आयुक्त सीमाशुल्क) आयात-I (का कार्यालय
OFFICE OF THE COMMISSIONER OF CUSTOMS (IMPORT - I)
नवीन सीमाशुल्क भवन, वेलार्ड इस्टेट, मुंबई - ४०० ००१
New Customs House, Ballard Estate, Mumbai- 400 001
Email-adjn-adc-jc-imp1@gov.in

File No: CUS/APR/LC/93/2023-GR-5(AB) **Date of Order**: 26.03.2026
DIN: 20260377000000000FC95 **Date of Issue**: 26.03.2026

Order No: 27/JC/AS/ADJ/2025-26
Order Passed by: Shri Arshdeep Singh,
Joint Commissioner of Customs, Import-I,
New Custom House, Mumbai Customs Zone-I

Name of Party/Noticee: M/s. Tata Motors Limited

मुल आदेश
ORDER-IN-ORIGINAL

१. यह प्रति जिस व्यक्ति को जारी की जाती है, उसके उपयोग केलिए नि:शुल्क दी जाती है।

1. This copy is granted free of charge for the use of the person to whom it is issued.

२. इस आदेश के विरूद्ध अपील सीमाशुल्क अधिनियम ,१९६२ की धारा १२८ (१) के तहत आदेश की संसूचना की तारीख से साठ दिन के भीतर ऐसे मामले जहां शुल्क या शुल्क और जुर्माना विवादित हैं या जुर्माना जहां सिर्फ जुर्माना ही विवादित है, की ७.५ %राशि अदा करने पर सीमाशुल्क (आयुक्त) अपील का कार्यालय, नवीन सीमाशुल्क भवन, बेलार्ड इस्टेट, मुंबई – ४०० ००१ के समक्ष की जा सकतीहै।

2. An appeal against this order shall lie before the Commissioner of Customs (Appeals), New Custom House, Ballard Estate, Mumbai - 400 001 under Section 128(1) of the Customs Act, 1962 within **Sixty days** from the date of communication of this order and on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute or penalty where penalty alone is in dispute.

३. अपील सीमाशुल्क अपील नियम १९८२ में प्रदर्शित फॉर्म सी.ए.-१ में दो प्रति में की जानी चाहिए। अपील रुपये ५.०० के न्यायालय फीस स्टांप तथा इस आदेश या आदेश की प्रति के साथ संलग्न होनी चाहिए। यदि आदेश की प्रति संलग्न की जाती है तो इसमें भी न्यायालय फीस अधिनियम १९७० की अनुसूची १ में प्रदर्शित रूपये ५.०० की न्यायालय फीस स्टांप भी होना चाहिए।

3. The appeal should be in duplicate and should be filed in Form CA – 1 appeared in Custom (Appeals) Rule, 1982. The appeal should bear a court fee stamp of Rs. 5.00 only and should be accompanied by this order or a copy thereof. If a copy of this order is enclosed, it should also bear a court fee stamp of Rs. 5.00 only as prescribed under Schedule 1, item 6 of the Court Fees Act, 1970.

४. जो व्यक्ति इस निर्णय या आदेश के विरूद्ध अपील कर रहा हैं वह अपील को अनीर्णित रखेगा,और सीमाशुल्क अधिनियम,१९६२ की धारा १२९ ई के उपबंधों के अंतर्गत पैरा२ के अनुसार धनराशि जमा कराएगा तथा अपील के समय उन भुगतान का प्रमाण प्रस्तुत करेगा, जिसके अनुपालनन किए जाने पर सीमाशुल्क अधिनियम १९६२ की धारा १२८ (१) के उपबंधों के अधीन अपील अस्वीकार कर दी जाएगी।

4. Any person appealing against this decision or order shall, pending the appeal, deposit the amount as per Para 2 above under Section 129E of the Customs Act, 1962 are produce proof of such payment along with the appeal, failing which the appeal is liable to be rejected for noncompliance with the provisions of Section 128(1) of the Customs Act, 1962.

BRIEF FACTS OF THE CASE

M/s. TATA MOTORS LIMITED (IEC No. 0388002808), having address at Pimpri, Pune-4110187 (hereinafter referred to as "Importer/Noticee") filed Bill of Entry No. 9780047 dated 29.07.2022 for import of goods declared as "HYUNDAI PORTER3 EV (USED TRUCK & R&D PURPOSE) CHASSIS NO.KMF-ZCZ7NFMU021446". The declared assessable value for the BE was Rs. 42,68,728.96 and the declared duty was Rs. 4,59,955.5/-.

2. During the Online Audit of Import-1, New Customs House (NCH), Mumbai, it was observed that 01 consignment of "HYUNDAI PORTER3 EV (USED TRUCK & R&D PURPOSE) CHASSIS NO. KMF - ZCZ7NFMU021446" was imported by M/s Tata Motors under the CTH 8704 9012 on which BCD @5% and IGST@5% were levied under 1242A of IGST Notification 01/2017 after taking exemption under Customs Notification no. 51/96.

2.1 The Customs Notification no. 51/96 dated 23.7.1996 exempts specified goods from the duty of customs leviable thereon as is in excess of the amount calculated at the rate of five percent ad valorem and from the whole of the additional duty leviable thereon when imported into India, by specified importers, subject to the condition specified in the said notification. These goods are as follows:

a) Scientific and technical instruments, apparatus, equipment (including computers);
b) accessories, parts, consumables and live animals (for experimental purposes);
c) Computer software, Compact Disc-Read Only Memory (CDROM), recorded magnetic tapes, microfilms, microfiches;
d) proto-types, the C.I.F. value of which does not exceed rupees fifty thousand in a financial year.

2.2 As per the Customs Tariff Act 1975, the "MOTOR VEHICLES FOR THE TRANSPORT OF GOODS; Other: Electrically operated" are classified under CTH 87049012 and attracts BCD at the rate of 40% along with other applicable duties. Also, as per the S. No. 166 of Schedule-IV of the IGST Notification No. 01/2017 Integrated Tax (Rate) dated 28 June, 2017 CTH 8704 Motor vehicles for the transport of goods "other than Refrigerated motor vehicles" attracts IGST @ 28%.

2.3 Audit further observed that, the benefit of exemption can be availed for the specified items only under the notification no. 51/96. Since the item imported is a "HYUNDAI PORTER3 EV (USED TRUCK & R&D PURPOSE)" is not the specified item mentioned under the said notification, the benefit of above exemption cannot be given even though the importer is an institution registered with the Government of India in Department of Scientific and Industrial Research; and the importer produces a certificate to this effect from the Deputy Secretary in the concerned Department. The item should have been levied BCD@40% and IGST@28% along with other duties. As per audit observation, incorrect application of exemption notification on the said item resulted in short levy of duty of₹ 31.39 lakhs.

2.4 The above said audit findings were issued by the Director General of Audit (Central) Mumbai vide Audit Observation Reference: #30 (OBS-962085) dated 14.09.2023.

3. In view of the above audit observations, on further scrutiny of the said B/E, invoice, packing list and other documents, it was noticed that one old & used electric vehicle having declared description as "HYUNDAI PORTER3 EV (USED TRUCK & R&D PURPOSE) CHASSIS NO.KMF - ZCZ7NFMU021446" has been imported by M/s Tata Motors Limited under CTH 87049012 under invoice No. BWID220530.1 dated 30.05.2022 and claimed duty exemption under Sr. No. 2 of the Notification No. 51/1996 dated 23.07.1996 (hereinafter referred to as the said notification) i.e. BCD@5% instead of merit duty @40%. The importer submitted a certificate of registration issued vide F. No. TU/IV-RD/1531/2021 dated 27.07.2021 from the Ministry of Science and Technology, Department of Scientific and Industrial Research along with the letter/Certificate Ref. No. ERC/22-23/0048 dated 17.06.2022 from the Head of Engineering Research Centre, Tata Motors Ltd. in support of their claim as required vide the said Notification for research purpose. The relevant para/Sr. No. of Notification No. 51/1996 is reproduced below:

NotificationNo.51/96-Custom **Dated:23.07.1996**

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and specified in column (3) of the Table hereto annexed, from so much of that portion of the duty of customs leviable thereon which is specified in the said First Schedule as is in excess of the amount calculated at the rate of five percent ad valorem and from the whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act, when imported into India, by importers specified in column (2) of the said Table, subject to the conditions specified in the corresponding entry in column (4) of the said Table.

This notification shall come into force with effect from the 1st day of September, 1996.

Sl No.	*Name of the Importer*	*Description of goods*	*Conditions*
(1)	*(2)*	*(3)*	*(4)*
2.	*Non-commercial research institutions, other than a hospital*	*(a) Scientific and technical instruments, apparatus equipment (including computers);* *(b) accessories, parts consumables and live animals (for experimental purposes);* *(c) computer software, Compact Disc-Read Only Memory (CD-ROM), recorded magnetic tapes, microfilms, microfiches;* *(d) prototypes, the C.I.F. value of which does not exceed rupees fifty thousand in a financial year*	*(1) The importer –* *(i) is registered with the Government of India in the Department of Scientific and Industrial Research;* *(ii) produces a certificate from the Head of the institution, in each case of import, certifying that the said goods are essential for research purposes and will be used for the stated purpose only;* *(iii) in the case of import of live animals for experimental purposes, produces, at the time of importation, a certificate from the Head of the institution that the live animals are required for research purposes and encloses a no objection certificate issued by the Committee for the Purpose of Control and Supervision of Experiments on Animals.* *(2) The goods falling under (1) above shall not be transferred or sold for a period of five years from the date of importation."*

3.1 In the said Certificate Ref No. ERC/22-23/0048 dated 17.06.2022, the importer has certified that the 'goods being imported against above referred Purchase Order are essential for research purposes and will be used for research purposes. On scrutinizing the said letter/ certificate dated 22.08.2023, it appears to be generic in nature. The said certificate only refers to the purchase order without describing the goods and their relevance to research, and the goods prima facie do not appear to be in the nature of scientific instrument, apparatus or equipment meant for research. The goods are found to be a HYUNDAI PORTER3 EV (USED TRUCK & R&D PURPOSE) CHASSIS NO.KMF - ZCZ7NFMU021446 which is in the nature of commercial vehicle carrying goods. No reason has been given as to how the said goods carrying vehicle is essential for research purpose.

4. The Head, R&D Center of Tata Motors Limited, Pimpri, Pune has been delegated the power to issue exemption certificate by the Department of Scientific and Industrial Research (DSIR) of the Government of India. The head of the Tata R&D Center has to certify that the said imported goods fall under the category "Scientific and Technical Instrument, Apparatus, Equipment (including computers)" and are required for research purposes only. This certificate is in the nature of a decision and therefore, has to satisfy the fundamental benchmarks of being a reasonable, fair and just decision. The Hon'ble Allahabad High Court in the case of Buddhraj vs. State of U.P. and Ors. (17.01.2017 -ALLHC): MANU/UP/0085/2017, has observed in para 22 that clarity of thought leads to proper reasoning and proper reasoning is a foundation of a just and fair decision. The said Certificate dated 22.08.2023 issued by Head - Engineering Research Center, Tata Motors Limited, Pimpri, Pune is silent on how the said vehicle is required for research purposes only and, therefore, his appear not to be considered innovative.

5. The said notification does not define the scientific and technical equipment, hence the definition of the scientific and technical equipment has to be referred from other sources.

5.1 The Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code for the European Union defines the subject term Scientific Equipment. In fact, the purpose of the definition is very similar to the purpose in the present notification. The subsection 1 of section 2 of the code refers to temporary importation with total relief to import duties. This subsection grants total relief from import duties on temporary importation to (i) Professional equipment, (ii) Goods for display or use at exhibitions, fairs, meetings or similar events, and (iii) Teaching aids and scientific equipment. The subsection refers to two subsets of equipment, which are also well defined therein. Definition of these terms makes it very clear that the scientific equipments are only a subset of the equipments and not equivalent to it. The definitions given are reproduced here below.

a. Professional equipment means (i) cinematographic equipment necessary for a person established outside the customs territory of the Community and visiting that territory in order to make a specified film or films; (ii) equipment for the press or for sound or television broadcasting which is necessary for representatives of the press or of broadcasting or television organizations established outside the customs territory of the Community and visiting that territory for purposes of reporting or in order to transmit

or record material for specified programmes; ..... etc. (definition also includes other such equipments related to other professions, which are not being included here for sake of brevity).

b. Scientific Equipment means instruments, apparatus and machines used for the purpose of scientific research or teaching.

5.2 The definition of scientific equipment from various sources- if a definition is to be drawn for "scientific equipment", it will be something similar to "Scientific Equipments are a subset of equipments, apparatus or instruments, which are specifically designed for the purpose of scientific research, medical or teaching and are used by scientist or experts".

6. From above, it appears that the impugned goods are in the nature of 'goods carrying commercial vehicle' on which aggregated customs duty is very high (around 84.32%). Besides the lack of reason/grounds in the said certificate, the subject goods are also not in the nature of "Scientific and technical instruments, apparatus, equipment (including computers)". From the lack of reasons to justify use in research, it appears that Tata R&D Centre has imported this vehicle for general goods carrying use and not for research purpose.

7. The principle of ejusdem generis or noscitur a sociis are well settled principles of interpretation. They imply that a word of general and wider import used in an entry surrounded by other relevant terms has to draw its colour and meaning from such surrounding words and that cannot be lost sight of. In the present case the terms used to describe goods in the Notification No. 51/96-Customs dated 23.07.1996 are "scientific and technical instruments, apparatus, equipment (including computers)". The importer has argued that the HYUNDAI PORTER3 EV (USED TRUCK & R&D PURPOSE) CHASSIS NO.KMF - ZCZ7NFMU021446 will fall under the term 'equipment' used in the notification. The term 'equipment' is preceded by the words 'instruments' and 'apparatus'. Also, all these 3 terms 'instruments', 'apparatus' and 'equipment' are preceded by adjectives scientific and technical. The imported motor vehicles are neither a scientific/technical instrument nor a scientific/technical apparatus. By the principle of noscitur a sociis, the word equipment will take colour from the preceding words instrument and apparatus; therefore, the imported motor vehicles will also not fall under the term equipment.

8. The goods specified in clause (a) of sr. no. 2 of the said notification i.e. instruments, apparatus, equipment (including computers), are preceded by the adjective "Scientific and technical". The benefit of the notification is not given to any and every instruments, apparatus, equipment (including computers) but only to specific set, that is to scientific and technical instruments, apparatus, equipment (including computers). These adjectives, are clearly specified by the statute and cannot be ignored and also that the legislature had a very clear intention to exempt goods of nature "Scientific and technical instruments, apparatus, equipment (including computers)".

9. Reliance is placed on the decision of the constitutional bench of Hon'ble Supreme Court in the matter of (Commissioner of Customs (Import) Vs. Dilip Kumar & Company [2018(361) E.L.T.577(S.C.)]) wherein it is held in para 66.1, 66.2 & 66.3 that "an exemption notification should be interpreted strictly and in case of any ambiguity in the exemption notification, the same must be interpreted

in favour of the revenue". In Paragraph 66 and in particular 66.1 to 66.3 in the case of Dilip Kumar and Company it was held thus: -

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

66.2 When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the Revenue.

66.3 The ratio in Sun Export case [Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] is not correct and all the decisions which took similar view as in Sun Export case [Sun Export Corpn. v. Collector of Customs, (1997) 6 SCC 564] stand overruled."

(Emphasis added)

10. Thus, as per the above order, when there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue. But in the present case, there is no ambiguity about the adjectives used, hence the exemption notifications have to be interpreted strictly. Only "Scientific and technical instruments, apparatus, equipment (including computers)" are exempted that too when imported by a research institute for the specific purpose of research. If the exemption is allowed to all the "instruments, apparatus, equipment (including computers)", then the intent of the legislature to limit the exemption to only "Scientific and technical" will be defeated.

11. In view of the observation of the constitutional bench of Hon'ble apex court in the matter Dilip Kumar & Company (supra), the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification. Hence, in the present case the burden is on the importer to prove that the imported goods are not general purpose equipment but scientific and technical equipment.

11.1 In another case of Collector of Central Excise, Hyderabad v. Fenoplast (P) Ltd. (II) [1994 (72)E.L.T. 513 (S.C.)], Hon'ble Apex Court held that "*it is well settled that in interpreting items in statutes like the Excise Tax Acts or Sales Tax Acts, whose primary object is to raise revenue and for which purpose they classify diverse products, articles and substances, resort should be had not to the scientific and technical meaning of the terms or expressions used but to their popular meaning, that is to say, the meaning attached to them by those dealing in them. If any term or expression has been defined in the enactment, then it must be understood in the sense in which it is defined but in the absence of any definition being given in the enactment the meaning of the term in common parlance or commercial parlance has to be adopted*". In view of the above ratios, a meaning has to be drawn to "scientific and technical equipment" from the available resources.

12. To elaborate it further, to avail benefit of said notification, particularly in the present case when benefit is claimed as an equipment, the entry should satisfy following requirements and conditions: -

i. The imported goods should be "Scientific and technical instruments, apparatus, equipment (including computers)".

ii. The importer is registered with the Government of India in the Department of Scientific and Industrial Research.
iii. The importer produces a certificate from the Head of the institution, in each case of import, certifying that the said goods are essential for research purposes and will be used for the stated purpose only.

13. The importer in support of their claim as required vide the said Notification for research purpose has submitted a certificate Ref. No. ERC/22-23/0048 dated 17.06.2022 stating that they have Engineering Research Centre, i.e., in-house R&D Unit, which is registered with Department of Scientific & Industrial Research (DSIR) under Registration Certificate No. TU/IV-RD/1531/2021 dated 27.07.2021 from the Ministry of Science and Technology, Department of Scientific and Industrial Research in support of their claim as required vide the said Notification for research purpose. However, in the said certificate there is no mention about which goods are being imported and its purpose of import as per the condition no. 2(ii) of the said notification.

14. The notification No. 51/96-Cus. dated 23.07.1996 mandates that the importer produces a certificate certifying that the said goods are essential for research purposes and will be used for the stated purpose only. However, the notification does not define the term 'research'. In this regard, the Department of Scientific and Industrial research (DSIR) has issued GUIDELINES for granting recognition & registration to in-house R&D units established by corporate industry. This is the only scheme in the entire government set-up for benchmarking the industrial R&D. Para 2, 3 and 4 of the guidelines relevant in this regard. Para 2, 3 and 4 of the guidelines are reproduced as under:

"*2. The In-house R&D units applying for recognition to DSIR are* ***expected to be engaged in innovative research & development activities*** *related to the line of business of the firm, such as, development of new technologies, design & engineering, process/product/design improvements, developing new methods of analysis & testing; research for increased efficiency in use of resources, such as, capital equipment, materials & energy; pollution control, effluent treatment & recycling of waste products or any other areas of research.*
3. It may be noted that market research, work & methods study, operations & management research, testing & analysis of routine nature for operation, process control, quality control and maintenance of day-to-day production, maintenance of plant are not considered as R&D activities.
4. This is the only scheme in the entire government set-up for benchmarking the industrial R&D. Government of India has announced a number of fiscal incentives for research and development by industry from time to time and many of these incentives are implemented through DSIR. In-house R&D units recognised by DSIR are not only eligible for these incentives (wherever applicable) but also for receiving funds for R&D from other government departments and agencies such as DST, DBT, Deity, MoEF, MNRE, MoFPI, CSIR, ICMR, ICAR, TDB where recognition to the in-house R&D centre by DSIR is a requirement."

15. The Guidelines issued by the DSIR mentions in para 2 that the In-house R&D units applying for recognition to DSIR are expected to be engaged in innovative research & development activities related to the line of business of the firm, such as, development of new technologies, design & engineering, process/product/design improvements, developing new methods of analysis & testing; research for increased efficiency in use of resources, such as, capital

equipment, materials & energy; pollution control, effluent treatment & recycling of waste products or any other areas of research. The term 'Research and Development' has been preceded by the term 'Innovative'. Therefore, the nature of the Research and Development, which is expected from the registered in-house R&D institutes, should be essentially innovative in nature. According to the Merriam-Webster dictionary, the adjective 'Innovative' means "characterized by, tending to, or introducing innovations". Further the word 'innovation' means "1.a new idea, method, or device: NOVELTY 2. the introduction of something new". Therefore, the word 'innovative' will mean "characterized by, tending to, or introducing a new idea, method, or device, novelty". However, in the instant matter, the Research and Development activities are intended towards a product which is already existing and in use and thus this appear not to be considered innovative.

16. For more clarity in the issue, the definition of Research and Development given in the Frascati Manual was referred. The Manual was prepared and published by Organization for Economic Cooperation and Development (OECD). The OECD is a forum where the governments of 37 Developed Countries with market-based economies collaborate to develop policy standards to promote sustainable economic growth. The definition of the R & D under the Frascati Manual is as under:

"*i. Research and experimental development (R&D) comprise creative and systematic work undertaken in order to increase the stock of knowledge—including knowledge of humankind, culture and society—and to devise new applications of available knowledge.*

ii. A set of common features identifies R&D activities, even if these are carried out by different performers. R&D activities may be aimed at achieving either specific or general objectives. R&D is always aimed at new findings, based on original concepts (and their interpretation) or hypotheses. It is largely uncertain about its final outcome (or at least about the quantity of time and resources needed to achieve it), it is planned for and budgeted (even when carried out by individuals), and it is aimed at producing results that could be either freely transferred or traded in a marketplace.

For an activity to be an R&D activity, it must satisfy five core criteria.

iii. The activity must be:

- *novel*
- *creative*
- *uncertain*
- *systematic*
- *transferable and/or reproducible.*

iv. All five criteria are to be met, at least in principle, every time an R&D activity is undertaken whether on a continuous or occasional basis."

17. From above definition, it is clear that R&D is always aimed at new findings and is largely uncertain about its final outcome. Further, for an activity to be an R&D activity, it must satisfy all five core criteria, namely, the activity must be- (i)novel, (ii) creative, (iii) uncertain (iv) systematic (v) transferable and/or reproducible.

18. However, in the instant matter, the intended activities, i.e., teardown of foreign brand vehicles for aggregate detailing, craftsmanship, dynamic testing and static performance evaluation etc., are not aimed at new findings and also

fail to satisfy first 3 of the said 5 criteria as the intended activity is in connection with a product which is already in existence and use. Para 2.15 of the Frascati Manual, which explains one of 5 such criteria, "novel" and is relevant in the current context, is reproduced as under:

"*2.15 In the business enterprise sector (Frascati Manual sectors are defined in Chapter 3), the potential novelty of R&D projects has to be assessed by comparison with the existing stock of knowledge in the industry. The R&D activity within the project must result in findings that are new to the business and not already in use in the industry. Excluded from R&D are activities undertaken to copy, imitate or reverse engineer as a means of gaining knowledge, as this knowledge is not novel.*"

19. Therefore, as per the said CRA OBS and on perusal of the item description, the notification conditions and other literature/technical details as detailed above, it appears that the goods under import i.e. "HYUNDAI PORTER3 EV (USED TRUCK & R&D PURPOSE) CHASSIS NO.KMF - ZCZ7NFMU021446" are not eligible for the benefit of Sr. No. 2 of the Notification No. 51/1996-Customs dated 23.07.1996 and accordingly, it appears that the importer has intentionally claimed the same in order to evade the legitimate Customs duty amounting to Rs. 31,39,437/- (Rupees Thirty-One Lakh Thirty Nine Thousand Four Hundred and Thirty Seven Only).

20. The relevant provisions of Law:

20.1 In terms of Section 46 (4) of the Customs Act, 1962, it is mandatory for the importer to make and subscribe to a declaration as to the truth of the contents of the bill of entry being presented.

20.2 In terms of Section 17 of the Customs Act, 1962, relating to Assessment of duty, it is mandatory for the importer, save as otherwise provided in Section 85 of the Act, to self-assess the duty, and in case 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 the Act, re-assess the duty leviable on such goods.

20.3 In terms of sub-section 2 of Section 2 of the Customs Act, 1962, "assessment" means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (51 of 1975) or under any other law for the time being in force, with reference to—

(a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;

(b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;

(c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;

(d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;

(e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;]

(f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods, and includes provisional assessment, self- assessment, re-assessment and any assessment in which the duty assessed is nil;

20.4 Circular No.17/2011- Customs dated 8th April, 2011 issued by the Ministry of Finance, specifies that Section 17 of the Customs Act, 1962 provides for self-assessment of duty on import and export goods by the importer or exporter himself by filing a Bill of Entry or Shipping Bill, as the case may be. The importer or exporter at the time of self-assessment is required to ensure that he declared the correct classification, applicable rate of duty, value, and benefit of exemption notifications claimed, if any, in respect of the imported / export goods while presenting Bill of Entry or Shipping Bill. The Bill of Entry or Shipping Bill self- assessed by importer or exporter, as the case may be, can be subject to verification with regard to correctness of classification, value, rate of duty, exemption notification or any other relevant particular having bearing on correct assessment of duty on imported or export goods. For the purpose of verification, the proper officer may order for examination or testing of the imported or export goods, production of any relevant document or ask the importer or exporter to furnish any relevant information.

20.5 The relevant provisions of Section 28(4) of Customs Act, 1962 are reproduced below:

Section 28*. Recovery of duties not levied or not paid or short-levied or short- paid or erroneously refunded-*

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

a. collusion; or

b. any willful mis-statement; or

c. suppression of facts,

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

20.6 Section 28AA. Interest on delayed payment of duty-

1. Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made there under, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

2. Interest at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

3. Notwithstanding anything contained in sub-section (1), no interest shall be payable where, -

a. the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A; and

b. such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.]

20.7 Section 111 (m) & 111(o) of the Customs Act, 1962-

The following goods brought from a place outside India shall be liable to confiscation: -

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

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

20.8 Section 125. Option to pay fine in lieu of confiscation.

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit:

[Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, no such fine shall be imposed.

Provided further that], without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

[(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges, payable in respect of such goods.]

[(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

Explanation. - For removal of doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date on which the Finance Bill, 2018 receives the assent of the President and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received.] [Inserted by Finance Act, 2018 (Act No. 13 of 2018), dated 29.3.2018.]

20.9 As per Section 112 of the Customs Act, 1962 – *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, to penalty. As per the provisions of section 112, the penalty in the case of dutiable goods is proportional to the duty sought to be evaded.

20.10 *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 (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined.*

21. As per the CRA OBS, the differential Customs duty liability of the importer M/s. TATA MOTORS LIMITED (IEC No. 0388002808) is Rs. 31,39,437/- (Rupees Thirty One Lakh Thirty Nine Thousand Four Hundred and Thirty Seven Only).

22. Under the self-assessment procedure, it was obligatory on the part of the importer to declare all the particulars relevant to the assessment of the goods. The impugned goods were self-assessed by the importer M/s TATA MOTORS LIMITED (IEC No. 0388002808). It was noticed that during the import of the goods vide Bill of Entry No. 9780047 dated 29.07.2022, they declared the goods as "HYUNDAI PORTER3 EV (USED TRUCK & R&D PURPOSE)" claiming the benefit of Notification No. 51/96 dated 23.07.1996. Thus, it appears that, they have claimed incorrect grant of exemption benefit of notification no. 51/96 for the above said item.

23. Thus, it appears that M/s. TATA MOTORS LIMITED (IEC No. 0388002808) have short paid the Customs duty, totally amounting to Rs. 31.39 lakhs. Hence, the duty, not paid by the importer, appear liable to be demanded from them in terms of Section 28 (4) of the Customs Act, 1962.

24. As it appears that the importer had taken incorrect benefit of aforesaid exemption notification on the subject imported item declared as 'HYUNDAI PORTER3 EV (USED TRUCK & R&D PURPOSE)' imported vide BE No. 9780047 dated 29.07.2022, at the time of import of goods, the said incorrect application of aforesaid exemption notification has led to non-payment of appropriate Customs duty by M/s. TATA MOTORS LIMITED (IEC No. 0388002808), it appears that the goods have become liable to confiscation under Section 111(m) & 111(o) of the Customs Act, 1962.

25. As the impugned goods imported by M/s. TATA MOTORS LIMITED (IEC No. 0388002808) appears to be liable for confiscation under Section 111(m) & 111(o) of the Customs Act, 1962, the importer also appears to have rendered themselves liable for penal action under Section 112(a) and /or 114A of the Customs Act, 1962.

26. Accordingly, in compliance of Pre-Notice Consultation Regulations, 2018 as amended vide Notification No. 29/2018(NT) dated 02.04.2018, Pre-Consultative Notices (PNC) letter dated 19.12.2023 was issued to importer for short payment of duty amounting to Rs. 31.39 lakhs under Section 28(4) of Customs Act, 1962 along with applicable interest and Penalty.

27. Records of Pre-Notice Consultation

The importer vide letters dated 10.07.2024 has mainly Submitted following:

(i) that as per Notification 51/96-Customs exemption benefit is available to Scientific and technical instruments, apparatus, equipment (including computers); said Truck was imported as an "Equipment". Therefore, the exemption benefit is available to them.

A) the imported Truck is covered under the category of "Equipment" and the benefit of exemption under Notification No. 51/96-Customs is available to them.
A.1) that the term "Equipment" is not defined in Notification No. 51/1996-Customs dated 23.07.1996. The benefit allowed by Government of India since 1996 with the intention to boost exports outside India which will ultimately results into gaining foreign exchange.
A.2) that though the terms 'Scientific & Technical Instrument, 'Equipment', 'Apparatus' have not been defined in the said Notification, these terms have been interpreted by hon`ble Tribunals in the context to include within ambit a wide variety of goods which are used for research purposes after considering facts of the individual cases.
A.3) that they rely on the decision of Hon`ble CESTAT, Chennai in the case of Jackson Generators Pvt. Ltd. V CCE Pondicherry, 2014 (311) E.L.T. 815 (Tri. - Chennai), wherein while considering the grant of exemption to Diesel Generators which were for use in supplying power to the Research Institution, held as follows:

> *"3.…The term 'equipment' is wider in its ambit than the expression 'scientific and technical instruments'. We also find that under the cited precedent decisions, transformers and UPS have been granted similar exemption. We find no reason as to why DG sets cannot be considered as equipment and granted the exemption. In fact, computers may not be considered strictly as scientific and technical instruments or apparatus, but it is allowed exemption being included in the category of equipment under the impugned Notification. On the same analogy, and since equipments like transformers, UPS and Computers have been allowed exemption under the Notification No. 10/97-C.E. we are of the considered view that similar exemption is required to be allowed in the case of DG sets considering the same as an eligible equipment especially when exemption certificate in respect of the same have been issued by the authorized officials from the eligible institutes."*

A.4) That they also rely on the decision of hon`ble CESTAT, Bangalore in the case of Tractors and Farm Equipments Ltd. V. CCE., Bangalore 2011 (269) E.L.T. 534 (Tri. - Bang.), wherein a tractor supplied to a research institute, which was used for carrying scientist instruments was held entitled to the benefit of exemption.
Para 8 of the above CESTAT order read as under:

> *"8. We note that the clearance of the tractor was made to NAL against the requisite certificate from the appropriate authority as envisaged in the notification. Therefore, the argument of the assessee that it was under the bona fide belief that the tractor was eligible for the exemption is difficult to reject. Moreover in the P.L. Haulwel Trailers case (supra), the Tribunal had held that the exemption was available also for the apparatus and equipments required for using along with scientific and technical instruments. In that case, the trailer involved was used for carrying scientific equipment. In the light of the ratio of the above decision, not stayed or vacated by any higher judicial forum, the argument of the ld. Jt. CDR that the exemption is not available to the agricultural tractor in question for the same not being a scientific and technical instrument, apparatus, equipment or an accessory of the same, cannot be countenanced. As the subject agricultural tractor was otherwise entitled to the exemption in dispute, we hold that the impugned order is contrary to the settled interpretation of the*

notification. In the circumstances, we vacate the demand of duty, interest and penalty as regards the agricultural tractor."

A.5) That in view of above referred case laws, they submitted that the hon`ble Tribunals have consistently interpreted the terms 'scientific and technical instrument, apparatus, equipment' in a very wide manner to allow maximum benefit to approved research institutes.

A.6) that the Truck imported by them is very well covered under the category of "Equipment" and the exemption benefit is available to us.

B) Chapter 87 governed by Section XVII which covers Vehicle, Aircraft, Vessels and Associated Transport Equipment.

B.1) In Para (4) it is mentioned that the benefit of exemption notification can be availed for specified items only. Since the subject imported goods is not covered under the specified goods under the Notification benefit of exemption is not available to the importer.

B.2) That the Truck imported by them fall under Chapter Head 87 and said Chapter Head is governed by Section XVII which covers Vehicle, Aircraft, Vessels and Associated Transport Equipment. That Section XVII also recognizes Vehicles covered under Chapter Head as
an "Equipment".

B.3) that the term "Equipment" is not defined in the Notification No. 51/96-Customs.

Therefore, they refer to the general definition. As per Collins Dictionary the Transport Equipment defined as below:

Transport- any vehicle that you can travel in or carry goods in. Equipment- consists of the things which are used for a particular purpose; that conjoint reading of both terms denote that any types of vehicles are squarely covered under the term "Equipment".

C) That Ld. Commissioner of Customs (Appeals), NCH, Mumbai passed Orders remanding back the cases in similar matter.

C.1) That earlier also they have imported Commercial Vehicles for Research & Development purpose and claimed benefit under Sr. No. 2 of Notification No. 51/96-Cus. At the time of assessment of BOE the Department raised objection and denied the benefit. In view of urgency of vehicles for research purpose they have paid entire differential duty under protest. Upon receipt of Order of Assessment/ Speaking Order they have filed appeals before Ld. Commissioner of Customs (Appeals).

C.2) The Ld. Commissioner of Customs (Appeals) passed below OIAs and remanded the case back to the Original Authorities for fresh adjudication.

a. MUM-CUS-TK-IMP-147,148/2023-24 NCH dated 29.11.2023
b. MUM-CUS-TK-IMP- 16,17,18/2024-25/NCH dated 29.05.2024

D) Demand under Section 28(4) is not tenable

In the subject letter the demand is raised against BOE filed in the month of July 2022, by invoking the provisions of Section 28(4) of the Customs Act, 1962. They submitted that Section 28(4) can be invoked under serious cases like suppression of facts, wilful misstatement etc. Here it is pertinent to note that the value, quantity and description of goods is same as per invoice and BOE, and the dispute is only related to the availability of benefit under exemption Notification; that, in absence of ingredients required to invoke Section 28(4) demand/Interest/Penalty cannot be raised.

E) Without prejudice to above submissions, they also submitted that the differential IGST of Rs.14,95,976/- needs to be re-quantified. The differential IGST has been worked out by applying IGST @28% instead of correct rate of 5%. As per Schedule I Entry Sr. 242A Electric Vehicles attract IGST @ 5% only. Hence, the proposed IGST demand needs to be reduced by Rs.14,13,803/- (IGST @28% Rs. 17,21,152/- less IGST @ 5% Rs.3,07,348/-). Details of calculation as below:

Particulars	*As per Consultative letter (Amount in Rs.)*	*IGST as per 5% (Amount in Rs.)*	*Proposed excess IGST demand as per CL (Amount in Rs.)*
Assessable Value	*42,68,729*	*42,68,729*	
BCD	*17,07,492*	*17,07,492*	
SWS	*1,70,749*	*1,70,749*	
IGST @ 5% Vs 28%	*17,21,152*	*3,07,348*	*14,13,803*
Total	*35,99,392*		

F.) They requested to drop the proceedings initiated through subject Consultative Letter by taking above mentioned facts on records.

28. Thus, it appears that the importer has taken incorrect benefit of Sr. No. 2 of the Notification No. 51/1996-Customs for the subject imported item declared as 'HYUNDAI PORTER3 EV (USED TRUCK & R&D PURPOSE)' vide BE No. 9780047 dated 29.07.2022, at the time of import of goods, and the said incorrect application of aforesaid exemption notification has led to non-payment of appropriate Customs duty by M/s. TATA MOTORS LIMITED (IEC No. 0388002808).

29. Further, the CRA in the OBS-962085 dated 14.09.2023 has observed that, as per the S. No. 166 of Schedule-IV of the IGST Notification No. 01/2017 Integrated Tax (Rate) dated 28 June, 2017 CTH 8704 Motor vehicles for the transport of goods {other than Refrigerated motor vehicles" attracts IGST @ 28% and has accordingly, observed that the total differential duty as follows:

Item Description	**CTH**	**Assessable Value**	**Duty paid**	**BCD@ 40%**	**SWS@ 10%**	**IGST@ 28%**	**Total Duty**	**Total diff. DUTY**
HYUNDAI PORTER3 EV (USED TRUCK & R&D PURPOSE) CHASSI S NO. KMF-ZCZ7NFMU021446 MODEL YEAR: 2021.	8704 9012	4268728.96	459955.5	17074 91.584	17074 9.1584	172115 1.517	359939 2.259	**3139436.76**

29.1 However, it appears that the importer in their submissions as mentioned in para 27(i)(E) has rightly submitted that as per Schedule I Entry Sr. 242A of IGST Notification No. 01/2017, Electric Vehicles attract IGST @ 5% only. Hence, the proposed IGST demand needs to be reduced by Rs.14,13,803/- (IGST @28% Rs. 17,21,152/- less IGST @ 5% Rs.3,07,348/-).

29.2 On perusal of the BE, it has been noticed that the duty paid is Rs. 4,59,955.5 and the duty payable as per BCD@40%, SWS@10% and IGST@5% comes out to be as follow:

Assess Value	Duty paid	BCD@40%	SWS@10%	IGST@5%	Total Duty payable	Differential Duty
4268728.96	459955.5	1707491.584	170749.1584	307348.4851	2185589.227	17,25,634/-

29.3 Therefore, the differential duty which appears to be short-paid by the importer works out to be Rs. 17,25,634/-(Rupees Seventeen Lakhs Twenty Five Thousand Six Hundred and Thirty-Four Only) instead of Rs. 31,39,437/- as proposed by the CRA in OBS-962085 dated 14.09.2023.

30. Show Cause Notice

Accordingly, Show Cause Notice No. 38/2025-26/Gr-VB dated 05.09.2025 [hereinafter referred to as SCN] was issued to M/s. Tata Motors Limited calling upon to show cause as to why

i. the benefit of serial number 2 of the Notification No. 51/1996- Customs, dated 23.07.1996 as amended, to the imported goods, availed at the time of filing of the Bill of Entry No. 9780047 dated 29.07.2022 should not be denied.

ii. The total differential Customs duty of Rs. 17,25,634/-(Rupees Seventeen Lakhs Twenty-Five Thousand Six Hundred and Thirty-Four Only) as mentioned in paras 29.2 & 29.3 of this Show Cause Notice along with applicable interest thereon should not be demanded and recovered from them in terms of Section 28 (4) read with Section 28AA of the Customs Act, 1962.

iii. The impugned goods declared as 'HYUNDAI PORTER3 EV (USED TRUCK & R&D PURPOSE) CHASSIS NO.KMF - ZCZ7NFMU021446' imported vide BE No. 9780047 dated 29.07.2022, by availing exemption benefit of notification which had led to non-payment of appropriate Customs duty should not be liable to confiscation under Section 111(m) & 111(o) of the Customs Act, 1962.

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

31. Reply to Show Cause Notice

The importer, M/s. Tata Motors Limited submitted written reply dated 23.02.2026 to the SCN, key points of which are as below:

1) The Noticee submits that they carry extensive research and development (R&D) activities as required in the manufacturing of vehicles and their parts/components. The said R&D activities are carried out by "Engineering & Research Center (ERC). The ERC Unit carries out various activities relating to development of newer vehicles, variants of existing vehicles or their parts and components.

2) The ERC has in its credit, a lot of patents and copy-rights with respect to vehicles, its parts and components, not only in India but in abroad also. The Intellectual Property rights are registered in the name of the Appellant. The ERC has about 1974 number of skilled personnel as on 31/03/2025 from various engineering and technical qualifications, who undertake R&D for improving existing parts, accessories and technology used in the existing models of vehicle as well as for development of new vehicles/ variants and their parts.

3) The ERC is responsible for conceptualizing new products (vehicles, parts, components), design and development of clay models, developing styling properties, physical prototyping, testing and validation, innovation of new technology, energy solutions etc.

4) Development of new model or an improvised version of existing model happens in three stages:

1. Mule Prototype: A mule prototype is an early-stage of R&D wherein the data relating- to existing issues or the proposed technologies that would be introduced in future is collected. In this stage, the R&D Team would finalize the problem statement or the outcome that needs to be achieved

2. Alpha Prototype: Alpha prototype is the second stage in prototyping process wherein various parts are tested for freezing or finalizing the engineering design. Based on the test results, the designs are amended so as to achieve the desired results

3. Beta Prototype: After the finalization of the drawings and the designs as per State 1 and Stage 2, the Alpha Prototypes developed in stage 2 are used to build vehicles. Such vehicles are based on such finalized engineering designs and are tested for validations. Once Beta prototype validations are completed and the design is finalized, the commercial production commences at a large scale. In case any of the part tested in Beta prototyping is not compatible with other items then the necessary modifications are undertaken. The process of modification and testing continues till the time the desired results are achieved.

5) Basis the above, it is clear that the final product developed, tested and approved after Beta prototype is considered as final "prototype".
6) The Company has imported “HYUNDAI PORTER3 EV (USED TRUCK & R&D PURPOSE) CHASSIS NO. KMF - ZCZ7NFMU021446” under CTH 87049012 (hereinafter referred to as “subject goods”) by availing Sr. No. 2 to exemption Notification No. 51/96-Customs dated 23.07.1996 vide Bills of Entry No 7057105 dated 12.01.2022 by paying appropriate duties. The assessable value of the subject goods is Rs. 42,68,728.96/-.

A. The reopening of the assessment in the present proceedings post the clearance of the subject goods is bad in law.

7) The Company submits that the subject goods were duly assessed by the Customs officer at the time of import, the applicable duty was paid, and the goods were cleared for home consumption upon issuance of the “Out of Charge” order under Sections 17 and 47 of the Customs Act, 1962. Such clearance indicates that the proper officer was satisfied with the assessment and classification adopted at the time of import.
8) It is further contended that once the goods were finally assessed and cleared, the Department cannot reopen the assessment at a later stage on the ground of misclassification. If the Post Clearance Audit disagreed with the classification adopted, the appropriate course would have been to challenge the assessment by filing an appeal, particularly since the Bills of Entry were not provisionally assessed.
9) This position has been affirmed in the case of CCE, Kanpur Vs. Flock (India) - 2000 (120) ELT 285 (SC) and was relied upon in the case of Priya Blue Industries Vs. CC (*Preventive) – 2004 (172) ELT 145 (SC).
10) Reliance is placed on the judgment of the Hon’ble Supreme Court in ITC Ltd. v. Commissioner of Central Excise, Kolkata-IV [(2019) 17 SCC 46; 2019 (368) E.L.T. 216 (S.C.)], wherein the Court held that even after the introduction of self-assessment, assessment remains an integral part of the clearance process and the Bill of Entry constitutes an assessment order passed by the proper officer after evaluation of the goods.

11) Also, in the case of Vittesse Export Import Vs. CC (EP), Mumbai – 2008 (224) ELT 241 (Tri. -Mumbai), it was held that once the shipping bills have been assessed, they attain finality and cannot be re-assessed on the grounds of mis-declaration.

12) Furthermore, in order to substantiate that an out of charge order passed under Section 47 of the Customs Act amounts to quasi-judicial order, the case of CC, Cochin Vs. Arvind Export - 2001 (130) ELT 54 (Tri. -LB) decided by a Larger Bench (of 5 Members), may be taken into consideration.

13) Reliance is also placed on Neelkanth Polymers v. Commissioner of Customs, Kandla [2009 (90) RLT 188 (Tri.-Ahmd.)], wherein the Hon'ble CESTAT held that a demand under Section 28 of the Customs Act for recovery of additional duty not levied is not sustainable when the assessed Bill of Entry itself has not been challenged. The Tribunal observed that without first setting aside or modifying the assessment, a demand for differential duty cannot be raised.

14) The Noticee submits that the ratio of the cited judgments squarely applies to the present case. The Department has proposed a demand without challenging the assessed Bills of Entry or the resultant "Out of Charge" orders. In the absence of any appeal against these orders, the assessment has attained finality and cannot be questioned subsequently, particularly when there is no allegation of mis-declaration or misrepresentation. The Department cannot unilaterally modify or reopen finalized assessments without first setting aside the original assessment and providing the importer an opportunity to contest the issue before the competent forum.

<u>B. Equipments" are not defined under Notification No. 51/1996-Customs dated 23.07.1996 and said imported commercial vehicles rightly covered as an "Equipments" which are used in Research & Development activity:</u>

15) The Noticee submits that it is a leading automobile manufacturer exporting vehicles to international markets. In order to meet global standards, the company needs to set some benchmarking by teardown of foreign make vehicles and detailed study of imported models to understand design, performance, and safety parameters.

16) It is stated that the imported vehicle is used as equipment for research and development activities, including aggregate detailing, craftsmanship evaluation, dynamic testing, safety analysis, and static performance assessment. Without these instruments, the research objectives cannot be effectively achieved.

17) The Noticee further submits that the imported truck falls under Chapter 87 of the Customs Tariff, which forms part of Section XVII covering Vehicles, Aircraft, Vessels and Associated Transport Equipment. Since the term "equipment" is not defined in Notification No. 51/96-Cus., reliance is placed on its Collins dictionary meaning as below, from which it can be concluded that vehicles are included within the broader meaning of the term "Equipment",,

> <u>Transport</u>: any vehicle that you can travel in or carry goods in;
> <u>Equipment</u>: consists of the things which are used for a particular purpose;

18) Accordingly, the Noticee contends that vehicles used for R&D purposes qualify as "equipment" in common parlance. It is also submitted that

Notification No. 51/96-Cus. was introduced by the Government to promote exports and enhance foreign exchange earnings, and therefore the benefit of the notification should be extended in the present case.

19) Further, according to the DSIR guidelines for recognition of in-house R&D units - recognized R&D activities include design & engineering, product improvements, and development of new technologies, activities like testing and analysis for innovative development, efficiency improvements, and new methods of analysis are considered valid R&D. On the other hand, routine testing, quality control, and maintenance are not considered R&D. Hence, Teardown benchmarking, when done for the purpose of studying innovative technologies, informing new product development and enhancing design and engineering capabilities would qualify as legitimate R&D under DSIR guidelines as per para 2 of the above guidelines. The intended benchmark activity i.e., aggregate detailing, craftsmanship, dynamic testing, safety analysis and static performance evaluation, which are for an existing product already in use or for new product development related to the line of business of the firm can be broadly covered within the scope of "Scientific and technical instruments, apparatus, equipment" specified under Notification No. 51/1996-Customs dated 23.07.1996.

20) The Noticee rely on the decision of Hon ble CESTAT, Chennai in the case of Jackson Generators Pvt. Ltd. V CCE Pondicherry, 2014 (311) E.L.T. 815 (Tri. - Chennai), the hon'ble Tribunal while considering the grant of exemption to Diesel Generators which were for use in supplying power to the Research Institution.

21) The Noticee also rely on the decision hon'ble CESTAT, Bangalore in the case of Tractors and Farm Equipments Ltd. V. CCE., Bangalore 2011 (269) E.L.T. 534 (Tri. - Bang.), wherein a tractor supplied to a research institute, which was used for carrying scientist instruments was held entitled to the benefit of exemption.

22) In the case of Auto Aircon (India) Ltd. vs. Commissioner of Central Excise, Pune-III [2016 (336) E.L.T. 558 (Tri. - Mumbai)] the appellant had claimed exemption under Notification No. 10/97-CE for air-conditioning and refrigerator.

23) It is further submitted that the scope of scientific and technical instruments varies across industries. For an Original Equipment Manufacturer, technological advancement is of paramount importance, and achieving such advancement requires continuous research and development along with rigorous testing.

24) Attention is also invited to Chapter 87 of ITC(HS), wherein the Import Policy covers the import policy with respect to "Vehicles other than Railway or Tramway rolling — Stock, and Parts and Accessories Thereof". Policy Condition No. 2(I) covers import of new vehicles and Condition No. 2(II)(f) specially covers import of Vehicles for R&D purposes. The relevant condition is extracted below for reference:

"*f- The above mentioned provisions will also not apply to the import of new vehicles for R & D purpose by vehicle manufacturers and auto component manufacturers. However, the vehicles imported by both these categories for R&D will not be registered under the CMVR Rules in the country and will not ply on Indian roads. The customs will make necessary endorsement at the time of clearance of these vehicles.*"

25) Vide the Import Policy, the import of Vehicles for R&D purposes is contemplated. It is also submitted that vide Policy Circular No. 06(RE-06)/2004-2009 dated 18.05.2006 it has been clarified that vehicles

imported for R&D purposes can be registered under Motor Vehicle regulations for limited purpose of carrying out endurance test, evaluation test and for other testing purposes.

26) From the said clarification it can be inferred that testing is considered as part of R&D, and the vehicles have been considered as the goods for R&D and testing. In view of the above, the finding that vehicles cannot be used for R&D purposes is incorrect.

27) Reliance is also placed on the case of Spectrum Infotech P. Ltd. v. CESTAT Bangalore-I [2016 (343) E.L.T. 961 (Tri-Bang) wherein aircraft parts supplied to various institutes for conducting research has been granted the benefit of exemption. Thus, BTP/ BTS parts of vehicles used for conducting research are also eligible for availment of benefit under Notification No. 51/96.

28) It is submitted that the objective of Notification No. 51/96 is to promote research and development in India. Therefore, while exemption notifications are generally interpreted strictly, those intended to encourage or promote specific activities should be construed liberally. Reliance in this regard is placed on the decision of Hon'ble Supreme Court in the case of in Government of Kerala & Anr. v. Mother Superior Adoration Convent [2021 (376) E.L.T. 242 (S.C.)].

29) The Noticee submits that Notification No. 51/96 should be interpreted liberally, as it aims to promote research and development. Even if certain minor conditions are not strictly met, the broader objective of the notification should be considered, particularly since the Noticee is undisputedly engaged in R&D activities. It is further contended that judicial decisions have consistently interpreted the terms "scientific and technical instrument, apparatus, equipment" broadly to extend benefits to research institutions. Accordingly, the commercial vehicles imported for research purposes qualify as "equipment," making the Noticee eligible for the exemption and rendering the Show Cause Notice unsustainable.

30) It is submitted that, under Rule 126 of the Central Motor Vehicles Rules, 1989, every manufacturer or importer of motor vehicles is required to submit a prototype of the vehicle for testing by designated agencies before large-scale manufacturing. The Motor Vehicle law thus treats a prototype as a fully functional vehicle developed for future production and regulatory testing. Accordingly, a "prototype" refers to a product ready for commercial production and not to intermediate or experimental vehicles that are still under trial.

31) The Noticee submits that they referred case laws of Hon ble Tribunal wherein the exemption benefit allowed under the category of "Scientific & Technical Instrument", "Equipments" & "Apparatus" by taking broader view in absence of specific definition in the said Notification.

Case Law	Category	Appellants submission
Godrej Appliances Ltd. v. CCE [2009 (236) ELT 729 Tri-Ahm]	*Scientific & Technical Instrument*	Air-Conditioners have been regarded as "scientific and technical instruments"
Andrew Yule & Co. Ltd. v. C.C.E., Chennai - 2004 (172) E.L.T. 212 (Tri-Chennai)	*Scientific & Technical Instrument*	Held that the transformers are scientific and technical instrument
Danke Products v. C.C.E., Vadodara-II - 2005 (186) E.L.T. 215 (Tri-Mumbai)		

Voltamp Transformers Pvt. Ltd. v. C.C.E., Vadodara-II - 2007 (218) E.L.T. 217 (Tri.-Ahmd.) Featherlite Products Pvt. Ltd. v. C.C.E., Bangalore-III - 2007 (208) E.L.T. 143 (Tri.- Bang.)		
Jackson Generators Pvt. Ltd. V CCE Pondicherry, [2014 (311) E.L.T. 815 (Tri. - Chennai)]	Equipment	Exemption benefit is allowed to Diesel Generators which were for use in supplying power to the Research Institution
Tractors and Farm Equipments Ltd. V. CCE., Bangalore 2011 (269) E.L.T. 534 (Tri. - Bang.)	Equipment	Tractor supplied to a research institute, which was used for carrying scientist instruments was held entitled to the benefit of exemption
P.L. Haulwel Trailers v. Commissioner — 2002 (142) E.L.T. 204 (Tribunal)	Apparatus	Held that Trailer supplied for carrying Scientific Instruments is entitled to exemption

32) There are plethora of judgments where the exemption of the subject Notification has been granted upon fulfillment of the conditions listed in Column (4) of the said Notification. Reliance has been placed upon the following judgments:

- CC. Vs. Jai Research Foundation-2007 (209) ELT197 (Tri - Mumbai)
- Devi Ahilya Vishwavidyalaya Vs. CC-2002 (146) ELT407 [Tri -Chennai]:

C. The Department erred in holding that benefit of exemption Notification is not available in case goods are not specified item mentioned under the said notification.

33) The Noticee submits that to avail the benefit of Notification No. 51/1996-Cus., the importer must fulfil certain conditions, namely: registration with DSIR, production of a certificate from the Head of the institution certifying that the goods are essential for research purposes and will be used only for that purpose, and an undertaking that the goods will not be transferred or sold for five years from the date of import. It is contended that the Noticee has complied with all the conditions. The Show Cause Notice does not allege any violation of these conditions, and the compliance of the same has in fact been acknowledged.

34) The Noticee further submits that the imported foreign vehicles were intended for teardown and benchmarking studies to meet international market standards, which are integral to research activities. Therefore, the Department's finding that the goods are not specifically designed or modified for research purposes is untenable and the proceedings deserve to be set aside.

D. The SCN IS VAGUE, CRYPTIC AND ISSUED WITHOUT ANY BASIS/EVIDENCE.

35) The Noticee strongly refutes all the allegations made in the Show Cause Notice and submits that the proposals therein are legally and factually untenable. It is further submitted that the SCN is vague and cryptic, as it fails to properly examine the nature and characteristics of the imported goods. According to the Noticee, the demand of duty and proposal for

penalty have been made merely on assumptions and presumptions rather than on any concrete evidence.

36) The Noticee also submits that the SCN ignores the detailed submissions earlier made in response to the consultative letter dated 27.08.2025, wherein it was clearly explained why Notification No. 51/1996-Cus. is applicable to the present case. Such disregard, according to the Noticee, reflects complete non-application of mind and on this ground alone the SCN deserves to be dropped.

37) Reliance is placed on the decision in Electronik Lab v. CC [2005 (187) ELT 362 (CESTAT Mumbai)] and Govind Laskar v. CCE [1991 (52) ELT 529], wherein it was held that duty demand and penalty cannot be sustained on mere presumptions or disbelief in the absence of supporting evidence. Accordingly, the Noticee submits that the proceedings proposed in the SCN are unsustainable.

E. The entire demand raised in the impugned Show Cause Notice being time barred is liable to be set aside.

38) The Noticee submits that mere wrong classification does not amount to wilful misdeclaration or misstatement so as to attract the extended period under Section 28(4) of the Customs Act, 1962. Therefore, the demand proposed in the Show Cause Notice is barred by limitation.

39) It is contended that invocation of the extended period under Section 28(4) requires the presence of specific elements such as fraud, collusion, wilful misstatement, or suppression of facts. In the absence of these ingredients, the Department cannot invoke the extended limitation period, and the normal limitation of two years under Section 28(1) would apply.

40) The Noticee submits that at the time of filing the Bills of Entry, all relevant details were fully and correctly disclosed, including the description of goods, the applicable notification number, and the relevant serial number under Notification No. 51/1996-Cus. Necessary documents such as the DSIR registration certificate and the certificate from the Head of the Engineering Research Centre were also submitted to substantiate the claim of exemption.

41) It is further argued that there was complete transparency in the declarations made by the Noticee, and there was no suppression of facts, collusion, or wilful misstatement with intent to evade duty. The description of the goods in the Bills of Entry, invoices, and the actual imported goods were consistent, leaving no scope to allege misclassification with intent to evade duty.

42) Accordingly, the Noticee submits that the dispute, if any, arises only from a difference in legal interpretation regarding the applicability of the exemption notification and not from any misdeclaration or incorrect statement made by the importer.

43) Reliance is also placed on the judgment of the Hon'ble Supreme Court in Easland Combines v. Collector of Central Excise [(2003) 3 SCC 410], wherein it was held that the extended period of limitation cannot be invoked in the absence of a positive act such as fraud, collusion, wilful misstatement, or suppression of facts.

F. No malafide intent can be attributed on part of the Company to evade the payment of Customs duty

44) The Company is a law-abiding corporate entity and has been diligently paying the applicable Customs duties to the Government exchequer without any intent to evade payment of Customs duty. In fact, the Company is importing parts of automobiles on a high-volume basis. In the course of such business operations, there may be miniscule cases where the Company has inadvertently classified the goods under incorrect tariff entry. However, such wrong classification if any, cannot amount to wilful suppression.

45) Therefore, the Company humbly submits that there is no wilful suppression or malafide intent on part of the Company to evade payment of Customs duty. Hence, the extended period of limitation under Section 28(4) is not invokable in the present case.

G. Only the normal period of limitation is applicable.

46) The Noticee submits that since the ingredients required for invoking Section 28(4) of the Customs Act are absent in the present case, the extended period of limitation is not applicable. Consequently, only the normal limitation period under Section 28(1) of the Customs Act would apply, which provides for demand of duty to be raised within two years from the relevant date, i.e., the date of clearance of the goods. Therefore, any demand beyond this statutory period is barred by limitation.

47) The Noticee further submits that all relevant documents and details were duly disclosed at the time of filing the Bills of Entry, and the transactions were fully within the knowledge of the Department. In the absence of any suppression or misdeclaration, only normal limitation period is applicable.

48) It is also pointed out that the Directorate of Revenue Intelligence (DRI), Mangaluru Regional Unit, had conducted a search at the premises of the Noticee on 31.10.2023 and carried out an investigation concerning Notification No. 51/1996-Cus. Subsequently, a Show Cause Notice dated 14.05.2025 was issued in relation to the same matter. This not only demonstrates that the Department was already aware of the relevant facts, leaving no scope to allege suppression, but also that only the normal limitation period is applicable, as DRI itself issued the said Show Cause Notice for the normal period of limitation.

H. The demand of IGST cannot sustain on the ground of revenue neutrality.

49) The Noticee submits that the demand of IGST is unsustainable on the ground of revenue neutrality, as the Company is engaged in the manufacture of finished goods liable to GST and is eligible to avail Input Tax Credit (ITC) of any IGST paid on the imported goods. It is contended that even if, without admitting, there was any short payment of IGST due to classification, the same would have been available as ITC to the Company. Therefore, there was no incentive to misclassify the goods to evade payment of IGST, and allegations of fraud or suppression cannot arise.

50) Accordingly, the foundation of the impugned proceedings based on fraud or suppression is untenable. Reliance is placed on Birla NGK Insulators Pvt. Ltd. v. Commissioner of Customs, Ahmedabad [2014 (309) E.L.T. 501 (Tri.-Ahmd.)], wherein it was held that when the duty demanded is available as credit or refund, the demand is not sustainable due to revenue neutrality.

I. The Customs Authorities do not have the authority to demand IGST.

51) The Noticee submits that the Customs authorities lack jurisdiction to adjudicate and demand IGST on imported goods. It is contended that IGST is levied under the provisions of the Integrated Goods and Services Tax Act, 2017, and therefore any demand relating to such tax must be governed by the provisions of the GST law.

52) Reference is made to the proviso to Section 5 of the IGST Act, which states that IGST on imported goods shall be levied and collected in accordance with Section 3 of the Customs Tariff Act, 1975 at the time when customs duties are levied. The Noticee contends that Section 3(7) of the Customs Tariff Act merely provides the mechanism for collection of IGST at the time of import and does not constitute an independent charging provision. The levy of IGST arises under the IGST Act itself, and the Customs Tariff Act only facilitates its collection during customs assessment.

53) The Noticee further submits that recovery proceedings under GST law are governed by Sections 73 and 74 of the CGST Act, which authorize only the "proper officer" to initiate such proceedings. As per Section 2(91) of the CGST Act, the proper officer refers to the Commissioner or officers of Central Tax assigned such functions under GST law.

54) It is therefore argued that Customs officers are not appointed as "proper officers" under the CGST or IGST Acts for the purpose of initiating recovery proceedings for IGST. Consequently, the Customs Department lacks the statutory authority to issue a demand for IGST under Section 28 of the Customs Act.

55) Reliance is placed on judicial precedents including Ortho Clinical Diagnostics India Pvt. Ltd. v. Commissioner of Customs (Import), Mumbai [2022 (9) TMI 1109 – CESTAT Mumbai] and Interglobe Aviation Ltd. v. Commissioner of Customs [2021 (1) TMI 726 – CESTAT New Delhi], wherein it was held that IGST is a levy under the IGST Act and Customs authorities do not have the power to demand it.

56) In light of the above legal provisions and case laws, the Noticee submits that the Customs Department has no jurisdiction to demand IGST on the imported goods. Accordingly, the proposed demand of differential IGST along with interest is unsustainable in law and liable to be set aside.

J. NO INTEREST UNDER SECTION 28AA OF THE CUSTOMS ACT, 1962 WHEN DEMAND ITSELF IS NOT SUSTAINABLE

57) The Noticee submits that it held a bona fide belief that no differential duty is payable in the present case. Since the Department has failed to substantiate the proposed reclassification of goods under CTH 8708 with evidence, the demand of differential duty itself is unsustainable. It is further submitted that interest is merely accessory to the duty component. Therefore, when the principal demand of duty fails, the corresponding demand of interest also cannot survive.

58) Reliance is placed on the judgment of the Hon'ble Supreme Court in Pratibha Processors v. Union of India (1996 (88) E.L.T. 12), wherein it was held that when the duty demand is not sustainable, interest cannot be levied. The said principle was also affirmed by the Hon'ble Supreme Court in CC v. Jayathi Krishna (2000 (119) ELT 4), reiterating that

interest liability cannot arise when the underlying duty demand itself is not maintainable.

59) The Noticee further submits that Section 3(12) of the Customs Tariff Act, 1975 does not borrow the provisions relating to interest and penalty from the Customs Act. In the absence of such borrowing, interest cannot be demanded for IGST levied under the Customs Tariff Act.

60) It is contended that while IGST is levied under Section 3(7) of the Customs Tariff Act, the borrowing provision under Section 3(12) extends only to provisions relating to levy, collection, refund and exemption, and not to penalty or interest.

61) Reliance is placed on the judgment of the Hon'ble Bombay High Court in Mahindra and Mahindra v. Union of India (2022 (10) TMI 212), affirmed by the Hon'ble Supreme Court, wherein it was held that provisions relating to interest and penalty are substantive in nature and must be strictly interpreted.

62) The Noticee also relies on the decisions of the Hon'ble Supreme Court in India Carbon Ltd. v. State of Assam and J.K. Synthetics v. CTO, wherein it was held that interest can be levied only when the statute specifically provides for it through a substantive provision. This position of law was approved and reiterated by the constitution bench in the case of V.V.S. Sugars Vs. Govt. of A.P. & Ors., (1999) 4 SCC 192.

63) In Pioneer Silk Mills vs. Union of India – 1995 (80) ELT 507 (Del.), the Hon'ble High Court of Delhi examined whether penalty provisions under the Central Excise Rules, 1944 could be invoked for non-payment of additional duty under the Additional Duties of Excise (Goods of Special Importance) Act, 1957. The Court held that Section 3(3) of the Act merely borrowed provisions of the Central Excise law relating to "levy and collection" of duty. Interpreting this expression narrowly, the Court held that it covered procedural aspects such as assessment, recovery, refunds and exemptions, but did not extend to penalty or confiscation provisions in the absence of a specific statutory mandate. This judgment was subsequently approved by the Hon'ble Supreme Court.

64) A similar view was taken in Bajaj Health & Nutrition vs. Commissioner of Customs – 2004 (166) ELT 189, where the Tribunal held that provisions of the Customs Act were borrowed under Section 9A(8) of the Customs Tariff Act only for the limited purpose of levy and collection of anti-dumping duty. Since the statute did not expressly incorporate provisions relating to confiscation, interest or penalty, the Tribunal held that such liabilities could not be imposed.

65) Further, in Tonira Pharma Ltd. vs. Commissioner of Customs – 2009 (237) ELT 65 (Tri.), the Tribunal set aside penalties and interest relating to anti-dumping duty, CVD and SAD, holding that penal provisions cannot be applied unless they are specifically borrowed by the statute. This view was subsequently followed in Siddeshwar Textile Mills vs. Commissioner – 2009 (248) ELT 290 (Tri.), reaffirming that penalty and interest cannot be imposed where the charging provision only borrows provisions relating to levy and collection of duty.In view of the above legal position and judicial precedents, the Noticee submits that interest cannot be demanded on the alleged differential IGST, and therefore the proposed demand of interest is legally unsustainable and liable to be set aside.

<u>K. IMPORTED GOODS ARE NOT LIABLE FOR CONFISCATION UNDER SECTION 111(m) OF THE CUSTOMS ACT, 1962</u>

66) At the outset, it is submitted that there has been no mis-declaration of the description of the goods. The importer is only required to correctly describe the goods and disclose the primary facts. In the present case, the true nature and description of the goods were clearly declared in the import documents and were also made available to the Department at the time of assessment.

67) The Noticee submits that confiscation provisions under Sections 111 of the Customs Act, 1962 can be pressed into service only in cases where the assessee has acted with a mala fide intention, and it is proved beyond doubt that there was mens rea on part of the assessee. Support for the above proposition is found in the following: Allseas Marine Contractors S.A. Vs. CC – 2011 (272) ELT 619 (Tri.-Del.); Sutures India Vs. CC – 2009 (245) ELT 596 (Tri.-Bang), affirmed by Hon'ble Supreme Court in 2010 (255) ELT A85 (SC).

68) Reliance is placed on Kirti Sales Corpn. vs. CC – 2008 (232) ELT 151 (Tri.-Del.), wherein the Tribunal held that misdeclaration under Section 111(m) of the Customs Act must be intentional. A mere wrong declaration made bona fide, particularly when based on documents provided by the foreign supplier, cannot be treated as misdeclaration so as to attract confiscation under Section 111(m).

69) In Ace Kargoways Vs. CC – 2003(158) ELT 505 at para 9, it was held by the Tribunal that claiming benefit of notification by itself is not an offence calling for confiscation of the goods and imposing fine and penalty and that the assessee-importer had no intent to circumvent the law.

70) Furthermore, in the case of CC Vs. Maruti Udyog – 2002 (141) ELT 392, the tribunal had observed that where the assessee-importer had given all the details of the goods, he cannot be held guilty of mis-declaration and consequently, the tribunal set aside the confiscation and penalty imposed on the assessee.

71) Similarly, in the case of J K Industries Vs. CC – 1996 (88) ELT 41, the Tribunal held that the claim for exemption is not a declaration for the purposes of Section 111(m) of the Customs Act, 1962 and hence the tribunal invalidated the confiscation of goods and imposition of penalty. Reliance is also placed on the cases, namely, Hindustan Lever Vs. CC – 1996 (83) ELT 520 and Metro Tyres Vs. CCE – 1994 (74) ELT 964.

72) The Hon’ble Bombay High Court in CC Vs. Gaurav Enterprises – 2006 (193) ELT 532 (Bom.) went a step ahead and clearly held that declaration with regard to untenable claim for exemption of duty is not a mis-declaration and that as long as there is no wilful suppression/mis-declaration by the assessee, it can’t be said that it is a case of mis-declaration.

73) It is therefore submitted that from the discussion of various case-laws cited above, that mere claim to a particular exemption does not amount to mis-declaration so long as the description given in the Bill of entry is correct. In the instant case, the Noticee had given the correct description along with various supporting documents like commercial invoice, packing list, etc. No attempt has been made to mis-declare the goods and evade customs duty. Hence, the imported goods are not liable for confiscation under Section 111(m).

74) It is submitted that Section 111 of the Customs Act, 1962 permits confiscation only of “imported goods.” Under Section 2(25), imported

goods exclude those cleared for home consumption. Reliance is placed on Bussa Overseas & Properties vs. C.L. Mahar – 2004 (163) ELT 304 (Bom.), wherein the Hon'ble Bombay High Court held that once goods are cleared for home consumption, they lose the character of imported goods and therefore cannot be confiscated under Section 111, unless the order of clearance is first revised or set aside.

L. PENALTY IS NOT IMPOSABLE IN THE PRESENT CASE UNDER SECTION 114A OF THE CUSTOMS ACT, 1962

75) The Noticee submits that the customs department was always aware of the classification declared and exemption availed by the Noticee. Consequently, at most, the present dispute can be one of legal interpretation of the Customs Tariff.

76) However, penalty under section 114A can be imposed in cases when the duty has not been paid or short-paid/part-paid by the reason of collusion or any wilful mis-statement or suppression of facts.

77) The Noticee submits that, the duty demand is not sustainable in the present case and that there has been no suppression or mis-statement of facts by the Noticee. The only allegation is of mis-classification and wrong availment of exemption for the imported products, which is a matter of bona fide belief.

78) The Noticee submits that penalty under Section 114A of the Customs Act, 1962 is attracted only where duty has not been levied or paid due to collusion, wilful mis-statement, or suppression of facts with intent to evade duty. In the present case, the demand itself is within the normal limitation period, and there is no allegation of wilful suppression or mis-statement. The SCN has invoked Section 28(4) only for the purpose of imposing penalty, which is unsustainable, particularly when the dispute merely relates to availment of an allegedly incorrect exemption.

79) The Hon'ble Supreme Court in Anand Nishikawa Vs. CCE – (2005) 7 SCC 749 has held that mere failure to declare, without any positive act from the side of the assessee, would not amount to wilful suppression of facts.

80) Reliance is placed on Pushpam Pharmaceuticals Co. vs. CCE – 1995 (78) ELT 401 (SC), wherein the Hon'ble Supreme Court held that "suppression of facts" must be deliberate and with intent to evade duty. Mere omission or failure to disclose information does not amount to suppression, particularly where the relevant facts were already known to the Department.

81) The Hon'ble Supreme Court in the case of Aban Lloyd Offshore Vs. CC – 2006 (200) ELT 370 (SC) has held that the word 'wilful' implies that there has to be an intention to evade duty on part of the assessee.

82) Based upon the above referred judgments, it can be said that to invoke penalty provisions under Section 114A of the Act, the intention or deliberate attempt, on the part of importer, to evade duty has to be proved beyond reasonable doubt to justify invocation of Section 114A of the Act. In the present case, the Noticee correctly declared the goods in the Bills of Entry based on the import documents, and there was no wilful mis-statement or suppression of facts. Accordingly, penalty under Section 114A is not sustainable. Reliance is placed on Tamil Nadu Housing Board vs. CCE – 1994 (74) ELT 9 (SC), CCE vs. Chemphar Drugs & Liniments – 1989 (40) ELT 276 (SC), and Hindustan Steel Ltd. vs. State of Orissa – AIR 1970 SC 253.

83) The Noticee relies on the following decisions wherein it was held that penal action is not permissible in absence of mens rea - CC Vs. Kamal Kapoor – 2007 (216) ELT 21 (P & H), CC Vs. Surbhit Impex Pvt. Ltd. – 2012 (286) ELT 500 (Bom.), and Ghanshyam Metal Udyog Vs. CC – 2008 (229) ELT 631 (Tri. -Ahmd.).

84) As has been demonstrated by the Noticee in their submissions above, since no wilful mis-statement or suppression of facts is established, the extended period of limitation is not invocable. Consequently, the penalty proposed under Section 114A of the Customs Act, 1962 is unsustainable and liable to be dropped.

85) In view of the above submissions, the Noticee Company respectfully prays that the present proceedings initiated against it be dropped in entirety. The Company further requests that no adverse action be taken without affording it an opportunity of personal hearing.

32. Record of Personal Hearing

A personal hearing in the matter was granted on 02.03.2026, which was attended by Shri Supriya Sett, Authorised Representative of the noticee. During the hearing, he submitted that the Hyundai Porter EV Truck was imported in July 2022 for R&D purposes by Tata Motors' Government-recognized Engineering & Research Centre (ERC) and that the import qualifies for exemption under Notification No. 51/96-Cus. He argued that the goods were correctly declared and examined by customs officers, and required certificate from the Head of Institution was duly furnished and that the vehicle qualifies as "equipment" for research activities such as benchmarking, testing, design engineering and development of new technologies. He also referred to DSIR guidelines to support the claim. He also pressed upon judicial pronouncements stated in their reply to SCN to contend that once the prescribed certificate is produced, the Department cannot go beyond the same if the conditions of the notification are fulfilled.

On limitation, he contended that all details were correctly declared in the Bill of Entry and examined by Customs, and therefore no suppression or misstatement exists to justify invocation of the extended period. He also argued that Customs authorities are not empowered to demand IGST in the manner proposed in the notice. He reiterated the written submissions and requested that the proceedings be dropped in entirety.

33. Discussion and Findings

I have gone through the facts of the case, material evidence on record, the Show Cause Notice dated 05.09.2025, oral & written submissions of the noticee. I find that reasonable opportunity of making representation against the Show Cause Notice has been given to the noticee, by way of personal hearing and written submission. I now proceed and observe that in the present case, the following issues are required to be determined:

i. Whether the benefit of Serial No. 2 of Notification No. 51/1996-Customs dated 23.07.1996, as amended, availed by the Noticee at the time of filing Bill of Entry No. 9780047 dated 29.07.2022, is admissible to the imported goods or is liable to be denied.

ii. Whether the extended period of limitation under Section 28(4) of the Customs Act, 1962 is invocable, and consequentially, whether the differential duty proposed in the Show Cause Notice, is liable to be

demanded and recovered from the Noticee, along with applicable interest under Section 28AA of the said Act.

iii. Whether the impugned goods are to be held liable for confiscation under Section 111(m) & 111(o) of the Customs Act, 1962.

iv. Whether the noticee is liable for penalty under Section 112(a) and/or 114A of the Customs Act, 1962.

34. Whether the benefit of Serial No. 2 of Notification No. 51/1996-Customs dated 23.07.1996, as amended, availed by the Noticee at the time of filing Bill of Entry No. 9780047 dated 29.07.2022, is admissible to the imported goods or is liable to be denied.

34.1 The Show Cause Notice alleges that the Noticee imported a "HYUNDAI PORTER3 EV (USED TRUCK & R&D PURPOSE) CHASSIS NO.KMF-ZCZ7NFMU021446" under Bill of Entry No. 9780047 dated 29.07.2022 and availed the benefit of Serial No. 2 of Notification No. 51/1996-Customs dated 23.07.1996. The said notification provides concessional duty to specified goods such as scientific and technical instruments, apparatus, equipment, accessories, parts and prototypes imported by eligible research institutions subject to prescribed conditions. It is alleged in the Show Cause Notice that the goods imported do not fall within the description specified in the said notification such as scientific or technical instruments, apparatus or equipment. Therefore, the benefit of Notification No. 51/1996-Cus. has been wrongly availed by the Noticee and the exemption is liable to be denied.

34.2 The foremost contention of the noticee is that the present proceedings seeking to reopen the assessment of the imported goods are legally untenable. The subject goods were duly assessed by the proper officer under Sections 17 and 47 of the Customs Act, 1962, the applicable duty was paid, and the goods were cleared for home consumption after issuance of the Out-of-Charge order. Relying on various judicial precedents, the noticee submits that if the Department disagreed with the classification accepted at the time of assessment, the appropriate course would have been to challenge the assessed Bill of Entry by way of appeal.

34.3 I find that the contention of the noticee that the assessment of the Bill of Entry cannot be reopened after clearance of the goods is not tenable. The very purpose of Section 28 of the Customs Act, 1962 is to recover duties which have not been levied or have been short-levied for any reason. In the present case, the issue pertains to the claim of exemption under Notification No. 51/1996-Cus, where it was subsequently alleged that the imported goods are essentially a commercial transport vehicle and not scientific instruments, apparatus or equipment envisaged under the said notification. Therefore, the earlier acceptance of the declaration and clearance of the goods at the time of assessment does not bar initiation of proceedings for recovery of duty short-paid where it is subsequently found that the exemption benefit was wrongly claimed.

34.4 Further, the judicial pronouncements relied upon by the noticee do not fall within the factual matrix of the present case. The cited decisions broadly relate to issues such as maintainability of challenge to adjudication order when the same has not been appealed against, maintainability of refund claims without challenging assessments, finality of assessed FOB/PMV in export matters. While the cited case laws emphasize that assessment/out of charge

orders may have quasi-judicial characteristics, they do not take away the express statutory power to issue SCN for short levy of duty after clearance under Section 28 of the Customs Act, 1962.

34.5 Having settled the aforesaid issue, I find that the central point of dispute relates to the applicability of the notification, wherein the Noticee seeks to apply the benefit to all equipment claimed to be used for R&D activities, while the Show Cause Notice proposes to restrict the benefit only to scientific and technical equipment. The Noticee contends that the imported vehicle is used for teardown benchmarking and research activities such as design study, testing, safety analysis and performance evaluation, which are essential for product development in the automobile industry. It is further argued that vehicles used for such R&D purposes qualify as "equipment" under Notification No. 51/96-Cus., in view of the DSIR guidelines and the broad interpretation adopted in various judicial decisions.

34.6 In this regard, I find that the DSIR guidelines recognize activities such as development of new technologies, design and engineering, product or process improvements, and development of new testing or analytical methods as R&D, while excluding market research, methods study, management research, and routine testing for operations, quality control, or maintenance. The activity in the instant case, i.e. teardown benchmarking refers to studying imported vehicles by dismantling them and analyzing their components, build quality, and performance characteristics. This is typically done for benchmarking or comparative evaluation of manufacturer's products with that of the competitor, primarily aimed at enhancing market competitiveness rather than undertaking any novel innovative scientific research. Therefore, I find that the imported goods, i.e. HYUNDAI PORTER3 EV (USED TRUCK & R&D PURPOSE) CHASSIS NO.KMF-ZCZ7NFMU021446, do not fall within the legislative intent of the notification, which appears to be confined to equipment that is scientific and technical in nature, rather than finished commercial vehicles.

34.7 I have considered the case laws cited by the Noticee in support of their contention that the term "equipment" should be interpreted broadly, namely Jackson Generators Pvt. Ltd. V CCE Pondicherry, 2014 (311) E.L.T. 815 (Tri. - Chennai), Tractors and Farm Equipments Ltd. V. CCE., Bangalore 2011 (269) E.L.T. 534 (Tri. - Bang.), Auto Aircon (India) Ltd. vs. Commissioner of Central Excise, Pune-III [2016 (336) E.L.T. 558 (Tri. - Mumbai)], Spectrum Infotech P. Ltd. v. CESTAT Bangalore-I [2016 (343) E.L.T. 961 (Tri-Bang), CC. Vs. Jai Research Foundation – 2007 (209) ELT 197 (Tri – Mumbai), Devi Ahilya Vishwavidyalaya Vs. CC – 2002 (146) ELT 407 [Tri – Chennai]. I find that the cited case laws do not squarely cover the present case where not only is the character of the goods as scientific equipment is in question, but the alleged activity for which the exemption has been claimed is also found to be falling outside the scope of research and development. Such aspect did not arise for similar consideration in the decisions relied upon.

34.8 The noticee further contends that denial of exemption under Notification No. 51/1996-Cus dated 23.07.1996 is unsustainable. It is submitted that all prescribed conditions in the said notification—DSIR registration, production of the requisite certificate from the Head of the institution, and the undertaking regarding non-transfer for five years—were duly complied with at the time of import, as also acknowledged in the SCN. Accordingly, it is argued that, having

fulfilled all explicit conditions of the notification, the exemption cannot be denied.

34.9 In this regard, I find that a plain reading of Notification No. 51/1996-Cus dated 23.07.1996 shows that the exemption applies to goods "*specified .....*, *when imported into India, by importers specified ……., subject to the conditions specified in the corresponding entry.....*". The structure of the notification thus clearly establishes that the description of the goods along with the category of importer constitute the primary eligibility criteria, which are thereafter supplemented by the prescribed conditions. In other words, compliance with the conditions is necessary but not sufficient by itself to claim the exemption. Consequently, where the goods themselves are found not to fall within the legislative intent of the notification, as held in the foregoing paras, the compliance of conditions becomes inconsequential for the purpose of extending the benefit of the notification.

34.10 Accordingly, I hold that the benefit of Serial No. 2 of Notification No. 51/1996-Customs dated 23.07.1996 is not admissible to the imported goods and the exemption claimed by the Noticee is liable to be denied.

35. Whether the extended period of limitation under Section 28(4) of the Customs Act, 1962 is invocable, and consequentially, whether the differential duty proposed in the Show Cause Notice, is liable to be demanded and recovered from the Noticee, along with applicable interest under Section 28AA of the said Act.

35.1 The Show Cause Notice alleges that the Noticee wrongly availed the benefit of Notification No. 51/1996-Cus. despite the imported goods not being eligible for such exemption. By claiming the ineligible exemption, the Noticee short paid Customs duty amounting to ₹17,25,634/-. The Show Cause Notice further alleges that the Noticee declared the goods as being eligible for exemption under the said notification despite knowing that the goods were commercial vehicle. Accordingly, it is alleged that the Noticee misdeclared the eligibility of the goods with an intent to evade payment of duty and therefore the extended period under Section 28(4) of the Customs Act, 1962 is invocable.

35.2 The Noticee submits that all relevant details including description of the goods, classification and claim of exemption were clearly declared at the time of import. It is contended that there was complete transparency in the declarations made before the Customs authorities and that the dispute, if any, arises only due to a difference in interpretation regarding the applicability of the exemption notification. The Noticee submits that there was no suppression of facts, fraud, collusion or wilful misstatement on their part. Accordingly, the noticee argues that the ingredients required for invoking the extended period under Section 28(4) are absent. The noticee further refers to SCN No. 142/2025-26/COMMR./NS-V/CAC/JNCH dated 14.05.2025 issued pursuant to investigation by DRI, Mangaluru Regional Unit in relation to impugned Notification No. 51/1996-Customs, dated 23.07.1996, wherein only the normal period of limitation is applied. The noticee therefore contends that the demand is time-barred.

35.3 I find that the contention of the Noticee that all particulars were transparently declared in the Bill of Entry and that the dispute is merely

interpretational is not acceptable in the facts of the present case. It is observed that the noticee described the goods as "HYUNDAI PORTER3 EV (USED TRUCK & R&D PURPOSE)" in the Bill of Entry, and claimed exemption under Notification No. 51/1996-Cus. dated 23.07.1996 by furnishing a certificate declaring that the goods were intended for use in Research and Development (R&D) activities. However, as discussed hereinabove, the facts on record indicate that the goods were imported only for comparative testing/benchmarking purposes and not R&D activities as declared.

35.4 The act of declaring "R&D purpose" at the time of import and furnishing of supporting certificate, when the importer, being an established industrial entity engaged in engineering and automotive activities, was aware of the actual intended use of the goods, indicates a deliberate declaration made to obtain the benefit of exemption. The act of invoking the notification conditions and furnishing the certificate for goods which are outside the scope of the notification amounts to a positive act of misdeclaration regarding the eligibility of the goods for exemption. Such declaration had the effect of presenting the goods as eligible for the exemption benefit and resulted in short payment of duty at the time of import. Therefore, it cannot be treated as an inadvertent interpretational error. Further, the invocation of limitation under Section 28 of the Customs Act, 1962 is required to be determined independently based on the facts and evidence of the case, and the approach adopted in another show cause notice, as contended, cannot govern or restrict the statutory determination in the present proceedings.

35.5 I therefore find that the Noticee actively claimed and supported the exemption through documents and declarations required under the notification despite the goods being ineligible. This amounts to wilful misstatement of the correct eligibility position with intent to avail inadmissible exemption. Accordingly, I hold that the extended period under Section 28(4) of the Customs Act, 1962 is rightly invocable in the present case.

35.6 The noticee has further contended that the demand of IGST is unsustainable on the ground of revenue neutrality, as the Company is engaged in the manufacture of finished goods liable to output GST and would be eligible to avail Input Tax Credit (ITC) of any IGST paid on the imported goods. Further, the noticee submits that IGST is a levy under the IGST Act, 2017, and recovery proceedings for such tax can be initiated only by the proper officer under the GST law in terms of Sections 73 and 74 of the CGST Act. The Section 3(7) of the Customs Tariff Act, 1975 merely facilitates the collection of IGST at the time of import and does not confer authority upon Customs officers to demand IGST under Section 28 of the Customs Act, 1962. The noticee takes support and relies upon the decisions in Ortho Clinical Diagnostics India Pvt. Ltd. vs. Commissioner of Customs (Import), Mumbai [2022 (9) TMI 1109 – CESTAT Mumbai] and Interglobe Aviation Ltd. vs. Commissioner of Customs [2021 (1) TMI 726 – CESTAT New Delhi].

35.7 In this regard, I find that the principle of revenue neutrality cannot be invoked to negate the liability to pay duty or tax which has otherwise become payable under the law. The liability to pay IGST at the time of import arises under Section 3(7) of the Customs Tariff Act, 1975, and such levy is independent of the availability of credit under the GST regime. The eligibility to avail ITC is a subsequent and conditional benefit governed by the provisions of the CGST Act, 2017 and the IGST Act, 2017, and cannot be a ground to deny or extinguish the

duty liability determined under the Customs law. Therefore, the fact that the Noticee may subsequently become eligible to avail ITC does not render the demand itself unsustainable. Acceptance of such an argument would defeat the scheme of assessment under the Customs Act, 1962, wherein duty is required to be correctly assessed and paid at the time of import.

35.8 I further find that IGST on imported goods is levied under Section 3(7) of the Customs Tariff Act, 1975, and Section 3(12) of the said Act provides that the provisions of the Customs Act, 1962 shall apply to the duty or tax or cess, chargeable under the said Section 3 in the same manner as they apply to duties of customs. Consequently, the provisions of the Customs Act relating to assessment and recovery are applicable to IGST levied on imports. Therefore, where IGST has not been levied or has been short-levied at the time of import, the same is recoverable by the Customs authorities under Section 28 of the Customs Act, 1962. I find that the case laws cited by the noticee examine the nature of IGST as a levy under the GST framework, including its collection at the time of import under the Customs Tariff Act, 1975. However, they do not advance the contention that Customs authorities lack jurisdiction to demand IGST.

35.9 The noticee has also contended that no interest under Section 28AA of the Customs Act, 1962 is payable as the demand of duty itself is unsustainable. The noticee further submits that IGST is levied under Section 3(7) of the Customs Tariff Act, 1975, and Section 3(12) of the CTA only borrows certain provisions of the Customs Act relating to levy and collection, but does not borrow the substantive provisions relating to interest and penalty, and therefore interest on differential IGST cannot be demanded. In support, reliance is placed on Mahindra and Mahindra v. Union of India [2022 (10) TMI 212 – Bombay High Court] affirmed in [2023 (386) E.L.T. 11 (S.C.)], India Carbon vs. State of Assam (1997) 6 SCC 479, J.K. Synthetics vs. CTO (1994) 4 SCC 276, V.V.S. Sugars vs. Govt. of A.P. (1999) 4 SCC 192, Pioneer Silk Mills vs. UOI – 1995 (80) E.L.T. 507 (Delhi) affirmed in 2002 (145) E.L.T. A74 (S.C.), Bajaj Health & Nutrition vs. CC – 2004 (166) E.L.T. 189, Tonira Pharma Ltd. vs. CC – 2009 (237) E.L.T. 65 (Tri.), and Siddeshwar Textile Mills vs. Commissioner – 2009 (248) E.L.T. 290 (Tri.), to contend that interest or penalty cannot be imposed where the statute levying the duty does not expressly provide for such recovery.

35.10 With regard to applicability of interest, I find that the judgments relied upon by the Noticee were rendered in the context of statutes where the charging provisions themselves did not incorporate corresponding provisions for recovery of interest or penalty. In the present case, however, the statutory scheme under Section 3(12) of the Customs Tariff Act expressly provides that the provisions of the Customs Act, 1962 shall apply to the duty or tax or cess, chargeable under Section 3 in the same manner as they apply to duties of customs. Further, the specific decision in Mahindra and Mahindra v. Union of India dealt with CVD/SAD, which are different in nature from IGST, which is collected as duty under the Customs Act machinery as per Section 5 of IGST Act, 2017 read with Section 3(7) of Customs Tariff Act, 1975. Therefore, once the differential duty/IGST is demanded under Section 28, interest under Section 28AA automatically follows as a statutory consequence.

35.11 In view of the aforesaid discussion, I hold that the extended period under Section 28(4) of the Customs Act, 1962 is rightly invocable in the present case and the differential Customs duty amounting to ₹17,25,634/- is liable to be

demanded and recovered from the Noticee along with applicable interest under Section 28AA of the Customs Act, 1962.

36. Whether the impugned goods are to be held liable for confiscation under Section 111(m) & 111(o) of the Customs Act, 1962.

36.1 The Show Cause Notice proposes confiscation of the imported goods under Sections 111(m) and 111(o) of the Customs Act, 1962 on the ground that the Noticee misdeclared the eligibility of the goods for exemption under Notification No. 51/1996-Customs dated 23.07.1996, resulting in short payment of duty.

36.2 The noticee contends that there has been no mis-declaration of the goods, as the description and all primary facts were correctly disclosed in the import documents and supporting records. It is submitted that confiscation under Section 111(m) of the Customs Act, 1962 can arise only where there is intentional mis-declaration or mala fide conduct, which is absent in the present case. Relying on Allseas Marine Contractors S.A. vs. CC – 2011 (272) ELT 619 (Tri.-Del.), Sutures India vs. CC – 2009 (245) ELT 596 (Tri.-Bang), affirmed in 2010 (255) ELT A85 (SC), Kirti Sales Corpn. vs. CC – 2008 (232) ELT 151 (Tri.-Del.), Ace Kargoways vs. CC – 2003 (158) ELT 505, CC vs. Maruti Udyog – 2002 (141) ELT 392, J.K. Industries vs. CC – 1996 (88) ELT 41, Hindustan Lever vs. CC – 1996 (83) ELT 520, Metro Tyres vs. CCE – 1994 (74) ELT 964, and CC vs. Gaurav Enterprises – 2006 (193) ELT 532 (Bom.), the noticee argues that a mere claim of exemption does not amount to misdeclaration when the description of goods is correctly declared. It is further submitted that once goods are cleared for home consumption, they cease to be "imported goods" under Section 2(25) and therefore cannot be confiscated under Section 111, as held in Bussa Overseas & Properties vs. C.L. Mahar – 2004 (163) ELT 304 (Bom.). Accordingly, the noticee submits that the goods are not liable to confiscation.

36.3 I have carefully considered the judicial decisions relied upon by the Noticee. The said decisions generally deal with situations where an exemption was claimed on the basis of correctly declared facts and the dispute was confined to interpretation of the notification. In the present case, however, the exemption was claimed on the strength of a certificate declaring that the goods were intended for use in Research and Development (R&D) activities. The present case therefore involves a positive declaration regarding the intended use of the goods made for the purpose of availing the exemption, which directly affects duty liability. Accordingly, the facts of the present case are distinguishable from the judgments relied upon by the Noticee.

36.4 I find that the Noticee incorrectly declared the goods as eligible for exemption under Notification No. 51/1996-Cus. dated 23.07.1996, despite them being outside the scope of the said notification. Such declaration regarding eligibility of exemption resulted in short levy of duty. The incorrect claim of exemption is further accompanied by furnishing a certificate declaring that the goods were intended for use in Research and Development (R&D) activities, whereas the facts on record indicate otherwise. Such a positive act of wrongful declaration, coupled with the benefit accruing to the importer in the form of reduced duty liability, is indicative of intent. Therefore, the material particulars were mis-declared in the instant case to avail the benefit of exemption. Accordingly, the goods become liable for confiscation under Section 111(m) of

the Customs Act, 1962, as they do not correspond with the Bill of Entry, in respect of material particulars impacting duty liability.

36.5 In respect of confiscation under Section 111(o) of the Customs Act, 1962, I find that this provision is attracted only where goods exempted subject to a condition are imported and such condition is not complied with. In the present case, although the importer has complied with the procedural conditions prescribed in the Notification No. 51/1996-Cus. dated 23.07.1996, namely the DSIR registration and certificate from the Head of the institution; the impugned goods themselves do not satisfy the eligibility requirement of the notification, as they are not scientific and technical equipment pertaining to research and development activities. Consequently, the exemption claimed is not admissible and the goods are liable to duty. Therefore, the issue relates to eligibility of goods for exemption rather than breach of any condition pursuant to clearance of exempted goods. Accordingly, the proposal in the Show Cause Notice to confiscate the goods under Section 111(o) is not sustainable, and therefore, the same is not upheld.

36.6 Insofar as the noticee's contention regarding the physical non-availability of the goods is concerned, I place reliance on the judgment of the Hon'ble Madras High Court in M/s Visteon Automotive Systems India Limited [2018 (9) G.S.T.L. 142 (Mad.)], as reaffirmed by the Hon'ble Gujarat High Court in M/s Synergy Fertichem Pvt. Ltd. v. Union of India [2020 (33) G.S.T.L. 513 (Guj.)], wherein the Hon'ble Court observed as under:

> "*The penalty directed against the Importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the Improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorized by this Act brings out the point clearly. The power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act.*"

36.7 In view of the discussion above, I hold that the impugned goods are liable to confiscation under Section 111(m) of the Customs Act, 1962, and the case merits imposition of redemption fine under Section 125(1) of the Customs Act, 1962, notwithstanding the fact that the goods are not physically available.

37. Whether the noticee is liable for penalty under Section 112(a) and/or 114A of the Customs Act, 1962.

37.1 The Show Cause Notice proposes imposition of penalty on the ground that the Noticee wrongly availed exemption and thereby short paid Customs duty. According to the SCN, such availment of exemption led to non-levy/short-levy of duty, attracting the provisions of Section 28(4) of the Customs Act, 1962. Since the duty is alleged to have been short-paid by reason of wilful misstatement or suppression of facts with intent to evade payment of duty, the noticee is stated to be liable for penalty under the provisions of the Customs Act, 1962. Accordingly, the SCN proposes imposition of penalty on the noticee for the alleged wrongful availment of exemption and consequent short payment of duty.

37.2 The noticee contends that penalty under Section 114A of the Customs Act, 1962 is not imposable in the present case as the essential ingredients of collusion, wilful misstatement, or suppression of facts with intent to evade duty are absent. It is submitted that the exemption claimed were duly disclosed in the Bill of Entry and supporting import documents, and the dispute, if any, is merely one of interpretation regarding eligibility of exemption, which cannot attract penal provisions. The noticee further submits that the demand itself is unsustainable and no intention to evade duty is demonstrated. In support, the noticee places reliance on Anand Nishikawa Co. Ltd. vs. CCE – (2005) 7 SCC 749, Pushpam Pharmaceuticals Co. vs. CCE – 1995 (78) ELT 401 (SC), Aban Lloyd Offshore Ltd. vs. CC – 2006 (200) ELT 370 (SC), Tamil Nadu Housing Board vs. CCE – 1994 (74) ELT 9 (SC), CCE vs. Chemphar Drugs & Liniments – 1989 (40) ELT 276 (SC), Hindustan Steel Ltd. vs. State of Orissa – AIR 1970 SC 253, CC vs. Kamal Kapoor – 2007 (216) ELT 21 (P&H), CC vs. Surbhit Impex Pvt. Ltd. – 2012 (286) ELT 500 (Bom.), and Ghanshyam Metal Udyog vs. CC – 2008 (229) ELT 631 (Tri.-Ahmd.), to contend that in the absence of deliberate suppression or mens rea, penalty under Section 114A cannot be sustained.

37.3 I find that the Noticee claimed exemption under Notification No. 51/1996-Cus. dated 23.07.1996 for goods which have been held to be falling outside the scope of the said notification. The said benefit was claimed on the strength of a certificate declaring that the goods were to be used for Research and Development (R&D) purposes. Thus, the issue involves an affirmative and incorrect declaration regarding the intended use of the goods, which directly impacted the duty liability. Accordingly, as held in the foregoing paras, the differential duty has rightly been demanded under Section 28(4) of the Customs Act, 1962, on account of such wilful misstatement of material facts. Consequently, the ingredients required for invocation of Section 114A stand satisfied. Further, in view of the proviso to Section 114A, separate penalty under Section 112(a) of the Customs Act, 1962 on the importer is not warranted.

37.4 Accordingly, I hold that the Noticee is liable for penalty under Section 114A of the Customs Act, 1962.

ORDER

38. In view of the findings and observations as made above, I pass the following order:

i. I reject the benefit of Notification No. 51/1996-Cus dated 23.07.1996 availed by the Noticee for the goods imported under Bill of Entry No. 9780047 dated 29.07.2022.

ii. I confirm the differential duty amounting to **₹17,25,634/- (Rupees Seventeen Lakh Twenty Five Thousand Six Hundred Thirty Four only)**

under Section 28(8) of the Customs Act, 1962, to be recovered from M/s. Tata Motors Limited, along with applicable interest under Section 28AA of the Customs Act, 1962.

iii. I hold the goods imported under the Bill of Entry No. 9780047 dated 29.07.2022, having assessable value of ₹42,68,728.96/-, liable to confiscation under Section 111(m) of the Customs Act, 1962. However, as the goods are not physically available, I impose redemption fine of **₹4,00,000/- (Rupees Four Lakhs only)** on M/s. Tata Motors Limited, in lieu of confiscation, under Section 125(1) of the Customs Act, 1962.

iv. I impose a penalty equal to the differential duty **₹17,25,634/- (Rupees Seventeen Lakh Twenty Five Thousand Six Hundred Thirty Four only)** and applicable interest thereupon under Section 28AA, on M/s. Tata Motors Limited under Section 114A of the Customs Act, 1962.

39. This order is passed without prejudice to any other action which may be taken or purported to be taken against the noticee or any other concerned person under the Customs Act, 1962, or any other act for the time being in force in the Union of India.

26/03/2026

(Arshdeep Singh)
Joint Commissioner of Customs
Import-I, New Custom House

To,
M/s TATA MOTORS LIMITED,
Pimpri, Pune-411018

Copy to:
1. The Commissioner of Customs (Import – I), New Custom House, Mumbai.
2. The Asstt./Dy Commissioner of Customs, ACU Section, NCH, Mumbai
3. The Asstt./Dy Commissioner of Customs, Review Cell, Import-I, NCH, Mumbai.
4. The Asstt./Dy. Commissioner of Customs, Gr. VB, NCH, Mumbai.
5. EDI Section for upload in Mumbai Customs Zone – I website.
6. Office Copy.
7. Notice Board.