



**सीमा शुल्क आयुक्त का कार्यालय,
नवीन सीमा शुल्क भवन, नया कांडला ।
OFFICE OF THE COMMISSIONER OF CUSTOMS,
NEW CUSTOM HOUSE, NEW KANDLA-370 210 (GUJARAT)
Phone No: 02836-271468/469, Fax No. : 02836-271467.**

A	फाइल संख्या/ File No.	S/10-144/ADJ/ADC/Electrotherm/2016-17
B	आदेश में मूल सं./ Order-in-Original No.	KDL/ADC/UBR/02/2017-18
C	पारित कर्ता/ Passed by	SH. U.B. RAKHE, ADDITIONAL COMMISSIONER
D	आदेश की दिनांक/Date of order	09/05/2017
E	जारी करने की दिनांक/Date of issue	11/05/2017
F	एस.सी.एन. सं. एवं दिनांक /SCN No. & Date	DRI/AZU/INV-18/2009, Dated 19/08/2009
G	नोटीसी पार्टी /Noticee/Party	M/s Electrotherm (India) Limited, Survey No 323, Village: Samkhiyali, Nr. Toll Tax Booth, Bhachau, Kutch, Gujarat and others.

1. यह अपील आदेश संबन्धित को नि शुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली के नियम 19823 के साथ पठित सीमा शुल्क अधिनियम 12 की धारा 19628 A)1 - 3के अंतर्गत प्रपत्र सीए (में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A (1) (a) of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

“सीमा शुल्क आयुक्त (अपील), कांडला

वीं मंजिल 7, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड

अहमदाबाद 380 009”

**“THE COMMISSIONER OF CUSTOMS (APPEALS), KANDLA
7th Floor, Mridul Tower, Behind Times of India, Ashram Road
Ahmedabad - 380 009.”**

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए ।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 2/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 2/- under Court Fee Act it must accompanied by -

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं.-6 में निर्धारित 2/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए

।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 2/- (Rupees Two only) as prescribed under Schedule - I, Item 6 of the Court Fees Act, 1870.

5. अपील जापान के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये ।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमा शुल्क नियम (अपील), और सीमा शुल्क अधिनियम 1982, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए ।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क 7.5% भुगतान करना होगा।

7. An appeal against this order shall lie before the Appellate Authority on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE

An intelligence was received by the Directorate of Revenue Intelligence (DRI), Ahmedabad that M/s. Electrotherm (India) Limited, Survey No 323, Village: Samkhiyali, Nr. Toll Tax Booth, Bhachau, Kutch, Gujarat, (hereinafter referred to as "M/s. EIL" for the sake of brevity), holding IEC No. 0889000093, is engaged in the import of various items under concessional rate of duty availing the benefit of EPCG scheme (Notfn.No-97/2004 dated 17.09.04) as amended by Notfn.No.72/2007-Cus dated 21.05.2007.

1.2 It was also gathered that M/s. EIL had imported "**Magnesia Calcium Bricks, Magnesia Chrome Bricks and Back Filling Material**" falling under CTH-38160000 from China vide bill of entry no 997253 dated 20-11-2007 and "**Refractory Ball Alumina**" vide Bill of Entry No. 223612 dated 02-01-2008 and cleared them under concessional rate of duty availing the benefit of EPCG scheme.

1.3 On perusal of the EPCG Licence utilized in the clearance of goods under the above mentioned two Bills of Entry it was observed that the imported items under both the bills of entries were debited from the same EPCG Licence No. 0830002236 dated 01.11. 2007

1.4 On analyzing the EPCG-Notification No. 97/2004-Cus dated 17.09.2004 read-with amending Notification No 72/2007-Cus dated 21.05.2007 it was observed, that by virtue of the amending notification No 72/2007-Cus dated 21.05.2007, the letters and words "CONSUMABLES" had been deleted from the scope of exemption under EPCG scheme with effect from 21.05.2007. As a result of the said amendment, items imported and cleared under concessional rate of duty-EPCG Post-21.05.2007 and used as "CONSUMABLES" would not be eligible for benefit of exemption under EPCG scheme.

1.5 On the basis of the above intelligence and facts gathered, summons were issued to the Vice President, M/s EIL, wherein he was also asked to produce the relevant records.

1.6 Statements of Shri Kishore Mukati, Senior Vice President of M/s EIL were recorded under Section 108 of the Customs Act, 1962 on 24.11.2008 and 26.11.2008 wherein he inter alia stated that :-

- He was working as Senior Vice President (Projects) with M/s EIL since 01.04.2008.As a part of his duty he looked after project related activities of the steel plant of their company located at Samkhiyali, Dist. Kutch, Gujarat.
- He produced copy of bill of entry no 997253 dated 20th November, 2007 filed by M/s EIL seeking clearance of Magnesia Chrome Bricks, Magnesia Calcium

Bricks, back filling material etc under EPCG license No. 0830002236 dated 1st November, 2007. The duty paid under the said bill of entry was Rs.1,09,387/-. He also produced a copy of the EPCG License No.0830002236 dated 1st November, 2007 under the category “**EPCG 5% FOB basis**”. In the said license the duty saved is shown as Rs.13,06,363/-.

- Magnesia Chrome Bricks, Magnesia Calcium Bricks were imported by their company for the purpose of lining the new metal refining converter used for steel refining process for steel melting plant. M/s EIL had only one steel plant at Samkhiyali Village, Dist. Kutchh, Gujarat. The said steel plant was started in the year-2005 and Metal Refining Converter was started in the year-2007. The Steel Melting plant consisted of 4 induction furnaces and 2 Metal Refining Converters.

- He produced a summary sheet showing the details of different items imported at concessional rate of customs duty under EPCG Scheme.

- Their company had imported 93.882 MTS of Magnesia Calcium Brick, Magnesia Chrome Brick & Back Filling material at concessional rate of duty under EPCG licence Number 830002236 dated 01.11.2007. The above mentioned imported items were ordered for lining the metal refining converter (MRK)/ Argon Oxygen De-carbonization (AOD) Converter Project.

- Initially, they had procured similar items-Magnesia Calcium Brick, Magnesia Chrome Brick & Back Filling material from indigenous suppliers and the same were used for initial lining of the metal refining converter (MRK)/ Argon Oxygen De-carbonization (AOD) Converter Project. Since the Magnesia Calcium Brick, Magnesia Chrome Brick procured from the domestic market did not match with the requirement of the plant, they had subsequently used the imported Magnesia Calcium Brick, Magnesia Chrome Brick imported under BE No. 997253 dated 20.11.2007 by availing the benefit of concessional rate of duty under EPCG scheme under Notification number 97/ 2004 dated 17.09.2004.

- During the course of his statement he was informed that only ‘**refractories for initial lining**’ are eligible for import as capital goods under concessional rate of duty under EPCG scheme. The refractories/ refractory bricks for subsequent use are deemed as **consumables** and are not entitled for import at concessional rate of duty under EPCG scheme in terms of Notification No. 97/2004 dated 17.09.2004 as amended by Notification No. 72/2007 dated 21.05.2007. Since the import of Magnesia Calcium Brick, Magnesia Chrome Brick & Back Filling material as stated above was for replacement of the original bricks procured indigenously, they were not entitled for benefit of concessional rate of duty under EPCG scheme. Therefore, the duty forgone/ debited in the above EPCG licence of Rs.6,12,599/- was required to be paid by

their company. Shri. Mukati admitted their mistake and agreed to deposit the duty saved under the imports.

- They had imported three consignments of other consumables, i.e., Refractory Ball Alumina at concessional rate of duty under EPCG Scheme at Kandla port. The details of the two consignments were as per the summary (sheet) produced by him, and the third consignment was imported under Bill of entry No 189042 dated 27.04.2007, EPCG licence No. 0830001915 dated 26.02.2007, item was Blast Furnace Stove. It was Commissioned in September 2007. The Supplier was: Pingxiang Xinto Chemical Packing Co. Ltd., China, Order qty: 100 MT.
- He produced the copy of all the three Bills of entry and also stated that the total quantity imported under three Bills of entry was 350 MT out of which 340 MT was imported at concessional rate of duty under EPCG scheme prevailing at the time, while 10 MT was imported on payment of customs duty, at normal rate without availing any concessional rate of duty benefit.
- The total requirement of Refractory Ball Alumina for 3 numbers of Blast Furnace Stove was 210 MT (approx) against which they had imported 340 MT which resulted in the excess import of 130 MT than that required for the plant. He would check up the status from their plant site and furnish the correct details. If the quantity imported was found in excess of the required quantity they would voluntarily pay the duty forgone/ duty debited in the licences for the said excess quantity of Refractory Ball Alumina.
- He produced the installation certificates issued by the jurisdictional Central excise authority in respect of installation of 93.882 MT of Magnesia Chrome Bricks & Magnesia Calcium Bricks on 16.02.2008, imported under BE No. 997253 dated 20.11.2007 under EPCG licence No. 0830002236 dated 01.11.2007. The installation certificates in respect of import of Refractory Ball Alumina were not available with them as they had applied for the same to Central excise authority and same would be submitted on receipt of the same. He would submit the copy of application filed by their company with the DGFT, Ahmedabad for EPCG licenses in respect of the above stated consumables within two to three days.
- All the work relating to EPCG and other licences as well as decision relating to import at concessional rate of duty/ nil rate of duty under various export incentive schemes were taken from their Commercial/ purchase section at Ahmedabad.

1.7 M/s EIL was requested vide letter No. DRI/AZU/INV-18/2009/512 dated 22nd May, 2009 to furnish the copies of Application tendered before DGFT, for procuring the EPCG licences, along with the details and documents annexed

with the said application. It was also requested that the concerned person dealing with the same may also be deputed for clarification of details.

1.8 Shri Nilesh D Mehta, Assistant Manager (in-charge of DGFT matters), Finance of M/s EIL appeared before DRI alongwith the copies of application for EPCG licences. He was authorized by the Director of M/s EIL for replying to the queries and stated that the replies given by Shri Mehta would be binding on the directors and the company also. Accordingly, a statement of Shri Nilesh D Mehta was recorded on 11th June, 2009, wherein he *inter alia* tendered that:-

- He joined the company as an accounts officer and was presently working as Asstt Manager (Finance) in 2008. As an Asstt Manager (Finance), he was looking after all the matters relating to DGFT, which included applying for all types of licenses, getting them issued from the DGFT & monitoring them till the closure of the licenses. He reported to the General Manager (Finance) Shri G.C. Goel and further to their Director Shri Shailesh Bhandari.
- He was shown the statement of Shri Kishore Mukati, Vice-President of EIL, dated 24th November, 2008 & 26th November, 2008 before DRI, Ahmedabad. He perused the facts stated in the statements and agreed with it.
- They had imported the following items under the said EPCG license Number 0830002236 dated 0^{1st} November, 2007 :-
 - (1) CNC Roll Processing machine.
 - (2) Refractory ball Alumina.
 - (3) Magnesita chrome bricks, Magnesita calcium bricks, Back filling material, Mortar.
- Out of the aforesaid items, CNC Roll Processing machine was capital goods and was used for drawing, embossing, and cutting of TMT bars. All the other items, i.e., Refractory ball Alumina, Magnesita chrome bricks, Magnesita calcium bricks, Back filling material, Mortar, etc., were used as 'CONSUMABLES' and rightly fall under the category of "CONSUMABLES". The same were imported by them vide Bill of Entry No. 997253 dated 20th November, 2007 & Bill of Entry No 223612 dated 2nd January, 2008, availing the benefit of concessional rate of duty under EPCG scheme. However, in the import documents, i.e., import invoice and bill of entry they had declared only the name of item, such as, Magnesita Chrome Bricks, Magnesita Calcium Bricks, Refractory Ball Alumina, etc. **No mention of whether the same falls under capital goods/ spares/ consumables, etc., was made in the bill of entry.**
- In the application for obtaining EPCG license, they had declared all the items mentioned therein as 'Capital goods' and no specific category like spares/ consumables etc., was mentioned. He admitted that at the time of preparing

the application for obtaining EPCG Licence, they should have declared the specific category of Capital goods under which the said items fall, but they had not declared accordingly.

- They had imported Refractory Ball Alumina 65% under the two EPCG license Numbers 0830001914 & 0830001915 both dated 26th February, 2007.
- Against EPCG License No 0830001914 dated 26th February, 2007, they imported refractory ball alumina vide Bill of Entry No 189870 dated 4th May, 2007 under the EPCG scheme by declaring the description of the item as only item name, i.e., Refractory Ball Alumina 65%. No mention of whether the same falls under capital goods/spares/consumables, etc., was made in the bill of entry.
- Against EPCG License No. 0830001915 dated 26th February, 2007, they had imported refractory ball alumina cleared vide Bill of Entry No. 189042 dated 27th April, 2007 availing the benefit of concessional rate of duty under EPCG scheme by declaring only item name, i.e., Refractory Ball Alumina 65% in the description of goods. No mention of whether the same falls under capital goods/spares/consumables, etc., was made in the bill of entry.
- Refractory ball Alumina fall under the category of “**consumables**”. In the application for obtaining the said license, they had declared the same as ‘Spares’ and obtained the license from DGFT. He agreed that the said item, i.e., Refractory ball Alumina was a consumable and not a spare as declared by them in the application filed before the DGFT. He produced the copies of the application filed by them before DGFT for obtaining licence numbers 0830002236 dated 01st November, 2007, 0830001915 & 0830001915 both dated 26th February, 2007.
- Prior to the import of any item by their company, he was consulted for the opinion as to under what scheme the said item can be imported. In case of import against the aforesaid three licenses, he had directed the projects department that the said items can be imported under the EPCG scheme. He accepted that the import of such items is not permissible in terms of the prevalent customs notifications and admitted that they had committed the offence of mis-declaration of description in the import of consumables. He stated his willingness to pay the differential Customs duty leviable if any, on the imports of non-permissible items under the abovementioned three EPCG licences.

1.9

RELEVANT LEGAL PROVISIONS

A. The Foreign Trade (Development and Regulation) Act, 1992

Section 11: Contravention of provision of this Act, rules, orders and exports and import policy: -

(1) 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.

B. Foreign Trade (Regulation) Rules, 1993

(i) 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 (52 of 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.

(ii). RULE 14: Prohibition regarding making, signing of any declaration, statement or documents: -

No person shall make, sign or use or cause to be made, signed or used any declaration, statement or document for the purposes of obtaining a license or importing any goods knowing or having reason to believe that such declaration, statement or document is false in any material particular.

C. 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 28 - Notice for payment of duties, interest etc. - (1) when any duty has not been levied or has been short levied or erroneously refunded, or when any interest payable has not been paid, part paid or erroneously refunded, the proper officer may - (a) in the case of any import made by an individual for his personal use or by government or by any educational, research or charitable institution or hospital within one year; (b) in any other case within six months from the relevant date, serve notice on the person chargeable with the duty or interest which has not been levied or charged or which has been so short levied or part 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:

Provided that where any duty has not been levied or has been short-levied or the interest has not been charged or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts by the importer or the exporter or the agent or employee of the importer or exporter, the provisions of this sub-section shall have effect as if for the words "one year" and "six months", the words "five years" were substituted.

(3) For the purposes of sub section (1), the expression "relevant date" means

- a) in a case where duty is not levied, or interest is not charged, the date on which the proper office makes an order for the clearance of the goods;
- b) in a case where duty is provisionally assessed under Section 18, a date of adjustment of duty after the final assessment thereof;
- c) in a case where duty or interest has been erroneously refunded, the date of refund;
- d) in any other case, the date of payment of duty or interest.

(iii) Section 28AB(1): - where any duty has not been levied or has been short levied or erroneously refunded by reason of collusion or any willful misstatement or suppression of facts, the person who is liable to pay the duty as determined under sub-section (2) of Section 28, shall, in addition to the duty, be liable to pay interest at such rate not below ten per cent and not exceeding thirty per cent per annum, as is for the time being fixed by the Board, from the first day of the month, succeeding the month in which the duty ought to have been paid under this Act, or from the date of such erroneous refunds, as the case may be, but for provisions contained in sub-section(2) of Section 28, till the date of payment of such duty.

(iv) Section 46(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.

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

Section 111(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;

Section 111(m) :- any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of Section 54.

(vi) 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, harboring, keeping, concealing, selling or purchasing or in any other manner dealing with the goods which he knows or has reason to believe are liable to confiscation under Section 111;

is liable to penalty as envisaged in sub clause (i) to (v) of the said Section.

(vii) 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 (2) of Section 28 shall also be liable to pay a penalty equal to the duty or interest so determined.

1.10 DISCUSSION OF EVIDENCES:

From the available evidences discussed in the foregoing and the relevant legal provisions it transpires that:

1.10.1 The Notification No 97/2004-Cus dated 17th September, 2004, envisages capital goods to be imported under concessional rate of duty under certain conditions as explained in the said Notification. Sr.No.5 incorporated in the Table of the said Notification permits **“Spare parts including consumables for the existing plant and machinery of the licence holder”**.

1.10.2 This basic notification was amended by Notification No.72/2007-Cus, dated 21.05.2007 issued by the CBEC from F. No: 605/05/2007-DBK and reads as under:

G.S.R 364(E) - In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby directs that each of the notifications of the Government of India in the Ministry of Finance (Department of Revenue), specified in column (2) of the Table below, shall be amended or further amended, as the case may be, in the manner specified in the corresponding entry in column (3) of the said Table, namely :-

Table

S. No. (1)	Notification No. and date (2)	Amendment (3)
1.	92/2004-Customs, dated the 10 th September,	...
2.	97/2004-Customs, dated the 17 th September, 2004. [G.S.R 620 (E) dated the 17 th September, 2004].	In the said notification, - (a) -----

		(b) ----- (c) ----- (d) in S.No.5 of the table, the words "including consumables" shall be omitted; (e) ----- (f) -----
3.	41/2005-Customs,
4.	90/2006-Customs,
5.	91/2006-Customs,

1.10.3 Vide Sr.No. 2(d) of the table of the above Notification, the basic notification was amended to the effect that "Consumables" would not be allowed to be imported under EPCG Scheme, under concessional rate of duty. Accordingly, w.e.f 21st May, 2007 'Consumables' were not allowed to be imported under concessional rate of duty under EPCG Scheme.

1.10.4 **Capital goods** has been defined as per para 9.12 of the FTP, which reads as below:

*"Capital Goods" means any plant, machinery, equipment or accessories required for manufacture or production, either directly or indirectly, of goods or for rendering services, including those required for replacement, modernisation, technological upgradation or expansion. It also includes packaging machinery and equipment, **refractories for initial lining**, refrigeration equipment, power generating sets, machine tools, catalysts for initial charge, equipment and instruments for testing, research and development, quality and pollution control. Capital goods may be for use in manufacturing, mining, agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture and viticulture as well as for use in services sector."*

The above definition clearly shows that only "**refractories for initial lining**" are included within the scope of Capital Goods under the FTP.

1.10.5 **Consumables** are defined as per Para-9.15 of the Foreign Trade Policy which reads as –

"Consumables" means any item, which participates in or is required for a manufacturing process, but does not necessarily form part of end-product. Items, which are substantially or totally consumed during a manufacturing process, will be deemed to be consumables".

1.11 M/s EIL was issued licence No.830002236 dated 1st November, 2007 by the Jt DGFT, Ahmedabad under the EPCG scheme, for import of Magnesia Chrome Bricks, Magnesia Calcium Bricks, Back filling material, Mortar, Refractory ball etc, based on the application filed by M/s EIL dated 31st October, 2007. Scrutiny of the application filed by M/s EIL for obtaining the EPCG licences, revealed that in the ANF-5A form at Sr. No 15A the importer has declared **“capital goods”** in the column meant for **“Nature of Capital goods sought to be imported”**. Thus it appears that the aforesaid items for which license was granted under the EPCG scheme, should fall within the definition of Capital goods. The aforesaid items mentioned in the licence are refractories or are used in connection with refractories.

1.12 Shri Kishore Mukati, the then Sr. Vice President of M/s EIL, vide his statements dated 24.11.2008 and 26.11.2008, confirmed that the items imported by M/s EIL vide Bill of Entry No 997253 dated 20th November, 2007 were utilised in substitution for the refractories purchased indigenously by M/s EIL. As per the definition - **“Consumables” means any item which participates in or is required for a manufacturing process, but does not necessarily form part of the end product. Items which are substantially or totally consumed during a manufacturing process will be deemed to be consumable**”. The goods imported by M/s EIL vide Bill of Entry no 997252 dated 20th November, 2007 & 223612 dated 2nd January, 2008 i.e., Magnesium Alumina Bricks and Refractory Ball Alumina are actually refractory materials required for a manufacturing process, which do not form part of the end product, but are substantially consumed during the process and have to be replaced after a particular span of time.

1.12.1 The Senior Vice President of M/s EIL, submitted a ‘SUMMARY’ dated 26.11.2008 alongwith his statement dated 26.11.2008. In the said ‘Summary’ he explained that the “Magnesia Calcium Brick, Magnesia Chrome Brick & Back Filling Material” imported by M/s EIL under Bill of Entry No.997253, dated 20.11.2007 availing the benefit of EPCG Scheme under Licence No.830002236 dated 01.11.2007 was utilized for their AOD Convertor Project in Dec-2007 **as replacement** to the similar goods procured from domestic suppliers. This clearly shows that Magnesia Calcium Brick, Magnesia Chrome Brick & Back Filling Material imported by M/s. EIL and cleared under Bill of Entry No.997253, dated 20.11.2007 availing the benefit of EPCG Scheme under Licence No.830002236, dated 01.11.2007 was actually utilized as replacement and not for initial lining of the reactors. Therefore in terms of the definition of Capital Goods discussed in Para- 4.5 above, it is evident that the imported Magnesia Calcium Brick, Magnesia Chrome Brick & Back Filling Material imported by M/s EIL and cleared under Bill of Entry No.997253, dated 20.11.2007 availing

the benefit of EPCG Scheme under Licence No. 830002236, dated 01.11.2007 and used for subsequent purpose would qualify as "consumable" and not "Capital Goods" as declared by M/s EIL in their application for obtaining the relevant EPCG licence.

1.13 Further scrutiny of the Bills of Entry number 997253 dated 20th November, 2007 & 223612 dated 2nd January, 2008 reveals that M/s EIL has only declared the 'Commercial Name' of the item intended to be imported and not declared whether the said items are refractories for initial lining or for subsequent use and thereby have suppressed the factual details from Customs department with an intention to avail concessional rate of duty under EPCG Scheme and evade payment of full customs duty leviable thereon by contravening the provisions of the FTP.

1.14 This fact of mis-declaration of description was further corroborated by Shri Nilesh D. Mehta, Assistant Manager, of M/s EIL in his statement dated 11th June, 2009. Shri Mehta confirmed that the items, i.e., Refractory ball Alumina, Magnesia chrome bricks, Magnesia calcium bricks, back filling material, Mortar etc fall under the category of "consumables" and admitted that they have declared only the name of the item in the import document and did not mention whether the said item falls under capital goods/spares/consumables, etc., in the bill of entry or the import documents. He also further accepted that they had declared all the items as capital goods for obtaining the license, and no specific category was mentioned therein either.

1.14.1 He also admitted that as an importer it is their duty to declare the specific category of capital goods under which the import items fall, however, they have not declared the same. He accepted the fact that import of such items is not permissible in terms of Customs Notification No. 97/2004-Cus dated 17.09.2004 read-with amending Notification No 72/2007-Cus dated 21.05.2007 and they have committed the offence of mis-declaration of description in the import of consumables imported under Bill of Entry number 997253 dated 20.11.2007 & 223612; dated 02.01.2008 and as detailed in Annexure-A to this show cause notice.

1.15 M/s EIL has made a voluntary payment of Rs.6,12,610/-, vide Challan dated 27th November, 2009 as a deposit towards their duty liability in respect of wrong availment of benefit of EPCG Scheme as per Customs Notification No. 97/2004-Cus dated 17.09.2004, and amending Notification No 72/2007-Cus dated 21.05.2007.

1.16 From the material evidences available on record and the facts narrated in the foregoing paras, it appears that M/s EIL had imported goods- "Magnesia Calcium Brick, Magnesia Chrome Brick & Back Filling Material and Ball Alumina-65%" vide Bill of Entry number 997253 dated 20th November, 2007 & 223612 dated 2nd January, 2008. These items actually qualify as consumables, however, M/s. EIL have mis-declared them as 'capital goods' with an intent to qualify the imports under EPCG scheme at concessional rate of duty and evade full payment of Customs duty leviable thereon.

The mis-declaration is evident from the following:-

- In the application filed by M/s EIL before the DGFT, i.e., in the ANF 5A form at Sr. No. 15A they have declared "**capital goods**" in the column meant for "**Nature of Capital goods sought to be imported**" whereas the intended goods fall under the category of "consumables" as discussed above.
- Shri Kishore Mukati in his statement dated 26th November, 2008 admitted that the said items were used as replacements for similar items purchased indigenously by M/s. EIL. Hence the goods, i.e., refractories were not used for initial lining and hence do not fall under the definition of capital goods.
- In the aforesaid two Bills of Entry, M/s. EIL had declared only the Commercial Name of the item and not declared whether the said items are refractories for initial lining or for subsequent use and thereby have suppressed the relevant facts from the department with an intention to avail concessional rate of duty under EPCG Scheme and evade payment of full customs duty leviable thereon.
- Shri Nilesh D. Mehta, Assistant Manager, of M/s. EIL in his statement dated 11th June, 2009 admitted that the items imported under the aforesaid Bills of Entry (as detailed in Annexure "A" to the Show Cause Notice), fall under the category of "consumables" and in the import document they have declared only the Specific name of the item and did not mention whether the same falls under capital goods/ spares/ consumables etc in the relevant columns of the import bill of entry. He also accepted that import of such items is not permissible in terms of Customs Notification No. 97/2004-Cus dated 17.09.2004 as amended by Notification No 72/2007-Cus dated 21.05.2007.

1.17 Therefore, it appeared that M/s. EIL had willfully resorted to suppression of the factual details in their application for obtaining EPCG Licence, for the items intended to be imported by them under Notification No 97/2004-Cus dated 17th September, 2009 as amended, by declaring the items as Capital Goods and not Consumables. M/s. EIL had deliberately mis-declared the category under which the said goods fall, and have obtained EPCG license number 820002236 dated 1st November, 2008 under EPCG scheme

from DGFT by wrongly declaring the intended items as 'Capital goods' whereas the same actually fall under the category of 'Consumables' which have been excluded from the scope of EPCG Scheme by virtue of Notification No.72/2007-Cus dated 21.05.2007 and are not allowed to be imported under Notification No 97/2004-Cus dated 17th September, 2009.

1.17.1 It also appeared that, M/s. EIL had resorted to willful mis-statement and suppression of factual details by declaring only the commercial name of the item in the import Bills of Entry, invoice filed by them under section 46 of the Customs Act, 1962 and not declared whether the same are classifiable under what category, i.e., whether they are capital goods/ spares/ consumables etc., at the time of filing of the respective Bills of Entry in contravention of various provisions of the Customs Act, 1962 and the Rules framed there under as discussed above, with an intent to evade payment of Customs duty amounting to Rs 9,27,955/- (as detailed in Annexure "A" to the Show Cause Notice).

1.17.2 In view of the above, the provisions of proviso to section 28(1) of the Customs Act, 1962, for invoking the extended period for demand of duty is applicable in the instant case. The differential amount of Customs Duty altogether amounting to Rs.9,27,955/- as indicated in Annexure-A to this show cause notice is liable to be recovered from them under the under the proviso to section 28(1) of the Customs Act,1962 along with applicable interest under section 28 AB *ibid*. Further the amount of Rs.6,12,610/- voluntarily deposited by them towards differential customs duty on the said goods is liable to be appropriated towards the duty/fine/interest/penalty leviable thereon.

1.17.3 In view of the facts and evidences discussed in the foregoing and material evidences available, it appears that the importers M/s. EIL have contravened the provisions of rule 11 of the Foreign Trade (Regulation) Rules, 1993, inasmuch as they have failed to declare the true description of the imported items while submitting the declaration for filing the bill of entry by not declaring the category under EPCG in the respective Bills of Entry, and suppressing the fact that the said goods are consumables.

1.17.4 In view of the facts and evidences discussed in the foregoing and material evidences available, it appears that M/s EIL have contravened the provisions of rule 14 of the Foreign Trade (Regulation) Rules, 1993, inasmuch as they have intentionally mis-declared the description and material facts of the said goods, while obtaining the EPCG license and have failed to declare the true description of the imported items while submitting the application for obtaining an EPCG licence from the DGFT.

1.17.5 It appears that above act of mis-declaration of the imported goods on the part of M/s. EIL was done with an intention to evade payment of appropriate customs duty leviable thereon. Therefore the imported goods (as detailed in Annexure- A to this SCN), fall under the ambit of smuggled goods within the meaning of section 2(39) of the Customs Act, 1962 and hence appear liable for confiscation under the provisions of section 111(d) & 111(m) of the Customs Act, 1962. As the goods are not physically available for confiscation, fine in lieu of the confiscation is liable to be imposed upon them under section 125 of the Customs Act, 1962.

1.17.6 The aforesaid acts of willful misstatement and suppression of facts by M/s. EIL have led to a short levy of customs duty of Rs.9,27,955/- (as detailed in Annexure-A to this show cause notice), thus rendering them liable for penalty under section 114A of the Customs Act,1962 inasmuch as the duty of Rs.9,27,955/- was short levied by reason of willful misstatement and suppression of facts as narrated in the foregoing paras.

1.17.7 The above act of mis-declaration of the imported goods on part of M/s. EIL resulted into short levy of customs duty amounting to Rs.9,27,955/-, and has rendered the goods liable for confiscation under section-111 (d) and (m) of the Customs Act,1962. These acts of omission and commission on the part of M/s. EIL have rendered themselves liable for penalty under the provisions of section 112(a) of the Customs Act, 1962.

1.18 In view of the discussions made in the foregoing, it appears that Shri Shailesh Bhandari, Director of M/s. EIL, had knowledge about the mis-declaration committed by M/s. EIL in obtaining the EPCG license and suppression of facts in the bills of entry, in respect of the said goods at the time of their importation and had knowingly and consciously failed to declare the correct category of the items before the DGFT at the time of obtaining the license and also before the Customs authorities at the time of import with the sole intention to import the same under the EPCG Scheme under concessional rate of duty and to evade payment of full rate duty applicable on such goods. This fact has been corroborated by the statement of Shri Nilesh Mehta, who had been authorized by Shri Bhandari to the extent that his statement would be binding on Shri Bhandari. Shri Nilesh Mehta in his statement has accepted that the said goods were 'consumables' and they were mis-declared as capital goods at the time of application for obtaining the said EPCG license and have suppressed the actual description of the import items while filing of bill of entry at the time of importation of the said goods. Thus, he had knowingly and willfully imported the goods, i.e., consumables by mis-declaring the same as capital goods, as discussed in the foregoing paras to evade customs duty, and

had indulged in the activities relating to mis-declaration and suppression in the import of M/s. EIL which resulted in evasion of Customs duty. All the aforesaid acts of omission and commission have rendered the imported goods liable for confiscation under section 111(d) & 111(m) of the Customs Act, 1962. As, he had consciously dealt with the said goods which he knew or had reasons to believe, were liable to confiscation under the Customs Act, 1962, Shri Shailesh Bhandari has rendered himself liable for penalty under section 112(a) of the Customs Act, 1962.

DEMAND FOR NAHVA SHEVA PORT

1.19 M/s Electrotherm (India) Ltd, Survey No 323, Village: Samkhiyali, Nr. Toll Tax Booth, Bhachau, Kutch, Gujarat was called upon to Show cause vide Show Cause Notice No. F. No. DRI/AZU/INV-18/2009 dated 19th August, 2009, to the Joint Commissioner of Customs (Export), Jawaharlal Nehru Custom House, Nhava Sheva, Post: Uran, Dist : Raigad, Maharashtra as to why :

(i) The differential Customs duty totally amounting to **Rs.6,15,555/-** (as detailed in the Annexure- A to this notice), short paid by them, should not be demanded and recovered from them under proviso to section 28 (1) of the Customs Act, 1962;

(ii) The imported goods totally valued at **Rs.21,24,016/-** (details as per Annexure A to the SCN) should not be confiscated under section 111(d) & (m) of the Customs Act, 1962. However, as the goods are not available for confiscation, why fine in lieu of confiscation should not be imposed upon them under section 125 of the Customs Act, 1962;

(iii) Interest at appropriate rate should not be recovered from them on the short paid Customs duty as discussed in the foregoing and at Sr. No. (i) above under Section 28 AB of the Customs Act, 1962;

(iv) Penalty should not be imposed on them under section 114A of the Customs Act, 1962.

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

(vi) The amount of **Rs.6,12,610/-** (rupees six lakhs twelve thousand six hundred and ten only) already paid by them should not be adjusted/ appropriated against the duty liability discussed in the foregoing paras and at Sr.No.(i) above.

DEMAND FOR KANDLA PORT

1.20 M/s Electrotherm (India) Ltd, Survey No 323, Village: Samkhiyali, Nr. Toll Tax Booth, Bhachau, Kutch, Gujarat was called upon to Show cause vide Show Cause Notice No. F. No. DRI/AZU/INV-18/2009 dated 19th August, 2009, to the Joint Commissioner (Import), Custom House, Near Balaji Temple, Kandla, Kachchh, Gujarat as to why:

(i) The differential Customs duty totally amounting to **Rs.3,12,401/-** (as detailed in the Annexure- A to this notice), short paid by them, should not be demanded and recovered from them under proviso to section 28 (1) of the Customs Act, 1962;

(ii) The imported goods totally valued at **Rs.10,77,960/-** (details as per Annexure A to the SCN) should not be confiscated under section 111(d) & (m) of the Customs Act, 1962. However, as the goods are not available for confiscation, why fine in lieu of confiscation should not be imposed upon them under Section 125 of the Customs Act, 1962;

(iii) Interest at appropriate rate should not be recovered from them on the short paid Customs duty as discussed in the foregoing and at Sr. No. (i) above under section 28 AB of the Customs Act, 1962;

(iv) Penalty should not be imposed on them under section 114A of the Customs Act, 1962.

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

1.21 **Shri Shailesh Bhandari** was also called upon to Show cause to the Joint Commissioner of Customs (Export), Jawaharlal Nehru Custom House, Nhava Sheva, Post: Uran, Dist: Raigad, Maharashtra & Joint Commissioner of Customs (Import), Custom House, Near Balaji Temple, Kandla, Kachchh, Gujarat asking him as to why penalty should not be imposed upon him in terms of section 112(a) of the Customs Act, 1962.

The Central Board of Excise and Customs, vide **Notification No.82/2016 dated 07.06.2016** has appointed the undersigned as common adjudicating authority to exercise powers and discharge duties conferred or imposed on the undersigned, therefore, the case in hand has been taken up for adjudication purpose.

WRITTEN SUBMISSION AND PERSONAL HEARING:

M/s. EIL, vide letter dated 01.08.2016 and 07.03.2017, submitted written submission wherein they have, *inter alia*, submitted that the show cause notice, issued by Additional Director, DRI, Ahmedabad, seeks to demand

duty u/s 28 of Customs Act, is not a proper authority to assess/re-assess the Bill of Entry and to issue consequent show cause notice. Section 28(11) talks of the officers who are competent to deal with the questions of the powers of assessment under section 17, Explanation 2 to section 28 did not. Section 28(11) talks of persons appointed as Customs Officers even prior to 6th July 2011.

2.1 Section 2(34) specifically talks of an officer of Customs being assigned functions by the CBE & C or by the Commissioner of Customs. If all officers of the Customs appointed as such prior to 6th July 2011 are deemed to be 'proper officers', then the administrative chaos that is likely to result, as was pointed out in the *Sayed Ali* case.

2.1.1 To validate the legislature and to remove the defects in legislature, M/s. EIL has relied upon following case laws:

- (a) The Assistant Commissioner of Urban Land Tax v. The Buckingham and Carnatic Co. Ltd. - 1969 (2) SCC 55;
- (b) Krishnamurthi and Co. v. State of Madras - (1973) 1 SCC 75;
- (c) Vijay Mills Company Limited v. State of Gujarat - (1993) 1 SCC 345;
- (d) Bakhtawar Trust v. M.D. Narayan - (2003) 5 SCC 298;
- (e) Virender Singh Hooda v. State of Haryana - (2004) 12 SCC 588;
- (f) The Commissioner of Income Tax v. Hindustan Bulk Carriers - (2003) 3 SCC 57;
- (g) State of Tamil Nadu v. Thirumagal Mills Ltd. - (1972) 1 SCC 176;

2.2 M/s. EIL further submitted that section 28(11) states that all persons appointed as Customs Officers prior to 6th July 2011 will be deemed to always have had the power of assessment under section 17 and shall be deemed to always have been 'proper officers'. Further, this is notwithstanding anything to the contrary in any judgment, decree or order of any Court of law. While the said provision is intended to overcome the defect pointed out in the decision of the Supreme Court in the *Sayed Ali* case, Section 28(11) of the Act does not state that it would operate notwithstanding anything contained either in the Act or any other Act for the time being in force. In other words, the legislature has not made it explicit that Section 28(11) would prevail notwithstanding anything contained in Explanation 2 to Section 28 of the Act.

2.2.1 Prior to 8th April 2011 and subsequent thereto, only a 'proper officer' who has been 'assigned' specific functions by the CBE & C or the Commissioner as amended by section 2(34) of the Act could undertake the task of non-levy, short-levy or erroneous refund.

2.2.2 Therefore, section 28(11) does not validate the show cause notices issued by the DRI, DGCEI Officers who are not 'proper officers' for the purposes of section 2(34) of the Act if it amounted to undertaking any assessment or re-

assessment of a non-levy, short-levy or erroneous refund prior to 8th April 2011.

2.2.3 Section 28(11) is overbroad inasmuch as it confers jurisdiction on a plurality of officers on the same subject matter. Such untrammelled power would indeed be arbitrary and violative of Article 14 of the Constitution. M/s. EIL has relied upon the following case laws:

- (a) Sri Balaji Rice Company v. Commercial Tax Officer — (1984) 55 SCT 292 (AP).
- (b) Sivaramakrishnan v. State of Kerala

2.3 Explanation 2 in favour of Section 28(11) cannot be possibly overlooked. The statute has to be read for what it actually states. There cannot be a presumption of validity by reference to Statement of Objects and Reasons. Section 28(11) confers validity only on 'the proper officer.' M/s. EIL relied upon the following case laws:

- (a) Gujarat University, Ahmedabad v. Krishna Rangnath Mudholkar - AIR 1963 SC 703 (para 20);
- (b) Consolidated Coffee Ltd. v. Coffee Board
- (c) Shri Ishar Alloys Steels Ltd. v. Jayaswals Neco Ltd,

2.3.1 If jurisdiction is exercised by one officer of the Customs or of the DRI or DGCEI, it should impliedly oust the jurisdiction of other officers over the same subject matter. The doctrine of comity of jurisdiction requires that for the proper administration of justice there should not be an overlapping of the exercise of powers and functions. The decision of the Punjab and Haryana High Court in *Kenapo Textiles Pvt. Ltd. v. State of Haryana* and the decision of the Supreme Court in *India Household and Healthcare Ltd. v. LG Household and Healthcare Ltd.* are relevant in this context.

2.4 M/s. EIL, vide letter dated 07.03.2017, submitted that the notice issued on 19-8-09. First hearing notice is issued in 2017 i.e. after eight years. The delay has the effect of denying proper opportunity to defend and hence is in violation of principle of natural justice. M/s. EIL referred to following case laws:

- (a) Y.N. SHAH reported in 2004 (170) ELT 353.
- (b) Kuil Fireworks Industries - 1997 (95) ELT 3 (SC)
- (c) Jass Kann International - 2003 (162) ELT 445 (Tri.-Del.),
- (d) Calcom Electronics LTD. - 2000 (123) ELT 1030 (Tribunal),
- (e) Shree Vallabh Glass Works LTD. - 1999 (112) ELT 619 (Tribunal).
- (f) J.M. BAXI & CO. - 2016 (336) ELT 285 (Mad).
- (g) LANVIN SYNTHETICS PRIVATE LTD reported in 2015 (322) ELT 429 (Bom).

2.5 The demand is made in respect of bill of entry dated 21-01-08 and the show cause notice has been issued on 19-08-09, i.e., more than one year after date of import. The demand is under section 28.

2.5.1 It is important to note that the imported product is Refractory Ball Alumina 65% size 60mm. There is no mis-declaration in the bill of entry and all other documents. The show cause notice does not show reason why the said imported goods are considered to be consumable. The definition of consumable, at para 6.5, as per Foreign Trade Policy the items which are substantially totally consumed during manufacturing process is deemed to be consumable.

2.5.2 When the relevant bill of entry, exemption notification and Foreign Trade Policy is available to the department at the relevant time, the department cannot plead ignorance to the exemption notification. It is never the requirement that the manner of use of the imported product should be disclosed in the import documents.

2.5.3 At the time of assessment, all the details were available with the Assessing Officer. Subsequent enquiry by the offices does not in any manner contribute to the application of notification.

2.5.4 For change in the opinion, the extended period cannot be invoked. M/s. EIL had never suppressed any information. When the notification benefit is claimed, the assessing officer was fully aware about both the relevant facts and the applicable law. Since, in the present case the notice is issued after the period of one year, the same is also barred by limitation.

2.5.5 The application before DGFT was made much prior to the amendment and the declaration before DGFT was for obtaining EPCG license. It is not the case of the department that the license is invalid or incorrectly obtained. The objection is only to the condition of customs notification.

2.6 The second allegation, as to the statement of Shri Mukati, it only gives facts. These facts are undisputed. As mentioned above, the manner of use was not required to be declared and, therefore, there is no mis-declaration. The allegation that the goods are described by their commercial name is incorrect in as much as the description of "refractory ball alumina" is not commercial description.

2.6.1 Statement of Shri Mehta that whether the item is capital goods or consumable are not given in the bill of entry. Such details are not required to be furnished and, therefore, the contention is irrelevant and incorrect.

2.7 The duty is paid with interest of Rs.67,650/- vide challan dated 02-09-2009. Since the demand is barred by limitation, the same should be refunded to M/s. EIL.

2.8 The goods are not available per the show cause notice, there cannot be order for confiscation. Once the extended period is not available and demand does not survive, question of confiscation of goods also does not arise. Furthermore, the issue is regarding interpretation of notification and the goods were cleared after assessment by the officers. Therefore, error or mistake, if any, was mutual. In such circumstances, the question of confiscation cannot arise.

2.9 Since the demand for extended period cannot be confirmed, the penalty under section 114A cannot be imposed. All the submissions made above, for limitation would also apply here.

2.10 Since penalty under section 114A is proposed, penalty under this section cannot be imposed. Further the matter is legal in nature involving application of notification. The penalty proposed u/s 112(a), the said section provides that in relation to any goods, if a person does or omits to do any act which act or omission would render the goods liable to confiscation, then penalty can be imposed. Since, penalty cannot be imposed on Company under this section.

2.11 The question of personal penalty on the Director would not arise in the present case. The penalty proposed u/s 112(a), the said section provides that in relation to any goods, if a person does or omits to do any act which act or omission would render the goods liable to confiscation, then penalty can be imposed. The Director of the company looks after overall operation and policy matters relating to business. The individual transaction of import and that too were claiming exemption under the Customs Notification is not a matter decided by the Director. All the matters relating to customs, import and payment of tax, etc., are looked after by the relevant staff members. The Director personally never had any knowledge about such transactions.

2.11.1 S/ Shri Dev J. Vyas, Advocate and C.A Brahmbhatt, Assistant General Manager of M/s. EIL remained present on 08.03.2017, on behalf of

M/s. EIL and Shri Shailesh Bhandari, MD of M/s. EIL. They have, *inter alia*, reiterated the facts as discussed in the written submission.

DISCUSSION AND FINDING:

3.1 I have carefully gone through the case records, Show Cause Notice, submissions made by M/s. EIL and noticee No.2, as well as submissions made at the time of personal hearing.

3.2 The issue in the present proceeding to decide as to whether M/s EIL, Survey No 323, Village: Samkhiyali, Nr. Toll Tax Booth, Bhachau, Kutch, Gujarat has:

- (a) Contravened the provisions of the Foreign Trade Policy read with Notification No. 72/2007-Cus dated 21.05.2007.
- (b) They are liable to pay differential Customs duty totally amounting to Rs.9,27,956/- (for JNPT and Kandla Port as detailed in the Annexure- A to the notice), under proviso to section 28 (1) of the Customs Act, 1962 on account of contravention of the Notification No. 97/2004-Cus *ibid* as amended by Notification No. 72/2007-Cus *ibid*;
- (c) The imported goods totally valued at **Rs.32,01,976/-** (for JNPT and Kandla Port details as per Annexure A to the SCN) liable to be confiscated under section 111(d) & section 111(m) of the Customs Act, 1962. However, as the goods are not available for confiscation, fine in lieu of confiscation should be imposed upon them under section 125 of the Customs Act, 1962;
- (d) Interest at appropriate rate should be recovered from them on the short payment of Customs duty under section 28 AB of the Customs Act, 1962;
- (e) Penalty is liable to be imposed on them under section 114A of the Customs Act, 1962.
- (f) Penalty is liable to be imposed on them under section 112(a) of the Customs Act, 1962;
- (g) Penalty on Shri Shailesh Bhandari is also liable to be imposed in terms of section 112(a) of the Customs Act, 1962.

3.3 I find that investigation in the instant case suggests that M/s. EIL had imported "Magnesia Calcium Bricks, Magnesia Chrome Bricks and Back Filling Material" falling under CTH-38160000 from China vide bill of entry no 997253 dated 20-11-2007 and "Refractory Ball Alumina" vide Bill of Entry No. 223612 dated 02-01-2008 and cleared them under concessional rate of duty availing the benefit of EPCG Licence No. 0830002236 dated 01.11. 2007.

3.3.1 The investigation further suggests that Notification No. 97/2004 *ibid* as amended by Notification No 72/2007 *ibid*, the letters and words

“CONSUMABLES” had been deleted from the scope of exemption under EPCG scheme with effect from 21.05.2007. As a result, the items imported and cleared under EPCG after 21.05.2007 and used as “CONSUMABLES” not eligible for benefit of exemption under EPCG scheme.

3.4 Relevant text of Notification No. 97/2004-Cus. *ibid* reads as under:

“Export Promotion Capital Goods Scheme (EPCG) — Effective rate of duty for imports thereunder

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods specified in the Table annexed hereto, from, -

- (i) so much of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as is in excess of the amount calculated at the rate of five per cent *ad valorem*, and
- (ii) the whole of the additional duty leviable thereon under section 3 of the said Customs Tariff Act, when specifically claimed by the importer.

3.

TABLE

S. No.	Description of goods
(1)	(2)
1.	Capital goods for pre-production, production and post production including second hand capital goods.
2.	Capital goods in SKD/CKD conditions to be assembled into capital goods by the importer.
3.	Components of capital goods required for assembly or manufacture of capital goods by the importer.
4.	Spare parts of goods specified at Serial Nos. 1, 2 and 3 as actually imported and required for maintenance of capital goods so imported, assembled, or manufactured.
5.	Spare parts including consumables for the existing plant and machinery of the licence holder.

Explanation. - For the purposes of this notification, -

- (1) “Capital goods” has the same meaning as assigned to it in Paragraph of 9.12 of the Foreign Trade Policy;
- (2) “Foreign Trade Policy” means the Foreign Trade Policy 2004-2009 published vide notification of the Government of India in the Ministry of Commerce and Industry, No. 1/2004 dated the 31st August, 2004 as amended from time to time;
- (3) “Licensing Authority” means the Director General of Foreign Trade appointed under section 6 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992) or an officer authorized by him to grant a licence under the said Act;”

3.4.1 Above notification was amended vide Notification No. 72/2007 dated 21.5.2007. The relevant text of said notification reads as under:

2.	97/2004-Customs, dated the 17th September, 2004 [G.S.R. 620 (E), dated the 17th September, 2004].	In the said notification, - (a) ... (b) ... (c) ... (d) in S. No. 5 of the table, the words “ including consumables ” shall be omitted (e) ... (f) ...
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From the plain reading of above relevant text, it is clear that vide Notification No. 72/2007, *ibid* the word “consumables” has been omitted to be eligible for exemption for import under EPCG scheme with effect from 21.05.2007.

3.5 The intelligence suggests that M/s. EIL had imported "Magnesia Calcium Bricks, Magnesia Chrome Bricks and Back Filling Material" falling under CTH-38160000 from China vide bill of entry No.997253 dated 20.11.2007 and "Refractory Ball Alumina" vide Bill of Entry No.223612 dated 02.01.2008 and cleared them under concessional rate of duty availing the benefit of EPCG scheme.

3.6 Shri Kishore Mukati, Vice President of M/s EIL under his statements dated 24.11.2008 and 26.11.2008, tendered that M/s. EIL has filed bill of entry No. 997253 dated 20th November, 2007 seeking clearance of "Magnesia Chrome Bricks, Magnesia Calcium Bricks, back filling material, etc., under EPCG license No. 0830002236 dated 1st November, 2007, under the category "**EPCG 5% FOB basis**". In the said license the duty saved is shown as Rs.13,06,363/-. Magnesia Chrome Bricks, Magnesia Calcium Bricks were imported by their company for the purpose of lining the new metal refining Converter used for steel refining process for steel melting plant. Above imported items were imported for lining the metal refining converter (MRK)/ Argon Oxygen De-carbonization (AOD) Convertor Project under EPCG under Notification number 97/ 2004 *ibid*.

3.6.1 He further stated that he was informed that only '**refractories for initial lining**' were eligible for import as capital goods under concessional rate of duty under EPCG scheme. The refractories/ refractory bricks for subsequent use were deemed as **consumables**. Since, the import of Magnesia Calcium Brick, Magnesia Chrome Brick & Back Filling material as stated above was for replacement of the original bricks procured indigenously, they were not entitled for benefit of concessional rate of duty under EPCG scheme. Shri Mukati also tendered that M/s. EIL had imported three consignments of other consumables, i.e., Refractory Ball Alumina at concessional rate of duty under EPCG Scheme at Kandla port. Thus, Shri Mukati admitted the mistake and agreed to deposit the duty saved under the imports.

3.7 Shri Nilesh D. Mehta, Assistant Manager (in charge of DGFT matters), Finance of M/s EIL, under his statement dated 11th June, 2009, *inter alia* tendered that they had imported the following items under the said EPCG license Number 0830002236 dated 0^{1st} November, 2007 :-

(1) CNC Roll Processing machine

(2) Refractory ball Alumina

(3) Magnesia chrome bricks, Magnesia calcium bricks, Back filling material, Mortar.

• The items, i.e., Refractory ball Alumina, Magnesia chrome bricks, Magnesia calcium bricks, Back filling material, Mortar, etc., were used as

'CONSUMABLES' and rightly fall under the category of "CONSUMABLES". The same were imported by them vide Bill of Entry No 997253 dated 20th November, 2007 & Bill of Entry No 223612 dated 2nd January, 2008 , availing the benefit of concessional rate of duty under EPCG scheme. In the import documents, i.e., import invoice and bill of entry they had declared only the name of item, such as Magnesia Chrome Bricks, Magnesia Calcium Bricks, Refractory Ball Alumina etc. No mention of whether the same falls under capital goods/ spares/ consumables, etc., was made in the bill of entry.

- In the application for obtaining EPCG license, they had declared all the items mentioned therein as '**Capital goods**' and no specific category, like, spares/ consumables etc was mentioned. He admitted that at the time of preparing the application for obtaining EPCG Licence, they should have declared the specific category of Capital goods under which the said items fall, but they had not declared accordingly.
- Against EPCG License No 0830001914 dated 26th February, 2007, they imported refractory ball alumina vide Bill of Entry No 189870 dated 4th May, 2007 under the EPCG scheme by declaring the Item as, Refractory Ball Alumina 65%.
- Against EPCG License No 0830001915 dated 26th February, 2007, they had imported refractory ball alumina cleared vide Bill of Entry No 189042 dated 27th April, 2007 availing the benefit of concessional rate of duty under EPCG scheme by declaring the Item as Refractory Ball Alumina 65%.
- Refractory ball Alumina fall under the category of "**consumables**". In the application for obtaining the said license, they had declared the same as 'Spares' and obtained the license from DGFT. He agreed that the said item i.e., Refractory ball Alumina was a **consumable** and not a **capital goods** as declared by them in the application filed before the DGFT.

3.8 From the above statements of the concerned persons and evidences produced by them during the investigation, it is crystal clear that the Items, viz., Magnesia Calcium Bricks, Magnesia Chrome Bricks, Back Filling Material and Refractory ball Alumina merit to defined as "Consumables" as per the definition provided under:

"Consumables" means any item which participates in or is required for a manufacturing process, but does not necessarily form part of the end product. Items which are substantially or totally consumed during a manufacturing process will be deemed to be consumable".

3.9 I find that Notification No. 97/2004-Cus., *ibid* grants exemption to the specified goods from payment of customs duty. As per the table to the Notification, the specified goods are spare parts including consumables for existing plant and machinery of the licence holder. Subsequently, the word

consumable was omitted. Thus, contention of the Notification provides exemption to the spare parts for existing plant and machinery whereas as per the EPCG scheme under para 5.1A, spares including reconditioned spares, tools, spare refractories are covered and the Notification during the period in dispute provides exemption only to the spares and not to the "Consumables".

3.9.1 In view of the above, the benefit of the Notification No. 97/2004 *ibid*, as amended by Notification No. 72/2007 *ibid* to "consumables" is not admissible to M/s. EIL. In the policy, the capital goods also include "Consumables" for initial set up of the plant and under the EPCG scheme for existing plant. Consumables are separately mentioned in para 5.1A of the Policy. Subsequently, the "consumables" was omitted for the benefit of the Notification.

3.10 I find that application for obtaining EPCG License from the DGFT had prescribed to fill up certain column in the application. The relevant portion of the application is reproduced below:

"15A.

Sr. No.	Description of the items of import	ITC (HS) Code	Nature of Capital Goods sought to be imported +	Quantity	Primary Use of Capital Goods sought to be imported ++
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+ - whether **Capital Goods**/ Spares/ Tools/ Jigs/ Fixtures/ Dies/ Moulds/spare Refractories/ Catalyst.

++ - whether used for Pre Production activity/ Production activity/ Post Production activity/ for rendering Services

3.10.1 I find that during the investigation in the instant case, it was observed that M/s. EIL has while obtaining the EPCG licences, in the ANF-5A form at Sr. No 15A, the importer has declared "**capital goods**" in the column meant for "**Nature of Capital goods sought to be imported**". However, Shri Mukati, Sr. Vice President of M/s. EIL categorically stated in his statement that confirmed that the items imported by M/s EIL vide Bill of Entry No. 997253 dated 20th November, 2007 were utilised in substitution for the refractories purchased indigenously by M/s EIL.

3.10.2 From the discussion (*supra*) I find that "Magnesia Calcium Brick, Magnesia Chrome Brick & Back Filling Material and Refractory Ball Alumina are actually refractory materials, which are substantially consumed during the process and have to be replaced after a particular span of time in the refractory. Therefore the said goods cannot be form part of "capital goods".

3.11 M/s. EIL has pleaded that Additional Director, DRI, Ahmedabad, is not a proper authority to assess/re-assess the Bill of Entry and to issue show cause notice. Section 28(11) refers to the officers who are competent to deal with the questions of the powers of assessment under section 17, Explanation 2 to section 28 did not. Section 28(11) refers to persons appointed as Customs Officers even prior to 6th July 2011. M/s. EIL relied upon the case law in the case of Commissioner v. Sayed Ali — 2011 (265) E.L.T. 17 (S.C.)

3.11.1 In this regard, I find that above case law has been distinguished in the case of SWATI MENTHOL & ALLIED CHEM. LTD. Versus JT. DIR., DRI reported in 2014 (304) E.L.T. 21 (Guj.) wherein Hon'ble Gujarat High Court has observed as under:

“30. As we have already noticed in the notification dated 7-7-1997, all the officers of the Directorate of Revenue Intelligence are appointed as the officers of the Customs. Under the notification dated 7-3-2002, the officers of DRI have been given jurisdiction over the whole of India. Most significant notification is one of 6-7-2011. As noted, the notification, for the purpose of Section 2(34) of the Customs Act, assigns functions of the proper officer to the various officers including those under the Directorate of Revenue Intelligence, such as Additional Director, Joint Director, Deputy Directors and Assistant Directors for the purposes of Sections 17 and 28 of the Customs Act.

31.A proper officer is one, who is defined in Section 2(34) as the officer of Customs, either by the Board or by the Commissioner of Customs, who is assigned specific functions. Under notification dated 6-7-2011, Joint Director of Revenue Intelligence is assigned the function for the purpose of Sections 17 and 28 of the Customs Act by a specific reference to sub-section 2(34) of the Act.

32. In that view of the matter by the settled position, we cannot hold that respondent No. 1 lacked the jurisdiction to issue a show cause notice. Had this notification not been issued, the question perhaps would be whether under sub-section (17) of Section 28 despite the decision of the Supreme Court in the case of *Sayed Ali* (supra), the respondent No. 1 could be considered as a proper officer for the purpose of Section 28....

33. Before concluding, we may notice that the Bombay High Court in the case of *Commissioner of Customs (Import) v. Electron Textile Exports (P) Limited and Another* dated 14-6-2006 confirmed the view of the Special Bench of the Tribunal. In case of *Konia Trading Co. v. Commissioner of Customs, Jaipur* reported in 2004 (170) E.L.T. 51, **the Tribunal had held that the DRI authorities would have jurisdiction to issue show cause notice and also adjudicate the proceedings under Section 28.”**

In view of the above, I find that the other case laws relied upon by M/s. EIL regarding non-applicability of section 28 for the issuance of notice by the DRI and validation of the legislature is legally not sustainable and not relevant in the instant in view of case law (*supra*).

3.10. In the light of facts and circumstances as discussed herein above, I find that M/s. EIL and Shri Sailesh Bhandari, Director of M/s. EIL have deliberately suppressed the facts from the DGFT at the time of filing of application for obtaining EPCG License as well as before the Customs by

wrongly showing the Magnesia Calcium Brick, Magnesia Chrome Brick & Back Filling Material and Refractory Ball Alumina as capital goods. Therefore, present case is a fit case to invoke section 28(4) [erstwhile proviso to section 28(1)] of the Customs Act, 1962, for recovery of the duties of Customs for the extended period of limitation.

3.10.1 M/s. EIL by resorting to the above mentioned wilful misstatement has rendered themselves liable to pay total differential duty to the tune of Rs.6,15,555/-, for the import at JNPT and Rs.3,12,401/-, for the import at Kandla Port (as detailed in Annexures-A) which is recoverable under section 28(4) [erstwhile proviso to section 28(1)] of the Customs Act, 1962. Apart from paying the differential duty under section 28(4) [erstwhile proviso to section 28(1)] of the Customs Act, 1962, the importer is also liable to pay interest under section 28AA [erstwhile section 28AB] of the Customs Act, 1962.

3.11 M/s. EIL further contended that the show cause notice has been issued after more than one year of import. When the notification benefit is claimed, the assessing officer was fully aware about both the relevant facts and the applicable law. Since, in the present case the notice is issued after the period of one year, the same is also barred by limitation. The application before DGFT was made much prior to the amendment of notification for obtaining EPCG license.

3.11.1 In this regard, I find that M/s. EIL has submitted an Application before the DGFT to obtain the EPCG License for the impugned goods. In the said application, they have shown the said impugned goods as "capital goods" in the application. At the very first stage M/s. EIL has suppressed the facts before the DGFT at the time of filing of application. Subsequently, the notification 72/2007 *ibid* amended/ deleted the word "Consumables" eligible for import under the EPCG Scheme. This fact was also in the knowledge of M/s. EIL. Even at this stage, M/s. EIL had not brought in the knowledge of the DGFT nor they applied to the DGFT for such amendment. Even, if they had not informed the department regarding such amendment. At first sight, it appeared that M/s. EIL was importing the said impugned goods as first commencement of their newly plant, for which said impugned goods was permissible under the EPCG scheme. Therefore, the contention of M/s. EIL that the facts of import of Magnesia Calcium Brick, Magnesia Chrome Brick & Back Filling Material and Refractory Ball Alumina was in the knowledge of the department is totally devoid and mis-leading., hence not acceptable. The payment of duty and interest by M/s. EIL during investigation also proves the intention of M/s. EIL that on later stage, they agreed with the objection and paid the government dues.

3.12 The noticee further submitted that there is abnormal delay in adjudication. The delay has the effect of denying proper opportunity to defend and hence is in violation of principle of natural justice.

3.12.1 Factually, in the instant case, the Show Cause Notice dated 19.08.2009, was made answerable to two authorities, viz., Joint Commissioner of Customs (Export), Jawaharlal Nehru Custom House, Nhava Sheva and; Joint Commissioner of Customs, Custom House, Near Balaji Temple, Kandla.

3.12.2 Adjudication of such cases is required to be adjudicated only by any one authority. The CBEC, vide Notification No. 82/2016-Cus (NT) dated 07.06.2016, appointed the Joint/ Additional Commissioner, Custom House, Kandla as common adjudicating authority. This fact was informed to M/s. EIL and Shri Shailendra Bhandari, vide letter dated 12.07.2016. Subsequently, CBEC, vide Instruction F. No.276/104/2016-CX.8A (Pt.) dated 29.06.2016, directed that SCN issued by DRI/ DGCEI/ SIIB/ Preventive prior to 06.07.207.2011, is to be transferred to call book. Therefore, the instant case was transferred to the call book. After that CBEC, vide Instruction F. No.276/104/2016-CX.8A (Pt.) dated 03.01.2017, directed to withdraw such SCN's and the adjudication of such cases are to be proceeded with in accordance with law.

3.12.3 In view of the above, I find that there is no delay in the adjudication process. Thus the contention of the noticee(s) is not sustainable that there is abnormal delay in the adjudication process. All the above facts are in the knowledge of the noticee(s). Therefore, the case laws relied upon by the noticee(s) are not relevant in the instant case.

3.13 M/s. EIL has further tendered that the duty paid with interest should be refunded to M/s. EIL.

3.13.1 In this regard, I find that M/s. EIL has rightly admitted the facts during the investigation and paid the applicable duty with interest and after acceptance of the objection of the department M/s. EIL has paid the duty and interest. Therefore, the question of refund of duty does not arise when M/s. EIL has rightly paid duty.

3.14 M/s. EIL has further contended that the goods are not available per the show cause notice, there cannot be order for confiscation.

3.14.1 The noticee has imported Magnesia Calcium Brick, Magnesia Chrome Brick & Back Filling Material and Refractory Ball Alumina by suppressing the facts before the DGFT, by showing them as capital goods in the application for EPCG. This act categorically proves that M/s. EIL has

wilfully suppressed the facts from the DGFT. Therefore the imported Magnesia Calcium Brick, Magnesia Chrome Brick & Back Filling Material and Refractory Ball Alumina are liable for confiscation under section 111(d) and section 111(m) of the Customs Act, 1962, as they have evaded the customs duty by wrongly availing the exemption of EPCG Scheme. Since, these imported goods were not placed under seizure and also not physically available for confiscation, I refrain from imposition of redemption fine as the goods are not physically available for confiscation nor released under any bond and in view of the settled legal position in the case of Shiv Kripa Ispat Pvt. Ltd. vs CCE Nasik reported at 2009 (235) ELT 623 (Tri.-LB) wherein it is held that redemption fine could not be imposed in the absence of the goods which had already been released by the Customs authorities to the importer without execution of any bond/ undertaking by the latter. Conversely, where the goods are released under bond/undertaking, they could be confiscated as if the goods were available and consequently redemption fine in lieu of confiscation could also be imposed. The issue has been settled in the case of Commissioner of Customs, Amritsar Vs. Raja Impex (P) Ltd. (2008 TIOL 280 HC-P&H-CUS) wherein the High Court, after considering the Apex Court's judgment in Weston Components case (2002 TIOL 176-SC-CUS) held as above. A similar view taken by the Tribunal in the case of Chinku Exports also stands upheld by the Supreme Court 2005 (184) ELT A36 (SC) as Revenue appeal was dismissed. Further since the omission and commission on the part of the M/s. EIL made the imported goods liable for confiscation under section, 111 (d) and 111(m) of the Customs Act, 1962, M/s. EIL rendered himself liable for penalty under section 112(a) of the Customs Act, 1962.

3.15 As discussed above, the facts clearly proves that M/s. EIL has suppressed the facts from the DGFT as well as from Customs, section 28(4) [(erstwhile section 28(1)] is fit to invoke, For the acts of omissions and commissions on the part of M/s. EIL, as discussed hereinabove, in the matter of suppression of facts for evading customs duties, M/s. EIL is liable for penalty under section 114A of the Customs Act, 1962.

3.16 M/s. EIL has imported the goods by wilful resorting mis-declaration and suppression of facts, therefore the imported goods are liable for confiscation under section 111(d) and 111(m) of the Customs Act, 1962, inasmuch as, the goods declared in the Bills of Entry were factually "consumables" and not "capital goods". Therefore, M/s. EIL rendered themselves liable for penalty under section 112(a) of the Customs Act, 1962.

3.17 I find that Shri Nilesh D Mehta, Assistant Manager (in-charge of DGFT matters), Finance of M/s EIL, in his statement dated 11.06.2009, during investigation has nowhere tendered that Shri Sailesh Bhandari, Director of

M/s. EIL had directed to import the impugned goods under EPCG License. Even at any stage of investigation it was not proved that Shri Sailesh Bhandari was involved in the import of the said impugned goods. Therefore, I find that Shri Sailesh Bhandari, Director of M/s. EIL is not liable for penalty under section 112(a) *ibid*.

3.18 In view of the above, I pass the following order:

ORDER

PART-I: FOR JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA SHEVA:

- (i) I confirm and order to recover differential duties of **Rs.6,15,555/-** (Rupees Six Lakhs Fifteen Thousand Five Hundred and Fifty Five only) from M/s. Electrotherm (India) Limited, Survey No 323, Samkhiyali, Kutch under section 28(1) [now proviso to section 28(4)] of the Customs Act, 1962. M/s. Electrotherm (India) Limited has already paid **Rs.6,12,610/-** (Rupees Six Lakh Twelve Thousand Six Hundred and Ten only), therefore, I appropriate this paid amount against their duty liability. Now, they are required to pay balance duty amount.
- (ii) I order to charge and recover interest from M/s. Electrotherm (India) Limited, Survey No 323, Samkhiyali, Kutch under section 28AB [now section 28AA] of the Customs Act, 1962.
- (iii) I order to confiscate the goods imported against the Bills of Entry as detailed in Annexures - A to the SCN under section 111(d) and section 111(m) of the Customs Act, 1962. However, I refrain from imposing redemption fine in lieu of confiscation, as the goods are physically not available for confiscation nor released under any bond or legal instruments.
- (iv) I impose a penalty of Rs.6,15,555/- plus an amount equivalent to interest payable on confirmed duty upon M/s. Electrotherm (India) Limited, Survey No 323, Samkhiyali, Kutch under section 114A of the Customs Act, 1962.
- (v) I impose a penalty of Rs.1,00,000/- (Rupees One Lakh only) on M/s. Electrotherm (India) Limited, Survey No 323, Samkhiyali, Kutch under section 112(a) of the Customs Act, 1962.
- (vi) I refrain from imposing penalty on Shri Sailesh Bhandari, Director of M/s. Electrotherm (India) Limited, Survey No 323, Samkhiyali, Kutch under section 112(a) of the Customs Act, 1962.

PART-II: FOR KANDLA PORT:-

- (i) I confirm and order to recover differential duties of **Rs.3,12,401/-** (Rupees Three Lakh Twelve Thousand Four Hundred and One only) from M/s. Electrotherm (India) Limited, Survey No 323, Samkhiyali, Kutch under section 28(1) [now proviso to section 28(4)] of the Customs Act, 1962.

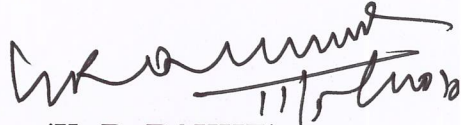
(ii) I order to charge and recover interest from M/s. Electrotherm (India) Limited, Survey No 323, Samkhiyali, Kutch under section 28AB [now section 28AA] of the Customs Act, 1962.

(iii) I order to confiscate the goods imported against the Bills of Entry as detailed in Annexures – A to the SCN under section 111(d) and section 111(m) of the Customs Act, 1962. However, I refrain from imposing redemption fine in lieu of confiscation, as the goods are physically not available for confiscation nor released under any bond or legal instruments.

(iv) I impose a penalty of **Rs.3,12,401/-** plus an amount equivalent to interest payable on confirmed duty upon M/s. Electrotherm (India) Limited, Survey No. 323, Samkhiyali, Kutch under section 114A of the Customs Act, 1962.

(v) I impose a penalty of Rs.50,000/- (Rupees Fifty Thousand only) on M/s. Electrotherm (India) Limited, Survey No 323, Samkhiyali, Kutch under section 112(a) of the Customs Act, 1962.

(vi) I refrain from imposing penalty on Shri Sailesh Bhandari, Director of M/s. Electrotherm (India) Limited, Survey No 323, Samkhiyali, Kutch under section 112(a) of the Customs Act, 1962.


(U. B. RAKHE)

ADDITIONAL COMMISSIONER

By Reg Post A.D.

1. M/s. Electrotherm (India) Limited, Survey No 323, Village: Samkhiyali, Nr. Toll Tax Booth, Bhachau, Kutch, Gujarat.
2. M/s. Electrotherm (India) Limited, Survey No. M72, Palodia, Village: Thaltej, Tal. Kalol, Gandhinagar, Gujarat.
3. Shri Sailesh Bhandari, Director of M/s. Electrotherm (India) Limited, Survey No 323, Village: Samkhiyali, Nr. Toll Tax Booth, Bhachau, Kutch, Gujarat.

Copy to:-

1. The Additional Director, Directorate Of Revenue Intelligence Zonal Unit, Rupen Bungalow, Nr. Jain Merchant Society, Paldi, Ahmedabad-380007.
2. The Joint Commissioner of Customs (Export), Jawaharlal Nehru Custom House, Nhava Sheva, Post: Uran, Dist: Raigad, Maharashtra – 007 with a request to account for the duty, penalty etc. pertaining to JNPT, Nahve Sheva.
3. The Deputy/Asstt. Commissioner of Customs (Recovery), CH, Kandla.
4. The Deputy/Asstt. Commissioner of Customs (RRA), CH, Kandla.
5. Guard file.