation being conducted by DRI belongs to the period after 07.04.2022 i.e. post issuance of the corrigendum and they remained elusive about the wrong availment of benefit of exemption under Notification No. 24/2005 dated 01.03.2005 between the period from 01.01.2022 to 06.04.2022. The importer again presumed that there is no demand under Section 28(4) and penalty is not imposable upon them.
- 1.5.3 However, it appeared that even after knowing the non-availability/non-applicability of exemption benefit under Notification no. 24/2005 dated 01.03.2005 as amended, to the LCDs imported by them, M/s. Varroc Engineering Limited maliciously did not recall rest of the Bills of Entry cleared in the past and the applicable differential duty was not paid by them. The same reflected the ill intent of Varroc Engineering Limited in evading Customs Duty.
- 1.5.4 Further, after acceptance of non-availability of exemption of BCD on import of LCD under notification no. 24/2005 as amended vide Notification no. 57/2021 and clarification dated 07.04.2022 for use in manufacturing of speedometer of automobiles by the authorized representative and CHA of the importer, the importer had not paid appropriate duty and the penalty applicable to them. Therefore, further summons dated 02.04.2024 were issued to Mr. Ranaba Patil and Mr. Santosh D. Patel of M/s. Varroc Engineering Ltd., to appear before officer of DRI, Raipur Regional Unit on 09.04.2024 to tender statement but nobody from M/s. Varroc Engineering Limited appeared before officer of DRI to tender statement.
- 1.5.5 Further, from the information provided by the authorized representative of the importer and their CHA, it was ascertained that the importer is engaged in manufacturing of Automobile parts under CTH 8708 and it appeared that the imported product i.e., "LIQUID CRYSTAL DISPLAYS" (LCD) was being used in the manufacturing of the same. It appeared that LCD for Automobile parts is not covered under Sr. No. 29 of Notification No. 24/2005, as amended by Notification No. 57/2021 dated 29.12.2021 and corrigendum dated 07.04.2022.

- 1.6.1 From the web portal of the Importer, it had been found that they are engaged in manufacturing of parts of auto industry. The details mentioned on their web portal is as under –

*"Varroc is a global tier-1 automotive component company. we commenced operations in India with our Polymer business in 1990. We design, manufacture, and supply exterior lighting systems, plastic and polymer components, electrical-electronics components, and precision metallic components to passenger car, commercial vehicle, two-wheeler, three-wheeler and off-highway vehicle ("OHV") OEMs directly worldwide."*

*"With over 3 decades of relentless commitment to excellence and performance, Varroc offers the best design solutions that provides its customers a competitive edge in their markets. This has helped Varroc place itself as the most preferred partner with all leading OEMs in the automotive segment."*

- 1.6.2 Further, it was also evident from the import data of the Importer that the Importer is engaged in import of Liquid Crystal Devices by declaring them as **USE FOR TWO-WHEELER DASHBOARD**. From the details available on company's web portal, it appeared that Varroc is a manufacturer of parts for use in automotive vehicle.
- 1.6.3 From the above description and Import data of the Importer, it appeared that the Importer is an automotive parts manufacturing-oriented company and deals with the manufacturing of automobile vehicle parts and accessories of vehicle which falls under chapter 87 of Customs Tariff Act. Therefore, it further appeared that the importer has ineligibly availed duty exemption under notification No.24/2005 dated 01.03.2005 and they are required to pay the customs duty at merit rate.

1.6.4 In view of above, it appeared that goods imported by M/s. Varroc Engineering Limited are solely used in manufacturing of automobile parts which appeared to be classifiable under Chapter 87 of CTA.

1.7.1 Pursuant to Change in HSN-2022, vide Notification No. 57/2021 dated 29.12.2021, Notification No. 24/2005 dated 01.03.2005 was amended and exemption from payment of Basic Customs Duty was provided to Liquid Crystal Devices falling under CTH 8524 or 90138000 w.e.f. 01.01.2022.

1.7.2 Whereas a corrigendum to the notification no, 57/2021 dated 29.12.2021 was issued on 07.04.2022. On going through **the Para No. (I) of the above-mentioned corrigendum dated 07.04.2022 to Notification No. 57/2021 dated 29.12.2021**, it is observed that the department has clarified that only HSN 8524 for goods mentioned at Sl. No. 1 to 38A is applicable for the benefit of the said Notification as it has been written that: -

(I) at page number 12, in the Table, in serial number 4, in column (3), in serial number (iv), in the Table, in column (2), in line twenty-two, for "8524 or 90138000", read "8524";

(II) at page number 12, in the Table, in serial number 4, in column (3), in serial number (iv), in the Table, in column (3), in line twenty-two, for "Liquid crystal devices", read "Liquid crystal devices for goods mentioned at S. Nos. 1 to 38A";

1.7.3 Thus, Sl. No. 29 of Notification No. 24/2005 dated 01.03.2005 was amended vide Notification 57/2021-Customs dated 29<sup>th</sup> December 2021 with effect from 01.01.2022, which was further corrected vide the corrigendum No. GSR (E) issued vide F. No. 190354/286/2021-TRU dated 07.04.2022 to make changes in line no. 22 of Notification No. 57/2021-Customs dated 29<sup>th</sup> December, 2021 viz. (Heading) "8524 or (Tariff Item) 90138000" was amended as "8524" (thereby deleting CTI 90138010) and (Description) "Liquid Crystal devices" was substituted and corrected as "Liquid crystal devices for goods mentioned at S. No. 1 to 38A".

1.7.4 It had been admitted by the importer that the goods being manufactured by them is not covered under Sr. No. 1 to 38A of the Notification no. 24/2005 dated 01.03.2005 as amended.

1.7.5 From the above, **it clearly appeared that benefit of Sr. No. 29 of Notification No. 24/2005 dated 01.03.2005 is specifically reserved for Liquid crystal devices that are used for goods mentioned at Sl. No. 1 to 38A of the said notification no. 24/2005.**

1.7.6 From the import data of M/s. Varroc Engineering Limited, it had been found that prior to year 2022, they have been classifying Liquid Crystal Display under CTI 90138010. The description of Chapter 9013 for the relevant period reads as under:

*9013-LIQUID CRYSTAL DEVICES NOT CONSTITUTING ARTICLES PROVIDED FOR MORE SPECIFICALLY IN OTHER HEADINGS; LASERS, OTHER THAN LASER DIODES; OTHER OPTICAL APPLIANCES AND INSTRUMENTS, NOT SPECIFIED OR INCLUDED ELSE WHERE IN THIS CHAPTER*

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*9013 80 10 --- Liquid crystal devices (LCD)*

1.7.7 Whereas, during the relevant period, the Liquid Crystal Devices (LCD) under CTI-90138010 were duty free. Further, the seventh edition of Harmonized System (HS) Nomenclature HS-2022 came into force from 01.01.2022, wherein the CTI-90138010 was omitted and replaced with New Code-90138000 under correlation 'NP', having partial relation with earlier HS code. Therefore, the description of heading in 9013 was changed and substituted to-

— “LASERS, OTHER THAN LASER DIODES; OTHER OPTICAL APPLIANCES AND INSTRUMENTS, NOT SPECIFIED OR INCLUDED ELSEWHERE IN THIS CHAPTER”

901380 - Other devices, appliances and instruments. DELETED

90138000 - Other devices, appliances and instrument.

1.7.8 Therefore, it appeared that Liquid Crystal Devices (LCD) was deleted from description of HS Code 9013. However, on going through import data of the importer, it was found that even after Change in Harmonized System (HS) Nomenclature HSN-2022, M/s. Varroc Engineering Limited started to classify LCDs being imported by them under CTI 90138000 between 15.01.2022 to 19.01.2022 i.e. under Bills of Entry no. 7090208 dated 15.01.2022 and 7145809 dated 19.01.2022, which was inappropriate for them. Further, from 23.01.2022 onwards, the classification of same goods was changed by them to 85249100.

1.7.9 From the import details of the M/s. Varroc Engineering Limited, it has been found that in Bill of Entry no. 7145809 dated 19.01.2022, wherein the importer has classified Liquid Crystal Display under CTI 90138000, was assessed by Customs and CTI was assessed and changed to 85249000, while the benefit of exemption under Notification no. 24/2005 dated 01.03.2005 as amended was removed. After, the assessment of CTI of Liquid Crystal Display by Customs, the importer started to classify CTI of Liquid Crystal Display imported by them under CTI 85249000. Earlier to the said Bill of Entry no. 7145809 dated 19.01.2022, from 01.01.2022 onwards, the importer has classified Liquid Crystal Display under CTI 90138000 in Bill of Entry no. 7090208 dated 15.01.2022 only but, the importer did not recall the Bill of Entry no. 7090208 dated 15.01.2022 for re-assessment the CTI of Liquid Crystal Display classified by them under the said CTI 90138000. The importer even after knowing the correct classification of Liquid Crystal Display under CTI 85249000 after the query raised by Customs and accepted by the importer themselves, evaded to correct the classification of Liquid Crystal Display in Bill of Entry no. 7090208 dated 15.01.2022 and the same is not appeared to be bonafide on part of the importer.

1.7.10 Further, from 24.01.2022, the importer started to classify the Liquid Crystal Display under CTI 85249100 but with exemption under Notification no. 24/2005 dated 01.03.2005 i.e. on payment of Customs duty @ NIL and IGST @ 18% and availed benefits of exemption from payment of Basic Customs duty under Sr. no. 29 of Notification No. 24/2005 dated 01.03.2005, as amended, by Notification No. 57/2021 dated 29.12.2021 corrected vide corrigendum dated 07.04.2022. Also, from the plain reading of Notification No. 24/2005-Customs dated 01.03.2005 read with amendment notification no. 57/2021 dated 29.12.2021 and further corrigendum date 07.04.2022, it is evident that benefit under Sr. no. 29 of Notification No. 24/2005 is for exemption of BCD under the said notification is applicable to only those Liquid Crystal Display which were imported for manufacturing of the goods mentioned at S. No. 01 to 38A of the said notifications. Therefore, the benefit of the exemption at Sr, No. 29 of Notification no. 24/2005 dated 01.03.2005 appeared not available to the Liquid Crystal Display being imported by the importer. The regular Basic Customs Duty applicable for Import of Liquid Crystal Display under CTI 8524 9100 is @ 15% of BCD with SWS @ 10% and IGST @ 18%.

1.7.11.1 From the import data of the importer, it had been found that Query Sr. No. 1 in Bill of Entry no. 9382719 dated 02.07.2022 was raised on 02.07.2022, as under:

*The goods appear to be parts of speedometer of automotive vehicles which are not eligible for benefit of Sr. No. 29 of 24/2005. Pl. Check the corrigendum dated 07.04.2022 in this regard and state why the benefit should not be denied.*

1.7.11.2 In reply, on 05.07.2022, the importer submitted as under:

*Sir, the notification no. 24/2005-Cus dated 1<sup>st</sup> March 2005 published in teh Gazette of India Vide G.S.R. 122(E) dated 1<sup>st</sup> March 2005, exempts certain goods from whole of duty of customs, falling*

*under the heading, sub-heading or Tariff Heading or Tariff Item of the first schedule of the Customs Tariff Act, 1975 and specified in column (2) of the table given in the notification. It is not mentioned in the notification that the benefit is available to ITA goods only. The Notification benefit available to all goods as mentioned above. Please assess final BE. Thanks.*

**1.7.11.3** Query Sr. No. 2 in same Bill of Entry was raised on 05.07.2022:

*Pl Check the Corrigendum dated 07.04.2022 to the Ntn 57/2021-Customs which is available in the Link <http://taxinformation.cbic.gov.in/view-pdf/1009282/eng/notifications>. In view of the above, the benefit is not applicable to the imported goods. Kindly clarify. Further if you want any personal hearing, you may submit your email address fir fixing PH or you may also write to [accimpdel-group5A@gov.in](mailto:accimpdel-group5A@gov.in) in requesting for personal hearing or you may attend the same @#142, New Custom House, ACC-Imports, New Delhi.*

**1.7.11.4** In reply, on 07.07.2022, the importer submitted as under:

*Sir, the importer is ready to pay the duty, we request you to kindly remove the notification and assess the BOE on merit. Regards.*

**1.7.12** It appeared that the copy of emails provided by Shri Kailash Gawade, Director of SME Logistics Pvt. Ltd. regarding intimation of query raised by Customs in assessment of Bill of Entry of Liquid Crystal Display as mentioned in above mentioned para 4.3 to 4.8, was regarding the same Bill of Entry no. 9382719 dated 02.07.2022. From the above, it appeared even though informed by the appraising officer, that the importer reluctantly disagreed to the ineligibility of exemption benefit under notification no. 24/2005 dated 01.03.2005 as amended to the Liquid Crystal Display being imported by them. However, after the second query was raised and the importer was asked to clarify through personal etc., the importer agreed to the findings of the appraising officer and duty was paid by them at merit rate. Therefore, it appeared that the importer was aware that exemption benefit under notification no. 24/2005 dated 01.03.2005 as amended was not available to the Liquid Crystal Display being imported by them.

**1.7.13** Further, after assessment of the Bill of Entry no. 9382719 dated 02.07.2022, the importer recalled other live Bills of Entry no. 9384811 dated 02.07.2022 and 9411289 dated 05.07.2022 wherein, the benefit under notification no. 24/2005 dated 01.03.2005 as amended was removed by them and duty was paid on merit rate.

**1.7.14** However, the importer wilfully and intentionally remained elusive about other bills of entry wherein benefit of exemption under Notification no. 24/2005 dated 01.03.2005 as amended, was wrongly availed between 01.01.2022 to 01.07.2022 and purposefully refrained from recalling the earlier Bills of Entry wherein the benefit of exemption under Notification no. 24/2005 dated 01.03.2005 as amended, was wrongly availed and the same was found out only after the investigation was initiated by DRI.

**1.7.15** The importer ought to have recalled and reassessed all the Bills of Entry in respect of import of Liquid Crystal Display wherein benefit under Notification no. 24/2005 dated 01.03.2005 as amended was wrongly availed and paid customs duty at merit rate but the importer suppressed the facts from department and chose to evade the customs duty not paid by wrong availment of benefit of exemption under Notification no. 24/2005 dated 01.03.2005 as amended.

**1.7.16** The query regarding inadmissibility of exemption to Liquid Crystal Display was raised by Customs Department on 02.07.2022, which was accepted by the importer on 07.07.2022. further, few other Bills of Entry were recalled and reassessed by the importer on 14.07.2022 but even after lapse of approx. 8 months, only when the summons dated 30.03.2023 was issued by DRI wherein information regarding the wrong availment of exemption under Notification No. 24/2005 dated 01.03.2005 as amended was sought and investigation in the case was initiated, the customs duty wrongly evaded by the importer was paid on 12.05.2023.

- 1.7.17 The M/s. SME Logistics Pvt. Ltd., CHA of the importer in collusion with the importer never informed any customs authorities regarding non-payment of customs duty in respect of import of Liquid Crystal Display vide Bills of Entry filed during the period from 01.01.2022 to 01.07.2022 and the importer in collusion with their CHA, recalled only the live bills of entry, thus evaded payment of customs in respect of consignments cleared in past. Thus, the CHA has facilitated the importer in evading payment of customs duty at merit rate which has resulted in huge loss to the government exchequer.
- 1.8.1 It appeared that after the new HSN-2022 became applicable, the importer has mis-classified the LCDs imported by them under Bills of Entry no. 7090208 dated 15.01.2022 to incorrect HSN 90138000, having total assessable value of goods Rs. 17,40,514/-.
- 1.8.2 Further, on account of availment of ineligible exemption under Notification No. 24/2005 dated 01.03.2005 as amended in respect of goods covered under Bills of Entry filed during period from 01.01.2022 to 01.07.2022 having total assessable Rs. 6,05,95,023/-, the importer has evaded custom duty to the tune of Rs. 1.18 Crore.
- 1.8.3 **M/s. Varroc Engineering Limited has paid differential duty amounting to Rs. 69.85.637/- along with interest amounting to Rs. 10,19,622/- in respect of the Bills of Entry filed during period from 18.04.2022 to 18.06.2022 only, whereas penalty at appropriate rate has not been paid by them.**
- 1.8.4 Since, the duty paid by the importer was inappropriate inasmuch as the importer remained elusive about payment of duty not paid in import of Liquid Crystal Display by wrong availment of exemption under notification no. 24/2005 dated 01.03.2005 as amended and presumed that the changes made vide corrigendum dated 07.04.2022 were effective from 07.04.2022 onwards, DRI vide letter F. No. :DRI/IZU/RaRU/CI/INT-27/ENQ-17/2023 dated 28.05.2024 informed the importer that the Hon'ble Supreme Court in the case of State of Rajasthan & another vs. J.K. Udaipur Udyog Ltd. &Anr., has held that
- “the use of the word corrigendum itself indicates, the intention was to correct and to rectify what the Government thought had been erroneously done. It is clear that a corrigendum is nothing but a correction and it relates back to the notification itself”.*
- In view of the above, it is amply clear that the effect of the Corrigendum to Notification no. 57/2021 dated 29.12.2021 is from the date of effect of the initial notification i.e. 01.01.2022.*
- 1.8.5. Vide the said letter dated 28.05.2024, the importer was requested to pay the total differential duty alongwith appropriate interest and penalty in respect of Liquid Crystal Display imported by them by misuse of exemption under Notification no. 24/2005 dated 01.03.2005 as amended, covered under Bills of Entry filed from 01.01.2022 onwards.
- 1.8.6. However, the importer did not respond to the letter and Customs Duty on account of wrong availment of exemption under Notification no. 24/2005 dated 01.03.2005 as amended was not paid by them and the same is recoverable in terms of Section 28(4) of the Customs Act, 1962.
- 1.8.7 Vide letters F.No.:DRI/IZU/RaRU/CI/INT-27/ENQ-17/2023 dated 28.05.2024 request was made to the Deputy Commissioner (P&V), Nhava Sheva Port and Deputy Commissioner (P&V), ACC, Mumbai to verify genuineness of Challans submitted by Varroc Engineering Limited vide email dated 16.05.2023 and confirm the deposit of same in government exchequer.
- 1.8.8 The Chief Account Officer, Cash Section, JNCH vide letter F. No.S/10-Gen-03/2017-18/CASH/JNCH dated 29.05.2024 confirmed the deposit of amount of Rs. 66,76,938/- by Varroc Engineering Limited vide challan dated 12.05.2023 in respect of Bills of Entry filed at Nhava Sheva Port (INNSA1). Further, the Chief Account Officer, Cash Section, ACC, Mumbai vide letter F.No. S/3-Misc-07/2022/Cash/ACC/Part-III dated 30.05.2024 confirmed the deposit of amount of Rs.

13,28,321/- by M/s. Varroc Engineering Limited vide Challans dated 15.05.2023 in respect of Bills of Entry filed at Mumbai Air Cargo (INBOM4).

**1.9. PROVISION OF THE LAW RELEVANT TO THIS CASE.**

**LEGAL PROVISIONS**

**1.9.1 Varroc Engineering Limited** has imported Liquid Crystal Display has wrongly availed exemption under notification no. 24/2005 dated 01.03.2005 as amended, with intent to evade payment of Customs duties. The extracts of the relevant provisions of following laws relating to self-assessment, import of goods in general, the liability of the goods to confiscation and person concerned to penalty for illegal importation under the Customs Act, 1962 and other laws for the time being in force, were mentioned in the subject SCN. The same are not reproduced in this Order-in-Original for the sake of brevity:

- Section 17- Assessment of duty leviable on any imported goods.
- Section 28- Recovery of duties not levied or not paid or short-levied or short- paid] or erroneously refunded.
- Section 46 -Entry of goods on importation.
- Section 28AA — Interest on delayed payment of duty.
- Section 46(4)- Importer while presenting a Bill of entry shall make and subscribe to a declaration as to the truth of the contents of such Bill of entry.
- Section 46(4A)— Importer who presents a Bill of entry shall ensure the accuracy and completeness of the information given in the Bill of entry.
- Section 111 Confiscation of improperly imported goods
- Section 112(a) & 112(b) - Penalty for improper importation of goods.
- Section 114A- Penalty for short-levy or non-levy of duty in cases where the duty has not been levied or has been short levied or the interest has not been charged or paid or has been part paid by reason of collusion or any wilful misstatement or suppression of facts.
- **Section 114AA- Penalty for use of false and incorrect material.**

**1.9.2 Notification No. 24/2005- Customs dated 01.03.2005 issued by CBEC**

*G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the following goods, falling under the heading, sub-heading or tariff-item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and specified in column (2) of the Table below, when imported into India, from the whole of the duty of customs leviable thereon under the said First Schedule, namely:-*

Table

Sr.No.	Goods falling under Heading, Sub-heading or Tariff item
(1)	(2)
1.	3818 00
2.	8456 91 00, 8469 11 00, 8470, 8471, 8473 21 00, 8473 29 00, 8473 30, 8473 50 00
3.	8517, 8520 20 00, 8523 (other than those falling under tariff item 8523 30 00), 8524 31, 8524 40, 8524 91, 8525 20, 8531 20 00, 8532, 8533, 8534 00 00, 8541, 8542, 8543 11 00, 8543 81 00, 8544 70
4.	9009 11 00, 9009 21 00, 9009 91 00, 9009 92 00, 9009 93 00, 9009 99 00, 9010 41 00, 9010 42 00, 9010 49 00, 9013 80 10, 9013 90 10, 9026, 9027 20 00, 9027 30, 9027 50, 9027 80, 9030 40 00, 9030 82 00, 9031 41 00
5.	All goods for the manufacture of goods covered by S. Nos. 1 to 4 above, provided that the importer follows the procedure set out in the Customs (Import of

	<i>Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996. [F.No334/1/2005- TRU] (V. Sivasubramanian) Deputy Secretary to the Government of India</i>
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**1.9.3 Notification no. 57/2021 dated 29.12.2021 issued by CBIC: -**

G.S.R. ....(E). -In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby directs that each of the notifications of the Government of India in the Ministry of Finance (Department of Revenue), specified in column (2) of the Table below shall be amended in the manner specified in the corresponding entry in column (3) of the said Table, namely:

<b>4.</b>	Notification No. 24/2005-Customs, dated the 1 <sup>st</sup> March, 2005, published in the Official Gazette vide G.S.R. 122(E), dated the 1st March, 2005.	<p>In the said notification, in the Table,</p> <p>.....</p> <p>(iv) For serial number 29 and the entries relating thereto, the following serial number and entries shall be substituted, namely: -</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">“29</td> <td style="width: 25%; text-align: center;">8524 90138000</td> <td style="width: 10%; text-align: center;">or</td> <td style="width: 40%;">Liquid crystal devices”;</td> </tr> </table> <p>(v) For serial number 30 and the entries relating thereto, the following serial number and entries shall be substituted, namely: -</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">“30</td> <td style="width: 25%; text-align: center;">8529 90139000</td> <td style="width: 10%; text-align: center;">or</td> <td style="width: 40%;">Parts of liquid crystal devices”;</td> </tr> </table> <p>.....</p>	“29	8524 90138000	or	Liquid crystal devices”;	“30	8529 90139000	or	Parts of liquid crystal devices”;
“29	8524 90138000	or	Liquid crystal devices”;							
“30	8529 90139000	or	Parts of liquid crystal devices”;							

**1.9.4 Corrigendum dated 07-04-2022 to Notification No. 57/2021 dated 29.12.2021 issued by CBIC:**

G.S.R. (E). -In the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No. 57/2021-Customs, dated the 29<sup>th</sup> December, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 906 (E), dated the 29<sup>th</sup> December, 2021, namely,-

(I) at page number 12, in the Table, in serial number 4, in column (3), in serial number (iv), in the Table, in column (2), in line twenty-two, for “8524 or 90138000”, read “8524”;

(II) at page number 12, in the Table, in serial number 4, in column (3), in serial number (iv), in the Table, in column (3), in line twenty-two, for “Liquid crystal devices”, read “Liquid crystal devices for goods mentioned at S. Nos. 1 to 38A”;

(III) at page number 12, in the Table, in serial number 4, in column (3), in serial number (v), in the Table, in column (2), in lines twenty-six and twenty-seven, for “8529 or 90139000”, read “8529”;

(IV) at page number 12, in the Table, in serial number 4, in column (3), against serial number (v), in the Table, in column (3), in line twenty-six, for “Parts of liquid crystal devices”, read “Parts of liquid crystal devices for goods mentioned at S. Nos. 1 to 38A”

**1.10** With the introduction of self-assessment and consequent upon amendments to Section 17 of the Customs Act, 1962 w.e.f. 08.04.2011, it was obligatory on the part of the importer to declare the actual description and correct classification and other details of the goods imported by them and pay the duty applicable in respect of the said goods. Therefore, by wrong availment of ineligible exemption under Notification No. 24/2005 dated 01.03.2005 as amended and not taking corrective measures to reassess the Bills of Entry cleared in past by resorting to wrong availment of exemption notification, the importer appears to have indulged in mis-declaration by way of suppression of facts and wilfully mis-declared the imported goods with intent to evade the payment of applicable Custom duties. Thus, the importer has contravened the provisions of Section 46(4) & 46(4A) of the Customs Act, 1962, inasmuch as they have mis-declared the goods imported by them, by suppressing the true and correct description of the goods, while filing the declaration seeking clearance at the time of importation of impugned goods. The importer has also mis-classified the goods being imported by them and even after being pointed out by customs authorities, the importer failed to reassess the bills of entry cleared by them in past by resorting to mis-classification of goods being imported. Section 17 (1) & Section 2 (2) of the Customs Act, 1962 read with CBIC Circular No. 17/2011- Customs dated 08.04.2011 cast a heightened responsibility and onus on the importer to determine duty, classification etc. by way of self-assessment. The importer, at the time of self-assessment, is required to ensure that he declared 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.

**1.11. Summary of Investigation:**

- (i) M/s. Varroc Engineering Limited is engaged in “manufacture of Instrument Cluster and other items used in Dashboard of Two Wheelers (Automotives) and had been importing LIQUID CRYSTAL DISPLAYS” under CTH 85249100 for the period from 24.01.2022 to 18.06.2022 and cleared the goods at NIL rate of BCD by availing ineligible benefit under Sl.No.29 of Notification No.24/2005, as amended by Notification No.57/2021 dated 29.12.2021 w.e.f. 01.01.2022. M/s. Varroc Engineering Limited during the period 15.01.2022 to 19.01.2022 has also misclassified “LIQUID CRYSTAL DISPLAYS” under incorrect CTIs, by availing benefit under Sl.No.29 of Notification No.24/2005, as amended by Notification No.57/2021 dated 29.12.2021, which was also not available to the LCDs imported by them.
- (ii) In light to the New HSN 2022, Query was raised by Customs in respect of mis-classification of Liquid Crystal Display by the importer vide Bill of Entry no. 7145809 dated 19.01.2022 under inappropriate CTI 90138000. After acceptance of the importer, the said Bill of Entry was recalled and the Liquid Crystal Display imported vide the said Bill of Entry was reassessed to CTI 85249000. However, the importer failed to recall the previous Bill of Entry no. 7090208 dated 15.01.2022 and the importer evaded to correct the misclassification of CTI of Liquid Crystal Display imported vide the said Bill of Entry.
- (iii) Corrigendum dated 07.04.2022 to Notification No. 57/2021 dated 29.12.2021 was issued by CBIC wherein correction in Notification No. 57/2021 dated 29.12.2021 with respect to the entries at Sr. No. 29 of the Notification No. 24/2005 dated 29.12.2021 was corrected, wherein the exemption under Notification No. 24/2005 dated 01.03.2005 was restricted to Liquid Crystal Devices for goods mentioned at Sr. No. 1 to 38A of Notification no. 24/2005 dated 01.03.2005 as amended, falling under CTH8524. However, it was ascertained that the goods i.e., Liquid crystal devices imported by importer are not covered under Sl.No.29 and do not fall under the category of Sl. Nos. 1 to 38A of Notification No.24/2005, as amended by Notification No.57/2021 dated 29.12.2021 w.e.f. 01.01.2022. Hence, the importer was required to pay BCD@15%.
- (iv) Query was raised by Customs in respect of Liquid Crystal Display imported by the importer under Bill of Entry no. 9382719 dated 02.07.2022. The importer submitted reply to the query justifying the wrong availment of said exemption under Notification no. 24/2005 dated 01.03.2005 as amended but on being asked to further clarify, the importer accepted the findings of the appraising

officer and the exemption claimed was removed by the importer by recalling the said Bill of Entry. The importer also recalled some other live bills of entry and the exemption wrongly claimed was withdrawn and duty was paid by them at merit rate.

- (v) Shri Santosh Patel, Head of Taxation of M/s Varroc Engineering, in his statement dated 18.04.2023, has duly accepted the fact that their company knows the facts that exemption benefit of the Notification No. 24/2005 as amended by 57/2021 dated 29.12.2021 was available only for the items under Chapter Heading 8524. Accordingly, their company changed the CTI of LED Display imported by them from 90138010 to 85249100 to avail the benefit of the said notification. Even though, as the department again vide corrigendum dated 07.04.2022 clarified the matter that the said exemption is available only for the goods imported for goods mentioned at Sr. No. 01 to 38 A of the said notification no. 24/2005, however they continued to avail the exemption.
- (vi) Further, the documents (copies of mail between M/s. SME Logistics and M/s. Varroc Engineering Limited) submitted by the Kailash Gawade, one of the Directors of the SME Logistics, CHA of the Importer, it has been observed that M/s. SME Logistics had informed M/s. Varroc Engineering Limited about non-applicability of the Notifications for the import of LCD used for speedometer for motor vehicles, thereafter even after knowing the facts, Varroc Engineering never approached any customs officials to re-assess their previous bills of Entry and to pay the differential duty on goods covered under previous Bills of Entry.
- (vii) Also, Shri Kailash Bhikaji Gawade, directors of the M/s. SME Logistics Pvt. Ltd., CHA of the Importer, in his statement has informed that the company stopped availing benefits of the said notification only after the customs raised query in one of their bills of entry. Thereafter they started paying BCD on the import of the said LED Devices at merit rate. However, they never approached the Custom Department to pay the differential amount on LCDs imported by them under previous bills of entry filed by them. This reflects that even after knowing the facts that the exemption is not available to them, they did not make payment of the differential amount in respect of previous bills of entries filed by them. This reflects malafide on part of the importer as they had wilfully suppressed the facts in r/o previous bills of entry and remained elusive in payment of customs duty evaded by them by wrong availment of exemption from payment of customs duty.
- (viii) The query regarding inadmissibility of exemption to Liquid Crystal Display was accepted by the importer on 07.07.2022 and few other Bills of Entry were recalled and reassessed by the importer upto 14.07.2022 but even after lapse of approx. 8 months, only when the summons dated 30.03.2023 was issued by DRI and investigation in the case regarding wrong availment of exemption under Notification No. 24/2005 dated 01.03.2005 as amended, was initiated, the customs duty wrongly evaded by the importer was paid on 12.05.2023 & 15.05.2023.
- (ix) It further appeared that if the investigation had not been conducted by the DRI Raipur in respect of wrong availment of exemption available under notification no. 24/2005 as amended vide 57/2021 and corrigendum dated 07.04.2022, the importer would have successfully evaded the Customs Duty along with other applicable duty in previous bills of entry. The importer never approached any customs authorities to pay the differential duty even after knowing the facts; this showed that Varroc Engineering Limited had wilfully suppressed the facts.. ‘
- (x) SME Logistics Pvt. Ltd., CHA of the importer in collusion with the importer never informed any customs authorities regarding non-payment of customs duty in respect of import of Liquid Crystal Display vide Bills of Entry filed during the period from 01.01.2022 to 01.07.2022, and the importer, in collusion with their CHA, recalled only the live bills of entry, thus evaded payment of customs in respect of consignments cleared in past.
- (xi) By virtue of the provisions contained under Section 17(1) read with Section 46(4A) of the Customs Act, 1962, it had been incumbent upon the importer viz. M/s Varroc Engineering Limited to do the lawful and appropriate assessment of duty payable under the Schedule to the Customs Tariff Act, 1975 and pay the appropriate Customs duty accordingly. Therefore, it appeared that M/s

Varroc Engineering Limited had contravened the provisions prescribed under Section 17(1) read with Section 46(4A) of the Customs, 1962. Further, it appeared that the importer had wilfully misstated the appropriate schedule/Notification and serial number in their declaration filed under Section 46 resulting in short payment of duty and thus deliberately certified the said wilful misstated declarations.

- (xii) As discussed above, the malafide intention of Varroc Engineering Limited was established inasmuch as they were aware that liquid crystal devices imported by them were not covered under Sl.No.29 and did not fall under the category of Sl. Nos. 1 to 38A of Notification No.24/2005, as amended by Notification No.57/2021 dated 29.12.2021 w.e.f. 01.01.2022. The importer cleared the goods at a NIL rate of BCD instead of the applicable BCD @15% in order to evade payment of appropriate BCD. Therefore, it appeared that Varroc had wilfully misstated in the bills of entry as listed in Annexure-I with a malafide intention to evade payment of appropriate Customs duties; thereby, by those acts of wilful misstatement by Varroc Engineering Limited, the provisions of Section 28(4) of the Customs Act, 1962, were squarely attracted for the demand and recovery of duty not paid/short paid.
- (xiii) From the above discussion, it appeared that Varroc Engineering Limited had also grossly mis-declared the goods to evade a huge amount of customs duty. Varroc Engineering Limited, in collusion with their CHA, had evaded recalling and reassessing the Bills of Entry filed in the past in respect of the import of Liquid Crystal Displays, thus evading payment of duty at the merit rate, which resulted in a loss to the government exchequer. The above act of Varroc Engineering Limited clearly reflected the act of suppression, collusion, and wilful mis-statement on the part of Varroc Engineering Limited in order to evade payment of customs duty at the appropriate rate.
- (xiv) From the above discussion, it appeared that Varroc Engineering Limited, by acts of omission and commission with an intention to evade payment of appropriate Customs duties, as discussed above, had rendered the impugned goods imported—as mentioned in Annexure-I & II to the notice—liable to confiscation under Section 111(m) of the Customs Act, 1962. They had rendered the goods, i.e., Liquid Crystal Displays imported by them via bills of entry filed at Nhava Sheva Port and bills of entry at Mumbai Air Customs, as detailed in Annexure-I & II, liable for confiscation under Section 111(m) of the Customs Act, 1962.
- (xv) In view of the above mis-declaration, wilful mis-statement, collusion, and suppression of facts on account of wrong availment of exemption benefit under Sl.No.29 of Notification No.24/2005, as amended vide Notification No.57/2021 dated 29.12.2021 w.e.f. 01.01.2022, Customs duty aggregating to Rs. 1,18,03,178/- (Rupees One Crore Eighteen Lakhs Three Thousand One Hundred and Seventy-Eight only) evaded by Varroc Engineering Limited appeared liable to be recovered from Varroc Engineering Limited under Section 28(4) of the Customs Act, 1962. The same, along with interest and penalty at the appropriate rate, appeared recoverable under Section 28AA ibid in respect of goods imported under Bills of Entry mentioned in Annexure –I & II.
- (xvi) Varroc Engineering Limited paid the differential BCD amount of Rs. 69,85,637/- along with interest of Rs. 10,19,622/- vide TR6 Challan dated 12.05.2023 and 15.05.2023 in respect of only the Bills of Entry filed during the period from 07.04.2022 to 01.07.2022 as mentioned in Annexure-I.
- (xvii) The Chief Accounts Officer, Cash Section, JNCH, vide their letter dated 29.05.2024, verified the genuineness of the challans amounting to Rs. 66,76,938/- tendered for payment of Customs Duty and interest in respect of Bills of Entry filed at Nhava Sheva Port (INNSA1) and confirmed the deposit of the same in the government account. Further, the Chief Account Officer, Cash Section, ACC, Mumbai, vide letter dated 30.05.2024, verified the genuineness of Challans tendered for payment of Customs Duty and Interest in respect of the Bill of Entry filed at Mumbai Air Cargo (INBOM4) and confirmed the deposit of the same in the government account.

- (xviii) The Customs Duty & interest amounting to Rs. 69,85,637/- (Rupees Sixty-Nine Lakhs, Eighty-Five Thousand Six Hundred Thirty-Seven Only) and Rs. 10,19,622/- (Rupees Ten Lakhs Nineteen Thousand Six Hundred Twenty-Two only) paid by Varroc Engineering Limited in respect of Bills of Entry filed during the period 18.04.2022 to 18.06.2022 was required to be appropriated against the duty demand.
- (xix) Therefore, Varroc Engineering Limited appeared to have rendered themselves liable for penalty under Section 112 (a) (ii) and/or 114A of the Customs Act, 1962. Further, by the wilful misstated declaration made under Section 46(4) of the Customs Act, 1962, in the bills of entry as true, Varroc Engineering Limited appeared to have also rendered themselves liable to penalty under section 114AA of the Customs Act 1962.
- (xx) Varroc Engineering Limited remained elusive about the payment of differential duty evaded by them on account of wrong availment of exemption under Notification No. 24/2005 dated 01.03.2005 as amended and attempted to misguide the investigation by stating the corrigendum dated 07.04.2022 was an amendment and was applicable from 07.04.2022 onwards only. Thus, Varroc Engineering Limited denied payment of the differential duty evaded by them in respect of Bills of Entry filed by them during 01.01.2022 to 06.04.2022, i.e., before 07.04.2022.
- (xxi) Thus, the total liability of payment of differential duty amounting to Rs. 1,18,03,178/-, interest (@15% p.a.) and Penalty at appropriate rate was on Varroc against which, they have paid differential duty amounting to Rs. 69,85,637/-, interest amounting to Rs. 10,19,622/-, which is tabulated as under:

Period	Duty Evaded	Duty Paid during investigation	Duty Required to be recovered U/s 28(4) of the CA, 1962	Remarks
For the Bill of Entries filed from 01.01.2022 to 06.04.2022	4,817,541	0	4,817,541	During the Course of Investigation, the importer had paid Rs. 8005259/- (Rs. 6985637/- of Duty and Rs. 1019622/- of Interest
For the Bill of Entries filed from 07.04.2022 to 18.06.2022	6,985,637	6,985,637	0	
<b>For the Total Bill of Entries filed from 01.01.2022 till 18.06.2022</b>	<b>11,803,178</b>	<b>6,985,637</b>	<b>4,817,541</b>	

- 1.12 During investigations, it was also found that M/s. SME Logistics Pvt. Ltd., CHA of the importer in collusion with the importer never informed any customs authorities regarding non-payment of customs duty in respect of import of Liquid Crystal Display vide Bills of Entry filed during the period from 01.01.2022 to 01.07.2022 and the importer in collusion with their CHA, recalled only the live bills of entry, thus evaded payment of customs in respect of consignments cleared in past. Accordingly, SME Logistics Pvt. Ltd., CHA has rendered themselves liable for penal provisions under section 112(a) and/or 114(A) & 114(AA) of customs act, 1962.
- 1.13. Therefore, the importer M/s Varroc Engineering Limited (IEC – 0390019402), was called upon to show cause, in writing, to the Adjudicating Authority, i.e. Commissioner of Customs, Nhava Sheva V, Mumbai Zone – II having his office at Jawaharlal Nehru Customs House, Tal – Uran, Dist. – Raigad, Maharashtra within thirty days of the receipt of this notice, as to why-

- i) The classification of the goods imported vide Bill of Entry No. 7090208 dated 15.01.2022 under CTI 90138000 should not be rejected and classified under CTI 85249000;
- ii) The goods imported vide Bill of Entry No. 7090208 dated 15.01.2022 having assessable value of ₹ 17,40,514/- (Seventeen Lakh Forty Thousand Five Hundred Fourteen Only) should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962 for contravention of the provisions of Section 46(4) by mis-classification of the goods;
- iii) Penalty under Section 112(a)/Section 112(b) of the Customs Act, 1962, should not be imposed on M/s Varroc Engineering Limited for the acts of omission and commission which have rendered the imported goods of Bill of Entry no. 7090208 dated 15.01.2022 liable to confiscation under Section 111(m) of the Customs Act, 1962
- iv) The benefit of duty exemption under Sr. No. 29 of the Notification No.24/2005 dated 01.03.2005 as amended vide Notification No. 57/2021 dated 29.12.2021 w.e.f. 01.01.2022 followed by corrigendum dated 07.04.2022, claimed for the goods imported and cleared vide Bills of Entry as detailed in Annexure-I and Annexure-II, should not be denied with consequential duty liability;
- v) The said subject goods imported vide Bills of Entry as detailed in Annexure-I and Annexure-II having assessable value of ₹6,06,22,384/- (Rupees Six Crore Six Lakhs Twenty-Two Thousand Three Hundred and Eighty-Four only) should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962 for availment of exemption benefit under Notification No. 24/2005 dated 01.03.2005 as amended;
- vi) The differential duty amounting to **Rs.1,18,03,178/-** (Rupees One Crore Eighteen Lakhs Three Thousand One Hundred and Seventy-Eight only), evaded by M/s Varroc Engineering Limited should not be demanded and recovered under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA *ibid*;
- vii) The Customs Duty and interest amounting to **Rs. 69,85,637/- (Rupees Sixty-Nine Lakhs, Eighty-Five Thousand Six Hundred Thirty-Seven Only)** and **10,19,622/- (Rupees Ten Lakhs Nineteen Thousand Six Hundred Twenty-Two only)** respectively, paid by Varroc Engineering Limited in respect of Bills of Entry filed during period 18.04.2022 to 18.06.2022 should not be appropriated against the duty demand and applicable interest thereon;
- viii) Penalty under Section 112(a)(ii) of the Customs Act, 1962, should not be imposed on M/s Varroc Engineering Limited for their act of omission and commission;
- ix) Penalty should not be imposed on M/s Varroc Engineering Limited under Section 114A of the Customs Act, 1962;
- x) Penalty should not be imposed on M/s Varroc Engineering Limited under Section 114AA of the Customs Act, 1962;

**1.13.1** Further, SME Logistics Pvt. Ltd., CHA of the importer, was called upon to show cause, in writing, to the Adjudicating Authority, i.e. Commissioner of Customs, Nhava Sheva V, Mumbai Zone – II having his office at Jawaharlal Nehru Customs House, Tal – Uran, Dist. – Raigad, Maharashtra within thirty days of the receipt of this notice, as to why-

- i) Penalty should not be imposed on M/s SME Logistics Pvt. Ltd. under Section 112(a) of the Customs Act, 1962;
- ii) Penalty should not be imposed on M/s SME Logistics Pvt. Ltd. under Section 114A and/or 114 AA of the Customs Act, 1962;

## **2. WRITTEN SUBMISSIONS OF THE NOTICEES**

### **2.1 Written Submissions of M/s. Varroc Engineering Ltd.**

2.1.1. The Noticee No.1, M/s. Varroc Engineering Ltd., vide their letter dated 29.04.2025 has given written submission to the subject SCN through their authorised representative. M/s. Varroc Engineering Ltd. in the said letter dated 29.04.2025 submitted, inter alia, as under:

**A. Preliminary submissions.**

A.1. the Noticees vehemently refuted each and every allegation in the SCN and submits that the proposals made in the SCN are totally untenable in law and on facts. The SCN is full of false allegations without any factual or legal basis. The SCN is a bare SCN. That, the entire SCN is based on assumptions and presumptions of the Ld. Commissioner of Customs. In this regard, reliance is placed on the decision of the **Hon'ble Tribunal in Elektronik Lab Vs. CC – 2005 (187) ELT 362 and Govind Laskar Vs. CCE - 1991 (52) ELT 529, para 8.**

The duty and interest pertaining to 24 Bill(s) of Entry, filed between 18.04.2022 and 18.06.2022, has been duly paid prior to the issuance of the present SCN. In light of the established legal principles, proposal to impose penalty in respect of these bills of entry is completely bad in law.

A.2. that that an amount of Rs.80,05,259/- was paid by the Noticees on 10.05.2023 towards differential duty and interest in respect of the said 24 Bill(s) of Entry. Subsequently, vide letter dated 28.12.2023, the Noticees requested the DRI to close the present investigation in respect of the said 24 Bill(s) of Entry under Section 28(2) of the Customs Act, 1962.

A.3. that the payment was a voluntary surrender of duty and interest which arose due to inadvertently claiming the exemption benefit of Sl. No. 29 of the Notification No. 24/2005 as amended.

A.4. Section 28(2) states that no show cause notice shall be served on the assessee by the proper officer in respect of the duty or interest so paid under Section 28(1) of the Customs Act, 1962 or in respect of any penalty leviable under the provision of the Customs Act, 1962 and rules made thereunder. In the present case, the differential duty along with interest was duly paid by the Noticees, during the investigation, therefore, proposal in the SCN to impose penalty in respect of these bills of entry is completely bad in law. The above legislative position has been affirmed by the **Hon'ble Karnataka High Court in CC Vs. Pierre Colsun – 2014 (300) ELT 207 (Kar.), CC Vs. Powerica – 2012 (276) ELT 302 and Minebea Intec India Vs. CC – 2024 (387) ELT 689 (Tri. – Bang.)**

A.5. that the differential duty along with interest was voluntarily paid prior to the issuance of the SCN, and the DRI was also duly informed about such payment. In fact, the DRI has also verified the genuineness of the payment Challan(s) submitted to the Customs House (JNCH, Nhava Sheva & Air Cargo Complex, Andheri). Therefore, proposal to impose penalty in respect of the said 24 Bill(s) of Entry is incorrect and completely perverse.

Proposed reclassification of subject goods imported vide Bill of Entry No. 7090208 dated 15.01.2022 is immaterial and has no revenue implication.

A.6. that the reclassification of goods under Bill of Entry No. 7090208 dated 15.01.2022 is immaterial as the goods qualify for the same exemption under the alternative classification (Tariff Item 9013 80 00 or 8524 90 00) as per the relevant notification, resulting in a revenue-neutral situation.

**B. THE NOTICEES HAVE CORRECTLY AVAILED THE EXEMPTION BENEFIT UNDER SR. NO. 29 OF NOTIFICATION NO. 24/2005 ON IMPORT OF LIQUID CRYSTAL DISPLAY.**

B.1. that The Noticees correctly availed the complete Basic Customs Duty (BCD) exemption for "Liquid Crystal Devices" (LCDs) under Sr. No. 29 of Notification No. 24/2005.

B.2. that there is no dispute that the imported goods are indeed LCD and have been correctly classified under Tariff Item 8524 91 00 of the Customs Tariff. That Heading 85.24 of the Customs Tariff covers various kinds of Flat Panel Display Modules. On a conjoint reading of Note 7 of Chapter 85 and HSN Explanatory Notes Heading 85.24, it can be seen that '*Flat Panel Display Modules*' are the devices or apparatus which are used for display of information. These devices have at least

a display screen such as LCD, OLED, LED etc. and are designed to be incorporated in a wide range of apparatus including for motor vehicles prior to its use. It says that these devices may or may not come with touch-sensitive screens. The note further states that these devices may incorporate additional elements. However, the devices which have components for conversion of video signals are excluded from the scope of this heading.

- B.3. that in the present case, the goods imported by the Noticees are LCD display screens and the same are incorporated in monitors and reception apparatus for motor vehicles prior to its use. These devices incorporate certain additional components like Touch Panel, Touch IC etc. which make them touch-sensitive screens. Furthermore, the disputed goods do not have any components for conversion of video signals.
- B.4. that, the goods imported by the Noticees satisfy the definition of 'Flat Panel Display Modules' provided under Note 7 of Chapter 85. Therefore, the disputed goods have been correctly classified under Heading 85.24 and are consequently eligible for the exemption benefit in terms of Sr. No. 29 of the Notification No. 24/2005, as existed during the period 01.01.2022 till 06.05.2022.

**C. CORRIGENDUM DATED 07.04.2022 IS PROSPECTIVE BEING AN AMENDMENT, AND CANNOT BE APPLIED RETROSPECTIVELY.**

The Corrigendum introduces substantial changes and does not merely correct printing / typographical errors. Hence, it is an amendment and not a clarification.

- C.1. that The SCN alleges the Corrigendum dated April 7, 2022, was a mere correction and thus retrospective. However, the Noticee submitted that the Corrigendum dated 07.04.2022 has made substantive changes in Notification No. 24/2005 and therefore, it is in the nature of an amendment the same is applicable prospectively i.e., with effect from 07.04.2022.
- C.2. that Dictionary definitions show a corrigendum is only for correct printing or typographic errors or imperfections found after publication. However, a corrigendum which brings about substantial change impacting rights of assesses cannot be construed as merely a correction.
- C.3. that the addition of the words "for goods mentioned at Sr. No. 1 to 38A" in Sr. No. 29 of the Notification No. 24/2005 cannot be said to be for correcting an error as it has the effect of substantially altering and restricting the scope of the exemption under the said entry. That the addition of the said words in Sr. No. 29 has amended the scope of the exemption under the said entry for the first time since the issuance of Notification No. 24/2005 on 01.03.2005.
- C.4. that it is only by virtue of the Corrigendum dated 07.04.2022 that the scope of the exemption has been restricted to LCDs for the goods mentioned in Sr. No. 1 to 38A of Notification No. 24/2005. Therefore, the Corrigendum to Notification No. 57/2021 which has been issued after 3 months on 07.04.2022, can by no means be characterized as a 'Corrigendum' and have a retrospective effect.
- C.5. that any attempt to modify the ambit of the exemption must be made by way of an amendment notification to the Notification No. 24/2005 under Section 25 of the Customs Act. Needless to mention that even such an amendment could have been made only prospectively and not with retrospective effect. Therefore, even though the addition of words has been characterized as a 'Corrigendum' by the Central Government, it is essentially in the nature of an amendment which has come into force on the date of its issuance. In this regard, reliance is placed on:

(i) **UOI Vs. Ganesh Das Bhojraj - 2000 (2) TMI 189,**

(ii) **Pankaj Jain Agencies Vs. UOI - 1994 (72) ELT 805 (SC).**

(iii) the decision of Hon'ble Gujarat High Court in **Bharat Vijay Mills & 1 Vs. UOI - 2018 (2) TMI 1442.**

A corrigendum can have retrospective effect only when it seeks to correct an inadvertent error.

C.6. that a corrigendum can have retrospective effect only when it corrects an error. If it is not established that the Corrigendum was issued to correct an 'error', then it ceases to be a corrigendum and will have prospective effect. Reliance in this regard is placed on **CST Vs. Dunlop India Limited - 1991 (10) TMI 298**.

C.7. The principle that a Corrigendum can be issued only for carrying out a correction and that only such Corrigendum would date back to the parent / original Notification has also been laid down in the judgement of the Hon'ble Karnataka High Court in **Jubilant Organosys Vs. Asst. Commissioner - 2011 (6) TMI 631** and judgement of Hon'ble Allahabad Court **Polyplex Corporation Vs. UOI - 2014 (306) ELT 377 (All)**.

Merely because the document is titled as 'Corrigendum', it does not partake its character.

C.8. that the title or caption or nomenclature of an instrument / document is not determinative of the nature and character of the instrument/document and the substance of the document needs to be looked into to ascertain the true nature of the document. Reliance in this regard is placed on the Hon'ble Supreme Court's decision in **Bunga Daniel Babu Vs. Sri Vasudeva Constructions, (2016) 8 SCC 429** and **Fomento Resources Vs. UOI - 2019 (367) ELT 897 (Bom.)** and **Inductotherm India Vs. CC - 2022 (6) TMI 1263**.

C.9. that only because a provision attached to a section/notification bears nomenclature such as 'corrigendum, 'explanation' or 'it is clarified' or 'for the removal of doubts', it cannot be presumed to be clarificatory. It is to be determined in each case if such provision is clarificatory / declaratory or not basis the tests laid down by the Courts, as discussed in the succeeding paras. In this regard, further reliance is placed on:

- (i) the decision of the Hon'ble Supreme Court in the case of **MM Aqua Technologies Vs. CIT - 2021 (8) TMI 520 (SC)**
- (ii) **Virtual Soft System Ltd. vs. Commissioner of Income Tax 2007 (2) TMI 147 (SC)**
- (iii) **Sedco Forex International Drill Vs. CIT - (2005) 279 ITR 310 (SC)**.
- (iv) the decision of Hon'ble Bombay High Court in the case of **Greatship (India) Vs. CST - 2015 (4) TMI 1006**
- (v) the judgement of the Hon'ble Delhi High Court in the case of **CIT Vs. Rajasthan Mercantile - 1998 (5) TMI 17**.
- (vi) **Instamedic International Vs. CC - 1997 (89) ELT 701 (Tribunal)**, [affirmed by the Hon'ble Supreme Court in **1996 (86) ELT A162 (SC)**].

An amending notification cannot be further amended by the Central Government under guise of a corrigendum.

C.10. that the Central Government couldn't issue a corrigendum to an Amending Notification which had already served its purpose and was subsumed into the Principal Notification. That Textual amendments alter the text so it can be read as a single, revised document. Therefore, Amendments become part of the principal legislation.

C.11. that the Amending Notification, issued by the Central Government is only to be read as a part of the principal notification, i.e., Notification No. 24/2005 from 01.01.2022. Once amended and the amendment has taken effect, the Amending Notification has completely worked itself out. Thus, any further amendments/modifications/ corrections can only be to the original / principal Notification No. 24/2005 and not to the Notification No. 57/2021. Further, Notification No. 57/2021 does not have any relevance of its own, considering the text of Notification No. 24/2005 had been amended w.e.f. 01.01.2022.

**D. THE VESTED RIGHTS OF THE NOTICEES HAVE BEEN TAKEN AWAY RETROSPECTIEVLV BY MEANS OF AN AMENDMENT.**

D.1 that the Noticees submit that its vested right i.e., right to claim benefit of concessional rate of duty under the Notification No. 24/2005, has been taken away by Customs department by means of a retrospective amendment effected through the Corrigendum dated 07.04.2022.

D.2. The term "**vested right**" means a right accrued, or settled in favour of a person such that it is protected by law. These rights are not dependent on any factor after becoming "vested" and are unconditional in nature thereon. The words "**vested right**" have also been explained by the Hon'ble Supreme Court in **JS Yadav Vs. State of UP - (2011) 6 SCC 570**.

D.3. In the instant scenario, the Corrigendum dated 07.04.2022 amends the principal Notification (Notification No. 24/2005) in such a manner, that it does not expressly provide implications of the retrospective effect of such amendments. Therefore, it cannot be said that the Corrigendum dated 07.04.2022 amends the principal notification with retrospective effect, considering no express mention therein.

D.4. At the time of import, Notification No. 24/2005 provided unconditional benefit from payment of BCD on import of LCD, which was duly availed by the Noticees. The benefit was availed as per the legislative intent and no query or objection was raised by the Customs Authorities at the time of import. Basis the same, the Noticees submit that they had a vested right over such concessional rate of duty during the relevant period. The Corrigendum dated 07.04.2022 and the present SCN seek to take away the vested right through retrospectively effecting the amendment. The assessments made under the scrutiny of the Customs department itself highlights how on the date of the relevant assessment no one could have foretold the amendments that the revenue department was seeking to introduce under the guise of the Corrigendum dated 07.04.2022. Reliance is placed on:

(i) **DGFT Vs. Kanak Exports - 2015 (326) ELT 26 (SC).**

(ii) **MM Nagalingam Nadar Vs. State of Kerala — (1993) 91 STC 61.**

(iii) **Govind Das Vs. ITO - (1976) 1 SCC 906.**

(iv) **CIT Vs. Vatika Township - (2015) 1 SCC 1.**

(v) **Taryajot Ploymers Vs. UOI - 2018 (359) ELT 678 (Mad.)**

(vi) **Malik Tanning Industries Vs. UOI - 2015 (320) ELT 508 (Del.)**

**E. PENALTY IS NOT IMPOSABLE MERELY ON THE BASIS OF STATEMENTS RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962 WITHOUT ANY CORROBORATIVE EVIDENCE.**

E.1. The case made out in the SCN is also based on the recorded statements of various officials of the Noticees, without any corroborative proof. Further, the SCN has not given any evidence whatsoever against the Noticees. In fact, there is no clear allegation against the Noticees. It is a well-settled law that mere reliance on statements without any supporting evidence is bad in law. Reliance is placed on the following case laws:

a) **Vikram Dahiya Vs. CC - 2008 (223) ELT 619 (Tri. - Del.) para 4**  
**Maintained before Hon'ble Delhi High court at 2010 (260) ELT 180 (Del.);**

b) **Jagannath Premnath Vs. CC - 2006 (198) ELT 104 (Tri. - Del.) para 3 and 5;**

c) **Jaswinder Singh Vs. CC - 1996 (83) ELT 175 (Tribunal), para 3;**

d) **Mehmood Khan Vs. CC - 2002 (140) ELT 97 (Tribunal), para 3;**

e) **Gopalji Heavy Lifters Vs. CC - 2017 (357) ELT 537 (Tri. - Mumbai), para 16;**

f) **Surat Melton Vs. CC – 2016 (10) TMI 725 (Tri - Mum), para 9.2.**

- E.2. that the Customs department has failed to prove how the Noticees availed the exemption benefit from the period between 01.01.2022 till 06.04.2022 with the mala fide intent of evading the customs duty. Further, the Customs department before proposing penalty on the Noticees has failed to understand that prior to Corrigendum dated 07.04.2022, the Noticees were eligible to avail the exemption benefit. Therefore, the said benefit was rightly availed and there was no mala fide involved on part of the Noticees.
- E.3. That exemption for the pre-corrigendum period (01.01.2022 - 06.04.2022) has been correctly availed and they were not liable to pay any duty as the Corrigendum dated 07.04.2022 is not applicable retrospectively. Therefore, there was no requirement to recall the bills of entry for the said period to make payment of duty.

F. **PRESENT DISPUTE IS LIMITED TO CLAIM OF AN EXEMPTION BENEFIT, WHICH IS A MATTER OF BONA FIDE BELIEF OF THE IMPORTER. THERE IS NO MIS-STATEMENT OR SUPPRESSION. ACCORDINGLY, EXTENDED PERIOD UNDER SECTION 28(4) OF THE CUSTOMS ACT, 1962 HAS BEEN INCORRECTLY INVOKED IN THE PRESENT CASE.**

- F.1. that the invocation of extended period of limitation in respect of 24 Bill(s) of Entry filed during the period 18.04.2022 to 18.06.2022 is unsustainable and bad in law. Since the Noticees have already paid the duty along with interest for the said 24 Bill(s) of Entry, the present SCN has incorrectly invoked extended period of limitation for these bills of entry only to impose penalty. That the customs department has incorrectly invoked the extended period of limitation in terms of Section 28(4) of the Customs Act, 1962 for the imports made vide 39 Bill(s) of Entry filed during the period 15.01.2022 to 18.06.2022. The Customs department has invoked extended period on the ground that the LCDs imported by Noticees are ineligible for NIL rate of BCD in terms of benefit of Sr. No. 29 of the Notification No. 24/2005 as amended.
- F.2. The entire basis for issuance of the present SCN and the allegation that the imported goods are not eligible for the exemption benefit is the Corrigendum dated 07.04.2022. It is submitted that imports made in the pre-corrigendum period are rightly eligible to the exemption benefit as the Corrigendum dated 07.04.2022 cannot have retrospective application. Further, in respect of the imports made after issuance of Corrigendum dated 07.04.2022, the Noticees have already surrendered the exemption benefit availed by them and paid the differential duty along with interest. Therefore, alleging that the Noticees have mis-declared or suppressed any fact, to invoke extended period is completely incorrect.
- F.3. That it is a settled law that claim to an exemption notification is a matter of bona-fide belief and in such cases, extended period of limitation is not invocable as held by the Hon'ble Supreme Court in **Northern Plastic Vs. CC – 1998 (101) ELT 549 (SC)**.
- F.4. that the imported goods were cleared after correct declaration; the proceeding is a change of opinion by the department. Reliance is placed on **CC Vs. G.C. Jain – 2011 (269) ELT 307 (SC)**.  
**Extended period cannot be invoked as there was no mis-declaration / suppression of facts.**
- F.5. that the extended period is not invocable since no mis-declaration or suppression can be attributed to them. The Noticees rely on the case of **Cosmic Dye Chemical Vs. CCE, Bombay – (1995) 6 SCC 117 and CCE, Aurangabad Vs. Bajaj Auto Limited – 2010 (260) ELT 17 (SC)**.
- F.6. that to invoke extended period under Section 28 of the Act, it has to be proved that there was a conscious or intentional act of collusion, wilful mis-statement or suppression of fact, on the part of the importer. The intention or deliberate attempt, on the part of importer, to evade duty has to be proved beyond reasonable doubt to justify invocation of extended period.
- F.7. that the SCN shows no positive, intentional act by Noticees; all relevant info was declared.

**Extended period cannot be invoked as the customs department was always aware regarding the practices of the Noticees.**

- F.8. that Customs was always aware of the practices; self-assessment doesn't automatically allow extended limitation. It is mandatory on the part of the department to prove that the assessment of the imported goods at the time of import was obtained by mis-declaration or suppression of facts etc. – whether it is a self-assessed bill of entry or customs system assessed bill of entry or officer-assessed bill of entry.
- F.9. that the Department must prove mis-declaration. Classification and exemption claims are matters of opinion/judgment, not fact. Reliance is placed on **Midas Fertchem Impex Vs. Pr. CC – 2023 (1) TMI 998 and Challenger Cargo Carriers Vs. Pr. CC – 2022 (12) TMI 621.**
- F.10. that investigation started in March 2023; SCN could have been issued within normal limitation. Extended period not invocable where department had knowledge or was aware of transactions. Reliance is placed on:
- a) **Padmini Products Vs. CC – 1989 (43) ELT 195 (SC);**
  - b) **CCE Vs. Chemphar Drugs & Liniments – 1989 (40) ELT 276 (SC) ;**
  - c) **Gammon India Vs. CCE – 2002 (146) ELT 173 (Tri.),  
Affirmed by the Hon'ble Supreme Court in 2002 (146) ELT A313;**
  - d) **Lovely Food Industries Vs. CCE – 2006 (195) ELT 90 (Tri.); and**
  - e) **Vaspar Concepts Vs. CCE – 2006 (199) ELT 711 (Tri.).**
  - f) **Orissa Bridge & Construction Corp. Vs. CCE, Bhubaneshwar – 2011 (264) ELT 14 (SC).**
  - g) **Jalla Industries Vs. CCE – 2000 (117) ELT 429 (Tri.);**
  - h) **Rivaa Textile Inds. Ltd. Vs. CCE – 2006 (197) ELT 555 (Tri.).**

Extended period of limitation is not invocable in case of disclosure of primary facts. In present case, information has been correctly declared at the time of import, and therefore, there is no mis-declaration

- F.11. that extended period cannot be invoked when primary facts (description, classification) were disclosed. Reliance is placed on the case of **Maruti Udyog Limited Vs. CCE, Delhi – 2002 (147) ELT 881 (Tri. – Del.),**
- F.12. that the customs department was always aware of the classification adopted for the goods in question. This shows that the entire proceeding has been initiated only to deny the exemption available and demand higher duty. Reliance is placed on the case of **Continental Jt. Venture Foundation Vs. CCE – 2007 (216) ELT 177 (SC) and CCE Vs. Chemphar Drugs & Liniments – 1989 (40) ELT 276 (SC).**

Extended period is not invocable as the issue involves an interpretation of the law.

- F.13. that the issue raised in the present SCN is classification i.e., interpretation of the entries of the First Schedule to the Customs Tariff. Therefore, extended period cannot be invoked in the present case. The Noticees place reliance on the following in support of the contention:
- a) **Singh Brothers Vs. CCE – 2009 (14) STR 552;**

- b) **Steelcast Ltd. Vs. CCE – 2009 (14) STR 129;**
- c) **P.T. Education & Training Services Ltd. Vs. CCE – 2009 (14) STR 34; and**
- d) **K.K. Appachan Vs. CCE – 2007 (7) STR 230.**
- e) **Sirthai Superware India Vs. CC – 2020 (371) ELT 324 (Tri. – Mum.), at paras 5.1-5.5;**
- f) **Raghav Industrial Vs. CC – 2019-TIOL-2559-CESTAT-DEL, at paras 6 – 9;**
- g) **Lewek Altair Vs. CC – 2019 (366) ELT 318 (Tri.-Hyd.), at para 7  
Affirmed in Hon’ble Supreme Court 2019 (367) ELT A328 (SC);;**
- h) **Kohler India Vs. CC – 2017 (1) TMI 584 – CESTAT NEW DELHI, at para 4.**

**G. NO INTEREST CAN BE DEMANDED WHEN DUTY DEMAND IS NOT SUSTAINABLE.**

G.1. that the question of levy of interest arises only if the demand of duty is sustainable. As submitted in the foregoing paragraphs, the demand of duty is not sustainable, therefore, the question of levy of any interest under Section 28AA on such duty would not arise. Reliance is placed on **Prathibha Processors Vs. UOI – 1996 (88) ELT 12 (SC) and CC Vs. Jayathi Krishna – 2000 119 ELT 4.**

**H. THE ENTIRE EXERCISE OF DEMANDING IGST NOW IS REVENUE NEUTRAL.**

H.1 that due to addition of the proposed BCD, the present SCN also demands differential IGST amounting to Rs.51,88,692/- for the goods imported vide 15 Bill(s) of Entry filed during 15.01.2022 to 01.04.2022. As submitted in the foregoing paragraphs that since the demand of BCD against the Noticees is not sustainable in respect of the said 15 Bill(s) of Entry, the question of differential IGST would not arise.

H.2. that in respect to the subject goods imported vide 24 Bill(s) of Entry filed during the period 18.04.2022 to 18.06.2022, it is submitted that the Noticees have already surrendered the exemption benefit availed and paid off the differential duty (including IGST) along with interest. Therefore, the differential IGST demand in respect of the said 24 Bill(s) of Entry is unsustainable as the same has already been paid. Reliance is placed on **Himadri Speciality Chemical Vs. CC – 2024 (4) TMI 383.**

H.3. that the Hon’ble Supreme Court in the following decisions has held that when the confirmation of duty demand would result in a revenue neutral situation, then such duty demand is not sustainable:

- a) **CCE & C (Appeals) Vs. Narayan Polyplast – 2005 (179) ELT 20 (SC);**
- b) **CCE Vs. Narmada Chematur Pharmaceuticals – 2005 (179) ELT276 (SC);**
- c) **CCE Vs. Textile Corporation – 2008 (231) ELT 195 (SC);**
- d) **CCE Vs. Jamshedpur Beverages – 2007 (214) ELT321 (SC);**
- e) **CCE Vs. Coca Cola India – 2007 (213) ELT 490 (SC);**

Also, reliance is placed on:

- a) **Accurate Chemicals Industries Vs. CCE – 2014 (300) ELT 451 (Tri. - Del.),  
Affirmed in CCEx. Vs. Accurate Chemical Industries – 2014 (310) ELT 441  
(All.); and**

b) **Suntex Mercantiles Vs. CCE – 2014 (313) ELT 809 (Tri. - Mumbai).**

H.4. that that since the differential duty (including IGST) and interest for the 24 Bill(s) of Entry filed during the period 18.04.2022 to 18.06.2022 has already been paid, the said Bill(s) of Entry be reassessed at the earliest to enable the Noticees to claim input tax credit of the IGST paid.

**I. NO INTEREST CAN BE DEMANDED OR PENALTY IMPOSED IN RESPECT TO THE DIFFERENTIAL IGST DEMAND.**

I.1. that In respect of the subject goods imported vide 15 Bill(s) of Entry filed during the period 15.01.2022 to 01.04.2022, the Noticees have correctly classified the goods and paid 18% IGST; therefore, no further demand, interest, or penalty arises.

I.2. that Section 3(12) of the Customs Tariff Act, which is the borrowing provision with regard to IGST, does not borrow provision for demand of IGST with interest or penalty from the Customs Act. Therefore, it is submitted that demand of IGST along with interest has been incorrectly proposed to be recovered. Also, penalty has been incorrectly proposed to be imposed on the Noticees so far as the IGST component of the demand is concerned and no interest can be recovered. Reliance is placed on **Mahindra and Mahindra Vs. UOI – 2022-VIL-690-BOM-CU, Acer India Vs. CC - 2023-VIL-998-CESTAT-CHE-CU, Philips India Limited Vs. CC – Final Order No. A/86879/2024 dated 18.07.24 in Customs appeal no. C/87594/2023, India Carbon Vs. State of Assam, (1997) 6 SCC 479, J.K. Synthetics Vs. CTO, (1994) 4 SCC 276, V.V.S. Sugars Vs. Govt. of A.P. & Ors., (1999) 4 SCC 192, Pioneer Silk Mills Pvt. Ltd. Vs. UOI - 1995 (80) ELT 507 (Del.), Bajaj Health & Nutrition Vs. CC – 2004 (166) ELT 189, Tonira Pharma Ltd. Vs. Commissioner - 2009 (237) ELT 65 (Tribunal), Siddeshwar Textile Mills Vs. Commissioner – 2009 (248) ELT 290 (Tribunal).**

I.3. that under the Customs Act, Section 28 is the only provision for recovery of duty short paid duty of differential duty. Here, it is relevant to note that the term ‘duty’ has been defined under Section 2(15) of Customs Act as follows:

“(15) “duty” means a duty of customs leviable under this Act”.

I.4. that the ‘duty’ under Customs Law must be restricted to such duties that are levied under Customs Act. Reliance is placed on **Prestige Engineering (India) Ltd. Vs. CC Ex - 1994 (73) ELT 497 (SC)**. Therefore, IGST cannot be recovered under Section 28 of the Customs Act due to a lack of machinery provisions for collection of IGST and interest

**J. THE SUBJECT GOODS ARE NOT LIABLE FOR CONFISCATION UNDER SECTION 111(m) OF THE CUSTOMS ACT.**

J.1. that the proposal to confiscate the subject goods imported vide 24 Bill(s) of Entry filed during the period 18.04.2022 to 18.06.2022 under Section 111(m) of the Customs Act, 1962, is unsustainable. Since the Noticees have already paid the duty along with interest for the said 24 Bill(s) of Entry, the present SCN incorrectly proposes to reopen the demand and confiscate the subject goods imported vide the said Bill(s) of Entry.

J.2. that the subject goods imported vide the disputed Bill(s) of Entry in question [*in total 39 Bill(s) of Entry*] are not liable to be confiscated under Section 111(m) of the Customs Act, 1962. That confiscation provisions under Sections 111 of the Customs Act can be pressed into service only in cases where the assessee has acted with a *mala fide* intention, and it is proved beyond doubt that there was *mens rea* on part of the assessee. *Bona fide* conduct on part of the assessee does not entail the goods liable for confiscation. Reliance is placed on the following cases:

- a) **Northern Plastic Vs. CCE – 1998 (101) ELT 549 (SC) at paras 19, 20;**
- b) **Allseas Marine Contractors S.A. Vs. CC – 2011 (272) ELT 619 (Tri.-Del.) at paras 7, 8; and**

- c) **Sutures India Vs. CC – 2009 (245) ELT 596 (Tri.-Bang) at Para 10.5; Affirmed by Hon'ble Supreme Court in 2010 (255) ELT A85 (SC).**
  - d) **Kirti Sales Corpn. Vs. CC – 2008 (232) ELT 151 (Tri.-Del.).**
  - e) **Ace Kargoways Vs. CC – 2003(158) ELT 505 at para 9.**
  - f) **CC Vs. Maruti Udyog – 2002 (141) ELT 392**
  - g) **Bussa Overseas & Properties Vs. C.L. Mahar, ACC —2004 (163) ELT 304 (Bom.)**
- J.3. that Section 111 only applies to "imported goods," which are defined as goods brought into India but not cleared for home consumption. Once cleared for home consumption, as these goods were, they are not liable for confiscation under Section 111, unless the clearance order is first revised/cancelled. Reliance is placed on **Bussa Overseas & Properties Vs. C.L. Mahar, ACC —2004 (163) ELT 304 (Bom.)**.
- K. **NO PENALTY IS IMPOSABLE UNDER SECTION 112(a) OF THE CUSTOMS ACT IN THE PRESENT CASE.**
- K.1. that the proposal to impose penalty under Section 112(a)(ii) of the Customs Act, 1962 in respect of the subject goods imported vide 24 Bill(s) of Entry filed during the period 18.04.2022 to 18.06.2022 is unsustainable. Since the Noticees have already paid the duty along with interest for the said 24 Bill(s) of Entry, the present proceedings incorrectly propose to reopen the demand and impose penalty in respect of the said Bill(s) of Entry.
- K.2. that no penalty is imposable on the Noticees in respect of the disputed Bill(s) of Entry in question [in total 39 Bill(s) of Entry]. The Noticees submit that in the present case, imposition of penalty in terms of Section 112(a)(ii) of the Customs Act is untenable.
- K.3. that the penalty under this sub-Section is linked to the liability of the goods to confiscation. The Noticees have neither done nor omitted to do any act which act, or omission has rendered the goods liable to confiscation nor has the Noticees abetted the doing or omissions of such an act. In fact, for the reasons explained in the foregoing paragraphs, the goods are not liable for confiscation. Hence, application of Section 112 is itself legally unsustainable. Therefore, no penalty under this sub-Section ought to be imposed on the Noticees. Reliance in support of this proposition is placed on the following:
- a) **Sona Casting Vs. CC – 2006 (205) ELT 249 (Tri.-Del.) para 4; and**
  - b) **Eastern Silk Industries Vs. CC – 2007 (207) ELT 714 (Tri.- Kol) para 3.5.**
- K.4. that *mens rea* is a necessary requirement for imposition of penalty under Section 112, vide the decision in **Sij Electronics Comp Tech Vs. CC – 2001 (129) ELT 528 (Tri)**. That, in the issue at hand, the element of *mens rea* is absent as the Noticees have declared the correct details of the subject goods in the subject Bill(s) of Entry. That their conduct was totally *bona fide* and in the absence of any *mala fide* on their part, no penalty is imposable. The Noticees place reliance on the case of **Hindustan Steel Ltd. Vs. State of Orissa – 1978 (2) ELT (J159) (SC)**, **Cement Marketing Co. of India Vs. Assistant Commissioner of Sales Tax – 1980 (6) ELT 295 (SC)**,
- K.5. that there is no duty demand in the present case as the entire duty, albeit provisionally, has already been discharged by the Noticees. Therefore, penalty is not imposable when differential duty is not payable. Reliance is placed on **CCE Vs. H.M.M. Limited – 1995 (76) ELT 497 (SC)** and **CCE Vs. Balakrishna Industries – 2006 (201) ELT 325 (SC)**.
- L. **NO PENALTY IS IMPOSABLE UNDER SECTION 114A OF THE CUSTOMS ACT IN THE PRESENT CASE.**
- L.1. that the proposal to impose penalty under Section 114A of the Customs Act, 1962 in respect of the subject goods imported vide 24 Bill(s) of Entry filed during the period 18.04.2022 to 18.06.2022 is unsustainable. Since the Noticees have already paid the duty along with interest for the said 24

Bill(s) of Entry, the present SCN incorrectly proposes to reopen the demand and impose penalty in respect of the said Bill(s) of Entry only to impose penalty.

- L.2. that no penalty is imposable on the Noticees in respect of the disputed Bill(s) of Entry in question [in total 39 Bill(s) of Entry]. Penalty cannot be imposed under Section 114A when no mala fides on the part of the assessee has been established. In the present case, the Noticees have declared all particulars fully and truly in the subject Bill(s) of Entry. The Noticees are of the bona fide belief that the subject goods merit classification under Heading 85.24 of the Customs Tariff and exemption benefit is avail under Sr. No. 29 of the Notification No. 24/2005, as amended.
- L.3. It is settled law that in order to impose penalty under Section 114A, an assessee should have engaged in collusion or wilful misstatement or suppression of facts with an intent to evade payment of duty. That, it is clear that the demand is not sustainable in the present case and that there has been no suppression or mis-statement of facts as the Noticees is under bona fide belief that the goods were rightly eligible for exemption benefit in terms of Sr. No. 29 of the Notification No. 24/2005, as amended. Detailed submissions in this regard have been made supra.
- L.4. The Hon'ble Supreme Court in **Anand Nishikawa Vs. CCE – (2005) 7 SCC 749** has held that mere failure to declare, without any positive act from the side of the assessee, would not amount to wilful suppression of facts. Reliance is place on **Pushpam Pharmaceuticals Company Vs. CCE – 1995 (78) ELT 401 (SC)**, **Aban Lloyd Offshore Vs. CC – 2006 (200) ELT 370 (SC)**.
- L.5. that the present case does not involve any wilful mis-statement or suppression of facts from the Department. The subject goods were correctly declared by the Noticees in the subject Bill(s) of Entry. As such, it is not a case of wilful mis-statement or suppression of facts. Hence, on the same grounds, penalty under Section 114A is also not imposable. Reliance is placed on the Hon'ble Supreme Court in **Tamil Nadu Housing Board Vs. CCE – 1994 (74) ELT 9 (SC)**, and **CCE Vs. Chemphar Drugs & Liniments – 1989 (40) ELT 276 (SC)**, **Hindustan Steel Vs. The State of Orissa reported in AIR 1970 (SC) 253**, **CC Vs. Kamal Kapoor – 2007 (216) ELT 21 (P & H) paras 13, 14**; **CC Vs. Surbhit Impex Pvt. Ltd. – 2012 (286) ELT 500 (Bom.) para 11-13**; and **Ghanshyam Metal Udyog Vs. CC – 2008 (229) ELT 631 (Tri. -Ahm) para 2**.
- M. **NO PENALTY IS IMPOSABLE UNDER SECTION 114AA IN THE PRESENT CASE.**
- M.1. that the proposal to impose penalty under Section 114AA of the Customs Act, 1962 in respect of the subject goods imported vide 24 Bill(s) of Entry filed during the period 18.04.2022 to 18.06.2022 is unsustainable. Since the Noticees have already paid the duty along with interest for the said 24 Bill(s) of Entry, the present SCN incorrectly proposes to reopen the demand and impose penalty in respect of the said Bill(s) of Entry only to impose penalty.
- M.2. that no penalty is imposable on the Noticees in respect of the disputed Bill(s) of Entry in question [in total 39 Bill(s) of Entry].
- M.3. that penalty under Section 114AA of the Customs Act, 1962 can be imposed in cases where person knowingly or intentionally makes, signs or uses or causes or made, signed or used, in a declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purpose of the Customs Act. 1962.
- M.4. that penalty under Section 114AA of the Customs Act, 1962 is not sustainable as the Noticees have not made any declaration, statement or document which is false or incorrect in any material particular in classifying the imported goods. That the Noticees classified the goods under Heading 85.24 and claimed exemption benefit under a bona fide belief that the same is correct.
- M.5. that penalty under Section 114AA is imposable only in those situations where exports benefits are claimed without exporting the goods and by presenting forged documents. In support of this argument, reliance is placed on the **27th Report of the Standing Committee of Finance**. That the Hon'ble CESTAT has also held that penalty under Section 114AA of the Customs Act, 1962 can only be imposed in cases of fraudulent exports where no goods are exported and it's only a paper trail transaction. Reliance is placed on the following decisions in this regard:

- a) **CC Vs. Sri Krishna Sounds and Lightings - 2018 (7) TMI 867- CESTAT Chennai; and**
- b) **Access World Wide Cargo Vs. CC - 2022 (379) ELT 120**

**M.6.** that all the declarations were made on the bona fide belief that the classification adopted, and exemption benefit availed was correct. Further, the Noticees have not misstated anything in the Bill(s) of Entry in dispute with respect to classification, valuation, etc. M.11. Reliance is also placed on the case of **Singh World Vs. CC – 2017 (353) ELT 243 (Tri.-Del.)**, wherein the Hon'ble Tribunal held that penalty under Section 114AA can be waived in the case where bona fide belief is available and no mala fide intention was there for committing the fraud.

**N. THE PRESENT SCN IS INVALID IN ABSENCE OF AN APPEAL AGAINST THE OUT OF CHARGE ORDER / BILL(S) OF ENTRY.**

**N.1.** that the goods were cleared for home consumption after 'Out of Charge' orders were issued by a proper officer, which are quasi-judicial orders. These orders can only be set aside by a competent appellate authority, not by merely issuing an SCN, which has proposed to declare the goods to be liable for confiscation. This position has been affirmed in the case of **CCE, Kanpur Vs. Flock (India) – 2000 (120) ELT 285 (SC)** and relied upon in the case of **Priya Blue Industries Vs. CC(Preventive) – 2004 (172) ELT 145 (SC)**. The Hon'ble Supreme court has once again affirmed this position in the case of **ITC Vs. CCE - 2019-VIL-32-SC-CU**. Reliance is placed on **Vitesse Export Import Vs. CC (EP), Mumbai reported at 2008 (224) ELT 241 (Tri. -Mumbai)**, **Ashok Khetrapal Vs. CC, Jamnagar - 2014 (304) ELT 408 (Tri.-Ahmedabad)**, **CC, Cochin Vs. Arvind Export - 2001 (130) ELT 54 (Tri. -LB)** and **Neelkanth Polymers Vs. CC - 2009 (90) RLT 188 (Tri. -Ahmd.)**

## **2.2 Written Submissions of M/s. SME Logistics Pvt. Ltd. (Customs Broker)**

**2.2.1.** The Noticee No.2, M/s. SME Logistics Pvt. Ltd. vide their letters dated 27.03.2025 and 11.11.2025 has given written submission to the subject SCN through their authorised representative. M/s. SME Logistics Pvt. Ltd. in the said letter 27.03.2025 submitted, inter alia, as under:

### **A. Facts:**

- A.1.** that during the course of investigation, the company officials stated that they were clearing the goods under heading 90138000 but after the amendment of the notification 24/2005, they started classifying the goods under heading 85249100, which is covered by the Notification. Thereafter, after 5th July 2022, they stopped availing the benefit of Notification no. 24/2005 - cus dated 01.03.2005. That, during the course of investigation, a specific question was asked to the Head of Indirect Taxes of the company and he stated that the decision to change the classification was taken by his company. Even the Director of the noticee company had also in his statement confirmed that the classification decisions are taken by the importing company and that even the availment of notification benefit is decided by the importer company.
- A.2** that the importer in May 2023 deposited the full differential duty with interest vide Challans at the Nava Sheva Custom House and the Air Cargo Complex, Mumbai. That M/s. SME Logistics Pvt. Ltd. have themselves requested the proper officers to recall four Bills of Entry, cleared under RMS, which were assessed without considering the Corrigendum to Notification. It was also stated that once it became clear that the benefit of notification was wrongly availed, they discussed the matter with the importer and ensured that the duty and interest are duly paid.
- A.3.** that the email correspondence between the noticee and the importer have been reproduced in Para 4.4 of the impugned notice, wherein the noticee has clearly stated that the corrigendum to Notification does not appear in the CBIC website and subsequently, vide email dated 05.07.2022, it was informed that the said Corrigendum has been found on the CBIC website in the notifications

for the year 2021 although the same was issued on 07.04.2022. It may also be noted from para 4.11 of the impugned notice that the noticee has requested the importer to pay the duty, interest and penalty at the earliest establishing their bona-fides.

- A.4. that the corrigendum to notification was issued only on 07.04.2022 and the same was not found in the list of notifications for the year 2022 even as of date on the CBIC website. However, the importer and the noticee came to know of the said Corrigendum when the AO raised objection to the notification in respect of Bill of Entry No. 9382719 dated 02.07.2022 and as per the reply given in said Para 7.11.2, it is clear that the noticee himself was unaware of the issuance of the corrigendum and hence no mala-fide can be attributed to the noticee.
- A.5. that after this Bill of Entry, the departmental officers were requested to recall the Bills of Entry filed post-07.04.2022 and the same were reassessed and the differential duty paid by the importer. The main allegation in the notice is that the other Bills of Entry were not recalled by the importer/noticee, yet it escaped the attention of the authors of the notice, that it does not lie in the importers hand to recall and reassess the Bills of Entry already passed and the same has to be done by the departmental officers. It may be noted that in the case of Bill of Entry No. 714589 dated 19.01.2022 & No. 6719567 dated 17.12.2022, the noticee himself had approached the department to amend the Bill of Entry and got the duty paid. Therefore, the noticee has been vigilant in getting the Bills of Entry which were incorrectly filed under heading 9013, except in the case of Bill of Entry No. 7090208 dated 15.01.2022, which was missed out by the noticee, through pure oversight. Secondly, the bona-fides of the noticee are proved that the said notification was not available on the CBIC website in the year 2022 and also the corrigendum notification was issued on 07.04.2022 and hence only the Bills filed after this date were recalled. Whether the corrigendum has a retrospective effect or not, is a question of law and the Customs Broker cannot be expected to have expertise on such nuances of law.
- A.6. that The Chief Commissioner of Customs, Mumbai Zone II has vide his advisory No. 1/2022 dated 02.12.2022 & advise dated 20.02.2023 has recommended that customs broker should not be made noticee in cases which involves interpretation of law. Therefore, the factum of duty liability and the retrospective effect of a notification is something relating to interpretation of law and hence the noticee ought not to have been made party to the notice. It bears mention herein that when the Appraising Officers had noted that the importer had requested for recall and reassessment of Bills of Entry post-07.04.2022, nothing prevented the said assessment officers from recalling the other Bills of Entry for the period 01.01.2022 to 07.04.2022 and reassessing them.
- A.7. that the noticee has been unnecessarily been implicated in the said case and accordingly, requests that the proceedings against the noticee may be dropped.

**B. Penalty proposed under Section 112(a) of Customs Act, 1962:**

- B.1. that the notice does not spell out as to which of the actions or omissions of the noticee have rendered the goods liable for confiscation or that he has abetted the doing of such act or omitted to doing of such action on the part of the importer. There is no mis-declaration so as to attract the provisions of Section 111 (m) of Customs Act, 1962 at all and hence there is no scope for imposition of penalty under section 112(a) of Customs Act, 1962. The matter pertains to the availment of notification benefit which has been amended by way of corrigendum issued months after the notification itself was issued.
- B.2. that the noticee being a custom broker employee has submitted the documents as per his responsibilities for submission of documents and after examination and payment of duty has cleared the goods. The noticee has in fact, guided the importer to pay the amount once the Assessing officer at Delhi gave the link to the corrigendum to notification and requested that the Bill of Entry may be assessed by removing the notification.
- B.3. that, thereafter, he coordinated with the importer to recall and reassess the other bills of entry filed after 07.04.2022. It bears mention herein that the notice alleges that this reassessment has been done only for live Bills of Entry in July 2022, which is an incorrect allegation. The Bills of Entry

post-07.04.2022 were already cleared from customs after due duty payment and yet the same were recalled and got reassessed. Thus the allegation is wholly incorrect. Hence no penalty can be imposed under Section 112(a) of Customs Act, 1962.

C. **Penalty under Section 114A of Customs Act, 1962:**

C.1. that the said Penalty is liable to be imposed on the person who is liable to pay duty or interest as the case may. In the present instance, no duty or interest has been demanded from the noticee but from the importer, Varroc Engineering Ltd and hence the said section is not applicable to the noticee at all and no penalty could be imposed on the noticee.

D. **Penalty under Section 114AA of customs Act 1962:**

D.1. that the authors of the notice appear to have overlooked the fact that the noticee, as an individual, has never submitted any document to customs, whether he knows or not or believes it to be false in any material respect. Whatever documents were submitted in customs were in the capacity as a customs broker.

D.2. that the whole issue is that of amendment to notification by way of corrigendum, which was not even promulgated when the impugned Bills of Entry between 01.01.2022 and 07.04.2022 were filed. It was only when a Bill of Entry was filed in July 2022 and the same was marked to the FAG New Delhi that the factum of 20. 21. 22. the corrigendum was brought to the notice of the noticee and the importer. Thereafter, the duty for the period post 07.04.2022 was duly paid with interest.

D.3. that the said provision is applicable only when any declaration, statement or document is submitted during the course of business with customs, which is false in any material respect. When the impugned Bills of Entry were filed, the said corrigendum was not even passed and hence no such case for imposition of penalty under Section 114AA of customs act, 1962 be made against the noticee.

D.4. that there is nothing in the notice which indicates that the noticee has made, signed or used or caused to be made, signed or used any declaration, which was known to him as being false or incorrect in any material particular. Once there is no such instance shown in the impugned Notice, no penalty can be imposed on the noticee under Section 114AA of Customs Act, 1962.

D.5. that in view of the above submissions, it is requested that the proceedings initiated by the impugned Show Cause Notice against my client, Kailash Gawade, Director of CB firm, SME Logistics Pvt Ltd, be dropped.

2.2.2. M/s. SME Logistics Pvt. Ltd. in the said letter 11.11.2025 submitted, inter alia, as under:

A. **Facts:**

A.1. that during the course of investigation, it was categorically stated by the Company head of Indirect Taxes that all decisions relating to classification and notification benefit were taken by them and the decision to change the classification from 90138000 to 85249100 was taken by them to take the benefit of Notification. The director of the company also confirmed the above facts which goes on to demonstrate that the CB was not involved in the changes for classification or benefit of notification. That, the correspondence between the company and the CB also shows that the change in notification was not found on CBIC website and hence he was unaware of the change of notification, since instead of being shown for the year 2022, it figures in the year 2021. That, the CB himself discussed the matter with the company and requested the officers to recall and reassess the Bills of Entry by removing the benefit of Notification. He had himself requested for the recall and reassessment except for one Bill of Entry, which was inadvertently missed out by him. The Group officers also did not recall the rest of the Bill of Entry, while reassessing the Bill of Entry. In fact, thereafter, the importer paid the differential duty with interest.

B. **Submissions on Penalty:**

- B.1. that in respect of penalty under Section 112(a) of the Customs Act, 1962, the notice does not spell out the demeanour of the noticee as to which Act has rendered the goods liable to confiscation. As such, the issue being that of interpretation of Tariff Entries and Notification benefit, the same cannot be expected to be within the domain expertise of a Customs Broker. Therefore, no penalty under Section 112(a) may be imposed on the CB.
- B.2. that the penalty proposed under Section 114A of the Customs Act, 1962, relates to demand of duty from the Importer and the same cannot be demanded from the Customs Broker.
- B.3. that whatever documents were submitted, it was in his role as a custom broker and none of them have been found to be false or fabricated in any manner and therefore, it is prayed that no penalty under Section 114AA of Customs Act, 1962 be imposed on the Customs Broker.

C. **Other submissions:**

- C.1. that the CBIC vide Instruction No. 20/2024 — Cus dated 03.09.2024 has categorically directed the field formations not to make the Customs Broker, co-noticee in proceedings that involve interpretational issues. That the whole issue involved in the matter is classification of goods and benefit of notification, which are nothing but interpretational issues. While the said Instructions allows for making Custom Broker noticees, only when there is a charge of abetment. It may be noted from the facts of the case that the importer himself has through their Director and Indirect Taxes Head had categorically stated that they are the ones who decide the classification and notification benefit.
- C.2. that The Chief Commissioner of Customs, Mumbai Zone II vide Advisory No. 1 dated 02.12.2022 had clearly advised the field formations in JNCH not to make the Custom Brokers as co-noticee in matters where there is no direct involvement of the Custom Broker in such violation of the Customs Act.
- C.3. that The Chief Commissioner of Customs, Mumbai Zone II vide Advisory no. 2/2024 — INCH dated 23.10.2024 has reiterated the above instructions and in the light of the CBIC Instructions has directed in Para 5 thereof, that imposition of penalty on classification matters and availment of notification benefit should not be resorted to.
- C.4. that the noticee rely upon the cases **J P Traders & Cargomar Vs CC [2025 (6) TMI 1280] and CC (1) Vs Trinetra Impex P Ltd [2019 (11) TMI 72]**

In view of the above submissions, it is prayed that the proceedings initiated by the impugned Show Cause Notice for imposition of penalty under Section 112(a)/114A/114AA of ~ S5 (Sanjay Singhal) Customs Act, 1962 against the Customs Broker may be dropped.

3. **RECORD OF PERSONAL HEARINGS**

- 3.1 There are 2 Noticees in the subject SCN viz. (1) M/s. Varroc Engineering Limited (IEC - 0390019402), and (2) M/s. SME Logistics Pvt. Ltd.
- 3.2. In compliance of provisions of Section 28(8) read with Section 122A of the Customs Act, 1962 and in terms of the principle of natural justice, the Noticees were granted opportunities of Personal Hearing (PH) on 12.11.2025 and 09.12.2025, for the same reasons, PH intimation letters were issued by speedpost. On 12.11.2025, Mr. Sanjay Singhal, Advocate, on behalf of the Noticee no. (2) M/s. SME Logistics Pvt. Ltd., attended the personal hearing (PH) before the Adjudicating Authority. During the PH, he made the following submissions as under:
- (i) He requested to take on record his client's written submission dated 11.11.2025, which they have through email dated 10.11.2025, and also written submission dated 27.03.2025.

(ii) It was requested that the matter may be decided on the basis of the reply to notice and written submissions. It was explained that the CB had sent two emails on 05.07.2022 wherein at 2 PM he had informed the importer that the notification as it stands does not restrict to goods of 1 to 38 of the table to notification 24/20225. But at 3 PM, he found the said amendment notification in CBIC website in a different year 2021 instead of 2022 when it was promulgated and informed them that they are not eligible. Therefore, no malafide can be attributed to the CB.

3.3. On 09.12.2025, Ms. Apoorva Parihar, Advocate, and Mr. Nayan Singhal, Advocate, on behalf of the Noticee No. (1) M/s. Varroc Engineering Ltd, attended the PH before the Adjudicating Authority. During the PH, they made the following submissions as under:

(i) It is a settled law that an amendment to an exemption Notification can be retrospective only if the same is beneficial. If the amendment is not beneficial to the assessee, the same cannot have a retrospective effect. Further, a Corrigendum can be issued only to rectify obvious or typographical errors and not make substantial changes. In the present case, the Corrigendum dated 07.04.2022 has made substantial changes to the exemption entry which is not beneficial to the assessee. Hence, the same cannot be applied retrospectively to demand duty.

(ii) It is a settled position that the title or caption or nomenclature of an instrument / document is not determinative of the nature and character of the instrument/document, and the substance of the document needs to be looked into to ascertain the true nature of the document. In the present case, even though the document is titled 'Corrigendum', it has made substantial amendment in the existing exemption entry, and therefore, cannot be made effective retrospectively.

(iii) Noticees had a vested right over such concessional rate of duty during the relevant period. The Corrigendum dated 07.04.2022 has made substantial changes to the exemption entry and the present SCN seeks to incorrectly take away the vested right or already claimed exemption benefit by applying the Corrigendum retrospectively which is impermissible in law.

(iv) The duty and interest pertaining to 24 Bill(s) of Entry, filed between 18.04.2022 and 18.06.2022 have been duly paid prior to the issuance of the present SCN. In light of the established legal principles, proposal to impose penalty in respect of these bills of entry is completely bad in law.

(v) they reiterated the contents of submission to subject SCN submitted vide email dated 09.12.2025.

In view of the above, they requested for dropping of the charges levelled against the Noticee in the SCN.

#### 4. DISCUSSION AND FINDINGS

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

4.2. Section 122A of the Customs Act, 1962, stipulates that the Adjudicating Authority shall give an opportunity of being heard to a party in a proceeding, if the party so desires. The adjudicating authority may, if sufficient cause is shown, at any stage of proceeding, grant time, from time to time, to the parties or any of them and adjourn the hearing, provided that no such adjournment shall be granted more than three times to a party during the proceeding.

- 4.3. I find that in compliance to the provisions of the Section 28(8) and Section 122A of the Customs Act, 1962 and in terms of the principles of natural justice, opportunities for Personal Hearing (PH) were granted to both the Noticees. Thus, the principles of natural justice have been followed during adjudication proceedings. Having complied with the requirement of the principle of natural justice, I proceed to decide the case on merits, bearing in mind the allegation made in the SCN as well as the Submission/Contention made by both the Noticees.
- 4.4. The Noticees have placed reliance on various judgments of Tribunals, High Courts and Apex Court on various issues, however, I find that the facts and circumstances involved in these judgements are not similar to facts and circumstances of the case in hand. Further, I find that the Hon'ble Supreme Court of India in case of *Ambica Quarry Works Vs. State of Gujarat & Others* [1987(1) S.C. C. 213] observed that *"the ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides and not what logically follows from it."* Further in the case of *Bhavnagar University Vs. Palitana Sugar Mills (P) Ltd.* 2003 (2) SCC 111, the Hon'ble Apex Court observed *"It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."*

One other reference on the situation, I have noted is the decision of the Hon'ble Supreme Court in *Ispat Industries Vs. Commissioner of Customs, Mumbai* [2004 (202) ELT 56C (SC)], wherein, the Hon'ble Court has quoted Lord Denning and ordered as under:

*Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly reliance on a decision is not proper.*

*The following words of Lord Denning in the matter of applying precedents have become locus classicus:*

*"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."*

- 4.5. I find that investigation was initiated by DRI, Raipur Regional Unit, in respect of import of "LIQUID CRYSTAL DISPLAYS" (LCD) made by M/s. Varroc Engineering Ltd. (IEC No. 0390019402), registered office at L-4, MIDC, Industrial Area, Waluj, Aurangabad, Maharashtra 431136. As per investigation, Varroc Engineering Limited is engaged in "manufacture of Instrument Cluster and other items used in Dashboard of Two Wheelers (Automotives) and has been importing LIQUID CRYSTAL DISPLAYS" under CTH 85249100 for the period from 24.01.2022 to 18.06.2022 and cleared the goods at NIL rate of BCD by availing ineligible benefit under Sl.No.29 of Notification No.24/2005, as amended by Notification No.57/2021 dated 29.12.2021 w.e.f. 01.01.2022. Varroc Engineering Limited during the period 15.01.2022 to 19.01.2022 has also misclassified "LIQUID CRYSTAL DISPLAYS" under incorrect CTIs, by availing benefit under Sl. No. 29 of Notification No.24/2005, as amended by Notification No.57/2021 dated 29.12.2021, which was also not available to the LCDs imported.
- 4.6. I find that, in light to the New HSN 2022, Query was raised by Customs in respect of misclassification of Liquid Crystal Display by the importer vide Bill of Entry no. 7145809 dated 19.01.2022 under inappropriate CTI 90138000. After acceptance of the importer, the said Bill of Entry was recalled and the Liquid Crystal Display imported vide the said Bill of Entry was reassessed to CTI 85249100.
- 4.7. I find that Corrigendum dated 07.04.2022 to Notification No. 57/2021 dated 29.12.2021 was issued by CBIC wherein correction in Notification No. 57/2021 dated 29.12.2021 with respect to the entries at Sr. No. 29 of the Notification No. 24/2005 dated 29.12.2021 was corrected, wherein the exemption under Notification No. 24/2005 dated 01.03.2005 was restricted to Liquid Crystal Devices for goods mentioned at Sr. No. 1 to 38A of Notification no. 24/2005 dated 01.03.2005 as amended, falling under CTH8524. However, it was ascertained that the goods i.e., Liquid crystal devices imported by importer are not covered under Sl.No.29 and do not fall under the category of

Sl. Nos. 1 to 38A of Notification No.24/2005, as amended by Notification No.57/2021 dated 29.12.2021 w.e.f. 01.01.2022. Hence, the importer was required to pay BCD@15%.

- 4.8. I find that the Query was raised by Customs in respect of Liquid Crystal Display imported by the importer under Bill of Entry no. 9382719 dated 02.07.2022. The importer submitted reply to the query justifying the wrong availment of said exemption under Notification no. 24/2005 dated 01.03.2005 as amended but on being asked to further clarify, the importer accepted the findings of the appraising officer and the exemption claimed was removed by the importer by recalling the said Bill of Entry.
- 4.9. I note that Shri Santosh Patel, Head of Taxation of M/s Varroc Engineering, in his statement dated 18.04.2023, has duly accepted the fact that their company knows the facts that exemption benefit of the Notification No. 24/2005 as amended by 57/2021 dated 29.12.2021 was available only for the items under Chapter Heading 8524. Accordingly, their company changed the CTI of LCD Display imported by them from 90138010 to 85249100 to avail the benefit of the said notification. Even though, as the department again vide corrigendum dated 07.04.2022 clarified the matter that the said exemption is available only for the goods imported for goods mentioned at Sr. No. 01 to 38 A of the said notification no. 24/2005, however they continued to avail the exemption.
- 4.10. On the basis of documents (copies of mail between SME Logistics and Varroc Engineering Limited) submitted by the Kailash Gawade, one of the Directors of the SME Logistics, CHA of the Importer, I find that SME Logistics had informed Varroc Engineering Limited about non-applicability of the Notifications for the import of LCD used for speedometer for motor vehicles.
- 4.11. Also, I find that Shri Kailash Bhikaji Gawade, directors of the SME Logistics Pvt. Ltd., CHA of the Importer, in his statement has informed that the company stopped availing benefits of the said notification only after the customs raised query in one of their bills of entry. Thereafter they started paying BCD on the import of the said LCD Devices at merit rate. I find that even after knowing the facts that the exemption is not available to them, they did not make payment of the differential amount in respect of previous bills of entries filed by them. I find that investigation revealed that both the importer and their CHA had the knowledge regarding the facts that the exemption is not available on the subject imported goods, despite that importer did not make payment of the differential duty amount in respect of previous Bills of entries filed by the importer. This reflects malafide on part of the importer as they had wilfully suppressed the facts in r/o previous bills of entry and remained elusive in payment of customs duty evaded by them by wrong availment of exemption from payment of customs duty.
- 4.12. I find that the query regarding inadmissibility of exemption to Liquid Crystal Display was accepted by the importer on 07.07.2022 and few other Bills of Entry were recalled and reassessed by the importer upto 14.07.2022 but even after lapse of approx. 8 months, only when the summons dated 30.03.2023 was issued by DRI and investigation in the case regarding wrong availment of exemption under Notification No. 24/2005 dated 01.03.2005 as amended, was initiated, the customs duty wrongly evaded by the importer was paid on 12.05.2023 & 15.05.2023.
- 4.13. I find that investigation revealed that had the investigation not been conducted by the DRI, Raipur regarding the wrongful availment of exemptions under Notification No. 24/2005 (as amended by 57/2021 and the corrigendum dated April 7, 2022), the importer would have successfully evaded Customs Duty and other applicable duties on previous bills of entry. The importer never approached any customs authorities to pay the differential duty, even after becoming aware of the facts; this demonstrated that Varroc Engineering Limited had wilfully suppressed the facts.
- 4.14. I find that SME Logistics Pvt. Ltd., CHA of the importer in collusion with the importer never informed any customs authorities regarding non-payment of customs duty in respect of import of Liquid Crystal Display vide Bills of Entry filed during the period from 01.01.2022 to 01.07.2022

and the importer in collusion with their CHA, recalled only the live bills of entry, thus helped evading payment of customs in respect of consignments cleared in past by the importer.

- 4.15. I find that the SCN alleges that the M/s. Varroc Engineering in collusion with their CHA, M/s. SME Logistics Pvt Ltd. deliberately suppressed the facts, with malafide intention, that they were aware that Liquid crystal devices imported by them are not covered under Sl.No.29 and do not fall under the category of Sl. Nos. 1 to 38A of Notification No. 24/2005, as amended by Notification No.57/2021 dated 29.12.2021 w.e.f. 01.01.2022. The importer cleared the goods at NIL rate of BCD instead of applicable BCD @15% in order to evade payment of appropriate BCD. Therefore, differential customs duty amounting to Rs. 1,18,03,178/- (Rupees One Crore Eighteen Lakhs Three Thousand One Hundred and Seventy-Eight only), as worked out in the Annexure-I & II of the subject Notice, evaded by M/s. Varroc Engineering Ltd., by reasons of collusion, mis-statement and suppression of facts, is proposed to be demanded in the SCN, under the provisions of Section 28 (4) of the Customs Act, 1962, along with interest, under the provisions of Section 28AA of the Customs Act, 1962. Further, the SCN has also proposed appropriation of payment of duty, confiscation of goods and imposition of penalty on the importer and their CHA, M/s. SME Logistics Pvt. Ltd.
- 4.16. From the brief of the statements of the key persons involved and the documentary/digital evidences available in the import of the goods covered in the instant SCN as outlined above, it can be seen that the admissions/confessions made therein are in coherence with each other and the same have been recorded voluntarily without the use of any force or threat. Moreover, none of the statements have negated any facts adduced in the other statements. Thus, I find that the statements tendered during the investigation under the provisions of Customs Act 1962, are fully corroborated with cogent and tangible evidences. Further, from the records available, the DRI, Raipur had recorded the statement under Section 108 of the Customs Act, 1962 without any duress and coercion. I find from the facts on record, that none of the noticees had made any allegation during investigation and retracted their statements. In this regard, I place reliance in the decision of Hon'ble Supreme Court in the case of **K.I. Pavunny Vs. Assistant Collector (HQ), Central Excise Cochin, (1997) 3 SCC 721** wherein the Apex Court has held that there is no law which forbids acceptance of voluntary and true admission statement if the same is later retracted on bald assertion of threat and coercion. In the light of the above discussed judgements, I find that the statements recorded under Section 108 of the Customs Act, 1962 have legal evidentiary value in the present matter.
- 4.17. Furthermore, the Legal position about the importance and validity of statements rendered under Section 108 of the Customs Act, 1962 is well settled. It has been held by various judicial fora that Section 108 is an enabling act and an effective tool in the hands of Customs to collect evidences in the form of voluntary statements. The Hon'ble Courts in various judicial pronouncements, have further strengthened the validity of this enabling provision. It has been affirmed that the statement given before the Customs officers is a material piece of evidence and certainly can be used as substantive evidence, among others, as held in the following cases:
- i *Asst. Collector of Central Excise, Rajamundry v. M/s. Duncan Agro India Ltd.* reported in 2000 (120) E.L.T. 280 (S.C.) : Statement recorded by a Customs Officer under Section 108 is a valid evidence
  - ii In 1996 (83) E.L.T. 258 (S.C.) in the case of *Shri Naresh J. Sukawani v. Union of India* : "4. It must be remembered that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore, it is a material piece of evidence collected by Customs officials under Section 108 of the Customs Act."
  - iii It was held that statement recorded by the Customs officials can certainly be used against a co-noticee when a person giving a statement is also tarnishing his image by making admission of guilt. Similar view was taken in the case of *In Gulam Hussain Shaikh Chougule v. S. Reynolds* (2002) 1 SCC 155 = 2001 (134) E.L.T. 3 (S.C.)

- iv State (NCT) Delhi Vs Navjot Sandhu @ Afsan Guru, 2005 (122) DLT 194 (SC): Confessions are considered highly reliable because no rational person would make admission against his interest unless prompted by his conscience to tell the truth. "Deliberate and voluntary confessions of guilt, if clearly proved are among the most effectual proofs in law." (Vide Taylors's Treatise on the Law of Evidence, VI. I).
- v Hon'ble Supreme Court in the case of Kanhailal Vs. UOI, 2008 (1) Scale 165 observed: "*The law involved in deciding this appeal has been considered by this court from as far back as in 1963 in Pyare Lal Bhargava's case (1963) Supp. 1 SCR 689. The consistent view which has been taken with regard to confessions made under provisions of section 67 of the NDPS Act and other criminal enactments, such as the Customs Act, 1962, has been that such statements may be treated as confessions for the purpose of Section 27 of the Indian Evidence Act.*
- vi The Hon'ble Supreme Court in the case of Badaku Joti Savant Vs. State of Mysore [ 1966 AIR 1746 = 1978 (2) ELT J 323 (SC 5 member bench) ] laid down that statement to a Customs officer is not hit by section 25 of Indian Evidence Act, 1872 and would be admissible in evidence and in conviction based on it is correct.
- vii In the case of BhanaKhalpa Bhai Patel Vs. Asstt. Collr. of Customs, Bulsar [1997 (96) E.L.T. 211 (SC)], the Hon'ble Apex Court at Para 7 of the judgment held that :- "*It is well settled that statements recorded under Section 108 of the Customs Act are admissible in evidence vide Romesh Chandra v. State of West Bengal, AIR 1970 S.C. 940 and K.I. Pavunny v. Assistant Collector (H.Q.), Central Excise Collectorate, Cochin, 1997 (90) E.L.T. 241 (S.C.) = (1997) 3 S.C.C. 721.*"
- viii In the case of Raj Kumar Karwal Vs. UOI & Others (1990) 2 SCC 409, the Court held that *officers of the Department of Revenue Intelligence who have been vested with the powers of an Officer-in-Charge of a police station under Section 53 of the NDPS Act, 1985, are not police officers within the meaning of Section 25 of the Evidence Act. Therefore, a confessional statement recorded by such officer in the course of investigation of a person accused of an offence under the Act is admissible in evidence against him.*
- ix The Hon'ble Supreme Court's decisions in the case of Romesh Chandra Mehta Vs. the State of West Bengal (1969) 2 S.C.R. 461, A.I.R. 1970 S.C. 940. The provisions of Section 108 are judicial provisions within statement has been read, correctly recorded and has been made without force or coercion. In these circumstances there is not an iota of doubt that the statement is voluntary and truthful. The provisions of Section 108 also enjoin that the statement has to be recorded by a Gazetted Officer of Customs and this has been done in the present case. The statement is thus made before a responsible officer and it has to be accepted as a piece of valid evidence.
- x Jagjit Singh vs State of Punjab And Another, Hon'ble Punjab and Haryana High Court in Crl. Appeal No.S-2482-SB of 2009 Date of Decision: October 03, 2013 held that : *The statements under Section 108 of the Customs Act were admissible in evidence as has been held by the Hon'ble Supreme Court in Ram Singh vs. Central Bureau of Narcotics, 2011 (2) RCR (Criminal) 850.*

4.18. In view of the above referred consistent judicial pronouncements, the importance of statements rendered under Section 108 of the Customs Act, 1962 during the case is quite imperative. I find that the statements made in the case were voluntary and are very much valid in Law and can be relied upon as having full evidentiary value.

4.19. I find that noticee in their written submission has contended that the goods were imported on the basis of assessed Bills of Entry which are in themselves to be considered as appealable orders under Section 47 of the CA, 1962; that the assessment orders being quasi-judicial orders, they ought be challenged before taking recourse to Section 28 of the Customs Act; that the demand of duty is not sustainable as the assessment has not been challenged by the Department. They relied

upon the case of ITC Ltd. Vs Commissioner of Central Excise, Kolkata-IV [2019 (368) ELT 216 (SC)].

4.20 In this context, I find that there are plenty of case laws of various Appellate Forums, wherein it is held that for demand of short levy of Customs Duty, assessment is not required to be challenged. In the case of M/s. ITC Ltd., the Hon'ble Supreme Court was dealing with the issue of filing Refund under Section 27 of the Customs Act, 1962 without taking recourse to modify the assessment. The Hon'ble Supreme Court observed (Para 44 and 47 of the judgment) that refund proceedings under Section 27 are in the nature of execution for refunding amount and assessment cannot be challenged by way of refund application. It is also held that any order including self-assessment can be modified under Section 128 or under other relevant provisions of the Act. Thus, the judgment was given in the backdrop of different set of facts to hold that appeal against the assessment of Bill of Entry to modify the assessment is prerequisite for sanctioning of refund and refund sanctioning authority cannot adjudicate the exigencies involved. Hence, reliance placed by the Noticee on case law of M/s. ITC Ltd. is of no avail in the case on hand.

4.21. I find that this issue has also been settled by the Hon'ble Supreme Court in the case of Union of India V/s. Jain Shudh Vanaspati Limited [reported at 1996 (86) ELT 460 (SC)] wherein it has been clearly held that Show Cause Notice under Section 28 of the Customs Act, 1962 can be issued without revising the order of assessment. The same ratio was once again pronounced by the Hon'ble Supreme Court in the case of Collector of Central Excise, Bhubaneswar V/s. Re-Rolling Mills [reported at 1997 (94) ELT 8 (SC)]. Once again by relying the ratio of Jain Shudh Vanaspati Limited [reported at 1996 (86) ELT 460 (SC)] the Civil Appeal No. 327/1998 filed by Component Corporation was rejected by the Supreme Court as reported at Component Corporation V/s Collector – 1998 (99) ELT A228 and thus, upholding the Tribunal's order dated 19-09-1996 reported at Component Corporation V/s. Collector of Customs, New Delhi – 1997 (93) ELT 225 (Tribunal).

4.22. I further rely upon some of the judgments, the details of the same are as follows:

(i) M/s. Interglobe Aviation Ltd. V/s. Pr. Commissioner Bangalore reported in 2022 (379) ELT 235 (Tri. Bang.);

*"18. Coming to the issue as to whether the issuance of notice under section 28 of Customs Act, 1962 was correct as no appeals have been filed against the assessed bills of entry, we find that the appellants placed reliance on the decision of Hon'ble Supreme Court in the case of ITC Ltd Vs Commissioner of Central Excise, Kolkata IV, 2019 (368) ELT 216 (SC) wherein it was held that the sign/endorsement made on the bill of entry is an order of assessment under Section 17 which is an appealable order and any person including the departmental authorities who are aggrieved by order of self-assessment should challenge the assessment by way of filing an appeal against such self-assessment under Section 128 of the Customs Act, 1962; they submit that in the absence of any appeal against the Out of Charge orders for clearance of goods or the Bills of Entry passed by the proper officers of Customs, the said orders of assessment and clearance have attained finality and the same cannot be challenged or negated by issuance of the impugned order.*

*18.1. Learned Commissioner, on the other hand, finds that the case laws submitted by the appellants pertained to the era where goods were assessed duty by the officers whereas in the present case, the goods have been cleared on self-assessment basis. We find that the appellants have relied upon the recent decision of Hon'ble Supreme Court in the case of ITC Ltd. Vs CCE, Kolkata-IV, 2019 (368) ELT 216(SC). We find that the issue for consideration before Apex Court was about refund and in this context, Hon'ble Apex Court has observed that in terms of the provisions of Section 27 read with Section 17 of the Customs Act, 1962, no refund claim is maintainable unless the order of assessment is challenged. The Hon'ble Supreme Court observes that: 47. When we consider the overall effect of the provisions prior*

*to amendment and post-amendment under Finance Act, 2011, we are of the opinion that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would not be within the ken of Section 27 to set aside the order of self-assessment and reassess the duty for making refund; and in case any person is aggrieved by any order which would include self-assessment, he has to get the order modified under Section 128 or under other relevant provisions of the Act.*

18.2. *On going through the above cited case, we find that the issue which was considered by the Hon'ble Apex Court was not "Demand" issued under Section 28 but "Refund" under Section 27. We find that the Apex Court has not, anywhere in the order, observed that for issuing a demand under Section 28, the assessment order needs to be challenged under the provisions of Section 128. We cannot read such a conclusion from the judgment. Therefore, we find that in view of the provisions of Section 17 and Section 28 of the Customs Act, 1962, the demand issued is in order. We find that learned Commissioner has rightly relied upon the order of Hon'ble Madras High Court, 2006 (199) ELT 405."*

- (ii) Commissioner of Customs, C. Ex. & ST, Hyderabad-II V/s. M/s. S.V. Technologies Pvt. Ltd. reported in 2019 (369) ELT 1631 (Tri. Hyd.); wherein it has been clearly held that Show Cause Notice can be issued without challenging the assessment in view of the issue already settled by the Supreme Court in the case of Jain Shudh Vanaspati Limited. It has been further held that judgment of Priya Blue Industries - 2004 (172) ELT 145 (SC) and Flock (India) Private Limited - 2000 (120) ELT 285 (SC) are clearly distinguishable being related to refund and not demand.

4.23. I find that the noticee, M/s. Varroc Engineering Ltd., in their written submissions has contended that an amendment to an exemption Notification can be retrospective only if the same is beneficial. If the amendment is not beneficial to the assessee, the same cannot have a retrospective effect. Further, a Corrigendum can be issued only to rectify obvious or typographical errors and not make substantial changes. In the present case, the Corrigendum dated 07.04.2022 has made substantial changes to the exemption entry which is not beneficial to the assessee. Hence, the same cannot be applied retrospectively to demand duty. They relied upon the cases of *Sylvania & Laxman Vs. UOI 1987 (30) ELT 697 (Del.)*, *Bharat Vijay Mills & 1 Vs. UOI 2018 (2) TMI 1442* and *Instamedic International Vs. CC 1997 (89) ELT 701 (Tribunal)* Affirmed by the Hon'ble Supreme Court in 1996 (86) ELT A162 (SC).

4.24. Further, I find the importer has argued that it is a settled position that the title or caption or nomenclature of an instrument / document is not determinative of the nature and character of the instrument/document, and the substance of the document needs to be looked into to ascertain the true nature of the document. In the present case, even though the document is titled 'Corrigendum', it has made substantial amendment in the existing exemption entry, and therefore, cannot be made effective retrospectively. They relied upon the cases of *Bunga Daniel Babu Vs. Sri Vasudeva Constructions (2016) 8 SCC 429* and *MM Aqua Technologies Vs. CIT 2021 (8) TMI 520 (SC)*.

4.25. In this context, the Hon'ble Supreme Court in the case of *State of Rajasthan & another vs. J.K. Udaipur Udyog Ltd. & Anr.*, has held that

*"the use of the word corrigendum itself indicates, the intention was to correct and to rectify what the Government thought had been erroneously done. It is clear that a corrigendum is nothing but a correction and it relates back to the notification itself".*

In light of above, I hold that the effect of the Corrigendum to Notification no. 57/2021 dated 29.12.2021 is from the date of effect of the initial notification i.e. 01.01.2022.

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

- (A) Whether or not the classification of the goods imported vide Bill of Entry No. 7090208 dated 15.01.2022 under CTI 90138000 should be rejected and classified under CTI 85249000;
- (B) Whether or not the goods imported vide Bill of Entry No. 7090208 dated 15.01.2022 having assessable value of ₹ 17,40,514/- (Seventeen Lakh Forty Thousand Five Hundred Fourteen Only) should be held liable for confiscation under Section 111(m) of the Customs Act, 1962 for contravention of the provisions of Section 46(4) by mis-classification of the goods;
- (C) Whether or not Penalty under Section 112(a)/Section 112(b) of the Customs Act, 1962, should be imposed on M/s Varroc Engineering Limited for the acts of omission and commission which have rendered the imported goods of Bill of Entry no. 7090208 dated 15.01.2022 liable to confiscation under Section 111(m) of the Customs Act, 1962.
- (D) Whether or not the benefit of duty exemption under Sr. No. 29 of the Notification No.24/2005 dated 01.03.2005 as amended vide Notification No. 57/2021 dated 29.12.2021 w.e.f. 01.01.2022 followed by corrigendum dated 07.04.2022, claimed for the goods imported and cleared vide Bills of Entry as detailed in Annexure-I and Annexure-II, should be denied with consequential duty liability;
- (E) Whether or not the differential duty amounting to Rs.1,18,03,178/- (Rupees One Crore Eighteen Lakhs Three Thousand One Hundred and Seventy-Eight only), evaded by M/s Varroc Engineering Limited should be demanded and recovered under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA ibid;
- (F) Whether or not the subject goods imported vide Bills of Entry as detailed in Annexure-I and Annexure-II of the subject Notice having assessable value of ₹6,06,22,384/- (Rupees Six Crore Six Lakhs Twenty-Two Thousand Three Hundred and Eighty-Four only) should be held liable for confiscation under Section 111(m) of the Customs Act, 1962 for wrong availment of exemption benefit under Notification No. 24/2005 dated 01.03.2005 as amended;
- (G) Whether or not The Customs Duty and interest amounting to Rs. 69,85,637/- (Rupees Sixty-Nine Lakhs, Eighty-Five Thousand Six Hundred Thirty-Seven Only) and 10,19,622/- (Rupees Ten Lakhs Nineteen Thousand Six Hundred Twenty-Two only) respectively, paid by Varroc Engineering Limited in respect of Bills of Entry filed during period 18.04.2022 to 18.06.2022 should not be appropriated against the duty demand and applicable interest thereon;
- (H) Whether or not penalty should be imposed on M/s. Varroc Engineering Ltd. under Section 112(a)(ii), 114A and 114AA of the Customs Act, 1962.
- (I) Whether or not penalty should be imposed on co-noticee, M/s. SME Logistics Pvt. Ltd., under Section 112(a), 114A and/or 114AA of the Customs Act, 1962.

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

4.28. **Whether or not the classification of the goods imported vide Bill of Entry No. 7090208 dated 15.01.2022 under CTI 90138000 should be rejected and classified under CTI 85249100**

- (i) I find that the subject SCN proposed to reject the classification of the subject goods imported vide Bill of Entry 7090208 dated 15.01.2022 under CTI 90138000 and reclassify the said imported goods under CTI 85219100. I find that, in the SCN, it is argued that the seventh edition of Harmonized System (HS) Nomenclature HS-2022 came into force from 01.01.2022, wherein the CTI-90138010 was omitted and replaced with New Code- 90138000 under correlation 'NP', having partial relation with earlier HS code. Therefore, the description of heading in 9013 was changed and substituted to-

— *“LASERS, OTHER THAN LASER DIODES; OTHER OPTICAL APPLIANCES AND INSTRUMENTS, NOT SPECIFIED OR INCLUDED ELSEWHERE IN THIS CHAPTER”*

*901380 - Other devices, appliances and instruments. DELETED*

*90138000 - Other devices, appliances and instrument.*

- (ii) Further, I find that the Noticee has also put forth arguments in favour of the classification of the subject goods, i.e., “LIQUID CRYSTAL DISPLAYS” (LCD), under CTI 85249100. Therefore, there is no dispute that the imported goods are indeed LCD and have been correctly classified under Tariff Item 8524 91 00 of the Customs Tariff. The relevant portion of the Customs Tariff is extracted below for ease of reference:

CHAPTER HEADING	ELECTRICAL MACHINERY AND EQUIPMENT AND PARTS THEREOF; SOUND RECORDERS AND REPRODUCERS, TELEVISION IMAGE AND SOUND RECORDERS AND REPRODUCERS, AND PARTS AND ACCESSORIES OF SUCH ARTICLES
8524	Flat Panel Display Modules, Whether or not Incorporating Touch-Sensitive Screens
	- <b>Without drivers or control circuits:</b>
85241100	-- Of liquid crystals
85241200	-- Of organic light-emitting diodes (OLED)
85241900	-- Other
	- <b>Other</b>
<b>85249100</b>	<b>-- Of liquid crystals</b>
85249200	-- Of organic light-emitting diodes (OLED)
85249900	-- Other

- (iii). From the above extracted portion, it can be seen that Heading 85.24 of the Customs Tariff covers various kinds of Flat Panel Display Modules. The term ‘Flat Panel Display Modules’ has been defined under Note 7 of Chapter 85. The relevant portion is extracted below:

*“7. For the purposes of heading 8524, “flat panel display modules” refer to devices or apparatus for the display of information, equipped at a minimum with a display screen, which are designed to be incorporated into articles of other headings prior to use. Display screens for flat panel display modules include, but are not limited to, those which are flat, curved, flexible, foldable or stretchable in form. Flat panel display modules may incorporate additional elements, including those necessary for receiving video signals and the allocation of those signals to pixels on the display. However, heading 8524 does not include display modules which are equipped with components for converting video signals (e.g., a scaler IC, decoder IC or application processor) or have otherwise assumed the character of goods of other headings.*

*For the classification of flat panel display modules defined in this Note, heading 8524 shall take precedence over any other heading in the Nomenclature.”*

(iv) Further, I find that the HSN Explanatory Notes to Heading 85.24 reads as:

*“This heading covers flat panel display modules, whether or not incorporating touch-sensitive screens, which are defined in Note 7 to this Chapter.*

*The articles of this heading are equipped at a minimum with a display screen utilizing liquid crystal display (LCD), organic light-emitting diodes (OLED), light-emitting diodes (LED) or other display technologies.*

*The screen types of flat panel display modules include, but are not limited to, those which are flat, curved, flexible, foldable, stretchable or rollable in form.*

*This heading includes:*

- (1) Flat panel display modules without drivers or control circuits, which are generally referred to as ‘cells’. In the case of LCD cells, liquid crystals are placed between two sheets or plates of glass or plastics such as TFT substrates and colour filter substrates. In the case of OLED cells, they have organic materials deposited on TFT substrates. Those cells do not contain electrical parts such as drivers or control circuits, whether or not fitted with electrical connections or attached with polarizing plates.*
- (2) Flat panel display modules with drivers or control circuits: Drivers or control units are added to ‘cells’ of item (1). The modules may contain drivers that receive video signals or other data (e.g., text, images, ADP signals, or other graphical data) and switch individual pixels of displays (generally consisting of driver IC and PCB that connects video signals to driver IC) or control circuits of power supply for display modules or timing control. They might combine with backlight units (for LCDs) or frames (chassis).*
- (3) Flat panel display modules with touch-sensitive screens: Touch-sensitive screens are attached to the flat panel display modules or embedded in the cell. They allow input as well as output (display) of information such as images.*

*The articles of this heading are designed to be attached to or incorporated in a wide range of apparatus (e.g., refrigerators, automatic data processing machines, mobile phones and devices for transmission or reception of images or data, digital cameras and video camera recorders, monitors and reception apparatus for television and motor vehicles for the transport of persons).*

*However, flat panel display modules that are not integrated into other apparatus and presented separately are classified in this heading rather than the heading in which the finished products with flat panel display modules are classified.*

*Flat panel display modules that have been integrated into other apparatus are to be classified in the heading appropriate to the apparatus as a whole.”*

(v) I note that on a conjoint reading of Note 7 of Chapter 85 and HSN Explanatory Notes of Heading 85.24, it can be seen that ‘Flat Panel Display Modules’ are the devices or apparatus which are used for display of information. These devices have at least a display screen such as LCD, OLED, LED etc. and are designed to be incorporated in a wide range of apparatus including for motor vehicles prior to its use. It says that these devices may or may not come with touch-sensitive screens. The note further states that these devices may incorporate additional elements. However, the devices which have components for conversion of video signals are excluded from the scope of this heading.

- (vi) I find that the goods imported by the Noticees are LCD display screens and the same are incorporated in *monitors and reception apparatus for motor vehicles* prior to its use. These devices incorporate certain additional components like Touch Panel, Touch IC etc. which make them touch-sensitive screens. Furthermore, the disputed goods do not have any components for conversion of video signals.
- (vii). In view of the above, I am of the opinion that the goods imported by the Noticee satisfy the definition of 'Flat Panel Display Modules' provided under Note 7 of Chapter 85. Therefore, the disputed goods have been correctly classified under Heading 85.24. Accordingly, I hold that the classification of the goods imported vide Bill of Entry No. 7090208 dated 15.01.2022 under CTI 90138000 should be rejected and re-classified under CTI 85249100.

**4.29. Whether or not the goods imported vide Bill of Entry No. 7090208 dated 15.01.2022 having assessable value of ₹ 17,40,514/- (Seventeen Lakh Forty Thousand Five Hundred Fourteen Only) should be held liable for confiscation under Section 111(m) of the Customs Act, 1962 for contravention of the provisions of Section 46(4) by mis-classification of the goods.**

- (i). The SCN proposes confiscation of goods imported vide Bills of Entry No. 7090208 dated 15.01.2022 having total assessable value of ₹ 17,40,514/- (Seventeen Lakh Forty Thousand Five Hundred Fourteen Only) under the provisions of Section 111(m) of the Customs Act, 1962.
- (ii) Section 111(m) of the Customs Act, 1962 states that the following goods brought from a place outside India shall be liable to confiscation:

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

- (iii) 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.
- (iv). I find that the noticee has argued that even if the subject goods are reclassified under Tariff Item 8524 90 00, the same shall be eligible to exemption benefit in terms of Sr. No. 29 of the said Notification No. 24/2005 (as existed during 01.01.2022 till 06.04.2022), that the subject goods imported by availing the exemption benefit in terms of Sr. No. 29 of the Notification No. 24/2005, that the Sr. No. 29 during the relevant period provided exemption to '*Liquid Crystal Devices*' classifiable under Heading 8524 or Tariff Item 9013 80 00, that, therefore, even if reclassification as suggested by the customs department is accepted, the same would result in a revenue neutral situation. Therefore, following the established principle of law, demand / confiscation / penalty proposed in respect of the Bill of Entry No. 7090208 dated 15.01.2022 is unsustainable and liable to be dropped.
- (v). I find that the during the investigation it was revealed that in light to the New HSN 2022, Query was raised by Customs in respect of mis-classification of Liquid Crystal Display by the importer vide Bill of Entry no. 7145809 dated 19.01.2022 under inappropriate CTI 90138000. After acceptance of the importer, the said Bill of Entry was recalled and the Liquid Crystal Display imported vide the said Bill of Entry was reassessed to CTI 85249000 and the benefit of exemption under Notification no. 24/2005 dated 01.03.2005 as amended was removed. Therefore, in respect of said Bill of Entry 7145809 dated 19.01.2022, the importer accepted the reassessment under CTI 85249100 and removed the benefits claimed under exemption Notification 24/2005 dated 01.03.2005, as amended. However, the importer failed to recall and re-assess the previous Bill of Entry no. 7090208 dated 15.01.2022, wherein subject goods, Liquid Crystal Display, were imported and, consequently, the importer evaded to correct the misclassification of CTI of Liquid

Crystal Display imported vide the said Bill of Entry dated 15.01.2022. I find that this is not Bonafide on the part of the importer.

(vi). I find that Section 46 of the Customs Act, 1962 stipulates as under:

*(1) The importer of any goods, other than goods intended for transit or transshipment, shall make an entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed.*

*(2) Save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.*

*(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.*

*(4A) The importer who presents a bill of entry shall ensure the following namely: -*

*a) the accuracy and completeness of the information given therein;*

*b) the authenticity and validity of any document supporting it; and*

*c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.*

(vii). Therefore, in view of above, even though the importer recalled and reassessed the subject goods imported vide Bill of Entry 7145809 dated 19.01.2022, but I find that the importer failed to recall and reassess the previous Bill of Entry 7090208 dated 15.01.2022. Therefore, I am of the opinion that the importer contravened the provisions under Section 46(4) of the Customs Act, 1962. This deliberate suppression of facts and wilful mis-classification resorted by the Noticee, therefore, renders the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962. Accordingly, I find that acts of omission and commission on the part of the Noticee have rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962.

(viii). 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.

(ix). 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.

(x). 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.

- (xi). Prior to 08.04.2011, sub-section (2) of Section 2 of the Customs Act, 1962 read as under:  
*(2) "assessment" includes provisional assessment, reassessment and any order of assessment in which the duty assessed is nil;*

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

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

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

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

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

- a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;*
- b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;*
- c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;*
- d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;*
- e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods,*
- f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods,*

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

- (xii). From a plain reading of the above provisions related to assessment, it is very clear that w.e.f. 08.04.2011, the importer must self-assess the duty under Section 17 read with Section 2(2) of the Customs Act, and since 2018 the scope of assessment was widened. Under the self-assessment regime, it was statutorily incumbent upon the importer to correctly self-assess the goods in respect of classification, valuation, claimed exemption notification and other particulars. With effect from

29.03.2018, the term 'assessment', which includes provisional assessment also, the importer is obligated to not only establish the correct classification but also to ascertain the eligibility of the imported goods for any duty exemptions. From the facts of the case as detailed above, it is evident that M/s Varroc Engineering Ltd. has deliberately failed to discharge this statutory responsibility cast upon them.

- (xiii). Besides, as indicated above, in terms of the provisions of Section 46(4) of the Customs Act, 1962 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018, the importer while presenting a Bill of Entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such Bill of Entry. In terms of the provisions of Section 47 of the Customs Act, 1962, the importer shall pay the appropriate duty payable on imported goods and then clear the same for home consumption. However, in the subject case, the importer while filing the Bill of Entry has resorted to deliberate suppression of facts and wilful misclassification to claim lower rate of duty. Thus, the Noticee has failed to correctly assess and pay the appropriate duty payable on the imported goods before clearing the same for home consumption. Therefore, I find that by not self-assessing the true and correct rate of Customs duty applicable on the subject goods, the importer wilfully did not pay the applicable duty on the impugned goods.
- (xiv). In view of the foregoing discussion, I hold that the impugned imported goods declared in the Bills of Entry filed by M/s Varroc Engineering Ltd. having total assessable value ₹ 17,40,514/- (Seventeen Lakh Forty Thousand Five Hundred Fourteen Only) should be held liable for confiscation under Section 111(m) of the Customs Act, 1962, on the grounds of suppression and mis-classification of the imported goods.
- (xv). As the importer, through wilful mis-statement and suppression of facts, had mis-classified the goods while filing the Bills of Entry with intent to evade the applicable Customs duty, resulting in short levy and short payment of duty, I find that the confiscation of the imported goods under Section 111(m) is justified & sustainable in law. However, I find that the goods imported are not available for confiscation. But I rely upon the order of Hon'ble Madras High Court in case of *M/s Visteon Automotive Systems India Limited [reported in 2018 (9) G.S.T.L. 142 (Mad.)]* wherein the Hon'ble Madras High Court held in para 23 of the judgment as below:

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

- (a) 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.)*.
- (b) 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.
- (c) 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.
- (d) In view of above, I find that any goods improperly imported as provided in any sub-section of the Section 111 of the Customs Act, 1962, the impugned goods become liable for confiscation. Hon'ble Bombay High Court in case of *M/s Unimark reported in 2017(335) ELT (193) (Bom)* held Redemption Fine (RF) imposable in case of liability of confiscation of goods under provisions of Section 111(o). Thus, I also find that the goods are liable for confiscation under other sub-sections of Section 111 too, as the goods committing equal offense are to be treated equally. I opine that merely because the importer was not caught at the time of clearance of the imported goods, can't be given different treatment.
- (e) 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.

**4.30. Whether or not Penalty under Section 112(a)/Section 112(b) of the Customs Act, 1962, should be imposed on M/s Varroc Engineering Limited for the acts of omission and commission which have rendered the imported goods of Bill of Entry no. 7090208 dated 15.01.2022 liable to confiscation under Section 111(m) of the Customs Act, 1962.**

- (i). I find that in the era of self-assessment, the Noticee had wrongly self-assessed the Bill of Entry dated 15.01.2022 and also failed to recall and re-assess the said Bill of entry for the reasons that are not bonfide on the part of the Noticee and evaded the payment of correctly leviable duty in respect of the impugned imported goods covered under said Bill of Entry. As the Noticee got monetary benefit due to their wilful suppression of facts and mis-declaration and evasion of applicable duty on the aforesaid goods, I find that penal provisions get attracted for the acts of omissions and commissions.
- (ii). As discussed above, I find that the subject Bill of Entry No. 7090208 dated 15.01.2022 was self-assessed by the Noticee, M/s Varroc Engineering Ltd. They were aware of the true nature and characteristics of the imported goods and accordingly, were knowing about the correctly leviable duty thereon. They recalled and reassessed subject goods imported vide Bill of Entry dated 19.01.2022. However, they failed to recall and re-assess the subject goods imported vide Bill of Entry No. 7090208 dated 15.01.2022. Therefore, they wilfully suppressed this fact and evaded

payment of legitimately payable duty in the said Bill of Entry filed before the Customs authorities. By resorting to the aforesaid suppression and mis-declaration, they evaded legitimately payable duty. Under the self-assessment scheme, it is obligatory on the part of importer to declare truthfully all the particulars relevant to the assessment of the goods, ensuring their accuracy and authenticity, which the importer clearly failed to do with malafide intention. They suppressed the fact before the Customs Department regarding correctly leviable duty thereon, to claim the undue duty benefit at the time of clearance of the said imported goods. This wilful and deliberate suppression of facts amply points towards the “mens rea” of the Noticee to evade the payment of legitimate duty. The wilful 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, confiscation and penal provision will automatically get attracted. Thus, the Noticee, by their various acts of omission and commission discussed above, have rendered the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962, thereby making themselves liable for penalty under Section 112(a) *ibid*.

- (iii). Accordingly, I agree with the proposal made in the subject SCN and hold that penalty should be imposed on the Noticee, M/s Varroc Engineering Ltd. under Section 112(a) of the Customs Act, 1962.

**4.31 Whether or not the benefit of duty exemption under Sr. No. 29 of the Notification No.24/2005 dated 01.03.2005 as amended vide Notification No. 57/2021 dated 29.12.2021 w.e.f. 01.01.2022 followed by corrigendum dated 07.04.2022, claimed for the goods imported and cleared vide Bills of Entry as detailed in Annexure-I and Annexure-II, should be denied with consequential duty liability.**

- (i) I note that the Noticee, M/s Varroc Engineering Ltd. had imported goods having description “Liquid Crystal Displays” as detailed in Annexure-I & Annexure-II to the subject SCN. The Noticee had availed the benefit of duty exemption under Sr. No. 29 of the Notification No.24/2005 dated 01.03.2005 as amended vide Notification No. 57/2021 dated 29.12.2021 w.e.f. 01.01.2022 followed by corrigendum dated 07.04.2022. As per the SCN, the above items imported by the Noticee are not eligible for the benefit of duty exemption under Sr. No. 29 of the Notification No.24/2005 dated 01.03.2005 as amended. Thus, the main issue involved here is determining the eligibility of the impugned imported goods under Sr. No. 29 of the exemption Notification No. 24/2004, as amended.
- (ii) I find that it is undisputed that the description of the subject imported goods is “Liquid Crystal Displays (LCD)”. It would be worthwhile to look at the Sr. No. 29 of the Notification No.24/2005 dated 01.03.2005 as amended vide Notification No. 57/2021 dated 29.12.2021 w.e.f. 01.01.2022 followed by corrigendum dated 07.04.2022, as under:

**(a) Notification No. 24/2005- Customs dated 01.03.2005 issued by CBEC**

*G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the following goods, falling under the heading, sub-heading or tariff-item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and specified in column (2) of the Table below, when imported into India, from the whole of the duty of customs leviable thereon under the said First Schedule, namely:-*

*Table*

<i>Sr.No.</i>	<i>Goods falling under Heading, Sub-heading or Tariff item</i>
<i>(1)</i>	<i>(2)</i>
1.	3818 00
2.	8456 91 00, 8469 11 00, 8470, 8471, 8473 21 00, 8473 29 00, 8473 30, 8473 50 00

3.	8517, 8520 20 00, 8523 (other than those falling under tariff item 8523 30 00), 8524 31, 8524 40, 8524 91, 8525 20, 8531 20 00, 8532, 8533, 8534 00 00, 8541, 8542, 8543 11 00, 8543 81 00, 8544 70
4.	9009 11 00, 9009 21 00, 9009 91 00, 9009 92 00, 9009 93 00, 9009 99 00, 9010 41 00, 9010 42 00, 9010 49 00, 9013 80 10, 9013 90 10, 9026, 9027 20 00, 9027 30, 9027 50, 9027 80, 9030 40 00, 9030 82 00, 9031 41 00
5.	All goods for the manufacture of goods covered by S. Nos. 1 to 4 above, provided that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996. [F.No334/1/2005- TRU] (V. Sivasubramanian) Deputy Secretary to the Government of India

**(b) Notification no. 57/2021 dated 29.12.2021 issued by CBIC: -**

G.S.R. ....(E). -In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby directs that each of the notifications of the Government of India in the Ministry of Finance (Department of Revenue), specified in column (2) of the Table below shall be amended in the manner specified in the corresponding entry in column (3) of the said Table, namely:

4.	Notification No. 24/2005-Customs, dated the 1 <sup>st</sup> March, 2005, published in the Official Gazette vide G.S.R. 122(E), dated the 1 <sup>st</sup> March, 2005.	<p>In the said notification, in the Table, .....</p> <p>(iv) For serial number 29 and the entries relating thereto, the following serial number and entries shall be substituted, namely: -</p> <table border="1"> <tr> <td>"29</td> <td>8524 or 90138000</td> <td>Liquid crystal devices";</td> </tr> </table> <p>(v) For serial number 30 and the entries relating thereto, the following serial number and entries shall be substituted, namely: -</p> <table border="1"> <tr> <td>"30</td> <td>8529 or 90139000</td> <td>Parts of liquid crystal devices";</td> </tr> </table> <p>.....</p>	"29	8524 or 90138000	Liquid crystal devices";	"30	8529 or 90139000	Parts of liquid crystal devices";
"29	8524 or 90138000	Liquid crystal devices";						
"30	8529 or 90139000	Parts of liquid crystal devices";						

2. This notification shall come into effect on the 1<sup>st</sup> day of January, 2022.

**(c) Corrigendum dated 07-04-2022 to Notification No. 57/2021 dated 29.12.2021 issued by CBIC:**

G.S.R. (E). -In the notification of the Government of India, in the Ministry of Finance (Department of Revenue) No. 57/2021-Customs, dated the 29<sup>th</sup> December, 2021, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 906 (E), dated the 29<sup>th</sup> December, 2021, namely,-

(I) at page number 12, in the Table, in serial number 4, in column (3), in serial number (iv), in the Table, in column (2), in line twenty-two, for "8524 or 90138000", read "8524";

(II) at page number 12, in the Table, in serial number 4, in column (3), in serial number (iv), in the Table, in column (3), in line twenty-two, for "Liquid crystal devices", read "Liquid crystal devices for goods mentioned at S. Nos. 1 to 38A";

(III) at page number 12, in the Table, in serial number 4, in column (3), in serial number (v), in the Table, in column (2), in lines twenty-six and twenty-seven, for "8529 or 90139000", read "8529";

*(IV) at page number 12, in the Table, in serial number 4, in column (3), against serial number (v), in the Table, in column (3), in line twenty-six, for "Parts of liquid crystal devices", read "Parts of liquid crystal devices for goods mentioned at S. Nos. 1 to 38A"*

- (iii) Conjoint reading of the Notification No. 24/2005 dated 01.03.2005, amendment Notification No. 57/2021 dated 29.12.2021 and Corrigendum dated 07.04.2022 to Notification NO. 57/2021 dated 29.12.2021, it is evident that benefit under Sr. no. 29 of Notification No. 24/2005 is for exemption of BCD under the said notification applicable to only those Liquid Crystal Display which were imported for manufacturing of the goods mentioned at S. No. 01 to 38A of the said notifications.
- (iv) I find that during the investigation, it was revealed that Varroc Engineering Limited is engaged in "manufacture of Instrument Cluster and other items used in Dashboard of Two Wheelers (Automotives) and has been importing LIQUID CRYSTAL DISPLAYS" under CTH 85249100 for the period from 24.01.2022 to 18.06.2022 and cleared the goods at NIL rate of BCD by availing ineligible benefit under Sl. No. 29 of Notification No.24/2005, as amended by Notification No.57/2021 dated 29.12.2021 w.e.f. 01.01.2022. Varroc Engineering Limited during the period 15.01.2022 to 19.01.2022 has also misclassified "LIQUID CRYSTAL DISPLAYS" under incorrect CTIs, by availing benefit under Sl. No. 29 of Notification No.24/2005, as amended by Notification No.57/2021 dated 29.12.2021, which was also not available to the LCDs imported by M/s. Varroc Engineering Ltd.
- (v) Corrigendum dated 07.04.2022 to Notification No. 57/2021 dated 29.12.2021 was issued by CBIC wherein the exemption under Notification No. 24/2005 dated 01.03.2005 was restricted to Liquid Crystal Devices for goods mentioned at Sr. No. 1 to 38A of Notification no. 24/2005 dated 01.03.2005 as amended, falling under CTH 8524. However, it was ascertained that the goods i.e., Liquid crystal devices imported by importer are not covered under Sl. No. 29 and do not fall under the category of Sl. Nos. 1 to 38A of Notification No.24/2005, as amended by Notification No.57/2021 dated 29.12.2021 w.e.f. 01.01.2022.
- (vi) I find that a query was raised by Customs in respect of Liquid Crystal Display imported by the importer under Bill of Entry no. 9382719 dated 02.07.2022. The importer submitted reply to the query justifying the wrong availment of said exemption under Notification no. 24/2005 dated 01.03.2005 as amended but on being asked to further clarify, the importer accepted the findings of the appraising officer and the exemption claimed was removed by the importer by recalling the said Bill of Entry. The importer also recalled some other live bills of entry and the exemption wrongly claimed was withdrawn and duty was paid by them at merit rate. The query regarding inadmissibility of exemption to Liquid Crystal Display, imported by M/s. Varroc Engineering Ltd., was accepted by the importer on 07.07.2022 and few other Bills of Entry were recalled and reassessed by the importer upto 14.07.2022.
- (viii) In view of foregoing discussions, I am of the opinion that "LIQUID CRYSTAL DISPLAYS", imported by importer are not covered under Sl.No.29 and do not fall under the category of Sl. Nos. 1 to 38A of Notification No.24/2005, as amended by Notification No.57/2021 dated 29.12.2021 w.e.f. 01.01.2022.
- (ix) It is pertinent to mention that exemption notification has to be strictly and narrowly construed. It is settled law that, in an exemption notification, there is no room for any change in the intendment which envisages the clear meaning of the words used therein. Therefore, the sense in which the law understands or interprets the true intention of the notification should remain intact. In other words, the admissibility of exemption, under a notification, from payment of duty / or availability of payment of duty at reduced rate on specified goods is governed wholly by the language of the notification.
- (x) I find that it is well established that any exemption notification has to be strictly interpreted and in the case of doubt the benefit should go to the department. Hon'ble Apex Court in the case of

*Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar & Company [2018 (361) E.L.T. 577 (S.C.)]* has held that exemption notification should be interpreted strictly and ambiguity in exemption notification must be interpreted in favour of the Revenue. The relevant paras, para 41 and 52 of the said order are reproduced below:

**“41. After thoroughly examining the various precedents some of which were cited before us and after giving our anxious consideration, we would be more than justified to conclude and also compelled to hold that every taxing statute including, charging, computation and exemption clause (at the threshold stage) should be interpreted strictly. Further, in case of ambiguity in a charging provisions, the benefit must necessarily go in favour of subject/assessee, but the same is not true for an exemption notification wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State.”**

**“52. To sum up, we answer the reference holding as under -**

**(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.”**

**(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.”**

- (xi) In the case of *Saraswati Sugar Mills Vs. Commissioner of C. Ex., Delhi-III* reported at [2011 (270) E.L.T. 465 (S.C.)], it was held that an exemption notification has to be strictly construed and that when the wordings of notification are clear, then the plain language of the notification must be given effect to. Relevant portion of the judgment is extracted below:

**“7. The Tariff Act prescribes the rate of duty for each chapter head and sub-head. The Tariff Act has authorized the Central Govt. to modify the rates/duty by issuing notifications. Since exemption notifications are issued under delegated legislative power, they have full statutory force. The Notification No. 67/95-C.E., dated 16-3-1995 specifically exempts capital goods as defined in Rule 57Q of the Rules. The other condition that is envisaged in the Notification is that the “capital goods” should be manufactured in a factory and used within the factory of production. If these twin conditions are satisfied, the capital goods are exempt from payment of excise duty. A party claiming exemption has to prove that he/it is eligible for exemption contained in the notification. An exemption notification has to be strictly construed. The conditions for taking benefit under the notification are also to be strictly interpreted. When the wordings of notification is clear, then the plain language of the notification must be given effect to. By way of an interpretation or construction, the Court cannot add or substitute any word while construing the notification either to grant or deny exemption. The Courts are also not expected to stretch the words of notification or add or subtract words in order to grant or deny the benefit of exemption notification. In *Bombay Chemicals (P) Ltd. v. CCE - (1995) Supp (2) SCC 64 = 1995 (17) E.L.T. 3 (S.C.)*, a three Judge Bench of this Court held that an exemption notification should be construed strictly, but once an article is found to satisfy the test by which it falls in the notification, then it cannot be excluded from it by construing such notification narrowly”**

- (xii) I also find that it is a settled law that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession and the exemption has to be construed based upon the settings on which the provision has been placed in the statute and the object and purpose to be achieved. In this regard, I place reliance on the judgement of the Hon'ble Supreme Court in the case of *CCE, New Delhi Vs Hari Chand Shri Gopal and Others [2010 (260) ELT 3 (SC)]*, wherein, the issue of grant and claim of exemption has been clarified by holding as under:

*“a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption.”*

(xiii) Similarly, the Hon'ble Supreme Court of India in the case of *M/s Novopan India Ltd Vs. Collector of C. Ex and Customs, Hyderabad 1994 (73) E.L.T.769 (SC)*, has held that:

*“a person, invoking an exception or exemption provisions, to relieve him of tax liability must establish clearly that he is covered by the said provisions and, in case of doubt or ambiguity, the benefit of it must go to the State.”*

(xiv) In view of the above legal position and after having gone through the provisions of the subject Notification No. 24/2005 dated 01.03.2005, amendment Notification No. 57/2021 dated 29.12.2021 and Corrigendum dated 07.04.2022 to Notification NO. 57/2021 dated 29.12.2021, it is evident that benefit under Sr. no. 29 of Notification No. 24/2005 is for exemption of BCD under the said notification applicable to only those Liquid Crystal Display which were imported for manufacturing of the goods mentioned at S. No. 01 to 38A of the said notifications. I find that when the words used in the exemption notification are plain and clear in meaning and do not admit of any doubt or ambiguity, such words, represent the legislative intent, leaving no room for any construction of the words to gather any other intention therefrom

(xv) Further, I find that the noticee, M/s. Varroc Engineering Ltd., in their written submissions has contended that an amendment to an exemption Notification can be retrospective only if the same is beneficial. If the amendment is not beneficial to the assessee, the same cannot have a retrospective effect. Further, a Corrigendum can be issued only to rectify obvious or typographical errors and not make substantial changes. In the present case, the Corrigendum dated 07.04.2022 has made substantial changes to the exemption entry which is not beneficial to the assessee. Hence, the same cannot be applied retrospectively to demand duty. They relied upon the cases of *Sylvania & Laxman Vs. UOI 1987 (30) ELT 697 (Del.)*, *Bharat Vijay Mills & I Vs. UOI 2018 (2) TMI 1442 and Instamedic International Vs. CC 1997 (89) ELT 701 (Tribunal) Affirmed by the Hon'ble Supreme Court in 1996 (86) ELT A162 (SC)*.

(xvi). Further, I find the importer has argued that it is a settled position that the title or caption or nomenclature of an instrument / document is not determinative of the nature and character of the instrument/document, and the substance of the document needs to be looked into to ascertain the true nature of the document. In the present case, even though the document is titled 'Corrigendum', it has made substantial amendment in the existing exemption entry, and therefore, cannot be made effective retrospectively. They relied upon the cases of *Bunga Daniel Babu Vs. Sri Vasudeva Constructions (2016) 8 SCC 429* and *MM Aqua Technologies Vs. CIT 2021 (8) TMI 520 (SC)*.

(xvii) In this context, the Hon'ble Supreme Court in the case of *State of Rajasthan & another vs. J.K. Udaipur Udyog Ltd. &Anr.*, has held that:

*“the use of the word corrigendum itself indicates, the intention was to correct and to rectify what the Government thought had been erroneously done. It is clear that a corrigendum is nothing but a correction and it relates back to the notification itself”.*

In light of above, I am of the opinion that the effect of the Corrigendum to Notification no. 57/2021 dated 29.12.2021 is from the date of effect of the initial notification i.e. 01.01.2022.

(xviii) In view of the foregoing discussion, taking in view the importer's submission and above referred judgement, I am of the opinion that the subject goods are ineligible to claim benefit of duty exemption under Sr. No. 29 of the Notification No.24/2005 dated 01.03.2005 as amended vide Notification No. 57/2021 dated 29.12.2021 w.e.f. 01.01.2022 followed by corrigendum dated 07.04.2022, and therefore, benefit of duty exemption claimed for the goods imported and cleared vide Bills of Entry as detailed in Annexure-I and Annexure-II, should be denied with consequential duty liability. Accordingly, I hold that benefit of duty exemption under Sr. No. 29 of the Notification No.24/2005 dated 01.03.2005 as amended vide Notification No. 57/2021 dated 29.12.2021 w.e.f. 01.01.2022 followed by corrigendum dated 07.04.2022, claimed for the goods imported and cleared vide Bills of Entry as detailed in Annexure-I and Annexure-II, should be denied with consequential duty liability.

4.32 **Whether or not the differential duty amounting to Rs.1,18,03,178/- (Rupees One Crore Eighteen Lakhs Three Thousand One Hundred and Seventy-Eight only), evaded by M/s Varroc Engineering Limited should be demanded and recovered under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA ibid.**

(i) I find that the subject SCN has proposed demand and recover the differential duty amounting to Rs.1,18,03,178/- (Rupees One Crore Eighteen Lakhs Three Thousand One Hundred and Seventy-Eight only), evaded by M/s Varroc Engineering Limited recovered under Section 28(4) of the Customs Act, 1962. Therefore, it is imperative to determine whether the demand of differential/short paid duty as per the provisions of Section 28(4) of the Customs Act, 1962, in the subject SCN is sustainable or otherwise. In this regard, the relevant legal provision is as under:

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

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

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

- (a) collusion; or*
- (b) any wilful mis-statement; or*
- (c) suppression of facts,*

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

(ii) I have held in preceding paras that benefit of duty exemption under Sr. No. 29 of the Notification No.24/2005 dated 01.03.2005 as amended vide Notification No. 57/2021 dated 29.12.2021 w.e.f. 01.01.2022 followed by corrigendum dated 07.04.2022, claimed for the goods imported and cleared vide Bills of Entry as detailed in Annexure-I and Annexure-II, should be denied with consequential duty liability. I find that being a regular importer, the Noticee must be well aware of the type of equipment, their parts and accessories, correct classification and leviability of IGST thereon. However, in the instant case, they mis-declared the exemption notification in the said Bills of entry. I find that the query regarding inadmissibility of exemption to Liquid Crystal Display was accepted by the importer on 07.07.2022 and few other Bills of Entry were recalled and reassessed by the importer upto 14.07.2022 but even after lapse of approx. 8 months, only when the summons dated 30.03.2023 was issued by DRI and investigation in the case regarding wrong availment of exemption under Notification No. 24/2005 dated 01.03.2005 as amended, was initiated, the customs duty wrongly evaded by the importer was paid on 12.05.2023 & 15.05.2023.

I find that had the investigation was not conducted by the DRI Raipur in respect of wrong availment of exemption available under notification no. 24/2005 as amended vide 57/2021 and corrigendum dated 07.04.2022, the importer would have successfully evaded the Customs Duty along with other applicable duty in previous bills of entry. The importer never approached any customs authorities to pay the differential duty even after knowing the facts, this shows that Varroc Engineering Limited has wilfully suppressed the facts. Moreover, the Noticee have not produced any evidence in support their Bonafide that the importer approached the customs authorities and paid the applicable differential duty amount.

- (iii) Further, I find that SME Logistics Pvt. Ltd., CHA of the importer in collusion with the importer never informed any customs authorities regarding non-payment of customs duty in respect of import of Liquid Crystal Display vide Bills of Entry filed during the period from 01.01.2022 to 01.07.2022 and the importer in collusion with their CHA, recalled only the live bills of entry, thus evaded payment of customs in respect of consignments cleared in past.
- (iv) I find that by virtue of the provisions contained under Section 17(1) read with Section 46(4A) of the Customs Act, 1962, it was incumbent upon the importer viz. M/s Varroc Engineering Limited to do the lawful and appropriate assessment of duty payable under the Schedule to the Customs Tariff Act, 1975 and pay the appropriate Customs duty accordingly. Therefore, I find that M/s Varroc Engineering Limited have contravened the provisions prescribed under Section 17(1) read with Section 46(4A) of the Customs, 1962. Further, I find that the importer has wilfully misstated the appropriate schedule/Notification and serial number in their declaration filed under Section 46 resulting in short payment of duty and thus deliberately certified the said wilful misstated declarations.
- (v) I find that the malafide intention of Varroc Engineering Limited to have been established inasmuch as they were aware that Liquid crystal devices imported by them are not covered under Sl.No.29 and do not fall under the category of Sl. Nos. 1 to 38A of Notification No.24/2005, as amended by Notification No.57/2021 dated 29.12.2021 w.e.f. 01.01.2022. The importer cleared the goods at NIL rate of BCD instead of applicable BCD @15% in order to evade payment of appropriate BCD. Therefore, I find that Varroc have wilfully misstated in the bills of entry as listed in Annexure-I & Annexure-II with a malafide intention to evade payment of appropriate Customs duties and thereby, by these acts of wilful misstatement by Varroc Engineering Limited, the provisions of Section 28(4) of the Customs Act, 1962, are squarely attracted for demand and recovery of duty not paid/short paid.
- (vi) Regarding the larger period of limitation attracted in this case, I find that in the instant case, as elaborated in the foregoing paras, to evade payment of correctly leviable duty, the Noticee misclassified and suppressed the facts that they were aware that Liquid crystal devices imported by them are not covered under Sl.No.29 and do not fall under the category of Sl. Nos. 1 to 38A of Notification No.24/2005, as amended by Notification No.57/2021 dated 29.12.2021 w.e.f. 01.01.2022 and also fraudulently claimed lower rate of duty at the time of filing of the Bills of Entry. 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 declaration of exemption notification and claiming lower rate of duty. Instead, in the instant case, the Noticee deliberately chose to suppress the facts of inadmissibility of exemption to Liquid Crystal Display imported by them and wrongly claimed the subject exemption notification to claim lower rate of duty, being fully aware of the correct nature and classification 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.
- (vii) In view of the foregoing, I find that, due to deliberate / wilful mis-classification of goods, 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 following court decisions:

(a) 2013(294)E.L.T.222(Tri.-LB): Union Quality Plastic Ltd. Versus Commissioner of C.E. & S.T., Vapi [Misc. Order 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.*

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

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

- (viii) I find that the Noticee has wrongly availed duty exemption under Sr. No. 29 of Notification No.24/2005 dated 01.03.2005, as amended by Notification No.57/2021 dated 29.12.2021 w.e.f. 01.01.2022, whereas the subject imported goods are ineligible for duty exemption under Sr. No. 29 of Notification No.24/2005 dated 01.03.2005, as amended. Accordingly, due to mis-declaration, wilful mis-statement, collusion and suppression of facts on account of wrong availment of exemption benefit under Sl.No.29 of Notification No.24/2005, as amended vide Notification No.57/2021 dated 29.12.2021 w.e.f. 01.01.2022, Customs duty aggregating to Rs. 1,18,03,178/- (Rupees One Crore Eighteen Lakhs Three Thousand One Hundred and Seventy-Eight only) evaded by Varroc Engineering Limited, as proposed in the subject Show Cause Notice, is recoverable from the Noticee under extended period in terms of the provisions of Section 28(4) of the Customs Act, 1962.
- (ix) Therefore, I hold that the differential/short paid duty amounting Rs. 1,18,03,178/- (Rupees One Crore Eighteen Lakhs Three Thousand One Hundred and Seventy-Eight only) for the subject goods imported vide Bills of Entry as detailed in Annexure-I and Annexure-II to the subject SCN should be demanded and recovered from M/s. Varroc Engineering Ltd., under the provisions of Section 28(4) of the Customs Act, 1962 by invoking extended period.
- (x) 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)]*. 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.
- (xi) I have already held in the above paras that the differential/short paid duty amounting to Rs. 1,18,03,178/- (Rupees One Crore Eighteen Lakhs Three Thousand One Hundred and Seventy-Eight only) for the subject goods imported vide Bills of Entry as detailed in Annexure-I and

Annexure-II to the subject SCN should be demanded and recovered from the Noticee under the provisions of Section 28(4) of the Customs Act, 1962 by invoking extended period. Therefore, in terms of the provisions of Section 28AA of the Customs Act, 1962, interest on the aforesaid amount of differential/short paid duty is also liable to be recovered from M/s Varroc Engineering Ltd.

**4.33. Whether or not the subject goods imported vide Bills of Entry as detailed in Annexure-I and Annexure-II of the subject Notice having assessable value of ₹6,06,22,384/- (Rupees Six Crore Six Lakhs Twenty-Two Thousand Three Hundred and Eighty-Four only) should be held liable for confiscation under Section 111(m) of the Customs Act, 1962 for availment of exemption benefit under Notification No. 24/2005 dated 01.03.2005 as amended.**

- (i) The SCN proposes confiscation of goods imported vide Bills of Entry listed in Annexure-A to the SCN, having total assessable value ₹6,06,22,384/- (Rupees Six Crore Six Lakhs Twenty-Two Thousand Three Hundred and Eighty-Four only) under the provisions of Section 111(m) of the Customs Act, 1962.
- (ii) Section 111(m) of the Customs Act, 1962 states that the following goods brought from a place outside India shall be liable to confiscation:
- (m) Any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77, in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of Section 54;*
- (iii) 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-declaration of exemption notification and shall make the goods liable to confiscation.
- (iv) I have already held in foregoing paras that the goods imported by the Noticee were ineligible to claim duty exemption under Sr. No. 29 of the Notification No.24/2005 dated 01.03.2005 as amended vide Notification No. 57/2021 dated 29.12.2021 w.e.f. 01.01.2022 followed by corrigendum dated 07.04.2022, instead attracts BCD @15%. The Noticee was very well aware of the actual nature of the imported goods and ineligibility of Notification No. 24/2005 dated 01.03.2005. However, they deliberately suppressed this fact, and instead wrongly availed duty exemption under Notification No. 24/2005 as amended in the Bills of Entry as detailed in the Annexure-I & Annexure-II of the subject Notice to claim lower rate of duty. As discussed in the foregoing paras, it is evident that the Noticee deliberately suppressed the facts and wilfully mis-declared the exemption Notification for the imported goods, resulting in short levy of duty. This deliberate suppression of facts and wilful mis-declaration resorted by the Noticee, therefore, renders the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962. Accordingly, I find that acts of omission and commission on part of the Noticee have rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962.
- (v) 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.
- (vi) 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.

- (vii) 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.

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

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

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

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

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

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

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

- a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;*
- b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;*
- c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;*

- d) *the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;*
  - e) *the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods,*
  - f) *any other specific factor which affects the duty, tax, cess or any other sum payable on such goods,*
- and includes provisional assessment self-assessment, re-assessment and any assessment in which the duty assessed is nil;*

- (ix) From a plain reading of the above provisions related to assessment, it is very clear that w.e.f. 08.04.2011, the importer must self-assess the duty under Section 17 read with Section 2(2) of the Customs Act, and since 2018 the scope of assessment was widened. Under the self-assessment regime, it was statutorily incumbent upon the importer to correctly self-assess the goods in respect of classification, valuation, claimed exemption notification and other particulars. With effect from 29.03.2018, the term 'assessment', which includes provisional assessment also, the importer is obligated to not only establish the correct classification but also to ascertain the eligibility of the imported goods for any duty exemptions. From the facts of the case as detailed above, it is evident that M/s Varroc Engineering Ltd. has deliberately failed to discharge this statutory responsibility cast upon them.
- (x) Besides, as indicated above, in terms of the provisions of Section 46(4) of the Customs Act, 1962 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018, the importer while presenting a Bill of Entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such Bill of Entry. In terms of the provisions of Section 47 of the Customs Act, 1962, the importer shall pay the appropriate duty payable on imported goods and then clear the same for home consumption. However, in the subject case, the importer while filing the Bill of Entry has resorted to deliberate suppression of facts and wilful mis-declaration to claim lower rate of duty. Thus, the Noticee has failed to correctly assess and pay the appropriate duty payable on the imported goods before clearing the same for home consumption. Therefore, I find that by not self-assessing the true and correct rate of Customs duty applicable on the subject goods, the importer wilfully did not pay the applicable duty on the impugned goods.
- (xi) In view of the foregoing discussion, I hold that the impugned imported goods declared in the Bills of Entry filed by M/s Varroc Engineering Ltd. having total assessable value of Rs. 6,06,22,384/- (Rupees Six Crore Six Lakhs Twenty-Two Thousand Three Hundred and Eighty-Four only) should be held liable for confiscation under Section 111(m) of the Customs Act, 1962, on the grounds of suppression and mis-classification of the imported goods.
- (xii) As the importer, through wilful mis-statement and suppression of facts, had mis-classified the goods while filing the Bills of Entry with intent to evade the applicable Customs duty, resulting in short levy and short payment of duty, I find that the confiscation of the imported goods under Section 111(m) is justified & sustainable in law. However, I find that the goods imported are not available for confiscation. But I rely upon the order of Hon'ble Madras High Court in case of *M/s Visteon Automotive Systems India Limited [reported in 2018 (9) G.S.T.L. 142 (Mad.)]* wherein the Hon'ble Madras High Court held in para 23 of the judgment as below:

*“23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the*

goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act ....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii)."

- (a) 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.)*.
- (b) 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.
- (c) 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.
- (d) In view of above, I find that any goods improperly imported as provided in any sub-section of the Section 111 of the Customs Act, 1962, the impugned goods become liable for confiscation. Hon'ble Bombay High Court in case of *M/s Unimark reported in 2017(335) ELT (193) (Bom)* held Redemption Fine (RF) imposable in case of liability of confiscation of goods under provisions of Section 111(o). Thus, I also find that the goods are liable for confiscation under other sub-sections of Section 111 too, as the goods committing equal offense are to be treated equally. I opine that merely because the importer was not caught at the time of clearance of the imported goods, can't be given different treatment.
- (e) 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.

4.34. **Whether or not The Customs Duty and interest amounting to Rs. 69,85,637/- (Rupees Sixty-Nine Lakhs, Eighty-Five Thousand Six Hundred Thirty-Seven Only) and Rs. 10,19,622/- (Rupees Ten Lakhs Nineteen Thousand Six Hundred Twenty-Two only) respectively, paid by Varroc Engineering Limited in respect of Bills of Entry filed during period 18.04.2022 to 18.06.2022 should not be appropriated against the duty demand and applicable interest thereon.**

(i) I find that during the course of investigation, M/s Varroc Engineering Ltd. has paid differential duty amounting to Rs. 69,85,637/- along with interest amounting to Rs. 10,19,622/- in respect of the Bills of Entry filed during period from 18.04.2022 to 18.06.2022 only. Further, I find that during the investigation, DRI, Raipur verified genuineness of Challans submitted by Varroc Engineering Limited vide email dated 16.05.2023 and confirmed the deposit of same in government exchequer. As documented in RUD-16 and RUD-17 of the Notice, DRI Raipur has confirmed the following deposits made by M/s. Varroc Engineering Limited:

(a) Rs. 66,76,938/- vide challan dated 12.05.2023 for Bills of Entry at Nhava Sheva Port (INNSA1).

(b) Rs. 13,28,321/- vide challan dated 15.05.2023 for Bills of Entry at Mumbai Air Cargo (INBOM4).

(ii). In view of Para 4.32(ix) and 4.32(xi), I have held that the differential/short paid duty amounting Rs. 1,18,03,178/- (Rupees One Crore Eighteen Lakhs Three Thousand One Hundred and Seventy-Eight only) for the subject goods imported vide Bills of Entry as detailed in Annexure-I and Annexure-II to the subject SCN should be demanded and recovered from M/s. Varroc Engineering Ltd., under the provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962, by invoking extended period. However, in view of above para, I find that the importer has deposited partial differential duty of Rs. 69,85,637/- along with interest amounting to Rs. 10,19,622/- in respect of the Bills of Entry filed during period from 18.04.2022 to 18.06.2022 only. Thus, I find that the total liability of payment of differential duty amounting to Rs. 1,18,03,178/-, interest (@15% p.a.) and Penalty at appropriate rate was on the importer against which, they have paid differential duty amounting to Rs. 69,85,637/-, interest amounting to Rs. 10,19,622/-, which is tabulated as under:

Period	Duty Evaded	Duty Paid during investigation	Duty to be recovered U/s 28(4) of the CA, 1962	Remarks
For the Bill of Entries filed from 01.01.2022 to 06.04.2022	48,17,541	0	48,17,541	During the Course of Investigation, the importer had paid Rs. 8005259/- (Rs. 6985637/- of Duty and Rs. 1019622/- of Interest
For the Bill of Entries filed from 07.04.2022 to 18.06.2022	69,85,637	6,985,637	0	
<b>For the Total Bill of Entries filed from 01.01.2022 till 18.06.2022</b>	<b>1,18,03,178</b>	<b>6,985,637</b>	<b>48,17,541</b>	

(iii) In view of above paras, I find that since the Noticee total liability is Rs. 1,18,03,178/- (Rupees One Crore Eighteen Lakhs Three Thousand One Hundred and Seventy-Eight only) but they have discharged only partial liability of amount Rs. Rs. 69,85,637/- along with interest amounting to Rs. 10,19,622/-. Accordingly, I hold that the Customs Duty and interest amounting to Rs. 69,85,637/- (Rupees Sixty-Nine Lakhs, Eighty-Five Thousand Six Hundred Thirty-Seven Only) and 10,19,622/- (Rupees Ten Lakhs Nineteen Thousand Six Hundred Twenty-Two only) respectively, paid by Varroc Engineering Limited in respect of Bills of Entry filed during period 18.04.2022 to 18.06.2022 should be appropriated against the duty demand and applicable interest thereon.

4.35. **Whether or not penalty should be imposed on M/s. Varroc Engineering Ltd. under Section 112(a)(ii), 114A and 114AA of the Customs Act, 1962.**

- (i) The provisions of Section 112, 114A and 114AA of the Customs Act, 1962 are reproduced as under:

**SECTION 112. Penalty for improper importation of goods, etc. — Any person, -**

(a) *who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or*

(b) *who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,*

*Shall be liable*

(i) *in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding the value of the goods or five thousand rupees], whichever is the greater;*

(ii) *in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is the greater:*

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

*Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (2) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:*

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

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

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

**114AA. Penalty for use of false and incorrect material. —**

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

- (ii) I find that in the era of self-assessment, the Noticee had wrongly self-assessed the Bills of Entry and evaded the payment of correctly leviable duty in respect of the impugned imported goods

covered under Bills of Entry detailed in Annexure-I & Annexure-II to the subject SCN. As the Noticee got monetary benefit due to their wilful mis-declaration and suppression of facts on the aforesaid goods, I find that duty was correctly demanded under Section 28(4) of the Act by invoking extended period.

- (iii) As discussed above, I find that the subject Bills of Entry were self-assessed by the Noticee. They were aware of the true nature and characteristics of the imported goods and accordingly, were knowing about the correctly leviable duty thereon. However, still they wilfully suppressed this fact and evaded payment of legitimately payable duty in the Bills of Entry filed before the Customs authorities. By resorting to the aforesaid suppression and mis-declaration, they evaded legitimately payable duty. Under the self-assessment scheme, it is obligatory on the part of importer to declare truthfully all the particulars relevant to the assessment of the goods, ensuring their accuracy and authenticity, which the importer clearly failed to do with malafide intention. They suppressed the fact before the Customs Department regarding correctly leviable duty thereon, to claim the undue duty benefit at the time of clearance of the said imported goods. This wilful and deliberate suppression of facts amply points towards the “mens rea” of the Noticee to evade the payment of legitimate duty. The wilful 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. Thus, the Noticee, by their various acts of omission and commission discussed above, have rendered the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962, thereby making themselves liable for penalty under Section 112(a)(ii) *ibid*.
- (iv) Accordingly, I agree with the proposal made in the subject SCN and hold that penalty should be imposed on the Noticee, M/s Varroc Engineering Ltd. under Section 112(a) of the Customs Act, 1962.
- (v) I find that as per Section 114A, imposition of penalty is mandatory once the elements for invocation of extended period are established. Hon’ble Supreme Court in *Grasim Industries Ltd. V. Collector of Customs, Bombay [(2002) 4 SCC 297=2002 (141) E.L.T.593 (S.C.)]* has followed the same principle and observed:

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

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

- (vi) 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*.*

- (vii) As I have held above, that the extended period of limitation under Section 28(4) of the Customs Act, 1962 for the demand of duty is rightly invoked in the present case. Therefore, penalty under Section 114A is rightly proposed on the Noticee, M/s Varroc Engineering Ltd., in the impugned

SCN. Accordingly, the Noticee is liable for a penalty under Section 114A of the Customs Act, 1962 for wilful mis-declaration and suppression of facts, with an intent to evade duty.

- (viii) Further, I have already held above that by their acts of omission and commission, the importer has rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962, making them liable for a penalty under Section 112(a) *ibid.* However, I find that the penalty under Section 114A and Section 112 of the Customs Act, 1962 are mutually exclusive and both cannot be imposed simultaneously. Therefore, in view of fifth proviso to Section 114A, no penalty is imposed on the Noticee under Section 112(a) *ibid.*
- (ix) I find that in Bill of Entry no. 7145809 dated 19.01.2022, wherein the importer has classified Liquid Crystal Display under CTI 90138000, was assessed by Customs and CTI was assessed and changed to 85249000, while the benefit of exemption under Notification no. 24/2005 dated 01.03.2005 as amended was removed and also Customs query regarding inadmissibility of exemption to Liquid Crystal Display was accepted by the importer on 07.07.2022 and few other Bills of Entry were recalled and reassessed by the importer up to 14.07.2022. Therefore, it is ample clear that the importer is well aware about the wrong availment of duty exemption Notification No. 24/2005 dated 01.03.2005, as amended. Even after lapse of approx. 8 months when the summons dated 30.03.2023 was issued by DRI and investigation in the case regarding wrong availment of exemption under Notification No. 24/2005 dated 01.03.2005 as amended, was initiated, the customs duty wrongly evaded by the importer was partially paid on 12.05.2023 & 15.05.2023. Accordingly, I am of the opinion that the Noticee knowingly and intentionally mis-declared the duty exemption Notification 24/2005, *ibid.*, and suppressed the facts of wrongful availment of duty exemption notification, in respect of previous Bills of Entry as detailed in the Annexure-I and Annexure-II of the subject Notice, till the DRI initiated the investigation against the Noticee. Therefore, I hold that the Noticee is liable for a penalty under Section 114A of the Customs Act, 1962 for wilful mis-declaration and suppression of facts, with an intent to evade duty.

**4.36. Whether or not penalty should be imposed on co-noticee, M/s. SME Logistics Pvt. Ltd., under Section 112(a), 114A and/or 114AA of the Customs Act, 1962.**

- (i) I find that the notice has proposed penalties on the Customs Broker, M/s. SME Logistics Pvt. Ltd. under Section 112(a), 114A and/or 114AA of the Customs Act, 1962. The said sections are reproduced as under:

***SECTION 112. Penalty for improper importation of goods, etc. — Any person, -***

*(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or*

*(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, Shall be liable*

*(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding the value of the goods or five thousand rupees], whichever is the greater;*

*(ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is the greater:*

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

*Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (2) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:*

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

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

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

**114AA. Penalty for use of false and incorrect material. –**

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

- (ii) I find that penalty under Section 114A of the Customs Act, 1962 can be imposed only on the person who is liable to pay duty. As discussed in foregoing paras, only the importer, M/s. Varroc Engineering Ltd. is liable to pay duty in the instant case, therefore, no penalty under Section 114A of the Customs Act, 1962 can be imposed on M/s. SME Logistics Pvt. Ltd.
  - (iii) I find that M/s. SME Logistics Pvt. Ltd., CHA of the importer filed Bills of Entry as detailed in the Annexure I & Annexure -II of the subject Notice, wherein the subject goods were mis-declared and the importer wrongly availed duty exemption under Notification 24/2005 as amended. As discussed in paras *supra*, the goods imported were not eligible for benefits of duty exemption under Notification 24/2005 as amended. The CHA, M/s. SME Logistics Pvt. Ltd. in collusion with the importer never informed any customs authorities regarding non-payment of customs duty in respect of import of Liquid Crystal Display vide Bills of Entry filed during the period from 01.01.2022 to 01.07.2022 and the importer in collusion with their CHA, recalled only the live bills of entry, thus evaded payment of customs in respect of consignments cleared in past. This act of abetment of omission and commission on part of the CHA in mis-declaring the duty exemption Notification and subsequently suppressing the facts of wrong availment of benefit of duty exemption Notification No. 24/2005 of resulted in evasion of correctly leviable duty in respect of consignments cleared in the past. The wilful mis-declaration and suppression of facts while filing the Bills of Entry have made the impugned imported goods liable for confiscation. Accordingly, I hold the penalties proposed on the CHA, M/s. SME Logistics Pvt. Ltd. under Section 112 (a) and 114AA 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

- (i) I reject the classification of the goods imported vide Bill of Entry No. 7090208 dated 15.01.2022 under CTI 90138000 and order it to be re-classified under CTI 85249000;
- (ii) I order to confiscate the goods imported vide Bill of Entry No. 7090208 dated 15.01.2022 having assessable value of ₹ 17,40,514/- (Seventeen Lakh Forty Thousand Five Hundred Fourteen Only) under Section 111(m) of the Customs Act, 1962 for contravention of the provisions of Section 46(4) by mis-classification of the goods;

I also impose a redemption fine of Rs. /- (Rupees Only) on M/s Varroc Engineering Ltd. in lieu of confiscation of goods imported vide Bill of Entry No. 7090208 dated 15.01.2022 under Section 125(1) of the Customs Act, 1962.

- (iii) I impose Penalty of Rs /- (Rupees Only) on M/s Varroc Engineering Limited for the acts of omission and commission which have rendered the imported goods of Bill of Entry no. 7090208 dated 15.01.2022 liable to confiscation under Section 111(m) of the Customs Act, 1962, under Section 112(a) of the Customs Act, 1962.
- (iv) I deny the benefit of duty exemption under Sr. No. 29 of the Notification No.24/2005 dated 01.03.2005 as amended vide Notification No. 57/2021 dated 29.12.2021 w.e.f. 01.01.2022 followed by corrigendum dated 07.04.2022, claimed for the goods imported and cleared vide Bills of Entry as detailed in Annexure-I and Annexure-II, with consequential duty liability
- (v) I confirm the demand of differential/short paid duty amounting to Rs.1,18,03,178/- (Rupees One Crore Eighteen Lakhs Three Thousand One Hundred and Seventy-Eight only), evaded by M/s Varroc Engineering Limited and order to recover the same under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962.
- (vi) I order to confiscate the subject goods imported vide Bills of Entry as detailed in Annexure-I and Annexure-II of the subject Notice having assessable value of ₹6,06,22,384/- (Rupees Six Crore Six Lakhs Twenty-Two Thousand Three Hundred and Eighty-Four only) under Section 111(m) of the Customs Act, 1962 for wrong availment of exemption benefit under Notification No. 24/2005 dated 01.03.2005 as amended.

I also impose a redemption fine of **Rs. 50,00,000/- (Rupees Fifty Lakhs Only)** on M/s Varroc Engineering Ltd. in lieu of confiscation under Section 125(1) of the Customs Act, 1962.

- (vii) I order to appropriate the Customs Duty and interest amounting to Rs. 69,85,637/- (Rupees Sixty-Nine Lakhs, Eighty-Five Thousand Six Hundred Thirty-Seven Only) and 10,19,622/- (Rupees Ten Lakhs Nineteen Thousand Six Hundred Twenty-Two only) respectively, paid by Varroc Engineering Limited in respect of Bills of Entry filed during period 18.04.2022 to 18.06.2022 during the course of investigation and order the same to be adjusted differential duty and interest demanded from them at para 5(v) above.
- (viii) I impose a penalty equivalent to differential duty of Rs.1,18,03,178/- (Rupees One Crore Eighteen Lakhs Three Thousand One Hundred and Seventy-Eight only) along with applicable interest under Section 28AA of the Customs Act, 1962, on M/s Varroc Engineering Ltd. under Section 114A of the Customs Act, 1962.

In terms of the first and second proviso to Section 114A *ibid*, if duty and interest is paid within thirty days from the date of the communication of this order, the amount of penalty liable to be paid shall be **twenty-five per cent of the duty and interest**, subject to the condition that the amount of penalty is also paid **within the period of thirty days** of communication of this order.

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

- (ix) I impose a penalty of Rs. 10,00,000/- (Rupees Ten Lakhs only) on the importer, M/s Varroc Engineering Ltd. under Section 114AA of the Customs Act, 1962.
- (x) I impose a penalty of Rs. 5,00,000/- (Rupees Five Lakhs only) on CHA, M/s SME Logistics Pvt. Ltd. under Section 112(a) of the Customs Act, 1962.
- (xi) I impose a penalty of Rs. 2,00,000/- (Rupees Two Lakhs only) on CHA, M/s SME Logistics Pvt. Ltd. under Section 114AA of the Customs Act, 1962.

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*  
9.12

(अनिल रामटेके / ANIL RAMTEKE)

सीमा शुल्क आयुक्त / Commissioner of Customs

एनएस-V, जेएनसीएच / NS-V, JNCH

To,

1. **Varroc Engineering Limited (IEC - 0390019402)**

L-4, MIDC, Industrial Area, Waluj

Aurangabad, Maharashtra – 431136

2. **SME Logistics Pvt. Ltd**

5<sup>th</sup> FLOOR, 513-515, swastikDisacorp park

LBS Marg, Opp Shreyas Cinema, Ghatkopar

West Mumbai Suburban, Maharashtra- 400086

Copy to:

1. The ADG, DRI, Indore Zonal Unit  
First Floor, Telephone Exchange Building,  
Transport Nagar, Indore - 452014.
2. The Addl. Commissioner of Customs, Group VA, JNCH
3. The Addl. Commissioner of Customs, Gr. VA, ACC, Mumbai Customs Zone-III
4. AC/DC, Chief Commissioner's Office, JNCH
5. The Asst./Dy. Commissioner of Customs, CAC, JNCH – For Adjudication

6. AC/DC, Centralized Revenue Recovery Cell, JNCH
7. Notice Board (CHS Section)
8. EDI Section
9. Office Copy

