

प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद  
सीमा शुल्क भवन, आल इंडीया रेडीऑ के बाजु मे, नवरंगपुरा, अहमदाबाद 380009  
दुर भाष (079) 2754 46 30 फैक्स (079) 2754 23 43  
**OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, AHMEDABAD**  
**CUSTOMS HOUSE, NEAR ALL INDIA RADIO, NAVRANGPURA, AHMEDABAD 380009**  
**PHONE : (079) 2754 46 30 FAX (079) 2754 23 43**

निबन्धित पावती डाक द्वारा / By SPEED POST A.D.

फा. सं./ F. No.: VIII/10-16/Pr.Commr/O&A/2024-25

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आदेश की तारीख/Date of Order :21.02.2025  
जारी करने की तारीख/Date of Issue :21.02.2025

द्वारा पारित/Passed by:-

शिव कुमार शर्मा, प्रधान आयुक्त  
Shiv Kumar Sharma, Principal Commissioner

मूल आदेश संख्या :

**Order-In-Original No: AHM-CUSTM-000-PR.COMMR-64-2024-25 dated 21.02.2025 in the case of M/s. Corteva Agriscience India Private Limited, V-Ascendas, Atria Block, 12th Floor, Plot No.17, Software Units Layout, Madhapur, Hyderabad, Telangana- 500081.**

- 1 जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।
1. This copy is granted free of charge for private use of the person(s) to whom it is sent.
2. इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, दुसरी मंज़िल, बहुमाली भवन, गिरिधर नगर पुल के बाजु मे, गिरिधर नगर, असारवा, अहमदाबाद-380 004 को सम्बोधित होनी चाहिए।
2. Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, Ahmedabad – 380004.
3. उक्त अपील प्रारूप सं. सी.ए.3 में दाखिल की जानी चाहिए। उसपर सीमा शुल्क (अपील) नियमावली, 1982 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियों में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए)। अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियों में अग्रेषित किए जाने चाहिए।
3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the

order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएंगी (उनमें से कम से कम एक प्रमाणित प्रति होगी)।
4. The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)
5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।
5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.
6. केंद्रीय सीमा शुल्क अधिनियम, 1962 की धारा 129 ए के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।
6. The prescribed fee under the provisions of Section 129A of the Customs Act, 1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.
7. इस आदेश के विरुद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुर्माना का विवाद है अथवा जुर्माना जहां शीर्ष जुर्माना के बारे में विवाद है उसका भुक्तान करके अपील की जा सकती है।
7. An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute".
8. न्यायालय शुल्क अधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर उपयुक्त न्यायालय शुल्क टिकट लगा होना चाहिए।
8. The copy of this order attached therein should bear an appropriate court fee stamp as prescribed under the Court Fees Act, 1870.

Sub: Show Cause Notice F.No. VIII/10-16/Pr.Commr/O&A/2024-25 dated 11.09.2024 and corrigendum dated 11.12.2024 issued by the Principal Commissioner, Customs, Ahmedabad to M/s. Corteva Agriscience India Private Limited, V-Ascendas, Atria Block, 12th Floor, Plot No.17, Software Units Layout, Madhapur, Hyderabad, Telangana-500081.

#### **Brief facts of the case:**

1. Specific intelligence was received by Directorate of Revenue Intelligence, DRI(MZU), Mumbai that an importer **M/s Corteva Agriscience India Private Limited (IEC No. 0596020651) (previously known as M/s E.I. Dupont India Private Limited)** (hereinafter to be refereed as "CAIPL" or 'the importer' for the sake of brevity), having their registered office situated at 'V-Ascendas, Atria Block, 12<sup>th</sup> Floor, Plot No.17, Software Units Layout, Madhapur, Hyderabad, Telangana- 500081' and M/s FMC India Private Limited (IEC No. 0300037830) (hereinafter to be refereed as "the FIPL" for the sake of brevity), who is engaged in the business of import and manufacturing of chemicals including various insecticides, pesticides, herbicides etc., is importing from

their related supplier, by resorting to under-valuation and, thereby, evading the applicable customs duty.

1.1. Intelligence suggested that the said importers had changed their billing practice for their imported goods and thereby evading payment of appropriate duty. They changed the basis of billing practice of the product from actual purity (actual concentration) to standard purity (fixed concentration) in respect of certain active ingredient in the product. Initially, the billing was done on the basis of the actual concentration of certain active ingredient in the product, however, later the practice was changed and billing was being done on the basis of a fixed concentration of certain active ingredient in the product. The fixed concentration of active ingredient chosen for the purpose of valuation was generally less than the actual concentration of active ingredient, which decreased the actual value of the imported product.

1.2. For instance, in one such product ‘Rynaxypyr Technical’ also known as Chlorantraniliprole Technical, company used to bill to its buyers on the basis of actual concentration of ‘Chlorantraniliprole’ which is the active ingredient in the product but this method was changed and the company fixed the price of its product on the basis of certain fixed concentration of ‘Chlorantraniliprole’, which was less than actual concentration, thereby decreasing the assessable value of the product which led to revenue loss. This is illustrated under Table-01 below:

Table-01

Amount (In Rs.)

Port Code: INBRC6 (ICD Dashrath)									
Bills of Entry No. 4982159 dated 20.09.2019									
Product: RYNAXYPYR TECHNICAL (CHLORANTRANILIPROLE TECHNICAL)									
Total Quantity: 3000 Kgs									
Sr. No.	Qty (Kgs)	Actual purity (% of active ingredient in the product)	Standard purity (% of active ingredient used for invoicing)	Difference in Purity of active ingredient	Unit Price (as per standard purity)	Assessable Value (as per standard purity)	Qty based on purity Difference (In Kgs)	Assessable Value (as per actual purity)	Difference in Assessable Value
1	1450	98.07%	97.50%	0.57%	23,321	3,38,14,870	8	3,40,07,615	1,92,745
2	1550	98.17%	97.50%	0.67%	23,321	3,61,46,930	10	3,63,89,114	2,42,184
	3000					6,99,61,800	18.65	7,03,96,729	4,34,929

1.3. For illustration purpose, the valuation that the importer had adopted at the time of import and the valuation that the importer had to adopt as per actual purity is illustrated as below:

- 1.3.1. The CAIPL had imported 10,000 kgs of Chlorantraniliprole Technical (also known as Rynaxypyr) having declared unit price of \$493.33 (Rs.32,017/-) per kgs at ICD Dashrath (INBRC6) through Home Consumption Bill of Entry No. 4552392 dated 26.12.2017 having Invoice No. 7721360953 dated 11.12.2017.
- 1.3.2. The unit price of Chlorantraniliprole Technical was taken as Rs.32,017/- per kgs at 97.5% Standard Purity i.e. one kilogram of Chlorantraniliprole Technical of 97.5% purity is priced at Rs.32,017/-. That means, the price of goods having purity more than 97.5% will be accordingly higher. However, the CAIPL valued the goods at Rs.32,01,71,170/- (32,017\* 10,000) without considering the actual purity of the imported goods.
- 1.3.3. The batch wise actual purity of the goods imported under said BE are listed under **Table-02** below. Batch No. SEP17SHRG9 having 650 Kgs of said goods had actual purity of 98.12%. However, the goods were valued at Standard Purity of 97.50% at Rs. 32,017/- per kg i.e. 650 kg of said batch was valued at Rs.2,08,11,126/-. However, the actual purity of the said batch

is 98.12%, hence, the purity difference that had not being considered in value is 0.62% which turns out to be 4.03 kgs of active ingredient that has not being considered in value. Therefore, the value of quantity based on purity difference is Rs.1,29,029/- at Rs. 32,017/- per kg. Consequently, the re-determined value of 650 kgs of said goods in Batch No. SEP17SHRG9 is Rs.2,09,40,155/- and not Rs.2,08,11,126/-. Similarly, the value of quantity based on purity difference for all the batches imported under subject BE are as listed in **Table-02** below. As evident below, there is under-valuation of Rs.11,67,344/- in the subject BE.

**Table-02**

Sr. No.	Batch No.	Qty (Kgs )	Actual Purity (%)	Standard Purity (%)	Purity Diff (%)	Qty based on Purity Diff (Kgs)	Unit Price (Transfer Price) In Rs.	Value of Qty based on Purity Diff (In Rs.)	Declared Assessable Value as per Standard Purity (In Rs.)	Redetermined Assessable Value as per Actual Purity (In Rs.)
1	SEP17SHRG9	650	98.12	97.50	0.62	4.03	32017	129029	20811126	20940155
2	SEP17SHRH0	1600	97.79	97.50	0.29	4.64	32017	148559	51227387	51375947
3	SEP17SHRH1	1600	98.15	97.50	0.65	10.4	32017	332978	51227387	51560365
4	SEP17SHRH2	1600	98.01	97.50	0.51	8.16	32017	261260	51227387	51488647
5	SEP17SHRH3	1600	97.83	97.50	0.33	5.28	32017	169050	51227387	51396438
6	SEP17SHRH4	1600	97.73	97.50	0.23	3.68	32017	117823	51227387	51345210
7	SEP17SHRH5	1350	97.52	97.50	0.02	0.27	32017	8645	43223108	43231753
	<b>TOTAL</b>	<b>10000</b>				<b>36.46</b>		<b>11,67,344</b>	<b>32,01,71,170</b>	<b>32,13,38,514</b>

1.4 Accordingly, an investigation was initiated by the Directorate of Revenue Intelligence (DRI), Mumbai Zonal Unit (MZU), 13, Sir Vithaldas Thackersey Marg, New Marine Lines, Mumbai-400020 (hereinafter referred to as DRI), against the importer CAIPL through summons on 13.09.2022. This Show Cause Notice pertains to the imports made by CAIPL.

1.5 Another investigation was initiated by the Directorate of Revenue Intelligence (DRI), Mumbai Zonal Unit (MZU), against the importer FIPL. The importer paid full duty along with Interest and penalty under Section 28(5) of the Customs Act, 1962 during investigation for conclusion of matter.

**2      Action taken on intelligence**

2.1      Based on above intelligence, summons was issued to person associated with the company and the statements were recorded as discussed below:

**Recording of Statements**

2.2      Statement dated 22.09.2022 and 07.02.2024 of **Shri Sandeep Bansal**, Tax Manager of CAIPL, was recorded under Section 108 of the Customs Act, 1962 wherein he, inter alia, stated that:

- (a)      CAIPL is engaged in light processing of Agri Chemicals, sales, marketing and distribution of crop protection chemicals. The raw materials were imported and/or procured domestically too. The imported raw material was used for manufacturing various formulations etc.

(b) CAIPL used to import various goods i.e. various grade technical of pesticides/insecticides/herbicides manufactured by E I Dupont USA and China through Dupont Singapore and Switzerland.

(c) Till 31<sup>st</sup> October, 2017 the crop protection manufacture was under Dupont and thereafter Dupont sold part of its Agrichemical business to FMC. From November, 2017 and onwards the manufacturing of certain crop protection products was taken over by FMC in USA and China. CAIPL continued to import such products in India on behalf of FMC India as the necessary licenses for import and manufacture were yet to be transferred in the name of FMC India. The imported product was used to make formulations by CAIPL on behalf of FMC India and was sold to FMC Entities on cost-to-cost basis. Such import of Technicals were done by CAIPL on behalf of FMC till late 2019 i. e. to say for the duration from November 2017 till December 2019 FMC & Group company were the original seller of the goods and FMC India was the final beneficiary of the goods but due to the reasons (license requirement), as stated above, EI Dupont was acting as an importer on record. The effective control regarding pricing, production, purchase orders during this duration was resting with FMC only.

(d) On being asked he stated that CAIPL was importing various technical grade for itself till Oct 2017. The import price was determined by global Transfer Pricing team, in Spain and, accordingly, the import price was finalised and the product was imported in India as per that. The methods being used for determining import prices was Transactional Net Margin Method (TNMM) according to which the Transfer Price (TP) is determined, keeping in mind the Transfer Pricing policy after due consideration of function, asset and risk analysis of the importing entity and importing entity is entitled to a margin around fixed cost + 45% + distribution margin of 2-4%.

(e) On being asked whether the imported Technical was sold in domestic market directly or after making formulation of the same he stated that he is not sure whether CAIPL imports technical and sells them as such. To the best of his understanding CAIPL import technical and formulate the same and sell the final product. A very small/negligible quantity of the imported Technical may be sold in domestic market.

(f) On being asked about the License requirements for import of various technical grades of insecticides, fungicides and herbicides, he stated that for the import of various insecticides, fungicides and herbicides there was mandatory registration requirement to be registered with the Central Insecticides Board (CIB), then only one could import such products.

(g) On being asked whether there was any quality standard like minimum or maximum purity prescribed by the CIB Registration for the import of various Technicals of insecticides, fungicides and herbicides and their significance, he affirmed and stated that there were distinct minimum or maximum purity standards prescribed by the CIB Registration for the import of various Technicals of insecticides, fungicides and herbicides. It is based on the quality of technical produced by the plant from where the technical is being sourced. By prescribing such standards CIB tried to regulate the quality of product imported into the country.

(h) On being asked about the active ingredient and how does its purity influence the value and output of the goods, he stated that the active ingredients are the chemicals which controls the pest or disease in any of the crop protection products i.e. insecticides, fungicides and herbicides. Higher the purity of technical means higher the content of active ingredient in any insecticides, fungicides and herbicides. Relatively the material with higher purity will have higher available technical for use and hence, will possibly have higher value and possibility a higher output yield in formulation.

(i) On being asked to explain how CAIPL was determining the price for the imported goods, he stated that the prices of products are determined considering the arm's length principle which was based on the functions performed, asset deployed, and risks assumed by the tested party of each of those transactions. In general, Transfer Prices (Import Prices) of products were set to allow Corteva India Private Limited (formerly known as E.I DuPont India Private), as routine manufacturer / light processor and distributor, to cover its costs and earn an arm's length profit for its functions performed, assets deployed and risks assumed. The basis for the calculation was the Average Selling Price to local customers of the distributor entity. The costs recovered were those attributable to the functions performed, including but not limited to manufacturing cost, selling expenses, Freight and Distribution Expense, General and Administration, etc. Ideal Transfer Price is set/reviewed at the beginning of the year and revised as required to ensure that arm's length remuneration is met for the fiscal year.

(j) Further, on being shown the copy of statement dated 06.09.2022 of Shri Anurag Srivastava of M/s FMC India Private Limited (FIPL) wherein it had been admitted by FIPL that it traditionally followed a practice of billing on the basis of actual active ingredient as stated above. Therefore, the pricing for import made by CAIPL, formerly known as EI Dupont India Pvt. Ltd., particularly for the period from November 2017 till December 2019 wherein, CAIPL was importing goods on behalf of FIPL, the imported products like Chlorantraniliprole have been valued at uniform prices per kg but should have been done based on the Purity of active ingredient i.e. to arrive at the actual quantity of active ingredient on the basis of purity. For example, if a technical of 1000 Kg was imported with the purity of 98.5% then the actual content of active ingredient would be 985 Kgs and the value of such 1000 Kgs Technical would be arrived at valuing the 985 Kgs actual content of active ingredient with price of 100% pure active ingredient per Kg.

(k) He stated that it appeared that billing in case of imports done by CAIPL during the period of November, 2017 till December, 2019 on behalf of FIPL, has not been done as per the traditional practice as followed by FIPL and as an importer, they had a responsibility to do the billing correctly and the same should have been reflected in overall value declared to the customs. He further stated that they will contact the concerned team in FIPL regarding the same and get back to the department with an explanation regarding the same. He further stated that duty loss to the exchequer, if any, due to the above mistake in billing was totally un-intentional and CAIPL as a responsible and honest tax payer will discharge any liabilities i. e. duty, interest or penalty arising out of the same to the government once they get the detailed explanation regarding the same from FIPL.

(l) On being asked that CAIPL had voluntarily deposited duty along with interest amount of Rs.9,11,37,421/- for the product Chlorantraniliprole also known as Rynaxypyr, that was imported on behalf of FIPL, towards their liability for differential percentage of Active Ingredient over and above standard reference percentage in imported insecticide and asked about the liability arising due to differential percentage of Active Ingredient over and above standard reference percentage in other imported insecticides for FIPL he stated that the aforesaid amount of Rs.9,11,37,421/- was paid by CAIPL as per their Global Agreement with FIPL. CAIPL had paid it once it was confirmed by FIPL that they shall reimburse the same. The said payment should not be construed as acceptance of any position by CAIPL. Further, in relation to products other than Rynaxypyr imported on behalf of FIPL, he stated that if there was any liability arising due to this, if any, they would deposit it along with interest after discussion with FIPL as they had imported the product on their behalf and if they agreed to re-imburse the same, they shall consider it paying as per their Global agreement with FMC.

### 3 Legal Provisions

Relevant provisions of law relating to import of goods in general, the policy and rules relating to the import under the provisions of the Customs Act, 1962 and other laws for the time being in force are summarized as under:

#### 3.1 The Customs Act, 1962:

i) **Section 2. Definitions:** In this Act, unless the context otherwise requires-

(2) **"assessment"** means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, with reference to-

- (a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;
- (b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;
- (c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;
- (d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;
- (e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;
- (f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods, and includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;

(36) **"rules"** means the rules made by the Central Government under any provision of this Act;

(41) **"value"**, in relation to any goods, means the value thereof determined in accordance with the provisions of sub-section (1) or sub-section (2) of section 14;

(26) **"importer"**, in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner, beneficial owner or any person holding out to be the importer.

ii) **Section 14. Valuation of goods.**

(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:

Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf.



*Provided further that the rules made in this behalf may provide for,-*

- (i) the circumstances in which the buyer and the seller shall be deemed to be related;*
- (ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;*
- (iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section:*
- (iv) the additional obligations of the importer in respect of any class of imported goods and the checks to be exercised, including the circumstances and manner of exercising thereof, as the Board may specify, where, the Board has reason to believe that the value of such goods may not be declared truthfully or accurately, having regard to the trend of declared value of such goods or any other relevant criteria.*

**iii) Section 17. Assessment of Duty:**

- (1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.*
- (2) The proper officer may verify the entries made under section 46 or section 50 and the self-assessment of goods referred to in sub-section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.*

*Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.*

- (3) For the purposes of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.*
- (4) Where it is found on verification, examination or testing of the goods or otherwise that the self- assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.*
- (5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re- assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.*

**iv) Section 18. Provisional assessment of duty. –**

*(1) Notwithstanding anything contained in this Act but without prejudice to the provisions of section 46 2 [and section 50],-*

- (a) where the importer or exporter is unable to make self-assessment under sub-section (1) of section 17 and makes a request in writing to the proper officer for assessment; or*
- (b) where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test; or*



(c) where the importer or exporter has produced all the necessary documents and furnished full information but the proper officer deems it necessary to make further enquiry; or

(d) where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further enquiry,

the proper officer may direct that the duty leviable on such goods be assessed provisionally if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty as may be finally assessed or re-assessed as the case may be, and the duty provisionally assessed.

(1A) Where, pursuant to the provisional assessment under sub-section (1), if any document or information is required by the proper officer for final assessment, the importer or exporter, as the case may be, shall submit such document or information within such time, and the proper officer shall finalise the provisional assessment within such time and in such manner, as may be prescribed.

(2) When the duty leviable on such goods is assessed finally or reassessed by the proper officer in accordance with the provisions of this Act, then -

(a) in the case of goods cleared for home consumption or exportation, the amount paid shall be adjusted against the duty finally assessed or re-assessed, as the case may be, and if the amount so paid falls short of, or is in excess of the duty finally assessed or re-assessed, as the case may be, the importer or the exporter of the goods shall pay the deficiency or be entitled to a refund, as the case may be;

(b) in the case of warehoused goods, the proper officer may, where the duty finally assessed or re-assessed, as the case may be, is in excess of the duty provisionally assessed, require the importer to execute a bond, binding himself in a sum equal to twice the amount of the excess duty.

(3) The importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order or re-assessment order under sub-section (2), at the rate fixed by the Central Government under section 11 [28AA] from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.

(4) Subject to sub-section (5), if any refundable amount referred to in clause (a) of sub-section (2) is not refunded under that sub-section within three months from the date of assessment, of duty finally or re-assessment of duty, as the case may be, there shall be paid an interest on such un-refunded amount at such rate fixed by the Central Government under section 27A till the date of refund of such amount.

(5) The amount of duty refundable under sub-section (2) and the interest under sub-section (4), if any, shall, instead of being credited to the Fund, be paid to the importer or the exporter, as the case may be, if such amount is relatable to:

(a) the duty and interest, if any, paid on such duty paid by the importer, or the exporter, as the case may be, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(b) the duty and interest, if any, paid on such duty on imports made by an individual for his personal use;

(c) the duty and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(d) the export duty as specified in section 26;

(e) drawback of duty payable under sections 74 and 75.

**v) Section 28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded**

*(1) Where any duty has not been levied or not paid or short-levied or short-paid or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any willful mis-statement or suppression of facts,-*

*(a) the proper officer shall, within two years from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied or paid or which has been 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;*

*Provided that before issuing notice, the proper officer shall hold pre-notice consultation with the person chargeable with duty or interest in such manner as may be prescribed;*

*(b) the person chargeable with the duty or interest, may pay before service of notice under clause (a) on the basis of,-*

- (i) his own ascertainment of such duty; or*
- (ii) the duty ascertained by the proper officer,*

*the amount of duty along with the interest payable thereon under section 28AA or the amount of interest which has not been so paid or part-paid.*

*Provided that the proper officer shall not serve such show cause notice, where the amount involved is less than rupees one hundred.*

*(2) The person who has paid the duty along with interest or amount of interest under clause (b) of sub-section (1) shall inform the proper officer of such payment in writing, who, on receipt of such information, shall not serve any notice under clause (a) of that sub-section in respect of the duty or interest so paid or any penalty leviable under the provisions of this Act or the rules made thereunder in respect of such duty or interest:*

*Provided that where notice under clause (a) of sub-section (1) has been served and the proper officer is of the opinion that the amount of duty along with interest payable thereon under section 28AA or the amount of interest, as the case may be, as specified in the notice, has been paid in full within thirty days from the date of receipt of the notice, no penalty shall be levied and the proceedings against such person or other persons to whom the said notice is served under clause (a) of sub-section (1) shall be deemed to be concluded.*

*(3) Where the proper officer is of the opinion that the amount paid under clause (b) of sub-section (1) falls short of the amount actually payable, then, he shall proceed to issue the notice as provided for in clause (a) of that sub-section in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of two years shall be computed from the date of receipt of information under sub-section (2).*

*(4). Where any duty has not been levied or not paid or has been short-levied or erroneously refunded, or any 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, 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 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.

(5) Where any duty has not been levied or not paid or has been short-levied or short paid or the interest has not been charged 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 by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub-section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to fifteen per cent of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.

(6) Where the importer or the exporter or the agent or the employee of the importer or the exporter, as the case may be, has paid duty with interest and penalty under sub-section (5), the proper officer shall determine the amount of duty or interest and on determination, if the proper officer is of the opinion-

(i) that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub-section (4), shall, without prejudice to the provisions of sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein; or

(ii) that the duty with interest and penalty that has been paid falls short of the amount actually payable, then, the proper officer shall proceed to issue the notice as provided for in clause (a) of sub-section (1) in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of two years shall be computed from the date of receipt of information under sub-section (5).

**vi) Section 28AA. Interest on delayed payment of duty**

(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

**vii) Section 46. Entry of goods on importation:**

(1) The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed:

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in any other manner:

Provided further that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information

to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof:

(a) to examine the goods in the presence of an officer of customs, or

(b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

(2) Save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

(3) The importer shall present the bill of entry under sub-section (1) before the end of the day (including holidays) preceding the day on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing:

Provided that the Board may, in such cases as it may deem fit, prescribe different time limits for presentation of the bill of entry, which shall not be later than the end of the day of such arrival:

Provided further that a bill of entry may be presented at any time not exceeding thirty days prior to the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India:

Provided also that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed.

(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.

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

(a) the accuracy and completeness of the information given therein;

(b) the authenticity and validity of any document supporting it; and

(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

(5) If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa.

#### **viii) Section 111. Confiscation of improperly imported goods, etc.**

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

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

#### **ix) Section 112. Penalty for improper importation of goods, etc:**

Any person,

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

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

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

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten percent of the duty sought to be evaded or five thousand rupees, whichever is higher:

Provided that where such duty 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 communication of the order 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 percent of the penalty so determined;

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty [not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.

**x) 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 (8) 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 order 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.

**xi) Section 114AA. Penalty for use of false and incorrect material:**

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

**xii) Section 124. Issue of show cause notice before confiscation of goods, etc.**

*No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person—*

*(a) is given a notice in writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;*

*(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein, and*

*(c) is given a reasonable opportunity of being heard in the matter:*

*Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.*

*Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.*

**3.2 Customs Valuation (Determination of Value of Imported Goods) Rules, 2007:**

**i) Rule 2. Definitions:**

*(2) For the purpose of these rules, persons shall be deemed to be "related" only if -*

- (i) they are officers or directors of one another's businesses;*
- (ii) they are legally recognised partners in business;*
- (iii) they are employer and employee;*
- (iv) any person directly or indirectly owns, controls or holds five per cent or more of the outstanding voting stock or shares of both of them;*
- (v) one of them directly or indirectly controls the other;*
- (vi) both of them are directly or indirectly controlled by a third person;*
- (vii) together they directly or indirectly control a third person; or*
- (viii) they are members of the same family.*

**ii) Rule 3. Determination of the method of valuation:**

*(1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;*

*(2) Value of imported goods under sub-rule (1) shall be accepted:*

*Provided that -*

*(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which -*

- (i) are imposed or required by law or by the public authorities in India; or*
- (ii) limit the geographical area in which the goods may be resold; or*
- (iii) do not substantially affect the value of the goods;*

*(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;*

*(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an*

appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

- (3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.  
 (b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.

- (i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;
- (ii) the deductive value for identical goods or similar goods;
- (iii) the computed value for identical goods or similar goods:

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.

### iii) **Rule 11. Declaration by the importer**

- (1) The importer or his agent shall furnish –
- (a) a declaration disclosing full and accurate details relating to the value of imported goods; and
  - (b) any other statement, information or document including an invoice of the manufacturer or producer of the imported goods where the goods are imported from or through a person other than the manufacturer or producer, as considered necessary by the proper officer for determination of the value of imported goods under these rules.
- (2) Nothing contained in these rules shall be construed as restricting or calling into question the right of the proper officer of customs to satisfy himself as to the truth or accuracy of any statement, information, document or declaration presented for valuation purposes.
- (3) The provisions of the Customs Act, 1962 (52 of 1962) relating to confiscation, penalty and prosecution shall apply to cases where wrong declaration, information, statement or documents are furnished under these rules.

## **4 Discussion and Findings of Investigation**

### **Submission made by the importer CAIPL**

4.1 Further, the importer vide letter dated 22.09.2022, 27.12.2022, 26.10.2023 and 07.02.2024 interalia submitted that:

4.1.1 The method of valuation and billing of various grade chemicals imported regarding the prices were standard without considering the volatility of purity percentage and determined independently considering the arm's length principle



and the functions performed, asset deployed, and risks assumed by the tested party of each of those transactions.

- 4.1.2 In general, Transfer Prices (Import Prices) of products were set to allow their firm as routine manufacturer/light processor and distributor to cover its costs and earn an arm's length profit for its functions performed, assets deployed and risks assumed. The basis for the calculation was attributable to the functions performed, including but not limited to manufacturing cost, selling expenses, freight and distribution expense, general and administration, etc.
- 4.1.3 Ideal Transfer price was set/reviewed at the beginning of the year and revised as required to ensure that arm's length remuneration met for the fiscal year.
- 4.1.4 After discussion on the matter with FMC for the period when Corteva Agrisciences India Private Limited ("Corteva India") imported the said product for FMC India, FMC India asked them also to pay on similar lines, the custom duties which might arise, factoring in the % purity of the product being imported. Basis the same, the differential duty along with interest up to 31<sup>st</sup> December, 2022 has been paid.
- 4.1.5 Further, they clarified that Corteva India had sold a portion of its Crop Protection Business to FMC India on November 1, 2017, and owing to certain regulatory restrictions, Corteva India was required to carry on business activities on behalf of FMC, India for a period until it obtains the Central Insecticides Board registration. Consequently, Corteva India and FMC India had entered into a workaround agreement wherein Corteva India was obligated to carry business on behalf of FMC and recover from FMC India, its expenses on cost-to-cost basis. As a part of this arrangement, the said product was imported by Corteva India. After formulating the product, using the imported technical in India, the final product was sold to FMC India without any profits. So far as import prices of various products are concerned, they were being guided by FMC only, and CAIPL being importers on record for them.
- 4.1.6 CAIPL is not privy to FMC policies as to product pricing. Corteva has its own Transfer Pricing Policy. They had made payment without prejudice and to purely buy peace and because of the fact that Corteva was providing a logistics and sales services to FMC, for an FMC active and shall be indemnified by FMC as per the Work around arrangement.

#### ***Investigation by Special Valuation Branch (SVB) for CAIPL and FIPL***

4.2 The Assistant Commissioner, Special Valuation Branch (SVB), Import-II, New Custom House (NCH), Mumbai vide File No. CUS/SVB/MUM/817/2021-SVB-O/o COMMR-CUS-IMP-II-ZONE-I-MUMBAI having DGOV REGN No. DOV0006071 issued Investigation Report No. 182/AC/SVB/SKB/2022-23 dated 18.11.2022 regarding determination of assessable value of goods imported by **M/s Corteva Agriscience India Private Limited** (Previously known as M/s E.I. Dupont India Private Limited) from its related suppliers accepting the transaction value of import till present method of Invoicing or **the conditions of sale etc.** remains unchanged.

4.3 The Deputy Commissioner, Special Valuation Branch (SVB), Air Cargo Complex (ACC), Bengaluru vide File No. C. No. S-44/03/48/2016 SVB-BNG having DGOV No. 0011804 issued Investigation Report (New Case) No. 10/2019 dated 18.02.2019 regarding determination of assessable value of goods imported by M/s FMC India Private Limited from its related supplier and held that the price declared by the importer in the invoices may be accepted as the Transaction Value under Rule 3 (3) (a) of the CVR, 2007 for the purpose of Customs Valuations. ***However, if there is any change in the method of invoicing, terms of relationship or any other material facts affecting the valuation of goods under the CVR, 2007 read with Section 14(1) of the***

**Customs Act, 1962, the importer shall inform the same to the Special Valuation Branch immediately so as to enable the review of the decision in force.**

### **Transfer Pricing (TP)**

4.4 **M/s FMC India Private Limited**, vide letter dated 07.09.2022 and email dated 14.06.2024, submitted Transfer Pricing (TP) List for the year 2019 to 2023. The said **transfer pricing list is based on Standard Purity** of active compound present in the product and is listed under Table-03 below.

**Table-03**

Year	2019		2020		2021		2022		2023	
TECHNICAL NAME	Purity %	TP Price in Rs.	Purity %	TP Price in Rs.	Purity %	TP Price in Rs.	Purity %	TP Price in Rs.	Purity %	TP Price in Rs.
BIFENTHRIN	97.60	2458.38	97.60	-	97.60	-	97.60	-	97.60	-
CARBOSULFAN	90.80	1047.30	90.80	1003.85	90.80	1033.60	90.80	1046.70	90.80	1557.85
CLOMAZONE	93.80	1249.78	93.80	1237.51	93.80	1274.19	93.80	1290.34	93.80	1375.92
CLOTHIANIDIN	98.00	-	-	-	-	-	-	-	98.00	2460
FLUTHIACET METHYL	98.80	36903.35	98.80	38489.98	98.80	-	98.80	31130.61	98.80	-
METAMIFOP	98.50	8527.81	98.50	9002	98.50	-	98.50	-	98.50	-
METSULFURON METHYL	100	-	100	-	100	-	100	3964.45	100	4227.74
RYNAXYPYR (CHLORANTRANILIPROLE)	97.50	-	97.50	23806.52 (Revision-1) 23905.20 (Revised-2)	97.50	24512.05	97.50	23862.54	97.50	-
CYAZYPYR (CYANTRANILIPROLE)	97.00	-	97.00	37797.83	97.00	38918.00	97.00	30934.70	97.00	31977.32 (Revision-1) 32986.87 (Revision-2)
SULFENTRAZONE	92	2533.8	92.00	-	92.00	-	92.00	-	92.00	-

4.5 As submitted by importer CAIPL that they sold a portion of its Crop Protection Business to FIPL on 01.11.2017 and owing to certain regulatory restrictions, the CAIPL was required to carry on business activities on behalf of FIPL for a period until it obtains the Central Insecticides Board registrations. Therefore, both the firms entered into a workaround agreement wherein CAIPL was obligated to carry business on behalf of FIPL and recover from FIPL its expenses on cost-to-cost basis. As evident above, the foreign suppliers of FIPL from 01.11.2017 becomes related to CAIPL in terms of Rule 2(2) of the CVR, 2007. The goods supplied by the related foreign suppliers should be on the basis of transfer price arrangement as per FIPL. The transfer pricing of FIPL was fixed based on Standard Purity of active compound/ingredient of the Insecticide of Technical grade ('Technical' for short), which means the actual value of imported goods was decided based on actual percentage of the active compound/ingredient based on rate fixed on Standard Purity. However, FIPL itself has discontinued the practice of fixing the price based on actual purity and made the transfer pricing rates as actual rate per unit without considering the actual purity of the active compound/ingredient.

4.6 The said investigation was initiated as the method of invoicing was changed which rendered the transaction value determined by transfer pricing questionable between related parties. Transfer pricing is the method used to determine the arm's length price by related parties, which becomes transaction value for Customs purposes. During the investigation, it was unravelled that though CAIPL was importing initially from DuPont Singapore, and then FMC Singapore, the pricing was not being determined by CAIPL as they had entered into cost-to-cost basis arrangement to import on behalf

of FIPL by acting as importer-on-record for them. In a separate investigation initiated against FIPL, FIPL had agreed that the change in invoicing practice by them have caused evasion of Customs duty and voluntarily paid the dues. The same invoicing practice was adopted by them for those transactions in which CAIPL have acted as importer-on-record. This resulted in a unique situation where though transactions were happening between related entities, the transaction value was determined by third entity, in this case FMC, which rendered CAIPL's SVB Investigation Report No. 182/AC/SVB/SKB/2022-23 dated 18.11.2022 irrelevant in this case.

4.7 CAIPL had agreed during investigation that goods were imported on behalf of FIPL, and thus they would deposit any short-paid duty amount that resulted due to change in invoicing practice as suggested by FIPL. During investigation, CAIPL had voluntarily calculated and deposited duty, interest and penalty with regard to imports done by them on behalf of FIPL. This includes imports where supplies had made both by Dupont Singapore and FMC Singapore. But since the imports were happening on behalf of FIPL, CAIPL had voluntarily calculated and deposited customs dues also for the earlier period for the transactions where the supplier was FMC Singapore by adopting the same invoicing mechanism, even though the entities were technically unrelated. CAIPL had voluntarily paid the amount of Rs.4,05,53,962/- for the imports from supplier FMC Singapore.

4.8 During the course of investigation, CAIPL also had voluntarily calculated and paid Customs dues for the transactions where the supplier was DuPont Singapore, its related entity and FMC Singapore, by adopting same invoicing mechanism. CAIPL have paid the amount of Rs.5,05,83,460/- (inclusive of duty, interest and penalty) as determined by them towards their liability under Section 28 of the Customs Act, 1962 for the relevant period from December, 2017 to October, 2019.

***Non-applicability of SVB order of CAIPL for the said imports***

4.9 During the investigation, it was unravelled that though CAIPL was importing initially from DuPont Singapore, and then FMC Singapore, the pricing was not being determined by CAIPL as they had entered into cost-to-cost basis arrangement to import on behalf of FIPL by acting as importer-on-record for them. The change in invoicing practice by FMC had caused evasion of Customs duty. The same invoicing practice was adopted for those transactions in which CAIPL have acted as importer-on-record. This resulted in a unique situation where though transactions were happening between related entities, the transaction value was determined by third entity, in this case FMC, which rendered CAIPL's SVB Investigation Report No. 182/AC/SVB/SKB/2022-23 dated 18.11.2022 irrelevant in this case.

***Change of method of invoicing***

4.10 During the investigation, it was unravelled that though CAIPL was importing initially from DuPont Singapore, and then FMC Singapore, the pricing was not being determined by CAIPL as they had entered into cost-to-cost basis arrangement to import on behalf of FIPL by acting as importer-on-record for them. where the invoicing was done on the basis of a fixed concentration of active ingredient in the product. The fixed concentration of active ingredient chosen for the purpose of valuation was generally less than the actual concentration of active ingredient, which decreased the actual value of the imported product. However, as per pricing policy of FIPL the actual value of imported goods should be decided based on actual percentage of the active ingredient based. It is clear that after CAIPL had sold a portion of its Crop Protection Business to FMC India on November 1, 2017, the method of invoicing should be as per FIPL pricing policy.

***Ground for invoking extended period for recovery of duty under Section 28(4) of the Customs Act, 1962***

4.11 As evident from above, it is clear that CAIPL had acted as Importer on behalf of FIPL. The FIPL had become the owner of Crop Protection business of CAIPL after

01.11.2017. The said fact had never been disclosed/informed to concerned SVB Authority. Though the imports had happened on behalf of FIPL, but it was responsibility of CAIPL to disclose any change in pricing practice, which may result in short payment of customs duty. Also, by filling B/E from its related entity, DuPont Singapore, CAIPL made those imports appear to look like imports from related party, when they were only acting as importer-on-record. Similarly, CAIPL had also imported same goods from FMC Singapore, making it appear to like transactions from unrelated party, when he was only acting as importer-on-record for FIPL. The said transactions would have been transactions between related entities if FIPL would have imported. The act of changing the method of invoicing which resulted in under valuation of the actual price of imported goods whereby resulting in short payment of customs dues is clear case of intentional act. These facts were never disclosed at the time of clearance. Therefore, it appeared that CAIPL has suppressed the material fact resorting to mis-declaration in value i.e. under-valuation and cleared the goods without the applicable duty payment. From the facts and circumstances as detailed in Para: 4.1 to 4.10, it is felt that M/s Corteva Agriscience India Private Limited had violated Section 17 of the Customs Act, 1962, wherein it is envisaged that, an importer entering any goods under Section 46 of the Act, is bound to self-assess the duty, if any, leviable on such goods. The importer in the instant case, made an assessment of the duty of Customs by changing the billing practice which led to loss of revenue by way of Import Duties to the Government Exchequer. Had not the department initiated enquiry against the importer, the said act of suppression as discussed above on the part of importer in order to evade the duty of Customs liable to be deposited to the Government Exchequer would not have come to light and remained un-noticed. Hence, the extended period was invokable and the duty was liable to be recovered under the provisions of extended period in terms of Section 28 (4) of the Customs Act, 1962 along with interest in terms of Section 28AA of the Customs Act, 1962 apart from imposition of penalty.

#### ***Valuation of imported goods by CAIPL on behalf of FIPL***

4.12 As evident from above discussion, from 01.11.2017 the foreign suppliers of both FIPL and CAIPL are related to each other. Therefore, the pricing policy of the import made by CAIPL should be based on the price arrangement of FIPL. The pricing of FIPL was fixed based on Standard Purity of active compound/ingredient of the Insecticide of Technical grade ('Technical' for short), means the actual value of imported goods was decided based on actual percentage of the active compound/ingredient based on rate fixed on Standard Purity.

4.13 From December, 2017 to September, 2018 CAIPL has imported goods on behalf of FIPL from foreign related supplier M/s Dupont Company (Singapore) Pte (Dupont Singapore) of CAIPL. The details of these imports are listed in Annexure-A. At that time, these bills of entry were provisionally assessed for supplier Dupont Singapore and final for FMC Singapore. Consequent to SVB, NCH, Mumbai Investigation Report No. 182/AC/SVB/SKB/2022-23 dated 18.11.2022 these bills of entry were finalized in year 2023 and 2024 (bill of entry filed at INNSA1 were finalized on 21.02.2023, INBOM4 were finalized on 10.05.2024 and INBRC6 were finalized on 03.06.2024/06.06.2024). As submitted by CAIPL vide their letter dated 27.11.2022 and various statements that the said goods were imported on behalf of FIPL as FIPL did not have mandatory CIB registrations and CAIPL acted as importer on record, therefore CAIPL was liable for payment of differential duty along with interest and penalty for imports from its supplier Dupont Singapore as listed in Annexure-A.

4.14 From November, 2018 to October, 2019 CAIPL had imported goods on behalf of FIPL from foreign related supplier of FIPL i.e. M/s FMC Agro Singapore Pte Ltd. (FMC Singapore for short). At that time, the bills of entry were assessed final on record as the FMC Singapore and CAIPL were unrelated. In this period the CAIPL had already sold his Crop Protection Business to FIPL and hence they were related at that time. Therefore, it appears that FIPL influenced the pricing directly to their favour causing loss to the exchequer. The CAIPL submitted that after their discussion with FIPL who agreed on

the matter, FIPL asked CAIPL to pay the differential duty along with interest and penalty. Therefore, CAIPL voluntarily also paid the differential duty along with interest and penalty for imports from supplier FMC Singapore which is related supplier of FIPL.

4.15 Therefore, in view of above, the imports made by CAIPL on behalf of FIPL should have pricing based on actual purity of active compound/ingredient of the Insecticide of Technical grade ('Technical' for short), means the actual value of imported goods had to be decided based on actual percentage of the active compound/ingredient based on rate fixed on Standard Purity.

4.16 For illustration purpose, the valuation that the importer has adopted at the time of import and the valuation that the importer has to adopt as per actual purity is illustrated as below:

4.16.1 The CAIPL had imported 10,000 kgs of Chlorantraniliprole Technical (also known as Rynaxypyr) having declared unit price of \$493.33 (Rs.32,017/-) per kgs at ICD Dashrath (INBRC6) through Home Consumption Bill of Entry No. 4552392 dated 26.12.2017 having Invoice No. 7721360953 dated 11.12.2017.

4.16.2 As per Pricing Policy of FIPL which should be adopted by CAIPL, the unit price of Chlorantraniliprole Technical is Rs.32,017/- per kgs at 97.5% Standard Purity i.e. one kilogram of Chlorantraniliprole Technical of 97.5% purity is priced at Rs.32,017/-. That means, the price of goods having purity more than 97.5% will be accordingly higher. However, the CAIPL valued the goods at Rs.32,01,71,170/- (32,017\* 10,000) without considering the actual purity of the imported goods.

4.16.3 The batch wise actual purity of the goods imported under said BE are listed under **Table-04** below. For Batch No. SEP17SHRG9 having 650 Kgs of said goods had actual purity of 98.12%. However, the goods were valued at Standard Purity of 97.50% at Rs.32,017/- per kg i.e. 650 kg of said batch was valued at Rs.2,08,11,126/-. However, the actual purity of the said batch is 98.12%, hence, the purity difference that has not being considered in value is 0.62% which turns out to be 4.03 kgs of active ingredient that has not being considered in value. Therefore, the value of quantity based on purity difference is Rs.1,29,029/- at Rs.32,017/- per kg. Consequently, the re-determined value of 650 kgs of said goods in Batch No. SEP17SHRG9 is Rs.2,09,40,155/- and not Rs.2,08,11,126/-. Similarly, the value of quantity based on purity difference for all the batches imported under subject BE are as listed in **Table-04** below. As evident below, there is under-valuation of Rs.11,67,344/- in the subject BE.

**Table-04**

Sr. No.	Batch No.	Qty (Kgs)	Actual Purity (%)	Standard Purity (%)	Purity Diff (%)	Qty based on Purity Diff (Kgs)	Unit Price (Transfer Price) In Rs.	Value of Qty based on Purity Diff (In Rs.)	Declared Assessable Value as per Standard Purity (In Rs.)	Redetermined Assessable Value as per Actual Purity (In Rs.)
1	SEP17SHRG9	650	98.12	97.50	0.62	4.03	32017	129029	20811126	20940155
2	SEP17SHRH0	1600	97.79	97.50	0.29	4.64	32017	148559	51227387	51375947
3	SEP17SHRH1	1600	98.15	97.50	0.65	10.4	32017	332978	51227387	51560365
4	SEP17SHRH2	1600	98.01	97.50	0.51	8.16	32017	261260	51227387	51488647
5	SEP17SHRH3	1600	97.83	97.50	0.33	5.28	32017	169050	51227387	51396438
6	SEP17SHRH4	1600	97.73	97.50	0.23	3.68	32017	117823	51227387	51345210
7	SEP17SHRH5	1350	97.52	97.50	0.02	0.27	32017	8645	43223108	43231753
	<b>TOTAL</b>	<b>10000</b>				<b>36.46</b>		<b>11,67,344</b>	<b>32,01,71,170</b>	<b>32,13,38,514</b>

**Calculation of duty and other liabilities:**

4.17 The consignments imported in the past by CAIPL as detailed in Annexure-A from its related supplier Dupont Singapore were cleared by adopting method of invoicing where the goods were valued as per Standard Purity and not as per Actual Purity of active compound. Therefore, it appeared that CAIPL cleared the goods with short duty payment that is liable for recovery.

4.18 For the consignments imported in the name of CAIPL through bills of entry detailed in Annexure-A, it appeared that the value declared for the consignments imported by CAIPL were based on invoices where the Unit Price of product was as per Standard Purity whereas the unit price of product should be based on actual purity wherever it was higher than the Standard Purity. Hence, the declared value in past consignments was not the correct value of the goods. Therefore, the invoices submitted at the time of the import of the goods appeared to be incorrect document in terms of Rule 11 of the Customs Valuation (Determination of the Value of Imported Goods) Rules, 2007 (CVR, 2007).

4.19 Accordingly, the value of the impugned goods, as declared in respective bills of entry and as detailed in Annexure-A to the Show Cause Notice, imported into India in the name of CAIPL from its related foreign suppliers, on the basis of which the said goods were assessed and allowed clearance, did not appear to be the true and actual Transaction Value of the said goods, in terms of the provisions of Section 14(1) of the Customs Act, 1962 read with provisions of Rule 3(1) of the Customs Valuation (Determination of the Value of Imported Goods) Rules, 2007 (hereinafter referred to as CVR, 2007). In terms of the Rule 3(1) of CVR, 2007, it was apparent that the actual value of the said goods imported by CAIPL was the value determined by them taking into account the actual purity of the compound which they had submitted during the investigation. Further, Shri Sandeep Bansal, Tax Manager of CAIPL, in his statement dated 22.09.2022 and 07.02.2024 recorded under Section 108 of the Customs Act, 1962 has admitted that the value of goods imported by CAIPL on behalf of FIPL should be on the basis of actual purity.

4.20 The correct Transaction Value of the consignments, as detailed in Annexure-A to the Show Cause Notice, for the purpose of Section 14(1) of the Customs Act, 1962 read with provisions of Rule 3(1) of the CVR, 2007, is as per Actual Purity of active compound of the product and not as per Standard Purity. The Transaction Value is required to be re-determined by adopting the methodology as illustrated above under Table-04 above i.e. it has to be re-determined as per Actual Purity of active compound of the product and that shall be the value for the determination of actual assessable value of goods imported.

4.21 Therefore, CAIPL was liable to pay duty on the value of quantity based on purity difference. The duty liability was ascertained on the basis of redetermined assessable value as illustrated above. Consequently, the amount of differential duty i.e. duty not levied or not paid on account of the above stated mis-declaration in value were as calculated in Annexure-A. The duty was liable to be recovered under the provisions in terms of Section 28 (4) of the Customs Act, 1962.

4.22 For the past consignments imported through bills of entry as detailed in **Annexure-A** to the Show Cause Notice, the declared assessable value was **Rs.13,99,45,98,407/-**. The redetermined assessable value is **Rs.14,08,31,90,726/-**. **Therefore, the differential duty liability is Rs.2,74,45,901/-** on the value of quantity of actual purity whose value was not considered in invoice as detailed in Annexure-A to the Show Cause Notice.

4.23 On the said differential duty, the interest was calculated from the date of bill of entry to the date of actual payment made during the course of investigation as detailed in **Annexure-A**. The **total interest liability was Rs.1,90,20,675/-**. As submitted by CAIPL vide their letter dated 27.11.2022 and various statements that the said goods



were imported on behalf of FIPL as FIPL did not have mandatory CIB registrations and CAIPL acted as importer on record, therefore CAIPL was liable for payment of differential duty along with interest and penalty for imports from its supplier Dupont Singapore. Under Section 28(5) of the Customs Act, 1962, penalty at the rate of 15% of the demand of differential duty of Rs.2,74,45,901/- as detailed in Annexure-A is Rs. 41,16,885/-.

4.24 Further, the CAIPL submitted that they discussed the matter with FIPL in respect of imports from supplier FMC Singapore who is related to FIPL and the FIPL asked them to pay the differential duty along with interest and penalty for imports from FMC Singapore voluntarily. Therefore, CAIPL voluntarily also paid the differential duty along with interest and penalty for imports from FMC Singapore which is related supplier of FIPL.

### **Summary**

4.25 The CAIPL had acted as importer on behalf of FIPL during the said period. The import pricing followed by CAIPL was in contravention to the method of invoicing followed by FIPL. The invoicing was done on the basis of a fixed concentration of active ingredient in the product which decreased the actual value of the imported product. However, the actual value of imported goods should be decided based on actual percentage of the active ingredient based.

4.26 Consequently, CAIPL vide letter dated 27.12.2022 agreed that they had acted as importer on behalf of FIPL and subsequently voluntarily deposited the differential duty along with interest and penalty ascertained as per correct method of invoicing.

4.27 CAIPL vide letter dated 09.09.2024 submitted that, as they had made the necessary payments of dues voluntarily therefore requested for closure of proceedings without issuance of show cause notice.

4.28 The present case is covered under clause (a) of Section 110AA of the Customs Act, 1962 as the goods imported have been cleared from multiple jurisdictions. The port-wise duty liability is tabulated under Table-01 below. The differential duty is highest in respect of ICD Dashrath (INBRC6), which falls under the jurisdiction of the Principal Commissioner of Customs, Ahmedabad. Therefore, in terms of Section 110AA read with Notification No. 28/2022 Customs (NT) dated 31.03.2022 the proper officer in the instant case is 'the Principal Commissioner of Customs, Ahmedabad'.

**TABLE-01**

Sr. No.	Port Code	Port/ACC/ICD Name	Declared Assessable Value	Amount (In Rs.)	
				Redetermined Assessable Value	Differential Duty
1	INBRC6	ICD Dashrath	11,90,10,74,838	11,97,47,18,882	2,28,14,925
2	INNSA1	Nhava Sheva	1,56,11,42,786	1,57,37,77,457	39,14,221
3	INBOM4	ACC, Mumbai	53,23,80,783	53,46,94,387	7,16,754
<b>Total</b>			<b>13,99,45,98,407</b>	<b>14,08,31,90,726</b>	<b>2,74,45,901</b>

### **Contraventions**

5 Thus, from the evidence on record, statements of the various persons and legal position in the matter, as discussed above, it appears that:

5.1 The goods imported in past by CAIPL vide bills of entry as detailed in Annexure-A to the Show Cause Notice, are liable to confiscation under Section 111(m) of the Customs Act, 1962, for making false entries in the Bills of Entry by mis-declaring the value of goods.



5.2 The declared assessable value of Rs.13,99,45,98,407/- of the goods imported vide bills of entry as detailed in Annexure-A to the Show Cause Notice, is liable to be re-determined as Rs.14,08,31,90,726/- as detailed in Annexure-A to the Show Cause Notice, under the provisions of Section 14(1) of the Customs Act, 1962 read with Rule 3(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

5.3 The differential duty amount is Rs.2,74,45,901/-, as detailed in Annexure-A to the Show Cause Notice, should be demanded and recovered from CAIPL who acted as importer on behalf of FIPL under the provisions of Section 28(4) of the Customs Act, 1962, along with appropriate interest under the provisions of Section 28AA, *ibid*.

5.4 On the said differential duty, the interest is calculated from the date of bill of entry to the date of actual payment made during the course of investigation as detailed in Annexure-A. The interest liability is Rs.1,90,20,675/-.

5.5 The importer is liable for penalty under Section 112(a) and/or Section 114A of Customs Act, 1962 for imports made under bills of entry as detailed in Annexure-A. Under Section 28(5) of the Customs Act, 1962, penalty at the rate of 15% of the demand of differential duty of Rs.2,74,45,901/- as detailed in Annexure-A is Rs. 41,16,885/-.

5.6 The demand of differential duty along with interest and penalty as per Annexure-A of Rs.5,05,83,460/- is liable to be appropriated from the voluntarily payment made by CAIPL towards their liability under Section 28(4) of the Customs Act, 1962.

6. In view of the above, Show Cause Notice No. VIII/10-16/ Pr.Commr/O&A/2024-25 dated 11.09.2024 issued to M/s Corteva Agriscience India Private Limited (IEC No. 0596020651) (previously known as M/s E.I. Dupont India Private Limited) 'V- Ascendas, Atria Block, 12<sup>th</sup> Floor, Plot No.17, Software Units Layout, Madhapur, Hyderabad, Telangana- 500081' calling upon them to Show Cause in writing to the Principal Commissioner of Customs, Ahmedabad having his Office at Custom House, Nr. All India Radio, Income Tax Circle, Navrangpura, Ahmedabad -380009, as to why:-

- (a) The declared assessable value of **Rs.13,99,45,98,407/- (Rupees One Thousand Three Hundred Ninety Nine Crore, Forty Five Lakh, Ninety Eight Thousand, Four Hundred & Seven Only)** should not be rejected and the same should be re-determined having assessable value of **Rs. 14,08,31,90,726/- (Rupees One Thousand Four Hundred & Eight Crore, Thirty One Lakh, Ninety Thousand, Seven Hundred & Twenty Six only)** under the provisions of Section 14(1) of the Customs Act, 1962 read with Rule 3(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, and SVB IR No. 10/2019 dated 18.02.2019 as discussed from Para 4.1 to 4.4 above;
- (b) Subject goods having assessable value of **Rs.14,08,31,90,726/- (Rupees One Thousand Four Hundred & Eight Crore, Thirty One Lakh, Ninety Thousand, Seven Hundred & Twenty Six only)** imported through Various Ports, shall not be held liable for confiscation under Section 111(m) of the Customs Act, 1962 for making false entries in the Bills of Entry by mis-declaring the value of goods, as discussed from Para 4.1 to 4.4 above;
- (c) The differential Customs Duty amounting to **Rs.2,74,45,901/- (Rupees Two Crore, Seventy Four Lakh, Forty Five Thousand, Nine Hundred and One only)** as mentioned in **Para:4.10 (Table-5)**, short paid by them on the said goods, should not be demanded and recovered from them under Section 28(4) of the

Customs Act, 1962. The differential Customs Duty amounting to **Rs.2,74,45,901/- (Rupees Two Crore, Seventy Four Lakh, Forty Five Thousand, Nine Hundred and One only)** paid by them (as per details in Para: 5.5(i)) should not be appropriated against the above mentioned differential duty liability;

- (d) Interest should not be demanded and recovered from them under Section 28AA of the Customs Act, 1962 on the Customs Duty demanded at (a) above. The Interest amounting of **Rs.90,20,675/- (Rupees Ninety Lakh, Twenty Thousand, Six Hundred & Seventy Five only)** paid should not be appropriated towards the above mentioned Interest liability;
- (e) Penalty should not be imposed upon them under Section 112(a) of the Customs Act, 1962;
- (f) Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962;
- (g) Penalty should not be imposed under Section 114AA of the Customs Act, 1962;
- (h) Penalty of Rs. 41,16,885/- (Rupees only) already paid should not be appropriated.

6.1. Further, as the amount of interest was inadvertently mentioned as Rs. 90,20,675/- in the para 6(d) of the Show Cause Notice dated 11.09.2024, therefore, corrigendum to the show cause notice was issued on 11.12.2024 and following correction was made:

In the said Show Cause Notice at para 6 (d) in place of words & figures "The Interest amounting of Rs. 90,20,675/- (Rupees Ninety Lakh, Twenty Thousand, Six Hundred & Seventy Five only) paid should not be appropriated towards the above mentioned Interest liability" may be read as "The Interest amounting of **Rs. 1,90,20,675/- (Rupees One Crore, Ninety Lakh, Twenty Thousand, Six Hundred & Seventy Five only)** paid should not be appropriated towards the above mentioned Interest liability".

## DEFENCE SUBMISSION:

7. The importer vide letter dated 07.10.2024 submitted that the proceedings with DRI had been going on for more than 2 years and they had fully cooperated with the authorities. They further submitted that the importer is a law-abiding entity and have supported the investigation in all possible ways and always submitted all the relevant information. They had voluntarily (under instructions from FIPL) made the necessary payment of taxes, based on discussion with DRI amounting to INR 9,11,37,422/-. They further submitted that during the investigation, on instruction of FIPL, they have paid differential duty of Rs. 2,74,45,901/- along with interest of Rs. 1,90,20,675/- and Penalty@15% Rs. 41,16,885/-. They have also mentioned that the request of closure is made under instructions of FIPL and should not be construed as an acceptance of the allegations made in the SCN. Further, they have submitted that they have paid entire dues along with interest and penalty before the issuance of Show Cause Notice and amount thus paid has been examined and confirmed in the Show Cause Notice. They further requested that since they have paid all dues under Section 28(5) of Customs Act, 1962 the proceeding initiated against them are liable to be closed under Section 28(6) of Customs Act, 1962 and issue may be treated as closed with the provisions of the

Customs Act, 1962 and they further confirmed that aforesaid amounts are paid voluntarily and they do not wish to litigate or adjudicate the said payments and the amount thus paid may be duly appropriated as mentioned in the Show Cause Notice.

### PERSONAL HEARING:

8. The importer vide letter dated 07.10.2024 reiterated that as they have already paid the duties along with interest and penalty as per Section 28(5), even before the Show Cause Notice is issued, therefore, under the provisions of Section 28(6) of the Customs Act, 1962, the proceedings are liable to be considered as closed and not liable for further adjudication.

### DISCUSSION AND FINDINGS:

9 I have thoroughly reviewed the Show Cause Notice dated 11.09.2024 & corrigendum dated 11.12.2024 and written submission dated 07.10.2024 made by the importer as well as compilation of statutory provisions.

9.1 I find that the present case came into light when on the basis of specific intelligence, an enquiry was initiated against M/s Corteva Agriscience India Private Limited (CAIPL in short), who were engaged in import of goods on behalf of FIPL from its related party and have altered its billing practice of imported goods from actual purity (actual concentration) to standard purity (fixed concentration) in respect of certain active ingredients in the product and thus by resorting to under-valuation thereby, evading the applicable customs duty. The fixed concentration of active ingredient chosen for the purpose of valuation was generally less than the actual concentration of active ingredient, which decreased the actual value of the imported product which led to revenue loss. M/s Corteva Agriscience India Private Limited has acted as an importer on behalf of M/s FMC India Private Limited and imported goods for them and changed invoicing practice as suggested by FIPL. Consequently, it appeared that M/s Corteva Agriscience India Private Limited was liable to pay the duty not paid/short paid under Section 28(4) of the Customs Act, 1962 (hereinafter referred to as "the Act") along-with applicable interest under Section 28AA of the Act. Further, it appeared that the subject goods were being imported by reason of making false entries in the Bills of Entry by mis-declaring the value of goods, the subject goods were liable for confiscation under Section 111(m) of the Act and M/s Corteva Agriscience India Private Limited had rendered themselves liable to applicable penalty under Section 112 (a), 114A and 114AA of the Act.

10. From the facts of the case and submissions of the CAIPL, I have to decide whether the declared assessable value of **Rs. 13,99,45,98,407/-** is liable to be rejected and re-determined at **Rs. 14,08,31,90,726/-** and the importer is liable to pay the differential custom duty of **Rs. 2,74,45,901/-** (Rupees Two Crore, Seventy Four Lakh, Forty Five Thousand, Nine Hundred and One only) alongwith applicable interest of **Rs. 1,90,20,675/-** (One Crore, Ninety Lakh, Twenty Thousand, Six Hundred and

**Seventy Five Only)** in terms of Section 28AA of the Customs Act, 1962. I have also to decide whether the importer is liable for penalty under Section 112 (a), 114A & 114AA of the Customs Act, 1962 and the Impugned goods imported vide Bills of Entry as mentioned in Annexure-A to the Show Cause Notice having assessable value of **Rs.14,08,31,90,726/- (Rupees One Thousand Four Hundred & Eight Crore, Thirty One Lakh, Ninety Thousand, Seven Hundred & Twenty Six only)** imported through Various Ports are liable to confiscation or otherwise.

**11** From the facts and submission made by the importer, I note that the importer is engaged in the activity of light processing of Agri Chemicals, sales, marketing and distribution of crop protection chemicals. These raw materials are either imported or procured domestically and are used for manufacturing various formulations. CAIPL used to import various goods i.e. various grade technical of pesticides/insecticides/herbicides manufactured by E I Dupont USA and China through Dupont Singapore and Switzerland. I further note that CAIPL India had sold a portion of its Crop Protection Business to FIPL on November 1, 2017, and owing to certain regulatory restrictions, CAIPL India was required to carry on business activities on behalf of FIPL for a period until it obtains the Central Insecticides Board (CIB) registration. Consequently, CAIPL and FIPL had entered into a workaround agreement wherein CAIPL was obligated to carry business on behalf of FMC and recover from FIPL, its expenses on cost-to-cost basis. As a part of this arrangement, the said product was imported by CAIPL. After formulating the product, using the imported technical in India, the final product was sold to FIPL without any profits and so far as import prices of various products are concerned, they were being guided by FMC only, and CAIPL being importers on record for them.

**11.1** From the above, I further observe that the foreign suppliers of FIPL from 01.11.2017 became related to CAIPL in terms of Rule 2(2) of the CVR, 2007. The goods supplied by the related foreign suppliers should be on the basis of transfer price arrangement as per FIPL. The transfer pricing of FIPL was fixed based on Standard Purity of active compound/ingredient of the Insecticide of Technical grade ('Technical' for short), which means the actual value of imported goods was decided based on actual percentage of the active compound/ingredient based on rate fixed on Standard Purity. However, FIPL itself has discontinued the practice of fixing the price based on actual purity and made the transfer pricing rates as actual rate per unit without considering the actual purity of the active compound/ingredient.

**11.2** I further observe that during the investigation, it was unravelled that though CAIPL was importing initially from DuPont Singapore, and then FMC Singapore, without having any control over pricing, as they acted as importer-on-record for FIPL on cost-to-cost basis. I find that in a separate investigation initiated against FIPL, they acknowledged that the change in invoicing practices led to customs duty evasion and they voluntarily paid the evaded duty alongwith applicable interest and penalty. I find that the same invoicing practice was adopted by FIPL for those transactions in which

CAIPL have acted as importer-on-record which resulted in a unique situation where though transactions were happening between related entities, the transaction value was determined by third entity, in the present case FIPL, which rendered CAIPL's SVB Investigation Report No. 182/AC/SVB/SKB/2022-23 dated 18.11.2022 irrelevant in this case.

**11.3** I observe that although CAIPL initially imported through DuPont Singapore, then through FMC Singapore, the pricing was not being determined by CAIPL as they have entered into cost-to-cost basis arrangement to import on behalf of FIPL by acting as importer-on-record for them, where the invoicing was done on the basis of a fixed concentration of active ingredient in the product. The fixed concentration of active ingredient chosen for the purpose of valuation was generally less than the actual concentration of active ingredient, which reduced the actual value of the imported product. However, FIPL's pricing policy specified that the actual import value of imported goods should reflect actual active ingredient concentrations, and the value of imported goods by CAIPL on behalf of FIPL should be as per FIPL pricing policy, but CAIPL's invoicing did not follow this method post the sale of its crop protection business to FIPL on November 1, 2017.

**11.4** I find that by declaring the value of goods on standard pricing rather than on the basis of actual concentration of chemicals in their Bill of Entry during the period December 2017 to October 2019 has resulted in undervaluation of the products imported by them. The undervaluation of the product has resulted in short payment of duty on the goods imported into India by the importer. Further, the DRI alleged that the Transaction Value of the consignments imported in the name of CAIPL, declared in respective bills of entry and as detailed in Annexure-A to the Show Cause Notice, are mis-declared, and is required to be ascertained under the provisions of Section 14(1) of the Customs Act, 1962 read with provisions of Rule 3(1) of the CVR, 2007.

**11.5** I further find that the correct Transaction Value of the consignments, as detailed in Annexure-A to the Show Cause Notice, for the purpose of Section 14(1) of the Customs Act, 1962 read with provisions of Rule 3(1) of the CVR, 2007, is as per Actual Purity of active ingredient of the product and not as per Standard Purity. I find that the DRI has by adopting the methodology as illustrated under Table-04 of para 4.16.3 above has re-determined the transaction value as per Actual Purity of active ingredient of the product and that is the value for the determination of actual assessable value of goods imported. I find that for the past consignments imported through bills of entry as detailed in Annexure-A to the Show Cause Notice, the importer has mis-declared assessable value of goods as Rs.13,99,45,98,407/-, however, the re-determined assessable value was Rs.14,08,31,90,726/-. I further find that the differential duty liability on differential assessable value amounting to Rs. 8,85,92,319/- was calculated as Rs.2,74,45,901/- based on the value of quantity of actual purity whose value was not considered in invoice as detailed in Annexure-A to the Show Cause Notice and the same was demanded from the importer under the provisions of Section 28(4) of the Customs Act, 1962, along with appropriate interest under the provisions of Section 28AA, *ibid*.

**11.6** I find that as per Section 17 of the Customs Act, 1962, wherein it is envisaged that, an importer entering any goods under Section 46 of the Act, is bound to self-assess the duty, if any, leviable on such goods. In the instant case, CAIPL has acted as Importer on behalf of FIPL. FIPL has become the owner of Crop Protection business of CAIPL after 01.11.2017. I find that the said fact has never been disclosed/informed to concerned SVB Authority. Though the imports have happened on behalf of FIPL, but it was responsibility of CAIPL to disclose any change in pricing practice, which may result in short payment of customs duty. Also, by filling B/E from its related entity, DuPont Singapore, CAIPL made those imports appear to look like imports from related party, when they were only acting as importer-on-record. Similarly, CAIPL have also imported same goods from FMC Singapore, making it appear like transactions from unrelated party, while they were only acting as importer-on-record for FIPL. The said transactions would have been transactions between related entities if FIPL would have imported such goods. The act of changing the method of invoicing which resulted in under valuation of the actual price of imported goods whereby resulting in short payment of customs dues was clear case of intentional act. These facts were never disclosed at the time of clearance. I further find that the importer in the instant case, made an assessment of the duty of Customs by changing the billing practice which led to loss of revenue by way of lesser payment of Import Duties to the Government Exchequer. Had the department not initiated enquiry against the importer, the said act of suppression on the part of importer to evade the duty of Customs liable to be deposited to the Government Exchequer would not have come to light and remained un-noticed. Hence, I hold that the extended period is rightly invoked and the duty is liable to be recovered under the provisions of extended period in terms of Section 28 (4) of the Customs Act, 1962 along with interest in terms of Section 28AA of the Customs Act, 1962 apart from imposition of penalty.

**11.7** I find that on being pointed out, the differential duty liability of Rs. 2,74,45,901/-, the importer, on instruction of FIPL, agreed to the objection of the DRI and voluntarily paid the differential duty amounting to Rs.2,74,45,901/- during investigation and same is liable to be appropriated against the demand of differential duty under Section 28 (4) of the Customs Act, 1962.

**11.8** I find that on the above differential duty of Rs. 2,74,45,901/-, the importer has also paid interest amounting to Rs. 1,90,20,675/- voluntarily during investigation and amount thus paid is liable to be appropriated against the demand of interest under the provisions of Section 28AA of the Customs Act, 1962.

**11.9** I find that the Importer has already paid the penalty amounting to Rs. 41,16,885/- (15% of differential duty amount of Rs.2,74,45,901/-) voluntarily and same is liable to be appropriated against the penalty as demanded under section 28(4) of Customs Act, 1962.

**12** I find that in reply to the Show Cause Notice dated 11.09.2024, the importer vide their letter dated 07.10.2024 submitted that they had acted as an importer on behalf of FMC India Private Limited and on instruction of FIPL they agreed with the contention raised by the department and before issuance of show cause notice i.e. during the

investigation, they have paid differential duty of Rs. 2,74,45,901/- along with interest of Rs. 1,90,20,675/- and penalty of Rs. 41,16,885/- (15% of differential duty amount of Rs.2,74,45,901/-). They further submitted that they have voluntarily made the payment of differential duty along with interest and penalty as specified in section 28(5) of Customs Act, 1962 and they do not want any further litigation in this matter. I note that the importer also requested to close the proceedings by issuance of appropriate order as provided under Section 28(6) of the Customs Act, 1962.

**13.** I find that in the instant case, Show Cause Notice was issued to the importer, M/s Corteva Agriscience India Private Limited, for the demand of differential duty under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA, and for the imposition of penalties under Sections 112 (a), 114A, and 114AA of the Customs Act, 1962. Additionally, the goods imported were proposed to be confiscated under Section 111(m) of the Customs Act, 1962, with a corresponding penalty under Section 112(a) of the Act, on the grounds that the importer had mis-declared the assessable value of the imported goods, resulting in short payment of customs duty for several Bills of Entry filed during the period from December 2017 to October 2019. The importer, however, on instruction of FIPL has already accepted the re-determined assessable value of **Rs. 14,08,31,90,726/-** and acknowledged that the differential duty of Rs. 2,74,45,901/- arose due to change in pricing by FIPL. During the investigation, and prior to the issuance of the Show Cause Notice dated 11 September 2024, the importer voluntarily paid the differential duty of Rs. 2,74,45,901/, along with the applicable interest of Rs. 1,90,20,675/- and a penalty of Rs. 41,16,885/- (15% of differential duty amount of Rs.2,74,45,901/-), I find that proceeding initiated vide Show Cause Notice No. VIII/10-16/ Pr. Commr/O&A/2024-25 dated 11.09.2024 & corrigendum dated 11.12.2024 needs to be concluded in terms of the provision of Section 28 (6) (i) of the Customs Act, 1962 without prejudice to the provisions of Section 135, 135A and 140 of the Customs Act, 1962.

**13.1** I find that once the goods are held liable for confiscation, penalty under Section 112 of the Customs Act, 1962 are attracted. Penal provisions under Section 112 of the Customs Act, 1962 in the case of dutiable goods, other than prohibited goods are subject to the provisions of Section 114A of the Customs Act, 1962 and as per fifth proviso to Section 114A of the Customs Act, 1962, where any penalty has been levied under Section 114A, no penalty shall be concurrently levied under Section 112 of the Customs Act, 1962. In the present matter, the differential customs duty amounting to ₹2,74,45,901/- in relation to the imported goods, which bear a total differential assessable value of Rs. 8,85,92,319/-, has been duly demanded and confirmed under the provisions of Section 28(4) of the Customs Act, 1962. This is to be levied alongside the applicable interest under Section 28AA and the imposition of penalties under Section 114A of the Act. Consequently, the invocation of penal action under Section 112 (a) of the Customs Act, 1962, becomes inapplicable and non-invocable in the present circumstances. Additionally, the importer has voluntarily discharged the differential duty liability, along with the accrued interest and a penalty quantified at 15% of the duty, as delineated in the Show Cause Notice, prior to its formal issuance. In view of the



entire factual matrix stated above, I find that the proceeding against the importer under Section 28 (4), 28AA, Section 111(m), Section 112 (a), Section 114A and 114AA of the Customs Act, 1962 are deemed to be conclusive as per the provision of Section 28 (6) (i) of the Customs Act, 1962.

**13.2** Regarding the issue of fine in lieu of confiscation, I find that as per Section 125 (1) of the Customs, Act, 1962, it is mandatory for the officer adjudging confiscation of the goods, other than the goods the importation or exportation whereof is prohibited under the Customs Act, 1962 or under any other law for the time being in force, to give to the owner of goods, or where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit. However, first proviso to Section 125 (1) of the Customs Act, 1962 provides that where the proceeding are deemed to be concluded under provision to sub- section (2) of Section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, no such fine shall be imposed. From the DRI letter dated 02.12.2024 issued from F.No. DRI/MZU/F/INT-83/ENQ-72/2022, I note that M/s Corteva Agriscience India Private Limited (previously known as M/s E. I. Dupont India Private Limited) has valid Certificate of Registration issued by the CIB & RC (Central Insecticide Board & Registration Committee) to import the impugned goods. Thus, in the present case, I find that the goods having assessable value of Rs. 1408,31,90,726/- held liable for confiscation is neither prohibited nor restricted and the proceedings are deemed to be concluded under Section 28 (6)(i) of the Customs Act, 1962 and therefore, I am not inclined to impose any fine in lieu of confiscation.

**14.** In view of the foregoing discussion and findings, I pass the following order.

::ORDER::

**14.1** M/s Corteva Agriscience India Private Limited (IEC No. 0596020651) having their registered office situated at V- Ascendas, Atria Block, 12<sup>th</sup> Floor, Plot No.17, Software Units Layout, Madhapur, Hyderabad, Telangana- 500081 has declared assessable value of **Rs. 13,99,45,98,407/- (Rupees One Thousand Three Hundred Ninety Nine Crore, Forty Five Lakh, Ninety Eight Thousand, Four Hundred & Seven Only)** for goods imported by them vide various bill of entries during December 2017 to October 2019. I order to reject the value assessed by the importer and confirm the re-determined assessable value of **Rs. 14,08,31,90,726/- (Rupees One Thousand Four Hundred & Eight Crore, Thirty One Lakh, Ninety Thousand, Seven Hundred & Twenty Six only)** under the provisions of Section 14(1) of the Customs Act, 1962 read with Rule 3(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, and SVB IR No. 10/2019 dated 18.02.2019.

**14.2** M/s Corteva Agriscience India Private Limited has already paid the differential duty alongwith interest demanded under Section 28 (4) and Section 28AA, respectively of the Customs Act, 1962 vide the Show Cause Notice No. VIII/10-16/Pr.Commr/O&A/2024-25 dated 11.09.2024 and corrigendum dated

11.12.2024 and they have also paid the penalty equal to fifteen percent of the duty demanded in the notice as provided under Section 28 (5) of the Customs Act, 1962. I order to confirm the demand of duty of **Rs. 2,74,45,901/-** under Section 28(4) of the Customs Act alongwith applicable interest of **Rs. 1,90,20,675/-** under Section 28AA of the Customs Act, 1962 and order to appropriate the total amount of **Rs. 5,05,83,461/-** (Rupees Five Crore, Five Lakh, Eighty Three Thousand, Four Hundred and Sixty One only) paid by the importer against **duty of Rs. 2,74,45,901/-, Interest of Rs. 1,90,20,675/-** and **Penalty of Rs. 41,16,885/-**. Hence, the proceeding in respect of Show Cause Notice No. VIII/10-16/Pr.Commr/O&A/2024-25 dated 11.09.2024 and corrigendum dated 11.12.2024 is hereby treated as concluded in terms of the provision of Section 28 (6)(i) of the Customs Act, 1962 without prejudice to the provisions of Section 135, 135A and 140 of the Customs Act, 1962.



**14.3** I hold that the imported subject goods having assessable value of **Rs. 14,08,31,90,726/-** imported through Various Ports vide various Bills of Entry are liable for confiscation under Section 111 (m) of the Customs Act, 1962. However, in view of the first Proviso to Section 125 (1) of the Customs Act, 1962 and deemed conclusion of the proceeding under Section 28 (6) (i) of the Customs Act, 1962, I do not impose any fine in lieu of confiscation under Section 125 (1) of the Customs Act, 1962.

**14.4** I refrain from imposing any penalty on M/s. Corteva Agriscience India Private Limited under Section 112(a) of the Customs Act, 1962;


**14.5** I refrain from imposing any penalty on M/s. Corteva Agriscience India Private Limited under Section 114AA of the Customs Act, 1962.

**15.** This order is issued without prejudice to any other action that may be taken under the provisions of the Customs Act, 1962 and Rules/Regulations framed thereunder or any other law for the time being in force in the Republic of India.

**16.** The Show Cause Notice No. VIII/10-16/Pr.Commr/O&A/2024-25 dated 11.09.2024 & corrigendum dated 11.12.2024 is disposed off in above terms.

② RECEIVED  
CUSTOMS (HQ), A'BAD.  
DATE : 21/02/25  
SIGN. :   
NAME : Ashu Prasad Sharma 

F. No. VIII/10-16/Pr.Commr/O&A/2024-25

  
**(Shiv Kumar Sharma)**  
Principal Commissioner,  
Customs, Ahmedabad

Date: 21.02.2025

**DIN: 20250271MN000000E6DF**  
**BY SPEED POST A.D.**

To,

M/s Corteva Agriscience India Private Limited (IEC No. 0596020651) (previously known as M/s E.I. Dupont India Private Limited), V-Ascendas, Atria Block, 12<sup>th</sup> Floor, Plot No.17, Software Units Layout, Madhapur, Hyderabad, Telangana- 500081.

**Copy To:**

1. The Chief Commissioner of Customs, Gujarat Customs Zone, Ahmedabad;
2. The Additional Director General, Directorate of Revenue Intelligence, Mumbai Zonal Unit, Mumbai;
3. The Deputy Commissioner, ICD Dashrath, Nahavasheva Port, ACC Mumbai;
4. The Deputy/ Assistant Commissioner, HQ Systems, Customs Ahmedabad, for uploading on the official website;
5. The Deputy/ Assistant Commissioner, HQ Recovery Cell, Customs Ahmedabad;
6. Guard File.