

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

DIN – 20260178NX0000919019

Date of Order: 08.01.2026

F. No. S/10-23/2024-25/Commr/Gr.VA/NS-V/CAC/JNCH

Date of Issue: 08.01.2026

SCN No.: 126/2024-25/COMMR./GR.VA/CAC/JNCH

SCN Date: 25.04.2024

Passed by: Sh. Anil Ramteke

Commissioner of Customs, NS-V, JNCH

Order No: 347/2025-26/COMMR/NS-V/CAC/JNCH

Name of Noticee: M/s. Pacific Cyber Technology Private Limited (IEC: 0315086246)

ORDER-IN-ORIGINAL

मूल - आदेश

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

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

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

2. इस आदेश से व्यथित कोई भी व्यक्ति सीमाशुल्क अधिनियम 1962 की धारा 129 (ए) के तहत इस आदेश के विरुद्ध सी.ई.एस.टी.ए.टी., पश्चिमी प्रादेशिक न्यायपीठ (वेस्ट रीज़नल बेंच), 34, पी. डी.मेलो रोड, मस्जिद (पूर्व), मुंबई - 400009 को अपील कर सकता है, जो उक्त अधिकरण के सहायक रजिस्ट्रार को संबोधित होगी।

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

3. अपील दाखिल करने संबंधी मुख्य मुद्दे:-

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

फार्म - सीए3, चार प्रतियों में तथा उस आदेश की चार प्रतियाँ, जिसके खिलाफ अपील की गयी है (इन चार प्रतियों में से कम से कम एक प्रति प्रमाणित होनी चाहिए).

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

समय सीमा - इस आदेश की सूचना की तारीख से 3 महीने के भीतर

Fee -फ़ीस-

- (a) Rs. One Thousand - Where amount of duty & interest demanded & penalty imposed is Rs. 5 Lakh or less.
- (क) एक हजार रुपये जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 5 लाख रुपये

या उस से कम है।

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

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

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

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

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

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

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

Subject: Adjudication of Show Cause Notice No. 126/2024-25/COMMR./GR.VA/CAC/JNCH dated 25.04.2024 issued to Pacific Cyber Technology Private Limited, Mumbai (IEC No. 0315086246) – reg.

1. BRIEF FACTS OF THE CASE

1.1 It is stated in the Show Cause Notice (SCN) No. 126/2024-25/COMMR./GR.VA/CAC/JNCH dated 25.04.2024 that on the basis of the Alert Circular No. 11/2019 dated 30.03.2019 issued by the Commissioner of Customs (Audit), Mumbai, Zone-I vide F. No. S/16-Misc-75/2018-19 Audit (P&C), data pertaining to imports made by various importers through JNCH (INNSA1) during 01.03.2018 to 30.11.2022 was analysed in detail. It was observed that Pacific Cyber Technology Private Limited (IEC No. 0315086246) having address as 22, Piramal Industrial Estate No. 4, S. V. Road, Goregaon (West), Mumbai - 400062, have imported goods with description "Battery" under the CTH 8507 as detailed in Annexure- 'A' to the subject SCN and paid lower rate of BCD and/or IGST under Sl. No. 203 of Schedule-II of IGST Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 @12% and/or @18% under Sr. Nos. 376AA or 376AAA of Schedule-III of IGST Notification No. 19/2018-Integrated Tax (Rate) dated 27.07.2018 or a lower IGST rate in other Schedule, however, the imported goods attracted levy of BCD & IGST as per Table-A below.

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

TABLE-A

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

1.3 From the above table, it appeared that:

- Battery pack of cellular mobile phones under CTH 8507 except 85076000 and 850790 (other than lithium ion) attract BCD @ 15% & IGST @ 28% under Serial No. 139 of Schedule-IV of IGST Notification No. 01/2017.

- Till 26.07.2018, lithium ion battery of cellular mobile phones were classifiable under CTH 85076000 & attracted BCD @ 15% & IGST @ 28% under Serial No. 139 of Schedule-IV of IGST Notification No. 01/2017.
- From 27.07.2018 to 30.01.2019, lithium ion battery of cellular mobile phones were classifiable under CTH 85076000 & attracted BCD @ 15% & IGST @ 18% under Serial No. 376AA of Schedule-III of IGST Notification No. 01/2017.
- From 30.01.2019 to till date, lithium ion battery of cellular mobile phones falling under CTH 85076000 attracted BCD @ 20% & IGST @ 18% under Serial No. 376AA of Schedule-III of IGST Notification No. 01/2017.
- From 30.01.2019 to till date, power bank (lithium ion) falling under CTH 85076000 attracted BCD @ 20% & IGST @ 18% under Serial No. 376AA of Schedule-III of IGST Notification No. 01/2017.

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

1.3.2 The total assessable value of the B/E items so imported is Rs. 4,50,40,881/- and it appeared that a short levy of BCD and/or IGST amounting to Rs. 87,69,459/- (as detailed in Annexure-'A' to the subject SCN) is recoverable from the Importer along with applicable interest and penalty.

1.4 In view of the above, Consultative Letter No. 2632 dated 02.06.2023 was issued to importer to clarify the issue raised by the department and if agreed to the observation/finding of the department, the importer was advised to pay the differential duty along with applicable interest and penalty. However, no reply or submission was given by importer in this regard.

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

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

1.5.2 Further, the extracts of the following relevant provisions of the Customs Act, 1962 for the time being in force relating to import of goods, recovery of duties, liability of the goods to

confiscation and the persons concerned to penalty for improper importation, were mentioned in the subject SCN. The same are not reproduced in this Order-in-Original for the sake of brevity:

- Section 17 - Assessment of duty.
- Section 28 - Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.
- Section 46 - Entry of goods on importation.
- Section 111(o) - Confiscation of improperly imported goods, etc.
- Section 112 - Penalty for improper importation of goods etc.
- Section 114A - Penalty for short-levy or non-levy of duty in certain cases.

1.6 As per the SCN, whereas, consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-assessment' has been introduced in customs clearance. Section 17 of the Customs Act, effective from 08.04.2011 [CBEC's (now CBIC) Circular No. 17/2011 dated 08.04.2011] provides for self-assessment of duty on imported goods by the Importer himself by filing a bill of entry, in the electronic form. Section 46 of the Customs Act, 1962 makes it mandatory for the Importer to make entry for the imported goods by presenting a bill of entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Declaration) Regulation, 2011 (issued under Section 157 read with Section 46 of the Customs Act, 1962), the bill of entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a bill of entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under self-assessment, it is the Importer who has to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the bill of entry. Thus, with the introduction of self-assessment by amendments to Section 17, since 08.04.2011, it is the added and enhanced responsibility of the Importer to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

1.7 In view of the above facts, it appeared that the importer has deliberately not paid the duty by wilful mis-statement as it was his duty to declare correct applicable rate of duty in the entry made under Section 46 of the Customs Act, 1962, and thereby has attempted to take undue benefit amounting to ₹87,69,459/- (as detailed in Annexure-'A' to the subject SCN). Therefore, the differential duty, so not paid, is liable for recovery from the Importer under Section 28(4) of the Customs Act, 1962 by invoking extended period of limitation, along with applicable interest at the applicable rate under Section 28AA of the Customs Act, 1962 and for their acts of omission/commission.

1.8 Section 111(o) of Customs Act, 1962 provides for confiscation of the goods, if 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 condition is not observed unless the non-observance of the condition was sanctioned by the proper officer.

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

1.10 In view of the above, vide Show Cause Notice No. 126/2024-25/COMMR./GR.VA/CAC/JNCH dated 25.04.2024, Pacific Cyber Technology Private Limited, Mumbai (IEC No. 0315086246), was called upon to show cause to the Commissioner of Customs (NS-V), Jawaharlal Nehru Custom House (the Adjudicating Authority), as to why:

- (i) Differential/short paid Duty amounting to Rs. 87,69,459/- (Rupees Eighty Seven Lakh Sixty Nine Thousand Four Hundred Fifty Nine Only) for the subject goods imported vide Bills of Entry as detailed in Annexure-'A' should not be demanded under Section 28(4) of the Custom Act, 1962.
- (ii) In addition to the duty short paid, interest on delayed payment of Custom Duty should not be recovered from the Importer under Section 28AA of the Customs Act, 1962.
- (iii) The said subject goods imported vide Bills of Entry as detailed in Annexure-'A' to the subject SCN, having assessable value of Rs. 4,50,40,881/- (Rupees Four Crore Fifty Lakh Forty Thousand Eight Hundred Eighty One Only) 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 for their acts of omission and commission, in rendering the goods liable for confiscation, as stated above.
- (v) Penalty should not be imposed under Section 114A of Customs Act, 1962 for short levy of duty.

2. WRITTEN SUBMISSION OF THE NOTICEE

The Noticee, Pacific Cyber Technology Private Limited vide letter dated 10.05.2024 submitted written reply to the subject SCN. Vide the above reply, they denied all the allegations made in the SCN. The submissions made by the Noticee, in their words are summarised as below:

2.1 They are manufacturer of "Mobile Phone" and "Battery Packs for Mobile Phones and Power banks". The SCN is in the matter of import of "Lithium ion cell" (herein after referred to as goods) for manufacture of "Battery pack of the Power Banks" vide Bills of Entry No. 4178477

dtd. 22.07.2019 and 4448115 dtd. 10.08.2019 having total assessable value of Rs. 4,50,40,881/-. Goods were classified under Tariff Item 85076000 of the Customs Tariff and assessed to duty @ 5% Basic + 10% SWS + 18% IGST. Basic Duty @ 5% was claimed in terms of SI. No. 17B to Notification No. 57/2017-Cus. dated 30.06.2017, as amended, and IGST@ 18% has been claimed in terms of SI. No. 376AA, Schedule-III to Notification No. 1/2017 IT(Rate) dated 28.06.2017. It has been stated in the SCN that w.e.f. 01.01.2019, "Battery pack of cellular mobile phone (lithium ion)" and "Power bank (lithium bank)" were liable to duty @ 20% Basic + 10% SWS + 18% IGST where as in this case goods have been assessed to duty @ 5% Basic + 10% SWS + 18% IGST. This resulted in short levy of duty amounting to Rs. 87,69,459/- which Noticee is required to pay along with interest in terms of provisions contained in Section 28(4) of the Customs Act, 1962. This act on the part of Noticee has made the goods valued at Rs. 4,50,40,881/- liable to confiscation under Section 111(o) of the Customs Act, 1962 and Noticee liable to penalty under Section 112(a) and /or 114A of the Act, ibid.

2.2 They deny each and every allegation contained in the said Show Cause Notice and deny in particular that, they had paid lower rate of BCD. There has been no short levy of duty amounting to Rs. 87,69,459/- as alleged in the SCN, nor the goods valued at Rs. 4,50,40,881/- are liable to confiscation under Section 111(o) of the Customs Act, 1962 nor Noticee is liable to penalty under Section 112(a) and/or 114A of the Act, ibid. In support of the above contention, Noticee is making following submissions:

2.2.1 The goods imported in this case are "lithium ion cell" for the manufacture of "Power bank (lithium ion)" and not "lithium ion power bank". SCN has been issued on an incorrect assumption that goods imported are "lithium ion power bank".

2.2.2 Prior to the receipt of this show cause notice, they had received Consultative Letter No. 2632 dated 02.06.2023 vide File No. S/2-Aduit-Gen-383/19-20/3NCH/D-1, issued by the Aduit Commissionerate Circle D-1, JNCH, Nhava Sheva, advising them to pay the differential duty along with interest and penalty or make a submission on the issue. They submitted reply to the Consultative letter on 05.05.2023 interalia stating that goods imported by them are "lithium ion cell" meant for manufacture of "Lithium Ion Power Bank" and they have paid duty correctly and are not liable to payment of duty, interest and penalty. The present SCN has been issued without considering the reply submitted by them.

2.2.3 They are manufacturer of "Mobile Phone" and "Battery Packs for Mobile Phones and Power banks" for which they are registered in Industrial Entrepreneurs Memorandum Section, Ministry of Commerce & Industry. Lithium-ion cell imported vide Bills of Entry (1) BE No. 4178477 dtd. 22.07.2019 and (2) BE No. 4448115 dtd. 10.08.2019, were meant for the manufacture of Battery pack of the Power Bank. "Lithium ion cell" are classifiable under Tariff Heading 85076000 of the Customs Tariff and during the period of import were leviable to basic duty of customs @20% ad-valorem. However, in terms of SI. No. 17B to Notification No. 57/2017 Cus. dated 30.06.2017, as amended vide Notification No. 02/2019 dtd. 29.01.2019,

"lithium ion cell" used for the manufacture of "bank of lithium ion", were entitled to basic duty of customs @ 5% ad-valorem. The exemption was, however, subject to fulfilment of condition No. 1 to the notification, which read as "*If the importer follows the procedure set out in the Customs (Import of goods at concessional rate of Duty) Rules, 2017*". The goods imported were meant for manufacture of "Power bank of Lithium Ion". Noticee there claimed assessment in terms of above exemption notification. Noticee has followed the procedure set out in the set Rules, has obtained the Annexure from the competent authority and has claimed the benefit of exemption as mentioned above. That in the bills of entry, it has been specifically mentioned that BCD @ 5% is being claimed in terms of SI. No. 17B to Notification No. 57/2017-Cus. dated 30.06.2017. Noticee has also furnished the details of the Annexure in respective Bills of Entry as follows:

- (i) For BOE No. 4178477 dtd. 22.07.2019 - VIII/25-113/PACIFIC/18-19/524 dt. 02-JUL-19.
- (ii) For BOE No. 4448115 dtd. 10.08.2019 - VIII/25-194/PACIFIC/2019-20/62 dt. 02-AUG-19.

Since, noticee is entitled to the exemption in terms of Notification No. 057/2017, Sr. No. 17B, the duty @ 5% has been correctly paid. It is also not the case of Department that, Noticee were not entitled to benefit of exemption in terms of SI. No. 17B to Notification No. 57/2017 Cus. dated 30.06.2017, as amended. Therefore, demand of duty is not maintainable in law and is required to be dropped. As Noticee is not liable to pay duty demanded, they are also not liable to payment of interest and goods are not liable to confiscation under Section 111(o) of the Customs Act, 1962 and Noticee are not liable to penalty under Section 112(a) / 114A of the Customs Act, 1962.

2.2.4 Noticee without prejudice to submissions made above, say that demand of duty is barred by time limitation of two years. That Bills of Entry are dated 22.07.2019 and 10.08.2019, respectively. They have paid duty on 23.07.2019 and 13.08.2019. SCN has been issued on 25.04.2024 and been received by them on 04.05.2024. The SCN has therefore, been issued well beyond the normal period of limitation of two years by invoking extended period of limitation of five years. The demand of duty under Section 28(4) of Customs Act, 1962, invoking extended period of limitation of 5 years can be made only in cases where any duty has not been levied or not paid or has been short-levied or short-paid by reason of (a) collusion; or (b) any willful mis-statement; or (c) suppression of facts, by the importer or the exporter or the agent or employee of the importer or exporter. In this case, demand under Section 28(4) of the Customs Act, 1962 has been made, on the ground that Noticee has deliberately not paid the correct duty by willful mis-statement regarding correct rate of duty as it was his duty to declare correct applicable rate of duty in the bill of entry. As submitted supra, Noticee are manufacturer of "Mobile Phone" and "Battery Packs for Mobile Phones and Power banks". "Lithium-ion cell" imported vide bills of entry (1) BE No. 4178477 dtd. 22.07.2019 and (2) BE No. 4448115 dtd. 10.08.2019 were for the manufacture of Battery pack of the Power Bank. That in terms of SI. No. 17B to Notification No. 57/2017 Cus. dated 30.06.2017, as amended vide Notification No. 02/2019 dtd. 29.01.2019, lithium ion cell used for manufacture of Power bank of lithium ion were entitled to basic duty of customs @ 5%. The exemption was, however, subject to fulfilment of condition No. 1 to the

notification. Noticee say that they have complied with the condition and had submitted the Annexure while claiming the benefit of concessional duty. There is no allegation in the SCN to the effect that as to why Noticee is not entitled to benefit of exemption notification. That without stating that as to why Noticee is not entitled to benefit of exemption, the allegation that noticee has deliberately not paid the correct duty by resorting to wilful mis-declaration is without any basis and therefore, the very ground for raising the demand under Section 28(4) of the Customs Act, 1962 applying the extended period of limitation of 5 years has no basis. The demand by invoking the Section 28(4) of the Customs Act, 1962 required to be dropped on this ground also.

2.2.5 SCN proposes confiscation of goods under Section 111(o) of the Customs Act, 1962. Noticee say that Section 111(o) of the Customs Act, 1962 is applicable in cases where condition regarding payment of duty or any other prohibition are violated post importation. In this case, there is no allegation regarding violation of post import condition, the goods are therefore, not liable to confiscation under Section 111(o) of the Customs Act, 1962. In support of their above submission, Noticee rely on the judgment of Hon'ble Bombay High Court in the matter of *Commissioner of (Preventive) vs Leela Scottish Lace Pvt. Ltd. 2010 (250) ELT 481 (BOM)* and Hon'ble Apex Court in the matter of *Union of India vs Sampat Raj Dugar 1992 (58) ELT 163(SC)*. Further, Noticee has given correct description and value in the bills of entry. In the matter of *Sirthai Superware India Ltd vs Commissioner of Customs 2020(371) ELT 324 (Tri-Mum)*, Hon'ble CESTAT has held that if importer has declared correct description and value, then goods are not liable to confiscation under Section 111(m) and 111(o) of the Customs Act, 1962. The imported goods are not liable to confiscation on this ground also.

2.2.6 SCN also proposes penalty under Section 112(a) of the Customs Act, 1962. As submitted above, goods imported by them are not liable to confiscation under Section 111(o) of the Customs Act, 1962, therefore, they are not liable to penalty under Section 112(a) of the Customs Act, 1962.

2.2.7 SCN also proposes penalty under Section 114A of the Customs Act, 1962. Noticee say that penalty under Section 114A of the Customs Act, 1962 is imposable only when demand of duty is made under Section 28(4) of the Customs Act, 1962 and same is confirmed under Section 28(8) of the Act, *ibid*. Noticee has already submitted that they have paid duty correctly and other wise also demand of duty under Section 28(4) of the Customs Act, 1962 is not maintainable in law. Therefore, no demand can be confirmed under Section 28(8) of the Customs Act, 1962. Noticee are therefore, not liable to penalty under Section 114A of the Customs Act, 1962. In this regard, Noticee rely on the decision of Hon'ble Delhi High Court in the matter of *Commissioner of Customs, Import & General vs Care Foundation 2014 (302) ELT 181 (Del)*.

2.3 In view of the above, they had paid duty correctly and there has been no short levy of BCD and/or IGST totally amounting to Rs. 87,69,459/- as alleged in the SCN, nor the goods valued at Rs. 4,50,40,881/- are liable to confiscation under Section 111(o) of the Customs Act,

1962 nor noticee is liable to penalty under Section 112(a) or and 114A of the Act ibid and accordingly, charges made in SCN may dropped.

2.4 The Noticee, vide their letter dated 01.12.2025 submitted through their Authorised Representative, made further submissions in respect of subject SCN. The submissions made vide the above letter, except for the following submission, are on the same lines as made vide their earlier letter dated 10.05.2024. Accordingly, except for the following submission, remaining submissions are not reproduced herewith for the sake of brevity.

2.4.1 SCN has been issued without considering the fact that noticee as manufacturer of Power Bank is entitled to Basic Duty of Customs @ 5% ad-valorem. In any case, the BCD applicable on Lithium-Ion cell is 10% ad-valorem in terms of Sl. No. 16 to Notification No. 57/2017 Cus. dated 30.06.2017 and not 20% as stated in SCN and taken for calculating the duty demand.

3. RECORD OF PERSONAL HEARINGS

3.1 There is single Noticee in the subject SCN viz. Pacific Cyber Technology Private Limited, Mumbai (IEC No. 0315086246).

3.2 In compliance of provisions of Section 28(8) read with Section 122A of the Customs Act, 1962 and in terms of the principle of natural justice, the Noticee was granted opportunity of Personal Hearing (PH) on 11.04.2025 & 03.12.2025 and PH intimation letter was issued by speedpost. On 03.12.2025, Sh. Vijai Kumar Singh, Consultant and Sh. Kamal Baldi, Commercial Manager, Pacific Cyber Technology Private Limited, appeared before the Adjudicating Authority on behalf of the Noticee. During the PH, they reiterated the submissions made vide their letters dated 10.05.2024 and 01.12.2025 as under:

- a) They are the manufacturer of Power Bank and Mobile Phone. The goods imported by the Noticee are 'Lithium-ion Cells' which are used in the manufacture of Power Banks. They have correctly discharged the due duty liability on the imported goods by appropriately claiming the concessional rate of duty under Sl. No. 17B of Notfn. No. 57/2017 dtd. 30.06.2017 (as amended by Notification No. 02/2019).
- b) They have imported the impugned goods in the year 2019 during which the benefit of concessional rate of duty under Sl. No. 17B of Notfn. No. 57/2017 dtd. 30.06.2017 was duly available to the imported goods.
- c) The demand is barred by the time limitation of 2 years.
- d) They have duly complied with all conditions prescribed under the Notification and submitted a continuity bond for import of goods at concessional rate of duty (IGCRD) along with appropriate security and an undertaking.
- e) As the Noticee has paid all the duties correctly, no demand remains against them and therefore, the SCN may be dropped.

4. DISCUSSION AND FINDINGS

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

4.2 The Chief Commissioner of Customs, Mumbai Zone-II has granted extension of time limit to adjudicate the case up to 23.04.2026 as provided under Section 28(9) of the Customs Act, 1962, therefore, the case has been taken up for adjudication proceedings within the time limit as per Section 28(9) of the Customs Act, 1962.

4.3 In compliance to provisions of Section 28(8) and Section 122A of the Customs Act, 1962 and in terms of the principles of natural justice, opportunity for Personal Hearing (PH) on 11.04.2025 & 03.12.2025 was granted to the Noticee. Availing the said opportunity, the Noticee attended the PH on 03.12.2025. Thus, the principles of natural justice have been followed during the adjudication proceedings. Having complied with the requirement of the principle of natural justice, I proceed to decide the case on merits, bearing in mind the submissions / contentions made by the Noticee.

4.4 The fact of the matter is that a Show Cause Notice No. 126/2024-25/COMMR./GR.VA/CAC/JNCH dated 25.04.2024 was issued to Pacific Cyber Technology Private Limited (IEC-288037723), on the basis of the Alert Circular No. 11/2019 dated 30.03.2019 issued by the Commissioner of Customs (Audit), Mumbai, Zone-1 vide F. No. S/16-Misc-75/2018-19/Audit (P&C). It is alleged in the SCN that the goods covered under CTH 8507 were cleared by declaring lower rate of BCD and/or IGST, however, the imported goods falling under CTH 8507 attract levy of BCD & IGST as per Table-A figuring in Para 1.2 above. Thus, the SCN demands duty to the tune of Rs. 87,69,459/- (Rupees Eighty Seven Lakh Sixty Nine Thousand Four Hundred Fifty Nine Only) invoking extended period under Section 28(4) of the Customs Act, 1962, along with interest in terms of Section 28AA of the Customs Act, 1962 and consequential penalties under Section 112(a) and 114A, *ibid*. The Show Cause Notice also propose for confiscation of imported goods having assessable value of Rs. 4,50,40,881/- (Rupees Four Crore Fifty Lakh Forty Thousand Eight Hundred Eighty One Only) under Section 111(o) of the Customs Act, 1962.

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

- (i) Whether differential/short paid duty amounting to Rs. 87,69,459/- for the subject goods imported vide Bills of Entry as detailed in Annexure-'A' to the subject SCN, should be demanded under Section 28(4) of the Custom Act, 1962.

- (ii) Whether in addition to the duty short paid, interest on delayed payment of Custom Duty should be recovered from the Importer under Section 28AA of the Customs Act, 1962.
- (iii) Whether the said subject goods imported vide Bills of Entry as detailed in Annexure-‘A’ to the subject SCN having assessable value of Rs. 4,50,40,881/- should be held liable for confiscation under Section 111(o) of the Customs Act, 1962.
- (iv) Whether penalty should be imposed on Pacific Cyber Technology Private Limited under Section 112(a) of the Customs Act, 1962 for their acts of omission and commission, in rendering the goods liable for confiscation, as stated above.
- (v) Whether penalty should be imposed on Pacific Cyber Technology Private Limited under Section 114A of Customs Act, 1962 for short levy of duty.

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

4.7 Whether differential/short paid duty amounting to Rs. 87,69,459/- for the subject goods imported vide Bills of Entry as detailed in Annexure-‘A’ to the subject SCN, should be demanded under Section 28(4) of the Custom Act, 1962.

4.7.1 I note that the Noticee i.e. Pacific Cyber Technology Private Limited, vide the impugned 2 Bills of Entry (covering 4 item entries as detailed in Annexure-‘A’ to the subject SCN) filed during the period from 22.07.2019 to 10.08.2019 had imported the goods with description as ‘Lithium Ion Cell’ classifying the same under Customs Tariff Item (CTI) 85076000. Further, I note that the Noticee had mentioned in the ‘description’ heading in the said Bills of Entry, the item of import i.e. ‘Lithium Ion Cell’, Model / Reference No. of the goods, and also declared that the goods are ‘Parts for manufacturing battery pack of power bank / for manufacturing of power bank of lithium ion’. The said goods were cleared by the Noticee on payment of BCD @ 5% after availing exemption under Sr. No. 17B of Notification No. 57/2017 dtd. 30.06.2017 (as amended vide Notification No. 02/2019-Cus. dated 29.01.2019).

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

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

- 8507 80 00 - Other accumulators
- 8507 90 - Parts

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

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

8507.10 - Lead-acid, of a kind used for starting piston engines

8507.20 - Other lead-acid accumulators

8507.30 - Nickel-cadmium

8507.50 - Nickel-metal hydride

8507.60 - Lithium-ion

8507.80 - Other accumulators

8507.90 - Parts

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

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

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

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

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

4.7.4 Now coming to the issue of appropriate levy of Basic Customs Duty (BCD) on the imported goods, I note that during the relevant time period i.e. from 22.07.2019 to 10.08.2019, the impugned goods 'Lithium Ion Cell' attracted BCD @ 20%. The Noticee cleared the said goods on payment of BCD @ 5% after availing concessional BCD under Sr. No. 17B of Notification No. 57/2017 dated 30.06.2017 (as amended) which provided exemption of Customs duties on certain goods imported into India for use in the manufacture of cellular mobile phones and other electronic devices. I find that in the present case, the subject issue of availability / non-availability of exemption under Notification No. 57/2017-Cus dated 30.06.2017 (post amendment by Notification No. 02/2019-Cus dated 29.01.2019) is of pivotal importance around which the entire case revolves.

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

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

17A.	8507 6000	Lithium-Ion cell for use in the manufacture of battery pack of cellular mobile phone.	5%	1
17B.	8507 6000	Lithium-Ion cell for use in the manufacture of power bank of Lithium Ion.	5%	1

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

4.7.6 From the above, I note that the benefit of concessional rate of BCD @ 5% under Sr. No. 17B is available only to Lithium ion cell for use in the manufacture of power bank of Lithium ion. The condition mentioned to avail such exemption benefit is that the importer should follow the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. It will be pertinent to mention here that the aforesaid Sr. No. 17B was subsequently omitted with effect from 02.02.2021 vide Notification No. 03/2021-Cus dated 01.02.2021. As observed above, the impugned goods are Lithium ion Cells for use in manufacture of power bank and are rightly classified under CTI 85076000. Thus, I find that during the relevant time period i.e. from 22.07.2019 to 10.08.2019, the benefit of aforesaid Sr. No. 17B of the Notification No. 57/2017 dtd. 30.06.2017, was available to the impugned imported goods.

4.7.7 As regards condition to be fulfilled to avail aforesaid notification benefit, I find that the only condition mentioned to avail such exemption benefit is that the importer should follow the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 (IGCR). I note that in the instant case, the Noticee had declared in the 'Description' of the Bills of Entry that the imported goods viz. 'Lithium Ion Cell' are 'Parts for manufacturing battery pack of power bank / for manufacturing of power bank of lithium ion'. Also, the Noticee had declared the details of Model / Reference No. of the goods. I find that as the impugned imported 'Lithium Ion Cell' are used in manufacture of Power Bank, therefore, the same do fall under the purview of Sl. No. 17B of Notification No. 57/2017-Cus dated 30.06.2017 (as amended). Further, from the documents available on record and details of the impugned Bills of Entry available in the ICES 1.5 System in the form of execution of Continuity Bond; declaration of the particulars of the IGCR registration with the jurisdictional Custom officer; intimation by importer of intended import items to the jurisdictional Custom officer; letter/ certificate (i) F. No. VIII/25-113/Pacific/Concessional rate/18-19 dtd. 02.07.2019 (For BE No. 4178477 dtd. 22.07.2019) and (ii) F. No. VIII/25-194/Pacific/Concessional/2019-20 dtd. 02.08.2019 (For BE No. 4448115 dtd. 10.08.2019) issued by jurisdictional Custom officer viz. Asstt. Commissioner, EPC-6, Valsad, intimating intended import to the Port of import and debiting of the Bond/ Certificate, I find that the Noticee has fulfilled the Condition No. 1 mentioned in above Notification by complying with the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 (IGCRD).

4.7.8 As already observed by me in Para 4.7.6 & 4.7.7 above, I find that as the impugned imported 'Lithium Ion Cell' are used in manufacture of Power Bank, therefore, the same are covered under Sl. No. 17B of the Notification No. 57/2017-Cus dated 30.06.2017 (as amended vide Notification No. 02/2019-Cus. dated 29.01.2019). Further, the Noticee has fulfilled the condition No. 1 mentioned in the above Notification. In view of the above, I find that BCD @ 5% during the period 22.07.2019 to 10.08.2019 availing exemption under Sr. No. 17B of Notification No. 57/2017 dtd. 30.06.2017 (as amended vide Notification No. 02/2019-Cus. dated 29.01.2019), has been correctly claimed by the Noticee and accordingly, the due duty was paid by the Noticee in respect of the subject Bs/E. Therefore, I find that the demand of BCD in respect of the impugned 2 Bills of Entry (covering 4 item entries as detailed in Annexure-'A' to the subject SCN) raised in the SCN is not sustainable.

4.7.9 As regards levy of IGST, I note from the documents available on record and B/E details available in the ICES 1.5 System, that in respect of the impugned 2 Bills of Entry (covering 4 item entries as detailed in Annexure-'A' to the subject SCN), IGST was paid @ 18% under Sr. No. 376AA of Schedule III of the IGST Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017, which is available for goods classifiable under CTI 85076000. Therefore, I find that there is no duty recoverable from the Noticee on account of difference in the rate of IGST paid and payable, as the rate at which IGST is paid by the Noticee is in accordance with the rate of IGST demanded in the SCN.

4.7.10 Hence, after taking into consideration the discussions in the foregoing paras, I conclude that in respect of the impugned 2 Bills of Entry (covering 4 item entries as detailed in Annexure-'A' to the subject SCN) the Noticee has correctly paid the BCD by appropriately claiming the exemption / concessional rate benefit under Sr. No. 17B of Notification No. 57/2017 dtd. 30.06.2017 (post amendment by Notification No. 02/2019-Cus dated 29.01.2019) and has also correctly paid the IGST.

4.8 In view of the above, I do not find any merits in the instant SCN and thus, I am of the opinion that the demand of differential/short paid duty amounting to Rs. 87,69,459/- raised in the subject SCN under Section 28(4) of the Customs Act, 1962 does not sustains and thus, the same merits to be dropped. Resultantly, the confiscation proposed under Section 111(o) of the Customs Act, 1962, as well as the penal provisions invoked under Section 112(a) and/or Section 114A of Customs Act, 1962, are not sustainable. Thus, I am compelled that the liabilities so alleged, on account of short-payment of the applicable duty, do not survive and thus, the entire proceedings merits to be dropped.

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

ORDER

I drop all the proceeding initiated against Pacific Cyber Technology Private Limited, Mumbai (IEC No. 0315086246) by the impugned Show Cause Notice No. 126/2024-25/COMMR./GR.VA/CAC/ JNCH dated 25.04.2024.

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.

Anil Ramteke
21/4/24

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

To,

1. **Pacific Cyber Technology Private Limited,**
22, Piramal Industrial Estate No. 4, S. V. Road,
Goregaon (West), Mumbai - 400062

Copy to:

1. The Addl. Commissioner of Customs, Group VA, JNCH
2. AC/DC, Chief Commissioner's Office, JNCH
3. AC/DC, Centralized Revenue Recovery Cell, JNCH
4. AC/DC, Circle-C3, Audit Commissionerate, JNCH
5. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
6. EDI Section.
7. Office copy.

