

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

DIN – 20251278NX000000FFD6	Date of Order: 03.12.2025
F. No. S/10-145/2024-25/COMM/R/Gr-VA/CAC/JNCH	Date of Issue: 03.12.2025
SCN No.: 1438/2024-25/COMM/R/GR.VA /CAC/JNCH	
SCN Date: 04.12.2024	
Passed by: Sh. Anil Ramteke	
	Commissioner of Customs, NS-V, JNCH
Order No: 282/2025-26/COMM/R/NS-V/CAC/JNCH	
Name of Noticee: M/s. Navitasys India Private Limited (IEC-AAGCN4086N)	

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 व्यक्ति 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 रीजनल 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.
- (b) 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. 1438/2024-25/COMMR. /Gr.VA/CAC/JNCH Dated 04.12.2024 issued to M/s. Navitasys India Pvt. Ltd - reg.

Brief Fact of the Case

The importer, M/s. Navitasys India Pvt. Ltd. (IEC: AAGCN4086N), filed several Bills of Entry (as detailed in Annexure-A) at JNCH, Navi Mumbai for clearing goods described as "Lithium-Ion Cell (Core Pack)" and "Module (Lithium-Ion Cell Core Pack)" and classified the same under Customs Tariff Item CTI 85076000. They paid 5% Basic Customs Duty (BCD) by claiming exemption under Serial No. 527 and 527B of Customs Notification No. 50/2017-Cus., dated 30.06.2017 (as amended) respectively. The total assessable value of these goods was Rs. 39,70,83,695/-. The relevant portion of the Sr.No.527 & 527B of the Notification No.50/2017-Cus. dated 30.06.2017 is reproduced below for clarity:

S.N o.	Chapter or Heading or Subheading or tariff item	Description of goods	Standard rate	Condition No.
(1)	(2)	(3)	(4)	(5)
52 7	85076000	Lithium ion cell for use in manufacture of battery or battery pack, other than those mentioned against S. Nos. 527A and 527B (substituted vide Notfn No. 02/2021 dt. 01.02.2021).	5%	9
52 7B	85076000	Lithium ion cell for use in the manufacture of Battery or Battery pack of electrically operated vehicle or hybrid motor vehicle	5%	9

2. During the course of audit, it was observed that the importer has imported Module (Lithium-ion Core Pack), whereas, the exemption is applicable to Lithium-ion Cell, thus raising a question on the applicability of the said exemption to the impugned goods.

3. Accordingly, Consultative letter No. 673 dated 19.07.2024 vide File No. CADT/CIR/ADT/PBA/159/2023-PBA-CIR-B1 was issued to the Noticee by the Audit Commissionerate, Mumbai Zone-I, apprising them of clearance of the impugned goods under lower rate of duty and demanding payment of the consequent differential duty.

3.1 The importer vide their reply dated 19.07.2024, has submitted stated that:

The subject goods are covered under Sr. No. 527 and 527B of the Customs Notification and consequently, eligible for concessional rate of duty thereunder. Accordingly, the importer has made accurate declaration of the subject goods in all the Bills of Entry filed with respect to the subject goods. Thus, there is no mis-declaration on the part of the importer as alleged in the Consultative Letter. Further, they submitted that availing an exemption notification which the department is not in agreement with, does not amount to mis-declaration thereby resulting in invocation of extended period of limitation and also requested to drop the proceedings initiated vide this Consultative Letter.

4. Observation:

4.1 Based on the importer's submission, as per available records and information available on various websites, it is observed that the said impugned goods are a Module (Lithium-ion Core Pack), not individual Lithium-ion cell. Consequently, the exemption applicable to Lithium-ion Cell does not extend to Module, rendering the said exemption inapplicable to the said impugned goods. It is observed that there are distinct differences between a Lithium-ion cell and a Lithium-ion module, which are as follows;

Lithium Ion Cell; - This is the fundamental building block of a lithium-ion battery. It houses the chemical components that undergo a reversible reaction to store and release energy.

Lithium-Ion Module; - A module is a collection of multiple lithium-ion cells connected in series and/or parallel configuration and it cannot be removed. By combining cells, modules achieve higher voltage and capacity levels. Modules are physically larger than individual cell. In essence, a lithium-ion module is a higher-level assembly of lithium-ion cells designed to deliver increased performance and better manage the battery system.

Lithium-Ion Packs; - Packs are assemblies of modules that deliver power to the device.

4.2 In view of the above, it appears that the said imported goods are multiple lithium ion cells connected in series and in the nature of Modules or Packs which are physically larger than individual cell and it cannot be removed separately. As per audit observation the said imported item are "Lithium Ion Module (Core pack)" and therefore, it appears that the above said exemption is not available to goods which are mentioned against Serial Nos. 527 & 527B and therefore, benefit of Customs Notification No. 50/2017 (at Serial No. 527 & 527B) is not available in the case. Further, the impugned goods also appear to be ineligible for exemption of benefit under Serial No. 528A of the said Notification. Further, the importer is not a manufacturer of EV, therefore they can not avail the benefit of Serial No. 528A also and are therefore liable to pay BCD @ 20% as per Customs Tariff. Thus, total duty not paid / short paid by the importer is Rs.6,55,18,810/- (Rupees Six Crore Fifty-Five Lakhs Eighteen Thousand Eight Hundred and Ten Only) as per calculation sheet in Annexure "A" annexed herewith.

4.3 A Constitution Bench (Bench of Five Judges) of the Hon'ble Supreme Court of India ("SC") in one of the landmark case of Commissioner of Customs (Import) Mumbai Vs. M/s Dilip Kumar and Company and Ors has overruled the Three-Judge judgment in the case of Sun Export Corporation, Bombay Vs. Collector of Customs, Bombay [2002-TIOL-118-SC-CX-LB] ("Sun Export case") to firmly hold that: In case of ambiguity in a charging provision, benefit must necessarily go in favour of assessee but

the same is not true for an exemption notification. When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.

4.4 In terms of the provisions of Section 17 of the Customs Act, 1962, relating to assessment of duty, it is obligatory on the importer to correctly self-assess the duty. Self-assessment of duty by the importer is based on the valuation of goods, classification, exemption or concessions of duty availed consequent to any notification issued. It is amply clear that any anomaly *inter alia*, in relation to the valuation of goods, the classification, the exemption or concessions of duty availed consequent to any notification, would result in an incorrect self-assessment of duty and could lead to short levy of duty. The provisions of Section 17 also indicate that incorrect self-assessment of duty, can result in suitable action being taken under the Act. It is, therefore, apparent that for proper assessment of duty, besides declaring the correct value of the goods it is also obligatory for the importer to classify the goods in accordance with the General Rules for Interpretation (GRI) of the Tariff and avail duty exemption or duty concession strictly in accordance with the relevant notifications. The Importer appears to have willfully suppressed the facts and wrongly claimed the benefit under Serial No. 527 & 527B of the said notification. Thereby paid lower rate of BCD @5% instead of BCD@20%. Thus, the Importer appears to have mis-stated the exemption benefit of notification no. 50/2017 under Serial No. 527 & 527B wilfully. Such wilful mis-statement by the importer as well as the suppressions of fact, enables invocation of the provisions of Section 28(4) of the Customs Act, 1962.

4.5 Thus, it appears that the Importer had wrongly claimed the benefit under Serial No. 527 & 527B of the said notification and

thereby paid lower rate of BCD @5% instead of BCD@20%. As duty has been short levied by reason of wilful mis-statement and suppression of facts, the differential duty appears liable to be demanded by invoking the extended period under Section 28(4) of the Customs Act, 1962. As the duty has not been levied or has been short levied by reason of wilful mis-statement as discussed in previous paragraphs, the importer also appears to be liable to penalty under Section 114A of the Customs Act, 1962.

5. **Statutory Provisions**

The extracts of the relevant provisions of following laws relating to self-assessment, import of goods in general, the liability of the goods to confiscation and person concerned to penalty for illegal importation under the Customs Act, 1962 and other laws for the time being in force, were mentioned in the subject SCN. The same are not reproduced in this Order-in-Original for the sake of brevity:

- (i) *SECTION 12 — Dutiable goods (Levy of duties of Customs).*
- (ii) *SECTION 17- Assessment of duty leviable on any imported goods.*
- (iii) *SECTION 28(4) - Recovery of duties not levied or not paid or short-levied or short-paid by reason of collusion, or any wilful misstatement, or suppression of facts,*
- (iv) *SECTION 28AA — Interest on delayed payment of duty.*
- (v) *SECTION 46(4)-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.*
- (vi) *SECTION 46(4A)— Importer who presents a Bill of entry shall ensure the accuracy and completeness of the information given in the Bill of entry.*
- (vii) *SECTION 111(m) & (o)-Confiscation of improperly imported goods, which do not correspond in respect of value or in any other particular with the entry made under this Act.*

(viii) SECTION 112(a) & 112(b) - *Penalty for improper importation of goods.*

(ix) SECTION 114A- *Penalty for short-levy or non-levy of duty in cases where the duty has not been levied or has been short levied or the interest has not been charged or paid or has been part paid by reason of collusion or any wilful misstatement or suppression of facts.*

6. The calculation of the tax short paid/not paid for the products imported by the importer under 85076000 through 15 Bills of Entries during the period 06.12.2019 till 25.08.2021 by claiming BCD exemption under Notification No. 50/2017-cus dated 30.06.2017 (Serial No. 527 & 527B) as amended.

TABLE-I

Port Code	Assessed Value	Short payment of duty	
		Basic	Social Welfare
		Customs Duty	Surcharge
INNSAI1	39,70,83,695	5,95,62,554	59,56,256
Total	39,70,83,695/-	6,55,18,810/-	

7. From the above, it appears that the importer has not paid/short paid Customs Duty amounting to Rs. **6,55,18,810/-** as the importer has paid the BCD @ 5% rate instead of 20% (as applicable) and has not paid/ short paid applicable duty on the imported goods by claiming undue exemption under the above said notifications. Thus, the total duty short paid/not paid by the party is Rs.6,55,18,810/- (Rupees Six Crore Fifty-Five Lakhs Eighteen Thousand Eight Hundred Ten only). The date wise calculation sheet is attached to the Show Cause Notice as Annexure-A.

8. In view of the above, M/s Navitasys India Private Limited, Plot No.- 32 Sector-5 Phase-II, HSIIDC 1MT-Bawa1, Bawal, Rewari, Haryana, Pin- 123501 were called upon them to Show Cause to the Commissioner of Customs, (Import), NS-V, Jawaharlal Nehru

Customs House, Nhava Sheva, Tal: Urban, Dist: Raigad, Maharashtra-400707 within 30 days of receipt of the notice issued as to why:

- a.** Benefit of Customs Notification No.50/2017-Cus dated 30.06.2017 (Serial No. 527 & 527B) as amended, as claimed by the importer vide the above said Bills of Entry as in Annexure-A, for exemption from payment of BCD should not be denied;
- b.** The total assessable value of goods amount at Rs. 39,70,83,695/- (Rupees Thirty-Nine Crore Seventy Lakhs Eighty-Three Thousand Six Hundred Ninety-Five only) should not be held liable for confiscation under the provisions of Section 111(m) and Section 111(o) of the Customs Act, 1962;
- c.** The total differential Duty of Customs amounting to Rs. 6,55,18,810/- (Rupees Six Crore Fifty-Five Lakhs Eighteen Thousand Eight Hundred Ten only). as detailed in Annexure-A to this SCN should not be demanded and recovered under Section 28(4) of the Customs Act, 1962.
- d.** The applicable interest amount on the aforesaid demand of duty should not be demanded from them in terms of Section 28AA of Customs Act, 1962;
- e.** Penalty should not be imposed upon them in terms of Section 114A of the Customs Act, 1962.

Written Submission and Personal Hearing

9. M/s NAVITASYS INDIA PRIVATE LIMITED in their submission dated 06.03.2025 contended that the demand is not sustainable without challenging Out-of-Charge / Bill of Entry; that no appeal or review of the assessed Bill of Entry has been undertaken and hence demand under Section 28 is invalid, they relied on the case of ITC Ltd., 2019 (368) ELT 216 (SC). They further contended that the extended period is not invokable, as there is no

suppression, mis-statement, or collusion, and that all facts had been duly disclosed. They contended that an incorrect claim of exemption does not amount to suppression, they relied on the case of Padmini Products, 1989 (43) ELT 195 (SC) and Amrit Corp., 2016 (333) ELT 340 (Tri.).

9.1 They also contended that no confiscation under Sections 111(m) and 111(o) is warranted, as claiming an exemption does not amount to misdeclaration and the conditions of the notification have not been violated. they relied on the case of Bussa Overseas, 2004 (163) ELT 304 (Bom.); Northern Plastic, 1998 (101) ELT 549 (SC); and Sampat Raj Dugar, 1992 (58) ELT 163 (SC). Further, they contended that interest under Section 28AA is not payable where duty is not legally due, relying on Prathibha Processors, 1996 (88) ELT 12 (SC); and that no penalty can be imposed if the demand itself fails. They submitted that penalty under Section 114A is also not applicable in the absence of suppression, relying on HMM Ltd., 1995 (76) ELT 497 (SC). They stated that the goods in question are lithium-ion battery modules (20 cells assembled in series), classifiable under CTI 8507 60 00, which is undisputed in the SCN. They asserted that the goods fall within the scope of Sl. No. 527B of Notification No. 57/2017-Cus. for the period 19.05.2021 to 25.08.2021. Accordingly, they requested to drop the proceedings initiated vide impugned SCN dated 04.12.2024.

10. In order to comply the Principle of Natural Justice, opportunities to appear before the undersigned was granted to noticee's for personal hearing vide dated 17.10.2025, 03.11.2025, 13.11.2025.

10.1 In response to PH notice, Mr. Anurag Kapur authorised representative of the noticee appeared through physical mode before me on 13.11.2025 on behalf of the Noticee, Navitasys India Private Limited (IEC: AAGCN4086N). During the PH, he reiterated the submissions made vide their letter dated 06.03.2025 as under:

- i. that the lithium ion cells assembled together in a housing. Classification of subject goods under CTI 85076000 is not

disputed in the impugned SCN. Noticee has followed the procedure set out in IGCR Rules, 2017, subject goods are not covered under the exclusions provided under Sl. No. 527 of NN 50/2017 and therefore entitled for exemption.

ii. Where a SCN has already been issued for earlier period, department cannot issue another SCN by invoking extended period of limitation. as SCN No. 1937/2023-24/COMM.R./GR.VA/ NS-V/CAC/INCH dated 28.11.2023 for same goods was already issued by the department impugned SCN invoking extended period of limitation is liable to be dropped. Basis on the above submissions, he prayed that the proceedings initiated vide the present SCN be dropped.

DISCUSSION AND FINDINGS

11. I have carefully gone through the SCN, facts of the case, available records and evidences referred in the investigation. The case was examined in the light of the evidences produced by the department and applicable laws/rules.

12. On a careful perusal of the subject show Cause Notice and case records, I find that following main issues are involved in this case, which are required to be decided:

12.1 Whether benefit of Customs Notification No.50/2017-Cus dated 30.06.2017 (Serial No. 527 & 527B) as amended, as claimed by the importer vide the above said Bills of Entry as in Annexure-A, for exemption from payment of BCD should be denied or otherwise;

12.1.1 I find that the importer, M/s. Navitasys India Pvt. Ltd. (IEC: AAGCN4086N), imported goods described as “Lithium-Ion Cell (Core Pack)” and “Module (Lithium-Ion Cell Core Pack)” and classified the same under Customs Tariff Item CTI 85076000. They paid 5% Basic Customs Duty (BCD) by claiming exemption under Serial No. 527

and 527B of Customs Notification No. 50/2017-Cus., dated 30.06.2017 (as amended) respectively. The total assessable value of these goods was Rs. 39,70,83,695/- . The relevant portion of the Sr.No.527 & 527B of the Notification No.50/2017-Cus. dated 30.06.2017 is reproduced below for clarity:

S.N o.	Chapter or Heading or Subheadi ng or tariff item	Description of goods	Stan dard rate	Condi tion No.
(1)	(2)	(3)	(4)	(5)
52 7	85076000	Lithium ion cell for use in manufacture of battery or battery pack, other than those mentioned against S. Nos. 527A and 527B (substituted vide Notfn No. 02/2021 dt. 01.02.2021).	5%	9
52 7B	85076000	Lithium ion cell for use in the manufacture of Battery or Battery pack of electrically operated vehicle or hybrid motor vehicle	5%	9

it was observed that the importer has imported Module (Lithium-ion Core Pack), whereas, the exemption is applicable only to Lithium-ion Cell. Serial Nos. 527 & 527B explicitly provide concessional BCD only for “Lithium-Ion Cell” used in manufacture of batteries or battery packs. The importer imported Modules (Lithium-Ion Core Pack), not individual cells. A module is an assembly of multiple cells in series/parallel; it cannot be separated into individual cells. Exemption under Sr. 527/527B does not extend to modules; it is limited to individual cells.

12.1.2 Further I find that a Constitution Bench (Bench of Five Judges) of the Hon'ble Supreme Court of India, in the landmark case of Commissioner of Customs (Import) Mumbai vs. M/s Dilip Kumar & Co. and Ors, overruled the earlier Three-Judge judgment in Sun Export Corporation, Bombay vs. Collector of Customs, Bombay

[2002-TIOL-118-SC-CX-LB] to hold that: *in case of ambiguity in a charging provision, the benefit must go in favour of the assessee; however, the same does not apply to exemption notifications. Any ambiguity in an exemption notification, which is subject to strict interpretation, cannot be claimed by the assessee and must be interpreted in favour of the Revenue.*

As observed, exemption notifications are subject to strict interpretation (*Commissioner of Customs v. Dilip Kumar & Co.*, Constitution Bench). Any ambiguity is resolved in favour of Revenue, not the importer. In the present case, the importer declared Modules (Core Packs) as “cells” to claim the benefit under Serial Nos. 527 & 527B. Since the exemption applies only to individual Lithium-Ion Cells, the benefit claimed is not legally available for the imported Modules (Core Packs).

Exemption notifications are subject to strict interpretation (*Commissioner of Customs v. Dilip Kumar & Co.*, Constitution Bench). Any ambiguity is resolved in favour of revenue, not the importer. The importer declared modules as “cells” to claim the benefit. The exemption benefit claimed under Serial Nos. 527 & 527B is not legally available for the imported Modules (Core Packs).

The importer’s contentions do not hold merit. The goods imported are Modules (Lithium-ion Core Packs), which are not covered under Sl. Nos. 527 or 527B of Notification No. 57/2017-Cus. Hence, the importer is not eligible for exemption from Basic Customs Duty.

12.1.3 In view of the above discussion, it is concluded that the benefit of Customs Notification No. 50/2017-Cus dated 30.06.2017 (Serial No. 527 & 527B), as amended, as claimed by the importer vide the above-mentioned Bills of Entry in Annexure-A, for exemption from payment of Basic Customs Duty (BCD), is not available for the imported Modules (Core Packs). Accordingly, the claim of exemption is denied.

12.2 Whether the goods having a total assessable value of Rs. 39,70,83,695/- (Rupees Thirty-Nine Crore Seventy Lakhs Eighty-Three Thousand Six Hundred Ninety-Five only) are liable to confiscation under the provisions of Section 111(m) and Section 111(o) of the Customs Act, 1962, or otherwise;

12.2.1 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.

12.2.2 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 Act 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.

12.2.3 From the discussions, it is noted that the importer has imported Module (Lithium-ion Core Pack) and paid 5% Basic Customs Duty (BCD) by claiming exemption under Serial No. 527 and 527B of Customs Notification No. 50/2017-Cus., dated 30.06.2017 (as amended) respectively, whereas, the exemption is applicable only to Lithium-ion Cell. Serial Nos. 527 & 527B explicitly provide concessional BCD only for "Lithium-Ion Cell" used in manufacture of batteries or battery packs. the importer declared Modules (Core Packs) as "cells" to claim the benefit under Serial Nos. 527 & 527B. Since the exemption applies only to individual Lithium-Ion Cells, the benefit claimed is not legally available for the imported Modules (Core Packs).

By suppressing these facts, the importer, contravened the provisions of Section 46 of the Customs Act, 1962. Therefore, I hold that the subject goods are liable for confiscation under Section 111(m) of the Customs Act, 1962.

12.2.4 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).”

12.2.5 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.).

12.2.6 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.

12.2.7 In view of above, I find that any goods improperly imported as provided in any sub-section of the Section 111 of the Customs Act, 1962, the impugned goods become liable for confiscation. I opine that merely because the importer was not caught at the time of clearance of the imported goods, cannot be given different treatment. Accordingly, 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) of the Customs Act, 1962.

12.3 Whether the total differential Customs duty amounting to Rs. 6,55,18,810/- (Rupees Six Crore Fifty-Five Lakhs Eighteen Thousand Eight Hundred Ten only), as detailed in Annexure-A to the SCN, should be demanded and recovered under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962, or otherwise;

12.3.1 After having determined the correct duty on the impugned imported goods, it is imperative to determine whether the demand of differential Customs duty as per the provisions of Section 28(4) of the Customs Act, 1962, in the subject SCN is sustainable or otherwise.

12.3.2 I find that, after the introduction of self-assessment vides Finance Act, 2011, the onus is on the importer to make true and correct declaration in all aspects including calculation of duty. Section 17(1) Assessment of duty, reads as: 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.

12.3.3 In the instant case, M/s. Navitasys India Pvt. Ltd. has imported Module (Lithium-ion Core Pack) and paid 5% Basic Customs Duty (BCD) by deliberately claiming exemption under Serial

No. 527 and 527B of Customs Notification No. 50/2017-Cus., dated 30.06.2017 (as amended) respectively, whereas, the exemption is applicable only to Lithium-ion Cell. Serial Nos. 527 & 527B explicitly provide concessional BCD only for "Lithium-Ion Cell" used in manufacture of batteries or battery packs. the importer declared Modules (Core Packs) as "cells" to claim the benefit under Serial Nos. 527 & 527B. Since the exemption applies only to individual Lithium-Ion Cells, the benefit claimed is not legally available for the imported Modules (Core Packs).

In view of this fact, the importer deliberately availed the Notification benefit and paid lower rate of duty on the goods with an intention to evade correct duty in order to get financial benefits and thus suppressed the facts with intention to evade duties of customs. Therefore, the matter falls under the purview of Section 28(4) of the Customs Act, 1962.

12.3.4 I find that, the Importer has not paid the correct duty by engaging in suppression of facts and with an intent to evade customs duty on the subject goods. The Importer have submitted a false declaration under section 46(4) of the Customs Act, 1962, due to this act of omission of Importer, there has been loss to the government exchequer equal to the differential duty as mentioned in Annexure-A to the SCN.

12.3.5 The importer contended in his written submission and during the personal hearing, wherein he argued that since a Show Cause Notice No. 1937/2023-24/COMMR./GR.VA/ NS-V/CAC/JNCH dated 28.11.2023 has already been issued for earlier period, the department cannot issue another SCN by invoking extended period of limitation. Hence, the present impugned SCN invoking extended period of limitation is liable to be dropped.

12.3.6 At the outset, it is necessary to examine the factual matrix in its proper context. The earlier SCN relied upon by the importer pertained specifically to the period 16.10.2021 to 19.12.2022 and

was issued under Section 28(4) of the Customs Act, 1962. The scope of that notice was confined exclusively to the alleged short-payment or non-payment of duty for that defined period, based on the facts, records, and imports relevant to those dates. Importantly, the said notice did not extend to or include any period prior to 16.10.2021.

12.3.7 In contrast, the present SCN concerns the period 06.12.2019 to 25.08.2021, which is distinct and entirely non-overlapping with the period covered by the previous SCN. These two periods are independent of each other in terms of time span, import transactions, and the duty liabilities sought to be demanded. The mere fact that both notices relate to the same category of goods does not, by itself, bar the Department from issuing separate SCNs for different periods, especially where the earlier SCN did not address or adjudicate the earlier period now under scrutiny.

12.3.8 I find that it is a well-settled principle that issuance of an SCN under Section 28 for one period does not preclude issuance of another notice for a different period, provided the latter period was not part of the earlier proceedings. Each SCN is required to address duty liability arising out of a distinct set of imports and facts, and therefore, each period forms a separate cause of action. Accordingly, the Department is competent to issue the present SCN for the earlier uncovered period, invoking the extended period of limitation as the statutory conditions under Section 28(4) are fulfilled. What is important here is the date of importation, wherein the importer have willfully suppressed the facts and wrongly claimed the benefits under Sr. No. 527 and 527B of the Notification no. 50/2017- Cus. dated 30.6.2017.

12.3.9 In view of the foregoing, I find that the duty demand against the importer has been correctly proposed under Section 28(4) of the Customs Act, 1962 by invoking the extended period of limitation. In support of my stand of invoking extended period, I rely upon the decision of the Tribunal: -

2013(294) E.L.T.222 (Tri.-LB): Union Quality Plastic Ltd. Versus Commissioner of C.E. & S.T., Vapi [Misc. Order Nos.M/12671-12676/2013-WZB/AHD, dated 18.06.2013 in Appeal Nos. E/1762-1765/2004 and E/635- 636/2008] wherein the Hon'ble Tribunal held that:

In case of non-levy or short-levy of duty with intention to evade payment of duty, or any of circumstances enumerated in proviso ibid, where suppression or wilful omission was either admitted or demonstrated, invocation of extended period of limitation was justified

12.3.10 Accordingly, the differential duty amounting to Rs. 6,55,18,810/- (Rupees Six Crore Fifty-Five Lakhs Eighteen Thousand Eight Hundred Ten only) resulting from the correct Basic Customs Duty payable without availing the exemption under Serial Nos. 527 and 527B of Customs Notification No. 50/2017-Cus., dated 30.06.2017 (as amended), is recoverable from M M/s. Navitasys India Pvt. Ltd under extended period in terms of the provisions of Section 28(4) of the Customs Act, 1962.

12.3.11 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)].

12.3.12 I have already held in the above paras that the differential duty amount of Rs. 6,55,18,810/- (Rupees Six Crore Fifty-Five Lakhs Eighteen Thousand Eight Hundred Ten only), as calculated in Annexure-A to the subject SCN in respect of the Bills of Entry should be demanded and recovered from M/s. Navitasys India Pvt. Ltd. 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 liable to be recovered from M/s. Navitasys India Pvt. Ltd.

12.4 Whether the penalty should be imposed on M/s Navitasys India Private Limited in terms of Section 114A of the Customs Act, 1962 otherwise;

12.4.1 I find that the subject Bills of Entry were self-assessed by the importer. They were having knowledge of correct description of the goods, correct Notification etc., However, still they wilfully availed the notification benefit which was not available for the imported goods and thereby paid lower rate of duty. Under the self-assessment scheme, it is obligatory on the part of importers to declare truthfully all the particulars relevant to the assessment of the goods, ensuring their accuracy and authenticity, which the importer clearly failed to do with malafide intention. They suppressed the fact before the Customs Department regarding correct valuation of the goods to claim the undue duty benefit at the time of clearance of the said imported goods.

12.4.2 In this regard, I observe that self-assessment has been introduced on 08.04.2011 vide Finance Act, 2011 wherein under Section 17(1) of the Customs Act, 1962 an importer is required to do

self-assessment, thus placing more reliance on the importers. Further, as per the provisions of Section 46 (4) of the Customs Act, 1962, the importer of any goods is required to file a Bill of Entry before the proper officer mentioning therein the true and correct quality, quantity and value of the goods imported and subscribe to a declaration as to the truth and accuracy of the contents of such Bill of Entry. It is an admitted fact that the benefit of lower rate of duty on account of claim of inadmissible benefits by mis-declaring the description accrued to the importer.

12.4.3 Under the self-assessment scheme, it is obligatory on the part of importers to declare truthfully all the particulars relevant to the assessment of the goods, ensuring their accuracy and authenticity, which the importer clearly failed to do with malafide intention. They suppressed the fact before the Customs Department regarding correct description of the goods and deliberately availed the notification benefit to claim the undue duty benefit at the time of clearance of the said imported goods. Taking all the issues, relating to subject imports, into account and in view of my finding that goods were mis-declared by suppressing correct description of the goods by the importer, I find that the importer M/s Navitasys India Private Limited, has by his acts of commission and omission, as discussed above, has rendered the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962 and thereby made themselves liable for penalty under Section 112 ibid.

12.4.4 Since the improper importation of goods has resulted in short levy of Customs duty, which is recoverable under Section 28(4) of the Customs Act, 1962, the Importer is also liable for penalty under Section 114A ibid. However, I note that penalties under Section 112 and Section 114A are mutually exclusive. Therefore, as penalty is imposed under Section 114A of the Customs Act, 1962, no penalty is imposable under Section 112 in terms of the fifth proviso to Section 114A ibid.

13. 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 deny the benefit of duty availed vide Sr.No.527 & 527B of the Notification No.50/2017-Cus. dated 30.06.2017 as amended, in respect of goods imported by vide impugned Bills of Entries, as mentioned in Annexure-A to the SCN.

(ii). I order the confiscation of the goods having a total assessable value of 39,70,83,695/- (Rupees Thirty-Nine Crore Seventy Lakhs Eighty-Three Thousand Six Hundred and Ninety-Five only) as mentioned in Annexure-A to the subject Show Cause Notice (SCN) under Section 111(m) of the Customs Act, 1962 even though the goods are not available for confiscation. However, I give an option to the importer to redeem these goods on payment of redemption fine of Rs. 20,000,000/- (Rupees Two crore Only) under Section 125 of the Customs Act, 1962.

(iii). I confirm the demand of differential duty amounting to Rs. 6,55,18,810/- (Rupees Six Crore Fifty-Five Lakhs Eighteen Thousand Eight Hundred and Ten only) in respect of Bills of Entries as mentioned in Annexure-A to the SCN under Section 28 (4) of the Customs Act, 1962 along with applicable interest as per Section 28AA of the Customs Act, 1962.

(iv). I impose a penalty of Rs. Rs. 6,55,18,810/- (Rupees Six Crore Fifty-Five Lakhs Eighteen Thousand Eight Hundred and Ten only) (Equivalent to the differential duty) along with applicable interest on M/s. Navitasys India Pvt. Ltd. (IEC: AAGCN4086N) under Section 114A of the Customs Act, 1962.

14. 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.

REGER

Anil Ramteke

21/12/23

(Anil Ramteke)

Commissioner of Customs,
NS-V, JNCH, Nhava Sheva.

Enclosure: - Annexure-A

To,

M/s Navitasys India Private Limited,
Plot No.- 32 Sector-5 Phase-II,
HSIIDC IMT-Bawal, Bawal, Rewari, Haryana, 123501

Copy to: -

1. The Additional Commissioner of Customs, Gr.VB, JNCH
2. Deputy/Asstt. Commissioner of Customs, Centralized Revenue Recovery Cell, JNCH.
3. The Dy. Commissioner of Customs, Audit Circle B-1, NCH, Mumbai
4. Notice Board (CHS Section)
5. EDI Section
6. Office Copy

Annexe-A

Line No.	BOE Number	BOE Date	HSN Code	Short Text	Exempt on Notificat ion	BCD %	SWC %	IGST %	Assessable value	BCD Amount	SWC amount	BCD Amount	SWC amount	Total Dif Duty	
1	5977376	12/6/2019	85076000	LITHIUM-ION CELL (CORE PACK) (ZRB:518110001001)	527	5%	10%	28%	40,923,806	2,046,190	204,619	20%	8,184,761	818,476	6,752,428
2	6078207	12/14/2019	85076000	LITHIUM-ION CELL (CORE PACK) (ZRB:518110001001)	527	5%	10%	28%	40,923,806	2,046,190	204,619	20%	8,184,761	818,476	6,752,428
3	6175324	12/21/2019	85076000	LITHIUM-ION CELL (CORE PACK) (ZRB:518110001001)	527	5%	10%	28%	40,923,806	2,046,190	204,619	20%	8,184,761	818,476	6,752,428
4	6274354	12/28/2019	85076000	Corepack;C49MMX405;45Ah;60V; 1P175	527	5%	10%	28%	22,641,012	1,142,051	114,205	20%	4,568,202	456,820	3,768,767
5	6274354	12/28/2019	85076000	Corepack;R4PP000001;35Ah;72V;1 P205	527	5%	10%	28%	13,641,269	682,063	68,206	20%	2,728,254	272,825	2,250,409
6	4000397	5/19/2021	85076000	MODULE (LITHIUM ION CELL CORE PACK)	5278	5%	10%	28%	5,120,994	256,050	25,605	20%	1,024,199	102,420	844,564
7	4000456	5/19/2021	85076000	MODULE (LITHIUM ION CELL CORE PACK)	5278	5%	10%	28%	46,088,946	2,304,447	230,445	20%	9,217,789	921,779	7,504,576
8	4843935	7/28/2021	85076000	MODULE (LITHIUM ION CELL CORE PACK)	5278	5%	10%	28%	30,990,843	1,549,542	154,954	20%	6,198,159	619,817	5,113,489
9	5183309	8/25/2021	85076000	MODULE (LITHIUM ION CELL CORE PACK)	5278	5%	10%	28%	39,344,464	1,967,223	196,722	20%	7,868,893	786,889	6,491,837
10	5184177	8/25/2021	85076000	MODULE (LITHIUM ION CELL CORE PACK)	5278	5%	10%	28%	39,344,464	1,967,223	196,722	20%	7,868,893	786,889	6,491,837
11	5182798	8/25/2021	85076000	MODULE (LITHIUM ION CELL CORE PACK)	5278	5%	10%	28%	15,429,202	771,460	77,146	20%	3,085,840	308,584	2,545,818
12	5182800	8/25/2021	85076000	MODULE (LITHIUM ION CELL CORE PACK)	5278	5%	10%	28%	6,943,141	347,157	34,716	20%	1,388,628	138,863	1,149,818
13	5182800	8/25/2021	85076000	MODULE (LITHIUM ION CELL CORE PACK)	5278	5%	10%	28%	6,943,141	347,157	34,716	20%	1,388,628	138,863	1,149,818
14	5182800	8/25/2021	85076000	MODULE (LITHIUM ION CELL CORE PACK)	5278	5%	10%	28%	8,280,318	414,017	41,402	20%	1,656,068	165,607	1,366,261
15	5182800	8/25/2021	85076000	MODULE (LITHIUM ION CELL CORE PACK)					197,083,895	10,854,186	1,085,418		79,416,730	7,941,874	61,914,856

