CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL

CHENNAI

REGIONAL BENCH, COURT NO. I

Customs Appeal No. 40185 of 2025

(Arising out of Order in Original No.109978/2024 dated 22.10.2024 passed by the Commissioner of Customs, Chennai II (Imports), Custom House, No.60, Rajaji Salai, Chennai 600 001)

M/s. Toyota Kirloskar Motor Pvt. Ltd. ..... **Appellant**
Plot No.1, Bidadi Industrial Area, Bidadi
Ramanagara District
Karnataka 562 109

Versus

The Commissioner of Customs ... **Respondent**
Import Commissionerate
Custom House, No.60, Rajaji Salai
Chennai 600 001

APPEARANCE

For the Appellant : Shri Rohan Muralidharan, Advocate
For the Respondent : Shri C. Dhanasekaran, Special Counsel

CORAM

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No.41048/2026

DATE OF HEARING : 06.04.2026
DATE OF DECISION : 23.09.2026

Per Mr. AJAYAN T.V.

Toyota Kirloskar Motor Private Limited, the appellant herein, assails Order in Original No.109978/2024 dated 22.10.2024 (the impugned order) passed by the Commissioner of Customs. By that order the Adjudicating Authority rejected the self assessment of the imported goods, being parts and accessories of motor vehicles declared under Customs Tariff Item 87089900; held them to be parts and accessories of bodies of motor vehicles falling under Customs Tariff Item 87082900 and, in the case of certain articles, under other headings; directed reassessment on that basis and denied the benefit of Notification No.46/2011 Customs dated 01.06.2011 as a consequence of the reclassification. Differential duty of Rs.23,17,45,224/- was held to have escaped payment by reason of collusion, wilful mis-statement and suppression of facts and was determined in terms of Section 28(8) of the Customs Act, 1962 (the Act) upon a notice which had invoked Section 28(4), with interest under Section 28AA. Goods valued at Rs.170,37,12,914/- were held liable to confiscation under Section 111(m) and (o), a redemption fine of Rs.17,00,00,000/- was imposed under Section 125 in lieu of confiscation, and a penalty equivalent to the duty so determined together with the interest payable thereon was imposed under Section 114A. The Adjudicating Authority refrained from a penalty under Section 112(a) by reason of the fifth proviso to Section 114A.

2. The appellant is the Indian subsidiary of Toyota Motor Corporation, Japan, and manufactures and trades in passenger and multi utility vehicles. In the course of its business the appellant regularly imports parts and accessories from its overseas group companies, among them Guard Propeller Shaft, Panel Assy Instrument Panel Finish Lwr, Frame Assy RR, Tank Assembly Fuel and Battery Door Control, etc., described collectively as the subject goods. The imports in dispute were made during the period 2017 to 2022 from Thailand, Indonesia and the Philippines through the Chennai Sea Port and the Kattupalli Port. The subject goods were declared under Customs Tariff Item 87089900 and cleared at the concessional rate of 5 per cent under Sl.No.1478 of Notification No.46/2011 Customs dated 01.06.2011, on the strength of certificates of origin issued under the ASEAN India Free Trade Agreement. The genuineness of those certificates has not been questioned by the Department at any stage.

3. The Special Intelligence and Investigation Branch, Chennai, took up a study of the parts imported by the appellant under Customs Tariff Item 87089900, drawing upon technical write ups furnished by the appellant and upon material said to be available on the appellant's website. There was a pre notice consultation, and the investigation culminated in Show Cause Notice No. S. Misc. 24/2022 Gr. 5B dated 22.12.2022. That notice proposed to reject the declared classification of 226 parts and to reclassify them principally under

Customs Tariff Item 87082900 as parts and accessories of bodies, and in some instances under other headings, relying on Rules 1 and 6 of the General Rules for the Interpretation of the First Schedule, Note 3 to Section XVII and the Explanatory Notes to the Harmonised System of Nomenclature.

4. It is necessary, for a proper appreciation of what falls for decision, to notice how the figure of 226 was arrived at. Of the 1014 articles whose technical particulars the appellant had furnished, the appellant had itself proposed a revised classification for 345, of which the Department accepted the revision in respect of 307 and declined it in respect of 38, holding the latter to be classifiable under Customs Tariff Item 87082900. Of the remaining 669 articles for which no change had been proposed, the Department accepted the declared classification for 481 and disputed it for 188. The 38 and the 188 together make up the 226 articles listed in Annexure A to the notice, and it is those articles alone whose classification is in dispute. Annexure B carried 114 articles in respect of which the appellant had itself proposed the revised classification, the Department had accepted it, and the appellant had paid the differential duty with interest for the period from 06.11.2017 to 05.11.2019, the allegation in their regard being one of short payment for the remainder of the period. Annexure C set out the bill of entry wise computation of differential duty and Annexure D carried an allegation of short payment of Rs.1,56,91,525/- in respect of 70 articles said to have continued to be cleared under the declared heading even after the revision had been proposed and accepted.

Reply and order of adjudication

5. The appellant replied defending its declared classification article by article and pointing to errors of quantification in Annexure C. Its defence, as recorded in the impugned order, was that the expression other parts and accessories of bodies in Customs Tariff Item 87082900 answers only to the articles enumerated in paragraph (B) of the Explanatory Notes to Heading 87.08, and that articles such as Guard Propeller Shaft, Frame Assy RR, Tank Assembly Fuel, Rack Assembly Roof, Battery Door Control, Check Assy FR Door, Cover Sub Assy Shifting Hole, Cover FR Bumper Hole, Grip Assy Assist, Panel Subassy Instrument Lower, Panel Assy

Instrument Panel Finish Lwr and Garnish Instrument Panel Finish Plate do not answer that description and fall within the residuary tariff item. It was further urged that Seal Hood to Radiator Support, being a soft rubber seal, is covered by Customs Tariff Item 40169390. A series of rulings of the United States Customs and Border Protection was relied upon, as were *Western India Plywood Ltd. v. Collector of Customs, 2005 (188) E.L.T. 365 (S.C.), Commissioner of Central Excise v. Wockhardt Life Sciences Ltd., 2012 (277) E.L.T. 299 (S.C.), Commissioner of Central Excise v. Carrier Aircon Ltd., 2006 (199) E.L.T. 577 (S.C.) and Shiroki Auto Components India Pvt. Ltd. v. Commissioner of Central Excise, 2020 (7) TMI 706, affirmed in Commissioner v. Shiroki Auto Components India Pvt. Ltd., 2021 (9) TMI 729 (S.C.)*.

6. Accepting a part of the criticism of the computation, the Department issued a corrigendum dated 04.07.2024 with a revised Annexure C, by which the assessable value came down from Rs.170,40,12,430/- to Rs.170,37,12,914/- and the differential duty from Rs.23,23,66,502/- to Rs.23,22,12,914/-. By written submissions dated 21.08.2024 the appellant contended that the revised annexure introduced 14 articles across 81 bills of entry which found no place in the original annexure, that duplication of line items persisted to the extent of Rs.1,37,343/- across 306 line items, that differential duty already discharged ought to be appropriated, and that limitation had to be reckoned from the date of the corrigendum. The appellant's own summary of the demand, reproduced in the impugned order, placed the demand pursuant to reclassification under Customs Tariff Item 87082900 at Rs.22,05,01,244/- and the demand pursuant to reclassification under other headings at Rs.1,15,74,327/-. Of the first sum, Rs.36,48,076/- and Rs.1,84,15,244/- were said to have already been paid, Rs.13,66,26,326/- to be barred by limitation and Rs.6,18,11,598/- to be unsustainable on merits. Of the second, the corresponding figures were Rs.56,463/-, Rs.1,09,16,566/-, Rs.4,66,277/- and Rs.1,35,021/-.

7. On the substantive question the Adjudicating Authority held that the notice had furnished the list of articles, the technical write up and the description of the articles on the appellant's own website as parts used in the manufacture of bodies, and that this had not been

rebutted save by a list of decisions said to be distinguishable. The website being the appellant's own, its contents could not, in his view, be negated. He held that the articles fall within the inclusive list in the Explanatory Notes to Heading 87.08 under parts of bodies, that the part numbers show them to be made to order for specific models of vehicles and therefore for fitment at a specific place, and that upon Rules 1 and 6 of the General Rules for the Interpretation of the First Schedule read with Note 3 to Section XVII the articles are parts and accessories of bodies. Recourse to the residuary tariff item was held to be foreclosed once a specific entry covers the goods. The cross rulings relied upon by the appellant were dismissed on the basis that they indicate headings other than 87089900 and that the extent of their alignment was not forthcoming.

8. Two further strands of that reasoning must be noticed, since much turns upon them. The Adjudicating Authority recorded that after an initial period of cooperation the appellant did not appear before the officers for investigation, a circumstance which he described as fatal to its case. He observed that the appellant and its supplier are related parties, that their websites weigh heavily against the modus operandi adopted, and that the appellant could not take shelter under innocence. As regards the 114 articles in Annexure B he held that the appellant, having itself proposed and accepted the change of classification, had not discharged the resulting short payment, and that admitted facts need not be proved.

9. On limitation the Adjudicating Authority held that the appellant had knowingly and deliberately misdeclared both the description and the classification of the goods with the explicit intention of evading duty by paying basic customs duty at 5 per cent under the ASEAN India Free Trade Agreement notification, so that the extended period under Section 28(4) was available. Upon the corrigendum he held that the objection to the introduction of fresh articles was not tenable so long as the demand upon those articles was within five years from the date of the corrigendum, and he excluded as time barred an amount of Rs.3,30,347/- relatable to certain bills of entry of 2017. He verified the duplication of Rs.1,37,343/- and allowed it. He declined, however, to appropriate any part of the duty already paid, holding in one place that it was not forthcoming from

Annexure E whether the bills of entry formed part of Annexures A, B and revised C, and in another that the voluntary payment of Rs.36,48,076/- covering 1738 line items could not be verified because the invoices and bills of entry carried other items as well, and he left the matter to be taken up separately by the Department. Of the appellant's assertion that it had paid Rs.3,84,75,436/- voluntarily he observed that the payment could not be linked to the bills of entry in dispute and that it further cemented the case of the Department. The demand, interest, confiscation under Section 111(m) and (o), redemption fine and penalty set out in the first paragraph of this order followed, the confiscation and the fine being justified placing reliance upon *Weston Components Ltd. v. Commissioner of Customs, New Delhi, 2000 (115) E.L.T. 278 (S.C.), upon Synergy Fertichem Pvt. Ltd. v. State of Gujarat and upon Visteon Automotive Systems India Ltd. v. CESTAT, Chennai, 2018 (9) G.S.T.L. 142 (Mad.)*. Aggrieved, the appellant is before us.

Submissions on behalf of the appellant

10. Shri Rohan Muralidharan, learned advocate for the appellant, urged at the threshold that the Department has not discharged the burden which lies upon it whenever it seeks to displace a declared classification. Reclassification was proposed for 226 parts, yet neither the notice nor the impugned order contains a part specific finding explaining why any given article answers the description of a part or accessory of a body. Annexure A is a bare list. The website said to establish the case was never extracted, no screenshot or printout was placed on record, and the appellant was never confronted with the material on which the charge rests. The expression body, as used in relation to motor vehicles, is a technical expression which the Dictionary of Automobile Engineering defines as the main visible upper structure of a vehicle, as opposed to the chassis and running gear, and it could not be construed by assertion. Classification, it was argued, has to be determined by the General Rules for Interpretation read with the Section and Chapter Notes and the Explanatory Notes to the Harmonised System of Nomenclature, and not by information gathered from a website. Reliance was placed on *H.P.L. Chemicals Ltd. v. Commissioner of Central Excise, 2006 (197) E.L.T. 324 (S.C.), on Commissioner of Central Excise, Lucknow v. Railway Equipment and Engg. Works,*

2015 (325) E.L.T. 184 (Tri. Del.), on the recent pronouncement of the Supreme Court in *Commissioner of Customs (Import) v. Welkin Foods, 2026 INSC 19,* and on the decisions of this Tribunal in *Hitevision Tech India Pvt. Ltd. v. Commissioner of Customs, Chennai, 2026 (1) TMI 1240,* and *Provimi Animal Nutrition India Pvt. Ltd. v. Commissioner of Customs, Chennai, 2026 (1) TMI 1173*.

11. It was next contended that where the classification proposed by the Revenue fails, the classification adopted by the importer must prevail, whatever be the view one may take of its correctness, the authority for that proposition being *Warner Hindustan Ltd. v. Collector of Central Excise, 1999 (113) E.L.T. 24 (S.C.)* where it was held that a case laid for the first time in appeal cannot be entertained, *and Sunrise Traders v. Commissioner of Customs, Mundra, 2022 (381) E.L.T. 393 (Tri. Ahmd.), affirmed in Commissioner of Customs, Mundra v. Sunrise Traders, 2022 (382) E.L.T. 23 (S.C.),* for the consequence that follows. Learned counsel laid particular stress upon *Commissioner of Customs, Chennai v. Toyota Kirloskar Motor Pvt. Ltd., 2024 (1) TMI 1170 CESTAT Chennai*, a decision of this Tribunal between the same parties and concerning the same Chapter Heading, in which the very principle was reiterated.

12. Without prejudice, and on the merits of the classification, learned counsel took us through the functions of the illustrative articles. The Guard Propeller Shaft is a metallic wire rope with brackets at either end, bolted to the chassis frame to arrest a failed propeller shaft, and propeller shafts and their transmission components are dealt with in paragraph (F) of the Explanatory Notes to Heading 87.08 and not in paragraph (B) which deals with parts of bodies. The Tank Assy Fuel is a high density polyethylene fuel tank which offers design flexibility, crash resistance, thermal insulation, corrosion resistance and low permeability. The Battery Door Control is an electrical accumulator which powers the door locking mechanism and is thus a functional aid. The Frame Assy RR is a stamped and welded structural member attached to the chassis, carrying the rear suspension and the rear axle. The Panel Assy Instrument Panel Finish Lwr sits below the instrument panel, holds control switches and enhances the interior. None of these, Ld. Counsel maintained, forms part of the visible upper structure mounted upon the chassis.

Reference was made to rulings of the United States Customs and Border Protection, being *Cross Ruling No. N317522 dated 09.03.2021* and *Cross Ruling No. NY R04672 dated 11.09.2006*. It was pointed out that of the total demand, differential duty of about Rs.22,05,01,244/- relates to the proposed reclassification under Customs Tariff Item 87082900 and about Rs.1,15,74,327/- to goods sought to be taken to other headings altogether.

13. On the denial of the exemption under Notification No.46/2011 Customs dated 01.06.2011, Ld. Counsel submitted that the appellant held valid certificates of origin whose veracity was never questioned, and that paragraph 7(c) of the Rules of Origin notified under Notification No.189/2009 Customs (N.T.) dated 31.12.2009 obliges the Customs Authority which does not accept a certificate to mark it accordingly in box 4, to return the original to the Issuing Authority within a reasonable period not exceeding two months and to notify that Authority of the grounds of denial. None of this was done. Reliance was placed on *Hyundai Motor India Limited v. Commissioner of Customs, Chennai II, 2026 (1) TMI 800*, to contend that noncompliance with the prescribed procedure is fatal to the Department’s proposal to deny the benefit to the appellant.

14. On limitation, it was urged that of the total demand, Rs.4,23,06,620/- falls within the normal period from 22.12.2020 to 22.12.2022 and Rs.18,94,38,604/- within the extended period from 26.12.2017 to 21.12.2020. Since a pre notice consultation had been resorted to, the Department could not thereafter travel to Section 28(4), the authority cited being *Asahi India Glass Ltd. v. Commissioner of Customs, 2024 (9) TMI 11-Madras High Court*. The ingredients of Section 28(4) were said to be absent, wilfulness being indispensable, for which *Aban Lloyd Chiles Offshore Ltd. v. Commissioner of Customs, 2006 (200) E.L.T. 370 (S.C.)* and *Cosmic Dye Chemical v. Collector of Central Excise, Bombay, 1995 (75) E.L.T. 721 (S.C.)* were relied upon. Since the Department's own case rests upon the appellant's website and upon technical write ups furnished by the appellant itself, there could be no suppression, the material being in the public domain and in the Department's hands, for which *Hindalco Industries Ltd. v. Commissioner of Central Excise, Allahabad, 2003 (161) E.L.T. 346 (Tri. Del.), Nizam Sugar Factory, 2006 (197) E.L.T. 465 (S.C.), ECE*

Industries Ltd. v. Commissioner, 2004 (164) E.L.T. 236 (S.C.) and *Pushpam Pharmaceuticals Company v. Collector of Central Excise, Bombay, 1995 (78) E.L.T. 401 (S.C.)* were cited. A mere claim of classification, it was argued, is not suppression, reliance being placed on *Densons Pultretaknik v. Commissioner of Central Excise, 2003 (155) E.L.T. 211 (S.C.), Midas Fertchem Impex Pvt. Ltd. v. Principal Commissioner of Customs, New Delhi, 2023 (384) E.L.T. 397 (Tri. Del.), Sirthai Superware India Ltd. v. Commissioner of Customs, Nhava Sheva III, 2020 (371) E.L.T. 324 (Tri. Mumbai)* and *Secure Meters Ltd. v. Principal Commissioner of Customs (Imports), New Delhi, 2025 (393) E.L.T. 93 (Tri. Del.)*. Ld. Counsel further urged that the dispute being one of interpretation of tariff entries and of an exemption notification, the extended period was unavailable, on the strength of *Singh Brothers v. Commissioner of Customs and Central Excise, Indore, 2009 (14) S.T.R. 552 (Tri. Del.), Steelcast Ltd. v. Commissioner of Central Excise, Bhavnagar, 2009 (14) S.T.R. 129 (Tri. Del.), P.T. Education and Training Services Ltd. v. Commissioner of Central Excise, Jaipur, 2009 (14) S.T.R. 34 (Tri. Del.)* and *K.K. Appachan v. Commissioner of Central Excise, Palakkad, 2007 (7) S.T.R. 230 (Tri. Bang.)*. As to the integrated tax component of about Rs.5,06,25,451/-, the position was said to be revenue neutral since the tax would have been available as input tax credit, for which *Suryadev Alloys and Power (P) Ltd. v. Commissioner of Customs, 2025 (8) TMI 1356, Nuevera Wellness v. Commissioner of Customs, (2024) 22 Centax 418 (Tri. Ahmd.), AMNS Ports Hazira Limited v. Commissioner of Customs, Ahmedabad, 2024 (7) TMI 1268, International Auto Ltd. v. Commissioner of Central Excise, 2005 (183) E.L.T. 239 (S.C.)* and *Imperial Fragrance and Flavours Pvt. Ltd. v. Commissioner of Customs (Port), Kolkata, 2026 (3) TMI 1161* were pressed into service.

15. A separate limb of the argument turned upon the corrigendum dated 04.07.2024. That document, it was submitted, did not merely correct arithmetic. It replaced the entire Annexure C, altered invoice numbers and serial numbers of products, changed the duty demanded and, most significantly, brought in 14 parts across 81 bills of entry which had never before been noticed. To that extent the corrigendum operates as a fresh notice, limitation must be reckoned from 04.07.2024, and a demand of about

Rs.14,53,80,455/- relatable to clearances before 04.07.2019 would then lie beyond even the five year period. *Bakers Product (India) v. Commissioner of GST and Central Excise, Coimbatore, 2025 (5) TMI 1749* and *JSW Steel Ltd. v. Commissioner of Customs, Goa, 2025 (8) TMI 267* were relied upon for that proposition.

16. Ld. Counsel also submitted about the errors of quantification which survived adjudication. Duplication of line items to the extent of Rs.1,37,343.10 was illustrated by Reinforce Sub Assy Dash Panel, which appears once in Bill of Entry No.4815992 dated 16.01.2018 but twice in the revised Annexure C. It was pointed out that although Annexure C was revised, Annexure D, which had been extracted from the superseded version, was left untouched, so that Cleaner Assy Air W/Element, shown in the old annexure against Bill of Entry No.3318138 dated 15.11.2022, appears in the revised annexure against Bill of Entry No.5827598 dated 26.11.2019. Differential duty of about Rs.3.84 crore had already been discharged, as set out in paragraph 16 of the appeal with the TR6 challan enclosed as Annexure 2, and appropriation of that amount was expressly sought.

17. Finally, it was urged that the goods are not liable to confiscation under Section 111(m), there being no misdeclaration of value or of any other particular, a claim of classification being neither a misdeclaration nor a suppression, as held in *Northern Plastic Ltd. v. Collector of Customs and Central Excise, 1998 (101) E.L.T. 549 (S.C.)*; that a redemption fine could not be imposed since the goods were never seized and are not available, for *which Weston Components Ltd. v. Commissioner of Customs, New Delhi, 2000 (115) E.L.T. 278 (S.C.)* and *Mukesh Kumar v. Commissioner of Customs, Chennai, 2026 (2) TMI 916* were cited; that penalty under Section 114A must fall with the demand, as held in *Commissioner of Central Excise v. H.M.M. Ltd., 1995 (76) E.L.T. 497 (S.C.)*, and cannot be visited upon a bona fide belief or a technical breach, for which *Hindustan Steel Ltd. v. State of Orissa, 1978 (2) E.L.T. J159 (S.C.)* and *Commissioner of Customs, Tuticorin v. Suvidh Overseas, 2025 (12) TMI 690* were relied upon; that in any event no penalty is leviable upon the interest component, as held in *Xiaomi Technology India Pvt. Ltd. v. Principal Commissioner of Customs, Chennai, 2025 (11) TMI 1120*; and that interest and penalty could

not be imposed in respect of the differential integrated tax for the relevant period, the machinery provisions having been borrowed only later, for which *Mahindra and Mahindra Ltd. v. Union of India, 2022 (10) TMI 212-Bombay High Court*, affirmed in *Union of India v. Mahindra and Mahindra Ltd., 2023-VIL-72-SC-CU*, and the decisions in *A.R. Sulphonates Pvt. Ltd. v. Union of India, 2025 (4) TMI 578-Bombay High Court* and *Flextronics Technology India Pvt. Ltd. v. Commissioner of Customs, Chennai, 2025 (3) TMI 695* were cited.

<u>Submissions on behalf of the respondent</u>

18. Shri C. Dhanasekaran, learned Special Counsel for the respondent, supported the impugned order. He submitted that the Adjudicating Authority had not proceeded by assertion but had applied Rule 1 of the General Rules for Interpretation, the Harmonised System of Nomenclature and the Explanatory Notes relating to parts and accessories falling under Section XVII, including the three conditions prescribed in the General Note under the head Parts and Accessories, all of which is recorded in paragraphs 45 to 53 of the impugned order.

19. In respect of the items covered by Annexure B and the revised Annexure C, learned Special Counsel pointed out that the Adjudicating Authority reached the classification under Customs Tariff Item 87082900 after considering the Explanatory Notes, the tariff entries, the nature of the goods imported and their functionality, and consequently ordered reassessment, confirmed the differential duty and denied the benefit of Notification No.46/2011. As regards Annexure A, which covers 226 items, about 15 representative parts and accessories were examined with reference to the technical write ups and photographs furnished by the appellant and the usage disclosed on its own website, none of which the appellant chose to rebut. On that material the declared classification was found to be incorrect.

20. It was further urged that many of the articles are designed specifically for the bodies of particular vehicle models, that the Explanatory Notes to Heading 87.08 expressly place floor boards, panels, doors, window frames, as well as interior/exterior mountings like visors and steering column brackets under parts of bodies, and that Rules 1 and 6 read with Note 3 to Section XVII

require an article suitable for use solely or principally with a particular class of vehicle to be classified according to that principal use. The Adjudicating Authority had also met the appellant's grouse about the framing of the notice, holding in paragraphs 68 and 69 that the charges, read with the annexures, convey the nature of the goods drawn from the technical write ups and are sufficiently specific. Learned Special Counsel argued that the order in original being legal and proper, the appeal was liable to be dismissed.

Discussion and findings

21. We have heard both sides at length and perused the appeal records as well as the decisions relied upon at the bar.

22. The following issues arise for our determination.

a) Whether the Department has discharged the burden of establishing that the subject goods are classifiable under Customs Tariff Item 87082900 and under the other headings proposed, and whether the impugned order is a speaking order upon that question?
b) What consequence follows for the classification declared by the appellant and for the denial of the benefit of Notification No.46/2011 Customs dated 01.06.2011, and what is the position of the 114 articles listed in Annexure B in respect of which the appellant had itself proposed the revised classification?
c) Whether the extended period of limitation under Section 28(4) of the Act was available, and what is the effect of the corrigendum dated 04.07.2024 upon the reckoning of limitation?
d) Whether the goods were liable to confiscation and whether a redemption fine could be imposed under Section 125 of the Act?
e) Whether the penalty under Section 114A was imposable?

23. Since the first issue goes to the root of the entire proceeding and its answer governs much of what follows, we take it up first and confine ourselves thereafter to such of the remaining questions as require to be answered.

24. That the burden of establishing a reclassification lies upon the Revenue is no longer open to debate. In *Hindustan Ferodo Ltd. v. Collector of Central Excise, Bombay, 1997 (89) E.L.T. 16 (S.C.)* the Supreme Court held that the onus of establishing that goods fall

within a particular tariff entry lies upon the Revenue, and that where no evidence is led, there is no good reason to remand the matter and the classification claimed by the assessee cannot be displaced. In *H.P.L. Chemicals Ltd., 2006 (197) ELT 324 (SC),* it was reiterated that classification is a matter relating to chargeability and that the burden of proof is squarely upon the Revenue, which must adduce proper evidence and discharge that burden. The same principle was applied in *Commissioner of Central Excise, Chennai IV v. Hindustan Lever Ltd., 2015 (323) E.L.T. 209 (S.C.)*, where the demand failed because the Department had led no evidence at all, and again in *Commissioner of Customs and Central Excise, Amritsar v. D.L. Steels, 2022 (381) E.L.T. 289 (S.C.)*. It is, therefore, beside the point whether the appellant answered the Department's material, for the burden does not shift by silence. It shifts only when the Revenue has first led evidence sufficient to displace the declaration.

25. Equally settled is the method by which that burden is to be discharged. Classification proceeds under Rule 1 of the General Rules for the Interpretation of the First Schedule, according to the terms of the headings and the relative Section and Chapter Notes, and recourse to the later Rules arises only if the question is not resolved at that stage. The Explanatory Notes to the Harmonised System of Nomenclature are a safe guide in resolving a dispute of tariff classification, as held in *Collector of Central Excise, Shillong v. Wood Craft Products Ltd., 1995 (77) E.L.T. 23 (S.C.),* and carry strong persuasive value, as reaffirmed in *Commissioner of Central Excise, Delhi III v. Uni Products India Ltd., 2020 (372) E.L.T. 465 (S.C.)*. In *Commissioner of Central Excise, Salem v. Madhan Agro Industries (India) Private Ltd., 2024 INSC 1002*, the Supreme Court explained that where the tariff entry is aligned with the corresponding entry in the Harmonised System, the Explanatory Notes are binding guidance. Most recently, in *Welkin Foods, 2026(1) TMI 348-Supreme Court*, the Apex Court held that the General Rules are a legal framework dictating a precise and sequential methodology and not a menu of options, that Rule 1 is the non negotiable starting point, and that the common or trade parlance test is to be applied restrictively, only where the heading and the relative Notes furnish no definition or criterion, only where the terms used are not technical or specialised, and then only upon

satisfactory evidence advanced by the party asserting the parlance meaning.

26. Heading 87.08 carries a further discipline of its own. The General Explanatory Note to Section XVII, under the head Parts and Accessories, admits an article to the headings of that Section only if it satisfies three cumulative conditions, namely that it is not excluded by Note 2 to the Section, that it is suitable for use solely or principally with the articles of Chapters 86 to 88, and that it is not more specifically included elsewhere in the Nomenclature. Beneath the chapter heading 87.08 itself, and before the enumeration of what the heading includes, the Explanatory Notes stipulate that the heading covers parts and accessories of the motor vehicles of headings 87.01 to 87.05 provided they fulfil both of two conditions, that they are identifiable as suitable for use solely or principally with such vehicles and that they are not excluded by the provisions of the Notes to Section XVII. The articles which the heading includes are then set out in lettered paragraphs, of which paragraph (B) deals with parts of bodies and associated accessories and lists floor boards, sides, front or rear panels, luggage compartments, doors and parts thereof, bonnets, framed windows, window frames, running boards, wings, mudguards, dashboards, radiator cowlings, number plate brackets, bumpers and over riders, steering column brackets, exterior luggage racks, visors, safety seat belts and floor mats, while paragraph (D) deals with gear boxes, paragraph (E) with drive axles and differentials and paragraph (F) with other transmission parts and components including propeller shafts and half shafts. This Tribunal had occasion to apply precisely this discipline in *Toyota Kirloskar Auto Parts Private Limited v. Commissioner of Customs*, Final Order dated 27.07.2026 in Customs Appeal No.40683 of 2023 and connected appeals, reported in *2026 (7) TMI 1863 CESTAT Chennai*, where the classification was resolved at Rule 1 itself by reading the heading with the Section Notes and the General Explanatory Note.

27. Tested on the anvil of these requirements, the impugned order does not survive scrutiny. Reclassification was proposed for 226 articles. The Adjudicating Authority examined about 15 of them and applied the conclusion so reached across the whole of Annexure A. There is not a single finding which identifies an article, sets out its objective

characteristics as imported, matches those characteristics against the terms of Customs Tariff Item 87082900 read with the Section and Chapter Notes, and explains why it is a part or accessory of a body rather than a part or accessory of a motor vehicle simpliciter. The three cumulative conditions of the General Explanatory Note are reproduced but never applied. Rules 1 and 6 are invoked but the exercise those Rules require is not performed. An annexure which lists parts against a proposed tariff item, juxtaposed with a technical write up and a bare notation that the usage was read through the Toyota website, with no rationale offered for the conclusion drawn, is a statement of the charge. It is not proof of the charge, and it is certainly not a substitute for adjudication.

28. The evidentiary foundation is weaker still. The whole of the reasoning rests upon a technical write up and upon what is said to be available on the appellant's website. Neither the notice nor the impugned order extracts a single line from that website. No screenshot, printout or certified copy was placed on record or listed among the relied upon documents. It has been settled since *Dhakeshwari Cotton Mills Ltd. v. Commissioner of Income Tax, West Bengal, A.I.R. 1955 S.C. 65*, that an authority discharging a quasi judicial function is bound to disclose to the person proceeded against the material gathered behind his back and to give him an opportunity of meeting it, a principle which this Tribunal has applied in *Shivam Masale Pvt. Ltd. v. Commissioner of Central Excise, Kanpur, 2019-TIOL-2002-CESTAT-ALL*. A demand of Rs.23.17 crore cannot be founded upon a document which the authority has not reproduced, not exhibited and not put to the noticee. The observation that the material remains unrebutted only compounds the difficulty, for it treats the absence of an answer as proof of the charge and thereby inverts the burden which the law places upon the Revenue.

29. Two observations in the impugned order call for more than a passing comment. The first is that the appellant, after an initial period of cooperation, did not appear before the officers for investigation, which the Adjudicating Authority described as fatal to its case. No provision of the Act equates non appearance at the stage of investigation with an admission of the charge, and an adjudicator who draws such an inference relieves the Revenue of

the very burden it is required to discharge. The second is the observation that the appellant and its supplier are related parties, that their websites weigh heavily against the modus operandi adopted, and that the appellant cannot take shelter under innocence. A quasi judicial authority is not at liberty to begin with a presumption of guilt and then treat the absence of exculpation as proof. We are constrained to record that reasoning of this kind is not merely erroneous. It is contrary to the most elementary requirement of a quasi judicial order, namely that the person proceeded against must know from the record the material upon which he is to be condemned, and must be condemned upon evidence and not upon suspicion.

30. We are also of the view that the matter cannot be disposed of by merely treating end use as decisive. The expression body, in relation to a motor vehicle, denotes the main visible structure mounted upon the chassis or frame, as distinguished from the chassis and the running gear. Whether an article bolted to the chassis frame to retain a propeller shaft, a high density polyethylene fuel reservoir, an accumulator powering a door locking circuit, a stamped rear frame carrying the suspension, or a Panel Assy Instrument Panel Finish Lwr fitted below the instrument panel, answers that description, was a question which called for the construction of the heading and, where necessary, for evidence. The impugned order does not attempt it. The difficulty is sharpest in the case of Seal Hood to Radiator Support, which the appellant claimed under Customs Tariff Item 40169390 as an article of vulcanised rubber. Note 2(a) to Section XVII excludes from the expressions parts and parts and accessories all other articles of vulcanised rubber other than hard rubber falling under heading 4016, whether or not they are identifiable as for the goods of that Section. If the article is what the appellant says it is, the first of the three cumulative conditions is not merely unsatisfied but affirmatively defeated, and the article cannot be in Heading 87.08 at all. The impugned order does not address the contention. We say nothing upon where any of these articles ought finally to be classified, for that is not the question before us.

31. We have considered the decision in *G.S. Auto International Ltd. v. Collector of Central Excise, Chandigarh, 2003 (152) E.L.T. 3 (S.C.)*,

relied upon by Ld. Special Counsel, which holds that goods are to be classified as they are known in the market to those who deal in them. That test presupposes evidence of market understanding. As long ago as in *Union of India v. Garware Nylons Ltd., 1996 (87) E.L.T. 12 (S.C.)* the Supreme Court cautioned that there must be material, oral or documentary, to enter an appropriate finding upon trade parlance. There was no market enquiry in this case, no dealer was examined and no trade evidence was gathered. The governing principles restated in paragraph 66 of Welkin Foods put the matter beyond doubt, for they confine the parlance test to a state of statutory silence, forbid its use as a measure of first resort under a Harmonised System based regime, and require satisfactory evidence from the party asserting it. Here the heading, read with Note 2 and Note 3 to Section XVII and with the Explanatory Notes, furnishes the criterion, and there was accordingly no occasion to resort to parlance at all.

32. We should add a word upon the manner in which the cross rulings of the United States Customs and Border Protection were dealt with below. Foreign rulings are, of course, no more than persuasive, and an adjudicator is free to decline to follow them. What he is not free to do is to set aside a body of material relied upon by a noticee with the single observation that the rulings indicate headings other than 87089900 and that the extent of their alignment is not forthcoming. That is not a reason. It is the announcement of a conclusion.

33. We hasten to add that the failure of the classification proposed by the Revenue does not in every case leave the appellate forum powerless to determine the correct classification for itself. In *Voltas Ltd. v. Collector of Customs, Bombay, 1997 (91) E.L.T. 261 (S.C.)* the Supreme Court held that where the Tribunal finds both the heading applied by the Department and that canvassed by the assessee to be erroneous, and finds a third heading appropriate, it ought to order classification under that third heading rather than dismiss the appeal. That power, however, is neither unqualified nor exercisable upon a barren record. In *Precision Rubber Industries (P) Ltd. v. Commissioner of Central Excise, Mumbai, 2016 (334) E.L.T. 577 (S.C.)* the Court held that the show cause notice is the foundation of the proceeding and that a new classification made for the first time at the Tribunal stage is not sustainable, and it

confined the controversy to the two headings which the notice had put in issue. A coordinate Bench of this Tribunal has likewise held, in *Commissioner of Central Excise, Coimbatore v. Premier Instruments and Controls Ltd., 2004 (174) E.L.T. 49 (Tri. Chennai)*, that a classification claimed neither by the Department nor by the assessee cannot be ordered, since the assessee could not be put on notice of it. The decision stands maintained in *Premier Instruments & Controls Ltd v Commissioner, 2015 (321) ELT A 130 (SC)*. *Warner Hindustan Ltd. supra*, states the principle which reconciles these authorities, namely that it is impermissible to consider a case laid for the first time in appeal because the stage for setting out the factual matrix is before the authorities below.

34. Applying that principle, this is not a case in which we could ourselves undertake the exercise even if we were to so desire. The record contains no analysis of any individual article, no technical evidence and no trade evidence. To determine the classification of 226 articles for the first time at the appellate stage would be to lay a case which was never laid below. The consequence is that which a long line of authority prescribes, namely that the classification proposed by the Revenue having failed, the classification adopted by the importer holds the field, irrespective of what view might be taken of it were the question properly raised. That is what *H.P.L. Chemicals Ltd. (supra)* lays down, what *Sunrise Traders (supra)* applied and the Supreme Court affirmed, and what a coordinate Bench held in *Golden Tobacco Ltd. v. Commissioner of Customs, 2019 (368) E.L.T. 707 (Tri. Mumbai)*, in holding that if the alternative proposed in the show cause notice is not defensible the claimed classification will prevail even if some other heading be more apt. *Pepsico Holdings Pvt. Ltd. v. Commissioner of Central Excise, Pune III, 2019 (25) G.S.T.L. 271 (Tri. Mumbai)* is to the same effect. It is also what this Tribunal held between these very parties and upon this very heading in *Commissioner of Customs, Chennai v. Toyota Kirloskar Motor Pvt. Ltd., 2024 (1) TMI 1170 CESTAT Chennai*.

35. The last decision cited above and relied on by the appellant obliges us to say something further. The impugned order was passed on 22.10.2024, nine months after this Tribunal had told the very same Commissionerate, in a dispute with the very same importer under

the very same heading, that the burden of proving a reclassification lies upon the Revenue and that a failure to discharge it leaves the declared classification undisturbed. As early as in *Union of India v. Kamalakshi Finance Corporation Ltd., 1991 (55) E.L.T. 433 (S.C.)*, a three Judge Bench of the Supreme Court held that it cannot be too vehemently emphasised that revenue officers are bound, in disposing of quasi judicial issues, by the decisions of the appellate authorities, that the orders of this Tribunal are binding upon the authorities functioning within its jurisdiction, and that if this healthy rule is not followed the result will only be undue harassment to assessees and chaos in the administration of tax laws. Where the Department has allowed an earlier order between the same parties upon the same issue to become final, it is precluded from taking a different stand thereafter, as held in *Birla Corporation Ltd. v. Commissioner of Central Excise, 2005 (186) E.L.T. 266 (S.C.), in Jayaswals Neco Ltd. v. Commissioner of Central Excise, Nagpur, 2006 (195) E.L.T. 142 (S.C.)* and in *Commissioner of Central Excise, Mumbai v. Bigen Industries Ltd., 2006 (197) E.L.T. 305 (S.C.)*. The Board itself has impressed the same discipline upon the field formations by *Instruction F.No.201/01/2014-CX.6 dated 26.06.2014* and again by *Instruction F.No.275/17/2015-CX.8A dated 11.03.2015*.

36. It is of course true that an adjudicator must bring an independent mind to bear upon the matter before him, and that he does not discharge his function by a mechanical transcription of an earlier order, a caution sounded in *U.M. Cables Ltd. v. Union of India, 2017 (347) E.L.T. 78 (Guj.)*. Independence of mind, however, is not a licence to disregard a declaration of law by the forum to which one's orders are amenable in appeal. The impugned order does not distinguish the earlier decision of this Tribunal. It does not even advert to it. This Tribunal has had occasion very recently, in *Coromandel International Ltd. v. Commissioner of Customs, order dated 02.12.2025 in Customs Appeal No.40440 of 2015, reported in 2025 (12) TMI 382-CESTAT CHENNAI,* and *maintained in Commissioner of Customs v M/s. Coromandel International Ltd, 2026 (5) TMI 1533-SC Order,* to deprecate precisely this conduct, and to notice the observation of a coordinate Bench in *Dow Chemical International Pvt. Ltd. v. Commissioner of GST and Central Excise, Final Order No.40607/2025 dated 11.06.2025,* that

it is the bane of judicial indiscipline which is resulting in the proliferation of appeals before this Tribunal, making the process itself the punishment for the assessee. An adjudication which proceeds in the teeth of a binding declaration, without so much as adverting to it, unsettles the certainty which assessees are entitled to expect and imposes upon them an expensive and avoidable strain. We expect that this will not recur.

37. For these reasons we hold upon the first issue that the Department has wholly failed to discharge the burden of establishing the reclassification proposed, and that the impugned order is not a speaking order upon the classification of the subject goods. Upon the second issue it follows that the classification declared by the appellant under Customs Tariff Item 87089900 in respect of the 226 articles listed in Annexure A holds the field, and that the differential duty referable to that reclassification, whether under Customs Tariff Item 87082900 or under the other headings proposed, cannot be sustained. The denial of the benefit of Sl.No.1478 of Notification No.46/2011 Customs dated 01.06.2011 was purely consequential upon the reclassification and collapses along with it. In that view the contentions founded upon paragraph 7(c) of the Rules of Origin notified under Notification No.189/2009 Customs (N.T.) dated 31.12.2009 and upon *Hyundai Motor India Limited supra*, and the contention of revenue neutrality of the integrated tax component, being alternative submissions, do not arise for decision and we express no opinion upon them.

38. A word is necessary about the 114 articles listed in Annexure B, since the demand confirmed by the impugned order is not confined to the articles in Annexure A. In their regard there never was a classification dispute at all. It was the appellant which proposed the revision, the Department which accepted it, and the appellant which paid the differential duty with interest for the period from 06.11.2017 to 05.11.2019. The controversy in their regard is one of quantification and of limitation alone, and it is to those issues that we now turn. Our finding upon the first issue does not, and is not intended to, disturb the classification of those articles.

<u>Extended period of limitation</u>

39. Although our finding upon classification disposes of the greater part of the demand, limitation was fully argued, it is the only surviving

answer to the demand upon the Annexure B articles, and the manner in which the extended period came to be invoked and then enlarged calls for our comment.

40. Section 28(4) of the Act is not a provision of general recovery. It is available only where the short levy is by reason of collusion, wilful misstatement or suppression of facts. Suppression, as the Supreme Court explained in *Pushpam Pharmaceuticals Company v. CCE, Bombay, 1995 (78) ELT 401 (SC)*, means a deliberate withholding of information which the assessee knew it was bound to disclose. In *Cosmic Dye Chemical v. CCE, Bombay, 1995 (75) ELT 721 (SC)* and in *Aban Lloyd Chiles Offshore Ltd., 2006 (200) ELT 370 (SC)*, it was held that the act relied upon must be wilful. The principle has been reiterated by the Supreme Court in *M/s. Tata Steel Ltd. v. Union of India, 2026 INSC 920,* where, dealing with a notice issued under Section 74 of the Central Goods and Services Tax Act, 2017, the Court held that the foundational facts which led to the inference of fraud, wilful misrepresentation or suppression should be evident from the notice itself, that the mere employment of such words will not indicate an application of mind upon which alone the satisfaction can be arrived at, and that the words are not to be mechanically recited in the notice to enable recovery outside the normal period of limitation. The foundation must therefore be laid in the notice and established on evidence. It cannot rest upon the adjectives deliberate and knowing, however often they are repeated. We may observe, in the same connection, that the operative portion of the impugned order records that the duty escaped payment by reason of collusion, wilful mis-statement and suppression of facts, although no finding of collusion is to be found anywhere in the order, and no person is identified with whom the appellant is said to have colluded. The recital of a statutory expression which the body of the order does not support is the clearest indication that the ingredients were assumed rather than found.

41. On the record before us the foundation is absent, and is indeed excluded by the Department's own case. The entire charge is built upon technical write ups and photographs furnished by the appellant to the Department and upon usage stated to be published by the appellant on its own website. What an importer itself

publishes to the world, and the technical write ups it itself hands to the Department, these cannot in the same breath be said to have been suppressed by it from the Department. The description of the goods in each bill of entry is not alleged to be false. What is alleged is that the tariff item chosen was wrong. A claim of classification in a self assessed bill of entry, the description being correctly declared, is neither a misdeclaration nor a suppression, as held in *Northern Plastic Ltd. v CCE, 1998 (101) ELT 549 (SC)* and the principle has been applied in *Midas Fertchem Impex Pvt. Ltd. v Principal CC, ACC (Import), 2023 (384) ELT 397 (Tri-Del)* and in *Sirthai Superware India Ltd. v CC, 2020 (371) ELT 324 (Tri-Mumbai)*. To this, it must be added that the appellant classified these articles consistently throughout, and that in respect of such articles as it came upon reflection to accept as falling elsewhere, it proposed the revision itself and paid the differential duty of its own accord long before the notice issued. Conduct of that kind is the antithesis of an intent to evade. It follows that the extended period was unavailable, and unavailable as much in respect of the Annexure B articles as in respect of those in Annexure A, for it is precisely in their regard that the appellant volunteered the revision.

42. The reliance upon *Asahi India Glass Ltd. v CC, Chennai, 2024 (9) TMI 11-MADRAS HIGH COURT* though requires a word of caution. That decision does not lay down an absolute rule that a pre notice consultation forecloses the extended period. What it holds is that where the Department sets in motion the machinery of Section 28(1) through a consultative letter, receives a reply asserting the correctness of the classification, and thereafter issues a notice under Section 28(4) without dealing with that reply and without disclosing adequate reasons for invoking the larger period, the invocation lacks foundation. Understood in that sense the decision assists the appellant, for that is precisely what occurred here, and the fact of consultation is not in dispute. We observe only that the impugned order itself records that the appellant paid differential duty for the two year period from 06.11.2017 to 05.11.2019, which suggests that the Department was in possession of the relevant facts by then and issued its notice on 22.12.2022.

43. We come to the corrigendum dated 04.07.2024, and here we must speak plainly. A corrigendum is a device for the correction of a

clerical or arithmetical slip. It is not an instrument by which a notice may be enlarged, and it cannot be employed to the disadvantage of a noticee, as this Tribunal held in *Ave Maria Enterprises v. Commissioner of Customs (Air Cargo), Chennai VII, 2021-TIOL-627-CESTAT-MAD*. The reason is the one stated in *Precision Rubber Industries (P) Ltd. supra*, that the show cause notice is the foundation of the proceeding. Where a corrigendum so alters the notice that the noticee must in substance meet a different case, the date of the corrigendum becomes the date from which limitation runs, a proposition applied in as the appellant pointed out, in *Bakers Product (India) (supra)* and in *JSW Steel Ltd. (supra)*. The corrigendum in this case replaced the whole of Annexure C, altered invoice numbers and serial numbers, revised the duty demanded, and brought into the proceeding 14 articles spread over 81 bills of entry which had never before been in issue. To the extent that the demand rests upon those articles, the appellant was called upon to answer a fresh charge on 04.07.2024, and limitation in their regard must run from that date.

44. What makes the position untenable is not that the Adjudicating Authority rejected this contention, but that he accepted its premise and then declined to follow it to its conclusion. He held in terms that the introduction of fresh articles was unobjectionable so long as the demand upon them lay within five years from the date of the corrigendum. Having so held, the only course open to him was to exclude every clearance of those articles effected before 04.07.2019. What he in fact excluded was a sum of Rs.3,30,347/- relatable to certain bills of entry of 2017, and he did so without any reconciliation of the 81 bills of entry across which the fresh articles were spread, and without a word upon the appellant's computation, placed squarely before him, which is at variance with the amount he has determined. A demand raised beyond the outer limit of five years is not merely barred. It is one which the proper officer had no authority to raise at all, and a want of jurisdiction of that order is not cured by silence. To confirm such a demand upon a test which the order itself propounds and then abandons is an exercise of power that we are unable to countenance.

45. The same want of application of mind marks the treatment of quantification, and it is here that the Annexure B articles are

principally affected. The appellant asserted in paragraphs D and E of its written submissions before the Adjudicating Authority that differential duty of about Rs.3.84 crore had already been discharged, and prayed that the payment be appropriated. The Adjudicating Authority found himself able to verify a duplication of Rs.1,37,343/- across 306 line items and to allow it, and able to identify Rs.3,30,347/- as time barred and to exclude it. When it came to the far larger sums which the Department had already received, he recorded that it was not forthcoming from Annexure E whether the bills of entry formed part of Annexures A, B and revised C, that the voluntary payment of Rs.36,48,076/- could not be verified because the invoices carried other items as well, and that the matter might be taken up separately by the Department. An adjudicating authority is not at liberty to confirm a demand in its entirety and relegate the noticee to some future and unidentified proceeding for credit of tax already in the treasury. The obligation to determine the amount due under Section 28 is an obligation to determine what is due, and what is due is what remains after credit for what has been paid. Annexure C was revised but Annexure D, extracted from the superseded version and carrying the allegation of short payment of Rs.1,56,91,525/- in respect of 70 articles, was left as it stood, so that the two annexures upon which the demand rests do not speak to each other.

46. One observation in this part of the impugned order we are unable to pass over. Of the appellant's assertion that it had paid Rs.3,84,75,436/- voluntarily, the Adjudicating Authority observed that the payment could not be linked to the bills of entry in dispute and that it further cemented the case of the Department. To treat a voluntary payment of duty as corroboration of an intent to evade duty is to stand the matter on its head. If conduct of that kind is to be read as an admission of guilt, no assessee will ever again come forward to correct its own assessment, and the self assessment scheme which Sections 17 and 46 of the Act establish will be the poorer for it.

47. We accordingly hold upon the third issue that the extended period of limitation under Section 28(4) was not available to the Department; that the demand, in so far as it is founded upon the articles introduced for the first time by the corrigendum dated

04.07.2024 and relates to clearances effected before 04.07.2019, is beyond the outer limit prescribed by law and void for want of jurisdiction; and that the demand within the normal period cannot survive either, resting as it does upon a computation which the impugned order has neither reconciled nor credited with the payments already made.

Confiscation, redemption fine, interest and penalty

48. Section 111(m) is attracted where goods do not correspond in respect of value or in any other particular with the entry made under the Act. The particulars entered here were the description and the value, and neither is alleged to be untrue. What is alleged is an incorrect choice of tariff item, which, on the authority of *Northern Plastic Ltd. supra*, is not a misdeclaration at all, the Supreme Court having held that a claim to an exemption, whether admissible or not, is a matter of the belief of the assessee and does not amount to misdeclaration where the description has been given correctly and fully. Section 111(o), which deals with goods exempted subject to a condition that is not observed, is equally inapplicable, since the exemption under Notification No.46/2011 was claimed upon certificates of origin whose genuineness the Department has never questioned, and no condition of that notification is said to have been breached. That the goods were, in the view of the Adjudicating Authority, not covered by the notification is a proposition about eligibility. It is not a breach of condition. It is also not without significance that the Adjudicating Authority, when framing the questions for his own decision, framed the question of confiscation with reference to Section 111(m) alone, and then proceeded to confiscate under Section 111(m) and (o). The invocation of both clauses, without any finding as to which particular was false or which condition was infringed, cannot be sustained.

49. The redemption fine must share the same fate, and for a reason which is anterior to the controversy upon which the parties joined issue. A fine under Section 125 is a fine in lieu of confiscation. It presupposes that confiscation was authorised. Once the foundation for confiscation under Section 111(m) and (o) disappears, given our findings on this count above, there is nothing in lieu of which a fine can be imposed, and the decisions in *Weston Components Ltd.*

(supra), in Synergy Fertichem Pvt. Ltd. and in Visteon Automotive Systems India Ltd. (supra), upon which the Adjudicating Authority relied, do not assist, for each of them proceeds upon the footing that confiscation was authorised and addresses only the different question whether the fine may be levied when the goods are not available. That question does not arise for decision and we express no opinion upon it. We would, however, be failing in our duty if we did not record that even upon the assumption most favourable to the Revenue the quantum of the fine is indefensible. The proviso to Section 125(1) caps the fine at the market price of the goods confiscated less the duty chargeable thereon, and the Supreme Court held in *Commissioner of Customs, Mumbai v. Mansi Impex, 2011 (270) E.L.T. 631 (S.C.)* that the quantum is always dependent upon a determination of the market price, which is a prerequisite prescribed by the statute itself, so that a fine fixed without even a sample market survey cannot be a legally justified quantum. This Tribunal has applied that requirement in *J. Uthaman v. Commissioner of Customs, order dated 24.11.2025 in Customs Appeal No.40567 of 2016 and connected appeals, 2025 (11) TMI 1652-CESTAT CHENNAI*. In the present case a fine of Rs.17,00,00,000/- was fixed upon goods which were never seized, never bonded and long since consumed in the appellant's manufacture, without any enquiry into market price and without any reason disclosed for the figure arrived at.

50. Penalty under Section 114A is exigible only where duty has been short levied by reason of collusion, wilful misstatement or suppression, and it follows the demand. The demand having been set aside and the ingredients of the extended period having been found wanting, no penalty survives, as follows from *Commissioner of Central Excise v. H.M.M. Ltd. supra*. Penalty is in any event not to be imposed for a technical or venial breach, nor where the conduct complained of flows from a bona fide belief, as *Hindustan Steel Ltd. supra* laid down and as this Tribunal applied to a classification dispute in *HBL Power Systems Ltd. v. Commissioner of Customs, Chennai II, 2025 (5) TMI 2010*. Interest under Section 28AA is likewise consequential and cannot stand alone. Since the penalty does not survive, the contentions that no penalty attaches to the interest component and that interest and penalty could not be levied upon the differential integrated tax for the period in

question do not arise for decision and we express no opinion upon them.

51. Tying up our aforesaid discussions and its conclusions together, the Department set out to displace a classification which the appellant had adopted consistently for years and which it had supported with certificates of origin that were never impugned. It bore the burden of justifying the displacement. It did not discharge that burden. It examined fifteen articles and decided two hundred and twenty six. It rested its case upon a website it never placed on record, and then treated the absence of a reply as proof, fortified by an adverse inference drawn from non appearance at the stage of investigation for which the statute affords no warrant. It enlarged the notice by a corrigendum which brought in fresh articles reaching back to clearances beyond the outer limit of five years, accepted in terms the very test which required their exclusion, and then excluded a sum of about three lakhs while confirming a demand far in excess as per computation placed before it and to which that test equally applied. It found itself able to verify a duplication of a little over one lakh in the appellant's favour, yet unable to verify payments of nearly four crores which the appellant had made and which it relegated to a separate proceeding, while treating the very fact of those payments as cementing its case. It ordered confiscation of goods that had ceased to exist and imposed a fine of seventeen crore rupees in lieu of a confiscation whose foundation was never laid and whose quantum was never explained. An order of that description cannot be allowed to stand in any part.

52. We are conscious that the Department may yet be of the view that some among the two hundred and twenty six articles are properly classifiable elsewhere, and that some short payment may survive in respect of the articles listed in Annexure B once the payments already made are verified and credited. Nothing in this order concludes either question upon its merits. Our setting aside of the impugned order is without prejudice to such course as may lawfully be open to the Department, to be pursued, if at all, in accordance with the law of limitation, upon our finding that the extended period is unavailable, and after affording the appellant a proper opportunity to meet a properly particularised charge.

53. In the light our aforesaid discussions and reasons given above, we hold that the classification of the 226 articles listed in Annexure A to the show cause notice, under Customs Tariff Item 87089900 as declared by the appellant, save for such of them as were declared under another heading, holds the field, and the benefit of Sl.No.1478 of Notification No.46/2011 Customs dated 01.06.2011 in respect of those imports is held available to the appellant. The demand of differential duty of Rs.23,17,45,224/- and the demand of interest under Section 28AA are set aside. The confiscation of the goods under Section 111(m) and (o) of the Customs Act, 1962 and the redemption fine of Rs.17,00,00,000/- imposed under Section 125 are set aside. The penalty imposed under Section 114A, being equal to the duty determined together with the interest payable thereon, is set aside. In respect of the 114 articles listed in Annexure B, the setting aside of the demand rests upon our findings that the extended period of limitation was unavailable and that the computation was neither reconciled nor credited with the payments already made, and not upon any finding as to the classification of those articles, which was never in dispute. It shall be open to the proper officer to determine, in accordance with law and subject to the law of limitation, such short payment, if any, as may survive in their regard after due verification and appropriation of the amounts already paid, and after affording the appellant an opportunity of being heard. Amounts paid by the appellant in excess of its liability as finally determined shall be dealt with in accordance with law.

54. In sum, the impugned Order in Original No.109978/2024 dated 22.10.2024 is set aside in its entirety.

The appeal is allowed with consequential reliefs in law, if any.

(Order pronounced in open court on 23.09.2026)

(AJAYAN T.V.)
Member (Judicial)

(VASA SESHAGIRI RAO)
Member (Technical)

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