
	<p align="center">आयुक्त, सीमाशुल्क (निवारक) का कार्यालय OFFICE OF THE COMMISSIONER OF CUSTOMS (PREVENTIVE), MUMBAI दूसरी मंजिल, नवीन सीमा शुल्क भवन, बेलाई इस्टेट, मुंबई-400 001 2ND FLOOR, NEW CUSTOMS HOUSE, BALLARD ESTATE, MUMBAI-400001 Email: commrprev-cusmum@gov.in</p>	
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DIN: 20251279OC000061158E

मूलादेश संख्या/Order-in-Original No. :	PCCP/ADJ/AH/11/2025-26
आदेश की तारीख / Date of Order :	23.12.2025
जारी करने की तारीख / Date of issue :	23.12.2025
आदेश फा. सं. / Order File No.	S/10-223/23-24/Commr/NS-V/CAC/JNCH
द्वारा जारी / PASSED BY :	डॉ. अतुल हांडा / Dr. Atul Handa आयुक्त, सीमाशुल्क (निवारक), मुंबई / Commissioner of Customs (Preventive), Mumbai.

मूल आदेश / Order-in-Original

- यह प्रति जिस व्यक्ति को जारी किया गया है उसके उपयोग के लिए निः शुल्क दिया जाता है।
This copy is granted free of charge for use of the person to whom it is issued.
- इस आदेश के खिलाफ अपील क्षेत्रीय पीठ, सीमाशुल्क, उत्पाद शुल्क और सेवाकर अपीलीय न्यायाधिकरण, चौथा एवं पांचवा तल, जय सेंटर, 34, पी.डी.मेल्लो रोड, पूनास्ट्रीट, मस्जिद बंदर (पूर्व), मुंबई-400009 को प्रस्तुत की जा सकती है।
An appeal against this order lies with the Regional Bench, Customs, Excise, and Service Tax Appellate Tribunal, 4th and 5th Floor, Jai Centre, 34, P.D. Mello Road, Poona Street, Masjid Bunder (East), Mumbai – 400 009.
- अपील सीमा शुल्क (अपील) नियमावली, 1982 के नियम 6 के अनुसार उन नियमों के साथ संलग्न फॉर्म सी.ए. 3 में तीन माह के भीतर की जानी चाहिए। अपील चार प्रतियों में तथा निम्नांकित के साथ संलग्न होनी चाहिए:
The appeal is required to be filed **within 3 months** as provided in Rule 6 of the Customs (Appeals) Rules, 1982 in form C.A. 3 appended to said Rules. The appeal should be in quadruplicate and shall be accompanied by:
 - उस आदेश की चार प्रतियां जिसके विरुद्ध अपील हो (जिनमें से कम से कम एक प्रमाणित प्रति होना चाहिए) ;
4 copies of the order appealed against (at least one of which should be a certified copy).
 - किसी भी राष्ट्रीय कृत बैंक की शाखा पर, जहां उचित न्यायालय (बेंच) स्थित है, उपयुक्त शुल्क का (नीचे दिया गया है) क्रॉस किया हुआ बैंकड्राफ्ट अधिकरण की पीठ के सहायक रजिस्ट्रार के पक्ष में जारी किया होना चाहिए।
A crossed Bank Draft drawn in favour of the Assistant Registrar of the Tribunal on a branch of any Nationalized Bank located at a place where the Bench is situated, for appropriate fee (as given below).
 - जहां अपील से संबंधित मामले में किसी सीमा शुल्क अधिकारी द्वारा मांगे गए शुल्क एवं व्याज और लगाए गए अर्थदंड की राशि पांचलाख या उससे कम हो, तो एक हजार रुपए का;
a. Where the amount of duty and interest demanded and penalty levied by any officer of the Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees.
 - जहां अपील से संबंधित मामले में किसी सीमा शुल्क अधिकारी द्वारा मांगे गए शुल्क एवं व्याज और लगाए गए अर्थदंड की राशि पांचलाख रुपए से अधिक हो पर पचास लाख रुपए से अधिक नहीं हो, तो पांच हजार रुपए का;
b. Where the amount of duty and interest demanded and penalty levied by any officer of the Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees.
 - जहां अपील से संबंधित मामले में किसी सीमा शुल्क अधिकारी द्वारा मांगे गए शुल्क एवं व्याज और लगाए गए अर्थदंड की राशि पचास लाख रुपए से अधिक हो, तो दस हजार रुपए का।
c. Where the amount of duty and interest demanded and penalty levied by any officer of the Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees.
- अपील अधिकरण पीठ के रजिस्ट्रार अथवा इस संबंध में उनके द्वारा अधिकृत किसी भी अधिकारी के कार्यालय में प्रस्तुत की जानी चाहिए अथवा रजिस्ट्रार या ऐसे अधिकारी के नाम पंजीकृत डाक द्वारा भेजी जानी चाहिए।
The appeal shall be presented in person to the Registrar of the Bench or an officer authorized in this behalf by him or sent by Registered Post addressed to the Registrar or such officer.
- इस निर्णय या आदेश के विरुद्ध अपील करने के इच्छुक व्यक्ति को, इस अपील के लंबित रहने तक, मांग किए गए शुल्क या लगाए गए अर्थदंड का दस प्रतिशत धनराशि जमा करना होगा और ऐसे भुगतान का साक्ष्य प्रस्तुत करना होगा। ऐसा न करने पर अपील सीमा शुल्क अधिनियम, 1962 की धारा 129E के प्रावधानों का अनुपालन न करने के आधार पर निरस्त मानी जाएगी।
Any person desirous of appealing against this decision or order shall, pending the appeal, shall deposit ten per cent of the duty demanded or the 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.

विषय/ Subject :	Adjudication of Show Cause Notice No. 2556/2023-24/Commr/Gr.VA/CAC/JNCH dated 29.01.2024 issued to M/s. Brandworks Technologies Pvt. Ltd. under Section 28(4) of the Customs Act, 1962 by the Commissioner of Customs, NS-V, JNCH, Nhava Sheva - reg.
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BRIEF FACTS OF THE CASE

Based on an Alert Circular No. 11/2019 dated 30.03.2019 issued by the Commissioner of Customs (Audit), Mumbai, Zone-I vide F.No.S/16-Misc-75/2018-19Audit(P&C), data pertaining to imports made by various importers through JNCH (INNSA1) was analysed in detail. It was observed that M/s. Brandworks Technologies Pvt. Ltd. (IEC- AAHCB4208P) (hereinafter also referred to as 'the noticee') had imported goods viz., "Battery" under the CTH 8507, vide Bills of Entry as detailed in Annexure- 'A' to the impugned Show Cause Notice, and paid lower rate of BCD and/or IGST under Sl. No. 203 of Schedule II of IGST Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 @ 12% and/or @18% under Sr. Nos. 376AA or 376AAA of Schedule III of IGST Notification No. 19/2018- Integrated tax (Rate) dated 27.07.2018 or a lower IGST rate in other Schedule. However, the said imported goods attracted levy of BCD & IGST as detailed in Table-A given below.

Table-A

Tariff Item	Description of goods	BCD %	SWS %	IGST %	Total Duty	Remarks
8507 (except 8507 60 00 and 850790)	Battery pack of cellular mobile phones [Other than Lithium-ion]	15	10	28	49.12	02.02.18 - till date
85076000	Lithium-ion battery of cellular mobile phones	15	10	28	49.12	02.02.18 - 26.07.18
		15	10	18	37.47	27.07.18 - till date
85076000	Battery pack of cellular mobile phones [Lithium-ion]	20	10	18	43.96	30.01.19 - till date
85076000	Power Bank [Lithium-ion]	20	10	18	43.96	30.01.19 - till date

2. From the above table, it appeared that;

- (i) Battery pack of cellular mobile phones except 85076000 and 850790 (other than Lithium-ion) fell under CTH 8507 and attracted BCD @ 15% & IGST @ 28% under Serial No. 139 of Schedule-IV of IGST notification No. 01/2017.
- (ii) Till 26.07.2018, Lithium-ion battery of cellular mobile phones [CTH 85076000] attracted BCD @ 15% & IGST @ 28% under Serial No. 139 of Schedule-IV of IGST Notification No. 01/2017.
- (iii) From 27.07.2018 to 30.01.2019, Lithium-ion battery of cellular mobile phones [CTH 85076000] attracted BCD @ 15% & IGST @ 18% under Serial No. 376AA of Schedule-III of IGST Notification No. 01/2017.
- (iv) From 30.01.2019 onwards, Lithium-ion battery of cellular mobile phones [CTH 85076000] attracted BCD @ 20% & IGST @ 18% under Serial No. 376AA of Schedule-III of IGST Notification No. 01/2017.
- (v) From 30.01.2019 onwards, Power Bank (Lithium-ion) [CTH 85076000] attracted BCD @ 20% & IGST @ 18% under Serial No. 376AA of Schedule-III of IGST Notification No. 01/2017.

3. On scrutiny of the import data, it was observed that the goods covered under CTH 8507 were cleared by the noticee at lower rate of BCD and/or IGST instead of the proper rate of BCD and IGST as detailed in the Table-A above. The total assessable value of the said goods imported and cleared by the noticee under CTH 8507 was found to be Rs. 8,37,56,158/- and it appeared that instead of total applicable duty of Rs.3,68,19,207/-, they had paid duty totally amounting to Rs.2,10,45,729/- only, resulting in short payment of duty to the tune of Rs.1,57,73,478/-. The BoE-wise details of the same are enumerated in Annexure-'A' to the impugned SCN. The gist of the same is as under:-

Table-B

(Amount in Rs.)

Total Assessable Value	Applicable/ Payable duty	Duty Paid	Differential/ recoverable duty
8,37,56,158/-	3,68,19,207/-	2,10,45,729/-	1,57,73,478/-

3.1 From the above, it appeared that the noticee had short-paid duty totally amounting to Rs.1,57,73,478/- and the same was required to be recovered from the noticee along with applicable interest and penalty under the provisions of the Customs Act, 1962.

4. In view of the above, a consultative letter No. 2597 dated 2/6/2023 was issued to the noticee requiring them to clarify the above said issue raised by the department. They were also advised to pay the above said differential duty along with applicable interest and penalty, if they agreed to the observation/finding of the department. However, the noticee failed to submit any reply, and did not respond to the said letter issued by the department.

5. It appeared that, after the introduction of self-assessment, vide Finance Act, 2011, the onus was on the importer to make true and correct declaration in all aspects including classification and calculation of duty, but in the instant case the subject goods have been misclassified and duty amount has not been paid correctly by the noticee-importer. Further, the following legal provisions of the Customs Act, 1962 relating to import of goods, recovery of duties, liability of the goods for confiscation and penalty for improper importation appeared to be relevant in the instant case:

- (i) Section 17(1) – Self-assessment of duty.
- (ii) Section 46 - Entry of goods on importation.
- (iii) Section 28 - Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.
- (iv) Section 111 - Confiscation of improperly imported goods etc.
- (v) Section 112 - Penalty for improper importation of goods etc.
- (vi) Section 114A - Penalty for short-levy or non-levy of duty in certain cases.

6. Further, it appeared that consequent upon amendment to Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'self-assessment' has been introduced in customs clearance. Section 17 of the Act provides for self-assessment of duty on imported goods by the importer himself by

filing a 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 a bill of entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Declaration) Regulation, 2011, the bill of entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic declaration in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a bill of entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under self-assessment, it is the importer who has to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the bill of entry. Thus, with the introduction of self-assessment, it is the added and enhanced responsibility of the importer to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

7. In view of the above facts, it appeared that the noticee had deliberately not paid the duty by wilful mis-statement as it was their duty to declare correct applicable rate of duty in the entry made under Section 46 of the Customs Act, and thereby has attempted to take undue benefit of Rs.1,57,73,478/-. Therefore, it appeared that the said short-paid duty amounting to Rs.1,57,73,478/- was liable for recovery from the noticee under Section 28(4) of the Customs Act, 1962 by invoking extended period of limitation, along with applicable interest at under Section 28AA of the Customs Act, 1962 and penalty for their acts of omission/ commission.

8. It further appeared that the imported goods were liable for confiscation under Section 111(o) of the Customs Act, 1962 as the said goods did not correspond in respect of value, duty liability, etc. with the entry made by the noticee under this Act and the noticee failed to comply with the conditions related to import of exempted goods. It also appeared that the noticee for their said acts of omission and commissions has rendered themselves liable for penalty under Sections 112(a) and 114A of the Customs Act, 1962.

9. In view of the above, the noticee viz, M/s. Brandworks Technologies Pvt. Ltd. were issued the impugned SCN dated 29.01.2024 requiring them to show cause as to why:-

- (i) The differential/short-paid duty amounting to Rs.1,57,73,478/- should not be demanded from them under Section 28(4) of the Custom Act, 1962;
- (ii) Interest should not be recovered from them under Section 28AA of the Customs Act, 1962;
- (iii) The said subject goods imported vide Bills of Entry as detailed in Annexure-'A' having total assessable value of Rs.8,37,56,158/- should not be held liable for confiscation under Section 111(o) of the Customs Act, 1962;
- (iv) Penalty should not be imposed on them under Section 112(a) of the Customs Act, 1962; and
- (v) Penalty should not be imposed on them under Section 114A of Customs Act, 1962.

WRITTEN SUBMISSIONS

10. The noticee has furnished their written reply to the impugned SCN dated 29.01.2024, vide their letter dated 20.02.2025 wherein they have *inter alia* contended as under:-

- (i) It is submitted that goods description as per invoice, BEs and even as per the Annexure to SCN is Lithium Ion Cell and not Battery.
- (ii) There is no short levy of duty as they have paid IGST at higher rate i.e., @18% as mentioned in para 2 of SCN, and the BCD has been paid availing the concessional rate as per Notf. No. 50/2017, by following the procedure prescribed in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.
- (iii) The SCN is totally silent on our claim of notification benefit for BCD against the Bond and Bank Guarantee etc. as per above Rules of 2017 and the short levy has been calculated with preconceived notion, in routine manner without stating any basis or reason to state that total applicable duty on imported goods is 43.96%.
- (iv) In all BEs, the goods have been declared as Lithium-Ion Cell and Polymer Li-Ion Cell (For use in manufacture of POWER BANK) 3.7V of different capacity, with model numbers and BIS certificate numbers of imported Li-ion Cells.
- (v) All the BEs listed in Annexure to SCN have been filed, assessed /examined and cleared out of Customs Control after 30.01.2019 and in case of all BEs the IGST has been paid @18% as per claim under Sl.No. 376AA, Schedule-III of Notification No. 01/2017. Thus even as per SCN, there is no lower payment of IGST and the assessment of IGST is also as per the rate prescribed in SCN i.e., @18%. Thus, there is no short levy or Lower payment of IGST.
- (vi) The BEs in subject case pertained to period 30.01.2019 till date and that, in the SCN, the BCD chargeable is shown as 20%. It is pointed out that the Description of goods in all BEs is "*Lithium-Ion Cell or Polymer Li-Ion Cell (For use in manufacture of POWER BANK) 3.7V of different capacity with model numbers and BIS certificate numbers of imported Li-ion Cells*". It is submitted that in case of following 10 out of 12 consignments (BEs), they have claimed the exemption of Notification 57/2017 (Sl. No. 17B): -

Sl. No.	BE No.	BE Date	Assessable value	Total Duty Paid	Total Applicable Duty as per SCN @43.96%	Difference
1	7714866	21.05.2020	12235989	2996594	5378941	2382347
2.	8181072	15.07.2020	12235989	2996594	5378941	2382347
3.	6293542	30.12.2019	10615507	2599738	4666577	2066839
4	6293573	30.12.2019	5299068	1297742	2329470	1031728
	6293573	30.12.2019	3594337	880253.1	1580071	699818
	6293573	30.12.2019	3337614	817381.7	1467215	649833.3
5	6293651	30.12.2019	4409340	1079847	1938346	858499
	6293651	30.12.2019	3545967	868407.4	1558807	690399.6
6	6010129	09.12.2019	3363928	823826	1478783	654957
	6010129	09.12.2019	1780295	435994.1	782617.5	346623.4
7	5356161	18.10.2019	2677153	655634.9	1176877	521241.1
	5356161	18.10.2019	2662682	652090.8	1170515	518424.2
	5356161	18.10.2019	1751003	428820.5	769740.9	340920.4
8	7898178	13.06.2020	2484738	608512.4	1092291	483778.6
	7898178	13.06.2020	706471.6	173015	310564.9	137549.9
9	2514318	19.09.2022	2465971	603916.2	1084041	480124.8
	2514318	19.09.2022	964944.7	236314.9	424189.7	187874.8

10.	6734605	03.02.2020	1399483	342733.5	615212.8	272479.3
TOTAL Difference of duty amount demanded						1,47,05,785.1

- (vii) As per Notification No.57/2017, the concessional rate of BCD @5% is applicable subject to the condition that importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. It is submitted that, they had applied for import of Li-ion cell for use in manufacture of Li-ion Power Bank and had executed Bond with Bank Guarantee with the Jurisdictional AC/DC Bassien Division, Vasai as prescribed in the guidelines to follow procedure set out in Customs (Import of Goods at Concessional Rate of Duty) Rules 2017. The said authority after due verification and acceptance of Bond with BG issued letter to the AC/DC Import, Nhava Sheva with detail of imported goods for further action regarding release as per the Rules. Such Certificates issued by jurisdictional office in lieu of Bond are mentioned in the BEs. A copy of Certificate F.No.II/Mumbai-EP/CUS-88/Brandworks/2019 dated 09.06.2019 is enclosed for reference. Thus, in case of 10 BEs the goods had been cleared after fulfilment of the condition.
- (viii) Further the SCN has not questioned the claim of benefit of Notification 57/2017, Sl.No. 17B in the BEs neither it has stated that the claim of Notification is wrong/incorrect. The total duty paid i.e., BCD@5%, SWS@10% and IGST@18% in the said 10 BEs is correct and was also found to be correct on assessment and examination. Thus, the short levy of Rs. 1,47,05,785.1/- in the said 10 Bes on account of lower payment of BCD is erroneous and without any basis and is liable to be set aside.
- (ix) In case of two BEs i.e., No. 4677243 dt. 28.08.2019 and No. 2067883 dt. 15.02.2019, they have paid BCD@10% availing the concessional rate as per Sl.No. 16 of Notification 57/2017 dated 30.06.2017 as amended by Notf. 22/2018-Cus dt. 02.02.2018.

Sl. No.	BE No.	BE Date	Assessable Value	Duty Paid	Duty Applicable as per SCN @43.96%	Difference
1.	2067883	15.02.2019	5661328	1753879	2488720	734840
2	2067883	15.02.2019	1198176	371195	526718.2	155523.2
3	4677243	28.08.2019	1366174	423240.7	600570.1	177329.4
Total differential duty demanded						10,67,692.6

- (x) The effective rate of duty on Li-ion cell as per Sl.No. 16 of Notf.No. 57/2017 is 10% only, as the same is goods other than Li-ion Battery of cellular mobile phone. The item imported i.e. Li-ion Cell is covered by Sl. No. 16 of above Notification with effective rate of duty @10%. Accordingly there is no short levy even in case of these two BEs.
- (xi) In view of above, there is no short-levy. As the demand do not survives under Section 28(4) of CA'62, there cannot be any penal action u/s 114A of CA'62
- (xii) The essential ingredient for invocation of extended period for demand of duty under Section 28(4)of CA'62 are (i) Collusion,(ii) willful Misstatement and /or

(iii) suppression of facts. It is pointed out that the SCN has not alleged any of the above three i.e. Collusion, mis-statement and suppression of facts. They had correctly declared the goods and there is no misdeclaration of description and claim of notification. The SCN in para 6 and 7 has stated that in the self assessment, the onus to correctly pay the duty is on importer and that the importer has deliberately not paid the duty by willful mis-statement and hence short paid duty is liable for recovery under Section 28(4) of CA'62 and penal action under Section 114A of CA'62. The above allegation is baseless and is devoid of facts. It is not the fact that the goods imported vide BEs listed in Annexure to SCN are self assessed and were facilitated from assessment and/or examination. As per ICEGATE BE status, all the BEs were selected for assessment and the three BEs were assessed as well as physically examined vis-a-vis declared description and claimed duty. The BEs are mostly single item and thus the goods were assessed by Department, and notification claimed has been duly verified. The Certificate issued by jurisdictional office of Customs is part of the BE filed for due verification before clearance. Further there is no allegation of misdeclaration and wrong claim of notification benefit even in the SCN. The SCN mentions about an Alert Circular of Audit but has not divulged the content of the said Circular. Further, the SCN is completely silent about the BCD rates of goods as to whether the same are *Standard rate* or *Effective rate*. The SCN has also not co-related the imported goods with the description stated in Audit Circular i.e. Battery (refer para 1 of Circular). Thus there is no mis-statement and that even no misstatement has been alleged/ pointed out in assessment and/or examination, before clearance of goods. Hence the ingredients to invoke extended period under Section 28(4) of CA'62 does not exists and the SCN is liable to be set aside on the basis of above. They have relied on the Order of Hon'ble CESTAT Chennai in the matter of *Swastik Glass Trader Vs Commissioner of Customs* [2024(08)LCX0345].

- (xiii) The SCN has proposed confiscation under Section 111(o) and penal action under section 112(a) of CA'62. However no basis of confiscation has been provided, namely on wrong claim of notification, violation of condition of Notification to invoke Sec 111(o) of CA'62. As there is no short levy, hence there is no reason for confiscation.
- (xiv) The impugned SCN is based on Audit observation, issued approx. two(2) years after the clearance of goods from Customs Control after assessment and/or examination. The goods in subject case has been cleared without Bond or Undertaking, pending finalisation of duty etc. 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*". The larger bench of Tribunal in *Shiv Kripa Ispat Pvt Ltd v Commissioner of C. Ex and Cus., Nasik* [2009(235) ELT623(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 no 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 bonding precedents for the present case. Relying upon the above we submit that the goods are not liable to confiscation under Section 111(o) of CA'62. Once the goods are not liable to confiscation, the importer is also not liable for penal action under Section 112(a) of CA'62.

- (xv) The SCN has proposed penalty under Section 112 and Section 114A. Though as explained above they are not liable to penal action under Section 112(a) of CA'62 as goods are not liable for confiscation and also not under Section 114A of CA'62 as extended period u/s 28(4) is not invocable in this case as explained above. However it is pointed out that no simultaneous penalty can be imposed under Section 112 and Section 114A of CA'62 as held by Hon'ble CESTAT in the case of 2019 (368) E.L.T. A348 (Tri.-Bom).
- (xvi) The SCN has been issued on the basis of Alert Circular No. 11/2019 dated 30.03.2019. The same has not been provided to us nor the details of the same i.e. (i) how the imported goods get covered by the Circular, (ii) what is the basis of arriving the BCD rates; (iii) whether the BCD rate stated in Table of SCN is standard or effective duty etc. It is submitted that the same should be provided so that they could defend the clearance at correct rate of duty.
- (xvii) In view of the above, the noticee has requested to set aside the subject SCN.

10.1 Further, vide their letter/email dated 11.12.2025, the noticee has *inter alia* reiterated their written submissions dated 20.02.2025. They have also stated that an identical issue had been decided in adjudication of SCN No.25/ADC/Gr.VA/CAC/JNCH dated 25.04.2024 by the Additional Commissioner of Customs by setting aside the SCN and confirming BCD@10% only. They have enclosed a copy of the said adjudication order.

PERSONAL HEARING

11. Personal hearing in the matter was conducted on 10.12.2025 (in virtual mode) which was attended by Mr. Ravindra Kumar Singh, Advocate & Tax Consultant of the noticee. During the personal hearing, he reiterated their written submissions furnished vide their letter dated 20.02.2025. Further, with respect to payment of concessional rate of duty @5% i.r.o. Bill of Entry No.2514318 dated 19.09.2022 under Sl.No.17B of Notification No.57/2017-Cus as amended which has been omitted w.e.f.02.02.2021 vide Notification No.03/2021-Customs dated 01.02.2021, he submitted that in the subject SCN no such allegation has been made and hence, the same is beyond the scope of the subject SCN.

DISCUSSION & FINDINGS

12. I have carefully gone through the entire case records including the impugned SCN dated 29.01.2024, material on record and facts of the case, written and oral submissions made by the noticee as well as relevant legal provisions and Notifications issued by the CBIC/Government.

13. I find that the impugned SCN has been issued by the Commissioner of Customs (NS-V), JNCH, Nhava Sheva after a detailed scrutiny/analysis of import data pertaining to the noticee was conducted based on an Alert Circular issued by the Commissioner of Customs (Audit), Mumbai Zone-I. The impugned SCN was made answerable to the Commissioner of Customs (NS-V), JNCH, Nhava Sheva. The CBIC vide Notification No. 29/2025-Customs (NT) dated 24.04.2025 has appointed the Commissioner of Customs-VI (Preventive), Mumbai Customs Zone-III as the proper officer for the purpose of adjudication of the impugned SCN dated 29.01.2024. Accordingly, the instant case has been transferred to the undersigned for the purpose of adjudication of the impugned SCN. It is also seen that the competent authority has granted extension of time limit to adjudicate the impugned SCN till 28.01.2026 in terms of the first proviso to Section 28(9) of the Customs Act, 1962. The said extension of time limit by the competent authority for adjudication of the impugned SCN has also been informed to the noticee by the office of the Commissioner of Customs (NS-V), JNCH, Nhava Sheva vide letter dated 24.04.2025.

14. I find that in the impugned SCN it is, inter alia, alleged that the goods covered under CTH 8507 were cleared by the noticee declaring lower rate of BCD and/or IGST, whereas the said imported goods attracted higher rate of BCD & IGST (i.e., BCD @20% and IGST @18%, as detailed in Table-A of para supra) as per the provisions of the Customs Act, 1962 and the Customs Tariff Act, 1975. Therefore, vide the impugned SCN, differential duty to the tune of Rs. 1,57,73,478/- has been demanded under Section 28(4) of the Customs Act, 1962 along with applicable interest in terms of Section 28AA ibid and consequential penalties under Section 112(a) and 114A, ibid. The impugned SCN also proposes for confiscation of the said imported goods having assessable value of Rs. 8,37,56,158/- under Section 111(o) of the Customs Act, 1962.

15. In view of the above, I find that the main issues to be decided in the instant case are:-

- (i) Whether the differential/short-paid duty amounting to Rs. 1,57,73,478/- should be demanded and recovered from the noticee under Section 28(4) of the Custom Act, 1962;
- (ii) Whether interest should be recovered from the noticee under Section 28AA of the Customs Act. 1962;
- (iii) Whether the subject goods imported vide Bills of Entry as detailed in Annexure-'A' to the impugned SCN, having assessable value of Rs. 8,37,56,158/-, are liable to be confiscated under Section 111(o) of the Customs Act, 1962;
- (iv) Whether penalty should be imposed on the noticee under Section 112(a) of the Customs Act, 1962; and

- (v) Whether penalty should be imposed on the noticee under Section 114A of Customs Act, 1962.

16. After having identified and framed the main issues to be decided, I now proceed to examine each of the issues individually in the light of facts and circumstances of the case, provisions of the Customs Act, 1962, contentions made in the defence submissions by the noticee and evidences available on record. I find that the primary issue to be decided in the case is as to whether the noticee is liable to pay the differential/short-paid duty amounting to Rs.1,57,73,478/- as demanded by the impugned SCN.

Issue of demand of differential duty

17. It is seen that the said differential duty of Rs.1,57,73,478/- has been demanded under the impugned SCN on the goods viz., “Lithium-ion Cell (for use in the manufacture of Power Bank)”, “Lithium-ion Cells (for manufacture of Battery Pack for Power Bank)” and “LIPO/Lithium-Polymer Battery Cells (Parts/for use in the manufacture of Power Bank)” imported by the noticee vide the following Bills of Entry (BOEs) filed during the period February, 2019 to September, 2022 alleging that the noticee had cleared the said goods at lower rate of BCD and/or IGST instead of applicable BCD @20% and IGST @18%.

Table-C

(Amount in Rs.)							
S. No.	BoE No.	BoE Date	Full Item Description	Assessable Value Amount	Total Duty Amount	DUTY Applicable @43.96	Differential DUTY
1	2067883	15-02-2019	LIPO Battery Cells (for use in manufacture of Power Bank)	5661328	1753879	2488720	734840
			LIPO Battery Cells (for use in manufacture of Power Bank)	1198176	371195	526718	155523
2	4677243	28-08-2019	Li-ion Cells for manufacture of Battery Pack for Power Bank	1366174	423241	600570	177329
3	5356161	18-10-2019	Lithium-ion Cell for use in the manufacture of Power Bank	2677153	655635	1176876	521242
			Lithium-ion Cell for use in the manufacture of Power Bank	2662682	652091	1170515	518424
			Lithium-ion Cell for use in the manufacture of Power Bank	1751003	428821	769741	340920
4	6010129	09-12-2019	Lithium-ion Cell for use in the manufacture of Power Bank	3363928	823826	1478783	654957
			Lithium-ion Cell for use in the manufacture of Power Bank	1780295	435994	782618	346623
5	6293542	30-12-2019	Lithium-ion Cell for use in the manufacture of Power Bank	10615507	2599738	4666577	2066839
6	6293573	30-12-2019	Lithium-ion Cell for use in the manufacture of Power Bank	5299068	1297742	2329470	1031729
			Lithium-ion Cell for use in the manufacture of Power Bank	3594337	880253	1580071	699817
			Lithium-ion Cell for use in the manufacture of Power Bank	3337614	817382	1467215	649833
7	6293651	30-12-2019	Lithium-ion Cell for use in the manufacture of Power Bank	4409340	1079847	1938346	858499
			Lithium-ion Cell for use in the manufacture of Power Bank	3545967	868407	1558807	690400
8	6734605	03-02-2020	Lithium-ion Cell for use in the manufacture of Power Bank	1399483	342734	615213	272479
9	7714866	21-05-2020	Lithium-ion Cell for the manufacture of Power Bank	12235989	2996594	5378941	2382347

10	7898178	13-06-2020	Lithium-ion Cell for use in the manufacture of Power Bank	2484738	608512	1092291	483779
			Lithium-ion Cell for use in the manufacture of Power Bank	706472	173015	310565	137550
11	8181072	15-07-2020	Lithium-ion Cell for the manufacture of Power Bank	12235989	2996594	5378941	2382347
12	2514318	19-09-2022	Parts of Power Bank- Polymer Li-ion Cell	2465971	603916	1084041	480124
			Parts of Power Bank- Polymer Li-ion Cell	964945	236315	424190	187875
	TOTAL			83756158	21045729	36819207	15773478

18. On going through the above mentioned BOEs, I find that the noticee has classified the impugned goods imported by them under CTH 85076000 and cleared them on payment of Basic Customs Duty (BCD) @5% or 10% instead of BCD @ 20% as demanded vide the impugned SCN. Thus, I find that there is no dispute regarding classification of the impugned goods imported by the noticee under CTH 85076000. Further, I find that as per the impugned SCN, the applicable rate of IGST on the impugned goods is 18%, and the noticee in their defence reply has inter alia submitted that they have paid IGST @18% in respect of all the above BOEs as per Serial No.376AA of Schedule-III of Notification No.01/2017-IGST. On going through the impugned BOEs, I find that the noticee has indeed paid IGST @18% in respect of all the impugned BOEs mentioned above. As such, I find that there is no short-payment of IGST.

19. I find that in their defence reply, the noticee has claimed that copy of the relied upon Audit Circular was not provided to them neither the content of the said Circular has been stated in the impugned SCN. In this regard, on going through the content of Para 5.1 of their written reply dated 20.02.2025 viz., *"the SCN has also not co-related the imported goods with the description stated in Audit Circular i.e. Battery (refer Para 1 of Circular)"*, it is apparent that they had received/ obtained the said Audit Circular and/or were aware about the content of the said Audit Circular. As such, I find that this contention of the noticee is not correct and hence not tenable.

20. Now, I take up the issue of Basic Customs Duty (BCD) liability of the noticee on the goods imported vide the impugned BOEs. I find that in their defence reply, the noticee has contended that, out of the total 12 impugned BOEs, they have paid BCD @10% in respect of the following 2 BOEs, by availing the concessional rate of duty as per Sl. No. 16 of Notification No.57/2017 dated 30.06.2017 as amended by Notification No. 22/2018-Cus dated 02.02.2018.

(Amount in Rs.)							
BoE Number	BoE Date	Full Item Description	Assessable Value Amount	BCD @10%	SWS @10%	IGST @18%	Total Duty paid
2067883	15-02-2019	LIPO Battery Cells (for use in manufacture of Power Bank)	5661328	566133	56613	1131133	1753879
		LIPO Battery Cells (for use in manufacture of Power Bank)	1198176	119818	11982	239396	371195
4677243	28-08-2019	Li-ion Cells for manufacture of Battery Pack for Power Bank	1366174	136617	13662	272962	423241

20.1 It is seen that vide the above 2 BOEs, the noticee had imported goods viz., “LIPO Battery Cells (for use in manufacture of Power Bank)” and “Li-ion Cells for manufacture of Battery Pack for Power Bank” and cleared them under HSN 85076000 with benefit of Notification No.57/2017 dated 30.06.2017 (Sl.No.16) as amended. In this regard, I find that as per Customs Tariff Act, the standard rate of BCD for goods falling under HSN 85076000 is 20%. However, the above said goods are eligible for the benefit under Sl. No. 16 of Notification No.57/2017 dated 30.06.2017 as amended by Notification No. 22/2018-Cus dated 02.02.2018, which is unconditional. The extract of Sl. No. 16 of Notification No. 57/2017 is reproduced below:

Sl. No.	Chapter or Heading or Sub-heading or tariff item	Description of goods	Standard Rate	Condition
16	8507 6000	All goods other than Lithium-ion battery of cellular mobile phone	10%	-

20.2 In view of the above, I find that the goods imported vide the above said 2 BOEs dated 15.02.2019 and 28.08.2019 are liable for BCD @10% after availing the benefit under Sl. No. 16 of Notification No.57/2017 dated 30.06.2017 as amended. As such, I find that the payment of BCD @10% w.r.t. the above said 2 BOEs is proper. Therefore, I find that the demand of BCD @20% is not sustainable in respect of the above said 2 BOEs dated 15.02.2019 and 28.08.2019.

21. Further, with respect to the remaining 10 BOEs, the noticee has *inter alia* submitted that the description of goods in all the said 10 BOEs was ‘Lithium-ion Cell or Polymer Li-ion Cell (For use in manufacture of Power Bank)’ classified under HSN 85076000, and that they had claimed benefit of Notification 57/2017 dated 30.06.2017 (Sl. No. 17B). As per Sl.No.17B of Notification 57/2017, concessional rate of BCD @5% was applicable. Therefore, they have contended that the total duty paid i.e., BCD @5%, SWS@10% and IGST@18% w.r.t. the said 10 BOEs was correct.

21.1 I find that vide the said 10 BOEs, the noticee had imported goods (HSN 85076000) viz., ‘Lithium-ion Cell or Polymer Li-ion Cell (For use in manufacture of Power Bank)’ during the period from 18.10.2019 to 19-09-2022 and cleared them on payment of concessional rate of BCD@5% claiming benefit of Notification 57/2017 dated 30.06.2017 (Sl. No. 17B). I find that vide Notification No. 57/2017- Customs dated 30.06.2017 (Sl.No.17B) as amended vide Notification No. 2/2019-Cus dated 29.01.2019, concessional rate of BCD @5% was provided to Lithium-ion cells for use in the manufacture of power bank of lithium-ion. The extract of Sl. No. 17B of Notification No. 57/2017 is reproduced below:

Sl. No.	Chapter or Heading or Sub-heading or tariff item	Description of goods	Standard Rate	Condition
17B	8507 6000	Lithium-ion cell for use in the manufacture of power bank of lithium-ion	5%	1

21.2 I find that the noticee has also contended that they had applied for import of Li-ion cell for use in manufacture of Li-ion Power Bank and had executed Bond with Bank Guarantee with the Jurisdictional office i.e., AC/DC, Bassien Division, Vasai as prescribed in the guidelines to follow procedure set out in Customs (Import of Goods at Concessional Rate of Duty) Rules 2017, and that the said authority after due verification and acceptance of Bond with BG issued letter to the AC/DC import, Nhava Sheva with detail of imported goods for further action regarding release as per the Rules. Thereafter, the goods were released by Customs against the said letter of jurisdictional Custom office. The noticee has also enclosed a sample copy of the said Certificate/letter F. No. II/Mumbai-EP/CUS-88/Brandworks/2019 dated 09.06.2019. On going through the impugned 10 BOEs, I find that details of such Certificate issued by jurisdictional office in lieu of Bond are mentioned in the said BOEs. As such, I find that the noticee had fulfilled the condition prescribed under Notification 57/2017 dated 30.06.2017.

21.3 In view of the above, I find force in the noticee's contention that the said goods viz., 'Lithium-ion Cell or Polymer Li-ion Cell (For use in manufacture of POWER BANK)' imported by the noticee were eligible for the benefit of concessional rate of BCD@5% under Sl. No. 17B of Notification No. 57/2017 dated 30.06.2017 as amended. However, I find that the said Sl.No. 17A and its entries were omitted from the Notification No. 57/2017 dated 30.06.2017 w.e.f. 02.02.2021 vide Notification No.03/2021-Customs dated 01.02.2021. Therefore, I find that the concessional rate of BCD@5% was available to the said goods upto 01.02.2021 only. From the details of the impugned 10 BOEs, it is apparent that except for BOE No. 2514318 dated 19.09.2022, all other 9 BOEs are prior to 01.02.2021, and therefore, are liable for concessional rate of BCD@5% under Sl. No. 17B of Notification No. 57/2017 dated 30.06.2017 as amended. As such, I find that the demand of BCD @20% in respect of the said 9 BOEs (as detailed at S.No. 3 to 11 of Table-C supra) is not sustainable. However, the said concessional rate of BCD@5% was not available for the goods imported vide BOE No. 2514318 dated 19.09.2022.

21.4 On perusal of the impugned BOE No. 2514318 dated 19.09.2022, it is seen that the noticee had paid BCD@5% claiming benefit under Sl.No.527 of Notification No. 50/2017-Customs dated 30.06.2017 as amended. On going through the Notification No. 50/2017-Customs dated 30.06.2017 as amended vide Notification No.02/2021-Customs dated 01.02.2021, I find that vide the said Sl.No.527 of Notification No. 50/2017-Customs, concessional BCD@5% is provided for "Lithium-ion cell for use in manufacture of battery or battery pack, other than those mentioned against S.Nos.527A and 527B. As the goods imported by the noticee vide the impugned BOE No. 2514318 dated 19.09.2022 was 'Polymer Li-ion Cell (For use in manufacture of POWER BANK)', therefore, the benefit of concessional BCD@5% under Sl.No.527 of Notification No. 50/2017- Customs was not available to the noticee.

21.5 I find that as per Customs Tariff Act, the standard rate of BCD for goods falling under HSN 85076000 is 20%. However, the above said goods viz. 'Polymer Li-ion Cell (For use in manufacture of POWER BANK)' are eligible for the benefit under Sl. No. 528C of Notification No.57/2017 dated 30.06.2017 as amended by Notification No.02/2021-Customs dated

01.02.2021, which is unconditional. The extract of Sl. No. 528C of Notification No. 57/2017 is reproduced below:

Sl. No.	Chapter or Heading or Sub-heading or tariff item	Description of goods	Standard Rate	Condition
528A	8507	Battery pack for use in the manufacture of electrically operated vehicle or hybrid vehicle	15%	9
528B	8507 6000	Lithium ion battery or battery pack of cellular mobile phones	15%	-
528C	8507 6000	All goods other than the following, namely: - (i) Goods mentioned against S.Nos.528A and 528B; (ii) Power Bank	10%	-

21.6 In view of the above, I find that the goods viz. ‘Polymer Li-ion Cell (For use in manufacture of POWER BANK)’ imported by the noticee vide the impugned BOE No. 2514318 dated 19.09.2022 were liable for BCD @10% after availing the benefit under Sl. No. 528C of Notification No.57/2017 dated 30.06.2017 as amended. As the noticee has paid the BCD @5% instead of due BCD @10% applicable on the goods imported vide the impugned BOE No. 2514318 dated 19.09.2022, therefore, I find that the noticee is liable to pay the differential duty (comprising of BCD, SWS and IGST) totally amounting to **Rs.2,22,666/-**. The details of the same are as under:-

Table-D

(Amount in Rs.)

BoE No.	BoE Date	Full Item Description	Assessable Value Amount	Differential BCD	Differential SWS	Differential IGST	Total Differential Duty Payable
(a)	(b)	(c)	(d)	(e)=[d*5%]	(f)=[e*10%]	(g)=[(e+f)*18%]	(h)=[e+f+g]
2514318	19.09.2022	Parts of Power Bank-Polymer Li-ion Cell	2465971	123299	12330	24413	160042
		Parts of Power Bank-Polymer Li-ion Cell	964945	48247	4825	9553	62625
Total			3430916	171546	17155	33966	222666

Applicability of extended period under the provision of Section 28(4) of the Customs Act, 1962

22. I find that the demand notice covers extended period of limitation. Hence, it is required to be examined if there are sufficient grounds to invoke the same as per proviso to Section 28(4) of the Act. In this regard, I find that Section 17 of the Customs Act stipulates that every importer liable to pay Customs duty shall self-assess the due Customs duty on imported goods by filing a Bill of Entry in the electronic form. The Government has introduced self-assessment system under a trust based regime which casts the onus of proper assessment and discharging of Customs duty on the importer. Further, Section 46 of the Customs Act, 1962 makes it mandatory for the importer to make a true and correct declaration in the Bills of Entry submitted electronically. Thus, under the scheme of self-assessment, it is the importer who has to doubly ensure that he declares the correct description of the imported goods, its correct classification, applicable rate of duty, value and benefit of exemption notification claimed, if any, in respect of the imported goods while filing the Bill of Entry.

22.1 I find that in their defence reply, the noticee has inter alia contended that there was no mis-declaration of description and claim of notification and that there was no allegation of mis-declaration and wrong claim of notification benefit even in the SCN. However, I find that the said contention of the noticee is not true as the same is discussed in detailed in para Nos.6 and 7 of the impugned SCN. Further, from the discussions made supra, it is clear that with respect to the goods imported vide BOE No. 2514318 dated 19.09.2022, the noticee had claimed concessional rate of BCD@5% under Sl.No.527 of Notification No. 50/2017- Customs dated 30.06.2017. However, the said concessional rate of BCD@5% was apparently not available to the noticee. The content of the said Sl.No.527 of Notification No. 50/2017 are very clear, and the noticee was very much aware that the goods viz. 'Polymer Li-ion Cell (For use in manufacture of POWER BANK)' imported by the noticee vide the impugned BOE No. 2514318 dated 19.09.2022 were not covered under the said Sl.No.527 of Notification No. 50/2017. However, despite being aware that the goods imported by them were not eligible for BCD@5% under Sl.No.527 of Notification No. 50/2017, they had availed undue benefit of concessional rate of duty on the said goods in the BOE No. 2514318 dated 19.09.2022 filed by them under the provision of Section 46 of the Customs Act, 1962 for clearing the said goods. Section 46(4A) of the Act casts an obligation on the importer to ensure accuracy of the declaration and authenticity of the documents supporting such declaration. In the instant case, the noticee failed to discharge their statutory obligation cast upon them by making wrong declaration about applicable rate of duty on the said goods imported by them vide BOE No. 2514318 dated 19.09.2022. Therefore, I find that the noticee had wilfully and deliberately claimed undue benefit of concessional rate of BCD@5%, which was not available to the goods imported by them, solely to evade the Customs duty. Thus, I also find that the case law of Swastik Glass Trader Vs Commissioner of Customs cited by the noticee is not applicable in the instant case. Therefore, I find that the noticee had wilfully and deliberately contravening the provisions of the Customs Act, 1962 to evade the Customs duty and the same clearly shows mens rea on their part. When material evidence establishes fraud against Revenue, white collar offences shall not be exonerated as has been held by Apex Court Judgment in the case of K.L Pavunny v. AC, Cochin - 1997 (90) E.L.T. 241 (S.C.). No adjudication is barred under Section 28 of the Customs Act, 1962, if Revenue is defrauded for the reason that enactments like Customs Act, 1962, and Customs Tariff Act, 1975 are not merely taxing statutes but are also potent instruments in the hands of the Government to safeguard interest of the economy. One of its measures is to prevent practices of undue claim of fiscal incentives. I also find that various Courts including the Apex Court have clearly laid down the principal that duty/tax liability is a civil obligation and therefore, the intent to evade payment of duty/tax cannot be established by peering into the minds of the tax payer, but has to be established through evaluation of tax payers' behaviour.

22.2 In view of the above, I find in the instant case, that all the essential ingredients exist to invoke the extended period under Section 28(4) of Customs Act, 1962. Therefore, the wilful and deliberate mis-declaration on part of the noticee is proved beyond doubt and therefore, the extended period under Section 28(4) of Customs Act, 1962 has rightly been invoked in the instant case and the demand is sustainable on limitation. For the same reasons, all ingredients for

imposing penalty on the noticee under Section 114A of the Act *ibid* exists and, therefore, the noticee is also liable for penal action under the provisions of section 114A of the Customs Act, 1962.

22.3 Therefore, in view of the above discussion, I find that the differential duty amounting to Rs.2,22,666/- is recoverable from the noticee under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA *ibid*.

Interest under section 28AA of the Act

23. I find that the impugned SCN has proposed to recover interest on the demanded duty, under Section 28AA of the Customs Act, 1962. The provisions for recovery of interest on delayed payment of duty as per Section 28AA of the Customs Act, 1962, read as under: -

'28AA. Interest on delayed payment of duty

(1) Notwithstanding, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.'

23.1 From the above, it is apparent that Section 28AA of the Act mandates that any person, who is liable to pay duty as per Section 28 of the Act, is also liable to pay the applicable interest, in addition to the said duty. As already discussed hereinabove that the noticee is liable to pay the differential duty amounting to Rs. 2,22,666/- under the provisions of Section 28(4) of the Customs Act, 1962, therefore, the noticee is also liable to pay the interest at applicable rate as per the provisions of Section 28AA of the Act. I also find that Hon'ble Supreme Court, in the case of *Pratidha Processors Vs. Union of India reported in (1996)11 SCC 101*, has settled this issue and held that interest is compensatory in character and is imposed on the assessee who has withheld payment of any tax as and when it is due and payable; that the levy of interest is levied on the delay in payment of tax due and payable on the due date. I further find that Hon'ble Supreme Court in the case of *Commissioner of Trade Tax Lucknow Vs Kanhai Ram Tekedar, 2005(185) ELT 3(SC)* had held that interest liability accrues automatically from confirmation of demand of duty/tax as recoverable. Thus, I find that payment of interest under Section 28AA of the Act is mandatory on every person who is liable to pay duty as per Section 28 of the Act. Therefore, I hold that the noticee is liable to pay applicable interest under the provisions of Section 28AA of the Act.

Issue of Confiscation of the goods under Section 111(o) of the Customs Act, 1962

24. I find that the impugned SCN has proposed confiscation of the impugned goods imported by the noticee under Section 111(o) of the Customs Act, 1962. In their defence, the noticee has *inter alia* contended that the goods in the subject case had been cleared without Bond or Undertaking, pending finalisation of duty, etc., and therefore, the goods are not liable to confiscation under Section 111(o) of the Act. They have also cited some case law in support of their claim. In this context, it would be pertinent to go through the provisions of the same. The provisions of Section 111(o) of the Customs Act, 1962 are reproduced below: -

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

The following goods brought from a place outside India shall be liable to confiscation:

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

24.1 From the above, it is apparent that as per the above provisions of Section 111(o) of the Act, any goods, being imported, contrary to any prohibition imposed by/or under this Act, or imported by way of mis-declaration, or any goods exempted, subject to any condition, in respect of which the condition is not observed, will be liable to confiscation.

24.2 I find that in the instant case, it is proven beyond doubt that the noticee had wilfully and deliberately suppressed the correct rate of duty applicable to the impugned goods and claimed undue benefit of exemption of Customs duty on the impugned goods viz., 'Polymer Li-ion Cell (For use in manufacture of POWER BANK)' to evade the Customs duty. Therefore, I find that the noticee had wilfully and deliberately claimed undue benefit of concessional rate of duty which was not available to the impugned goods, solely to evade the Customs duty. Hence, I find that the provisions of Section 111(o) of the Customs Act, 1962 is applicable to the present case.

Further, I find that once the goods are found violating the relevant provisions of the Customs Act, 1962, the liability of confiscation arises as per Section 111 of the Act, and the physical availability of goods or seizure doesn't alter this position. I find that this position has already been settled by the Hon'ble Madras High Court in the case of M/s. Dadha Phama Private Limited vs. Secretary to Govt of India 2000 (126) E.L.T. 535 (Mad.).

24.3 In view of above, I hold that the impugned goods viz. 'Polymer Li-ion Cell (For use in manufacture of POWER BANK)' imported by the noticee vide the impugned BOE No. 2514318 dated 19.09.2022 are liable for confiscation under Section 111 (o) of the Customs Act, 1962.

Applicability of Redemption Fine

24.4 As the impugned goods viz. 'Polymer Li-ion Cell (For use in manufacture of POWER BANK)' are found to be liable for confiscation under Section 111(o) of the Customs Act, 1962, I find that it is necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the impugned goods as alleged in impugned SCN. The Section 125 ibid reads as under:-

125. Option to pay fine in lieu of confiscation.—

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit.

A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods, by paying redemption fine.

24.5 In the instant case, it is seen that the impugned goods, viz, 'Polymer Li-ion Cell (For use in manufacture of POWER BANK)' have been cleared and are not physically available for confiscation under Section 111(o) of the Customs Act, 1962. In this regard, I find that redemption fine is imposable even if the goods are not seized & are not available for confiscation. There is a catena of judgments wherein it has been held that the availability of the goods is not necessary for imposing the redemption fine. A couple of them are cited below and relied upon by me.

- (i) In the case of M/s.Venus Enterprises Vs. CC, Chennai [2006(199)E.L.T.66(Tri-Chennai)], it has been held that:

"We cannot accept the contention of the appellants that no fine can be imposed in respect of goods which are already cleared. Once the goods are held liable for confiscation, fine can be imposed even if the goods are not available. We uphold the finding of the mis-declaration in respect of the parallel invoices issued prior to the date of filing off the Bill of Entry. Hence, there is mis-declaration and suppression of value and the offending goods are liable for confiscation under Section 111(m) of the Customs Act. Hence the imposition of fine even after the clearance of the goods is not against the law."

- (ii) Further, in the case of M/s. Visteon Automotive Systems India Ltd. [reported in 2018(9)G.S.T.L.142(Mad)], the Hon'ble High Court of Madras has passed the landmark judgment. In the said judgment, it has been held that:

"23. The penalty directed against the import 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 regularized, 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 authorized by this Act.....", brings out the point clearly. The power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. When once power of authorization 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."

- (iii) Further, in case of Synergy Fertilchem Ltd vs. Union of India [reported in 2020(33)G.S.T.L.513(Guj.)], the Hon'ble Gujrat High Court has relied on the judgment

in case of C.M.A. No. 2857 of 2011 in the case of Visteon Automotive Systems India Ltd. Vs. CESTAT. Chennai [2018(9)G.S.T.L.142(Mad)] and held that:-

"Even in the absence of the physical availability of the goods or the conveyance, the authority can proceed to pass an order of confiscation and also pass an order of redemption fine in lieu of the confiscation. In other words, even if the goods or the conveyance has been released under Section 129 of the Act and, later, confiscation proceedings are initiated, then even in the absence of the goods or the conveyance, the payment of redemption fine in lieu of confiscation can be passed."

- (iv) Further, I also find that the Hon'ble Supreme Court in the case of *Weston Components Ltd. Vs Commissioner of Customs, New Delhi* [as reported in 2000 (115) E.L.T. 278 (SC)] has held that-

"Redemption fine imposable even after release of goods on execution of bond- Mere fact that the goods were released on the bond would not take away the power of the Customs Authorities to levy redemption fine 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."

24.6 Relying on the above guiding judgments, I conclude that imposition of redemption fine under Section 125 of the Customs Act, 1962 is not contingent upon the physical availability of the goods. Redemption fine is intrinsically linked to the authorization of confiscation under Section 111 and serves to mitigate the consequences of such confiscation. Therefore, the absence of the impugned goods does not preclude the imposition of redemption fine, which remains valid and enforceable in accordance with the law. Thus, I find that the impugned goods viz, 'Polymer Li-ion Cell (For use in manufacture of POWER BANK)' which are not available for confiscation does not prevent to impose redemption fine.

24.7 In view of the above discussions, I find that redemption fine is liable to be imposed on the impugned goods viz, 'Polymer Li-ion Cell (For use in manufacture of POWER BANK)' which has been held to be liable for confiscation under Section 111(o) of the Customs Act, 1962.

Issue of imposition of penalty Section 112(a) and Section 114A of the Customs Act, 1962

25. The impugned SCN has proposed penalty on the noticee under Section 112(a) and Section 114A of the Customs Act, 1962. Therefore, it would be pertinent to go through the provisions of the said Sections. First, I would discuss the provisions of Section 114A of the Act. The same are reproduced below:-

114A. *"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 (8) of Section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:*

...

...

PROVIDED ALSO *that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114."*

25.1 From the above, it is seen that the provisions of Section 114A of the Act provide for imposition of Penalty equal to the amount of duty or interest evaded by reason of collusion or wilful mis-statement or suppression of facts. I find that the wilful and deliberate mis-declaration on part the noticee has been established beyond doubt as discussed and concluded in the earlier part of this order. As it is already proven that the noticee had wilfully and deliberately made wrong declaration with respect to the rate of duty applicable on the impugned goods and claimed undue benefit of exemption of Customs duty on the impugned goods, and that the demand is maintainable under Section 28(4) of the Act, therefore, the consequences shall automatically follow. I find that when the demand is maintainable under Section 28(4) of the Act, the imposition of penalty under Section 114A of the Act is mandatory. Hon'ble Supreme Court has settled this issue in the case of *U.O.I Vs Dharmendra Textile Processors* reported in 2008 (231) ELT 3 (S.C) and further clarified in the case of *U.O.I Vs R S W M* reported in 2009 (238) ELT 3 (S.C). I, therefore, hold that the noticee has rendered himself liable to penalty under Section 114A of the Customs Act, 1962. My above view gets support from below mentioned case laws:

- (i) *Grasim Industries Ltd. V. Collector of Customs, Bombay* [reported in (2002) 4 SCC 297=2002 (141) E.L.T.593 (S.C.)]
- (ii) *Samay Electronics (P) Ltd. V. C.C.(Import)/(General), Mumbai* [reported in 2015 (328) E.L.T. 238 (Tri. - Mumbai)]
- (iii) *Chairman, SEBI v/s Shriram Mutual Fund & Anr.* [reported in AIR 2006 SC 2287]
- (iv) *CCE & Cus, Ahmedabad vs Padmashree V.V. Patil SSK Ltd.* [reported in 2007 (215) ELT 23 (Bom.)]
- (v) *Indian Aluminium Company limited v/s Thane Municipal Corp.* [reported in 1991 (55) ELT 454 (SC)]

25.2 It is seen that the impugned SCN has proposed penalty on the noticee under Section 112(a) of the Act alongside penalty under Section 114A of the Act. I find that penalty under Section 112(a) is imposable if goods are liable to confiscation under Section 111 of the Act. In the foregoing discussions, it has been held that the impugned goods viz, 'Polymer Li-ion Cell (For use in manufacture of POWER BANK)' imported by the noticee are liable for confiscation under Section 111(o) of the Customs Act, 1962. Therefore, it appears that the noticee is liable for penalty under Section 112(a)(ii) of the Act. However, I find that the Fifth proviso to Section 114A of the Act stipulates that "*where any penalty has been levied under this Section, no penalty shall be levied under Section 112 or Section 114*". Thus, it is apparent that once penalty under Section 114A is imposed, penalty under Section 112 cannot be imposed simultaneously. As, in the instant case, it has already been held by me that the noticee is liable for penalty under Section 114A of the Customs Act, 1962, therefore, I find that penalty under Section 112(a) of the Act is not imposable on him and hence the same is liable to be set aside.

26. In view of the foregoing discussions and findings, I pass the following order:

ORDER

- (i) I confirm the demand of duty amounting to **Rs.2,22,666/-** (Rupees Two Lakh Twenty-two Thousand Six Hundred and Sixty-six only), as detailed in Para 21.6

(Table-D) of this order, out of total demand of duty of Rs.1,57,73,478/-, under Section 28(8) of the Customs Act, 1962, and order to recover the same from the noticee viz., M/s. Brandworks Technologies Pvt. Ltd. under Section 28(4) of the Customs Act, 1962. Accordingly, the rest of the demand of duty amounting to Rs.1,55,50,812/- is dropped.

- (ii) I confirm and order to recover interest on the duty amount confirmed at (i) above, under Section 28AA of the Customs Act, 1962 from the noticee viz., M/s. Brandworks Technologies Pvt. Ltd.
- (iii) I order to confiscate the impugned goods viz, 'Polymer Li-ion Cell (For use in manufacture of POWER BANK)', having total assessable value of Rs.34,30,916/-, as detailed in Para 21.6 (Table-D) of this order, under Section 111(o) of the Customs Act, 1962. However, since the impugned goods are not physically available, I impose a Redemption Fine of **Rs.3,40,000/-** (Rupees Three Lakh Forty Thousand only) under Section 125(1) of the Customs Act, 1962 on the noticee viz., M/s. Brandworks Technologies Pvt. Ltd. in lieu of confiscation.
- (iv) I impose penalty equal to the duty amount of **Rs.2,22,666/-** (Rupees Two Lakh Twenty-two Thousand Six Hundred and Sixty-six only) plus interest thereon, as confirmed at (i) and (ii) above respectively, on the noticee viz., M/s. Brandworks Technologies Pvt. Ltd. under Section 114A of the Customs Act, 1962. However, in terms of first and second proviso to Section 114A ibid, if the duty and the interest payable thereon is paid within thirty days from the date of the communication of this order, the amount of penalty liable to be paid by the noticee shall be twenty-five percent of the duty, subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days.
- (v) I refrain from imposing penalty on the noticee under Section 112(a) of the Customs Act, 1962 as penalty under Section 114A of the Customs Act, 1962 is already imposed.

27. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or the noticee viz., M/s. Brandworks Technologies Pvt. Ltd. or any other person under the Customs Act, 1962 or any other law for the time being in force in India.



(Dr. Atul Handa)
Commissioner

F.No. S/10-223/23-24/Commr/NS-V/CAC/JNCH

To,

M/s. Brandworks Technologies Pvt.Ltd.,
Plot No.4, Giriraj Complex, Survey No. 20/C/2/4,
Behind Swagat Petrol Pump, Near Tungar Phata,
Sativali, Vasai (East) – 401208.

Email: info@bwtech.in, vikrant.pendkhalkar@bwtech.in, kapil@bwtech.in

Copy to:

1. The Principal Chief Commissioner of Customs, Mumbai Zone-III.
2. The Chief Commissioner of Customs, JNCH, Mumbai Zone-II.
3. The Commissioner of Customs, NS-V, JNCH, Mumbai Zone-II.
4. EDI Section, JNCH (for upload on website).
5. Notice Board.
6. Master File.