

 सत्यमेव जयते	भारतसरकार/ Government of India वित्तमंत्रालय/ Ministry of Finance आयुक्तसीमाशुल्कएनएस-IIकाकार्यालय, केंद्रीकृतअधिनिर्णयनप्रकोष्ठ, जवाहरलालनेहरूसीमाशुल्कभवन न्हावाशेवा, तालुका-उरण, जिला -रायगढ़, महाराष्ट्र- 400 707 OFFICE OF THE COMMISSIONER OF CUSTOMS, NS-II CENTRALIZED ADJUDICATION CELL, JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA SHEVA, DIST- RAIGAD, MAHARASHTRA-400707	
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F. No. S/10-201/2024-25/Commr./NS-II/CAC/JNCH

DIN	:	20251278NT0000222C83
आदेश की तिथि	:	31 .12.2025
Date of Order	:	
जारी किए जाने की तिथि	:	31 .12.2025
Date of Issue	:	
आदेश सं.	:	329/2025-26/आयुक्त/एनएस-II/ सीएसी/जेएनसीएच
Order No.	:	329/2025-26/Commr /NS-II /CAC /JNCH
पारितकर्ता	:	श्री गिरिधर जि. पई
Passed by	:	आयुक्त, सीमाशुल्क (एनएस-II), जे.एन.सी.एच, न्हावाशेवा
	:	Sh. Giridhar G. Pai
	:	Commissioner of Customs (NS-II), JNCH, Nhava Sheva
पक्षकार (पार्टी)/ नोटिसी का नाम	:	मेसर्स नालको चैंपियन दे-ची प्राइवेट लिमिटेड
Name of Party/Noticee	:	M/s. Nalco Champion Dai-Chi India Pvt. Ltd.

मूल आदेश
ORDER-IN-ORIGINAL

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

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

2. इस आदेश से व्यथित कोई भी व्यक्ति सीमाशुल्क अधिनियम १९६२ की धारा १२९(ए) के तहत इस आदेश के विरुद्ध सी ई एस टी ए टी, पश्चिमी प्रादेशिक न्यायपीठ (वेस्ट रीज़नल बेंच), ३४, पी .डी .मेलोरोड, मस्जिद (पूर्व), मुंबई- ४००००९ को अपील कर सकता है, जो उक्त अधिकरण के सहायक रजिस्ट्रार को संबोधित होगी।

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.)

3. अपील दाखिल करने संबंधी मुख्य मुद्दे:-

Main points in relation to filing an appeal:-

F. No. S/10-201/2024-25/CC./DMC/NS-II/CAC/JNCH
SCN No. 620/2020-21/DMC/CAC/JNCH dated 04.09.2020

फार्म Form	:	फार्मन. सीए३, 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 (Form No. CA3 in quadruplicate and four copies of the order appealed against (at least one of which should be certified copy)
समय सीमा Time Limit	:	इस आदेश की सूचना की तारीख से ३ महीने के भीतर Within 3 months from the date of communication of this order
फीस Fee	:	(क) एक हजार रुपये – जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम ५ लाख रुपये या उससे कम है। (a) Rs. One Thousand - Where amount of duty & interest demanded & penalty imposed is Rs. 5 Lakh or less. (ख) पाँच हजार रुपये – जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम ५ लाख रुपये से अधिक परंतु ५० लाख रुपये 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 (ग) दस हजार रुपये – जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम ५० लाख रुपये से अधिक है। (c) Rs. Ten Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 50 Lakh.
भुगतानकीरी ति Mode of Payment	:	क्रॉस बैंक ड्राफ्ट, जो राष्ट्रीयकृत बैंक द्वारा सहायक रजिस्ट्रार, सीईएसटीएटी, मुंबई के पक्ष में जारी किया गया हो तथा मुंबई में देय हो। A crossed Bank draft, in favour of the Asstt. Registrar, CESTAT, Mumbai payable at Mumbai from a nationalized Bank.
सामान्य General	:	विधि के उपबंधों के लिए तथा ऊपर यथा संदर्भित एवं अन्य संबंधित मामलों के लिए, सीमाशुल्क अधिनियम, १९९२, सीमाशुल्क (अपील) नियम, १९८२ सीमाशुल्क, उत्पादन शुल्क एवं सेवा कर अपील अधिकरण (प्रक्रिया) नियम, १९८२ का संदर्भ लिया जाए। 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.

इस आदेश के विरुद्ध अपील करने के लिए इच्छुक व्यक्ति अपील अनिर्णीत रहने तक उसमें माँगे गये शुल्क अथवा उद्गृहीत शास्तिका ७.५ % जमा करेगा और ऐसे भुगतान का प्रमाण प्रस्तुत करेगा, ऐसा न किये जाने पर अपील सीमाशुल्क अधिनियम, १९६२ की धारा १२९ के उपबंधों की अनुपालना न किये जाने के लिए नामंजूर किये जाने की दायी होगी।

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 129 of the Customs Act 1962.

F. No. S/10-201/2024-25/CC./DMC/NS-II/CAC/JNCH
SCN No. 620/2020-21/DMC/CAC/JNCH dated 04.09.2020

Subject: Adjudication of Show Cause Notice F. No. 620/2020-21/DMC/CAC/JNCH dated 04.09.2020 issued by EPSMMC, JNCH to M/s Nalco Champion Dai-Chi Pvt. Ltd. -reg.

BRIEF FACTS OF THE CASE

M/s Nalco Champion Dai-Chi India Private Limited, holder of Import Export Code No. 0390003051 and declared address at Liberty Building, 3 Floor, Sir Vithaldas Thackery Marg, Mumbai, Maharashtra-400020 (hereinafter referred to as “the importer”) have cleared goods against advance authorisation claiming benefit of Notification No. 96/2009-Customs, dated 11.09.2009 of the Government of India, Ministry of Finance:

Sr. No.	Advance Authorisation No.	Date	Value (Rs.)	IGST Amount (Rs.)
1	0310823911	21.09.2018	37,45,954/-	74,16,989/-

2. The importer had executed a bond (as accepted by the Assistant Commissioner of Customs) in terms of the said notification and had undertaken to fulfil the conditions of the bond, advance authorization license and relevant customs notification at the time of registration of the license at Nhava Sheva port.

2.1. The importer had cleared imported goods involving IGST amounting to Rs. 74,16,989/- under the said advance authorization. The scrutiny of the licence file during Audit inspection revealed that Authorisation holder had imported various goods during October, 2018 to March, 2018 using Advance Authorisation and claimed IGST exemption. Cross verification of same revealed that licence holder had fulfilled EO by supplying to EOU unit (Deemed export) instead of physical export. The importer imported 16 consignments (detailed in Annexure to this notice) without payment of IGST amounting to Rs. 74,16,989 /-.

2.2. As per the provisions of Section 143 of Customs Act, 1962, the said imported goods were allowed clearance by proper officer on execution of bond by the importer wherein the importer bounded themselves to discharge liability in certain manner. Further, DGFT’s Notification No.33/2015-20 dated 13.10.2017 amended Para 4.14 of the FTP providing exemption from the IGST and GST Compensation Cess leviable under sub-section (7) and sub-section (9) respectively, of Section 3 of Customs Tariff Act subject to the condition that the export obligation shall be fulfilled by physical exports only and further subject to pre-import condition. Accordingly, Customs Notification No. 18/2015 was also amended vide Notification 79/2017-Cus dated 13.10.2017 giving exemption from IGST and GST Compensation Cess subject to pre-import condition and achievement of EO by physical exports. Subsequently, DGFT vide Notification No. 53/2015-20 dated 10.01.2019 amended para 4.14 of the FTP to remove pre-import condition to avail exemption from IGST and GST compensation Cess and also extended this exemption to deemed exports. Accordingly,

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Customs also issued Notification No.01/2019-Cus dated 10.01.2019 amending Notification 18/2015.

2.3. Thus, for the intervening period i.e. 13.10.2017 to 09.01.2019, there were conditions of pre-import and EO achievement through physical exports to claim the benefit of exemption from IGST and Compensation Cess.

2.4. Imports made under Advance Authorisation from 13.10.2017 onwards would, therefore, be leviable to IGST and Compensation Cess, if export obligations under such authorisations is not met through physical exports.

2.5. Legal Provisions:

- i. Para 4.03 of FTP 2015-20 inter-alia states that: Advance Authorisation is issued to allow duty free import of input, which is physically incorporated in export product (making normal allowance for wastage). In addition, fuel, oil, catalyst which is consumed / utilized in the process of production of export product, may also be allowed.
- ii. Para 4.05 of FTP 2015-20 inter-alia states that:
 - a. Advance Authorisation can be issued either to a manufacturer exporter or merchant exporter tied to supporting manufacturer.
 - b. Advance Authorisation for pharmaceutical products manufactured through Non-Infringing (NI) process as indicated in paragraph 4.18 of Handbook of Procedures) shall be issued to manufacturer exporter only.
- iii. Advance Authorisation shall be issued for:
 - a. Physical export (including export to SEZ);
 - b. Intermediate supply; and/or
 - c. Supply of goods to the categories mentioned in paragraph 7.02 (b), (c), (e), (f), (g) and (h) of this FTP.
 - d. Supply of "stores" on board of foreign going vessel / aircraft, subject to condition that there is specific Standard Input Output Norms in respect of item supplied.
- iv. Para 4.13 of FTP 2015-20 inter-alia states that: Pre-Import condition in certain cases:
 - a. DGFT may, by Notification, impose pre-import condition for inputs under this Chapter.
 - b. Import items subject to pre-import condition are listed in Appendix 4-J or will be as indicated in Standard Input Output Norms (SION).
 - c. Import of drugs from unregistered sources shall have pre-import condition.

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- v. Para 4.14 of FTP 2015-20 inter-alia states that: 4.14 Details of Duties exempted Imports under Advance Authorisation are exempted from payment of Basic Customs Duty, Additional Customs Duty, Education Cess, Ant-dumping Duty, Countervailing Duty, Safeguard Duty, Transition Product Specific Safeguard Duty, wherever applicable. Import against supplies covered under paragraph 7.02 (c), (d) and (g) of FTP will not be exempted from payment of applicable Antidumping Duty, Countervailing Duty, Safeguard Duty and Transition Product Specific Safeguard Duty, if any. However, imports under Advance Authorisation for physical exports are also exempt from whole of the integrated tax and Compensation Cess leviable under sub-section (7) and sub-section (9) respectively, of section 3 of the Customs Tariff Act, 1975 (51 of 1975), as may be provided in the notification issued by Department of Revenue, and such imports shall be subject to pre-import condition. Imports against Advance Authorisations for Physical exports are exempted from Integrated Tax and Compensation Cess upto 31.03.2020 only.
- vi. Para 9.20 of FTP 2015-20 inter-alia states that: 9.20 "Export" is as defined in FT (D&RJ Act, 1992, as amended from time to time.
- vii. Para 4.27 of FTP 2015-20 inter-alia states that: 4 27. Eligibility (i) Duty Free Import Authorisation shall be issued on post export basis for products for which Standard Input Output Norms have been notified, (ii) Merchant Exporter shall be required to mention name and address of supporting manufacturer of the export product on the export document viz. Shipping Bill/ Bill of Export / Tax Invoice for export prescribed under the GST rules. (iii) Application is to be filed with concerned Regional Authority before effecting export under Duty Free Import Authorisation. (iv) No Duty-Free Import Authorisation shall be issued for an input which is subjected to pre-import condition or where SION prescribes, Actual User" condition or Appendix-4J prescribes pre-import condition for such an input. However, this restriction is not applicable for, Raw Sugar" on exports made till 30.9.2018.
- viii. NOTIFICATION NO. 31 (RE-2013)/ 2009-2014
After para 4.1.14 of FTP a new para 4.1.15 is inserted.
"4.1.15 Wherever SION permits use of either (a) a generic input or (b) alternative inputs, unless the name of the specific input(s) [which has (have) been used in manufacturing the export product} gets indicated / endorsed in the relevant shipping bill and these inputs, so endorsed, match the description in the relevant bill of entry, the concerned Authorisation will not be redeemed. In other words, the name/ description of the input used (or to be used) in the Authorisation must match exactly the name/description endorsed in the shipping bill. At the time of discharge of export obligation (EODC) or at the time of redemption, RA shall allow only those inputs which have been specifically indicated in the shipping bill."

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Effect of this Notification: Inputs actually used in manufacture of the export product should only be imported under the authorisation. Similarly inputs actually imported must be used in the export product. This has to be established in respect of every Advance Authorisation / DFIA.

ix. Policy Circular No.03 (RE-2013)/ 2009-2014 Dated 2nd August 2013

Subject: Withdrawal of Policy Circular No.30 dated 10.10.2005 on Importability of Alternative inputs allowed as per SION.

2. This is to reiterate that duty free import of inputs under Duty Exemption/ Remission Schemes under Chapter-4 of FTP shall be guided by the Notification No. 31 issued on 1.8.2013. Hence any clarification or notification or communication issued by this Directorate on this matter which may be repugnant to this Notification shall be deemed to have been superseded to the extent of such repugnancy.

x. NOTIFICATION NO. 18/2015-Custome dated 01.04.2015:

that in respect of imports made before the discharge of export obligation in full, the importer at the time of clearance of the imported materials executes a bond with such surety or security and in such form and for such sum as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself to pay on demand an amount equal to the duty leviable, but for the exemption contained herein, on the imported materials in respect of which the conditions specified in this notification are not complied with, together with interest at the rate of fifteen percent per annum from the date of clearance of the said materials;

that in respect of imports made after the discharge of export obligation in full, if facility under rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) or sub-rule (2) of rule 19 of the Central Excise Rules, 2002 or of CENVAT Credit under CENVAT Credit Rules, 2004 has been availed, then the importer shall, at the time of clearance of the imported materials furnish a bond to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself, to use the imported materials in his factory or in the factory of his supporting manufacturer for the manufacture of dutiable goods and to submit a certificate, from the jurisdictional Central Excise officer or from a specified chartered accountant within six months from the date of clearance of the said materials, that the imported materials have been so used:

that in respect of imports made after the discharge of export obligation in full, and if facility under rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) or sub-rule (2) of rule 19 of the Central Excise Rules, 2002 or of CENVAT credit under CENVAT Credit Rules, 2004 has not been availed and the importer furnishes proof to this effect to the satisfaction of the Deputy Commissioner of Customs or the Assistant Commissioner of Customs as the case may be, then the

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imported materials may be cleared without furnishing a bond specified in condition (v);

that the export obligation as specified in the said authorisation (both in value and quantity terms) is discharged within the period specified in the said authorisation or within such extended period as may be granted by the Regional Authority by exporting resultant products, manufactured in India which are specified in the said authorisation:

Provided that an Advance Intermediate authorisation holder shall discharge export obligation by supplying the resultant products to exporter in terms of paragraph 4.05 (c) (ii) of the Foreign Trade Policy;

that the said authorisation shall not be transferred and the said materials shall not be transferred or sold;

Provided that the said materials may be transferred to a job worker for processing subject to complying with the conditions specified in the relevant Central Excise notifications permitting transfer of materials for job work;

Provided further that, no such transfer for purposes of Job work shall be effected to the units located in areas eligible for area based exemptions from the levy of excise duty in terms of notification Nos. 32/1999-Central Excise dated 08.07.1999, 33/1999-Central Excise dated 08.07.1999, 39/2001-Central Excise dated 31.07.2001, 56/2002-Central Excise dated 14.11.2002, 57/2002-Central Excise dated 14.11.2002, 49/2003-Central Excise dated 10.06.2003, 50/2003-Central Excise dated 10.06.2003, 56/2003-Centra Excise dated 25.06.2003, 71/03-Central Excise dated 09.09.2003, 8/2004-Central Excise dated 21.01.2004 and 20/2007-Central Excise dated 25.04.2007;

xi. NOTIFICATION NO. 79/ 2017-Customs dated 13.10.2017

Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in each of the notifications of the Government of India in the Ministry of Finance (Department of Revenue), specified in column (2) of the Table below, in the manner as specified in the corresponding entry in column (3) of the said Table, namely:

Sr.No.	Notification No. and date	Amendments
1	16/2015-Customs dated 1 st April 2015 (vide number GSR 252 (E) dated 1 st April 2015	In the said notification, - in the opening paragraph, after clause (ii), the following shall be inserted, namely: - (iii) the whole of integrated tax and the goods and the services tax compensation cess leviable thereon under sub-section (7) and sub-section (9) of section 3 of the said Customs Tariff Act:

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		<p>Provided that the exemption from integrated tax and the goods and services tax compensation cess shall be available up to the 31st March, 2018.”;</p> <p>in the Explanation C (II), for the words “However, the following categories of supplies, shall also be counted towards fulfilment of export obligation:”, the words “However, in authorisations where exemption from integrated tax and goods and service tax compensation cess is not availed, the following categories of supplies, shall also be counted towards fulfillment of export obligation shall be substituted.</p>
2	18/2015- Customs dated 1 st April 2015 (vide number GSR 254 (E) dated 1 st April 2015	<p>In the said notification, in the opening paragraph, -</p> <p>(a) for the words, brackets, figures and letters “from the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3, safeguard duty leviable thereon under section 8B and anti-dumping duty leviable thereon under section 9A”, the words brackets, figures and letters “from the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3, integrated tax leviable thereon under sub-section (7) of section 3, goods and services tax compensation cess leviable thereon under subsection (9) of section 3, safeguard duty leviable thereon under section 8B, countervailing duty leviable thereon under section 9 and anti-dumping duty leviable thereon under section 9A” shall be substituted; {b) in condition (viii), after the proviso, the following proviso shall be inserted, namely: - “Provided further that notwithstanding anything contained hereinabove for the said authorizations where the exemption from integrated tax and the goods and services tax compensation cess leviable thereon under sub-section (7) and sub-section (9) of section 3 of the said Customs Tariff Act, has been availed, the export obligation shall be fulfilled by physical exports only;”; (c) after condition (xi), the following conditions shall be inserted, namely: - “(xii) that the exemption from integrated tax and the goods and services tax compensation cess leviable thereon under sub-section (7) and sub-section (9) of section 3 of the said Customs Tariff Act shall be subject to pre-import condition; (xiii) that the exemption from integrated tax and the goods and services tax compensation cess leviable thereon under</p>

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	sub-section (7) and sub-section (9) of section 3 of the said Customs Tariff Act shall be available upto the 31st March 2018."
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- xii. Section 17(1) of the Customs Act 1962 reads as: -
 Assessment of duty: (1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.
 (2) The proper officer may verify the self-assessment of such goods and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.
 (3) For verification of self-assessment under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.
- xiii. Section 46 (4) of the Customs Act 1962 reads as:
 The importer while presenting a bill of entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, relating to the imported goods.
- xiv. Section 111(o) of the Customs Act 1962 inter alia stipulates: -
 111. Confiscation of improperly imported goods, etc.—the following goods brought from a place outside India shall be liable to confiscation: -
 (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; 3{(p} any notified goods in relation to which any provisions of Chapter IVA or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened.
- xv. Further section 112 of the Customs Act 1962 -provides for penal action and inter-alia stipulates: -
 Penalty for improper importation of goods, etc. —any person,
 (a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act.
- xvi. Further Section 114A of the Customs Act, 1962 provides for penal action and inter-alia stipulates: -

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Penalty for short-levy or non-levy of duty in certain 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 or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined.

xvii. Section 124 of the Customs Act, 1962 inter-alia stipulates:-

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

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

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

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

2.6. Discussion of Provisions of Law

2.6.1 Imposition of two conditions for availing the IGST exemption in terms of Notification No. 79/2017-Cus dated 13-10-2017: -

2.6.2 Advance Authorizations are issued by the Directorate General of Foreign Trade (DGFI) to importers for import of various raw materials without payment of Customs duty and the said export promotional scheme is governed by Chapter 4 of the Foreign Trade Policy (2015-20), applicable for subject case and corresponding Chapter 4 of the Hand Book of Procedures (2015-20). Prior to GST regime, in terms of the provisions of Para 4.14 of the prevailing Foreign Trade Policy (2015-20), the importer was allowed to enjoy benefit of exemption in respect of Basic Customs duty as well as Additional Customs duties, Anti-dumping duty and Safeguard duty, while importing such input materials under Advance Authorizations.

2.6.3 With the introduction of GST w.e.f 01-01-2017, Additional Customs duties (CVD & SAD) were subsumed into the newly introduced Integrated Goods and Service Tax (IGST). Therefore, at the time of imports, in addition to (Basic Customs duty, IGST was made payable instead of such additional duties of Customs, Accordingly, Notification No. 26/2017-Customs dated 29 June 2017, was issued to give effect to the changes introduced in the GST regime in respect of imports under Advance Authorization. It was a conscious decision to impose IGST at the time of import, however, at the same time, importers were allowed to either take credit of such IGST for payments of duty during supply to DTA, or to take refund of such IGST amount within a specified period. The corresponding changes in the Policy were brought through Trade Notice No; 11/2018 dated 30-06-2017. It is pertinent to note here

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that while in pre-GST regime blanket exemption was allowed in respect of all duties leviable when goods were being imported under Advance Authorizations, contrary to that, in post-GST regime, for imports under Advance Authorization, the importers were required to pay such IGST at the time of imports and then they could get the credit of the same.

2.6.4 However, subsequently, the Government of India decided to exempt imports under Advance Authorizations from payment of IGST, by introduction of the Customs Notification no. 79/2017 dated 13-10-2017. However, such exemption from the payment of IGST was made conditional. The said Notification no. 79/2017 dated 13-10-2017, was issued with the intent of incorporating certain changes/ amendment in the principal Customs Notifications, which were issued for extending benefit of exemption

(c) Advance Authorization shall be issued for:

(i) Physical export (including export to SEZ);

(ii) Intermediate supply; and/or

(iii) Supply of goods to the categories mentioned in paragraph 7.02 (b), (c), (e), (f) (g) and (h) of this FTP.

(iv) Supply of 'stores' on board of foreign going vessel / aircraft, subject to condition that there is specific Standard Input Output Norms in respect of item supplied.

2.6.5 Therefore, the definition has been further extended in specific terms under Chapter 4 of the Policy and the supplies made to SEZ, despite not being an event in which goods are being taken out of India, are considered as Physical Exports. However, other three categories defined under (c) (ii), (iii) & (iv) do not qualify as physical exports. Supplies of intermediate goods are covered by Letter of Invalidation, whereas, supplies covered under Chapter 7 of the Policy are considered as Deemed Exports. None of these supplies are eligible for being considered as physical exports. Therefore, any category of supply, be it under, letter of Invalidation and/or to EOU and/or under International Competitive Bidding (ICB) and/or to Mega Power Projects, other than actual exports to other country and supply to SEZ, cannot be considered as Physical Exports for the purpose of Chapter 4 of the Foreign Trade Policy (2015-20).

2.6.6 This implies that to avail the benefit of exemption as extended through amendment of Para 4.14 of the Policy by virtue of the DGFT Notification No. 33/2015-20 dated 13-10-2017, one has to ensure that the entire exports made under an Advance Authorization towards discharge of EO are physical exports. In case the entire exports made, do not fall in the category of physical exports, the Advance Authorization automatically sets disqualified for the purpose of exemption.

2.6.7 Violations in respect of the Foreign Trade Policy (2015-20) and the condition of the Notification No. 79/2017-Cus dated 13-10-2017 in respect of the imports made by the importer: -

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2.6.8 DGFT Notification No. 33/2015-20 dated 13-10-2017 amended the Para 4.14 of the Foreign Trade Policy (2015-20). It has been clearly stated in the said Para 4.14 of the Policy that

‘imports under Advance Authorisation for physical exports are also exempt from whole of the integrated tax and Compensation Cess leviable under sub-section (7) and sub-section m (2) respectively, of section 3 of the Customs Tariff Act, 1975 (51 of 1975),.....’

Basically, the said notification brought the same changes in the Policy, which have been incorporated in the Customs Notification by the aforementioned amendment.

2.6.9 For the purpose of availing the benefit of exemption from payment of IGST in terms of Para 4.14 of the Foreign Trade Policy (2015-20) and the corresponding Customs Notification No. 79/2017-Cue dated 13-10-2017, it is obligatory to comply with the Pre-import as well as physical export conditions. Therefore, if for reasons as elaborated in section D-3 above, the duty-free materials are not subjected to the process of manufacture of finished goods, which are in turn exported under the subject Advance Authorization, condition of pre-import gets violated.

2.6.10 Combined provisions of the Foreign Trade Policy and the subject Customs Notifications, clearly mandate, only imports under pre-import condition would be allowed with the benefit of such exemption subject to physical exports. Therefore, no such exemption can be availed, in respect of the Advance Authorizations, against which exports have already been made before commencement of import or where the goods are supplied under deemed exports. The importer failed to comply with the aforementioned conditions.

2.7 Violations of the Provisions of the Customs Act, 1962:

2.7.1 In terms of Section 46 of the Customs Act, 1962, while presenting the Bills of Entry before the Customs authority for clearance of the imported goods, it was duty of the importer to declare whether or not they complied with the conditions of pre-import and/or physical export in respect of the Advance Authorization under which imports were being made availing benefit of IGST exemption. The law demands true facts to be declared by the importer. It was duty of the importer to pronounce that the said pre-import and/or physical exports conditions could not be followed in respect of the subject Advance Authorization. As the importer has been working under the regime of self-assessment, where they have been given liberty to determine every aspect of an imported consignment from classification to declaration of value of the goods, it was sole responsibility of the importer to place correct facts and figures before the assessing authority. In the material case, the importer has failed to comply with the requirements of law and incorrectly availed benefit of exemption of Notification No. 79/2017-Cus dated 13-10-2017 by the means of wilful mis-statement during redemption of the licences. This has therefore, resulted in violation of Section 46 of the Customs Act, 1962.

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2.7.2 The importer failed to comply with the conditions laid down under the relevant Customs notification as well as the DGFT Notification and the provisions of the Foreign Trade Policy (2015-20), as would be evident from the discussion at para 8 of this notice. The amount of IGST not paid, is recoverable under Section 28(4) of the Customs Act, 1962 along with interest.

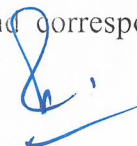
2.7.3. With the introduction of self-assessment under the Customs Act, more faith is bestowed on the Importer, as the practice of routine assessment, concurrent audit and examination has been dispensed with and the importers have been assigned with the responsibility of assessing their own goods under Section 17 of the Customs Act, 1962. As a part of self-assessment by the importer, it was duty of the importer to present correct facts and declare to the Customs authority about their inability to comply with the conditions laid down in the Customs notification while seeking benefit of exemption under Notification No. 79/2017-Cus dated 13-10-2017. However, contrary to this, they availed benefit of the subject notification for the subject goods, without complying with the conditions laid down in the exemption notification in violation of Section 17 of the Customs Act, 1962, Amount of Customs duty attributable to such benefit availed in the form of exemption of IGST, is therefore, recoverable from them under Section 28(4) of the Customs Act, 1962.

2.7.4 The importer failed to comply with the physical export condition of the notification and imported goods duty free by availing benefit of the same without observing condition, which they were duty bound to comply. This has led to contravention of the provisions of the Notification No. 79/2017-Cus dated 13-10-2017, and the Foreign Trade Policy (2015-20), which rendered the goods liable to confiscation under Section 111 (o) of the Customs Act, 1962.

2.7.5 Therefore, while Section 28 gives authority to recover Customs duty, short paid or not-paid, and Section 111(o) of the Act, holds goods liable for confiscation in case such goods are imported by availing benefit of an exemption notification and the importer fails to comply with and/or observe conditions laid down in the notification, Section 124 & Section 28 of the Customs Act, 1962, authorize the proper officer to issue Show Cause Notice for confiscation of the goods, recovery of Customs duty and imposition of penalty in terms of Section 112(a) or Section 114A of the Customs Act, 1962.

2.8. OMISSION AND COMMISSION BY THE IMPORTER AND CHARGES FRAMED

2.8.1 In the present case, it can be seen that in respect of 01 (one) Advance Authorization mentioned in the Table above, the importer has supplied entire goods to specified domestic project (not for physical export), which is treated as "Deemed Export". As per condition of Para 4.14 of the Forcing Trade Policy (2015-20), and corresponding changes brought in



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through Customs Notification No. 79/2017 dated 13-07-2017, for availing benefit of exemption of IGST, one is required to discharge his EO through physical exports only during the relevant period. Thus, for the intervening period i.e 13.10.2017 to 09.01.2019, there were condition of pre-import and EO achievement through physical exports to claim the benefit of exemption from IGST and Compensation Cess. This condition was removed from 10.01.2019 onwards vide Customs Notification No.01/2019 dated 10.01.2019 for all deemed exports except deemed exports of kind defined under (e) to (h) of Para 7.02 of FTP which involve supply of goods to projects specified thereunder. This is because "Deemed Exports" for the purpose of GST would include only four type of supplies notified under Section 147 of the CGST/SGST Act vide Notification No.48/2017-Central Tax dated 18.10.2017 namely

- Supply of goods by the registered person against Advance Authorisation (AA) ie. Supplier must be registered under GST and recipient must be an Advance Authorisation holder
- Supply of capital goods by the registered person against Export Promotion Capital Goods Authorisation (EPCG)
- Supply of goods by the registered person to Export Oriented Unit (EOU)/ Electronic Hardware Technology Park Unit (EHTP)/ Software Technology Park Unit (STP)/ Bio-Technology Park Unit (BTP).
- Supply of gold by Bank or Public Sector Undertaking against AA

2.8.2 The supplies to specified projects under (e) to (h) of Para 7.02 of FTP, though they are considered deemed exports under the FTP, are not deemed exports as per GST Act. Hence, imports made Advance authorization from 13/10/2017 onwards suffer IGST and Compensation Cess, if exports obligations under such authorisations are achieved by supply of goods to the specified projects.

2.8.3 It is implied that by resorting to discharging their export obligation through supply to specified domestic projects, the noticee violated the deemed export conditions laid down in Section 147 of CGST/SGST Act vide Notification no.48/2017-Central Tax dated 18.10.2017. Noticee has also failed to comply with such deemed export condition laid down in the amended Policy as well as the amended Customs notification despite having failed to comply with such physical export condition, they did not pay the amount of Rs. 74,16,989/- towards IGST, which they were liable to pay.

2.8.4 Thus, it appears that the importer is liable to pay IGST forgone of Rs.74,16,989/- (Details tabulated in Annexure) on the said imported goods along with interest at the applicable rate on the imported goods in terms of the conditions of said notification read with the conditions of licensee and the bond executed by the importer read with Section 143 of the Cust Act, 1962.

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2.9. The importer was called upon to show cause to Commissioner of Customs, NS-II, having office at Jawaharlal Nehru Custom House, Nhava Sheva, Tal. Uran, Dist. Raigad, Maharashtra 400 707 as to why:

- (a) Duty of customs amounting Rs 74,16,989/- (Rs Seventy four lakhs sixteen thousands nine hundred eighty nine only) in the form of IGST saved in course of imports of the goods through Nhava Sheva port, under the subject advance authorization and Bill of entry as detailed in Annexure, in respect of which benefit of exemption under Custom Notification no. 18/2015 dated 01.04.2015, as amended by notification 79/2017-Cus, dated 13.10.2017, was incorrectly availed, without complying with the obligatory physical export condition as stipulated in the said notification, and also for contravening provision of para 4.14 of the foreign trade policy (2015-20), should not be demanded and recovered from them under section 28(4) of the Customs Act, 1962;
- (b) Subject goods imported through Nhava Sheva port, under the subject advance authorization should not be held liable for confiscation under section 111(o) of the Customs Act, 1962 for being imported availing incorrect exemption of IGST in terms of the notification no. 18/2015 dated 01.04.2015, as amended by notification 79/2017-Cus dated 13.10.2017, without complying with obligatory physical export condition laid down under the said notification;
- (c) Interest should not be demanded and recovered under section 28AA of the Customs Act, 1962 from them on such duty of custom in the form of IGST, benefit of exemption of which was incorrectly availed;
- (d) Penalty should not be imposed upon them under section 112(a) of the Customs Act, 1962 for improper importation of goods availing exemption under notification no. 18/2015 dated 01.04.2015, as amended by notification 79/2017-Cus, dated 13.10.2017, without observation of physical export condition set out in the notification, resulting in the non-payment of custom duty, which rendered the goods liable to confiscation under Section 111(o) of the Customs Act, 1962.
- (e) Penalty should not be imposed upon them under section 114A of the Customs Act, 1962 for improper importation of goods availing exemption under notification no. 18/2015 dated 01.04.2015, as amended by notification 79/2017cus, dated 13.10.2017, without observation of physical export condition set out in the notification, resulting in the non-payment of custom duty, which rendered the goods liable to confiscation under Section 111(o) of the Customs Act, 1962.
- (f) Bond executed by them at the time of import should not be enforced in term of section 143(3) of the Customs Act, 1962 for recovery of the custom duty and interest there upon.

RECORD OF PERSONAL HEARING:

3. Personal hearing in the matter was granted on 11.12.2025. M/s. Champion Dai-Ichi India Pvt. Ltd. (formerly known as M/s. Nalco Champion Dai-Chi Pvt. Ltd.) sent an email

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dated 09.12.2025 attaching copies of EODC issued from DGFT and copy of Bond cancellation in respect of Advance Authorisation No. 0310823911 dated 21.09.2018 and requested to cancel the Personal Hearing.

4. The importer submitted the copy of the Redemption Letter dated 30.05.2023 bearing F.No.03AF04004285AM24 issued by Directorate General of Foreign Trade, Mumbai, wherein it is stated that redemption letter is issued against the Authorisation No. 0310823911 dated 21.08.2018.

5. On verification from the online portal of DGFT, it is found that the status of the Advance Authorisation No. 0310823911 dated 21.08.2018 is reflecting as 'closed'.

DISCUSSION AND FINDINGS:

6. I have carefully gone through the facts of the case and the evidences on record. Issues involved for decision in the instant case are:

- (i) Whether M/s Nalco Champion Dai-Chi India Private Limited have incorrectly availed exemption of IGST amounting to Rs. 74,16,989/- under Customs Notification No. 18/2015-Cus dated 01.04.2015, as amended by Notification No. 79/2017-Cus dated 13.10.2017, in respect of the goods imported through Nhava Sheva port under the subject Advance Authorisation, without fulfilling the obligatory physical export condition stipulated therein and in contravention of para 4.14 of the Foreign Trade Policy (2015-20).
- (ii) Whether the subject goods imported under the said Advance Authorisation are liable to confiscation under Section 111(o) of the Customs Act, 1962, for having been imported availing exemption subject to conditions which were not complied with.
- (iii) Whether the noticee is liable to pay interest on the recoverable amount of customs duty in the form of IGST under Section 28AA of the Customs Act, 1962, from the date the duty became payable till the date of payment.
- (iv) Whether the noticee is liable to penalty under Section 112(a) of the Customs Act, 1962 for improper importation of goods by availing conditional exemption and rendering the goods liable to confiscation under Section 111(o) of the Act.
- (v) Whether the noticee is liable to penalty under Section 114A of the Customs Act, 1962 for non-payment of duty by reason of wilful misstatement or suppression of facts in relation to availing exemption under the said notification.
- (vi) Whether the bond executed under Section 143 of the Customs Act, 1962 at the time of import is liable to be enforced under Section 143(3) for recovery of the customs duty along with applicable interest.

7. I find that the instant SCN was issued when it was observed during Audit inspection that the importer has claimed IGST exemption. After, issuance of the SCN, I find that the

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importer has paid **Rs. 1,12,59,203/- (IGST-Rs. 74,16,989 + Interest-Rs.38,42,214/-)** which includes the IGST amount of Rs.74,16,989/- demanded in the SCN, along with applicable interest, vide Challan No. HCM - 566 to 589 (total 24 Challans) all dated 08.02.2021 and same has been verified from the Cash Section.

8. I further find that after payment of IGST amount along with interest the importer was issued Redemption Letter dated 30.05.2023 issued from F.No.03AF04004285AM24 by Directorate General of Foreign Trade, Mumbai, wherein it is stated that redemption letter is issued against the Advance Authorisation No. 0310823911 dated 21.08.2018. The importer has submitted a copy of the said Redemption letter. Subsequent to the issuance of Redemption letter dated 30.05.2023, the bond executed by the importer was cancelled from EPSMMC, JNCH on 27.06.2023.

9. I find that as per the condition of the notification No.18/2015-Cutoms dated 01.04.2015 the importer has to produce evidence of discharge of export obligation to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, within a period of sixty days of the expiry of period allowed for fulfilment of export obligation, or within such extended period as the said Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, may allow.

10. I find that the CBIC, New Delhi has issued Circular No.16/2017 dated 02.05.2017 in this context whereby the Deputy/Assistant Commissioner of Customs have power to extend the period to submit proof of fulfillment of EO without any limit. Thus, there is inherent provision in Revenue notifications to keep action of Customs pending till EODC is issued by DGFT. Moreover, the process of issuance of EODC by DGFT itself is linked to submission of BRC by the license holder. The BRC itself can be submitted as per the period allowed by RBI in terms of Foreign Exchange Management Act, 1999. The license/ authorization is also subject to extension, if any by DGFT. Hence, alignment of the time period given in Customs notifications with that given in FTP/HBP may not be required.

11. I find that the Circular No.16/2017 dated 02.05.2017 stipulates that a simple notice will suffice to the licence/authorization holders for submission of proof of discharge of export obligation. Further, I find that the Show Cause Notice was issued for availment IGST exemption for which the importer was not eligible and the demanded amount has been deposited by the Noticee along with applicable interest and EODC has also been issued by DGFT belatedly in this regard.

12. I find that the noticee was required to inform the Customs authorities regarding their inability to submit the Export Obligation Discharge Certificate (EODC) within the prescribed time and to seek extension for submission of the same, as stipulated in the conditions of Notification No. 18/2015-Customs dated 01.04.2015. However, the noticee failed to do so. I

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further note that CBIC Circular No. 16/2017-Customs dated 02.05.2017 clarifies that in cases where the licence/authorisation holder submits proof of having applied to DGFT for issuance of EODC, the matter may be kept in abeyance till a decision is taken by DGFT. In the present case, although the noticee did not comply with the said procedural requirements prior to issuance of the Show Cause Notice, I observe that subsequent to issuance of the SCN, the noticee has paid the applicable IGST along with interest and has also submitted the EODC dated 30.05.2023 issued by DGFT. Thus, the substantive export obligation stands fulfilled and the procedural lapse has been regularised post-SCN, which merits consideration while deciding the case.

13. I have also gone through the online portal of DGFT and found that the status of the said Advance Authorisation License No. 0310823911 dated 21.08.2018 is reflecting as 'closed'. I find that the Directorate General of Foreign Trade, Mumbai is the Competent Authority to certify the fulfillment of Export Obligation against the Advance Authorisation License and had issued the Redemption Letter dated 30.05.2023 bearing F.No. 03AF04004285AM24 to the Importer.

14. I find that the demand of IGST amounting to Rs.74,16,989/- arose solely on account of the importer being held ineligible for IGST exemption at the relevant time due to non-fulfilment of the stipulated condition, and not on account of any misdeclaration, suppression of facts or deliberate contravention of the provisions of the Customs Act, 1962. After issuance of Show Cause Notice, the importer has paid IGST along with interest as stipulated in the Bond executed by the importer at the time of import. Hence, the export obligation under the subject Advance Authorisation has since been fulfilled and the competent authority, namely DGFT, has issued the Redemption Letter and the authorisation stands closed, thereby establishing compliance with the conditions of the exemption notification. In these circumstances, the lapse on the part of the noticee is procedural and stands fully regularised by payment of the applicable IGST, along with interest and subsequent discharge of export obligation. Once the duty liability has been discharged and the Advance Authorisation is regularized, the essential ingredients for confiscation of goods under Section 111(o) of the Customs Act, 1962 are not satisfied. Consequently, the question of imposing penalty under Sections 114A or 112A of the Customs Act, 1962 does not arise, as there is no evidence of mens rea, wilful misstatement or suppression of facts. Accordingly, I hold that confiscation of goods and imposition of penalty are not warranted in the facts and circumstances of the case.

15. The copy of Bond cancellation submitted by the importer in respect of the said Authorisation has also been verified from EPSMMC, JNCH vide letter dated 19.12.2025 and it is confirmed that the Bond executed against the said Authorisation has been cancelled from EPSMMC, JNCH. Thus, I do not find any ground to proceed further in the instant matter after examining all the facts and documents produced by the noticee and legalities involved.

ORDER

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16. In view of above, I pass the following order:

I hereby drop the proceedings against M/s. Nalco Champion Dai-Chi Pvt. Ltd. (IEC No. 0390003051) in respect of Show Cause Notice no. 620/2020-21/DMC/JNCH dated 04.09.2020 issued vide F.No. S/26-Misc-58/2020-21 DMC.

17. This Order is passed without prejudice to any other action that may be taken in respect of the goods in question and/or against the person concerned or any other person including Customs Brokers concerned under the Provisions of the Customs Act, 1962 and/or other law for the time being in force.

Digitally signed by
GIRIDHAR GOPALKRISHNA PAI
Date: 31-12-2025 09:57:07
(Giridhar G. Pai)
Commissioner of Customs
Nhava Sheva-II, JNCH

To,

M/s. Nalco Champion Dai-Chi India Pvt. Ltd.
Liberty Building, 3rd Floor
Sir Vitaldas Thackery Marg,
Mumbai, Maharashtra – 400020

Copy to:

- (i) The Chief Commissioner of Customs, Mumbai Customs Zone-II, JNCH, Nhava Sheva
- (ii) The Dy. Commissioner of Customs, EPSMMC section, JNCH, Nhava Sheva
- (iii) EDI, JNCH
- (iv) The Superintendent, CHS, JNCH for display on Notice Board, JNCH
- (v) Office Copy.
- (vi) DC / CRRC, JNCH.

