OFFICE OF THE COMMISSIONER OF CUSTOMS, NS-I
सीमा-शुल्क आयुक्त का कार्यालय, एनएस-**I**
CENTRALIZED ADJUDICATION CELL, JAWAHARLAL NEHRU CUSTOM HOUSE,
केंद्रीकृत अधिनिर्णयन प्रकोष्ठ, जवाहरलाल नेहरू सीमा-शुल्क भवन,
NHAVA SHEVA, TALUKA-URAN, DIST- RAIGAD, MAHARASHTRA 400707
न्हावाशेवा, तालुका-उरण, जिला- रायगढ़, महाराष्ट्र **-400 707**

Date of Order : 28.04.2026 **Date of Issue:** 28.04.2026
आदेश की तिथि : 28.04.2026 **जारी किए जाने की तिथि:** 28.04.2026
DIN: 20260478NW0000000465

F. No. S/10-15/2025-26/Pr. Commr/NS-I/Gr. I & IA/CAC/JNCH

Show Cause Notice No. 113/2025-26/Pr. Commr /Gr. I & IA/ NS-I/CAC/JNCH dated 07.05.2025

Passed by: Shri Yashodhan Wanage

पारितकर्ता: श्री यशोधन वनगे

Principal Commissioner of Customs (NS-I), JNCH, Nhava Sheva

प्रधान आयुक्त, सीमा शुल्क (एनएस-1), जेएनसीएच, न्हावाशेवा

Order No 21/2026-27 /Pr. Commr./NS-I /CAC /JNCH

आदेश सं. : **21/2026-27/प्र. आयुक्त/एनएस-1/ सीएसी/जेएनसीएच**

Name of Party/Noticees: M/s Skyway Michigan (J V)

पक्षकार (पार्टी)/ नोटिसीकानाम: मेस्सर्स स्काईवे मिशिगन (संयुक्त उद्यम)

ORDER-IN-ORIGINAL

मूलआदेश

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

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

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

2.इस आदेश से व्यथित कोई भी व्यक्ति सीमा-शुल्क अधिनियम१९६२की धारा १२९(ए) के तहत इस आदेश के विरुद्ध सी ई एस टी ए टी, पश्चिमी प्रादेशिक न्याय पीठ (वेस्टरीज़नलबेंच), ३४, पी. डी. मेलो रोड, मस्जिद (पूर्व), मुंबई– ४००००९ 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 - फार्मन. सी ए ३, 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 ३ महीने के भीतर

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

फीस- (क (एक हजार रुपये–जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम ५ लाख रुपये या उससे कम है ।

(b) Rs. Five Thousand - Where amount of duty &Page 2 of 40
interest demanded & penalty imposed is more than Rs. 5 Lakh but not exceeding Rs. 50 lakhs.

(ख(पाँच हजार रुपये– जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम ५ लाख रुपये से अधिक परंतु ५० 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 ५० लाख रुपये से अधिक है ।

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

भुगतान की रीति– क्रॉस बैंकड्राफ्ट, जो राष्ट्रीयकृत बैंक द्वारा सहायक रजिस्ट्रार, सीईएसटीएटी, 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 संबंधि तमाम लों के लिए, सीमा-शुल्क अधिनियम, १९९२, सीमा-शुल्क (अपील) नियम, १९८२ सीमा-शुल्क, उत्पादन शुल्क एवं सेवा कर अपील अधिकरण (प्रक्रिया) नियम, १९८२ 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 129 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 उद्गृहीतशास्ति का ७.५% जमा करेगा और ऐसे भुगतान का प्रमाण प्रस्तुत करेगा, ऐसा न किये जाने पर अपील सीमा-शुल्क अधिनियम, १९६२ की धारा १२८ के उपबंधों की अनुपालना न किये जाने के लिए नामंजूर किये जाने की दायी होगी ।

1. BRIEF FACTS OF THE CASE

1.1. During audit (TBA), it was observed that the importer, M/s Skyway-Michigan (JV) (IEC No. ACAAS3213N), having address at 3rd Floor, 303 Gitanjali Arcade, Above Indian Bank, Vile Parle East, Mumbai-400057, had imported and cleared goods described as "Geospray 22.7 Kg Bag (per Kg) Geopolymer Finished Goods 4000177092" by classifying them under Customs tariff item (CTI) 25309070. The details of such imports are as under:

TABLE – 1

Sr. No.	B.E. No	Date	Description	Assessable Value (in Rs.)	Duty Paid (in Rs.)
1	9060830	04.12.2023	Geospray 22.7 Kg Bag (per Kg) Geopolymer Finished Goods 4000177092	74,68,934.4	8,04,777.6
2	9457636	29.12.2023	--do--	1,24,03,819	13,36,511.5
3	9869785	29.01.2024	--do--	1,21,77,901.4	13,12,169
4	9985375	05.02.2024	--do--	1,49,11,225.8	16,06,684.2
5	2108069	12.02.2024	--do--	1,49,11,225.8	16,06,684.2
6	2628738	18.03.2024	--do--	1,73,54,985.3	18,69,999.6
7	3212284	26.04.2024	--do--	74,95,577.46	8,07,648.3
8	3212287	26.04.2024	--do--	97,40,903.28	10,49,582.4
9	3469812	14.05.2024	--do--	99,88,182.6	10,76,226.8
10	3469814	14.05.2024	--do--	1,74,79,319.6	18,83,396.9
11	4125028	22.06.2024	--do--	1,49,73,393	16,13,384
Total				**13,89,05,468**	**1,49,67,065**

1.2. CTH 25309070 covers "Other processed earth colour ochre". Note 1 to Chapter 25 reads as "*Except where their context or Note 4 to this chapter otherwise requires, the heading of this Chapter cover only products which are in the crude state or which have been washed (even with chemical substances eliminating the impurities without changing the structure of the product), crushed, ground, powdered, levigated, sifted, screened, concentrated by flotation, magnetic separation or other mechanical or*

physical process (except crystallisation), but not products that have been roasted, calcined, obtained by mixing or subjected to processing beyond that mentioned in each heading. The products of this chapter may contain an added anti-dusting agent, provided that such addition does not render the product particularly suitable for specific use rather than for general use."

1.1. A search was made on the internet regarding Geospray and the following qualities/properties were noticed:

The GeoSpray® geopolymer system is made of a high-performance, fiber-reinforced geopolymer mortar, specifically formulated and engineered as an environmentally friendly solution for rehabilitating pipes, culverts, and containment areas.

Unlike other cementitious mortars and grouts, GeoSpray® spray-applied liners help create a new structural pipe within the old pipe. This process requires no digging-virtually eliminating traffic delays - and is fast to install. Using GeoSpray®mortar improves performance and strength and is less costly than alternatives, including SPR, CIPP, and slip-lining.

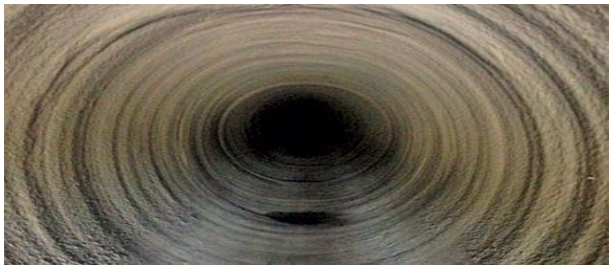
GeoSpray® geopolymer mortar is ideal for the rehabilitation of large diameter pipes and structures in Civil Infrastructure and Industrial applications. It is the first geopolymer mortar specifically designed as a structural and corrosion-resistant solution for large diameter storm and sanitary pipes, manholes, wet wells, and treatment plant structures.

Features

- *Water-activated*
- *Can be pumped a distance of 500 linear ft (152.4 m)*
- *Styrene-free with no leachable toxins*
- *Ultra-low, porosity-reducing chemical and water penetration*
- *Provides physical properties associated with cement mortars, but with the chemistry similar to that of an engineered stone*

GeoSpray® geopolymer is a high-performance fiber reinforced mortar specifically designed for structural rehabilitation. This high-strength, ultra-low porosity material is made from natural mineral polymers and industrial waste streams.

GEOSPRAY® Geopolymer Mortar



Unlike other cementitious liners, the unique GeoSpray mortar chemistry provides superior flexural and compressive strength, as well as ultra-low porosity and high self-bonding which eliminates cold joints.

GeoSpray® geopolymer is a fiber-reinforced mortar that looks and feels like Portland cement, but with higher performance properties. Unlike other cementitious liners, the unique GeoSpray mortar chemistry provides superior flexural and compressive strength, as well as ultra-low porosity and high self-bonding which eliminates cold joints. GeoSpray geopolymer is intended for use through multiple application techniques including pouring, troweling, spraying, or centrifugal/spin casting.

Geopolymer, an inorganic material, has been introduced as an innovative and eco-friendly binder for stabilization of soft soils. It is a network of alumino-silicates made up of alumina (AlO_4) and silica (SiO_4), connected alternatively by sharing the O^{2-} atoms (Khadka et al., 2018).

1.2. From the above, it was very clear that the goods under import i.e. "Geospray 22.7 Kg Bag (per Kg) Geopolymer Finished Goods 4000177092" were in no way "Other processed earth colour" of CTH 25309070. In fact, it was clear that Geospray Geopolymer is an Engineered Mortar which is used as binder for rehabilitating pipes, culverts, and containment areas. It is an Engineered product obtained from natural mineral polymers and industrial waste streams.

1.3. It was noticed that the importer has filed 06 additional Bills of Entry other than the Bills of Entry mentioned in Table - 1 above. These Bills of Entry are 8593293 dated 02.11.2023, 8593294 dated 02.11.2023, 8725903 dated 11.11.2023, 8849597 dated 20.11.2023, 8968015 dated 28.11.2023 and 9359117 dated 22.12.2023. The aforesaid 06 Bills of Entry have been provisionally assessed. Test Report for Bill of Entry No. 8593293 dated 02.11.2023 has been attached in the Supporting Documents of the Bills of Entry mentioned in the table above. Though, these 06 Bills of Entry have not been assessed finally, the 11 Bills of Entry mentioned in Table above have been self-assessed by importer and cleared under RMS.

1.4. Test report for Bill of Entry No. 8593293 dated 02.11.2023 which reads as "The sample as received is in the form of greyish powder. It is mainly composed of Calcium Oxide together with oxides of aluminium, iron magnesium and siliceous matter. Loss on ignition at 900*C = 2.57% ". This test report itself suggest that goods are not the product of Chapter 25 as it is a mixture of Calcium Oxide together with oxides of aluminium, iron magnesium and siliceous matter.

1.5. The data sheet attached with Bill of Entry No. 8593293 dated 02.11.2023 was explored and it was noticed that the goods imported i.e. "Geospray 22.7 Kg Bag (per Kg) Geopolymer Finished Goods 4000177092" are having 05 ingredients i.e. Crushed Stone or Gravel – 40-60%, Metal Slag - < 20%, Portland Cement - <15%, Fly Ash - <15% and Crystalline Silica - < 20%. The product description is given as "Geopolymer Cements intended for structural rehabilitation of sewers, storm and water piping, concrete and other infrastructure.

1.6. From the above, it was clear that goods under import was Mortar, an Engineered product" which is used for binding/repair works. As the product under import is a Engineered Mortar, it is rightly classifiable at CTH 38244090 attracting BCD @ 7.5% and IGST @ 18% (Total Duty- 27.735%).

1.7. Accordingly, the differential duty is worked out as under for each Bill of Entry:

TABLE - 2

Sr. No.	B.E. No.	B/E Date	Assessable Value (in Rs.)	Duty Paid (in Rs.)	Duty Payable (in Rs.)	Differential Duty to be paid (in Rs.)
1	9060830	04.12.2023	74,68,934.4	8,04,777.6	20,71,509	12,66,731.4
2	9457636	29.12.2023	1,24,03,819	13,36,511.5	34,40,199.18	21,03,687.68
3	9869785	29.01.2024	1,21,77,901.4	13,12,169	33,77,541	20,65,372
4	9985375	05.02.2024	1,49,11,225.8	16,06,684.2	41,35,628.48	25,28,944.28
5	2108069	12.02.2024	1,49,11,225.8	16,06,684.2	41,35,628.48	25,28,944.2
6	2628738	18.03.2024	1,73,54,985.3	18,69,999.6	48,13,405.18	29,43,405.58
7	3212284	26.04.2024	74,95,577.46	8,07,648.3	20,78,898.4	12,71,250.1
8	3212287	26.04.2024	97,40,903.28	10,49,582.4	27,01,639.5	16,52,057.1
9	3469812	14.05.2024	99,88,182.6	10,76,226.8	27,70,222.4	16,93,995.6
10	346981	14.05.202	1,74,79,319.6	18,83,396	48,47,889.28	29,64,492.38

	4	4		.9		
11	4125028	22.06.2024	1,49,73,393	16,13,384	41,52,870.55	25,39,486.549
Total			**13,89,05,468**	**1,49,67,065**	**38,52,54,31**	**2,35,58,367**

1.8. In view of above, a Consultative letter vide C. L. No. 290/2024-25 dated 24.06.2024 was issued vide F. No. CADT/CIR/ADT/TBA/788/2024-TBA-CIR-A3 advising the importer to pay the differential duty of Rs. 2,39,13,040/- (Rs. Two Crore Thirty-Nine Lakh Thirteen Thousand Forty Only) along with interest and penalty under Section 28 (4) of the Customs Act, 1962.

1.9. However, on further scrutiny, it was observed that the Bill of Entry mentioned at Sr. 2 of the first table of the above said CL is wrongly typed as 9259117 dated 22.12.2023 instead of 9359117 dated 22.12.2023. Further, it was observed that the subject Bill of Entry is provisionally assessed and has been inadvertently included in the above said CL for the purpose of calculation of differential duty.

1.10. Further, it was subsequently learnt that Bill of Entry No. 4125028 dated 22.06.2024 was filed by the importer for the similar goods, however, the same could not be included in the above said CL, as the detection was already made earlier before filing of the subject Bill of Entry by the importer. Thus, the subject Bill of Entry No. 412508 dated 22.06.2024 has been included in the subject Show Cause Notice.

1.11. Accordingly, after the above said rectifications, the differential duty to be paid by the importer in respect of the above mentioned 11 Bills of Entry has been re-worked to Rs. 2,35,58,367/- (Rupees Two Crores Thirty-Five Lakhs Fifty-Eight Thousand Three Hundred & Sixty-Seven Only).

1.12. The importer vide its letter dated 13.08.2024 has submitted that they have decided to settle the classification issue by accepting the classification of the subject goods under CTH 38244090 and are willing to pay the differential duty arising from the reclassification.

1.13. Subsequently, the importer vide its letter dated 16.08.2024 has submitted that the Indian Customs Tariff is based on the WTO Harmonized System of Nomenclature (HSN) which is used globally by the Customs Authorities. Their foreign supplier based in the US had classified the product under HSN 2530.90 and therefore the classification adopted by them was in consonance with the classification adopted by the US Customs Authorities.

1.14. The importer vide its above-mentioned letter dated 16.08.2024 has further submitted that the first import of the subject product was made by them on 02.11.2023 and the Bills of Entry filed by their company during the period 02.11.2023 to 28.11.2023 were provisionally assessed by the jurisdictional

customs authorities. The subsequent Bills of Entry filed for the same product by the importer from 04.12.2023 onwards were finally assessed by the jurisdictional customs authorities accepting the CTH 25309070 thereby adopting the classification claimed by them. Thus, the importer is of bonafide belief that the goods are classified under CTH 25309070. However, as a compliant corporate citizen, they are agreeing to get the Bills of Entry finally assessed/re-assessed based on CTH 38244090 as per the above said Consultative Letter and pay the differential duty along with applicable interest.

1.15. Further, the CHA of the importer M/s. Sunrise Freight Forwarders Pvt. Ltd. vide their letter dated 19.08.2024 requested this office for granting them permission for cancellation of Out of Charge and Re-calling of their Bills of Entry for re-assessment and amendment of CTH from 253090790 to 38244090.

1.16. From the above stated submissions of the importer, it can be observed that, in principle the importer has accepted that the correct classification of their impugned goods "Geospray 22.7 Kg Bag (per Kg) Geopolymer Finished Goods 4000177092" is under CTH 38244090 and has therefore agreed to pay the differential duty along with applicable interest. However, the importer is yet to pay the short-paid duty along with applicable interest.

1.17. Also, from the submissions of the importer, it appeared that the importer was aware that the correct classification of the subject import goods was under CTH 38244090 however, the importer has deliberately and wilfully mis-classified the subject goods with an intention to evade payment of duty which has resulted in a loss to the government exchequer.

1.18. By resorting to the aforesaid misclassification of the subject goods, the importer has short paid duty amounting to Rs. 2,35,58,367/- (Rupees Two Crores Thirty-Five Lakhs Fifty-Eight Thousand Three Hundred & Sixty-Seven Only).

1.19. It also appeared that consequently, the duty short paid is recoverable from the importer under section 28 (4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962 and for the same reason penalty is also required to be imposed on the importer under Section 114 A of the Customs Act, 1962. Further, as the importer has mis-declared the classification of the imported goods and has availed undue benefit of concessional duty, it also appeared that the subject goods are liable for confiscation under Section 111 (m) of the Customs Act, 1962 and the importer is liable for penalty under Section 112 (a) & (b) and/or 114 A ibid.

1.20. Whereas consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-assessment' has been introduced in customs clearance. Section 17 of the Customs Act, effective from 08.04.2011 [CBIC's (erstwhile CBEC) Circular No. 17/2011 dated 08.04.2011],

provides for self-assessment of duty on imported goods by the importer himself by filing a Bill of Entry, in the electronic form. Section 46 of the Customs Act, 1962 makes it mandatory for the importer to make entry for the imported goods by presenting a Bill of Entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Declaration) Regulation, 2011 (issued under Section 157 read with Section 46 of the Customs Act, 1962), the Bill of Entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a Bill of Entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under self-assessment, it is the importer who must ensure that he declared the correct classification, declaration, applicable rate of duty including IGST, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry. Thus, with the introduction of self-assessment by amendments to Section 17, since 08.04.2011, it is the added and enhanced responsibility of the importer more specifically the RMS facilitated Bill of Entry, to declare the correct classification, description, value, notification benefit, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods. In other words, the onus on the importer to prove that they have classified the goods correctly by giving the complete description of the goods.

1.21. As discussed above, it was the responsibility of the importer to classify the goods under import properly. In the instant case, the importer has assessed the impugned goods namely "Geospray 22.7 Kg Bag (per Kg) Geopolymer Finished Goods 4000177092" CTH 25309070 which has resulted in short payment of duty. It appeared that the importer has done the self-assessment wrongly with an intention to get financial benefit by paying lesser duty. The wrong assessment of goods is nothing but suppression of facts with an intention to get financial benefit. Hence, it appeared that the importer has suppressed the facts, by wrong assessment of the impugned goods leading to short payment of duty. As there is suppression of facts, extended period of five years can be invoked for demand of duty under Section 28 (4) of the Customs Act, 1962.

1.22. Therefore, in view of the above facts, it appeared that the importer M/s. Skyway Michigan (JV) (IEC No. ACAAS3213N) deliberately did not pay the duty by wilful mis-statement as it was their duty to declare correct classification and pay applicable rate of duty under Section 46 of the Customs Act, 1962, and the importer has thereby evaded duty amounting to Rs. 2,35,58,367/- (Rupees Two Crores Thirty-Five Lakhs Fifty-Eight Thousand Three Hundred & Sixty-Seven Only). Therefore, for their acts of omissions/commissions, the differential duty, so not paid, is liable for recovery from the importer under Section 28 (4) of the Customs Act, 1962 by invoking extended period of limitation,

along with applicable interest under section 28 AA of the Customs Act, 1962.

1.23. It also appeared that as the importer has mis-declared the classification of the imported goods and has availed undue benefit of concessional duty, the subject goods are liable to confiscation under Section 111 (m) of the Customs Act, 1962 and the importer is liable for penalty under Section 112 (a) & (b) and/or 114A and Section 114AA of the Customs Act, 1962.

1.24. Therefore, M/s. Skyway-Michigan (JV) (IEC No. ACAAS3213N) was called upon to show cause to The Pr. Commissioner/ Commissioner of Customs, Jawaharlal Nehru Custom House as to why: -

(i) The self-assessments in the classification of the imported goods described as "Geospray 22.7 Kg Bag (per Kg) Geopolymer Finished Goods 4000177092" under CTH 25309070, as declared by the importer M/s Skyway-Michigan (JV) (IEC No. ACAAS3213N) in the Bills of Entry mentioned in Table-1 of the Show Cause Notice should not be rejected as not in order and instead be classified under CTH 38244090 of the Customs Tariff and that Customs duty on the subject goods should not be levied at applicable rates corresponding to tariff item CTH 38244090.

(ii) Differential Duty amounting to Rs. 2,35,58,367/- (Rupees Two Crores Thirty-Five Lakhs Fifty-Eight Thousand Three Hundred & Sixty-Seven Only) with respect to the items covered under Bills of entry as mentioned in Table-1 of the Show Cause Notice should not be demanded under Section 28 (4) of the Customs Act, 1962 along with applicable interest as per Section 28AA of the Customs Act, 1962.

(iii) The subject goods as detailed in Table-1 of the Show Cause Notice having a total assessable value of Rs. 13,89,05,468/- (Rs. Thirteen Crore Eighty-Nine Lakh Five Thousand Four Hundred and Sixty-Eight only) should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962.

(iv) Penalty should not be imposed on the importer under Section 112 (a)&(b) and /or 114A of the Customs Act, 1962.

(v) Penalty should not be imposed on the importer under Section 114AA of the Customs Act, 1962.

2. WRITTEN SUBMISSION OF THE NOTICEE:

2.1. The noticee M/s Skyway-Michigan (JV) vide their letter dated 02.06.2025 submitted their written

submission which are as follows: -

2.2. It is submitted that the captioned Show Cause Notice is bad in law and deserves to be dropped in toto for the reasons fully described below. All the submissions made in the reply to the Show Cause Notice are independent of and without prejudice to one another

Request for re-assessment of the bill of entries under CTH 3824 4090

2.3. Section 17(4) of the Act states that upon verification, examination or testing of the goods, it is found that the self-assessment is not done correctly by the importer, the proper officer shall re-assess the duty leviable on such goods. Further, Section 17(5) of the Act states that where the importer confirm his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment within 15 days from the date of re-assessment of the Bill of Entry. Relevant extract of the said Section is reproduced below:-

> *"(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.*
>
> *(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re- assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the Bill of Entry or the shipping bill, as the case may be."*

2.4. As explained above, it has been determined by your good office that the goods imported by the Noticee should have been assessed under CTH 3824 4090. Without prejudice to the merits, the Noticee vide letter dated 16.08.2024 confirmed the acceptance the classification proposed by your good office and also requested to cancel the previous OOC.

2.5. Accordingly, in terms of Section 17(4) and Section 17(5) of the Act, we would request you to kindly re-assess the Bills of Entry and issue a speaking order to enable us to make the duty and interest payments.

Facts being known to the Customs Authorities from the description of the goods in the invoice itself at the time of assessment, suppression or mis-declaration of facts cannot be alleged

2.6. Section 17 of the Customs Act prescribes the procedure for assessment of duty. In terms of the said

Section, in cases where the goods have been self-assessed by the importer, the proper officer is empowered to verify the entries and for this purpose examine or test any imported goods, as may be necessary. The proviso to the said Section stipulates that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria. Furthermore, if on verification, examination or testing of the goods, the proper officer is of the opinion that the self-assessment is not done correctly, he is empowered to re-assess the duty leviable on such goods.

2.7. In the present case, the Noticee submits that it had self-assessed the duty leviable on the imported goods on the basis of the description of goods provided by the foreign supplier and paid the appropriate duties. Thereafter, the Bills of Entry were finally assessed by the Customs Authorities and out of charge was granted

2.8. The Noticee submits that at the time of filing the Bills of Entry, all the relevant documents including the invoices, packing list and safety data sheet were available with the Customs Authorities. It is basis the description provided in these documents that the Bills of Entry were filed and the goods were cleared by the Customs Authorities, after final assessment. Had there been any difference of opinion on the part of the Customs Authorities with respect to the classification adopted by the Noticee, the proper officer ought to have verified the imported goods in terms of Section 17 and re-assessed the said Bills of Entry. The same not being point out at the time of final assessment, the Noticee submits that the classification adopted by it is validated and stood accepted by the Customs authorities and therefore, no mis-declaration or suppression of facts on the part of the Noticee can be alleged on account of further change of opinion by the Department.

2.9. Thus, the Noticee submits that when all the documents were available with the authorities, basis which the Bills of Entry were filed by the Noticee at the time of final assessment, and the same stood approved by them, suppression or mis declaration of facts cannot be alleged on the part of the Noticee, without establishing any wilful evasion of duty. This view has been affirmed by the Hon'ble Supreme Court of India in the case of Commissioner of Central Excise, Noida Vs Shahnaz Ayurvedics [2004 (174) E.L.T. A34 (S.C.)]. Further, reliance in this regard is also placed on the decision of the Hon'ble Tribunal in the case Advanced Spectra Tek Pvt Ltd. vs. Commr. of Cus, (ACC&I), Mumbai, wherein it has been held that classification declared by the appellant on the Bill of Entry is as per their understanding and assessment and it is for the assessing officer to determine the correct classification and duty payable.

2.10. Furthermore, reliance is also placed on the decision of the Hon'ble Tribunal in the case of Intratrade Impex Private Limited vs. Commissioner of Customs, Indore [2001 (129) E.L.T. 737 (Tri. - Del.)], wherein it has been held that when the facts were known to the Custom authorities from the

description of the goods in the invoice itself, there is no justification in holding that the assessee had made any mis-declaration or suppressed correct facts.

2.11. Thus, in light of the above, the Noticee submits that having declared the classification on the basis of the documents as per its own understanding and on the basis of the documents available at the time of filing of the Bill of Entry , the allegation of suppression or mis-declaration of facts on the part of the Noticee is unsustainable.

2.12. The Noticee submits that at the time of final assessment of the Bills of Entry, if the proper officer was of the opinion that the classification adopted by us was incorrect, the proper officer ought to have verified and re-examined the goods and reassessed the duty payable. It is submitted that after the completion of final assessment and clearance of the goods for home consumption, it is now not open for the Customs Authorities to allege suppression and mis-declaration of facts, when all the documents on the basis of which the classification was adopted by the Noticee, were available with the Customs Authorities.

2.13. Reliance in this regard is also placed on the judgements of the Hon'ble Supreme Court in the case of G.S. Lamba & Ors. vs. Union of India & Ors., AIR 1985 SC 1019; and Narender Chadha vs. Union of India, AIR 1986 SC 638), wherein it has been categorically held that if the classification has been approved by the Revenue having full facts before it, the assessee cannot be held responsible for the reason that the department cannot be permitted to take the benefit of its own mistake. In light of the above, the allegation of suppression and mis-declaration of facts on the part of the Noticee is unsustainable.

Classification being adopted by the Noticee basis the classification adopted by the foreign supplier, the Noticee cannot be held guilty for mis-declaration of the description of the goods

2.14. The Noticee submits that the foreign supplier of the goods imported by us has declared the said goods under CTH 2530 90 under the category of "Mineral substances, not elsewhere specified or included" and the said classification has not been disputed by the US Customs Authorities. It is on the said basis that the Noticee classified the goods under CTI 2530 9070.

2.15. The Noticee further submits that it has made the declaration in the Bills of Entry as per the description of the goods provided in the invoices of the foreign supplier. The said invoices were available with the Customs Authorities at the time of final assessment of the goods. Furthermore, it is not the case of the department that the Noticee has made any declaration, which is contrary to the documents available with the importer at the time of filing of Bill of Entry. Thus, there is no ground whatsoever to allege suppression and mis-declaration of facts inasmuch as the classification was declared solely on the

basis of the description of goods provided by the foreign supplier.

2.16. While dealing with a similar set of facts, the Hon'ble Tribunal in the case Advanced Spectra Tek Pvt Ltd. vs. Commr of Cus (ACC &I), Mumbai (supra), held that importers cannot be held for mis-declaration of facts when the declaration on the Bills of Entry is as per the description given in the invoices of the foreign supplier.

2.17. Thus, in light of the above, the Noticee submits that the allegation as to suppression and mis-declaration of facts on the part of the Noticee deserves to be dropped.

A mere claim of different classification cannot mean suppression of facts and invocation of extended period of limitation

2.18. Without prejudice to the above, the Noticee submits that the Department has erred in invoking Section 28(4) of the Customs Act and alleging that the imports were deliberately mis-declared and misclassified by us with an intention to evade the applicable duty, leading to suppression of facts and wilful mis-statement. The Noticee submits that as explained above, the Noticee had classified the goods on the basis of the description provided by the foreign supplier. Further, the classification adopted by us is in consonance with the classification adopted by the foreign supplier, which has been accepted by the US Customs authorities.

2.19. Thus, in light of the above facts, the Noticee submits that a mere difference of opinion between the department and the importer regarding classification cannot be equated with suppression of facts or misstatement. Something more positive is required to be proved against the Noticee. This principle has been laid down in a catena of judgements, wherein the Courts have held that where the issue is relating to interpretation, suppression of facts cannot be alleged and extended period of limitation cannot be invoked. The Noticee relies on the following judgements in this regard:

- International Merchandising Company, LLC vs. Commissioner of Service Tax, New Delhi [2022 (67) G.S.T.L. 129 (S.C.)].
- Sundaram Finance Ltd. vs. Commissioner [2019 (25) G.S.T. L. J30 (S.C.)],
- Commissioner vs. Singh Transporters [2018 (13) G.S.T.L. J40 (S.C.)].
- Commissioner vs. N.C. Paul & Company [2020 (43) G.S.T.L. J93 (S.C.)]

2.20. In light of the above, since the issue is interpretational, Section 28(4) alleging suppression and mis-declaration of facts cannot be invoked in the present case.

Mis-classification being alleged basis the test report of the goods imported in a different batch, suppression and mis-declaration of facts, cannot be alleged

2.21. The Department has alleged misclassification of the imported goods on the basis of test reports and data sheet of the goods imported vide Bill of Entry No. 8593293 dated 02.11.2023 and on the basis of this, has proceeded to allege that the goods under import are Mortar, an Engineered product, which is used for binding/repair works (Refer para 5,6,7 and 8 of the Show Cause Notice)

2.22. In this regard, the Notices submits that the aforesaid Bill of Entry dated 02.11.2023 does not form part of the 11 Bills of Entry in question. It belongs to the first batch of import, wherein 6 Bills of Entry were filed and provisionally assessed by the Customs Authorities. It is pertinent to note here that there has been no independent verification/examination of the goods imported vide the 11 Bills of Entry in question and the allegation of mis-classification of the goods imported vide the aforesaid 11 Bills of Entry and suppression of facts is premised solely on the basis of the test report and data sheet of the Bill of Entry No. 8593293 dated 02.11.2023.

2.23. The Noticee submits that the allegation of mis-classification of goods and suppression of facts, solely on the basis of the test report and data sheet of the goods previously imported and which do not form part of the batch of import in question, is baseless and unsustainable.

Section 111(m) of the Customs Act, 1962 cannot be invoked in the facts of the present case as there is no mis-declaration at all

2.24. The Noticee submits that the allegation of mis-declaration in the Show Cause Notice is based on the ground that in the era of self-assessment, an assessee has to claim the right classification, that claiming a wrong classification tantamounts to mis-declaration, rendering the goods liable to confiscation under Section 111(m).

2.25. In this regard, for the reasons explained above, the Noticee submits that there is no mis-declaration or suppression of any facts of the imported goods and that mere claiming a classification with which the department does not agree does not amount to mis-declaration, and therefore Section 111(m) of the Customs Act, is not invocable. Moreover, the goods having being cleared for home consumption after final assessment, it is evident that the classification adopted by us stood accepted by the Customs Authorities. Thus, the Noticee submits that the ingredients to attract Section 111(m) are absent in the present case

2.26. Furthermore, the Noticee submits that it is settled law that adopting a classification with which the department does not agree does not tantamount to mis-declaration attracting Section 111(m) ibid. Reliance in this regard is placed on the judgement of the Hon'ble Supreme court in the case of

Northern Plastic Ltd. vs. Collector of Customs & Central Excise [1998 (101) ELT 549 (S.C)]. The relevant extract of the judgement is reproduced below:

> *"22. While dealing with such a claim in respect of payment of customs duty we have already observed that the declaration was in the nature of a claim made on the basis of the belief entertained by the Noticee and therefore, cannot be said to be a misdeclaration as contemplated by Section 111(m) of the Customs Act. As the Noticee had given full and correct particulars as regards the nature and size of the goods, it is difficult to believe that it had referred to the wrong exemption notification with any dishonest intention of evading proper payment of countervailing duty.*
>
> ……..
>
> *29. Therefore, neither on the ground of misdeclaration nor on the ground of import being unauthorized or illegal, the goods imported by the Noticee were liable to confiscation. We, therefore, allow these appeals, set aside the order of confiscation and also the order levying fine of Rs. 5 lakhs in lieu of confiscation. We also set aside the order of penalty imposed upon the Noticee. In view of the facts and circumstances of the cases, the parties shall beat care*

2.27. Likewise, in the case of Lewek Altair Shipping [2019-TIO1-322-CESTAT-HYDERABAD], it was held that mentioning of wrong tariff items or claiming benefit of ineligible exemption notification did not amount to mis-description of goods neither did it amount to making false or incorrect statement and therefore merely on the basis of such claims, confiscation under Section 111(m) of Customs Act, 1962 and penalty under Section 112(a) ibid, and penalty under Section 114AA ibid were not liable. CESTAT's observations are reproduced below

> *"The CTH indicated in the Bill of Entry is only a self-assessment by the assessee as per his understanding which is subject to re-assessment by the officers. Therefore, an assessee, not being an expert in the customs law can claim a wrong tariff or an ineligible exemption notification which does not make his goods liable to confiscation - The confiscation of vessels was incorrect-Making an incorrect classification does not amount to making an incorrect statement because it is not an incorrect description of the goods or their value but only a clam made by the assessee. Thus, even if the assessee makes a wrong classification, there is no reason to impose penalty u/s 114AA.*

It is pertinent to note that appeal against this order was dismissed by the Hon'ble Supreme Court of India 2019 (267) ELT A328.

2.28. Further, it is submitted that similar ratio emanates from the following judgments:

- CC vs. Gaurav Enterprises - 2006 (193) ELT 532 (Bom.)
- C Natwarlal & Co, vs. CC-2012-TIOL-2171-CESTAT-MUM
- S. Rajiv & Co. vs. CC-2014 (302) ELT 412
- Denton's Pultrtaknik - 2003-TIOL-46-SC-CX

Thus, in light of the above, the Noticee submits that the proposal to confiscate the goods deserves to be dropped.

No penalty under Section 112(a) is attracted as the impugned goods are not liable to confiscation

2.29. The Notice proposes to impose penalty under Section 112(a) of the Act. Section 112 ibid is reproduced herein under for ready reference:

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, subject to the provisions of Section 114A, to a penalty not exceeding ten per cent of the duty sought to be evaded or five thousand rupees, whichever is higher;

Provided that where such duty 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 communication of the order of the proper officer determining such duty, the amount of

penalty liable to be paid by such person under thus Section shall be twenty-five per cent of the penalty so determined,

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under Section 77 (in either case hereafter in this Section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest,

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest

2.30. The Noticee submits that as is evident from Section 112(a) ibid, penalty thereunder is attracted only when the goods are liable to confiscation. As has been already demonstrated by the Noticee, Section 111(m) is not attracted in this case and thus, the goods are not liable to confiscation. Therefore, the question of penalty under Section 112(a) does not arise.

No Penalty imposable under Section 114A

2.31. The Noticee submits that penalty under Section 114A of the Customs Act is imposable only when the duty has not been levied or short-levied on account of collusion or any wilful mis-statement or suppression of facts. In the present case, as already discussed above, there is no suppression of facts, collusion or any wilful mis-statement on the part of the Noticee and therefore penalty under Section 114A is not imposable.

Section 114AA not being invocable for alleged mis-declaration of value of imported goods

2.32. Without prejudice to the above, the Noticee submits that penalty under Section 114AA cannot be imposed in the present case inasmuch as the aforesaid Section 114AA is invocable only in the cases of mis-declaration of goods at the time of export and not where the "imported" goods have been allegedly mis-declared.

2.33. The Noticee submits that Section 114AA has been introduced in the statute consequent upon the Taxation Laws (Amendment Bill), 2006. The said Taxation Amendment Bill was moved on the basis of the recommendation of the 27th Standing Committee on Finance, which records the purpose and

object behind insertion of the Section 114AA, by stating that Section 114 of the Customs Act provided only for imposition of penalty for improper exportation of goods. However, there had been instances where export was only on paper and no goods had ever crossed the border. Such serious manipulators could escape penal action as Section 114 did not provide for penalty in such situation. Accordingly, to overcome this legal lacuna and provide for penal action in cases where false and incorrect declarations of material particulars in respect of export cargo had been made, Section 114AA was proposed to be introduced. The report records that the said section 114AA would only apply to cases where no goods were exported but only papers were being created for availing the benefits under various expert promotion schemes. The Report of the Finance Commission records that the Ministry of Finance had specifically informed that the new Section 114AA had been proposed consequent to the detection of several cases of fraudulent exports where the exports were shown only on paper and no goods crossed the Indian border.

2.34. Reliance in this regard is placed on the decision of the Hon'ble Tribunal in the case of Commr. of Cus, Sea, Chennai-II v. Sri Krishna Sound and Lightings V. [2019 (370) E.L.T. 594 (Tri-Chennai)] wherein, while setting aside the penalty imposed under Section 114AA of the Customs Act in case of importation of goods, the Tribunal held that:

> *"6. The Ld. AR has submitted that the Commissioner (Appeals) has set aside the penalty under Section 114AA for the reason that penalty has been imposed by the adjudicating authority under Section 112(a) and therefore there is no necessity of further penalty under Section 114AA. I find that this submission is incorrect for the reason that in the impugned order in paras 7 and 8, the Commissioner (Appeals) has discussed in detail the provision with regard to Section 114AA. It is seen stated that as per the Taxation Laws (Amendment) Bill, 2005, introduced in Lok Sabha on 12-5-2005, the Standing Committee has examined the necessity for introducing a new Section 114AA. The said Section was proposed to be introduced consequent to the detection of several cases of fraudulent exports where the exports were shown only on paper and no goods crossed the Indian border. The said Section envisages enhanced penalty of five times of the value of the goods. The Commissioner (Appeals) has analyzed the object and the purpose of this Section and has held that in view of the rationale behind the introduction of Section 114AA of the Customs Act and the fact that penalty has already been imposed under Section 112(a), the appellate authority has found that the penalty under Section 114AA is excessive and requires to be set aside. Thus, the penalty under Section 114AA is not set aside merely for the reason that penalty under Section 112(a) is imposed. After considering the ingredients of Section 114AA and the rationale behind introduction of Section 114AA, the Commissioner*

(Appeals) has set aside the penalty under Section 114AA." (emphasis supplied)

2.35. The Noticee further submits that similar view that penalty under Section 114AA of the Customs Act is not imposable in cases of importation of goods has been adopted by the Hon'ble Tribunal in the cases of M/s. V.R. Tools vs. Commissioner of Customs, Chennai [2021 (11) TMI 847 CESTAT CHENNAI and Interglobe Aviation Ltd. vs. Pr. Commissioner of Cus., Bangalore [2022 (379) E.L.T. 235 (Tri. - Bang.)].

2.36. Thus, in light of the report of the Standing Committee and the decisions of the Hon'ble Tribunal, the Noticee submits that Section 114AA can only be invoked in cases where fraudulent declaration/statements are made/filed in respect of goods being exported out of the country. The said provision is not applicable in cases of alleged mis-declaration made with respect to import consignments, for which adequate provisions otherwise exist under the Customs Act and therefore, penalty imposed under Section 114AA of the Customs Act, deserves to be quashed.

2.37. Without prejudice to the above, even assuming without admitting that Section 114AA was invokable in the present case, the Noticee submits that the Show Cause Notice has failed to indicate, let alone establish, that there has been a violation of Section 114AA of the Customs Act. It is submitted that penalty under Section 114AA of the Customs Act is imposable in a case where a person knowingly or intentionally does something in the transaction of business under the Customs Act, knowing fully well that the same is false or incorrect. In the present case, there is nothing to establish that the Noticee knowingly or intentionally made a false or incorrect declaration/statement or otherwise in the transaction of business under the Customs Act. Accordingly, it is submitted that no penalty under Section 114AA of the Customs Act can be imposed upon the Noticee.

2.38. In view of the various contentions made hereinabove, it is submitted that the captioned Show Cause Notice is not borne out of record and facts and is unsustainable which deserves to be withdrawn/dropped forthwith.

2.39. The noticee M/s Skyway-Michigan (JV) have made additional submissions vide their letter dated 31.03.2026 which are as follows:-

2.40. It is submitted that the issue involved in the Show Cause Notice is one involving interpretation - pertaining to classification of subject goods imported by the Noticee.

2.41. It is submitted that the following facts, which are not in dispute, evidences beyond any iota of doubt that there cannot be said to be any willful mis-statement of facts and/or suppression of facts in the instant case.

2.42. The Noticee adopted the same description and the HSN Code viz. 2530 9070 as indicated by the Supplier in all the Bills of Entry filed for import clearance of the said goods as the same corresponds to the CTH description in the Indian Customs Tariff

2.43. The descriptions and HSN Code indicated in Bills of Entry filed during the months of November 2023 and the period December 2023 to June 2024 was the same.

2.44. The first batch of imports for the said product in November 2023 (involving six Bills of Entry) were provisionally assessed by Customs authorities.

2.45. The subsequent imports for the said products during the period December 2023 to June 2024, involving 11 bills of entry were finally assessed by the jurisdictional Customs authorities, and Out of Charge was granted after scrutiny of invoices, packing lists, and technical documents.

2.46. The Customs Authorities at port of import were duly aware that the earlier 6 bills of entries filed by the Noticee for import of the same products, were provisionally assessed, samples thereof sent for testing and the said bills of entry were not finalized.

2.47. On a conspectus of the above, it is submitted that the very facts of the case evidences beyond any iota of doubt that there cannot be said to be any willful mis-statement of facts and/or suppression of facts by the Noticee in the instant case.

2.48. It is submitted that, on the contrary, the Noticee being a compliant and corporate citizen, agreed to pay the differential duties and interest thereon with the sole objective to avoid protracted litigation, which unnecessarily leads to loss of significant time and efforts both for the corporates as well as tax administration.

2.49. It is submitted that Section 28(10B) of the Customs Act allows the proper officer to adjudicate a SCN issued under Section 28(4), under Section 28(1), where the charges of collusion or any willful mis-statement or suppression of facts to evade duty has not been established against the person to whom such notice was issued. Further, the matter involved falls within the adjudication timelines as indicated in Section 28(9)(a) read with the first proviso.

2.50. As explained above and in our earlier submissions, the fact pattern of the present case do not fall under Section 28(4) of the Customs Act which pertains to cases involving collosion, wilful misstatement and suppression of facts and hence the SCN should be adjudicated under Section 28(1) of the Act. In case where the captioned SCN is adjudicated under Section 28(4) of the Act, the Noticee would have no option but to seek relief from higher judicial forums

2.51. As mentioned above, the Company, being a compliant corporate citizen, had already agreed to pay the

differential duty and has requested your good office to re-assess the bill of entries.

2.52. Further, without prejudice to the merits of the case, the Noticee upon receipt of pre-consultative notice itself vide letter dated 16.08.2024 communicated that it would pay the differential duty demand. Owing to the administrative process involved in closure of these matter, the Noticee could not undertake re-assessment of the bill of entries and there is a substantial interest liability which has been accrued during this period.

2.53. In this regard, we would like to bring to your kind attention that the Hon'ble Bombay High Court in the case of A.R. Sulphonates Private Limited Vs Union of India and others (Writ Petition no. 19366 of 2024) held that imposition of interest for delayed payment of IGST under Section 3(7) of the Customs Tariff Act for the period prior to 16.08.2024 is without authority of the law as there was no statutory provisions requiring the importer to pay interest in such cases. It is submitted that in view of the said judgment, no interest is imposable to the extent of differential duty demand pertaining to IGST.

2.54. In light of the facts and submissions made above, the Noticee most respectfully prays that your good self may kindly permit cancellation of the Out of Charge of the Bills of Entry and allow re-assessment of the Bills of Entry with payment of differential duty along with applicable interest on delayed payment of custom duty, in electronic mode and Adjudicate the Show Cause Notice under Section 28(1) of the Customs Act.

2.55. It is also requested that the Adjudicating Authority may kindly drop the allegations of wilful mis-declaration, suppression of facts, and accordingly the proposal for levy of penalties and confiscation in the Show Cause Notice may be kindly dropped. Furthermore, the interest demand on delayed payment of IGST in view of the specific ruling of the Hon'ble Bombay High Court may also be dropped.

3. RECORD OF PERSONAL HEARINGS

3.1. Opportunity for personal hearing in the matter was granted by the Adjudicating Authority to the Noticee M/s Skyway-Michigan (JV) on 12.08.2025 which was attended in person by its authorized representative Shri M. P. S. Sengar and the following submissions were made during the course of the personal hearing:-

i. The provisions of Section 28(4) are not applicable to facts of this case;
ii. The Show Cause Notice is based merely on all the documents, which had already been submitted by us, therefore, no facts were suppressed,
iii. The issue is about mis-classification and we were under bonafide belief about correctness of classification,
iv. Issuance of Consultative letter itself is evidence that this a case covered under Section 28(1) and

not under Section 28(4), as there is no provision for issuance of CL under Section 28(4).

v. To support our contention at iv above, we rely on judgment of Hon'ble Delhi High Court in the case of Ismartu I. P. Ltd. Vs. UOI [W.P. 15199/2023].

3.2. Furthermore, an opportunity for personal hearing was granted by the Adjudicating Authority on 24.03.2026, at the request of the Noticee, which was attended in person by its authorized representatives, Shri Nitin Goyal (Sr. Vice-President) and Shri Piyush Jain (DGM), during which the following submissions were made:-

i. The Noticee represented that there is no suppression and/or misrepresentation of facts with intent to evade duty involved in the matter and accordingly the matter falls under the purview of Section 28(1) and not Section 28(4) based on the following:

ii. They have adopted the same description and the HSN Code viz. 2530 9070 (corresponding to HTS Code 25309080) as indicated by the US Supplier in all the Bills of Entry filed for import clearance of the said goods during the months of November 2023 (which were provisionally assessed) and the period December 2023 to June 2024 (11 Bills of Entry covered under the Show Cause Notice).

iii. The first batch of imports for the said product in November 2023 (involving six Bills of Entry) were provisionally assessed by Customs authorities.

iv. The subsequent imports for the said products during the period December 2023 to June 2024, involving 11 Bills of Entry were finally assessed by the jurisdictional Customs authorities, and Out of Charge (OOC) was granted after scrutiny of invoices, packing lists, and technical documents.

v. The final assessment was done by Customs authorities with due knowledge of the earlier provisionally assessed Bills of Entry for the same products imported by the Noticee.

vi. They have represented that being a compliant corporate citizen and to avoid unnecessary litigations, they had intimated to the department in August 2024 their readiness to pay the differential duties along with interest, subject to proposal of penalty & confiscation being dropped.

vii. They have represented that the allegations of wilful mis-declaration, suppression of facts, and

accordingly the proposal for levy of penalties and confiscation in the Show Cause Notice should be dropped.

viii. They represented and requested that the Show Cause Notice should be adjudicated under Section 28(1) which is possible in terms of Section 28(10B) read with Proviso to Section 28(9)(a).

ix. They have requested that the authorities should permit cancellation of the Out of Charge of the Bills of Entry and allow re-assessment of the Bills of Entry and they would accordingly make the payment of differential duty along with applicable interest, in electronic mode.

4. DISCUSSION AND FINDINGS

4.1. I have carefully examined the Show Cause Notice, records of the case, and the written and oral submissions made by the Noticee. Accordingly, I proceed to decide the case on merits.

4.2. It is incumbent upon the Adjudicating Authority to consider the views and objections of the Noticee before passing an order. In the present case, opportunities of personal hearing were granted to the Noticee on 12.08.2025 and 24.03.2026, which were attended by the authorized representatives of the Noticee. The records of the personal hearings, along with the written submissions, have been duly incorporated in the preceding paragraphs of this order.

4.3. I find that the requirements of Section 28(8) and Section 122A of the Customs Act, 1962, as well as the principles of natural justice, have been duly complied with. Accordingly, I proceed to decide the case on merits, taking into account the allegations in the Show Cause Notice and the submissions made by the Noticee.

4.4. 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 self-assessments in the classification of the goods described as “Geospray 22.7 Kg Bag (per Kg) Geopolymer Finished Goods 4000177092” under CTH 25309070 by the Noticee M/s Skyway-Michigan (JV) in the Bills of Entry listed in Table-1 of the Show Cause Notice should be rejected as not in order and the same be reclassified under Customs Tariff Heading 38244090 and applicable rate of duty be charged.

B. Whether or not, the differential duty amounting to ₹2,35,58,367/- (Rupees Two Crore Thirty-Five Lakh Fifty-Eight Thousand Three Hundred Sixty-Seven only) should be demanded from M/s Skyway-Michigan (JV) under Section 28(4) of the Customs Act, 1962, along with interest under

Section 28AA.

C. Whether or not, the imported goods covered under the Bills of Entry mentioned in Table-1, having a total assessable value of ₹13,89,05,468/- (Rupees Thirteen Crore Eighty-Nine Lakhs Five Thousand Four Hundred and Sixty-Eight Only) are liable for confiscation under Section 111(m) of the Customs Act, 1962, on account of alleged mis-declaration of classification.

D. Whether or not, penalty is imposable on M/s Skyway-Michigan (JV) under Section 112(a)/(b) and/or Section 114A and/or Section 114AA of the Customs Act, 1962.

Having framed the substantive issues arising from the Show Cause Notice, I now proceed to examine each issue in detail, in light of the facts on record, relevant provisions of the Customs Act, 1962, applicable judicial pronouncements, and the oral and written submissions of the Noticee.

Whether or not, the self-assessments in the classification of the goods described as "Geospray 22.7 Kg Bag (per Kg) Geopolymer Finished Goods 4000177092" under CTH 25309070 by the Noticee M/s Skyway-Michigan (JV) in the Bills of Entry listed in Table-1 of the Show Cause Notice should be rejected as not in order and the same be reclassified under Customs Tariff Heading 38244090 and applicable rate of duty be charged.

4.5. I find that the Noticee had classified the imported goods, namely "Geospray 22.7 Kg Bag Geopolymer Finished Goods 4000177092," under CTH 25309070 as "other processed earth colours" falling under Chapter 25. However, the Show Cause Notice proposes classification of the said goods under CTH 38244090 on the grounds that the product is an engineered mortar used for structural rehabilitation, as evidenced by test reports, product literature, and composition details. The Show Cause Notice further proposes recovery of differential customs duty along with applicable interest. Therefore, the foremost issue before me for determination is whether the goods described as "Geospray 22.7 Kg Bag Geopolymer Finished Goods 4000177092," imported through the Bills of Entry listed in Table-1 of the Show Cause Notice, are correctly classifiable under CTH 25309070 as declared by the Noticee or under CTH 38244090 as proposed in the Show Cause Notice.

4.6. I find that the classification of goods under Customs Tariff is governed by the principles as set out in the General Rules for the Interpretation of Import Tariff. As per General Rules for the Interpretation of the Harmonized System, classification of the goods in the nomenclature shall be governed by Rule 1 to Rule 6 of General Rules for Interpretation of Harmonized System which are to be applied sequentially. "Rule 1 of the General Rules for the Interpretation of the Customs Tariff provides that *'the titles of Sections, Chapters and sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relevant*

Section or Chapter Notes'. It thus follows that the headings cannot be read in isolation and must be construed in conjunction with the applicable Section and Chapter Notes while determining the correct classification of goods. It is not possible to classify an item only in terms of heading itself without considering relevant Section or Chapter Notes.

4.7. In this connection, I put reliance upon the judgment passed by the Hon'ble Supreme Court in case of OK Play (India) Ltd. Vs. CCE, Delhi-III, Gurgaon [2005 (180) ELT-300 (SC)] wherein it was held that for determination of classification of goods, three main parameters are to be taken into account; first HSN along with Explanatory notes, second equal importance to be given to Rules of Interpretation of the tariff and third Functional utility, design, shape and predominant usage. These aids and assistance are more important than names used in trade or in common parlance.

4.8. I also put reliance upon the judgement of the Hon'ble Tribunal in case of Pandi Devi Oil Industry Vs. Commissioner of Customs, Trichy [2016 (334) ELT-566 (Tri-Chennai)] wherein it was held that it is Settled law that for classification of any imported goods, principle and guidelines laid out in General Interpretative Rules should be followed and description given in Chapter sub-heading and Chapter Notes, read with HSN Explanatory Notes should be the criteria.

4.9. Having thus established the primacy of the Chapter Notes in determining classification, I now proceed to examine the scope of Chapter 25. In this regard, Chapter Note 1 to Chapter 25 assumes critical significance, as it restricts the coverage of the Chapter to products in the crude state or those subjected only to limited physical processes, and expressly excludes products obtained by mixing or those subjected to processing beyond the specified operations. The said Chapter Note is reproduced below for ready reference: -

> *"1. Except where their context or Note 4 to this Chapter otherwise requires, the headings of this Chapter cover only products which are in the crude state or which have been washed (even with chemical substances eliminating the impurities without changing the structure of the product), crushed, ground, powdered, levigated, sifted, screened, concentrated by flotation, magnetic separation or other mechanical or physical processes (except crystallization), but not products that have been roasted, calcined, obtained by mixing or subjected to processing beyond that mentioned in each heading."*

4.10. In the present case, the description of the goods as "Geopolymer Finished Goods" itself indicates that the product is not a naturally occurring mineral but a processed and engineered material. The term "Geospray," as evidenced from technical literature, refers to a specialized mortar used for rehabilitation of pipelines and civil infrastructure. A product described as a "finished good" designed for specific engineering applications cannot be considered as a crude or minimally processed mineral

falling under Chapter 25.

4.11. The Test Report further confirms that the product is a greyish powder composed of Calcium Oxide along with oxides of aluminium, iron, magnesium, and siliceous matter. The presence of multiple oxides in defined proportions establishes that the goods are a chemically processed mixture and not a naturally occurring mineral substance. Such composition is characteristic of geopolymer binders, which are engineered materials formed through chemical interaction of various constituents. This clearly takes the product beyond the scope of Chapter 25 in view of the exclusion under Chapter Note 1.

4.12. The composition data sheet reinforces this conclusion by showing that the product comprises Crushed Stone/Gravel, Metal Slag, Portland Cement, Fly Ash, and Crystalline Silica in specified proportions. The inclusion of Portland Cement, Fly Ash, and Slag—each being industrially processed materials—demonstrates that the goods are the result of deliberate mixing and formulation to achieve specific performance characteristics such as strength, bonding, and durability. Such a composite product cannot be classified as "processed earth colours" under Heading 2530.

4.13. On the other hand, Heading 3824 covers prepared binders and chemical products not elsewhere specified, including mortars obtained by mixing mineral and chemical constituents. The nature, composition, and intended use of the impugned goods clearly align with this heading. The product is an engineered mortar designed for structural applications, and therefore squarely falls within the scope of CTH 38244090.

4.14. I further note that the HSN Explanatory Notes to Heading 38.24 inter alia cover prepared binders and chemical products obtained by mixing mineral substances with chemical components, including prepared mortars and similar compositions. The impugned goods, being a formulated mixture of cement, slag, fly ash, and silica intended for structural applications, clearly fall within the scope of such preparations. This further reinforces the classification under CTH 38244090.

4.15. I also take note of the Noticee's own communications dated 13.08.2024 and 16.08.2024, wherein they have, in clear and unequivocal terms, accepted the classification of the impugned goods under CTH 38244090 and expressed their willingness to discharge the differential duty along with applicable interest. Though such acceptance cannot supplant the statutory exercise of classification, it nonetheless carries persuasive evidentiary weight, as it resonates with and reinforces the conclusion independently arrived at on the touchstone of technical evidence, statutory provisions, and settled principles of classification.

4.16. Thus, upon a harmonious consideration of the statutory exclusion embodied in Chapter Note 1 to

Chapter 25, the intrinsic character of the product as a finished and engineered material, the scientific findings emerging from the test report, the deliberate industrial formulation reflected in the composition data, the unmistakable functional identity of the product as a structural mortar, and the Noticee's own subsequent acceptance of the correct classification, I arrive at a firm and inescapable conclusion that the impugned goods cannot be accommodated within the narrow confines of CTH 25309070. Rather, they find their true and rightful place under CTH 38244090 as prepared binders/mortars and accordingly, the classification proposed in the Show Cause Notice is, therefore, upheld.

4.17. In view of the foregoing, I reject the self-assessment of the goods described as 'Geospray 22.7 Kg Bag (per Kg) Geopolymer Finished Goods 4000177092' under CTH 25309070 by M/s Skyway-Michigan (JV), as declared in the Bills of Entry listed in Table-1 of the Show Cause Notice, as being not in order. I hold that the said goods are correctly classifiable under CTH 38244090, and the applicable rate of duty shall be levied accordingly.

Whether or not, the differential duty amounting to ₹2,35,58,367/- (Rupees Two Crore Thirty-Five Lakh Fifty-Eight Thousand Three Hundred Sixty-Seven only) should be demanded from M/s Skyway-Michigan (JV) under Section 28(4) of the Customs Act, 1962, along with interest under Section 28AA.

4.18. The Show Cause Notice proposes demand and recovery of differential customs duty amounting to ₹ 2,35,58,367/- on account of alleged mis-classification under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA. Section 28(4) provides for invocation of the extended period of limitation in cases where duty has not been levied or has been short-levied by reason of collusion, wilful misstatement, or suppression of facts. Thus, invocation of the said provision is contingent upon the existence of a deliberate act on the part of the Noticee with intent to evade payment of duty.

4.19. In the present case, I find that the Noticee has, at all material times, declared the goods with complete transparency, describing them as "Geospray 22.7 Kg Bag (per Kg) Geopolymer Finished Goods 4000177092" in each of the Bills of Entry. There is neither allegation nor evidence of any mis-declaration with respect to description, quantity, value, or any other material particular. The controversy, thus, lies confined to the realm of classification—an area where interpretational divergences are not uncommon.

4.20. I further find that, from the very inception of imports, the Department itself entertained doubt as to the correct classification, as is evident from the provisional assessment of the initial 06 Bills of Entry and the decision to subject the goods to testing. I find that provisional assessment is not a mere procedural

formality; it is an acknowledgment of uncertainty. When the Department itself chooses to tread the path of provisional assessment, it implicitly recognizes that the issue is not free from doubt. In such a situation, to subsequently attribute suppression or wilful misstatement to the importer on the very same issue would be to contradict the Department's own contemporaneous conduct. This sequence of events unmistakably demonstrates that the issue was not only alive but actively under the scrutiny of the Department.

4.21. It is a settled principle of law that where all material facts are within the knowledge of the Department, the allegation of suppression cannot be sustained. In the present case, the Noticee had disclosed complete particulars of the goods, including description, composition (through data sheets), and supporting documents at the time of filing the Bills of Entry, and the Department's own actions of provisional assessment and testing demonstrate that the issue of classification was within its knowledge and under examination. In such circumstances, the essential ingredient of suppression cannot be said to exist.

4.22. The above view finds support from the settled legal position laid down by the Hon'ble Supreme Court in *Nizam Sugar Factory vs. CCE* [2006 (197) E.L.T. 465 (S.C.)] and *P & B Pharmaceuticals (P) Ltd.* [2003 (153) E.L.T. 14 (S.C.)], wherein it has been held that once the relevant facts are within the knowledge of the Department, invocation of extended period on the ground of suppression is not sustainable. Though these judgments arose in the context of earlier proceedings, the underlying principle that knowledge of material facts by the Department negates suppression is squarely applicable to the present case.

Relevant part of the Judgment is as below: -

Nizam Sugar Factory vs. CCE [2006 (197) E.L.T. 465 (S.C.)]

> *"9. Allegation of suppression of facts against the appellant cannot be sustained. When the first SCN was issued all the relevant facts were in the knowledge of the authorities. Later on, while issuing the second and third show cause notices the same/similar facts could not be taken as suppression of facts on the part of the assessee as these facts were already in the knowledge of the authorities. We agree with the view taken in the aforesaid judgments and respectfully following the same, hold that there was no suppression of facts on the part of the assessee/appellant."*

P & B Pharmaceuticals (P) Ltd. v. Collector of Central Excise reported in [(2003) 3 SCC 599 = 2003 (153) E.L.T. 14 (S.C.)]

> *"14. We have indicated above the facts which make it clear that the question whether*

M/s. Pharmachem Distributors was a related person has been the subject-matter of consideration of the Excise authorities at different stages, when the classification was filed, when the first show cause notice was issued in 1985 and also at the stage when the second and the third show cause notices were issued in 1988. At all these stages, the necessary material was before the authorities. They had then taken the view that M/s. Pharmachem Distributors was not a related person. If the authorities came to the conclusion subsequently that it was a related person, the same fact could not be treated as a suppression of fact on the part of the assessee so as to saddle with the liability of duty for the larger period by invoking proviso to Section 11A of the Act. So far as the assessee is concerned, it has all along been contending that they were not related persons, so, it cannot be said to be guilty of not filling up the declaration in the prescribed proforma indicating related persons. The necessary facts had been brought to the notice of the authorities at different intervals from 1985 to 1988 and further, they had dropped the proceedings accepting that M/s. Pharmachem Distributors was not a related person. It is, therefore, futile to contend that there has been suppression of fact in regard M/s. Pharmachem Distributors being a related person. On that score, we are unable to uphold the invoking of the proviso to Section 11A of the Act for making the demand for the extended period."

4.23. What follows is equally significant. The examination report dated 12.12.2023 pertaining to Bill of Entry No. 9060830 dated 04.12.2023 records the availability of a Previous Test Report (PTR), which formed part of the assessment record and indicates that the Department was in possession of material relating to the nature and composition of the goods. Notwithstanding the above, subsequent consignments were allowed clearance through the facilitation mechanism, and it is also observed that, in the said Bill of Entry, the consignment was subjected to 100% examination with reference to the available test report.

4.24. I find that the question of invocation of the extended period under Section 28(4) cannot be examined in isolation, but must arise from a holistic appreciation of the facts on record, including the conduct of both the Noticee and the Department. The cumulative effect of provisional assessments, testing of the goods, 100% examination of a consignment, and subsequent clearances through RMS indicates that the material facts relating to the imported goods were available on record with the Department during the relevant period. I also note that the classification adopted by the Noticee was based on the product description and classification followed by the foreign supplier. Further, all relevant documents pertaining to assessment, including the data sheet containing the composition of the goods—which is consistent with the results obtained upon testing by the Customs authorities—were furnished by the

Noticee at the time of import. Significantly, the very same material has been relied upon by the Department in the present proceedings. In such circumstances, the allegation of suppression of facts is not sustainable.

4.25. I further note that the Noticee has accepted the revised classification and has discharged the differential duty obligation along with applicable interest vide Challan Nos., details of which are as follows:-

Sr. No.	B.E. No	Date	Challan No.	Duty Amount in Rs.	Interest in Rs.	Date of Payment
1	9060830	04.12.2023	2060673564	12,66,731	4,52,900	24.04.2026
2	9457636	29.12.2023	2060673570	21,03,688	7,27,069	24.04.2026
3	9869785	29.01.2024	2060673571	20,65,372	6,90,061	24.04.2026
4	9985375	05.02.2024	2060673581	25,28,945	8,37,670	24.04.2026
5	2108069	12.02.2024	2060673582	25,28,945	8,29,355	24.04.2026
6	2628738	18.03.2024	2060673584	29,43,406	9,20,520	24.04.2026
7	3212284	26.04.2024	2060673585	12,71,249	3,75,628	24.04.2026
8	3212287	26.04.2024	2060673597	16,52,058	4,90,186	24.04.2026
9	3469812	14.05.2024	2060673599	16,93,996	4,92,187	24.04.2026
10	3469814	14.05.2024	2060673626	29,64,494	8,61,328	24.04.2026
11	4125028	22.06.2024	2060673647	25,39,485	6,94,010	24.04.2026
TOTAL				**2,35,58,369**	**73,70,914**	

Where conduct reflects compliance upon clarification rather than resistance in the face of determination, it lends weight to the inference that the dispute arises from interpretation rather than design. Seen in this light, the present case bears the character of an interpretational dispute and does not disclose any element of wilful misstatement or mala fide intent.

4.26. In view of the foregoing analysis, I hold that the essential ingredients required for invocation of the extended period under Section 28 (4) of the Customs Act, 1962, namely suppression of facts, wilful misstatement, or intent to evade payment of duty, are not established in the present case. The dispute is essentially one of classification arising out of interpretational differences, and all material facts were

within the knowledge of the Department. However, it is equally settled that non-availability of extended period does not extinguish the duty liability arising on account of incorrect classification. Accordingly, the demand of differential duty is sustainable under the provisions of Section 28 (1) of the Customs Act, 1962, within the normal period of limitation.

4.27. In this regard, I take note of Section 28 (10B) of the Customs Act, 1962, which provides that where a notice issued under Section 28(4) is held to be unsustainable for the extended period, it shall be deemed to have been issued under Section 28(1). I further find that the conclusion arrived at in the foregoing paragraphs regarding absence of wilful misstatement or suppression of facts with intent to evade duty has a direct bearing on the applicability of Section 28(10B) of the Customs Act, 1962. Once the essential ingredients required for invoking Section 28(4) stand negated, the notice issued thereunder cannot be sustained to that extent. In such a situation, Section 28(10B) expressly mandates that the notice shall be deemed to have been issued under Section 28(1) for the normal period of limitation. Thus, the invocation of Section 28(10B) in the present case is not discretionary but flows as a statutory consequence of the findings recorded.

4.28. I also note that the very factors which disentitle the Department from invoking the extended period—namely, full disclosure of material particulars, provisional assessment by the Department, availability of test reports, and absence of any deliberate intent—simultaneously establish that the case falls outside the scope of Section 28(4) and within the ambit of Section 28(1). In other words, the absence of mens rea, which is fatal to the invocation of extended limitation and penal provisions, positively supports the application of Section 28(10B).

4.29. This position is consistent with the settled legal principle laid down by the Hon’ble Courts in numerous judgments wherein it has been held that where the conditions for invoking the extended period are not satisfied, the demand cannot be sustained under the proviso but may survive for the normal period. Section 28(10B) merely codifies this settled legal position and provides statutory backing to such conversion.

4.30. I, therefore, hold that in view of the categorical finding that the present case does not involve any wilful misstatement or suppression of facts, the proceedings initiated under Section 28(4) are rightly required to be treated as proceedings under Section 28(1) by virtue of Section 28(10B) of the Customs Act, 1962. The confirmation of demand to the extent is thus fully in accordance with the statutory scheme and does not amount to travelling beyond the scope of the Show Cause Notice.

4.31. I further find that the confirmed differential duty remains wholly unaltered notwithstanding the shift in the statutory footing from Section 28(4) to Section 28(1) by operation of Section 28(10B) of the Customs Act, 1962. This is for the reason that all the relevant Bills of Entry squarely fall within the

statutorily prescribed period of limitation of two years applicable for invocation of Section 28(1). Thus, the transformation of the provision is one of legal character and not of consequence insofar as the duty liability is concerned. The demand, in its entirety, remains intact and enforceable, the foundation of limitation being firmly within the bounds of the normal period.

4.32. As regards interest, I find that liability under Section 28AA arises as a consequence of determination of duty under Section 28 and is compensatory in nature. The same is not contingent upon the presence of mala fide intent, but flows automatically once duty is found payable.

4.33. Accordingly, I hold that the demand of differential duty of ₹ 2,35,58,367/- (Rupees Two Crore Thirty-Five Lakh Fifty-Eight Thousand Three Hundred Sixty-Seven only is sustainable under Section 28(1) of the Customs Act, 1962, along with applicable interest under Section 28AA.

Whether or not, the imported goods covered under the Bills of Entry mentioned in Table-1, having a total assessable value of ₹13,89,05,468/- (Rupees Thirteen Crore Eighty-Nine Lakhs Five Thousand Four Hundred and Sixty-Eight Only) are liable for confiscation under Section 111(m) of the Customs Act, 1962, on account of alleged mis-declaration of classification.

4.34. I find that under the scheme of self-assessment introduced in the Customs Act, 1962 the primary responsibility for correct declaration—including classification—squarely rests upon the importer. The statutory framework does not treat classification as a mere procedural formality; it is a material declaration having a direct bearing on the assessment and levy of duty. Thus, an incorrect declaration of classification, even if arising in the course of a dispute, or a bonafide belief cannot be rendered inconsequential.

4.35. In the present case, it stands conclusively established that the classification adopted by the Noticee under the impugned Bills of Entry was not in accordance with law and has rightly been re-determined. This incorrect declaration has resulted in short-payment of duty and, therefore, assumes material significance within the meaning of Section 111(m). The provision is attracted where the goods are mis-declared in any material particular, and classification—being determinative of duty liability—undoubtedly falls within its ambit.

4.36. The argument that the issue pertains to interpretation does not, by itself, eclipse the legal consequence flowing from an incorrect declaration under a self-assessment regime. Once the declaration is found to be erroneous and has impacted duty, the goods become liable to confiscation, irrespective of whether the mis-declaration was deliberate or arose from an incorrect understanding. The element of intent, though relevant for penal consequences, is not a pre-condition for attracting confiscation under Section 111(m) in such circumstances. Accordingly, I hold that the imported goods are liable for

confiscation under Section 111(m) of the Customs Act, 1962, on account of mis-declaration of classification.

4.37. Once goods are held liable for confiscation, the adjudicating authority is required either to order absolute confiscation or to grant an option for redemption in terms of Section 125 of the Customs Act, 1962. In the present case, the Show Cause Notice does not allege that the imported goods, though classified under incorrect CTH, are either prohibited or restricted. In the absence of any such allegation or finding, absolute confiscation is not warranted. As regards the applicability of redemption fine under Section 125 of the Customs Act, 1962, it is a settled position of law that redemption fine can be imposed only when the goods are physically available for confiscation and consequent redemption. This principle has been categorically affirmed by Hon'ble Bombay High Court in Commissioner of Customs (Import), Mumbai v. Finesse Creation Inc., 2009 (248) E.L.T. 122 (Bom.), wherein it was held that the concept of redemption fine arises only if the goods are available and capable of being redeemed. In the absence of availability of goods, redemption fine cannot be imposed.

4.38. In the said decision, the Hon'ble Court distinguished the judgment of the Hon'ble Supreme Court in Weston Components Ltd. v. Commissioner of Customs, 2000 (115) E.L.T. 278 (S.C.), by observing that in Weston Components, the goods had been released on bond and were therefore constructively within the control of the Customs authorities. However, in Finesse Creation Inc., the goods had already been finally cleared, were not available for seizure, and had not been released on any bond or undertaking. The Hon'ble Bombay High Court further approved the view taken by Hon'ble Punjab and Haryana High Court in Commissioner of Customs, Amritsar v. Raja Impex (P) Ltd., 2008 (229) E.L.T. 185 (P&H), wherein it was held that where goods are neither available nor covered by any bond, redemption fine cannot be levied.

4.39. Although certain decisions of the Hon'ble Gujarat and Madras High Courts have taken a contrary view permitting imposition of redemption fine even when the goods are not physically available, such views stand in contrast to the position laid down by the jurisdictional High Court. In Commissioner of Customs, Nhava Sheva-I v. Frigorifico Allana Pvt. Ltd., (2024) 25 Centax 145 (Bom.), Hon'ble Bombay High Court has expressly addressed this divergence and held that Tribunal was entirely justified in relying on Finesse Creation Inc. [2009 (248) E.L.T. 122 (Bom.)] of Bombay High Court, which was jurisdictional High Court instead of relying on decisions of Gujarat and Madras High Court. The Hon'ble Court also noted that the Hon'ble Supreme Court had declined to interfere with the decision in Finesse Creation Inc., thereby reinforcing its precedential value.

4.40. Applying the aforesaid ratio to the facts of the present case, the subject goods have already been

finally cleared and are no longer available for confiscation. These goods were neither prohibited nor restricted and are also not covered under any bond. Consequently, invocation of Section 125 of the Customs Act, 1962, in respect of such consignments lacks jurisdictional foundation and is legally unsustainable. Inasmuch as redemption fine cannot be imposed in respect of goods which are not available and which are not prohibited or restricted, ordering confiscation in such circumstances would be merely academic and devoid of practical consequence. Accordingly, I refrain from ordering confiscation of the subject goods, notwithstanding the fact that the goods were rendered liable to confiscation under Section 111(m) of the Customs Act, 1962 on account of erroneous classification adopted by the Noticee.

Whether or not penalty is imposable on M/s Skyway-Michigan (JV) under Section 112(a)/(b) and/or Section 114A and/or Section 114AA of the Customs Act, 1962.

4.41. I find that in the instant Show Cause Notice, penalty under Section 112(a) & (b) and/or114A, and 114AA against the Noticee has been proposed. The said sections are as follows:-

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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,*

(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, subject to the provisions of section 114A, to a penalty not exceeding ten per cent of the duty sought to be evaded or five thousand rupees, whichever is higher.'

SECTION 114A. Penalty for short-levy or non-levy of duty in certain cases. –

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (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.*

SECTION 114AA. ***Penalty for the 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.

4.42. I will discuss the applicability of the above penal provisions on the Noticee one by one. Starting with Section 114A, I find that the said provision is inextricably linked with the existence of mens rea in the form of collusion, wilful misstatement, or suppression of facts with intent to evade duty. In the present case, it has already been held, on a detailed appreciation of the factual milieu, that the ingredients necessary for invocation of Section 28(4) i.e. collusion, wilful misstatement, or suppression of facts with intent to evade duty are conspicuously absent. The edifice of Section 114A being founded upon the same set of ingredients, once such foundation fails, the superstructure cannot survive. Accordingly, penalty under Section 114A is not imposable and is liable to be set aside.

4.43. I find that where Section 114A cannot be levied, Section 112 (a) fills the penalty vacuum. Section 112(a) of the Customs Act, 1962 provides for the imposition of penalty on any person who does or omits to do any act which renders the goods liable to confiscation under Section 111 of the Act, or who abets the doing or omission of such an act. I find that Section 112(a) operates in a distinct field and does not require the stringent pre-conditions of intent including collusion, wilful misstatement, or suppression of fact as contemplated under Section 114A. Its applicability is, therefore, to be examined with reference to whether the goods have, in fact, been rendered liable to confiscation. In the present case, it has already been held that the goods have been rendered liable to confiscation under Section 111(m) on account of erroneous classification adopted by the Noticee which is a material particular

having a direct bearing on the assessment of duty.

4.44. I take note of the overall factual matrix and find that the dispute pertains to classification of the imported goods. The Department was aware of the issue from the outset, as evidenced by provisional assessment of the initial consignments, testing of samples, and subsequent 100% examination of a consignment. These circumstances establish that the matter was under active consideration at the material time and, accordingly, negate any element of wilful misstatement or suppression of facts on the part of the Noticee.

4.45. However, under the statutory scheme of the Act, the consequence of confiscability under Section 111 cannot be entirely delinked from the provisions of Section 112(a). Once it is held that the goods are liable to confiscation under Section 111(m) on account of erroneous classification adopted by the Noticee, the provisions of Section 112(a) stand attracted as a legal consequence of such finding. In the present case, the incorrect classification adopted by the Noticee, though not attended by any mala fide intent and arising in a background of interpretational uncertainty and ongoing departmental examination, has nevertheless resulted in the goods being rendered liable to confiscation. I further note that the Noticee has accepted the revised classification and has discharged the differential duty obligation along with applicable interest. Accordingly, while the ingredients for invocation of Section 112(a) are satisfied, the absence of intent, the conduct of the Noticee, and the surrounding circumstances merit due consideration in determining the quantum of penalty.

4.46. I now proceed to examine the applicability of Section 112(b) of the Customs Act, 1962. I find that the said provision is attracted in cases where a person, having knowledge or reason to believe that the goods are liable to confiscation, is concerned in dealing with such goods—by way of possession, carrying, removal, harbouring, keeping, concealing, selling, purchasing, or otherwise. The application of Section 112(b) thus lies in the element of conscious knowledge coupled with subsequent dealing in goods already tainted with liability to confiscation.

4.47. In the present case, the Noticee is the importer who has filed the Bills of Entry and undertaken self-assessment of the goods. The role attributed to the Noticee in the Show Cause Notice does not extend beyond the act of importation and declaration for which penalty under Section 112(a) has already been imposed on account of mis-classification. There is no material on record to establish that they had knowledge or reason to believe that the goods were liable to confiscation at the relevant time. The dispute, as already held, arises out of an interpretational issue of classification, and the necessary element of conscious knowledge, which forms the sine qua non for invocation of Section 112(b), is clearly absent. In such a factual milieu, the provision cannot be invoked in a routine or mechanical manner.

4.48. I now turn to the applicability of Section 114AA of the Customs Act, 1962, which contemplates penalty in cases where a person knowingly or intentionally makes, signs, or uses any declaration, statement, or document which is false or incorrect in any material particular. The provision, by its very design, is attracted only where there exists a conscious and deliberate act of falsification—mere inaccuracy or error being insufficient to invite its rigours.

4.49. In the instant case, the sequence of events, as discussed in detail above, clearly indicates that the issue at hand was a continuing and evolving dispute of classification, within the knowledge of the Department from the outset. The goods were consistently declared with full particulars; multiple Bills of Entry were provisionally assessed; the goods were subjected to testing; and the test report was available on record. Thereafter, a subsequent consignment was subjected to 100% examination and cleared with reference to the earlier test report, and further consignments were allowed clearance through RMS without objection.

4.50. This factual matrix does not support the allegation of knowing or intentional use of false or incorrect material. On the contrary, it reflects disclosure of relevant particulars and a state of continuing departmental awareness, further reinforced by the conduct of the Noticee in accepting the revised classification and discharging the differential duty along with applicable interest. In circumstances where the Department was seized of the issue, had occasion to examine the goods, and permitted clearance of consignments, it cannot be reasonably held that the Noticee had employed any document or made any declaration with conscious falsity.

4.51. The incorrectness that has emerged is confined to the realm of classification—an interpretational issue —and not to any falsification of foundational facts. In such circumstances, the essential ingredient of mens rea, which constitutes the very sine qua non for invocation of Section 114AA, is conspicuously absent. Accordingly, I hold that, in the peculiar facts and circumstances of the present case, penalty under Section 114AA is not imposable on the Noticee.

5. ORDER

5.1. In view of the foregoing discussion and findings, I pass the following order:

i. I order rejection of the self-assessment of the imported goods described as “Geospray 22.7 Kg Bag (per Kg) Geopolymer Finished Goods 4000177092” under CTH 25309070 in the Bills of Entry as detailed in Table-1 of the Show Cause Notice and order that the said goods are correctly classifiable under CTH 38244090. I order that the subject Bills of Entry be re-assessed accordingly.

ii. I confirm the demand of differential duty amounting to ₹2,35,58,367/- (Rupees Two Crore Thirty-Five Lakh Fifty-Eight Thousand Three Hundred and Sixty-Seven only) and order recovery of the same from M/s. Skyway-Michigan (JV) under Section 28(1) of the Customs Act, 1962, read with Section 28(10B) thereof alongwith applicable interest under Section 28 AA of the Customs Act, 1962.

iii. I further order that the payments made by the Noticee M/s. Skyway-Michigan (JV), amounting to Rs. 2,35,58,369/- (Rupees Two Crore Thirty- Five Lakh Fifty-Eight Thousand Three Hundred and Sixty-Nine only) towards differential duty and Rs. 73,70,914/- (Rupees Seventy-Three Lakh Seventy Thousand Nine Hundred and Fourteen only) towards interest, vide challan Nos. as detailed in para 4.25 of this Order, be appropriated towards the differential duty and applicable interest confirmed herein.

iv. I refrain from ordering confiscation of the subject goods under Section 111(m) of the Customs Act, 1962.

v. I impose penalty of Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousand only) on the Noticee M/s. Skyway-Michigan (JV) under Section 112 (a) of the Customs Act, 1962.

vi. I hold that penalty under Section 112 (b), 114A and 114AA of the Customs Act, 1962 are not imposable on the Noticee and the proposal is dropped.

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.

Digitally signed by
Yashodhan Arvind Wanage
Date: 28-04-2026
09:52:00

(**यशोधन अरविंद वनगे** /Yashodhan Arvind Wanage)

प्रधान आयुक्त, सीमाशुल्क/ Pr. Commissioner of Customs

एन एस-I, जेएनसीएच / NS-I, JNCH

To,

M/s. Skyway-Michigan (JV) (IEC No. ACAAS3213N),

3rd Floor, 303 Gitanjali Arcade,

Above Indian Bank, Vile Parle East,

Mumbai-400057,

Copy to:

i. The Addl. Commissioner of Customs, Group I & I A, JNCH

ii. AC/DC, A-3 Circle, Audit, JNCH

iii. AC/DC, Chief Commissioner's Office, JNCH

iv. AC/DC, Centralized Revenue Recovery Cell, JNCH

v. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.

vi. Office Copy.