CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH : AHMEDABAD

COURT NO.I

Customs Appeal No.10040 of 2023

(Arising out of Order-in-Original No.JAM-CUSTM-PRV-COM-002-22-23 dated 14/10/2022 passed by Commissioner of Customs (Preventive), Jamnagar (Gujarat)

M/s Ford India Pvt. Ltd., ...Appellant
(Revenue Survey No.6, North Kotpura,
Sanand, Ahmedabad-382170)

VERSUS

Commissioner of Customs (Preventive), Jamnagar

....Respondent

(Seema Shulk Bhavan, Jamnagar-Rajkot Highway,
Near Victoria Bridge, Jamnagar, Gujarat-361001)

APPEARANCE:

Shri Manish Jain, Advocate for the Appellant
Shri Girish Nair, Authorised Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 10573/2026

DATE OF HEARING : 11 March, 2026
DATE OF PRONOUNCEMENT : 14 July, 2026

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Original No.JAM-CUSTM-PRV-COM-002-22-23 dated 14/10/2022 passed by Commissioner of Customs (Preventive), Jamnagar (Gujarat). By the impugned order following has been held:-

"ORDER

(i) I order that the entered and declared classification under tariff item 84099191 of the First Schedule to the Customs Tariff Act, 1975, for the goods "ROD ASY CONN [ROD ASSEMBLY CONNECTJ in Bills of Entry. mentioned in

Annexure-A & B to the Show Cause Notice No. PC-01/2022-23 dated 11.05.2022, be reclassified under tariff item 84099941 with consequential duty liability as held at Para 42.1 of this Order and I reject the respective classification and exemption Notification No. 46/2011-Customs dated 01.06.2011, as amended, claimed by the Noticee;

(ii) I order that the entered and declared classification under tariff item 87089900 of the First Schedule to the Customs Tariff Act, 1975, for the goods "TUB ASY-FU/ INJ INLT (TUBE ASSEMBLY FUEL INJECT INLET)" in Bills of Entry, mentioned in Annexure-A & B to the Show Cause Notice No. PC-01/2022-23 dated 11.05.2022, be reclassified under tariff item 84099941 with consequential duty liability, as held at Para 43.7 of this Order and I reject the respective classification and exemption Notification No. 46/2011-Customs dated 01.06.2011, as amended, as claimed by the Noticee:

(iii) I order that the entered and declared classification under tariff item 87089900 of the First Schedule to the Customs Tariff Act, 1975, for the goods "CVR ASY ENG APER (COVER ASSEMBLY ENGINE APPEARANCE)" in Bills of Entry, mentioned in Annexure-B, C & D to the Show Cause Notice No. PC-01/2022-23 dated 11.05.2022, be reclassified under tariff item 84099941 with consequential duty liability, as held at Para 44.5 of this Order and I reject the respective classification and exemption Notification No. 46/2011-Customs dated 01.06.2011, as amended, as claimed by the Noticee;

(iv) I order that the entered and declared classification under tariff item 87089900 of the First Schedule to the Customs Tariff Act, 1975, for the goods "Brake Pads" and "Kit Brake Linings" in Bills of Entry, mentioned in Annexure-C to the Show Cause Notice No. PC-01/2022-23 dated 11.05.2022, be reclassified under tariff item 87083000 with consequential duty liability, as held at Para 45.3 of this

Order and I reject the respective classification and exemption Notification No. 46/2011-Customs dated 01.06.2011, as amended, as claimed by the Noticee;

(V) I confirm the demand of the total differential Customs duty of Rs. 11,93,46,425/- (Rupees eleven crore, ninety three lakh, forty six thousand, four hundred and twenty five only) short levied and short paid on the said goods covered under Bills of Entry, as detailed in Annexure -A, B, C & D to the Show Cause Notice No. PC-01/2022-23 dated 11.05.2022, in terms of Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28 AA of the Customs Act, 1962. The same is ordered to be recovered from the Noticee;

(vi) I hold that the goods imported under Bills of Entry, as detailed in Annexure - A, B, C & D to the Show Cause Notice No. PC-01/2022-23 dated 11.05.2022, are liable for confiscation under Section 111(m) and 111(q) of the Customs Act, 1962. However, as the goods are not available for confiscation, I refrain from imposing any redemption fine

(vii) I do not impose any penalty on M/s Ford India Pvt. Ltd. under Section 112(a) of the Customs Act, 1962;

(viii) I impose penalty of Rs. 11,93,46,425/- (Rupees eleven crore, ninety three lakh, forty six thousand, four hundred and twenty five only) plus penalty equal to the applicable interest under Section 28AA payable on the duty demanded and confirmed above on M/s Ford India Pvt. Ltd. under Section 114A of the Customs Act, 1962;

(ix) I Impose penalty of Rs. 2,00,000/- (Rupees two lakhs only) on M/s Ford India Pvt. Ltd. under Section 114AA of the Customs Act, 1962;

(x) I order for appropriation of Rs. 10,00,00,000/- (Rupees ten crores only) voluntarily deposited by M/s Ford India Pvt.

Ltd. towards the part payment of the differential duty along with interest liability as ordered above."

2.1 On an specific intelligence developed by the officers of the Directorate of Revenue Intelligence, Delhi Zonal Unit showing that appellant having IEC No.0396011853 was engaged in the import of parts of compression Ignition internal combustion engine (Diesel Engine), correctly classifiable under sub-heading 8409.99 of the First Schedule of the Customs Tariff Act, 1975 ('the CTA'). The intelligence indicated that the importer was evading Customs duty by way of mis-classification/ mis-declaration of the said goods under sub-heading 8409.91 of the CTA, which covered parts for use exclusively with spark ignition internal combustion piston engines (Petrol Engine) and availing the undue benefit of preferential rate of Customs duty under Sr. No. 1064 (1) of the Notification No.46/2011-Customs dated 01.06.2011 in respect of the Free Trade Agreement between India and ASEAN countries, known as INDO-ASEAN FTA.

2.2 On scrutiny of import data of the appellant, it was observed that appellant had imported 'Connecting Rod Assembly (Connecting Rod/ Con Rod)' which is an essential part used principally or solely with the engines of headings 8407 and 8408 of the CTA it connects the piston to the crankshaft and is used in spark-ignition reciprocating or rotary internal combustion piston engine i.e. petrol engine of heading 8407 of the CTA; and compression ignition internal combustion piston engine, i.e., diesel engine. Connecting Rod assembly, designed and intended to be used with diesel engine, cannot be used with petrol engine and vice versa. It was noticed from the import data that appellant was importing Connecting Rod/Con Rod by declaring the same under chapter heading 8409.91 only, whereas, appellant was also manufacturing and assembling diesel engines for different models of vehicles.

2.3 It was noticed that they also importing 'Tube Assembly Fuel Injection Inlet/ High Pressure Fuel Injection' which is an essential part used principally or solely with the engines of headings 8408 of the CTA. It connects common rail fuel system to the fuel Injector in the engine and is used only in Compression ignition internal combustion piston engine i.e. diesel engine of heading 8408 of the CTA. It was noticed that appellant was classifying 'Tube Assembly Fuel Injection Inlet/ High pressure fuel injection under sub-heading 8708.99 of the CTA, as part of vehicle. However, as the said part was used solely or principally with engine, should have been classifiable under heading 8409 as part of engine.

2.4 Further, it was noticed that on certain occasions, appellant has imported - 'Brake Pad' and 'Kit Brake Lining (Brake lining)" etc. by classifying the same under tariff item 87089900 as parts of vehicle, whereas this should have correctly classifiable under tariff item 87083000.

2.5 Acting on the said intelligence, a search was conducted by the officers of the DRI on 15/16.02.2021 in the presence of Shri Anil Patel, Plant Head and Shri Vishrut Thakore, Manager (Taxation), Documents relevant to the investigation along with samples of the impugned goods were resumed by the officers under Panchnama dated 15/16.02.2021 for further investigation. Statements of Shri Anil Patel, Site Plant Manager and Shri V Umesh Chandra, General Manager were recorded under Section 108 of the Customs Act, 1962 on the spot.

2.6 Vide letter dated 16.02.2021 appellant submitted demand draft No.558820 dated 16.02.2021 towards differential customs duty of Rs.10,00,00,000/- deposited voluntarily by them vide TR-6 challan No.01/Ford/2021 dated 23.02.2021 in the government account.

2.7 Vide letter dated 07.04.2021 they submitted that connecting rod is predominantly meant for use in Diesel Engines. However, they were inadvertently classified the same under tariff item 84099191 and accepted the differential duty was payable in respect of Connecting Rods.

2.8 Further, investigation were made and statements of Shri Vaman Vaze, Manager, IMG Customs Operations of appellant was recorded on 07.04.2021, 22.07.2021 and Shri Preetam Singh Khera, General Manager (Taxation) was recorded on 27.08.2021 and 22.10.2021.

2.9 Vide letter dated 22.10.2021 appellant admitted that they have inadvertently classified Brake lining/ Brake pad under tariff item 87089900 instead of 87083000 during the period August, 2016 to June, 2018 and submitted the technical specification/engineering requirements of the Common Rail System (CRS) along with other documents.

2.10 On perusal of the import data of the importer it was observed that appellant has imported 'Tube Assembly Fuel Injection Inlet/High Pressure Fuel Injection Pipe' under two different sub-heading 8409.00 and 8708.99. Shri Preetam Singh Khera, General Manager (Taxation) himself admitted that they have also imported the 'Tube Assembly Fuel Injection Inlet/High Pressure Fuel Injection Pipe' under sub-heading 8409.99 and on most of the occasions, the said goods have been imported under heading 8708.99. During investigation it was observed that appellant had locally by classifying the said goods under heading 8409.99. From the above documents and statements recorded, it was evident that the said goods are part of engine and rightly classifiable under 8409 as part of engine.

2.11 Thus by mis-classifying the said goods appellant has evaded customs duty as detailed in table below:-

S. No	Description of goods	Part number	CTH declared by importer	CTH proposed	Assessable value of the goods (in Rs.)	Total duty evasion (in Rs.)
1	Connecting rod	HG9Q-6200-AA, GK2Q-6200-BA	8409.91.91	8409.99.41	44,89,41,317	9,46,79,504
2	Tube Assembly Fuel Injection Inlet-	HG9Q-9C993-CA, HG9Q-9C993-BA, HG9Q-9C993-CA	8708.99.00	8409,99.41	15,14,80,819	2,13,28,499
3	Cover Assembly Engine Appearance	EB3G-6A949-CB, EB3G-6A949-BB	8708,99.00	8409.99.41	1,52,18,203	16,76,767
4	Brake Pad and Kit	-	8708.99.00	8708.30.00	1,95,02,789	16,61,654

	Brake Lining					
	TOTAL (IN Rs.)				63,51,43,126	11,93,46,425

2.12 It was also evident that appellant was fully aware that 'Connecting Rod Assembly (Connecting Rod/ Con Rod)' which is an essential part used principally or solely with the diesel engines and should have been classified under heading 8409.9941. However, they continued to classify wrongly and claim the benefit of exemption not available to them.

2.13 Similarly, they had evaded customs duty in respect of Cover Assembly Engine Appearance by mis-classifying the said goods by not properly describing/declaring the connecting rods as connecting rod in the bill of entry. They have mis-classified the said goods which were mint for petrol engine in order to avail the benefit of Notification No.46/2011-Customs dated 01.06.2011. Similarly, in this case appellant by suppressing vital details, mis-classified these goods to avail the benefit of exemption which was not due to them.

2.14 Appellant had imported these goods from the port as detailed in table below:-

			(Amount in Rs)
S. No.	Port of import	Value of the goods	Duty evaded
1	Pipavav Port (INPAV1)	30,91,87,450	5,93,75,320
2	Mundra Port (INMUN1)	29,12,35,911	5,66,32,856
3	Chennai Port (INMAA1)	2,48,20,748	20,91,501
4	Katupalli Port (INKAT1)	98,99,017	12,46,748
	TOTAL	63,51,43,126	11,93,46,425

2.14 A show cause notice dated 11.05.2022 was issued to the appellant asking them to show cause as to why:-

"a) the entered and declared classification under tariff item 84099191 of the First Schedule to the Customs Tariff Act, 1975, for the goods "ROD ASY CONN [ROD ASSEMBLY CONNECT] in Bills of Entry, mentioned in Annexure-A & B attached to the said Show Cause Notice dated 11.05.2022, should not be rejected and the said goods should not be classified under tariff item 84099941 with consequential duty liability.

b) the entered and declared classification under tariff item 87089900 of the First Schedule to the Customs Tariff Act, 1975, for the goods "TUB ASY-FU/INJ INLT (TUBE ASSEMBLY FUEL INJECT INLET) in Bills of Entry, mentioned in Annexure-A & B attached to the said Show Cause Notice dated 11.05.2022, should not be rejected and the said goods should not be classified under tariff item 84099941 with consequential duty liability;

c) the entered and declared classification under tariff item 87089900 of the First Schedule to the Customs Tariff Act, 1975, for the goods "CVR ASY ENG APER (COVER ASSEMBLY ENGINE APPEARANCE)" in Bills of Entry, mentioned in Annexure-B, C & D attached to the said Show Cause Notice dated 11.05.2022, should not be rejected and the said goods should not be classified under tariff item 84099941 with consequential duty liability;

d) the entered and declared classification under tariff item 87089900 of the First Schedule to the Customs Tariff Act, 1975, for the goods "Brake Pads" and "Kit Brake Linings in Bills of Entry, mentioned in Annexure-C attached to the said Show Cause Notice dated 11.05.2022, should not be rejected and the said goods should not be classified under tariff item 87083000 with consequential duty liability:

e) The differential Customs duty amounting to Rs. 11,93,46,425/- (Rupees eleven crore, ninety three lakh, forty six thousand, four hundred and twenty five only) short levied and short paid on the said goods covered under Bills of Entry. as detailed in Annexure A, B, C & D attached to the said Show Cause Notice dated 11.05.2022, should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28 AA of the Customs Act, 1962;

f) The goods imported under Bills of Entry, as detailed in Annexure A, B, C & D attached to the said Show Cause Notice dated 11.05.2022, should not be held liable to *confiscation as per provisions of Sections 111(m) and 111(q) of the Customs Act, 1962, as applicable;*

g) Penalty should not be imposed on them under Section 112(a)(il) or 114A and 114AA of the Customs, Act, 1962;

h) The total amount of Rs. 10,00,00,000/- (Rupees ten crores only) voluntarily deposited by them, should not be appropriated against the aforesaid demands."

2.15 The said show cause notice was adjudicated as per the impugned Order-in-Original dated 14.10.2022 referred in para 1 above.

2.16 Aggrieved appellant have filed this appeal.

3.1 We have heard Shri Manish Jain learned Counsel appearing for the appellant and Shri Girish Nair learned Authorised Representative appearing for the revenue.

3.2 Arguing for the appellant learned Counsel submits that-

- Counsel for the appellant submitted a summary chart as follows:-

Description	CTH		Port Wise Demand				Ground of Contest
	Declared	Proposed	Port	Demand for Period			
				Normal	Extended	Total	
Connecting Rod Assembly	84099191	84099941	Pipavav	0	46421250	46421250	Limitation
			Mundra	6989556	40164766	47154322	
			Kattupali	0	0	0	
			Chennai	0	0	0	
			Total	6989556	86586016	93575572	
Tube Assembly Fuel Injection Inlet	87089900	84099941	Pipavav	0	11850138	11850138	Limitation & Merits
			Mundra	2884533	6593829	9478362	
			Kattupali	0	0	0	
			Chennai	0	0	0	
			Total	2884533	0	0	
Cover Assembly for Engine Appearance	87089900	84099941	Pipavav	0	0	0	Limitation & Merits
			Mundra	0	0	0	
			Kattupali	0	0	0	
			Chennai	0	0	0	
			Total	0	0	0	
Brake Pad and Kit Brake Lining	87089900	87083000	Pipavav	0	0	0	Limitation
			Mundra	0	0	0	
			Kattupali	0	0	0	

			Chennai	0	0	0	
			Total	0	0	0	
		Grand Total					

- However, after arguing for some time and in response to the quarries raised by the Bench Counsel submitted that they are not contesting anything on merits of the case, they are contesting the demand only on limitation.
- Arguing in respect of limitation Counsel for the appellant submits as follows:-
- Connecting Rod Assembly
    - There is no mis-declaration of the goods, appellant described the goods correctly in BOE along with specific part number on bill of entry. The goods were examined at the time of import as the examination order on the BOE clearly states that 10% of goods are to be examined. Thus, once the goods are physically examined, allegation of suppression or mis-declaration cannot be sustained and extended period of limitation cannot be sustained in the present case. Reliance is placed on the decision of Hon'ble Supreme Court in the case of M/s Cosmic Dye Chemical Vs CCE, Bombay (1995) 6 SCC 117.
- Tube Assembly Fuel Injection Inlet-
    - While supporting that appellant has not mis-declared the goods. In the case of connecting rod Counsel submitted that appellant had individually mis-classified these goods and such mis-classification could not change of mis-statement, even if in the past they were classifying the said goods correctly. Reliance is placed on the decision of this Tribunal in the case of CC Vs Nayara Energy Ltd. 2019 (370) ELT 1201 (Tri.-Ahmd.), thus extended period cannot be invoked in this case also.
- Similar arguments have been given in respect of cover assembly for engine appliances.

- In respect of brake, pad and kit brake lining also relying to the decision of Hon'ble Supreme Court in the case of M/s Continental Foundation Vs CCE 2007 (216) ELT 177 (SC) wherein it was held that mere omission to give correct information is not suppression of the facts unless it is deliberate.
- The demand is also revenue neutral as the appellant has exported the finished goods under the claim of brand rate of drawback. They received drawback from the Customs Department in respect of all the customs duty paid at the time of import. Thus, there cannot be any intention to evade payment of duty. Reliance is placed on the following decisions:-
    - CC Vs Gaurav Enterpirses 2006 (193) ELT 532 (Bom.)
    - C. Natvaralal & Co vs CC (Import), Mumbai;
    - Hindustan National Glass & Industries Vs CC, Calcutta 2002 (145) ELT 162 (Tri.-Kalkata);
- Wherein it has been held that claiming the benefit of exemption in bill of entry filed does not amount to suppression, mis-declaration etc.
- Further, penalties imposed on the appellant cannot be sustained in view of following decisions:-
    - CCE Vs HMM Ltd. 1995 (76) ELT 497 (SC);
    - Goodyear (India) Vs CCE 2003 (157) ELT 560;

3.3 Arguing for the revenue on the issue of invocation of extended period of limitation, Learned Authorized Representative submitted as follows:-

> *"9. The Adjudicating Authority has taken up the issue of availability of extended period for demand separately for each of the four import items:*
>
> *Connecting Rod Assembly (Connecting Red/ Con Rod) -*
>
> *9.1 The Adjudicating Authority observed that the importer mentioned the following description in the Bills of Entry - "Rod Asy Con with Tariff item 8409 9191". With this declared description, anyone would treat the description as*

Rod Asy Con for petrol engine as the Tariff Item 84099191 clearly mentions parts of petrol engine of motor Vehicles. Thus the suppression of facts and wilful mis-statement in description and classification of the item is quite glaring. The Adjudicating Authority thus found that the importer, with an intent to evade payment of Customs Duty, had willfully mis-stated the facts to the department in the concerned Bills of Entry by suppressing the vital information related to the use of the same and intentionally mis-classified the said item under 84099191 which is meant for petrol engines only, whereas the parts of diesel engine correctly fall under 84099941. Therefore, it was held that the ingredients related to invocation of extended period are rightly applicable under Section 28(4) of the Customs Act, 1962.

Tube Assembly Fuel Injection Inlet:

9.2 The Adjudicating Authority observed that there is no dispute that the said item is used in diesel engine only and not elsewhere in the motor vehicle. Further, the item has been listed as part of diesel engine in their BOM (Bill of Material) with a specific part number and the said item is fixed on the diesel engine in the assembly line where it becomes an integral part of diesel engine. It was found that the importer had earlier, imported the said item from Japan and South Africa by classifying the same under CTH 84099990 and 84099941 i.e. parts of Diesel Engine and the same was also being procured from domestic/ local market under CTH 8409 i.e. Parts of engine. Thus, in these circumstances, found that the mis-classification amounts to mis-statement, as the importer was well aware about the classification of the item, but with an intent to evade the payment of Customs Duty, had willfully mis-classified the said item under CTH 870899 i.e. parts of motor vehicle, whereas the item being part of diesel engine correctly falls under CTH 84099941. Therefore, it was held that the *ingredients related to invocation of the extended period in the instant case are rightly applicable under Section 28(4) of the Customs Act.*

Brake Pad and Kit Brake Lining (Brake Lining)

9.3 This part was classified by the importer under CTH 870899 i.e. parts of motor vehicle Inspite of the fact that the Customs Tariff had a specific entry for Brakes and parts thereof i.e. 87083000. The Adjudicating Authority observed that it is a settled issue that when a specific entry is provided in the Customs Tariff, the question of classifying the same under any general entry does not arise. Further, Tariff Entry No. 87083000 is so clear that there is no scope for interpretation. The importer has now accepted the classification proposed in the SCN and is not contesting now. He therefore found that the importer had mis-classified with intent to avail Exemption Notification and evade payment of Customs Duty which amounts to mis-statement about the item. Therefore, he held that the ingredients related to invocation of extended period in the instant case is rightly applicable under Section 28(4) of the Customs Act, 1962.

Cover Assembly for Engine Appearance:

9.4 The Adjudicating Authority observed that this item is used in engine only and not elsewhere in the motor vehicle which has been accepted by the importer. Shri Preetam Singh Khera, General Manager (Taxation) in his statement dated 22.10.2021 had already accepted that they have imported the item by classifying the same under two tariff headings 840999 and 870899. The Adjudicating Authority found that the Importer had already imported the said item under CTH 84099941 on which the benefit of preferential rate of duty was not available. Therefore, they had intentionally changed the classification to evade the payment of Customs Duty for availing the benefit of Not. No. 46/2011-Cus dated 01.06.2011. In these *circumstances, mis-classification amounts to mis-statement about the item and hence the ingredients of Section 28(4) are met.*

9.5 The Adjudicating Authority further found that in the era of self-assessment, Section 17 of the Customs Act, 1962 provides that it is the duty of the importer lo correctly describe and classify the items and self-assess the duty on the imported goods by filing the Bill of Entry. CBEC vide Circular No. 17/2011-Cus dated 08.04.2011 had cast the responsibility on the shoulder of the importers to correctly determine the duty, classification, etc by way od self-assessment. However, the importer had not discharged their liability and had knowingly availed undue benefit of the duty exemption by willful mis-statement and suppression of facts. It was therefore held that for the subject import items, the extended period of demand was rightly invoked in the SCN."

4.1 We have considered the impugned orders along with the submissions made in appeal and during the course of argument.

4.2 We note that the appellant had disputed initially the demand made in respect of the two items on merit. However, they have given that claim in the court and expressed that they would argue the entire issue on limitation only. Thus, we have taken this matter for consideration on the ground of limitation only as we find that classification as proposed by the revenue in respect of all the goods done during the course of investigation itself admitted by the appellant and they have also on making such payment deposited a substantial amount of duty voluntary as per the following challan:-

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FORM TR-6

Major Head 0037-Custom Duties
TR-6/GAR7 Challan No.01/ FORD/2021
(Treasury Rule 92/Receipt & Payment Rules 26)

ORIGINAL (To be sent to PAO through Focal Point Bank)
DUPLICATE (For Assessing Authority for Release of Goods etc. to be sent through Assesse)
TRIPLICATE (Assesse/Depositors Copy) Not valid for cleaning goods.
quadruplicate (To be sent to Nominated Range Officer/ Superintendent of Customs through Focal Point Branch.

Challan of amount paid into the **Commissioner of Customs, Ahmedabad** (Code No.)

Name of the Bank and the Branch with Code No. **Bank of Baroda, Navrangpura Branch, Ahmedabad**

Accounting Collectorate .... (Code No.)
Division .... (Code No.)
Range .... (Code No.)

Name of the Focal Point Bank (Code No.)

Name and Address of the Assesse/Iimporter/Exporter **M/s. Ford India Pvt. Ltd, Survey No. 01, North Kothpura, Sanand, Ahmedabad, IEC No.0396011853.** By Whom Tendered Shri **Vishrut Thakor**

Country of Origin forImports/Country to which exported .... (Code No. ....)

Full Particulars of the remittance and Bill of Entry No. and date etc./Name of the commodity imported 'exported with Tariff (Itan No.)	Head of Accounts and Major Head (Indicate below the propriate Minor Head from the list on the reverse)	Accounting Code No.	Amount Tendered		Counter Signature of the Departmental Officer (Where Required)
			By Cash Rs.	By Cheque/ Draft/ Pay Order Etc. Rs. P.	
Voluntary payment of customs duty with respect to FTA benefit availed on import of goods in the case booked by DRI, DZU vide F. No. DRI/DZU/23/ENQ-09/2021.	0037-Customs Duties			100000000.00 Demand Draft No.......... dated .... of ICICI Bank Payable at Ahmedabad	पवन कुमार PAWAN KUMAR आसूचना अधिकारी INTELLIGENCE OFFICER रा.आ.नि. जोनल यूनिट/अहमदाबाद D.R.I. ZONAL UNIT AHMEDABAD.
	TOTAL:			100000000.00	

(In Words) Rupees **Ten Crores Only**

Date: 16.02.2019

Signature of the Tenderer ... V.A. Thakor ...

(TO BE FILLED BY THE BANK)

Received payment (In words) Rupees ....

(Signature of the Authorised Officer of the Bank)

Bank's Receipt Stamp
Name of the Bank

19 FEB 2021
20 FEB 2021
23 FEB 2021
200333

Space for Focal Point Bank Stamp indicating the date and amount credited ID Government Account

4.3 On the issue of limitation, impugned order records as follows:-

> *"Whether extended period for demand applicable*
>
> *46. The Noticee has contended that extended period is not available for issue of show cause notice. I find that the show cause notice pertains to four items imported. I take up the issue of availability of extended period for demand separately for each of the items imported as under:*

(A) Connecting Rod Assembly (Connecting Rod/Con Rod) - observe that in respect of this item, the Noticee gave the description in the Bills of Entry as "ROD ASY CONN and claimed the classification under the Tariff Item 8409 9191 as part of petrol engine and also claimed the benefit of the preferential rate of customs duty under the Notification no. 46/2011-Customs dated 01.06.2011. I find that in the Bills of Entry, the Noticee, at no place had mentioned/ declared that the said item i.e. "ROD ASY CONN" is for the diesel engine. Instead they had classified the same under the Tariff item pertaining to the parts of the petrol engine i.e. under Tariff Item 8409 9191. This vital fact regarding the item being for diesel engine has been suppressed from the Department. I find that the Noticee was already aware that the said item would be used in the Diesel Engine only and the same were bearing the specific part number for diesel engine. Further, as the Noticee is a manufacturer of motor vehicles along with diesel and petrol engines for the same, they were well aware about the use of the particular part. I observe that there are two different entries in the Customs Tariff related to parts of petrol engine and diesel engine. The same read as follows:

8409		*Parts suitable for use solely or principally with the engines of heading 8407 or 8408.*
…………………………….		
8409 91 91	*---*	*of petrol engine of motor vehicles*
…………………………….		
8409 99 41-	*---*	*of diesel engines for motor vehicles*

The Noticee only mentioned the following description in the Bills of Entry: "Rod Asy Con with Tariff Item 8409 9191". With this declared description anybody would treat this description as Rod Asy Con for petrol engine as the Tariff Item 8409 9191 is so clearly mentioned parts "of petrol engine of motor vehicles. Thus, the suppression of facts and willful mis-statement in description and classification of the item is quite glaring.

Thus, I find that it is crystal clear that only the parts of petrol engine could fall under the Tariff item 8409 91 91, whereas, in the instant case, the imported item i.e. CON ROD is part of diesel engine, which is correctly classifiable under Tariff Item 8409 9941 on which the benefit of the preferential rate of customs duty under the Notification No. 48/2011-Customs dated 01.06.2011 is not available. Thus, I find that, the Noticee with an intend to evade the payment of Customs duty, had willfully mis-stated the facts to the Department in the concerned Bills of Entry by suppressing the vital information related to the use of the same and intentionally misclassified the said item under Tariff Item 8409 9191 which is meant for petrol engines only, whereas the parts for diesel engine correctly fall under Tariff Item 8409 9941. Therefore, the ingredients related to invocation of the extended period are rightly applicable under Section 28(4) of the Customs Act, 1962 and I hold so. In these circumstances, the case law cited by the Noticee are not applicable at all as the facts and circumstances in those cases were different. The cases cited by the Noticee are related to the bona fide issues of classification, whereas here it is misclassification by way of misstatement and suppression of facts as discussed above.

(B) Tube Assembly Fuel Injection Inlet - I observe that this item is used in the diesel engine only and not elsewhere in the motor vehicle and this fact has already been accepted by the Noticee. I further find that the Noticee had listed this item as a part of diesel engine in their BOM (Bill of Material) with a specific part number and the said item is fixed on the diesel engine in the assembly line where it becomes the integral part of the diesel engine. I find that the Noticee earlier had also imported the said item from Japan and South Africa by classifying the same under CTH 84099990 and 84099941 i.e. the parts of diesel engines and the same are also being procured from the domestic/ local market, under CTH 8409 i.e. the parts of engine. Thus, it is clear

that the Noticee was aware of the correct classification and has previously imported the same under Tariff Item 8904 9941 but intentionally mis-classified here. Inspite of the above narrated facts, the Noticee had mis-classified the item under Tariff Item 8708 9900 i.e. part of motor vehicle, with an intent to gain the benefit of the preferential rate of customs duty under the Notification No. 46/2011-Customs dated 01.06.2011, whereas, the same is classifiable under correct Tariff Item 8409 9941 i.e. the parts of diesel engine, on which the benefit of the said Notification No. 46/2011-Customs dated 01.06.2011, is not available. Thus, I find that, in these circumstances the mis-classification amounts to mis-statement, as the Noticee was well aware about the classification of this item but with an intent to evade the payment of Customs duty, had willfully mis-classified the said item under Tariff Item 8708 99 i.e. the parts of motor vehicle, whereas the item being the parts for diesel engine correctly falls under Tariff Item 8409 9941. Therefore, the ingredients related to invocation of the extended period in the instant case are rightly applicable under Section 28(4) of the Customs Act, 1962 and I hold so. In these circumstances, the case law cited by the Noticee are not applicable at all as the facts and circumstances in those cases were different. The cases cited by the Noticee are related to the bona fide issues of classification, whereas here it is misclassification by way of misstatement and suppression of facts as discussed above.

(C) Brake Pad and Kit Brake Lining (Brake Lining) - I observe that this part was classified by the Noticee under the Tariff Item 8708 99 i.e. the parts of motor vehicles, inspite of the fact that the Customs Tariff is having a specific entry for the Brakes and parts thereof l.e. the Tariff Item 8708 3000, which reads as follows:

8708 30 00-Brakes and servo-brakes; parts thereof

I find that the Noticee by misclassifying the said item under Tariff Item No. 8708 99 had unduly availed the benefit of the preferential rate of customs duty under the Notification No. 46/2011-Customs dated 01.06.2011, whereas, under the correct classification of the said item being under Tariff Item 8708 3000, no benefit of such preferential rate of customs duty is available. Further, it is a settled issue that when the specific entry for the said item is provided in the Customs Tariff, the question of classifying the same under any general entry does not arise. Further, the Tariff Entry 8708 3000 is so clear that there is no scope for interpretation. The Noticee has now accepted the classification proposed in the show cause notice and is not contesting now. Thus, I find that the Noticee has misclassified with intent to avail exemption Notification and evade payment of duty which amounts to misstatement about the item. Therefore, the ingredients related to invocation of the extended period in the instant case are rightly applicable under Section 28(4) of the Customs Act, 1962 and I hold so.

(D) Cover Assembly for Engine Appearance - I observe that this item is used in the engine only and not elsewhere in the motor vehicle and this fact has already been accepted by the Noticee. Shri Preetam Singh Khera, General Manager (Taxation) of the Noticee, in his Statement dated 22.10.2021 has already accepted that they have imported the Cover Assembly for Engine Appearance by classifying the same under two tariff headings 8409.99 and 870899. He further accepted that during the import from China, USA and Thailand the same good shave been imported under Tariff Items 8409 9192 and 8409 9941. Thus, I find that the Noticee was already importing the said item under Tariff Item no. 8409 9941 on which the benefit of preferential rate of customs duty is not available. Therefore, they had intentionally changed the classification to evade the payment of customs duty for availing the benefit under the

Notification No. 46/2011-Customs dated 01.06.2011. In these circumstances, mis-classification amounts to misstatement about the item. Hence, the ingredients of Section 28(4) are met.

47. Further, I find that in the era of self-assessment, Section 17 of the Customs Act, 1962, provides that it is the duty of the importer to correctly describe and classify the items and self-assess the duty on the imported goods by filing of the Bill of Entry electronically. The CBEC vide Circular No. 17/2011-Customs dated 08.04.2011 had cast the responsibility on the shoulder of the importers to correctly determine the duty, classification, etc, by way of self-assessment. Thus, the importer is required to ensure that he declares the correct classification, applicable rate of duty, value and benefit of exemption notification claimed, if any. However, I observe that the Noticee had not discharged their liability and knowingly had availed the undue benefit of the duty exemption by willful mis-statement and suppression of facts. Therefore, I hold that for this reason also for the items Con Rod, Tube Assembly, Brake Pad and Cover Assembly Engine Appearance, the extended period for demand is rightly invoked in the Show Cause Notice.

48. In view of the above discussion, the above goods are ordered to be re-classified as proposed in the Show Cause Notice and accordingly, the benefit of Notification No. 46/2011-Customs dated 01.06.2011 is not available. Hence, the demand raised in the show cause notice is liable to be confirmed under Section 28(4) of the Customs Act, 1962. Since, the demand is confirmed under Section 28(4) of the Customs Act, 1962 on the grounds of willful mis-statement and suppression of facts with intent to evade the duty. the penalty under Section 114A of the Customs Act, 1962 is rightly applicable in this case."

4.4 We find that during the course of investigation certain statements of the personnel in the appellant company were recorded. The crux of these statements and analysis of the same leading to framing charges leading suppression, mis-declaration, mis-classification with intent to evade payment of duty by availing the benefit of exemption not due have been discussed in the show cause notice. To have proper understanding of the same it is necessary to reproduced the said paragraphs from the show cause notice.

"4. In response to Summons dated 15.02.2021, Shri V Umesh Chandra, General Manager (Product Development - PVT) of Mis Ford India Private Limited, appeared on 15.02.2021 to tender his voluntary statement. In his voluntary statement recorded on 15/16.02.2021, Shri V Umesh Chandra, inter alia, stated that: -

i. M/s Ford India Pvt. Ltd. is a subsidiary of Ford Motor Company Limited, USA and is engaged in the manufacturing of vehicles and Engines; that M/s Ford India has four plants in two locations in India i.e. two plants in Chennai and two plants in Sanand; that one Vehicle Plant and one Engine Plant is located at Sanand, Gujarat:

ii. Two types of Engines are manufactured and assembled in the Sanand Plant ie. Panther Engine and Dragon Engine and their variants;

iii. The company imports some parts of the Engine and manufactures the Engines in the engine plant at Sanand. Engines manufactured by Ford India were either exported or domestically used in the vehicles manufactured by Ford India.

iv. Panther Engine as manufactured in Sanand Engine plant of Ford India Pvt. Ltd. Is compression ignition (Diesel) internal combustion engine i.e. Diesel Engine and Dragon Engine as manufactured in Sanand Engine plant of Ford India Pvt. Ltd. is spark ignition (Petrol) internal combustion engine i.e. Petrol Engine;

v. *Part Numbers- (i) GK2Q-6200 CA, (ii) Part No. GNIG-6200 AA (iii) Part No. HG9Q-6200 AA and (iv) Part No. J7BG-6200-BA pertain to 'Rod Assembly/ Connecting Rod. It is stated that '6200" is the base part Number for Rod Assembly/ConnectingRod: that Rod Assembly/ Connecting Rod is a part of Engine, which connects the piston to Crank Shaft:*

vi. *To identify the use of 'Rod Assembly/ Connecting Rod' used in Dragon petrol engine or Panther diesel engine, they refer to their WERS (Worldwide Engineering Release System) developed by the Ford, USA and being used by the Ford, India.; he submitted some screenshots of various part/ assembly numbers of rod assembly/connecting rod taken from the WERS, the details of which are tabulated below in Table-1. In all the mentioned parts, the CPSC (Corporate Product System Classification) classification begins with the Code 03, which denotes parts of Engine; He also submitted print out of the codes of different parts taken from https://www.padb.ford.com, which is part address database of the Ford Company,*

Table-l: For Rod Assembly/ Connecting Rod

Part Code	*Description mentioned*	*Full Description*	*Used for*
HG9Q-6200-AA	*ROD. ASY CONN.*	*Rod Assembly Connecting Rod*	*Panther Engine*
J7BG-6200-BA	*ROD. ASY. CONN.*	*Rod Assy. Connecting Rod*	*Dragon Engine*
J7BG-6100-AA	*PST. & CONN ROD. ASY. CONN.*	*Piston and Connecting Rod Assembly*	*Dragon Engine*
J7BG-6011-AB	*CYL ASY*	*Cylinder Assembly*	*Dragon Engine*
BV2E-6200-AA	*ROD. ASY. CONN.*	*Rod Assembly Connecting Rod*	*Sigma Engine*
GK2Q-6200-BA	*ROD. ASY. CONN.*	*Rod Assembly Connecting Rod*	*Panther Engine*
GN1G-6200-AA	*ROD. ASY. CONN.*	*Rod Assembly Connecting Rod*	*Dragon Engine*
GN1G-6200-	*ROD. ASY, CONN*	*Rod Assembly*	*Dragon*

CA		*Connecting rod*	*Engine*
GN1G-6100-EA	*PST. & CONN. ROD. ASY*	*Piston and Connecting Rod Assembly*	*Dragon Engine*
GN15-6200-CA	*ROD. ASY, CONN*	*Rod Assembly Connecting Rod*	*Dragon Engine*
GN1G-6200-BA/ BB	*ROD. ASY, CONN.*	*Rod Assembly Connecting Rod*	*Dragon Engine*

vii. Tube Assembly Fuel Injection Inlet, Tube Assembly Fuel & Brake, Tube Assembly Auxiliary Fuel Tank etc. are used to transport fuel from Fuel Tank to Engine and back. In support of the same, he submitted some screenshots of the various parts of fuel system, taken from the WERS, the details of which are tabulated below in Table-II. In all the mentioned parts, the CPSC (Corporate Product System Classification) classification begins with 0304, which denotes parts of Fuel System and 1001, which denotes Fuel distribution; he submitted a print out of the codes of different parts from PADB (Part Address Database) portal of the Ford;

Table-II: For Tube Assembly Parts

Part Code	*Description mentioned*	*Full Description*	*Used for*
HG9Q-9C993-CA	*TUB.ASY-FU/INJ.JNLT*	*Tube Assembly Fuel Injection Inlet*	*Panther Engine*
HG9Q-9C993-BA	*TUB.ASY-FU/INJ.JNLT*	*Tube Assembly Fuel Injection Inlet*	*Panther Engine*
HG9Q-9C993-AA	*TUB.ASY-FU/INJ.JNLT*	*Tube Assembly Fuel Injection Inlet*	*Panther Engine*
EB3C-9L291-EC	*TUB.ASY.FUL& BRK*	*Tube Assembly Fuel Injection Inlet*	*All Diesel Engine In Everest*
JB3G-9289-BA	*TUB.ASY.FUL*	*Tube Assembly Fuel*	*Used in Everest**
JB3G-9289-BB	*TUB.ASY.FUL*	*Tube Assembly Fuel*	*Used in Everest*
JB3G-9289-BA	*TUB.ASY.FUL*	*Tube Assembly Fuel*	*Used in Everest*
JB3G-9289-BB	*TUB.ASY.FUL*	*Tube Assembly Fuel*	*Used in Everest*
JB3G-9289-BC	*TUB.ASY.FUL*	*Tube Assembly Fuel*	*Used in Everest*
AB39-9J280-AD	*TUB.ASY.FUL SPLY*	*Tube Assembly Fuel*	*Used in Everest*
AB39-9J280-AE	*TUB.ASY.FUL SPLY*	*Tube Assembly Fuel*	*Used in Everest*
EB3G-9292-DA	*TUB.ASY-AUX.FU/TNK*	*Tube Assembly Auxiliary Fuel Tank*	*Used in Everest*

EB3G-9292-DB	*TUB.ASY-AUX.FU/TNK*	*Tube Assembly Auxiliary Fuel Tank*	*Used in Everest*
EB3G-9299-EB	*TUB.ASY.FUL*	*Tube Assembly Fuel*	*Used in Everest*
EB3G-9289-EA	*TUB.ASY.FUL*	*Tube Assembly Fuel*	*Used in Everest*

**Sold as "Everest" model in Thailand & other foreign markets and branded as "Endeavour" in India, which is manufactured only in Diesel model in India.*

viii. Cover Assembly - Engine Appearance is used to cover the Engine to reduce the engine noise and for better appearance in engine compartment; he submitted some screenshots of few Cover Assembly - Engine Appearance parts taken from the WERS, the details of which are tabulated below in Table-Ill. In all the mentioned parts, the CPSC (Corporate Product System Classification) classification begins with 0315, which denotes Dressed Engine Exterior Cover,

Table-III: For Cover Assembly

Part Code	*Description mentioned*	*Full Description*	*Use*
EB3G-6A949-CB	*CVRASY.ENG.APER*	*Cover Assembly Engine Appearance*	*Used as a under hood cover for Engine*
EB3G-6A949-BB	*CVRASY.ENG.APER*	*Cover Assembly Engine Appearance*	*Used as a under hood cover for Engine*

ix. The nomenclature 'DV 1.5L' is used for Diesel Engine, the nomenclature 'Dragon' is used for Petrol Engine and the nomenclature 'Panther is used for Diesel Engine manufactured in India. In support of the same, he submitted the relevant screenshots from WERS, the details of which are tabulated as below:

Table-IV: Engine

Nomenclature used	*Type of Fuel/ engine*
DV 1.5 L	*Diesel engine used in Figo/ Ecosport in India*
1.5 L Dragon 13	*Petrol Engine used in Figo/Ecosport in India*
Panther 2.0L	*Diesel Engine used in Everest*.*

**Sold as "Everest" model in Thailand & other foreign markets and branded as "Endeavour" in India, which is manufactured only in Diesel model in India.*

6. In response to Summons dated 15.02.2021, Shri Anil Patel, Site Plant Manager of M/s Ford India Private Limited, appeared on 15.02.2021 to tender his voluntary statement. In his voluntary statement recorded on 15.02.2021, he, inter alia, stated that: -

i. M/s Ford India Pvt. Ltd. is a subsidiary of Ford Motor Company Limited, USA and is engaged in the manufacturing of vehicles and Engines; that M/s Ford India has four plants in two locations in India i.e. two plants in Chennai and two plants in Sanand; that one Vehicle Plant and One Engine Plant is located at Sanand, Gujarat;

ii. Ford India manufactures three cars at Sanand Plant i.e. Ford Figo, Ford Aspire. Ford Freestyle and their respective variants;

iii. Two types of Engines are manufactured at Sanand Plant: - one is Diesel Engine and other is Petrol Engine. The Diesel Engine is being manufactured under the internal code name as 'Panther and Petrol Engine is being manufactured under the internal code name as 'Dragon'; that Engine Specification of 'Panther Engine is 2.0 L Diesel 14 Inline 4 Cylinder with two variants named as 'Single Turbo' and 'Bi-Turbo'. 'Dragon' Engine is being manufactured in two variants i.e. 1.5 Lit. and 1.2 Lit. volume; Engine Specification of the 'Dragon' Engines are '1.5 PFi Petrol 13 Inline 3 Cylinder' and '1.2 PFi Petrol 13 Inline 3 Cylinder:

iv. At Chennai Plant, another type of engine under internal code name as 'DV5', is manufactured having engine specification '1.5L TDCi Diesel Engine';

v. At Sanand Plant, three vehicles are being manufactured under model name 'Ford Figo' all variants, 'Ford Free Style' all variants and 'Ford-Aspire' all variants. All these models Le. 'Ford-Figo', 'Ford-Free Style', and 'Ford-Aspire' have either Petrol

Engine or Diesel Engine. For Petrol variants of these three models of Car, "Dragon Engine' is used, and for Diesel variants of these three models of Car, 'DV5' engine is being used;

vi. Major import of automotive parts is from Germany, Thailand, USA, China, Mexico and Taiwan. Major import is being made at Mundra and Pipavav sea port; that customs clearance of the import is being dealt by their Customs team headed by Shri Vaman Vaze, Manager Customs, Chennai, Shri Rajnish Bedekar, Senior Analyst Customs, is coordinator for Sanand plant and reports directly to Shri Vaman Vaze;

vii. Their suppliers provide them documents viz. Bills of Lading, Invoice, Packing List and Technical Write up etc., on receipt of which, their Customs team forwards it to their concerned nominated CHA of M/s Ford India Pvt. Ltd.; On receipt of these documents, the CHA prepares a check list and forwards it back to customs team for scrutiny and approval. On receipt of the same, their customs team headed by Shri Rajnish Bedekar at Sanand plant verify the description of parts, its CTH, invoice value, invoice number, supplier detail, Bill of Lading Number, Number of packages etc., mentioned in the check list and if the same found in order, he gives final approval to file the Bill of Entry before the Customs Department and in turn CHA files Bill of Entry before the Customs for clearance of the imported parts;

viii. Whenever, a new product is to be imported, technical write up, product catalogue and end use of the product is taken into consideration and after detailed discussion with product development team and the legal principles of the classification, as laid down under Customs Law, final CTH of that particular product is decided.

ix. In the DV5 diesel engine, manufactured at Chennai plant of Ford India, "Rod Assy. Connect/ Connecting Rod having part No. 7M5Q-6200-A9E is used which are procured domestically from a supplier named M/s Magal Engg. Tech Private Ltd., Chennai;

x. Rod Assembly/ Connecting Rod is a part of Engine which connects the piston to crank shaft. Together with the crank, the connecting rod converts the reciprocating motion of the piston into the rotation of the crankshaft, that for Rod Assy. Connect/Connecting Rod either meant for petrol engine or for diesel engine, there is dimensional difference and minor differences in features. On each imported Rod Assy. Connect/ Connecting Rod, individual part number is laser marked by the manufacturer. For example, Rod Assy. Connect/Connecting Rod meant for use solely in diesel engine have marking of 'GK2Q' or 'HG9Q' and Rod Assy. Connect/ Connecting Rod meant for use solely in petrol engine have marking of 'GN1G' or 'J7BG';

xi. Rod Assy. Connect/ Connecting Rod, meant for use solely in diesel engine have bigger diameter of crank journal and piston pin in comparison to Rod Assy. Connect/Connecting Rod meant for use solely in petrol engines;

xii. The part no HG9Q-6200-AA & GK2Q-6200-BA of Rod Assy. Connect /Connecting Rod which are solely used in manufacturing of Diesel Engine (Panther) were wrongly classified under CTH 840991 and upon which M/s Ford India Pvt. Ltd. had wrongly claimed FTA benefit under Notification No. 46/2011-Customs dated 01.06.2011;

xiii. Brakes and their parts have been imported by Ford India under CTH 87083000. However, in some Bill of Entry, M/s Ford India Pvt. Ltd. had wrongly declared the brake and their parts having different part no.

under CTH 87089900 & 87082900 and availed duty exemption benefit under the Notification no. 46/2011-Customs dated 01.06.2011 and accepted that this is mistake on the part of Ford India;

xiv. Part no. EB3G-6A949-BB and EB3G-6A949-CB of description "Cover Assembly Engine Appearance" is solely used for covering of engine and it is not used anywhere else in the vehicle except engine. Therefore, the said part is correctly classifiable under the tariff heading 8409 i.e. tariff heading for parts of engine; that these two part numbers are exclusively used with the diesel engine of 'Endeavour' model vehicle made at Chennai plant;

xv. "Cover Assembly for Engine Appearance" used in diesel engine squarely falls under tariff heading 84099990; that they have wrongly classified the said item under tariff head 87089900 and claimed FTA benefit under the Notification 46/2011-Customs dated 01.06.2011;

xvi. On being asked about Tube Assembly Fuel Injection Inlet (Part Numbers-HG9Q-9C993-CA, HG9Q-9C993-BA, and HG9Q-9C993-AA), he stated that it is actually a part of Panther Diesel Engine, which is solely used with diesel engine manufactured at Sanand plant, that Tube Assembly Fuel Injection Inlet is correctly classifiable under CTH 84099990 and Ford India has wrongly classified the same under CTH 87089900 and availed wrong FTA benefit under the Notification No. 46/2011-Customs dated 01.06.2011:

xvii. They are aware that Brake and their parts for vehicle are correctly classifiable under CTH 87083000, Rod Assy. Connect/ Connecting Rods used in diesel engines are correctly classifiable under CTH 84099990, Cover Assembly for Engine Appearance is correctly classifiable under CTH 84099990 and Tube

Assembly Fuel Injection Inlet is correctly classifiable under CTH 84099990:

xviii. Ford India is willing to pay the differential duty that arises due to misclassification and wrong availment of FTA benefit; they are in the process of making internal assessment and pay the balance duty as soon as possible.

7. Vide letter dated 16.02.2021, Ford India enclosed Demand Draft No. 558820 dated 16.02.2020 towards differential customs duty of Rs. 10,00,00,000/- (Rupees ten crore only) deposited voluntarily by them. The said payment was realized in the Govt. Account vide TR-6 Challan No. 01/Ford/2021 dated 23.02.2021.

8. Vide letter dated 07.04.2021, the importer submitted that the connecting rod is predominantly meant for use in Diesel Engines. However, they have inadvertently classified the same under tariff item 84099191 and accepted that differential duty was payable in respect of Connecting Rods.

9. In response to Summons dated 19.03.2021, Shri Vaman Vaze, Manager - IMG Customs Operations in M/s Ford India Private Limited, appeared on 07.04.2021 to tender his voluntary statement. In his voluntary statement recorded on 07.04.2021, he, inter alia, stated that:-

i. As Manager-Customs, he looks after Customs clearance of imports and exports in M/s Ford India Pvt. Ltd. (FIPL); that he looks after monitoring of the customs broker, liasoning with various customs authorities, finalizing the classification of import goods, appearing before various customs authorities, operational co-ordination with Supply Chain and Logistics for production criticalities and regular clearance;

ii. M/s Ford India Pvt. Ltd. (FIPL) and M/s Ford Motor Private Limited (FMPL) are subsidiary companies of Ford Motor Company Limited, USA; that while FIPL is specifically into manufacturing and sales operations in India, FMPL is a part of regional group supporting Ford *entities of International markets including M/s Ford India Pvt. Ltd. On being asked, he stated that he was an employee of M/s Ford Motor Private Limited but he also looked after and was responsible for import and export of M/s Ford India Pvt. Ltd. Both FIPL and FMPL are related companies/associated as per local law;*

iii. FIPL is engaged in the manufacturing of vehicles and Vehicles Engine and domestic sales and Exports of Vehicles and Engines; Ford India has four plants in two locations in India i.e. two plants in Chennai Plant and two plants in Sanand Plant i.e. one vehicle plant and one engine plant in each location;

iv. FIPL manufactures three (03) cars- Ford Figo, Ford Aspire, Ford Freestyle and their respective variants in the Sanand Plant; that two (02) types of Engines are manufactured and assembled in the Sanand Plant i.e. Panther Engine, which is Diesel Engine and Dragon Engine, which is Petrol Engine; that in the Chennai Plant of FIPL, two (02) cars- Ford Endeavour and Ford Ecosport and one (01) Engine- DV5 Engine are manufactured;

v. Only Diesel Engine is used in Ford Endeavour. However, both petrol and Diesel engine variants are used in the other cars i.e. Ford Ecosport, Ford Figo, Ford Aspire and Ford Freestyle; that DV5 is a Diesel Engine, which is primarily used in Ford Ecosport (Diesel) and Ford Aspire (Diesel). The Dragon (Petrol) Engine is used in Ford Ecosport (Petrol), Ford Aspire (Petrol), Ford Figo (Petrol) and Ford Aspire (Petrol); that a minor proportion of Panther (Diesel) Engine manufactured by FIPL is used in Ford Endeavour and mostly the Panther (Diesel) Engine is exported; Ford Figo, Ford Aspire, Ford Freestyle and Ford Ecosport are sold domestically and exported out of India. However, Ford Endeavour is sold domestically only.

vi. *Base Part Number for Con Rod/ Connecting Rod is 6200'; HG9Q-6200-AA, GK2Q-6200-BA, J7BG-6200-BA, BV2E-6200-AA, GN1G-6200-AA and GN15-6200-CA etc. are different part numbers of Con Rod/Connecting Rod imported by FIPL; that the part numbers- HG9Q-6200-AA and GK2Q-6200-BA pertain to Con Rod/ Connecting Rod of Diesel Engine and part numbers J7BG-6200-BA, BV2E-6200-AA, GN1G-6200-AA and GN15-6200-CA pertain to Con Rod/Connecting Rod of Petrol Engine;*

vii. *A connecting rod also known as Con Rod is part of an engine. It connects the piston to the crankshaft. Together with the crank, the connecting rod converts the reciprocating motion of the piston into the rotation of the crankshaft;*

viii. *Connecting Rods for both Petrol Engine and Diesel Engine have been imported by FIPL under tariff item 84099191 and availed the benefit of concessional rate of duty under the Notification No. 46/2011-Customs dated 01.06.2011;*

ix. *Connecting Rods having part numbers HG9Q-6200-AA and GK2Q-6200-BA are solely meant for use in Diesel Engines. However, they have inadvertently classified the same under tariff item 84099191, which is for Petrol Engine; that the connecting rods meant for diesel engines are classifiable under Tariff item, 84099941, on which concessional rate of duty benefit under the Notification No. 46/2011-Customs dated 01.06.2011 is not available;*

x. *They accept that differential duty is payable in respect of import of connecting rods, meant for diesel engine. The differential duty and interest has been computed by FIPL at Rs. 5,81,81,821/- (Duty- Rs. 4,94,07,116/- + Interest- Rs. 87,74,705/-) for the period beginning from 01.04.2019 to 23.02.2021 (date of payment) in* *respect of import of connecting rods, meant for diesel engine;*

xi. *Part numbers HG9Q-6200-AA and GK2Q-6200-BA are mentioned in Bill of Materials of Panther Diesel Engine manufactured by Ford India; that prior to the import of said part number, they were aware that the same part number is to be used in the manufacturing of Diesel Engine only, that the supplier of the said goods is M/s Ford, Thailand, which is a related party, who is also aware about the end use of the said part number;*

xii. *Base Part Number for Tube Assembly Fuel Injection Inlet is '9C993' Tube Assembly Fuel Injection Inlet is meant for carrying the fuel from the fuel rail to the fuel injector. This part is used to deliver the high pressure fuel into the cylinder head via fuel injector pump; that Tube Assembly Fuel Injection Inlet is used in Diesel Engines only; Tube Assembly Fuel Injection Inlet has been imported by FIPL under tariff item 87089900 and the benefit of the concessional rate of duty under the Notification No. 46/2011-Customs dated 01.06.2011 has been availed at the time of import;*

xiii. *Tube Assembly Fuel Injection Inlet is only meant for carrying the fuel from the fuel rail to the injectors. As these are external to the engine, they cannot be treated as integral parts of engines. As these pipes are identifiable for use with the motor vehicles, by application of Note 3 to Section XVII, they are classifiable under heading 8708. More specifically, they are classifiable under the residuary tariff item 87089900 covering 'other' as they are not covered under any other sub-heading of 8708;*

xiv. *He perused the statements of Shri V. Umesh Chandra and Shri Anil Patel, Site Plant Manager, recorded on 15/16.02.2021 wherein both of them had stated that the Tube Assembly Fuel Injection Inlet was part of Diesel Engine and was solely used with diesel engine;*

that he also perused heading 8409-parts suitable for use solely or principally with the engines of heading 8407 or 8408. On perusal of the said statements and heading 8409, he stated that Tube Assembly Fuel Injection Inlet appeared to be classifiable under sub-heading 840999. However, they would further have a technical assessment to identify/ arrive at the most appropriate tariff item for Tube Assembly Fuel Injection Inlet;

xv. M/s Ford Motors, USA, has appointed M/s Livingstone International, USA, as their global customs consultant to finalize the classification/tariff item of various goods, which are to be imported by the subsidiaries of M/s Ford in their respective countries; that M/s Ashapura Forwarders Pvt. Ltd., Ahmedabad, M/s Kerry-Indev, Chennal and M/s DB Shankar, Chennal are appointed as the Customs Broker/CHA of M/s Ford India Pvt. Ltd; that whenever, a new part is identified by their technical engineering team, the same is generated in WERS (Worldwide Engineering Release System). Thereafter, the new part gets transmitted to CMMS (Common Material Management System); that WERS and CMMS are different online portals developed by M/s Ford, USA. While WERS is used in part release information, CMMS is used as interface with our global suppliers of different goods. M/s Livingstone International, USA, has the access to CMMS and WERS portals. When a new part number is fed in the WERS along with its technical write-up/functions, the same is transmitted to CMMS portal, which is then viewed by M/s Livingstone International, USA. After analysis at their end, M/s Livingstone International finalizes the classification of the respective parts and intimates the same by E-mail to the Customs team, Ford India Pvt. Ltd. with a copy to CHA.

xvi. In respect of Cover Assembly for Engine Appearance, they have communicated with their supplier in Thailand, who also suggested that the same is a part of engine and classifiable as per fuel variant of engine.

10. In response to Summons dated 06.07.2021, Shri Vaman Vaze, Manager-IMG Customs Operations in M/s Ford India Private Limited, appeared on 22.07.2021 to tender This voluntary statement. In his voluntary statement recorded on 22.07.2021, he inter alia stated that:-

i. Tube Assembly Fuel Injection Inlet is meant for carrying the fuel from the fuel rail to the fuel injector. Fuel injector is assembled inside the engine. This part is used to deliver the high pressure fuel into the cylinder head via fuel injector pump; that Tube Assembly Fuel Injection Inlet is used in Diesel Engines only;

ii. Tube Assembly Fuel Injection Inlet is classifiable under Tariff Item 87089900 as other automotive parts, hence, the same has been imported by M/s Ford India Pvt. Ltd. under Tariff Item 87089900;

iii. In the BOM (Bill of Material) submitted by Ford India, Tube Assembly Fuel Injection Inlet is listed as part of Diesel Engine. When the Engine is being sent to vehicle assembly line, the Tube Assembly Fuel Injection Inlet is fixed with Engine and hence, it is listed in BOM for Engine; that from functionality point of view, these tubes (Tube Assembly Fuel Injection Inlet) are delivering the function of carrying the fuel to the Engine. Being an external part of Engine, we are of the opinion that as the part Tube Assembly Fuel Injection Inlet is identifiable for use with Motor vehicle, they are classifiable under 8708 as part of vehicles in other category:

iv. 'Tube Assembly Fuel Injection Inlet (TUB ASY-FU/INJ INLT)' is used only with Engine and is not used anywhere else in the vehicle other than Engine;

v. He perused the Explanatory Notes to Heading 8409- parts suitable for use solely or principally with the engines of heading 84.07 or 84.08 and stated that they are of the opinion that explanatory notes of heading 8409 and parts description refers only fuel injection equipment as being part of engine and not a tube that supplies fuel to fuel injection equipment. As the said goods are external to the engine and hence, cannot be treated as integral parts of engines;

i. vi Common Rail System (CRS) is used in Diesel Engines. It operates at high pressure, where pressure is maintained in the fuel rail and pressurized fuel is fed to the injector for combustion wherein, injector will deliver fuel for efficient combustion, Common Rail System (CRS) has following components- (i) Common Rail (ii) Fuel Injector (iii) High Pressure Pipe connecting common rail to fuel injector (Tube Assembly Fuel Injection Inlet). Fuel rail receives fuel from high pressure fuel pump via High pressure pipe (Tube Assembly Fuel Injection Inlet). The leak off pipe drains excess fuel back to the fuel system. He stated that 'Tube Assembly Fuel Injection Inlet is a part of CRS:

vi. Ford India has imported 'Diesel Engine' at Chennai plant; they also export 'Diesel Engine' from Sanand plant, primarily to Thailand and Vietnam; that Diesel Engines are imported/exported along with Common Rail, Fuel Injector and Tube Assembly Fuel Injection Inlet that CRS is a part of Engine:

vii. As per functionality, Tube Assembly Fuel Injection Inlet is a part of CRS and CRS is a part of Engine; that, as per the explanatory notes, parts suitable for use solely or principally with the engines are covered under heading 8409. On perusal and understanding the explanatory notes, he found that Tube Assembly Fuel Injection Inlet is part of engine. However, they would like to review the classification of 'Tube Assembly Fuel

Injection Inlet' with their technical team and the taxation team;

viii. *Cover Assembly Engine Appearance (Cover) is a heat-resistant cover of the engine in the car, which reduces noise from the machine from entering the room and for beautiful appearance of Engine room. It is made up of hard plastic;*

ix. *Panther Diesel Engines, manufactured at their Sanand plant, are exported without Cover Assembly, that the Cover Assembly is fitted in vehicle for better appearance of engine, noise reduction and vibration control; 'Cover Assembly Engine Appearance' is used only with Engine and is not used anywhere else in the vehicle other than Engine;*

x. *In a vehicle, Cover Assembly is used only with engine but they are of the view that Engine can work even without Cover Assembly, therefore, they classify it as part of vehicle under heading 8708 and not as part of engine under heading 8409. Further, they export engine without cover assembly.*

11. In response to Summons dated 12.08.2021, Shri Preetam Singh Khera, General Manager (Taxation) in M/s Ford India Private Limited, appeared on 27.08.2021 to tender his voluntary statement. In his voluntary statement recorded on 27.08.2021, Shri Preetam Singh Khera, inter alia, stated that: -

i. *Tube Assembly Fuel Injection Inlet (Base Part Number 9C993) is a high pressure pipe, which carries fuel from the fuel rail to the fuel injector, that Tube Assembly Fuel Injection Inlet is used in Diesel Engines only and it is not used in Petrol Engine. Prior to the import of said part number, they were aware that the same part number is to be used in the manufacturing of Diesel Engine only; that the supplier of the said goods is M/s Ford, Thailand, which is a related party, who is also aware about the end use of the said part number;*

ii. In the past, the goods Tube Assembly Fuel Injection Inlet' have also been imported with Item description 'HIGH PRESSURE FUEL INJECTION PIPE with part number-CV6Q9J323A9C/AB.;

iii. The prefix part number 'CV6Q" refers to Diesel Engine - DV5 of Ford. The part 'Tube Assembly Fuel Injection Inlet' or 'High Pressure Fuel Injection Pipe' pertaining to DV5 engine is being locally procured now,

iv. Tube Assembly Fuel Injection Inlet' or 'High Pressure Fuel Injection Pipe' is used in vehicle only with Engine and is not used anywhere else in the vehicle other than Engine;

v. Common Rail Direct Injection System (CRDI System) or Common Rail System (CRS) is widely used in Diesel Engines. It operates at high pressure where pressure is maintained in the fuel rail and pressurized fuel is fed to the injector for combustion wherein, individual injector operates on PCM command and delivers fuel in atomized spray for efficient combustion; CRS has following components- (i) Common Rail (ii) Fuel Injector (iii) High Pressure Pipe connecting common rail to fuel injector (Tube Assembly Fuel Injection Inlet/ High Pressure Fuel Injection Pipe); Fuel rail receives fuel from high pressure Fuel Pump via High Pressure Pipe (Tube Assembly Fuel Injection Inlet). The approx. pressure in common rail is in the range of 200 bar to 2500 bar for Ford India Engines. The Tube Assembly Fuel Injection Inlet/ High Pressure Fuel Injection Pipe is designed in a manner that it can withstand high pressure up to 2500 bars:

vi. CRDI System or Common Rail System (CRS) is a part of Engine;

vii. Ford India Pvt. Ltd. (FIPL) manufactures two types of engine- Petrol Engine and Diesel Engine. There are further two types of Diesel Engine-Panther Engine and

DV5 Engine; that Dragon Engine is Petrol Engine and Panther Engine is Diesel Engine;

viii. Connecting Rods for both Petrol Engine and Diesel Engine have been imported by M/s Ford India Pvt. Ltd. under tariff item 84099191; the connecting rods meant for diesel engines are classifiable under Tariff item, 84099941; they accept that the differential duty is payable in respect of import of connecting rods, meant for diesel engine;

ix. Part numbers HG9Q-6200-AA and GK2Q-6200-BA are mentioned in Bill of Materials of Panther Diesel Engine manufactured by Ford India. Prior to the import of said part number, based on his understanding from technical team, he stated that the said part number is to be used in the manufacturing of Diesel Engine only. The supplier of the said goods is M/s Ford, Thailand which is a related party, who is also aware about the end use of the said part number,

x. Earlier FIPL used to import the goods 'Tube Assembly Fuel Injection Inlet' or 'High Pressure Fuel Injection Pipe pertaining to DV5 Engine of Ford from Thailand, Germany etc. but the same are now being domestically procured from M/s Usui Susira International Pvt. Ltd.; that he will inform about the rest of the vendors after confirming from his team:

12. In response to Summons dated 18.10.2021, Shri Preetam Singh Khera, General Manager (Taxation) in M/s Ford India Private Limited, appeared on 22.10.2021 to tender his voluntary statement. In his voluntary statement recorded on 22.10.2021, Shri Preetam Singh Khera, inter alia stated that:-

i. Brakes and Parts of Brakes are correctly classifiable under tariff item 87083000 as Parts of Brake; that certain brake parts have been inadvertently imported under tariff item 87089900 and benefit of the Notification No. 46/2011-Customs has been wrongly *claimed during the period from Aug 2016 to June'2018; that after June 2018, they rectified the mistake and imported Brake Pad and Kit Brake Lining under the correct tariff item 87083000;*

ii. *After going through the Technical specifications including design/ engineering requirements of Common Rail System (CRS) and its components, he stated that Common Rail System (CRS) is a part of engine; that CRS is used in Diesel Engine only (and not in Petrol Engine);*

iii. *CRS is widely used in Diesel Engines. It operates at high pressure where pressure is maintained in the fuel rail and pressurized fuel is fed to the injector for combustion, wherein individual injector operates on PCM command and delivers fuel in atomized spray for efficient combustion; CRS has the following components-(i) Common Rail (ii) Fuel Injector (iii) Fuel Tube- High Pressure Pipe connecting common rail to fuel injector (Tube Assembly Fuel Injection Inlet/ High Pressure Fuel Injection Pipe), (iv) Fuel Tube (Fuel Pump to Fuel Rail) and (v) Fuel Pump; Fuel rail receives fuel from high pressure fuel pump via High Pressure Pipe (Tube Assembly Fuel Injection Inlet). The approx. pressure in common rail is in the range of 200 bar to 2500 bar for Ford India Engines; that M/s Ford India Private Limited imports all the above mentioned components individually;*

iv. *'Tube Assembly Fuel Injection Inlet/ High Pressure Fuel Injection Pipe (Base part number- 9C993)' has been imported by them by classifying the same under two tariff headings viz. 840999 and 870899; that on most of the occasions, the said goods have been imported under heading 870899, however, in few cases earlier, during import from Japan and South Africa, the same goods (Base part no. 9C993) have been imported* *under tariff items-8409 9990 and 84099941 respectively;*

v. Common Rail Fuel Rail (Base part number-9D280) is imported by them by classifying under tariff item 84099941, Fuel Injector (Base part number-9K546) is Imported by classifying under tariff item-84099930 and Fuel Tube -Fuel Pump to Fuel Rail (Base part number-9J323) is imported by classifying the same under tariff item-84099930;

vi. Tube Assembly Fuel Injection Inlet/ High Pressure Fuel Injection' (Base part- no. 9C993) is also a part of engine. However, according to our understanding of explanatory notes of HSN classification and General Rules of interpretation, this part is not classifiable under heading 8409 as we believe that the Fuel Tube, not being integrally connected to the engine as in the case of Fuel Injector or inlet/exhaust valve. Hence, it will not be classified under heading 8409.

vii. He perused Invoice no. FM16-838 dated 04.10.20216 issued by M/s Usul Kokusai Sangyo Kaisaha Ltd., Japan, in relation to the supply of the goods Tube Assembly Fuel Injection Inlet (Base Part No.- 9C993). In the corresponding Bill of Entry number 7572348 dated 23.11.2016, the goods Tube Assembly Fuel Injection Inlet (Base Part No.- 9C993)' have been imported under heading 8409. As stated earlier, we have imported on few occasions, the said goods under heading 8409, however, on regular imports subsequently based on our understanding of HSN classification and General Rule of Interpretation, we believe that is correctly classifiable under heading 8708.

viii. He perused the domestic purchase invoices of the goods Tube Assembly Fuel Injection Inlet/ High Pressure Fuel Injection' (our base part number- 90993. supplier reference part number- AV6Q-9A55). In all the *said invoices, M/s Usul Susira International Pvt. Ltd. has supplied the goods 'Tube Assembly Fuel Injection Inlet/ High Pressure Fuel Injection' under HSN 8409 and charged GST @ 18% which is same irrespective of HSN classification 8409 or 8708;*

ix. *He perused the Explanatory Notes to Heading 8409, which refers to parts suitable for use solely or principally with the engines of heading 84.07 or 84.08. On perusal of the same, it may be construed that the goods-Tube Assembly Fuel Injection Inlet/ High Pressure Fuel Injection Pipe are classifiable under heading 8409 as parts of engine for the purpose of charging appropriate duty; that the said goods are used only with engine and not anywhere else in the vehicle, however, it is not specified therein; that they have already deposited Rs. 10 Crores towards the duty liability during DRI search; the differential duty liability, along with interest thereon, on account of change in classification of 'Tube Assembly Fuel Injection Inlet (Base Part No.-9C993) may be adjusted accordingly.*

x. *"Cover Assembly Engine Appearance' (Base part number-6A949) has been imported by us by classifying the same under two tariff headings viz. 840999 and 870899. He stated that on most of the occasions, the said goods have been imported under heading 870899, however, in few cases earlier, during import from China, USA and Thailand, the same goods (Base part no. 6A949) have been imported under tariff items-84099192 and 84099941;*

xi. *The part 'Cover Assembly Engine Appearance (Base part number-6A949)' is use exclusively with engine and not anywhere else;*

xii. *He perused the Explanatory Notes to Heading 8409 which refers to parts suitable for use solely or principally with the engines of heading 84.07 or 84.08. On perusal of the same, it may be construed that the* *goods 'Cover Assembly Engl Appearance (Base part number-6A949)' are classifiable under heading 84 as parts of engine which are suitable for use solely or principally with the engine for the purpose of charging appropriate duty. He stated that the engine coves used exclusively with the engine and not anywhere else in the vehicle, however is not specified therein; that they have already deposited Rs. 10 Crores towards the duty liability during DRI search. The differential duty liability, along with inter thereon, on account of change in classification of 'Cover Assembly Engine Appearance' (Base part number-6A949) may be adjusted accordingly.*

13. Vide letter dated 22.10.2021, the importer accepted that they had inadvertently classified Brake lining/ Brake pad under tariff item 87089900 instead of 87083000 during the period August, 2016 to June, 2018 and further submitted the technical specification engineering requirements of the Common Rail System (CRS) along with other document sought by DRI summons dated 18.10.2021.

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24. From the facts of this case, it is noticed that Ford India has classified Connecting Rod/ Con Rod for use in diesel engine under tariff item 8409.91.91 and claimed the benefit of the Notification No. 46/2011-Customs dated 01.06.2011 on the basis of FTA Certificates, which had been obtained after giving wrong information about their classification before the issuing authority in the country of export. Similar practice was also adopted in respect of Tube Assembly Fuel Injection Inlet and 'Cover assembly Engine Appearance' for use in internal combustion piston engine by Ford India and its related overseas companies for fraudulently claiming benefit of the Notification no. 46/2011-Customs dated 01.06.2011 under tariff item 8708.99.00. Therefore, the group company of Ford India, namely, M/s Ford Motor Co. Thailand Ltd., Thailand colluded with Ford India and helped *it in availing undue benefit of concessional rate of Customs duty under the Notification No. 46/2011-Customs dated 01.06.2011 which otherwise was not available to Ford India. Ford India availed the benefit of the said Notification for which they got issued AIFTA certificates for these ineligible products with sole intention of taking undue benefit of duty exemption. By not declaring the intended use of Connecting Rod/Con Rod, Tube Assembly Fuel Injection Inlet and 'Cover assembly Engine Appearance', Ford India not only suppressed the material facts, but also knowingly and intentionally mis-stated the facts before the Customs authorities. Further, consequent to the DRI investigation, Ford India started importing Connecting Rod/ Con Rod for use in diesel engine under the tariff item 8409.99.41 and stopped avalling the benefit of Notification No. 46/2011-Customs dated 01.06.2011 under AIFTA and paid duty on merit. Similarly, Ford India stopped availing the benefit of Notification No. 46/2011-Customs dated 01.06.2011 on import of 'Tube Assembly Fuel Injection Inlet' and 'Cover assembly Engine Appearance. However, Ford India neither informed or disclosed the fact of wrong availment of benefit of the said Notifications under FTA nor made any efforts to discharge the duty liability in respect of their earlier clearances of import of Connecting Rod/ Con Rod, Tube Assembly Fuel Injection Inlet and Cover Assembly Engine Appearance. None of the officials of Ford India viz. Shri Preetam Singh Khera and Shri Vaman Vaze could give any justification for such non-disclosure of wrong classification in respect of previous shipments of Connecting Rod/ Con Rod for use in diesel engine and Tube Assembly Fuel Injection Inlet and Cover Assembly Engine appearance for use in internal combustion piston engine*

25. With the introduction of self-assessment and consequent upon amendments to Section 17 of the Customs Act, 1962 w.e.f. 08.04.2011, it was obligatory on the part of the importer to declare the actual description and correct *classification of the goods imported by them and pay the duty applicable in respect of the said goods. Therefore, by not disclosing the true and correct facts to the proper officer, at the time of clearance of imported goods, the importer appears to have indulged in mis-declaration and mis-classification by way of suppression of facts and willfully mis-declared and mis-classified the imported goods with intent to evade the payment of applicable Custom duties. Thus, the importer has contravened the provisions of Section 46(4) & 46(4A) of the Customs Act, 1962, inasmuch as they have mis-classified and mis-declared the goods imported by them, by suppressing the true and actual description of the goods, while filing the declaration seeking clearance at the time of importation of impugned goods. Further, the importer is also an Authorised Economic Operator (AEO Registration No. 0396011853), Tier-2 status holder, thereby availing higher level of facilitation at the time of import and clearance. Being an AEO status holder, most of the consignments of the importer were cleared without assessment and examination.*

4.4 From the above extracts reproduced from the show cause notice, it is quite evident that appellant have a quite comprehensive system of cataloguing every part used by them in the process of manufacture and also have system of nomenclature and identification of each and every part. They have dedicated teams and lead by senior executives to handle this. These teams are well aware of each and every part and manner of their identification and classification under the Customs Tariff and also in HSN.

4.5 The difference between the Petrol Engine (Spark Ignition Engine) parts and Diesel Engine (Compression Engine) parts is also well understood by these executives and there is no possibility of mix up between the two as the parts are designed for different specifications and are catalogued and have nomenclature accordingly. It is not possible technically that parts of Diesel Engine and Petrol Engine could be used interchangeably and hence we do not find any merits in submissions of the appellant that they had inadvertently classified the parts of Diesel Engine as Part Of Petrol Engine while making the declaration on their Bill of Entry. Connecting Rod for Diesel Engine can never be mixed up with the connecting rod for petrol engine. Petrol Engine which use spark ignition technology operate under much different compression ratios then the Diesel Engine which use compression ignition technology. The connecting rods for diesel engine are thus designed for totally different pressure ratios from the petrol engine. The appellant was fully aware that the parts being imported by them were meant for use in the Diesel Engine at the time of importation. And they have not inadvertently but knowingly mis-declared these as part of petrol engine in the Bill of Entries filed by them.

4.6 We also observe by referring to the statement of Shri Anil Patel, Site Plant Manager of M/s Ford India Private Limited that appellant have well established method of approval of the Check List by the senior executives of the company (Customs team headed by Shri Vaman Vaze, Manager Customs, Chennai, Shri Rajnish Bedekar, Senior Analyst Customs, is coordinator for Sanand plant and reports directly to Shri Vaman Vaze) who expertise in the Customs/ HSN Classification and it is only after their proper approval the check list is finally filed by the CHA on the Custom Portal.

4.7 Further we note that appellant was importing all the goods from against the FTA Certificates issued by the concerned authorities in the exporting country by declaring these goods as part of Petrol Engines, to avail the benefit of exemption Notification No 46/2011-Cus by classifying them under the CTH 84099191. This exemption was available only to the parts of petrol engines and not to the parts of Diesel Engine. FTA certificates/declarations are self-certified by a party who is knowledgeable about the transaction. Generally, this is the exporter of the product. The exporter may or may not be the producer. The producer, however, is in the best position to have the necessary knowledge about how a product qualifies under the rules of origin (ROO), as highlighted in the FTA Rules of Origin article. For this reason, a producer may be asked for an FTA certificate or declaration even if they are not the exporter. The importer or buyer will make the claim of FTA preference when clearing customs for import but will rely on information provided by the exporter in the certificate or declaration. Rule 3, 4 & 8 of the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 provides as follows:

Rule 3 . Preferential tariff claim . -

(1) To claim preferential rate of duty under a trade agreement, the importer or his agent shall, at the time of filing bill of entry,-

(a) make declaration in the bill of entry that the goods qualify as originating goods for preferential rate of duty under that agreement;

(b) indicate in the bill of entry the respective tariff notification against each item on which preferential rate of duty is claimed;

(c) produce certificate of origin covering each item on which preferential rate of duty is claimed; and

(d) enter details of certificate of origin in the bill of entry, namely:

(i) certificate of origin reference number;

(ii) date of issuance of certificate of origin;

(iii) originating criteria;

(iv) indicate if accumulation/cumulation is applied;

(v) indicate if the certificate of origin is issued by a third country (back-to-back); and

(vi) indicate if goods have been transported directly from country of origin.

(2) Notwithstanding anything contained in these rules, the claim of preferential rate of duty may be denied by the proper officer without verification if the certificate of origin-

(a) is incomplete and not in accordance with the format as prescribed by the Rules of Origin;

(b) has any alteration not authenticated by the Issuing Authority;

(c) is produced after its validity period has expired; or

(d) is issued for an item which is not eligible for preferential tariff treatment under the trade agreement; and in all such cases, the certificate shall be marked as "INAPPLICABLE".

Explanation: Clause (d) of sub-rule (2) includes the cases where goods are not covered in the respective tariff notification or the product specific rule mentioned in the certificate of origin is not applicable to the goods.

Rule 4. Origin related information to be possessed by importer .-

The importer claiming preferential rate of duty shall-

(a) possess information, as indicated in Form I , to demonstrate the manner in which country of origin criteria, including the regional value content and product specific criteria, specified in the Rules of Origin, are satisfied, and submit the same to the proper officer on request.

(b) keep all supporting documents related to Form I for at least five years from date of filing of bill of entry and submit the same to the proper officer on request.

(c) *exercise reasonable care to ensure the accuracy and truthfulness of the aforesaid information and documents.*

Rule 8. Miscellaneous . -

(1) Where an importer fails to provide requisite information and documents by the due date prescribed under rule 5, or where it is established that he has failed to exercise reasonable care to ensure the accuracy and truthfulness of the information furnished under these rules, the proper officer shall, notwithstanding any other action required to be taken under these rules and the Act, verify assessment of all subsequent bills of entry filed with the claim of preferential rate of duty by

the importer, in terms of sub-section (2) of section 17 of the Act, in order to prevent any possible misuse of a trade agreement. The system of compulsory verification of assessment shall be discontinued once the importer demonstrates that he is taking reasonable care, as required under section 28DA of the Act, through adequate record-based controls.

(2) Where it is established that an importer has suppressed the facts, made wilful mis-statement or colluded with the seller or any other person, with the intention to avail undue benefit of a trade agreement, his claim of preferential rate of duty shall be disallowed and he shall be liable to penal action under the Act or any other law for the time being in force.

(3) In the event of a conflict between a provision of these rules and a provision of the Rules of Origin, the provision of the Rules of Origin shall prevail to the extent of the conflict.

(4) *The Central Government may, by notification in the Official Gazette, relax such provisions of these rules for such class of persons as may be deemed necessary.*

4.8 Thus we observe that appellant importer had claimed the benefit of exemption on the basis of the FTA Certificates which had been obtained by mis-declaring the goods by the exporter in the country of origin as to be 'part of petrol engine'. It is beyond comprehension to our understanding, that exporter would have acted in making such a false declaration without any collusion with the importer. The exporter and importer had colluded whereby exporter made false declaration in the country of origin, to get such FTA Certificates on basis of which the importer in India (appellant) has claimed the preferential rate of duty as per FTA in terms of this agreement. In our view there is enough evidence adduced to show that ingredients for invoking extended period of limitation as per Section 28 are present in this case. In case of Rajasthan Prime Steel Processing Center Pvt. Ltd

[Miscellaneous Order No. 50037/2023 dated 30.01.2023 in Excise Rectification of Mistake Application No. 50154 of 2022 in Excise Appeal No. 50371 of 2019] Delhi Bench observed as follows:

> *"16. It is clear from the order passed by the Commissioner (Appeals) that even though the agreement between the applicant and the Honda India did not have a condition for payment of compensation if the goods manufactured by the applicant were not received by the Honda India, yet the applicant paid compensation for non-lifting of such goods. The Commissioner (Appeals) also noted that the goods were specifically manufactured for Honda India for its 2CV Model, yet they were sold as scrap and that perusal of the sample invoices showed that the buyers of the goods were not scrap dealers. Thus, it was a business arrangement between the applicant, Honda India and the buyers to evade payment of excise duty. In other words, the arrangement between the appellant and Honda India was such that the goods would be sold at a lesser price by declaring them as scrap and the balance amount would be paid by Honda India by terming the amount as „compensation". Thus, the amount received towards so called „compensation" was to be included in the transaction value. The Tribunal also recorded such a finding and the Supreme Court has confirmed this finding.*
>
> *17. The arrangement referred to above between the applicant and Honda India leaves no manner of doubt that the intent clearly was to evade payment of excise duty. The amount received by the applicant from Honda India was not even shown in the ER-I Returns filed by the applicant. Much emphasis has been placed by the learned counsel for the applicant on the balance sheet of the applicant for the financial year 2011-12. All that is recorded in the said balance sheet is "compensation from customers-Rs.49,156,375/-". It cannot be gathered from this statement in the balance sheet that this amount was received by the applicant from Honda India towards*

compensation for the cancellation of the agreement to supply the spare parts which were ultimately sold as scrap. The submission would have carried some weight if the balance sheet specifically described the reason for receiving this compensation.

18. The finding of the Tribunal that it transpires from the business arrangement between the appellant, Honda India and the buyers of scrap that the appellant had received some amount from the buyers of scrap and some amount from Honda India for the value of the auto parts sold by the appellant has been confirmed by the Supreme Court in the judgment and order dated February 14, 2022. The extended period of limitation contemplated under section 11A (4) of the Excise Act was, therefore, correctly invoked in the facts and circumstances of the case.

19. The imposition of penalty under section 11AC(1) (c) would, therefore, also be justified as the same parameters as for invocation of the extended period of limitation apply."

4.9 Appellant has also pleaded revenue neutrality, stating that the case made against them is revenue neutral, for the reason that the appellant could have claimed the benefit of custom duty paid against the drawback admissible to them, hence extended period could not have been invoked. They have relied upon certain case laws on the subject. We do not find much merits in the submissions made. The case where appellant is claiming the benefit of the revenue neutrality, it is for appellant to establish that the benefit is so available. Mere existence of alternate scheme is not sufficient to establish such revenue neutrality when appellant is found to have misused the scheme opted for. In case of Jay Yushin [2000 (119) E.L.T. 718 (Tribunal - LB)] Larger Bench of Tribunal has held as follows:

"13. In the light of the above discussion, we answer the reference as under:

(a) Revenue neutrality being a question of fact, the same is to be established in the facts of each case and not

merely by showing the availability of an alternate scheme;

(b) *Where the scheme opted for by the assessee is found to have been misused (in contradistinction to mere deviation or failure to observe all the conditions) the existence of an alternate scheme would not be an acceptable defence;*

(c) With particular reference to Modvat scheme (which has occasioned this reference) it has to be shown that the Revenue neutral situation comes about in relation to the credit available to the assessee himself and not by way of availability of credit to the buyer of the assessee's manufactured goods;

(d) *We express our opinion in favour of the view taken in the case of M/s. International Auto Products (P) Ltd. (supra) and endorse the proposition that once an assessee has chosen to pay duty, he has to take all the consequences of payment of duty."*

4.10 In case of Mahindra & Mahindra Ltd. [2005 (179) ELT 21 (SC)] Hon'ble Supreme Court ahs observed as follows:

"3. We have carefully examined the AMCO Batteries decision. The aforesaid observations in para 10 have to be read in the context of the facts noticed in paras 7, 8 and 9 of the decision. The AMCO Batteries decision cannot be held to have laid down that in cases where the assessee is entitled to get the benefit of the Modvat scheme, there can be no question of suppression of fact or invocation of the extended period of limitation under proviso to Section 11A. In fact it has not been so held In AMCO Batteries decision. Having regard to the facts and circumstances noticed in the earlier paragraphs 7, 8 and 9 and in addition to the appellant therein being entitled to get the benefit of Modvat scheme it was observed in para 10 that there was no justifiable reason for the appellant to suppress any fact.

4. There can be number of eventualities where extended period of limitation in terms of proviso to section 11A may *be available to the Department despite availability of Modvat credit to an assessee. The availability of Modvat credit to an assessee by itself is not conclusive or decisive consideration. It may be one of the relevant consideration. How much weight is to be attached thereto would depend upon the facts of each case."*

4.11 In case of Star India [2015 (324) E.L.T. 656 (S.C)] Hon'ble Supreme Court observed as follows:

> ***35.*** *It was submitted by the learned counsel for the assessee that the entire exercise is Revenue neutral because of the reason that the assessee would, in any case, get Cenvat credit of the duty paid. If that is so, this argument in the instant case rather goes against the assessee. Since the assessee is in appeal and if the exercise is Revenue neutral, then there was no need even to file the appeal. Be that as it may, if that is so, it is always open to the assessee to claim such a credit.*

4.12 In case of Dharampal Satyapal [2005 9183) ELT 241 (SC)] following was held:

> *"23. We do not find merit in the above contentions. In this matter, we are concerned with the application of the above judgments to the facts of this case. The words "wilfulness" and "intent" in Section 11A are expressions of mental state at the time of manufacture and clearance of the goods. The situs of the levy of central excise is on manufacture. Pricing and value of clearances are matters specially within the knowledge of the assessee. As stated above, the assessee herein was in the business of manufacture of chewing tobacco and its preparations for last couple of years. In the course of business, the assessee had dealt with similarly situated traders. It was fully aware that those traders who produced similar compounds had their units licensed or registered and yet the assessee herein did not take steps to get the above two units, in which the impugned compound (kimam) was manufactured, registered or licensed. As*

stated above, it has been buying a similar kimam from various traders. These circumstances constituted evidence of suppression brought on record by the department in answer to which it was contended on behalf of the assessee that they were under a bona fide impression that the compound was not excisable and that the benefit of proforma and modvat credit together with the benefit of exemption under Notification No. 121/94, dated 11-8-1994 was substantially equal to the demand for duty herein and, therefore, there was no intention to evade payment of duty.

24. We do not find any merit in these submissions. As stated above, the adjudication in this case was confined to the question of excisability and concealment of the existence of two units in which the compound (kimam) was manufactured. No explanation has been given by the assessee for not disclosing the affairs of these units, particularly when the assessee was in business for couple of years and when the assessee had been dealing with other traders who operated from licensed factories. It was for the assessee to explain the reasons for not getting the units registered or licensed. It was for the assessee to explain its failure to maintain the records under the 1944 Act and rules thereunder. In each of the above decisions, we find that there was substantial compliance of the rules under the said Act. In each of the decisions the findings indicate technical non-compliance and not total non-compliance of the rules. It was for the assessee to explain the basis of its alleged bona fide impression. In this connection, no evidence was put before the commissioner about receipt and utilization of the compound in the manufacture of Tulsi Zafrani Zarda. No evidence was led to show that the amount of proforma/modvat credits was equal to the duty demanded, although it was urged that after 3/94, the liability to duty on inputs stood shifted to the final product.

25. Modvat is basically a duty collecting procedure which provides relief to the manufacturer on the duty element

> *borne by him in respect of the inputs used by him. The relief is given under the modvat scheme on the actual payment of duty on the input. On such payment, the assessee gets a right to claim adjustment/set-off against the duty on the final product. The question of duty adjustment/set-off against duty on the final product was not in issue. In any event, no record on credit entitlement was produced. A right to claim proforma/modvat credit against duty on final product was different from the defence of bonafides in a case where circumstances mentioned in the proviso to section 11A(1) stands proved by the department for invoking larger period of limitation. The burden to prove the defence of bonafides was on the assessee and the assessee in this case has failed to prove its bonafides. Under modvat, excisable finished products made out of duty-paid inputs are given relief of excise duty to the extent of duty paid on inputs. In the circumstances, we are satisfied that the department was justified in invoking the extended period of limitation under the proviso to Section 11A(1).*

4.13 Thus we do not find any merits in submissions made by the appellant against invoking of extended period of limitation of limitation for making this demand. Though in our discussions we have referred to the mis-declaration of the connecting rod for diesel engine as part of petrol engine, we find that appellant were in respect of all four goods under consideration have resorted to deliberate mis-declaration of the goods with the intention to evade payment of due custom duty. The act of the appellant, by mis-declaring and mis-classifying these goods in their Bill of Entry cannot be without intent to evade payment of duty due specifically when they were aware of the correct description and classification in respect of these goods. The fact that appellant is and AEO as noted in the impugned order casts a greater responsibility on the Appellant to make correct and complete declarations in the documents filed by them with the customs.

4.14 As we uphold the demand made by invoking extended period of limitation penalty under Section 114A would flow mandatorily as have been held by the Hon'ble Supreme Court in the case of Rajasthan Spinning and Weaving Mills Ltd. [2009 (238) ELT 3 (SC)]. Further we observe that appellant had claimed the benefit of exemption under Notification 46/2011-Cus on the basis FTA Certificates obtained by mis-declaring the goods, hence the requisite ingredients for imposition of penalty under Section 114AA are visibly evident in the present case. Hence penalty of Rs 2,00,000/- imposed under this section is also justified.

4.15 In view of the discussions as above we do not find any merits in this appeal.

5.1 Appeal is dismissed.

(Order pronounced in open court on- 14th July, 2026)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

(Dr. AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)

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