

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA**

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 76188 of 2024

(Arising out of Order-in-Original No. KOL/CUS/PORT/COMMR/Gr.V/14/2024 dated 12.06.2024 passed by the Principal Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata – 700 001, West Bengal)

M/s.JMS Mining Private Limited : **Appellant**
DEC Building, 3rd Floor, Action Area 1A,
Newtown, Rajarhat,
West Bengal – 700 163

VERSUS

Commissioner of Customs (Port) : **Respondent**
Custom House, 15/1, Strand Road,
Kolkata – 700 001

APPEARANCE:

Shri Deepto Sen and Smt. Taniya Roy, both Advocates,
For the Appellant

Shri Ashwini Kr. Choudhary, Authorized Representative,
For the Respondent

CORAM:

HON’BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON’BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75716 / 2026

DATE OF HEARING: 10.06.2026

DATE OF DECISION: 17.06.2026

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed by M/s. JMS Mining Private Limited, DEC Building, 3rd Floor, Action Area 1A, Newtown, Rajarhat, West Bengal – 700 163 [hereinafter referred to as the “appellant”] against the Order-in-Original No. KOL/CUS/PORT/COMMR/Gr.V/14/2024 dated 12.06.2024 passed by the **Ld. Principal Commissioner of Customs (Port)**, Custom House, 15/1, Strand Road, Kolkata – 700 001, West Bengal.

2. The facts of the case are that the appellant herein is engaged in implementation of mass production technology in underground coal mining. In the furtherance of their business, the appellant entered into a contract dated 09.11.2017 with JOY Global (UK) for supply of mining machineries viz., joy continuous miner, battery hauler, twin bolter and feeder breaker along with mandatory spares.

3. Pursuant to the above agreement, the Appellant had imported four (4) sets of battery haulers through the following three Bills of Entry: -

Sl. No.	BOE No. & Date	Material Description	Gross Weight	No. of Crates	Invoice Value (USD)
1.	2736350 dated 06.04.2019	Part of 2 No. of Joy Battery Hauler including 6 batteries & 2 battery charger in CKD Condition (part of mining)	76595 Kgs.	25 Crates	1643919.42
2.	2927883 dated 22.04.2019	Part of 2 No. of Joy Battery Hauler including 6 batteries & 2 battery charger in CKD Condition (part of mining)	54430 Kgs.	4 Crates	169984.58
3.	7113686 dated 04.03.2020	2 No. of Joy Battery Hauler including 6 & 2 battery charger in CKD Condition (mining machine)	124602 Kgs.	27 Crates	1813904

4. Although the appellant had placed order for battery haulers, the 2 battery haulers imported vide the first two Bills of Entry, unlike the third Bill of Entry, could not be imported on a single ship/ vessel due to lack of storage space. Thus, the same were imported as part shipments under the first two Bills of Entry.

5. Since the above equipment were imported in Completely Knocked Down ('CKD') condition, the equipment were cleared for home consumption after levying concessional rate of duty at the rate of 15% as per Sl. No. 524(a) of Notification No. 50/2017 dated 30.06.2017 and IGST at the rate of 28% under CTH 8704 9090 having total assessable value of Rs. 12,72,97,028/-.

6. The Department conducted audit enquiry for the period 2019-20 and an Audit Notice was issued to the appellant, directing the appellant to pay differential duty amounting to Rs.1,79,23,421/- for the first two Bills of Entry dated 06.04.2019 and 22.04.2019 on the ground of alleged irregular grant of concessional BCD to Joy Battery Hauler.

6.1. The appellant vide their letter dated 07.07.2023 furnished a detailed response to the above Audit Notice along with necessary supporting documents and inter alia submitted that due to space constraint the shipping liner was unable to arrange the entire shipment at one go leading to the goods being imported as part consignments.

7. A Show Cause Notice dated 13.12.2023 was issued to the appellant proposing re-assessment of the first two Bills of Entry dated 06.04.2019 and 22.04.2019 and recovery of differential duty

amounting to Rs. 1,79,23,431/-, along with interest and penalty.

7.1. The appellant challenged the said Notice vide their reply dated 18.01.2024 contesting the proposals raised in the Show Cause Notice. Further, during the course of personal hearing, the appellant also submitted additional submissions filed vide letter dated 18.03.2024.

7.2. During adjudication proceedings, the Ld. Commissioner of Customs (Port), Kolkata, vide the impugned order, confirmed the demand of duty against the appellant, as proposed in the Show Cause Notice, along with interest and penalty thereon, thereby holding that the subject goods imported vide the first two Bills of Entry were not in CKD condition; accordingly, the duty benefit under Sl. 524(a) of Notification No. 50/2017-Customs dated 30.06.2017 was denied. Vide the impugned order the Ld. Commissioner also imposed a redemption fine of Rs. 10,00,000/- under Section 125 of the Customs Act, 1962.

7.3. Aggrieved by the said order, the appellant has filed the instant appeal.

8. The Ld. Counsel appearing on behalf of the appellant have made various submissions in support of their contentions, which can be broadly summarized as under: -

A. EXTENDED PERIOD OF LIMITATION IS NOT INVOKABLE

- (i) In terms of Section 28(1) of the Customs Act, 1962, the normal period of limitation for initiation of proceedings by issuing an SCN is 2 years from the date of out-of-charge order. Section 28(4) of the Customs Act, 1962 provides that the period of 2 years can be extended up to 5 years subject to the fact that the department proves that the importer has engaged in collusion or has suppressed any fact or made any wilful misstatement while clearing the goods.
- (ii) The Appellant submits that demand confirmed vide the impugned order pertains to the Bills of Entry dated 06.04.2019 and 22.04.2019 and the out of charge order was issued on 17.05.2019 whereas the underlying SCN was issued only on 13.12.2023. Hence demand confirmed for the entire period is barred by limitation. Claiming benefit under the notification for goods pertaining to a certain chapter under the Customs Tariff would not amount to wilful misstatement or suppression of facts
- (iii) That in the matter pertaining to availment of benefit under the notification upon fulfilment of the prescribed conditions which is technical in nature, no wilful misstatement on the part of the importer can be alleged. Further, the even assuming without admitting that the imported goods are to be re-assessed in term of Sl. No. 524(b) of Notification No. 50/2017-Cus and not under Sl. No. 524(a) of the said notification,

merely claiming benefit under the particular heading on bona fide belief should not be treated as mis-statement of material facts in the Bills of entry.

- (iv) Hence, mere mis-classification of a product can never be a ground for alleging suppression and thus invoking extended period of limitation. Reliance herein is placed on the following decisions:

- a. Madhepura Electric Locomotive Pvt. Ltd. Versus Principal Commissioner of Customs (Port) Kolkata, 2025 (3) TMI 789-CESTAT Kolkata; affirmed by the Hon'ble Supreme Court in 2025 (11) TMI 145-SC Order.*
- b. DIC India Limited vs. CC (Port), Kolkata 2024 (9) TMI 186 – CESTAT KOLKATA*
- c. KPR Fertilizers Ltd. v. CCE, Cus. and ST, Visakhapatnam-II, 2023 (384) E.L.T. 216 (Tri. - Hyd.)*
- d. Incredible Unique Buildcon Pvt. Ltd. v. CCE & ST., Alwar 2022 (65) GSTL 377 (Tri-Del.)*

- (v) Thus, the impugned order confirming the demand invoking the extended period of limitation under Section 28(4) of the Customs Act, 1962 is liable to be set aside.
- (vi) Further that the extended period of limitation is not invocable when the Department is aware of all the facts. It is submitted that the Department was well aware of the fact that the appellant is engaged in import of goods in CKD condition and that in respect of such import, the appellant

was availing benefit under Sl. No. 524(a) of Notification No. 50/2017-Cus. Further, at the time of importation, all the necessary declarations have been made by the appellant in the Bill of Entry and invoices as submitted. The subject Bills of Entry clearly mention that goods are imported in CKD condition. Further, the corresponding invoices also specify that goods are part shipment. Hence, all the material information pertaining to the import in question was always submitted and available with the officers of the Department. This goes on to establish that all relevant facts were well within the knowledge of the Department and no suppression can now be alleged against the appellant.

- (vii) Therefore, the appellant contends that the extended period of limitation is not invokable in the instant case and thus, the impugned order is liable to be set aside.

B. BATTERY HAULERS IMPORTED VIDE BILLS OF ENTRY DATED 06.04.2019 AND 22.04.2019 QUALIFY AS IMPORTED IN CKD CONDITION.

- (i) The primary basis for confirmation of demand against the appellant is that battery haulers imported through Bills of Entry dated 06.04.2019 and 22.04.2019 were not in CKD condition but imported as part shipment in split way; hence, the Revenue alleges that the appellant is not entitled to avail concessional duty of 15% under Sl. No. 524(a) of Notification No. 50/2017-Cus. The only finding in the impugned order (paragraph 13.6) is that the

goods imported by the importer do not become a complete article since they are not presented together as a complete article in CKD condition.

(ii) The appellant submits that the imported goods fall under Sl. No. 524(a) of Notification No. 50/2017-Cus. The relevant entry of the notification is as follows:

524	8702 or 8704	Motors Vehicles:	15%
		(a) If imported as a as a Completely Knocked Down (CKD) kit containing all the necessary components, parts or sub-assemblies, for assembling a complete vehicle, with, (a) engine, gearbox and transmission mechanism not in a pre-assembled condition; (b) in a form other than (a) above	25%

(iii) Further, that subject import of battery haulers vide Bills of Entry dated 06.04.2019 and 22.04.2019 qualify as import in CKD condition only, in terms of Rule 2(a) of General Rules of Interpretation (hereinafter referred to as "GRI"), which reads as under: -

*"Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, **as***

presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.”

(Emphasis supplied)

- (iv) It is a fact on record that the goods imported vide the two Bills of Entry were presented together for clearance which is evident from the Out of Charge order of both the Bills of Entry since both are dated 17.05.2019. Therefore, the entire basis of the finding in the impugned order is erroneous and thus the same is liable to be set aside.
- (v) It is submitted that Rule 2(a) of GRI consists of two parts. According to the Harmonized System of Nomenclature (hereinafter referred to as 'HSN') Explanatory Notes to Rule 2(a), the first part of Rule 2(a) extends the scope of any heading which refers to a particular article to cover not only the complete article but also that article incomplete or unfinished, provided that, as presented, it has the essential character of the complete or finished article.
- (vi) Further, the HSN Explanatory Notes state that second part of Rule 2(a) provides that complete or finished articles presented unassembled or disassembled are to be classified in the same heading as the assembled article. When goods are so presented, it is usually for reasons such as requirements or convenience of packing, handling or transport.

(vii) That the abovementioned principle enunciated vide Rule 2(a) of GRI duly stands fulfilled in the present factual scenario inasmuch as:

- Subject battery haulers imported through two different bills of entry, were presented together for customs clearance. Screenshots of the Icegate portal reflecting the date of out of charge for Bills of Entry bearing No. 273650 dated 06.04.2019 and 2927883 dated 22.04.2019 have been placed on record.
- Components of two Bills of Entry, when presented together, represent essential character of a battery hauler. For instance, under Bill of Entry No. 273650 dated 06.04.2019, the consignment contained all the components of a battery hauler except trailer and tractor viz., tyre & wheel, battery charger, battery assembly, plug, connector, magnetic holder etc. On the other hand, consignment under second Bill of Entry no. 2927883 dated 22.04.2019 comprised of only tractor and trailers (two quantities each). Such bills of entry when presented together clearly depicts that the consignment consists of two sets of battery haulers in CKD condition.
- Even the impugned order at paragraph 13.4 observes that the weight and value of the consignments imported by the two subject bills of entry was equal to the total weight and value of the complete battery hauler.

- (viii) Hence, in terms of Rule 2(a) of GRI read with principles laid down in the case of *C.C., Delhi v. Sony India [2008 (231) ELT 385 (SC)]* and various other relevant judicial precedents, the battery haulers imported through two Bills of Entry and presented together for clearance would qualify as CKD import only.
- (ix) Without prejudice, it is submitted that the subject Bills of Entry are liable to be re-assessed as parts of battery haulers; assuming without accepting that the battery haulers are not imported in CKD condition and that both the bills of entry cannot be cumulatively assessed but assessed separately, the appellant submits that the subject imported goods should be re-assessed as parts of battery haulers under respective Customs Heading viz., 8706, 4011, 8708, 7318, 8544, 8536, 2853.
- (x) In the present case, consignment under Bill of Entry dated 06.04.2019 contains all the components of a battery hauler except trailer and tractor viz., tyre & wheel, battery charger, battery assembly, plug, connector, magnetic holder etc. On the other hand, consignment under second Bill of Entry dated 22.04.2019 consist of only tractor and trailers (two quantities each). It is thus submitted that unless both the Bills of Entry are considered together, the goods cannot be classified under CTH 8704. Hence, re-assessment of Bills of Entry under Sl. No. 524(b) indicates that the Department has considered both the Bills of Entry together, either as import in CKD condition or import of battery haulers, to re-assess the goods under

Sl. No. 524(b) and deny lower duty benefit to the appellant.

- (xi) It is submitted by the appellant that it has been discharging excess tax by classifying the subject goods as battery haulers vis-à-vis parts of battery haulers. That if a detailed working is undertaken and the goods are re-assessed as parts of battery haulers, the total duty payable would amount to Rs.6,01,64,264/- against the duty payment of Rs. 6,25,28,299/- already made by the appellant at the time of clearance of goods as battery haulers in CKD condition.
- (xii) That since the appellant has already discharged excess tax by adopting an incorrect classification as indicated above, the question of payment of differential duty does not arise.

C. DEMAND CANNOT BE SUSTAINED IN THE ABSENCE OF APPEAL AGAINST THE TWO BILLS OF ENTRY DATED 06.04.2019 AND 22.04.2019.

- (i) It has been further submitted that the assessment orders being quasi-judicial orders can only be set aside by an order of the competent appellate authority in appellate proceedings; that quasi-judicial orders cannot be sought to be set aside by mere issuance of a Show Cause Notice, which has proposed to modify the assessment orders in the instant case.
- (ii) The Hon'ble Supreme Court in *ITC Ltd vs. CCE, Kolkata-IV [2019 (368) E.L.T. 216 (S.C.)]* observed that that an order of self-assessment is nonetheless an assessment order passed

under the Customs Act, so it would be appealable by any person aggrieved thereby; the Department, as well as the assessee can prefer an appeal aggrieved by such order of assessment.

- (iii) In the present case impugned goods imported by the appellant were cleared for home consumption on the strength of duly assessed Bills of Entry. There is no dispute regarding this factual position. Therefore, if the Revenue was aggrieved by the self-assessment undertaken by the appellant, instead of issuing the underlying SCN, an appeal under Section 128 of the Customs Act, 1962 should have been filed by the department challenging the disputed finally assessed Bills of Entry dated 06.04.2019 and 22.04.2019.
- (iv) The limitation period to file an appeal under Section 128 is 60 days from the date of communication of the order and the same is further extendable by the Ld. Commissioner (Appeals) by a further period of 30 days. In the present case the disputed Bills of Entry are dated 06.04.2019 and 22.04.2019; therefore, it is clear that the time period for filing appeals has already elapsed. The Department having failed to do so, cannot sustain the instant proceeding initiated by way of issuance of the underlying SCN.
- (v) The CESTAT, Kolkata in *Shri Rumen Dey Versus Commissioner of Customs (Prev.) Shillong [2023 (7) TMI 70 - CESTAT KOLKATA]* was dealing with a case where SCN was issued to importer alleging undervaluation of goods. By

placing reliance on *ITC Ltd (supra)* it was held that the Department cannot initiate SCN proceedings without challenging the Bills of Entry in appeals. The said order has been upheld by the Hon'ble Tripura High Court in *Union of India Versus M/s Sri Rumon Dey [2025 (10) TMI 73 - TRIPURA HIGH COURT]*

(vi) Similarly in the following rulings, proceedings for demand of differential duty initiated vide SCN have been set aside for non-challenging of the Bills of Entry by the Department:

- a. *Shri Rajib Saha Versus Commissioner of Customs (Preventive), Shillong [2023 (8) TMI 1162 - CESTAT KOLKATA]*
- b. *Commissioner-Kolkata (Port) vs. Huvepharma (Sea) Pune Pvt. Ltd. [2026 (5) TMI 138 - CESTAT KOLKATA]*
- c. *Vijay Nirman Company Pvt. Ltd. Versus Principal Commissioner of Customs, Visakhapatnam [2025 (1) TMI 747 - CESTAT HYDERABAD]*

(vii) In light of the above, the appellant argues that the impugned order is liable to be set aside since the two Bills of Entry dated 06.04.2019 and 22.04.2019, under which the 2 Joy Battery Haulers including 6 batteries and 2 battery charger in CKD Condition brought in part shipments due to lack of storage space on a single ship/vessel have been imported, have not been challenged by the Department.

D. REDEMPTION FINE UNDER SECTION 125 OF THE CUSTOMS ACT, 1962 IS NOT IMPOSABLE.

- (i) The appellant also submits that provisions of Section 125 of the Customs Act triggers only when the goods are confiscated by the Department. In the present case, it is an undisputed fact that the imported goods were cleared for home consumption upon payment of duty. The Ld. Commissioner in the operative part of the impugned order has held that '*since the goods have already been cleared, I impose a redemption fine...*'. It is submitted that it is settled position of law that when goods are not available for confiscation, redemption under Section 125 of the Customs Act cannot be imposed.
- (ii) The Hon'ble Bombay High court in *Commissioner v. Finesse Creation Inc [2009 (248) E.L.T. 122 (Bom.)]* has held that once the goods are not available for confiscation no fine can be levied [approved by the Hon'ble Supreme Court in *Commissioner v. Finesse Creation Inc. [2010 (255) E.L.T. A120 (S.C.).]*
- (iii) The aforesaid ruling has also been followed by this Tribunal in *M/s Reach Infocom Tech Pvt. Ltd., Ms Kinjal Desai Versus Commr. of Customs (Airport & Admin), Kolkata [2025 (11) TMI 210 - CESTAT KOLKATA.]*
- (iv) In light of the aforesaid judgments, it is submitted that in the present case since the impugned goods in question have been cleared for home consumption, the same have lost the

character of being imported goods under the Act and therefore, the said goods cannot be held liable for confiscation under section 111 of the Act. Consequently, the imposition of redemption fine is also legally untenable and unwarranted; thus, the imposition of redemption fine by the impugned order is liable to be set aside, in entirety.

E. INTEREST IS NOT CHARGEABLE AND PENALTY IS NOT IMPOSABLE IN THE PRESENT CASE

- (i) It is also the appellant's stand that where the principal demand itself is not payable, the levy of interest and imposition of penalty ought to be set aside.
- (ii) Further, the appellant submits that the impugned order confirmed the imposition of penalty under Section 114A of the Customs Act which provides for imposition of penalty only in cases where the duty or interest has been erroneously paid or short paid by reason of collusion or any wilful mis-statement or suppression of facts; however, in view of the foregoing submissions it is clear that none of said ingredients are satisfied in the present case. Therefore, imposition of equivalent penalty under Section 114A is not sustainable.

8.1. In view of these submissions, the Ld. Counsel for the appellant have prayed for setting aside the demand of differential customs duty, along with interest, penalty and redemption fine, as confirmed against them vide the impugned order and allowing the instant appeal.

9. On the other hand, the Ld. Authorized Representative of the Revenue justifies the impugned order and prays for rejection of the present appeal.

10. Heard both sides and perused the documents presented before us.

11. We find that although the appellant has argued the case on merits, they have not pressed the issue as far as their contentions regarding the merits of the issue are concerned and have mainly contested the impugned demands on the ground of limitation.

11.1. We take note of the fact that in this case, the Show Cause Notice has been issued after a period of two years from the date of the out-of-charge order. The Bills of Entry in this case were filed on 06.05.2019 and 22.04.2019, the out-of-charge order was issued on 17.05.2019 and the underling Show Cause Notice has been issued on 13.12.2023. The issue involved in the present appeals pertains to the availment of benefit under Notification No. 50/2017-Cus. subject to fulfilment of the conditions prescribed therein. Thus, it is evident that the issue involved is technical in nature, for which no wilful mis-statement or suppression of facts can be attributed on the part of the importer. Mere claiming of benefit under a Notification cannot be construed as mis-statement of material facts in the Bills of Entry. It is also a settled position of law that mis-classification of a product or claiming the of benefit under a Notification, can never be a ground for alleging suppression or wilful mis-statement of facts, so as to invoke the extended period of limitation. This view has been expressed by the Tribunal in the case of *M/s. Madhepura Electric Locomotive Pvt. Ltd. versus Principal Commissioner of Customs (Port) Kolkata* [2025 (3) TMI 789-CESTAT

Kolkata]. The relevant portion of the said order is reproduced below:-

"4.1. He further submitted that the extended period of limitation is not invocable in the facts and circumstances of the case; the import took place during November, 2017 to January, 2018 whereas the Show Cause Notice has been issued on 29.07.2020 by invoking the extended period of limitation. It is his contention in this regard that claim of classification under a particular Customs Tariff would not amount to wilful suppression or mis-statement or suppression of facts. To support this contention, he relied upon the decisions of this Tribunal in the following cases: -

.....

7. We find that it is a fact on record that the import took place during the period from November, 2017 to January, 2018 and the goods were cleared for home consumption by assessment of the Bills of Entry. Therefore, we observe that the Show Cause Notice issued on 29.07.2020 is highly barred by limitation. The same view has been taken by this Tribunal in the case of DIC India Ltd. v. Commissioner of Cus. (Port), Kolkata [2024 (9) TMI 186 – CESTAT, Kolkata] vide Final Order No. 76782 of 2024 dated 28.08.2024 in Customs Appeal No.75652 of 2015 (CESTAT, Kolkata) wherein it has been observed as under:

.....

7.1. In view of this, we hold that the extended period of limitation is not invocable in the case. Consequently, the proceedings against the appellant are not sustainable."

11.2. The aforesaid ruling has been further affirmed by the Hon'ble Supreme Court as reported in 2025 (11) TMI 145 – SC.

11.3. The above issue was also examined by this Tribunal in the case of *DIC India Limited vs. CC (Port), Kolkata [2024 (9) TMI 186 – CESTAT, KOLKATA]*, wherein the following observations have been recorded by the Bench: -

"8. We observe that the appellant has imported the goods viz. "SCRIPTANE PW 28/32H (Petroleum Hydro treated Middle)" and classified the said goods under Chapter Heading 2709. In respect of the 17 Bills-of-Entry filed by the appellant during the period from February 2010 to September 2010, **we observe that the Bills of entry were assessed finally classifying the goods under Chapter Heading 2709. We observe that the Department did not raise any doubt about the classification of the goods in respect of these 17 Bills-of-Entry when the goods were assessed finally. These final assessments were not challenged by the department and hence the assessment attained finality. We observe that the department cannot reopen the classification of the goods imported vide these 17 Bills of Entry later by invoking suppression clause. We observe that the appellant has not suppressed any information from the department when the goods were imported under these 17 Bills of entry and all the relevant facts were well within the knowledge of the Department. Thus, we hold that there is no suppression of facts with intention to evade payment of tax established in this case and hence, we hold that the Show Cause Notice issued on 26.12.2013 by invoking the extended period of limitation is not sustainable. Thus, we hold that the re-classification of the imported goods vide the 17 Bills of entry under CTH 2710, on the basis of Test Report received from IIT, Kharagpur, is not sustainable. Accordingly, we set aside the demands confirmed in the impugned order in respect of all these 17 Bills of Entry."**

(Emphasis supplied)

11.4. In fact, the Department was well aware of the fact that the appellant was engaged in the import of goods in CKD condition and also that in respect of such imports, the appellant was availing the benefit of Sl. No. 524(a) of Notification No. 50/2017-Cus. It is on record that at the time of importation, the appellant made all necessary declaration in the Bills of Entry and invoices were also submitted by them. Further, the subject Bills of Entry also clearly mention that the goods imported are in CKD condition. Thus, it is clear that all the relevant facts were within the knowledge of the Department and hence, suppression, as alleged, has not been established.

11.5. In view thereof, we find that the ingredients required for invoking the extended period of limitation are absent in the present case. Consequently, the demand confirmed vide the impugned order, by invocation of the extended period of limitation, is not sustainable and hence the same stands set aside.

12. The appellant has also raised the contention that assessment orders being quasi-judicial in nature, can only be set aside by an order of the competent appellate authority in appellate proceedings and not by mere issuance of a Show Cause Notice. We find merit in the above submission made by the appellant. In the present case, the Department has not filed any appeal against the assessment of the two Bills of Entry dated 06.04.2019 and 22.04.2019. The impugned goods were cleared by the appellant for home consumption after the said Bills of Entry were properly assessed under self-assessment and no objections were raised by the Revenue against the above assessment at that time. If the Revenue felt aggrieved by such self-assessment undertaken by the appellant,

they ought to have challenged the finally assessed Bills of Entry dated 06.04.2019 and 22.04.2019 before the appropriate authority. As the assessment of the concerned Bills of Entry has not been challenged, the Department cannot issue a Show Cause Notice for demanding the differential customs duty, as alleged. This view has been affirmed by the Hon'ble Supreme Court in the case of *ITC Ltd vs. Commissioner of C.Ex., Kolkata-IV [2019 (368) E.L.T. 216 (S.C.)]* wherein it has been observed that that an order of self-assessment is nonetheless an assessment order passed under the Customs Act, so it would be appealable by any person aggrieved thereby and that the Department, as well as the assessee, can prefer an appeal if aggrieved by such order of assessment. Thus, as there is no challenge to the assessed Bills of Entry by the Revenue, no demand can be sustained, in terms of the decision of the Hon'ble Supreme Court in the case of *ITC Ltd. (supra)*.

12.1. In the case of *Shri Rumen Dey Versus Commissioner of Customs (Prev.) Shillong [2023 (7) TMI 70 - CESTAT KOLKATA]*, this Tribunal, while dealing with a similar issue, has held as under: -

"10. We observe that the self-assessment of the Bills of Entry by the importer was not challenged by the department. The Hon'ble Supreme Court in the case of ITC Ltd, has held as under:

47. When we consider the overall effect of the provisions prior to amendment and post-amendment under Finance Act, 2011, we are of the opinion that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would not be within the

ken of Section 27 to set aside the order of self-assessment and reassess the duty for making refund; and in case any person is aggrieved by any order which would include self-assessment, he has to get the order modified under Section 128 or under other relevant provisions of the Act.

11. We observe that the ratio of the above said decision is squarely applicable in this case. We find that the impugned order passed demanding differential duty without challenging the original assessment of the Bills of entry is not sustainable. Hence, the demand is not sustainable on this count also.”

12.2. The above order has been upheld by the Hon'ble Tripura High Court as reported in 2025 (10) TMI 73 - TRIPURA HIGH COURT.

12.3. Therefore, we also hold that the impugned order is liable to be set aside since the assessments of the two Bills of Entry dated 06.04.2019 and 22.04.2019 have not been challenged by the Revenue.

13. On the aspect of imposition of redemption fine, we observe that the goods are not available for confiscation in this case. Under such circumstances, the question of imposition of redemption fine under Section 125 of the Customs Act, 1962 naturally does not arise, as has been held in a catena of decisions on the issue. The Hon'ble Bombay High court in *Commissioner v. Finesse Creation Inc [2009 (248) E.L.T. 122 (Bom.)]* has held that once the goods are not available for confiscation no fine can be levied. This case was approved by the Hon'ble Supreme Court in *Commissioner v. Finesse Creation Inc. [2010 (255) E.L.T. A120 (S.C.)]*. The aforesaid ruling has also been

followed by this Tribunal in *M/s Reach Infocom Tech Pvt. Ltd., Ms Kinjal Desai Versus Commr. of Customs (Airport & Admin), Kolkata [2025 (11) TMI 210 - CESTAT KOLKATA]*. Thus, it flows from the above decisions that once the goods are not available for confiscation, no redemption fine can be levied therefor. Accordingly, we set aside the redemption fine imposed in the present case.

14. As regards the demand of interest, since the demand of customs duty itself does not survive, there is no question of charging interest. Accordingly, the demand of interest stands set aside.

15. Coming to the issue of imposition of penalty, we find that the said penalty has been imposed under Section 114A of the Customs Act, 1962. It is relevant to note that imposition of penalty under Section 114A of the Customs Act, 1962 is attracted only in cases where the duty has not been levied or has been short-levied or erroneously refunded by reason of collusion or any wilful misstatement or suppression of facts on the part of the assessee. In the facts and circumstances of the present case and in view of the findings recorded hereinabove, none of the ingredients necessary for invocation of the said provision are found to be established. Consequently, the imposition of equivalent penalty under Section 114A of the Customs Act, 1962 cannot be sustained and is accordingly set aside.

16. In view of the discussions hereinabove, we do not find any merit in the impugned order and accordingly, the same is set aside.

17. In the result, the appeal is allowed, with consequential relief, if any, as per law.

(Order pronounced in the open court on **17.06.2026**)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd