

	<p>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, NS-I</p> <p>सीमाशुल्क प्रधान-आयुक्त का कार्यालय, एनएस-1</p> <p>CENTRALIZED ADJUDICATION CELL (NS-V), JAWAHARLAL NEHRU CUSTOM HOUSE,</p> <p>केंद्रीकृत अधिनिर्णयन प्रकोष्ठ (एनएस-व), जवाहरलाल नेहरू सीमा-शुल्क भवन, NHAVA SHEVA, TALUKA-URAN, DIST- RAIGAD, MAHARASHTRA 400707</p> <p>न्हावाशेवा, तालुका-उरण, जिला- रायगढ़, महाराष्ट्र -400707</p>
---	--

Date of Order: 05.05.2026

आदेश की तिथि: **05.05.2026**

Date of Issue : 06.05.2026

जारी किए जाने की तिथि: **06.05.2026**

DIN: 20260578NW000000B362

F. No. S/10-22/2025-26/CC/Gr. IIG/NS-I/CAC/JNCH

Show Cause Notice No. 144/2025-26/Commr./Gr. IIG/NS-I/CAC/JNCH dated 15.05.2025

Passed by: Shri Yashodhan Wanage

पारितकर्ता: श्री यशोधन वनगे

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

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

Order No.: 28 /2026-27 /Pr. Commr./NS-I /CAC /JNCH

आदेश सं. : **28 /2026-27/प्र. आयुक्त/एनएस-1/ सीएसी/जेएनसीएच**

Name of Party/Noticee: M/s Globechem Imports

पक्षकार (पार्टी)/ नोटिसीकानाम: मेसर्स ग्लोबकेम इम्पोर्ट्स

ORDER-IN-ORIGINAL

मूलआदेश

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

1. इस आदेश की मूलप्रति की प्रतिलिपि जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए निः शुल्क 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 सीईएसटीएटी, पश्चिमीप्रादेशिकन्यायपीठ (वेस्टरीजनलबेंच), ३४, पी. डी. मेलोरोड, मस्जिद (पूर्व), मुंबई- ४००००९को अपील कर सकता है, जो उक्तअधिकरण के सहायक रजिस्ट्रार को संबोधित होगी।

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

3. अपील दाखिल करने संबंधी मुख्यमुद्दे:-

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

फार्म - फार्मन. सीए३, चारप्रतियों 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.

समयसीमा- इसआदेशकीसूचनाकीतारीखसे३महीनेकेभीतर

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

फीस- (क) (एक हजार रुपये—जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम ५ लाख रुपये या उससे कम है)

(b) Rs. Five Thousand - Where amount of duty & Page 2 of 26 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 ५ लाख रुपये से अधिक परंतु ५० लाख रुपये से कम है।

(c) Rs. Ten Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 50 Lakh.

(ग) दसहजाररुपये—जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम ५० लाख रुपये से अधिक है।

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

भुगतान की रीति— क्रॉस बैंक ड्राफ्ट, जो राष्ट्रीय कृत बैंक द्वारा सहायक रजिस्ट्रार, सीईएसटीएटी, 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, १९९२, सीमाशुल्क (अपील) नियम, १९८२ सीमाशुल्क, उत्पादन शुल्क एवं सेवाकर अपील अधिकरण (प्रक्रिया) नियम, १९८२का संदर्भ लिया जाए।

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

4. इस आदेश के विरुद्ध अपील करने के लिए इच्छुक व्यक्ति अपील अनिर्णीत रहने तक उसमें माँगे गये शुल्क अथवा उद्धृतशास्ति का ७.५ % जमा करेगा और ऐसे भुगतान का प्रमाण प्रस्तुत करेगा, ऐसा किये जाने पर अपील सीमाशुल्क अधिनियम, १९६२ की धारा १२८ के उपबंधों की अनुपालना न किये जाने के लिए नामंजूर किये जाने की दायी होगी।

1. BRIEF FACTS OF THE CASE

1.1. Whereas, M/s. Globechem Imports (IEC 398022801) having address at 309 Yogeshwar Building, 135/139, Kazi Sayed Street, Mumbai-400003 had cleared their imported items declared as "TEXTILE AUXILIARIES POLYURETHANE NC-5001 TEXTILE AUXILIARIES POLYURETHANE NC-5001" as mentioned in Annexure-A of the Show Cause Notice (hereinafter referred to as the subject goods) at lower rate of BCD vide Bills of Entry as mentioned in Annexure A of the Show Cause Notice by taking benefits of Notification No. 20/2020-Cus. dated 09.04.2020. The details of the Notification No. 20/2020-Cus dated 09.04.2020 are mentioned below:

S. No.	Chapter of Heading or sub-heading or tariff item	Description of goods
1	9018 or 9019	Artificial respiration or other therapeutic respiration apparatus (Ventilators)
2	63 or any chapter	Face masks and surgical Masks
3	62 or any chapter	Personal Protection Equipment (PPE)
4	30, 38 or any chapter	Covid-19 testing kit
5	Any chapter	Inputs for manufacturing of items at Sr. No. 1 to 4 above, subject to the condition that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017

1.2. The Notification No. 20/2020-Cus dated 09.04.2020 was issued in the public interest for exempting the goods of the description specified in column (3) of the Table above falling within the Chapter, heading, sub- heading or tariff item of the First Schedule to the said Customs Tariff Act specified in column (2) of the above Table, from whole of the duty of customs leviable thereon under the First Schedule to the said Customs Tariff Act and the whole of health cess leviable thereon under section 141 of Finance Act, 2020.

1.3. However, it was noticed that some importers were engaged in imports of VTM (Viral Transport Media) kits and RNA extraction kits by availing benefit of S. No. 4 of the Notification No. 20/2020-Cus., dated 09.04.2020 and inputs for VTM kits such as nasopharyngeal swab and plastic tubes by claiming benefit of S. No. 5 of Notification No. 20/2020 Cus, dated 09.04.2020. The VTM kits and RNA extraction kits are not the Covid-19 testing kits. The VTM kits are merely tools for nasopharyngeal sampling in flu like diseases and RNA extraction kits are used for extraction RNA

from the samples. It was further observed that there are multiple uses of RNA extraction kits in medical science like research and diagnose of cancer apart from RNA extraction from swab sample collected for Covid-19 testing. For any Covid-19 RT-PCR testing, the extracted RNA is the starting material. Thus, the VTM kits and RNA extraction kits are not Covid-19 testing kits and benefit under S. No. 04 of Notification No. 20/2020-Cus dated 09.04.2020 is not available for the same. Therefore, only RT-PCR testing kits and Rapid Antigen/Antibody testing kits for Covid-19 would qualify for benefit under Sr. No. 4 of Notification No. 20/2020-Cus dated 09.04.2020.

- 1.4. Similarly, the raw material of inputs such as nasopharyngeal swab and plastic tubes required to prepare VTM kits and the raw material or inputs required to prepare RNA extraction kits are also not eligible for benefit under S. No. 5 of the Notification No. 20/2020 Cus., dated 09.04.2020. Therefore, the raw material or inputs of RT-PCR testing kits and Rapid Antigen/Antibody testing kits for Covid-19 would qualify for the benefit under S. No. 5 of the Notification No. 20/2020-Cus., dated 09.04.2020 only when the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty), Rules, 2017.
- 1.5. Accordingly, a Consultative Letter No. 1158/2021-22/PCA (C-3), dated 28.06.2021 (DIN No. 2021077800000000B184) was issued to the importer for payment of short-levied BCD as mentioned in Annexure-A of the Show Cause Notice along with applicable interest and penalty. Vide the aforementioned Consultative letter, the importer was advised to pay the differential duty under Section 28 of the Customs Act, 1962 along with applicable interest and penalty thereon under Section 28AA of the Customs Act, 1962. The Consultative letter was issued considering the Pre-Notice Consultation Regulations, 2018.
- 1.6. The importer neither paid the differential duty along with the applicable interest and penalty nor responded in reference to the Consultative letter issued.
- 1.7. In this case, M/s. Globechem Imports imported the items as mentioned in Annexure-A of the Show Cause Notice and availed benefit of concessional BCD rates under Notification No. 20/2020-Cus, dated 09.04.2020 for which they were not eligible.

Acts of omission and commission by the Importer

- 1.8. As per section 17(1) of the Act "An Importer entering any imported goods under Section 46, shall save as otherwise provided in Section 85, self-assess the duty, if any, leviable on such goods. Thus, in this

case the importer had self-assessed the Bills of Entry and appeared to have Short-levy of BCD rate by wrongfully availing the benefit of concessional BCD rates under Notification No. 20/2020-Cus, dated 09.04.2020. As the importer got monetary benefit due to said act, it was apparent that the same was done deliberately by willful mis-classification of the said goods in the Bills of Entry during self-assessment. Therefore, differential duty is recoverable from the importer under Section 28(4) of the Customs Act, 1962 along with applicable interest as per Section 28AA of the said Act.

- 1.9.** It appeared that the importer had given a declaration under section 46(4) of the Act for the truthfulness of the content submitted at the time of filing Bill of Entry. However, the applicable BCD rate on the subject goods was not paid by the Importer at the time of clearance of goods. It also appeared that the Importer had submitted a false declaration under section 46(4) of the Act. By the act of presenting goods in contravention to the provisions of Section 111(m), it appeared that the importer had rendered the subject goods liable for confiscation under Section 111(m) of the Act. For the above act of deliberate omission and commission that rendered the goods liable to confiscation. Accordingly, the Importer also appeared liable to penal action under Section 112 (a) and/or 114 A of the Customs Act, 1962.
- 1.10.** From the foregoing, it appeared that the Importer have willfully misclassified the goods, that the Importer had submitted a false declaration under section 46(4) of the said Act. Due to this act of omission of Importer, there had been loss to the government exchequer equal to the differential duty.
- 1.11.** Therefore, in exercise of the powers conferred by Section 124 read with Section 28(4) and Section 28AA of the Customs Act, 1962, M/s. Globechem Imports (IEC 398022801) was called upon to show Cause as to why:-
- i. The benefit of concessional rate of BCD under Notification No. 20/2020-Cus. dated 09.04.2020 for the subject goods should not be rejected and BCD rates under CTH 39095000 should not be levied
 - ii. Differential BCD amount of Rs. 54,44,486/- (Rupees Fifty-Four Lakh Forty-Four Thousand Four Hundred and Eighty-Six only) with respect to the items covered under Bill of entry as mentioned in Annexure A to the Show Cause Notice should not be demanded under Section 28 (4) of the Customs Act, 1962 along with applicable interest as per Section 28AA of the Customs Act, 1962.

- iii. The subject goods as detailed in Annexure-A to the Show Cause Notice having a total assessable value of Rs 3,93,64,847/- (Rupees Three Crore Ninety-Three Lakh Sixty-Four Thousand Eight Hundred and Forty-Seven only) should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962.
- iv. Penalty on the duty should not be recovered under the provisions of section 28(5) of the Customs Act, 1962.
- v. Penalty should not be imposed under Section 112(a), 114(A) & 117 of the Customs Act, 1962.

2. WRITTEN SUBMISSIONS OF NOTICEES

- 2.1. The Noticee M/s Globechem Imports has made following submissions vide letter dated 10.06.2025.
- 2.2. The Show Cause Notice, in Paras 3 and 4, states that some importers who were engaged in imports of VTM (Viral Transport Media) kits and RNA extraction kits, had availed benefit of Sr. No. 4 of Notification No.20/2020-CUS dated 9-4-2020 which covers Covid-19 testing kit. It further states that importers of inputs for VTM kits such as nasopharyngeal swab and plastic tubes had claimed benefit of Sr. No. 5 of the said Notification which covers inputs for manufacturing items at Sr. Nos. 1 to 4 of the said Notification. It is further stated that VTM kits and RNA extraction kits are not Covid-19 testing kits but are merely tools for taking samples and accordingly the said importers wrongly claimed the benefit of exemption under the said Sr. Nos. 4 and 5 for the VTM kits and RNA kits and for the inputs for the said kits respectively. It is stated that the said Sr. No. 4 only covers RT-PCR testing kits and Rapid Antigen/ Antibody testing kits.
- 2.3. Based on the aforesaid contentions raised in Paras 3 and 4, the Show Cause Notice in paras 5 to 7.1 contends that we have accordingly, wrongly availed the said exemption in respect of the goods imported by us under the Bills of Entry mentioned in Annexure A to the Notice.
- 2.4. We submit that we have not imported VTM kits and RNA kits, nor have we imported inputs for VTM kits and RNA kits. Accordingly, the proposal in the Show Cause Notice to deny the exemption to the goods imported by us, based on the contentions raised in Paras 3 and 4 of the Notice in respect of VTM kits and RNA kits and inputs for the said kits, is clearly untenable in law.
- 2.5. The Show Cause Notice itself in the first Para mentions that we have imported Textile Auxiliaries-Polyurethane NC-5001. These goods are neither VIM/RNA Kits nor their inputs but are for Personal

Protection Equipment (PPE) which is appearing at Sr. No. 3 of the said notification. Accordingly, the contentions raised in the Show Cause Notice in Paras 3 and 4 in respect of VTM/ RNA kits and inputs for the same have no relevance to the goods imported by us. Consequently, the proposal in the show cause Notice to deny the exemption to the goods imported by us based on contentions raised in respect of VTM/RNA kits and their inputs, is clearly untenable in law.

- 2.6.** Without prejudice to the aforesaid submissions, even otherwise, the Show Cause Notice is barred by limitation as hereinafter submitted. The Show Cause Notice was served on us on 19 May 2025. Copies of the postal envelope and postal tracking report are enclosed.
- 2.7.** The Show Cause Notice, which was served on us on 19th May 2025, demands duty in respect of goods which were cleared in May-June 2020, which is well beyond the limitation period of two years provided in Section 28 (1) of the Customs Act 1962.
- 2.8.** We submit that the larger period of limitation of 5 years provided in Section 28 (4) of the said Act is inapplicable in the present case since there has been no collusion, willful misstatement or suppression of facts on our part.
- 2.9.** Though the Show Cause Notice has invoked the said Section 28 (4), it does not spell out and specify the particular ingredient of Section 28 (4), out of collusion, willful mis-statement or suppression of facts, which is being alleged against us. It is settled law as laid down by the following judgments that for invocation of the larger period of limitation, the Show Cause Notice must specify the particular ingredient out of "Collusion, wilful mis-statement or suppression of facts" mentioned in Section 28 (4) of the Customs Act 1962 and must put the importer to clear notice about the specific ingredient of Section 28 (4) being invoked against the importer:
- Aban Lloyd Chiles Offshore Ltd v CC-2006 (200) ELT 370 (SC)
 - Uniworth Textiles Ltd v CC-2013 (288) ELT 161
 - CCE v HMM Lid-1995 (76) ELT 497 (SC).
 - Raj Bahadur Narain Singh Sugar Mills Ltd v UOI-1996 (88) ELT 24 (SC)
 - Kaur & Singh v CCE-1997 (94) ELT 289 (SC).
- 2.10.** In the present case the Show cause Notice does not specify the particular ingredient of Section 28 (4) which is being invoked against us and therefore the demand under Section 28 (4) is not sustainable in law. Without prejudice to the aforesaid submission, even otherwise, where the goods have been

correctly described in the Bills of Entry, which in the present case they undisputedly are, the mere claiming of a particular exemption Notification by the importer, cannot and does not amount to mis-declaration or wilful mis-statement or suppression of facts and cannot justify invocation of Section 28 (4) of the Customs Act 1962. We place reliance in this behalf on the following judgments:

- Northern Plastic Ltd v Collector-1998 (101) ELT 549 (SC)
- CC v Gaurav Enterprises-2006 (193) ELT 532 (BOM)
- C. Natwarlal & Co v CC-2012-TIOL-2171-CESTAT-MUM
- S. Rajiv & Co. v CC-2014 (302) ELT 412.
- Lewek Altair Shipping Pvt. Ltd. v CC-2019(366) ELT 318 (Tri- Hyd) 2019 (367) ELT A328 (SC).

2.11. The contention that with effect from 8-4-2011, Section 17 (1) of the Customs Act 1962 provides for self-assessment does not in any way justify invocation of Section 28 (4). Even after introduction of self-assessment, Section 28 (4) applies only in a case of wilful mis-statement or suppression of facts and the issue of eligibility to exemption Notification, is an issue of law and not a statement of fact. As held by the Supreme Court and the High Court in the aforesaid decisions, claiming of Notification is a matter of belief and interpretation and therefore an issue of law and not a statement of fact. The said decisions of the Supreme Court and High Court have been applied by the Tribunal in the aforesaid cases of C. Natwarlal & Co an S. Rajiv & Co even to cases of self-assessment which came into effect from 8-4-2011.

2.12. We submit that even after 8-4-2011, the self-assessment done by the importer under Section 17 (1) is not conclusive and final but is subject to verification by the proper officer under Section 17(2) and if the proper officer finds that the self-assessment is incorrect, the proper officer has to re-assess the goods under Section 17(4). The very fact that in the present case, the proper officers who allowed clearance accepted the self-assessment and did not carry out the re-assessment under Section 17(4) itself establishes that the even the proper officers held the view that the exemption was available.

2.13. We place reliance in this behalf on the decision of the Hon'ble Tribunal in the case of Lewek Altair Shipping Pvt. Ltd. v CC-2019(366) ELT 318 (Tri- Hyd), in which it is held that the claiming of an alleged ineligible classification or notification by the importer does not amount to mis-declaration and the self-assessment by the importer is subject to re-assessment by the proper officer of customs, if he is of the opinion that the self-assessment is incorrect. The said decision has been upheld by the Hon'ble Supreme Court in Commissioner v Lewek Altair Shipping P. Ltd-2019 (367) ELT A328 (SC).

2.14. Without prejudice to the aforesaid submissions, in any event, in respect of the following Bills of Entry, the Show Cause Notice having been served on us even after the expiry of five years, is even beyond the time provided in Section 28 (4) and therefore, in any view of the matter, barred by time:

Bill of Entry No.	Date
7641402	12-5-2020
7641558	12-5-2020
7684815	17-5-2020

Goods not liable to confiscation under Section 111(m) of the Customs Act 1962:

2.15. We submit that the proposal in the Show Cause Notice to hold the goods liable to confiscation under Section 111(m) of the Customs Act 1962 is untenable in law.

2.16. It is settled law that claiming of a particular Notification is a matter of belief on the part of the importer and so long as the goods are correctly described in the Bill of Entry, which in the present case they are, the claiming of a particular Notification does not attract Section 111(m) of the Customs Act 1962. We have correctly the described the goods in the Bills of Entry. Therefore, as laid down in the following judgments, the goods cannot be held liable to confiscation under Section 111(m) merely because of claiming of a particular Notification:

- Northern Plastic Ltd v Collector-1998 (101) ELT 549 (SC)
- C. Natwarlal & Co v CC-2012-TIOL-2171-CESTAT-MUM
- S. Rajiv & Co. v CC-2014 (302) ELT 412.

2.17. As laid down in the aforesaid decisions, Section 111(m) is attracted only where the goods do not correspond to any particular mentioned in the Bill of Entry and claiming of a particular Exemption notification is not a statement of any particular of the goods.

2.18. Even after 8-4-2011, Section 111(m) is attracted only where the goods do not correspond to any particular mentioned in the Bill of Entry and claiming of a particular Exemption notification is not a statement of any particular of the goods. The aforesaid decision of the Supreme Court in the case of Northern Plastic Ltd which relates to the period prior to 8-4-2011 has been followed and applied by the Tribunal in the aforesaid cases of C. Natwarlal & Co an S. Rajiv & Co to imports after 8-4-2011.

2.19. We also place reliance on the decision of the Honourable CESTAT in the case of Lewek Altair Shipping Pvt. Ltd. v CC-2019(366) ELT 318 (Tri-Hyd) in which it is held that the Custom Tariff Heading indicated by the importer in the Bill of Entry is only a self- assessment by the importer as per his understanding which is subject to reassessment by the officers if necessary and that the claim to an alleged wrong tariff or ineligible exemption does not amount to making a false or incorrect statement when the goods have been correctly described in the Bill of Entry. The said decision has been upheld in the Hon'ble Supreme Court as reported in 2019 (367) ELT A328 (SC).

2.20. Without prejudice to the aforesaid submissions, in any event, the good are not available for confiscation and consequently no redemption fine can be imposed in view of the law laid down in the following decisions:

- CC v Raja Impex P. Ltd-2008 (229) ELT 185
- Shiv Kripa Ispat P. Ltd v CC-2009 (235) ELT 623
- CC v Finesse Creation Inc 2009 (248) ELT 122 (Bom) [Upheld in 2010 (255) ELT A120(SC)]
- Commissioner v Sudarshan Cargo P. Ltd 2010 (258) ELT 197 (Bom)
- Chinku Exports v CC 1999 (112) ELT 400 [Upheld in Commissioner v Chinku Exports 2005 (184) ELT A36 (SC)]
- Commissioner of Customs v Air India Ltd. 2023 (386) E.L.T. 236 (Bom.)

Penalty under Sections 112 (a), 114A and 117 of the Customs Act 1962 is not imposable:

2.21. Since, as submitted hereinabove, the goods are not liable to confiscation under Section 111(m) of the Customs. Act, no penalty is imposable on us under Section 112 (a) of the said Act.

2.22. In view of the submissions made herein above, the duty demand is liable to fail and therefore penalty under Section 114A is not imposable. As submitted herein above, there has been no collusion, wilful mis-statement or suppression of facts. The submissions made herein above in respect of Section 28 (4) also apply in respect of Section 114A and the same are reiterated.

2.23. Since we have not contravened any provision of the Customs Act 1962, nor failed to comply with any provision of the said Act which we were required to comply, penalty under Section 117 of the said Act is not imposable.

2.24. In the circumstances, the Show Cause Notice is liable to be discharged and dropped and Your Honour is accordingly requested to do so.

3. RECORDS OF PERSONAL HEARING

- 3.1.** Opportunity for personal hearing in the matter was granted to the noticees on 24.03.2026. Advocate Shri Jaydeep Chandrakant Patel and Advocate Ms. Shamita Jaydeep Patel appeared on behalf of the Noticee M/s Globechem Imports on 24.03.2026 via virtual mode before the Adjudicating Authority and made following submissions: -
- 3.2.** At the outset they reiterated the submissions made by letter 2025 (Submitted on 11th June 2025) of the importer in reply to the SCN.
- 3.3.** The Show Cause Notice, in Paras 3 and 4, states that some importers who were engaged in imports of VTM (Viral Transport Media) kits and RNA extraction kits, had availed benefit of Sr. No. 4 of Notification No.20/2020-Cus. dated 9-4-2020 which covers Covid-19 testing kit. It further states that importers of inputs for VTM kits such as nasopharyngeal swab and plastic tubes had claimed benefit of Sr. No. 5 of the said Notification which covers inputs for manufacturing items at Sr. Nos. 1 to 4 of the said Notification. It is further stated that VTM kits and RNA extraction kits are not Covid-19 testing kits. However, they have not imported VTM kits and RNA kits, nor have we imported inputs for VTM kits and RNA kits. Accordingly, the proposal in the Show Cause Notice to deny the exemption to the goods imported by us, based on the contentions raised in Paras 3 and 4 of the Notice in respect of VTM kits and RNA kits and inputs for the said kits, is clearly untenable in law.
- 3.4.** The Show Cause Notice itself in the first Para mentions that we have imported Textile Auxiliaries-Polyurethane NC-5001. These goods are neither VTM/RNA Kits nor their inputs but are for Personal Protection Equipment (PPE) which is appearing at Sr. No. 3 of the said notification. Accordingly, the contentions raised in the Show Cause Notice in Paras 3 and 4 in respect of VTM/RNA kits and inputs for the same have no relevance to the goods imported in the present case.
- 3.5.** Without prejudice to the above, the show Cause notice is barred by time and larger period of limitation does not apply.
- 3.6.** Goods are not liable to confiscation under Section 111(m) since goods have been correctly described in the Bills of entry.
- 3.7.** Penalties are not imposable in the present case.

- 3.8. Reliance on Judgments referred to in Reply dated 10-6-2025 and all other submissions in said Reply are reiterated.

4. DISCUSSIONS AND FINDINGS

- 4.1. I have carefully gone through the Show Cause Notice, 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. In compliance with the principles of natural justice, an opportunity for personal hearing was granted on 24.03.2026, which was attended in virtual mode by Advocate Shri Jaydeep Chandrakant Patel and Advocate Ms. Shamita Jaydeep Patel on behalf of the Noticee M/s Globechem Imports. The written submissions and record of personal hearing have been duly taken on record.
- 4.3. I find that the requirements of Section 28(8) and Section 122A of the Customs Act, 1962, as well as the principles of natural justice, have been duly complied with. Accordingly, I proceed to decide the case on merits, taking into account the allegations in the Show Cause Notice and the submissions made by the Noticee.
- 4.4. On careful perusal of the Show Cause Notice and case records, I find that the following main issues are required to be decided in the case:
- A. Whether or not, the benefit of concessional rate of BCD under Notification No. 20/2020-Cus. dated 09.04.2020 for the subject goods should be rejected and BCD rates under CTH 39095000 should be levied.
 - B. Whether or not, the differential BCD amount of Rs. 54,44,486/- (Rupees Fifty-Four Lakh Forty-Four Thousand Four Hundred and Eighty-Six only) with respect to the items covered under Bills of Entry as mentioned in Annexure A to the Show Cause Notice should be demanded from the Noticee M/s Globechem Imports under Section 28 (4) of the Customs Act, 1962 along with applicable interest as per Section 28AA of the Customs Act, 1962.
 - C. Whether or not, the subject goods as detailed in Annexure-A to the Show Cause Notice having a total assessable value of Rs 3,93,64,847/- (Rupees Three Crore

Ninety-Three Lakh Sixty-Four Thousand Eight Hundred and Forty-Seven only) should be held liable for confiscation under Section 111(m) of the Customs Act, 1962.

D. Whether or not, Penalty should be imposed on the Noticee M/s Globechem Imports under Section 112(a), 114A & 117 of the Customs Act. 1962.

4.5. After having framed the substantive issues raised in the Show Cause Notice which are required to be decided, I now proceed to examine each of the issues individually one by one for detailed analysis based on the facts and circumstances mentioned in the Show Cause Notice, provisions of the Customs Act, 1962, nuances of various judicial pronouncements as well as Noticee's oral and written submissions and documents/evidences available on record.

Whether or not, the benefit of concessional rate of BCD under Notification No. 20/2020-Cus. dated 09.04 2020 for the subject goods should be rejected and BCD rates under CTH 39095000 should be levied.

4.6. I find that the core allegation in the Show Cause Notice is that the Noticee M/s Globechem Imports has wrongly availed exemption under Notification No. 20/2020-Cus. dated 09.04.2020 by treating the imported goods, namely "*Textile Auxiliaries – Polyurethane NC-5001*", as eligible goods under the said notification. The said Notification grants exemption to specified goods such as ventilators, masks, PPE, COVID-19 testing kits, and also inputs required for manufacture of such goods, subject to prescribed conditions.

4.7. The department's case draws support from the clarification issued in respect of VTM (Viral Transport Media) kits and RNA extraction kits, wherein it has been clarified that such goods are not covered under Sr. No. 4 or 5 of Notification No. 20/2020-Cus. dated 09.04.2020. The reliance on this clarification is only to illustrate the scope and intent of the notification, i.e., that the exemption was meant for specified COVID-19 related goods and not for items having general or multi-purpose use. The Noticee has contended that since their imports are neither VTM/RNA kits nor their inputs, the basis of the Show Cause Notice is not applicable to their case.

4.8. In this regard, I find that the above contention is misplaced. The denial of exemption in the present case is not solely based on the analogy with VTM/RNA kits, but on the independent finding that the impugned goods do not satisfy the conditions of the Notification. I find that the Show Cause Notice, though referring to VTM/RNA kits by way of illustration, fundamentally alleges wrongful availment

of exemption under Notification No. 20/2020-Cus. dated 09.04.2020. The essence of the allegation is ineligibility to the exemption, and not merely the classification of goods as VTM/RNA kits.

- 4.9.** Further, I find that the contention of the Noticee that the Show Cause Notice itself acknowledges that the imported goods are textile auxiliaries (polyurethane-based) is not borne out by record. A plain reading of the Show Cause Notice shows that while the goods were declared by the importer as “Textile Auxiliaries – Polyurethane NC-5001”, the Notice does not accept such description as determinative for eligibility under Notification No. 20/2020-Cus. dated 09.04.2020. The Show Cause Notice merely records the self-declared description as appearing in the Bills of Entry and proceeds to examine the eligibility of the goods for exemption. Therefore, reliance placed by the Noticee on the said description to claim eligibility under the notification is not tenable.
- 4.10.** Having examined the records, I find that the imported goods have been declared by the Noticee as “Textile *Auxiliaries – Polyurethane NC-5001*” and assessed under CTH 3909 5000 at the time of clearance. However, I note that the present proceedings are not centered on re-determination of classification, but on the eligibility of the goods for exemption under Notification No. 20/2020-Cus. dated 09.04.2020. The Noticee has contended that the impugned goods are for Personal Protection Equipment (PPE) which is appearing at Sr. No. 3 of the said notification. I find that the Noticee has not explicitly stated the imported goods as raw materials for manufacture of PPE kits. However, I find that the impugned goods are admittedly ‘textile auxiliaries – polyurethane’, which are not PPE per se. Therefore, the claim cannot fall under Sr. No. 3 directly. The only possible basis for claiming exemption would be under Sr. No. 5 as inputs for manufacture of PPE. Moreover, the benefit has been claimed under Sr. No. 5 of the Notification, which pertains to inputs for manufacture of goods covered under Sr. Nos. 1 to 4. In this context, the Noticee appears to have treated the impugned goods as inputs for manufacture of PPE. Accordingly, the claim of exemption is required to be examined with reference to Sr. No. 5 of the Notification and the conditions attached thereto.
- 4.11.** In this regard, I find that the benefit under Sr. No. 5 of Notification No. 20/2020-Cus. dated 09.04.2020 is conditional, and is available only when the importer follows the procedure prescribed under the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. The said rules, inter alia, require the importer to obtain registration, execute the prescribed bond, declare the intended end-use, and maintain proper accounts of receipt and utilization of the imported goods. In the present case, I find that the Noticee has not produced any evidence to demonstrate compliance with the aforesaid requirements. There is nothing on record to show that the Noticee had undertaken registration under

Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, executed the requisite bond, or maintained and furnished end-use records as mandated. In the absence of such compliance, the essential condition for availing exemption under Sr. No. 5 remains unfulfilled, rendering the claim of concessional rate of duty inadmissible.

- 4.12.** Apart from non-compliance with the procedural requirements prescribed under the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, I further find that the Noticee has not produced any documentary evidence to establish that the imported goods were actually used, or intended to be used, as inputs in the manufacture of Personal Protective Equipment (PPE). No material such as production records, consumption registers, invoices evidencing to whom manufactured PPE were sold to, or any other corroborative evidence has been placed on record to substantiate the claimed end-use. Moreover, it is observed that the Noticee has not produced any technical literature, product specifications, or industry evidence to establish that the impugned goods are of a type ordinarily or specifically used as inputs in the manufacture of PPE. "I note that the burden of establishing eligibility to the exemption notification lies squarely upon the Noticee. In the present case, despite being specifically put to notice, the Noticee has not produced any technical literature, product specifications, end-use certificates, or any industry evidence to demonstrate that the impugned goods are either classifiable as PPE or are inputs ordinarily and specifically used in the manufacture of PPE. In the absence of any such material on record, it is not possible to independently correlate the impugned goods with the description of goods covered under the notification. Therefore, the claim of the Noticee remains unsubstantiated both on technical and functional grounds.
- 4.13.** In such a scenario, the foundational requirement of Sr. No. 5 of Notification No. 20/2020-Cus. dated 09.04.2020, namely that the goods should be inputs for manufacture of specified goods, remains unsubstantiated. The mere assertion that the goods are capable of being used for PPE, without any supporting evidence of actual or intended use, is insufficient to claim the benefit of exemption. Therefore, even on merits, independent of procedural non-compliance under Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, the Noticee has failed to establish that the imported goods satisfy the substantive condition of the exemption notification.
- 4.14.** I further find that the conditions prescribed under the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 are substantive conditions and not merely procedural requirements, as they ensure verification of end-use and prevent misuse of concessional duty provisions. Non-compliance with such conditions renders the exemption itself unavailable.

4.15. In the present case, where the claim of exemption is conditional and dependent upon fulfillment of statutory requirements, the legal position assumes significance. It is well settled that exemption notifications must be strictly construed and the burden lies on the assessee to establish eligibility. In this context, I rely on the judgment of Hon'ble Supreme Court in the case of Commissioner of Cus. (Import), Mumbai Versus Dilip Kumar & Company {2018 (361) E.L.T. 577 (S.C.) [30-07-2018]} wherein it was held that

“Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.”

Therefore, unless the Noticee demonstrates clear and unambiguous compliance with the conditions prescribed, the benefit of exemption cannot be extended.

4.16. In view of the foregoing, I find that the Noticee has failed to establish eligibility for exemption under Notification No. 20/2020-Cus. dated 09.04.2020. The Noticee has neither demonstrated that the impugned goods satisfy the substantive requirement of being inputs for manufacture of specified goods under the said Notification, nor has it has proved compliance with the mandatory conditions prescribed under the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. It is a settled position of law that the burden of proving eligibility to an exemption notification lies upon the claimant, and such exemption must be strictly construed. In the present case, the Noticee has failed to discharge this burden on both substantive as well as procedural counts. Accordingly, the claim of exemption is not sustainable in law. The benefit of concessional rate of Basic Customs Duty (BCD) availed by the Noticee is liable to be denied, and the impugned goods are chargeable to duty at the applicable tariff rate.

Whether or not, the differential BCD amount of Rs. 54,44,486/- (Rupees Fifty-Four Lakh Forty-Four Thousand Four Hundred and Eighty-Six only) with respect to the items covered under Bill of entry as mentioned in Annexure A to the Show Cause Notice should be demanded under Section 28 (4) of the Customs Act, 1962 along with applicable interest as per Section 28AA of the Customs Act, 1962.

4.17. I find that the Show Cause Notice proposes recovery of differential Basic Customs Duty amounting to Rs. 54,44,486/- under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA. The relevant legal provision is as follows:

SECTION 28(4) of the Customs Act, 1962.

Recovery of duties not levied or not paid, or short-levied or short-paid or erroneously refunded. –

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

(a) collusion; or

(b) any wilful mis-statement; or

(c) suppression of facts,

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

- 4.18.** It is an admitted fact that the goods were imported during May–June 2020, and the Show Cause Notice has been issued on 15.05.2025, i.e., beyond the normal limitation period prescribed under Section 28(1). Therefore, the applicability of the extended period under Section 28(4) is required to be examined. I find that Section 28(4) is invocable where duty has not been levied or has been short-levied by reason of collusion, wilful misstatement, or suppression of facts with intent to evade payment of duty.
- 4.19.** In the present case, I observe that the Noticee had availed the benefit of exemption under Notification No. 20/2020-Cus. dated 09.04.2020 at the time of self-assessment under Section 17 of the Customs Act, 1962. The exemption was claimed in respect of the imported goods based on the declared description and the Noticee’s understanding of eligibility under the said notification. However, the Noticee has not placed on record any documentary evidence to establish fulfilment of the conditions prescribed under the said Notification read with the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. In particular, no evidence such as registration/intimation under the said Rules, execution of bond/undertaking, or maintenance of end-use compliance records has been produced to substantiate that the imported goods satisfied the mandatory procedural requirements for availing the concessional benefit.
- 4.20.** I further note that the burden of establishing eligibility to an exemption notification lies squarely upon the claimant. In the present case, despite being put to notice, the Noticee has not produced any technical literature, product specifications, end-use certificates, or any industry evidence to demonstrate that the impugned goods are inputs ordinarily and specifically used in the manufacture of

PPE. Further, no documents have been produced to establish how the imported goods were actually utilized or intended to be utilized in the manufacture of PPE kits. In the absence of such material, it is not possible to correlate the impugned goods with the description of goods covered under the notification. Accordingly, the claim of the Noticee remains unsubstantiated both on technical and functional grounds.

- 4.21.** The act of claiming exemption without fulfilling mandatory statutory conditions, coupled with non-disclosure of the intended use of the goods and absence of supporting technical or end-use evidence, amounts to suppression of material facts necessary for proper assessment. Under the regime of self-assessment, a greater responsibility is cast upon the importer to correctly assess duty and claim exemptions strictly in accordance with law. The requirements under the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 are explicit, mandatory, and within the exclusive knowledge and control of the importer. Availment of exemption without initiating compliance with such statutory requirements, and without demonstrating the nexus of the goods with the claimed end-use, cannot be regarded as a mere procedural lapse but reflects conscious disregard of statutory conditions, giving rise to a reasonable and legally sustainable inference of intent to evade payment of duty.
- 4.22.** In view of the above, I find that the Noticee neither produced any evidence at the time of import nor during adjudication to substantiate eligibility to the exemption Notification, including proof of intended or actual use of the goods as inputs for PPE, compliance with the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, or maintenance of prescribed records relating to receipt, consumption, and utilization of the imported goods. These facts were within the exclusive knowledge of the Noticee and were not disclosed at the time of assessment. Accordingly, the short-levy of duty is not attributable to any interpretational ambiguity but to conscious availment of exemption despite non-fulfilment of mandatory statutory conditions, squarely falling within the ambit of suppression of facts under Section 28(4) of the Customs Act, 1962. In view of the above findings, I hold that the ingredients of suppression of facts with knowledge of non-compliance are clearly established in the present case. Accordingly, the invocation of the extended period of limitation under Section 28(4) of the Customs Act, 1962 is legally sustainable. In view of the same, the differential duty amounting to Rs. 54,44,486/- is liable to be demanded and recovered under Section 28(4) of the Customs Act, 1962.
- 4.23.** The judgments relied upon by the Noticee, are distinguishable on facts as they relate to cases involving bona fide classification disputes or situations where no deliberate non-compliance with statutory conditions was established. In the present case, the Noticee was aware of the Customs

(Import of Goods at Concessional Rate of Duty) Rules, 2017 requirements and consciously chose not to comply with the same while availing exemption benefits. Therefore, the ratio of the cited decisions does not advance the case of the Noticee.

- 4.24.** I find that the Noticee has raised a contention that in respect of three Bills of Entry, the demand is time barred as the Show Cause Notice has been issued beyond the period of five years prescribed under Section 28(4) of the Customs Act, 1962. The said Bills of Entry are as follows:

Bill of Entry No.	Date
7641402	12-5-2020
7641558	12-5-2020
7684815	17-5-2020

On perusal of records, I find that the said Bills of Entry were finally assessed and out of charge was granted on 16.05.2020, 21.05.2020 and 19.05.2020 respectively.

- 4.25.** I find that for the purposes of Section 28 of the Customs Act, 1962, the “relevant date” for computation of limitation in respect of imported goods is the date on which the order for clearance for home consumption is made under Section 47 of the Customs Act, 1962, i.e., the date of “Out-of-Charge” (OOC). It is only upon issuance of Out-of-Charge that the assessment process attains finality and the duty liability crystallises for the purpose of recovery proceedings under Section 28.
- 4.26.** Explanation (1) to Section 28 of the Customs Act, 1962 specifically provides that in the case of imported goods, the relevant date means the date on which the proper officer makes an order for clearance for home consumption. Thus, the statutory scheme makes it explicit that the limitation period under Section 28 is to be reckoned from the date of Out of Charge and not from the date of filing of the Bill of Entry.
- 4.27.** Accordingly, in the present case, the relevant dates for the purpose of computation of limitation under Section 28 are 16.05.2020, 21.05.2020 and 19.05.2020 respectively. The Show Cause Notice has been issued on 15.05.2025. Thus, the Show Cause Notice issued on 15.05.2025 falls within the statutory period of five years when computed from the respective dates of out-of-charge, and is therefore legally

sustainable. Accordingly, the contention of limitation raised by the Noticee is rejected as being without merit.

- 4.28. As per Section 28AA of the Customs Act, 1962, 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) of Section 28AA, whether such payment is made voluntarily or after determination of the duty under that section. From the above provisions, it is evident that regarding the demand of interest, Section 28AA of the Customs Act, 1962 is unambiguous and mandates that where there is a short payment of duty, the same, along with interest, shall be recovered from the person who is liable to pay duty. The interest under the Customs Act, 1962, is payable once the demand of duty is upheld and such liability arises automatically by operation of law.
- 4.29. I have already held in the above paras that the differential customs duty amounting to Rs. 54,44,486/- should be demanded and recovered from the importer M/s Globechem Imports under the provisions of Section 28(4) of the Customs Act, 1962. Therefore, in terms of the provisions of Section 28AA of the Customs Act, 1962 interest on the aforesaid amount of the differential customs duty is also liable to be recovered from Noticee M/s Globechem Imports. Therefore, the Noticee M/s Globechem Imports is liable to pay the differential duty amount of Rs. 54,44,486/- under the provisions of Section 28(4) of the Customs Act, 1962 along with the applicable interest under Section 28AA of the Customs Act, 1962.

Whether or not, the subject goods as detailed in Annexure-A to the Show Cause Notice having a total assessable value of Rs 3,93,64,847/- (Rupees Three Crore Ninety-Three Lakh Sixty-Four Thousand Eight Hundred and Forty-Seven only) should be held liable for confiscation under Section 111(m) of the Customs Act, 1962.

- 4.30. I find that M/s Globechem Imports had subscribed to a declaration as to the truthfulness of the contents of the Bills of Entry in terms of Section 46(4) of the Customs Act, 1962 read with the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018. Under the scheme of self-assessment introduced under Section 17, the importer is required to correctly declare all particulars relevant for assessment, including description of goods, classification, value, applicable rate of duty, and eligibility of any exemption notification claimed.

- 4.31.** In the present case, I find that the Noticee has failed to substantiate the exemption claimed under Notification No. 20/2020-Cus. dated 09.04.2020. As discussed hereinabove, the Noticee has neither produced any technical literature or product-specific material to establish that the impugned goods qualify as inputs for manufacture of PPE, nor furnished any evidence demonstrating actual or intended end-use of the goods in the manufacture of PPE kits. Further, there is no evidence of compliance with the conditions prescribed under the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. This cumulative failure indicates that the exemption was claimed without adequate basis, resulting in incorrect self-assessment.
- 4.32.** In view of the above, I find that the claim of exemption by the Noticee has led to an incorrect determination of duty liability at the time of clearance of the goods. Such incorrect claim, in the absence of supporting technical, functional, and end-use evidence, and without fulfilment of prescribed conditions, has vitiated the self-assessment under the Customs Act, 1962.
- 4.33.** I find that Section 111(m) of the Customs Act, 1962 provides that any goods which do not correspond, in respect of value or any other particular, with the entry made under the Act shall be liable to confiscation. The expression “any other particular” is wide in scope and includes material declarations having a bearing on assessment, including eligibility to exemption notifications and determination of duty liability under the self-assessment scheme.
- 4.34.** In the present case, the Noticee claimed exemption under Notification No. 20/2020-Cus. dated 09.04.2020 without establishing fulfilment of the prescribed statutory conditions and without disclosing or substantiating the nexus of the goods with the claimed end-use. Consequently, the duty liability declared in the Bills of Entry was not in accordance with law. Under the self-assessment regime, such incorrect claim forms part of the assessment particulars and directly impacts determination of duty.
- 4.35.** In these circumstances, I find that the incorrect claim of exemption, resulting in incorrect declaration of duty liability, amounts to misdeclaration of material particulars for the purposes of Section 111(m) of the Customs Act, 1962, particularly where such claim is made without satisfying mandatory statutory conditions and without disclosure of relevant facts relating to technical nature and end-use of the goods. The Noticee’s contention that a mere wrong claim of exemption does not amount to misdeclaration is not acceptable in the present facts, as the exemption claimed is conditional in nature and the Noticee has failed to establish compliance with such conditions. Accordingly, I hold that the imported goods are liable to confiscation under Section 111(m) of the Customs Act, 1962.

- 4.36.** Once goods are held liable for confiscation, the adjudicating authority is required either to order absolute confiscation or to grant an option for redemption in terms of Section 125 of the Customs Act, 1962. In the present case, the Show Cause Notice does not allege that the imported goods, though ineligible for exemption Notification, are either prohibited or restricted. In the absence of any such allegation or finding, absolute confiscation is not warranted. As regards the applicability of redemption fine under Section 125 of the Customs Act, 1962, it is a settled position of law that redemption fine can be imposed only when the goods are physically available for confiscation and consequent redemption. This principle has been categorically affirmed by Hon'ble Bombay High Court in *Commissioner of Customs (Import), Mumbai v. Finesse Creation Inc.*, 2009 (248) E.L.T. 122 (Bom.), wherein it was held that the concept of redemption fine arises only if the goods are available and capable of being redeemed. In the absence of availability of goods, redemption fine cannot be imposed.
- 4.37.** In the said decision, the Hon'ble Court distinguished the judgment of the Hon'ble Supreme Court in *Weston Components Ltd. v. Commissioner of Customs*, 2000 (115) E.L.T. 278 (S.C.), by observing that in *Weston Components*, the goods had been released on bond and were therefore constructively within the control of the Customs authorities. However, in *Finesse Creation Inc.*, the goods had already been finally cleared, were not available for seizure, and had not been released on any bond or undertaking. The Hon'ble Bombay High Court further approved the view taken by Hon'ble Punjab and Haryana High Court in *Commissioner of Customs, Amritsar v. Raja Impex (P) Ltd.*, 2008 (229) E.L.T. 185 (P&H), wherein it was held that where goods are neither available nor covered by any bond, redemption fine cannot be levied.
- 4.38.** Although certain decisions of the Hon'ble Gujarat and Madras High Courts have taken a contrary view permitting imposition of redemption fine even when the goods are not physically available, such views stand in contrast to the position laid down by the jurisdictional High Court. In *Commissioner of Customs, Nhava Sheva-I v. Frigorifico Allana Pvt. Ltd.*, (2024) 25 Centax 145 (Bom.), Hon'ble Bombay High Court has expressly addressed this divergence and held that Tribunal was entirely justified in relying on *Finesse Creation Inc.* [2009 (248) E.L.T. 122 (Bom.)] of Bombay High Court, which was jurisdictional High Court instead of relying on decisions of Gujarat and Madras High Court. The Hon'ble Court also noted that the Hon'ble Supreme Court had declined to interfere with the decision in *Finesse Creation Inc.*, thereby reinforcing its precedential value.
- 4.39.** Applying the aforesaid ratio to the facts of the present case, the subject goods have already been finally cleared and are no longer available for confiscation. These goods were neither prohibited nor restricted

and are also not covered under any bond. Consequently, invocation of Section 125 of the Customs Act, 1962, in respect of such consignments lacks jurisdictional foundation and is legally unsustainable. Inasmuch as redemption fine cannot be imposed in respect of goods which are not available and which are not prohibited or restricted, ordering confiscation thereof would be an exercise in futility. Accordingly, I refrain from ordering confiscation of the subject goods, notwithstanding the fact that the goods were rendered liable to confiscation under Section 111(m) of the Customs Act, 1962 on account of ineligible availment of Notification benefit.

Whether or not Penalty should be imposed on the importer M/s Globechem Imports under Section 112(a) 114(A)& 117 of the Customs Act. 1962.

- 4.40. The Show Cause Notice has proposed imposition of penalties on the importer, M/s Globechem Imports., under the provisions of Section 114A of the Customs Act, 1962. Section 114A is reproduced below: -

SECTION 114A. Penalty for short-levy or non-levy of duty in certain cases. –

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (2) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:

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

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

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

- 4.41. I find that Section 114A provides for a specific penal consequence arising from determination of duty under Section 28(4) of the Customs Act, 1962, and once the ingredients for invoking the extended period are established, penalty under Section 114A follows as a natural corollary. In the present case, I have already held that the Noticee availed ineligible exemption under Notification No. 20/2020-Cus. dated 09.04.2020 without fulfilling the mandatory statutory conditions. Further, the Noticee failed to

disclose material particulars necessary for assessment, including non-compliance with the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, absence of any technical or product-specific evidence to establish eligibility, and failure to substantiate the end-use of the imported goods. These acts resulted in short-levy of duty and establish suppression of material facts with intent to evade payment of duty, thereby satisfying the conditions of Section 28(4) and attracting the provisions of Section 114A.

- 4.42.** I further find that under the self-assessment regime, the importer is under a statutory obligation to correctly declare classification, eligibility to exemption, and duty liability. Any claim of exemption, particularly a conditional exemption, must be supported by compliance with prescribed procedures as well as substantiation of the nature and end-use of the goods. In the present case, the Noticee has failed on all these counts. Such conduct cannot be treated as a mere procedural lapse or interpretational error, but constitutes a serious violation with direct revenue implications.
- 4.43.** The contention of the Noticee that the issue is interpretational is therefore not acceptable. The exemption notification clearly prescribes specific conditions and procedures, and the Noticee has neither complied with such conditions nor demonstrated eligibility on technical or functional grounds. The conscious availment of exemption in the absence of such compliance reflects disregard of statutory requirements and renders the Noticee liable to penal consequences. Accordingly, I hold that the Noticee is liable for imposition of penalty under Section 114A of the Customs Act, 1962 equal to the differential duty of Rs. 54,44,486/- along with applicable interest.
- 4.44.** Once penalty under Section 114A is imposed, the fifth proviso to that provision bars the imposition of any penalty under Section 112 in respect of the same goods. Accordingly, no penalty under Section 112 is imposed in the instant case.
- 4.45.** I note that a penalty under Section 117 of the Customs Act, 1962 has also been proposed against the Noticee M/s Globechem Imports. I find that Section 117 of the Customs Act, 1962 is a residuary provision applicable only in cases where no specific penalty is provided under the Act. Since the acts and omissions of the Importer are squarely covered under Section 114A invocation of Section 117 is neither required nor justified. Hence, no penalty is imposed under Section 117 of the Customs Act, 1962.

4.46. I find that the Show Cause Notice has proposed recovery of penalty under the provisions of Section 28(5) of the Customs Act, 1962. However, I find that the said provision is not applicable in the facts and circumstances of the present case, as it pertains to situations involving voluntary payment of duty along with applicable interest and penalty within one month of the receipt of the Show Cause Notice, which is not the case here. Accordingly, the proposal to recover penalty under Section 28(5) of the Customs Act, 1962 is rejected.

ORDER

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

- i. I reject the benefit of concessional rate of Basic Customs Duty (BCD) under Notification No. 20/2020-Cus. dated 09.04.2020 in respect of the goods imported by M/s Globechem Imports and order that applicable Customs duties under CTH 39095000 should be levied on the said goods.
- ii. I confirm demand and order recovery of the differential Customs Duty amounting to Rs. 54,44,486/- (Rupees Fifty-Four Lakhs Forty-Four Thousand Four Hundred and Eighty-Six only) in respect of the goods covered in the Bills of Entry as detailed in Annexure-A of the Show Cause Notice, under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962, from M/s Globechem Imports.
- iii. I refrain from ordering confiscation of subject goods having an assessable value of Rs. 3,93,64,847/- (Rupees Three Crore Ninety-Three Lakhs Sixty-Four Thousand Eight Hundred and Forty-Seven only) under Section 111(m) of the Customs Act, 1962.
- iv. I impose a penalty of Rs. 54,44,486/- (Rupees Fifty-Four Lakhs Forty-Four Thousand Four Hundred and Eighty-Six only) alongwith applicable interest on M/s Globechem Imports under Section 114A of the Customs Act, 1962.
- v. No separate penalty is imposed under Section 112(a) and Section 117 of the Customs Act, 1962 for the reasons discussed above.

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 the Customs Act, 1962, and/or any other law for the time being in force in the Republic of India.

(यशोधन वनगे /Yashodhan Wanage)
प्रधान आयुक्त, सीमा शुल्क/ **Pr. Commissioner of Customs**
एनएस-1, जेएनसीएच / **NS-I, JNCH**

To,

M/s. Globechem Imports (IEC 398022801,
309, Yogeshwar Building, 135/139,
Kazi Sayed Street, Mumbai-400003

Copy to,

1. DC, Audit, JNCH
2. ADC, CCO, JNCH
3. DC, CRRC, JNCH
4. Superintendent, CHS, JNCH
5. DC, Group II G, JNCH.
6. Office Copy.