BRIEF FACTS OF THE CASE

M/s. ASR Multimetals (P) Ltd., Survey Nos.394,398,399 & 400, Village: Chhadwada, NH-8A, Near RTO Checkpost, Taluka: Bhachau, Kutch (Gujarat) – 370 140 having IEC Code Number – 3705000802 (hereinafter referred to as the 'ASRMPL') is importing Coal from South Africa and Indonesia. M/s ASRMPL classified the coal imported by them under CTH 27011920 claiming the same as 'Steam coal' and paid only 1% Additional duty leviable under Sub-Section (1) of Section 3 of the Customs Tariff Act 1975(CVD) claiming the exemption Notification 12/2012-Cus. dated 17.03.2012 (Sr. No. 123).

Intelligence collated and developed by the officers of DRI, Ahmedabad indicated that certain importers were importing Coal having the calorific value greater than 5,833 KCal/Kg and the coal imported by them fell in the category of Bituminous coal chargeable to duty @ 5% Basic Customs Duty (BCD) under the notification no: 12/2012-Cus. dated 17.03.2012 (Sr. No. 124) and 6% Additional duty leviable under Sub-Section (1) of Section 3 of the Customs Tariff Act 1975 (CVD) as in terms of the Central Excise Tariff.

2.1 The Coal is classified under Chapter 27 of the First Schedule to the Customs Tariff Act 1975. The relevant text of the same is re-produced hereunder:

2701		***COAL; BRIQUETTES, OVOIDS AND SIMILAR SOLID FUELS MANUFACTURED FROM COAL.***
		- Coal, whether or not pulverised, but not agglomerated:
2701 11 00	*- -*	*Anthracite*
2701 12 00	*- -*	*Bituminous coal*
2701 19	*- -*	*Other coal:*
2701 19 10	*- - -*	*Coking Coal*
2701 19 20	*- - -*	*Steam Coal*
2701 19 90	*- - -*	*Other*
2701 20	*-*	*Briquettes, ovoids and similar solid fuels manufactured from coal:*

3. Further, sub-heading note (2) of the Chapter 27 specifically provides that for the purposes of sub-heading 2701 12 "bituminous coal" means coal having volatile matter limit (on a dry, mineral-matter-free basis) exceeding 14% and a calorific value limit (on a moist, mineral-matter-free basis) equal to or greater than 5,833 kcal/kg.

4.1. From the scrutiny of the import documents submitted by M/s. ASRMPL, it transpires that M/s.ASRMPL has imported "Indonesian Steam Coal In Bulk" and also "South African Steam Coal In Bulk" having Calorific value between 5828 Kcal/Kg to 6128 KCal/Kg (ADB basis) from various overseas suppliers at Kandla Port. The same is detailed below:-

Vessel Name	B/E	Date	GCV (ADB) Kcal/Kg	VM (ADB)
LORENTZOS	6549446	16/04/2012	5828	42.78
LORENTZOS	7096731	13/06/2012	5828	42.78
LORENTZOS	7590932	6/8/2012	5828	42.78

LORENTZOS	8199744	12/10/2012	5828	42.78
INDUS PROSPERITY	8830673	21/12/2012	6128	23.80
INDUS PROSPERITY	9424960	26/02/2013	6128	23.80

4.2 It transpires from the import documents that M/s. ASRMPL has classified the coal imported by them under Customs Tariff Item 27011920 as Steam Coal and availed the exemption of Customs Duty under exemption Notification No. 12/2012-Cus dated 17.03.2012 (Sr. No. 123) in their imports after 17.03.2012.

4.3 Further, it also transpires from the import documents that M/s. ASRMPL are importing Coal at Kandla Port and during the scrutiny of documents it is also observed that the Coal imported vide various Bills of Entry were assessed finally on account of RMS facilitation or on assessment of the Bills of Entry at Kandla Port.

5.1 The analysis reports of the shipments of coal in respect of M/s. ASRMPL indicated that the Gross Calorific Value of the Coal imported was between 5828 KCal/Kg and 6128 KCal/Kg on 'As received Basis (ARB)' / 'Air Dry Basis (ADB)' / 'Dry Basis' and the Volatile matter exceeds 14% (ADB) the details are tabulated in Annexure-B annexed to the Show Cause Notice.

6. The relevant legal provisions in so far as they relate to the facts and circumstances of the subject imports are as follows (emphasis supplied):-

6.1 The Customs Act, 1962

(i) ***Section 2(39) – "Smuggling"*** *in relation to any goods, means any act or omission which render such goods liable to confiscation under Section 111 or Section 113 of the Customs Act, 1962.*

(ii) ***Section 12.*** *(1)* ***Dutiable goods. -*** *Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975)], or any other law for the time being in force, on goods imported into, or exported from India.*

(iii) ***Section15 (1). Date for determination of rate of duty and tariff valuation of imported goods.*** *The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force, -*

(a) in the case of goods entered for home consumption under section 46, on the date on which a bill of entry in respect of such goods is presented under that section;

(b) in the case of goods cleared from a warehouse under section 68, on the date on which a ***bill of entry for home consumption in respect of such goods is presented under that section;***

(c) in the case of any other goods, on the date of payment of duty:

(iv) ***Section 28 – Recovery of duties not levied or short-levied or erroneously refunded–***

(1) Where any duty has not been levied or has been short-levied or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any wilful mis-statement or suppression of facts,

(a) the proper officer shall, within one year from the relevant date, serve notice on the person chargeable with the duty or interest which has not been short levied or short-paid or to whom the refund has erroneously been made,

requiring him to show cause why he should not pay the amount specified in the notice;

(b) the person chargeable with the duty or interest, may pay before service of notice under clause (a) on the basis of, -

(i) his own ascertainment of the duty; or

(ii) the duty ascertained by the proper officer,

the amount of duty along with the interest payable thereon under Section 28AA or the amount of interest which has not been so paid or part-paid.

(v) Section 28AA: Interest on delayed payment of duty:

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

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

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

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

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

(vi) Section 46: Entry of goods on importation. - *(1) The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting to the proper officer a bill of entry for home consumption or warehousing in the prescribed form:*

Provided that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

.....

....."

(4) The importer while presenting a bill of entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, relating to the imported goods.

(vii) Section 111 –Confiscation of improperly imported goods, etc. - *The following goods brought from a place outside India shall be liable to confiscation :*

……..
……..

(d) *any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force.*

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

……..”

(viii) Section 112- Penalty for improper importation of goods, etc. – *Any person* ***-(a)*** *- who in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or*

(b) *who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111, shall be liable to penalty. .....*

(ix) Section 114A – Penalty for short levy or non levy of duty in certain cases -*: -where duty has not been levied short levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful misstatement or suppression of facts, the person who is liable to pay duty or interest as the case may be as determined under sub-section (8) of Section 28 shall also be liable to pay a penalty equal to the duty or interest so determined.*

6.2 Exemption and Effective Rate of Basic and Additional Duty for specified goods of Chs. 1 to 99 [Notification 12/2012-Cus. Dated 17.03.2012]:

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

Notification
No.12 /2012 –Customs

New Delhi, dated the 17 th March, 2012

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 21/2002-Customs, dated the 1st March, 2002 Published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 118(E) dated the 1st March, 2002, except as respects things done or omitted to be done before such supersession, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below or column (3) of the said Table read with the relevant

List appended hereto, as the case may be, and falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as are specified in the corresponding entry in column (2) of the said Table, when imported into India,-

(a) from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the standard rate specified in the corresponding entry in column (4) of the said Table;

(b) from so much of the additional duty leviable thereon under sub-section (1) of section 3 of the said Customs Tariff Act 1975 (51 of 1975) as is in excess of the additional duty rate specified in the corresponding entry in column (5) of the said Table, subject to any of the conditions, specified in the Annexure to this notification, the condition number of which is mentioned in the corresponding entry in column (6) of said table:

(The relevant portion of the said Notification is reproduced here below)

S. No.	*Chapter or Heading or Sub-heading or tariff item*	*Description of goods*	*Standard rate*	*Additional duty rate*	*Condition No.*
(1)	*(2)*	*(3)*	*(4)*	*(5)*	*(6)*
122	*2701*	*Coking coal* *Explanation - For the purpose of this exemption, "Coking coal" means coal having mean reflectance of more than 0.60 and Swelling Index or Crucible Swelling Number of 1 and above*	*NIL*	*-*	*-*
123	*27011920*	*Steam Coal*	*NIL*	*1%*	*-*
124	*2701 11 00, 2701 12 00, 2701 19*	*All goods other than those specified at S. Nos. 122 and 123 above*	*5%*	*-*	*-*

6.3 Chapter Sub-Heading Note 2 to the Chapter 27 as given under:

CHAPTER 27

Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes

SUB-HEADING Notes :

2. For the purposes of sub-heading 2701 12 "bituminous coal" means coal having volatile matter limit (on a dry, mineral-matter-free basis) exceeding 14% and a calorific value limit (on a moist, mineral-matter-free basis) equal to or greater than 5,833 kcal/kg.

6.4 The Foreign Trade (Development and Regulation) Act, 1992

(i) Section 3(2) –The Central Government may also, by order published in the Official Gazette, make provision for prohibiting, restricting, or otherwise

regulating, in all cases and subject to such exceptions, if any, as may be made by or under the order, the import or export of goods.

(ii) Section 3(3) - all goods to which any order under sub section (2) applies shall be deemed to be goods the imports or exports of which has been prohibited under section 11 of the Customs Act, 1962 and all the provisions of that Act shall have effect accordingly.

(iii) Section 11: Contravention of provision of this Act, rules, orders and exports and import policy: - No export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made there under and the export and import policy for the time being in force.

6.5 *FOREIGN TRADE (REGULATION) RULES, 1993*

Rule: 11. Declaration as to value and quality of imported goods-

On the importation into, or exportation out of, any customs ports of any goods, whether liable to duty or not, the owner of such goods shall in the Bill of Entry or the Shipping Bill or any other documents prescribed under the Customs Act 1962, state the value, quality and description of such goods to the best of his knowledge and belief and in case of exportation of goods, certify that the quality and specification of the goods as stated in those documents, are in accordance with the terms of the export contract entered into with the buyer or consignee in pursuance of which the goods are being exported and shall subscribe a declaration of the truth of such statement at the foot of such Bill of Entry or Shipping Bill or any other documents.

7.1 Scrutiny of the various documents/records of M/s. ASRMPL indicate that they have imported coal having Volatile Matter higher than 14% and Gross Calorific Value greater than 5833 Kcal/Kg. M/s ASRMPL was classifying the coal imported by them under Customs Tariff Item 27011920 and availing the exemption of Customs Duty under Sr. No: 123 of the Notification No. 12/2012-Cus dated 17.03.2012 for their imports with effect from 17.03.2012. As the revenue implication on account of mis-classification arose only in the wake of Notification No. 12/2012-Cus dated 17.03.2012, the evidence discussed in the instant notice covers the period commencing from 17.03.2012.

7.2 The Sub-heading note (2) of the Chapter 27 of the First Schedule to the Customs Tariff Act 1975, defines "bituminous coal" as coal having volatile matter limit (on a dry, mineral-matter-free basis) exceeding 14% and a calorific value limit (on a moist, mineral-matter-free basis) equal to or greater than 5,833 kcal/kg.

7.3 Further, as per the literature 'Coal Production and Preparation Report' downloaded from the website https://www.eia.gov/cneaf/coal/page/surveys/eia7ainst.pdf, it is clear that dry, mineral-matter free basis means total moisture and mineral matter have been removed and moist, mineral-matter free basis means the natural inherent moisture is present but mineral matter has been removed and moist coal does not include visible water on the surface and the Volatile Matter (on dry, mineral-matter-free basis) & Gross Calorific Value(on moist, mineral-matter-free basis) can be derived by applying the following Formulae:-

Dry, mineral-matter free fixed carbon percentage
= 100 (FC – 0.15S) / (100 – (M + 1.08A + 0.55S))

Dry, mineral-matter free volatile matter percentage
= 100 – (Dry, mineral-matter free FC)

Moist, mineral-matter free Btu content
= 100 (Btu – 50S) / (100 – (1.08A + 0.55S))

Where,
Btu = gross calorific value per pound;
FC = fixed carbon content percentage by weight;
M = moisture content percentage by weight;
A = ash content percentage by weight; and
S = sulfur content percentage by weight.
*Btu = 1.80 * kcal/kg*

7.3.1 The values of Ash content, Sulphur content and Btu are to be applied on Air Dry Basis (ADB) as confirmed by Joint Director, Customs and central Revenue Control Laboratory (CRCL) vide letter F. No: JNCH/T.O./2012-12 dated 07.03.2013.

7.3.2 It may be pertinent to mention here that the values of fixed carbon content and ash content used in above formulae have not been adjusted for SO3 free basis (as prescribed by ASTM 388). In this regard reliance was placed on the conclusion put forth in the report titled 'SULFUR RETENTION IN BITUMINOUS COAL ASH' by O.W. Rees et al. In the said report it has been concluded that 'very little sulfur is retained in bituminous coal ash resulting from higher temperature combustion in industrial or power plant installations'. Apart from above, in the body of the above report, it is noted that the the amount of sulfur retention in coal ash is a function (effect) of ashing temperature. As the ashing temperature rises the sulfur content in ash decreases. It reaches zero at higher temperatures (usually >1000 deg Celsius). It can also be concluded from the said report that even at the relatively lower temperatures (say 800 deg Celsius – which is usually laboratory ashing temperature) the percentage of sulfur content in ash is negligible (to the tune of 5% on an average). Thus the effect of non-adjustment (with reference to SO3) of values of fixed carbon content and ash content in bituminous coal would be negligible on both volatile matter (on dry, mineral matter free basis) and calorific value limit (on moist, mineral matter free basis), and hence would hardly impinge adversely on the interest of the importers. In any case, the calorific values in respect of coal consignments covered in this show cause notice are not so very close to the figure of 5833 kcal/kg, nor their volatile matter content percentage so very close to 14%, and hence ignoring the negligible presence of SO3 will be of no consequence as far as the classification of the impugned coal and duty liability thereon are concerned.

8 A reference was made by DRI, vide a letter F. No: DRI/AZU/INT-01/2013 dated 05.03.2013 to the Joint Director, Customs and central Revenue Control Laboratory (CRCL) to ascertain whether the aforesaid formulae can be applied as such in calculation of the volatile matter limit (on a dry, mineral-matter-free basis) and the calorific value limit (on a moist, mineral-matter-free basis) in case of Coal imported into India.

9 The Joint Director, Customs Laboratory, Jawaharlal Nehru Customs House, Nhava Sheva, Raigad, Maharashtra vide a letter F. No: JNCH/T.O./2012-12 dated 07.03.2013 confirmed the applicability of the said formulae to the coal

imported. It was also confirmed that the values of Ash content, Sulphur content and Btu are to be applied on Air Dry Basis (ADB).

10. M/s ASRMPL has imported Coal from various suppliers of South Africa and Indonesia under various Bills of Entry at Kandla Port describing them as ""Indonesian Steam Coal In Bulk" and also "South African Steam Coal In Bulk". In Bulk". The various Certificates of Sampling & Analysis of Shipment of Coal for each vessel submitted by M/s. ASRMPL indicate that the Coal imported were having Gross Calorific Value between 5828 Kcal/Kg to 6128 KCal/Kg (ADB basis) simultaneously, the Volatile Matter is more than 14%. But, the Gross Calorific Value and the Volatile Matter in these analysis reports are on Air Dry Basis (ADB) conditions, whereas as per Sub-heading Note 2 to Chapter 27 of the Customs Tariff the volatile matter limit should be on a dry, mineral-matter-free basis and a calorific value limit should be on a moist, mineral-matter-free basis. The formulae to calculate the Volatile Matter (on dry, mineral-matter-free basis) & Gross Calorific Value (on moist, mineral-matter-free basis) is given below:

'Dry, mineral-matter-free fixed carbon percentage' = $\frac{100\ (FC - 0.15S)}{100 - (M + 1.08A + 0.55S)}$

'Dry, mineral-matter-free volatile matter percentage' =100 – (Dry, mineral-matter-free FC)

'Moist, mineral-matter-free Btu content' = $\frac{100\ (Btu - 50S)}{100 - (1.08A + 0.55S)}$

Btu=Gross calorific value per pound.
S= Sulphur content percent by weight
A= Ash content percent by weight.
(1 Kcal/Kg = 1.800001 Btu/Lb.)

On the basis of above said formula the Volatile Matter (VM) (on dry, mineral-matter-free basis) & Gross Calorific Value (GCV) (on moist, mineral-matter-free basis) are calculated for 02 Certificates of Sampling & Analysis of Shipment of Coal herein below as a sample.

11 First in case of Certificates of Sampling & Analysis of Shipment of Coal, where GCV (ADB) is less than 5833 Kcal/kg i.e. for Reference 42-2-20319 dated 22.03.2012 on a Sample drawn from the cargo of 52986 MTs of coal described by the Exporter as Indonesian Steam Coal in Bulk loaded at the Taboneo Offshore Safe Anchorage, South Kalimantan, Indonesia on board the vessel M.V. Lorentzos. **(Annexure –C)**

The analysis report appended in the said certificate indicates the Coal was having Gross Calorific Value 5828 kcal/kg (Air Dry Basis), and the Volatile Matter 42.78 % (Air Dry Basis). On applying the above formulae the Volatile Matter (on dry, mineral-matter-free basis) worked out to be 51.16 % as against 42.78 % (Air Dry Basis) and Gross Calorific Value (on moist, mineral-matter-free basis) worked out to be 6147 kcal/kg as against 5828 kcal/kg (Air Dry Basis).

12 Second in case of Certificates of Sampling & Analysis of Shipment of Coal, where GCV (ADB) is greater than 5833 Kcal/kg i.e. for Reference No. GPL/10/ACC-005/2012 dated 27.11.2012, in respect of the test conducted by M/s GITCO (PTY) Ltd., South Africa on a Sample drawn from the cargo of 90278 MTS of coal described by the Exporter as South African Steam Coal in Bulk loaded

at Richards Bay Coal Terminal, South Africa on board the vessel M.V. Indus Prosperity **(Annexure – D).**

The analysis report appended in the said certificate indicates the Coal was having Gross Calorific Value 6128 kcal/kg (Air Dry Basis) and the Volatile Matter 23.80 % (Air Dry Basis). On applying the above formula the Volatile Matter (on dry, mineral-matter-free basis) worked out to be 29.03 % and Gross Calorific Value (on moist, mineral-matter-free basis) worked out to be 7751 kcal/kg.

13 Similarly the Volatile Matter (on dry, mineral-matter-free basis) and Gross Calorific Value (on moist, mineral-matter-free basis) for all other such Certificates of Sampling & Analysis have been calculated on the basis of above said formula. The Volatile Matter (on dry, mineral-matter-free basis) exceeding 14% and Gross Calorific Value (on moist, mineral-matter-free basis) equal to greater than 5833 Kcal/Kg are tabulated in Annexure-B annexed to the Show Cause Notice.

14. It thus appears from the Certificates of Sampling & Analysis of Shipment of Coal **(As detailed in Annexure-B)** in respect of test conducted by various independent inspecting agencies at various Load Ports that the volatile matter limit (on a dry, mineral-matter-free basis) of the coal imported by M/s. ASRMPL exceeds 14% and also the calorific value of the said coal (on a moist, mineral-matter-free basis) is found to be greater than 5,833 kcal/kg. Hence, in terms of Sub-heading note (2) of the Chapther-27 discussed supra, it is evident that the Coal imported from South Africa and Indonesia, by declaring as “Indonesian Steam Coal In Bulk” and also “South African Steam Coal In Bulk” and classified under Customs Tariff Item 27011920 is in fact Bituminous Coal and is correctly classifiable under Sub-Heading 2701 1200.

15. The classification of the goods under Customs Tariff is governed by principles as set out in ‘The General Rules for the Interpretation of Import Tariff’. Rule 1 of The General Rules for the Interpretation of Import Tariff clearly stipulates that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes. Further, the Rule 6 of The General Rules for the Interpretation of Import Tariff states that ‘for legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub-headings and any related sub-heading Notes and, mutatis mutandis, to the above rules, on the understanding that only sub-headings at the same level are comparable. For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.’

16 The Sub-heading note (2) of the Chapter 27 specifically provides that for the purposes of sub-heading 2701 12, “bituminous coal” means coal having volatile matter limit (on a dry, mineral-matter-free basis) exceeding 14% and a calorific value limit (on a moist, mineral-matter-free basis) equal to or greater than 5,833 kcal/kg. The coal imported by M/s ASRMPL had volatile matter limit (on a dry, mineral-matter-free basis) exceeding 14% and the calorific value limits (on a moist, mineral-matter-free basis) greater than 5833 kcal/kg. Hence the said coal is classifiable under Customs tariff heading 2701 1200 instead of CTH 2701 1920 as Steam Coal.

17 The structure of chapter heading no: 2701 is reproduced below once again for convenience.

2701	***COAL; BRIQUETTES, OVOIDS AND SIMILAR SOLID FUELS MANUFACTURED FROM COAL.***	
	- Coal, whether or not pulverised, but not agglomerated:	
2701 11 00	*- -*	*Anthracite*
2701 12 00	*- -*	*Bituminous coal*
2701 19	*- -*	*Other coal:*
2701 19 10	*- - -*	*Coking Coal*
2701 19 20	*- - -*	*Steam Coal*
2701 1990	*- - -*	*Other*
2701 20	*-*	*Briquettes, ovoids and similar solid fuels manufactured from coal:*

As is evident from the above structure, only that coal which does not get covered under the category of anthracite coal of Customs tariff heading (CTH) 27011100 and Bituminous Coal of CTH 27011200 can go in the category of 'Other Coal' of CTH 2701.19. The 'Other Coal' of CTH 2701.19 is then divided into Coking Coal CTH 2701 19 10, Steam Coal CTH 2701 19 20 and other CTH 2701 1990. It has been abundantly brought out without any doubt that the impugned coal categorically and unambiguously satisfies the requirements stipulated for its classification under CTH 27011200 as 'Bituminous Coal' and therefore it gets classified there (i.e. under CTH 27011200) and as a consequence it cannot be covered under the category of 'Other Coal' of CTH 2701 19 and therefore its classification under CTH 27011920 is completely out of question because coal which is not covered under 2701 19 cannot be covered under 27010920. This is so self evident that any further elaboration on this point will be a futile exercise in tautology.

18. The Notification No: 12/2012-cus dated 17.03.2012 exempts the specified goods when imported into India,-

(a) from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the standard rate specified in the corresponding;

(b) from so much of the additional duty leviable thereon under sub-section (1) of section 3 of the said Customs Tariff Act 1975 (51 of 1975) as is in excess of the additional duty rate specified in the corresponding entry subject to any of the conditions, specified:

The relevant portion of the table appended to the notification reads as under:

S. No.	Chapter or Heading or sub– heading or tariff item	Description of goods	Standard rate	Additional duty rate	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
123.	27011920	Steam Coal	Nil	1%	-
124.	2701 11 00, 2701 12 00, 2701 19	All goods other than those specified at S. Nos. 122 and 123 above.	5%	-	-

Since the impugned coal imported by M/s ASRMPL appears to be classifiable under CTH 2701 12 00, the same is not eligible for exemption in terms of Sr. No: 123 of the said notification and hence is leviable to duty @ 5% Basic Customs Duty in accordance with the Sr. No: 124 of the Notification no: 12/2012 dated 17.03.2012 and 6% Additional duty (CVD) leviable thereon under sub-section (1) of section 3 of the said Customs Tariff Act 1975.

19.1 In terms of Section 46 (4) of Customs Act, 1962, the importer is required to make a declaration as to truth of the contents of the bills of entry submitted for assessment of Customs duty. M/s. ASRMPL have wrongly declared the coal imported by them as 'Steam Coal' (As detailed in Annexure-A) in as much as they were fully aware that the said Coal ordered by them were having Gross Calorific Value in excess of 5833 Kcal/Kg and the percentage of Volatile matter in excess of 14%. Further, the Certificate of Sampling & Analysis received from the overseas supplier categorically mentioned that the said Coal imported was having Gross Calorific Value in excess of 5833 Kcal/Kg and the percentage of Volatile matter in excess of 14%. In few cases, based on the formula the GCV was found to be more than 5833 Kcal/Kg and Volatile Matter is in excess of 14%. M/s. ASRMPL were aware that the sub-heading note (2) to the Chapter 27 of the Customs Tariff categorically mentioned that for the purposes of sub-heading 2701 12 "bituminous coal" means coal having volatile matter limit (on a dry, mineral-matter-free basis) exceeding 14% and a calorific value limit (on a moist, mineral-matter-free basis) equal to or greater than 5833 Kcal/kg. Despite of the same they chose to declare their goods as "steam coal" classifiable under CTH 27011920 to wrongly claim the benefit of exemption applicable to the 'Steam Coal' under Notification No. 12/2012-Cus dated 17.03.2012 (Sr.No.:123).

19.2 Thus it appears that M/s. ASRMPL have contravened the provisions of sub section (4) of Section 46 of the Customs Act, 1962, in as much as, they had mis-declared the goods imported as "Indonesian Steam Coal In Bulk" and also "South African Steam Coal In Bulk" in the declaration form of Bill of Entry filed under the provisions of Section 46(4) of the Customs Act 1962 and mis-classified the goods under Customs tariff heading 27011920, in order to avail the exemption available in the Notification 12/2012-Cus. dated 17.03.2012 against the Sr. No. 123. This constitutes an offence of the nature covered in Section 111(m) of the Customs Act, 1962. Accordingly the impugned goods as detailed in the **Annexure – A** of this show cause notice are liable to confiscation under Section 111(m) of the Customs Act, 1962.

19.3 Further, in terms of Rule 11 of the Foreign Trade (Regulation) Rules, 1993, on the importation into, any customs ports of any goods, whether liable to duty or not, the owner of such goods shall in the Bills of Entry or the Shipping Bills or any other documents prescribed under the Customs Act 1962, state the value, quality and description of such goods to the best of his knowledge and belief and in case of exportation of goods, certify that the quality and specification of the goods as stated in those documents, are in accordance with the terms of the export contract entered into with the buyer or consignee in pursuance of which the goods are being exported and shall subscribe a declaration of the truth of such statement at the foot of such Bill of Entry or Shipping Bill or any other documents. In the instant case the importers M/s. ASRMPL have failed to declare the true description of the products imported as 'Bituminous Coal' and has hence contravened the provisions of Rule 11 of the Foreign Trade (Regulation) Rules, 1993 and Rule 14 of the Rules ibid in as much as M/s. ASRMPL knew that the declarations made by them was false with regard to the description of the Coal imported by them. The contraventions of the provisions of the Foreign Trade (Development and Regulation) Act, Foreign Trade (Regulation) Rules and Export and Import policy is a prohibition of the nature as described under the Section 11 of the Foreign Trade (Development and Regulation) Act, 1992. Now, in terms of Section 3(3) of the Act ibid the prohibitions are deemed to be a prohibition under the Section 11 of the Customs Act 1962. In terms of the Section 111 (d) of the Customs Act, 1962 any

goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force is liable to confiscation. Thus it appears that the impugned goods as detailed in the **Annexure-A** to this notice are liable to confiscation under Section 111(d) of the Act ibid.

19.4. Further, on account of the above said acts of omission and commission, which have rendered the impugned goods liable to confiscation under the provisions of Section 111(d) and 111(m) of the Customs Act 1962, M/s. ASRMPL are also liable for penalty under Section 112(a) of the Act ibid.

19.5 Further, it also appears that M/s. ASRMPL have mis-declared and (mis) classified the impugned goods under CTH 2701 1920 (instead of their correct classification under CTH 2701 1200) in their Bills of Entry and thereby wrongly availed the benefit of the exemption Notification 12/2012-Cus dated 17.03.2012 (Sr. No. 123) and paid duty (only CVD) @ 1% ad valorem instead of paying BCD @ 5% in terms of Notification 12/2012-Cus dated 17.03.2012 (Sr. No. 124) and CVD @ 6% ad valorem leviable under sub-section (1) of Section 3 of the Customs Tariff Act, 1975, which led to short levy of Customs duty. Bills of Entry as detailed in **Annexure-A** to this notice which were assessed finally on account of RMS facilitation of these Bills of Entry / finally assessed. Hence, differential duty of **Rs. 1,08,08,551/-** on the **25,000 MTs** of impugned coal, imported by M/s. ASRMPL at Kandla Port under the bills of entry as detailed in **Annexure-A** to this notice & assessed finally, is liable to be recovered from them under **Section 28(1) of the Customs Act, 1962** along with applicable interest under **Section 28 AA** of the Customs Act, 1962.

20. In view of the foregoing para, M/s.ASR Multimetals (P) Ltd., were called upon to show cause to the Commissioner of Customs, Kachchh Commissionerate having his office at Custom House-Kandla, Near Balaji Temple, Kandla as to why:-

(i) Their claim for classification of impugned goods (as detailed in Annexure A) under Customs Tariff item / heading 270119 20, should not be rejected and why the same should not be re-classified under Customs Tariff item/heading 2701 1200 of the First Schedule to the Customs Tariff Act, 1975;

(ii) The 25000 MTs, imported Coal valued at Rs10,79,94,385/- as detailed in Annexure –A should not be confiscated / held liable for confiscation under the provisions of Section 111(d) and 111(m) of the Customs Act,1962 ;

(iii) The differential Customs duty amounting to Rs. 1,08,08,551/-, on the 25000.MTs, of imported impugned Coal as detailed in Annexure-A to this notice, should not be demanded and recovered from them under Section 28(1) of the Customs Act, 1962;

(iv) Interest should not be recovered from them on the said differential Customs Duty, as at (iii) above, under Section 28AA of the Customs Act, 1962, in respect of final assessments made;

(v) Penalty should not be imposed on them under Section 112(a) of the Customs Act, 1962.

21. DEFENCE REPLY:

M/s. ASRMPL in their written reply dated **24.03.2014**, to the Show Cause Notice, has denied and disputed the allegations levelled against them in the present Show Cause Notice. Further they have, inter-alia, submitted:

that the coal imported by them is classifiable under Tariff Item 2701 19 00 of the Customs Tariff and further denied that the goods imported by them would be liable to confiscation under Section 111 (d) and (m) of the Customs Act, 1962 or that they would be liable to any penalty under Section 112 (a) ibid. Accordingly, they denied that they are liable to pay any differential duty as well as interest as proposed in the Notice.

that on the basis of some intelligence collected and developed by DRI that the goods imported by them were Bituminous Coal classifiable under Tariff Item 2701 12 00 where the rate of duty was 5% basic duty in terms of serial No. 124 of the Notification No. 12/2012-Cus dated 17.3.2012 and further that the CVD payable was also 6%, the matter was investigated by the officials of the Kandla Customs. Based on the same and other materials available in the form of documents, the notice alleges that since the coal imported satisfies the parameters of sub heading Note 2 to Chapter 27 it had to be classified under Tariff Item 2701 12 00 only as Bituminous Coal and that they could claim exemption on the goods only as Bituminous Coal as per serial No. 124 of Notification No. 12/2012-Cus and not as per serial No. 123 as Steam Coal. The notice has computed the GCV on a moist-mineral matter free basis, as stipulated in the sub-heading note to chapter 27, on a theoretical basis by referring to a formula stated in a web-site and applying the conversion factors, on a self-determined basis.

that the present Show Cause Notice has been issued alleging that they had wrongly claimed benefit of exemption under serial No. 123 of Notification No. 12/2012-Cus dated 17.3.2012 declaring the goods to be Steam Coal even when the coal imported had to be classified as Bituminous Coal under Tariff Item 2701 12 00 since it satisfied the parameters pertaining to Volatile Matter Limit and Calorific Value Limit as stipulated in sub heading Note 2 to Chapter 27.

that the issue that arises for consideration in the present proceedings is that even though the goods are Steam Coal, known worldwide as Steam Coal, known in the trade parlance in India as Steam Coal, imported with an agreement with the foreign supplier as Steam Coal, since these satisfied the parameters given in sub heading Note 2, as presumed in the notice, with respect of Volatile Matter Limit and Calorific Value Limit, these come in the category of Bituminous Coal and that being so, whether these must be classified and assessed only under Tariff Item 2701 12 00 as Bituminous Coal and not under Tariff Item 2701 19 20 as Steam Coal. The effective rate of Customs duty payable under the two Tariff Items is different as per Notification No.12/2012-Cus dated 17.3.2012.

that according to the notice the goods satisfy the parameters of Bituminous Coal, it is proposed to classify them for the purpose of charging Customs duty as Bituminous Coal under Tariff Item 2701 12 00 in the Show Cause Notice, however, is that as per Certificates of Sampling and Analysis of shipment the same is “Steam coal” etc. the Gross calorific value of the imported coal was 4421Kcal/Kg. on “As received basis according to ASTM D2234/D2234M-07 standards and 5828 Kacl/Kg (Air Dry Basis) in four Bills of Entry and 6128 Kcal/Kg. (Air Dry Basis) in two Bill of Entry and hence the goods were also correctly classifiable under Tariff Item 2701 19 20 and claiming exemption under serial No. 123 of Notification No. 12/2012-Cus dated 17.3.2012 was fully in accordance with law and justified.

that Paragraph 10 of the SCN also very candidly admits that “the Volatile Matter (on ADB) and Gross Calorific Value (on ADB) in respect of this consignment imported under six bills of entry are as above as per certificate of Sampling & Analysis of the load port submitted by the importer. Since, Chapter Note 2 of Chapter 27 very specifically provides that for the purpose of sub-heading 2701 12 “Bituminous Coal” means coal having a volatile matter limit (on a dry, mineral-matter-free basis) exceeding 14% and a calorific value limit (on a moist, mineral-matter-free basis) equal to or greater than 5,833 kcal/kg and it is not known but have to ascertain on the basis of formula discussed in the said paragraph. Therefore, entire show cause notice is liable to be quashed in limine.

that their agreement with the international supplier through high seas seller was for supply of Steam Coal known internationally as Steam Coal and which was also to be utilized as Steam Coal by them. All parameters for such Steam Coal were examined by the foreign supplier before the shipment of the goods to India. That the goods were Steam Coal for the purpose of international classification and even under the Customs Tariff classifiable under Tariff Item 2701 19 20 has never been in dispute. The Customs authorities had drawn sample from the consignment at the time of assessment and sent the same to their own laboratory. The show cause is totally silent on the test report of the Customs Laboratory. They requested to provide the test reports of the Customs Laboratory in respect of the said six Bill of Entry. After receipt of the test report they will be able to make further submissions regarding the calorific value tested by the customs laboratory and whether it will be covered under the definition of bituminous coal or otherwise on the basis of the parameters given in sub heading Note 2 to Chapter 27. That in the absence of the testing parameters, it is not conclusively established that the goods satisfy the requirements of sub-note No. 2 to Chapter 27 to be treated as Bituminous Coal as such. On the basis of the certificate of sampling and analysis of shipment of coal Volatile Matter Limit and the Calorific Value Limit in Annexure – A to the SCN have been determined for the purpose of sub heading Note 2 are therefore not conclusive in the matter.

that all the consignments of steam coal imported by them had a calorific value limit less than 5833 kg./cal., on ADB/ARB and that the Notice has erred in incorrectly discussing the formula, which the department borrowed from “eai” website for converting the test results done at the load port, results of which have been expressed on an ‘Air Dried’ Basis (ADB) and/or on ‘As Received’ Basis (ARB), to MMMF basis. From the tests conducted at the load port, relied upon in the Notice, it can be seen that at least in four Bills of Entry and consignment imported by them, the GCV was less than 5833 kg/cal., but was on an ADB/ARB basis.

that the Notice has not brought on record any evidence giving credence to the formula stated in the website. The mere fact that some website gives some formula for conversion, it was not open to the department to have, without any basis, followed the same and not even examine the source and authenticity of such a formula. That merely relying upon literature available on the internet without verifying its authenticity and correctness is fraught with risk. The internet is a platform where any person can load his/her opinion/views. To assume such opinions/views to be scientific and correct is completely untenable. In fact, on the internet there are several sites which give different formulas for computing “mineral matter free component” in coal. The formulas given in those websites are different from that given in www.eia.gov website. Therefore, a formula given in www.eia.gov website without any scientific basis cannot be relied upon.

that they have done a search on the internet and have come across ASTM D388 – 98A which is supposed to be a standard for classification of coals by rank i.e., according to a degree of metamorphosis or progressive alteration in the natural series lignite to anthracite. As per this standard, the formula which has been referred to in the eia website appears to be that of PARR S.W., which was published in the ‘Classification of Coal’ Bulletin No.180 Engineering Experiment Station, University of Illinois, 1928. The said literature states that the calculation on MMMF basis is done for determining coal ranks. It is explained therein that the

mineral matter free contains inherent moisture and is equivalent to 'as received' basis for samples collected and preserved as prescribed in Section 7. For all conversion to be made on MMMF basis conversion factor to be applied is one containing inherent moisture, which is equivalent to 'as received' basis. In the Show Cause Notice issued to them, the conversion factor which has been applied is on a 'Air Dried Basis' and not on 'As Received Basis' as mandated in ASTM D 388.

that the "eia website" which has been relied upon in the Notice does not state anywhere that while applying the formula, values have to be taken on the 'air dried' basis. From the relied upon document in the Notice it appears that the DRI had asked the Chemical Examiner, JNCH, Nhava-Sheva whether they could take the value on an 'air-dried' basis in the formula and the Chemical Examiner has said that the GCV, ash content, sulphur content on an ADB basis can be adopted and that the said formula can be applied to the coal imported into India. The Chemical Examiner does not seem to have given reference of any technical literature based on which he suggests that the ADB value could be adopted or for that matter the said formula could be applied to coal imported into India even though it was not imported from US. The evidence available in the form of ASTM D388 and the extracts from the website seem to suggest to the contrary. Also, there is nothing to show that the said formula had universal application and the same would apply also to coal imported into India from elsewhere having different characteristics than that coal imported from the US. They requested for grant of an opportunity to cross examine the Chemical Examiner so as to bring out the correct factual position on record.

that the coal imported by them was low calorific value steam coal and was aptly classifiable as "Steam coal", even if this was not factually correct even then same were rightly classifiable as " Steam Coal".

that even though, as mentioned in the earlier paragraph, in the absence of test of the goods, it is not conclusively proved that the parameters mentioned in sub heading Note 2 were fully satisfied in respect of the imported goods, assuming without admitting the imported goods to be fulfilling the criteria of Bituminous Coal even then they submitted that Coking Coal and Steam Coal are only separate sub categories of Bituminous Coal and have to be classified under specific headings as given in the Tariff for their classification.

that during the course of investigation the officers have relied upon the literature downloaded from the website https://www.eia.gov and the Publication named 'World Coal Institute, the Coal Resource – a Comprehensive Overview of Coal'. In the Show Cause Notice while for ascertaining the parameters for the purpose of sub note No 2 reliance has been placed on the Publication: Coal Production and Preparation Report, the categorization of coal as given in the Coal Resource Publication of the World Coal Institute has not been taken into account and has been totally ignored. While the Coal Production and Preparation Report has been used only for the formula given thereunder the categorization of coal as given in the World Coal Institute Publication, the Coal Resource is of utmost importance and is very crucial. A perusal of this booklet indicates that coal is classified and categorized as per rank in the following manner:

(i) Low Rank Coal and Hard Rank Coal. The Low Rank Coal is further categorized as lignite and sub bituminous;

(ii) Hard Coal is categorized as Bituminous and Anthracite. Bituminous Coal is further categorized as Thermal (Steam Coal) and Coking Coal.

(iii) In other words, both Coking Coal and Thermal Coal apart from being Thermal Coal and Coking Coal in their specific properties are broadly Bituminous Coal only with the Hard Coal rank.

that as per this Publication, Steam Coal is used for power generation and so is lignite. Coking Coal is mostly used in Iron and Steel production. Coking Coal is

more expensive than Steam Coal. However for power generation it is mainly Steam Coal or which is also known as Thermal Coal that is mostly used. From the above, it is therefore clear that Steam Coal and also Coking Coal are also Bituminous Coal only but since these have specific end uses and distinct properties these are not known as merely Bituminous Coal but are known for their distinct categories and uses as Coking Coal or as Steam Coal and recognized as such not only in the Harmonized Commodity Description System but in the Customs Tariff itself.

that even if the imported Steam Coal under the Bill of Entry had the same parameters as given in sub heading Note 2 to Chapter 27 on the basis of which it came in the category of Bituminous Coal classifiable under Tariff Item 2701 12 00, it will not detract from the fact that being a specific category of Bituminous Coal as Steam Coal it had to be classified under its own specific Tariff Item namely 2701 19 20.

that in view of sub-heading Note 2 to Chapter 27, the coal imported may come in the category of Bituminous Coal classifiable under Tariff Item 2701 12 00, since there is absolutely no dispute that it is steam coal also, known internationally as such, known as such in trade parlance in India and used as such for power generation, it also equally merits classification under Tariff Item 2701 19 20. If certain goods merit classification in two competing Tariff Items, the problem has to be resolved by reference to the GENERAL RULES FOR THE INTERPRETATION OF THE SCHEDULE. Rules 1 to 5 of these General Rules are intended to resolve disputes when a material appears classifiable in two or more headings namely upto 4 digits. When such a dispute arises at the 6 digit level or the 8 digit level the problem of classification between the competing entries is to be resolved in terms of Rule 6, which in turn again refers to the concerned Rules meant for headings at 4 digit level *mutatis mutandis.*

that accordingly in view of the above, between the 2 Tariff Items 2701 12 00 for Bituminous Coal and 2701 19 20 for Steam Coal, the more specific description of the imported coal will be in the category of Steam Coal under Tariff Item 2701 19 20. In case both were to be treated as equally specific, in that case the dispute will be resolved by referring to General Rule 3(c) which provides that in a case of this type the classification will be done under that heading or in the present case under that sub-heading which occurs last in numerical order. Following this principle, classification of the imported coal will have to be done under Tariff Item 2701 19 20 as Steam Coal since in the numerical order this appears subsequent to 2701 12 00 for Bituminous Coal at the 6 digit level. That by following these principles of the General Rules for Interpretation of the Tariff, absolutely no doubt is left that the imported coal which is Steam Coal has to be classified under Tariff Items 2701 19 20 notwithstanding the fact that it has volatile matter limit exceeding 14% and calorific value limit equal or greater than 5833 k.cal/kg, the requirements for sub-heading Note 2 for a coal to be treated as Bituminous Coal classifiable under Tariff Item 2701 12 00.

that the exemption given to various types of Coal under Notification No. 12/2012-Cus has to be understood on the basis of the specific description and classification of the items in the specific entries. Under serial No. 122, exemption is available to Coking Coal which satisfied the parameters of Mean Reflectance and Crucible Swelling Number (CSN) as given in the Explanation against Coking Coal. Here Coking Coal figures against Chapter Heading 2701 and not against a specific Tariff Item under six digits or under eight digits. In other words, even though Coking Coal as such is classifiable under Tariff Item 2701 19 10, exemption under serial No. 122 is available for Coking Coal falling anywhere under Chapter Heading 2701 but only when it satisfies the requirement of Mean Reflectance and CSN as given in the Explanation. Coking Coal not satisfying these requirements will not enjoy exemption under serial No. 122 but will go to serial No. 124. Serial No. 124 gives the effective rate of duty of those goods which did not figure either in serial No. 122 or in serial No. 123.

that it is serial No. 123 which is relevant in the present proceedings. Exemption under this serial number from the whole of basic customs duty and from the additional duty in excess of 1% is available to Steam Coal without reference to any specific parameters. So long the goods are Steam Coal, benefit of Exemption is available. Criteria such as Mean Reflectance or CSN which are relevant for Coking Coal for the purpose of exemption under serial No. 122 do not exist for Steam Coal for the purpose of exemption under serial No. 123. In other words, so long as Steam Coal is concerned, it is eligible for exemption irrespective of any parameters. Neither any definition of Steam Coal is given for the purpose of exemption, nor any parameters have been prescribed. That so long the goods imported are Steam Coal the blanket exemption is available to it under serial No. 123 of Notification No. 12/2012-Cus dated 17.3.2012.

that the goods imported by them are Steam Coal is not in dispute. That on the basis of the contract with the foreign supplier from Indonesia and South Africa and as per the connected import documents and the test reports at the time of shipment from Indonesia and South Africa there is no doubt that the goods imported by us under the Bill of Entry were Steam Coal only. This has not been even controverted anywhere in the Show Cause Notice. When the goods are Steam Coal and Steam Coal has a specific classification under Tariff Item 2701 19 20 and enjoys specific exemption under serial No. 123 of Notification No. 12/2012-Cus the fact that it might also satisfy the parameters of sub heading Note 2 with reference to Volatile Matter Limit and Calorific Value Limit required for Coal to be classified as Bituminous Coal will not change the position ; that both Coking Coal and Steam Coal being Bituminous Coal could be classified under Tariff Item 2701 12 20 as Bituminous Coal but since there are separate and distinct Tariff Items specifically for these, Coking Coal will have to be classified under Tariff Item 2701 19 10 and Steam Coal under Tariff Item 2701 19 20. In short, notwithstanding the fact that the Steam Coal imported by us may be Bituminous Coal as per note 2 of chapter 27, since it is Steam Coal only, it has to be classified only under Tariff Item 2701 19 20 and not under Tariff Item 2701 12 00 as has been attempted to be done in the Show Cause Notice.

that the Explanatory Notes to the tariff are still in six digits. There is no reference to Coking Coal or Steam Coal in the Explanatory Notes at six digits level. At the six digits level, the coals are mainly Anthracite, Bituminous or some residue varieties of coal. It is the category of Bituminous Coal that includes both Coking Coal as well as Steam Coal. In view of the latest technological advancement and the need for international trade where it is only these two varieties of Bituminous Coal, namely Coking Coal and Steam Coal which are mostly traded worldwide, these have been specifically included under distinct sub headings of Chapter Heading 2701. Anthracite as is generally known is only used in households. Other varieties of coal except Coking Coal and Steam Coal are also used for local insignificant purposes. The coal which is used extensively is Bituminous Coal only and its sub-categories namely; Coking Coal and Steam Coal are the most extensively traded items in the world. While Coking Coal finds use in Blast Furnaces in Steel Industry, Steam Coal has traditionally been used in power generation and at present is more and more being used in Steel Industry also in view of its price being much less than the price of Coking Coal. That they have therefore been importing Steam Coal for its use in the manufacture of article of iron and steel. There being a specific entry for steam coal applying the principles of classification the same has to be classified in the specific heading with covers the same, viz steam coal as against a generic entry of Bituminous coal.

that the notice relies upon the statements recorded from the Company executive during the investigation for holding that the goods had to be classified only under Tariff Item 2701 12 00 as Bituminous Coal, conveniently ignoring the rest of the things what have been asserted in those statements. Merely as per those statements, the imported goods had to be classified as Bituminous Coal under Tariff Item 2701 12 00, cannot be reason enough once it is demonstrated by us, that Steam Coal had a specific Tariff Item 2701 19 20 and it had to be classified only there under.

that the customs classification of imported goods, filing of bills of entry and also all other related activities are being carried out by the executive/director who is mostly dealing with purchase of coal for the imports pertaining to the same. They handle general commercial function and not expert in indirect taxation matters. Therefore, no adverse inference should be drawn from any of the statements relied upon in the Notice.

that on the basis of all the import documents, the international practice and usage of the coal imported by us, no doubt, whatsoever, is left that it was only Steam Coal classifiable under Tariff Item 2701 19 20 notwithstanding the fact that it might also be coming in the broad category of Bituminous Coal classifiable under Tariff Item 2701 12 00 since it might satisfy the parameters given in sub heading Note 2. Even if the Steam Coal imported by us were to be treated as Bituminous Coal, it will be that variety of Bituminous Coal which is worldwide recognized as Steam Coal and for which a specific and distinct Tariff Item 2701 19 20 exists. That being so, not only it will be correctly classifiable under Tariff Item 2701 19 20 it will also be eligible for exemption under serial No. 123 of Notification No. 12/2012-Cus dated 17.3.2012 where it was assessed and benefit of exemption was claimed. The inferences and conclusion drawn in the Show Cause Notice are therefore misconceived and totally untenable.

that as per Britannia Encyclopedia, in Britain bituminous coal is commonly called “Steam Coal” and in Germany the term *Steinkohle* (“rock coal”) is used. In the United States and Canada bituminous coal is divided into high-volatile, medium-volatile, and low-volatile bituminous groups. High-volatile bituminous coal is classified on the basis of its CV on a moist, ash-free basis (ranging from 24 to 33 megajoules per kilogram; 10,500 to 14,000 British thermal units per pound), while medium-volatile and low-volatile bituminous coals are classified on the basis of the percentage of fixed carbon present on a dry, ash-free basis (ranging from 69 to 78 percent for medium-volatile and from 78 to 86 percent for low-volatile bituminous coal). Medium-volatile and low-volatile bituminous coals typically have calorific values near 35 megajoules per kilogram (15,000 British thermal units per pound) on a dry, ash-free basis. An Expert Wendy Lyons Sunshine has expressed opinion on About Energy website http://energy.about.com/od/Coal/a/Bituminous-Coal.htm and stated that Bituminous coal includes two subtypes: thermal and metallurgical.

> **Thermal coal** is sometimes called steaming coal because it is used to fire power plants that produce steam for electricity and industrial uses. Locomotive trains that run on steam may also be fueled with "bit coal" (a nickname for bituminous coal).
>
> **Metallurgical coal** is sometimes referred to as coking coal, because it is used in the process of creating coke necessary for iron and steel-making. Coke is a porous, hard black rock of concentrated carbon that is created by heating bituminous coal without air to extremely high temperatures. This process of melting the coal in the absence of oxygen to remove impurities is called pyrolysis.
>
> **Heating value**: Bituminous coal provides approximately 10,500 to 15,000 Btu per pound as mined.

that the ASTM, U.S. Geological Survey and U.S. Department of Energy, Energy Information and Administration, department is according Steam Coal as Bituminous coal. The Classification of Steam coal as Bituminous coal gets support from the absence of definition in Sub Heading Notes of Chapter 27 in Customs Tariff Act 1975, inclusion of Steam Coal in Bituminous prior to 2002-03 in Chapter 27 in Customs Tariff Act, 1975, absence of defined Parameters in Explanatory Notes in Harmonized System of Nomenclature, other countries Tariff Classification of Chapter Heading 2701 12 00 not separated Steam Coal from Bituminous, Literatures including World Coal Council, World Coal Institute, Britannica etc, lend support to assertion that Steam Coal is species of Bituminous.

that World Coal Association at http://www.worldcoal.org/coal/what-is-coal/, states that steam coal is a form of bituminous coal. Thus, it is very clear that as per literature, steam coal is a type of bituminous/ sub-bituminous coal. All steam coals are bituminous coals but all bituminous coals are not steam coal. The coal imported by them is steam coal as well as Bituminous/ sub- bituminous coal and thus benefit cannot be denied by taking a stand that coal imported by us is bituminous, because for the purposes of availing exemption notification, the precise question to be answered is whether coal imported by us is steam coal or not.

that the World Coal Council too has classified the Bituminous Coal into two Categories i.e., Thermal Coal and Metallurgical Coal. Thermal Coal is used in Power Generation and production of Cement etc., and Metallurgical Coal is used in manufacture of Iron and Steel etc.

that various Countries of the world have classified Chapter 2701 in mainly three sub headings i.e., Anthracite, Bituminous and Briquettes. The Steam Coal is part of Bituminous Coal in their Chapter 27 Classification. The same was in their Customs Tariff Act, 1975 prior to 2002-03.

that the Indian Customs adopted Eight Digit Classification by 2003 amendment in Customs Tariff Act, 1975 in the Budget. The Bituminous coal entry made in the Customs Tariff Act, 1975 in Chapter 27 at 2701 in Eight Digit Classification by 2003 amendment in Customs Tariff Act, 1975. Chapter 27 Sub-Heading Notes 1 and 2 defines parameter for "anthracite" and, "bituminous coal". The Parameters of Steam Coal are not defined in the Chapter Heading 27 of Customs Tariff Act, 1975, neither in Harmonized System of Nomenclature Explanatory Notes.

that the Steam and Coking coal are erroneously separated from Bituminous coal and shown separately as Coking Coal 2701 19 10 and Steam Coal 2701 19 20. No separate or independent Parameter were inserted in Chapter Sub Heading Notes. This clearly indicates that Parameter of Bituminous Coal Volatile Matter (VM) exceeding 14% and Calorific Value (CV) i.e. greater than 5,833 kcal/kg covers Steam Coal.

that the comparative Chart of Chapter 2701 of Customs Tariff Act, 1975 of 2002-03 and 2003-04 clearly shows that there is no specific parameter inserted in Chapter Sub-Heading Note. The separation or independent mention of Steam Coal has no technical or scientific premise in absence of specific parameters. Steam Coal was specie of generic Bituminous earlier and even after eight digit introduction in 2003.

that human error in Chapter can't be ruled out since entire Budget in Tariff and introduction of various notification etc. are made by TRU, Delhi. The Joint Secretary Shri. Gautam Ray at Para 29 had expressly stated in TRU Circular D.O.F.No.334/1/2003-TRU dated the 28 February, 2003 that though every care has been taken to reflect the intention of the Government clearly in all these documents, the chances of human error cannot be ruled out. The Tax Research Unit of Ministry of Finance, Govt of India, New Delhi had issued a TRU Circular D.O.F.No.334/1/2003-TRU dated the 28 February, 2003.

that Customs Tariff Act, 1975 upto 2002-03 had correctly included Steam and Metallurgical Coal in Bituminous Coal, however, when the Tariff was expanded into 8 digit code, both Metallurgical and Steam Coal were erroneously placed under the head 'Other Coal' whereas they are, in fact, species of Bituminous Coal as explained in preceding paragraphs. There is nothing to indicate that Metallurgical and Steam Coal are not part of Bituminous Coal. The HSN Explanatory Notes had not made any changes as far as heading 2701 was concerned, in the circumstances; the department ought to have placed Metallurgical and Steam Coal under the head 'Bituminous Coal' instead of erroneously mentioning them under heading 'Other Coal'. This is because, Bituminous Coal is of two types, the higher quality Bituminous Coal with certain special qualities like caking is used in Metallurgical Industry and the Low grade bituminous Coal with high calorific value and volatile element is used as Steam Coal. In fact, Metallurgical Coal is nothing but

prime grade Bituminous Coal only. Therefore, placing Metallurgical Coal and Steam Coal under the head, 'Other Coal' is clearly fallacious and an obvious drafting error. Had the department correctly placed Metallurgical Coal and Steam Coal as sub-heads of Heading 'Bituminous Coal', as it was in past then the notification would have also appropriately indicated the correct heading and this controversy would not have arisen at all. Various countries in the World including USA, Federation of RUSSIA, and Canada etc. have classified Steam and Metallurgical Coal in Bituminous Coal Category.

that It is only in 2003-04 that Indian Customs by Customs Tariff (Amendment), Act, 2003, adopted 8 digit Customs Classification Codes based on Harmonized Classification which has been adopted by the Customs with effect from 1st March, 2003 and at the time of this adoption the error has crept in which remained still uncorrected.

that Tax Research Unit of Customs has erroneously removed Steam Coal from Bituminous Coal as in various Coal Literatures including World Coal Council, World Coal Institute, Britannica etc, US, Russian, Canada, Bermuda, Nigeria, China etc, Steam Coal is included under the species of Bituminous Coal and is classified in 2701 12 00 not in 2701 1900.

that the interpretation given by the Department frustrates the object and reasons and express exemption given to steam coal. The rule of construction of interpretation envisages that the notification must be construed so as to give them a sensible meaning. The legislature always expects the Adjudicating Authority or Court to observe the *maxim ut res magis valeat quam pereat* (it is better for a thing to have effect than to be made void). The principle also means that if the obvious intention of the statute gives rise to obstacles in implementation, the court must do its best to find ways of overcoming those obstacles, so as to avoid absurd results. The exemption granting authority expects exemption granted by it to be made workable and never visualizes absurd results. The interpretation being adopted by the department defeats the very purpose of granting the exemption and leads to absurdity as it excludes majority of good variety environment friendly steam coals from exemption. Such interpretation needs to be discarded. Department should gather the meaning of the word Steam Coal in its natural sense and by discovering the object which the notification seeks to serve and the purpose of the full exemption brought about. Accordingly they relied upon the following judgements:

(i) In ***Manmohan Das v. Vishnu Das*** **[AIR 1967 (S.C.) 643]** a Constitution bench held as follows:

(ii) In ***Indo International Industries v. Commissioner of Sales Tax, U.P.,*** **[(1981) 3 SCR 294 AT 297 C]**, Honorable SC held that

that the notification exempts 'steam coal' by name without any conditions attached to it. Steam coal whether bituminous or otherwise stands exempted vide the notification ibid. The Hon'ble Supreme Court in the case of ***Jain Engineering Co*** **v. *C.C., Bombay*** **[1987 (32) E.L.T. 3 (S.C.)]** has held that if the goods are mentioned in the notification but do not fall within the classification mentioned therein, the goods will be eligible for benefit of Exemption Notification. Following the same analogy, the Notification No. 12/2012–Cus dated 17.03.2012 specifically mentions Steam Coal. The goods imported in the Impugned B/E is nothing but Steam Coal and the Department has not adduced any evidences to indicate that the goods are other than Steam Coal and impugned Coal has not been used for production of power generation. In such circumstances, the goods would get the benefit of notification irrespective of the classification of the goods. Department has placed reliance on Sub-heading Note 2 to Chapter 27 to allege that the goods satisfy the definition of Bituminous Coal and hence do not fall within the purview of the serial number indicated in the notification. No evidence has been tendered to indicate that the goods imported are not 'Steam Coal' and hence once these are Steam Coal, they fall within the purview of the descriptive portion of the notification and hence become eligible for benefit of notification, notwithstanding their classification

elsewhere in the tariff in terms of Chapter Notes and Sub-heading Notes. Further, it is fact that Steam Coal is a type of Bituminous Coal and hence naturally, the specification would tally with Bituminous Coal. Had the notification prescribed a specific rate of duty for Bituminous Coal, then the goods imported by us would fall within the purview of such notification but notification does not prescribe a specific rate of duty on Bituminous Coal, it merely states that goods other than Steam Coal and Coke attract higher rate of 5% duty with applicable CVD. In the light of the above, it is respectfully submitted that the goods being Steam Coal, are specifically falling within the description portion of Notification No. 12/2012-Cus dated 17.03.2012 and hence eligible for benefit of notification notwithstanding the stand of the Department that the goods fall in another heading other than specified in the notification.

that the very foundation of above SCN that imported Steam Coal is having Volatile Matter exceeding 14% and Calorific Value of greater than 5,833 kcal/kg, and hence falls in the category of Bituminous Coal and classifiable under CTH 2701 12 00 is based on misplaced understanding of the term 'Steam coal' as only those coals which are other than bituminous. This understanding is far from truth and reality and is not warranted by any evidence. The SCN based on such misconceived understanding and interpretation of Steam Coal is not sustainable in law. The Notification No. 12/2012-Cus dated 17.03.2012 exempting Basic Customs duty and reducing CVD to 1% was issued in line with direction and intent provided in the Finance Minister's Speech. The Statement of Object and Reasons of Notification can be ascertained from the Finance Minister's Speech that can be used as External Aid for interpretation. The object of this notification was to provide relief to thermal power producers of this country by reducing the cost of the imported coal by reducing the duty to 'Nil' rate of Duty. The stand taken by revenue is contrary to the object and intent and clear mandate of the notification and is in contrast with Scheme of the CTH 2701 worldwide including World Customs Organization. The term Bituminous Coal is a generic term, and Steam Coal, and Metallurgic Coal are the two species of Bituminous Coal. Various Countries in their Tariff have included in Chapter 2701 mainly two types of Coal i.e., Anthracite and Bituminous Coal. There is no separate Sub-heading for Steam and Coking Coal as 'others.' The High Calorific Value Coal and high Volatile Matter Coal are in fact high quality Bituminous Steam Coal and such Steam Coal of high calorific values reduces cost of production of power besides being environment friendly, energy efficient.

that the Finance Minister while introducing the 2012-13 Budget in the Parliament identified five objectives which required to be addressed effectively and one among the five objectives was to remove supply and cost bottleneck in coal and Thermal Power. The Finance Minister expressed intention of Government in the Parliament while moving the Finance Bill that in order to resolve the Power problem supply of power has to be increased aligning with demand and economy growth. The Hon'ble Finance Minister therefore, took cognizance of the high price of coal which adversely affected the domestic thermal power producers. Further, the Finance Minister had clearly expressed intention of the Government in the Parliament that Domestic Thermal Power Producers will be provided full exemptions from Basic Customs duty and a concessional CVD above 1% on import of Steam coal for a period of two years till March 31, 2014.

The Hon'ble Finance Minister has categorically stated in the speech while moving Finance Bill in the Parliament that Power producers are heavily burdened by high cost of coal prices. Hence he is providing full Customs Duty exemption and CVD will be levied only 1%. The Speech of Ministers as an external aid to construction of Interpretation is held in the judgment ***Commissioner of Income-tax* v. *Agriculture Market Committee and Other*** [(**2011) 337 ITR 0299 (A.P**.)]

The speech of a Hon'ble Minister, while piloting the Bill, can be pressed into service for interpreting the law. As a general principle of law, speeches made by Members during the debate are not relevant while construing a statute, but the speech of the Hon'ble Minister, while introducing the Bill, stands on a different footing. As the Mover of the Bill, it is presumed that the Minister knows the answers as to why such

a law is being made, and what it seeks to achieve. In **K. P. *Varghese* v. *Income-tax Officer* [(1981) 131 ITR 597 (S.C.)],** the Supreme Court relied on the speech made by the Hon'ble Finance Minister while moving the amendment introducing Sub-Sec (2) of Sec. 52 of the Act.

The Hon'ble Supreme Court held in the cases of ***Sole Trustee***, ***Loka Shikshana Trust* v. *Commissioner of Income-tax* [(1976) 1 (S.C.C.) 254]**, the other in ***Indian Chamber of Commerce*** v. ***Commissioner of Income-tax*** [(1976) 1 (S.C.C.) 324], and the third in ***Additional Commissioner of Income-tax* v. *Surat Art Silk Cloth Manufacturers Association* [(1980] 121 ITR 1 (S.C.)]; [(1980] 2 (S.C.C.) 31]**, the speech made by the Finance Minister while introducing budget was relied upon by the court for the purpose of ascertaining what was the reason for introducing that clause.

In ***CWT* v. Yuvraj Amrinder Singh [AIR 1986 (S.C.) 959], *CIT* v. *Gold Coin Health Food P. Ltd.* [(2008) 304 ITR 308 (S.C.)] and *Union of India & Others* v. *Martin Lorry Agencies Ltd* [(2009) 12 (S.C.C. 209],** the Supreme Court relied upon the speech of the Honourable Finance Minister to interpret the provisions in the Act as well as the Finance Act, 1994. In these cases, the speech of the Honourable Minister, at the time of introduction of the Bill, was used as an external aid. Indeed, as seen from the decided cases, while referring to the Notes on Clauses appended to the Bill, the speech of the Hon'ble Minister was relied upon to understand the provision.

The Hon'ble High Court of Bombay in the case of ***Raymond Limited* v. *Union of India* [(2009) 240 E.L.T. 180 (Bom.)]**, has taken into consideration the Finance Minister's speech while moving the Finance Bill in the Parliament for interpretation of Exemption Notification. In this decision, the High court has held that, the Finance Minister speech is a valid tool for interpretation of Exemption Notification and it is binding on the department. The facts of this case are that the Tops manufactured under CETH 5506 from Staple Fibres of Chapter Heading 5503 were exempted under Notification 30 of 2004, but the Tops manufactured under CETH 5506 manufactured from fibers of Chapter Heading 5501 was denied exemption. Assessee claimed that 5501 and 5503 fibers differs only on length and there end product is 5506. Legislative intention is to be ascertained from Finance Minister Speech. Denying exemption was violation of tax regime pronounced by Finance Minister in his speech. The Bill was introduced and was approved by the Parliament and has also received assent from the President of India. There is no evidence to show that what announced by Finance Minister has been modified or altered. The exemption construed to be applied on goods under 5501. It also considered the TRU version expressed in Circular that an error cannot be ruled out.

In the present case also identically, Coal used in the production of Power by using steam coal, exemption is disallowed on the ground that coal is bituminous. The stand taken by Department is contrary to speech of Finance Minister, which specifically exempts Steam Coal and therefore, the incorrect mention of the tariff heading in the notification does not disentitle the item to benefit of notification. In present case also Bill was introduced, was approved by the Parliament and has also received assent from the President of India. There is no evidence to show that what was announced by Finance Minister has been modified or altered. In present case also TRU has expressed in Circular that an error cannot be ruled out. Department has not brought any evidence on record to say that FM has reversed his statement or parliament has subsequently disallowed his announcement.

That the Commissioner has incorrectly proceeded to demand a higher rate of duty by misinterpreting the coal imported by us as bituminous coal, though used in generating steam and electricity power. The Finance Minister in his speech has expressly stated that he is exempting coal used in power generation. In the case of ambiguity, Finance Minister Speech can be used as external aid in construction of notification. The coal imported is exempted from BCD and over 1% CVD. The statement of Object and Reasons of Notification can be ascertained from the Finance Minister speech. It is judicially settled that Speech of Finance Minister can

be used as External Aid for interpretation. Reliance is also placed on the following judicial pronouncements to buttress our contention. The Honourable Supreme Court in the cases of ***Commissioner of Income-tax* v. *Mahindra and Mahindra Ltd.* (1983 Vol. IV Supreme Court Cases 392), *K.P. Varghese* (1981 Vol. 131 ITR 597), *the Sole Trustee, Loka Shikshan Trust* (1976 Taxation Law Reporter Page I)** had laid down that if an amendment was being brought forward by the Finance Minister (as in the present case by introduction of a new item in the CET) his speech justifying the amendment would be extremely relevant, as it would throw considerable light on the object and the purpose of the amendment and his speech would be a proper aid to a correct interpretation of the words in the amendment.

In the present case, the Finance Minister in his speech emphasized need for power in several Paragraphs of the Speech. Finance Minister has explicitly granted exemption on coal used for power production through steam. Thus Steam Coal was exempted irrespective of its use as said notification nowhere provides any restriction on use.

that the Department assertion suggests that coals having Calorific Value less than 5,833 Kcal/kg will fall under the 'Others' category and therefore coals having Calorific Value of less than 5,833 Kcal/kg alone should fall under the category of steam coal as 'Others' is travesty of facts and acceptance of the unrealistic fact that steam coal is non bituminous i.e., other than Bituminous. The 'Other' Category is classified in Indian Customs Tariff as under –

2701 1900 - - OTHER

2701 19 10- - - Coking coal

2701 19 20 - - - Steam Coal

2701 1990 - - - Other

that Coking Coal figuring in the heading 'Other' is nothing but a prime bituminous coal invariably having Calorific Value much more than of 5,833 Kcal/kg (Normal range of Coking Coal is in the range of 6,500 to 8,000 Kcal/kg), therefore it should not have been classified in the category of 'Other', if the contention of the Department is to be accepted. Similarly, Steam coal has Calorific Value of more than 5,833 Kcal/kg and classified under the category of 'Other' is included in the category of Bituminous Coal as per the World Coal Council Web Site. Therefore, steam coal mentioned under specific heading without any parameters should be understood independently without attaching any specific parameters of Bituminous Coal.

that the Department was following the above mentioned approach in the process of classification of goods since long and it is only now, when the Govt. has reduced duties on steam coal in last budget that the department has raised this objection with an intention to levy higher rate of duty (taking plea of Calorific Value as per the Chapter Notes 2 of Chapter 27 of the Customs Tariff) to steam coal by classifying it in the category of Bituminous Coal which is not justifiable.

that the tariff does not anywhere say or suggest that the Bituminous coal as defined in tariff is not a steam coal. Rather, all the good quality steam coals are Bituminous coals having Calorific Value equal to or above 5,833 Kcal/kg and a Volatile Matter (VM) exceeding 14%. Therefore, it follows that irrespective of its classification a steam coal will qualify for exemption provided under Notification No. 12/2012-Cus dated 17.03.2012 as the exemption is specifically to Steam coals without any exclusion for Bituminous Coals or others based on its Calorific Value. **It is express description of the exempt product named in the column 3 of the table attached to the notification which will control the exemption and not the tariff heading shown in the column 2 of the said table in the notification**. If the tariff heading is allowed to control the exemption, it will lead to absurd, anomalous interpretation and the very purpose of the exemption will get defeated. It is not

denying a fact that the steam coals are predominantly Bituminous coals having Calorific Value more than 5,833 Kcal/kg and VM exceeding 14% and if the exemption is denied to these coals due to incorrect mention of tariff heading/omission of tariff subheading 2701 12 00 in column 2 of Notification, then the exemption given to steam coals is rendered redundant. Such interpretation cannot be accepted in law.

The SCN proceeds on an interpretation that on the plain reading of the Chapter Sub-Heading Notes of Chapter 27 and Sr. No. 123 of Notification No.12/2012-Cus dated 17.03.2012, Coal imported by us is classifiable in Customs Tariff Heading 2701 12 00 of Customs Tariff Act, 1975. The Coal imported is Bituminous Coal hence not entitled for exemption. Such interpretation is manifestly absurd and giving unfair result as though the imported coal is undisputedly steam coal of high Calorific Value, it gets devoid of exemption specifically extended to it by the notification.

Department holds a view that Chapter 27 Sub-Heading Notes 1 and 2 defines parameter for "Anthracite" and, "Bituminous Coal". The said Sub-Heading Notes 1 and 2 are reproduced below.

***Chapter 27**:*

Sub-Heading Notes:

1. For the purpose of sub-heading 2701 11 "Anthracite" means coal having a Volatile Matter limit (on a dry, mineral-matter-free basis) not exceeding 14%.

2. For the purposes of sub-heading 2701 12, "Bituminous Coal" means coal having a Volatile Matter limit (on a dry, mineral-matter-free basis) exceeding 14% and a Calorific Value limit (on a moist, mineral-matter-free basis) equal to or greater than 5,833 Kcal/kg.

What is defined is, thus Bituminous Coal but not Steam Coal. The definition does not say that Bituminous Coal is not Steam Coal. The definition is open ended and generic. The Parameters of Steam Coal are not defined in the Chapter Heading 27 of Customs Tariff Act, 1975 and neither in the Harmonized System of Nomenclature Explanatory Notes. Only Anthracite and Bituminous types of Coal are defined. Chapter 27 Sub-Heading Notes 1 and 2 supports the 2002-03 Indian Customs Tariff Act, 1975 the predecessor 6 digit tariff classification and the Tariff Classification of Chapter Heading 2701 12 00 by Tariffs of other countries where 'Steam Coal' has been classified as a part of Bituminous Coal.

Steam Coal is specie of Bituminous Coal is evident from preceding 6 digit Customs tariff schedule since rescinded and other documentary evidences. The absence of definition in Sub-Heading of Chapter 27 in the erstwhile Indian Customs Tariff Act, 1975, inclusion of Steam Coal in Bituminous prior to 2002-03 in Chapter 27 in Indian Customs Tariff Act, 1975, absence of defined parameters for Steam Coal in 'Explanatory Notes' to the Harmonized System of Nomenclature, and other countries 'Tariff Classification' of Chapter Heading 2701 12 00 which have not separated Steam Coal from Bituminous coal go to support the fact that Steam Coal is a sub class of Bituminous Coal and not other than Bituminous Coal. So even if it is Bituminous Coal by its technical parameters laid down in the Chapter Notes it is Steam Coal by its usage. The fact that Steam Coal is a species of Bituminous Coal further gets support from various articles on this aspect across the world including Literatures of World Coal Council, World Coal Institute, Britannica etc. But having admitted the facts, the Department has wrongly concluded on premise of parameters prescribed in the definition in Sub-Heading Notes 2 of Chapter 27 of Customs Tariff Act, 1975 that the imported coal is Bituminous Coal and not entitled for the benefits which the importer claimed under Sr. No. 123 of Notification No. 12/ 2012-Cus dated 17.03.2012. It is relevant to mention that in the said Chapter Sub-

Heading definition, it is not mentioned that Bituminous Coal is not Steam Coal; neither the SCN specifically says so. It is no denying a fact that Steam Coal in question covered by the Bill of Entry is of the same parameter of Bituminous Coal but it is steam coal by function and use. It thus goes without saying that Bituminous Coals are high rank Steam Coal and exemption to Steam Coal will cover the Bituminous steam Coal of specified parameter known and traded as Steam Coal.

The notice issued to us has failed to appreciate that there are no section or chapter notes of heading 2701 which deal with or explain the basis of classification of steam coal, coking coal, bituminous coal, etc. While sub-heading note 2, explains what is meant by Bituminous coal, but in the tariff there is no sub-heading (i.e. any six digit entry) for Bituminous coal. The tariff only contains a sub-heading for "other coals" viz 2701 19. The other entries in heading 2701 are all for tariff items (i.e eight digit entries). Consequently the sub-heading notes are completely irrelevant and inconsequential as there is no corresponding sub-heading (at the 6 digit level) in the Tariff. That the General Rules for Interpretation apply at the 4 digit level and by virtue of Rule 6 at the six digit level, the same principles also ought to apply while interpreting Tariff items at the eight digit level.

The Notice proceeds on the erroneous presumption that the steam coal imported by us is classifiable as Bituminous coal, at the six digit level i.e. sub heading 2701 12 and only if the coal was not classifiable under that heading, an alternative heading was required to be explored. What the Notice has failed to appreciate that there is no heading for Bituminous coal at the 6 (six) digit level in the Tariff. The only entry in the Tariff for bituminous coal is for the tariff item with 8 (eight) digit i.e. 2701 12 20. Actually the conflict, if any, is between the tariff item for "Bituminous coal" and tariff item for "steam coal" both of which are 8 (eight) digit level. Applying the principle of interpretation of the Tariff as applicable to Headings and Sub Headings even in respect of Tariff items, the Tariff items for Steam Coal being more specific and occurring later in the numerical order amongst the entries which merit equal consideration, the goods in question was aptly classifiable under steam coal under Tariff Heading 2701 19 20. The Notice has failed to appreciate this fact and deserves to be dropped in limine on this ground alone.

that even if the imported Steam Coal satisfies the parameters given in sub heading Note 2 to Chapter 27 of the Customs Tariff and on that basis could come in the category of Bituminous Coal classifiable under Tariff Item 2701 12 00, it will not detract from the fact that the coal in question is a steam coal, for which a separate and specific classification has been prescribed in sub-heading 2701 19 20.

that applying the General Rules for Interpretation of the Customs Tariff, there remains no doubt whatsoever that the imported Steam Coal will be classifiable only under Tariff Item 2701 19 20 and not under Tariff Item 2701 12 00.

That after the Customs Department commenced enquiries across India in respect of exemption claimed on steam coal, the Association of power producers had vide letter dated 4.2.2013 brought this present dispute to the notice of the Hon'ble Finance Minister/Hon'ble Power Minister through a representation and had requested the Ministry of Finance to issue a suitable clarification to clarify that the intention of the Government was to grant exemption to all forms of coal which are used for generation of power.

Based on the representation made by different Association of power producers, the Ministry of power had under cover of its letter F. No. FU-17/2012-IPC dated 11.2.2013 addressed to the Department of Revenue pointed out that exemption from duty has been granted to reduce stress on domestic producers of thermal power because of high price of coal. It was stated that if the view taken by the Customs, to the effect that only coal with calorific value of less than 5833 Kcal/kg was eligible for exemption is accepted then almost 70% of the total quantum of coal imported for the purpose of power generation, which consists of high calorific value of coal would lose the exemption and this would defeat the very purpose for which exemption has been granted.

In this backdrop of representation made by Association to power producers and the letter written by Ministry of power to the Department of Revenue, Exemption Notification No. 12/2012-Cus., dated 17-3-2012 was amended vide Notification No. 12/2013 dated 1st March, 2013, wherein exemption to Bituminous Coal and Steam Coal was brought at par irrespective of its use.

It is evident that amendment was made in Exemption Notification No. 12/2012-Cus., dated 17-3-2012 as the Government realized its drafting error after receiving representation from power producers and Ministry of Power and there is not even an iota of doubt that Government intended to always grant exemption from payment of duty to all types of steam coal.

It was held by the Hon'ble Supreme Court in the case of **Johnson & Johnson Ltd. Versus Commissioner Of C. Ex., Aurangabad reported in 1997 (92) E.L.T. 23 (S.C.)** that in interpreting an earlier notification, intention of the authorities could be gathered from the subsequent notification. Applying the ratio laid of the decision in the case of Johnson & Johnson, Sr.No.123 of Notification 12/2012-Cus. should be interpreted as extending exemption to all types of steam coal.

Reliance is also placed on decision of the Apex Court in the case of Commissioner of Trade Tax vs Kajaria Ceramics Ltd 2005 (191) ELT 20 (SC), wherein it has been held that if there is any ambiguity in interpreting an exemption notification, the contents of the previous or subsequent notification can be looked into.

That, the amendment made to Exemption Notification No. 12/2012-Cus., dated 17-3-2012 vide Notification No. 12/2013 dated 1st March, 2013, extending benefit of exemption to both Bituminous Coal and Steam Coal ought to be considered as clarificatory in nature, given the context in which amendment was made, as discussed above.

that the goods are known in the Trade as Steam Coal and not as Bituminous Coal. There is no allegation that the goods are not Steam Coal or that the same are not known as Steam Coal in Trade Parlance. The Honourable Supreme Court in the case of ***C.C.* v. *K Mohan & Co. Exports*** **[1989 (43) E.L.T. 811 (S.C.)]** has held that Scientific and Technical definitions are not be preferred over Commercial usage. In the present instance, the Commercial usage of the goods is Steam Coal and the notification specifically exempts Steam Coal, then that being so, the benefit of notification will accrue to the Goods in terms of the above Judgment of the Honourable Supreme Court.

The parameters for Steam Coal are not defined in the Chapter-Heading 27 of Customs Tariff Act, 1975, neither in Harmonized System of Nomenclature Explanatory Notes. Only Anthracite and Bituminous coals are defined. The Chapter 27 Sub-Heading Notes 1 and 2 supports the 2002-03 Customs Tariff Act, 1975 and the other countries Tariff Classification of Chapter Heading 2701 12 00. The Steam Coal is part of Bituminous Coal; otherwise Explanatory Notes in Harmonized System of Nomenclature would have defined Steam Coal parameter. Even Customs Tariff Act, 1975 does not define Steam Coal parameter.

It stands judicially settled by catena of judgments of Hon'ble Apex Court that, if a particular item is not defined in the statute then reliance on popular meaning/Common Parlance/Trade Parlance Theory are resorted to.

that the goods imported by them are nothing but Steam Coal. The Department has not adduced evidence of any kind to show that the goods are other than Steam Coal. The one and only contention of the Department is that the goods satisfy the criteria of Bituminous Coal and hence therefore merit classification under heading 2701 12 00 and not 2701 19 20 as classified in the B/E. Once the goods are classified under heading 2701 12 00, the notification benefit is not available since the notification is applicable only to Steam Coal falling under heading 2701 19 20.

that Bituminous Coal is only of two types, Metallurgical Coal (Coking Coal) and Steam Coal. There is no other Bituminous Coal known in the Commercial world and no coal in the world as Bituminous Coal per se, it is either sold as Coking Coal or Steam Coal. Thus there is no such commercially known commodity as Bituminous Coal. Hence while publishing the new eight digit classification, the Department ought to have classified both Coking Coal (metallurgical Coal) and Steam Coal under heading 2701 12 10 & 2701 12 20 respectively. Not having done so, error is obvious in tariff and notification and interpretation is required to bring out the correct meaning and harmonious outcome.

Steam Coal has a specific entry under the Customs Tariff i.e. 2701 19 20. Therefore, even if it is assumed that the goods satisfy the criteria prescribed for Bituminous Coal, the Specific Entry in the Tariff i.e. Steam Coal, in the absence of its definition, has to be preferred as against the generic entry, Bituminous Coal. ***Rule 3 (a) of the Rules for Interpretation of the Tariff*** reads as follows –

> ***3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:***
>
> ***(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.***

Heading 2701 19 20 gives a more specific description – Steam Coal as opposed to heading 2701 12 00 – Bituminous Coal and therefore, following rule 3(a) cited above, the goods would merit classification under heading 2701 19 20 which is also mentioned in the notification and hence the benefit of notification would be available to the goods.

that the goods merit classification under both headings 2701 12 00 and 2701 19 20 in terms of Technical Criteria and Commercial Parlance, then Rule 3(c) of the Rules for Interpretation of the Tariff comes into play. Rule 3 (c) reads as follows –

> ***3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:***
>
> ***(a) …..***
>
> ***(b) ……***
>
> ***(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.***

By application of the above rule, heading No 2701 19 20 occurs last in numerical order to heading 2701 12 00 and hence the goods merit classification under heading 2701 19 20. That being so, the benefit of notification would become available to the goods.

that specific or special entry is there in the Tariff for Steam coal i.e. 2701 19 20 then Departments stand to classify the goods in general 2701 12 00 is contrary to maxim “Generalia Specialibus non Derogant”. The principle of “Generalia Specialibus non Derogant” is well known and also applies to classifications of articles under the Customs Tariff. It means that the general thing does not abrogate the special things. Once Steam Coal is classified under separate heading, it attains specific character and all the steam coals i.e., low grade anthracite and Bituminous Coal are

to be considered as steam coal for the purposes of granting the benefit of notification. Classification of the product in the tariff is a general approach and granting exemption benefit is special approach. As such, the general things cannot over ride the special things.

The thread of this principle runs all through even in the General Rules of Interpretation of Entries under the Customs Tariff Act mentioned above. This view is held by Honourable High Court of Bombay in the case of ***Xl Telecom Pvt. Ltd.*** **v.** ***Union of India*** **[1994 (70) E.L.T. 530 (Bom.)** and approved by Honourable SC in the case of ***Densons Pultretaknik*** **v.** ***Commissioner of Central Excise*** **[2003 (155) E.L.T. 211 (S.C.).** The Honourable High Court of Bombay followed it in the case of ***Chandulal Mehta & Co. Pvt. Ltd.*** **v.** ***Union Of India*** **[2003 (153) E.L.T. 504 (Bom.).**

that the formula relied upon in the show cause notice has no legal authority and cannot be relied upon in these cases. As per certificate of analysis provided by the supplier the calorific value of the coal imported by us is more than 5833 only. The laboratory tests conducted by the Customs laboratory has not been provided by us. The exemption has been granted under the said notification to Steam coal by name irrespective of the fact whether the Steam Coal is bituminous or sub-bituminous. There is no exclusion of Bituminous Coal from the Steam Coal in the exemption notification. It is the description of the exempted product that will control the exemption and not the tariff sub-heading classification as held by Supreme Court in the case of ***Jain Irrigation (Supra)***. The sub heading mentioned in column 2 of notification at '---' level has to be read with main heading at '-' level to get the intended exemption to all steam coals as expressed in Budget Speech of F M (supra) Therefore, the demand and allegations in the show cause notice are not sustainable and liable to be dropped.

that, they are eligible for exemption from payment of CVD in excess of 2% ad valorem by virtue of Notification No.1/2001-CE dated 1.3.2011 which inter alia provides that all goods covered under heading 2701 would be exempt from CVD in excess of 2% provided credit of the duty on inputs or tax on input service had not been taken under the provisions of Cenvat Credit Rules, 2004. They submit that since the goods in question have been imported there is no question of any credit on input or tax on input service having been taken under the provisions of Cenvat Credit Rules, 2004. Therefore, benefit of exemption in terms of Notification No.1/2011-CE dated 1.3.2011 is clearly available in respect of the said goods. The Notice on the other hand computed the CVD @ 6% based on the Tariff Rate which is clearly untenable.

that in a somewhat similar circumstances the Apex Court extended the benefit of exemption from CVD in the case of CC Vs. Malva Industries Ltd., reported in 2009 (235) ELT 214 (SC). In that case, the exemption from CVD was available to finishing agents dye carriers and preparation of any kind used in the same factory for manufacture of textile and textile articles. Since the assessee was importing the said goods and was not manufacturing in the said factory, the revenue sought to deny the said exemption. This contention of the revenue was rejected by the Hon'ble Apex Court by holding that the expression 'same factory' used in the Notification would mean the factory when the goods are manufactured. However, in the case of imported goods the same would have to be read to mean that factory belonging to the importer where the manufacturing activity takes place. Likewise, in the instant case, the expression 'no cenvat credit on input and input services used in the manufacture of coal 'would have to be accordingly read and the benefit of the concessional CVD ought to be extended to us. To the same effect is the decision of the Apex Court in the case of Lohia Sheet Product Vs. CC reported in 2008 (224) ELT 349 wherein the exemption from CVD was available to copper waste and copper scrap used within the factory of production for manufacture of unrefined or unwrought copper sheets and plates and handicrafts. The issue before the Apex court was whether the said exemption would be available to the copper waste and copper scrap which was imported. The Apex Court, applying the ratio laid down in the case of Hyderabad Industries held that for the purpose of levying CVD it has to

be imagined that the articles have been produced and manufactured in India and thereafter apply the rate of duty applicable in India. Accordingly, it was held that benefit of the exemption Notification was available even to the inputs waste and scrap.

that the ratio laid down in the aforesaid case applies in all fours to the present case and the CVD at the highest of 2% can be recovered from us, if benefit of Serial No.123 of the Notification No.12/2012 dated 17.03.2012 is for any reason, held to be inapplicable.

that irrespective of the Tariff classification, all the goods falling under chapter sub-heading 2701 11 to 2701 19 attracts concessional rate of duty @ 2% by virtue of notification no.46/2011-Cus. Dated 11.06.2011 (Sr. No.207). The referred notification prescribes effective rate of duty for specified goods imported from various countries specified therein including Indonesia (ASEAN). that the only condition for availing the benefit of the notification is that the importer proves to the satisfaction of the Deputy Commissioner of Customs, or Assistant Commissioner of Customs, as the case may be, that the goods in respect of which the benefit of the exemption is being claimed are of the origin of the Countries mentioned in Appendix I or Appendix II of the notification. that the name of Country Indonesia is mentioned in Appendix-I of the subject notification and it is a matter of fact and record that out of 25000 MTs of coal as covered in the show cause notice and imported by ASRMPL, 20000 MTs of Coal were of Indonesian origin. This fact has been acknowledged in the notice itself and a certificate to this effect was enclosed with the Bills of Entry.

since the goods have been correctly classified and exemption has been correctly claimed, no differential duty is payable by us. Further, since the goods had been correctly declared as Steam Coal on the basis of all import documents and the contract with the Indonesian/South African suppliers/High Seas Seller etc, the allegation of any mis-declaration in description is totally misconceived. The allegations in the notice that they have failed to declare the true description of the products imported as “Bituminous Coal” and hence contravened the provisions of Rule 11 of the Foreign Trade (Regulation) Rules, 1993 and Rule 14 in as much as they knew that the declarations made by them were false with regard to coal imported by them are incorrect, baseless and unsustainable. Accordingly, the alleged violation of provisions of FTR Act, 1992 are also incorrect and unsustainable. There can therefore be no contravention of Section 111 (m) of the Customs Act, 1962. Reference to Section 111 (d) of the Customs Act, 1962 is totally misconceived as no such restrictions warranting invoking the provisions of Section 111 (d) of the Customs Act, 1962 were at all there. They therefore submitted that the goods in respect of the eleven Bills of Entry were not at all liable to confiscation under Section 111 (d) or (m) of the Customs Act, 1962 as proposed in the Notice. Consequently, there will be no question of any penalty under Section 112 (a) ibid either.

that the department has never seized the goods under question. Goods were allowed to be cleared on payment of appropriate duty of customs by the proper officer of the customs by making an order for ‘out of customs charge’ under Section 47(1) of the Customs Act, 1962. It is clearly forth coming from the impugned show cause notice that the goods were never seized by the officer.
that seizure is pre-requisite for making any order of confiscation. In this regard attention of your kind honour is invited towards the provisions of Section 110 of the Customs Act, 1962, according to which, if the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods. Provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.

That provisions of Section 110 ibid very much provides for seizure of goods which are liable to confiscation and when and what types of goods are liable to confiscation are provided under Section 111 and Section 113 of the Customs Act,

1962. As per the provisions of Section 125 of the Customs Act, 1962, when the owner of the goods is not known, an option to pay fine in lieu of confiscation may be given to the person from whose possession or custody such goods have been seized. That the word 'confiscation' implies appropriation consequential to seizure. (Kindly refer Para 5 of Chapter 25 of CBEC's Customs Manual). That confiscation without seizure will lead to an illogical situation. Therefore, without seizure of the goods it cannot be confiscated. It's above views find support from the following judgments of honourable High Court and Tribunal:

Honourable High Court of Andhra Pradesh in the case of Appellate **CC & CE Vs T.N.Khambati reported in 1988 (37) ELT (37) (A.P),** COMMISSIONER OF CUSTOMS, KANDLA Versus SAHIL TRENDS - 2004 (177) E.L.T. 732 (Tri. - Del.).The issue is now put to rest by the Larger Bench of Honourable Tribunal in recent judgment in the case of **Shiv Kripa Ispat Pvt. Ltd. Vs. Commissioner of Central Excise & Customs, Nasik and Commissioner of Customs, Mumbai Vs. Rishi Ship Breakers – reported in 2009-TIOL-388-CESTAT-MUM-LB**

that even otherwise goods which were allowed to be cleared for home consumption as provided under Section 47(1) of the Customs Act, 1962, are no more imported goods within the meaning of Section 2(25) of the Customs Act, 1962. Section 2(25) ibid defines "imported goods". Section 111 ibid provides confiscation of improperly imported goods. The said section further states that the following goods brought from a place outside India shall be liable to confiscation. It means on imported goods shall be liable to confiscation under Section 111(m) of the Customs Act, 1962. As per the provisions of Section 2(25) of the Customs Act, 1962, goods cleared for home consumption are no more imported goods. Floating cranes cleared from the customs are no more imported goods, hence not liable to confiscation under Section 111(d) or 111(m)ibid; that no penalty is imposable upon them under Section 112(a) of the Customs Act, 1962.

that goods duly cleared for home consumption under Sec. 47 and not available for confiscation cannot be confiscated and redemption fine cannot be imposed. They relied upon the decisions of Honourable High Court in the case of ***C.C.* v. *Finesse Creations Inc.*** **[2009 (248) E.L.T. 122 (Bom.)**] HC, confirmed by S C. *[Commissioner v. Finesse Creation Inc. - 2010 (255) E.L.T. A120 (S.C.)]* 2010 (258) E.L.T. 197 (Bom.) COMMISSIONER OF CUSTOMS (EXPORTS) Versus SUDARSHAN CARGO PVT. LTD.

that they have not mis-declared the goods in any manner; that the description of the goods declared in the Bs/E is the very same description as indicated in Bill of Lading and Invoice copy of the foreign supplier. Further in the Bs/E we had claimed the benefit of duty exemption vide Sr.No.123 of Notification No. 12/2012-Cus dated 17.03.2012 as "Steam coal" as per our *bonafide* belief that the coal imported by us was nothing but Steam coal and is entitled for concessional rate of duty. The analysis certificates as received from the supplier were also submitted to the Customs at the time of examination and assessment. that they have not resorted to any mis-declaration and mere claiming the benefit of exemption whether rightly or otherwise but in *bonafide* belief cannot tantamount to in law as "mis-declaration" and hence the provision of section 111(m) invoked by the department in the notice is untenable in law and on facts; that the Supreme Court repeatedly in **G C Jain vs C C 2011(269) ELT (307) SC,** and ***Northern Plastics Limited* v*. C.C. & C.E.*** **[1998 (101) E.L.T. 549 (S.C.)]** held that when the Assessee had given the description of goods correctly and fully in the B/E, classification declaration, the fact of claiming the benefit of exemption notification whether admissible or not was held to be a matter of belief of the Assessee and does not amount to mis-declaration under Sec.111 (m) of the Customs Act, 1962. That they placed decision in ***Sutures India Pvt. Ltd.* v*. C.C.*** **[2009 (245) E.L.T. 596 (T-Bang.)]** maintained by Supreme Court as reported in [**2010 (255) E.L.T. A85 (S.C.)]** wherein it was held that claiming of classification of goods and claiming exemption under particular notification is a matter of belief and would not amount to mis-declaration.

that it is also well settled law that claiming an exemption by itself does not tantamount to intention to evade payment of duty on its part. that classification is a departmental function and just because an importer bonafidely claims exemption by classifying goods under a particular entry the same cannot amount to mis-declaration. In the matter of classification and misclassification no penalty is imposable. They placed reliance on the decision in t**he case of CC Mumbai vs R K Impex 2010 (259) ELT725** Tribunal held that classification is the function of dept provided by law and hence no charge of misdeclaration is sustainable and no penalty under sec 112/111.m is imposable. They relied upon

(i) **International Exim Agency v. C.C.[2009 (242) E.L.T. 267 (T-Che)];**

(ii) **ietronics Vijay India Pvt. Ltd v. C.C. [2009 (234) E.L.T. 535 (T-Che)];**

(iii) **Kirti Sales Corporation v. C.C. [2008 (232) E.L.T. 151 (T-Del)]; Handtex v. C.C. [2008 (226) E.L.T. 665 (T-Del.)];**

(iv) **Universal Chemical (India) v. C.C.E. [1999 (105) E.L.T. 379 (T)];**

(v) **C.C.E. v. Smithkline Beecham Consumer Health Care Ltd [2004 (167) E.L.T. 225 (T-Bang)] and**

(vi) **Hindustan Cargo Ltd v. C.C.E. [2007 (220) E.L.T. 349 (T-Che)].**

that department made contradiction in making allegation of mis-declaration for the purpose of confiscation of goods and rightly not alleged mis-declaration for demand of differential duty under Section 28 of the Customs Act, 1962 and imposition of penalty under Section 112(a) of the Customs Act, 1962 etc. It is also matter of facts that Bills of Entry were filed based on the import documents which clearly show that imported goods are steam coal. Even copy of load port test results were also submitted to the proper officer, therefore, allegation of mis-declaration etc. are totally wrong.

22. PERSONAL HEARING :

22.1 Personal hearing the in matter was fixed on 10.02.2015 Shri P. D. Rachchh, Advocate appeared on behalf of M/s. ASRMPL, and reiterated the written submissions dated 24.03.2014, 06.05.2014, 17.01.2015. He further submitted that the goods merit classifications as Steam Coal only. In any case they are entitled for the nil rate of duty as the imports are from Indonesia. No penalty can be imposed in view of the settled legal positions and he has filed a case law of Tribunal. Considering the facts and circumstances of the case he requested to drop the proceedings. He requested another 10 days time to make further submissions. As per the request Shri P.D. Rachchh, vide letter dtd. 19.02.2015 submitted to drop the demand as two different benches of Hon'ble CESTAT, has given two different decisions. (1) Bangalore Bench in the case of M/s. Coastal Energy Pvt. Ltd. & others V/s. Commr. Of C.Ex., & Service Tax, Guntur & others- 2014-TOIL-1157-CESTAT, Bang wherein Hon'ble Bench has decided the issue against the importer, however, it was held by the CESTAT that no penalty is imposable under any provisons of the Customs Act, 1962. (2) Hon'ble Madras Bench of CESTAT in the case of M/s. TamilNadu Generation and Distribution Corporation Ltd. & others v/s. CC, Tuticorin and others -2014-TIOL-2503-CESTAT, Mad has referred the matter to Larger Bench. Based on the same he prayed to transfer the case to call book as both the decisions are binding upon the adjudicating authority.

23. DISCUSSION & FINDINGS

I have carefully gone through the records of the case, including the Show Cause Notice dated 01.04.2013, the written submissions dated 24.03.2014,

06.05.2014, 17.01.2015. and 19.02.2015, as well as the oral submissions made during the course of Personal Hearing.

23.1 I find that the following main issues are involved in the subject Show Cause Notice, which is required to be decided:-

1. The correct classification of the product under the schedule to the Customs Tariff Act, 1975, in respect of the Coal imported by M/s. ASRMPL, as detailed in Annexure-A to the Show Cause Notice.

2. Whether 25000 MTs, imported Coal valued at Rs.10,79,94,385/- as detailed in Annexure-A to the Show Cause Notice, imported by M/s. ASRMPL, though not available physically, is liable for confiscation under the provisions of Sections 111 (d) and 111(m) of the Customs Act, 1962.

3. Whether the Differential Customs Duty amounting to Rs. 1,08,08,551/-, is required to be demanded and recovered from M/s. ASRMPL, under Section 28(1) of the Customs Act, 1962;

4. Whether the noticee is liable to pay Interest on the differential Customs duty shown at (3) above, under Sections 18(3) of the Customs Act, 1962;

5. Whether M/s. ASRMPL is liable for penal action, under Section 112(a) of the Customs Act, 1962.

23.2 After having framed the main issues to be decided, now I proceed to deal with each of the issues individually, herein below:

(1) The correct classification of the product, Coal imported by M/s. ASRMPL, as detailed in Annexure-A to the Show Cause Notice, under the schedule to the Customs Tariff Act, 1975.

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23.3 I find that in this case, it is an undisputed fact that the coal under consideration is imported and that duty is leviable on such imported coal vis-à-vis grant of exemption, if any. For this purpose, one of the important steps in assessing the duty payable is the classification of goods under the Schedule to the Customs Tariff Act. Thus, the crux of the issue in this case, around which all the above six issues are revolved, which I am required to decide, is regarding the classification of the Coal imported by M/s. ASRMPL, **within the ambit of the Schedule to the Customs Tariff Act, 1975,** for the purpose of levying of duty/deciding the eligibility for exemption.

23.4 In view of the above, the main issue before me for decision is whether the ‘Coal’ imported by M/s. ASRMPL, falls under the category of ‘Steam Coal’ as

declared by M/s. ASRMPL, or is 'Bituminous Coal', as alleged in the Show Cause Notice, within the ambit of the Schedule to the Customs Act, 1975, in order to decide the eligibility of exemption or otherwise under Sl.No.123 of Notification No. 012/2012-Cus. dated 17.03.2012.

23.5 Now coming to the above said aspect in respect of the imported Coal under consideration, I am of the view that before proceeding for classification of an entity, it is absolutely essential to determine, 'what is the entity under classification dispute?' After such determination, a suitable heading or sub-heading in the tariff is to be located and then the same has to be considered, in light of Statutory Rules for Interpretation, the Section Notes and the Chapter Notes in the Tariff, to establish the proposed heading for classifying the entity would be appropriate or not. Thus, the goods are required to be classified taking into consideration the scope of headings/subheadings, related Section Notes, Chapter Notes and the General Interpretative Rules.

23.6 I find that the whole issue of whether the goods imported by M/s. ASRMPL, is entitled for exemption from duty in terms of Sl.No.123 of Notification No. 012/2012-Cus. dated 17.03.2012, has cropped up in the light of the Sub-heading Note 2 of Chapter 27 of the Schedule to Customs Tariff Act, 1975. Therefore, the issue is to be examined and considered in the light of the said Sub-heading Note 2 of Chapter 27, which reads as "For the purposes of sub-heading 2701 12, "bituminous coal" means *coal having a volatile matter limit (on a dry, mineral-matter-free basis) exceeding 14% and a calorific value limit (on a moist, mineral-matter-free basis) equal to or greater than 5,833 kcal/kg*."

23.7 I find that the Show Cause Notice has been issued proposing the classification of the imported Coal under CTH 2701 1200 as 'Bituminous Coal', only in respect of those imports, where the volatile matter limit (on a dry, mineral-matter-free basis) exceeds 14% and calorific value limit (on a moist, mineral-matter-free basis) is equal to or greater than 5,833 kcal/kg. Further, the Show Cause Notice does cover those bills of entry where the calorific value limit and the GCV is less than the above prescribed limit, which means that the same has been accepted as 'Steam Coal" falling under CTH 27011990. **Thus, I am proceeding to decide the case on the said facts and on the premises that the Coal imported by M/s. ASRMPL is having volatile matter limit (on a dry, mineral-matter-free basis) exceeding 14% and a calorific value limit (on a moist, mineral-matter-free basis) equal to or greater than 5,833 kcal/kg. and as a consequence whether the said Coal is eligible for exemption under Sl.No.123 of Notification No. 012/2012-Cus. dated 17.03.2012.**

23.8 For proper appreciation, the classification and duty structure of Coal as per the First Schedule of the Customs Tariff, is as under:

Tariff Item	**Description of goods**	**Rate of Duty**				**Remarks**
		Standard		**Effective**		
		BCD	**CVD**	**BCD**	**CVD**	
2701	**Coal; Briquettes, Ovoids and similar solid fuels manufactured from Coal** - Coal whether or not pulverized, but not agglomerated:					Effective rate of Basic Customs Duty (BCD) as per Notfn. No.12/2012-Cus. dt. 17.03.2012.
2701 11 00	- - Anthracite	10%	6%	5%	6%	
2701 12 00	- - Bituminous Coal	55%	6%	5%	6%	
2701 19	-- Other Coal:					
2701 19 10	- - - Coking Coal	10%	6%	0%	6%	
2701 19 20	- - - Steam Coal	10%	6%	0%	1%	
2701 19 90	- - - Others	10%	6%	5%	6%	

23.9 From the above Notification No.012/2012-Cus. dated 17.03.2012, it can be seen that the effective rate of duty for Bituminous Coal is 5% BCD + 6% CVD, as against Nil BCD + 1% CVD for Steam Coal.

23.10 As regards the definition of the above listed Coal under various headings/sub-headings are concerned, only two types of Coals have been defined under Chapter 27. These two definitions pertain to “Anthracite” and “Bituminous Coal”, which are as under:

1. For the purposes of sub-heading 2701 11 “anthracite” means *coal having a volatile matter limit (on a dry, mineral-matter-free basis) not exceeding 14%*’.
2. For the purposes of sub-heading 2701 12, “bituminous coal” means *coal having a volatile matter limit (on a dry, mineral-matter-free basis) exceeding 14% and a calorific value limit (on a moist, mineral-matter-free basis) equal to or greater than 5,833 kcal/kg*.

23.11 From a reading of the above definition, it evolves that all Coal with a volatile matter limit (on a dry, mineral-matter-free basis) not exceeding 14% are to be classified as ‘Anthracite’, irrespective of the calorific value. However, the coal

with a volatile matter limit (on a dry, mineral-matter-free basis) exceeding 14% will be classified as 'Bituminous Coal' if the calorific value limit (on a moist, mineral-matter-free basis) is equal to or greater than 5,833 kcal/kg and in other case, where the caloric value limit is less than 5,833 kcal/kg, the same would be classified as 'Other Coal'. 'Other Coal' amongst others includes 'Steam Coal'. As such, the issue under consideration whether imported coal is Steam Coal or Bituminous Coal, is to be decided in the light of the above Chapter Notes and the General Interpretative Rules. Also, it is to be seen whether the headings/sub-headings of the imported coal can be arrived at by applying Rule 1 of the General Interpretative Rules or whether the other Rules from 2 to 6 ibid are to be applied sequentially.

23.12 The expression "Bituminous Coal" is defined under Sub Heading Note 2 of the Chapter 27 of the Customs Tariff Act, 1975. As per the Sub Heading Note 2 of the Chapter 27 of the Customs Tariff Act, 1975, "bituminous coal" means coal having a volatile matter limit (on a dry, mineral-matter-free basis) exceeding 14% and a calorific value limit (on a moist, mineral-matter-free basis) equal to or greater than 5,833 kcal/kg. From the above, it is quite evident that the coal which possesses volatile matter value (on a dry, mineral-matter-free basis) exceeding 14% and a calorific value limit (on a moist, mineral-matter-free basis) equal to or greater than 5,833 kcal/kg is to be treated as "Bituminous Coal". On the other hand, it is worth mentioning that there is no specific definition of Steam coal, falling under Chapter Sub Heading No. 27011920.

23.13 The meaning of the terms "dry, mineral-matter-free basis" and "moist, mineral-matter-free basis" has been detailed in the Show Cause Notice. Accordingly, I have gone through the literature 'Coal Production and Preparation Report (Instructions) **-** U.S. Department of Energy, Energy Information, Administration' available on website https:/www.eia.gov/cneaf Coal/page/surveys/ eia7ainst.pdf, referred to in the Show Cause Notice. In the said report, it is stated that '*dry, mineral-matter free basis'* means that the total moisture and mineral matter have been removed from the Coal sample and '*moist, mineral-matter free basis'* means as though the natural inherent moisture is present but mineral matter has been removed from the Coal sample and moist Coal does not include visible water on the surface. Wherever the data in respect of Volatile Matter (VM) and Gross Calorific Value (GCV) is expressed on 'As Received Basis'(ARB) or 'Air Dry Basis'(ADB) or 'Dry Basis', the same needs to be converted into percentage value of Volatile Matter on 'dry, mineral-matter-free' basis and the Calorific Value on 'moist, mineral-matter-free basis'. For this, the literature available on the website of 'U.S. Department of Energy, Energy Information, Administration' which gives the formula (as detailed above), using which the Fixed Carbon (%) and Volatile Matter (%) both on dry, mineral-matter-free basis and Gross Calorific Value (Kcal/Kg) on moist, mineral-matter-free basis can be derived. The said formula is already

detailed in the Show Cause Notice has hence not repeated. In this case, amongst others reliance is also placed on the above report of U.S. Department of Energy, Energy Information, and Administration.

24. I further find that the Joint Director, Customs Laboratory, Jawaharlal Nehru Customs House, Nhava Sheva, Raigad vide letter F.No.JNCH/T.O./2012-13 dt.07.03.2013 confirmed the applicability of the above mentioned formulae available on the website of 'U.S. Department of Energy, Energy Information, Administration' in calculating volatile matter limit of Coal (on a dry, mineral-matter-free basis) and a calorific value limit of Coal (on a moist, mineral-matter-free basis) to coal imported into India. He also confirmed that the values of Ash content, Sulphur content etc. are to be applied on Air Dry Basis (ADB).

24.1 As per the General Rules for the interpretation of the Import Tariff, it can be seen that classification shall be determined according to the terms of Headings and any relative Sections or Chapter Notes and provided such heading or Notes do not otherwise require, then by applying the Interpretative Notes 2, 3, 4, 5 and 6. In this case, 'Bituminous Coal' coal has been defined under Sub-heading Note 2 of Chapter 27 of CTA, 1975. In conformity with the Note, the Volatile Matter, calculated on dry, mineral-matter-free basis, for all the imported shipments is in excess of 14% (whether ADB/ARB) and calorific value for all these consignments on moist, mineral-matter-free basis, is in excess of 5,833 Kcal/Kg. in respect of the Coal imported and covered by the Show Cause Notice. The Coal imported in these shipments confirms to the definition of 'Bituminous Coal' given in Sub-heading Note 2 of Chapter 27.

24.2 In terms of Rule 1 of the General Interpretative Rules, the titles of Sections, Chapters and Sub-chapters are provided for ease of reference only; **for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes** and, provided such headings or Notes do not otherwise require. Thus, this is the first Rule to be considered in classifying any product. For practical purposes, we may break this rule down into 2 parts:

1) The words in the Section and Chapter titles are to be used as guidelines ONLY to point the way to the area of the Tariff in which the product to be classified is likely to be found. Articles may be included in or excluded from a Section or Chapter even though the titles might lead one to believe otherwise.

2) Classification is determined by the words (terms) in the Headings (the first four numbers) and the Section and Chapter Notes that apply to them unless the terms of the heading and the notes say otherwise. **In other words, if the goods to be classified are covered by the words in a heading and the Section and**

Chapter Notes do not exclude classification in that heading, the heading applies.

24.3 In the light of the above, for the imported coal under consideration, I have to find a Heading/Sub-heading that is worded in such a way so as to include the product in question, by referring to the Section and Chapter Notes, to see if the product is mentioned specifically, as being included or excluded. As already discussed, in this case Sub-Heading Note No.2 of Chapter 27 defines the parameters to be satisfied for classification as 'Bituminous Coal'. In conformity with the Note the Volatile Matter, calculated on dry, mineral-matter-free basis, for all the shipments covered by the Show Cause Notice, is in excess of 14%. (whether ADB/ARB) and calorific value for all these consignments on moist, mineral-matter-free basis, is in excess of 5,833 Kcal/Kg. In view of this, the Coal imported in these shipments confirms to the definition of 'Bituminous Coal' given in Sub-heading Note 2 of Chapter 27.

24.4 As regards the classification of imported Coal under Chapter Sub-heading 27011920, as Steam Coal, is concerned, it is clear that the same is grouped under the Heading 'Other Coal' falling after the Anthracite and Bituminous Coal. Therefore, this heading covers only those Coals which are other than and do not fall within the above stated definition of Anthracite and Bituminous Coal. **In respect of the imported Coal covered by the Show Cause Notice, the same satisfies the parameters for Chapter Sub-heading 27011200 and clearly answer to the description of 'Bituminous Coal' as per the definite definition assigned to the said Coal by Sub-heading Note 2 of Chapter 27.** Thus, when the concerned goods fall under the definition of Chapter Sub-heading 27011200, the question or even the need for referring to the entry of the same goods in Chapter Sub-heading 27011920 does not arise. Such a need would have arisen if there was a doubt about the classification of goods under Chapter Sub-heading 27011200. In this case since the classification of the product can be arrived at an appropriate Tariff Heading/Sub-heading, by applying Rule 1 of the General Interpretative Rules itself, I find no reason for referring to the other interpretative Rules i.e. from 2 to 6 ibid.

24.5 The Hon'ble Supreme Court in the case of Oswal Agro Mills Ltd. reported in 1993 (66) ELT-37 (SC) has held that where the words of the statute are plain and clear, there is no room for applying any of the principles of interpretation which are merely presumption in cases of ambiguity in the statute. The relevant paragraph 7 of the said judgement is reproduced below, which speaks for itself and is squarely applicable in this case:

> *7. " .....Where the words of the statute are plain and clear, there is no room for applying any of the principles of interpretation*

which are merely presumption in cases of ambiguity in the statute. The court would interpret them as they stand. The object and purpose has to be gathered from such words themselves. Words should not be regarded as being surplus nor be rendered otiose. Strictly speaking there is no place in such cases for interpretation or construction except where the words of statute admit of two meanings. The safer and more correct course to deal with a question of construction of statute is to take the words themselves and arrive, if possible, at their meaning, without, in the first place, reference to cases or theories of construction. ……..”

24.6 The Customs Tariff Act is broadly based on the system of classification from the International Convention called the Brussels' Convention on the Harmonised Commodity Description and Coding System (Harmonised System of Nomenclature). HSN is a safe guide for the purpose of deciding issues of classification. In the present case, the HSN explanatory notes to Chapter 27 categorically state that “bituminous coal” means coal having a volatile matter limit (on a dry, mineral-matter-free basis) exceeding 14% and a calorific value limit (on a moist, mineral-matter-free basis) equal to or greater than 5,833 kcal/kg. The Hon'ble Supreme Court in the case of Phil Corporation Ltd. Vs. CCE, Goa reported in 2008 (223) E.L.T. 9 (S.C.) has held that HSN is a safe guide for deciding issue of classification. The relevant paragraph 13 of the said judgement is reproduced below.

“13.*The learned Additional Solicitor General also placed reliance on the judgment of this court in Collector of Central Excise, Shillong v. Wood Craft Products Ltd. - (1995) 3 S.C.C. 454. This court in paragraph 12 of the said judgment observed as under :-*

“Accordingly, for resolving any dispute relating to tariff classification, a safe guide is the internationally accepted nomenclature emerging from the HSN. This being the expressly acknowledged basis of the structure of the Central Excise Tariff in the Act and the tariff classification made therein, in case of any doubt the HSN is a safe guide for ascertaining the true meaning of any expression used in the Act.””

24.7 **In this case, a particular definition has been assigned to the word 'Bituminous Coal' in the statue. The very definitions set forth and define the key term used in the statute. These definitions are important because they suggest the legislative intend for a term to have a specific meaning that might differ in important ways from its common usage. The definitions so given in the Chapter Notes/Section notes of the Tariff are to avoid ambiguity and to explicitly define the terms used in that statute.** In this case, when the imported Coal is having a volatile matter limit (on a dry, mineral-matter-free basis) exceeding 14% and a calorific value limit (on a moist, mineral-matter-free basis) equal to or greater than 5,833 kcal/kg., in terms of the definition given in the Sub-heading note, which is part of the statue, the coal so imported can be called as 'Bituminous Coal'

only and not by any other name. As a consequence, the appropriate Chapter Sub-heading of this 'Bituminous Coal' will be 27011200 only.

25.1 As for the relevance of the Chapter Notes, for deciding the classification of the product, and subsequently its eligibility or otherwise for any exemption by way of notifications, I find that classification is to be determined only on the basis of description of the heading, read with relevant section or chapter notes. Since, these chapter notes are part of the Act itself; they have full statutory legal backing. It is a settled legal position that the Section Notes and Chapter Notes have an overriding force over the respective headings and sub-headings. This finds support in the decision of the Hon'ble Tribunal in the cases of Saurashtra Chemicals Vs CC – 1986 (23) ELT 283 (CEGAT); Tractors and Farm Ltd. Vs CC – 1986 (25) ELT 235 (CEGAT); Tracks Parts Corpn. Vs CCE - 1992 (57) ELT 98 (CEGAT) and Calcutta Steel Industries Vs CCE - 1991 (54) ELT 90 (CEGAT).

25.2 In the case of Fenner India Ltd. Vs CCE – 1995 (97) ELT 8 (SC), the Hon'ble Supreme Court has observed that tariff schedule would be determined on terms of headings and or any relevant section or chapter notes. In Sanghvi Swiss Refills Pvt. Ltd. case reported in 1997 (94) ELT 644 (CEGAT), it was held that section notes and chapter notes, being statutory in nature, have precedence over functional test and commercial parlance for purposes of classification. **From the above judgements/decision it flows that, in this case, the product imported being Bituminous Coal, in terms of Sub-heading Note 2 of Chapter 27, the said imported Coal will not be eligible for exemption under Sl.No.123 of Notification No.012/2012-CE, dated 17.03.2012.**

25.3 It is not the case in the Show Cause Notice, that whether the product imported is Coal or not and for what purpose the same is imported. The issue is whether the Coal imported is 'Steam Coal or 'Bituminous Coal', for the determining the eligibility of exemption or otherwise, in terms of Sl.No.123 of Notification No.012/2012-CE, dated 17.03.2012. In this regard, I find that, as already discussed, as per the Sub-Heading Note 2 to Chapter 27, the Coal having Volatile Matter, calculated on dry, mineral-matter-free basis, for all the imported shipments is in excess of 14%. (whether ADB/ARB) and calorific value for all these consignments on moist, mineral-matter-free basis, is in excess of 5,833 Kcal/Kg.(as per Annexure-B to the SCN) is defined as 'Bituminous Coal'. Further, there is no dispute regarding the fact that the Show Cause Notice has been issued proposing the classification of the imported Coal under CTH 2701 1200 as 'Bituminous Coal', only in respect of those Bills of entry, where the volatile matter limit (on a dry, mineral-matter-free basis) exceeding 14% and a calorific value limit (on a moist, mineral-matter-free basis) equal to or greater than 5,833 kcal/kg in respect of the imported coal. Thus, in this case, where the words of the statute i.e. Sub-heading Notes are

plain and clear, there is no room or scope for applying any other interpretation than the one given in the statute.

26. **In view of the Sub-heading Note 2 of Chapter 27 of the Schedule to Customs Tariff Act, 1975; by applying Rule 1 of the General Interpretative Rules and by relying on the legal position in such cases settled by the Apex Court, it is quite evident that the Coal imported by M/s. ASRMPL, is none other than 'Bituminous Coal' falling under Chapter Sub-heading 27011200 of the Schedule to Customs Tariff Act, 1975 and in no way can be considered as "Steam Coal" falling under Chapter Sub-heading 27011990 ibid. As such, the exemption under Sl.No.123 of Notification No.012/2012-CE, dated 17.03.2012, as claimed by M/s. ASRMPL will not be available to the imported Coal covered by the Show Cause Notice.**

27. M/s. ASRMPL in their written submissions as well as during the course of personal hearing has advanced many arguments to justify that the imported coal, covered by the Show Cause Notice, clearly falls under the category of 'Steam Coal', classifiable under Chapter Sub-heading 27011920 of the Schedule to the Customs Tariff Act, 1975. As such, I proceed to discuss those main contentions one by one, for which titles broadly based on those contention, have been assigned.

Testing parameters and not brought on record any evidence giving credence to the formula adopted

27.1 I find that the above contention of the noticee is factually incorrect, in as much the Certificate of Sampling & Analysis of Shipment of Coal in respect of test conducted by various independent inspecting agencies at various Load Ports that the volatile matter limit of the coal imported by M/s. ASRMPL exceeds 14% and also the calorific value of the said coal (on a moist, mineral-matter-free basis) as well as per the certificate was found to be greater than 5,833 kcal/kg (as per Annexure-B to the SCN).

27.2 Not withstanding the above, I find that as regards the application of the formula in this case, I find that it would be necessary and imperative to understand the technicalities of the relevant terms, namely, as-received basis (ARB), air-dried basis (ADB), inherent moisture, total moisture, moist, mineral-matter-free basis, gross calorific value and net calorific value. The international trade in coal resolves around mutually accepted Certificates of Sampling and Analysis and/or Certificates of Quality usually issued by independent accredited testing and certifying agencies, which are commonly known as load port certificates or discharge port certificates. All these certificates are taking the coal for sampling, testing and certification of quality either on as-received basis (ARB) or air-dried

basis (ADB) or dry basis (DB). However, in the context of Indian Customs Tariff and classification thereof the two primary criteria i.e. volatile matter content and calorific value content are neither on ADB nor on ARB/DB. The two parameters that are to be adopted are 'a dry, mineral matter free basis' and 'a moist, mineral matter free basis' respectively. These load port certificates clearly mention that they have adopted ASTM standards for the purpose of sampling and analysis and the test results generated on the basis of the said ASTM standards are based on (i) Total moisture is based on as received basis (ii) Inherent moisture is based on air dried basis (iii) gross calorific value is based on air dried basis and (iv) other parameters such as ash, volatile matter, fixed carbon sulphur are based on air dried basis. The arguments at a latter stage questioning the authenticity of the certificates, when they themselves are relying on the load port certificates, which are based on ASTM standards, are devoid of any merits, which is nothing but an afterthought.

27.3 As far as the formulae adopted for arriving at the two parameters, I had referred to various literatures, namely, para 3.1.2. of ASTM D3180-07; Coal Conversion Statistics of World Coal Association; Coal Marketing International; Wikepedia, ASTM-D121-01; para 9.1 of ASTM D388-12 etc. as well as regarding the terms as-received basis (ARB), air-dried basis (ADB), inherent moisture, total moisture, moist, mineral-matter-free basis, gross calorific value and net calorific value and have examined the basis of calculations therein.

27.4 After going through the various literatures as stated above, I am of the clear view that as per the international standards, accepted world-over including India, coals are ranked/classified on mineral-matter-free basis, dry or moist, depending on the parameters that applies, by applying the ASTM D3180-07. The parameters, either volatile matter (of fixed carbon) or gross calorific values, are commonly reported by laboratories on the as received, dry-and-ash-free basis but as per the technical literatures published by ASTM, these reported **values must be converted to the mineral-matter-free basis** for ranking purposes.

27.5 The Show Cause Notice has been issued to all the importers of coal across the country, in respect of consignments where volatile matter limit of the coal imported exceeds 14% and also the calorific value of the said coal (on a moist, mineral-matter-free basis) as well as per the certificate was found to be greater than 5,833 kcal/kg. Further, The Show Cause Notices have been issued only in those cases, based on the Certificate of Sampling & Analysis of Shipment, where the volatile matter limit of the coal imported exceeds 14% and also the calorific value of the said coal is greater than 5833 kcal/kg. In terms of Sub-heading Note 2, the meaning of Bituminous Coal has been defined and the coal imported by M/s. ASRMPL falls within the said meaning. Wherever, it was found that the imported Coal is Steam Coal, the eligible exemption has not been denied.

SCN is against Legislative Mandate expressed in Finance Minister's Speech on Budget:

28.1 The noticees' further contention is that the exemption to Steam Coal granted in Notification No.12/2012-Cus, dated 17.03.2012, should be interpreted in the light of the Hon'ble Finance Minister's budget speech made on 16.03.2012.

28.2 With regard to the above contention, it is a fact that exemption has been granted to Steam Coal under Notification No.12/2012-Cus, dated 17.03.2012, wherein the BCD has been made nil and CVD has been reduced to 1% and this exemption, as per the finance ministers' speech is for domestic producers of thermal power. However, it is also a fact that the exemption has been granted to Steam Coal only. Thus what flows from the above is that Steam Coal is required to be imported and used for producing thermal power, if one is to become eligible for the above said exemption. **Bituminous Coal can also very well be used for producing thermal power and the law makers are aware of this fact. Had the intention of the notification was to grant exemption to any type of coal used for producing thermal power, then naturally exemption would have been granted to Bituminous Coal also.**

28.3 In the present case, issue is of classification of the imported Coal and classification cannot be decided on the basis of the headings to which exemption has been granted. For imports, firstly the Heading/Sub-heading of the goods imported is to be decided and only thereafter one has to see whether the said Heading/Sub-heading of the goods imported, is there in the exemption notification. In other words, in the present case, the classification of the Coal, whether it is Bituminous Coal or Steam Coal is to be decided first. Then only the matter of exemption for the said imported goods is to be looked into. If the goods fall under the definition of Bituminous Coal, then there is no question of grant of exemption in terms of Sl.No.123 of Notification No. 012/2012-Cus. dated 17.03.2012 and if it is steam coal, then the said exemption is indeed available. In this connection, it is pertinent to point out here that the present Show Cause Notice does not covers all the coal imports made by M/s. ASRMPL. Show Cause Notice has been issued only in respect of those imports, where the goods falls under the category Bituminous Coal, in the light of Note 2 to Chapter 27. Thus, the intention of the department was not to deny benefit to import of all types of coal. Wherever, it was found that the imported Coal is Steam Coal, the eligible exemption has not been denied and the intent of the notification has been served. In other words, if the intention of the department was to raise the revenue, then all imports of coal would have been treated as Bituminous Coal and duty demanded accordingly.

28.4 In this case, there is no doubt regarding the fact that by classifying the goods as Bituminous Coal under CTH 27011200, M/s. ASRMPL is indeed deprived of the eligibility for exemption under Sl.No.123 of Notification No. 012/2012-Cus.

dated 17.03.2012 and consequently has to pay a higher rate of duty. However, this liability of a higher rate of duty in no way should be the consideration for classifying the said Coal under a different Heading/Sub-heading, where there is less rate of duty or no duty at all. This aspect has been clearly spelt out by the Hon'ble Tribunal in the case of Gosai Trading Co. - 2007 (214) E.L.T. 301 (Tri. - Kolkata), wherein it was observed that "the present higher rate of duty by itself cannot be a ground for deciding the classification of the impugned goods outside the Heading 6212 **as classification of goods are to be done according to the terms of the Headings, Section and Chapter Notes and the Rules of Interpretation contained in the Customs Tariff Act but not on the basis of the duty rates which keep changing from time to time."** (emphasis supplied)**.** As such, I do not find any merit in the argument.

Notice not sustainable on the touchstone of common parlance understanding of Steam Coal:

29.1 The contention of M/s. ASRMPL in support of their claim that the Coal imported is to be classified as 'Steam Coal" is that the term Steam Coal has not been defined anywhere in the Customs Tariff Act, 1975, nor has its meaning for the purpose of exemption been clarified vide Explanation, Circular or a clarificatory Trade Note. Therefore, the term 'Steam Coal' has to be interpreted in the light of its popular meaning based on the manner it is commercially known and understood by those conversant in the relevant trade or industry, even though the imported coal many have certain technical characteristics of Bituminous Coal. Thus, from the above, as per M/s. ASRMPL, the 'Common/commercial/trade Parlance' test is to be applied in this case for classification of the imported coal.

29.2 I find that in respect of the description of the entries under Heading No.2701 that the market nomenclature was adopted only for entries at '8' digit level of sub-heading 2701 19, whereas for other entries viz., 27011100 and 27011200, it was with reference to the definitions mentioned in the Chapter Sub-Heading Notes. It is now a well settled principle of law that the trade or commercial nomenclature comes into play only when the product description occurs by itself in a Tariff entry and there is no conflict between Tariff entry and any other entry requiring reconciling and harmonizing that tariff entry with any other entry.

29.3 The Hon'ble Supreme Court in the case of CCE, Delhi Vs. Connaught Plaza Restaurant (P) Ltd. - 2012 (286) E.L.T. 321 (S.C.) in paragraph 15 of the said judgement has held "According to the rules of interpretation for the First Schedule to the Tariff Act, mentioned in Section 2 of the Tariff Act, classification of an excisable goods shall be determined according to the terms of the headings and any corresponding chapter or section notes. Where these are not clearly determinative of classification, the same shall be effected according to Rules 3, 4 and 5 of the general rules of interpretation. **However, it is also a well known principle that in**

the absence of any statutory definitions, excisable goods mentioned in tariff entries are construed according to the common parlance understanding of such goods." (emphasis supplied)

29.4 Further the Hon'ble Apex Court in the case of CCE, Bhubaneshwar Vs. Champdany Industries Ltd. - 2009 (241) E.L.T. 481 (S.C.) had observed that "In *Collector of Central Excise, Hyderabad* v. *Fenoplast (P) Ltd. (II)* - 1994 (72) E.L.T. 513 (S.C.), a three-Judge Bench of this Court held that while interpreting statutes like the Excise Tax Acts or Sales Tax Acts where the primary object is to raise revenue and for such purpose the various products and goods are classified, the common parlance test can be accepted, if any term or expression is not properly defined in the Act **"if any term or expression has been defined in the enactment then it must be understood in the sense in which it is defined but in the absence of any definition being given in the enactment the meaning of the term in common parlance or commercial parlance has to be adopted".** (emphasis supplied).

29.5 In the Oswal Agro Mills Ltd. case - 1993 (66) E.L.T. 37 (S.C.), the Hon'ble Supreme Court has emphasized that."……Where the words of the statute are plain and clear, there is no room for applying any of the principles of interpretation which are merely presumption in cases of ambiguity in the statute. The court would interpret them as they stand. The object and purpose has to be gathered from such words themselves. Words should not be regarded as being surplus nor be rendered otiose. Strictly speaking there is no place in such cases for interpretation or construction except where the words of statute admit of two meanings. The safer and more correct course to deal with a question of construction of statute is to take the words themselves and arrive, if possible, at their meaning, without, in the first place, reference to cases or theories of construction. ……."

29.6 Finally, with regard to the question of applying common/market parlance test, the proposition of law has been laid down by the Hon'ble Supreme Court in the case of Akbar Badruddin Jiwani Vs. Collector of Customs - 1990 (047) ELT 014 (SC) in the following words:

> *"**36.**In deciding this question the first thing that requires to be noted is that Entry No. 25.15 refers specifically not only to marble but also to other calcareous stones whereas Entry No. 62 refers to the restricted item marble only. It does not refer to any other stones such as ecaussine, travertine or other calcareous monumental or building stone of a certain specific gravity. Therefore, on a plain reading of these two Entries it is apparent that travertine, ecaussine and other calcareous monumental or building stones are not intended to be included in `marble' as referred to in Entry No. 62 of Appendix 2*

as a restricted item. Moreover, the calcareous stone as mentioned in ITC Schedule has to be taken in scientific and technical sense as therein the said stone has been described as of an apparent specific gravity of 2.5 or more. Therefore, the word `marble' has to be interpreted, in our considered opinion, in the scientific or technical sense and not in the sense as commercially understood or as meant in the trade parlance. ***There is no doubt that the general principle of interpretation of Tariff Entries occurring in a text statute is of a commercial nomenclature and understanding between persons in the trade but it is also a settled legal position that the said doctrine of commercial nomenclature or trade understanding should be departed from in a case where the statutory content in which the Tariff Entry appears, requires such a departure. In other words, in cases where the application of commercial meaning or trade nomenclature runs counter to the statutory context in which the said word was used then the said principle of interpretation should not be applied.*** *Trade meaning or commercial nomenclature would be applicable if a particular product description occurs by itself in a Tariff Entry and there is no conflict between the Tariff Entry and any other entry requiring to reconcile and harmonise that Tariff Entry with any other Entry."* (emphasis supplied).

29.7 From the above, it is quite evident that it has become the law of the land for the purpose of classification of goods **that only in the absence of any statutory definitions, the common parlance understanding of such goods should be applied and that the classification of goods shall be determined according to the terms of the Headings and any corresponding Chapter or Section notes.** In this case, Sub-heading Note 2 of Chapter 27 in unambiguous terms defines what "Bituminous Coal" is. Thus, when a clear definition is available in statute, in respect of the coal imported by M/s. ASRMPL, I find no reason why it should be called and classified as 'Steam Coal'. As such, I do not find any merit in contention of M/s. ASRMPL and they cannot take shelter for classifying the coal imported by them as 'Steam Coal', under the name of common/commercial/market parlance, which deserves to be rejected.

The literature on Coal and World Coal Council consider Steam Coal as Bituminous Coal and not other than Bituminous.

30.1 Another contention is that as per Britannia Encyclopedia, in Britain bituminous coal is commonly called "Steam Coal" and in Germany the term *Steinkohle* ("rock coal") is used. In the United States and Canada bituminous coal is divided into high-volatile, medium-volatile, and low-volatile bituminous groups. An Expert Wendy Lyons Sunshine has expressed opinion on About Energy website http://energy.about.com/od/Coal/a/Bituminous-Coal.htm and stated that Bituminous

coal includes two subtypes: thermal and metallurgical. In this regard, I find that the noticee has placed a study material regarding various types of coal categorized by various agencies.

30.2 At the outset, I find that in this case, once the item imported has been identified as Bituminous Coal, then finding out of the definition of Steam Coal, is irrelevant in the said context. As regards the classification of imported Coal under Chapter Sub-heading 27011920, as Steam Coal, is concerned, I have already discussed that the same is grouped under the Heading 'Other Coal' falling after the Anthracite and Bituminous Coal. Therefore, the said heading covers only those Coals which are other than and do not fall within the above stated definition of Anthracite and Bituminous Coal. In respect of the imported Coal covered by the Show Cause Notice, the same satisfies the parameters for Chapter Sub-heading 27011200 and clearly answer to the description of 'Bituminous Coal' as per the definite definition assigned to the said Coal by Sub-heading Note 2 of Chapter 27. Thus, when the concerned goods fall under the definition of Chapter Sub-heading 27011200, the question or even the need for referring to the entry of the same goods in Chapter Sub-heading 27011920 does not arise. Such a need would have arisen if there was a doubt about the classification of goods under Chapter Sub-heading 27011200. In this case since the classification of the product can be arrived at an appropriate Tariff Heading/Sub-heading, by applying Rule 1 of the General Interpretative Rules itself, I find no reason for finding out the meaning of steam coal by referring to the study materials regarding various types of coal categorized by various agencies.

30.3 However, I am in full agreement with the argument of the noticee that that if a term is explained or defined, a plain meaning of the term as explained in the Tariff or in the Statutory Book will be followed for the purpose of exemption of benefit. In this case, the meaning of the term Bituminous Coal has been explained and defined in the Statue by way of Sub-heading Note in the Chapter. So what is important is to first look at what is defined rather than going after what is not defined. In view of this I find no merit in the argument of M/s. ASRMPL.

30.4 I also find that the noticee has relied upon the International Tariffs of US, Australia, European Union and Canada, in support that the tariffs are based on rank and that Bituminous Coal is divided into coking coal and other coal and Steam Coal falls under other coal. As for this contention the simple answer is that levy and collection of tax is a sovereign function. Levy includes assessment and assessment comprises of classification and valuation of the goods and applying the rate of duty on the value determined. Thus, classification of the goods under Indian Customs Tariff is a sovereign function pertaining to levy of tax and totally governed by the entries made under Customs Tariff Act, 1975.

Interpretation in SCN leads to manifest absurdity and unfair result which is not acceptable in law.

31. The basis of arriving at the conclusion that the coal imported by them as covered in the Show Cause Notice is Bituminous Coal, has been discussed in paragraphs 25.3 to 26, wherein the above aspect has been dealt in detail. As such, the same is not repeated. As already discussed in the foregoing paras, the classification of goods is to be done according to the terms of the Headings, Section and Chapter Notes and the Rules of Interpretation contained in the Customs Tariff Act. Further, I have also held that, in this case since the classification of the product can be arrived at an appropriate Tariff Heading/Sub-heading, by applying Rule 1 of the General Interpretative Rules itself, I find no reason for referring to the other interpretative Rules i.e. from 2 to 6 ibid. Thus, the contention of the noticee is devoid of any merit and is required to be rejected summarily.

Specific Classification will prevail over General Classification:

32. M/s. ASRMPL in support of their contention that the coal imported by them is steam coal has relied upon decisions of the Hon'ble Supreme Court wherein the universal principle had been laid down that specific entry prevails over general entry and that classification which is more specific has to be preferred over the one which is not specific or general in nature. I do not find any merit in this argument, since I have dealt in length regarding the classification of the coal imported by M/s. ASRMPL, vis-à-vis the interpretative rules, and how it can be termed as Bituminous Coal. Thus, the argument on this count has been answered to. As such, I find that the facts of the above cited case laws have not relevance to the facts of the issue under consideration.

Even otherwise the coal imported by the notice is eligible for benefit of Notification No.46/2011-Cus dtd. 11.06.2011.

33.1 I find that, M/s. ASRMPL has finally contended that in any event, even if the coal imported by them is classified as bituminous coal, the same would be eligible for exemption from payment of BCD, in terms of Notification No.46/2011-Cus dated 01.06.2011, since the imports of the coal in some Bills of Entry under consideration are from Indonesia.

33.2 I find that M/s. ASRMPL has adopted an 'either' 'or' policy in the matter. If the coal is treated as Steam Coal, then exemption under Sr. No. 123 of Notification No.12/2012-Cus dt.17.03.2012, if not, then under Notification No.46/2011-Cus dated 01.06.2011, as amended from time to time. This cannot be accepted since in order to avail the benefits under Notification No.46/2011-Cus dated 01.06.2011, some basic procedures prescribed, such as, for applying for such benefits in the country of export, inspection of goods and subsequent issue of

Country of Origin Certificate etc. are required to be followed, and proof of these conditions are required to be produced at the time of import. These procedures have not been followed in the case by M/s. ASRMPL, which also cannot be followed at this stage.

33.3 **Accordingly, I hold that M/s. ASRMPL is not eligible for the benefit of exemption from payment of BCD as well as CVD, in terms of Notification No.46/2011-Cus dated 01.06.2011, as amended, and consequently their claim is rejected in toto.**

34. In view of foregoing discussions, **I hold that the Coal imported by M/s. ASRMPL, as detailed in Annexure A to the Show Cause Notice, is nothing but Bituminous Coal, classifiable under Chapter Sub-heading 27011200 of the Schedule to Customs Tariff Act, 1975, as proposed in the Show Cause Notice. Accordingly, classification of the said Coal as Steam Coal, under Chapter Sub-heading 27011920, as claimed by M/s. ASRMPL is hereby rejected. Consequently, I also hold that M/s. ASRMPL is not eligible to avail the benefit of exemption prescribed under Notification No.12/2012-Cus dt.17.03.2012.**

2. Whether 25000 MTS of Coal totally valued at Rs.10,79,94,385/- imported by M/s. ASRMPL, though not available physically, is liable for confiscation under Sections 111 (d) and 111(m) of the Act, 1962.

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35.1 In this case, as already discussed and decided by me, the coal imported by M/s. ASRMPL, as detailed in Annexure-A to the Show Cause Notice, is Bituminous Coal, classifiable under Chapter Sub-heading 27011200 of the Schedule to Customs Tariff Act, 1975. However, for the purpose of claiming exemption, M/s. ASRMPL has declared the same as Steam Coal and classified it under Chapter Sub-heading 27011920 ibid. As M/s. ASRMPL has declared the imported goods as Steam Coal, inspite of the fact that they were fully aware that the coal imported by them falls within the parameters prescribed in respect of Bituminous Coal in the light of Sub-heading Note 2 to Chapter 27. Since the noticee had wrongly claimed and availed the benefit of exemption under Sr. No. 123 of Notification No.12/2012-Cus dt.17.03.2012 which in turn led to less payment of differential BCD as well as CVD of Rs.1,08,08,551/- on the 'Bituminous Coal' by considering the same as 'Steam Coal', they have violated the provisions of Section 46 (4) of the Customs Act, 1962. Accordingly, the said imported goods are liable for confiscation, under Section 111(m) of the Customs Act, 1962. This contravention and or violation falls within the purview of the nature of offence prescribed under Section 111(m) of the Customs Act, 1962. Thus, the goods are liable for confiscation under Section 111(m) of the Customs Act, 1962.

35.2 I also find that the noticee has also contravened the provisions of Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 (as detailed in the Show Cause Notice) and for this, the goods are liable for confiscation under Section 111(d) of the Customs Act, 1962. I also find no substance in the contention of the noticee that there is no mis-declaration of the imported Coal, on their part, since classification of Bituminous Coal in the name of Steam Coal, clearly falls under the category of mis-declaration.

35.3 The noticee has contended they have not misdeclared the goods in as much as since there is no prohibition for the goods imported, the provisions of Section 111 (d) of the Act does not attract. I find that the noticee for Bituminous Coal has declared the same as Steam Coal. This is nothing but mis-classification. In my view, mis-declaration has been defined in a plethora of decisions, which means representing something or declaring something which is not true with or without intention to evade payment of duty. Further, it is a settled law that mis-declaration means not declaring something or making an incorrect declaration about something, which he is required to declare under the law. This definition has a direct connection in this case.

35.4 The other contention is that the goods were not prohibited and therefore, the confiscation of goods under Section 111 (d) is without authority of law. It is now a well settled position of law that **any restriction on import or export is to an extent a prohibition.** In this connection, I would like to reproduce the judgement of the Hon'ble Supreme Court of India in the case of *Sheikh Mohd Omer* v. *C.C.* reported in 1983 (13) E.L.T. 1439 (S.C.), which speaks for itself.

> *This takes us to the question whether by importing the mare "14. "Jury Maid" the appellant contravened Section 114(d) read with Section 125 of the Act. It was urged on behalf of the applicant that expression "prohibition" in Section 111(d) must be considered as a total prohibition and that expression does not bring within its fold the restrictions imposed by clause 3 of the Import Control Order, 1955. According to the learned counsel for the appellant clause 3 of that order deals with the restrictions of import of certain goods. Such a restriction cannot be considered as a prohibition under Section 111(d) of the Act. While elaborating his argument the learned Counsel invited our attention to the fact that while Section 111(d) of the Act uses the word "prohibition", Section 3 of the Imports and Exports (Control) Act, 1947 as that statute deals with "restrictions or otherwise controlling" separately from prohibitions. We are not impressed with this argument. What clause (d) of Section 111 says is that any goods which are imported or attempted to be imported contrary to "any prohibition" referred to in that section applies to every type of "prohibition". That prohibition may be complete or partial. Any restriction on import or export is to an extent a prohibition.* ***The expression "any prohibition" in Section 111(d) of the Customs Act, 1962 includes restrictions. Merely because Section 3 of the Imports and Exports (Control) Act, 1947 uses three different expressions "prohibiting", "restricting" or "otherwise controlling" we cannot cut down the amplitude of the word "any prohibition" in section 111(d) of the Act. "Any prohibition" means every prohibition. In other words all types of prohibitions. Restriction is one type of prohibition.*** *From Item (I) of Schedule I, Part IV to Import Control Order, 1955, it is clear*

that import of living animals of all sorts is prohibited. But certain exceptions are provided for. But none the less the prohibition continues." (emphasis supplied).

35.5 In the instant case M/s. ASRMPL has failed to declare the true description of the products imported as 'Bituminous Coal' and has hence contravened the provisions of Rule 11 of the Foreign Trade (Regulation) Rules, 1993 and Rule 14 of the Rules ibid. The contraventions of the provisions of the Foreign Trade (Development and Regulation) Act, Foreign Trade (Regulation) Rules and Export and import policy is a prohibition of the nature as described under the Section 11 of the Foreign Trade (Development and Regulation) Act, 1992. Further in terms of Section 3(3) of the Act ibid, the prohibitions are deemed to be a prohibition under the Section 11 of the Customs Act 1962. In terms of the Section 111 (d) of the Customs Act, 1962 any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force is liable to confiscation. Thus, acts constituting offences under Section 11 of Foreign Trade (Development and Regulation) Act, 1992, as discussed above, will be prohibitions imposed by that Act and will, by definition come within the ambit of the phrase "or any other law for the time being in force" appearing in Section 11 of the Customs Act, 1962 and thus the goods will be liable to confiscation under Section 111(d) ibid.

35.6 **Therefore, I hold that 25000 MTS of Coal imported by M/s. ASRMPL, totally valued at Rs.10,79,94,385/-, as detailed in Annexure-A to the Show Cause Notice, are liable for confiscation under Section 111(m) and Section 111(d) of the Customs Act, 1962. However, since the impugned goods are not physically available for confiscation, as the same have already been cleared, I refrain from imposing redemption fine in lieu of confiscation.**

3. Whether the differential Customs Duty amounting to Rs.1,08,08,551/-, as detailed in Annexure – A to the Show Cause Notice, is to be demanded and recovered from M/s. ASRMPL under Section 28 (1) of the Customs Act, 1962.

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36.1 As discussed above, I have already held that the Coal imported by M/s. ASRMPL as detailed in Annexure-A to the Show Cause Notice is Bituminous Coal, and as a consequence M/s. ASRMPL is not eligible for the benefit of exemption Sr. No. 123 of Notification No.12/2012-Cus dt.17.03.2012, which is applicable for steam coal. I find from the records that M/s. ASRMPL had paid duty of Rs.30,48,418/- on the above mentioned quantity of 25000 MTS of coal imported by them declaring as Steam Coal, by availing benefit of Sr. No. 123 of Notification No.12/2012-Cus dt.17.03.2012. Since, the noticee is held not eligible for the said

exemption, they should have actually paid a duty of Rs.1,38,56,956/- on the basis of the correct classification of the coal imported by them.

36.2 In view of the above, **I hold that M/s. ASRMPL is liable to pay the differential duty amounting to Rs.1,08,08,551/- as detailed in Annexure-A to the Show Cause Notice, and the said differential duty not levied or short levied is to be recovered from them under Section 28(1) of the Customs Act, 1962.**

4. Whether the noticee is liable to pay Interest on the differential Customs duty mentioned in Annexure-B to the Show Cause Notice, under Section 28AA of the Customs Act, 1962.

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37. As per the wordings of Section 28AA of the Customs Act, 1962 it is clear that when M/s. ASRMPL is liable to pay duty in accordance with the provisions of Section 28 ibid, he in addition to such duty is liable to pay interest as well. The said Section provides for payment of interest automatically along with the duty. I have already held that differential Customs Duty of Rs.1,08,08,551/-, mentioned in Annexure-A to the Show Cause Notice, is required to be recovered from them. In view of this, **I hold that M/s. ASRMPL is liable to pay interest under the provisions of Section 28AA of the Customs Act, 1962.**

5 Whether M/s. ASRMPL is liable for penal action, under Section 112(a) of the Customs Act, 1962:

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38. As regards, imposition of penalty on the noticee under Section 112(a) of the Customs Act, 1962, since it has been held that the impugned 'Coal" as detailed in Annexure-B to the Show Cause Notice are liable for confiscation under Section 111(m) and 111(d) ibid of the Customs Act, 1962, **I, hold that the penalty under Section 112 (a) ibid is attracted on the importer. However, since the issue involved in this case being of technical nature regarding classification and availment of benefit of a notification, I take a lenient view while imposing the penalty.**

38.1 As for the reliance placed by the noticee on various decisions/judgement in support of their contention, I am of the view that the conclusions arrived may be true in those cases, but the same cannot be extended to other case (s) without looking to the hard realities and specific facts of each case. Those decisions / judgments were delivered in a different context and under different facts and circumstances, which cannot be made applicable in the facts and circumstances of this case. Further, these would have been relevant had there been any doubt for taking a decision regarding the classification of the coal imported and covered by the Show Cause Notice. As such, there would not have even a need for referring to those decision/judgements.

38.2 While applying the ratio of one case to that of the other, the decisions of the Hon'ble Supreme Court are always required to be borne in mind. The Hon'ble Supreme Court in the case of CCE, Calcutta Vs Alnoori Tobacco Products [2004 (170) ELT 135 (SC)] has stressed the need to discuss, how the facts of decision relied upon fit factual situation of a given case and to exercise caution while applying the ratio of one case to another. This has been reiterated by the Hon'ble Supreme Court in its judgment in the case of Escorts Ltd. Vs CCE, Delhi [2004 (173) ELT 113 (SC)], wherein it has been observed that one additional or different fact may make difference between conclusion in two cases; and so, disposal of cases by blindly placing reliance on a decision is not proper. Again in the case of CC (Port), Chennai Vs Toyota Kirloskar [2007 (213) ELT 4 (SC)], it has been observed by the Hon'ble Supreme Court that, the ratio of a decision has to be understood in factual matrix involved therein and that the ratio of decision has to be culled out from facts of given case; further the decision is an authority for what it decides and not what can be logically deduced there from.

39. In view of the forgoing discussions and findings, I pass the following order:-

:ORDER:

(a) The coal imported under the Bills of Entry covered in Annexure-A to the Show Cause Notice dated 01.04.2013, is considered and held as "Bituminous Coal" and is correctly classifiable under Tariff Heading/Sub-heading 2701 1200 of the Schedule to the Customs Tariff Act, 1975. Accordingly the declared classification of the imported Coal under Tariff Heading/Sub-heading 2701 1920 ibid, is hereby rejected. Consequently, I deny M/s. ASR Multimetals (P) Ltd., Survey Nos.394,398,399 & 400, Village: Chhadwada, NH-8A, Near RTO Checkpost, Taluka: Bhachau, Kutch (Gujarat)– 370 140, the benefit of exemption under Sl.No.123 of Notification No.12/2012-Cus. dated 17.03.2012.

(b) The 25000.000 MTs of Coal, valued at Rs.10,79,94,385/- as detailed in Annexure–A to the Show Cause Notice, imported by M/s. ASR Multimetals (P) Ltd., Survey Nos.394,398,399 & 400, Village: Chhadwada, NH-8A, Near RTO Checkpost, Taluka: Bhachau, Kutch (Gujarat)– 370 140, are held liable for confiscation, under the provisions of Section 111(m) and Section 111(d) of the Customs Act, 1962. However, since the impugned goods are not available for confiscation, I refrain from imposing any redemption fine in lieu of confiscation.

(c) I demand and order for recovery of the Differential Customs Duty amounting to Rs.1,08,08,551/- (Rupees One Crore eight Lakhs eight

thousand five hundred Fifty one only), on the 25000 MTs, of Imported impugned Coal, as detailed in Annexure-a to the Show Cause Notice, from M/s. ASR Multimetals (P) Ltd., Survey Nos.394,398,399 & 400, Village: Chhadwada, NH-8A, Near RTO Checkpost, Taluka: Bhachau, Kutch (Gujarat) – 370 140, under Section 28(1) read with Section 28(8) of the Customs Act, 1962.

(d) I order for recovery of Interest involved on the differential Customs Duty of Rs.1,08,08,551/- mentioned at (c) above, from M/s. ASR Multimetals (P) Ltd., Survey Nos.394,398,399 & 400, Village: Chhadwada, NH-8A, Near RTO Checkpost, Taluka: Bhachau, Kutch (Gujarat) – 370 140, under Sections 28AA of the Customs Act, 1962.

(e) I impose a penalty of Rs.20,00,000/- (Rupees Twenty lakhs Only) on M/s. ASR Multimetals (P) Ltd., Survey Nos.394,398,399 & 400, Village: Chhadwada, NH-8A, Near RTO Checkpost, Taluka: Bhachau, Kutch (Gujarat) – 370 140, under section 112 (a) of the Customs Act, 1962.

(P V R REDDY)
COMMISSIONER

To,
M/s. ASR Multimetals (P) Ltd.,
Survey Nos.394,398,399 & 400,
Village: Chhadwada, NH-8A,
Near RTO Checkpost, Taluka: Bhachau,
Kutch (Gujarat) – 370 140

Copy to:

1) The Chief Commissioner of Customs, Gujarat Zone, Ahmedabad, alongwith a copy of the Show Cause Notice.
2) The Additional Director General, Directorate of Revenue Intelligence, AZU, Ahmedabad, for information.
3) The Assistant Commissioner (Recovery Cell) Customs House, Kandla.
4) The Assistant Commissioner (Gr.I) Customs House, Kandla.
5) Guard File.