

OFFICE OF THE COMMISSIONER OF CUSTOMS (NS-V)
सीमाशुल्कआयुक्त (एनएस - V) का कार्यालय
JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA SHEVA,
जवाहरलालनेहरुसीमाशुल्कभवन, न्हावाशेवा,
TALUKA – URAN, DISTRICT - RAIGAD, MAHARASHTRA -400707
तालुका - उरण, जिला - रायगढ़ , महाराष्ट्र 400707

DIN – 20251078NX0000313604

Date of Order:31.10.2025

F. No. S/10-057/2024-25/COMMR/GR-V/NS-V/CAC/JNCH

Date of Issue:31.10.2025

SCN No.: 498/2024-25/COMMR/GR-VI/NS-V/CAC/JNCH

SCN Date: 12.06.2024

Passed by: Sh. Anil Ramteke

Commissioner of Customs, NS-V, JNCH

Order No:254/2025-26/COMMR/NS-V/CAC/JNCH

Name of Noticees: M/s. BIC CELLO (INDIA) PRIVATE LIMITED(IEC-300056061)

ORDER-IN-ORIGINAL

मूल - आदेश

1. The copy of this order in original is granted free of charge for the use of the person to whom it is issued.

1. इस आदेश की मूल प्रति की प्रतिलिपि जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए निःशुल्क दी जाती है।

2. Any Person aggrieved by this order can file an Appeal against this order to CESTAT, West Regional Bench, 34, P D'Mello Road, Masjid (East), Mumbai - 400009 addressed to the Assistant Registrar of the said Tribunal under Section 129 A of the Customs Act, 1962.

2. इस आदेश से व्यथित कोई भी व्यक्ति सीमाशुल्क अधिनियम 1962 की धारा 129 (ए) के तहत इस आदेश के विरुद्ध सी.ई.एस.टी.ए.टी., पश्चिमी प्रादेशिक न्यायपीठ (वेस्ट रीज़नल बेंच), 34, पी. डी.मेलो रोड, मस्जिद (पूर्व), मुंबई - 400009 को अपील कर सकता है, जो उक्त अधिकरण के सहायक रजिस्ट्रार को संबोधित होगी।

3. Main points in relation to filing an appeal:-

3. अपील दाखिल करने संबंधी मुख्य मुद्दे:-

Form - Form No. CA3 in quadruplicate and four copies of the order appealed against (at least one of which should be certified copy).

फार्म - सीए3, चार प्रतियों में तथा उस आदेश की चार प्रतियाँ, जिसके खिलाफ अपील की गयी है (इन चार प्रतियों में से कम से कम एक प्रति प्रमाणित होनी चाहिए).

Time Limit - Within 3 months from the date of communication of this order.

समय सीमा - इस आदेश की सूचना की तारीख से 3 महीने के भीतर

Fee - फीस-

- (a) Rs. One Thousand - Where amount of duty & interest demanded & penalty imposed is Rs. 5 Lakh or less.
- (क) एक हजार रुपये जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 5 लाख रुपये या उस से कम है।
- (b) Rs. Five Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 5 Lakh but not exceeding Rs. 50 Lakh.
- (ख) पाँच हजार रुपये - जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 5 लाख रुपये से अधिक परंतु 50 लाख रुपये से कम है।
- (c) Rs. Ten Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 50 Lakh.
- (ग) दस हजार रुपये - जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 50 लाख रुपये से अधिक है।

Mode of Payment - A crossed Bank draft, in favor of the Asstt. Registrar, CESTAT, Mumbai payable at Mumbai from a nationalized Bank.

भुगतान की रीति - क्रॉस बैंक ड्राफ्ट, जो राष्ट्रीय कृत बैंक द्वारा सहायक रजिस्ट्रार, सी.ई.एस.टी.ए.टी., मुंबई के पक्ष में जारी किया गया हो तथा मुंबई में देय हो।

General - For the provision of law & from as referred to above & other related matters, Customs Act, 1962, Customs (Appeal) Rules, 1982, Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982 may be referred.

सामान्य - विधि के उपबंधों के लिए तथा ऊपर यथा संदर्भित एवं अन्य संबंधित मामलों के लिए, सीमाशुल्क अधिनियम, 1962, सीमाशुल्क (अपील) नियम, 1982, सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर अपील अधिकरण (प्रक्रिया) नियम, 1982 का संदर्भ लिया जाए।

4. Any person desirous of appealing against this order shall, pending the appeal, deposit 7.5% of duty demanded or penalty levied therein and produce proof of such payment along with the appeal, failing which the appeal is liable to be rejected for non-compliance with the provisions of Section 129E of the Customs Act 1962.

4. इस आदेश के विरुद्ध अपील करने के लिए इच्छुक व्यक्ति अपील अनिर्णीत रहने तक उसमें माँगे गये शुल्क अथवा उद्गृहीत शास्ति का 7.5 % जमा करेगा और ऐसे भुगतान का प्रमाण प्रस्तुत करेगा, ऐसा न किये जाने पर अपील सीमाशुल्क अधिनियम, 1962 की धारा 129 E के उपबंधों की अनुपालना न किये जाने के लिए नामंजूर किये जाने की दायी होगी।

Subject: Adjudication of Show Cause Notice No. 498/2024-25/COMMR./Gr.VI/NS-V/CAC/ JNCH dated 12.06.2024 issued to M/s M/S BIC CELLO (INDIA) PRIVATE LIMITED (IEC-300056061)– reg.

1. BRIEF FACTS OF THE CASE

1.1 A SCN No. 498/2024-25/COMMR./Gr.VI/NS-V/CAC/ JNCH dated 12.06.2024 issued to M/s M/S BIC CELLO (INDIA) PRIVATE LIMITED (IEC-300056061), address PLOT NO.711/1,2, 3, 4 SOMNATH ROAD, DABHEL DAMAN, DAMAN AND DIU396215 (hereinafter referred to as importer) had filed Bills of Entry having assessable value Rs.7,58,19,809/- (Rupees Seven Crores Fifty-Eight Lakhs Nineteen Thousand Eight Hundred Nine Only) as per Annexure-I enclosed herewith for the clearance of imported goods 'Parts of pens and pencils of heading 9608 and 9609'.

1.2 During the course of Post Clearance Audit, based on the Analytical Report No. 39/2021-22 dated 08.09.2021 issued by Additional Director General, National Customs Targeting Centre, DGARM, Mumbai on the above subject, it has been observed that M/S. BIC CELLO (INDIA) PRIVATE LIMITED (IEC-300056061), have imported Parts of pens and pencils of heading 9608 and 9609 through Bills of Entry enclosed herewith as Annexure-I to the subject SCN and cleared at a lower rate of IGST @ under Sr. No. 232 and Sr. No. 233 of Schedule II of the IGST Notification No.01/2017 dated 28.06.2017.

1.3 The Sr. No. 232 and Sr. No. 233 of the Schedule II of the Notification No. 01/2017 dated 28.06.2017 covers the goods viz., "Pens [other than Fountain pens, stylograph pens] and Pencils (including propelling or sliding pencils), crayons, pastels, drawing charcoals and tailor 's chalk" respectively. It is observed that the parts of Pens and Pencils of heading 9608 and 9609 are not covered by the Sr. No. 232 and Sr. No. 233 of Schedule II of the said notification. The parts of Pens and Pencils of heading 9608 and 9609, having not been covered in any other schedule of the said notification, are classifiable under residual entry at Sr. No. 453 of Schedule III of the said notification which covers "Goods which are not specified in Schedule I, II, IV, V or VI. The goods classifiable under Schedule III of the said notification attracts IGST @ 18%, hence, IGST should have been levied @ 18% on the subject goods.

1.4 In addition, the relevant extracts of the HS Explanatory Notes for "Parts" under CTH 9608 are transcribed below:

"The heading also covers identifiable parts not more specifically included elsewhere in the Nomenclature, For example.' Pen nibs of any design including unfinished nibs roughly cut to shape; clips; refills for ball point pens, comprising the ball point and the ink reservoir; holders for the ball points or felts of marking stylographs; ink-flow regulators; barrels for pens or pencils of this heading; filling or propelling mechanisms; ink sacs of rubber or other materials; point protectors; interchangeable renew nib units comprising nib, feed and collar; nib points (or pen points) which are

small balls made from platinum alloys or from certain tungsten alloys used for pointing the tips of pen nibs to prevent premature wear."

1.5 Furthermore, 'Pencil leads', which are parts of pencils, are classifiable under CTH 9609 20 00. The relevant part of the HS Explanatory Notes for "Pencil leads" under Chapter Heading 9609 is reproduced below:

"The heading includes: Pencil leads (e.g., black leads, composed of a mixture of graphite and clay; coloured leads, consisting of metallic oxides or other mineral pigments combined with clay, chalk or wax; indelible or copying leads, composed of clay tinted with a dye, such as aniline or fuchsine)."

1.6 From the above Customs Tariff Headings and the associated HS Explanatory Notes, it can be inferred that parts of pen and pencils include, inter alia, "refills", "nibs", "pencil leads", and "barrels", as well as items like "tungsten carbide balls", "clips", falling under CTIs 960860 10 to 9608 99 90 and CTI 9609 20 00; are within the purview of the description Parts of Writing Instruments".

1.7 Given this context, reference is drawn to the relevant entries of Notification No.01/2017 Integrated Tax (Rate) dated 28.06.2017 i.e. serial nos. 232 and 233 of Schedule II as well as serial nos. 447 and 453 of Schedule III of this Notification, which are outlined below:

232	9608	Pens [other than Fountain pens, stylograph pens]	II	12%
233	9608,9609	Pencils (including propelling or sliding pencils), crayons, pastels, drawing charcoals and tailor's chalk	II	12%
447	9608	Fountain pens, stylograph pens	III	18%
453	Any Chapter	Goods which are not specified in Schedule I, II, IV, V or VI	III	18%

1.8 From the above, it is apparent that Sr. Nos. 232 and 233 of Schedule II of the said Notification, is very specific, inasmuch as they cover only pens (other than fountain/stylograph pens) and pencils, crayons, pastels, drawing charcoals and tailor's chalk, whereas serial no. 447 covers fountain pens and stylograph pens.

1.9 Since there is no specific serial number in the said Notification that covers different descriptions of goods, which can be collectively clubbed as 'Parts of Writing Instruments', all the parts of writing instruments like pens and pencils and pencil leads would be covered under the residual serial no. 453 of Schedule III of the said Notification. Accordingly, the rate of IGST applicable on the same would be @18% and not @12%.

1.10 West Bengal Authority for Advance Ruling in the case of M/S Shiva Writing Co Pvt Ltd ruled that "Tips and Balls" of Ball Point Pens are to be classified under GST Tariff heading 9608 99 90 and included under Sl No. 453 of Schedule III of Notification No, 01/2017— Central Tax (Rate) dated 28.06.2017. The relevant portion of the ruling is extracted below-

"In the Rate Notification ball point pens, classified under HSN 9608, are included under Sl No. 232 of Schedule II under the description: "pens other than fountain pens, stylograph pens ". The same Notification also mentions "fountain pens, stylograph pens " under Sl No. 447 of Schedule III. However, parts of pen, including "tips and balls of pens ", classifiable under HSN 9608 as discussed above, are not exempted or specifically included under entries of any other schedules. They are, therefore, to be included under Sl No. 453 of Schedule III and taxable @ 9% CGST and 9% SGST. "

The above ruling was also subsequently upheld by the West Bengal Appellate Authority for Advance Ruling, dismissing the appeal filed by M/S. Shiva Writing Co Pvt Ltd. The reference to the advance ruling is to highlight the fact parts of writing instruments like pens and pencils that are not specifically included under entries of any other schedules are to be included under sr. No. 453 of Schedule III of Notification No. 01/2017- Central Tax (Rate) dated 28.06.2017.

1.11 Based on the Analytical Report No. 39/2021-22 dated 08.09.2021 issued by Additional Director General, National Customs Targeting Centre, DGARM, Mumbai on the above subject, it has been observed that importer, M/S BIC CELLO (INDIA) PRIVATE LIMITED (IEC300056061) have imported parts of pens and pencils of heading 9608 and 9609 vide Bills of Entry as mentioned in the Annexure-I to the subject SCN by paying IGST paid at a lower rate of IGST@ 12% under Sr. No. 232 and Sr. No. 233 of Schedule II of the IGST Notification No. 01/2017 dated 28.06.2017. As the subject goods were not pens and pencils of heading 9608 and 9609, rather, the goods are parts of pens and pencils of heading 9608 and 9609, and as the specific Sr. No. 232 and 233 of the Notification does not cover the parts of the pens and pencils of heading 9608 and 9609, the same attract higher rate of IGST @ 18% under residual entry at Sr. No. 453 of Schedule III of the said notification. Thus, there is short payment of IGST on clearance of parts of pens and pencils of heading 9608 and 9609. Based on the Bills of entry as shown in the Annexure-I to the subject SCN, the differential duties of customs (IGST) short paid by the importer has been calculated at Rs.50,49,599/-.

1.12 In the instant case, the importer imported parts of pens and pencils of heading 9608 and 9609 and paid IGST @ 12% in terms of Sr. No. 232 and Sr. No. 233 of Schedule II of the said notification. As the subject goods were the parts of pens and pencils of heading 9608 and 9609, the specific Sl. No. 232 and Sr. No. 233 of the Notification does not seem applicable for the same as the said entry covers only the complete pens and pencils of heading 9608 and 9609. The entry at Sl. No.453 of the Notification No. 1/2017-IGST covers the Goods which are not specified in Schedule I, II, IV, V or VI and attracts IGST @18%. As the impugned goods in the instant case are not complete pens and pencils but parts of the pens and pencils of heading

9608 and 9609 and no other entry of the Notification No. 1/2017-IGST or any other Notification cover the parts of the pens and pencils, the residual entry of the Notification vide SI No.453 under Schedule-III is applicable to the impugned goods. As per the entry at SI. 453 under Schedule III of the said notification, the impugned goods attract IGST@ 18%. Thus, it appears that there is short payment of IGST on clearance of parts of the pens and pencils of heading 9608 and 9609. Based on the Bills of entry, the differential duties of customs (IGST) short paid by the importer has been calculated Rs. 50,49,599/-. Thus, it appears that the importer has short paid the IGST @ 12% instead of 18% on the impugned goods imported the same is recoverable from the importer under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA and penalty under Section 112(a)/114A of the Customs Act, 1962 read with Section 28 of the Customs Act, 1962.

1.13 The relevant provisions of law relating to import of goods in general, the Policy and Rules relating to imports, the liability of the goods to confiscation and the persons concerned are liable to penalty for illegal importation under the provisions of the Customs Act, 1962 and the other laws were mentioned in the subject SCN. The same are not reproduced in this Order in Original for the sake of brevity.

- (i) Section 46 - Entry of goods on importation
- (ii) Section 17 - Assessment
- (iii) Section 111 - Confiscation of improperly imported goods etc.
- (iv) Section 112 - Penalty for improper importation of goods etc.
- (v) Section 114 – Penalty for short-levy or non-levy of duty in certain cases
- (vi) Section 28 - Recovery of duties not levied or not paid or short-levied or short- paid or erroneously refunded
- (vii) Section 125 - Option to pay fine in lieu of confiscation

1.14 Acts of omission and commission by the importer:

1.14.1 As per section 17(1) of the Act, “An Importer entering any imported goods under section 46, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.” Thus, in this case the importer imported parts of pens and pencils of heading 9608 and 9609 and paid IGST@ in terms of sr. No. 232 and sr. No. 233 of Schedule 11 of the IGST Notification No. 01/2017 dated 28.06.2017. As the subject goods were not pens and pencils of heading 9608 and 9609, rather, the goods were parts of pens and pencils of heading 9608 and 9609, and as the specific Sr. No. 232 and 233 of the Notification does not cover the parts of the pens and pencils of heading 9608 and 9609, the same attract higher rate of IGST @ 18% under residual entry at Sr. No. 453 of Schedule III of the said notification. In spite of the same, the importer availed the undue benefit under Sr. No. 232 and Sr. No. 233 of Schedule II of the IGST Notification No. 01/2017 dated 28.06.2017. The importer failed to correctly declare the same to Customs; and the facts was revealed when the same has been pointed out by customs during Post Clearance Audit. Therefore, it is evident that, had this irregularity not been detected during the audit, the government exchequer could have lost substantial revenue. Thus, it appears that the importer has engaged in suppression of facts to evade the legitimate

customs duty. As the importer got monetary benefit due to said act, it is apparent that the same was done deliberately by availing the undue benefit under Sr. No. 232 and Sr. No. 233 of Schedule II of the IGST Notification No. 01/2017 dated 28.06.2017. Therefore, by the above acts of the suppression of facts, the provision of Section 28(4) of the Customs Act, 1962, where any duty has not been levied or not paid or has been short paid or erroneously refunded, or interest by reason of collusion, willful misstatement and suppression of facts, is squarely applicable in this case. Hence, Differential duty amounting Rs. 50,49,599/- (Rupees Fifty Lakhs Forty Nine Thousand Five Hundred and Ninty Nine only) with respect to the items covered under Bills of entry as mentioned in Annexure-I is recoverable from the importer under Section 28(4) of Customs Act, 1962- along with applicable interest under Section 28AA of the Customs Act, 1962. The improper action of the importer warrants action for recovery of duty under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962. Consequently, they have rendered himself liable for penal action under Section 114A and/or 114AA of the Customs Act, 1962 as the duty was evaded by willful statement and suppression of facts.

1.14.2 It appeared that the Importer has given a declaration under section 46(4) of the Act, for the truthfulness of the content submitted at the time of filing Bill of Entry. However, as discussed above, the importer had wrongly availed lower rate of IGST@12% in place of IGST@18% to avoid paying the correct duty at the time of clearance of goods. It also appeared that the Importer had submitted a false declaration under section 46(4) of the Act. By the act of presenting goods in contravention to the provisions of section 111(m), it appeared that the Importer had rendered the subject goods liable for confiscation under section 111(m) of the Act. For the above act of deliberate omission and commission that rendered the goods liable to confiscation. Accordingly, the Importer also appeared liable to penal action under Section 112 (a) and /or 114 A of the Customs Act, 1962.

1.15 From the foregoing, it appeared that the Importer has deliberately not paid the duty by wilful mis-statement as it was his duty to declare correct applicable rate of duty in the entry made under Section 46 of the Customs Act, 1962, and thereby has attempted to take undue benefit amounting to Rs. 50,49,599/- (Rupees Fifty Lakh Forty Nine Thousand Five Hundred Ninety Nine Only) (as detailed in Annexure-I to the subject SCN). Therefore, the differential duty, so not paid, is liable for recovery from the Importer under Section 28 (4) of the Customs Act, 1962 by invoking extended period of limitation, along with applicable interest at the applicable rate under section 28AA of the Customs Act, 1962 and for their acts of omission/commission.

1.16 Therefore, the importer M/S. BIC CELLO (INDIA) PRIVATE LIMITED (IEC-300056061) was called upon to show cause to the Commissioner of Customs (Import), NS-V, Jawaharlal Nehru Custom House, Nhava Sheva, Raigad, Maharashtra – 400 707 (Adjudicating Authority), as to why:

- (i) The IGST should not be rejected @ 12% and the IGST should not be assessed @ 18% in terms of Sr. No. 453 of Schedule III of the IGST Notification No. 01/2017 dated 28.06.2017.
- (ii) The differential IGST amounting to Rs. 50,49,599/- (Rupees Fifty Lakhs Forty Nine Thousand Five Hundred and Ninty Nine only) should not be demanded and recovered from the importer under section 28 (4) of the Customs Act, 1962;
- (iii) The applicable interest on the amount specified above should not be recovered from them in terms of section 28AA of the Customs Act, 1962.
- (iv) The subject goods should not be confiscated under Section 111 (m) and/or 111(o) of the Customs Act, 1962;
- (v) Penalty should not be imposed on him under Section 112(a)/114A/114AA of the Customs Act, 1962.

1.17 It was also advised that the importer may avail the benefit of reduced penalty @15% of duty an interest so specified in the notice in terms of Section 28(5) of Customs Act 1962 by payment of duty and interest within 30 days of receipt of this notice, failing which importer may be subject to higher penalty equal to the duty and interest so determined.

PERSONAL HEARING AND WRITTEN SUBMISSIONS

2. There is one Noticee in the subject SCN namely, M/S. BIC CELLO (INDIA) PRIVATE LIMITED (IEC-300056061).

2.1 In compliance with the provisions of Section 28(8) read with Section 122A of the Customs Act, 1962, and in terms of the principle of natural justice, the Noticee was granted opportunity of Personal Hearing (PH) on 28.05.2025 by the then Adjudicating Authority. However, the Noticee failed to attend of the said hearing.

2.2 During the period, Adjudicating Authority has been changed, hence, again another opportunity for PH was granted to the Noticee on 24.09.2025 and 07.10.2025. Shri Ankit Trivedi, Advocate appeared before me in person on behalf of the Noticee, M/s BIC Cello (India) Private Limited, on 07.10.2025. Further, the notice had also submitted the additional written reply vide their letter dated 07.10.2025. He reiterated the submission made by them vide their letter dated 25.11.2024 and 07.01.2025 as under:

- i.) that the department has wrongly invoked 28 (4) of the Customs Act, 1962. Hence, he contended that the proceeding initiated after period of limitation of time.

ii) that the noticee had paid the differential IGST of Rs. 24,54,181/- vide TR-6 challan dated 27.11.2024 under protest.

iii) he requested that the Show Cause Notice be discharged, and the proposed fine and penalties on the Noticee may kindly be dropped.

2.3. The gist of the submission dated 25.11.2024 and 07.01.2025 is as follows:

A. ABSENCE OF INGREDIENTS UNDER SECTION 28 (4) OF THE ACT:

A.1 The Department has raised the purported demand under Section 28(4) of the Act. The relevant part is extracted below for ready reference:

(4) Where any duty has not been levied or not paid or has been short-levied or short paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of(a) collusion; or

(a) any wilful mis-statement; or

suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

A.2 It is evident that this provision is applicable in cases where tax has been underpaid due to collusion, any wilful mis-statement, or suppression of facts. In this context, it is further submitted that none of these conditions are present in this case, thereby making the provision inapplicable. The defence to each such condition has been detailed hereunder:

Collusion:

A.3 Collusion implies a secret agreement or cooperation for a fraudulent or deceitful purpose. In the present case, there is no evidence to suggest that the Noticee engaged in any secretive or deceitful agreement with any party to evade customs duty. The transactions were conducted transparently, and all relevant documents were duly submitted to the customs authorities at the time of filing Bills of Entry.

No Wilful Misstatement:

A.4 A wilful mis-statement involves a deliberate intention to mislead or deceive the authorities. The Noticee have always made accurate and truthful statements and submissions whenever required. Moreover, the Department has failed to present even a shred of evidence to substantiate their claim of any misstatement.

Suppression of Facts:

A.5 Suppression of facts refers to the deliberate concealment of material information. In this case, the Noticee has disclosed all relevant documents to the assessing officer at the time of filing to the customs authorities; there has been no intentional withholding of information that could have influenced the assessment of customs duty. The Noticee has maintained full transparency in all dealings with the customs authorities, the proceedings initiated based on the documents provided, and there was no concealment of information.

A.6 The Noticee have, in fact, submitted all relevant documents pertaining to these imports, including the Bills of Entry, commercial invoices, packing lists and other relevant documents to the customs authorities at the time of filing the Bills of Entry. All the documents, which clearly described the goods as "Parts of Writing Instruments" were available and accessible to the officers at the time of assessment. There was no information concealed or misrepresentation at Noticee's part. This was a matter of interpretation of notification entries, and no ingredient of fraud, misrepresentation or any intention to evade payment of duty can be inferred.

A.7 The Hon'ble Supreme Court, in the case of *Uniworth Textiles v. CCE, Raipur* [2013 (288) BLT 161 (SC)] has held that, a conscious and deliberate concealment of facts with the intention to evade payment of duty, is a sine qua non for invoking the extended period of limitation. In the absence of such an intent, invocation of the extended period of limitation is not valid. The extended time limit cannot be imposed without any mala-fide intention to evade payment of duty. As such, the conditions necessary for applying the extended period of limitation are not met, and thus under section 28 (4) of the Act cannot be invoked in the Noticees case.

A.8 In the case of *Continental Foundation Joint Venture vs. CCE, Delhi* [2007 (216) ELT 177 (SC)], the Hon'ble Supreme Court has held that, "Suppression means the act of deliberately withholding information, and does not include any failure to pay duty arising out of an interpretational difference". This precedent clearly establishes that where a dispute arises out of an interpretation of the law, invocation of the extended period of limitation on the grounds of suppression of facts is not justified. Further, in the case of *Pushpam Pharmaceuticals Company vs. Collector of Central Excise, Bombay*, [1995 (78) ELT 401 (SC)], the Honble Supreme Court held that "suppression of facts must be wilful and intentional. Mere failure to declare the correct information would not be suppression of facts". As there was no wilful misrepresentation of facts at the time of assessment, and all documents were duly submitted, the extended period of limitation to demand duty beyond the normal period should not be applied.

A.9 The Impugned SCN is silent on any evidence of deliberate suppression or misstatement of facts by the Noticee. In the absence of such allegations supported by cogent evidence, the extended period cannot be invoked, and the demand must fail. The show cause notice must explicitly mention the specific allegations of fraud, collusion, or wilful mis-statement to invoke

the extended limitation period. The Hon'ble Supreme Court in *M/S, Uniworth Textiles Ltd. (Supra)* that the appellant had acted in good faith, seeking clarification from the Development Commissioner and relying on the response received. Consequently, the extended period of five years cannot be invoked without clear evidence of deliberate default.

A.10 The Hon'ble Supreme Court in *M/S. Uniworth Textiles Ltd. (Supra)* emphasised that the burden of proving mala fide conduct under the proviso to Section 28 lies with the Revenue. The Show Cause Notice lacked specific allegations and evidence, failing to meet the required standard of proof. The department in the Impugned SCN should have explicitly mention the specific allegations of fraud, collusion, or wilful mis-statement to invoke the extended limitation period, which they have failed to do so. Therefore, the extended period is invoked without any merit or application of mind and thus, the Impugned SCN is liable to be set aside.

B. The impugned SCN is baarred by limitation as stipulated in Section 28(i) (a) of the act.

B.1 The impugned SCN seeks to recover dues pertaining to the years 2019-2022. Section 28 (1) (a) of the Act makes it abundantly clear that the time limit to issue notice is two years from the relevant date. In this case, the relevant date being the date Bill of Entry was filed. The relevant part of section 28(1) (a) of the Act is extracted below for ready reference:

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

(a) the proper officer shall, within two years from the relevant date, serve notice on the person chargeable with the duty or interest has not been so levied or paid or which has been short-levied or short-paid or to whom the has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice;

B.2 In this regard, reliance is placed on the decision of the Hon'ble Supreme Court in Miscellaneous Application No. 665 of 2021 reported in *Suo Motu Writ Petitibn (C) NO. 03 of 2020* wherein for the purpose of computing the period of limitation for any suit of appeal, among others, the period from 15.03.2020 till 0110.2021 shall stand excluded. In case the limitation period expires within the said bracket, every person shall have a limitation period of 90 days from 03.10.2021. The Impugned SCN is issued well beyond the limitation period as well.

B.3 The Hon'ble Supreme Court in the case of *Collector of Central Excise v. H.M.M. Limited 11995 (76) E.L.T. 497 (SO)* held that the limitation period prescribed under the statute must be strictly adhered to, and any demand raised beyond the stipulated period is time-barred and not enforceable. Similarly, in *Tata Engineering & Locomotive Co. Ltd. v. Union of India 11976 AIR 24631*, the Hon'ble Bombay High Court emphasized that in the absence of fraud, collusion, or wilful mis-statement, the demand raised beyond the statutory limitation period is invalid.

B.4 In the present case, it is submitted that since the period of limitation for issuing Show Cause Notice covering Bills of Entry from 20.06.2019 to 04.06.2020 is extinguished, the impugned SCN is devoid of merits and therefore, the demand is time-barred and cannot be pursued.

B.5 In light of the above arguments and judicial precedents, it is evident that the impugned SCN is barred by limitation as per Section 28(l)(a) of the Act. Consequently, the demand raised in the Impugned SCN is not enforceable and should be set aside.

C. PAYMENT OF DIFFERENTIAL IGST UNDER PROTEST-

C.1 They reiterated that without prejudice to above contention on the absence of suppression and the bar of limitation, in the interest of closure and to avoid unnecessary litigation, the noticee paid the differential IGST amount of Rs. 24,54,181/- (Rupees Twenty-Four Lakh Fifty-Four Thousand One Hundred Eighty-One Only) vide TR-6 challan dated 25.11.2024.

C.2 As per the provisions of the Act, the limitation period for issuing demand defined. In the absence of any allegations of collusion, wilful mis-statement facts, the demand raised beyond the statutory limitation period is not enforceable.

C.3 Given that the differential IGST has been paid and there are no allegations of fraud, or willful misstatement, the proceedings should be concluded, and no further action should be taken against the Noticee.

C.4 In light of the above arguments and judicial precedents, it is evident that the differential IGST paid by the Noticee post limitation should be considered. The payment made by satisfies the tax liability, and therefore, the proceedings further demands or penalties.

D. No interest or Penalty can be levied

D.1 The core issue at hand revolves around a difference in the rate of IGST — whether the parts of writing instruments should be taxed at 12% or 18%. It is the Noticee's contention that, even if the goods were to be taxed at the higher rate of 18% as contended in the impugned SCN, the additional IGST paid by us would have been entirely available to us as Input Tax Credit ("ITC").

D.2 The imposition of penalty is unwarranted. The principle of revenue neutrality implies that the tax paid by the Noticee is available as a credit to the recipient, resulting in no loss to the revenue. This has been upheld in various judicial pronouncements, including the case of *Mahindra & Mahindra Ltd Vs CCE 12019 (368) E.L.T. 105 - Mumbai*] affirmed by the Supreme Court in [2019 (368) E.L.T. (S.C.)], where the Supreme Court accepted the contention of revenue neutrality and set aside the demand for penalties. Therefore, in a revenue neutral

situation, penalties should not be levied as there is no intention to evade tax and no revenue loss.

They reiterated that in view of the submissions made hereinabove, the Noticee has not suppressed any facts. The Hon'ble Supreme Court in the case of *Hindustan Steel Ltd. vs. State of Orissa reported in (1969 (8) TMI 31]* held that the discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in cases where the party acts deliberately in defiance of the law, or is guilty of contumacious or dishonest conduct, or acts in conscious disregard of its obligation; but not, in cases where there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the Statute.

D.4 Additionally, interest is typically levied to compensate for the loss of revenue due to delayed payment of tax. However, in a revenue-neutral situation, where the tax paid is available as a credit, there is no actual loss to the revenue. This principle has been upheld by *Hon'ble CESTAT Kolkata in the case of Steel Authority of India Limited Vs Commissioner of Central Excise [Excise Appeal No. 396 of 2006]*, wherein it was held that interest is not leviable in a revenue-neutral situation. The Hon 'ble Tribunal emphasized that since the tax paid is available as a credit, the imposition of interest is unjustified. Therefore, in such cases, the demand for interest should be waived.

DISCUSSION AND FINDINGS

3. I have carefully gone through the entire records of the case, the subject SCN dated 12.06.2024, the relied upon documents, evidence/material on record, facts of the case, as well as written and oral submissions made by the Noticee/authorized representative on behalf of the Noticee in response to the subject SCN.

3.1 I find that the subject Show Cause Notice was issued on 12.06.2024. On 04.06.2025, the Chief Commissioner of Customs, JNCH, Mumbai Zone-II granted an extension of time limit to adjudicate the case up to 11.12.2025, in accordance with the first proviso to Section 28(9) of the Customs Act, 1962. Therefore, the case has now been taken for adjudication proceedings within the time limit as per Section 28(9) of the Customs Act, 1962.

3.2 In compliance to provisions of Section 28(8) and Section 122A of the Customs Act, 1962 and in terms of the principles of natural justice, opportunity for Personal Hearing (PH) was granted to the Noticee on 28.05.2025, 24.09.2025 and 07.10.2025. The PH on 07.10.2025 was held before me.

3.3 On a careful perusal of the Show Cause Notice and case records, I find that following main issues are involved in the case which are required to be decided: -

- (i) Whether the IGST should be rejected @ 12% and the IGST should be assessed @ 18% in terms of Sr. No. 453 of Schedule III of the IGST Notification No. 01/2017 dated 28.06.2017.
- (ii) Whether the differential IGST amounting to Rs. 50,49,599/- (Rupees Fifty Lakhs Forty Nine Thousand Five Hundred and Ninty Nine only) should be demanded and recovered from the importer under section 28 (4) of the Customs Act, 1962;
- (iii) Whether the applicable interest on the amount specified above should be recovered from them in terms of section 28AA of the Customs Act, 1962.
- (iv) Whether the subject goods should be confiscated under Section 111 (m) and/or 111(o) of the Customs Act, 1962.
- (v) Whether penalty should be imposed on him under Section 112(a)/114A/114AA of the Customs Act, 1962.

4. I now proceed to deal with each of the issues individually for analysis in light of facts, circumstances of the case, provision of the Customs Act, 1962 and nuances of various judicial pronouncements.

4.1. Whether the IGST should be rejected @ 12% and the IGST should be assessed @ 18% in terms of Sr. No. 453 of Schedule III of the IGST Notification No. 01/2017 dated 28.06.2017.

4.1.1 M/S. BIC CELLO (INDIA) PRIVATE LIMITED (IEC-300056061), have imported Parts of pens and pencils of heading 9608 and 9609 through Bills of Entry enclosed herewith as Annexure-I to the subject SCN and cleared at a lower rate of IGST @ under sr. No. 232 and sr. No. 233 of Schedule II of the IGST Notification No.01/2017 dated 28.06.2017.

4.1.2 *The Sr. No. 232 and Sr. No. 233 of the Schedule II of the Notification No. 01/2017 dated 28.06.2017 covers the goods viz., "Pens [other than Fountain pens, stylograph pens] and Pencils (including propelling or sliding pencils), crayons, pastels, drawing charcoals and tailor 's chalk" respectively. It is observed that the parts of Pens and Pencils of heading 9608 and 9609 are not covered by the Sr. No. 232 and Sr. No. 233 of Schedule II of the said notification. The parts of Pens and Pencils of heading 9608 and 9609, having not been covered in any other schedule of the said notification, are classifiable under residual entry at Sr. No. 453 of Schedule III of the said notification which covers "Goods which are not specified in Schedule I, II, IV, V or VI. The goods classifiable under Schedule III of the said notification attracts IGST @ 18%, hence, IGST should have been levied @ 18% on the subject goods.*

4.1.3 In addition, the relevant extracts of the HS Explanatory Notes for "Parts" under CTH 9608 are transcribed below:

"The heading also covers identifiable parts not more specifically included elsewhere in the Nomenclature, For example.' Pen nibs of any design including unfinished nibs roughly cut to shape; clips; refills for ball point pens, comprising the ball point and the ink reservoir; holders for the ball points or felts of marking stylographs; ink-flow regulators; barrels for pens or pencils of this heading; filling or propelling mechanisms; ink sacs of rubber or other materials; point protectors; interchangeable renew nib units comprising nib, feed and collar; nib points (or pen points) which are small balls made from platinum alloys or from certain tungsten alloys used for pointing the tips of pen nibs to prevent premature wear."

4.1.4 Furthermore, 'Pencil leads', which are parts of pencils, are classifiable under CTH 9609 20 00. The relevant part of the HS Explanatory Notes for "Pencil leads" under Chapter Heading 9609 is reproduced below:

"The heading includes: Pencil leads (e.g., black leads, composed of a mixture of graphite and clay; coloured leads, consisting of metallic oxides or other mineral pigments combined with clay, chalk or wax; indelible or copying leads, composed of clay tinted with a dye, such as aniline or fuchsine)."

4.1.5 From the above Customs Tariff Headings and the associated HS Explanatory Notes, it can be inferred that parts of pen and pencils include, inter alia, "refills", "nibs", "pencil leads", and "barrels", as well as items like "tungsten carbide balls", "clips", falling under CTIs 960860 10 to 9608 99 90 and CTI 9609 20 00; such items are within the purview of the description "Parts of Writing Instruments".

4.1.6 Given this context, reference is drawn to the relevant entries of Notification No.01/2017 Integrated Tax (Rate) dated 28.06.2017 i.e. serial nos. 232 and 233 of Schedule II as well as serial nos. 447 and 453 of Schedule III of this Notification, which are outlined below:

232	9608	Pens [other than Fountain pens, stylograph pens]	II	12%
233	9608,9609	Pencils (including propelling or sliding pencils), crayons, pastels, drawing charcoals and tailor's chalk	II	12%
447	9608	Fountain pens, stylograph pens	III	18%
453	Any Chapter	Goods which are not specified in Schedule I, II, IV, V or VI	III	18%

4.1.7 From the above, it is apparent that Sr. Nos. 232 and 233 of Schedule II of the said Notification, is very specific, inasmuch as they cover only pens (other than fountain/stylograph

pens) and pencils, crayons, pastels, drawing charcoals and tailor's chalk, whereas serial no. 447 covers fountain pens and stylograph pens.

4.1.8 Since there is no specific serial number in the said Notification that covers different descriptions of goods, which can be collectively clubbed as 'Parts of Writing Instruments', all the parts of writing instruments like pens and pencils and pencil leads would be covered under the residual serial no. 453 of Schedule III of the said Notification. Accordingly, the rate of IGST applicable on the same would be @18% and not @12%.

4.1.9 West Bengal Authority for Advance Ruling in the case of M/S Shiva Writing Co Pvt Ltd ruled that "Tips and Balls" of Ball Point Pens are to be classified under GST Tariff Heading 9608 99 90 and included under Sl No. 453 of Schedule III of Notification No, 01/2017— Central Tax (Rate) dated 28.06.2017. The relevant portion of the ruling is extracted below- .

"In the Rate Notification ball point pens, classified under HSN 9608, are included under Sl No. 232 of Schedule II under the description: "pens other than fountain pens, stylograph pens ". The same Notification also mentions "fountain pens, stylograph pens " under Sl No. 447 of Schedule III. However, parts of pen, including "tips and balls of pens ", classifiable under HSN 9608 as discussed above, are not exempted or specifically included under entries of any other schedules. They are, therefore, to be included under Sl No. 453 of Schedule III and taxable @ 9% CGST and 9% SGST. "

4.1.10 The above ruling was also subsequently upheld by the West Bengal Appellate Authority for Advance Ruling, dismissing the appeal filed by M/S. Shiva Writing Co Pvt Ltd. The reference to the advance ruling is to highlight the fact parts of writing instruments like pens and pencils that are not specifically included under entries of any other schedules are to be included under sr. No. 453 of Schedule III of Notification No. 01/2017- Central Tax (Rate) dated 28.06.2017.

4.1.11 There is no dispute regarding the applicable Schedule Serial Number, as the Noticee has already paid the partial differential IGST amount of ₹24,54,181/- (Rupees Twenty-Four Lakh Fifty-Four Thousand One Hundred Eighty-One only) through TR-6 Challan dated 25.11.2024, thereby acknowledging the short payment of IGST on the imported goods. The Noticee has also accepted the correct applicable Serial Number 453 under Schedule III of Notification No. 01/2017-IGST (Rate) dated 28.06.2017, attracting IGST @18%, in place of the earlier wrongly claimed entry under Schedule II. This conduct clearly denotes that the Noticee was fully aware of the correct classification and IGST rate applicable to the goods, and had knowingly availed the benefit of an incorrect entry at the time of import. The said payment has been duly verified by the CASH Section vide F.No.S/10-Gen-03/2017-18/CASH/JNCH Pt.III dated 29.09.2025.

4.1.12 The Harmonized System (HS) Classification is globally recognized for uniform interpretation of tariff headings. As per the HS Explanatory Notes (2022 edition), all components of goods are to be classified under the heading of the complete product if no

separate entry exists. Since parts of pens and pencils are not separately listed in Schedule II Notification No. 01/2017- Central Tax (Rate) dated 28.06.2017, they are covered by the residual entry under Sr. No. 453 of Schedule III Notification No. 01/2017- Central Tax (Rate) dated 28.06.2017.

4.1.13 The legal principle of “residual classification” under the Notification No. 01/2017-IGST clearly applies. Residual entries are meant to capture all goods not specifically mentioned elsewhere. Therefore, the rate of IGST @ 18% is mandatory for parts of writing instruments not specifically enumerated.

4.1.14 It is observed that Notification No. 01/2017-IGST differentiates between complete goods and their components. Serial Nos. 232 and 233 of Schedule II Notification No. 01/2017- Central Tax (Rate) dated 28.06.2017 specifically refer to pens and pencils in complete form, not their parts. Therefore, the differential IGST is applicable on all imported parts including refills, barrels, nibs, clips, and pencil leads at the rate of IGST@18% under Sr. No. 453 of Schedule III Notification No. 01/2017- Central Tax (Rate) dated 28.06.2017.

4.1.15 Judicial and quasi-judicial precedents, including the Advance Ruling by the West Bengal Authority for Advance Ruling in the case of M/S Shiva Writing Co. Pvt. Ltd, have consistently held that parts of writing instruments, not covered by any specific schedule, are to be classified under the residual entry. The Appellate Authority upheld this ruling, reinforcing that such classification attracts IGST @ 18% and not at concessional rates applicable to complete pens or pencils.

4.1.16 The differential IGST paid by the noticee (Rs. 24,54,181/-) does not negate the fact that the full IGST liability under Sr. No. 453 is legally enforceable. The partial payment merely demonstrates acknowledgment of some tax liability but cannot be construed as full compliance.

4.1.17 Moreover, the HS Explanatory Notes for 9608 and 9609 (as cited in paras 4.1.3 and 4.1.5) clearly include items such as nibs, refills, barrels, clips, ink sacs, and pencil leads. These components are distinct from finished pens and pencils and hence do not qualify for the lower 12% rate under Sr. Nos. 232/233.

4.1.18 Finally, considering the PCA findings, tariff interpretation, advance ruling, and HS Explanatory Notes, it is evident that all imported items listed in Annexure-I to the subject SCN are legally liable to IGST @ 18% under Sr. No. 453 of Schedule III, and the SCN's allegation of underpayment of IGST is fully justified.

4.2 **Whether the differential IGST amounting to Rs. 50,49,599/- (Rupees Fifty Lakhs Forty Nine Thousand Five Hundred and Ninty Nine only) should be demanded and recovered from the importer under section 28 (4) of the Customs Act, 1962.**

4.2.1 I have carefully gone through the facts of the case, the contents of the Show Cause Notice, the written submissions, and the records of import. The issue to be determined is whether the parts of pens and pencils imported by M/s. BIC Cello (India) Pvt. Ltd. are liable to IGST @18% under Sr. No. 453 of Schedule III of Notification No. 01/2017-IGST (Rate) dated 28.06.2017 and consequently whether the short-levied IGST amounting to ₹50,49,599/- is recoverable under Section 28(4) of the Customs Act, 1962.

4.2.2 As discussed in preceding paragraphs, the goods in question are “parts of pens and pencils” falling under CTH 9608 and 9609. These goods were cleared under Sr. Nos. 232 and 233 of Schedule II of Notification No. 01/2017-IGST (Rate), attracting IGST @12%. However, as these entries specifically pertain to finished writing instruments, and not their parts, the goods are more appropriately classifiable under the residual entry at Sr. No. 453 of Schedule III of Notification No. 01/2017-IGST (Rate) dated 28.06.2017, which attracts IGST @18%. Hence, the self-assessment of the importer applying 12% IGST was incorrect.

4.2.3 Under Section 17(1) of the Customs Act, 1962, importers are responsible for self-assessment of duties, including IGST. Where such self-assessment results in short-payment of duty, Section 28(4) empowers the department to recover the same if the short-payment arises from suppression, mis-declaration, or contravention of provisions with intent to evade payment of duty. In this case, the importer has knowingly availed a lower rate of IGST@12% in place of correct IGST@18%. Had the department not raised the issue and initiated procedure under the Customs Act, 1962 in this case, the duty so evaded might have gone unnoticed & unpaid. The Noticee evaded duty by mis-classification of goods and availing lower IGST. This shows willful suppression, mis-statement and malafide intention of the Noticee to evade payment of appropriate Customs duty. As the Noticee got monetary benefit due to their willful mis-classification and evasion of applicable Customs Duty on the subject goods, hence, I find that duty was correctly demanded under Section 28(4) of the Customs Act, 1962 by invoking extended period.

4.2.4 The importer is a large and experienced entity regularly engaged in import and manufacture of writing instruments. Therefore, it is reasonable to conclude that the importer was fully aware of the applicable tariff structure and Notification entries. The deliberate choice of a concessional rate applicable to “pens and pencils” for “parts thereof” constitutes misclassification with intent to evade tax, attracting the provisions of Section 28(4).

4.2.5 The West Bengal Appellate Authority for Advance Ruling (AAAR), in the case of M/s. Shiva Writing Co. Pvt. Ltd., has clearly ruled that parts of pens—such as tips, balls, nibs, refills, etc.—are classifiable under HSN 9608 99 90 and fall under Sr. No. 453 of Schedule III of Notification No. 01/2017-IGST (Rate), attracting IGST @18%. This ruling squarely applies to the present case, leaving no doubt that the goods are taxable at 18% IGST.

4.2.6 As per Section 28AA of the Customs Act, 1962, interest is mandatorily payable on any amount of duty not levied or short-levied, from the date on which the duty became due until

the date of actual payment. Hence, the importer is liable to pay interest on the differential IGST of ₹50,49,599/-.

4.2.7 It is well-settled law that *mens rea* or malafide intent is presumed under Section 28(4) when the importer, despite having sufficient experience and knowledge, misclassifies goods or suppresses material information to avail a lower duty rate. The repeated import of similar goods under incorrect IGST rate indicates conscious and deliberate evasion.

4.2.8 In view of the foregoing findings, the demand for recovery of differential IGST amounting to ₹50,49,599/- (Rupees Fifty Lakh Forty-Nine Thousand Five Hundred and Ninety-Nine Only) is confirmed under Section 28(4) of the Customs Act, 1962.

4.3 Whether the applicable interest on the amount specified above should be recovered from them in terms of section 28AA of the Customs Act, 1962.

4.3.1 As per Section 28AA of the Customs Act, 1962, the person, who is liable to pay duty in accordance with the provisions of Section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2) of Section 28AA, whether such payment is made voluntarily or after determination of the duty under that section. From the above provisions, it is evident that regarding demand of interest, Section 28AA of the Customs Act, 1962 is unambiguous and mandates that where there is a short payment of duty, the same along with interest shall be recovered from the person who is liable to pay duty. The interest under the Customs Act, 1962 is payable once demand of duty is upheld and such liability arises automatically by operation of law. In an umpteen number of judicial pronouncements, it has been held that payment of interest is a civil liability and interest liability is automatically attracted under Section 28AA of the Customs Act, 1962. Interest is always accessory to the demand of duty as held in case of *Pratibha Processors Vs UOI* [1996 (88) ELT 12 (SC)].

4.3.2 I have already held in the above paras that the differential duty amount of ₹50,49,599/- (Rupees Fifty Lakh Forty-Nine Thousand Five Hundred and Ninety-Nine Only) as calculated and annexed as Annexure 'I' to the subject SCN should be demanded and recovered from M/s BIC CELLO (INDIA) PRIVATE LIMITED under the provisions of Section 28(4) of the Customs Act, 1962 by invoking extended period. Therefore, in terms of the provisions of Section 28AA of the Customs Act, 1962, interest on the aforesaid amount of differential duty is also liable to be recovered from M/s BIC CELLO (INDIA) PRIVATE LIMITED.

4.3.3 Accordingly, I agree with the proposal made in the subject SCN and hold that interest at an appropriate rate should be recovered from M/s BIC CELLO (INDIA) PRIVATE LIMITED on the said differential Customs duty amount of Rs. ₹50,49,599/- (Rupees Fifty Lakh Forty-Nine Thousand Five Hundred and Ninety-Nine Only) confirmed in this order, under Section 28AA of the Customs Act, 1962.

4.4 Whether the subject goods should be confiscated under Section 111 (m) and/or 111(o) of the Customs Act, 1962.

4.4.1 The SCN proposes confiscation of goods imported vide Bills of Entry listed in Annexure-I to the SCN, having total assessable value of Rs.7,58,19,809/- (Rupees Seven Crore Fifty Eight Lakh Nineteen Thousand Eight Hundred Nine Only) under the provisions of Section 111(m) and 111(o) of the Customs Act, 1962.

4.4.2 Section 111(m) and 111(o) of the Customs Act, 1962 states that the following goods brought from a place outside India shall be liable to confiscation:

(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 trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of Section 54;

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

4.4.3 Section 111(m) deals with any and all types of mis-declaration regarding any particular of Bill of Entry. Therefore, the declaration of the importer herein by mis-classification of the impugned goods, amounts to mis-declaration and shall make the goods liable to confiscation.

4.4.4 I have already held in foregoing paras that the "Parts of pens and pencils" imported by the Noticee was correctly classifiable under the Customs Tariff Item 9609200. The Noticee was very well aware of the actual nature of the imported goods and the applicable correct IGST Schedule as the importer is a large and experienced entity regularly engaged in import and manufacture of writing instruments. As discussed in the foregoing paras, it is evident that the Noticee deliberately suppressed the correct IGST Schedule and willfully mis-classified the imported goods, resulting in short levy of duty. This deliberate suppression of facts and willful mis-classification resorted by the Noticee, therefore, renders the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962. Accordingly, I find that acts of omission and commission on part of the Noticee has rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962.

4.4.5 I find that Section 111(m) provides for confiscation even in cases where goods do not correspond in respect of any other particulars in respect of which the entry is made under the Customs Act, 1962. I have to restrict myself only to examine the words "*in respect of any other particular with the entry made under this act*" would also cover case of mis-classification. As this act of the importer has resulted in short levy and short payment of duty, I find that the confiscation of the imported goods invoking Section 111(m) is justified and sustainable.

4.4.6 As per Section 111(o) of the Customs Act, 1962, when goods are exempted from customs duty subject to certain conditions and such conditions are fulfilled, the imported goods become liable to confiscation. In the present case, the Noticee had claimed the benefit under Sr. No. 232 and Sr. No. 233 of Schedule II of Notification No. 01/2017-Customs, dated 28.06.2017. I find that Sr. Nos. 232 and 233 of Schedule II of the said notification pertain to finished writing instruments, which attract IGST @ 12%, whereas the impugned goods are parts of pen & Pencil, which attract IGST @ 18% under the residual entry at Sr. No. 453 of Schedule III of Notification No. 01/2017-IGST (Rate) dated 28.06.2017, as discussed supra. In view of the above, I find that the Noticee has wrongly availed duty exemption in contravention of the conditions of the said notification, since “parts of pen and pencil” are not covered under Sr. Nos. 232 and 233 of Schedule II of Notification No. 01/2017-Customs, dated 28.06.2017. However, as parts of pens and pencils falling under Headings 9608 and 9609 are not covered under any other Schedule of the said notification, they fall under Schedule III of Notification No. 01/2017-Customs, dated 28.06.2017, which covers goods “not specified in Schedule I, II, IV, V or VI.” Accordingly, the goods attract IGST @ 18%, and hence, IGST should have been levied at 18% on the subject goods.

4.4.7 As per Section 46 of the Customs Act, 1962, the importer of any goods, while making entry on the Customs automated system to the Proper Officer, 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. He shall ensure the accuracy and completeness of the information given therein and the authenticity and validity of any document supporting it.

4.4.8 I find that the importer while filing the Bill of Entry for the clearance of the subject goods had subscribed to a declaration as to the truthfulness of the contents of the Bill of Entry in terms of Section 46(4) of the Customs Act, 1962 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2011 in all their import declarations. Section 17 of the Act, w.e.f. 08.04.2011, provides for self-assessment of duty on imported goods by the importer themselves by filing a Bill of Entry, in the electronic form. Section 46 of the Act makes it mandatory for the importer to make an entry for the imported goods by presenting a Bill of Entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulation, 2011 (issued under Section 157 read with Section 46 of the Act), the Bill of Entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic integrated declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the Service Centre, a Bill of Entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under the scheme of self-assessment, it is the importer who has to diligently ensure that he declares all the particulars of the imported goods correctly e.g., the correct description of the imported goods, its correct classification, the applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported goods when presenting the Bill of Entry. Thus, with the

introduction of self-assessment by amendment to Section 17, w.e.f. 8th April, 2011, the complete onus and responsibility is on the importer to declare the correct description, value, notification, etc. and to correctly classify, determine and claim correct exemption notification and pay the applicable duty in respect of the imported goods.

4.4.9 Prior to 08.04.2011, sub-section (2) of Section 2 of the Customs Act, 1962 read as under:

(2) "assessment" includes provisional assessment, reassessment and any order of assessment in which the duty assessed is nil;

Finance Act, 2011 introduced provision for self-assessment by the importer. Subsequent to substitution by the Finance Act, 2011 (Act 8 of 2011), (w.e.f. 08.04.2011) sub-section (2) of Section 2 ibid read as under:

Section 2 - Definitions, Sub-section (2) – assessment:

(2) "assessment" includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;

With effect from 29.03.2018, the term 'assessment' in sub-section (2) of Section 2 ibid means as follows:

*(2) "assessment" means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, with reference to-
the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;*

the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;

exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;

the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;

the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods,

any other specific factor which affects the duty, tax, cess or any other sum payable on such goods,

and includes provisional assessment self-assessment, re-assessment and any assessment in which the duty assessed is nil;

4.4.10 From a plain reading of the above provisions related to assessment, it is very clear that w.e.f. 08.04.2011, the importer must self-assess the duty under Section 17 read with Section 2(2) of the Customs Act, and since 2018 the scope of assessment was widened. Under the self-assessment regime, it was statutorily incumbent upon the importer to correctly self-assess the goods in respect of classification, valuation, claimed exemption notification and other particulars. With effect from 29.03.2018, the term 'assessment', which includes provisional assessment also, the importer is obligated to not only establish the correct classification but also to ascertain the eligibility of the imported goods for any duty exemptions. From the facts of the case as detailed above, it is evident that M/s BIC Cello (India) Private Limited has deliberately failed to discharge this statutory responsibility cast upon them.

4.4.11 From the discussion above, I find that that the importer had in a planned manner suppressed the relevant facts and intentionally evaded Customs duty by wrongfully misclassifying the goods and claiming the benefit of Sr.No. 232 and Sr. No. 233 of the Schedule II of the Notification No.01/2017-Customs dated 28.06.2017 on the impugned goods and hence, contravened the provisions of Section 46 of the Customs Act, 1962 read with Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 and Rule 14 of the Foreign Trade (Regulation) Rules, 1993.

4.4.12 Besides, as indicated above, in terms of the provisions of Section 46(4) of the Customs Act, 1962 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018, the importer while presenting a Bill of Entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such Bill of Entry. In terms of the provisions of Section 47 of the Customs Act, 1962, the importer shall pay the appropriate duty payable on imported goods and then clear the same for home consumption. However, in the subject case, the importer while filing the Bill of Entry has resorted to deliberate suppression of facts and willful mis-declaration to claim ineligible notification benefit. Thus, the Noticee has failed to correctly assess and pay the appropriate duty payable on the imported goods before clearing the same for home consumption.

4.4.13 Therefore, I find that by not self-assessing the true and correct rate of Customs duty applicable on the subject goods, the importer willfully did not pay the applicable duty on the impugned goods. They suppressed and mis-declared certain facts in a planned manner at the time of clearance of the said goods so as to wrongly avail IGST duty on the impugned goods under Sr.No. 232 and Sr. No. 233 of the Schedule II of the Notification No.01/2017-Customs dated 28.06.2017, by violating its conditions and thereby evaded applicable duty.

4.4.14 In view of the foregoing discussion, I hold that the imported goods declared in the Bills of Entry filed by M/s BIC Cello (India) Private Limited having total assessable value of Rs.7,58,19,809 should be held liable for confiscation under Section 111(m) and 111(o) of the Customs Act, 1962, on the grounds of suppression and mis-declaration of the import goods.

4.4.15 As the importer, through wilful mis-statement and suppression of facts, had mis-classified the goods and claimed ineligible notification benefit while filing Bill of Entry with intent to evade the applicable Customs duty, resulting in short levy and short payment of duty, I find that the confiscation of the imported goods under Section 111(m) and 111(o) is justified & sustainable in law. However, I find that the goods imported are not available for confiscation. But I rely upon the order of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited [reported in 2018 (9) G.S.T.L. 142 (Mad.)] wherein the Hon'ble Madras High Court held in para 23 of the judgment as below:

"23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii)."

4.4.16 I further find that the above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd. reported in 2020 (33) G.S.T.L. 513 (Guj.).

4.4.17 I also find that the decision of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) and the decision of Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd. reported in 2020 (33) G.S.T.L. 513 (Guj.) have not been challenged by any of the parties and are in operation.

4.4.18 I find that the declaration under Section 46(4) of the Customs Act, 1962 made by the importer at the time of filing Bill of Entry is to be considered as an undertaking which appears as good as conditional release. I further find that there are various orders passed by the Hon'ble CESTAT, High Court and Supreme Court, wherein it is held that the goods cleared on execution of Undertaking/ Bond are liable for confiscation under Section 111 of the Customs

Act, 1962 and Redemption Fine is imposable on them under provisions of Section 125 of the Customs Act, 1962.

4.4.19 In view of the above, I find that the decision of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), which has been passed after observing decision of Hon'ble Bombay High Court in case of M/s Finesse Creations Inc. reported vide 2009 (248) ELT 122 (Bom)- upheld by Hon'ble Supreme Court in 2010(255) ELT A. 120 (SC), is squarely applicable in the present case. I observe that the present case also merits imposition of Redemption Fine having held that the impugned goods are liable for confiscation under Section 111(m) and 111(o) of the Customs Act, 1962. Accordingly, since the impugned goods are not prohibited goods, the said goods are required to be allowed for redemption by the owner on payment of fine in lieu of confiscation under Section 125(1) of the Customs Act, 1962.

4.5 Whether penalty should be imposed on him under Section 112(a)/114A/114AA of the Customs Act, 1962.

4.5.1 The subject SCN proposes penal action on the Noticee M/s BIC Cello (India) Private Limited under Section 112 (a)/114A/114AA of the Customs Act, 1962. Evidently, the Noticee had mis-classified and vaguely declared the imported goods in such a manner that their exact nature could not be ascertained with a malafide intent, despite being fully aware of its actual nature and the correct notification schedule for IGST. I have already elaborated in the foregoing paras that the Noticee has willfully suppressed the facts and deliberately mis-classified the goods and availed lower rate of IGST, with an intent to evade the applicable higher IGST. I find that in the self-assessment regime, it is the bounden duty of the importer to correctly assess the duty on the imported goods. In the instant case, the willful mis-classification and suppression of correct Schedule of IGST notification as discussed in above paras by the Noticee tantamount to suppression of material facts and willful mis-statement. As held by me above, this willful and deliberate suppression of facts and mis-classification of the goods amply points towards the "*mens rea*" of the Noticee to evade the payment of legitimate duty. The willful and deliberate acts of the Noticee to evade payment of legitimate duty, clearly brings out their '*mens rea*' in this case. Once the '*mens rea*' is established, the extended period of limitation, as well as confiscation and penal provision will automatically get attracted.

4.5.2 I find that as per Section 114A, imposition of penalty is mandatory once the elements for invocation of extended period is established. Hon'ble Supreme Court in Grasim Industries Ltd. V. Collector of Customs, Bombay [(2002) 4 SCC 297=2002 (141) E.L.T.593 (S.C.)] has followed the same principle and observed: "*Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for Court to take upon itself the task of amending or altering the statutory provisions*" (para 10). Hon'ble Supreme Court has again in Union of India v. Ind-Swift Laboratories has held: "*A taxing statute must be interpreted in the light of what is clearly expressed. It is not permissible to import provisions in a taxing statute so as to supply any*

assumed deficiency....” [2011 (265) ELT 3 (SC)]. Thus, in view of the mandatory nature of penalty under Section 114A no other conclusion can be drawn in this regard. I also rely upon case reported in 2015 (328) E.L.T. 238 (Tri. - Mumbai) in the case of SAMAY ELECTRONICS (P) LTD. Versus C.C. (IMPORT) (GENERAL), Mumbai, in which it has been held:

Penalty - Imposition of - Once demand confirmed under Section 28 of Customs Act, 1962 read with Section 9A of Customs Tariff Act, 1975 on account of fraud, penalty under Section 114A ibid mandatory and cannot be waived - Therefore imposition of penalty cannot be faulted - Section 114A ibid.

4.5.3 As I have held above, the extended period of limitation under Section 28(4) of the Customs Act, 1962 for the demand of duty is rightly invoked in the present case. Therefore, penalty under Section 114A is rightly proposed on M/s BIC Cello (India) Private Limited in the impugned SCN. Accordingly, the Noticee is liable for a penalty under Section 114A of the Customs Act, 1962 for wilful mis-statement and suppression of facts, with an intent to evade duty.

4.5.4 Further, as I have already held above that by their acts of omission and commission, the importer has rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962, making them liable for a penalty under Section 112(a) ibid. However, I find that the penalty under Section 114A and Section 112 of the Customs Act, 1962 are exclusive and both cannot be imposed simultaneously. Therefore, in view of fifth proviso to Section 114A, no penalty is imposed on the Noticee under Section 112(a) ibid.

4.5.5 Regarding imposition of Penalty under Section 114AA, I find that penalty is imposable under the provisions of Section 114AA of the Customs Act, 1962, wherein 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.

4.5.6 In the instant case, I find that the Noticee has mis-classified the subject goods and deliberately and knowingly claimed ineligible Notification benefit as discussed supra. I find that the Noticee has filed Bills of Entry containing false or incorrect material particular with the purpose of clearance of the imported goods by mis-classifying the goods. I find that the Noticee was actively and knowingly involved in evading Customs duty by resorting to mis-classification of imported goods before Customs authorities which rendered the goods liable for confiscation under Section 111(m) & 111(o) of Customs Act, 1962. In view of the above facts and credible evidences, I find that M/s BIC Cello (India) Private Limited, has deliberately and intentionally committed the contraventions as discussed supra covered under the ambit and scope of Section 114AA of the Customs Act, 1962 and accordingly, has rendered themselves liable to penalty under Section 114AA of the Customs Act, 1962.

4.5.7 Accordingly, I agree with the proposal made in the subject SCN and hold that penalty should be imposed on M/s BIC Cello (India) Private Limited in terms of Section 112(a)/114A/114AA of the Customs Act, 1962.

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

ORDER

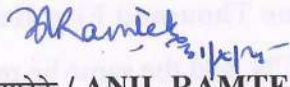
- a) I reject the benefit of IGST Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017, availed under Sr. No. 232 and Sr. No. 233 of Schedule II, by M/s BIC Cello (India) Private Limited, in respect of the Bills of Entry detailed in Annexure-I to the subject SCN. The applicable rate of IGST is accordingly re-determined under Sr. No. 453 of Schedule III of the Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017.”
- b) I confirm the differential Customs duty amounting to **Rs. 50,49,599/- (Rupees Fifty Lakh Forty Nine Thousand Five Hundred Ninety Nine only)** as detailed in Annexure-I to the subject SCN, and the same be recovered from M/s BIC Cello (India) Private Limited under Section 28(4) of the Customs Act, 1962, **along with applicable interest under Section 28AA of the Customs Act, 1962 ibid.**
- c) I confiscate the import goods declared in the Bills of Entry as detailed in Annexure-I to the subject SCN filed by M/s BIC Cello (India) Private Limited having total Assessable Value of **Rs. 7,58,19,809/- (Rs. Seven Crore Fifty Eight Lakh Nineteen Thousand Eight Hundred Nine Only)** under Section 111(m) and 111(o) of the Customs Act, 1962.

Further, I impose a redemption fine of **Rs. 40,00,000/- (Rupees Forty Lakhs Only)** M/s BIC Cello (India) Private Limited in lieu of confiscation under Section 125(1) of the Customs Act, 1962.
- d) I impose a penalty equivalent to differential duty of **Rs. 50,49,599/- (Rupees Fifty Lakh Forty Nine Thousand Five Hundred Ninety Nine only)** **along with applicable interest** under Section 28AA of the Customs Act, 1962, on M/s BIC Cello (India) Private Limited under Section 114A of the Customs Act, 1962.

In terms of the first and second proviso to Section 114A ibid, if **duty and interest is paid within thirty days** from the date of the communication of this order, the amount of penalty liable to be paid shall be **twenty-five per cent of the duty and interest**. Further, the benefit of reduced penalty of 25% shall be available subject to the condition that the amount of penalty is also paid within the period of thirty days of communication of this order.

As penalty is imposed under Section 114A of the Customs Act, 1962, I refrain to impose penalty under Section 112(a) in terms of the fifth proviso to Section 114A ibid.

- e) I impose a penalty of Rs. 5,00,000/- (Rupees Five Lakhs Only) under Section 114AA of the Customs Act, 1962, on M/s M/s BIC Cello (India) Private Limited for fraudulently availing IGST Scheduled as discussed supra with respect to import of goods under Bills of Entry as mentioned in Annexure – I to the subject SCN.
- f) I order to appropriate the aforesaid differential / short paid duty/penalty/redemption fine and interest liability recoverable from the Noticee, from the total amount of Rs. 24,54,181/- vide HCM-1669 dated 27.11.2024 paid by the Noticee after due verification of the Challan.
6. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or the persons/firms concerned, covered or not covered by this show cause notice, under the provisions of Customs Act, 1962, and/or any other law for the time being in force in the Republic of India.


(अनिल रामटेके / ANIL RAMTEKE)

सीमा शुल्क आयुक्त / Commissioner of Customs
एनएस-V, जेएनसीएच / NS-V, JNCH

To,
M/s. BIC Cello (India) Private Limited,
Plot No. 711/1,2,3,4 Somnath Road,
Dabhel Daman, Daman and DIU-396215
Email ID : ankit.trivedi@vaishlaw.com

Copy to:

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2. AC/DC, Audit Circle B-3, JNCH
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6. EDI Section
7. Office copy