

 <p>BHARAT SARKAR</p>	<p>सीमा शुल्क प्रधानआयुक्त का कार्यालय (एन एस-1) OFFICE OF PR. COMMISSIONER OF CUSTOMS (NS-1) जवाहरलाल नेहरू कस्टम हाउस, न्हावा-शेवा JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA SHEVA ताल -उरण, जिला- रायगढ़, महाराष्ट्र-400 707 TAL-URAN, DISTRICT- RAIGAD, MAHARASHTRA-400707</p>	 <p>INDIAN CUSTOMS</p>
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F. No. :S/26-Misc-88/2024-25/Gr. IIG/JNCH
S/10-Adj-237/2025-26 Gr. IIG/ JNCH
SCN No.: 602/2024-25/ADC/Gr. IIG/CAC/JNCH

Date of Order: 15/07/2025
Date of issue: 15/07/2025
Date of SCN: 27.06.2024

DIN No.: 20250778NW000000FED6

Passed by: **(Dr. Parul Singhal)**
Joint Commissioner of Customs (NS-I), JNCH, Nhava Sheva.
द्वारा पारित : डॉ. पारुल सिंघल. संयुक्त आयुक्त, सीमाशुल्क, एनएस-1, जेएनसीएच.

Order No. 509(L)/2025-26/ADC/GR.IIG/NS-I/CAC/JNCH
Name of Party/Noticee: M/s. Nexus Organo Chem (IEC No. ADKPV7762R)

मूलआदेश

- यह प्रति जिस व्यक्तिको जारी की जाती है, उसके उपयोग के लिए निःशुल्कदीजाती है।
- इस आदेश के विरुद्ध अपील सीमाशुल्क अधिनियम 1962 की धारा 128 (1) के तहत इस आदेश की संसूचना की तारीख से साठ दिनों के भीतर सीमाशुल्क आयुक्त (अपील), जवाहरलाल नेहरू सीमा शुल्क भवन, शेवा, ता. उरण, जिला - रायगढ़, महाराष्ट्र -400707 को की जा सकती है। अपील दो प्रतियों में होनी चाहिए और सीमा शुल्क (अपील)नियमावली, 1982 के अनुसार फॉर्म सी.ए.1 संलग्नक में की जानी चाहिए। अपील पर न्यायालय फीस के रूपमें 1.50 रुपये मात्र का स्टॉप लगाया जायेगा और साथ में यह आदेश या इसकी एक प्रति लगायी जायेगी। यदि इस आदेश की प्रति संलग्न की जाती है तो इसपर न्यायालय फीस के रूपमें 1.50 रुपये का स्टॉप भी लगाया जायेगा जैसाकि न्यायालय फीस अधिनियम 1970 कीअनुसूची 1, मदके अंतर्गत निर्धारित किया गया है।
- इस निर्णय या आदेश के विरुद्ध अपील करने वाला व्यक्ति अपील अनिर्णीत रहने तक, शुल्क या शास्ति के संबंध में विवाद होने पर माँगे गये शुल्क के 7.5% का, अथवा केवल शास्तिके संबंध में विवाद होने पर शास्तिका भुगतान करेगा।

ORDER-IN-ORIGINAL

- This copy is granted free of charge for the use of the person to whom it is issued.
- An appeal against this order lies with the Commissioner of Customs (Appeal), Jawaharlal Nehru Custom House, Sheva, Tal :Uran, Dist : Raigad, Maharashtra – 400707 under section 128(1) of the Customs Act, 1962 within sixty days from the date of communication of this order. The appeal should be in duplicate and should be filed in Form CA-1 Annexure on the Customs (Appeal) Rules, 1982. The Appeal should bear a Court Fee stamp of Rs.1.50 only and should be accompanied by this order or a copy thereof. If a copy of this order is enclosed, it should also bear a Court Fee Stamp of Rs. 1.50 only as prescribed under Schedule 1, items 6 of the Court Fee Act, 1970.
- Any person desirous of appealing against this decision or order shall, pending the appeal, make 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

Specific intelligence was developed that M/s. Nexus Organo Chem (IEC No. ADKPV7762R) (herein after referred to as 'importer'), having registered address at Building D, Flat No B 407, 4th Floor, Parmanand Nagar, 60 Feet Road, Bhayandar(West), Mira Bhayandar, Thane, Maharashtra-401101, is involved in smuggling of insecticides. Accordingly, an investigation was initiated by the Directorate of Revenue Intelligence, Mumbai Zonal Unit, 13, Sir Vithaldas Thackersey Marg, New Marine Lines, Mumbai-400020 (hereinafter referred to as DRI).

2. Action taken on intelligence

2.1. A live import consignment of the said importer, covered under the below mentioned Bill of Entry, lying at JWR Logistic Pvt. Ltd, CFS, No. 13-15, NH-4B, Panvel-JNPT Road, Village-Padeghar, Tal:Panvel, Distt. Raigad, was put on hold and examined under Panchanama dated 04.08.2023(**RUD-1**).

Table - A

S.No.	Port	BE No./Date	Declared Item Description/ Qty.
1	INNSA1	7113368/29.07.2023	"Xanthan Gum" Industrial Grade/2000 kg

Examination and drawing of samples

2.2. During the course of examination, it was found that the consignment contained 80 bags of 25 kg each. Further, it was noticed that the consignment contained two different types of marking viz. 40 bags bearing the marking '1' which were serially numbered from 1 to 40 and 40 bags bearing the marking '2' which were serially numbered from 41 to 80. Hence, two set of representative samples, one each from a type of marking were drawn for testing to ascertain the composition and nature of the goods. The samples drawn from the said consignment were marked as Type-AB1 to AB4 (for samples drawn from bags numbered 1 to 40) and Type-AC1 to AC4 (for samples drawn from bags numbered 41 to 80)

Test Results of Samples Drawn

2.3. To ascertain the composition and nature of the imported goods, the representative samples were sent to Central Insecticides Laboratory (CIL), Faridabad, Haryana and CRCL, NCH, Mumbai.

(a) The sample marked as Type-AB1 & Type-AC1, and drawn from the goods imported through Bill of Entry No. 7113368 dated 29.07.2023 having declared description as 'Xanthan Gum', Quantity 2000 Kgs drawn under panchanama dated 04.08.2023 were sent to CRCL, NCH, Mumbai vide Test Memo dated 07.08.2023.

(b) The sample marked as Type-AB2 & Type-AC2, and drawn from the goods imported through Bill of Entry No. 7113368 dated 29.07.2023 having declared description as 'Xanthan Gum', Quantity 2000 Kgs drawn under panchanama dated 04.08.2023 were sent to CIL, Faridabad vide Test Memo dated 10.08.2023.

(c) The CRCL, NCH, Mumbai analysed the samples and gave results of analysis vide letter dated 17.08.2023 (**RUD-2**). The result for the sample marked as Type-AB1 & AC1 were of "nitrogen bearing Organic Compound and each of the sample under reference is other than Xanthan Gum"

(d) The CIL, Faridabad analysed the samples and gave results of the analysis vide letter dated 26.09.2023(**RUD-3**). The result for sample marked as Type-AB2 and AC2 tested positive for the presence of *Chlorantraniliprole* (content=97.26%)&*Chlorantraniliprole* (content=86.57%), respectively. It has also been stated in the report that “*Chlorantraniliprole is a registered pesticide and cannot be imported in the country without possessing a valid Certificate of registration for import or Import permit issued by Secretariat of Central Insecticide Board and Registration Committee (CIB & RC)*.”

(e) The test results of the live consignment of M/s. Nexus Organo Chem covered under Bill of Entry 7113368 dated 29.07.2023 are summarised in Table-B below:

Table - B

Sr. No.	Lab	Letter date	Sample Type	Test Result
1	CRCL	17.08.2023	AB1	Not Xanthan Gum
			AC1	Not Xanthan Gum
2	CIL	26.09.2023	AB2	Chlorantraniliprole (Content=97.26%)
			AC2	Chlorantraniliprole (Content=86.57%)

Seizure

2.4. Chlorantraniliprole is a registered pesticide which cannot be imported in the country without possessing a valid Certificate of Registration for import or import permit issued by Secretary of Central Insecticide Board and Registration Committee (CIB & RC). Hence, the goods are Restricted and thus liable for confiscation under Section 111of the Customs Act, 1962. Accordingly, based on the test reports of the samples drawn during examination of goods covered under Bill of Entry No. 7113368 dated 29.07.2023, the subject goods were seized under Section 110 of the Customs Act, 1962 vide seizure memorandum dated 05.10.2023 (**RUD-4**).

Recording of Statements

2.5. Bhavik Soni, IEC Handler:

Statements dated 04.08.2023(**RUD-5**), 15/16.03.2024 (**RUD-6**) and 26.03.2024 (**RUD-7**)of **Shri Bhavik Kirit Soni**, IEC handler of M/s. Nexus Organo Chem was recorded under Section 108 of the Customs Act, 1962:

2.11.1. In his statement dated 04.08.2023 Shri Bhavik KiritSoni, interalia, stated that:

- (a) He started M/s. Nexus Organo Chem, an import/export firm in April, 2023, in the name of Shri PrabhudasSoni, who is father-in-law of his elder brother Shri Vishal Soni;
- (b) Till date he had imported 6 consignments including the live consignment, out of which 2 consignments were of ‘*Cytosine*’ and 4 consignments were of ‘*Xanthan Gum*’;
- (c) The products‘*Cytosine*’ and ‘*Xanthan Gum*’were purchased for supply toM/s. Fine Organic Chemical &M/s.AvandosePharmatechPvt. Ltd., Telangana, respectively;
- (d) Shri Mahavir Jain was doing all the work related to import and local supply.Mahavir Jain used to place order in China and also arrange local buyer at 2% commission;

- (e) One consignment of 'Xanthan Gum', and 2 consignments of 'Cytosine' were imported through Air Cargo, Delhi, other consignments were imported through Nhava Sheva Port, JNPT;
- (f) Local sales proceeds and foreign remittances were done through Axis Bank account no. 922020041575296 of M/s. Nexus Organo Chem;
- (g) Mobile number 8291086455 of Shri Prabhudas Soni is in his possession since obtaining the IEC and was being used for the business and bank transactions. Shri Prabhudas Soni is not involved in any way with the working of M/s. Nexus Organo Chem and he (Bhavik) alone handled all the activities of the firm.

2.11.1. Further, summons was issued to Shri Bhavik Soni (IEC handler) on 08.09.2023, which was returned back with a remark 'address move, dated 13.09.2023' from postal authorities, the same summons was also sent through email. Shri Bhavik Soni filed a Criminal Writ in High Court, Bombay, wherein he requested the presences of advocate and videography during interrogation. The said Writ Petition No. 3492 of 2023, was decided by the Hon'ble High Court, Bombay vide Order dated 11.03.2024, **(RUD-8)** which held that: -

".....Considering the prayers made in the Petition, we do not find any impediment in permitting the Petitioner's advocate to remain present when the Petitioner is summoned for interrogation by the Respondent No.2. The Petitioner's advocate to remain present at a visible but not audible distance. We also permit videography of the said interrogation, however, at the cost of the Petitioner.

7. We make it clear that if the Petitioner's advocate is unable to remain present or if the person video-graphing is not present, that will not be a ground for the Petitioner, not to remain present, before the Respondent No.2-DRI, when summoned."

2.11.1. Accordingly, further, statements dated 15/16.03.2024 and 26.03.2024 of **Shri Bhavik Kirit Soni**, IEC handler of M/s. Nexus Organo Chem was recorded under Section 108 of the Customs Act, 1962. His advocate Shri Kedar Dilip Khambete was present at a visible but not audible distance during the recording of these statements. In his statements dated 15/16.03.2024 and 26.03.2024, he, inter alia, stated that:

- (a) His earlier statement dated 04.08.2023 was fabricated and nothing apart from his personal details was correct and that his statement dated 15.03.2023 was the correct statement. Further, he stated that Mahavir Jain is a person known to one Gaganjot Singh, partner in a company named M/s. Avandose Pharmatech Pvt. Ltd., and Gaganjot guided him to create a fictitious story about Mahavir Jain to save themselves. Gaganjot Singh was the one who suggested him to open a company for import of chemicals from China. Further, Gaganjot Singh assured to provide him all basic support regarding finances, suppliers and buyers in import business.
- (b) Gaganjot Singh promised him a commission of Rs. 50/- per kg on supply of the said imported product i.e. chemical compounds and till date he received an amount of Rs. 2 lakhs as commission, in cash. Shri Gaganjot Singh also provided him the number of Shri Ravi Balwani, his other partner in M/s. Avandose Pharmatech Pvt. Ltd. However, he never met Shri Ravi

Balwani and only had a telephonic conversation once with him (Shri Ravi Balwani) in respect of an import consignment.

(c) He opened the firm in the name of Prabhudas Dayalji Vaya Soni, since his own firm "Zillion Gold" was blacklisted in GST. He used documents of Shri Prabhudas Dayalji Vaya Soni, because he himself lived in a rented place, and it was very difficult to create an IEC using documents of a rented house. He stated that Prabhudas Dayalji Vaya Soni is the proprietor of M/s. Nexus Organo Chem only on paper, and is actually nowhere concerned with the working of the firm and all the paper related work of M/s. Nexus Organo Chem was being handled by him. Gaganjot Singh handled all the work related to import of chemical compounds and he was helping Gaganjot Singh to import the goods in the name of M/s. Nexus Organo Chem for financial favours (Rs. 50/Kg).

(d) Shri Gaganjot Singh used to talk to foreign suppliers in China and also arranged for transport of goods to local suppliers. On 04.08.2023, when DRI put on hold their live consignment, Gaganjot Singh through one of his associates viz. Bablu Karmakar guided Bhavik Soni to take another mobile phone, and not the one from which he used to talk to Gaganjot Singh. Further, in his statement dated 26.03.2024, he stated that before coming to the DRI office, Gaganjot Singh instructed him to destroy evidence in respect of live consignment kept on hold. Therefore, he destroyed his previous mobile phone. He confirmed that the deleted chat and data were related to the products being imported in the guise of Cytosine and Xanthan Gum.

(e) He knew about the consignments being mis-declared but was not aware of the exact nature of goods. He submitted a photo uploaded on his google drive, which contained WhatsApp conversation dated 28.08.2023 (**RUD-9**), wherein the communication was being done with a person whose number was saved as GJS. In the said conversation the person informed him that the imported consignment contained Coragen i.e. Chlorantraniliprole, which requires a valid licence issued by CIB for import into India. Bhavik Soni stated that he had saved Gaganjot Singh's name as GJS in his phone. He also submitted the email conversation on nexusorganochem@gmail.com with Chinese supplier (email jd-xukunshan@gmail.com) and Bank Statement of M/s. Nexus Organo Chem.

(f) He received Rs. 11.98 lakh in cash from Gaganjot Singh through Angadiya channels and Rs. 24.60 lakh through M/s. Avandose Pharmatech Pvt. Ltd. He later deposited the cash received amounting to Rs. 11.98 lakh in Axis Bank account No. 922020041757296 of M/s. Nexus Organo Chem.

(g) He had not given any financial benefit to Shri Prabhudas Soni. The bank account of M/s. Nexus Organo Chem was handled by him. Further, all the transactions in Axis Bank, Bhayander (West) A/c No.: 922020041757296 were done by him. He had supplied 6,000 kgs. of Xanthan Gum to M/s. Fine Organic Chemicals, Delhi but never received any payments from them. However, all the payments regarding Customs Duty and clearing charges in respect of M/s. Nexus Organo Chem were paid to him by Shri Gaganjot Singh.

(h) Shri Gaganjot Singh or his person (Bablu Karmakar) used to interact with CHAs, Shipping Agents, transporters etc. They used to send all the import documents i.r.o M/s. Nexus Organo Chem through courier from Delhi.

(i) The first call regarding DRI hold of the consignment under Bill of Entry No. 7113368 dated 29.07.2023, was received by him from Bablu Karmakar. As he had destroyed his mobile handset and old sim card, so the mobile number of Bablu Karmakar was not available with him. Bhavik Soni informed that Bablu Karmakar ran a firm named M/s. B.L. Trading Services and provided his email id viz. bltrading@gmail.com.

2.6. Shri Anuj Umesh Mishra of M/s. R U Import Export Pvt. Ltd. (CHA) & M/s. Mishra and Sons Shipping Logistics (cargo handler):

Further, a statement dated 27.03.2024 of Shri Anuj Umesh Mishra of M/s. R U Import Export Pvt. Ltd. (CHA) & M/s. Mishra and Sons Shipping Logistics (cargo handler), was recorded under Section 108 of the Customs Act, 1962 (**RUD-10**), wherein he inter alia stated that:

- (a) They handled 4 previously imported consignments of M/s. Nexus Organo Chem, and also filed B/E No. 7113368 dated 29.07.2023, which is seized by the DRI;
- (b) All the documents pertaining to M/s. Nexus Organo Chem, were received by them through email of Shri Bablu Karmakar, of M/s. B L Trading & Services i.e. from the email id bltradingservices@gmail.com.
- (c) Shri Bablu Karmakar of M/s. B L Trading & Services informed them that all the documents are being received from Shri Bhavik Soni.
- (d) They received payments in the account of M/s. Mishra & Sons from M/s. Nexus Organo Chem, however the bills raised to M/s. Nexus Organo Chem were sent to Shri Bablu Karmakar on bltradingservices@gmail.com;
- (e) They contacted Shri Bablu Karmakar of M/s. B L Trading & Services, for all the import work related to M/s. Nexus Organo Chem and all the documents, payments were received through bltradingservices@gmail.com;
- (f) He also submitted email communication and documents in relation to all the five import consignments.

2.7. Shri Vikas Mani Tivari, G-Card holder of M/s. Rakesh Kumar Singh (CHA No. 21/2010) & M/s. Shyam Cargo Services (cargo handler):

Further, a statement dated 01.04.2024 of Shri Vikas Mani Tivari, G-Card holder of M/s. Rakesh Kumar Singh (CHA No. 21/2010) & M/s. Shyam Cargo Services (cargo handler), was recorded under Section 108 of the Customs Act, 1962 (**RUD-11**), wherein he inter alia stated that:

- (a) They handled 2 imported consignments of M/s. Nexus Organo Chem, and filed B/E No. 5728287 dated 28.04.2023 and 6905295 dated 17.07.2023;
- (b) M/s. Nexus Organo Chem, vide letter dated 19.04.2023, authorized Mr. Bablu Karmakar to carry out Customs clearance on their behalf. All the documents pertaining to M/s. Nexus

Organo Chem, were received by them through email of Shri Bablu Karmakar of M/s. BL Trading & Services i.e. from the email id bltradingservices@gmail.com;

- (c) Shri Bablu Karmakar of M/s. B L Trading & Services, informed them that all the documents are being received from M/s. Nexus Organo Chem;
- (d) They received payments in the account of M/s. Shri Shyam Cargo from M/s. Nexus Organo Chem, however the bills raised to M/s. Nexus Organo Chem were sent to Shri Bablu Karmakar on bltradingservices@gmail.com;
- (e) They contacted Shri Bablu Karmakar of M/s. B L Trading & Services, for all the import work related to M/s. Nexus Organo Chem and all the documents, payments were received through bltradingservices@gmail.com;
- (f) He also submitted email communication and documents in relation to these two import consignments.

2.8. Shipping Agents and Cargo Handler:

Further, statements of Shri Nilesh Subhash Hindlekar, Ocean Product Head of M/s. Transworld Integrated Logistek Pvt. Ltd., Mumbai (Shipping Agent) dated 27.03.2024(**RUD-12**); Shri Giridhar Anand Kotian, Assistant Manager of Sales & Marketing of M/s. Contech Logistics Solutions Pvt. Ltd., Mumbai (Shipping Agent) dated 28.03.2024(**RUD-13**), Shri Rajat Chakraborty, Managing Director of M/s. CTL Logistics (India) Pvt. Ltd., Mumbai (Shipping Agent) dated 28.03.2024(**RUD-14**), were recorded under Section 108 of the Customs Act, 1962, wherein they, inter-alia, stated that:

- (a) They had handled import consignments of M/s. Nexus Organo Chem.
- (b) They intimated the sailing of vessel/IGM & cargo arrival to M/s. Nexus Organo Chem, on their email id. nexusorganochem@gmail.com; Further, they received email from bltradingservices@gmail.com an agent of importer, Shri Bablu Karmakar of B L Trading & Services, with introduction of CHA urmishra@gmail.com. Further, it was confirmed that importer's e-mail id nexusorganochem@gmail.com was never kept in CC/BCC in communication made with them either by CHA or by M/s. B L Trading Service; they interacted further with CHA/agent of importer, on these email ids only.
- (c) The communication regarding payment of their charges were also handled by Shri Bablu Karmakar, agent of importer through his email id bltradingservices@gmail.com, but the payments were received directly from the Axis Bank account of M/s. Nexus Organo Chem.
- (d) They also submitted copies of all the communication in-between importer (nexusorganochem@gmail.com), Shri Bablu Karmakar, agent of importer bltradingservices@gmail.com and CHA.

2.9. Further, a statement dated 05.04.2024 of **Shri Bablu Karmakar** of M/s. BL Trading & Services, New Delhi, was recorded under Section 108 of the Customs Act, 1962 (**RUD-15**), wherein he inter-alia stated that:

- (a) He provided indenting services to various customers in relation to import and export and M/s. Nexus Organo Chem is one such client.

- (b) They (M/s. BL Trading & Services) have been duly appointed as import intendent agent for handling the Customs clearance work by M/s. Nexus Organo Chem, and produced an authorization letter dated 19.04.2023.
- (c) He was introduced to Shri Bhavik Soni of M/s. Nexus Organo Chem, by Shri Gaganjot Singh, who is director of the M/s. Avanscure Lifescience Pvt. Ltd., for which he (Shri Bablu Karmakar) is working as an Assistant General Manager. Shri Bhavik Soni told him that he (Shri Bhavik Soni) is handling all the work of M/s. Nexus Organo Chem on behalf of Shri Prabhudas Soni. Bhavik used to send all the required documents signed by Shri Prabhudas Soni such as KYC etc.
- (d) They used to contact Shri Bhavik Soni of M/s. Nexus Organo Chem for all import related work and payments, and Shri Bhavik Soni used to send the confirmation of the payments of Customs Duty, Shipping Agents Charges and Cargo Handling Charges of CHA made from the Axis bank accounts of M/s. Nexus Organo Chem. These communications were either received through email or on whatsapp;
- (e) Upon arrival of the cargo, M/s. Nexus Organo Chem used to send the Cargo Arrival Notice to him (Bablu Karmakar). Accordingly, Bablu Karmakar used to appoint the CHA for the Customs clearance work. Further, he would arrange for the delivery of cargo as per destination provided by Shri Bhavik Soni;
- (f) He handled all the seven imports consignments of M/s. Nexus Organo Chem, including the consignment put on hold by DRI at JNPT port on 04.08.2023;
- (g) Upon holding of cargo by DRI on 04.08.2023, he got the information from CHA and subsequently, he informed Shri Bhavik Soni about the same; out of fear he deliberately deleted all the relevant WhatsApp chats and emails.

2.10. Gaganjot Singh, Director M/s. Avandose Pharma Pvt. Ltd:

Further, Summons dated 08.09.2023, was issued to Shri Gaganjot Singh (Director of M/s. Avandose Pharmatech Pvt. Ltd.) & Shri Gaganjot Singh vide letter dated 13.09.2023, replied that due to family commitments he is not in a position to appear on the given date and requested for date & time in second week of October, 2023. Accordingly, another summons dated 25.09.2023 was issued to appear on 13.10.2023, however he filed a Writ Petition No. 3909 of 2023, in the High Court, Bombay, wherein he requested for the presence of an advocate and videography of his interrogation. The Hon'ble High Court, Bombay vide interim order dated 12.01.2024, gave relief in terms of his prayer. Further, the said Writ Petition No. 3909 of 2023 was finally decided by the Hon'ble High Court, Bombay vide Order dated 18.01.2024, **(RUD-16)** wherein it was held that-

'6.having considered the judgement of this Court (Coram: R.D. Dhanuka & S. M. Modak, JJ.) passed in Civil Writ Petition No. 6558 of 2021, we permit the Petitioner's advocate to remain present when the Petitioner is summoned for interrogation. The Petitioner's advocate to remain present at a visible but not audible distance. We also permit videography of the said interrogation, however, at the cost of the Petitioner.

7. We make it clear that if the Petitioner's advocate is unable to remain present or if the person video-graphing is not present, that will not be a ground for the Petitioner, not to remain present, before the appropriate authority, when summoned.'

2.11.1. Accordingly, in view of order dated 18.01.2024 issued by Hon'ble High Court, Bombay, Shri Gaganjot Singh was summoned to appear on 11.03.2024, however he did not respond and another summons dated 16.03.2024 was issued to him to appear on 22.03.2024, along with a request to honour aforementioned order dated 18.01.2024. Shri Gaganjot Singh vide mail dated 19.03.2024, stated that due to international travel, he was unable to appear on 11.03.2024 and requested for a date past 10.04.2024. Further, vide mail dated 19.03.2024, he was asked for travel itinerary and same was submitted on 22.03.2024. The travel itinerary indicated the return date as 28.03.2024. Accordingly, he was summoned on 05.04.2024 to appear before officer of DRI on 10.04.2024.

2.10.2. Further, a statement dated 10.04.2024 of Shri Gaganjot Singh, Director of M/s. Avandose Pharmatech Pvt. Ltd., was recorded under Section 108 of the Customs Act, 1962 (**RUD-17**). His advocate Shri Yogesh Rohira was present at a visible but not audible distance during the recording of statement. In his statement dated 10.04.2024, he, inter alia, stated that: -

(a) He met Shri Bhavik Soni in his office in Delhi, who offered to sell Cytosine as the same is one of ingredient for the product Gemcitabine HCL manufactured by them.

(b) After going through the statement dated 15/16-03-2024 and 26.03.2024 of Shri Bhavik Soni, he denied his role mentioned therein regarding imports and payments in cash to M/s. Nexus Organo Chem but agreed that he purchased two consignments for M/s. Nexus Organo Chem and made payments accordingly.

(c) He stated that he never had any WhatsApp chat with Shri Bhavik Soni regarding his import business and disagreed that the WhatsApp chat printout tendered by Shri Bhavik Soni under his statement dated 15/16.03.2024, was done by him, with Shri Bhavik Soni.

(d) Shri Bablu Karmakar is his employee and looking after import and export documents of his company. He told Shri Bablu Karmakar to help Shri Bhavik Soni in respect of Cytosine consignments purchased by M/s. Avansdose Pharmatech Pvt. Ltd. Further, he stated that he is not aware that Bablu Karmakar is running any firm in the name of M/s. BL Trading & Services for import/export clearance purpose.

2.11. Shri Prabhudas Soni, IEC holder:

Shri Prabhudas Soni, IEC holder was summoned but he filed a Writ Petition No. 11870 of 2023, in the High Court, Bombay, wherein he requested for provisional release of seized goods and the presence of advocate at a visible but not audible distance and videography of his interrogation. The said Writ Petition was dismissed by the Hon'ble High Court, Bombay vide Order dated 21.02.2024, (**RUD-18**) wherein it was held that *'None appears for the petitioner when the matter is called out. It appears that the petitioner is not interested in prosecuting the petition. Hence, the petition is dismissed for want of prosecution.'*

2.11.1. Accordingly, Shri Prabhudas Soni was summoned to appear on 11.03.2024, however he vide mail dated 08.03.2024, submitted that he had filed Writ Petition (St.) No. 25273 of 2023 before the Hon'ble High Court and the matter was listed next on 19.03.2024. He requested that summons may be kept in abeyance till then. Further, summons dated 26.04.2024 was also issued to him and also a letter dated 26.04.2024 (**RUD-19**) was issued explaining the provisions of Section 108 of the Customs Act,

1962 and consequences for not appearing before the designated authority. Upon receiving no reply, Shri PrabhudasSoni was again summoned vide summons dated 06.05.2024. Shri PrabhudasDayaljiVayaSoni telephonically informed that owing to his ill health, he was not in physical condition to travel and sought more time.

2.11.2. Accordingly, his statement was recorded under Section 108 of the Customs Act, 1962 on 14.06.2024 (**RUD-20**). In his statement he, inter alia, stated that:

- (a) Bhavik Soni contacted him somewhere in January, 2023 and asked for his Aadhar Card, PAN Card and some other documents for starting a brand new business in Prabhudas' name, to which he agreed, since Bhavik Soni was part of the family.
- (b) Bhavik Soni informed him that he had opened a new firm named M/s. Nexus Organo Chem in his name. Further, he (Bhavik) took his (Prabhudas') details and also opened a new bank account. Prabhudas provided his signatures and OTP as and when required by Bhavik Soni.
- (c) The company M/s. Nexus Organo Chem was operated and run by Bhavik Soni and Prabhudayal had no idea about the business operations of the firm.
- (d) Bhavik Soni never informed him about the documents which were being imported or sold by the said firm opened in his name, he just signed on the document brought by Shri Bhavik Soni.
- (e) In regards to the writ petition, he stated that, although he signed the writ petition, but he was unaware of the contents of the writ petition. He stated that the writ petition was brought to him by Bhavik Soni for signatures, which he did out of trust.
- (f) He stated that the bank account of M/s. Nexus Organo Chem was handled by Bhavik Soni and he (Prabhudas) was not aware of any banking transactions made in the said bank account.

3. Legal Provisions

Relevant provisions of law relating to import of goods in general and insecticides in particular, the Policy and Rules relating to the import of insecticides, the liability of the goods to confiscation and liability of the persons concerned to penalty for improper/illegal importation, under the provisions of the Customs Act, 1962 read with the provisions of the Insecticides Act, 1968 and other laws for the time being in force are summarized as under:

4.1. Foreign Trade (Development and Regulation) Act, 1992:

- i) Section 5 of the Foreign Trade (Development and Regulation) Act, 1992:**
Section 5 of FTDR Act, 1992 provides inter-alia, for formulation of the export and import policy by the Central Government from time to time.
- ii) Section 7 of the Foreign Trade (Development and Regulation) Act, 1992:**
Section 7 of FTDR Act, 1992 states that no import can take place without a valid Import Export Code Number unless otherwise exempted.
- iii) Section 11 (1) of the Foreign Trade (Development and Regulation) Act, 1992:**
Section 11 (1) of FTDR Act, 1992 states no export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force.

4.2. Foreign Trade (Regulation) Rules, 1993:

i) Rule 11 of the Foreign Trade (Regulation) Rules, 1993:

Rule 11 of the FTR Rules, 1993 stipulates inter-alia that on the importation into any custom port of any goods, whether liable to duty or not, the owner of such goods shall in the bill of entry or any other documents prescribed under the Customs Act, 1962 state the value, quality and description of such goods to the best of his knowledge and belief and shall subscribe a declaration of the truth of such statement at the foot of such bill of entry or any other document.

ii) Rule 14 of the Foreign Trade (Regulation) Rules 1993:

Rule 14 of the FTR Rules, 1993 provides inter-alia, that (i) no person shall make sign or use or cause to be made, signed or used any declaration, statement or document for the purpose of obtaining any license or importing or exporting any goods knowing or having reasons to believe that such declaration statement or document is false in any material particular (ii) no person shall employ any corrupt or fraudulent practice for the purposes of obtaining any license or importing or exporting any goods.

4.3. The Insecticides Act, 1968:

i) Section 9 of the Insecticides Act, 1968: Registration of insecticides:

(1) Any person desiring to import or manufacture any insecticide may apply to the Registration Committee for the registration of such insecticide and there shall be a separate application for each such insecticide:

Provided that any person engaged in the business of import or manufacture of any insecticide immediately before the commencement of this section shall make an application to the Registration Committee within a period of seventeen months from the date of such commencement for the registration of any insecticide which he has been importing or manufacturing before that date:

Provided further that where any person referred to in the preceding proviso fails to make an application under that proviso within the period specified therein, he may make such application at any time thereafter on payment of a penalty of one hundred rupees for every month or part thereof after the expiry of such period for the registration of each such insecticide.

(2) Every application under sub-section (1) shall be made in such form and contain such particulars as may be prescribed

(3) On receipt of any such application for the registration of an insecticide, the Committee may, after such enquiry as it deems fit and after satisfying itself that the insecticide to which the application relates conforms to the claims made by the importer or by the manufacturer, as the case may be, as regards the efficacy of the insecticide and its safety to human beings and animals, register on such conditions as may be specified by it and on payment of such fee as may be prescribed, the insecticide, allot a registration number thereto and issue a certificate of registration in token thereof within a period of twelve months from the date of receipt of the application:

Provided that the Committee may, if it is unable within the said period to arrive at a decision on the basis of the materials placed before it, extend the period by a further period not exceeding six months:

Provided further that if the Committee is of opinion that the precautions claimed by the applicant as being sufficient to ensure safety to human beings or animals are not such as can be easily observed or that notwithstanding the observance of such precautions the use of the insecticide involves serious risk to human beings or animals, it may refuse to register the insecticide.

(3A) In the case of applications received by it prior to the 31st day of March, 1975, notwithstanding the expiry of the period specified in sub-section (3) for the disposal of such applications, it shall be lawful and shall be deemed always to have been lawful for the Registration Committee to dispose of such applications at any time after such expiry but within a period of one year from the commencement of the Insecticides (Amendment) Act, 1977 (24 of 1977):

Provided that nothing contained in this sub-section shall be deemed to make any contravention before the commencement of the Insecticides (Amendment) Act, 1977 (24 of 1977), of a condition of a certificate of registration granted before such commencement, an offence punishable under this Act.

(3B) Where the Registration Committee is of opinion that the insecticide is being introduced for the first time in India, it may, pending any enquiry, register it provisionally for a period of two years on such conditions as may be specified by it.

(3C) The Registration Committee may, having regard to the efficacy of the insecticide and its safety to human beings and animals, vary the conditions subject to which a certificate of registration has been granted and may for that purpose require the certificate-holder by notice in writing to deliver up the certificate to it within such time as may be specified in the notice.

(4) Notwithstanding anything contained in this section, where an insecticide has been registered on the application of any person, any other person desiring to import or manufacture the insecticide or engaged in the business of, import or manufacture thereof shall on application and on payment of prescribed fee be allotted a registration number and granted a certificate of registration in respect thereof on the same conditions on which the insecticide was originally registered.

ii) Section 17 of the Insecticides Act, 1968 mandates that:

(1) No person shall, himself or by any person on his behalf, import or manufacture-

(a) any misbranded insecticide;

(b) any insecticide the sale, distribution or use of which is for the time being prohibited under section 27;

(c) any insecticide except in accordance with the conditions on which it was registered;

(d) any insecticide in contravention of any other provision of this Act or of any rule made thereunder:

Provided that any person who has applied for registration of an insecticide under any of the provisos to sub-section (1) of section 9 may continue to import or manufacture any such insecticide and such insecticide shall not be deemed to be a misbranded insecticide within the meaning of sub-clause (vi) or sub-clause (vii) or sub-clause (viii) of clause (k) of section 3, until he has been informed by the Registration Committee of its decision to refuse to register the said insecticide.

(2) No person shall, himself or by any person on his behalf, manufacture any insecticide except under, and in accordance with the conditions of, a licence issued for such purpose under this Act.

(3) Central Insecticide Board & Registration Committee (CIB & RC) released a Public Notice vide F. No. 04-01/2022-CIR-I dated 17.02.2022 regarding 'check list for Customs on Import of pesticides' for better implementation and dealing with consignments containing imported Insecticides. There are certain conditions for import of insecticides, which are to be followed while import of insecticides, which are as under:

As insecticides, i.e. any substance included in the Schedule to the Insecticides Act, 1968, or any preparation containing anyone or more thereof, require mandatory registration under Section 9 by the Registration Committee, constituted under Section 5, of the said Act for insecticidal use or an import permit, issued by the same Committee, for non-insecticidal use. Therefore, no insecticide should be allowed to be imported without a valid Certificate of Registration or an Import Permit, issued by the Secretary, Central Insecticides Board & Registration Committee under his signature and official seal.

The Certificate of Registration or the Import Permit should be checked with respect to date of validity, if any mentioned thereon. In case, it is not mentioned, such certificate or import permit shall be treated as a permanent document. In case, any date of validity is mentioned, the import should not be allowed on or after its expiry.

The Import should be allowed only if the insecticide is originating from the source of import, as mentioned in the Certificate of Registration. In case, the name of a supplier is also mentioned therein, the material should route only through the supplier and should not be allowed directly from the source of import.

In case, there is any variation in the name or address of either the source of import or the supplier and the endorsement of such change has not been obtained by the registrant from the Secretary, Central Insecticides Board & Registration Committee before the import, such import should not be allowed.

The consignment should be accompanied by an invoice of that insecticide issued by the source of import. Even in case of routing the material through the supplier, the material is required to originate from the source of import, duly accompanied by an invoice issued only by the source of import. "If the supplier or the manufacturer of the pesticide (source of import) is the principal company or the subsidiary of the registrant of the Pesticide in India, invoice can be generated from either the manufacturer or the supplier providing the complete details of the source of import

in the invoice including name and mailing address as approved by the committee along with Authorization letter from the manufacturer for supplying the material.”

In cases of Certificate of Registration issued for pesticides for Import for Export category, it is to be ensured that the entire quantity imported against that Certificate is Exported too (in case of conversion of technical grade material into a preparation thereof, the quantity should be matching in terms of technical grade).

In case of doubt, the material should not be released. Only on receiving confirmatory information from the Secretary, Central Insecticides Board & Registration Committee the consignment may be dealt with further.

4.4. The Customs Act, 1962:

i) Section 2. Definitions:

(33) “prohibited goods” means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.

(39) “smuggling”, in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 11 or section 113;

ii) Section 14. Valuation of goods.

(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:

Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf.

iii) Section 17. Assessment of Duty:

(1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

(2) The proper officer may verify the entries made under section 46 or section 50 and the self-assessment of goods referred to in sub-section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.

(3) For the purposes of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

iv) Section 46. Entry of goods on importation:

(1) The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed:

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in any other manner:

Provided further that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof:

- (a) to examine the goods in the presence of an officer of customs, or
- (b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

(2) Save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

(3) The importer shall present the bill of entry under sub-section (1) before the end of the day (including holidays) preceding the day on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing:

Provided that the Board may, in such cases as it may deem fit, prescribe different time limits for presentation of the bill of entry, which shall not be later than the end of the day of such arrival:

Provided further that a bill of entry may be presented at any time not exceeding thirty days prior to] the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India:

Provided also that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed.

(4) *The importer while presenting a bill of entry shall 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, and such other documents relating to the imported goods as may be prescribed.*

(4A) *The importer who presents a bill of entry shall ensure the following, namely:*

(a) the accuracy and completeness of the information given therein;

(b) the authenticity and validity of any document supporting it; and

(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

(5) *If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa.*

v) Section 111. Confiscation of improperly imported goods, etc.

The following goods brought from a place outside India shall be liable to confiscation:

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

(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;

(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, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable,-

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten percent of the duty sought to be evaded or five thousand rupees, whichever is higher:

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five percent of the penalty so determined;

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty [not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.

vii) Section 114AA. Penalty for use of false and incorrect material:

If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

viii) Section 119. Confiscation of goods used for concealing smuggling goods:

Any goods used for concealing smuggled goods shall also be liable to confiscation.

Explanation: In this section, "goods" do not include a conveyance used as a means of transport.

ix) Section 124. Issue of show cause notice before confiscation of goods, etc.

No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person—

(a) is given a notice in writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter:

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.

4.5. Customs Valuation (Determination of Value of Imported Goods) Rules, 2007:

i) Rule 3. Determination of the method of valuation:

(1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;

(2) Value of imported goods under sub-rule (1) shall be accepted:

Provided that –

(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which –

(i) are imposed or required by law or by the public authorities in India; or

(ii) limit the geographical area in which the goods may be resold; or

(iii) do not substantially affect the value of the goods;

(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.

(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

(ii) the deductive value for identical goods or similar goods;

(iii) the computed value for identical goods or similar goods:

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;

(a) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.

ii) Rule 4. Transaction value of identical goods: -

(1) (a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued;

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.

(c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

(2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

iii) Rule 5. Transaction value of similar goods: -

(1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued:

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, *mutatis mutandis*, also apply in respect of similar goods.

iv) Rule 11. Declaration by the importer

(1) The importer or his agent shall furnish –

(a) a declaration disclosing full and accurate details relating to the value of imported goods; and
(b) any other statement, information or document including an invoice of the manufacturer or producer of the imported goods where the goods are imported from or through a person other than the manufacturer or producer, as considered necessary by the proper officer for determination of the value of imported goods under these rules.

(2) Nothing contained in these rules shall be construed as restricting or calling into question the right of the proper officer of customs to satisfy himself as to the truth or accuracy of any statement, information, document or declaration presented for valuation purposes.

(3) The provisions of the Customs Act, 1962 (52 of 1962) relating to confiscation, penalty and prosecution shall apply to cases where wrong declaration, information, statement or documents are furnished under these rules.

v) Rule 12. Rejection of declared value:

- (1) *When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.*
- (2) *At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).*

Explanation. -(1) For the removal of doubts, it is hereby declared that: -

- (i) *This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.*
- (ii) *The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.*
- (iii) *The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -*
- (a) *the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;*
- (b) *the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;*
- (c) *the sale involves special discounts limited to exclusive agents;*
- (d) *the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;*
- (e) *the non-declaration of parameters such as brand, grade, specifications that have relevance to value;*
- (f) *the fraudulent or manipulated documents.*

4. Discussion and Findings as contained in SCN/IR

Mis-declaration of imported goods

4.1. The import of any insecticide into India is governed by the Foreign Trade (Development and Regulation) Act, 1992, the Insecticide Act, 1968 and the Customs Act, 1962.

4.2. In the present case, based on the test reports and statements mentioned above, the importer appears to have imported following goods:

Table - C

BE No. / Date	Declared Description of goods	Qty (In Kgs.)	Declared CTH	Goods as per Test Report	Redetermined CTH	Import Policy
7113368/ 29.07.2023	Xanthan Gum (Industrial Grade)	2,000	39139090	Chlorantra niliprole	38089199	Restricted*

***Import Policy read with Paragraph 2.01 (b) & 2.03 (a) of the Foreign Trade Policy and Section 17 of the Insecticides Act, 1968.**

4.3. As per Paragraph 2.01 (b) & 2.03 (a) of the Foreign Trade Policy all imported goods shall also be subject to domestic laws, rules, orders, regulations etc. Also, Section 17 of the Insecticides Act, 1968 states that any insecticide, except in accordance with the conditions on which it was registered, is prohibited for import and manufacture. Hence, the import of insecticides is restricted.

4.4. As per section 9 of the Insecticide Act, 1968, read with Public Notice vide F. No. 04-01/2022-CIR-I dated 17.02.2022, import of insecticides mentioned in schedule to this Act is allowed only with a valid Certificate of Registration or an Import Permit issued by CIB & RC (Central Insecticide Board & Registration Committee).

4.5. Chlorantraniliprole is mentioned at Sr. No. 764 of the said schedule to the Insecticide Act, 1968. Therefore, import of Chlorantraniliprole requires mandatory Certificate of Registration, which M/s.Nexus Organo Chemdid not have.

4.6. Further, CIB & RC, under the provisions of the Insecticides Act, 1968, provides the Source of Import and list of Indigenous Manufactures of Insecticides. It implies that the said Insecticide can only be imported under a valid license issued by CIB & RC from the approved source company/factory of the approved composition and not from any other source company/factory. Therefore, any import from non-approved source is illegal and any import other than approved composition is also illegal even if it is accompanied with a valid CIB&RC license.

4.7. In the present case, the imports of Chlorantraniliprole are neither from the approved Source of Import as provided nor of the approved composition as can be observed from the description of bill of entry and commercial invoice.

4.8. In view of above, it appears that, vide the Bill of Entry No. 7113368 dated 29.07.2023, the importer has imported 2,000 Kg. of Chlorantraniliprole, an insecticide, contrary to the conditions imposed by the Insecticide Act, 1968. As such, Chlorantraniliprole imported by the importer becomes prohibited goods as defined in Section 2(33) of the Customs Act, 1962 and, therefore, appears to be liable to confiscation under Section 111(d), 111(l) & 111(m) of the Customs Act, 1962. In the case of **Sheikh Mohd. Omer versus Collector of Customs**, Calcutta and Others, it has been observed by the Hon'ble Court that Section 111 says that goods which are imported or attempted to be imported contrary to "any prohibition imposed by any law for the time being in force in this country" is/are liable to be confiscated. "Any prohibition" referred to in that section applies to every type of "prohibition". That prohibition may be complete or partial. Any restriction on import or export is to an extent a prohibition. Therefore, the expression "any prohibition" in Section 111(d) of the Customs Act, 1962 includes restrictions.

Wrong Classification & Undervaluation of Imported Goods

4.9. Chlorantraniliprole, an insecticide mentioned at Sr. No. 764 of the said schedule to the Insecticide Act, 1968 is classified under HS Code 3808 91 99. While mis-declaring Chlorantraniliprole

imports as Xanthan Gum, the importer also appears to have mis-classified them under HS Code 39139090.

4.10. Chlorantraniliprole is significantly costlier in comparison to Xanthan Gum in the international market. Hence, the value declared for import of goods declared as Xanthan Gum appeared to be highly under-invoiced as can be seen from table below:

Table - D

Imported Goods	Price(\$/kg)
Chlorantraniliprole	331*
Xanthan Gum	6

***Source:Data for bills of entry pertaining to the import of Chlorantraniliprole from China were downloaded from ISS and it was found that Chlorantraniliprole imported by M/s. Syngenta India Limited in March, 2023 &September 2023 @331USD/kg. The details are mentioned in Annexure-A.**

4.11. Hence, it is apparent that the value declared for the consignment imported by M/s.Nexus Organo Chem vide the Bill of Entry No. 7113368 dated 29.07.2023 was based on manipulated invoice and, thereby, not the correct value of the goods. The manipulated invoice submitted at the time of the import of the goods appear to be incorrect document in terms of Rule 11 of the Customs Valuation (Determination of the Value of Imported Goods) Rules, 2007 (CVR, 2007).

4.12. Accordingly, the value declared in the consignment imported vide Bill of Entry No. 7113368 dated 29.07.2023 did not appear to be the Transaction Value of the said goods, in terms of the provisions of Section 14(1) of the Customs Act, 1962 read with provisions of Rule 3(1) of the CVR, 2007. Accordingly, the transaction value declared in the consignment is liable to be rejected as per Rule 12 (1) of the CVR, 2007.

4.13. The same is required to be re-determined by proceeding sequentially through Rule 4 to Rule 9 in terms of Rule 3 (4) of the CVR, 2007. As per the Rule 4 of CVR, 2007, the value of the goods can be re-determined using the transaction value of identical goods. As, the insecticides smuggled through the firm M/s. Nexus Organo Chem are not allowed as per the registrations granted under the Customs Act, 1962 for various insecticides, and so the Rule 4 is not applicable in this case. For example, as per the Insecticides Act, 1968 Chlorantraniliprole (98%) CAS No. 1104384-14-6 can be imported into India, but as per the test report of CIL, the sample (marked as AB2 & AC2), contains Chlorantraniliprole of 97.26%& 86.57% concentration, respectively. Hence, the goods smuggled are not identical to those imported by the importers having certificate of registration of the insecticide with the competent authority.

4.14. Further, as per Rule 5 of CVR, 2007, the value of the goods can be re-determined using the transaction value of similar goods. As discussed above, the goods which can be legally imported are similar to the goods being smuggled through the firm M/s. Nexus Organo Chem. Hence, the value of the goods can be re-determined using the Rule 5 of CVR, 2007. Also, as per Rule 5 of the CVR, 2007 the value of the similar goods should be at or around the same time, as the goods being valued.

4.15. In view of the same, the data of contemporaneous imports made into India for the insecticide as mentioned in **Table – E** below has been taken into consideration. Since, the import of insecticides is allowed as per registrations granted for different insecticides, the value of the imports has been taken at the minimum concentration allowed to be imported for that particular insecticide. Further, since this

import was made from China, the imports of the insecticide i.e. Chlorantraniliprole from China have been considered whose legal import data for the contemporaneous period is available. The details of the contemporaneous imports are attached as **Annexure-A**. Hence, the value of goods from the contemporaneous imports is as follows: -

Table - E

Sr. No.	Name of Insecticides	Rate (\$/Kgs)
1	Chlorantraniliprole	331

4.16. Based on the above findings, the value of the goods imported vide the said consignment having BE No. 7113368/ 29.07.2023 has to be re-determined. The goods are seized in view of Test Reports where the presence of insecticides has been confirmed. Hence, the value declared in the said BE No. viz. 7113368/ 29.07.2023 is liable for rejection and the value has to be re-determined as below:

Table - F

BE No. / Date	Declared Description of goods	Declared Value (Rs.)	Goods as per Test Report	Qty (In Kgs.)	Price (\$/kg)	Re-determined Value (@Rs. 82.95/\$)
7113368/ 29.07.2023	Xanthan Gum	9,95,400	Chlorantraniliprole	2,000	331	Rs. 5,49,12,900/-

5. Contraventions

In view of above, it appears that the importer has contravened following provisions:

- i) **Section 11(1) of the Foreign Trade (Development & Regulation) Act, 1992, Rule 11 and 14 of the Foreign Trade (Regulation) Rules 1993**, since M/s. Nexus Organo Chem did not obtain mandatory certificate of registration for import of Chlorantraniliprole, an insecticide.
- ii) **Para 6.01 (d) of The Foreign Trade Policy, 2015-2020**, as M/s. Nexus Organo Chem mis-declared the contents during imports.
- iii) **Section 9 (1), Section 17 (1), Section 17 (2) of the Insecticides Act, 1968**, since M/s. Nexus Organo Chem mis-declared the contents during the imports. Further, they imported insecticides for which they did not have the license to import.
- iv) **Section 14 of the Customs Act, 1962**, since, M/s. Nexus Organo Chem deliberately mis-declared the value of imported goods in the bill of entry by mis-declaring their description.
- v) **Section 46 (4) of the Customs Act, 1962**, M/s. Nexus Organo Chem mis declared the contents mentioned in Bill of Entry during import.
- vi) The 2000 Kgs of goods imported by M/s. Nexus Organo Chem vide Bill of Entry No. 7113368 dated 29.07.2023, as mentioned in **Annexure-B**, are liable to confiscation under Sections 111(d), 111(l) and 111(m) of the Customs Act, 1962, for misdeclaration of the description and the value of goods, as discussed above.

6. *Role played by Various Persons:*

6.1 Shri. Bhavik Soni:

- i) Shri. Bhavik Soni, the IEC handler of M/s. Nexus Organo Chem, has played a vital role in smuggling of insecticides from China by means of mis-declaration.
- ii) Shri. Bhavik Soni, in absence of a valid Certificate of Registration from CIB, conspired with Shri Gaganjot Singh to import insecticides namely Chlorantraniliprole into India under the guise of

Xanthan Gum. He used the identity documents of Shri PrabhudasSoni (father-in-law of his brother) to open a new firm namely M/s. Nexus Organo Chem, which was voluntarily provided to him by Shri PrabhudasSoni (also stated by PrabhudasSoni in his statement dated 14.06.2024). Bhavik Soni used the new IEC and the bank account for executing the said *modus operandi*.

- iii) Being well aware of the conditions and restrictions imposed on the import of insecticides, Shri. Bhavik Soni wilfully entered into the business of insecticide smuggling for instant monetary gains offered to him by Shri Gaganjot Singh. Shri. Bhavik Soni handled all day-to-day business activities of M/s. Nexus Organo Chem and also actively co-ordinated with Shri Bablu Karmakar to get the Bill of Entry filed with gross mis-declaration of description and value. Shri Bhavik Soni, being well aware of the mis-declaration in the consignment imported vide Bill of Entry No. 7113368 dated 29.07.2023, wilfully hid the true facts from the Customs department regarding the nature of the goods being imported i.e. insecticides.
- iv) Shri Bhavik Soni deleted all the evidence related to the smuggling of insecticides i.e. Chlorantraniliprole from his e-mail and mobile phone and further destroyed his mobile phone. In his statement dated 26.03.2024, he agreed to have deliberately done the same to hide the true facts from the department and to delay the ongoing investigation.
- v) This act of deliberate mis-declaration on the part of Shri Bhavik Soni, to manipulate the description and value of the imported goods in the Customs declaration appears to have rendered the said goods imported by M/s. Nexus Organo Chem vide Bill of Entry No. 7113368 dated 29.07.2023, liable to confiscation under Section 111(d), 111(l) and 111(m) of the Customs Act, 1962.
- vi) Shri. Bhavik Soni was instrumental in deliberately mis-stating the descriptions and value of the goods imported by M/s. Nexus Organo Chem vide Bill of Entry No. 7113368 dated 29.07.2023 before the Customs department. Consequently, in relation to the said goods imported by M/s. Nexus Organo Chem, Shri Bhavik Soni appears to have rendered himself liable to penalty under Section 112 (a) of the Customs Act, 1962.
- vii) Shri Bhavik Soni, in relation to the goods imported in the name of M/s. Nexus Organo Chem vide the Bill of Entry No. 7113368 dated 29.07.2023, always knew that the documents and the declarations submitted under the said Bill of Entry were false or incorrect in their material particulars. In spite of the above Shri Bhavik Soni, knowingly made false or incorrect declarations in relation to the consignments imported vide the said Bill of Entry No. 7113368 dated 29.07.2023. Consequently, Shri Bhavik Soni appears to have also rendered himself liable to penalty under Section 114AA of the Customs Act, 1962.

6.2 Shri. Gaganjot Singh: -

- i) Shri Gaganjot Singh appears to be the ultimate beneficiary of the imported/smuggled goods imported by M/s. Nexus Organo Chem vide Bill of Entry No. 7113368 dated 29.07.2023. Shri Gaganjot Singh conspired with Shri Bhavik Soni to smuggle the said insecticide into India. He guided Shri Bhavik Soni to open a new firm namely M/s. Nexus Organo Chem and further obtained a new IEC in the name of M/s. Nexus Organo Chem for smuggling insecticides into the country.

- ii) Shri Gaganjot Singh was also well aware about the contents of the said consignment i.e. insecticide namely Chlorantraniliprole. During his statement dated 15/16.03.2024, Shri Bhavik Soni submitted the printout of the chat revealing that Shri. Gaganjot Singh was very well aware about the import of insecticides viz chlorantraniliprole. In the said chat Shri Gaganjot Singh was informing Shri Bhavik Soni that as M/s. Nexus Organo Chem didn't possess the requisite certificate of registration, he (Shri Gaganjot Singh) placed orders of insecticides viz chlorantraniliprole with the foreign suppliers by way of mis-declaring the description and value of the goods.
- iii) Shri Bhavik Soni, in his statement dated 15/16.03.2024 also revealed that Shri Gaganjot Singh offered him Rs. 50/Kg as commission for every consignment imported by M/s. Nexus Organo Chem. Shri Bhavik Soni further stated that Shri Gaganjot Singh finalised the goods to be imported and placed the order with the overseas supplier.
- iv) Shri Gaganjot Singh, in relation to the goods imported in the name of M/s. Nexus Organo Chem vide the Bill of Entry No. 7113368 dated 29.07.2023, always knew that the documents and the declarations submitted under the respective Bill of Entry were false or incorrect in their material particulars. In spite of the above Shri Gaganjot Singh had knowingly helped Shri Bhavik Soni to make false or incorrect declarations in relation to the consignment imported vide the said Bill of Entry. Although, Shri Gaganjot Singh in his statement dated 10.04.2024 has denied his involvement in the smuggling, the statements dated 15/16.03.2024 of Bhavik Soni, statement dated 05.04.2024 of Shri Bablu Karmakar and the documentary evidence recovered during investigation prove contrary to his statement.
- v) Shri Gaganjot Singh, in connivance with Shri Bhavik Soni, involved in deliberately mis-stating the description and value of the goods imported by M/s. Nexus Organo Chem. Consequently, in relation to the said goods imported by M/s. Nexus Organo Chem, Shri. Gaganjot Singh appears to have rendered himself liable to penalty under Section 112 (b) of the Customs Act, 1962.
- vi) Consequently, it appears that Shri Gaganjot Singh was the ultimate beneficiary of the imports and his act of conniving with Bhavik Soni in causing false or incorrect declarations in relation to the consignments imported vide the said Bill of Entry No. 7113368 dated 29.07.2023 to smuggle insecticides renders himself liable to penalty under Section 114AA of the Customs Act, 1962.

7 Summary of the Investigation

7.1 M/s. Nexus Organo Chem filed Bill of Entry No. 7113368 dated 29.07.2023 for import of goods with declared description as 'Xanthan Gum'.

7.2 On the basis of examination & test reports of imported goods, it was observed that the imported goods contained 2,000 kg of Chlorantraniliprole, an insecticide which requires mandatory certificate of registration under the Insecticides Act, 1968.

7.3 Investigation revealed that IEC handler of M/s. Nexus Organo Chem, Shri Bhavik Soni, was well aware that the import of insecticide i.e. Chlorantraniliprole is restricted and required a valid Certificate of Registration from the CIB, which the importer was not having, and hence chose to smuggle it by way of mis-declaring the same in the guise of Xanthan Gum.

7.4 M/s. Nexus Organo Chem and its IEC handler Shri Bhavik Soni agreed to smuggle insecticides into India by way of mis-declaration, after their discussion with one Shri Gaganjot Singh and with help of Shri Bablu Karmakar of M/s. BL Trading & Services.

7.5 All the import related communication in the firm M/s. Nexus Organo Chem was done by Shri Bhavik Soni, and he appointed Shri Bablu Karmakar as his agent for Customs clearance of the cargo imported by them. The import documents were received by the Customs Broker from the B L Trading & Services of Shri Bablu Karmakar, and the Customs duty, shipping agent and CHA charges, for the import consignment was paid directly by the importer M/s. Nexus Organo Chem through online mode from their Axis Bank account. The process of payment by M/s. Nexus Organo Chem is mediated by Shri Bablu Karmakar of M/s. B L Trading & Services.

7.6 The transportation post customs clearance was managed by M/s. B L Trading & Services of Shri Bablu Karmakar, and the goods were transported directly to the buyers' places as directed by Shri Bhavik Soni.

7.7 From this, it appeared that M/s. Nexus Organo Chem and its IEC handler Shri Bhavik Soni, with the help of Shri Gaganjot Singh and Bablu Karmakar got involved in the smuggling of insecticides from China into India through JNPT Port, (INNSA1), by way of mis-declaration of the same as 'Xanthan Gum'.

8. The Competent Authority gave approval for extension of time limit for issuance of Show Cause Notice under Section 124 of the Customs Act, 1962 in respect of import pertaining to M/s. Nexus Organo Chem as listed under **Table- A**, in terms of provisions under the Section 110(2) of the Customs Act, 1962. The Competent Authority gave extension up to **01.07.2024** and same was informed vide letter dated 01.02.2024 issued by Additional Commissioner of Customs, Nhava Sheva-1, JNCH(**RUD-21**).

9. Now, Therefore, from the evidence on record, statements of various persons and legal position in the matter, M/s. Nexus Organo Chem (IEC No. ADKPV7762R) having registered address at Building D, Flat No B 407, 4th Floor, Parmanand Nagar, 60 Feet Road, Bhayandar (West), Mira Bhayandar, Thane, Maharashtra-401101 was called upon to Show Cause to the Additional/Joint Commissioner of Customs, Gr. IIG, NS- I, Jawaharlal Nehru Customs House, Nhava Sheva, Taluka: Uran, Distt: Raigad, Maharashtra-400707 within 30 days of receipt of this notice issued as to why: -

- i) The 2,000 kg. of goods imported vide Bill of Entry No. 7113368 dated 29.07.2023, in respect of which CIL, Faridabad has confirmed them to be insecticides, which were seized vide Seizure Memo dated 05.10.2023 should not to be confiscated under Section 111 (d), 111 (l), 111 (m) of the Customs Act, 1962, as discussed above.
- ii) The declared assessable value of **Rs. 9,95,400/-** (Rupees Nine Lakh Ninety-Five Thousand Four Hundred only) of the said goods imported vide Bill of Entry No. 7113368 dated 29.07.2023, should not be rejected and the same to be re-determined as Rs. **5,49,12,900/-** (Rupees Five Crore Forty-Nine Lakh Twelve Thousand Nine Hundred only) as mentioned in **Annexure-B**, under the provisions of Rule 5 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, as elaborated in Para 4.16 of the Show Cause Notice.

iii) The classification of the goods in respect of which test reports have confirmed them to be insecticides i.e., 2,000 kg. of Chlorantraniliprole vide BE No. 7113368 dated 29.04.2023 should not be rejected and the same to be reclassified under CTH 38089199. Accordingly, the said Bill of Entry should not be reassessed under Section 17 of the Customs Act, 1962.

iv) Penalty under Section 112(a) of the Customs Act, 1962 should not be imposed on M/s. Nexus Organo Chemin relation to the said goods.

9.2 In view of the above-mentioned facts and circumstances, Shri Bhavik Soni, IEC handler of M/s. Nexus Organo Chem, having address at A-1101, Jairaj Ratan, Shashtri Nagar, Goregaon (West), Mumbai was called upon to Show Cause to the Additional Commissioner of Customs, Gr. IIG, NS- I, Jawaharlal Nehru Customs House, Nhava Sheva, Taluka: Uran, Distt: Raigad, Maharashtra-400707 within 30 days of receipt of this notice issued as to why: -

i) Penalty under Section 112(a) of the Customs Act, 1962 should not be imposed on him for violation of legal provisions as discussed in relevant Para 6.1, in relation to the said goods.

ii) Penalty under Section 114AA of the Customs Act, 1962 should not be imposed on him for violation of legal provisions as discussed in relevant Para 6.1, in relation to the said goods.

9.3 In view of the above-mentioned facts and circumstances, Shri Gaganjot Singh having address B-79, Block-B, 1st Floor, Greenwood City, Near Suncity School, Sector-45, Gurugram, Haryana-122003 was called upon to show cause to the Additional/Joint Commissioner of Customs, Gr. IIG, NS- I, Jawaharlal Nehru Customs House, Nhava Sheva, Taluka: Uran, Distt: Raigad, Maharashtra-400707 within 30 days of receipt of this notice issued as to why: -

i) Penalty under Section 112(b) of the Customs Act, 1962 should not be imposed on him for violation of legal provisions as discussed in relevant Paras, in relation to the said goods.

ii) Penalty under Section 114AA of the Customs Act, 1962 should not be imposed on him for violation of legal provisions as discussed in relevant Para 6.2, in relation to the said goods.

RECORD OF PERSONAL HEARING AND SUBMISSION OF IMPORTER

10. In compliance of the Principle of natural justice, Personal Hearing was granted to the importer on 15.04.2025, 29.04.2025 and 19.06.2025 vide office letter dated 08.04.2025, 21.04.2025 and 16.06.2025 for 23.08.2023. However, the importer has not appeared for the personal hearing on the scheduled dates. On request of the authorized representative of the importer the PH was held via video conferencing on dated 25.06.2025. Advocate Shrey S. Lodha appeared for the Noticee 1 (M/S NEXUS ORGANO CHEM) and Noticee 3 (Gaganjot Singh) and reiterated the written submissions already made via letter dated 25.08.2024. However, none has appeared in respect to Noticee No. 2 (Mr. Bhavik Soni) for personal hearing held on 25.06.2025. In regard to that the submissions made are mentioned below:

I The advocate Shrey S. Lodha submitted reply dated 25.08.2024 on the behalf of the Noticee No. 1 (M/S NEXUS ORGANO CHEM THROUGH ITS PROPRIETOR MR. PRABHUDAS DAYALJI VAYA SONI). It is stated that Section 124 does not empower show cause notice issuing authority to issue a show cause notice. Further submissions are as mentioned below:

- i. It is submitted that paragraph 2.11 of the show cause notice regarding the dismissal of the writ petition filed by the noticee is false and misleading. It clarifies that the writ petition has been restored by the Hon'ble Bombay High Court through an order dated 01.03.2024, and the counsel for the Directorate of Revenue Intelligence was also present during the proceedings. Therefore, the statement in the show cause notice is incorrect and misrepresents the facts before the Adjudicating Authority.
- ii. It is submitted that the allegations of willful mis-declaration and smuggling based on a manipulated invoice are baseless and unsupported by evidence. The Bill of Entry was filed in good faith, based on genuine documents including a purchase order, sales invoice, and bill of lading. Email correspondence (undisputed by authorities) confirms that the incorrect product was dispatched due to a logistical error by the overseas supplier. Following the seizure, the importer sought provisional release of goods and later relinquished all rights to them through a rejoinder affidavit, demonstrating bona fide intent. The Show Cause Notice relies on assumptions and lacks any concrete evidence of malafide intent or mens rea on the importer's part.
- iii. It is submitted that the statements recorded under Section 108 of the Customs Act cannot be relied upon as evidence unless the conditions under Section 138B are met. As per Section 138B(1), such statements are admissible only if the person is dead, untraceable, incapable of giving evidence, or cannot be produced without unreasonable delay or expense, or if examined as a witness and found admissible by the court. In this case, none of these conditions are met for the individuals whose statements are relied upon (viz. Bhavik Soni and Gagan Jot Singh). Therefore, unless these individuals are examined and allowed to be cross-examined by the importer, their statements cannot be treated as valid evidence. The importer cites the decision in *Jindal Drugs Pvt. Ltd. v. Union of India* to support this position and contends that no adverse inference can be drawn solely on the basis of such statements.
- iv. It is submitted that the statement dated 14.06.2024 of Noticee No. 1, recorded under Section 108 of the Customs Act, 1962, was involuntary. It is incorrectly stated that Noticee No. 1's daughter explained the statement word-by-word in Hindi and Gujarati, as there is no endorsement or dated signature from her on the handwritten statement to support this claim.
- v. It is submitted that the rejection of the declared value under Rule 12 and the reassessment under Rule 5 of the Customs Valuation Rules, 2007 is legally flawed. The re-determined value of ₹5,49,12,900/- mentioned in the show cause notice contradicts the value of ₹1,93,02,150/- stated in the seizure memo dated 05.10.2023, indicating inconsistency and incorrect valuation. The reassessment is based on imports from a different country of origin (USA) and from a different period, making the comparison non-contemporaneous and invalid. Additionally, the supporting data is not substantiated with proper documentation—only an internal chart is annexed—making the valuation exercise unreliable and legally unsustainable.
- vi. It is submitted that no penalty under Section 112(a) of the Customs Act is justified, as the bona fides of Noticee No. 1 have been clearly established through undisputed documentary evidence. The show cause notice lacks any credible evidence to counter or disprove this bona fide conduct, which is a necessary precondition for imposing such a penalty.

II The advocate Shrey S. Lodha submitted reply dated 25.08.2024 on the behalf of the Noticee No. 3 (Gaganjot Singh). It is stated that Section 124 does not empower show cause notice issuing authority to issue a show cause notice. Further submissions are as mentioned below:

- i. It is submitted that that the statements recorded under Section 108 of the Customs Act cannot be treated as evidence unless the specific conditions under Section 138B are satisfied. Since the individuals whose statements are relied upon—including Noticee No. 2—are available and can be examined, their statements cannot be admitted as evidence without such examination and the opportunity for cross-examination by Noticee No. 2. This is mandated by Section 138B(2) and supported by the decision in *M/s Jindal Drugs Pvt. Ltd. v. Union of India*. Furthermore, the importer highlights that the penalty imposed on the present noticee is solely based on the statements of Noticee No. 2, which were retracted in March 2024. Therefore, in light of the retraction and the absence of examination and cross-examination, no adverse inference can legally be drawn against the importer. The present noticee is also willing to present itself for examination by the Adjudicating Authority.
- ii. It is submitted that the allegation of willful mis-declaration and smuggling based on a manipulated invoice is unfounded. The Bill of Entry dated 29.07.2023 was filed in good faith, based on valid commercial documents—purchase order, invoice, and bill of lading. Email correspondence with the overseas supplier confirms a logistical error on the supplier's part, which has not been disputed by the authorities. The importer also relinquished all rights to the goods through a rejoinder affidavit, reinforcing its bona fide intent. No independent documentary evidence has been presented to show the importer's involvement in any act warranting confiscation under Section 111. Aside from a retracted statement by Noticee No. 2, which lacks evidentiary value without compliance with Section 138B, there is no proof of malafide intent or mens rea. Thus, the allegations are unsupported and legally unsustainable.
- iii. It is submitted that no penalty under Section 112(b) of the Customs Act is warranted, as the show cause notice lacks any credible or corroborated evidence linking the noticee to the alleged acts. The allegations rely solely on unverified statements and disputed documents, with no proof of the noticee's involvement as required under the said provision. Therefore, the essential conditions for imposing penalty under Section 112(b) remain unfulfilled.
- iv. It is submitted that no penalty under Section 114AA of the Customs Act is justified, as there is no evidence—credible or otherwise—to show that the noticee knowingly or intentionally made, signed, or used any false or incorrect declaration, statement, or document. Thus, the conditions required for invoking this provision remain unsubstantiated.

III The advocate Tarang Jain submitted reply dated 25.08.2024 on the behalf of the Noticee No. 2 (Bhavik Soni).). It is stated that Section 124 does not empower show cause notice issuing authority to issue a show cause notice. Further submissions are as mentioned below:

- i. It is submitted that the statements recorded under Section 108 of the Customs Act cannot be treated as evidence unless the strict conditions laid out in Section 138B are met. These conditions include circumstances such as the unavailability or incapacity of the person who made the statement, or where the person is examined and cross-examined as a witness. In the

present case, none of these conditions are satisfied, and the persons whose statements are relied upon, including the noticee, are available and willing to be examined and cross-examined. The noticee also highlights that reliance on such statements without following the due process under Section 138B is contrary to law, as affirmed by the Punjab and Haryana High Court in *Jindal Drugs Pvt. Ltd. v. Union of India*. Furthermore, the noticee has formally retracted the statements recorded under Section 108 through affidavits dated 20.03.2024 and 26.03.2024 (Annexure 2). Therefore, in light of the retraction, procedural safeguards under Section 138B become even more critical to assess the truthfulness of the statements, and no adverse inference can be drawn solely based on them.

- ii. It is submitted that the claim in paragraph 2.11 of the show cause notice regarding the dismissal of Writ Petition No. 11870 of 2024 is incorrect and misleading. The said writ petition has been restored by the Hon'ble Bombay High Court through an order dated 01.03.2024 in Interim Application No. 2144 of 2024, and the appearance of DRI's counsel has been recorded. Therefore, the representation in the show cause notice omits crucial developments and misleads the Adjudicating Authority.
- iii. It is submitted that the allegation of willful mis-declaration and smuggling based on a manipulated invoice is baseless. The Bill of Entry dated 29.07.2023 was filed in good faith based on authentic commercial documents, including the purchase order, sales invoice, and bill of lading from the overseas supplier, Sanito International Limited. Email correspondence also confirms that a logistical error by the supplier led to the dispatch of incorrect goods, a fact not disputed by the authorities. After the goods were detained, the noticee sought provisional release under Section 110A and later relinquished all rights to the goods through a rejoinder affidavit, evidencing its bona fide intent. There is no evidence of malice or mens rea against the noticee, and the show cause notice relies merely on conjecture without any credible proof linking the noticee to deliberate mis-declaration or smuggling.
- iv. The noticee contends that the rejection of the declared value under Rule 12 and the reassessment under Rule 5 of the Customs Valuation Rules, 2007 is legally flawed. A stark inconsistency exists between the re-determined value stated in the show cause notice (INR 5.49 crores) and the value mentioned in the seizure memo dated 05.10.2023 (INR 1.93 crores), indicating an unreliable and arbitrary valuation process. Further, the reassessment is based on imports from the USA, not China as claimed, and the comparison is neither country-specific nor contemporaneous. The show cause notice relies solely on a department-generated chart without furnishing actual supporting documents from the ISS database. Hence, the valuation lacks transparency, credibility, and legal validity.
- v. It is submitted that no penalty under Section 112(a) of the Customs Act is sustainable, as the documentary evidence on record clearly establishes the bona fide nature of the import. The show cause notice fails to provide any credible evidence to challenge or undermine this bona fide intent, which is a necessary precondition for imposing a penalty under the said provision.
- vi. It is submitted that the penalty proposed under Section 114AA of the Customs Act is unwarranted, as there is no evidence—credible or otherwise—showing that the noticee knowingly or intentionally made, signed, or used any false or incorrect declaration, statement, or document in connection with the transaction. Therefore, the conditions necessary for invoking Section 114AA have

not been fulfilled.

I, therefore, in terms of Section 122A of the Customs Act, 1962 proceed to decide the case on the basis of available record.

DISCUSSION AND FINDINGS

11. I have carefully gone through the subject Show Cause Notice (SCN) and its enclosures, material on record and facts of the case, as well as written made by the Noticee/ representative of the notice and I find that the Show Cause Notice was issued by the competent authority in compliance of the provisions of Section 124 of the Customs Act, 1962. Accordingly, I proceed to decide the case on merit.

M/s. Nexus Organo Chem (IEC No. ADKPV7762R) having registered address at Building D, Flat No B 407, 4th Floor, Parmanand Nagar, 60 Feet Road, Bhayandar (West), Mira Bhayandar, Thane, Maharashtra-401101, (herein after referred to as 'Importer') , is involved in smuggling of insecticides.. Accordingly, an investigation was initiated by the Directorate of Revenue Intelligence, Mumbai Zonal Unit, 13, Sir Vithaldas Thackersey Marg, New Marine Lines, Mumbai-400020 (hereinafter referred to as DRI).

12. I find that based on specific intelligence, a live import consignment declared as "Xanthan Gum (Industrial Grade), 2000 kg" under Bill of Entry No. 7113368 dated 29.07.2023 was examined on 04.08.2023 at JWR Logistic Pvt. Ltd., CFS, Panvel. The examination revealed 80 bags with two different markings, from which representative samples were drawn and sent to CRCL, Mumbai and CIL, Faridabad. CRCL found the samples to be nitrogen-bearing organic compounds, not Xanthan Gum, while CIL detected the presence of Chlorantraniliprole at concentrations of 97.26% and 86.57%, identifying it as a registered insecticide. Since Chlorantraniliprole is restricted for import and requires a valid Certificate of Registration or Import Permit from the Central Insecticide Board & Registration Committee (CIB & RC), and the importer lacked such authorization, the goods were held to be restricted and liable for confiscation under Section 111 of the Customs Act, 1962. Accordingly, the consignment was seized under Section 110 of the Act vide seizure memorandum dated 05.10.2023.

13. Mis-declaration of imported goods

13.1 The import of any insecticide into India is governed by the Foreign Trade (Development and Regulation) Act, 1992, the Insecticide Act, 1968 and the Customs Act, 1962.

13.2 I find that, in the present case, based on the test reports and statements mentioned above, the importer have imported following goods:

Table - C

BE No. / Date	Declared Description of goods	Qty (In Kgs.)	Declared CTH	Goods as per Test Report	Redetermined CTH	Import Policy
7113368/ 29.07.2023	Xanthan Gum (Industrial Grade)	2,000	39139090	Chlorantra niliprole	38089199	Restricted*

***Import Policy read with Paragraph 2.01 (b) & 2.03 (a) of the Foreign Trade Policy and Section 17 of the Insecticides Act, 1968.**

13.3 As per Paragraph 2.01 (b) & 2.03 (a) of the Foreign Trade Policy all imported goods shall also be subject to domestic laws, rules, orders, regulations etc. Also, Section 17 of the Insecticides Act, 1968 states that any insecticide, except in accordance with the conditions on which it was registered, is prohibited for import and manufacture. Hence, the import of insecticides is restricted.

13.4 As per section 9 of the Insecticide Act, 1968, read with Public Notice vide F. No. 04-01/2022-CIR-I dated 17.02.2022, import of insecticides mentioned in schedule to this Act is allowed only with a valid Certificate of Registration or an Import Permit issued by CIB & RC (Central Insecticide Board & Registration Committee).

13.5 I find that, Chlorantraniliprole is mentioned at Sr. No. 764 of the said schedule to the Insecticide Act, 1968. Therefore, import of Chlorantraniliprole requires mandatory Certificate of Registration, which M/s. Nexus Organo Chem did not have.

13.6 Further, I find that, CIB & RC, under the provisions of the Insecticides Act, 1968, provides the Source of Import and list of Indigenous Manufactures of Insecticides. It implies that the said Insecticide can only be imported under a valid license issued by CIB & RC from the approved source company/factory of the approved composition and not from any other source company/factory. Therefore, any import from non-approved source is illegal and any import other than approved composition is also illegal even if it is accompanied with a valid CIB&RC license.

13.7 I find that, in the present case, the imports of Chlorantraniliprole are neither from the approved Source of Import as provided nor of the approved composition as can be observed from the description of bill of entry and commercial invoice.

13.8 In view of above, I find that, vide the Bill of Entry No. 7113368 dated 29.07.2023, the importer has imported 2,000 Kg. of Chlorantraniliprole, an insecticide, contrary to the conditions imposed by the Insecticide Act, 1968. As such, Chlorantraniliprole imported by the importer becomes prohibited goods as defined in Section 2(33) of the Customs Act, 1962 and, therefore, appears to be liable to confiscation under Section 111(d), 111(l) & 111(m) of the Customs Act, 1962. In the case of **Sheikh Mohd. Omer versus Collector of Customs**, Calcutta and Others, it has been observed by the Hon'ble Court that Section 111 says that goods which are imported or attempted to be imported contrary to "any prohibition imposed by any law for the time being in force in this country" is/are liable to be confiscated. "Any prohibition" referred to in that section applies to every type of "prohibition". That prohibition may be complete or partial. Any restriction on import or export is to an extent a prohibition. Therefore, the expression "any prohibition" in Section 111(d) of the Customs Act, 1962 includes restrictions.

14. Wrong Classification & Undervaluation of Imported Goods

14.1 I find that, Chlorantraniliprole, an insecticide mentioned at Sr. No. 764 of the said schedule to the Insecticide Act, 1968 is classified under HS Code 3808 91 99. While mis-declaring Chlorantraniliprole imports as Xanthan Gum, the importer also appears to have mis-classified them under HS Code 39139090.

14.2 I find that, Chlorantraniliprole is significantly costlier in comparison to Xanthan Gum in the international market. Hence, the value declared for import of goods declared as Xanthan Gum appeared to be highly under-invoiced as can be seen from table below:

Table - D

Imported Goods	Price (\$/kg)
Chlorantraniliprole	331*
Xanthan Gum	6

***Source: Data for bills of entry pertaining to the import of Chlorantraniliprole from China were downloaded from ISS and it was found that Chlorantraniliprole imported by M/s. Syngenta India Limited in March, 2023 & September 2023 @ 331USD/kg. The details are mentioned in Annexure-A.**

14.3 Hence, it is apparent that the value declared for the consignment imported by M/s. Nexus Organo Chem vide the Bill of Entry No. 7113368 dated 29.07.2023 was based on manipulated invoice and, thereby, not the correct value of the goods. The manipulated invoice submitted at the time of the import of the goods appear to be incorrect document in terms of Rule 11 of the Customs Valuation (Determination of the Value of Imported Goods) Rules, 2007 (CVR, 2007).

14.4 Accordingly, I find that, the value declared in the consignment imported vide Bill of Entry No. 7113368 dated 29.07.2023 does not appear to be the Transaction Value of the said goods, in terms of the provisions of Section 14(1) of the Customs Act, 1962 read with provisions of Rule 3(1) of the CVR, 2007. Accordingly, the transaction value declared in the consignment is liable to be rejected as per Rule 12 (1) of the CVR, 2007.

14.5 I find that, the same is required to be re-determined by proceeding sequentially through Rule 4 to Rule 9 in terms of Rule 3 (4) of the CVR, 2007. As per the Rule 4 of CVR, 2007, the value of the goods can be re-determined using the transaction value of identical goods. As, the insecticides smuggled through the firm M/s. Nexus Organo Chem are not allowed as per the registrations granted under the Customs Act, 1962 for various insecticides, and so the Rule 4 is not applicable in this case. For example, as per the Insecticides Act, 1968 Chlorantraniliprole (98%) CAS No. 1104384-14-6 can be imported into India, but as per the test report of CIL, the sample (marked as AB2 & AC2), contains Chlorantraniliprole of 97.26% & 86.57% concentration, respectively. Hence, the goods smuggled are not identical to those imported by the importers having certificate of registration of the insecticide with the competent authority.

14.6 I find that, as per Rule 5 of CVR, 2007, the value of the goods can be re-determined using the transaction value of similar goods. As discussed above, the goods which can be legally imported are similar to the goods being smuggled through the firm M/s. Nexus Organo Chem. Hence, the value of the goods can be re-determined using the Rule 5 of CVR, 2007. Also, as per Rule 5 of the CVR, 2007 the value of the similar goods should be at or around the same time, as the goods being valued.

14.7 In view of the same, I find that the data of contemporaneous imports made into India for the insecticide as mentioned in **Table – E** below has been taken into consideration. Since, the import of insecticides is allowed as per registrations granted for different insecticides, the value of the imports has been taken at the minimum concentration allowed to be imported for that particular insecticide. Further, since this import was made from China, the imports of the insecticide i.e. Chlorantraniliprole from China have been considered whose legal import data for the contemporaneous period is available. The details of the contemporaneous imports are attached as **Annexure–A**. Hence, the value of goods from the contemporaneous imports is as follows: -

Table - E

Sr. No.	Name of Insecticides	Rate (\$/Kgs)
1	Chlorantraniliprole	331

14.8 Based on the above findings, the value of the goods imported vide the said consignment having BE No. 7113368/ 29.07.2023 has to be re-determined. The goods are seized in view of Test Reports where the presence of insecticides has been confirmed. Hence, the value declared in the said BE No. viz. 7113368/ 29.07.2023 is liable for rejection and the value has to be re-determined as below:

Table - F

BE No. / Date	Declared Description of goods	Declared Value (Rs.)	Goods as per Test Report	Qty (In Kgs.)	Price (\$/kg)	Re-determined Value (@ Rs. 82.95/\$)
7113368/ 29.07.2023	Xanthan Gum	9,95,400	Chlorantraniliprole	2,000	331	Rs. 5,49,12,900/-

Contraventions

In view of above, I find that that the importer has contravened following provisions:

- i. **Section 11(1) of the Foreign Trade (Development & Regulation) Act, 1992, Rule 11 and 14 of the Foreign Trade (Regulation) Rules 1993**, since M/s. Nexus Organo Chem did not obtain mandatory certificate of registration for import of Chlorantraniliprole, an insecticide.
- ii. **Para 6.01 (d) of The Foreign Trade Policy, 2015-2020**, as M/s. Nexus Organo Chem mis-declared the contents during imports.
- iii. **Section 9 (1), Section 17 (1), Section 17 (2) of the Insecticides Act, 1968**, since M/s. Nexus Organo Chem mis-declared the contents during the imports. Further, they imported insecticides for which they did not have the license to import.
- iv. **Section 14 of the Customs Act, 1962**, since, M/s. Nexus Organo Chem deliberately mis-declared the value of imported goods in the bill of entry by mis-declaring their description.
- v. **Section 46 (4) of the Customs Act, 1962**, M/s. Nexus Organo Chem mis declared the contents mentioned in Bill of Entry during import.

In view of the above, the 2000 Kgs of goods imported by M/s. Nexus Organo Chem vide Bill of Entry No. 7113368 dated 29.07.2023, as mentioned in **Annexure-B**, are liable to confiscation under Sections 111(d), 111(l) and 111(m) of the Customs Act, 1962, for misdeclaration of the description and the value of goods, as discussed above.

15. Role played by Various Persons:

15.1 Shri. Bhavik Soni:

I find that:

- (i) Shri. Bhavik Soni, the IEC handler of M/s. Nexus Organo Chem, has played a vital role in smuggling of insecticides from China by means of mis-declaration.
- (ii) Shri. Bhavik Soni, in absence of a valid Certificate of Registration from CIB, conspired with Shri Gaganjot Singh to import insecticides namely Chlorantraniliprole into India under the guise of Xanthan Gum. He used the identity documents of Shri Prabhudas Soni (father-in-law of his brother) to open a new firm namely M/s. Nexus Organo Chem, which was voluntarily provided to him by

Shri Prabhudas Soni (also stated by Prabhudas Soni in his statement dated 14.06.2024). Bhavik Soni used the new IEC and the bank account for executing the said *modus operandi*.

- (iii) Being well aware of the conditions and restrictions imposed on the import of insecticides, Shri. Bhavik Soni wilfully entered into the business of insecticide smuggling for instant monetary gains offered to him by Shri Gaganjot Singh. Shri. Bhavik Soni handled all day-to-day business activities of M/s. Nexus Organo Chem and also actively co-ordinated with Shri Bablu Karmakar to get the Bill of Entry filed with gross mis-declaration of description and value. Shri Bhavik Soni, being well aware of the mis-declaration in the consignment imported vide Bill of Entry No. 7113368 dated 29.07.2023, wilfully hid the true facts from the Customs department regarding the nature of the goods being imported i.e. insecticides.
- (iv) Shri Bhavik Soni deleted all the evidence related to the smuggling of insecticides i.e. Chlorantraniliprole from his e-mail and mobile phone and further destroyed his mobile phone. In his statement dated 26.03.2024, he agreed to have deliberately done the same to hide the true facts from the department and to delay the ongoing investigation.
- (v) This act of deliberate mis-declaration on the part of Shri Bhavik Soni, to manipulate the description and value of the imported goods in the Customs declaration have rendered the said goods imported by M/s. Nexus Organo Chem vide Bill of Entry No. 7113368 dated 29.07.2023, liable to confiscation under Section 111(d), 111(l) and 111(m) of the Customs Act, 1962.
- (vi) Shri. Bhavik Soni was instrumental in deliberately mis-stating the descriptions and value of the goods imported by M/s. Nexus Organo Chem vide Bill of Entry No. 7113368 dated 29.07.2023 before the Customs department. Consequently, in relation to the said goods imported by M/s. Nexus Organo Chem, Shri Bhavik Soni have rendered himself liable to penalty under Section 112 (a) of the Customs Act, 1962.
- (vii) Shri Bhavik Soni, in relation to the goods imported in the name of M/s. Nexus Organo Chem vide the Bill of Entry No. 7113368 dated 29.07.2023, always knew that the documents and the declarations submitted under the said Bill of Entry were false or incorrect in their material particulars. In spite of the above Shri Bhavik Soni, knowingly made false or incorrect declarations in relation to the consignments imported vide the said Bill of Entry No. 7113368 dated 29.07.2023. Consequently, Shri Bhavik Soni have also rendered himself liable to penalty under Section 114AA of the Customs Act, 1962.

15.2 Shri. Gaganjot Singh: -

I find that:

- (i) Shri Gaganjot Singh is the ultimate beneficiary of the imported/smuggled goods imported by M/s. Nexus Organo Chem vide Bill of Entry No. 7113368 dated 29.07.2023. Shri Gaganjot Singh conspired with Shri Bhavik Soni to smuggle the said insecticide into India. He guided Shri Bhavik Soni to open a new firm namely M/s. Nexus Organo Chem and further obtained a new IEC in the name of M/s. Nexus Organo Chem for smuggling insecticides into the country.
- (ii) Shri Gaganjot Singh was also well aware about the contents of the said consignment i.e. insecticide namely Chlorantraniliprole. During his statement dated 15/16.03.2024, Shri Bhavik Soni submitted the printout of the chat revealing that Shri. Gaganjot Singh was very well aware about the import of

insecticides viz chlorantraniliprole. In the said chat Shri Gaganjot Singh was informing Shri Bhavik Soni that as M/s. Nexus Organo Chem didn't possess the requisite certificate of registration, he (Shri Gaganjot Singh) placed orders of insecticides viz chlorantraniliprole with the foreign suppliers by way of mis-declaring the description and value of the goods.

- (iii) Shri Bhavik Soni, in his statement dated 15/16.03.2024 also revealed that Shri Gaganjot Singh offered him Rs. 50/Kg as commission for every consignment imported by M/s. Nexus Organo Chem. Shri Bhavik Soni further stated that Shri Gaganjot Singh finalised the goods to be imported and placed the order with the overseas supplier.
- (iv) Shri Gaganjot Singh, in relation to the goods imported in the name of M/s. Nexus Organo Chem vide the Bill of Entry No. 7113368 dated 29.07.2023, always knew that the documents and the declarations submitted under the respective Bill of Entry were false or incorrect in their material particulars. In spite of the above Shri Gaganjot Singh had knowingly helped Shri Bhavik Soni to make false or incorrect declarations in relation to the consignment imported vide the said Bill of Entry. Although, Shri Gaganjot Singh in his statement dated 10.04.2024 has denied his involvement in the smuggling, the statements dated 15/16.03.2024 of Bhavik Soni, statement dated 05.04.2024 of Shri Bablu Karmakar and the documentary evidence recovered during investigation prove contrary to his statement.
- (v) Shri Gaganjot Singh, in connivance with Shri Bhavik Soni, involved in deliberately mis-stating the description and value of the goods imported by M/s. Nexus Organo Chem. Consequently, in relation to the said goods imported by M/s. Nexus Organo Chem, Shri. Gaganjot Singh have rendered himself liable to penalty under Section 112 (b) of the Customs Act, 1962.
- (vi) Consequently, Shri Gaganjot Singh was the ultimate beneficiary of the imports and his act of conniving with Bhavik Soni in causing false or incorrect declarations in relation to the consignments imported vide the said Bill of Entry No. 7113368 dated 29.07.2023 to smuggle insecticides renders himself liable to penalty under Section 114AA of the Customs Act, 1962.

16. After introduction of the Self-Assessment scheme, the onus is on the importer to comply with the various laws, determine his tax liability correctly and discharge the same. The importers are required to declare the correct description, value, classification, notification number, if any, and themselves assess the Customs duty leviable, if any, on the imported goods. Self-Assessment is supported by Sections 17, 18 and 46 of the Customs Act, 1962 and the Bill of Entry (Electronic Declaration) Regulations, 2011. Thus, with the introduction of the self-assessment by amendment to Section 17, effective from 08.04.2011, it is an added and enhanced responsibility of the importer to declare the correct description, value, notifications etc., and to correctly classify, determine and pay the duty applicable in respect of the imported goods. The importer is squarely responsible for Self-Assessment of duty on imported goods and for filing all declarations and related documents and confirming these are true, correct and complete. Self-Assessment can result in assured facilitation for compliant importers. However, delinquent importers would face penal action on account of wrong Self-Assessment made with intent to evade duty or avoid compliance of conditions of notifications, Foreign Trade Policy or any other provision under the Customs Act, 1962 or the Allied Acts.

17. As per sub-section (4) of Section 46 of the Customs Act, 1962, the importer while presenting a bill of entry shall 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, and such other documents relating to the imported goods. However, I find that the importer in the instant case has failed to fulfil its obligation, suppressed correct information in respect to the classification of the goods, has given mis-statements and, thus, contravened provisions of the Customs Act, 1962 and thereby he is liable to be penalized under Custom Act, 1962.

18. With regards to imposition of penalty under Section 112 of the Customs Act, 1962, I find that it is well settled that mens-rea is not required for invoking penalty in civil cases. Further mens-rea is not required to be proved for invocation of penalty under section 112(a). It has been held in case of Imperial Trading LLC V. CC (Import), Nhava-Sheva, 2005 (181) E L T 29 at Para-32 (Tri. Mumbai) that "*Mens rea is not a necessary ingredient for imposing a penalty under section 112(a)*".

19. In view of the facts of the case, the documentary evidences on record and findings as detailed above, I pass the following order:

ORDER

- i. I order to confiscate the 2,000 kg. of goods imported vide Bill of Entry No. 7113368 dated 29.07.2023, under Section 111 (d), 111 (l), 111 (m) of the Customs Act, 1962.
- ii. I order that the declared assessable value of Rs. 9,95,400/- (Rupees Nine Lakh Ninety-Five Thousand Four Hundred only) of the said goods imported vide Bill of Entry No. 7113368 dated 29.07.2023, is hereby rejected and the same to be re-determined as Rs. 5,49,12,900/- (Rupees Five Crore Forty-Nine Lakh Twelve Thousand Nine Hundred only) as mentioned in Annexure-B, under the provisions of Rule 5 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. However, I give the importer an option to redeem the impugned goods after paying a fine of Rs.60,00,000/- (Rupees Sixty Lakhs Only) under section 125 of the Customs Act 1962, but subject to the condition that they shall re-export the goods within 120 days.
- iii. I order to reclassify the goods, namely 2,000 kg of Chlorantraniliprole imported vide Bill of Entry No. 7113368 dated 29.04.2023, under CTH 38089199, as the test reports have confirmed them to be insecticides. Accordingly, I order to reassess the said Bill of Entry under Section 17 of the Customs Act, 1962.
- iv. I impose a penalty of Rs. 1,00,00,000/- (Rupees One Crore only) on M/s. Nexus Organo Chem under Section 112(a) of the Customs Act, 1962.
- v. I impose penalty of Rs. 60,00,000/- (Rupees Sixty Lakhs only) on Shri Bhavik Soni, IEC handler of M/s. Nexus Organo Chem under Section 112(a) of the Customs Act, 1962 for violation of legal provisions as discussed above.
- vi. I impose penalty of Rs. 1,00,00,000/- (Rupees One Crore only) Shri Bhavik Soni, IEC handler of M/s. Nexus Organo Chem under Section 114AA of the Customs Act, 1962 on for violation of legal provisions as discussed above.

- vii. I impose penalty of Penalty Rs. 60,00,000/- (Rupees Sixty Lakhs only) on Shri Gaganjot Singh under Section 112(b) of the Customs Act, 1962 for violation of legal provisions as discussed above.
- viii. I impose penalty Rs. 1,00,00,000/- (Rupees One Crore only) Shri Gaganjot Singh under Section 114AA of the Customs Act, 1962 on for violation of legal provisions as discussed above.

19. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or against the persons concerned or any other person, if found involved under the provisions of the Customs Act, 1962, and/or other law for the time being in force in the Republic of India.

पारुल
15/7/24

(डॉ. पारुल सिंघल/Dr. Parul Singhal)
Joint Commissioner of Customs
Group-IIG, NS-I, JNCH, Nhava Sheva

To

- 1) M/s. Nexus Organo Chem (IEC No. ADKPV7762R)
Building D, Flat No B 407, 4th Floor,
Parmanand Nagar, 60 Feet Road, Bhayandar (West),
Mira Bhayandar, Thane, Maharashtra-401101
- 2) Shri Bhavik Soni S/o Shri Kirat Soni
A-1101, Jairaj Ratan, Shashtri Nagar,
Goregaon (West), Mumbai.
- 3) Shri Gaganjot Singh S/o Shri Madan Singh,
B-79, Block-B, 1st Floor, Greenwood City,
Near Suncity School, Sector-45,
Gurugram, Haryana-122003

Enclosures:

- 1) Annexure A & B.
- 2) Relied Upon Documents

Copy forwarded for information and necessary action to:

1. The Deputy Commissioner of Customs, CRAC (I), JNCH, Nhava Sheva.
2. The Deputy Commissioner of Customs, CAC, JNCH, Nhava Sheva.
3. The Deputy Commissioner of Customs, EDI, JNCH, Nhava Sheva.
4. Office Copy.

Sr. No.	BE NUMBER	BE DATE	NAME OF THE IMPORTER	ITEM DESCRIPTION	CTH	QUANTITY	UNIT	UNIT PRICE	COUNTRY OF ORIGIN
1	534977	03-04-2023	SYNGENTA INDIA LIMITED	CHLORANTRANILIPROLE TECHNICAL 93% W/W MIN (USA) 50 KG 130 UNNO.3077 CLASS 9 PG III (CIB REG NO:CIR-132429/2016-CHLORAN	38089199	20000	KGS	331	US
2	4096771	09-01-2023	SYNGENTA INDIA LIMITED	CHLORANTRANILIPROLE TECHNICAL 93% W/W MIN (USA) 50 KG 130 UNNO.3077 CLASS 9 PG III (CIB REG NO:CIR-132429/2016-CHLORANT	38089199	10000	KGS	331	US

ANNEXURE - A

(रक्षक कृपा)
(Rakesh Kumar)
अधीन निदेशक
Senior Intelligence Officer
डी.आई.एस. जिल्हा कार्यालय
डी.आई.एस. मुंबई

24-05-24

(रक्षक कृपा)
(Rakesh Kumar)
अधीन निदेशक
Senior Intelligence Officer
डी.आई.एस. जिल्हा कार्यालय
डी.आई.एस. मुंबई

Annexure-B

Imports made by M/s Nexus Organo Chem at Nhava Sheva Port from China: As per test report

SL NO	BE NUMBER	BE DATE	SUPPLIER NAME	ITEM DESCRIPTION	CTH	QUANTITY	UQC	UNIT PRICE(IN USD)	EXCHANGE RATE (USD TO INR)	RE-DETERMINED ASSESSABLE VALUE (In INR)
1	7113368	29.07.2023	Sanio International Limited	Chlorantaniiprole	38089199	2,000	KGS	331	82.95	5,49,12,900
				TOTAL		2,000				5,49,12,900

(DR) सहायक
(S) N/A BAUPA)
सहायक अधिकारी
Intelligence Officer
राज्य, १११ सहायक कर्म
DRI, Mumbai Zonal Unit.

(DR) सहायक
(P) KESHU KUMAR)
सहायक अधिकारी
Senior Intelligence Officer
राज्य, १११ सहायक कर्म
DRI, Mumbai