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

DIN – 20260578NX000022222B **Date of Order: 22.05.2026**

F. No. S/10-36/2025-26/COMMR/Gr.VA/NS-V/CAC/JNCH **Date of Issue: 22.05.2026**

SCN No.: 222/2025-26/COMMR/GR.VA/CAC/JNCH

SCN Date: 05.06.2025

Passed by: Sh. Anil Ramteke

Commissioner of Customs, NS-V, JNCH

Order No: 44/2026-27/COMMR/GR.VA/NS-V/CAC/JNCH

Name of Noticee: M/s Schindler India Private Limited (IEC: 0398005796)

ORDER-IN-ORIGINAL
मूल - आदेश

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

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

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

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

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

3. अपील दाखिल करने संबंधी मुख्य मुद्दे:-

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

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

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

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

Fee -फीस-

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

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

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

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

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

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

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

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

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

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

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

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

Subject: - Adjudication of Show Cause Notice No. 222/2025-26/COMMR/Gr. VA/CAC/JNCH dated 05.06.2025 issued to M/s. Schindler India Private Limited (IEC – 0398005796)- reg.

BRIEF FACT OF THE CASE

It is stated in the Show Cause Notice (SCN) No. 222/2025-26/COMMR/Gr. VA/CAC/JNCH dated 05.06.2025 that, importer M/s. Schindler India Private Limited (IEC – 0398005796) having address as Schindler House, Main Street, Hiranandani Gardens, Powai – 400076, have imported goods having description "as mentioned in Annexure – A" to the show cause notice and paid IGST @ 5% as per serial no. 234B of Schedule -I of IGST levy Notification No. 01/2017- Integrated Tax (Rate) dated 28.06.2017(as amended by Notification No. 12/2019-Integrated *Tax (Rate) dated 31/07/2019).*

2. The Bills of Entry, as mentioned in Annexure–A to the Show Cause Notice, indicate that the goods were classified under CTH 85044030 and IGST was paid at the rate of 5%. However, the said goods attract IGST at the rate of 18% with effect from 01.08.2019, in terms of Notification No. 12/2019–Integrated Tax (Rate) dated 31.07.2019. Accordingly, the goods were liable to be assessed at IGST @ 18% instead of 5%, which resulted in short payment of customs duty.

2.1 The entry 234B of Schedule -I (@5%) or I-234 B (@ 5%) has been introduced with effect from 01.08.2019 (Notfn. No. 12/2019- Integrated Tax (Rate) dated 31.07.2019). Accordingly, certain specified goods, namely, charger or charging station for electrically operated vehicles falling under 8504 attract a lower IGST @5%.

IGST entry I-234 B (@5%) is reproduced below:

234 B	8504	Charger or charging station for electrically operated vehicles

2.2 Goods "other than charger or charging station for electrically operated vehicles ", falling under heading 8504, attract a higher IGST rate @ 18% under serial No. 375 of Schedule- III (18%), as amended by (Notfn. No. 12/2019- Integrated Tax (Rate) dated 31.07.2019).

The description of this entry is given below:

375	8504	Electrical Transformer, Static converters (for example, rectifiers) and inductors other than charger or charging station for electrically operated vehicles	18%

It is evident from the tables above that I-234 B (@5%) only applies to chargers or charging stations for electrically operated vehicles, excluding all others goods that fall under 375-III (@18%). It is evident from the bills of entry description that the imported goods are elevator parts-frequency convertor, i.e. the imported goods are other than Charger or charging

station for electrically operated vehicles, thus making them eligible for classification under 375-III (@18%).

3. The total assessable value of the BE items so imported is ₹ 3,92,37,802/- and it appears that a short levy of duty amounting to ₹ 56,76,307/- (as detailed in Annexure-'A') is recoverable from the Importer along with applicable interest and penalty.

4. In view of the above, Consultative letter bearing No. 2795/2021-22/JNCH(A2) dated 24.12.2021 was issued to the importer to clarify the issue raised by the department and if agreed to the observation/finding of the department, the importer was advised to pay the differential duty along with applicable interest and penalty. However, the importer has paid the differential duty amounting to Rs. 56,76,307/- and Interest Rs. 11,86,259/- but not paid the penalty.

5. Statutory Provisions

The extracts of the relevant provisions of following laws relating to self-assessment, import of goods in general, the liability of the goods to confiscation and person concerned to penalty for illegal importation under the Customs Act, 1962 and other laws for the time being in force, were mentioned in the subject SCN. The same are not reproduced in this Order-in-Original for the sake of brevity:

(i) Section 17. Assessment of duty

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

(iii) Section 28AA - Interest on delayed payment of duty.

(iv) Section 46 - Entry of goods on importation.

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

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

(vii) Section 114A - Penalty for short-levy or non-levy of duty in certain cases.

6. In view of the above facts, it appears that the importer has deliberately not paid the duty by wilful mis-statement as it was his duty to declare correct applicable rate of duty in the entry made under Section 46 of the Customs Act, 1962, and thereby has attempted to take undue benefit amounting to ₹ 56,76,307/- (as detailed in Annexure- 'A'). The importer has paid the differential duty of Rs. 56,76,308/- along with interest of Rs. 11,86,259/- but not paid the penalty. Therefore, the Penalty, so not paid, is liable for recovery from the Importer under Section 28 (4) of the Customs Act, 1962 by invoking extended period of limitation, along with applicable interest at the applicable rate under section 28AA of the Customs Act, 1962 and for their acts of omission/commission.

7. Section 111(o) of Customs Act, 1962 provides for confiscation of the goods if any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which condition is not observed unless the non-observance of the condition was sanctioned by the proper officer.

Section 111(m) of Customs Act, 1962 provides for confiscation of the goods if any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54.

8. It appears that the importer had availed concessional IGST rate of 5% under Serial No. 234B of Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017, as amended, on goods which were allegedly not eligible for such concession and were liable to IGST @ 18% under Serial No. 375 of Schedule III. Therefore, it appears that the importer had short-paid customs duty by incorrectly claiming the benefit of concessional rate and thereby failed to comply with the conditions of the said notification. Accordingly, it appears that the imported goods are liable for confiscation under Sections 111(m) and 111(o) of the Customs Act, 1962 and that the importer, by the aforesaid acts of omission and commission, has rendered themselves liable for penal action under Sections 112(a) and 114A of the Customs Act, 1962.

9. In view of the above, the importer Schindler India Private Limited (IEC – 0398005796) having address as Schindler House, Main Street, Hiranandani Gardens, Powai – 400076, was called upon them to show cause to the Competent Authority of Customs, Gr 5A. JNCH, Nhava-Sheva, Distt. Raigad, Maharashtra- 400707 within 30 days of the receipt of this notice as to why:

(i) The said subject goods imported vide Bills of Entry as detailed in Annexure-'A' having assessable value of ₹ 3,92,37,802/- should not be held liable for confiscation under Section 111(m) and/or 111(o) of the Customs Act, 1962.

(ii) The penalty for their acts of omission and commission, on short paid duty amounting Rs. 56,76,307/- for the subject goods imported vide Bills of Entry as detailed in Annexure- 'A' should not be demanded under Section 112(a) of the Custom Act, 1962.

(iii) Penalty should not be imposed under Section 114A of Customs Act, 1962 for short levy of duty.

10. WRITTEN SUBMISSION OF THE NOTICE

10.1 The Noticee, vide letter dated 28.07.2025 submitted written reply to the subject SCN. The Noticee interalia submitted as under:

(i) That they had inadvertently captured the wrong tax rate (i.e. 5% instead of 18%) at the time of clearance of goods and that there was no intention of evading any duty/tax; that they paid the differential amount of IGST Rs. 56,76,308/- along with Interest amounting to Rs.11,86,259/- on 09.09.2022 vide Receipt No. 731 and 732 dated 09.09.2022 and complied with the Consultative Letter dated 24.12.2021. In the given situation, as per Section 28(2) of the Customs Act, 1962 the department shall not issue any Show Cause Notice to the importer/ Noticee; that once the importer paid the duty along with interest as applicable and inform the Customs department, the

department shall not issue any Show Cause Notice in that case with regard to duty/interest/penalty etc.

In the present case the importer paid the duty along with applicable interest and intimated to the department by submitting the copy of letter and payment Challan duly endorsed by the Customs department.

(ii) The Noticee relies on the following case laws:

M/s Faiveley Transport Rail Technologies India Private Limited versus Principal Commissioner of Customs (Import), ACC, New Delhi [Final Order No.51057/2025 dated 21.07.2025 passed by the Principal Bench, CESTAT, New Delhi in Customs Appeal No.55785 of 2023] –wherein it was held that once the appellant had paid the entire amount of duty with interest, show cause notice could not have been issued by the DRI because the mandate in section 28(2) is that the "proper officer shall not serve any notice.

(iii). That they had no malafide intention to evade any duty or tax; that the omission was inadvertent and unintentional; that they had paid differential amount of IGST along with applicable interest to the department and complied their duty liability as and when they got to know about the tax structure for their imported goods and that too before issuance of the SCN. Therefore, it is a proven fact that the importer/ Noticee has no mens rea to evade any tax/ duty incidence. Hence, no penalty is imposable on the Noticee.

(iv). That they had declared the description, tariff heading, value, specification of the goods properly in the Bill of Entry. The onus of Assessment lies with the proper officer of the department. Even in the case of self-assessment the proper officer has the power to reassess and change the duty structure, but that was not happened in this case. Such omission on the part of the proper officer of the department cannot be attributed or shifted to the Importer/ Noticee. Even if any discrepancy is noticed in assessment the department at the most ask the importer to pay the duty along with interest. The department has issued a Consultative Letter to the Importer/ Noticee and the importer/ Noticee has paid the differential amount of duty along with interest and intimated the department about that payment. As per section 28(2) of the Customs Act, 1962, when the duty along with interest is paid by any importer the department shall not issue any Show Cause Notice to the importer. However, in this case the importer has paid the differential amount of duty with interest in September 2022 and after almost three years the department has issued this SCN in June, 2025, which is neither proper nor legally tenable. Therefore, this impugned Show Cause Notice is liable to be dropped.

(v). The Noticee relied on the following case laws:

DIMENSION DATA INDIA PVT. LTD. Versus COMMISSIONER OF CUSTOMS [2021 (376) E.L.T. 192 (Bom.)]

Bill of Entry - Amendment of - Inadvertent error of classification in self-assessed Bills of Entry - *HELD* : Though duty cast upon importer to self-assess customs duty leviable on imported goods

in terms of scheme of Section 17 of Customs Act, 1962 corresponding duty also cast upon proper officer to verify and examine such self-assessment - In process of verification or examination if proper officer finds misclassification of tariff head or wrong classification of tariff head of imported goods leading to lesser levy of customs duty or excess levy of customs duty, officer and authority empowered under sub-section (4) to make reassessment and reassess duty leviable on such goods - Under provision of Section 149 ibid discretion vested on proper officer to authorise amendment of any document after being presented in customs house - Also, Section 154 ibid permits correction of any clerical or arithmetical mistakes in any decision or order or of errors arising therein due to any incidental slip or omission - Petitioner not seeking any refund on basis of self-assessment but seeking reassessment upon amendment of Bills of Entry by correcting customs tariff head of goods which would then facilitate petitioner to claim for refund - Case made out for issuance of direction for correction of mistake or error in classification of goods and thereby for amendment of Bills of Entry - Sections 149 and 154 of Customs Act, 1962. *[paras 14, 15, 15.1, 15.2, 15.3, 16, 17, 17.1, 18, 19, 19.1, 20, 21, 22, 22.1, 22.2, 23, 24, 25, 26, 29, 30]*

Writ Jurisdiction - Amendment/Correction of inadvertent error in documents - Power to amend documents available under Section 149 of Customs Act, 1962 read with correction of clerical or arithmetical mistakes or errors in orders due to accidental slip or omission under Section 154 ibid, different and distinct from appellate power exercised under Section 128 ibid - Power of amendment or correction, vested on same officer who had passed initial order or officer of equivalent rank - On the other hand appellate jurisdiction directed to correct decisions or orders passed by inferior or lower authority - By very nature appellate authority, superior to authority which had passed order appealed against - Article 226 of Constitution of India. *[para 27]*

Words and Phrases - Expression "mistake" appearing in Section 154 of Customs Act, 1962 may be defined as something done unintendedly or through inadvertence - Impugned section itself says that error in any decision or order should be due to any accidental slip or omission - Moreover, same may be mistake of law or mistake of fact and need not be an arithmetical error alone. *[para 27]*

The Supreme Court dismissed the Petition for Special Leave to Appeal (C) No. 15777 of 2021 filed by Commissioner of Customs against the Judgment and Order dated 18-1-2021 of Bombay High Court in W.P.L. No. 249 of 2020 [**2021 (376) E.L.T. 192 (Bom.)**] *(Dimension Data India Private Ltd.* v. *Commissioner)*. While dismissing the petition, the Supreme Court passed the following order:

"Having heard Learned Counsel for the petitioners and on perusal of the record, we do not find any reason to entertain this petition under Article 136 of the Constitution of India.

The petition seeking special leave to appeal is, accordingly, dismissed.

All pending applications stand disposed of."

The Bombay High Court in its impugned order had held that during self-assessment, if assessee had filed bills of entry under Section 17 of Customs Act, 1962 claiming wrong classification of imported goods under a particular Tariff Heading, the proper officer of Customs is empowered to make reassessment and reassess duty leviable on such goods after permitting amendment of such Bills of Entry by correcting Tariff Heading in terms of Section 154 of Customs Act, 1962.

(vi). The Noticee/ Importer has paid the differential duty as and when they got to know about their inadvertent mistake and informed the department about the payment made in compliance to the consultative Letter issued by the department. The Noticee/Importer has paid the differential amount of duty along with interest in September 2022 and the department has issued this SCN in June, 2025. As per section 28(2) of the Customs Act, 1962 the department shall not issue any Show Cause Notice to the Noticee/ Importer. Furthermore, it is a settled law that that mere claiming benefit of wrong Notification is not an offence. The importer relies on the following case law:

(i) DIMENSION DATA INDIA PVT. LTD. Versus COMMISSIONER OF CUSTOMS [2021 (376) E.L.T. 192 (Bom.)]

(ii) SIRTHAI SUPERWARE INDIA LTD. Versus COMMR. OF CUSTOMS, NHAVA SHEVA-III [2020 (371) E.L.T. 324 (Tri. - Mumbai)]

iii) 2003 (155) E.L.T. 211 (S.C.) DENSONS PULTRETAKNIK Versus COMMISSIONER OF CENTRAL EXCISE

(vii). That they filed the Bills of Entry by declaring the description, value, Customs Tariff Heading, specification etc. on the basis of the import documents and after verification of all the parameters the proper officer of the department allowed the goods to be cleared for home consumption. In the whole process the action on the part of the Noticee/ Importer was fair enough and was within the four walls of law. The importer has not done any wrong on their part.

(viii). That the IGST was leviable @18% instead of declared/assessed @5%. The department has issued Consultative Letter to the Importer. In compliance, the Noticee/Importer in September, 2022 paid the differential amount of duty along with applicable interest to the department and intimated to the department along with copy of evidence for payment made. As per section 28(2) of the Customs Act, 1962 if the importer has already paid the total differential amount of duty along with applicable interest no Show Cause Notice should be issue to the importer. Therefore, the impugned SCN is neither proper nor legally tenable. Therefore, the question of confiscation of the goods does not arise.

(ix) That the onus of assessment lies with the proper officer and levying a different duty rate on the goods cannot be a reason for confiscation of the goods under section 111 of the Customs Act.

(x) That the impugned goods were already cleared and not available for confiscation, hence goods cannot be confiscated. The Noticee relies on the following case laws:

BRAMHANI INDUSTRIES LTD. Versus C.C. (AIRPORT & AIR CARGO), CHENNAI [2018 (363) E.L.T. 277 (Tri. - Chennai)]

> Confiscation/Redemption fine - Offending goods already cleared out of Customs charge - When goods not available, no confiscation to be ordered, unless goods cleared under bond, etc. - Ordering confiscation as also redemption fine under Section 125 of Customs Act, 1962 not justified by law and therefore set aside.

(xi) That the Importer/ Noticee has paid the total amount of duty along with applicable interest to the department and intimated the department with evidence of payment made. Therefore, the department should not issue any SCN in this case. Hence, the SCN itself is liable to be dropped.

(xii) That the importer has neither omitted nor committed to do anything which can render the goods liable for confiscation under section 111 of the Customs Act, 1962. Therefore, the question of imposition of penalty under section 112 should not arise. Hence, no penalty u/s 112(a) of the Customs Act, 1962 is imposable.

(xiii). The Noticee relied on the following case laws:

SIRTHAI SUPERWARE INDIA LTD. Versus COMMR. OF CUSTOMS, NHAVA SHEVA-III [2020 (371) E.L.T. 324 (Tri. - Mumbai)]

Confiscation and penalty - Customs - Fact that the goods correspond to declaration in respect of the description and value is sufficient to take the imported goods away from the application of Sections 111(m) and 111(o) of Customs Act, 1962 - Confiscation of goods and imposition of penalty under Section 112(a) ibid cannot be sustained - Appellant not having made any mis-declaration with intent to evade payment of duty, penalty not imposable under Section 114A of Customs Act, 1962.

MAHESH P. PATEL Versus COMMISSIONER OF CUSTOMS (EP) [2019 (367) E.L.T. 865 (Bom.)]

Penalty on Chartered Accountant - Certificates such as Solvency Certificate and Export Performance Certificate issued by Chartered Accountant (CA) without full verification of records - Show cause notice not alleging that appellant either part of or aware of impending fraud which the importer intended to perpetrate - No role played by appellant insofar as the imports and illegal diversion of imported goods to local market are concerned - Appellant neither having done nor committed to do any act which would render the goods liable to confiscation under Section 111 of Customs Act, 1962, penalty not imposable under Section 112(a) of Customs Act, 1962.

(xiv) That the Noticee has neither colluded nor given any mis-statement nor suppressed any facts, instead the Noticee/ Importer has paid all the duty along with applicable interest and complied section 28(2) of the Customs Act, 1962. As a result, no SCN is required to be issued by the department. However, the department has issued this SCN arbitrarily against the statute,

which demands that the SCN is liable to be dropped. Therefore, the no penalty can be imposed in this case on the Noticee under Section 114A of the Customs Act, 1962.

(xv) The Noticee relied on the following case law:

LANDIS + GYR LTD. versus COMMISSIONER OF CENTRAL EXCISE, KOLKATA-V [2013 (290) E.L.T. 447 (Tri. - Kolkata)]

I.O.C.L. LTD. Versus COMMISSIONER OF SERVICE TAX, SILLIGURI [2013 (294) E.L.T. 97 (Tri. - Kolkata)]

(xvi) That the goods correspond to declaration in respect of the description and value is sufficient to take the imported goods away from the application of Sections 111(m) and 111(o) of Customs Act, 1962 - Confiscation of goods and imposition of penalty under Section 112(a) ibid cannot be sustained - Appellant not having made any mis-declaration with intent to evade payment of duty, penalty not imposable under Section 114A of Customs Act, 1962.

11. RECORD OF PERSONAL HEARINGS

In order to comply the Principle of Natural Justice, opportunities for personal hearing before the undersigned were granted to the noticee on 29.04.2026 and 06.05.2026. In response to PH notice, abovementioned authorised representative appeared before me on 06.05.2026 on behalf of the Noticee M/s Schindler India Pvt. Ltd (IEC: 0398005796). During the PH, he reiterated the submissions made vide their letter dated 28.07.2025 as under:

(i) Elevators Parts imported during June 2020-July 2021 were classified and cleared under CTH 85044090. No dispute of classification.

(ii) Before Amendment 1.8.2019, all goods falling under CTH 8504 were liable for IGST @5%. But after 1.8.2019, all goods other than 'Charger & Charging Station" falling under CTH 8504 attracted IGST@18%.

(iii) Consultative Letter was issued on 24.12.2021. So, realising their mistake, Importer agreed to pay duty + Interest, vide letter dt 15.07.2022 (copy already submitted)

(iv) Importer paid duty+ interest on 09.09.2022 and also informed Customs not to issue SCN, vide letter dt 12.09.2022 ((copy already submitted)

(v) Despite this, SCN was issued in June, 2025 i.e. after three years of payment

(vi) Law Position: (a)Sec 28(2) provides that SCN shall not be issued once CL is issued u/s 28(1) and the payment of differential duty + interest has already been made.

(b) There is no collusion / wilful misstatement / misdeclaration / suppression, SCN shall not be issued for demand u/s 28(4).

(c) Case law: (i) Asahi India Glass [(2024) 24 Centax 34(Mad.)] (ii) Faiveley Trasnport Rail Technologies India Pvt Ltd [Cestat Mumbai – Customs Appeal No. 55785 of 2023

DISCUSSION AND FINDINGS

12. I have carefully gone through the SCN, facts of the case, available records and evidences referred in the investigation. The case was examined in the light of the evidences produced by

the department, written submissions made by the noticee and applicable laws/rules. On a careful perusal of the subject Show Cause Notice and case records, I find that following main issues are involved in this case, which are required to be decided:

12.1 Whether the said subject goods imported vide Bills of Entry as detailed in Annexure-'A' having assessable value of ₹ 3,92,37,802/- should not be held liable for confiscation under Section 111(m) and/or 111(o) of the Customs Act, 1962 or otherwise;

(i). The Case of the Department is that M/s. Schindler India Private Limited (IEC – 0398005796) having address as Schindler House, Main Street, Hiranandani Gardens, Powai – 400076, have imported goods having description "as mentioned in Annexure – A" to the show cause notice and paid IGST @ 5% as per serial no. 234B of Schedule -I of IGST levy Notification No. 01/2017- Integrated Tax (Rate) dated 28.06.2017(as amended by Notification No. 12/2019-Integrated *Tax (Rate) dated 31/07/2019).*

(ii) The Bills of Entry, as mentioned in Annexure–A to the Show Cause Notice, indicate that the goods were classified under CTH 85044030 and IGST was paid at the rate of 5%. However, the said goods attract IGST at the rate of 18% with effect from 01.08.2019, in terms of Notification No. 12/2019–Integrated Tax (Rate) dated 31.07.2019. Accordingly, the goods were liable to be assessed at IGST @ 18% instead of 5%, which resulted in short payment of customs duty.

(iii) The entry 234B of Schedule -I (@5%) or I-234 B (@ 5%) has been introduced with effect from 01.08.2019 (Notfn. No. 12/2019- Integrated Tax (Rate) dated 31.07.2019). Accordingly, certain specified goods, namely, charger or charging station for electrically operated vehicles falling under 8504 attract a lower IGST @5%. IGST entry I-234 B (@5%) is reproduced below:

234 B	8504	Charger or charging station for electrically operated vehicles

(iv) Goods "other than charger or charging station for electrically operated vehicles ", falling under heading 8504, attract a higher IGST rate @ 18% under serial No. 375 of Schedule- III (18%), as amended by (Notfn. No. 12/2019- Integrated Tax (Rate) dated 31.07.2019).

The description of this entry is given below:

375	8504	Electrical Transformer, Static converters (for example, rectifiers) and inductors other than charger or charging station for electrically operated vehicles	18%

(v) It is evident from the tables above that I-234 B (@5%) only applies to chargers or charging stations for electrically operated vehicles, excluding all others goods that fall under 375-III (@18%). It is evident from the bills of entry description that the imported goods are elevator parts-frequency convertor, i.e. the imported goods are other than Charger or charging station for electrically operated vehicles, which squarely cover under sr.no. 375-III of the exemption Notfn.No. 12/2019–Integrated Tax (Rate) dated 31.07.2019 attracting IGST @18%.

(vi) On a careful consideration of the facts and the relevant statutory notifications, it becomes clear that the importer was not entitled to the concessional IGST rate of 5% under Serial No. 234B of Notification No. 01/2017-Integrated Tax (Rate), as amended from time to time. The benefit of the said notification is confined only to chargers or charging stations for electrically operated vehicles, and cannot be extended to goods which do not strictly satisfy that description. In the present case, the imported goods were elevator parts/frequency converters and, therefore, were outside the scope of the concessional entry. The exemption notification, being a specific and beneficial provision, has to be construed strictly, and the importer must establish clear eligibility for the benefit claimed. Since the goods in question did not fall within the description of EV chargers or charging stations, the concessional rate was wrongly claimed. The correct treatment was under the residual entry at 18% under Serial No. 375 of Schedule III, and therefore the importer's claim for exemption was not sustainable in law or on merits.

(vii). I find that the subject goods imported vide the Bills of Entry detailed in Annexure-A to SCN No. 222/2025-26 were self-assessed by the importer at IGST 5% under entry 234B of Schedule I to Notification No. 01/2017-Integrated Tax (Rate), as amended by Notification No. 12/2019 dated 31.07.2019. I find that entry I-234B, introduced with effect from 01.08.2019, confers the concessional 5% IGST rate only on charger or charging station for electrically operated vehicles falling under CTH 8504. I further find that the description in the Bills of Entry and the technical nature of the imported items establish that the goods are elevator parts—frequency converters, which are static converters under heading 8504 but are not chargers or charging stations for electrically operated vehicles. Consequently, I find that the goods are legally liable to IGST at 18% under serial no. 375 of Schedule III to Notification No. 12/2019 and are expressly excluded from the concessional 5% rate.

(viii) I observe that Section 111(m) of the Customs Act, 1962 renders liable to confiscation any imported goods which do not correspond in respect of value or in any other particular with the entry made under the Act. I observe that the phrase in any other particular is broad and includes material particulars that determine duty liability, including classification, rate applicability, and eligibility for concessional treatment. I observe that the entry made under Section 46 reflects duty computed at 5% on the basis that the goods qualify under entry 234B, whereas the actual dutiable character of the goods—frequency converters not qualifying as EV chargers—means the goods do not satisfy the defining condition for the concessional rate. I observe that this discrepancy is material because the rate of duty is a core component of the entry's duty computation and legal characterization. Therefore, I observe that the entry does not correspond with the goods in the particular of eligibility for the concessional rate, attracting Section 111(m).

(ix) I observe that Section 111(o) applies where goods are imported exempt from duty or subject to a concessional rate subject to any condition, and the condition is not observed unless sanctioned by the proper officer. I observe that the 5% IGST rate under entry 234B is a conditioned concession expressly limited to chargers or charging stations for electrically operated vehicles. I observe that the importer availed this concession without the goods

satisfying that condition, and there is no record of any sanction for non-observance. I observe that payment of differential duty and interest after the consultative letter does not retrospectively validate the condition at the time of import. Therefore, I observe that the statutory ground under Section 111(o) is independently made out.

(x) I note that the importer has contended that the wrong rate was captured inadvertently, that there was no mens rea to evade duty, and that the differential duty along with interest was paid in September 2022 after the consultative letter, relying on Section 28(2) to argue that no show cause notice should have been issued. I note that these submissions, even if accepted for the purpose of penalty and interest, do not displace the grounds for confiscation under Section 111. I note that Section 111 is concerned with the status of the goods at the time of import and whether they correspond with the entry and satisfy notification conditions. I note that payment of differential duty and interest under Section 28 relieves the importer from further demand of duty and may mitigate penalty, but it does not cure the initial improper importation or the non-correspondence of goods with the entry. I note that the clearance by the proper officer does not legitimize an entry that was legally incorrect at the time it was made.

(xi) I note that the importer has also submitted that the goods were already cleared and are not available for confiscation. I note that the legal liability to confiscation under Section 111 arises at the time of import and is not contingent on the current availability of the goods. I note that the Act provides, under Section 125, that when any person is liable to confiscation of goods, the proper officer may, in his discretion, allow such person to pay a fine in lieu of confiscation. I note that the possibility of redemption does not negate the finding that the goods are liable to confiscation; it merely provides a statutory mechanism to compound the liability.

(xii) I hold that the imported goods described in Annexure-A to the Show Cause Notice, having an assessable value of ₹3,92,37,802/-, do not correspond with the entry made in respect of the rate eligibility and description for concessional treatment, and the condition for availing the 5% IGST rate under entry 234B was not observed. I hold that the statutory conditions for confiscation under Section 111(m) and Section 111(o) of the Customs Act, 1962 are satisfied. I hold that the said subject goods are liable to confiscation under Section 111(m) and/or Section 111(o).

(xiii) As regards applicability of actual confiscation and redemption fine in terms of Section 125 of the Customs Act, 1962, I find that it is a settled position in law that redemption fine under Section 125 of the Customs Act, 1962 can only be imposed where goods are physically available for confiscation and subsequent redemption. This principle has been categorically affirmed by the Bombay High Court in *Commissioner of Customs (Import), Mumbai v. Finesse Creation Inc.*, 2009 (248) E.L.T. 122 (Bom.), wherein the Court held that the concept of redemption fine arises only if the goods are available and can be redeemed. In the absence of the goods, no redemption fine can be imposed. The Bombay High Court distinguished the Supreme Court judgment in *Weston Components Ltd. v. Commissioner of Customs*, 2000 (115) E.L.T. 278 (S.C.), noting that in *Weston*, 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 cleared and were not available for seizure, nor had they been released on any bond or undertaking. The Bombay High Court further endorsed the reasoning of the Punjab and Haryana High Court in *Commissioner of Customs, Amritsar v. Raja Impex (P) Ltd.*, 2008 (229) E.L.T. 185 (P&H), which held that where goods are neither available nor covered by any bond, no redemption fine can be levied. This order of the High Court in *Finesse Creation Inc.,* stands accepted by the department, as Special Leave Petition (SLP) filed in the Supreme Court (C.A. No. 66/2009) was dismissed by order dated 12.05.2010. [2010 (255) E.L.T. A120 (S.C.)]

(xiv) Accordingly, I am of the considered view that, since the goods in the present case have already been cleared and are no longer available for confiscation, the invocation of Section 125 of the Customs Act, 1962, lacks jurisdictional basis and is legally unsustainable. Therefore, I refrain from imposing any Redemption Fine on the impugned goods held liable to confiscation.

12.2 Whether penalty should be imposed under Section 114A and Section 112(a) of Customs Act, 1962 for short levy of duty.

(i) I find that the subject goods were imported and self-assessed at IGST @ 5% under entry 234B of Schedule I to Notification No. 01/2017–Integrated Tax (Rate), as amended by Notification No. 12/2019. However, the goods, namely elevator parts/frequency converters falling under CTH 8504, are static converters which do not qualify as chargers or charging stations for electrically operated vehicles and are therefore liable to IGST @ 18% under Serial No. 375 of Schedule III. I find that this has resulted in a short levy of duty amounting to ₹56,76,307/- on an assessable value of ₹3,92,37,802/-. I also note that the importer paid the differential duty and applicable interest in September 2022 after issuance of the consultative letter, but did not discharge any penalty. Accordingly, the Show Cause Notice proposed penalty under Sections 112(a) and 114A of the Customs Act, 1962.

(ii) I observe that Section 114A of the Customs Act, 1962 provides for penalty in cases where duty has not been levied or has been short-levied by reason of wilful misstatement or suppression of facts. I further observe that under Section 28(4), where duty has been short-levied due to wilful misstatement or suppression, the recovery includes duty and interest and also attracts mandatory penalty. The importer, being a self-assessing entity under Section 17 read with Section 46 of the Customs Act, 1962, was under a statutory obligation to declare the correct applicable rate of duty. The concessional entry at Serial No. 234B is specifically restricted to "chargers or charging stations for electrically operated vehicles," whereas the importer has applied the said concessional rate to goods which are not covered under the said description.

(iii) I observe that Section 112(a) of the Customs Act, 1962 provides for penalty where any person, in relation to any goods, does or omits to do any act which renders such goods liable to confiscation under Section 111, with intent to evade payment of duty. I further observe that Section 111(m) and 111(o) are attracted in the present case inasmuch as the goods do not correspond with the declaration in a material particular relating to duty eligibility and the conditions of exemption notification have not been satisfied. Therefore, the act of the importer in

availing concessional rate of 5% instead of applicable 18% renders the goods liable to confiscation and consequently attracts penal provisions under Section 112(a).

(iv) I note the submissions of the importer that the incorrect rate was applied inadvertently without any mala fide intention, and that the differential duty along with interest was paid upon being pointed out by the department even prior to issuance of the Show Cause Notice. I also note reliance placed on judicial pronouncements to contend that absence of mens rea and voluntary payment of duty negates penalty. However, I observe that the present case involves incorrect availment of a conditional exemption notification, where eligibility is strictly restricted to specified goods. The importer has failed to ensure compliance with the conditions of the notification at the time of self-assessment, resulting in short payment of duty.

(v) I note that the records of import, including the Bills of Entry and product descriptions declared by the importer, clearly establish that the imported goods were "elevator parts/frequency converters" classifiable under CTH 85044090. I observe that the said goods are static converters used in elevator systems for regulating electrical power and controlling the functioning and movement of elevators/lifts. The technical nature, intended usage and commercial identity of the imported goods therefore clearly establish that the goods were specifically meant for elevator systems and not for electrically operated vehicles.I further observe that the concessional IGST rate under Serial No. 234B of Notification No. 01/2017–Integrated Tax (Rate), as amended, is specifically restricted to "charger or charging station for electrically operated vehicles." The imported goods neither possess the characteristics of EV chargers nor perform the function of charging electrically operated vehicles. The goods were also not declared, marketed, supplied or intended for use as EV charging equipment.

(vi) I therefore find that the imported goods were entirely different in nature, function and end-use from the goods covered under the concessional entry claimed by the importer. Merely because the goods fall under the broader tariff heading 8504 does not automatically make them eligible for the concessional rate, unless they strictly satisfy the specific description prescribed in the notification. Accordingly, the imported goods were not eligible for the concessional IGST rate of 5% applicable to EV chargers/charging stations.

(vii) I further note that entry 234B is a specific concessional entry applicable only to EV chargers/charging stations, whereas the importer has applied the said entry to goods which are clearly classifiable as frequency converters/elevator parts under CTH 8504. The availment of the benefit of conditional exemption notification cannot be treated as a mere clerical error, but constitutes a substantive misstatement regarding eligibility to concessional rate, which directly impacts duty liability. The magnitude of short levy further supports the conclusion that the declaration was not in conformity with statutory requirements.

(viii) I note that the payment of differential duty and interest by the importer after issuance of consultative letter does not absolve the liability for penal action under Sections 112(a) and 114A of the Customs Act, 1962. The liability to pay duty and interest is distinct from penal liability,

and discharge of duty and interest does not extinguish consequences arising from improper availment of exemption where statutory conditions are not fulfilled. The invocation of Section 28(2) is not applicable in the facts of the present case as the proceedings have been initiated and adjudicated in accordance with law.

(ix) I have considered the case laws relied upon by the importer; however, the same are distinguishable on facts, as those decisions relate to cases where there was no misstatement regarding eligibility of exemption or where goods fully corresponded with declared description and classification. In the present case, the dispute is not merely interpretational but pertains to incorrect application of a conditional exemption notification resulting in short levy of duty.

(x) I hold that the short levy of duty amounting to ₹56,76,307/- has arisen due to incorrect availment of concessional rate not applicable to the imported goods, which amounts to a misstatement of material facts relevant for assessment. Accordingly, the ingredients of Section 28(4) and Section 114A are satisfied and penalty under Section 114A is imposable in the present case.

(xi) I further hold that the act of the importer in self-assessing the goods at 5% instead of 18% has rendered the goods liable to confiscation under Section 111(m) and 111(o) of the Customs Act, 1962, and consequently attracts penalty under Section 112(a) of the Customs Act, 1962.

(xii) Since the improper importation of goods has resulted in short levy of Customs duty, which is recoverable under Section 28(4) of the Customs Act, 1962, the importer is also liable for penalty under Section 114A ibid. However, I note that penalties under Section 112(a) & 112(b) and Section 114A are mutually exclusive. Therefore, as penalty is imposed under Section 114A of the Customs Act, 1962, no penalty is imposable under Section 112(a) in terms of the fifth proviso to Section 114A ibid.

(xiii) In view of the foregoing discussions and findings, I hold that the importer is liable for penal action under Section 114A of the Customs Act, 1962, as the short levy has arisen due to wilful misstatement/suppression of facts in relation to eligibility of concessional rate. I further hold that invocation of Section 114A is legally sustainable.

Accordingly, I hold that the Show Cause Notice invoking Section 114A of the Customs Act, 1962 is sustainable and penalty is imposable accordingly.

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

ORDER

(i) I confirm the demand of duty and interest under Section 28(4) and Section 28AA of the Customs Act, 1962. However, the importer has already paid the differential duty amounting to Rs. 56,76,307/- and interest amounting to Rs. 11,86,259/-. Accordingly, I appropriate the said amounts towards the confirmed demand.

(ii) I hold the goods imported by M/s. Schindler India Private Limited (IEC – 0398005796) having a total assessable value of Rs. 3,92,37,802/- (Rupee Three Crore Ninety-Two Lakh Thirty-Seven Eight Hundred and Two only) as mentioned in Annexure-A, are liable to confiscation, under Section 111(m) and 111(o) of the Customs Act, 1962. However, I do not impose any redemption fine under Section 125(1) of the Customs Act, 1962, for the reasons cited *supra*.

(iii) I impose a penalty of Rs. 56,76,307/- (Rupees Fifty-Six Lakh Seventy-Six Thousand Three Hundred and Seven Only) on M/s. Schindler India Private Limited (IEC – 0398005796) under Section 114A of the Customs Act, 1962.

(iv) I refrain from imposing any penalty on M/s Schindler India Private Limited (IEC – 0398005796) under Section 112(a) of the Customs Act, 1962, for the reasons discussed hereinabove.

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

14. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or against the persons concerned or any other person, if found involved under the provisions of the Customs Act, 1962 and/or any other law for the time being in force in India.

(अनिल रामटेके / **ANIL RAMTEKE**)
सीमा शुल्क आयुक्त / Commissioner of Customs,
एनएस-V, जेएनसीएच / NS-V, JNCH

To,

M/s Schindler India Private Limited
Schindler House, Main Street, Hiranandani Gardens,
Powai – 400076

Copy to:

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2. The Dy./Asstt. Commissioner of Customs, CCO, JNCH
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