

	OFFICE OF THE COMMISSIONER OF CUSTOMS, NS-I सीमाशुल्क आयुक्तकाकार्यालय, एनएस-1 CENTRALIZED ADJUDICATION CELL, JAWAHARLAL NEHRU CUSTOM HOUSE, केंद्रीकृतअधिनिर्णयनप्रकोष्ठ, जवाहरलालनेहरूसीमाशुल्कभवन, NHAVA SHEVA, TALUKA-URAN, DIST- RAIGAD, MAHARASHTRA 400707 न्हावाशेवा, तालुका-उरण, जिला- रायगढ़, महाराष्ट्र -400 707
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DIN: 20251178NW000000D1D3

Date of Order: 11.11.2025

Date of Issue: 11.11.2025

F.No. S/10-93/2024-25/Commr/Gr. II(C-F)/NS-I/CAC/JNCH

SCN No. 914/2024-25/Commr/NS-I/CAC/JNCH dtd 12.08.2024

आदेशकीतिथि: 11.11.2025

जारीकिएजानेकीतिथि 11.11.2025

Passed by: Shri Yashodhan Wanage

पारितकर्ता: श्री. यशोधनवनगे

Principal Commissioner of Customs (NS-I), JNCH, Nhava Sheva

प्रधानआयुक्त, सीमाशुल्क (एनएस-1), जेएनसीएच, न्हावाशेवा

Order No.: 264/2025-26 /Pr. Commr/NS-I /CAC /JNCH

आदेशसं. : 264/2025-26/प्र. आयुक्त/एनएस-1/ सीएसी/जेएनसीएच

Name of Party/Noticee: M/s Krishna Antioxidants Pvt Ltd (IEC – 0396045448)

पक्षकार (पार्टी)/ नोटिसीकानाम: मेसर्स कृष्णा एंटीऑक्सीडेंट्स प्रा. लि. (आईसी-0396045448)

ORDER-IN-ORIGINAL**मूलआदेश**

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. इसआदेशकीमूलप्रतिकीप्रतिलिपिसव्यक्तिकोजारीकीजातीहै,उसकेउपयोगकेलिएनिःशुल्कदीजातीहै।

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. इसआदेशसेव्यथितकोईभीव्यक्तिसीमाशुल्कअधिनियम१९६२कीधारा१२९(ए) केतहतइसआदेशकेविरुद्धसीईएसटीएटी, पश्चिमीप्रादेशिकन्यायपीठ (वेस्टरीजनलबेंच), ३४, पी. डी. मेलोरोड, मस्जिद (पूर्व), मुंबई- ४००००९कोअपीलकरसकताहै, जोउक्तअधिकरणकेसहायकरजिस्ट्रारकोसंबोधितहोगी।

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

3. अपीलदाखिलकरनेसंबंधीमुख्यमुद्दे:-

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

फार्म - फार्म नं. सीए३, चारप्रतियोंमें तथा उस आदेश की चारप्रतियाँ, जिसके खिलाफ अपील की गयी है (इन चारप्रतियोंमें से कम से कम एक प्रति प्रमाणित होनी चाहिए).

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

समयसीमा- इस आदेश की सूचना की तारीख से ३ महीने के भीतर

Fee- (a) Rs. One Thousand - Where amount of duty & interest demanded & penalty imposed is Rs. 5 Lakh or less.

फीस- (क) एक हजार रुपये-
जहाँ माँग गये शुल्क एवं ब्याज की तथालगायी गयी शास्तिकीरकम ५ लाख रुपये या उससे 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 माँग गये शुल्क एवं ब्याज की तथालगायी गयी शास्तिकीरकम ५ लाख रुपये से अधिक परंतु ५० 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 माँग गये शुल्क एवं ब्याज की तथालगायी गयी शास्तिकीरकम ५० लाख रुपये से अधिक है।

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

भुगतान की रीति- क्रॉस बैंक ड्राफ्ट, जो राष्ट्रीय कृत बैंक द्वारा सहायकर जिस्ट्रार, सीईएसटीएटी, मुंबई के पक्ष में जारी किया गया होतथा 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 - विधिके उपबंधों के लिए तथा ऊपर यथासंदर्भित एवं अन्य संबंधित मामलों के लिए, सीमा शुल्क अधिनियम, १९९२, सीमा शुल्क (अपील) नियम, १९८२, सीमा शुल्क, उत्पादन शुल्क एवं सेवाकर अपील अधिकरण (प्रक्रिया) नियम, १९८२ 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 129 of the Customs Act 1962.

5. इस आदेशके विरुद्ध अपील करनेके 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, ऐसान किये जाने पर अपील सीमा शुल्क अधिनियम, १९६२ की धारा १२८ के उपबंधों की अनुपालना न किये जाने के लिए नामंजूर किये जाने की दायी होगी।

1. BRIEF FACTS OF THE CASE

1.1 It is stated in SCN that the importer, M/s Krishna Antioxidants Pvt Ltd (IEC-0396045448) having office address at 1, Lopes Manor, I.C. Colony, Borivali (W), Mumbai - 400103 (hereinafter referred to as importer) had filed various Bills of Entry for the clearance of imported goods declared under CTH 29051700, 38237090 and 38237090 through their Customs Broker. The details of Bills of Entry was tabulated and attached as Annexure-A with the said SCN. It is alleged in the SCN that the goods under subject Bills of Entry were imported by the importer under lower/Nil rate of ADD, subject to certain conditions as mentioned in the Notification No. 28/2018-Customs (ADD) dated 25.05.2018 including producer, exporter, country of origin, country of export etc. The analysis of the import data revealed that the importer had misused the above notification in order to avail the benefit of lower duty rate.

1.2 The importer had imported the goods falling under CTH 29051700, 38237020 and 38237090 without paying the true applicable Anti-Dumping Duty as per the Notification No. 28/2018-Customs (ADD) dated 25.05.2018, further amended vide Notification No. 48/2018 dated 25.09.2018. The extract of the said notification is given below: -

TABLE-I

S.No .	Sub-headings	Description of goods	Country of origin	Country of export	Producer	Exporter	Amount	Unit	Currency
1	2	3	4	5	6	7	8	9	10
1	2905 17, 2905 19, 3823 70	All types of Saturated Fatty Alcohols excluding Capryl Alcohols (C8) and Decyl Alcohols (C10) and blends of C8 and C10	Indonesia	Singapore	M/s PT Eco green Oleochemicals	M/s Eco green Oleochemicals (Singapore) Pte Ltd.	NIL	MT	USD
2	2905 17, 2905 19, 3823 70	-do-	Indonesia	Indonesia	M/s PT Musim Mas	M/s Inter-Continental Oils & Fats Pte Ltd, Singapore	7.1	MT	USD
3	2905 17, 2905 19, 3823 70	-do-	Indonesia	Indonesia	M/s PT Wilmar Nabati	M/s Wilmar Trading Pte Ltd., Singapore	52.23	MT	USD
4	2905 17, 2905 19, 3823 70	-do-	Indonesia	Indonesia	Any combination other than Sl.	Any combination other than Sl.	92.23	MT	USD

					Nos. 1, 2 & 3	Nos. 1, 2 & 3			
5	2905 17, 2905 19, 3823 70	-do-	Indonesia	Any	Any	Any	92.2 3	MT	USD
6	2905 17, 2905 19, 3823 70	-do-	Any country other than those subject to antidumpi ng duty	Indonesi a	Any	Any	92.2 3	MT	USD

7	2905 17, 2905 19, 3823 70	-do-	Malaysia	Malaysia	M/s FPG Oleoch emicals Sdh Bhd	M/s Procter & Gamble Internation al Operations SA, Singapore	17.6 4	MT	USD
8	2905 17, 2905 19, 3823 70	-do-	Malaysia	Malaysia	M/s KL - Kepong Oleoma s Sdn Bhd	M/s KL - Kepong Oleomas Sdn Bhd	NIL	MT	USD
9	2905 17, 2905 19, 3823 70	-do-	Malaysia	Malaysia	Any combin ation other than Sl. Nos. 7 & 8	Any combinati on other than Sl. Nos. 7 & 8	37.6 4	MT	USD
10	2905 17, 2905 19, 3823 70	-do-	Malaysia	Any Country	Any	Any	37.6 4	MT	USD
11	2905 17, 2905 19, 3823 70	-do-	Any country other than those subject to antidumpi ng duty	Malaysia	Any	Any	37.6 4	MT	USD
12	2905 17, 2905 19, 3823 70	-do-	Thailand	Thailand	M/s Thai Fatty Alcohol s Co. Ltd.	M/s Thai Fatty Alcohols Co. Ltd.	NIL	MT	USD
13	2905 17, 2905 19, 3823 70	-do-	Thailand	Thailand	Any combin ation other than Sl. No. 12	Any combinati on other than Sl. No. 12	22.5	MT	USD
14	2905 17, 2905 19, 3823 70	-do-	Any country other than country of origin	Thailand	Any	Any	22.5	MT	USD
15	2905 17,	-do-	Thailand	Any	Any	Any	22.5	MT	USD

	2905 19, 3823 70			country					
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Whereas, Para 2 of Notification No. 28/2018-Customs (ADD) dated 25.05.2018 mentions as follows: -

“The anti-dumping duty imposed shall be effective for the period of five years (unless revoked, amended or superseded earlier) from the date of publication of this notification in the Official Gazette and shall be payable in Indian Currency”.

Thus, it appeared to the department that the importer is required to pay ADD as per the said notification. However, the importer had not paid the ADD.

1.3 Further, amendment was done vide Notification No.13/2019-Customs (ADD), 14th March, 2019, wherein relevant para reads as below:

“And Whereas, M/s. PT. Energi Sejahtera Mas (Producer) Indonesia and through M/s. Sinarmas Cepsa Pte Ltd (Exporter/trader), Singapore have requested for review in terms of rule 22 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, in respect of exports of the subject goods made by them, and the designated authority, vide new shipper review notification No.7/38/2018-DGTR, dated the 15th January 2019, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 15th January 2019, has recommended provisional assessment of all exports of the subject goods made by the above stated party till the completion of the review by it;

*Now Therefore, in exercise of the powers conferred by sub-rule (2) of rule 22 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Central Government, after considering the aforesaid recommendation of the designated authority, hereby orders that pending the outcome of the said review by the designated authority, the subject goods, **when originating in or exported from the subject country by M/s. PT. Energi Sejahtera Mas (Producer) Indonesia and through M/s. Sinarmas Cepsa Pte Ltd (Exporter/trader), Singapore and imported into India**, shall be subjected to provisional assessment till the review is completed.*

2. The provisional assessment may be subject to such security or guarantee as the proper officer of customs deems fit for payment of the deficiency, if any, in case a definitive antidumping duty is imposed retrospectively, on completion of investigation by the designated authority.

3. In case of recommendation of anti-dumping duty after completion of the said review by the designated authority, the importer shall be liable to pay the amount of such anti-dumping duty recommended on review and imposed on all imports of subject goods when originating in or exported from the subject country by M/s PT Energi Sejahtera Mas (Producer) Indonesia and through M/s. Sinarmas Cepsa Pte Ltd (Exporter/trader), Singapore and imported into India, from the date of initiation of the said review”

1.4 Further Notification No 23/2022-Customs (ADD) dated 12.07.2022 made the following amendment in the notification 28/2018-Customs (ADD) dated 25.05.2018 and below entry is added:

TABLE-II

S.N o.	Sub-headings	Description of goods	Country of origin	Country of export	Producer	Exporter	Amount	Unit	Currency
1	2	3	4	5	6	7	8	9	10
16	2905 17, 2905 19, 3823 70	-do-	Indonesia	Any country including Indonesia	PT. ENERGI SEJAHTERA MAS	Sinarmas CEPSA Pte. Ltd.	51.64	MT	USD

***Note. - The principal notification No. 28/2018 Customs (ADD), dated the 25th May, 2018 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 498(E), dated the 25th May, 2018 and last amended by notification No. 41/2019-Customs (ADD), dated the 25th October, 2019, published in the official Gazette vide number G.S.R. 812 (E), dated the 25th October, 2019.*

1.5 It has been alleged vide above said SCN that the Anti-dumping duty was leviable on the imported goods on subject Bills of Entry vide Notification 28/2018-Customs (ADD) dated 25.05.2018, but applicable Anti-dumping duty was not paid for the said Bills of Entry by the importer.

1.6 During the investigation, it was seen that the importer had opted the benefit of S.No. 1 of Notification No. 28/2018-Customs (Nil Anti-Dumping) as shown in Table-I for various consignments under the condition that the Producer is "PT Ecogreen Oleochemicals" & Exporter is "Ecogreen Oleochemicals (Singapore) Pte Ltd" along with other mentioned conditions in the said notification. On scrutiny of the relevant documents, it is seen that the goods have not been exported from Singapore, but the same have been transshipped at Singapore. The details mentioned on the Bill of Lading for these consignments clearly indicated that the goods were for "Transshipment at Singapore on Vessel - Shipped on Board on Pre-Carriage Vessel at Batam, Indonesia,". This also indicated that there is no 'Export Declaration/ Bill of Export/Shipping Bill' presented at Singapore, Thus the mandatory condition of country of export as Singapore is not being fulfilled by the Exporter. Consequently, it appeared that the importer inappropriately claimed the benefit of Sr. No. 1 of Notification 28/2018-Customs.

Copy of one such Bill of Lading uploaded in e-sanchit by the importer is as below:

Shipper PT. ECOGREEN CLEOCHEMICALS J.L. PELABUHAN KAY.1, KABIL, BATAM ISLAND 29467 INDONESIA TELEPHONE: (62-778) 711002 FACSIMILE: (62-778) 711007		ECONSHIP TECH PRIVATE LIMITED Ocean Bill Of Lading No: SIN136374NSA CHINA BL REGD NO SMTG-NV01402 & MTO(India) REGD NO MTO/DGS 72061/OCT/2022	
Consignee KRISHNA ANTIOXIDANTS PRIVATE LIMITED UNIT-II, PLOT NO B-23/24, MIDC LOTE PARSHURAM KHED, VILLAGE: AWASHI-415722, TAL- KHED, DIST-RATNAGIRI, MAHARASHTRA, INDIA.*		Received the goods in apparent good order and condition and, as far as ascertained by reasonable means of checking, as specified above unless otherwise stated. The carrier, in accordance with and to the extent of the provisions contained in this B/L, and with liberty to sub-contract, undertakes to perform and/or in his own name to procure performance of the combined transport and the delivery of the goods, including all services which are necessary to such transport from the place and time of taking the goods in charge to the place and time of delivery and accepts responsibility for such transport and such services. Weights, measures, marks, numbers, quality, contents, descriptions and value as declared by the shipper but unknown by the carrier, in accepting this B/L, the merchant expressly accepts and agrees to all its stipulations, exceptions and conditions whether written, printed, stamped or otherwise incorporated and in particular to the terms overleaf as if they were signed by the merchant. One of the B/Ls must be surrendered duly endorsed in exchange for the goods or delivery order IN WITNESS whereof the number of original B/Ls have been signed, if not otherwise stated above, one of which being accomplished the other(s) to be void. The original B/Ls are cloud based eBLs, e-signed by shipping line.	
Notify Party KRISHNA ANTIOXIDANTS PRIVATE LIMITED UNIT-II, PLOT NO B-23/24, MIDC LOTE PARSHURAM KHED, VILLAGE: AWASHI-415722, TAL- KHED, DIST-RATNAGIRI, MAHARASHTRA, INDIA.*			
Vessel : CSL SANTA MARIA		Voyage : 889W	
Port of Loading SINGAPORE		Port of Discharge NHAVA SHEVA, INDIA	Place of Delivery / Final Destination NHAVA SHEVA, INDIA
Container Seal PKG Gm(KGS) ECU2242909 EOB007533 1 19797 Total 1 PACKAGE		1 X 20 DV (Non DG) Sald to contain *KIND ATTN: - MR. HARSHAD KINI PHONE:- +91 22 4090 4100 EXT. 165 MOBILE: +91 7045920850	
Marks & Number SHIPPING MARK: KAPL NHAVA SHEVA FATTY ALCOHOL C12-14 LAURYL MYRISTYL ALCOHOL GROSS WT:19.797 MT NET WT: 19.700 MT COUNTRY OF ORIGIN: INDONESIA LOT NO.: B3321-3240-19 DATE OF MANUFACTURE: 14 NOVEMBER 2019		1X20 FEET CONTAINERS PACKED IN FLEXITANK 19.700 MT OF FATTY ALCOHOL C12-14 LAURYL MYRISTYL ALCOHOL SHIPPER'S REF: 1010712617/2010712617 IEC NUMBER : 0398043001 GSTIN NUMBER : 27AAACK1793M125 PAN NO. AAACK1793M OFFICIAL EMAIL ADDRESS OF IMPORTER: HARSHAD.KINI@CRISTOL.COM UIC CODE:382370 TRANSHIPMENT AT SINGAPORE ON VESSEL CSL SANTAMARIA VOY. 889W SHIPPED ON BOARD ON PRE-CARRIAGE VESSEL BUJANA OCEAN 09 VOY. 89116 AS AT BATAM, INDONESIA ON 15 NOV 2019	
		Gross Weight 19797.000 KGS Net Weight 19700 KGS	
14 DAYS FREE DETENTION AT DESTINATION			
(1)Shipped On Board :21 Nov 2019 (2)Shipper's Load, Stow, Count & Seal. (5)No security deposit for damage or claim for damage (Except loose scrap or stone). (3)FCL/FCL (4)CY/CY			
Freight & Charges	Freight Payable At	Number Of Original BL's	Place Date Of Issue
Freight Prepaid	SINGAPORE	THREE (03)	SINGAPORE 22/11/2019
For Delivery Please Apply To: Econship Tech Private Limited. HBL/CFS - lgm@econshipping.com 876767888 Ext 31 Whatsapp: 8291945613 DO - do.mumbai@econshipping.com 876767888 Ext 132 Whatsapp:8879987395 Live Tracking - www.econshipping.com - ATA/VGM No/Line No/CFS/Depot PIC : Ms Deepali			
FOR ECONSHIP TECH PRIVATE LIMITED (As carrier)   Sign: <i>Pak</i> Date: 22/11/2019			

1.7 It is mentioned in the SCN that the importer had imported the goods from other Suppliers (Inter-Continental Oils & Fats PTE. LTD., Sinarmas Cepsa PTE. LTD. & Wilmar Trading PTE. LTD.) without paying the applicable Anti-Dumping Duty as per the ADD notification. The amount of Anti-Dumping Duty payable is calculated and is mentioned in the attached Annexure-A.

1.8 In SCN the relevant provisions of law have mentioned, in so far as they relate to the facts and circumstances of the subject imports, are as under;

A. Section 17: - Assessment of Duty

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

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

B. Section 28 (4): Notice for payment of duties, interest etc

Where any duty has not been [levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of, -

Collusion: or

Any wilful mis-statement: or

Suppression of facts

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

A. Section 46. Entry of goods on importation. –

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

The accuracy and completeness of the information given therein; The authenticity and validity of any document supporting it; and compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

D. Section 111. Confiscation of improperly imported goods, etc.

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

E. 114A: Penalty for short-levy or non-levy of duty in certain cases:

Where the duty has not been levied or has not 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 under sub-section (8) of section 28 shall, also be liable to pay a penalty equal to the duty or interest so determined.

F. 114AA: Penalty for use of false and incorrect material. -

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

1.9 It has been stipulated in the SCN that consequent upon amendment to the section 17 of the Customs Act, 1962 vide the Finance Act, 2011, "self-assessment" has been introduced effective from 08.04.2011 which provides for self-assessment of duty on imported goods by the importer himself by filing Bill of Entry, in electronic form. Section 46 of the Customs Act, 1962 makes it mandatory for the importer to make entry for the imported goods by presenting the 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 has 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 claimed, if any, in respect of the imported goods while presenting the Bill of Entry. Thus, with the introduction of self- assessment vide Finance Act, 2011 in terms of Section 17 and Section 46 of the Customs Act, 1962, it is the added and enhanced responsibility of the importer to declare true and correct declaration in all aspects including levy of correct duty.

1.10 It is concluded in the SCN that the Anti-dumping duty vide Notification No. 28/2018-Customs (ADD) dated 25.05.2018 was leviable on the import of the Saturated Fatty Alcohol goods originating from Indonesia, Malaysia & Thailand and imported into India with effect from 25.05.2018. Hence, the importer had not paid the differential Anti-dumping duty amounting to **Rs. 1,46,88,885.9/-** and IGST on not paid Anti-dumping Duty amounting to **Rs 26,43,999.463/-** as explained in the preceding paras.

1.11 It was informed to importer vide above said SCN that as per section 46(4) of the Customs Act the importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any and such other documents relating to the imported goods as may be prescribed. In the instant case, the importer has not declared the truth of the contents in the bill of entry and hence not paid the applicable Anti-dumping duty and

IGST. Since such Anti-dumping duty and IGST appears to have arisen due to suppression and willful misstatement by the importer, the demand for differential duty is invokable under the extended period as per the provisions of Section 28 (4) of the Customs Act, 1962.

1.12 It is alleged in the above said SCN that the said goods have been imported by the importer by not paying applicable Anti-dumping duty leviable under Notification 28/2018-Customs (ADD) dated 25.05.2018 which resulted into short payment of **Anti-dumping duty of Rs. 1,46,88,885.9/- & IGST on not paid Anti-dumping Duty amounting to Rs 26,43,999.463/-** (total amounting to Rs 1,73,32,885.37/-). Accordingly, M/s Krishna Antioxidants Pvt Ltd has committed these infirmities with a view to resort to evasion of duty with malafide intention to defraud the exchequer of its rightful duty thereby clearly attracting the penal provisions of Section 114A of the Customs Act, 1962 as well.

1.13 As per this SCN by this act of willful mis-declaration the said goods have been imported by the importer by not paying applicable Anti-dumping duty leviable under Notification 28/2018-Customs (ADD) dated 25.05.2018 which resulted into short payment of Anti-dumping duty of **Rs. 1,46,88,885.9/- & IGST on not paid Anti-dumping Duty amounting to Rs 26,43,999.463/- (total amounting to Rs 1,73,32,885.37/-)**, liable for confiscation in terms of provisions of Section 111 (m) of the Customs Act, 1962.

1.14 This act of commission and omission, of mis-declaration of the goods, has rendered the subject goods liable to confiscation in terms of provisions of Section 111(m) of the Customs Act, 1962, consequently, rendered the Importer liable for penal action in terms of provisions of Section 112(a) of the Customs Act, 1962.

1.15 The importer had knowingly and intentionally made, used declarations and documents which are false and incorrect during the import transaction under Customs Act, 1962 with the department with an intention to evade Customs duty thereby rendering themselves liable for penalty under Section 114AA of the Customs Act, 1962.

1.16 Therefore in terms of Section 124 read with Section 28(4) of the Customs Act, 1962, **M/s Krishna Antioxidants Pvt Ltd (IEC-0398043001)** having office address at 1, Lopes Manor, I.C. Colony, Borivali (W), Mumbai 400103, was called upon to Show Cause to the **Commissioner of Customs, NS-I, JNCH, Nhava-Sheva, Taluka-Uran, District-Raigad, Maharashtra-400707** as to why:-

- a) The Anti-dumping duty vide Notification 28/2018-Customs (ADD) dated 25.05.2018 should not be levied on the import of the goods "Saturated Fatty Alcohol" imported against the Bills of Entry, as tabulated in attached Annexure-A of this Show Cause Notice.
- b) The differential Anti-dumping duty amounting to **Rs. 1,46,88,886/- (One Crore Forty-Six Lakh Eighty-Eight Thousand Eight Hundred Eighty-Six only)** and IGST on Anti-dumping Duty amounting to **Rs 26,43,999/- (Twenty-Six Lakhs Forty-Three Thousand Nine Hundred Ninety-Nine only)** as explained in the preceding paras should not be demanded and recovered as per section 28(4) of the Customs Act, 1962, and accordingly, the applicable interest against the same should not be demanded and recovered under section 28AA of the Customs Act, 1962.

- c) The goods covered under the Bills of Entry as tabulated in attached Annexure-A of this Show Because Notice should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962.
- d) Penalty should not be imposed on M/s Krishna Antioxidants Pvt Ltd under the provisions of Sections 112(a) and/or 114A, and/or 114AA of the Customs Act, 1962.

2. WRITTEN SUBMISSIONS OF NOTICEE

2.1 It is submitted by Noticee that the subject SCN has been issued on the basis of documents submitted by the Noticee. The importer had submitted the import documents to the department related to the 148 consignments listed in the Annexure-A of the SCN. It is submitted by Noticee that no new documents and evidence has been incorporated in the subject SCN while issuing demand and proposing confiscation and penal action under Customs Act 1962, therefore there was no investigation done by the department in this matter.

2.2 The notice has denied all the allegations made in the SCN including the differential duty demand made under Section 28(4) of CA'62 in the Annexure-A to the SCN based on the facts of clearance available in the import documents, legal provisions on imposition and collection of Anti-Dumping Duty, on the basis of Findings of Director General Trade Remedy, Notification issued by the Ministry of Finance, provisions of Customs Tariff Act 1975, the Law established by Hon'ble Apex Court and decisions/ruling of Tribunals.

2.3 The Noticee has drawn the attention towards the basis and /or evidences considered in SCN. They have informed that the evidences are the import documents submitted by the Noticee themselves for the 148 consignments listed in Annexure-A of the SCN. It is re-iterated that no misdeclaration of description and other particulars has been alleged in the transaction documents namely invoice, packing list, Country of Origin Certificate, Bill of Lading. As per noticee the main issue involved is interpretation of levability of ADD as per Notification No. 28/2018-Cus (ADD). The Department had concluded without giving any reason that Sr. Nos. 5 or 6 of the said Notification is correct Sr. No. for calculation of differential ADD @US\$92.23 PMT in majority of cases out of 148 BEs wherein the producer is M/s PT Ecogreen Oleochemicals Indonesia and Exporter is M/s Ecogreen Oleochemicals Singapore.

2.4 No ADD is leviable where clearance is made under Advance License

2.4.1 It is submitted by Noticee that irrespective of the Serial Number of ADD Notification 28/2018-Cus, their 29 consignments out of 148 consignments listed in Annexure-A of SCN has been cleared under Advance License Notification 18/2015-Cus which expressly mention exemption to materials imported against a valid Advance Authorization from whole of Customs Duty, Additional Duty and Anti-Dumping Duty. Accordingly, the Customs department has assessed the above 29 BEs without the levy of ADD and cleared the goods out of Customs Control. However, ADD on these 29 consignments have been included in total demand calculation under SCN. The list of 29 consignments (BEs) cleared under Advance Authorization is enclosed as Annexure-2 of their reply for due verification of their claim. Hence the differential ADD demand of Rs. 27,64,796/- (ADD Rs. 23,43,046/- + IGST on differential ADD Rs. 4,21,748/-) against these 29 BEs is contrary to the provisions of ADD and Advance License and has been demanded without the authority of law, hence is liable to be set aside. The list of BEs

cleared against the Advance License along with ADD proposed and differential ADD calculation as per the SCN is enclosed in separate sheet as Annexure-2 to their reply.

2.5 No ADD leviable when clearance is made under EOU Scheme

2.5.1 It is informed by Noticee that out of 148 consignments they had cleared 79 consignments under EOU scheme. The list of said 79 consignments cleared under EOU Scheme under Notification 052/2003-Cus is enclosed as Annexure-3 of their submission for due verification of above claim of the Noticee. The Noticee submits that in all 79 consignments clearance were sought under EOU Scheme under Notification 052/2003 -Cus which are liable to be assessed duty free including the Anti-Dumping duty, which were duly approved and assessed by Customs without charging ADD.

2.5.2 It is submitted by Noticee that irrespective of Serial Number of ADD Notification 28/2018-Cus the goods imported against these 79 consignments will not attract ADD.

2.5.3 The Noticee submitted that by virtue of Sub-Section 2A(1) of Section 9A of Customs Tariff Act, 1975 the ADD imposed under sub-section (1) or (2) shall not apply to Articles imported by a 100% EOU. The fact that the ADD Notification 28/2018 has been issued under power conferred by sub-section(1) of Section 9A of CTA 1975. It is mentioned on the opening para of the said Notification and hence the ADD is not leviable on the goods imported under EOU scheme.

2.5.4 Further CBIC vide Circular 12/2008-Cus dt. 24.07.2008 has clarified that no ADD is leviable on EOU imports (para 10 of Circular refers). Hon'ble Apex Court in the matter of M/s Dhiren Chemicals 2002(139) E L T 3(S. C.) dt. 12.12.2001 has ruled that the CBEC circulars have binding effect on Revenue Departmental Officer.

2.5.5 It is submitted by importer that out of 148 consignments listed in Annexure-A to the SCN the 79 consignments along with amount of ADD demanded is enclosed as Annexure-3. The alleged demand of ADD amounting to Rs. 76,72,677/- and IGST on the said differential ADD amounting to Rs. 13,81,082/- totaling to Rs. 90,53,759/- is liable to be set aside on the above count.

2.5.6 Thus, Rs. 1,18,18,855/- out of total demand of Rs.1,73,32,885/- is liable to be dropped as wrongly/incorrectly raised.

2.6 Submission on ADD leviable on Imports cleared on payment of duty

2.6.1 The Noticee submitted that they have cleared subject goods i.e. Saturated Fatty Alcohols vide 40 BEs on payment of applicable Customs duty and Antidumping duty, wherever applicable, as per Notification No. 28/2018-Cus. The list of consignments cleared without Advance License and EOU, on payment of applicable duty, is enclosed as Annexure-4 in submission. It is submitted by Noticee that in case of 38 out of 40 Consignments (BEs), the producer of the goods was M/s. PT Ecogreen Oleochemicals Indonesia and Exporter is M/s. Ecogreen Oleochemicals Singapore and in two cases the Producer was PT Musim Mas Indonesia and Exporter was Intercontinental Oil and Fats Pte Ltd Indonesia.

2.6.2 The Noticee has submitted that they have rightly and correctly claimed the NIL ADD on Imports where the Producer/ manufacturer is PT Ecogreen Oleochemicals Indonesia and the Exporter is M/s Ecogreen Oleochemicals Pte. Singapore as per the entry made in Column 6 and 7 of the Notification no. 28/2018-Cus (ADD) reproduced as Table-1 of this submission below: -

S.N o.	Sub-headings	Description of goods	County of origin	County of export	Prod ucer	Exporter	Am ount	Unit	Curr ency
1	2	3	4	5	6	7	8	9	10
1	2905 17, 2905 19, 3823 70	All types of Saturated Fatty Alcohols excluding Capryl Alcohols (C8) and Decyl Alcohols (C10) and blends of C8 and C10	Indonesia	Singapore	M/s PT Eco green Oleoc hemic als	M/s Eco green Oleochemi cals (Singapore) Pte Ltd.	NIL	MT	USD

2.6.3 The above ADD Notification contains the manufacturer/producer and exporter specific entry for levy of Anti-Dumping duty in case of PT Ecogreen Oleochemicals Indonesia as Manufacturer and M/s Ecogreen Oleochemicals Pte. Singapore as Exporter, the ADD applicable is NIL.

2.6.4 The Noticee submitted that all above imports fall in Sl. No. 1 of ADD Notification as the goods imported are found to be Saturated fatty Alcohols, its Country of Origin certificate confirms Origin as Indonesia, the manufacturer shown in import documents is PT Ecogreen Oleochemical Indonesia, the import invoice is raised and payment received by M/s Ecogreen Oleochemicals Singapore as Exporter and the goods exported from Singapore by Exporter located in the said country by loading the goods brought on feeder vessel from Batam Indonesia to the main vessel at Singapore.

2.6.5 On the basis of Bill of Lading, it is concluded by the Department that the Country of Export is not Singapore but Indonesia as the goods have been loaded at the Indonesian Port and that the Bill of Lading shows that the goods are transshipped at Singapore Port and not exported from Singapore.

2.6.6 It is objection of Noticee that while observing the above said serial number of ADD notification the department has overlooked the facts that the goods were purchased by Singapore Exporter from Indonesia and that the goods were shipped in Pre-carriage vessel to Singapore from Indonesian port of Batam and then the same shipped to India after loading on to vessel at Singapore. Thus, the port of Export is also Singapore. One such import documents of BE No. 4925925 dt. 06.03.2023, Invoice No. 2070728413 dt. 23.02.2023 is enclosed as Annexure-5 with importers reply. The documents clearly demonstrate that the goods were shipped from Batam Port Indonesia on a pre-carriage vessel Batam Indo v voyage to Singapore and then the same was loaded into vessel WAN HAI at Singapore thus the Port of Loading becomes Singapore.

2.6.7 I find that the Noticee submitted that the ADD Notification has not been interpreted in correct manner to determine the Anti-dumping duty as per the said Notification issued by DGAD. The Opening para of ADD Notification 28/2018 as amended, reads as; -

“Whereas, in the matter of import of 'Saturated Fatty Alcohols' (hereinafter referred to as the subject goods), falling under Chapters 29 and 38 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act), originating in, or exported from Indonesia, Malaysia and Thailand (hereinafter referred to as the subject countries) and imported into India, the designated authority vide its final findings, published in the Gazette of India, Extraordinary, Part I, Section 1, vide Notification No. F. No. 14/51/2016-DGAD, dated the 23rd April, 2018, has come to conclusion that -

(i) the product under consideration is exported to India from the subject countries below its associated normal value, thus, resulting in dumping of the product;

(ii) some of the imports were also causing material injury to the domestic industry,

and has recommended the imposition of definitive anti-dumping duty on the imports of subject goods, originating in or exported from the subject countries and imported into India, in order to remove injury to the domestic industry;

Now, therefore, in exercise of the powers conferred by sub-sections (1) and (5) of section 9A of the Customs Tariff Act, and rules 18 and 20 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Central Government, after considering the aforsaid final findings of the designated authority, hereby imposes on the subject goods,-----”.

2.6.8 The wording of ADD Notification clearly states that the same has been inserted in the table on the basis of Investigation and Final Findings of Designated Authority (DA) published as Notification in Official Gazette. Further the duty has been imposed by Government of India on the basis of power conferred by sub-sections (1) and (5) of section 9A of the Customs Tariff Act, and rules 18 and 20 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995. Thus, the Notification has not been issued under Customs Act 1962 but under Section 9A of Customs Tariff Act which deals with Anti-dumping duty and the ADD Rules of 1995 which for the sake of clarity is reproduced below: -

“Sub-Section (1) of Section 9A:-Where 1[any article is exported by an exporter or producer] from any country or territory (hereinafter in this section referred to as the exporting country or territory) to India at less than its normal value, then, upon the importation of such article into India, the Central Government may, by notification in the Official Gazette, impose an anti-dumping duty not exceeding the margin of dumping in relation to such article.

Subsection (5) of Section 9A :-The anti-dumping duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition

Rule 18. (1) The Central Government may, within three months of the date of publication of final findings by the designated authority under rule 17, impose by notification in the Official Gazette,

upon importation into India of the article covered by the final finding, anti-dumping duty not exceeding the margin of dumping as determined under rule 17.-----”

Rule 20:- ADD imposed shall take effect from the date of publication of Notification in Official Gazette of India.

2.6.9 It is submission of Noticee that the legal provisions quoted in para above clearly shows that ADD Notification is based on the Dumping Investigation carried out by the Designated Authority. The Final finding is binding on Central Government as per provisions of Section 9A(1) (5) of CTA 1975 and Rule 18 of Determination of Anti-Dumping Rules 1995.

2.7 The Noticee Submits that in case of doubt on coverage of ADD Notification on Imports, the Final Findings of the Designated Authority is the legal document to call upon and consult before arriving at any conclusion. In the subject case also, the Designated Authority conducted a thorough and detailed Anti-Dumping Investigation concerning imports of “Saturated Fatty Alcohols” from manufacturers located in Indonesia, Malaysia, Thailand and Saudi Arabia at the instance of the petitioners (Domestic Industry) and issued its findings as Notification published in the Official Gazette of India No. 14/51/2016-DGAD dated 23.04.2018(Copy Attached as Annexure-6). Some Important points of above Final Findings, related to the present case are: -

I. The Designated Authority found that the imports of the subject goods from Saudi Arabia during the Period of Investigation accounted for less than 3 percent. Accordingly, Saudi Arabia was excluded from the investigation.

II. The Designated Authority investigated manufacturers from the remaining three countries namely Indonesia, Malaysia and Thailand to determine the extent of injury being caused by them to the local producers. Accordingly, the investigating authority recommended a Table stating injury margin vide F. No. 14/51/2016-DGAD dated 23.04.2018 which has been adopted as such in identical manner in ADD Notification 28/2018 dt. 25.05.2018.

III. As mentioned in the Final Findings, the Producer and Exporter in question i.e. PT Ecogreen Oleochem Indonesia and Ecogreen Oleochem Singapore, participated in the investigation and submitted data related to exports for investigation and determination of Dumping Margin, if any. Those producers from the three countries who did not participate in the investigations were classified differently with higher imposition of ADD.

IV. Para 31 of the Final Finding contained the fact that the manufacturer M/s PT Ecogreen Oleochem Indonesia (PTEOI) and Ecogreen Oleochem Singapore (EOS) are related companies and that the PTEOI sells goods to India through EOS only. In the said arrangement, the goods were sold to EOS by PTEOI on ex-factory terms and then exports the goods to India. Thus, the exporter for goods manufactured by PTEOI to India is EOS.

V. The Designated Authority, beside investigating into the pricing and sale aspect at manufacturer M/s PTEO Indonesia also investigated the same aspect at the present exporter i.e. EOS (Singapore). The Final Findings listed the cost incurred by EOS Singapore in export from Singapore after purchase from Indonesia on Ex-factory price which included inland freight, Insurance, commission, rebates etc. Thus, while arriving at the margin of dumping, the Designated authority considered the cost and expenses of both the PT Ecogreen Oleochem

Indonesia and Ecogreen Oleochem Singapore for recommending ADD to be imposed to neutralize the effect of dumping. The same process was also adopted for other related parties namely-(1) PT Musim Mas Indonesia and Inter-continental Oils and Fats, (2) PT Energi Sejahtera Mas Indonesia and M/s Sinarmas Cespa Pvt. Ltd Singapore and (3) PT Wilmer Nabati Indonesia and Wilmer Trading Pvt. Ltd.

VI. The para 84 of Final Findings contained table with list of Producer and supplier/exporter and the injury margin against the same. As per the Sl. No. 1 of the said list, in case of PTEOI and EOS the injury margin is Nil. Similarly, for PT Musim Mas and Intercontinental Oils and fats the injury margin is US\$7.1 PMT. It is relevant to emphasize that Ecogreen – both PTEO and EOS had participated in the investigation process and thus imports from Ecogreen are specifically mentioned under Sr. No. 1 of the ADD Notifications. No other Serial Number of the said Injury margin Table of Final Finding Notification is applicable for imports from PTEO and EOS combination. The government issued notification no. 28/2018 as amended time to time imposing the ADD equal to injury margin given in para 81 of the Final Findings. Thus, Notification is based on Final findings only and is liable to be interpreted in terms of the said findings which clearly covered M/s EOS as Exporter and considered the internal freight element from Ex-factory in Indonesia to Singapore port in investigation.

VII. The Noticee submitted that internationally recognized practice of imposition of anti-dumping duty has consistently been referring to producer in the country of the origin of the product being investigated, irrespective its coordinate of export. This is consistent with the Final findings in the Sunset Review Anti-Dumping Investigation concerning imports of Saturated Fatty Alcohol originating in or exported from Indonesia, Malaysia and Thailand under F. No. 7/01/2022-DGTR dated 02/02/2023 (Enclosed as Annexure-7).

Under Sunset Review the Recommendation has been made as under-

“146. Therefore, Authority recommends continuation of anti-dumping measure as fixed rate duty. Accordingly, definitive anti-dumping duty equal to the amount mentioned in Column 7 of the Duty Table below is recommended to be imposed for five (5) years from the date of the Notification to be issued by the Central Government, on imports of the subject goods described at Column 3 of the Duty Table, originating in or exported from Indonesia, Malaysia and Thailand. Duty Table of Sun-set Review is as under for Serial Number-

Duty Table

S. No	Heading/ Subheading	Description of Goods	Country of Origin	Country of Export	Producer	Amount (USD/MT)
1	2905.17, 2905.19, 3823.70	Saturated Fatty Alcohol of Carbon chain length C12 to C18 and	Indonesia	Any including Indonesia	M/s PT Ecogreen Oleochemical s	Nil

		their blends				
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2.7.1 It is pointed out by Noticee that in final finding the Country of Export was mentioned as “Singapore” whereas in the Sun-Set Review findings Country of Export has been mentioned as “Any including the Country of Origin” for the goods produced by M/S. PT Ecogreen Oleochemicals, Indonesia. This clearly confirms that when goods were produced by M/s PT Ecogreen Oleochemicals, Indonesia, then ADD was not applicable, no matter the goods had been exported from which country. In the present case there is no dispute that the manufacturer/producer is PT Ecogreen Oleochem Chemicals Indonesia, for which NIL ADD has been prescribed.

VIII. The Noticee has submitted the various citations. CESTAT Principal Bench of Delhi in the Matter of Apcotex Industries Ltd Vs. Union of India 2023) 7 Centax 86 (Tri.-Del) [30-08-2022] in a matter where the Central Government did not impose ADD as per Final Finding of DA and issued Office Memorandum conveying decision not to impose ADD, the Tribunal quashed the said Office Memorandum with direction to Central Government to examine the matter afresh as per the DA’s Final finding. Relying on the above, importer claimed that the Final Finding of DA is binding on Central Government in imposing ADD. In the present case also the ADD Notification is completely based on the Final Finding. Hence the Final Finding should be considered, in case of any doubt on coverage of ADD Notification.

2.7.2 It has been emphasized by the Noticee that based on the Final Findings, discussed above, the Imports from M/s Ecogreen Oleochemicals Singapore wherein the manufacturer is PT Ecogreen Oleochemicals Indonesia will fall under Sl. No. 1 of Notf. 28/2018-Cus and attract NIL rate of duty.

2.7.3 It is submitted by Noticee that the Disclosure statement issued under File No. 14/51/2016-DGAD, Government of India, Ministry of Commerce & Industry, Department of Commerce (Directorate General of Anti-Dumping & Allied Duties), New Delhi, dated 23.04.2018 describes the transaction process of PTEO and EOS. The Statement at Para 31 states that

“During POI, PT Ecogreen Oleochemicals Indonesia has exported ***** MT of the subject goods to India through Ecogreen Oleochemicals (Singapore) Pte Ltd, Singapore and Ecogreen, Indonesia has sold the subject goods to Ecogreen Singapore on ex-factory terms.”

Thus, there exists prior arrangements of export of goods produced by M/s PT Ecogreen Oleochemicals Indonesia through M/s Ecogreen Oleochemicals Singapore where goods sold to EOS on ex-factory price and shipped to Singapore in pre-carriage vessel where the Singapore exporter load it on Vessel for shipment to India, as can be seen from the Import documents (Copy of one such documents attached as Annexure-5). Thus, the arrangement was covered in the ADD investigation and hence there appears to be no reason to question the coverage of above transaction under Sl. No. 1 of Notification 28/2018-Cus.

2.7.4 It is submitted by Noticee that at Para 31, it has been found by investigating authority that PT Ecogreen Oleochemicals, Indonesia has exported the goods to India only through Ecogreen Oleochemicals (Singapore) Pte Ltd. This is a clear reference to Third-Party Export. The

word **THROUGH** is very much important in the above said sentence. The Singapore entity, M/S. Oleochemicals (Singapore) Pte Ltd had worked as an exporter situated in third Country. This entire transaction was happening through the well-known procedure of third Country invoicing. In the third country invoicing, the goods are moved from origin but the third country party is considered actual exporter because third country party issues the invoice and packing list in his name showing himself exporter and the Shipping Bills are filed at the country of origin of goods. The Foreign currency remittance also goes to this third country exporter.

This fact is also evident from the Certificate of Origin (COO) issued by the Indonesian Authority under AIFTA Rules, wherein Sr. No. 13 of the said COO, relating to THIRD PARTY EXPORT/DOCUMENTATION is ticked Refer relevant COO sample copy is enclosed in Annexure-5 It signifies that the entire process of shipment has been clearly carried out in line with the established process, which was declared to the Designated Authority at the time of reference investigations.

2.7.5 It is submitted by Noticee that the Exporter is person who confirms orders, raises Invoice and receives remittance against the Export invoice. In this case, Importers have been placing orders on EOS, Singapore and EOS was issuing the export invoices, packing list and importers were paying remittance to EOS only. Therefore, the above referred Notifications mentioned M/s. Ecogreen Oleochemicals (Singapore) Pte Ltd – EOS, as exporter. The Companies, PTEO and EOS were following the same procedure before initiation of investigation, during the time of investigation, after the Final Findings and issuance of the Notification. There has been no change in the mode of operation and procedure of transactions from PTEO and EOS to the Indian importers before or after the investigation.

2.7.6 It is submitted by Noticee that as per Bill of lading the goods had been transshipped from Batam Port Indonesia to Singapore Port and port of loading has been declared at Singapore in the Bill of lading. Transshipment occurs when goods are transferred from one vessel to another, typically also due to the limitations of smaller ports or feeder services. The initial movement from Batam, Indonesia to Singapore (a distance of around 20 nautical miles) is seen on a feeder service i.e. Pre- Carriage vessel BatamIndo v., and not the primary loading port for shipping purposes. The port of loading is where the cargo is loaded onto the main (mother) vessel that will carry it to the final destination.

2.7.7 It is informed by Noticee that in their case, the mother vessel was loaded at Singapore, not Batam, Indonesia. Batam Port's inability to handle large vessels means that goods must be moved first to a larger hub, in this case - Singapore, for the main sea voyage. This is a standard practice, especially in regions where smaller ports act as feeder points. The Bill of Lading or other shipping documents will reflect Singapore as the port of loading because that is where the goods were last loaded onto the main vessel responsible for the international leg of the journey. This declaration aligns with the usual industry practices for shipping documentation and liability purposes. According to conventions and other international maritime regulations, the port of loading is the port where the goods are loaded onto the main vessel, not the feeder vessel. Therefore, declaring Singapore as the port of loading is compliant with these shipping standards.

2.7.8 It is submitted by Noticee that no basis for taking ADD @US\$ 92.23 PMT has been mentioned in the SCN. The Annexure to SCN shows that ADD @US\$92.23 has been taken for

raising demand under Section 28(4) of CA'62. Now as per Table to Notification 28/2018-Cus ADD of US\$92.23 PMT is prescribed in Sl. No. 4,5 and 6 of the said Notification (Table-1 of SCN refers). The goods imported from M/s Ecogreen Oleochem Singapore where the producer is PT Ecogreen Oleochemicals Indonesia do not fit into any of the three Sl. Nos. i.e. 4,5 and 6 as explained below-

I. Sl. No. 4 is for any combination of producer and supplier other than Sl. No. 1 to 3 of the said Table. Our Supplier and producer are listed in Sl. No. 1 of the Notification hence ADD cannot be charged as per Sl. No. 4.

II. Sl. No. 5 of the Notification is for "Any" producer and Exporter where Country of Export is also Any. In our case the producer and exporter are listed in Sl. No. 1, which is the more specific coverage and hence it will not fall under Sl. no. 5 but Sl. No. 1 only.

III. Serial No. 6 of the table mentioned in ADD Notification is for imported consignments where Country of origin has been mentioned that "any country other than those subject to anti-dumping duty". In our case of import from M/s Ecogreen Oleochem Singapore. It is clearly mentioned on COO and Bill of Entry that country of origin of our imported goods is "Indonesia". This fact has also not been disputed in the SCN. Hence the ADD cannot be charged under Sl. No. 6 also.

IV. This demonstrates and establishes that the ADD cannot be charged @US\$ 92.23PMT as per the subject Notification and that the correct rate of ADD for the combination M/ EOS and M/s PTEOI is Sl. No. 1, where the customs has assessed and released the goods.

2.7.9 It is informed by Noticee that the ADD leviable in two cases under Sl. No. 2 of ADD Notification 28/2018-Cus @ US\$ 7.1PMT in case of import from M/s Intercontinental Oils & Fats Pte. Ltd Singapore where PT Musimas is the producer has been deposited vide challan dt. and is enclosed as Annexure-8.

2.7.10 The submission in paras above clearly demonstrates that there is no short levy of ADD and that the subject Demand Notice is liable to be set aside and hence proceeding initiated vide subject SCN is prayed to be dropped.

2.8 It is submitted by Noticee that demand raised under Section 28(4) of CA'62 does not survive, the proposal for imposition of penalty and confiscation of goods already cleared for Home Consumption by Customs is liable to be dropped. The Noticee made the submission on the same as under-

2.8.1 Demand raised in extended period under Section 28(4) and proposal for penalty u/s 114A is not Legal and Correct. All the relevant details namely, Producer Name and details, Exporter Name and details, Country of Origin, Country of Export, Feeder Vessel Name, Mother Vessel Name, Port of Receipt of Goods, Port of Shipment have been clearly mentioned in all relevant documents. No details/information has been hidden or mis declared or incorrectly declared. The entire process of documentation and imports has been transparently followed, recorded and completed. The department has relied on the documents that were made available to them by the importers. Even the Transshipment information has been mentioned on all the documents issued by both PTEOI and EOS. Department has not provided any document or any

proof of any misdeclaration on part of the importers. There is even no charge of misdeclaration of goods in import invoice, CO certificate, packing list, BL and also in the import BE with respect of any particular.

2.8.2 The above details show that there is no collusion, willful misstatement or suppression of fact, which are required ingredient to invoke Section 28(4) of CA'62. On the basis of above fact, the demand is liable to be set aside.

2.9 It is submitted by Noticee that in the last line of Para 6 of SCN while discussing Self-Assessment contended that “-----it is the added and enhanced responsibility of importer to declare true and correct declaration in all aspects including levy of correct duty”.

2.9.1 In this regard it is pointed out that the test checks of BE status of BEs listed in Annexure to SCN at ICEGATE reveals that it is not a case where the BE filed by importer under Section 17(1) of CA'62 has been facilitated from Appraisement and Examination and cleared without verifying the import documents and BEs. In fact, the BEs have been assessed by the Appraising Groups and goods examined by the Docks before clearing it out of Customs Control. Hence it is not self-assessment where goods have been cleared on the basis of claim of Notification benefit of Importer only under Section 17(1) of CA'62 but the fact remains that the claim of Importer for notification benefit and documents submitted has been verified, appraised and assessed by the Department under Section 17(2) of CA'62. The Customs has found the goods imported from M/s. EOS where M/s PTEOI is manufacturer liable to NIL ADD under Sl. No. 1 of Notification 28/2018-Cus. In view of above contravention of Section 17(1) of CA'62 has no basis.

2.10 It is submitted by Noticee that the para 8 of SCN states that “----- In the instant case, the Importer has not declared the truth of the contents in the BE and hence not paid the applicable Anti-Dumping Duty and IGST. Since such ADD and IGST appears to have arisen due to suppression and willful misstatement by the Importer, the demand of differential duty is invokable under extended period as per the provisions of Section 28(4) of the Customs Act, 1962.”

2.11 It is countered by Noticee that the above averments made in SCN is wrong, without any basis and provisions of law. The allegation made at Para 8 of SCN that the importer has not declared the truth of the content in BE is contradictory to the SCN itself because the basis of issuing SCN is based on the documents submitted by Importer only. Further what truth of content has not been declared has not been stated. The allegation is made in casual way just to any how invoke Section 28(4) of CA'62.

2.12 The allegation of suppression and willful mis-statement has no basis. What has been suppressed and mis-stated has also not been stated in SCN. Importer has claimed that there is no suppression, neither alleged and that the basis of inference in SCN is the documents and declaration of importer only.

2.13 It is submitted by Noticee that the only charge made in SCN is the purported regarding wrong claim of Serial Number of ADD Notification 28/2018-Cus. This has been treated for willful misdeclaration, suppression etc. to invoke the extended period under Section 28(4) of CA'62. The Noticee submitted that there is no misdeclaration in entry made in BE and that the claim of Serial Number-1 of Notification is based on their bonafide understanding of ADD

investigation, its final finding and ADD Notification. Noticee has submitted the above documents clearly point out that their claim is correct and legal and in such cases of difference in understanding, the extended period alleging misdeclaration, suppression cannot be invoked.

2.14 I find that the Noticee relied on the order of Principal Bench of CESTAT Delhi 2024(20) Centax 467(Tri. Del.) in the matter of Daxen Agritech India Pvt. Ltd Vs. Pr. Commissioner of Customs Delhi. Hon'ble Tribunal held that the Extended period cannot be invoked in cases of misclassification where there is difference of opinion on classification of Department. Hon'ble Tribunal also discussed Apex Court Order in Nizam Sugar.

2.15 I find that the Supreme Court in Nizam Sugar Factory 1995 (78) E.L.T. 401 has categorically laid down that where facts are known to both the parties, the omission by one to do what he might have done, and not that he must have done, does not render it suppression. Thus, when all the facts are before the department, as in the present case, then there would be no wilful mis-declaration or wilful suppression of facts with a view to evade payment of duty.

The relevant para from the judgement in Nizam Sugar Factory (supra) is quoted below: -

"4. Section 11A empowers the Department to re-open proceedings if the levy has been short-levied or not levied within six months from the relevant date. But the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts. The meaning of the word both in law and even otherwise is well known. In normal understanding it is not different that what is explained in various dictionaries unless of course the context in which it has been used indicates otherwise. A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or wilful default. In fact, it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."

2.16 Also, the Noticee relied upon the Order of Hon'ble CESTAT Chennai in the matter of Swastik Glass Trader Vs Commissioner of Customs in Customs (2024) 23 Centax 228(Tri. Mad.) dt. 25.08.2024. In the above referred case the Tribunal, referring to the Order of Hon'ble Supreme Court in the matter of Northern Plastic Ltd. Vs Collector of Customs and C. Ex [1998(101) ELT 549 SC observed that :-

"---In the absence of any finding of positive suppression by the Appellant in the impugned order, we find that the allegation of wilful misclassification and intention to evade duty by the appellant is not at all tenable and misclassification could not be equated with misdeclaration within the meaning of Section 28 (4) of the Customs Act, 1962 as it is a settled law that once the goods are correctly described, the bona fide adoption of classification by the importer cannot be equated with misdeclaration as the importers are not expected to be fully conversant with the schedule to the Customs Tariff Act, 1975. ---"

2.17 Relying on the above law laid down by Hon'ble SC, it is prayed by Noticee that the demand under Section 28(4) of CA'62 to be set aside. Further penalty under Section 114A of

CA'62 is liable to be dropped once the extended period of limitation in invoking demand under Section 28(4) do not survives in absence of any willful mis-statement, misdeclaration and suppression.

2.18 It is submitted by Noticee that the para 10 & 11 of SCN states that the act of wilful mis-declaration by the importer by not paying applicable Anti-Dumping Duty leviable under Notification No. 28/2018-Cus dt 25.05.2018 renders the goods liable for confiscation under Section 111(m) of Customs Act, 1962 and therefore the importer is liable for penal action under Section 112(a) of CA'62. The misdeclaration being alleged by the Department is the claim of Notification serial number 1 by them. It is argued by Noticee that by no stretch of imagination this can be described as misdeclaration by them, particularly considering the fact that the they had claimed the serial Number of Notification and the same was verified by the Customs department before clearance of the goods and same were found to be correct. The Orders of Hon'ble SC and Tribunals clearly lays down the law that the goods imported goods cannot be held liable for confiscation merely because the exemption availed by Importer is not acceptable to the department. In other words, merely because the Department has different view over the eligibility of Exemption, the goods imported availing an exemption cannot be said to be liable for confiscation.

2.19 It is submitted by Noticee that the Hon'ble Supreme Court has laid down the criteria for confiscation of goods under Section 111(m) of CA'62 in the Case of M/s Northern Plastics 1998(101) E.L.T. 549 (S C) that :-

"The charge of misdeclaration of goods was based upon Section 111(m) of the Customs Act. According to the said provision, the goods brought from a place outside India are liable to confiscation if the goods "do not correspond in respect of value or in any other particular with the entry made under this Act." Therefore, if the description of the imported goods given to the customs authorities does not correspond in respect of value or in any other particular including its description as mentioned in the Entry made under the Act, then only they can be said to have been mis-declared and, therefore liable to confiscation. The words "Entry" in the context of the facts of this case meant an Entry made in the Bill of Entry. Therefore, before holding that the goods were mis-declared the authorities were required to come to the conclusion that the imported goods did not correspond in respect of value or in any other particular with the description and the value of the goods as stated in the Bill of Entry."

2.20 I find that the Noticee placed their reliance on the jurisdictional CESTAT(Mum.) decision in case of Sirthai Superware India Ltd. Vs.CC 2020(371) ELT 324(Tri. Mum), which reads as under-

"4.4 In our view with the introduction of self-assessment the principal of ascertaining the misdeclaration as laid down by Apex Court in various judicial pronouncement listed below have under gone change. Northern Plastic 1998 (101) ELT (549) SC

22 "----- As regards to claim of exemption in payment of countervailing duty, Appellant had stated that it was entitled to the benefit under Notification 50/88 CE. The declaration made by the Appellant is found to be wrong by Collector and CEGAT on the ground that there was a separate exemption notification in respect of jumbo roll of cinematographic films. While dealing with such

a claim in payment of Custom duty we have already observed that the declaration wads in a nature of a claim made on the basis of belief entertained by the Appellant and therefore cannot be said to be misdeclaration as contemplated by Section 111(m) of CA'62. As the Appellants have given full and correct particulars in regard to nature and size of the goods, it is difficult to believe that it had referred to the wrong exemption notification with any dishonest intention of evading proper payment of Countervailing Duty.

2.21 Goods cannot be confiscated as it is already imported i.e. cleared out of customs control

I. It is informed by Noticee that the goods are already imported and cleared from Customs control and hence there appears to be no legal basis of confiscation, its redemption without having possession and imposing Redemption fine without actually redeeming the goods. The notice has relied on following Order / Decisions of Hon'ble Supreme Court and Tribunals in support of above claim:

It is submitted that under Section 111 of CA 62 only imported goods can be confiscated. The imported goods have been defined in Section 2(25) of CA'62 as: -

"Imported goods means any goods which has been brought into India from a place outside India but does not include goods which have been cleared for home consumption."

In the subject case the goods in question, Imported from M/s Ecogreen Oleochem Singapore where manufacturer is PT Ecogreen Oleochemicals Indonesia have been assessed and cleared for Home Consumption on payment of applicable duty. Thus, it no longer remains Imported Goods and hence not liable for confiscation.

In case of Bussa Overseas and Properties Vs. C L Mahar Astt. Commissioner of Customs, Bombay 2004 (163) ELT 304 (Bom.) Hon'ble Bombay High Court held that once the goods are cleared for home consumption, they cease to be imported goods as defined in Section 2(25) of CA'62 and consequently are not liable for confiscation under Section 111 of CA'1962.

The above cited decision was maintained by Hon'ble Supreme Court reported in 2004 (163) ELT A160. This view has also been re-iterated by the Hon'ble Tribunal in the case of Southern Vs CC 2005 (186) ELT 324 wherein it has held as follows: -

"Furthermore, the revenue cannot confiscate goods which have been cleared for home consumption as they cease to be imported goods in terms of Section 2 of Custom act and as held by Hon'ble Bombay High Court in case of Bussa Overseas and properties. Pvt Ltd (cited supra)."

II. I find that the goods cannot be confiscated, if the same is not available for confiscation and also no Redemption fine can be imposed when the goods are not available for Redemption.

I find that the goods listed in Annexure-4 have been cleared on payment of applicable duty without execution of any Bond and Bank Guarantee. Hence the goods covered by subject SCN and enclosed as Annexure-4 has been finally cleared out of Customs control. In such situation the law laid down by Tribunals and Courts duly affirmed by Hon'ble Apex Court is very clear that-" No Confiscation if the goods are not available".

I find that the larger bench of Tribunal in Shiv Kripa Ispat Pvt Ltd v Commissioner of C. Ex and Cus., Nasik,

2009(235) E L T 623 (Tri.LB), after considering the Punjab and Haryana High Court's Judgement in Commissioner of Customs, Amritsar vs Raja Impex Pvt. Ltd 2008(229) ELT 185(P&H) held that the Redemption Fine in lieu of confiscation cannot be imposed when the goods have been cleared without Bond or Undertaking. The order was affirmed by Hon'ble High Court Mumbai in 2015 (318) E.L.T. A259 (Bom.) [22-09-2009] when Customs filed appeal against the Tribunal Order. Similar view of Tribunal was taken in the case of Ram Khajana Electronics vs Commissioner of Customs 1999(112) ELT 400 Tribunal which attained finality after being affirmed by Hon'ble SC 2005(184) ELT A 6 SC. The above are binding precedents for the present case.

III. It is submitted by Noticee that it is a settled principle of law that there cannot be any confiscation of goods which are not available. In this regard, reliance is placed on the following decisions:

- a) Finesse Creation Inc. vs CC (Import) Mumbai 2009 (248) ELT 122 (Bom) 2010 (255) ELT A120 (SC)
- b) Munjal Showa Ltd. v. CCE, reported in 2008 (227) ELT. 330 (Tri-Del).
- c) Quippo Energy Pvt. Ltd. v. CCE, 2016 (331) ELT. 617 (Tri. - Ahmd.)
- d) CCE v. Citizen Synthetic, 2010 (261) ELT. 843 (Tri. - Ahmd.)
- e) New Wave Industries v. CCE, 2010 (260) ELT. 473 (Tri. - Del.)

Relying upon the above they have submitted that the goods are not liable to confiscation under Section 111(m) of Customs Act, 1962 and no Redemption Fine can be imposed on Noticee.

2.22 No case for Penalty under Section 114AA

2.22.1 It is submitted by Noticee that at Para 12 of SCN an allegation has been made against them that they had knowingly and intentionally made the declarations and documents which were false and incorrect at the time of the import transaction under Customs Act 1962 with an intention to evade Customs Duty thereby rendering themselves liable for penalty under Section 1114AA of the Customs Act, 1962. It is submitted by the Noticee that without citing evidence in support of above allegations, the wording of Section 1114 AA has been copied in this para to invoke penal action under that Section.

2.22.2 It is argument of the notice that the above statement is absurd as no discussion, detail or any other evidence is cited in the SCN to show that they have made, used declaration and documents which were false and incorrect. It is not a case where Importer has claimed NIL rate of ADD based on forged, fake and incorrect certificate or documents like CO, BL. Rather the whole SCN is based on the transaction documents submitted by the importer. There is no allegation of misdeclaration. Only allegation in the SCN is that of wrong claim of Sl. No. of Notification 28/2018-Cus. which is based on Final Finding of Anti-Dumping Investigation. The Section cannot be invoked for alleged violation of Section 46(4) which itself is not proved, hence it is

bad in law to invoke Section 114AA in this case and they have prayed to be drop the charges against them under this Section 114AA of Customs Act, 1962.

3. RECORDS OF PERSONAL HEARING

3.1 The authorized representatives of the Noticee i.e. Shri Ravinder Singh, consultant advocate and Shri Harshad Kini, Sr. Import Manager of the Noticee appeared for Personal Hearing in virtual mode before the Principal Commissioner of Customs, NS-I, JNCH on 07.08.2025. Following submissions were made by them on behalf of the Noticee during the course of the personal hearing:

3.2 The authorized representative, Shri Ravinder Singh informed that the Noticee has submitted written response to SCN along with 8(eight) Annexures. He requested Hon'ble Authority to consider and discuss the same while deciding the SCN.

3.3 Shri Ravinder Singh informed that out of 148 consignments listed in Annexure A of SCN for calculating the differential duty i.e. ADD, the 29 consignments were cleared under Advance License and 79 consignments were cleared under EOU. As ADD is not leviable on clearance under Advance Licence vide Notfn. No. 018/2015-Cus and also not leviable for imports by EOU units, ADD cannot be demanded on the same. Details of the same given in Annexure-2 and 3 of submission. Out of remaining 40, ADD is payable on 2 consignments falling under Sl. No. 2 of ADD Notf. No. 028/2018-CUS(ADD) and the ADD applicable has been paid in one the other left by mistake will be paid by tomorrow.

3.4 Shri Ravinder Singh submitted that the remaining 38 consignments were PTEOI(Indonesia) is producer, EOS (Singapore) is exporter, Country of Origin is Indonesia and Country of Export is Singapore, the ADD is NIL as per Sl. No. 1 of Notfn. 028/2025. On the allegation in SCN that the goods have not been exported from Singapore but from Indonesia, Shri Singh requested the Authority to consider his written submission in this regard. He explained that ADD Notification has been issued under Section 9A of CTA 1975 and ADD Rules, 1995 pursuant to Dumping Investigation against manufacturers, exporters and the Final Finding published as Gazetted Notification by Designated Authority have not found any dumping in above exports were manufacturer is PTEOI, Exporter is EOS, goods sold on Ex-factory basis to Singapore and then exported in Vessel to India. He pointed out that the para of FF where cost involved by Singapore Exporter has been considered while calculating Dumping margin which is taken as ADD in the Notification. The Notification is issued as per the Findings of DA of Ministry of Commerce and hence based on the same the ADD demand is prayed to be dropped. Shri Singh requested that clarification may kindly be obtained in case the ADD Notification is not being interpreted as per Final Findings Notification of Ministry of Commerce.

3.5 Shri Ravinder Singh submitted that as the demand raised in SCN do not survive, the proposals of confiscation and levy of penalty and fine is liable to be dropped. He explained that there is no misdeclaration, suppression of fact or willful misstatement. The only allegation of misdeclaration is purportedly wrong claim of Sl. No. ADD Notfn as per its understanding. This cannot become basis for invoking extended period, imposing penalty u/s 114A/114AA and confiscation u/s 111(m) of CA' 62. He requested that the case laws submitted in support of above contention may kindly be considered while deciding the extended period Demand and confiscation. He requested that the decision of Jurisdictional High Court affirmed by Hon'ble SC

and Tribunal may kindly be taken as of binding nature in compare to other High Courts and Tribunals.

3.6 He prayed to decide the case after considering oral as well as submissions in writing during PH.

4. DISCUSSION AND FINDINGS

4.1 I have carefully examined the SCN, the Noticee's written submissions, documents submitted, and arguments presented during the personal hearing. I have also considered the relevant provisions of the Customs Act, 1962, the Customs Tariff Act, 1975, and judicial precedents cited by the Noticee. My findings are as follows:

4.2 The adjudicating authority has to take the views/objections of the noticee on board and consider before passing the order. In the instant case, the personal hearing was granted to the noticee on 16.07.2025 by the Adjudicating Authority which was not attended by the Noticee. One more opportunity of personal hearing was given to the Noticee, M/s Krishna Antioxidants Pvt Ltd on 07.08.2025 which was attended by Shri Ravinder Singh and Shri Harshad Kini, authorized representatives of M/s Krishna Antioxidants Pvt Ltd. The recordings of the personal hearing are placed in para 3 of this order. In the instant case, as per Section 28(9) of the Customs Act, 1962 the last date to adjudicate the matter was 11.08.2025 which was extended by the Chief Commissioner of Customs in terms of first proviso to Section 28(9) of the Act *ibid* up to 11.11.2025 vide his order dated 08.08.2025. Accordingly, I am bound to decide the matter on the basis of the submissions made by the noticees and the documents on record. Therefore, the case was taken up by me for adjudication proceedings within the time limit

4.3 I find that in compliance to the provisions of Section 28(8) and Section 122A of the Customs Act, 1962 and in terms of the principles of natural justice, opportunities for Personal Hearing (PH) were granted to the Noticee. Thus, the principles of natural justice have been followed during the adjudication proceedings. Having complied with the requirement of the principles of natural justice, I proceed to decide the case on merits, bearing in mind the allegations made in the SCN as well as the submissions/contentions made by the Noticee.

4.4 The present proceedings emanate from Show Cause Notice No. 914/2024-25/Commr/NS-I/CAC/JNCH dated 10.09.2024 to M/s Krishna Antioxidants Pvt Ltd, alleging wrongful availment of exemption from Anti-Dumping Duty (ADD) on imports of 'Saturated Fatty Alcohols' under various Bills of Entry by misdeclaring the country of export as Singapore. The SCN alleges that the importer inappropriately claimed benefit of Sr. No. 1 of Notification No. 28/2018-Customs (ADD) dated 25.05.2018 (NIL ADD) **under 101 bills of entry out of total 148 bills of entry filed for import**, though the goods were actually shipped from Batam, Indonesia and merely transshipped at Singapore, without any export declaration being filed there. Further, the SCN also alleges that the importer has not paid applicable anti-dumping duty for the goods imported from the foreign suppliers, M/s Inter-Continental Oils & Fats Pte Ltd, Singapore, M/s Sinarmas Cepsa Pte. Ltd, Singapore and M/s Wilmar Trading Pte. Ltd., Malaysia as per the ADD notification. The SCN contends that this non-payment of applicable anti-dumping duty has resulted in short payment of **Rs. 1,73,32,885/- (Rupees One Crore Forty Six Lakhs Eighty Eight**

Thousand Eight Hundred and Eighty Six only) (ADD amounting to Rs. 1,46,88,886/- along with IGST of Rs. 26,43,999/-) which is recoverable under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of Customs Act, 1962. The SCN further proposes holding the goods liable for confiscation under Section 111(m) of the Act, and seeks imposition of penalties upon M/s Krishna Antioxidants Private Limited under Sections 112(a), 114A and 114AA of the Customs Act, 1962.

4.5 On careful perusal of the Show Cause Notice, reply filed by the Noticee, and the case records, I find that the following main issues arise for determination in this case:

A. Whether the goods “Saturated Fatty Alcohols” imported under the 101 Bills of Entry wherein the supplier is M/s Ecogreen Oleochemicals (Singapore) Pte Ltd, Singapore, as mentioned in Annexure-A of the SCN are rightly covered for the purpose of Anti-Dumping Duty under Serial No. 1 of Notification No. 28/2018-Customs(ADD) dated 25.05.2018 (as amended), attracting NIL rate of ADD, or under Serial No. 6 of the said Notification, attracting ADD @ USD 92.23 per MT.

B. Whether or not the goods “Saturated Fatty Alcohols” imported under the remaining 47 Bills of Entry, wherein the suppliers are M/s Intercontinental Oils and Fats Pte. Ltd., Singapore, M/s Sinarmas Cepsa Pte. Ltd., Malaysia and M/s Wilmar Trading Pte Ltd, Singapore, as mentioned in Annexure-A of the SCN are rightly covered for the purpose of Anti-Dumping Duty under Serial No. 2, Sr. No.10 of Notification No. 28/2018-Customs (ADD) dated 25.05.2018 and Serial No. 13 of amended Notification No. 41/2019-Customs (ADD) dt 25.10.2019 to the said Notification, respectively, attracting ADD@USD 7.1 per MT, @USD 37.64 per MT and @USD 51.64 per MT respectively and whether such imported goods are liable for payment of applicable Anti-Dumping duty in terms of Notification No. 28/2018-Customs (ADD) dated 25.05.2018.

C. Whether or not the differential Anti-Dumping Duty of ₹ 1,46,88,886/- along with IGST of ₹26,43,999/- (totalling ₹1,73,32,885/-) proposed as duty demand in SCN, is recoverable from the importer, M/s Krishna Antioxidants Pvt Ltd under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of Customs Act, 1962.

D. Whether or not the imported goods covered under the Bills of Entry in question are liable to confiscation under Section 111(m) of the Customs Act, 1962.

E. Whether or not penalty is imposable on the importer, M/s Krishna Antioxidants Pvt Ltd under Sections 112(a), 114A and 114AA of the Customs Act, 1962.

4.6 After having framed the substantive issues raised in the SCN which are required to be decided, I now proceed to examine each of the issues individually for detailed analysis based on the facts and circumstances mentioned in the SCN; provision of the Customs Act, 1962; nuances of various judicial pronouncements, as well as Noticee’s oral and written submissions and documents/evidences available on record. I find that in order to better address the issues framed above it would be better to discuss imports from four different suppliers separately one by one.

A. Whether the goods “Saturated Fatty Alcohols” imported under the 101 Bills of Entry wherein the supplier is M/s Ecogreen Oleochemicals (Singapore) Pte Ltd, Singapore, as mentioned in Annexure-A of the SCN are rightly covered for the purpose of Anti-Dumping Duty under Serial No. 1 of Notification No. 28/2018-Customs(ADD) dated 25.05.2018 (as amended), attracting NIL rate of ADD, or under Serial No. 6 of the said Notification, attracting ADD @ USD 92.23 per MT.

4.7 I start with M/s Ecogreen Oleochemicals (Singapore) Pte. Ltd. I find that in respect of the **101 consignments under dispute**, the Noticee’s submission that the goods were produced by M/s PT Ecogreen Oleochemicals, Indonesia and exported through M/s Ecogreen Oleochemicals (Singapore) Pte. Ltd., thereby attracting NIL ADD under Serial No. 1 of Notification No. 28/2018-Customs (ADD) dt 25.05.2018, is borne out from the records. The import documents on file, including the commercial invoices, packing lists and Certificates of Origin, clearly establish Indonesia as the country of origin, PT Ecogreen Oleochemicals as the producer, and Ecogreen Singapore as the exporter. The Bills of Lading further confirm that the consignments were first shipped from Batam, Indonesia on feeder vessels, and subsequently loaded onto mother vessels at Singapore, thus identifying Singapore as the port of loading.

4.8 I find that Notification No. 28/2018-Customs (ADD) dated 25.05.2018 was issued pursuant to the Final Findings of the Designated Authority (DGAD) in the anti-dumping investigation concerning imports of Saturated Fatty Alcohols. In the said findings, the Authority clearly recorded that exports made by M/s. PT Ecogreen Oleochemicals, Indonesia were effected through their related trading arm, M/s. Ecogreen Oleochemicals (Singapore) Pte. Ltd. It was precisely on this basis that Sr. No. 1 of the Notification prescribed a NIL rate of duty for such exports. Thus, the legislative intent underlying the exemption entry was to exempt the exports of PT Ecogreen routed through Ecogreen Singapore, recognizing that such transactions were not causing injury to the domestic industry. In light of this background, it would not be correct to interpret the entry in a manner that defeats the very objective for which it was created.

4.9 I further find merit in the importer’s contentions made regarding sunset review final findings dated 02.02.2023. I take note of the findings of the Designated Authority in the Sunset Review vide Final Findings Notification No. 7/01/2022-DGTR dated 02.02.2023, wherein it was categorically recorded that exports made by M/s PT Ecogreen Oleochemicals, Indonesia attract a NIL rate of anti-dumping duty, irrespective of the country of export. This clarification from the authority which originally conducted the anti-dumping investigation leaves no ambiguity as to the policy intent. It is evident that the exemption was producer-specific and not meant to be restricted or denied merely because the goods were routed through or transshipped at Singapore. Accordingly, the reliance placed in the SCN on procedural aspects such as non-filing of a shipping bill at Singapore is of no consequence, as the binding clarification of the Designated Authority leaves no scope for denying the NIL duty benefit to PT Ecogreen’s exports. Para 146 of Sunset Review vide Final Findings Notification No. 7/01/2022-DGTR dated 02.02.2023 is quoted below for reference: -

“146. Therefore, Authority recommends continuation of anti-dumping measure as fixed rate duty. Accordingly, definitive anti-dumping duty equal to the amount mentioned in Column 7 of the Duty Table below is recommended to be imposed for five (5) years from the date of the Notification to be issued by the Central Government, on imports of the subject goods described at Column 3 of

the Duty Table, originating in or exported from Indonesia, Malaysia and Thailand.

DUTY TABLE

S. No.	Heading/ Subheading	Description of Goods	Country of Origin	Country of Export	Producer	Amount (USD/MT)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1.	2905.17, 2905.19, 3823.70	Saturated Fatty Alcohol of Carbon chain length C12 to C18 and their blends	Indonesia	Any including Indonesia	M/s PT Ecogreen Oleochemicals	Nil

4.10 Section 9A and 9B of Customs Tariff Act, 1975 are quoted below for reference: -

“Section 9A. Anti- dumping duty on dumped articles. -

(1) Where ¹[any article is exported by an exporter or producer] from any country or territory (hereinafter in this section referred to as the exporting country or territory) to India at less than its normal value, then, upon the importation of such article into India, the Central Government may, by notification in the Official Gazette, impose an anti-dumping duty not exceeding the margin of dumping in relation to such article.

Explanation. For the purposes of this section, -

(a) "margin of dumping", in relation to an article, means the difference between its export price and its normal value;

(b) "export price", in relation to an article, means the price of the article exported from the exporting country or territory and in cases where there is no export price or where the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported articles are first resold to an independent buyer or if the article is not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as may be determined in accordance with the rules made under sub-section (6);

(c) "normal value", in relation to an article, means -

(i) the comparable price, in the ordinary course of trade, for the like article when ²[destined for consumption] in the exporting country or territory as determined in accordance with the rules made under sub section (6); or

(ii) when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either -

(a) comparable representative price of the like article when exported from the exporting country or ³ [territory to] an appropriate third country as determined in accordance with the rules made under sub-section (6); or

(b) the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6):

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transshipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

⁴ [(1A) Where the Central Government, on such inquiry as it may consider necessary, is of the opinion that circumvention of anti-dumping duty imposed under sub-section (1) has taken place, either by altering the description or name or composition of the article subject to such anti-dumping duty or by import of such article in an unassembled or disassembled form or by changing the country of its origin or export or in any other manner, whereby the anti-dumping duty so imposed is rendered ineffective, it may extend the anti-dumping duty to such article or an article originating in or exported from such country, as the case may be ⁵ [, from such date, not earlier than the date of initiation of the inquiry, as the Central Government may, by notification in the Official Gazette, specify].]

⁶ [(1B) Where the Central Government, on such inquiry as it may consider necessary, is of the opinion that absorption of anti-dumping duty imposed under sub-section (1) has taken place whereby the anti-dumping duty so imposed is rendered ineffective, it may modify such duty to counter the effect of such absorption, from such date, not earlier than the date of initiation of the inquiry, as the Central Government may, by notification in the Official Gazette, specify.

Explanation. - For the purposes of this sub-section, "absorption of anti-dumping duty" is said to have taken place, -

(a) if there is a decrease in the export price of an article without any commensurate change in the cost of production of such article or export price of such article to countries other than India or resale price in India of such article imported from the exporting country or territory; or

(b) under such other circumstances as may be provided by rules.]

(2) The Central Government may, pending the determination in accordance with the provisions of this section and the rules made thereunder of the normal value and the margin of dumping in relation to any article, impose on the importation of such article into India an anti-dumping duty on the basis of a provisional estimate of such value and margin and if such anti-dumping duty exceeds the margin as so determined: -

(a) the Central Government shall, having regard to such determination and as soon as may be after such determination, reduce such anti-dumping duty; and

(b) refund shall be made of so much of the anti-dumping duty which has been collected as is in excess of the anti-dumping duty as so reduced.

⁷ [(2A) Notwithstanding anything contained in sub-section (1) and sub-section (2), a notification issued under sub-section (1) or any anti-dumping duty imposed under sub-section (2) shall not apply to articles imported by a hundred percent export-oriented undertaking or a unit in a special economic zone, unless, -

- (i) it is specifically made applicable in such notification or to such undertaking or unit; or
- (ii) such article is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area, in which case, anti-dumping duty shall be imposed on that portion of the article so cleared or used, as was applicable when it was imported into India.

Explanation. - For the purposes of this section, -

(a) the expression "hundred percent export-oriented undertaking" shall have the same meaning as assigned to it in clause (i) of Explanation 2 to sub-section (1) of section 3 of the Central Excise Act, 1944 (1 of 1944);

(b) the expression "special economic zone" shall have the same meaning as assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005).]

(3) If the Central Government, in respect of the dumped article under inquiry, is of the opinion that -

(i) there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury; and

(ii) the injury is caused by massive dumping of an article imported in a relatively short time which in the light of the timing and the volume of imported article dumped and other circumstances is likely to seriously undermine the remedial effect of the anti-dumping duty liable to be levied,

the Central Government may, by notification in the Official Gazette, levy anti-dumping duty retrospectively from a date prior to the date of imposition of anti-dumping duty under sub-section (2) but not beyond ninety days from the date of notification under that sub-section, and notwithstanding anything contained in any law for the time being in force, such duty shall be payable at such rate and from such date as may be specified in the notification.

(4) The anti-dumping duty chargeable under this section shall be in addition to any other duty imposed under this Act or any other law for the time being in force.

(5) The anti-dumping duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition:

Provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period ⁸ [upto five years] and such further period shall commence from the date of order of such extension:

Provided further that where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the anti-dumping duty may

continue to remain in force pending the outcome of such a review for a further period not exceeding one year.

⁹ **[Provided** also that if the said duty is revoked temporarily, the period of such revocation shall not exceed one year at a time.]

(6) The margin of dumping as referred to in sub-section (1) or sub-section (2) shall, from time to time, be ascertained and determined by the Central Government, after such inquiry as it may consider necessary and the Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner in which articles liable for any anti-dumping duty under this section may be identified, and for the manner in which the export price and the normal value of, and the margin of dumping in relation to, such articles may be determined and for the assessment and collection of such anti-dumping duty.

¹⁰ *[(6A) The margin of dumping in relation to an article, exported by an exporter or producer, under inquiry under sub-section (6) shall be determined on the basis of records concerning normal value and export price maintained, and information provided, by such exporter or producer:*

Provided that where an exporter or producer fails to provide such records or information, the margin of dumping for such exporter or producer shall be determined on the basis of facts available.]

(7) Every notification issued under this section shall, as soon as may be after it is issued, be laid before each House of Parliament.

¹¹ *[(8) The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.]*

Section 9B. No levy under section 9 or section 9A in certain cases. -

(1) Notwithstanding anything contained in section 9 or section 9A, -

(a) no article shall be subjected to both countervailing duty and anti-dumping duty to compensate for the same situation of dumping or export subsidization;

(b) the Central Government shall not levy any countervailing duty or anti-dumping duty -

(i) under section 9 or section 9A by reasons of exemption of such articles from duties or taxes borne by the like article when meant for consumption in the country of origin or exportation or by reasons of refund of such duties or taxes;

(ii) under sub-section (1) of each of these sections, on the import into India of any article from a member country of the World Trade Organization or from a country with whom Government of India has a most favoured nation agreement (hereinafter referred as a specified country), unless in accordance with the rules made under sub-section (2) of this section, a determination has been made that import of such article into India causes or threatens material injury to any established industry in India or materially retards the establishment of any industry in India; and

(iii) under sub-section (2) of each of these sections, on import into India of any article from the specified countries unless in accordance with the rules made under sub-section (2) of this section, a preliminary finding has been made of subsidy or dumping and consequent injury to domestic industry; and a further determination has also been made that a duty is necessary to prevent injury being caused during the investigation:

Provided that nothing contained in sub-clauses (ii) and (iii) of clause (b) shall apply if a countervailing duty or an anti-dumping duty has been imposed on any article to prevent injury or threat of an injury to the domestic industry of a third country exporting the like articles to India;

(c) the Central Government may not levy -

(i) any countervailing duty under section 9, at any time, upon receipt of satisfactory voluntary undertakings from the Government of the exporting country or territory agreeing to eliminate or limit the subsidy or take other measures concerning its effect, or the exporter agreeing to revise the price of the article and if the Central Government is satisfied that the injurious effect of the subsidy is eliminated thereby;

(ii) any anti-dumping duty under section 9A, at any time, upon receipt of satisfactory voluntary undertaking from any exporter to revise its prices or to cease exports to the area in question at dumped price and if the Central Government is satisfied that the injurious effect of dumping is eliminated by such action.

(2) The Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner in which any investigation may be made for the purposes of this section, the factors to which regard shall be at in any such investigation and for all matters connected with such investigation."

4.11 I note that under the statutory framework of Section 9A of the Customs Tariff Act, 1975, the levy of Anti-Dumping Duty (ADD) is contingent upon the Final Findings and recommendations of the Designated Authority (DA) functioning under the Directorate General of Trade Remedies (DGTR), Ministry of Commerce and Industry. The DA alone is empowered to conduct a detailed investigation into alleged dumping, determine the margin of dumping, assess the injury to domestic industry, and recommend the imposition of ADD at specific rates for specific producer-exporter combinations. The Customs authorities cannot travel beyond their scope or reinterpret them at the assessment or adjudication stage.

4.12 I also note the mandate of Section 9B(1)(b)(iii) of the Customs Tariff Act, 1975, which categorically stipulates that no anti-dumping duty shall be levied on imports from a country unless two specific preconditions are met:

1. A **preliminary finding** of dumping or subsidy and the consequent injury to the domestic industry; and
2. A **further determination** that imposition of such duty is necessary to prevent injury during the pendency of investigation.

4.13 This statutory provision reflects the legislative intent that ADD cannot be imposed automatically or on mere suspicion, but only after due inquiry and determination in strict accordance with the rules framed under Section 9B (2). In the present case, the Designated Authority (DGTR), in its Final Findings of 2018 as well as the subsequent Sunset Review of

2023, has clearly determined that exports from M/s PT Ecogreen Oleochemicals, Indonesia, through M/s Ecogreen Oleochemicals (Singapore) Pte. Ltd., attract a NIL rate of ADD. There is no preliminary finding, nor any subsequent determination, justifying levy of ADD on these specific consignments. Hence, imposition of ADD by disregarding such findings would be contrary to Section 9B(1)(b)(iii) and ultra vires to the statutory framework.

4.14 The Hon'ble Bombay High Court in *Mahle Anand Thermal Systems Pvt. Ltd. v. Union of India* [2023 (383) E.L.T. 32 (Bom.)] categorically held that the levy and collection of Anti-Dumping Duty (ADD) in disregard of the statutory framework under Section 9A read with Section 9B(1)(b)(iii) of the Customs Tariff Act, 1975 is impermissible. The Court, while granting relief to the petitioner, declared that the impugned levy was "incorrect and contrary to Section 9A read with 9B(b)(iii)", as the goods in question stood excluded under the Final Findings. Para 12 to 14 of the said judgement is quoted below: -

"12. Of course, in the notification issued being Notification No. 23 of 2017 the description of the goods not included in the goods on which anti-dumping duty is leviable is worded as under: -

"(vii) Clad with compatible non-clad Aluminium Foil: Clad with compatible non-clad Aluminium Foil is a corrosion-resistant aluminium sheet formed from aluminium surface layers metallurgically bonded to high-strength aluminium alloy core material for use in engine cooling and air conditioner systems in automotive industry; such as radiator, condenser, evaporator, intercooler, oil cooler and heater."

13. Subsequently, there is a clarification issued by the Directorate General of Anti-Dumping and Allied Duties on 1st February, 2018 which is quoted earlier. Therefore, it is quite clear that clad as well as clad with compatible non-clad or unclad aluminium foil has been excluded from anti-dumping duty. Respondent No. 4 therefore was not justified in insisting on payment of anti-dumping duty for clearance of unclad or non-clad consignment of aluminium foil, more so, when the same product is allowed to be imported from other ports without insisting on payment of levy of anti-dumping duty.

14. In view of the above, we allow the petition in terms of prayer clauses (a1) and (e) and the same read as under: -

"(a1) that this Hon'ble Court be pleased to issue a writ of Mandamus or a writ in the nature of Mandamus or any other writ, order or direction under Article 226 of the Constitution of India declaring that levy and collection of ADD on unclad or non-clad aluminium foils for automobile industry imported from China PR in terms of Notification No.23/2017-Cus. (ADD), dated 16-5-2017, is incorrect and contrary to Section 9A read with 9B(b)(iii) of the Customs Tariff Act, 1975 and read with paragraph(s) 9(ii)(c), 12, 31, 79 and 136(xlix) of Final Findings dated 10-3-2017.

(e) that this Hon'ble Court be pleased to issue a writ of Mandamus or a writ in the nature of Mandamus or any other writ, order or direction under Article 226 of the Constitution of India ordering and directing the respondents by themselves, their officers, subordinates, servants and agents to forthwith grant refund of Anti-dumping Duty paid by the petitioner under protest on import of unclad/non-clad aluminium foil from China PR in terms of Notification No. 23/2017-Cus.(ADD), dated 16-5-2017 during the period from August 2017 to December 2018;"

4.15 Applying the above legal position to the facts of the present case, I find that the DA in its Final Findings of 2018 clearly determined that exports of goods produced by M/s PT Ecogreen Oleochemicals, Indonesia, through M/s Ecogreen Oleochemicals (Singapore) Pte. Ltd., attract

NIL ADD. Further, the Sunset Review of 2023 reaffirmed this position by recording that the NIL rate applies to exports of the said producer with “Country of Export – Any including Indonesia,” thereby recognizing that routing or transshipment through Singapore does not disqualify the goods from levy of NIL ADD.

4.16 Therefore, any denial of benefit on the basis of objections relating to exporter-of-record or transshipment would amount to re-interpreting or overriding the DA’s binding determinations, which is impermissible under Section 9A, Section 9B, and the ratio laid down by the Hon’ble Bombay High Court. Consequently, I hold that the demand of ADD proposed in the SCN is unsustainable in law.

4.17 I further find that the Hon’ble Gujarat High Court, in *Realstrips Pvt. Ltd. v. Union of India* [2023 (11) Centax 272 (Guj.)], has laid down the binding principle that the recommendations of the Designated Authority (DA) constitute the **jurisdictional facts** for any levy, withdrawal, or continuation of Anti-Dumping Duty or Countervailing Duty. In para **7.6.1**, the Court categorically held:

“7.6.1 The recommendations of the designated authority would contain the findings on these facts and aspects. They are the jurisdictional facts. They are the foundations for the Central Government to take a decision and to issue the notification. The jurisdictional facts cannot be bypassed.”

4.18 The above ratio squarely applies to the present case. It reinforces that the levy, continuation, or withdrawal of duty must strictly follow the statutory procedure and be founded upon DA’s findings. Any attempt by Customs authorities to impose or interpret Anti-Dumping Duty beyond the DA’s determinations amounts to bypassing jurisdictional facts and is ultra vires the Customs Tariff Act.

4.19 I find that the Department’s position appears to be based on a narrow interpretation of the term “exported from Singapore,” focusing on the physical movement of goods from Batam to Singapore via feeder vessel rather than the legal and commercial role of the exporter. However, this stance seems inconsistent with the Designated Authority’s findings and the intent of Notification No. 28/2018-Customs (ADD) for the following reasons:

4.19.1 In international trade and anti-dumping investigations, the “exporter” is typically the entity responsible for the commercial transaction and export documentation, not necessarily the entity at the port of physical shipment. Here, M/s Ecogreen Oleochemicals (Singapore) Pte Ltd is clearly identified as the exporter in the Certificates of Origin and other documents, and it handles the commercial export to India. The Designated Authority explicitly recognized this role in its findings.

4.19.2 The definition of transshipment as provided in S.B Sarkar’s ‘Words and Phrases of Central Excise and Customs’ is reproduced below:

“Transship, or Trans-shipment means to transfer from one ship or conveyance to another. Transshipment of imported goods without payment of duty is provided for in Section 54 of the Customs Act, 1962.”

Further, the term transshipment has been defined under Chapter 2, International Convention on the Simplification and Harmonization Of Customs Procedures (Kyoto Convention) as follows:

“transshipment” means the Customs procedure under which goods are transferred under Customs control from the importing means of transport to the exporting means of transport within the area of one Customs office which is the office of both importation and exportation.”

From the above definitions, it is evident that definition of the term transshipment does not by any means exclude the act of export. In the instant case, the goods were shipped from Indonesia to Singapore to their related party, which were subsequently exported to India. This can also be seen from the Bill of Lading issued & signed in Singapore. In the instant case, the export would tantamount to goods being taken outside of Singapore. The fact that the goods are being transshipped has no bearing on the fact that the imported goods are indeed exported from Singapore.

4.19.3 Transshipment does not alter exporter status. Transshipment through Singapore from Batam to the main vessel is a common logistical practice and does not change the identity of the exporter. The Sunset Review Findings vide F. No. 7/01/2022-DGTR explicitly state that the country of export is “Any including Indonesia,” indicating that the NIL ADD rate applies regardless of whether the goods were shipped directly from Indonesia or transshipped through another port, such as Singapore. The Department’s focus on the port of loading Singapore as evidence of non-export from Singapore ignores this clarification.

4.19.4 Had the exporter itself been based in Indonesia, the movement through Singapore could have been characterised as *mere transshipment*. However, since the exporter was Ecogreen Singapore, the shipment cannot be so treated; rather, it represents a valid export from Singapore by the entity expressly recognized in Serial No. 1 of the Notification.

4.19.5 The intent of Serial No. 1 of Notification No. 28/2018-Customs (ADD) specifically covers the producer-exporter combination of M/s PT Ecogreen Oleochemicals and M/s Ecogreen Oleochemicals (Singapore) Pte Ltd. The Designated Authority’s investigation considered the entire export chain, including the ex-factory sale and costs incurred by the Singapore entity for example inland freight. Assigning a NIL injury margin to this combination indicates that the arrangement was thoroughly evaluated and deemed non-injurious to the domestic industry. Denying the NIL ADD rate-by alleging/interpreting movement of goods through Singapore as mere transshipment-would effectively nullify Serial No. 1, as it would prevent the very transaction it was designed to cover from receiving the intended benefit.

4.19.6 The Certificates of Origin, Bills of Lading and invoices all align with the requirements of Serial No. 1. The Department’s contention that the goods were not exported from Singapore lacks support and is not sustainable, as the documentation clearly establishes M/s Ecogreen Oleochemicals (Singapore) Pte Ltd as the exporter, with Singapore as the port of loading for the main vessel.

4.19.7 In anti-dumping cases, the focus is on the commercial and legal roles of the parties involved, not merely the physical movement of goods. The Designated Authority’s findings and the Sunset Review explicitly account for the transshipment process and affirm the applicability of the NIL ADD rate. The Department’s interpretation appears to contradict these findings, which carry legal weight as they form the basis of the notification.

4.20 Therefore, I find that the importer is correct in claiming that Serial No. 1 of Notification No. 28/2018-Customs (ADD) as it specifically covers the transaction involving goods produced by M/s PT Ecogreen Oleochemicals (Indonesia) and exported by M/s Ecogreen Oleochemicals (Singapore) Pte Ltd. The Department’s denial of the NIL ADD rate on the grounds that the goods were transshipped through Singapore and not exported from Singapore is not supported by the

Designated Authority's Final Findings or the Sunset Review. The notification and its underlying findings clearly account for the export arrangement, including transshipment, and assign a NIL ADD rate to this specific producer-exporter combination.

4.21 I find that the Department's reliance on Serial No. 6 of the Notification, which prescribes an Anti-Dumping Duty of US\$ 92.23 per MT, is misplaced. A careful reading of the Notification reveals that Serial No. 6 applies **only** to imports of the subject goods **originating from countries other than** those subjected to anti-dumping duty. In the present case, the country of origin is Indonesia which has been subjected to anti-dumping duty, and the producer-exporter combination has been clearly covered under Serial No. 1 of the Notification, which prescribes NIL rate of ADD. As such, Serial No.6 clearly cannot be applied to the subject imports originated from Indonesia. Thus, invoking Serial No. 6 to impose ADD is legally untenable as it amounts to expanding the scope of the Notification beyond its express terms.

4.22 I find that the proposal contained in the Show Cause Notice in respect of 101 Bills of Entry mentioned at Annexure-A to SCN are not supported by cogent evidence or sustainable reasoning. The case of the Department rests on the assertion that the benefit of Serial No. 1 of Notification No. 28/2018-Cus. (ADD) is not available because no export declaration was filed at Singapore and that the goods were merely transshipped through Singapore. However, the SCN does not cite any provision of law or condition in the Notification which prescribes filing of a shipping bill at Singapore as a prerequisite for claiming the exemption. It is a settled principle that conditions not expressly provided in the Notification cannot be read into it by implication.

4.22.1 Further, the SCN overlooks the fact that the Designated Authority, in its Final Findings as well as the Sunset Review, has already examined the export channel of PT Ecogreen Indonesia through Ecogreen Singapore and granted NIL ADD to this producer-exporter combination. The very foundation of the Notification rests on these findings, and the SCN has failed to show how the importer's claim falls outside their scope. In fact, all the documents relied upon—Certificates of Origin, Bills of Lading, commercial invoices, and payment remittances—support the importer's stand that the goods originated in Indonesia and were exported through Ecogreen Singapore.

4.22.2 Therefore, I find that the SCN is fundamentally flawed in its reasoning, proceeds on presumptions rather than evidence, and fails to establish the statutory grounds.

4.22.3 In light of the foregoing discussion, including the statutory framework under Sections 9A and 9B of the Customs Tariff Act, 1975, the DGTR's Final Findings, and binding judicial precedents of the Hon'ble Gujarat High Court, Hon'ble Bombay High Court, I conclude that the goods imported by the Noticee were correctly assessed under Serial No. 1 of Notification No. 28/2018-Customs (ADD) attracting NIL rate of Anti-Dumping Duty. Accordingly, I hold the goods imported by the importer from foreign supplier M/s Ecogreen Oleochemicals (Singapore) Pte. Ltd. vide 101 Bills of Entry as per Annexure-A to the notice are not liable for levy of Anti-Dumping Duty.

B. Whether or not the goods "Saturated Fatty Alcohols" imported under the remaining 47 Bills of Entry, wherein the suppliers are M/s Intercontinental Oils and Fats Pte. Ltd., Singapore, M/s Sinarmas Cepsa Pte. Ltd., Singapore and M/s Wilmar Trading Pte Ltd, Singapore, as mentioned in Annexure-A of the SCN are rightly covered for the purpose of Anti-Dumping Duty under Serial Nos. 2, Sr. No. 10 of Notification No. 28/2018-Customs (ADD) dated 25.05.2018 and Serial No. 13 of amended Notification No. 41/2019-Customs

(ADD) dt 25.10.2019 to the said Notification, respectively, attracting ADD@USD 7.1 per MT, @USD 37.64 per MT and @USD 51.64 per MT respectively and whether such imported goods are liable for payment of applicable Anti-Dumping duty in terms of Notification No. 28/2018-Customs (ADD) dated 25.05.2018.

4.23 Now, after holding that the goods imported by the Noticee vide 101 Bills of Entry from foreign supplier, M/s Ecogreen Oleochemicals (Singapore) Pte. Ltd. are not liable for levy of Anti-Dumping Duty, I proceed to analyze the 47 imports made by the noticee from the 03 foreign suppliers i.e. M/s Intercontinental Oils & Fats Pte Ltd., Singapore, M/s Sinarmas Cepsa Pte Ltd, Singapore and M/s Wilmar Trading Pte Ltd, Singapore to ascertain whether the imported goods are liable for levy of anti-dumping duty in terms of Notification No. 28/2018-Customs (ADD) dated 25.05.2018 and in terms of amended Notification No. 41/2019-Customs(ADD) dt 25.10.2019 to the said Notification. In the SCN, it has been alleged that the noticee has imported the goods from M/s Intercontinental Oils & Fats Pte Ltd., Singapore, M/s Sinarmas Cepsa Pte Ltd, Singapore and M/s Wilmar Trading Pte Ltd, Singapore without paying applicable anti-dumping duty.

4.24 Now I discuss in detail on the 47 imports made by the Noticee from **OTHER** foreign suppliers namely M/s Intercontinental Oils & Fats Pte Ltd., Singapore, M/s Sinarmas Cepsa Pte Ltd, Singapore and M/s Wilmar Trading Pte Ltd, Singapore without availing ADD exemption benefit under different Notifications:

- (1) 16 bills of entry were filed for import and cleared by the Noticee under Advance Authorisation.**
- (2) 29 bills of entry were filed for import and cleared by the Noticee as EOU imports.**
- (3) 2 bills of entry were filed for import and cleared by the Noticee without availing any benefit under exemption notification.**

4.25 Out of the 16 bills of entry filed by the importer under Advance Authorisation, the payment of ADD along with applicable IGST amounting to Rs. 5,97,292/- was duly made by the importer in respect of Item at Sr. No. 2 of Bill of Entry No. 6169939 dt 09.11.2021 (with total 02 items), vide system generated challan No. 2036986138 dt 08.12.2021. This item at Sr. No. 2 of B/E No. 6169939 dt 09.11.2021 was not cleared under Advance Authorization. However, the item Sr. No. 1 of the said B/E was cleared under Advance Authorization. The remaining 15 bills of entry were cleared by the Noticee under Advance Authorization without payment of applicable dumping duty. I find that the applicable ADD amount was not debited in the respective Bonds executed by the Noticee against 06 Advance Authorisations pertaining to said 16 bills of entry (which includes Item at Sr. No. 1 of BE No. 6169939 dt 09.11.2021).

4.25.1 Notification No. 18/2015-Customs dated 01.04.2015 provides for exemption of Customs duty, ADD and other additional duties for goods imported against a valid Advance Authorisation subject to debit of applicable duties at the time of clearance, in the bond undertaken and executed by/on behalf of the importer against the said authorization, before the goods are actually imported.

4.25.2 The Advance Authorization scheme has been started by the government to facilitate exporters, promote exports and enhance foreign earnings. I find that Foreign Trade Policy para 4.14 and the exemption Notification No. 53/2015-20 dated 10.01.2019 exempts Basic Customs Duty (BCD), Additional Customs duty, Education cess, Anti-dumping duty, countervailing duty, safeguard duty on goods imported under advance authorisation. Consequently, ADD leviable on merit, is still exempted, along with all other leviable duties on the basis of Advance Authorization Scheme.

4.25.3 The details of 16 Bills of Entry cleared under Advance Authorization where the supplier is OTHER THAN M/s Ecogreen Oleogreenchemicals (Singapore) Pte Ltd, is given as under:

TABLE-A (DETAILS OF 16 BILLS OF ENTRY CLEARED UNDER ADVANCE AUTHORISATION WHEREIN SUPPLIER IS OTHER THAN M/S ECOGREEN OLEOGREENCHEMICALS (SINGAPORE) PTE LTD)

Sr. No.	Sr. No. in Annexure-A to SCN	Bill of Entry No.	Cleared under Advance Authorisation No(s) & Date(s)	Assessable Value (in Rs.)	ADD Notfn. Sr. No. claimed	ADD Payable (in Rs.)	Differential IGST (in Rs.) on ADD Payable	Payable (ADD+D iff. IGST)	Manufacturer	Supplier	Status of payment
1	52	2684020 dt 09.02.2021	031083744 6 dt 28.07.2020 031083747 6 dt 29.07.2020	15,05,520	2	7,859.70	1,414.75	9,274.45	PT. Musim Mas, Indonesia	Inter-Continent al Oil & Fats Pte Ltd., Singapore	PAYABLE ADD AND DIFF. IGST NOT DEBITED IN BOND UNDERTAKEN AGAINST THE RESPECTIVE ADVANCE AUTHORIZATIONS
2	59	2942597 dt 27.02.2021	031083132 3 dt 30.08.2019	15,03,480	2	7,849.05	1,412.83	9,261.88	PT. Musim Mas, Indonesia	Inter-Continent al Oil & Fats Pte Ltd., Singapore	
3	65	3359726 dt 30.03.2021	031100044 1 dt 19.02.2021	14,96,340	2	7,811.78	1,406.12	9,217.89	PT. Musim Mas, Indonesia	Inter-Continent al Oil & Fats Pte Ltd., Singapore	
4	69	3424301 dt 03.04.2021	031100044 1 dt 19.02.2021	15,12,660	2	7,896.98	1,421.46	9,318.43	PT. Musim Mas, Indonesia	Inter-Continent al Oil & Fats Pte Ltd., Singapore	
5	70	3654170 dt 21.04.2021	031100044 1 dt 19.02.2021	15,53,460	2	8,109.98	1,459.80	9,569.77	PT. Musim Mas, Indonesia	Inter-Continent al Oil & Fats Pte Ltd., Singapore	
6	71	4286186 dt 11.06.2021	031100044 1 dt 19.02.2021	20,35,104	13 (inserted in amended Notification No. 41/2019-Cus(AD D) dt 25.10.2019)	61,100.45	10,998.08	72,098.53	PT. Energi Sejahtera Mas, Indonesia	Sinarماس Cepسا Pte. Ltd., Singapore	
7	72	4427803 dt 23.06.2021	031100044 1 dt 19.02.2021	20,51,616	13 (inserted in amended Notification No. 41/2019-Cus(AD D) dt 25.10.2019)	61,596.19	11,087.31	72,683.51	PT. Energi Sejahtera Mas, Indonesia	Sinarماس Cepسا Pte. Ltd., Singapore	

8	82	6169939 dt 09.11.20 21 (Item Sr. No. 1)	031100044 1 dt 19.02.2021	56,27,719. 5	3	1,53,893 .08	27,700.7 6	1,81,593. 84	PT. Wilmar Nabati Indonesia	Wilmar Trading Pte Ltd., Singapore
9	91	6611939 dt 10.12.20 21	031100044 1 dt 19.02.2021	28,46,250	2	8,083.35	1,455.00	9,538.35	PT. Musim Mas, Indonesia	Inter- Continent al Oil & Fats Pte Ltd., Singapore
10	94	6905615 dt 31.12.20 21	031100044 1 dt 31.12.2021	57,86,250	2	16,432.9 5	2,957.93	19,390.8 8	PT. Musim Mas, Indonesia	Inter- Continent al Oil & Fats Pte Ltd., Singapore
11	102	8620956 dt 10.05.20 22	031100502 4 dt 30.06.2021	42,77,816	13 (inserted in amended Notificat ion No. 41/2019- Cus(AD D) dt 25.10.20 19)	63,661.7 9	11,459.1 2	75,120.9 1	PT. Energi Sejahtera Mas, Indonesia	Sinarmas Cepsa Pte. Ltd., Singapore
12	108	9152920 dt 17.06.20 22	031100502 4 dt 30.06.2021	99,12,173	2	16,816.3 5	3,026.94	19,843.2 9	PT. Musim Mas, Indonesia	Inter- Continent al Oil & Fats Pte Ltd., Singapore
13	117	9811357 dt 01.08.20 22	031100502 4 dt 30.06.2021 & 031100505 6 dt 27.05.2022	64,44,430	9	57,892.2 0	10,420.6 0	68,312.8 0	Natural Oleochemi cals SDN BHD, Malaysia	Wilmar Trading Pte Ltd., Singapore
14	118	9993547 dt 13.08.20 22	031100505 6 dt 27.05.2022	64,45,865	9	57,905.0 9	10,422.9 2	68,328.0 1	Natural Oleochemi cals SDN BHD, Malaysia	Wilmar Trading Pte Ltd., Singapore
15	119	9993870 dt 13.08.20 22	031100505 6 dt 27.05.2022	64,72,764	9	58,146.7 4	10,466.4 1	68,613.1 6	Natural Oleochemi cals SDN BHD, Malaysia	Wilmar Trading Pte Ltd., Singapore
16	123	2692487 dt 01.10.20 22	031100502 4 dt 30.06.2021 & 031100505 6 dt 27.05.2022	42,88,536	9	42,367.5 8	7,626.17	49,993.7 5	Natural Oleochemi cals SDN BHD, Malaysia	Wilmar Trading Pte Ltd., Singapore
		TOTAL		6,37,59,98 2.46		6,37,423 .26	1,14,736. 19	7,52,159. 45		

4.25.4 I find that the importer filed and cleared 148 Bills of Entry in the following manner:

(i) Total 29 Bills of Entry (13 BEs from Ecogreen and 16 BEs from other than Ecogreen) out of total 148 Bills of Entry were filed and cleared by the importer during the relevant period from 15.01.2020 to 23.05.2023 against **Advance Authorizations**. Out of these 29 Bills of Entry, in 1 Bill of Entry i.e. B/E No. 6169939 dt 09.11.2021 only item at Sr. No. 1 was cleared under Advance Authorization. However, the applicable ADD along with IGST for this item amounting to Rs. 1,81,594/- was not debited from the bond executed against the respective Advance Authorization. ADD along with applicable IGST for the other Item at Sr. No. 2 of said B/E

amounting to Rs. 5,92,792/- was duly paid by the importer vide system generated challan No. 2036986138 dt 08.12.2021 at the time of import. The producer and supplier in 13 of these 29 Bills of Entry are M/s PT Ecogreen Oleochemicals, Indonesia and M/s Ecogreen Oleogreenchemicals (Singapore) Pte Ltd respectively and the producer and supplier in the rest of 16 Bills of Entry (including item Sr. No. 1 of 01 B/E 6169939 dt 09.11.2021) is other than M/s PT Ecogreen Oleochemicals, Indonesia and M/s Ecogreen Oleogreenchemicals (Singapore) Pte Ltd and the details of these 16 Bills of Entry are given at Table-A of Para 4.25.3 of this Order. As discussed in paras supra, ADD is **otherwise also NOT** applicable in respect of the 13 Bills of Entry wherein producer is M/s PT Ecogreen Oleochemicals, Indonesia and the supplier is M/s Ecogreen Oleogreenchemicals (Singapore) Pte Ltd, and ADD along with applicable IGST in respect of the 16 Bills of Entry cleared under Advance Authorizations as detailed at Table-A above, has not been debited from the respective bonds executed against the respective Advance Authorizations.

Notification No. 18/2015-Customs dated 01.04.2015 provides for exemption of Customs duty, ADD and other additional duties for goods imported against a valid Advance Authorisation subject to debit of applicable duties at the time of clearance, in the bond undertaken and executed by/on behalf of the importer against the said authorization, before the goods are actually imported.

(ii) Another 79 Bills of Entry filed and cleared by the importer were found to be exempted from levy of applicable ADD in accordance with Customs Notification No. 52/2003 dt 31.03.2003 which stipulates that the goods imported by Export Oriented Units (EOUs) are exempted from payment of Customs Duty and other additional duties. Out of these 79 bills of entry, the goods were produced by M/s PT Ecogreen Chemicals Ltd, Indonesia and supplied by M/s Ecogreen Chemicals (Singapore) PTE Ltd in 50 bills of Entry and in the remaining 29 bills of entry the goods were produced and supplied by entities OTHER THAN M/s PT Ecogreen Chemicals Ltd, Indonesia and M/s Ecogreen Chemicals (Singapore) PTE Ltd respectively.

(iii) The remaining 40 Bills of Entry were filed and cleared for home consumption without availing exemption benefit under Customs Notification No. 18/2015-Customs dated 01.04.2015 and Notification No. 52/2003 dt 31.03.2003. Out of these 40 Bills of Entry, the payment of applicable ADD along with IGST and interest has been made by the importer in 02 Bills of Entry i.e. 4672679 dt 28.08.2019 and 4585506 dt 10.02.2023 vide challan Nos. 2028332432 dt 30.08.2019 and 204839148 dt 16.02.2023 respectively. The producer and supplier in the remaining 38 Bills of Entry filed for home consumption, was M/s PT Ecogreen Oleochemicals, Indonesia and M/s Ecogreen Oleogreenchemicals (Singapore) Pte Ltd respectively. As discussed in Paras supra, ADD is not applicable in the Bills of Entry wherein the goods are produced by M/s PT Ecogreen Oleochemicals, Indonesia and supplied by M/s Ecogreen Oleogreenchemicals (Singapore) Pte Ltd as per Sr. No. 1 of ADD Notification No. 28/2018-Cus(ADD) dt 25.05.2018. and accordingly, I find that the ADD along with applicable IGST is not recoverable on the goods imported vide these 38 Bills of Entry.

4.25.5 With reference to above said 16 Bills of Entry (including Item Sr. No. 1 of Bill of Entry No. 6169939 dt 09.11.2021), it has been noticed that goods were manufactured by M/s PT Musim

Mas, Indonesia, M/s PT Sejahtera Mas, Indonesia and M/s Natural Oleochemicals SDN BHD, Malaysia and exported by foreign suppliers namely M/s Intercontinental Oils & Fats Pte Ltd, Singapore, M/s Sinarmas Cepsa Pte Ltd, Singapore and M/s Wilmar Trading Pte Ltd, Singapore. **The importer has cleared the goods under Advance Authorization but they have not debited ADD amount under Bond executed by them against the respective Advance Authorizations. The importer was supposed to declare the ADD amount against the relevant Anti-Dumping Duty headings in the 16 bills of entry under Notification No. 18/2015 dt 01.04.2015 and they should have debited that ADD amounts from the Bonds executed against Advance Authorizations in respect of the aforementioned Bills of Entry. This act of omission by the importer renders them liable for penal action under Section 114AA of Customs Act, 1962.**

4.25.6 The importer had not debited the ADD amounts from the Bonds executed against the said authorizations. It is therefore evident that importer had not declared the correct information in the Bills of Entry with respect to applicable ADD amounting to Rs. 6,37,423.26/-along with IGST to the tune of Rs. 1,14,736.19 /- totalling to Rs. 7,52,159.45/-.

4.26 I find that the Noticee's claim that **79 consignments were cleared under the EOU Scheme** in accordance with Notification No. 52/2003-Customs dt 31.03.2003 is supported by the records. Section 9A(2A)(1) of the Customs Tariff Act, 1975, exempts goods imported by a 100% EOU from ADD imposed under Section 9A(1) of the Customs Tariff Act, 1975. Notification No. 28/2018-Customs (ADD) was issued under Section 9A(1) of Customs Tariff Act, 1975 and CBIC Circular No. 12/2008-Customs dated 24.07.2008 clarifies that no ADD is leviable on EOU imports. The Supreme Court's ruling in *M/s Dhiren Chemicals* (2002 (139) ELT 3 (SC)) confirms that CBIC circulars are binding on the Department. The demand for **ADD of Rs. 76,72,677/- and applicable IGST of Rs. 13,81,082/- (total Rs. 90,53,759/-)** on these 79 consignments is not legally tenable and is liable to be set aside.

4.27 I find that the imports cleared in 38 BE's out of the 40 BE's, involved goods produced by M/s PT Ecogreen Oleochemicals, Indonesia and exported by M/s Ecogreen Oleochemicals (Singapore) Pte Ltd, attracting NIL ADD under Serial No. 1 of Notification No. 28/2018-Customs (ADD) dt 25.05.2018. The import documents, including Certificates of Origin, confirm Indonesia as the country of origin, M/s PT Ecogreen Oleochemicals, Indonesia as the producer and M/s Ecogreen Oleochemicals (Singapore) Pte Ltd as the exporter. The Bills of Lading indicate that the goods were shipped from Batam, Indonesia to Singapore on a feeder vessel and loaded onto the main vessel at Singapore, making Singapore the port of loading and export.

4.28 In view of the foregoing, I conclude that the goods imported vide the remaining 47 bills of entry rightly fall under Sr. No. 2, Sr. No. 10 and Sr. No. 13 of amended ADD Notification No. 41/2019-Cus(ADD) dt 25.10.2019 attracting ADD's@USD 7.1 per MT, @USD 37.64 per MT and USD 51.64 per MT respectively. However, the goods covered under these BEs except 2 Bills of Entry i.e. 4672679 dt 28.08.2019 and 4585506 dt 10.02.2023 were cleared under Advance Authorization claiming exemption Notification No. 18/2015-Cus dt 01.04.2015 which exempts ADD and other duties and under EOU scheme under Notification No. 52/2003-Customs dt 31.03.2003 which exempts goods imported by EOUs. Therefore, I find that the demand of differential ADD in respect of these 45 out of 47 bills of entry is not sustainable and liable to be set aside.

C. Whether or not the differential Anti-Dumping Duty of ₹ 1,46,88,886/- along with IGST of ₹26,43,999/- (totalling ₹1,73,32,885/-) proposed as duty demand in SCN, is recoverable from the importer, M/s Krishna Antioxidants Pvt Ltd under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of Customs Act, 1962.

4.29 Since the goods imported vide 101 Bills of Entry were rightly covered under Serial No. 1 of ADD Notification No. 28/2018-Cus(ADD) dt 25.05.2018 and no ADD was leviable, the consequential IGST on ADD also does not arise. As there has been no short-levy or short-payment of duty in 101 Bills of Entry, the demand proposed in respect of these 101 Bills of Entry, under Section 28(4) of the Customs Act, 1962 is not sustainable. Once the very basis of the demand is found to be incorrect, the question of recovery of the alleged differential duty, along with interest under Section 28AA, in the said 101 Bills of Entry does not survive.

4.30 Further, I find that the goods imported covered under the remaining 47 bills of Entry (where producer and supplier are OTHER THAN M/s PT Ecogreen Oleochemicals, Indonesia and M/s Ecogreen Oleochemicals (Singapore) Pte Ltd respectively) are exempted from payment of differential ADD for the following reasons:

- (i) 29 Bills of Entry were cleared by the importer under EOU imports and Customs duties in respect of EOU imports are exempted in accordance with Notification No. 52/2003-Customs dt 31.03.2003.
- (ii) 15 bills of Entry and Item at Sr. No. 1 of Bill of Entry no. 6169939 dt 09.11.2021 as tabulated at Para 4.25.3 (Table-A) of this order are exempted from payment of ADD as the same were cleared under Advance Authorizations and ADD is exempted for goods cleared under Advance Authorizations subject to fulfilment of export obligation against the declared imports and debit of applicable duties, as per Notification No. 18/2015-Customs dated 01.04.2015
- (iii) Payment of ADD along with applicable IGST and interest has been made by the importer in respect of the goods covered under the remaining 02 bills of entry viz. 4672679 dt 28.08.2019 and 4585506 dt 10.02.2023 vide challan Nos. 9907953324 dt 18.08.2025 and 7212293776 dt 07.01.2025 respectively and also payment of ADD along with applicable IGST in respect of goods covered under Item at Sr. No. 2 of B/E No. 6169939 dt 09.11.2021 has been duly made by the importer vide challan No. 2036986138 dt 08.12.2021 at the time of import.

4.30.1 In summary, I find that the goods imported vide the aforesaid 148 bills of entry were filed and cleared by the importer in the following manner:

- (a) 101 bills of entry were filed and cleared by the importer under Sr. No. 1 of ADD Exemption Notification No. 28/2018-Cus dt 25.05.2018 wherein the producer is M/s PT Ecogreen Oleochemicals Ltd, Indonesia and supplier is M/s Ecogreen Oleochemicals (Singapore) Pte Ltd.

(b) 29 bills of entry were filed and cleared by the importer as EOU imports under Notification No. 52/2003-Customs dt 31.03.2003 which exempts Customs duties for goods imported by EOUs, The producer and supplier in these 29 bills of entry are OTHER THAN M/s PT Ecogreen Oleochemicals Ltd, Indonesia and M/s Ecogreen Oleochemicals (Singapore) Pte Ltd.

(c) 16 bills of entry (including Item Sr. No. 1 of B/E No. 6169939 dt 09.11.2021) were filed and cleared by the importer by claiming exemption of ADD under Advance Authorization clearance as per Notification No. 18/2015-Cus dt 01.04.2015 which exempts ADD and other duties. The producer and supplier in these 16 bills of entry are OTHER THAN M/s PT Ecogreen Oleochemicals Ltd, Indonesia and M/s Ecogreen Oleochemicals (Singapore) Pte Ltd

(d) 2 bills of entry viz. 4672679 dt 28.08.2019 and 4585506 dt 10.02.2023 were filed and cleared by the importer without payment of applicable ADD and IGST at the time of import. However, the applicable ADD and IGST along with applicable interest were subsequently paid by the importer vide challan Nos. 9907953324 dt 18.08.2025 and 7212293776 dt 07.01.2025

4.30.2 In view of the above, I find that the importer has filed and cleared the 146 bills of entry either by availing duty exemption under different Notifications or by appropriately paying ADD and applicable IGST wherever it is required in respect of their imports. Therefore, I find that the demand of differential duty in respect of the 146 bills of entry mentioned at Para 4.30.1(a), 4.30.1(b) and 4.30.1(c) above is not sustainable and dropped forthwith. However, I find that the demand in respect of the remaining 02 bills of entry (mentioned at 4.30.1(d) above) i.e. B/E No. 4672679 dated 28.08.2019, and B/E No. 4585506 dated 10.02.2023, amounting to **Rs. 24,876/-** is sustainable and the amount paid by the Noticee in respect of these 02 bills of entry is required to be appropriated and adjusted against the demand of differential ADD along with applicable IGST and interest thereon, made against them.

D. Whether or not the goods imported vide the 148 bills of entry having assessable value of Rs. 42,37,58,965/- should be held liable for confiscation under Section 111(m) of the Customs Act, 1962.

4.31 I find that the importer had subscribed to a declaration as to the truthfulness of the contents of the bills of entry in terms of Section 46(4) of the Act in all their import declarations. Section 17 of the Act, w.e.f 08.04.2011, provides for self-assessment of duty on imported goods by the importer themselves by filing a bill of entry, in the electronic form. Thus, under the scheme of self-assessment, it is the importer who has to diligently ensure that he declares the correct description of the imported goods, its correct classification, the applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported goods while presenting the bill of entry. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 8th April, 2011, there is an 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.

4.32 I also find that, it is very clear that w.e.f. 08.04.2011, the importer must self-assess the duty under Section 17. Such onus have not been deliberately discharged by **M/s Krishna Antioxidants Pvt Ltd** in terms of the provisions of Section 46(4) of the Customs Act, 1962, the

importers 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 in support of such declaration, produce to the proper officer the invoice, of any, relating to the imported goods. In terms of the provisions of Section 47 of the Customs Act, 1962, the importer shall pay the appropriate duty payable on imported goods and then clear the same for home consumption.

4.33 I find that the importer, **M/s Krishna Antioxidants Pvt Ltd** failed to provide correct statement in the 16 Bills of Entry filed for import during the period from 09.02.2021 to 01.10.2022 without debiting the applicable antidumping duty along with consequential IGST in bonds executed against Advance Authorizations. It is a settled law position that when an importer is claiming a duty benefit, it is the responsibility of the importer to exercise reasonable care to the accuracy and truthfulness of the information supplied. Therefore, the burden of proof naturally falls on the importer to prove that exemption benefit is rightly availed in respect of the imported goods.

4.33.1 I find that the importer, M/s Krishna Antioxidants Pvt Ltd had used 6 Advance Authorizations for clearance of goods imported against aforesaid 16 Bills of Entry. It has been stated by the importer that they had fulfilled the export obligation in respect of 3 advance authorisations out of 6 advance Authorisations and they submitted required documents to DGFT for EODC in the remaining 3 Advance Authorisations for which they had been issued copies of receipts of acknowledgement by DGFT. This indicates that the importer has properly exported the quantity of goods against the declared imports. Therefore, there is no actual revenue loss to the department. However, the importer has wilfully mis-stated and suppressed the correct information in the impugned 16 bills of entry with regard to levy of ADD, so as to evade the payment of applicable ADD and the importer is engaged in the wilful circumvention of procedural aspect involved in the process of clearance of goods under Advance Authorisation. The details of the 6 Advance Authorizations are as under:

Sr. No	Advance Authorization No. & Date	EODC Staus
1	0311000441 dt 19.02.2021	EODC dated 30.03.2023
2	0310837446 dt 28.07.2020	DGFT Acknowledgement of receipt dt 14.10.2022
3	0310837476 dt 29.07.2020	DGFT Acknowledgement of receipt dt 14.10.2022
4	0310833188 dt 04.12.2019	EODC dated 29.03.2023
5	0311005024 dt 30.06.2021	EODC dated 22.11.2023
6	0310831323 dt 30.08.2019	DGFT Acknowledgement of receipt dt 11.04.2022

4.33.2 The noticee has fulfilled the Export obligation against the above said Advance Authorisations, therefore no actual loss of revenue was incurred by the Government of India. However, I find that the importer has failed to furnish the correct information to department while filing the aforementioned 16 Bills of Entry, by not mentioning the Anti-Dumping amount against the relevant Anti-dumping duty headings in the impugned 16 bills of entry.

4.33.3 The Noticee had wilfully furnished incorrect and false information at the time of filing the above said 16 Bills of Entry with reference to levy of ADD. The Noticee in the above said 16 Bills of Entry filed during the period from 09.02.2021 to 01.10.2022 (mentioned in Table-A at Para 4.27.6 of this order) and having an assessable value of Rs. 6,37,59,982.46/- failed to mention the applicable ADD amount in the Bills of Entry and resorted to non-payment of ADD by way of not debiting the said duties in the respective bonds undertaken against the said authorizations.

4.33.4 The EODC's submitted by the importer towards fulfilment of export obligation in respect of the Advance Authorizations under which these 16 bills of entry were cleared, show that the importer has appropriately exported the goods against the declared imports, causing no loss of revenue to the exchequer. Thus, I find that the goods imported vide these 16 bills of entry are not liable for confiscation under Section 111(m) of Customs Act, 1962.

4.33.5 I find that the goods imported covered under the 02 bills of Entry i.e. B/E No. 4672679 dated 28.08.2019 and B/E No. 4585506 dated 10.02.2023 and having assessable value of Rs. 35,99,075/- were imported without payment of applicable ADD along with IGST at the time of import. This act of the importer importing the goods without payment of applicable duties at the time of import renders the goods liable for confiscation under Section 111(m) of Customs Act, 1962. Therefore, I hold that the goods covered under the 02 Bills of Entry i.e. B/E No. 4672679 dated 28.08.2019 and B/E No. 4585506 dated 10.02.2023 having assessable value of Rs. 35,99,075/- liable for confiscation under Section 111(m) of the Customs Act, 1962.

4.33.5 The subject imported goods, are not available for confiscation, but I rely upon the order of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) wherein the Hon'ble Madras High Court held in para 23 of the judgment as below:

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

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

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

4.33.7 It is established under the law that the declaration under section 46 (4) of the Customs Act, 1962 made by the importer at the time of filing Bills of Entry is to be considered as an undertaking which appears as good as conditional release. I further find that there are various orders passed by the Hon'ble CESTAT, High Court and Supreme Court, wherein it is held that the goods cleared on execution of Undertaking/ Bond are liable for confiscation under Section 111 of the Customs Act, 1962 and Redemption Fine is imposable on them under provisions of Section 125 of the Customs Act, 1962. A few such cases are detailed below:

- a. M/s Dadha Pharma h/t. Ltd. Vs. Secretary to the Govt. of India, as in 2000 (126) ELT 535 (Chennai High Court);
- b. M/s Sangeeta Metals (India) Vs. Commissioner of Customs (Import) Sheva, as reported in 2015 (315) ELT 74 (Tri-Mumbai);
- c. M/s SacchaSaudhaPedhi Vs. Commissioner of Customs (Import), Mu reported in 2015 (328) ELT 609 (Tri-Mumbai);
- d. M/s Unimark Remedies Ltd. Versus. Commissioner of Customs (Export Promotion), Mumbai reported in 2017(335) ELT (193) (Bom)
- e. M/s Weston Components Ltd. Vs. Commissioner of Customs, New Delhi reported in 2000 (115) ELT 278 (S.C.) wherein it has been held that:

“if subsequent to release of goods import was found not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods - Section 125 of Customs Act, 1962, then the mere fact that the goods were released on the bond would not take away the power of the Customs Authorities to levy redemption fine.”

- f. Commissioner of Customs, Chennai Vs. M/s Madras Petrochem Ltd. As reported in 2020 (372) E.L.T. 652 (Mad.) wherein it has been held as under:

“We find from the aforesaid observation of the Learned Tribunal as quoted above that the Learned Tribunal has erred in holding that the cited case of the Hon'ble Supreme Court in the case of Weston Components, referred to above is distinguishable. This observation written by hand by the Learned Members of the Tribunal, bearing their initials, appears to be made without giving any reasons and details. The said observation of the Learned Tribunal, with great respect, is in conflict with the observation of the Hon'ble Supreme Court in the case of Weston Components.”

4.33.8 In view of the above, I find that the decision of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), which has been passed after observing decision of Hon'ble Bombay High Court in case of M/s Finesse Creations Inc reported vide 2009 (248) ELT 122 (Bom)-upheld by Hon'ble Supreme Court in 2010(255) ELT A. 120 (SC), is squarely applicable in the present case.

4.34 Further, I find that the goods imported vide 146 bills of entry OTHER THAN those mentioned at Sr. Nos. 1 and 138 of Annexure-A to the SCN are not liable for confiscation under Section 111(m) of the Customs Act, 1962, since the goods imported vide these 146 bills of entry

were cleared by rightly availing exemption benefits of ADD and applicable IGST under different exemption notifications or by appropriately discharging the payments of ADD and applicable IGST.

4.35 However, I find that the importer has paid the Anti-Dumping Duty along with applicable IGST and leviable interest thereon in respect of 02 Bills of Entry i.e. 4672679 dated 28.08.2019 and B/E No. 4585506 dated 10.02.2023 (at Sr. Nos. 1 and 138 of Annexure-A to SCN) vide challan Nos. 9907953324 dt 18.08.2025 and 7212293776 dt 07.01.2025 respectively long after the import has taken place. Further, the importer has duly discharged the payment of applicable ADD along with IGST in respect of Item Sr. No. 2 of B/E No. 6166939 dt 09.11.2021 (mentioned at Sr. No. 82 of Annexure-A to SCN) at the time of import vide challan No. 2036986138 dt 08.12.2021. Therefore, I find that the goods imported vide the aforementioned 02 bills of entry i.e. 4672679 dated 28.08.2019 and B/E No. 4585506 dated 10.02.2023 (at Sr. Nos. 1 and 138 of Annexure-A to SCN) and having a total assessable value of **Rs. 35,99,075/-** are liable for confiscation under Section 111(m) of Customs Act, 1962 as the goods covered under these 02 bills of entry were imported without payment of ADD and applicable IGST at the time of import. The applicable ADD along with IGST were paid by the importer along with interest long after the clearance of the imported goods.

D. Whether or not the penalty be imposed upon the importer, M/s Krishna Antioxidants Pvt Ltd under Section 112(a)/114A and Section 114AA of the Customs Act, 1962.

4.36 Now I proceed to examine whether penalty be imposed upon the importer, M/s Krishna Antioxidants Pvt Ltd under Section 112(a)/114A and Section 114AA of the Customs Act, 1962.

4.37 The provisions of Section 112(a), 114A and Section 114AA of the Customs Act, 1962 are reproduced as under:

“SECTION 112. Penalty for improper importation of goods, etc. — Any person, -

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

Shall be liable

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

(ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is the greater:

Section 114A. 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 under sub-section (2) of Section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:

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

***Provided** further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:*

Provided also that where any penalty has been levied under this section, no penalty shall be levied under Section 112 or Section 114.

114AA. Penalty for use of false and incorrect material. –

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

4.38 As discussed in paras supra, I find that the goods imported vide 130 bills of entry having an assessable value of Rs. 35,92,13,767/- are not liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962, therefore I find that the Noticee is not liable for penalty under the provisions of Section 112(a) of the Customs Act, 1962, in relation to the goods imported vide these 130 bills of entry.

4.39 However, I hold that the goods imported vide 02 bills of entry i.e. B/E No. 4672679 dated 28.08.2019, Item Sr. No. 2 of B/E No. 6169939 dt 09.11.2021 and B/E No. 4585506 dated 10.02.2023

having a total assessable value of **Rs. 35,99,075/- (Rupees Thirty Five Lakhs Ninety Nine Thousand and Seventy Five only)** are liable for penalty under Section 112(a) and 114A of the Customs Act, 1962, as these goods are held liable for confiscation under Section 111(m) of the Customs Act, 1962, as discussed in paras above. However, in view of fifth proviso of Section 114A of Customs Act, 1962, penalty cannot be imposed under Sections 112(a) and 114A *ibid*.

4.40 I find that in the instant case, the impugned imports against the 16 Bills of Entry as mentioned at Para 4.25.3 of this order, under the ambit of the subject SCN were effected in the name of M/s Krishna Antioxidants Pvt Ltd. I note that the importer had not declared the ADD

Notification in the 16 Bills of Entry as mentioned above and they had provided incorrect information about the applicable Anti-dumping duty for the imported goods.

4.41 Furthermore, I find that the ingredients for penal action under Section 114AA of the Customs Act, 1962 on **M/s Krishna Antioxidants Pvt Ltd** has been elaborately explained in the SCN. I note that, The Hon'ble CESTAT, New Delhi in the case of M/s S.D. Overseas vs The Joint Commissioner of Customs in Customs Appeal No. 50712 of 2019 had dismissed the appeal of the petitioner while upholding the imposition of penalty under Section 114AA of the Customs Act, wherein it was held as under:

28. As far as the penalty under Section 114AA is concerned, it is imposable if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act. We find that the appellant has misdeclared the value of the imported goods which were only a fraction of a price the goods as per the manufacturer's price lists and, therefore, we find no reason to interfere with the penalty imposed under Section 114AA.

4.41.1 There are several judicial decisions in which penalty on Companies under section 114AA of the Customs Act, 1962 has been upheld. Following decisions are relied upon on the issue -

- i. M/s ABB Ltd. Vs Commissioner (2017-TIOL-3589-CESTAT-DEL)
- ii. Sesa Sterlite Ltd. Vs Commissioner (2019-TIOL-1181-CESTAT-MUM)
- iii. Indusind Media and Communications Ltd. Vs Commissioner (2019-TIOL-441-SC-CUS)

4.41.2 As discussed in foregoing paras, the importer, M/s Krishna Antioxidants Pvt Ltd at the time of import, furnished documents such as the 16 Bills of Entry, import invoices, packing lists without mentioning the ADD notification with an intention to evade the applicable anti-dumping duty. Therefore, M/s Krishna Antioxidants Pvt Ltd have rendered themselves liable for penalty under Section 114AA of the Customs Act, 1962 for having knowingly made, signed and declared in the import documents with wrong and incorrect levy of import duties on the imported goods. M/s Krishna Antioxidants Pvt Ltd was aware of correct Customs duties on the goods and had knowingly not declared the ADD notification in the 16 Bills of Entry nor paid the applicable ADD on the goods by way of debiting in the Bond executed against the respective Advance Authorisations. From the evidences brought on record, it is evident that M/s Krishna Antioxidants Pvt Ltd has suppressed the facts and wilfully not paid the ADD on the goods imported against 16 Bills of Entry. Thus, I find that the importer had knowingly used and caused to be used such particulars as mentioned above that were false for the transactions under the Customs Act, 1962. Since the importer has caused wrong declarations to be made in respective bills of entry. I hold that M/s Krishna Antioxidants Pvt Ltd is liable to penalty under Section 114AA of the Customs Act, 1962.

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

ORDER

5.1 I order that the demand of differential Anti-Dumping Duty amounting to **Rs. 1,46,67,804/- and IGST on not paid Anti-Dumping Duty amounting to Rs. 26,40,205/- (total amounting to Rs. 1,73,08,009/-) and applicable interest** in respect of goods covered under 146 Bills of Entry mentioned at Sr. Nos. OTHER THAN 1 and 82 of Annexure-A to the SCN, under Section 28(4) of the Customs Act, 1962, **is not sustainable and is hereby dropped.**

5.2 I confirm the demand of differential Anti-Dumping Duty along with applicable IGST amounting to **Rs. 24,876/- (Rupees Twenty Four Thousand Eight Hundred and Seventy Six only)** in respect of goods covered under 02 Bills of Entry viz. B/E No. 4672679 dated 28.08.2019 and B/E No. 4585506 dated 10.02.2023 (mentioned at Sr. Nos. 1 and 138 of Annexure-A to SCN).

5.3 I order to appropriate and adjust the amount aggregating to **Rs. 39,104/- (Rupees Thirty Nine Thousand One Hundred and Four Only)** paid by the Noticee vide challan Nos, 7212293776 dt 07.01.2025 and 9907953324 dt 18.08.2025 towards demand of differential ADD along with applicable IGST and interest (wherever applicable) thereon in respect of goods covered under 02 Bs/E i.e.. B/E No. 4585506 dated 10.02.2023 and 4672679 dated 28.08.2019 respectively as mentioned at sub-para 5.3 above.

5.4 I order that the proposal to confiscate the goods covered under the 146 Bills of Entry (including B/E No. 6169939 dt 09.11.2021: Item Sr No. 1) mentioned at Sr. Nos. OTHER THAN 1 and 138 of Annexure-A to the SCN and having a total assessable value of Rs. 42,01,59,890/ (Rupees Forty Two Crores One Lakh Fifty Nine Thousand Eight Hundred and Ninety Only), under Section 111(m) of the Customs Act, 1962, is not maintainable and is hereby dropped.

5.5 I order for confiscation of goods covered under 02 bills of entry i.e. B/E No. 4672679 dated 28.08.2019 and B/E No. 4585506 dated 10.02.2023 having a total assessable value of **Rs. 35,99,074/- (Rupees Sixty Four Lakhs Twelve Thousand Nine Hundred and Thirty Four only)** under Section 111(m) of Customs Act, 1962. However, I give an option to the importer, M/s Krishna Anti-Oxidants Pvt Ltd, to redeem these goods under Section 125 of the Customs Act, 1962 on payment of redemption fine of **Rs. 1,75,000/- (Rupees One Lakh Seventy Five Thousand Only).**

5.6 I impose a penalty equal to differential duty of **Rs. 24,876/- (Rupees Twenty Four Thousand Eight Hundred and Seventy Six Only)** under Section 114A of Customs Act, 1962, in relation to goods covered under 02 Bills of Entry mentioned at Sr. Nos. 1 and 138 of Annexure-A to the SCN.

5.7 I refrain from imposing any penalty on the importer, M/s Krishna Anti-Oxidants Pvt Ltd under Section 112(a) of the Customs Act, 1962.

5.8 I impose a penalty of **Rs. 2,00,000/- (Rupees Two Lakhs only)** on **M/s Krishna Antioxidants Pvt Ltd** under Section 114AA of the Customs Act, 1962 owing to false declaration made by the importer in filing the 16 Bills of Entry mentioned at Para 4.25.3 (Table-A) of this Order.

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.

(यशोधन वनगे /Yashodhan Wanage)
प्रधान आयुक्त सीमा शुल्क / Pr. Commissioner of Customs
एनएस-I, जेएनसीएच / NS-I, JNCH

To,

- 1) M/s Krishna Antioxidants Pvt Ltd (IEC-0398043001)
1, Lopes Manor, I.C. Colony,
Borivali (W), Mumbai 400103.
- 2) Plant A-13 MIDC, GANE Khadpoli
Chiplun, Dist- Ratnagiri, Maharashtra-415603.
- 3) M/s Krishna Antioxidants Pvt Ltd (IEC – 0398043001),
107/108, 1st floor, Raheja plaza, 15 Shah Industrial estate ,
Opp. Yashraj studio, Veera desai road, Andheri west, Mumbai,
Mumbai suburban, Maharashtra-400053.

Copy to:

- i. The Additional Commissioner of Customs, Gr. II C-F, JNCH, Nhava Sheva.
- ii. AC/DC, Chief Commissioner's Office, JNCH.
- iii. AC/DC, Centralized Revenue Recovery Cell, JNCH
- i. Copy to EDI, JNCH through email (with a copy (cc) to Chief Commissioner's Office)
- v. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board