

	<p>सीमाशुल्क अग्रिम विनिर्णय प्राधिकरण Customs Authority for Advance Rulings नवीन सीमाशुल्क भवन, बेलार्ड इस्टेट, मुंबई - ४०० ००३ New Custom House, Ballard Estate, Mumbai - 400 001 E-MAIL: cus-advrulings.mum@gov.in</p>	
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F. No. CAAR/CUS/APPL/186/2025-26 - O/o Commr. -CAAR-Mumbai

दिनांक/Date: 20.01.2026

Order No. & date	CAAR/Mum/ARC/35/2025-26 dated 20.01.2026
Issued by	Shri Prabhat K. Rameshwaram, Customs Authority for Advance Rulings, Mumbai
Name and address of the applicant	M/s EMMVEE ENERGY PRIVATE LIMITED 13/1, International Airport Road, Bettahalasur Post, Bengaluru, Karnataka, 562 157, India. Email : info@emmvee.in , hena.datta@emmvee.in
Concerned Commissionerate	The Commissioner of Customs, Chennai-II (Import), Customs House No. 60, Rajaji Salai, Chennai- 600001.

ध्यान दीजिए/ N.B.:

1. सीमा शुल्क अधिनियम, 1962 की धारा 28I की उप-धारा (2) के तहत किए गए इस आदेश की एक प्रति संबंधित को निःशुल्क प्रदान की जाती है।
A copy of this order made under sub-section (2) of Section 28-I of the Customs Act, 1962 is granted to the concerned free of charge.
2. इस अग्रिम विनिर्णय आदेश के खिलाफ कोई भी अपील ऐसे निर्णय या आदेश के संचार की तारीख से दिनों के भीतर संबंधित क्षेत्राधिकार उच्च न्यायालय के समक्ष की जाएगी। 60
Any appeal against this Advance Ruling order shall lie before the jurisdictional **High Court of concerned jurisdiction**, within 60 days from the date of the communication of such ruling or order.
3. धारा 28-I के तहत प्राधिकरण द्वारा सुनाया गया अग्रिम विनिर्णय तीन साल तक या कानून या तथ्यों में बदलाव होने तक, जिसके आधार पर अग्रिम विनिर्णय सुनाया गया है, वैध रहेगा, जो भी पहले हो।
The advance ruling pronounced by the Authority under Section 28 - I shall remain valid for three years or till there is a change in law or facts on the basis of which the advance ruling has been pronounced, whichever is earlier.
4. जहां प्राधिकरण को पता चलता है कि आवेदक द्वारा अग्रिम विनिर्णय धोखाधड़ी या तथ्यों की गलत बयानी द्वारा प्राप्त किया गया था, उसे शुरू से ही अमान्य घोषित कर दिया जाएगा।
Where the Authority finds that the advance ruling was obtained by the applicant by fraud or misrepresentation of facts, the same shall be declared void *ab initio*.



अग्रिम विनिर्णय / Advance Ruling

M/s. Emmvee Energy Pvt. Ltd. (IIC No.: AAHCE0928K) (hereinafter referred to as 'the Applicant') filed an application (CAAR-1) for advance ruling in the Office of Secretary, Customs Authority for Advance Ruling (CAAR) Mumbai. The said application was received in the secretariat of the CAAR, Mumbai on 13.10.25 along with its enclosures in terms of Section 28H (1) of the Customs Act, 1962 (hereinafter referred to as the 'Act also'). The Applicant is a company incorporated within the laws of India and engaged in the business as producers/manufacturers, importers, exporters etc. and deals in all kinds of energy saving devices, solar energy products, solar photovoltaic cells / modules / wafers/ingots / polysilicon / systems / accessories, renewable energy systems, hybrid energy systems, clean energy systems and also operates a manufacturing unit for solar photovoltaic modules located at Bengaluru. The applicant is seeking advance ruling on the issue of eligibility for exemption from duty as per Sl. No. 18 of Notification No. 25/1999-Cus dated 28.02.1999 in respect of the "EPE encapsulant (EVA+POE+EVA)" imported under Customs Tariff Item 39201099 of the Customs Tariff Act for Specific use in manufacturing of Solar Photovoltaic (PV) Modules.

2. Applicant's Submissions: -

2.1 The Applicant imports various goods and materials for use in the manufacturing of its Solar PV modules in the aforesaid unit situated at Bengaluru. In this regard, the Applicant, like the other manufacturers of Solar PV modules, used to import Ethylene-Vinyl Acetate (EVA) sheets under CTH 39201099 and claimed the benefit of exemption from duty as per Sl. No. 18 of Notification No. 25/1999-Cus dated 28.02.1999. A sample copy of Bill of Entry No. 7619341 dated 04.01.2025 filed by the Applicant for import of EVA sheets has submitted.

2.2 However, due to certain technological limitations and drawbacks associated with the use of EVA sheets for manufacturing Solar PV modules, the manufacturers of Solar Modules in India have started using "EPE encapsulant", which is an advanced encapsulant manufactured as a three-layer polymer film consisting of two layers of Ethylene-Vinyl Acetate (EVA) copolymer and a core layer of Polyolefin Elastomer (POE). Consistent with the industry practice, the applicant has also imported the EPE encapsulant for use in manufacture of Solar (PV) modules, vide Bill of Entry No. 3608056 dated 31.07.2025. They have produced a summation of the product i.e., EPE encapsulant in comparison with other forms of encapsulants such as "EVA sheets" and "POE sheets."

3. They submitted that none of the restrictions under the proviso to Section 28-I (2) are applicable, in as much as, the questions raised in the present application are not pending or decided in any proceedings in the case of the Applicant. In this regard, it is submitted that while Summons dated 20.06.2025, 07.07.2025 and 23.07.2025 have been issued by SIIB, Customs House, Rajaji Salai, Chennai (hereinafter "SIIB, Chennai"), however the same do not qualify as "pending proceedings" under proviso to section 28-I (2) of the Act. Therefore, it is submitted that the present application ought to be admitted under Section 28-I of the Act.

In this regard, their relied upon the decision of Hon'ble Authority for Advance Ruling, New Delhi in the case of IN RE: H.Q. LAMPS MANUFACTURING CO. PVT. LTD, reported in (2023) 4 CENTAX 336 (A.A.R.-CUS-Del. And In Re: Amazon Seller Services, (2023) 5 Centax.com 186 (AAR-Del), In re: Nikon India Pvt Ltd., (2023) 12 Centax 114 (A.A.R. - Cus. - Del.) and In re: Vivo Mobile India Private Limited, dated 13.12.2023 (A.A.R. - Cus. - Del.).



4. They claimed that in light of the statutory framework and the judicial precedents cited, the present application is fully maintainable under Section 281I of the Customs Act, 1962. The Applicant has raised a question qua its eligibility for claiming reduced rate of duty as per the Notification No 25/1999-Cus dated 28.02.1999, and that the said question is not pending before any officer of customs, the Appellate Tribunal, or any Court and therefore, the present application of the Appellant is not barred by the proviso to sub-Section (2) of Section 281.

5. Further, the Seizure Memo dated 21.10.2025 is also merely investigative in nature and cannot be treated as initiation of any adjudicatory proceedings against the Applicant. In any case, the said Seizure Memo dated 21.10.2025 having been issued much after the date of filing of the present application by the Applicant, cannot be considered a bar under the proviso to sub-Section (2) of Section 281. Most significantly, in the present case there has been no confiscation of goods under Section 111 rather, the goods earlier seized have been duly released, thereby making it abundantly clear that no adjudicatory proceedings have been initiated against the Applicant.

6. Port of Import and reply from jurisdictional Commissioner, Chennai.

38.1 The applicant in their CAAR-I indicated that they intend to import the subject goods from the jurisdiction of Office of the Commissioner of Customs, Chennai –II (Import), Chennai. The application was forwarded to the Office of the Commissioner of Customs, Chennai –II (Import), Chennai for their comments on 15.10.2025, 03.11.2025 and 27.11.2025. The Import Chennai Commissionerate vide their letter dated 03.01.2026 submitted as below:

a) M/s. Emmvee Energy Private Limited have filed an application before the Customs Authority for Advance Rulings (CAAR), Mumbai, seeking a ruling on whether EPE Encapsulant Film (EVA+POE+EVA) imported by them is eligible for exemption under Serial No. 18A of Notification No. 25/1999-Customs dated 28.02.1999, which grants exemption to Ethylene Vinyl Acetate (EVA) films/sheets used in the manufacture of solar photovoltaic modules.

b) It is observed that the very same issue raised before CAAR is already pending under investigation by the Special Intelligence and Investigation Branch (SIIB) in respect of imports made by the applicant.

At the outset, it is respectfully submitted that the present Advance Ruling Application is not maintainable in law, in terms of Section 281(2) of the Customs Act, 1962, which clearly stipulates that an application for advance ruling shall not be allowed where the question raised is already pending in the applicant's case before any officer of Customs.

In the present case, the issue relating to:

- Nature of the imported goods declared as "EPE film",
- Correct classification thereof, and
- Wrong availment of exemption under Serial No. 18A of Notification No. 25/1999-Customs, is already under active investigation by the Special Intelligence and Investigation Branch (SIIB), Chennai.



The imported goods covered under Warehouse Bill of Entry No. 2320026 dated 28.05.2025 were detained, examined, sampled, and subjected to chemical testing, and the investigation has revealed substantial evidence indicating ineligible availment of exemption. The applicant has sought an advance ruling on the very same question which is the subject matter of investigation, thereby attempting to invoke CAAR jurisdiction in a matter already seized by the proper officer.

In view of the statutory bar contained in Section 281(2), the present application is liable to be rejected in limine, without going into the merits.

c) The importer, M/s Emmvee Energy Private Limited, has been continuously importing goods declared as "EPE film" and availing BCD exemption under Serial No. 18A of Notification No. 25/1999-Customs, which is specifically applicable only to Ethylene Vinyl Acetate (EVA) sheets/films used in the manufacture of solar modules. Investigation revealed that the impugned goods are not EVA films, but co-extruded multilayer EPE encapsulant films, consisting of:

- Outer layers of EVA, and
- A core layer of Polyolefin Elastomer (POE).

The importer has already cleared 22 consignments by wrongly availing the exemption, resulting in short-levy of Customs duty amounting to 7,41,84,433/-, which is under investigation by SIIB.

d) The importer's own technical write-up submitted to Customs clearly describes the product as EPE (EVA+POE+EVA) Encapsulant, manufactured through a co-extrusion process, wherein:

- EVA layers provide adhesion, and
- The POE core provides enhanced moisture barrier and PID resistance.

Thus, even as per the importer's own submission, the goods are not pure EVA films, but composite multilayer plastic films, technically and functionally distinct from EVA sheets.

e) Representative samples were drawn during examination were forwarded to the Custom House Laboratory (CRCL), Chennai for chemical analysis. The CRCL test reports unequivocally confirm that the samples are:

- Plastic sheets, and
- Composed of Ethylene Vinyl Acetate and Polyethylene (PE).

Hence the laboratory findings establish that the impugned goods are composite plastic films, and not exclusively EVA films, thereby conclusively disproving eligibility under Serial No. 18A, which covers only EVA sheets/films.

f) It is a settled position of law that exemption notifications must be interpreted strictly, and the benefit thereof cannot be extended by implication or liberal interpretation. The Hon'ble Supreme Court in Commissioner of Customs (Import) v. Dilip Kumar & Co. [2018 (361) ELT 577 (SC)] held that:



In case of ambiguity in an exemption notification, the benefit must go to the Revenue, and the burden of proving eligibility lies entirely on the assessee.

In the present case, there is no ambiguity whatsoever. The notification explicitly refers to EVA sheets, whereas the goods imported are EPE composite films, which are commercially, technically, and chemically distinct products. Any attempt to stretch the scope of the exemption to cover composite or multilayer products would amount to rewriting the notification, which is impermissible in law.

g) In view of the foregoing, it is respectfully submitted that:

(a) The Advance Ruling Application is barred under Section 281(2) of the Customs Act, 1962, as the issue is already under investigation by SIIB.

(b) On merits also, the impugned goods being EPE (EVA+POE+EVA) composite films, as established by technical literature and CRCL test reports, are not eligible for exemption under Serial No. 18A of Notification No. 25/1999-Customs.

(c) The application appears to be an attempt to pre-empt the ongoing investigation and regular assessment proceedings.

Hence, they requested to reject the advance ruling application and permit the department to proceed with investigation and adjudication in accordance with law.

7. **Details of Personal Hearing: -**

Mr. Sujit Ghosh, Advocate and Ms. Hena Dutta appeared online for Personal Hearing in this matter on 10.12.2025. They reiterated the submission filed with the application that they wish to import/imported EPE encapsulate under beneficial exemption as per Sr. No. 18 of Notification No. 25/1999-cus dated 28.02.1999 as amended, when used for manufacturing solar module. Ld. Advocate Shri Ghosh contended that exemption Notification for EVA (Ethylene Vinyl Acetate) sheets is available when it is imported for manufacturing of solar cells/modules as per sr. no. 18 of the said exemption. He further contended that in the present application the subject goods are EPE capsulate which is a new refined product that is 2 units of EVA and 1 unit of POE (Polyolefin Elastomer) and that both EVA and POE are primarily composed of ethylene monomer units, required to be same treatment for exemption as essential character is same and the intent of the notification is to give exemption for specific purpose and to a specific industry. They rely upon the case of M/s. Mother Superior, Tata Hitachi Construction Machinery Company Pvt. Ltd., H. Q. Lamps Manufacturing Co. Pvt. Ltd. and DRI vs M/s. Spraytec. He also submitted that there is one investigation going on in which a Seizure Memo was issued and the subject goods were provisionally released. It was asked to provide the details of all documents pertaining to current investigation and seizure memo copy, provisional release details etc.

Nobody appeared for personal hearing from the department.

8. **Discussion and Findings: -**

Ongoing through the case records, applicant's submission and department's contention filed, it is apparent that the issue is already under investigation by SIIB. The department submits that the impugned goods being EPE (EVA+POE+EVA) composite films, as established by technical literature and CRCL test reports, are not eligible for exemption under



Serial No. 18A of Notification No. 25/1999-Customs and the application appears to be an attempt to pre-empt the ongoing investigation and regular assessment proceedings.

9. In above backdrop and based upon the facts and circumstances of the case, I proceed to pass ruling/order in the instant case.

10. Ongoing through the contention filed by the applicant and the reply received from the department it is clear that:

- a. The goods/kind of goods for which exemption is sought in this application were already imported and Bill of Entry was filed on 28.05.2025.
- b. An investigation was initiated vide issuance of summons to the applicant vide summon dated 20.06.2025, 07.07.2025, 23.07.2025.
- c. The applicant filed the advance ruling application before this authority on 13.10.2025 i.e. after a lapse of approximately 04 months from the initiation of the investigation.
- d. As per provisions of the Customs Act, 1962 under section 28 E(b), Advance Ruling means a written decision on any of the questions refer to in section 28 H raised by the applicant in his application in respect of any goods **prior to its importation or exportation**.
- e. This provision clearly stipulates and limits the scope of advance ruling to say only in those cases where importation and exportation has not taken place.
- h. The mandate of the advance ruling in Customs in terms of WCO as available under the article **Technical guidelines on advance ruling for classification, origin and valuation**, in introduction section para 4 each as per fallow:

*The key objective of pre entry advance ruling programme is to provide decision on the classification, origin and valuation of the commodities **prior to their importation or exportation**.....*

- i. The section 28 (I) of the Customs Act, 1962 clearly bars the authority to allow the application where the question raised in the application is,
 - a. **Already pending** in the applicant's case before **any officer of Customs**, the appellate tribunal or any court;
 - b.

On simple analysis of the word "pending" it is apparent that it includes "any investigation pending" irrespective of its stage or status in as much as it does not explicitly mentions "pending adjudication only". This is further supported by the statute in the other part of the sentence/phrase which specifies the word "before any officer". Here, the use of the word "any" is important. It has been purposefully crafted.

- j. Section 3, 4 and 5 of the Customs Act, 1962 provide classes of the officer of the Customs, their appointment, and power of the Customs officers respectively.



Section 5 explicitly provides that an officer of customs may exercise the power and discharge the duties conferred or imposed under this act.

Section 5 (2) provides-

An officer of customs may exercise the power and discharge the duties conferred or imposed under this act or any other officer of customs who is subordinate to him.

- k. The chapter XIII of the Customs Act, 1962 makes provision for search, inspect, examine persons, issue summon to give evidence and produce documents. Seizures, provision release of the goods, documents; arrests and action subsequent to inquiry, investigation or audit or any other specified purposes.
- l. The section 108 of the Customs Act 1962, empowers a custom officer as per follow:
 1. Any Gazetted Officers of Customs shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making under this act.
 2.
 3.
 4. Every such inquiry as aforesaid shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860.

Section 110A of the Customs Act, 1962 provides as per follow:

110A. Provisional release of goods, documents and things seized pending adjudication. —

Any goods, documents or things seized under section 110, may, pending the order of the 3 [adjudicating authority], be released to the owner on taking a bond from him in the proper form with such security and conditions as the 4 [adjudicating authority] may require.]

Similarly, section 110AA of the Customs Act, 1962 provides as per follow:

110AA Action subsequent to inquiry, investigation or audit or any other specified purpose-

Where in pursuance of any proceedings, in accordance with chapter XIA or this Chapter, if an officer of Customs has reasons to believe that —

- a) any duty has been short-levied, not levied, short-paid or not paid in a case where assessment has already been made;
- b)
- c)
- d)



Then such officer of Customs shall, after causing inquiry, investigation, or as the case may be, audit, transfer the relevant documents, along with a report in writing-

i. to the proper officer having jurisdiction, as assigned under section 5 in respect of assessment of such duty, or to the officer who allowed such refund or drawback; or

ii.

and thereupon, power exercisable under section 28, 28AAA or chapter X, shall be exercised by such proper officer or by an officer to whom the proper officer is subordinate in accordance with sub-section (2) of section 5.]

- m. The provision made under section 108 (4) is very clear and purposeful that proceedings under section 108(4) is a judicial proceedings and it culminates in proper investigation or inquiry, which may eventually result in issuance of show cause notice (unless the investigation/inquiry is dropped).
- n. On conjoint readings of provisions of 108 and 110AA, it is clear that wherever an investigation/inquiry is going on (pending), the same may inevitably culminate in issuance of show cause notice so as to attain logical conclusion.
- o. The applicant itself has submitted that the goods were seized and where released on provisional basis and that they have submitted PD Bond dated 20.11.2025 amounting to Rupees 1,25,00,000/- and a Bank Guarantee of Rupees 29,71,000/- issued in the favour of assistant commissioner of customs as provided in Board's Circular No. 35/2017 – Customs dated 16.08.2017. **Thus, it clearly proves that the investigation is pending in the instant case.**
- p. Further, there is no any parallel provision in the Customs Act, 1962 empowering the Customs Authority for Advance Rulings to take over such proceedings already initiated by the officers of customs. Most importantly, it is to underline that against the such proceedings initiated by the customs authorities, there is a well-established remedial **appellate mechanism** is already put in place.

11. Further, it is a well-known principle of law that principal of harmonious construction must be kept in mind while construing any statute. This principle enunciates that while interpreting any law, the statute must be read as a whole and all the legal provisions must be read harmoniously to give effect to each word of the statute. The proviso (a) of section 28 (1) (2) of the Customs Act, 1962 in clear terms bars the advance ruling authority not to allow the application in a case where the question raised therein is already pending in applicant's case before any officer of customs. It is because, the proceedings under section 108 of the Customs Act, 1962 are absolute and contain specific procedures. Therefore, bar has been imposed on the Advance Ruling Authority to not to interfere in a particular situation, where any investigation is pending. Any such interference would amount to exercising excess of jurisdiction which is restricted.

12. In this context, the relevant excerpts of subsection (2) of section 28-1 of Customs Act, 1962 are reproduced below:



"Section 28-1. Procedure on receipt of application. (1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the Principal Commissioner of Customs or Commissioner of Customs and, if necessary, call upon him to furnish the relevant records:

Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the [Principal Commissioner of Customs or Commissioner of Customs.

(2) The Authority may, after examining the application and the records called for, by order, either allow or reject the application.

Provided that the Authority shall not allow the application where the question raised in the application is-

(a) already pending in the applicant's case before **any officer of customs**, the Appellate Tribunal or any Court,

(b) the same as in a matter already decided by the Appellate Tribunal or any Court:

Provided further that no application shall be rejected under this sub-section unless an opportunity has been given to the applicant of being heard;

Provided also that where the application is rejected, reasons for such rejection shall be given in the order."

The department has in clear terms emphasised that the application appears to be an attempt to pre-empt the ongoing investigation and regular adjudication proceedings in accordance with the Law. I concur the view expressed by the department.

13. The case laws relied upon by the applicants are not applicable in this case, due to distinct background of the case, the observation made and Legal provisions discussed herein above.

14. In view of the forgoing facts and records of the case, I find that the question raised in this application is clearly pending before the competent officer of Customs. Accordingly, considering the provisions of Section 28-1, sub-section (2) (a) of Customs Act, 1962 and binding legal provisions, I am of considered view that ruling cannot be issued in such cases.

15. Accordingly, I refrain from passing an Advance Ruling in the case.

The application is held to be non-maintainable before this authority and is accordingly rejected and disposed of. *Yen*




Prabhat K. Rameshwaram
20/11/26
(Prabhat K. Rameshwaram)
Customs Authority for Advance Rulings
Mumbai.

F. No. CAAR/CUS/APPL/186/2025-O/o Commr-CAAR-Mumbai Dated: 20-01-2026

This copy is certified to be a true copy of the ruling and is sent to:

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(Vivek Dwivedi)
Dy. Commissioner & Secretary
Customs Authority for Advance Rulings,
Mumbai