

OFFICE OF THE COMMISSIONER OF CUSTOMS (NS-V)
सीमाशुल्क आयुक्त (एनएस - V) कार्यालय
JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA SHEVA,
जवाहरलाल नेहरू सीमाशुल्क भवन, न्हावा शेवा,
TALUKA – URAN, DISTRICT - RAIGAD, MAHARASHTRA -400707
तालुका - उरण, जिला - रायगढ़, महाराष्ट्र 400707

DIN – 20250678NX0000515915

Date of Order: 05.06.2025

F. No. S/10-231/2023-24/COMMR/NS-V/CAC/JNCH

Date of Issue: 05.06.2025

SCN No.: 566/2023-24/COMMR/GR.VA/CAC/JNCH

SCN Date: 09.06.2023

Passed by: Anil Ramteke

Commissioner of Customs, NS-V, JNCH

Order No: 79/2025-26/COMMR/NS-V/CAC/JNCH

Name of Noticees: M/s. TDK India Private Limited

ORDER-IN-ORIGINAL

मूल - आदेश

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

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

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

2. इस आदेश से व्यथित कोई भी व्यक्ति सीमाशुल्क अधिनियम 1962 की धारा 129 (ए) के तहत इस आदेश के विरुद्ध सी.ई.एस.टी.ए.टी., पश्चिमी प्रादेशिक न्यायपीठ (वेस्ट 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.

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

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

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

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

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

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

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

Subject: Adjudication of Show Cause Notice No. 566/2023-24/Commr/Gr.VA/CAC/JNCH dated 09.06.2023 issued to M/s TDK India Private Limited (IEC-288037723) – reg.

1. BRIEF FACTS OF THE CASE

1.1 It is stated in the Show Cause Notice (SCN) No. 566/2023-24/Commr/Gr.VA/CAC/JNCH dated 09.06.2023 that on the basis of the Alert Circular No. 11/2019 dated 30.03.2019 issued by the Commissioner of Customs (Audit), Mumbai, Zone-I vide F. No. S/16-Misc-75/2018-19 Audit (P&C), data pertaining to imports made by various importers through JNCH (INNSA1) was analysed in detail. It was observed that M/s TDK India Private Limited (IEC-288037723) having address as Kulia Kanchrapara Road, P.O. - Netaji Subhas Sanatorium, Kalyani, Nadia, West Bengal-741251 have imported goods with description “Battery” under the CTH 8507 as detailed in Annexure- ‘A’ to the subject SCN and paid lower rate of BCD and/or IGST under Sl. No. 203 of Schedule-II of IGST Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 @12% and/or @18% under Sr. Nos. 376AA or 376AAA of Schedule-III of IGST Notification No. 19/2018-Integrated Tax (Rate) dated 27.07.2018 or a lower IGST rate in other Schedule, however, the imported goods attracted levy of BCD & IGST as per Table-A below.

1.2 The Bills of Entry (as per Annexure-A to the subject SCN) wherein goods have been classified under CTH 8507 attract levy of BCD & IGST as per Table-A. However, they have been cleared under lower rate of BCD.

Table-A

| Tariff Item | Description of goods | BCD % (Ntfn.) | SWS | IGST | Total Duty | Remarks |
|--------------------------------------|-----------------------------------------------------------------|------------------|-----|------|---------------|---------------------|
| 8507 (except 8507 60 00 and 8507 90) | Battery pack of cellular mobile phones [Other than Lithium-ion] | 15 | 10 | 28 | 49.12 | 02.02.18- till date |
| 85076000 | Lithium-ion battery of cellular mobile phones | 15 | 10 | 28 | 49.12 | 02.02.18- 26.07.18 |
| | | 15 | 10 | 18 | 37.47 | 27.07.18-till date |
| 85076000 | Battery pack of cellular mobile phones [Lithium-ion] | 20 | 10 | 18 | 43.96 | 30.01.19-till date |
| 85076000 | Power Bank [Lithium-ion] | 20 | 10 | 18 | 43.96 | 30.01.19-till date |

1.3 From the above table, it appeared that:

- Battery pack of cellular mobile phones under CTH 8507 except 85076000 and 850790 (other than lithium ion) attract BCD @ 15% & IGST @ 28% under Serial No. 139 of Schedule-IV of IGST Notification No. 01/2017.
- Till 26.07.2018, lithium ion battery of cellular mobile phones were classifiable under CTH 85076000 & attracted BCD @ 15% & IGST @ 28% under Serial No. 139 of Schedule-IV of IGST Notification No. 01/2017.
- From 27.07.2018 to 30.01.2019, lithium ion battery of cellular mobile phones were classifiable under CTH 85076000 & attracted BCD @ 15% & IGST @ 18% under Serial No. 376AA of Schedule-III of IGST Notification No. 01/2017.

- From 30.01.2019 to till date, lithium ion battery of cellular mobile phones falling under CTH 85076000 attracted BCD @ 20% & IGST @ 18% under Serial No. 376AA of Schedule-III of IGST Notification No. 01/2017.
- From 30.01.2019 to till date, power bank (lithium ion) falling under CTH 85076000 attracted BCD @ 20% & IGST @ 18% under Serial No. 376AA of Schedule-III of IGST Notification No. 01/2017.

1.3.1 As per the SCN, on scrutiny of the import data, it was observed that goods covered under CTH 8507 were cleared by declaring lower rate of BCD and/or IGST, however, the imported goods fall under CTH 8507 & attracts levy of BCD & IGST under Sl. No. 203 of Schedule-II of IGST Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 @12% and/or @18% under Sr. Nos.376AA or 376AAA of Schedule-III of IGST Notification No. 19/2018-Integrated Tax (Rate) dated 27.07.2018 or a lower IGST rate in other Schedule, however, the imported goods attracts levy of BCD & IGST as per Table-A above.

1.3.2 The total assessable value of the B/E items so imported is ₹2,55,29,53,736/- and it appeared that a short levy of BCD and/or IGST amounting to ₹30,85,61,495/- (as detailed in Annexure-'A' to the subject SCN) is recoverable from the Importer along with applicable interest and penalty.

1.4 In view of the above, Consultative Letter No. 2564 dated 06.02.2023 was issued to importer to clarify the issue raised by the department and if agreed to the observation/finding of the department, the importer was advised to pay the differential duty alongwith applicable interest and penalty. However, no reply or submission was given by importer in this regard.

1.5 As per the SCN, the relevant legal provisions for recovery of duty that appeared to be evaded are reproduced here which are applicable in this instant case:

1.5.1 After the introduction of self-assessment vide Finance Act, 2011, the onus is on the importer to make true and correct declaration in all aspects including classification and calculation of duty, but in the instant case the subject goods have been mis-classified and duty amount has not been paid correctly.

1.5.2 Further, the extracts of the following relevant provisions of the Customs Act, 1962 for the time being in force relating to import of goods, recovery of duties, liability of the goods to confiscation and the persons concerned to penalty for improper importation, were mentioned in the subject SCN. The same are not reproduced in this Order-in-Original for the sake of brevity:

- Section 17 - Assessment of duty.
- Section 28 - Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.

- Section 46 - Entry of goods on importation.
- Section 111(m) - Confiscation of improperly imported goods, etc.
- Section 112 - Penalty for improper importation of goods etc.
- Section 114A - Penalty for short-levy or non-levy of duty in certain cases.

1.6 As per the SCN, whereas, consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-assessment' has been introduced in customs clearance. Section 17 of the Customs Act, effective from 08.04.2011 [CBEC's (now CBIC) Circular No. 17/2011 dated 08.04.2011] provides for self-assessment of duty on imported goods by the Importer himself by filing a bill of entry, in the electronic form. Section 46 of the Customs Act, 1962 makes it mandatory for the Importer to make 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 Declaration) Regulation, 2011 (issued under Section 157 read with Section 46 of the Customs Act, 1962), the bill of entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic 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 self-assessment, it is the Importer who has to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the bill of entry. Thus, with the introduction of self-assessment by amendments to Section 17, since 08.04.2011, it is the added and enhanced responsibility of the Importer to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

1.7 In view of the above facts, it appeared that the importer has deliberately not paid the duty by wilful mis-statement as it was his duty to declare correct applicable rate of duty in the entry made under Section 46 of the Customs Act, 1962, and thereby has attempted to take undue benefit amounting to ₹30,85,61,495/- (as detailed in Annexure-'A' to the subject SCN). Therefore, the differential duty, so not paid, is liable for recovery from the Importer under Section 28(4) of the Customs Act, 1962 by invoking extended period of limitation, along with applicable interest at the applicable rate under Section 28AA of the Customs Act, 1962 and for their acts of omission/commission.

1.8 Section 111(m) of Customs Act, 1962 provides for confiscation of any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54.

1.9 It appeared that the Importer had failed to comply with the conditions mentioned above; therefore, it also appeared that the imported goods are liable for confiscation under Section 111(m) of the Customs Act, 1962. It further appeared that the Importer for the acts of omission and commissions mentioned above has rendered themselves liable for penal action under Section 112(a) and 114A of the Customs Act, 1962.

1.10 In view of the above, vide Show Cause Notice No. 566/2023-24/Commr/Gr.VA/CAC/JNCH dated 09.06.2023, M/s TDK India Private Limited (IEC-288037723) having address as Kulia Kanchrapara Road, P.O.-Netaji Subhas Sanatorium, Kalyani, Nadia, West Bengal-741251, was called upon to show cause to the Commissioner of Customs (NS-V), Jawaharlal Nehru Custom House (the Adjudicating Authority), as to why:

- (i) Differential/short paid Duty amounting to ₹30,85,61,495/- for the subject goods imported vide Bills of Entry as detailed in Annexure-‘A’ should not be demanded under Section 28(4) of the Custom Act, 1962.
- (ii) In addition to the duty short paid, interest on delayed payment of Custom Duty should not be recovered from the Importer under Section 28AA of the Customs Act, 1962.
- (iii) The said subject goods imported vide Bills of Entry as detailed in Annexure-‘A’ having assessable value of ₹2,55,29,53,736/- should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962.
- (iv) Penalty should not be imposed on them under Section 112(a) of the Customs Act, 1962 for their acts of omission and commission, in rendering the goods liable for confiscation, as stated above.
- (v) Penalty should not be imposed under Section 114A of Customs Act, 1962 for short levy of duty.

2. WRITTEN SUBMISSION OF THE NOTICEE

The Noticee, M/s. TDK India Pvt. Ltd. vide letter dated 07.02.2024 submitted written reply to the subject SCN, through their Consultant, M/s Lakshmikumaran & Sridharan. Vide above reply, they denied all the allegations made in the SCN. The submissions made by the Noticee are summarised as below:

2.1 The Noticee was, inter-alia, engaged in the manufacture of lithium-ion batteries for mobile phones and power banks. These products were mainly supplied to the mobile phone manufacturers and Original Design Manufacturers in India. In relation to its business activities, the Noticee was importing lithium-ion cells for the manufacture of mobile phones as well as power banks.

2.2 Vide the subject Bills of Entry, the Noticee imported ‘Lithium-ion Cells’ and classified the same under Customs Tariff Item (CTI) 8507 6000 of the First Schedule to the Customs Tariff Act, 1975 which covers “*Electric Accumulators, including separators therefor, whether or not*

rectangular (including square); Lithium-ion". During the relevant period, the Noticee discharged BCD on the subject goods as follows:

For imports made during June, 2018 to January, 2019:

During the period of June, 2018 to January, 2019, the Noticee availed full exemption from payment of BCD on the subject goods under Sl. No. 7(ii) of Notification No. 57/2017-Cus. dated 30.06.2017 which, during the relevant period provided exemption from payment of BCD to inputs/ raw materials used in the manufacture of specified parts of cellular mobile phones.

For imports made during February, 2019 to March, 2019:

Vide Notification No. 02/2019, two entries, viz., Sl. No. 17A and Sl. No. 17B were inserted in the Notification No. 57/2017-Cus. dated 30.06.2017, w.e.f. 30.01.2019, granting concessional rate of BCD to lithium-ion cells. The Noticee availed the benefit of concessional rate of BCD under Sl. No. 17A and Sl. No. 17B of Notification No. 57/2017 for lithium-ion cells for manufacturing battery packs of mobile phones and for manufacturing power banks, respectively.

Further, during the relevant period, the Noticee paid IGST @ 28% under Sl. No. 139 of Schedule-IV of Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 in all the cases.

2.3 The impugned SCN is vague, perverse and therefore, liable to be dropped.

The impugned SCN is vague, without reasons and violative of the principles of natural justice as it does not provide any explanation / reason or supporting evidence as to why the duty has been short-paid by the Noticee. There are multiple factual inconsistencies in the SCN. Firstly, the impugned SCN states that the Noticee has short-paid the duty on import of "battery", which is factually incorrect. The Noticee, vide the subject Bs/E has imported lithium-ion cells and not battery. Secondly, the impugned SCN alleges that the Noticee has short-paid IGST under Sl. No. 203 of Schedule II of the IGST Rate Notification @ 12% and / or under Sl. No. 376AA or 376AAA of Schedule III of the IGST Rate Notification @ 18%, which is again factually incorrect since the Noticee has never paid IGST under either of the above-mentioned entries. The Noticee has been discharging IGST @ 28% under Sl. No. 139 of Schedule IV of the IGST Rate Notification, since the very beginning. Lastly, the Sl. Nos. mentioned in the 'Table-A' of the SCN, detailing the alleged applicable rate of BCD, have been incorrectly mentioned. The impugned SCN is devoid of any reasoning to sustain the demand of BCD and / or IGST on import of the subject goods, thereby depriving the Noticee of an opportunity to defend its case, as it is unaware of the reasonings basis which the entire duty has been demanded. They placed reliance on the case of Commissioner of C. Ex., Bangalore Vs Brindavan Beverages (P) Ltd., {2007(6) TMI 4-Supreme Court}, Commissioner of C. Ex. Vs. M/s. Indian Oil Corporation, (2017 (6) TMI 573- Madras High Court}, Rajmal Lakhichand Vs. Commissioner of Customs,

Aurangabad {2010 (255) E.L.T. 357 (Bom.)} and M/s RR Financial Consultants Ltd. Vs. UOI & Ors. {2014 (33) STR 12 (Del.)}.

2.4 The Noticee has correctly discharged the duty liability on the subject goods. The proposed demand is unsustainable on all counts.

2.4.1 The Noticee has appropriately discharged BCD and / or IGST on import of the subject goods. In the present case, the goods imported by the Noticee are lithium-ion cells classifiable under CTI 8507 6000. The classification of the subject goods is not under dispute in the present case. Such lithium-ion cells have been imported by the Noticee for the manufacture of mobile phone battery as well as power banks of lithium-ion.

2.4.2 During the period of June, 2018 to January, 2019, the Noticee claimed full exemption from payment of BCD on the subject goods, by claiming the benefit of Sl. No. 7 of Notification No. 57/2017 which provided for the benefit of concessional rate of duty to inputs / raw materials used in the manufacture of specified parts of cellular mobile phones. The extract of Sl. No. 7 (as it read during the period of June, 2018 to January, 2019) is reproduced below:

Electronic goods — Exemption from Basic Customs Duty (BCD)

| S. No. | Chapter or Heading or Sub-heading or tariff item | Description of goods | Standard Rate | Condition No. |
|--------|--------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|---------------|
| 7. | Any Chapter | Inputs or raw materials for use in manufacture of following parts of Cellular mobile phones; (ii) Battery Pack (iii) Wired Headset (iv) Battery cover | NIL | 1 |

| Condition No. | Conditions |
|---------------|--------------------------------------------------------------------------------------------------------------------------|
| 1. | If the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. |

Sl. No. 7(ii) specifically includes “battery packs” of cellular mobile phones, that is to say that the parts used in the manufacture of battery packs of cellular mobile phones were fully exempt from payment of BCD in terms of Sl. No. 7(ii) of Notification No. 57/2017. The only condition to avail such exemption benefit was that the importer / assessee should comply with the procedures set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. In the present case, the Noticee imported lithium-ion cells which were used to form a battery pack. Such a battery pack was further used in the manufacture of cellular mobile phones. This is also evident from the bills of entry, invoices, etc. where it is clearly mentioned that the goods are for use in the manufacture of mobile battery packs. Notably, the subject goods, viz., lithium-ion cells were eligible to avail the benefit under Sl. No. 7(ii) of Notification No. 57/2017 since the same was used for the manufacture of battery pack of cellular mobile phones. Further,

the Noticee was also in compliance with the Import of Goods at Concessional Rate of Duty Rules, 2017 (IGCR Rules), as this aspect has not been disputed in the present case.

2.4.3 In January, 2019, the entry for ‘battery packs’, i.e., Sl. No. 7(ii) was omitted vide Notification No. 02/2019 w.e.f. 30.01.2019. As a consequence of such amendment, the Noticee did not avail any exemption under Sl. No. 7(ii) of Notification No. 57/2017. However, vide Notification No. 02/2019 dated 29.01.2019, two new entries, viz., Sl. No. 17A and Sl. No. 17B were introduced, granting concessional rate of BCD to lithium-ion cells for use in the manufacture of battery pack of cellular mobile phone and power bank, respectively. The extract of Sl. No. 17A and 17B inserted in Notification No. 57/2017 is reproduced below:

| S. No. | Chapter or Heading or Sub-heading or tariff item | Description of goods | Standard Rate | Condition No. |
|--------|--------------------------------------------------|---------------------------------------------------------------------------------------|---------------|---------------|
| 17A. | 8507 6000 | Lithium-Ion cell for use in the manufacture of battery pack of cellular mobile phone. | 5% | 1 |
| 17B. | 8507 6000 | Lithium-Ion cell for use in the manufacture of power bank of Lithium Ion. | 5% | 1 |

Sl. No. 17A of Notification No. 57/2017 (as amended vide Notification No. 02/2019) provided for concessional rate of BCD to lithium-ion cells falling under CTI 8507 6000 which were for use in the manufacture of battery pack of cellular mobile phone, subject to compliance with the IGCR Rules. Therefore, February, 2019 onwards, the Noticee claimed the benefit of concessional rate of BCD under Sl. No. 17A of Notification No. 57/2017 (as amended) and discharged BCD at the applicable rate of 5%. Such a benefit was claimed on the import of subject goods that were used in manufacture of battery packs of cellular mobile phones. Further, Sl. No. 17B of Notification No. 57/2017 (as amended vide Notification No. 02/2019) provided for concessional rate of BCD to lithium-ion cells falling under CTI 8507 6000 which were for use in the manufacture of power bank of lithium-ion. Therefore, on import of the subject goods which were to be used in the manufacture of power banks, the Noticee claimed the benefit of concessional rate of BCD under Sl. No. 17B of Notification No. 57/2017 (as amended) and paid BCD at the rate of 5%.

2.4.4 As far as IGST is concerned, the impugned SCN alleges that the Noticee has incorrectly paid IGST under Sl. No. 203 of Schedule II of the IGST Rate Notification @ 12% and / or under Sl. No. 376AA or 376AAA of Schedule III of the IGST Rate Notification @ 18%. In this regard, the impugned SCN is flawed and devoid of basic factual as well as legal rationale since the Noticee has not paid IGST under either of the above-mentioned entries. The Noticee imported the subject goods by paying IGST @ 28% under Sl. No. 139 of Schedule IV to the IGST Rate Notification. The extract of Sl. No. 139 of Schedule IV (as it read during the relevant period) is extracted below:

SCHEDULE IV - 28%

| S. No. | Chapter / Heading / Sub-heading / Tariff item | Description of Goods |
|--------|-----------------------------------------------|----------------------|
| (1) | (2) | (3) |

| | | |
|------|------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 139. | 8507 | Electric accumulators, including separators therefor, whether or not rectangular (including square) other than Lithium-ion battery and other Lithium-ion accumulators including Lithium-ion power banks |
|------|------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Sl. No. 139 of Schedule IV of the IGST Rate Notification covers “*Electric accumulators, including separators therefor, whether or not rectangular (including square) other than lithium-ion battery and other lithium-ion accumulators including lithium-ion power banks*”. In the present case, the subject goods, viz., Lithium-ion cells are classifiable under Heading 8507 of the First Schedule to the Tariff Act. Further, the term “electric accumulators” covers all the electric accumulators of Heading 8507 (irrespective of the type of electrolyte). In terms of the above-mentioned description under Schedule IV of the IGST Rate Notification, the Noticee paid IGST at the highest rate of 28%, as applicable. Further, the Noticee has always been discharging IGST under Sl. No. 139 as seen from the sample Bills of Entry.

Therefore, the Noticee has correctly paid all the applicable duties (BCD and IGST) and therefore, no demand shall sustain with respect to the subject goods. The impugned SCN is, therefore, liable to be dropped.

2.5 Interest under Section 28AA of the Customs Act cannot be demanded from the Noticee.

In the present case, the impugned SCN proposes recovery of interest under Section 28AA of the Customs Act. As the demand raised *vide* the SCN is unsustainable, therefore, the question of recovery of interest does not arise. As per Section 28AA of the Customs Act, interest is demandable only if the assessee is liable to pay the principal amount. It is a cardinal principle of law that when the principal demand is not sustainable, there is no liability to pay ancillary demands. Since the demand of duty is not sustainable, no interest can be demanded from the Noticee under Section 28AA of the Customs Act. They placed reliance on judgment in case of *Pratibha processors Vs UOI* {1996 (88) ELT 12 S.C.} wherein it was held that when the principal amount (duty) is not payable due to exemption, there is no occasion or basis to levy any interest either. They also placed reliance on case of *CC, Chennai Vs Jayathi Krishna & Co.* {2000 119 ELT 4 SC}.

2.6 Extended period of limitation is not invokable in the present case as there is no mis-declaration or suppression of facts.

2.6.1 The subject goods in the present case were imported *vide* Bills of Entry between 11.06.2018 to 27.03.2019, whereas the SCN has been issued only on 09.06.2023. Section 28(1) of the Customs Act provides a limitation period of two years from the relevant date (or the date of import) for issuance of Notice demanding payment of Customs duty. Section 28(4) of the Customs Act provides for an extended period of five years for raising the demand, in cases where the duty has not been levied or has been short-levied, etc. by reason of collusion or any wilful mis-statement or suppression of facts by the importer. The Department has invoked the

extended period in terms of Section 28(4) of the Customs Act. However, a perusal of the impugned SCN would reveal that there are no allegations whatsoever regarding suppression, collusion or any wilful misstatement. The impugned SCN is completely silent on the same.

2.6.2 Further, it is not the case of the Department that the Noticee had made improper / wrong / fraudulent declarations. In the relevant Bills of Entry, the Noticee had made correct declarations, by disclosure of all such relevant facts as the law mandates it to do. The Noticee has accurately described the subject goods as [*Lithium Ion Cell (Brand Ref. No.) (BIS No.) (used in the manufacture of mobile battery pack / power bank)*]. A perusal of the aforesaid description shows that the Noticee had accurately described the subject goods by specifically mentioning the product name along with its BIS registration number and the end use. Moreover, the Department has failed to adduce any evidence to demonstrate that the description provided by the Noticee in the subject BOEs is incorrect. Therefore, this is not a case of suppression either, and the extended period of limitation could not have been invoked. Moreover, in compliance with the IGCR Rules, the Noticee was intimating the department of its intention to avail the exemption benefit on the subject goods, well in advance. The Noticee also forwarded a copy of the IGCR intimation letters sent by the Export Promotion Circle to the relevant assessing officer, which establishes that all the relevant information was furnished by the Noticee at the time of import. In absence of any allegation regarding suppression/wilful misstatement etc., extended period of limitation cannot be invoked, as these requirements are essential for invoking the larger period. They relied upon judgment in case of CCE Vs Chemphar Drugs and Liniments {1989 (40) ELT 276 (SC)}, Pushpam Pharmaceuticals Company Vs Collector of Central Excise, Bombay {1995 (78) ELT 401 (SC)}, Padmini Products Vs CCE {1989 (43) ELT 195 (SC)}, etc.

2.6.3 The Noticee has not suppressed any information from the Department and all the relevant information was provided by the Noticee at the time of import and Department was already aware of the practice being followed by the Noticee as they had been importing the same products since many years. When the Department has knowledge about a transaction and yet there is a delay in issuance of notice, extended period of limitation cannot be invoked. In their support they relied upon case of Orissa Bridge & Construction Corpn. Ltd. Vs CCE, Bhubaneswar {2011 (264) ELT 14 (SC)}, Commissioner of Central Excise, Indore Vs Syncom Formulation (I) Ltd. {2004 (172) ELT 77 (Tri.-Del.)}, Gammon India Ltd Vs CCE, {2002 (146) ELT 173 (Tri.)}, etc.

2.6.4 Section 28(4) of the Customs Act, 1962 is an exception to the provisions of Section 28(1) and it is a settled law that an exception is required to be construed strictly. In case of Pushpam Pharmaceuticals (supra), the Hon'ble Supreme Court held that the proviso being an exception to the main section, it has to be construed strictly. They also placed reliance on judgment in case of Tamil Nadu Housing Board Vs CCE {1994 (74) ELT 9 (SC)}; CCE, Chandigarh Vs. Punjab Laminates Pvt. Ltd. {2006 (202) ELT 578 (SC)}.

2.6.5 The extended period cannot be invoked as the issue involves an interpretation of law i.e. eligibility to avail exemption benefit under Notification No. 57/2017. They placed reliance upon judgments in case of Singh Brothers Vs. Commissioner of Customs & Central Excise, Indore {2009 (14) STR 552 (Tri.-Del.)}, Steelcast Ltd. Vs. Commissioner of Central Excise, Bhavnagar {2009 (14) STR 129 (Tr.-Del.)} and K.K. Appachan Vs. Commissioner of Central Excise, Palakkad {2007 (7) STR 230 (Tri.-Bang.)}. Since no mala fide intention can be attributed to the Noticee, extended period of limitation has wrongly been invoked.

2.6.6 The burden of proof for establishing the grounds for invocation of extended period of limitation is on the Department. The show cause notice has to clearly bring out the reasons for invoking extended period of limitation. In this regard, they placed reliance upon judgments in case of Commissioner Vs. HMM Limited, {1995 (76) E.L.T. 497 (S.C.)}; Kaur & Singh Vs. Commissioner, {1997 (94) E.L.T. 289 (S.C.)}; Nizam Sugar Factory Vs. Commissioner, {2006 (197) E.L.T. 465 (S.C.)}.

2.7 The subject goods are not liable for confiscation under Section 111(m).

2.7.1 Confiscation under Section 111(m) of the Customs Act is not sustainable as there is no wilful mis-declaration on the part of the Noticee. There was no mis-declaration either in respect of value, description, classification or in any other particular with the entry made under the Customs Act. The Noticee did not mention incorrect details of the subject goods in the Bills of Entry, the impugned SCN fails in demonstrating any facts to the contrary. The Noticee has correctly described the subject goods, therefore, the subject goods are not liable for confiscation under Section 111(m) of the Customs Act.

2.7.2 An incorrect claim for exemption does not amount to mis-declaration. Even if the Noticee incorrectly claimed the benefits under Notification No. 57/2017, the same cannot amount to mis-declaration for the purpose of Section 111(m) of the Customs Act. In this regard, they placed reliance upon judgments in case of Sutures India Pvt. Ltd. Vs. CC, Bangalore, {2009 (245) ELT 596 (Tri.-Bang.)}; Lotus Beauty Care Products Pvt. Ltd. Vs. CC (Imports), JNCH, Nhava Sheva, {2020-TIOL-1664-CESTAT-MUM} and Kirti Sales Corporation Vs. Commissioner of Customs, Faridabad {2008 (232) ELT 151 (Tri.-Del.)}.

2.7.3 The Noticee has always been declaring the subject goods correctly in the import documents and the Department never raised any dispute w.r.t. declarations made in the bills of entries. In this regard, they placed reliance upon judgments in case of Lewek Altair Shipping Private Limited Vs. CC, {2019 (366) E.L.T. 318 (Tri.-Hyd.)} affirmed by the Hon'ble Supreme Court in Commissioner Vs. Lewek Altair Shipping Pvt. Ltd., {2019 (367) E.L.T. A328 (S.C.)}. The Noticee availed the exemption benefits under Notification No. 57/2017 under a bona fide belief that the subject goods are eligible for such exemption claim. Hence, without prejudice, even if the Noticee incorrectly availed the exemption under Notification No. 57/2017, the same

cannot said to be 'mis-declaration' and therefore, the subject goods cannot be held liable for confiscation under Section 111(m) of the Customs Act.

2.7.4 The provisions of Section 111 do not apply to goods already cleared after import. Only imported goods can be confiscated under Section 111 of the Customs Act. Section 2(25) defined imported goods as the goods brought into India from a place outside India but does not include goods which have been cleared for home consumption. They placed reliance on judgment in case of Bussa Overseas & properties Vs C.L. Mahar, Assistant Commissioner of Customs, Bombay {2004 (163) ELT 304 (Bom.)}, Southern Enterprises Vs CC {2005 (186) ELT 324 (Tri.-Bang.)} and Shiv Kripalspat Pvt. Ltd. Vs Commissioner of Central Excise & Customs, Nasik {2009 (235) ELT 623 (Tri.- LB)}.

2.8 Penalty is not imposable on the Noticee under Section 112(a) / 114A of the Customs Act.

2.8.1 No duty is payable as the Noticee has correctly availed the benefit of exemption / concessional rate of duty on import of the subject goods under Notification No. 57/2017. For the same reasons, no penalty is imposable when the duty demand is unsustainable. In case of Collector of Central Excise Vs H.M.M. Limited {1995 (76) ELT 497 (SC)} Hon'ble Apex Court held that the question of penalty would arise only if the department is able to sustain the demand. Similar view is taken by the Hon'ble Court in case of Commissioner of Central Excise, Aurangabad Vs Balkrishna Industries {2006 (201) ELT 325 (SC)}.

2.8.2 The Noticee has neither done nor omitted to do any act which makes the impugned goods liable for confiscation. The goods are not liable for confiscation under Section 111(m) of the Customs Act, therefore, the proposal for penalty under Section 112(a) of the Customs Act is legally untenable.

2.8.3 Penalty cannot be imposed in absence of *mens rea*. The Noticee has availed the benefit of exemption / concessional rate of duty under Notification No. 57/2017 on a *bona fide* belief that it is eligible to such exemption benefit. Thus, it cannot be said that the Noticee had reason to believe that the subject goods were liable for confiscation. In addition to the above, no penalty, even under Section 112 of the Customs Act, can be imposed when there has been no element of *mens rea* involved. Reliance was placed on the judgments, Hindustan Steel Ltd. Vs. State of Orissa, {1978 (2) E.L.T. (J159)}; Akbar Badruddin Jiwani Vs. Collector of Customs, {1990 (47) E.L.T. 161}; V. Lakshmipathy Vs. Commissioner of Customs, Cochin, {2003 (153) E.L.T. 640 (Tri.-Bang)}.

2.8.4 Penalty is not imposable when the issue is one of interpretation of law. Reliance was placed upon the case of Vadilal Industries Ltd. Vs Commissioner of C. Ex., Ahmedabad {2007 (213) ELT 157 (Tri.-Ahmd.)}, Auro Textile Vs Commissioner of Central Excise, Chandigarh {2010 (253) ELT 35 (Tri.-Del.)} etc.

2.8.5 Since extended period is not applicable, penalty under Section 114A of the Customs Act is not imposable. The present case does not involve any willful misstatement or suppression of facts from the department and in absence of mens rea penalty under Section 114A of the Customs Act is not imposable. Further the department has failed to discharge the burden of proof for imposition of penalty under Section 114A, therefore, the penalty is not imposable. They relied upon the judgment of Tribunal in case of CC Vs Videomax Electronics {2011 (264) ELT 0466 (Tri.-Bang.)} wherein it was held that legal requirement to invoke penalty under Section 114A is the same as extended period of limitation under Section 28. They also placed reliance on judgment of Hon'ble Apex Court in case of Pushpam Pharmaceuticals Company Vs CCE {1995 (78) ELT 401 (SC)}.

2.8.6 Penalty under Section 112(a) and Section 114A cannot be imposed simultaneously. The SCN proposes imposition of penalty under Section 112(a) and Section 114A of the Customs Act. In this regard, by virtue of the fifth proviso of Section 114A of the Customs Act, penalty under Section 112(a) and Section 114A cannot be invoked simultaneously.

2.9 Section 3(12) of the Tariff Act does not borrow IGST demand, interest and penalty provision from Customs Act. In absence of any machinery provision, IGST and interest cannot be recovered and penalty cannot be imposed on the Noticee.

2.9.1 Section 3(12) of the Customs Tariff Act, 1975 which is borrowing provision with regard to IGST, does not borrow provisions of penalty and interest from the Customs Act, 1962. Therefore, the penalty cannot be imposed and the interest cannot be recovered for non-payment of IGST which is chargeable under Section 3 of the Customs Tariff Act, 1975. They placed reliance on judgment in case of India Carbon Ltd. v. State of Assam, {(1997) 6 SCC 479}, Pioneer Silk Mills Pvt. Ltd. Vs UOI {1995 (80) ELT 507 (Del.)}, Khemka & Co. (Agencies) Pvt. Ltd. {1995 (76) ELT 235 (GOI)}, Bajaj Health & Nutrition Pvt. Ltd. Vs. CC, Chennai {2004 (166) ET 189} etc.

2.9.2 Under the Customs Act, Section 28 is the only provision for recovery of duty short paid duty of differential duty. Therefore, it is important to determine what encompasses within the phrase "duty of customs". 'Duty' has been defined under Section 2(15) of the Customs Act which reads as "duty" means a duty of Customs leviable under this Act. In case of Prestige Engineering (India) Ltd Vs CC, Ex., Meerut {1994 (73) ELT 497 (SC)} Hon'ble Apex Court held that once an expression is defined in the Customs Act, that expression, wherever it occurs in the Act, rules or notifications issued thereunder should be understood in the same sense. Hence, duty of customs must be interpreted as such duties which are levied under the Customs Act. IGST is not levied under Section 12 of the Customs Act, rather it is levied in terms of Section 5 of the IGST Act read with Section 3(7) of the Tariff Act. Section 3(7) merely provides for the manner of collection of the integrated tax. They placed reliance upon decision of Tribunal in case of Interglobe Aviation Ltd. Vs CC, New Delhi {Final Order No. 51226-51571/2020 dated 02.11.2020} wherein it was held that integrated tax is not duty under the Customs Act. They

placed reliance upon judgment in case of Vedanta Limited Vs UOI {2018 (19) GSTL 637 (Mad.)}.

2.10 The impugned SCN is invalid in the absence of valid appeal against the out of charge / bills of entry.

The impugned SCN is invalid in the absence of valid appeal against the Out of Charge of the Bill of Entry. The subject goods were cleared for home consumption after proper order under Section 47 of the Customs Act, 1962 and the said orders were passed on satisfaction of the proper officer that the said goods have been properly assessed before clearing. The said orders being quasi-judicial orders can only be set aside by an order of competent appellate authority proceedings. Quasi-judicial orders cannot be sought to be set aside by mere issuance of SCN, proposing to modify the assessment orders. They relied upon the judgments in case of ITC Limited Vs Commissioner of Central Excise {2019 (368) ELT 216 (SC)}, Jairath International Vs UOI {2019 (10) TMI 642}, Vitesse Export Import Vs Commissioner of Customs (EP), Mumbai {2008 (224) ELT 241 (Tri.-Mumbai)}, Ashok Khetrpal Vs Commissioner of Customs, Jamnagar {2014 (304) ELT 408 (Tri.-Ahmd.)}, Axiom Crodages Ltd. Vs Commissioner of Customs, Nhava Sheva-II {2020(9) TMI 478-CESTAT, Mumbai}.

3. RECORD OF PERSONAL HEARINGS

3.1 There is single Noticee in the subject SCN viz. M/s TDK India Private Limited.

3.2 In compliance of provisions of Section 28(8) read with Section 122A of the Customs Act, 1962 and in terms of the principle of natural justice, the Noticee was granted opportunity of Personal Hearing (PH) on 29.12.2023, 21.05.2024, 03.04.2025, 11.04.2025, 17.04.2025 and 05.05.2025 and PH intimation letter was issued by speedpost / email. On 05.05.2025, Ms. Anjali Singh, Advocate and Ms. Kruti Parashar, Advocate appeared virtually before the Adjudicating Authority on behalf of the Noticee, M/s. TDK India Private Limited. During the PH, they reiterated the submissions made vide letter dated 07.02.2024 as under:

- 1) The authorised representatives submitted that another SCN No. 2553/2023-24/Commr/Gr.VA/CAC/JNCH dtd. 29.01.2024 on the same issue has been issued to the Noticee and requested that both the SCNs may be tagged and heard together. The Adjudicating Authority informed that he is no longer the Adjudicating Authority in the aforesaid SCN as the same has been transferred to the Commissioner of Customs (Adjudication), Mumbai Customs Zone-I vide CBIC Notification No. 72/2024-Cus(NT) dtd. 29.10.2024.
- 2) That the goods imported by the Noticee are 'Lithium-ion Cells' and they have correctly discharged the due duty liability on the imported goods by appropriately claiming the concessional rate of duty under Sl. No. 7 of Notification No. 57/2017 during the period

June, 2018 to January, 2019 and under Sl. No. 17A (inserted vide Notification No. 02/2019 dtd. 30.01.2019) post February, 2019.

- 3) That they have always paid the IGST on the imported goods @ 28% which is the highest rate of IGST payable.
- 4) That as the Noticee has paid all the duties correctly, no demand remains against them and therefore, the SCN may be dropped.

4. DISCUSSION AND FINDINGS

4.1 I have carefully gone through the subject Show Cause Notice (SCN) and its Relied Upon Documents (RUDs), material on record and facts of the case, as well as written and oral submissions made by the Noticee. Accordingly, I proceed to decide the case on merit.

4.2 The Chief Commissioner of Customs, Mumbai Zone-II has granted extension of time limit to adjudicate the case up to 08.06.2025 as provided under Section 28(9) of the Customs Act, 1962, therefore, the case has been taken up for adjudication proceedings within the time limit as per Section 28(9) of the Customs Act, 1962.

4.3 In compliance to provisions of Section 28(8) and Section 122A of the Customs Act, 1962 and in terms of the principles of natural justice, opportunity for Personal Hearing (PH) on 29.12.2023, 21.05.2024, 03.04.2025, 11.04.2025, 17.04.2025 and 05.05.2025 was granted to the Noticee. Availing the said opportunity, the Noticee attended the PH on 05.05.2025. Thus, the principles of natural justice have been followed during the adjudication proceedings. Having complied with the requirement of the principle of natural justice, I proceed to decide the case on merits, bearing in mind the submission / contention made by the Noticee.

4.4 The fact of the matter is that a Show Cause Notice No. 566/2023-24/Commr/Gr.VA/CAC/JNCH dated 09.06.2023 was issued to M/s TDK India Private Limited (IEC-288037723), on the basis of the Alert Circular No. 11/2019 dated 30.03.2019 issued by the Commissioner of Customs (Audit), Mumbai, Zone-1 vide F. No. S/16-Misc-75/2018-19/Audit (P&C). It is alleged in the SCN that the goods covered under CTH 8507 were cleared by declaring lower rate of BCD and/or IGST, however, the imported goods falling under CTH 8507 attract levy of BCD & IGST as per Table-A figuring in Para 1.2 above. Thus, the SCN demands duty to the tune of ₹30,85,61,495/- (Rupees Thirty Crore Eighty Five Lakh Sixty One Thousand Four Hundred and Ninety Five Only) invoking extended period under Section 28(4) of the Customs Act, 1962 along with interest in terms of Section 28AA of the Customs Act, 1962 and consequential penalties under Section 112(a) and 114A, ibid. The Show Cause Notice also propose for confiscation of imported goods having assessable value of ₹2,55,29,53,736/- (Rupees Two Hundred Fifty Five Crore Twenty Nine Lakh Fifty Three Thousand Seven Hundred Thirty Six Only) under Section 111(m) of the Customs Act, 1962.

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

- (i) Whether differential/short paid duty amounting to ₹30,85,61,495/- for the subject goods imported vide Bills of Entry as detailed in Annexure-‘A’ to the subject SCN, should be demanded under Section 28(4) of the Custom Act, 1962.
- (ii) Whether in addition to the duty short paid, interest on delayed payment of Custom Duty should be recovered from the Importer under Section 28AA of the Customs Act, 1962.
- (iii) Whether the said subject goods imported vide Bills of Entry as detailed in Annexure-‘A’ to the subject SCN having assessable value of ₹2,55,29,53,736/- should be held liable for confiscation under Section 111(m) of the Customs Act, 1962.
- (iv) Whether penalty should be imposed on M/s TDK India Private Limited under Section 112(a) of the Customs Act, 1962 for their acts of omission and commission, in rendering the goods liable for confiscation, as stated above.
- (v) Whether penalty should be imposed under Section 114A of Customs Act, 1962 for short levy of duty.

4.6 After having identified and framed the main issues to be decided, I now proceed to examine each of the issues individually based on the facts and circumstances mentioned in the SCN; provision of the Customs Act, 1962; nuances of various judicial pronouncements, as well as documents available on record.

4.7 Whether differential/short paid duty amounting to ₹30,85,61,495/- for the subject goods imported vide Bills of Entry as detailed in Annexure-‘A’ to the subject SCN, should be demanded under Section 28(4) of the Custom Act, 1962.

4.7.1 I note that the Noticee i.e. M/s TDK India Private Limited vide the impugned 94 Bills of Entry (covered under 185 item entries as detailed in Annexure-‘A’ to the subject SCN) filed during the period from 11.06.2018 to 27.03.2019 had imported the goods with description as ‘Lithium Ion Cell’ classifying the same under Customs Tariff Item (CTI) 85076000. Further, I note that the Noticee had mentioned in the description the item of import i.e. Lithium Ion Cell, alongwith ‘Brand Name & Reference No.’ of the goods and also that the goods were described in the Bills of Entry as ‘used in manufacturing of mobile battery / used in manufacturing of mobile battery pack / used in manufacturing of power bank’. From 11.06.2018 to 28.01.2019, the said goods were cleared by the Noticee on payment of BCD @ 0% after availing exemption under Sr. No. 7(ii) of Notification No. 57/2017 dated 30.06.2017. Further, from 29.01.2019 to 27.03.2019, the said goods were cleared on payment of BCD @ 5% after availing exemption under Sr. No. 17A / 17B of Notification No. 57/2017 dtd. 30.06.2017 (as amended vide Notification No. 02/2019-Cus. dated 29.01.2019).

4.7.2 The Noticee had classified the imported goods ‘Lithium Ion Cell’ under CTI 85076000. Therefore, it would be worthwhile to look at the Customs Tariff Heading 8507, which covers the goods of broad description as under:

| | |
|------------|-------------------------------------------------------------------------------------------------------------|
| 8507 | <i>Electric accumulators, including separators therefor, whether or not rectangular (including square).</i> |
| 8507 10 00 | - <i>Lead-acid, of a kind used for starting piston engines</i> |
| 8507 20 00 | - <i>Other lead-acid accumulators</i> |
| 8507 30 00 | - <i>Nickel-cadmium</i> |
| 8507 50 00 | - <i>Nickel-metal hydride</i> |
| 8507 60 00 | - <i>Lithium-ion</i> |
| 8507 80 00 | - <i>Other accumulators</i> |
| 8507 90 | - <i>Parts</i> |

Further, for the sake of convenience, I find it appropriate to reproduce the relevant extract of the Explanatory Notes to Heading 8507 which read as under:

“85.07 *Electric accumulators, including separators therefor, whether or not rectangular (including square).*

- 8507.10 - *Lead-acid, of a kind used for starting piston engines*
- 8507.20 - *Other lead-acid accumulators*
- 8507.30 - *Nickel-cadmium*
- 8507.50 - *Nickel-metal hydride*
- 8507.60 - *Lithium-ion*
- 8507.80 - *Other accumulators*
- 8507.90 - *Parts*

Electric accumulators (storage batteries or secondary batteries) are characterised by the fact that the electrochemical action is reversible so that the accumulator may be recharged. They are used to store electricity and supply it when required. A direct current is passed through the accumulator producing certain chemical changes (charging); when the terminals of the accumulator are subsequently connected to an external circuit these chemical changes reverse and produce a direct current in the external circuit (discharging). This cycle of operations charging and discharging, can be repeated for the life of the accumulator.

Accumulators consist essentially of a container holding the electrolyte in which are immersed two electrodes fitted with terminals for connection to an external circuit. In many cases the container may be subdivided, each subdivision (cell) being an accumulator in itself; these cells are usually connected together in series to produce a higher voltage. A number of cells so connected is called a battery. A number of accumulators may also be assembled in a larger container. Accumulators may be of the wet or dry cell type.

Accumulators are used for supplying current for a number of purposes, e.g., motor vehicles, golf carts, fork-lift trucks, power hand-tools, cellular telephones, portable automatic data processing machines, portable lamps.

Accumulators containing one or more cells and the circuitry to interconnect the cells amongst themselves, often referred to as "battery packs", are covered by this heading, whether or not they include any ancillary components which contribute to the accumulator's function of storing and supplying energy, or protect it from damage, such as electrical connectors, temperature control devices (e.g., thermistors) circuit protection devices, and protective housings. They are classified in this heading even if they are designed for use with a specific device."

4.7.3 On analysis of the Customs Tariff Heading 8507 and Explanatory Notes to Heading 8507, I note that the imported goods viz. 'Lithium Ion Cell' are capable of charging and discharging, and are used in mobile battery / power bank for supplying current to cellular mobile phones. Further, I note that the Explanatory Notes mention *interalia* that in many cases the accumulator container may be subdivided, each sub-division (cell) being an accumulator in itself; and that accumulators containing one or more cells and the circuitry to interconnect the cells amongst themselves, often referred to as "battery packs", are covered by the heading 8507. It is, therefore, observed that the impugned goods rightly fall under CTI 8507 6000. Even the Show Cause Notice does not challenge the description and classification of the goods under CTI 8507 6000. Thus, I find that in the instant case, there is no dispute regarding the description and classification under CTI 85076000 of the impugned goods imported by the Noticee.

4.7.4 Now coming to the issue of appropriate levy of Basic Customs Duty (BCD) on the imported goods, I note that during the relevant time period i.e. from 11.06.2018 to 27.03.2019, the impugned goods 'Lithium Ion Cell' attracted BCD either @ 15% / 20%. The Noticee cleared the said goods on payment of BCD @ 0% or 5% after availing BCD exemption under Sr. No. 7(ii) or 17A/17B of Notification No. 57/2017 dated 30.06.2017 (as amended) which provided exemption of Customs duties on certain goods imported into India for use in the manufacture of cellular mobile phones and other electronic devices. I find that in the present case, the subject issue of availability / non-availability of exemption under Notification No. 57/2017-Cus dated 30.06.2017 (prior to and post amendment by Notification No. 02/2019-Cus dated 29.01.2019) is of pivotal importance around which the entire case revolves.

4.7.5 From 11.06.2018 to 28.01.2019, the subject goods were cleared by the Noticee on payment of BCD @ 0% after availing exemption under Sr. No. 7(ii) of Notification No. 57/2017 dated 30.06.2017. Accordingly, it would be worthwhile to go through the relevant entry of the Exemption Notification, which reads as under:

| S. No. | Chapter or Heading or Sub-heading or Tariff item | Description of goods | Standard Rate | Condition No. |
|--------|--------------------------------------------------|----------------------|---------------|---------------|
| | | | | |

| | | | | |
|----|-------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|---|
| 7. | Any Chapter | Inputs or raw materials for use in manufacture of following parts of Cellular mobile phones; (ii) Battery Pack (iii) Wired Headset (iv) Battery cover | NIL | 1 |
|----|-------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|---|

| Condition No. | Conditions |
|---------------|--------------------------------------------------------------------------------------------------------------------------|
| 1. | If the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. |

4.7.6 From the above, I note that Sl. No. 7(ii) specifically mentions “battery packs” in the list of parts of Cellular mobile phones for which full BCD exemption is provided to inputs or raw materials used in its manufacture. The only condition mentioned to avail such exemption benefit is that the importer should follow the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. I note that in the instant case, the Noticee had declared in the Item Description of the Bills of Entry that the goods are ‘used in manufacturing of mobile battery / used in manufacturing of mobile battery pack / used in manufacturing of power bank’. Moreover, the Noticee had declared the ‘Brand Name & Reference No.’ for which the imported goods are meant. I find that as the impugned imported ‘Lithium Ion Cell’ are used in manufacture of Battery Pack/Power Bank, therefore, the same do fall under the category of inputs or raw materials covered under Sl. No. 7(ii) of Notification No. 57/2017-Cus dated 30.06.2017. Further, from the documents available on record and details available in the ICES 1.5 System in the form of declaration of the particulars of the IGCRD registration with the jurisdictional Custom officer in the impugned Bills of Entry and debiting of Bond/Certificate, I find that the Noticee has fulfilled the condition No. 1 mentioned in above Notification by complying with the procedure set out in the Import of Goods at Concessional Rate of Duty Rules, 2017. I note that the same has not been disputed even in the subject Show Cause Notice.

4.7.7 I note that vide Notification No. 02/2019 w.e.f. 30.01.2019 some amendments were made in the Notification No. 57/2017-Cus dated 30.06.2017. Consequently, Sl. No. 7(ii) i.e. the entry for ‘Battery Pack’ was omitted and two new entries, viz., Sl. No. 17A and Sl. No. 17B were introduced which provided concessional rate of BCD @ 5% to Lithium-ion cells for use in the manufacture of battery pack of cellular mobile phone and power bank, respectively. The extract of Sl. No. 17A and 17B inserted in Notification No. 57/2017 is reproduced below:

| S. No. | Chapter or Heading or Sub-heading or tariff item | Description of goods | Standard Rate | Condition No. |
|--------|--------------------------------------------------|---------------------------------------------------------------------------------------|---------------|---------------|
| 17A. | 8507 6000 | Lithium-Ion cell for use in the manufacture of battery pack of cellular mobile phone. | 5% | 1 |
| 17B. | 8507 6000 | Lithium-Ion cell for use in the manufacture of power bank of Lithium Ion. | 5% | 1 |

| Condition No. | Conditions |
|---------------|---------------------------------------------------------------------------------------------------------------------------------|
| 1. | <i>If the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.</i> |

As already observed by me in Para 4.7.6 above, I find that as the impugned imported 'Lithium Ion Cell' are used in manufacture of Battery Pack/Power Bank, therefore, the same are covered under Sl. No. 17A/17B of the Notification No. 57/2017-Cus dated 30.06.2017 (as amended vide Notification No. 02/2019-Cus. dated 29.01.2019). Further, the Noticee has fulfilled the condition No. 1 mentioned in above Notification. I note that from 29.01.2019 to 27.03.2019, the impugned goods were cleared by the Noticee on payment of BCD @ 5% after availing exemption under Sr. No. 17A / 17B of Notification No. 57/2017 dtd. 30.06.2017 (as amended vide Notification No. 02/2019-Cus. dated 29.01.2019).

4.7.8 In view of the above, I find that BCD @ 0% during the period 11.06.2018 to 28.01.2019 availing exemption under Sr. No. 7(ii) of Notification No. 57/2017 dated 30.06.2017 and @ 5% during the period 29.01.2019 to 27.03.2019 availing exemption under Sr. No. 17A / 17B of Notification No. 57/2017 dtd. 30.06.2017 (as amended vide Notification No. 02/2019-Cus. dated 29.01.2019), has been correctly claimed by the Noticee and accordingly, the due duty was paid by the Noticee in respect of subject Bs/E. Therefore, I find that the demand of BCD in respect of the impugned 94 Bills of Entry (covered under 185 item entries as detailed in Annexure-'A' to the subject SCN) raised in the SCN is not sustainable.

4.7.9 As regards levy of IGST, I note from the documents available on record and details available in the ICES 1.5 System, that in respect of the impugned 94 Bills of Entry (covered under 185 item entries as detailed in Annexure-'A' to the subject SCN), IGST was paid @ 28% under Sr. No. 139 of Schedule IV of the IGST Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017. I note that IGST @ 28% is the highest rate of IGST payable. Therefore, I find that there is no duty recoverable from the Noticee on account of rate of IGST, as the rate at which IGST is paid by the Noticee is in accordance with the rate of IGST demanded in the SCN.

4.7.10 Hence, after taking into consideration the discussions in the foregoing paras, I conclude that in respect of the impugned 94 Bills of Entry (covered under 185 item entries as detailed in Annexure-'A' to the subject SCN) the Noticee has correctly paid the BCD by appropriately claiming the exemption / concessional rate benefit under Notification No. 57/2017 dtd. 30.06.2017 (prior to and post amendment by Notification No. 02/2019-Cus dated 29.01.2019) and has also correctly paid the IGST.

4.8 In view of the above, I do not find any merits in the instant SCN and thus, I am of the opinion that the demand of differential/short paid duty amounting to ₹30,85,61,495/- raised in the subject SCN under Section 28(4) of the Customs Act, 1962 does not sustains and thus, the same merits to be dropped. Resultantly, the confiscation proposed under Section 111(m) of the Customs Act, 1962 as well as the penal provisions invoked under Section 112(a) and/or Section

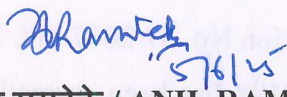
114A of Customs Act, 1962, are not sustainable. Thus, I am compelled that the liabilities so alleged, on account of short-payment of the applicable duty, do not survive and thus, the entire proceedings merits to be dropped.

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

ORDER

I drop all the proceeding initiated against M/s. TDK India Private Limited by the impugned Show Cause Notice No. 566/2023-24/Commr./Gr.VA/CAC/JNCH dated 09.06.2023.

6. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or the persons/firms concerned, covered or not covered by this show cause notice, under the provisions of Customs Act, 1962, and/or any other law for the time being in force in the Republic of India.


 (अनिल रामटेके / ANIL RAMTEKE)
 आयुक्त/Commissioner of Customs
 एनएस-V, जेएनसीएच/NS-V, JNCH

To,

1. **M/s. TDK India Private Limited,**
Kulia Kanchrapara Road,
P.O. - Netaji Subhas Sanatorium,
Kalyani, Nadia, West Bengal - 741251

Copy to:

1. The Addl. Commissioner of Customs, Group VA, JNCH
2. AC/DC, Chief Commissioner's Office, JNCH
3. AC/DC, Centralized Revenue Recovery Cell, JNCH
4. AC/DC, Circle-D1, Audit Commissionerate, JNCH
5. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
6. EDI Section.
7. Office copy.