

2525 to 2528

 <p>कार्यालय: प्रधान आयुक्त सीमा शुल्क, मुन्द्रा, सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT-370421 PHONE:02838-271426/271423 FAX:02838- 271425 Email:adj-mundra@gov.in</p>	 <p>Azadi Ka Amrit Mahotsav</p>
File No.	: GEN/ADJ/COMM/86/2023-Adjn-O/o Pr Commr-Cus – Mundra
Order-in-Original No.	: MUN-CUSTM-000-COM-014-24-25
Passed by	: K. Engineer Principal Commissioner of Customs, Customs House, AP & SEZ, Mundra.
Date of order and Date of issue	: 20.06.2024 20.06.2024
SCN No. & Date	: SCN No. GEN/ADJ/COMM/86/2023-Adjn dated 07.06.2023, issued by Commissioner of Customs, Customs.
Noticee(s) / Party / Importer	: 1. M/s. D.K. Biopharma Private Ltd. 2. M/s. Fermenta Biotech Limited 3. Shri. Rakesh Kasturilal Bakshi 4. Shri Arun Balkrishna Khedwal
DIN	: 20240671MO00009479BO

1. यह अपील आदेश संबंधित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम (1)6के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129 A (1)के अंतर्गत प्रपत्र सीए-3में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है -

Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004” “Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”

3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।

०/८

Appeal shall be filed within three months from the date of communication of this order.

- उक्त अपील के साथ 1000/- रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो -/5000 रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंच अहरित्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs. 50 lakh (Rupees Fifty lakhs) and Rs.10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

- उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत -/5 रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदसं 6-के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

- अपील ज्ञापन के साथ छूटि/दण्ड/जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo. अपील प्रस्तुत करते समय, सीमाशुल्क) अपील (नियम, 1982 और CESTAT (प्रक्रिया (नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.

- इस आदेश के विरुद्ध अपील हेतु जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

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.

BRIEF FACTS OF THE CASE

M/s D. K. Pharma Lab was a partnership firm with address 117 Kasturi Kansai, Section, Ambernath East, Thane, Maharashtra - 421501 and registered with Mumbai RA of DGFT as manufacturer exporters with IEC Number AANFD1755G. Branch address of the firm as per said IEC is M/s. D K Pharma Lab, Plot No 15, 16 & 21/12 & 21/13, Morivali, MIDC, Ambernath West, Maharashtra - 421501. There are two partners in the firm (viz.) namely, Mr. Rakesh Kasturi Lal Bakshi and his wife Mrs. Alka Rakesh Bakshi. The firm was originally set up during the year 2017. However, due to operational difficulties, the firm was closed and its liabilities taken over by M/s. D.K. Biopharma Private Ltd (hereinafter referred as "M/s. DK Bio" or "the importer") on 11.08.2018 as per the Memorandum of Understanding executed between the two parties on the said date and presently the firm M/s. D.K. Pharma Lab does not exist and hence M/s. D.K. Biopharma Private Ltd is legally responsible in respect of actions of M/s. D.K. Pharma Lab. The firm M/s. D.K. Biopharma Private Ltd which was also started by Mr. Rakesh Bakshi as a company with four directors Shri. Ajit Hari Behere, Shri. Rakesh Kasturi Lal Bakshi, Smt. Alka Rakesh Bakshi and Shri. Karan Rakesh Bakshi. Its Registered Address is Plot No.15, 16, 21/12 & 21/13 MIDC, Morivali, Ambernath, Thane, Maharashtra - 421501, India, i.e., same as that of M/s. D. K. Pharma Lab. The IEC no. of firm M/s. D.K. Biopharma Private Limited is AAGCD7625M and the said firm are manufacturers of Active Pharmaceutical Ingredients, Specialty Chemicals and Intermediates which comes under Pharmaceuticals Labs Industry.

2. Intelligence developed by the Officers of Directorate of Revenue Intelligence, Mangalore Regional Unit, Mangalore (hereinafter referred to as 'DRI') indicated that M/s. D.K. Pharma Lab, 117, Kasturi Kansai, Section Ambernath East, Thane, Maharashtra - 421501, holders of IEC No. AANFD1755G and M/s. D.K. Biopharma Private Limited, Plot No. 15, 16 & 21/12 & 21/13, Morivali MIDC, Ambernath West, Maharashtra - 421501, holders of IEC No. AAGCD7625M, have imported Fat Detox FOC-27 (Fish Body Oil Crude) under CTH 15042010 under concessional rate of duty vide notification No. 018/ 2015 Cus. dated 01.04.2015 in pursuant to advance authorization scheme provided vide chapter 4 of Foreign Trade Policy 2015-2020. The importation of raw materials or inputs without payment of customs duty under the advance authorization scheme is allowed only to an "actual user", i.e., to the importer himself on the condition that the resultant goods manufactured from the duty-free raw material will be exported. Intelligence gathered indicated that both the entities have violated the conditions prescribed in the advance authorisation and notification No. 018/2015 Cus. dated 01.04.2015 during the relevant period, thereby importers have violated/mis utilised the provisions of advance authorisation in order to procure duty free imports.

2.1 Intelligence gathered also revealed that M/s. D.K. Pharma Lab and M/s. D.K. Biopharma Private Limited, have imported subject goods on the basis of self-declaration as per para 4.07 of Hand Book of Procedures 2015-2020, and applied

for the norms committee of DGFT, for fixing the norms. However, as per the minutes of Meeting of Norms Committee hosted on the DGFT website, the committee has rejected the case of both DK Biopharma Private Limited (Meeting date 06.09.2019) and DK Pharma Lab (meeting date 20.09.2019) as “the import item – DETOX FOC-27 Fish Body Oil having ITC 15042010 comes under chapter 15 and as per para 4.11 (A) (ix) of the Foreign Trade Policy 2015-2020, all vegetable/edible oils classified under Chapter 15 are ineligible for import on self-declaration basis...”. Subsequently another meeting of NC dated 24/09/2021 also rejects the case of AA by DK Pharma Lab and DK Biopharma Private Limited on the same grounds. Intelligence gathered further revealed that in most of the consignments under import M/s. Fermenta Biotech Ltd is mentioned as notified party.

3. Pursuant to the said intelligence, the manufacturing cum office premises of M/s D.K. Biopharma Private Limited, situated at Plot No. 15,16, 21/12, 21/13 Swastik Compound, Morivali MIDC, Ambernath West, Thane, Maharashtra-421501 was searched under Panchanama on 11.04.2022 and the documents relevant to the enquiry were taken over for further investigation under the provisions of the Customs Act, 1962. During the mahazar proceedings, Mr. Rakesh Bakshi, Director of the company M/s D.K. Biopharma Private Limited explained his business profile to the officers as well as to the panchas. Mr. Rakesh Bakshi also informed that they have an MCA (Mutual Confidentiality Agreement) signed with M/s Fermenta Biotech Ltd regarding their business. Mr. Rakesh Bakshi further informed that Mr. Arun Balakrishna Khedwal from M/s Fermenta Biotech Ltd is aware about all the import related things and has also come to the premises upon his request. Upon arrival, Mr. Arun Balakrishna Khedwal explained everything to the officers regarding the import done by M/s D.K. Pharma Lab and M/s D.K. Biopharma Private Limited, under Advance License Scheme and dealing between M/s Fermenta Biotech Ltd and both the above-mentioned companies. When the officers specifically asked about the two advance licenses no. 0310816992 dt 13.11.2017 and 0310826158 dt 04.01.2019 issued to M/s D.K. Pharma Lab and M/s D.K. Biopharma Private Limited, Mr. Arun Balakrishna Khedwal informed that they are facing some issue with the said licenses as they have not fulfilled the mandatory export obligation, and are requesting more time from DGFT to fulfil the said obligation. The officers informed Mr. Rakesh Bakshi and Mr. Arun Balakrishna Khedwal that DGFT Norms Committee has rejected the advance license no. 0310816992 dt 13.11.2017 and 0310826158 dt 04.01.2019 issued to M/s D.K. Pharma Lab and M/s D.K. Biopharma Private Limited and thereafter the appeal filed by them against the said rejection has also been rejected by the DGFT Norms Committee.

3.1. Preliminary verification of the documents revealed that M/s D.K. Pharma Lab and M/s D.K. Biopharma Private Limited were issued following Advance Authorisations for the import of “**DETOX FOC-27 FISH BODY OIL CRUDE**” under CTH 15042010 and the item to be exported under the said authorisation was

"CHOLESTEROL". Data in respect of subject advance authorisation licenses along with the goods to be imported and exported are given as under: -

No. and date	Advance authorization No. & date including goods to be imported and exported with value					
	Items to be imported duty free under authorization			Item to be exported duty free under authorization		
	Description of Goods	Quantity (Kgs)	CIF value (Rs.)	Description of Goods	Quantity (Kgs)	FOB value (Rs.)
0310816992 dt 13.11.2017 issued to M/s D.K Pharma Lab	DETOX FOC-27 FISH BODY OIL CRUDE	200000	74871000	CHOLESTEROL	50000	162855455
0310826158 dt 04.01.2019 M/s D.K. Biopharma Private Limited	DETOX FOC-27 FISH BODY OIL CRUDE	200000	84665000	CHOLESTEROL	50000	138348750

3.2. Against the said advance authorizations, the details of the goods imported with quantity, value and duty saved amount by the importers M/s. DK Pharma Lab and M/s. DK Biopharma Private Limited, are as detailed below: -

Advance authorization no.	Item description	Quantity imported (in kgs)	Assessable value (in Rs.)	Duty foregone/duty saved (in Rs.)
0310816992 dt 13.11.2017 issued to M/s D.K Pharma Labs	DETOX FOC-27 FISH BODY OIL CRUDE	104090	42,076,942	20208932
0310826158 dt 04.01.2019 issued to M/s D.K. Biopharma Private Limited	DETOX FOC-27 FISH BODY OIL CRUDE	149370	58,205,928	28497622
		253460	100282870	48706554

4. Based on the preliminary analysis of documents, statements of the following concerned officials of M/s. D.K. Biopharma Private Ltd and M/s Fermenta Biotech Ltd were recorded under the provisions of section 108 of the Customs Act, 1962.

- Statement of Shri. Rakesh Kasturi Lal Bakshi, Son of Late Shri. Kasturi Lal Deshraj Bakshi, Director of M/s. D.K. Biopharma Private Limited recorded on 11.04.2022.
- Statement of Shri Arun Balkrishna Khedwal, S/o Balkrishna Khedwal, General Manager (Supply Chain), M/s. Fermenta Biotech Limited, A-1501, Thane one, DIL Complex, GHOD Bunder Road, Majiwada, Thane West, Maharashtra - 400610 recorded on 11.04.2022.

4.1. Scrutiny of the documents withdrawn during searches and also open-source documents revealed that M/s. DK Pharma Lab and DK Biopharma Private Limited

were issued with one Advance Authorisation each for duty free import of crude fish body oil with an obligation to export cholesterol manufactured from such duty-free imported goods as per provisions of the Foreign Trade Policy. It was also observed from the GST data that M/s. DK Biopharma Private Limited were regularly raising e-way bills for crude fish body oil in favour of another unit M/s. DK Pharma Chem. Further, M/s. DK Biopharma Private Limited have failed to give export documents corresponding to their import of crude fish body oil. In view of this, a letter dated 22.04.2022 was issued to them directing to submit the following documents: -

- (i) Copies of export documents, like, shipping bill, invoice, packing list, analysis of test report etc., in respect of export under advance authorisation license 0310816992 dated 13.11.2017, 0310826158 dated 04.01.2019;
- (ii) Copies of correspondence with the DGFT/norms committee with regard to advance authorisation licenses 0310816992 dated 13.11.2017, 0310826158 dated 04.01.2019;
- (iii) Details of imported crude fish body oil transferred to M/s. DK Pharma Chem and relevant copies of GST e-way bills in respect of goods imported under above advance authorisation;
- (iv) Copies of all the e-way bills with regard to procurement of crude fish body oil and transportation of cholesterol to M/s. Fermenta Biotech Limited.

4.2. As M/s. DK Biopharma Private Limited failed to submit the required documents nor submitted any reply to this Office letter dated 22.04.2022, it was decided to proceed for further investigation and accordingly summons were issued to S/Shri Rakesh Bakshi, Director of M/s. DK Biopharma Private Limited and also to Shri Arun Khedwal of M/s. Fermenta Biotech Limited with a direction to appear before the DRI officials on 12.05.2022, along with the documents sought for vide above referred letter dated 22.04.2022.

4.3. Both Shri Rakesh Bakshi, Director of M/s. DK Biopharma Private Limited and Shri Arun Khedwal of M/s. Fermenta Biotech Limited appeared before the DRI officials on 12.05.2022. Shri. Rakesh Bakshi, Director of M/s. DK Biopharma Private Limited also submitted a letter enclosing the documents as detailed below: -

SI No	Descriptions
01.	Export invoice – D K Pharma Lab
02.	Export invoice – D K Biopharma Private Limited – 2 boxes
03.	Correspondence with DGFT/Customs/PRC
04.	Job work challans evidencing material transferred to D.K. Pharma chem Pvt Ltd by DK Biopharma Pvt Ltd.
05.	Goods imported E-way bills and cholesterol sold to Fermenta Biotech – e way bills.

Subsequently, further statements of Shri Rakesh Bakshi, Director of M/s. DK Biopharma Private Limited and Shri Arun Khedwal of M/s. Fermenta Biotech Limited were recorded by the Officials of DRI on 12.05.2024.

4.4. On-going through the documents submitted by M/s. DK Biopharma Private Limited, vide their letter dated 11.05.2022, it was observed that in respect of advance authorisation license No.0310816992 dated 13.11.2017, they have initially applied for extension of export obligation for six months upto 12.11.2019 as they could not export during the first 18 months (i.e., on or before 12.05.2019 as mandated in the advance authorisation) which was granted by DGFT. Further, it is also observed that they have again applied for second extension to DGFT as they failed export within the extended period as well. The PRC committee of DGFT in its meeting No. 22/AM 21 dated 19.01.2021 & 02.02.2021 held that "the committee heard the submission made by the firm and discussed the matter at length and accordingly decided to accede to the request and allowed EOP extension of Advance Authorisation No. 0310816992 dated 13.11.2017 for a further period of 6 months from the date of endorsement subject to payment of composition fee @1% per month of the extension period granted, on the unfulfilled FOB value". However, there are no documents evidencing that they have paid the composition fee and got the extension from DGFT.

5. From the data retrieved and documents recovered/ received during investigation, it is found that M/s DK Pharma Lab have obtained one Advance Authorisation bearing No. 0310816992 dated 13.11.2017 and M/s. DK Biopharma Private Limited have obtained one Advance Authorisation bearing No. 0310826158 dated 04.01.2019 from DGFT, Mumbai in terms of the Foreign Trade Policy in force, under self-declaration basis, for duty free import of DETOX FOC-27 (Fish Body Oil Crude) as per conditions of notification No. 018/2015-cus dated 01.04.2015 read with Foreign Trade Policy in force, with an obligation to export Cholesterol using the duty free imported materials. It is also noted from the statements of Shri Rakesh Bakshi and also from the verification of documents that due to operational difficulties, the firm M/s DK Pharma Lab was closed and its liabilities taken over by M/s. D.K. Biopharma Private Ltd. on 11.08.2018 and presently the firm M/s. D.K. Pharma Lab does not exist and M/s. D.K. Biopharma Private Ltd. is legally responsible in respect of imports made by M/s. D.K. Pharma Lab.

A. Issue of rejection by Norms Committee

5.1. Advance Authorisations are issued by the Directorate General of Foreign Trade (DGFT) to importers for import of mainly various raw materials without payment of Customs Duty and the said export promotional scheme is governed by Chapter 4 of the Foreign Trade Policy (2015-20) and corresponding Chapter 4 of the Hand Book of Procedures (2015-20), Volume I & II. Para 4.03 of the Foreign Trade Policy allows duty free inputs which are to be physically incorporated in the export products, and prescribed procedures for this, as per which

- Advance Authorisation is issued for inputs in relation to resultant product, on the following basis:
 - (i) As per Standard Input Output Norms (SION) notified (available in Hand Book of Procedures);
OR
 - (ii) On the basis of self-declaration as per paragraph 4.07 of Handbook of Procedures.
OR
 - (iii) Applicant specific prior fixation of norm by the Norms Committee
OR
 - (iv) On the basis of Self Ratification Scheme in terms of Para 4.07A of Foreign Trade Policy.

5.2. It is observed that norms have not been notified by the DGFT in respect of export of cholesterol manufactured out of the imported crude fish body oil. As per para 4.07 of Hand Book of Procedures, Regional Authority may also issue Advance Authorisation where there is no SION/valid adhoc norms for an export product on the basis of self-declaration by the applicant. However, in case of revision/rejection by the Norms Committee, the applicant shall pay duty and interest as notified by DoR within thirty days from the date of hosting of Norms Committee decision on DGFT website. M/s. DK Pharma Lab and M/s. DK Biopharma Private Ltd, both have obtained the said advance authorisation under self-declaration basis as per paragraph 4.07 of Hand Book of Procedures and filed application with the DGFT for fixation of SION/ adhoc norms after getting the advance authorisation to get the ad-hoc norms in ANF 4A, along with prescribed documents, to the concerned Norms Committee (NC) in DGFT headquarters. The details of the advance authorisation obtained by them are as under: -

Advance authorization No. & date including goods to be imported and exported with value						
No. and date	Items to be imported duty free under authorization			Item to be exported duty free under authorization		
	Description of Goods	Quantity (Kgs)	CIF value (Rs.)	Description of Goods	Quantity (Kgs)	FOB value (Rs.)
0310816992 dt 13.11.2017 issued to M/s D.K Pharma Labs	DETOX FOC- 27 Fish Body Oil Crude	200000	7487100 0	Cholesterol	50000	162855455
0310826158 dt 04.01.2019 M/s D.K. Biopharma Pvt Ltd	DETOX FOC- 27 Fish Body Oil Crude	200000	8466500 0	Cholesterol	50000	138348750

5.3. M/s DK Pharma Lab and M/s. DK Biopharma Private Limited have utilised the said advance authorisation obtained by them for duty free clearance of different quantities of crude fish body oil under 12 different Bills of Entry (5 bills of entry in

respect of advance authorisation obtained by M/s DK Pharma Lab and 7 bill of entry in respect of advance authorisation obtained by M/s. DK Biopharma Private Limited) as detailed below through Mundra port (inmun1) and, Nhava Sheva port (innsa1).

import data						
Advance authorization License no. & dt	B.E. No. and date	Qty imported (in Kgs)	Supplier	place of import	assessable value	Duty foregone
0310816992 dated 13.11.2017	3984568 dated 13-11-2017	22000	Golden Omega	Mundra (inmun1)	8488920	3956516
	4630396 dated 30.12.2017	21350	Golden Omega S.A.	Mundra (inmun1)	8175129	3810264
	7071685 dated 04.07.2018	20830	Golden Omega S.A.	Mundra (inmun1)	8492183	4157773
	7500806 dated 04.08.2018	19110	Golden Omega S.A.	Mundra (inmun1)	8422350	4123583
	8821412 dated 12.11.2018	20800	Golden Omega S.A.	Mundra (inmun1)	8498360	4160797
		104090			42076942	20208933
0310826158 dated 04.01.2019	2256350 dated 01.03.2019	21830	Golden Omega S.A.	Nava Sheva (innsa1))	7701624	3770715
	2276853 dated 04.03.2019	21690	Golden Omega S.A.	Mundra (inmun1)	9213912	4511131
	2256374 dated 01.03.2019	20440	Golden Omega S.A.	Nava Sheva (innsa1)	8388576	4107047
	3102778 dated 04.05.2019	21030	Golden Omega S.A.	Nava Sheva (innsa1)	9069662	4440507
	3605315 dated 11.06.2019	21660	Golden Omega S.A.	Nava Sheva (innsa1)	7461220	3653013
	3911970 dated 03.07.2019	20660	Golden Omega S.A.	Nava Sheva (innsa1)	7126874	3489317
	4345344 dated 03.08.2019	22060	Golden Omega S.A.	Nava Sheva (innsa1)	9244060	4525892
		149370			58205928	28497622

5.4. The application for the fixation of norms in terms of paragraph 4.07 of Hand Book of Procedures was dealt by the norms committee and the proceedings are recorded in the minutes of meeting Meet No./Date:8/82-ALC4/ 2019 dated 20.09.2019 in respect of M/s. DK Pharma Lab and in the minutes of meeting Meet No./ Date:7/ 82-ALC4/ 2019 dated 06.09.2019 in respect of M/s. DK Biopharma Private Limited. The Norms Committee of the DGFT has rejected both the applications filed by M/s DK Pharma Lab and M/s. DK Biopharma Private Limited in respect of their above advance authorization with the remarks that "the committee considered the case as per agenda and it was observed that the import item - DETOX FOC -27 Fish Body Oil having ITC HS-15042010 comes under Chapter 15 and as per para 4.11 (A) (i) of the Foreign Trade Policy, all vegetable/edible oils classified under Chapter 15 of ITC (HS) are ineligible for import on self-declaration basis under para 4.07 of the FTP. In view of the above, the Committee decided to reject the case". It is observed from the

documents that consequent on closure of the firm M/s. DK Pharma Lab and taking over the said firm by M/s. DK Biopharma private limited, the advance license of M/s. DK Pharma Lab was transferred in the name of M/s. DK Biopharma Private Limited. The firm appeared to have preferred appeal before the norms committee in respect of both the applications as per the provisions provided under para 4.17 of Hand Book of Procedures 2015-2020 which states that "Applicant may file representation against the decision of the Norms Committee with regard to the fixation of norms within a period of 90 days from the date of hosting of decision on DGFT website. Representation beyond 90 days shall be subject to payment of composition fee of Rs. 5000/-". However, the norms committee has again rejected their both applications/claims vide its minutes of meeting No. NC/3/MEET/ Sep/2021-22/8 dated 24.09.2021 with the remarks that "**the Committee considered the request of the firm and it was observed that the import item'- DETOX FOC-27 Fish Body Oil having ITC HS- 15042010 comes under Chapter 15 and as per para 4.11 (A) (i) of the Foreign Trade Policy, all vegetable/edible oils classified under Chapter 15 of ITC (HS) are ineligible for import on self-declaration basis under para 4.07 of the FTP. Norms Committee is not authorise to allow DETOX FOC-27 Fish Body Oil Crude under para 4.07 of HBP Vol. I. Hence, the Committee decided to reject the case. For other issues, firm may approach concerned RA**". (RUD 02) Hence, it appears that the issue has reached finality since the importers have exhausted the appeal provisions available in the Foreign Trade Policy/ Hand Book of Procedures 2015-2020 and bound to pay the duty foregone in the above imports as per para 4.07 (ii) of Hand Book of Procedures 2015-2020 which stipulates that "in case of revision/rejection, applicant shall pay duty and interest as notified by DoR within thirty days from the date of hosting of Norms Committee decision on DGFT website". Even though the decision of the norms committee on the appeal filed by the importers was hosted on 24.09.2021, till the day of visit of DRI Officials the firm has failed to honour the decision/declaration given by them at the time of applying to the norms committee nor any correspondence has been made with the DGFT or jurisdictional customs Commissionerate which proves their malafide intention. In view of the above, it appears that the importers are liable to pay the total amount of duty forgone/duty saved amount in respect of their import under the above two advance authorisations, which works out to **Rs. 4,87,06,554/-**, along with applicable interest on their imports of crude fish body oil imported under above twelve bills of entry.

5.5. Whereas it further appears that notwithstanding the above, the importers have failed to fulfil multiple conditions laid out in the FTP 2015-2020 and the Handbook of Procedures, conditions specified in the notification No. 018/2015-customs dated 01.04.2015 and in the advance authorisation granted to them, which are detailed below: -

B. Transfer Of Goods to Another Entity for Manufacturing on Job Work Basis:

5.6. On analysis of the GST data of the firm M/s. DK Biopharma Private Limited, it was observed that they are regularly transferring the 'crude fish body oil' to another entity by name M/s. DK Pharma Chem for job work, violating the conditions prescribed in foreign trade policy, notification No. 18/2015-Customs dated 01.04.2015 and also the condition sheet attached with the advance authorisation (Copies of e-way bills and job work challan copy in this regard is enclosed as RUD 17 & 18). In this regard, for specific questions, both Shri Rakesh Bakshi and Shri Arun Khedwal in their respective statements have deposed that:

"The crude fish body oil was being imported from the supplier M/s. Golden Omega S.A., Chile. After import, it was directly transported from the port of import to our manufacturing unit situated at Plot No. 15, 16, 21/12 & 21/13 MIDC, Morivali, Ambernath, Thane, Maharashtra – 421501, by our customs brokers. After receipt of cargo at this unit, quality testing parameters are carried out at the unit and then the cargo is being released for manufacturing purpose. However, due to lack of facility and short capacity, we used to send the cargo to another entity M/s. DK Pharma Chem situated at F-32, Maharashtra Industrial Development Corporation, Badlapur, Maharashtra 421503, which is about 4 to 5 kms from this unit for the purpose of manufacturing. This exercise of transferring the cargo is done after quality testing. The cargo sent to DK Pharma Chem will be processed there and then it will be sent back to M/s. DK Bio pharma where after purification, drying (i.e, Cholesterol Aqua) will be sold to SEZ unit of Fermenta Biotech Ltd. situated at Plot No. Z-109/B & Z-109/C, Dahej, Distt. Bharuch, Gujrat - 392130, under an invoice. Bill of export or shipping bill will be generated by the SEZ unit based on the said data. Once, the cargo is dispatched to the SEZ unit of Fermenta, we treat this as fulfilling of export obligation".

"I have perused the extract of GST data produced before me and signed as a token of perusing the same. In this regard, I would like to state that we were not aware of the said provision. I would like to state that we have not sold the goods, but it is on job work. We used to transfer the imported goods to M/s. DK Pharma Chem only for job work. After processing of crude fish body oil and manufacture on job work basis, M/s. D K Pharma Chem has returned the said goods to us where after purification, drying and packing, which was ultimately exported by us to the SEZ unit of M/s. Fermenta Biotech Ltd., Dahej. Hence, we are of the opinion that we have followed 'actual user' condition prescribed at para 4.16 of foreign trade policy".

"Due to lack of facility and short capacity, we used to transfer the imported duty-free crude fish body oil to M/s. DK Pharma Chem for processing. However, we have not sold the goods; it is only on the basis of job work. After the process,

the said goods have been transferred to our unit for final export to Fermenta. Hence, we are of the opinion that there was no violation of conditions prescribed in Advance Authorization scheme".

5.7. It can be seen from the above that both Shri Rakesh Bakshi and Shri Arun Khedwal in principle have agreed that they are regularly transferring the goods to another unit by name M/s. DK Pharma Chem which is clear violation of conditions prescribed. Para 4.16 of Foreign Trade Policy, Para 4.35 and 4.10 of Hand Book of Procedures, notification No. 018/2015, conditions sheet attached to their advance authorisation all very clearly states that the imported goods cannot be transferred to another unit even for job work unless it is mentioned in the relevant advance authorisation. Para 4.16 of Foreign Trade Policy restricts use of such duty-free imported goods and stipulates that such import will be subject to actual user condition. It further demands that even after fulfilment of the export obligations, such goods remaining cannot be transferred. Para 4.35 of the foreign trade policy stipulates that imported material may be used in any unit of holder of Advance Authorisation subject to condition of paragraph 4.10 of this Handbook or jobber/ supporting manufacturer provided same is endorsed on authorisation by Regional Authority. If applicant desires to have name of any manufacturer or jobber added to authorisation, he may apply. Such endorsement **shall be mandatory** where prior import before export is a condition for availing Advance Authorisation scheme and authorisation holder desires to have material processed through any other manufacturer or jobber. Para 4.10 of the HBP clearly states that Transfer of any duty-free material imported or procured against Advance Authorisation from one unit of a company to another unit for manufacturing purpose shall be done with prior intimation to jurisdictional Customs Authority. In the case of both the advance authorisations the importers have transferred the duty-free import goods to another manufacturing unit violating these conditions. Further, condition no. (x) of the Notfn. No. 018/2015, prohibits any transfer or sale of the goods imported by availing benefit of the said notification.

5.8. It is evident from the above points that there was clear violation of the conditions of the Advance Authorization, Hand book of Procedures, Customs notification and Foreign Trade Policy by M/s. DK Biopharma Private Limited, hence they are liable to pay the duty foregone/ duty saved amount in respect of both the advance authorisation along with interest as per the extant legal provisions.

C. Issue of non-fulfilment of export obligation:

5.9. Para 4.44 of the Hand Book of Procedures (2015-20), requires an importer to fulfil export obligation under an Advance Authorisation within a period of 18 months from the date of issue of Authorisation, unless and until they were given opportunity by the Directorate General of Foreign Trade for extended time for such fulfilment of export obligation. Also, the Hand book Procedures and para (ix) of the notification No. 018/2015- Cus, makes it mandatory on the part of the

authorisation holder to submit requisite evidence in support of discharge of export obligation in accordance with the law within a period of sixty days from the date of expiry of export obligation. Further, sub para (d) of para 4.49 of the Hand Book of Procedures 2015-20 demands that if export obligation is not fulfilled in terms of both quantity and value, the authorisation holder shall, towards regularization, pay to Customs authorities, customs duty on unutilised value of imported/indigenously procured material along with interest as notified, which implies that the authorisation holder is legally duty bound to pay the Customs duty for non-fulfilment of export obligation. However, the importer did not pay any Customs duty, whatsoever, in respect of unfulfilled export obligation. Whereas it further appears that, M/s. DK Pharma Lab/DK Biopharma Private Limited have completely failed to fulfil the export obligations in respect of their advance authorisation 0310816992 dated 13.11.2017 as detailed below: -

Advance authorisation no.	Qty imported	Total assessable value	Duty foregone in the import	Qty exported
0310816992 dated 13.11.2017	104090	42,076,941.50	20208933	11,072.57

5.10. As per the above advance authorisation, the export quantity prescribed is 50000 kgs of cholesterol as against import of 200000 kgs of crude fish body oil, i.e, the importers have to account for export of exactly 25% of imported goods. However, as per the data provided by the importers the quantity exported in respect of the advance authorisation 0310816992 dated 13.11.2017 is far less and is as under: -

Import		Export	
Bill of entry no. and date	Qty imported (in kgs)	S.B. No. and date	Qty exported (in kgs)
3984568 dated 13.11.2017	22000	5001020 dated 12.06.2021	1250.50
4630396 dated 30.12.2017	21350	5001055 dated 21.06.2021	2983.50
7071685 dated 04.07.2018	20830	5001359 dated 14.08.2021	5394.07
8821412 dated 12.11.2018	19110	5001849 dated 16.11.2021	1444.50
7500806 dated 04.08.2018	20800		
	104090		11072.57

5.11. Thus, the firm has exported only 10.63% of cholesterol on the import of 104090 kgs of crude fish body oil as against 25% prescribed in the advance

authorisation, i.e., the firm should have exported 26022.50 kgs of cholesterol for import of 104090 kgs of crude fish body oil, but they have exported only 11072.57 MTs of cholesterol. Shri Rakesh Bakshi, Director of the firm M/s. DK Pharma Lab and Shri Arun Balakrishna Khedwal of M/s. Fermenta Biotech Ltd in their statements have admitted the shortfall in their export by stating that as it was their first import and yield was low and process was not optimised. Hence, it appears that the firm has diverted the imported goods to DTA. In view of this, they are liable to pay the duty foregone/duty saved amount in respect of this short fall in export which works out to Rs. 1,16,10,035/-, as under: -

Quantity required for export of 11,072.57 kgs of cholesterol as per the advance authorisation	44290.28 kgs.
Imported quantity not utilised for the export quantity in terms of the advance authorisation	59799.72 kgs.
Duty foregone in the import of 104090 kgs of crude fish body oil	20208933
Proportionate duty foregone in the import of 59799.72 kgs of crude fish body oil	11610035

5.12. Notwithstanding to the above, it appears that the entire duty foregone/ duty saved amount in respect of the advance authorisation license 0310816992 dated 13.11.2017 is payable as the export of cholesterol in respect of their import was done by them after the period prescribed in the advance authorisation, as amended, as detailed below: -

The advance authorisation No. 0310816992 was issued on 13.11.2017 and it was valid for 18 months i.e., upto 12.05.2019, i.e., they should have exported the entire quantity specified in the advance authorisation on or before 12.05.2019. It is seen from the documents furnished by the importers that they have initially applied for first extension of six months for completing the export obligation upto 12.11.2019 since they could not export any goods within the stipulated period of 18 months from the date of advance authorisation. As they failed to export any goods within that period also, they have again applied for second extension upto the period of 31.12.2020. The PRC Committee Meeting No. 22/AM 21 dated 19.01.2021 & 02.02.2021 (RUD16) allowed EOP extension of Advance Authorisation No. 0310816992 dated 13.11.2017 for a further period of 6 months from the date of endorsement subject to payment of composition fee @1% per month of the extension period granted, on the unfulfilled FOB value. The firm shall approach RA within 30 days from the date of uploading of the minutes of meeting. However, the firm failed to submit any documents evidencing the extension granted. Hence, it appears that the importers are liable to pay the entire duty foregone amount/ duty saved amount of Rs. 2,02,08,933/- in their import under advance authorisation No. 0310816992 dated 13.11.2017.

D. Shelf Life of the Imported Cargo:

5.13. In addition to the above, it was observed from the test analysis report of the imported cargo, which is enclosed alongwith the import documents (RUD 14) that the imported 'crude fish body oil' is having only two years shelf life. On analysis of their import and export dates as detailed in the above table, it can be seen that the export of goods was done by them after more than three years of import cargo. In view of this, it appears that the said imported cargo might not have utilised for the export cargo, it appears they might have diverted the cargo and utilised some other cargo for the manufacture of export cargo or original imported materials have not been used fully, thus, the 'actual user condition' prescribed in para 4.16 of HBP is failed. This may also be the reason for "quantity less exported" in respect of the said authorisation. As such also, the importers are liable to pay the entire duty foregone amount of Rs. 2,02,08,933/- in their import under advance authorisation No. 0310816992 dated 13.11.2017.

E. Import Goods Being Restricted Require Separate Restricted Goods License:

5.14. Under section 11 of the Customs Act, the Central Government has the power to issue notification under which export or import of any goods can be declared as prohibited. The prohibition can either be absolute or conditional. All the import items which are not allowed for import and only permitted after having a restricted import license are known as restricted import.

5.15. Restricted items can be imported only after obtaining an import license from the relevant regional licensing authority. The Restricted Import Items are those items that are not freely importable; require the import license/Authorization/ permission from DGFT. The restricted items can only be imported after having the Restricted Import License. In this regard, the procedures for import of restricted items are enumerated in the foreign trade policy which is briefly detailed as below:-

- (i) As per notification No. 08 (RE-2010)/ 2009-2014, New Delhi, The 8 October, 2010 issued by DGFT import of fish body oil crude under CTH 15042010 is restricted.
- (ii) As per para 2.08 of foreign trade policy 2015-2020, "Any goods/ service, the export or import of which is 'Restricted' may be exported or imported only in Procedures prescribed in a Notification/Public Notice issued in this regard"
- (iii) As per para 2.50 of Hand Book of Procedures 2015-2020, "An application for grant of an Authorisation for import or export of items mentioned as 'Restricted' in ITC (HS) may be made to RA, with a copy to DGFT Hqrs in ANF 2M alongwith documents prescribed therein".
- (iv) As per para 2.51 (a) of Hand Book of Procedures 2015-2020, "(a) Restricted item Authorisation may be granted by DGFT or any other RA authorised by him in this behalf. DGFT/ RA may take assistance and advice

of a Facilitation Committee while granting authorisation. The Assistance of technical authorities may also be taken by seeking their comments in writing. Facilitation Committee will consist of representatives of Technical Authorities and Departments/ Ministries concerned”.

(v) As per para 2.51 (b) Import authorisations for a restricted item, if so, directed by the competent authority, shall be issued for import through one of the sea ports or air ports or ICDs or LCS, as per the option indicated, in writing, by the applicant. Authorisation holder shall register the import authorisation at the port specified in the Authorisation and thereafter all imports against said authorisation shall be made only through that port, unless the authorisation holder obtains permission from customs authority concerned to import through any other specified port.

(vi) Further, as per “Import Licensing Procedures” for import of “Restricted Items” in India, ‘an application for import of such restricted items may be made to the Directorate of General of Foreign Trade (DGFT) WEBSITE. Import authorisation for restricted items are issued after due consideration of the EXIM Facilitation Committee (EFC) which is constituted by members from concerned authorities of the Government of India’

5.16. From the above, it appears that the Restricted Import Items are those items that are not freely importable; require a ‘import license for restricted list of import items’ from DGFT and can only be imported after having the Restricted Import License issued by DGFT. However, the importer has failed to obtain such restricted item license for import of crude fish body oil. The importers in their statement have also admitted that they have not declared with the DGFT that the item under import are restricted goods.

F. Misdeclaration to the Bank Authorities:

5.17. At the time of import of crude fish body oil, the importers have submitted an undertaking to their Bank, wherein they have submitted that the imported goods are not a restricted one. Thus, they have mis declared to the Bank even though they are aware that the imported goods are restricted one.

5.18. The importers have submitted documents establishing that they have exported ‘cholesterol’ in respect of their import authorisation No. 0310826158 dt 04.01.2019. The details of import and export as per the documents submitted by them are as under: -

Advance authorisation no.	Qty imported	Total assessable value	Duty foregone in the import	Qty exported
0310826158 dt 04.01.2019	149370	58205928	28497622	38397.82

5.19. Export data as per the documents submitted by M/s. DK Biopharma in respect of Advance authorisation No. 0310826158: -

Sl. No.	Exp Inv	Qty	Amount (in USD)	in Rs.
1	U-1/Ex-07/19-20 dated 28.02.2020	500	27500	1953875
2	U-1/Ex-02/19-20 dated 13.12.2019	2000	110000	7777000
3	U-1/Ex-03/19-20 dated 24.12.2019	782	43010	3040807
4	U-1/Ex-04/19-20 dated 30.01.2020	1082	59510	4207357
5	U-1/Ex-05/19-20 dated 18.02.2020	136	7480	528836
6	U-1/Ex-06/19-20 dated 28.02.2020	3425.43	188398.65	13178486
7	U-1/Ex-07/19-20 dated 28.02.2020	1574.57	86601.35	6057764
8	U-1/Ex-08/19-20 dated 28.02.2020	556.19	30590.45	2170392
9	U-1/Ex-09/19-20 dated 12.03.2020	2250.63	123784.65	8782521
10	U-1/Ex-10/19-20 dated 21.03.2020	34.93	1921.15	136306
11	U-1/Ex-11/19-20 dated 21.03.2020	1516.6	83413.00	5918152
12	U-1/Ex-1/20-21 dated 06.06.2020	1907.82	104930.1	7444791
13	U-1/Ex-2/20-21 dated 06.06.2020	1903.42	104688.1	7427621
14	U-1/Ex-3/20-21 dated 14.08.2020	1830.41	100672.55	7142717
15	U-1/Ex-4/20-21 dated 14.08.2020	62.25	3423.75	254727
16	U-1/Ex-5/20-21 dated 14.08.2020	1918.16	105498.8	7849111
17	U-1/Ex-6/20-21 dated 27.08.2020	2305.6	126808	9434515
18	U-1/Ex-7/20-21 dated 27.08.2020	1937.1	106540.5	7926613
19	U-1/Ex-8/20-21 dated 12.09.2020	2533.17	139324.35	10365732
20	U-1/Ex-9/20-21 dated 25.09.2020	1243.72	68404.6	5089302
21	U-1/Ex-10/20-21 dated 25.09.2020	1291.54	71034.7	5178430
22	U-1/Ex-11/20-21 dated 03.10.2020	2531.56	139235.8	10150290
23	U-1/Ex-12/20-21 dated 12.10.2020	2537.06	139538.3	10172342
24	U-1/Ex-13/20-21 dated 26.11.2020	2537.66	139571.3	10174748
		38397.82	2111880.1	152362435

5.20. However, it appears the same cannot be counted towards the fulfilment of their export obligations for the following reasons –

- a) As detailed in para 6.5 above, the Norms Committee of the DGFT has rejected their application for advance authorisation. This renders the advance authorisation ab-initio null and void and hence they are not eligible for any duty-free import of goods.
- b) The importers have failed to fulfil the "Actual User" condition as stipulated under para 4.16 of the policy which specifies that the duty-free imported inputs shall not be transferable even after completion of export obligation. However, Authorisation holder will have option to dispose of product manufactured out of duty-free input once export obligation is completed. During the search of their premises on 11.04.2022 and subsequent investigation, it was observed that they were regularly transferring the imported duty-free goods to another entity M/s. DK Pharma Chem. However, neither the DGFT has nominated the said firm in the advance authorisation issued for the purpose of manufacturing, nor they have intimated/obtained permission from the Customs authorities as discussed in earlier paras. When questioned about the same, the importers during their statements recorded under Section 108 of the Customs Act have admitted this, however, stating that it is on job work basis and in their opinion it is permissible.
- c) The notification No. 18/2015-Cus exempts materials imported against a valid Advance Authorisation issued by the Regional Authority of DGFT in terms of paragraph 4.03 of the Foreign Trade Policy. The important conditions for duty free import of goods under Advance Authorization are that the said authorization shall not be transferred and the said materials shall not be transferred or sold. Further, the importer at the time of clearance of the imported materials should execute a bond with such surety or security and in such form and for such sum as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself to pay on demand an amount equal to the duty leivable, but for the exemption contained herein, on the imported materials in respect of which the conditions specified in this notification are not complied with, together with interest at the rate of fifteen per cent per annum from the date of clearance of the said materials. It appears that the importers have failed to fulfil the conditions specified therein and as such they are not eligible for the benefit of duty exemption provided by the said notification.
- d) It is also observed that the condition sheet to the Advance Authorisation obtained and utilized by M/s DK Biopharma Private Limited, prescribes, among other conditions, that:
 - (i) Authorisation Holder shall export/supply the product(s) as per the quantity (ies) and value(s) specified in the Table at Serial 1 above within a period prescribed under Paragraph 4.22 of the Foreign Trade Policy 2015-2020.

(ii) "The exempt goods imported against this authorization shall only be utilized in accordance with the provisions of paragraph 4.16 of the Foreign Trade Policy 2015-2020 and other provisions and the relevant Customs Notification.

(iii) The authorisation holder to comply with the provisions of paragraph 4.10 and paragraph 4.35 of Handbook of Procedures, 2015-2020, as amended from time to time, with regard to transfer of any material from one unit of the authorisation to any other unit of the authorisation holder included in the IEC or the supporting manufacturer/jobber.

(iv) All conditions of the Foreign Trade Policy 2015-2020 and the Handbook of Procedures 2015-2020 and the ITC (HS) Classification Book as amended shall be applicable unless specifically dispensed with against this Authorisation.

5.21. It appears that in view of the discussions in earlier paras, the importers have failed to fulfil the conditions specified therein and as such also they are not eligible for the benefit of duty exemption provided by the said advance authorisation issued by the DGFT. It also appears that they have violated the "Actual User" condition and have diverted the imported goods before fulfilling their export obligation.

5.22. Section 143 of the Customs Act, 1962, provides for execution of Bonds under certain circumstances where this Act or such other law, grant leave for import, export or clearance of goods on the person executing a bond subject to conditions as approved by the competent authority. In case of exemption that requires fulfilment of post-import conditions over a period of time, law makes such execution of Bond mandatory which makes the importer/exporter duty bound to pay amount of duty benefit availed with appropriate interest, in case of failure on the part of the importer/exporter to comply with such conditions. Further, as per condition (iv) of the customs notification No. 018/2015-Cus dated 01.04.2015, in respect of imports made before the discharge of export obligation in full, the importer at the time of clearance of the imported materials executes a bond with such surety or security and in such form and for such sum as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself, to pay on demand an amount equal to the duty leviable, but for the exemption contained therein, on the imported materials in respect of which the conditions specified in this notification are not complied with, together with interest at the rate of fifteen percent per annum from the date of clearance of the said materials; In the instance case, the importers stated that they have executed bond alongwith two bank guarantees as detailed below and submitted to the customs authorities at the time of import of crude fish body oil under advance authorisation are as under:

Advance authorisation no. and date	Bank guarantee details
0310816992 dated 13.11.2017	BG no. 0095IFIBG1700005 dated 28.11.2017 for Rs. 60,00,000/-
0310826158 dated 04.01.2019	BG No. 0095IPEBG190019 dated 12.09.2019 for Rs. 33,00,000/-

5.23. As the importers failed to comply with the conditions stipulated, it appears that the above two Bank Guarantees (B.Gs) executed as security for the differential duty by M/s. DK Pharma/DK Biopharma Private Limited, in respect of the imports of goods covered under 12 Bills of Entry be appropriated against the differential duty payable by them.

5.24. The importer also undertook to comply with the conditions of the notification as well as the provisions of Foreign Trade Policy, as amended from time to time. It appears that they failed to observe such conditions and even after such failure, did not pay the amount of Customs duty and interest in terms of the conditions of the Policy, notification as well as the bond executed by them. As a result, they are liable to pay the entire duty forgone/duty saved amount of Rs. 4,87,06,554/-.

5.25. With the introduction of self-assessment under the Customs Act, more faith is bestowed on the importer, as the practice of routine assessment, concurrent audit and examination has been dispensed with. As a part of self-assessment by the importer, it was duty of the importer to present correct facts and declare to the Customs authority about their inability to fulfil export obligation and also, they should have volunteered to pay duty, the moment statutory 60 days from the expiry of the EO period was over. However, contrary to this, they availed benefit of the subject notification for the subject goods but did not comply with the conditions laid down in the exemption notification. It appears that only because of the vigilance and detailed scrutiny of the documents by the officers of DRI, the leakage of revenue could come to light. The importer did not come forward to pay such duty voluntarily on their own. But for the intervention of DRI, it appears that the said duty evasion would have remained undetected due to suppression of facts by the importer.

5.26. Until the investigation was taken up DRI, Mangalore, the importers M/s. DK Pharma Lab/DK Bio Pharma Pvt Ltd. did not even come forth to pay the Customs duty in respect of impugned Advance authorisation despite the fact that the norms committee of DGFT have rejected their application as well as the appeal filed by them. They are also fully aware that they have failed to fulfil export obligations in both the advance authorisations. It is evident that it was within the knowledge of the importers that they failed to comply with the conditions of Notification No. 18/2015-Cus dated 01.04.2015, as amended, but still they did not disclose the same to the Customs authority and did not pay the duty saved on these goods at

the time of import. M/s. DK Bio Pharma grossly failed to comply with the legal provisions laid down under the notification and the Policy and suppressed the fact of such failure by not submitting documents before the Customs authority. This clearly indicates their malafide intent of evading duty of Customs.

6. In view of above investigation, a Show Cause Notice bearing F.No. GEN/ADJ/COMM/86/2023-Adjn dated 07.06.2023 issued to M/s. D.K. Biopharma Private Limited, Plot No.15, 16, 21/12 & 21/13 MIDC, Morivali, Ambernath, Thane, Maharashtra - 421501, India, wherein they were called upon to show cause, in writing, in respect of their imports against advance authorisation no. 0310816992 dt 13.11.2017, within 30 days from the date of receipt of this notice, to **the Commissioner of Customs, 5B, Port User Building, Mundra Port, Mundra, Gujarat – 370 421**, as to why:-

- (i) the goods i.e., 104090 kgs of imported FAT DETOX FOC-27 (fish body oil crude) valued at Rs. 4,20,76,942/- imported in the name of M/s. DK Pharma Lab by utilising the advance authorisation No. {0310816992} dated 13.11.2017 under 5 bills of entry as detailed in **Annexure A** to show cause notice imported through Mundra Port should not be held liable to confiscation under Section 111(d) and 111(o) of the Customs Act, 1962, for being imported under the exemption notification No. 18/2015-cus dated 01.04.2015, without observing various conditions laid down under the said notification as well as for contraventions of the provisions of the Foreign Trade Policy (2015-2020) read with the Hand Book of Procedures 2015-2020;
- (ii) Duty concession availed by them, under 5 bills of entry as detailed in Annexure A to show cause notice, should not be denied and total Customs duty of **Rs. 2,02,08,932/-** (Rupees Two crores Two lakhs eight thousand nine hundred and thirty two only), forgone/saved on the said imports, should not be demanded and recovered from them along with applicable interest, in terms of conditions specified in the Notification No. 18/2015 -Cus dated 01.04.2015 and relevant paras of Foreign Trade Policy 2015-2020 and Hand Book of Procedures 2015-2020, the conditions specified in the advance authorisation license issued to them and in terms of the bond furnished by them read with Section 143(3) of the Customs Act, 1962;
- (iii) the amount of Rs. 50,00,000/- (Rupees fifty lakhs only), voluntarily deposited by M/s. DK Bio Pharma Private Limited as detailed in para 10 above, should not be appropriated against the liabilities at (ii) above and as to balance amount should not be recovered from them;
- (iv) The Bond furnished by them, against the consignments imported duty free under Advance Authorisations in terms of Notification No. 18/2015-Customs dated 01.04.2015 should not be enforced and the bank guarantee amounting

to **Rs. 60,00,000/-** furnished by them as detailed in para 6 above, should not be adjusted and appropriated from the duty payable now and the proceeds thereof be credited to the government account by enforcing the Bank Guarantees executed by M/s. DK Pharma/DK Biopharma Private Limited in terms of Section 143(3) of Customs Act, 1962;

(v) penalty should not be imposed on them under Section 112(a) and 112(b) of the Customs Act, 1962, for improper importation of goods availing exemption of notification and without observance of the conditions set out in the notification as elaborated above resulting in non-payment of duty, which rendered the goods liable to confiscation under Section 111(d) and 111(o) of the Customs Act, 1962.

6.1. Vide the aforesaid show cause notice Shri. Rakesh Kasturi Lal Bakshi, S/o Late Shri. Kasturi Lal Deshraj Bakshi, Director, M/s. D.K. Bio Pharma Private Limited, was also called upon to show cause to the **Commissioner of Customs, Customs House, 5B, Port User Building, Mundra Port, Mundra, Kutch, Gujarat-370 421**, as to why, penalty should not be imposed upon him under Section 112(a) and 112(b) of the Customs Act, 1962, for their acts of omission and commissions by which the imported goods covered under 5 Bills of Entry, as detailed in **Annexure-A** to show cause notice notice, were rendered liable to confiscation.

6.2. Vide the aforesaid show cause notice **M/s. Fermenta Biotech Limited, A-1501, Thane one, DIL Complex, GHOD Bunder Road, Majiwada, Thane West, Maharashtra - 400610**, was also called upon to show cause to the Commissioner of Customs, Customs House, 5B, Port User Building, Mundra Port, Mundra, Kutch, Gujarat-370 421 as to why penalty should not be imposed upon him under Section 112(a) and 112(b) of the Customs Act, 1962, for their acts of omission and commissions by which the imported goods covered under 5 Bills of Entry, as detailed in **Annexure-A** to show cause notice, were rendered liable to confiscation.

6.3. Vide the aforesaid show cause notice, **Shri Arun Balkrishna Khedwal, General Manager (Supply Chain), M/s. Fermenta Biotech Limited** was also called upon to show cause to the Commissioner of Customs, Customs House, 5B, Port User Building, Mundra Port, Mundra, Kutch, Gujarat-370 421 as to why penalty should not be imposed upon him under Section 112(a) and 112(b) of the Customs Act, 1962, for their acts of omission and commissions by which the imported goods covered under 5 Bills of Entry, as detailed in **Annexure-A** to show cause notice, were rendered liable to confiscation.

WRITTEN SUBMISSION

7. The advocate of M/s. D.K. Biopharma Private Ltd. and M/s. Fermenta Biotech Limited filed the written submissions dated 13.02.2024 separately. The grounds/contentions mentioned in submissions of said two noticees and

case laws relied upon by the them are very similar. Their pointwise submissions are as under:-

7.1. M/s. DK Biopharma Private Ltd, having its registered office and manufacturing unit at Plot No. 15, 16, 21/12 and 21/13, MIDC, Morivali, Ambernath, Thane, Maharashtra- 421501 are engaged in manufacturing of active pharmaceuticals ingredients, specialty chemicals and intermediates which comes under pharmaceuticals labs industries. Our Client is also holding Importer Exporter Code (IEC) Number AAGCD7625M.

7.2. M/s. D K Biopharma Private Ltd has taken over all the liabilities of partnership firm namely M/s. D. K. Pharma lab. The said partnership firm was closed on 11.08.2018 and Memorandum of Understanding (MOU) between the partnership firm and company was also executed on 11.08.2018.

7.3. Initially, i.e. from the date of inception in the year 2017 M/s. D K Pharma Lab had obtained IEC Number AANFD1755G and had applied for Advance Authorization No. 0310816992 dated 13.11.2017 for duty free import of Detox FOC-27 i.e. Fish Body Oil covered under ITC HS15042010 for manufacturing and clearance of Cholesterol to M/s. Fermenta Biotech Limited SEZ unit. The said partnership firm had entered into an agreement with Fermenta Biotech Limited for manufacturing of Cholesterol with the use of Fermenta's technology.

7.4. To manufacture the cholesterol M/s. D. K. Biopharma imported Fish Body Crude Oil from M/s. Golden Omega, Chile under Advance Authorization No. 0310816992 dated 13.11.2017 since the final product cholesterol is supplied to Fermenta (SEZ unit).

7.5. That, the Fermenta was not having the facility to manufacture the cholesterol; hence, the Fermenta had entered into Mutual Confidentiality Agreement on 09.06.2017 with M/s. D. K. Pharma Lab for manufacture of cholesterol out of imported fish body oil crude with the condition that said cholesterol will be exclusively manufacture for supply to Fermenta SEZ unit.

7.6. That, M/s. D. K. Pharma Lab the partnership firm was taken over by newly formed entity M/s. D. K. Biopharma Pvt. Ltd. along with its liabilities.

7.7. During the period M/s. D. K. Pharma Lab and M/s. D. K. Biopharma Pvt. Ltd. obtained Advance authorization license for fish body oil crude for the purpose of manufacture of body oil by claiming the exemptions from payment of customs duty. The details of advance licenses are as under:

a) Advance Authorization No. and date including goods to be imported and exported with the value.						
No. and date	Items to be imported duty free under authorization			Item to be exported duty free under authorization		
	Description of goods	Quantity (Kgs)	CIF Value (Rs)	Description of goods	Quantity (Kgs)	FOB value (Rs.)

0310816992 dated 13.11.2017 (M/s DK Biopharma Lab)	DETOX FOC-27 FISH BODY OIL CRUDE	200000	7,48,71,000/-	CHOLEST EROL	50000	16,28,55,455/-
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7.8. The details of quantity of goods imported its value and duty saved by M/s. D. K. Biopharma Pvt. Ltd. are as under:

Advance authorization No.	Item description	Quantity imported (In Kgs.)	Assessable Value (In Rs.)	Duty foregone/ duty saved (In Rs.)
0310816992 dated 13.11.2017	DETOX FOC-27 FISH BODY OIL CRUDE	104090	4,20,76,942/-	2,02,08,932/-

7.9. That said raw material has been exclusively used in the manufacture of cholesterol and supplied the same to SEZ unit of Fermenta situated at Dahej SEZ at Bharuch, Gujarat.

7.10. It is submitted that M/s. D. K. Biopharma Pvt. Ltd. has applied for subject Advance Authorization on self-declaration basis, since there is no SION norms fixed being the product is new, as the import of Crude Fish Body Oil does not fall under the exceptions prescribed under para 4.11 of FTP. Further, since, no norms were fixed by DGFT for import of Crude Fish Body Oil to manufacture Cholesterol; M/s. D. K. Biopharma Pvt. Ltd. had applied for fixation of norms to the norms committee of DGFT which was rejected initially but in the subsequent meeting held on 27.05.2022 norms committee was please to ratify the ad hoc norms under para 4.07 of HBP/ Vol. 1. The minutes of said meeting dated 27.05.2022, are enclosed herewith. The relevant extract of said ad hoc norms is as under:

Export product	Quantity	Sr. No.	Import Items	Qty.
Cholesterol (Assay by GC not less than 91.0%)	1 Kg	1	Detox FOC 27 (fish body Kg. oil crude) (Non edible grade, FFA content not less than 20%)	4.00 Kgs

7.11. In view of the aforesaid ratification issued by DGFT norms committee M/s. D. K. Biopharma Pvt. Ltd. had applied for redemption of said advance license to the Additional Director of the DGFT along with the relevant documents.

7.12. After considering the representations made by M/s. D. K. Biopharma Pvt. Ltd. the competent authority under DGFT regularized the said advance authorization and redeemed the said advance authorization vide Redemption cum Regularization Certificate dated 12.10.2023 (Copy Enclosed), by accepting the payment of differential amount of duty paid by M/s. D. K. Biopharma Pvt. Ltd. the details of said payments are as under:

Sr. No.	Challan No.	Challan Date	Challan Value (In Rs.)
1	2044396172	13.06.2023	71,97,504.00
2	2044396170	13.06.2023	71,66,830.00
3	2044396164	13.06.2023	71,88,935.00
4	2044396167	13.06.2023	69,14,627.00
5	2044396158	13.06.2023	69,01,275.00
			3,53,69,171/-

7.13. Accordingly, M/s. D. K. Biopharma Pvt. Ltd. has complied with the condition of export obligations and thereby got redeemed the advance authorization on payment of duty foregone and interest thereupon. This fact is also informed to Custom Commissionerate, Mundra by DGFT vide its communication dated 12.10.2023.

7.14. It is submitted that in the meantime the customs department issued the impugned Show Cause Notice dated 07.06.2023 alleging non-observation of conditions laid down under Notification No. 18/2015 CUS dated 01.04.2015 and non-observance of provisions of FTP 2015-20 r/w HBP 2015-20 and thereby proposed to confiscate the imported raw material under Section 111(d) and 111 (O) of Customs Act, 1962 as well as proposed to demand duty foregone / saved amount of Rs. 2,02,08,932/- along with interest in terms of bond furnished by M/s. D. K. Biopharma Pvt. Ltd. under Section 143(3) of Customs Act, 1962. Further, the said Show Cause Notice as also proposed imposition of penalty on Fermenta and on our client under Section 112(a) and Section 112(b) of the Customs Act, 1962.

7.15. In view of the aforesaid facts, the allegations made in the impugned Show Cause Notice against M/s. D. K. Biopharma Pvt. Ltd. which are as under stands negated:

- a) That M/s. D. K. Biopharma Pvt. Ltd. transferred the imported duty-free raw material to M/s. D. K. Pharma on job work basis for manufacture of final product is in violation of Notification No. 18/2015, Para 4.16 of FTP and Para 4.35/4.10 of HBP.
- b) Further, M/s. D. K. Biopharma Ltd. has not discharged export obligation in terms of value and quantity within the specified period and failed to submit evidence of discharge of export obligation, which renders imported goods liable for confiscation under Section 111(O) of the Customs Act, 1962.

c) Further, it is also alleged that impugned imported raw material i.e. fish body oil crude is restricted and M/s. D. K. Biopharma failed to obtain license for import of restricted goods and therefore, the imported goods liable to be held as prohibited goods under Section 11(u) of Customs Act, 1962 r/w Section 11(3)(3) of Foreign Trade, Development and Regulation Act, 1992.

d) For the said contravention, M/s. D. K. Biopharma Pvt. Ltd. rendered them liable for payment of amount of interest thereon.

7.16. It is submitted that the impugned Advance Authorization License No. 0310816992 dated 13.11.2017 under which the raw material is imported through Mundra Port by availing the exemption from payment of custom duty as been regularized and redeemed by the competent authority of DGFT and thereby issued Redemption cum Regularization Certificate dated 12.10.2023 copy to the office of the Hon'ble Authority.

7.17. In view of the aforesaid facts and circumstances, it is submitted that the impugned advance authorization has been regularized and redeemed by licensing authority i.e., DGFT after considering the representations made by M/s. D. K. Biopharma Pvt. Ltd. and on payment of Rs. 3,53,69,171/- (which is more than the duty demanded in the impugned Show Cause Notice);

7.18. In the above circumstances, the legal submissions are made hereunder for kind consideration of this Hon'ble Authority:

LEGAL SUBMISSIONS

7.19.1. It is settled preposition of law that, after redemption of advance authorization the Show Cause Notice for demand of custom duty is not sustainable. Impugned Show Cause Notice is issued by the Customs involving the legal issue of Exim Policy which is regulated by Ministry of Commerce through DGFT. Hence, in absence of any communication from DGFT issuance of such Show Cause Notice is untenable in law as per the law laid down in case of J. S. Gupta & Sons.

7.19.2. Further it is submitted that in the present case admittedly the competent authority under DGFT has regularized the advance authorization and redeemed the same on payment of duty foregone amount along with interest vide Redemption cum Regularization Certificate dated 12.10.2023.

7.19.3. In these circumstances, the Show Cause Notice issued for same foregone duty is suffering from doctrine of double taxation and without jurisdiction qua Exim Policy.

7.19.4. It is further submitted that norms committee of DGFT has fixed the norms during their meeting held on 22.05.2022 therefore, the allegation of non- fixation of norms also stands negated.

7.19.5. In view of the aforesaid, redemption of Advance Authorization there is no contravention of any conditions specified in Notification No. 18/2015. Similarly,

since the norms has been fixed and Advance Authorization is redeemed there is no contravention of provisions of FTP and HBP committed by our client.

7.19.6. Accordingly, the impugned Show Cause Notice demanding customs duty for alleged contravention is not sustainable. In support of this contention the reliance is placed on the following judgments:

- a) CC vs Jindal Drugs Ltd.
(2023) 11 Centax 156 (P&H.)
- b) Welspun Corp Ltd vs UOI
2018 (13) G.S.T.L. 302 (Bom)
- c) Arjuna Natural Extracts Limited vs CC
2021 (378) E.L.T. 187 (Tri. Bangalore)
- d) ALCA Technologies vs CC
2019 (369) E.L.T. 1447 (Tri. Mumbai)
- e) Hetero Labs Limited VS Assistant Commissioner
2019 (370) E.L.T. 234 (Telengana)

7.20. It is settled preposition of law that when the raw material procured under Advance Authorization which is redeemed by DGFT, such imported goods are not liable for confiscation under Section 111 of the Customs Act more particularly under Section 111(d) and Section 111(0) of Customs Act.

7.20.1. In case of M/s. D. K. Biopharma Pvt. Ltd. admittedly the imported raw material under advance authorization is used in the manufacture of Cholesterol which is exported to SEZ unit.

7.20.2. Further, the DGFT has also confirmed the same by way of issuance of Redemption cum Regularization Letter dated 12.10.2023, w.r.t. impugned Advance Authorization.

7.20.3. The said advance authorization is redeemed and regulated by DGFT vide their Redemption letter dated 12.10.2023 (copy of the same is endorsed to Commissioner of Custom Mundra SEZ Port). Under the circumstances, when the DGFT regularized and redeemed the Advance Authorization after satisfaction with the compliance of terms and conditions of Foreign Trade Policy and Exemption Notification No. 18/2015-Cus dated 01.04.2015.

7.20.4. Therefore, the allegations made in the impugned Show Cause Notice w.r.t. contravention of FTP and the terms and conditions of said Exemption Notification does not survive and thereby the allegation of Section 111(d) of Customs Act of the imports of the regulated item gets negated further, the allegation of imported goods exempted subject to condition which is not observed also gets negated.

7.20.5. It is submitted that the Section 111(d) and Section 111(0) of the Custom Act 1962, contemplates confiscation of goods in case of goods imported by non-observing the prohibitions imposed by or under this Act or by non-observing conditions sanctioned by proper officer. Whereas, in present case the raw materials

were imported under valid Advance Authorization and were used in the manufacturer of finished product for export on realization of Foreign Exchange. Further, the procedural aspects w.r.t. compliance of Advance Authorization has been regularized by the competent authority i.e., DGFT vide Redemption cum Regularization Letter dated 12.10.2023.

7.20.6. In view of the aforesaid it is submitted that there is no contravention or non-observation as contemplated under Section 111(d) and Section 111(0) of Customs Act, 1962 and therefore, proposal for confiscation of raw material imported by utilizing impugned Advance Authorization is not sustainable in the light of following judgments:

a) Hindustan Uniliver Ltd vs. CC
2012 (278) E.LT 618 (Tri-Bom)

b) Affirmed by Bombay High Court in Commissioner of Customs EP vs Hindustan Uniliver Ltd
2012 (285) E.LT 500 (Bom)

7.21. It is settled proposition of law that no penalty is imposable under Section 112(a) and 112(b) of Custom Act on juristic person since the provisions of Section 112 (a) and Section 112 (b) contemplates acts of natural person having a mind.

7.21.1. In case of our client, the penalty is proposed to be imposed under Section 112 (a) which inter-alia contemplates that any person who in relation to any goods does or omits to do any act which renders such goods liable for confiscation under section 111 or abets the doing or omission of such act be and Section 112 (b) inter-alia contemplates any person who acquires the possession or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling etc any goods which he knows or has a reason to believe are liable for confiscation under section 111 of Customs Act.

7.21.2. The aforesaid acts are attributable to natural person whereas our client are not natural persons but it is legal entity or juristic person.

7.21.3. In view of this, as per the law laid down by the Larger Bench while interpreting the similar provision under Central Excise Rules under Rule 25 or earlier rule 125 has held that for the acts and omissions attributable to natural person cannot be invoked to penalize a juristic person as these acts deals with mind and juristic person does not have mind hence penalty under Section 112 (a) and Section 112 (b) is not imposable on juristic person.

7.21.4. In support of this contentions, the reliance is placed on the following judgments:

a. Steel Tubes of India Ltd. vs Commissioner of C.EX., Indore
2007 (217) E.L.T. 506 (Tri.- LB)

b. Homang India Pvt. Ltd. vs Commr. of C.EX., S.T. & CUS., Bangalore-II
2017 (357) E.L.T. 1194 (Tri. Bang.)

c. Apple Sponge and Power Ltd. vs Commissioner of Service Tax, Audit-1

2018 (362) E.L.T. 894 (Tri. Mumbai)

7.21. It is settled preposition of law that no penalty is imposable under Section 112(a) and 112(b) of Custom Act, when goods are not liable for confiscation under Section 111 of Custom Act 1962.

7.21.1. In this regard, in the previously mentioned para it is submitted that the imported raw material is duly imported under valid Advance Authorization and has been used in the manufacture of export goods. The said fact has been endorsed by the DGFT by issuing the Redemption cum Regularization Letter dated 12.10.2023.

7.21.2. Thus, it is submitted that after the issuance of Redemption Letter, the terms and conditions w.r.t. impugned Advance Authorization stands fulfilled and thereby the importer gets himself exonerated from the conditions of bond.

7.21.3. Therefore, the imported raw materials are not liable for confiscation since, there was no violation of conditions of Advance Authorization and thereby no penalty can be imposed under Section 112 of custom Act, 1962.

7.21.4. In view of the aforesaid it is submitted that in case when Advance Authorization is redeemed and export obligation is complied which is the main condition of EXIM policy read with Notification No. 18/2015 of Customs under these circumstances goods are not liable for confiscation and therefore consequential act of penalty under Section 112 of Customs Act, 1962 is not imposable.

7.21.5. In support of the above contention, the reliance is placed on the following judgments:

a) Jindal waterway Ltd V/s. CC Export- Nhava Sheva
2019 (370) E.L.T 1451 (Tri-Mum)

- a) Agarwal industries Corporation Ltd V/s. CC, Mangalore
2020 (373) E.L.T 280 (Tri-Bang)
- b) Baby Marine Sea Food retail Pvt Ltd V/s CC Cochin
2021 (377) E.L.T 872 (Tri-Bang)

7.22. In view of the aforesaid facts and legal submissions, the noticees pray to set aside the impugned Show Cause Notice and they also requested for opportunity of Personal Hearing before Adjudication of the impugned Show Cause Notice.

8. Shri Rakesh Kasturilal Bakshi, Director, M/s. D.K. Bio Pharma Private Limited and Shri Arun Balkrishna Khedwal, General Manager (Supply Chain), M/s. Fermenta Biotech Limited filed the written submission dated 15.04.2024 separately. Their submissions are very similar, point wise submissions are as under:-

8.1 The grounds mentioned in submissions of above two noticees and case laws relied upon by the them are very similar. The pointwise submissions of Shri Rakesh Kasturilal Bakshi, Director, M/s. D.K. Bio Pharma Private Limited and Shri Arun Balkrishna Khedwal, General Manager (Supply Chain), M/s. Fermenta Biotech

Limited filed the written submission dated 15.04.2024, their pointwise submissions are as under:-

8.2. It is settled preposition of law that, after redemption of advance authorization the Show Cause Notice for demand of custom duty is not sustainable.

8.2.1. Impugned Show Cause Notice is issued by the Customs involving the legal issue of Exim Policy which is regulated by Ministry of Commerce through DGFT. Hence, in absence of any communication from DGFT issuance of such Show Cause Notice is untenable in law as per the law laid down in case of J. S. Gupta & Sons.

8.2.2. Further it is submitted that in the present case admittedly the competent authority under DGFT has regularized the advance authorization and redeemed the same on payment of duty foregone amount along with interest vide Redemption cum Regularization Certificate dated 12.10.2023,

8.2.3. In these circumstances, the Show Cause Notice issued for same foregone duty is suffering from doctrine of double taxation and without jurisdiction qua Exim Policy.

8.2.4. It is further submitted that norms committee of DGFT has fixed the norms during their meeting held on 22.05.2022 therefore, the allegation of non-fixation of norms also ruled out.

8.2.5. Therefore, there is no alleged contravention of Notification No. 18/2015 and the provisions of FTP and HBP so as to held M/s. D. K. Biopharma Pvt. Ltd. liable for payment of duty.

8.2.6. Accordingly, the impugned Show Cause Notice demanding customs duty for alleged contravention is not sustainable. In support of this contention the reliance is placed on the following judgments:

Commissioner of Customs vs Jindal Drugs Ltd. (2023) 11 Centax 156 (P&H.)

Welspun Corp Ltd vs UOI -2018 (13) G.S.T.L. 302 (Bom)

Arjuna Natural Extracts Limited vs CC -2021 (378) E.L.T. 187 (Tri. Bangalore)

ALCA Technologies vs CC-2019 (369) E.L.T. 1447 (Tri. Mumbai)

Hetero Labs Limited VS Assistant Commissioner -2019 (370) E.L.T. 234 (Telengana)

8.3. It is settled preposition of law that when the raw material procured under Advance Authorization which is redeemed by DGFT, such imported goods are not liable for confiscation under Section 111 of the Customs Act more particularly under Section 111(d) and Section 111(0) of Customs Act.

8.3.1. In case of M/s. D. K. Biopharma Pvt. Ltd. admittedly the imported raw material under advance authorization is used in the manufacture of Cholesterol which is exported to SEZ unit.

8.3.2. Further, the DGFT has also confirmed the same by way of issuance of Redemption cum Regularization Letter dated 12.10.2023, w.r.t. impugned Advance Authorization.

8.3.3. The said advance authorization is redeemed and regulated by DGFT vide their Redemption letter dated 12.10.2023 (copy of the same is endorsed to Commissioner of Custom- Mundra SEZ Port). Under the circumstances, when the DGFT regularized and redeemed the Advance Authorization after satisfaction with the compliance of terms and conditions of Foreign Trade Policy and Exemption Notification No. 18/2015-Cus dated 01.04.2015.

8.3.4. Therefore, the allegations made in the impugned Show Cause Notice w.r.t. contravention of FTP and the terms and conditions of said Exemption Notification does not survive and thereby the allegation of Section 111(d) of Customs Act of the imports of the regulated item gets negated further, the allegation of imported goods exempted subject to condition which is not observed also gets negated.

8.3.5. It is submitted that the Section 111(d) and Section 111(o) of the Custom Act 1962, contemplates confiscation of goods in case of goods imported by non-observing the prohibitions imposed by or under this Act or by non-observing conditions sanctioned by proper officer. Whereas, in present case the raw materials were imported under valid Advance Authorization and were used in the manufacturer of finished product for export on realization of Foreign Exchange. Further, the procedural aspects w.r.t. compliance of Advance Authorization has been regularized by the competent authority i.e., DGFT vide Redemption cum Regularization Letter dated 12.10.2023.

8.3.6. In view of the aforesaid it is submitted that there is no contravention or non-observation as contemplated under Section 111(d) and Section 111(o) of Customs Act, 1962 and therefore, proposal for confiscation of raw material imported by utilizing impugned Advance Authorization is not sustainable in the light of following judgments:

- a) Hindustan Uniliver Ltd vs. CC 2012 (278) E.L.T 618 (Tri-Bom)
- b) Affirmed by Bombay High Court in Commissioner of Customs EP vs Hindustan Uniliver Ltd 2012 (285) E.L.T 500 (Bom)

8.4. It is settled preposition of law that no penalty is imposable under Section 112(a) and 112(b) of Custom Act, when goods are not liable for confiscation under Section 111 of Custom Act 1962.

8.4.1. In case of our client, it is alleged that he is responsible person for the import of Crude Fish Body Oil under impugned Advance Authorization by M/s. D. K. Biopharma Pvt. Ltd. Further, it is also alleged that M/s. D. K. Biopharma Pvt. Ltd. wrongly utilized the said Advance Authorization for importation of raw material and thereby said imported raw material is liable for confiscation.

8.4.2. In this regard, in the previously mentioned para it is submitted that the imported raw material is duly imported under valid Advance Authorization and has been used in the manufacture of export goods. The said fact has been endorsed by the DGFT by issuing the Redemption cum Regularization Letter dated 12.10.2023.

8.4.3. Thus, it is submitted that after the issuance of Redemption Letter, the terms and conditions w.r.t. impugned Advance Authorization stands fulfilled and thereby the importer gets himself exonerated from the conditions of bond.

8.4.4. Therefore, the imported raw materials are not liable for confiscation since, there was no violation of conditions of Advance Authorization and thereby no penalty can be imposed under Section 112 of custom Act, 1962.

8.4.5. In view of the aforesaid it is submitted that in the absence of fulfillment of the pre-condition of confiscation of imported raw material no penalty under Section 112 of Custom Act 1962, is imposable.

8.4.6. In support of the above contention, the reliance is placed on the following judgments:

- a) Jindal waterway Ltd V/s. CC Export- Nhava Sheva 2019 (370) E.L.T 1451 (Tri-Mum)
- a) Agarwal industries Corporation Ltd V/s. CC, Mangalore 2020 (373) E.L.T 280 (Tri-Bang)
- b) Baby Marine Sea Food retail Pvt Ltd V/s CC Cochin 2021 (377) E.L.T 872 (Tri-Bang)

8.5. In view of the aforesaid facts and legal submissions, the noticees pray to set aside the impugned Show Cause Notice and they also requested for opportunity of Personal Hearing before Adjudication of the impugned Show Cause Notice.

9. Further, M/s. D.K. Pharma, M/s. Fermenta Biotech Limited, Shri. Rakesh Kasturilal Bakshi and Shri Arun Balkrishna Khedwal filed additional submissions. Their submissions are produced hereunder.

9.01. M/s. D.K. Pharma vide letter dated 04.04.2024 filed additional submission. Their point wise submission are as under:-

- the Advance Authorization is redeemed, the demand of the Customs Duty is not sustainable as explained in detail in legal submissions at **Para 1 on Page 14** of the Reply to the Show Cause Notice.
- In support of the aforesaid contention the demand of the Customs Duty by invoking prematurely the provisions of Section 143 of the Customs Act, 1962 for non-fulfillment of the conditions in the Bond. The fact is the DGFT Authority has not issued any deficiency Memo or Show Cause Notice for non-fulfillment of Advance Authorization. After, satisfying the conditions and after the payment of the forgone duty to the tune of Rs. 3,53,69,171/- the Authorization is redeemed therefore there is no violation of the condition of Advance Authorization consequently no violation of the Bond. Hence, the provision of Section 143 of Customs Act is not applicable therefore the demand of Custom Duty to the tune of Rs. 2,02,08,932/- is not sustainable.

- In Support of this contention on the following judgements

C.C vs Jindal Drugs Ltd. (2023) 11 Centax 156 (P&H.)

Welspun Corp Ltd vs UOI -2018 (13) G.S.T.L. 302 (Bom)

Arjuna Natural Extracts Limited vs CC 2021 (378) E.L.T. 187 (Tri. - Bangalore)

ALCA Technologies vs CC- 2019 (369) E.L.T. 1447 (Tri. - Mumbai)

Hetero Labs Limited vs Assistant Commissioner-2019 (370)
E.L.T. 234 (Telengana)

Ramsays Corporation (P) Ltd. Vs. Cus. Chennai – IV 2022
(381) E.L.T. 372 (Mad.)

9.1.1. It is also a settled law that wherever the import is under the Advance Authorisation the DGFT Communication to the Custom Authority is must.

- In the impugned Show Cause Notice there is no averment about any communication from the DGFT w.r.t. any violation of the conditions of the Advance Authorization therefore the impugned Show Cause Notice is suffering from vice of jurisdiction.
- In support of this contention the reliance is placed on the following judgments:
 - a. J.S Gupta & Sons Vs C.C.Ex. Meerut
2005 (180) E.L.T. 486 (Tri. – Del.)
 - b. Affirmed by Allahabad High Court
C.C.Ex., Meerut Vs. J.S Gupta & Sons
2006 (201) E.L.T. 174 (All.)
 - c. A. V. Industries Vs. UOI
2005 (187) E.L.T. 9 (Bom.)
 - d. USMS Saffron Co. Inc. Vs. CC, (ACC & Export)
Mumbai
2016 (331) E.L.T. 155 (Tri. - Mumbai)
 - e. Aditya Birla Nuvo Ltd. Vs CC, Bangalore
2010 (249) E.L.T. 273 (Tri. – Bang.)
 - f. M Far Hotels Ltd. Vs. CC Cochin
2009 (241) E.L.T. 94 (Tri. – Bang.)

9.1.2. It is settled preposition of law that duty cannot be demanded twice on the same transaction.

- In case of our client, it is evident from the Redemption cum Regularization Certificate dated 12.10.2023 that the duty saved to the extent of Rs. 3,53,69,171/- having paid the said amount as calculated by the DGFT Authority, the impugned demand under the Show Cause Notice amounting to Rs. 2,02,08,932/- is untenable being twice the demand on the ground of Double taxation. The reliance is placed on the following judgments
 - a. Super Industries Vs. C.C.Ex., Vadodara
2014 (310) E.L.T. 779 (Tri. - Ahmd.)
 - b. Panchmukhi Processors Pvt. Ltd. Vs. CCE., Surat – I
2010 (258) E.L.T. 152 (Tri. - Ahmd.)
 - c. Affirmed by Gujarat High Court
CCE., Surat – I Vs. Panchmukhi Processors p. Ltd.

- 2013 (291) E.L.T. 187 (Guj.)
d. Adani Power Ltd. Vs. UOI
2020 (372) E.L.T. 60 (Guj.)

9.1.3. It is settled law that when there is no improper import then Section 111 of the Customs Act is not sustainable and Penalty is not imposable under Section 112 of the Customs Act.

- It is submitted that the import was done with the Advance Authorization vide the EPCG License fulfilling the conditions of the Bond and the department has issued a Redemption cum Regularisation Certificate dated 12.10.2023.
- It is submitted that there was no improper import of the Goods and hence Section 111 of the Customs Act is not applicable on my clients.
- When Section 111 – The Goods are not liable for confiscation then the Penalty under Section 112 is not applicable. The reliance is placed on following judgments:
 - a) Raja Imports and Exports Vs C.C, Bombay
2000 (119) E.L.T. 346 (Tribunal)
 - b) Jindal waterway Ltd V/s. CC Export- NS
2019 (370) E.L.T 1451 (Tri-Mum)
 - c) Agarwal industries Corporation Ltd V/s. CC,
Mangalore
2020 (373) E.L.T 280 (Tri-Bang)
 - d) Baby Marine Sea Food retail Pvt Ltd V/s CC Cochin
2021 (377) E.L.T 872 (Tri-Bang)

9.1.4. It is settled preposition of Law that the Penalty under Section 112 (a) and Section 112 (b) of the Customs Act is not imposable on a Firm/Company.

- The Essential ingredient of Section 112 of the Customs Act is applicable on a **Person** who has a juristic mind.
 - In case of my client it is a Private Limited company and hence the Penalty under section 112 of the Customs Act is not imposable on the Company.
 - Without prejudice of what is stated above, it is submitted that the provisions of the Section 112 clearly states that the Penalty is imposable on a person who has does or omits any act that render the Goods to be liable for confiscation. In case of my client, they have met the Export obligations and the DGFT has issued an Redemption cum Regularization Certificate dated 12.10.2023 and hence there is no mis-declaration or improper import of Goods.
- a. Steel Tubes of India Ltd. vs C.C.EX., Indore
2007 (217) E.L.T. 506 (Tri.- LB)
- b. Homang India Pvt. Ltd. vs Commr. of C.EX., S.T. &
CUS., Bangalore-II

- 2017 (357) E.L.T. 1194 (Tri.- Bang.)
c. Apple Sponge and Power Ltd. vs C. ST, Audit-I
2018 (362) E.L.T. 894 (Tri.- Mumbai)

9.2. M/s. Fermenta Biotech Ltd vide letter dated 04.04.2024 have also filed written submission. Their pointwise submissions are as under:-

- M/s. Fermenta Biotech Ltd having their registered office at A-1501, DIL Complex, Majiwada, Ghodbunder Road, Thane, Maharashtra-400610 which is registered with DGFT (Mumbai RA) as "manufacturer exporters" and obtained IEC No. 0388076381 on 01.04.1989 and is engaged in the manufacture of Vitamin D3 amongst other pharmaceutical products. M/s. Fermenta Biotech for manufacture of the final product has also taken raw materials from D.K. Bio Pharma Pvt. Ltd.
- M/s. Fermenta Biotech have also entered into a Mutual Confidentiality Agreement on 09.06.2017 with **M/s. D. K. Pharma Lab for manufacture of cholesterol out of imported fish body oil crude** with the condition that said cholesterol will be exclusively manufacture for supply to them.
- M/s. D.K. Bio Pharma had obtained Advance Authorisation vide 0310816992 dated 13.11.2017 by self-declaration as there were no SION Norms at that time but later on 27.05.2022 the NORMS Committee was pleased to ratify the same.
- The DGFT was pleased to issue the Redemption cum Regularization Certificate on 12.10.2023 on fulfilling the Export obligation.
- Therefore, it is submitted that, when there is no duty demand payable by the main noticee i.e. D.K. Bio – Pharma Pvt. Ltd. the penalty is also not imposable.

9.2.1. **It is settled preposition of law that, after redemption of advance authorization the Show Cause Notice for demand of custom duty is not sustainable.**

- Impugned Show Cause Notice is issued by the Customs involving the legal issue of Exim Policy which is regulated by Ministry of Commerce through DGFT. Hence, in absence of any communication from DGFT issuance of such Show Cause Notice is untenable in law as per the law laid down in case of J. S. Gupta & Sons.
- Further it is submitted that in the present case admittedly the competent authority under DGFT has regularized the advance authorisation and redeemed the same on payment of duty foregone amount along with interest vide Redemption cum Regularization Certificate dated 12.10.2023. **Copy of the same has been attached with the Reply of the Show Cause Notice.**

- Therefore, there is no alleged contravention of Notification No. 18/2015 and the provisions of FTP and HBP so as to held M/s. D. K. Biopharma Pvt. Ltd. liable for payment of duty and therefore the impugned Show Cause Notice demanding customs duty for alleged contravention is not sustainable. In support of this contention the reliance is placed on the following judgments:
- a) Commissioner of Customs vs Jindal Drugs Ltd.
(2023) 11 Centax 156 (P&H.)
 - b) Welspun Corp Ltd vs UOI
2018 (13) G.S.T.L. 302 (Bom)
 - c) Arjuna Natural Extracts Limited vs CC
2021 (378) E.L.T. 187 (Tri. - Bangalore)
 - d) ALCA Technologies vs CC
2019 (369) E.L.T. 1447 (Tri. - Mumbai)
 - e) Hetero Labs Limited vs Assistant Commissioner
2019 (370) E.L.T. 234 (Telengana)

9.2.2. It is settled preposition of law that when the Goods are not liable for confiscation under Section 111 of the Customs Act then the Penalty under Section 112 of the Customs Act is not imposable.

- As stated in the above Para the Redemption Cum Regularization Certificate of Advance Authorization was issued by the DGFT and hence the It is submitted that there is no contravention of the provision of the Section 111 of the Customs Act which made the Goods liable for Confiscation.
- When the Goods are not liable for confiscation then the Penalty under Section 112 for improper import is not sustainable.
- When there is no contravention or non-observation as contemplated under Section 111(d) and Section 111(o) of Customs Act, 1962 and therefore, proposal for confiscation of raw material imported by utilizing impugned Advance Authorisation is not sustainable in the light of following judgments:
- a. Jindal waterway Ltd V/s. CC Export- Nhava Sheva
2019 (370) E.L.T 1451 (Tri-Mum)
 - b. Agarwal industries Corporation Ltd V/s. CC, Mangalore
2020 (373) E.L.T 280 (Tri-Bang)
 - c. Baby Marine Sea Food retail Pvt Ltd V/s CC Cochin
2021 (377) E.L.T 872 (Tri-Bang)
 - d. Hindustan Uniliver Ltd vs. CC
2012 (278) E.L.T 618 (Tri-Bom)
 - e. Affirmed by Bombay High Court in Commissioner of Customs EP vs Hindustan Uniliver Ltd
2012 (285) E.L.T 500 (Bom)

9.2.3. It is settled preposition of law that no penalty is imposable under Section 112(a) and 112(b) of Custom Act on juristic person since the provisions of Section 112 (a) and Section 112 (b) contemplates acts of natural person having a mind.

- Without prejudice to what is stated above it is submitted that, the penalty under Section 112 (a) and 112 (b) are applicable and imposable only on a Juristic person and not on a Firm/Company.
- In case of my client, being the Limited company cannot be penalized under section 112 (a) and 112 (b) of the Customs Act, 1962.
- In view of this, as per the law laid down by the Larger Bench while interpreting the similar provision under Central Excise Rules under Rule 25 or earlier rule 125 has held that for the acts and omissions attributable to natural person cannot be invoked to penalize a juristic person as these acts deals with mind and juristic person does not have mind hence penalty under Section 112 (a) and Section 112 (b) is not imposable on juristic person.
- In support of this contentions, the reliance is placed on the following judgments:
 - a. Steel Tubes of India Ltd. vs Commissioner of C.EX., Indore 2007 (217) E.L.T. 506 (Tri.- LB)
 - b. Homang India Pvt. Ltd. vs Commr. of C.EX., S.T. & CUS., Bangalore-II 2017 (357) E.L.T. 1194 (Tri.- Bang.)
 - c. Apple Sponge and Power Ltd. vs Commissioner of Service Tax, Audit-I 2018 (362) E.L.T. 894 (Tri.- Mumbai)
- Without prejudice of what is stated above, it is submitted that the provisions of the Section 112 clearly states that the Penalty is imposable on a person who has does or omits any act that render the Goods to be liable for confiscation. In case of my client, it has been proved that the M/s. D. K. Biopharma Pvt. Ltd. have met the Export obligations and the DGFT has issued an Redemption cum Regularization Certificate dated 12.10.2023 and hence there is no acts of commission and omission.

9.3. Shri Rakesh Bakshi, Director of M/s. D.K. Biopharma Pvt. Ltd vide letter dated 04.04.2024 have also filed written submission. Their pointwise submissions are as under:-

- Shri Rakesh Bakshi is Director of D. K. Biopharma Private Limited and the impugned show cause notice has been issued to proposing to impose penalty under Section 112(a) and Section 112(b) of Customs Act, 1962 on the allegation that our client was responsible for decision making for alleged contravention of procedures and provision of Foreign Trade Policy, Handbook procedure and conditions of Notification no. 018/2015 by company and thereby failed to fulfill export obligation and terms of advance authorization in respect of duty free importation of FAT Detax FOC-27 Le. Fish Body Crude

Oil under Advance Authorization No. 0310816992-dated 13.11.2017 which was obtained through self-declaration basis

- The compliance period for fulfilment of export obligation was extended from time to time and during said extended period the company has fulfilled exported obligation. The details of import and export are in Para 7 of our Reply and the details of quantity of goods imported along with its value and duty saved by M/s D.K. Biopharma is in Para 8 of the Reply.
- The Fish Body Crude Oil being a new product had no SION norms fixed and thus M/s. D.K. Biopharma Pvt Ltd had applied for fixation of norms to the DGFT which initially were rejected but the company had approached Norms Committee to reconsider the issue for fixation of norms. This fact has been duly informed by our client in his statement dated 12.5.2022 in answer to question no. 21 and 22 which is relied in the impugned show cause notice (Please refer Sr. 10 of Annexure I of Show cause notice.)
- The norms committee has pleased to reconsider the issue and has fixed the norms with respect to the impugned authorisation during meeting dated 27.5.2022 held on 22.6.2022 (Copy Attached) The impugned show cause notice has been issued on 7.6.2023 is without re-verifying the norms fixation by committee after record of statement and merely alleging company has not taken any initiatives for fixation of norms.
- Based on the same company M/s. D.K. Biopharma Pvt. Ltd. applied for redemption of Advance Authorization and also paid Forgone Customs Duty along with interest and penalty totally amounting to Rs.3,53,69, 171/- For the excess quantity imported during 2017 to 2018. Directorate General of Foreign Trade is monitoring and adjudicating authority to decide whether any advance authorization holder has contravened the terms and conditions of advance authorization and therefore provisions of Foreign trade policy / Handbook Procedure or not. The said Authority has issued Redemption cum Regularization Certificate dated 12.10.2023 in terms of Handbook procedure para 4.49. (Please refer to Page 18 of the Reply). Thus, the company where our client is director i.e. M/s. D.K. Biopharma Pvt. Ltd. has complied with all the requisite conditions of advance authorization.

9.3.1. In view of these facts it gets established that Shri Rakesh Bakshi never intended to contravene any of the provisions as alleged in the impugned show cause notice. In the absence of contravention in view of fact of payment of duty along with interest and penalty goods are not liable for confiscation and consequently Penalty under Section 112(a) or 112(b) of Customs Act, 1962 is not imposable. In support of this contention reliance is placed on following judgments:

- a) Gayson & Company (P) Ltd. v/s CC, Kolkata 2019 (370) ELT 1026 (Tri.-Kolkata)
- b) Ved Prakash Wadhwani v/s CC, Ahmedabad 2009 (233) ELT 356 (Tri-Ahmd)
- c) O. T. Enasu v/s Union of India 2011 (272) ELT 51 (Kerala)

9.4. **Mr. Arun Balkrishna Khedwal**, General Manager (Supply Chain) of **M/s. Fermenta Biotech Ltd** vide letter dated 04.04.2024 have also filed written submission. Their pointwise submissions are as under:-

- **Mr. Arun Balkrishna Khedwal**, is working as a General Manager (Supply Chain) for **M/s. Fermenta Biotech Ltd**, which is registered with DGFT as "manufacturer exporters" and is engaged in the manufacture of Vitamin D3. For the sake of brevity **M/s. Fermenta Biotech Ltd** will be referred hereinafter as **Fermenta**.
- During the period, M/s. Fermenta engaged in the manufacture of Vitamin D3, for which cholesterol obtained from Crude Fish Body Oil which is one of the major raw materials.
- The said raw material is purchased by Fermenta from the supplier known as M/s. D. K. Biopharma Pvt. Ltd.
- M/s. D. K. Biopharma Pvt. Ltd. manufactured said cholesterol by using imported Fish Body Crude Oil from M/s. Golden Omega, Chile under Advance Authorization No. 0310816992 dated **13.11.2017**.
- M/s. D. K. Biopharma Pvt. Ltd supplied said manufactured Cholesterol to Fermenta (SEZ unit) situated at Dahej SEZ at Bharuch, Gujarat. **(The detail facts are explained in our reply to the Show Cause Notice dated 14.02.2024)**.
- It is submitted that said M/s. D. K. Biopharma obtained said Advance Authorization on self-declaration basis for importing Crude Fish Body Oil for manufacture of Cholesterol.
- Further, said M/s. D. K. Biopharma had applied for fixation of norms to the norms committee of DGFT which was ratified on 27.05.2022. The details of the advance authorization along with quantity, description of goods, etc. are mentioned in Para No. 7 of our reply.
- Accordingly, M/s. D. K. Biopharma has applied for redemption of the said license with DGFT which was redeemed by the competent Authority through Redemption cum Regularization Certificate dated 12.10.2023 and has paid the amount of duty foregone along with interest and has also informed to Custom Commissionerate of Mundra. The details of the amount paid by D. K. Biopharma of Rs. 3,53,69,171/- is explained in a tabular format in our reply in Para No. 12. The copy of said Redemption Certificate is annexed along with the Reply.
- Whereas, in the meantime the Customs Department issued impugned Show Cause Notice to our client asking as to why penalty should not be imposed under Section 112(a) and (b) of the Customs Act, 1962 for the acts, omission

and commissions for the goods which were covered under the 5 Bills of Entry under the cover of said Advance Authorization.

- In response to said Show Cause Notice we have filed our detailed reply vide letter dated 14.02.2024 which is already on record.
- In view of the aforesaid factual matrix, following are the legal submissions for kind consideration of this Hon'ble Authority:

LEGAL SUBMISSIONS

- **It is settled preposition of law that, once the advance authorization is redeemed the Show Cause Notice for demand of custom duty is not sustainable.**
 - It is submitted that the impugned Show Cause Notice is issued for alleged violation of advance authorization under which M/s. D. K. Biopharma imported the raw material used in the manufacture of Cholesterol. whereas said violations are subjected to the adjudication by competent authority under the DGFT and in the absence of adjudication of the same, issuance of impugned Show Cause Notice is pre-matured and not sustainable.
 - Whereas, the Competent Authority under DGFT has redeemed the impugned advance authorization on payment of duty foregone along with interest vide Redemption cum Regularization Certificate dated 12.10.2023.
 - Therefore, it is submitted that the M/s. D. K. Biopharma has complied with the conditions of said Advance Authorization and in the absence of any contravention thereof impugned Show Cause Notice proposing demand and consequentially penalty on our client is not sustainable.
 - It is worthwhile to note that the M/s. D. K. Biopharma got redeemed said license by making payment of duty forgone along with the interest thereon and hence the present Show Cause Notice proposing demand of duty tantamount to double taxation and hence not sustainable.
 - Therefore, it is submitted that when the duty demand is not sustainable for the alleged violations then in consequence no penalty is imposable on our client under Section 112(a) and (b) of the Customs Act, 1962.
 - In support of this contention the reliance is placed on the following judgments:
 - f) Commissioner of Customs vs Jindal Drugs Ltd.
(2023) 11 Centax 156 (P&H)
 - g) Welspun Corp Ltd vs UOI
2018 (13) G.S.T.L. 302 (Bom)
 - h) Arjuna Natural Extracts Limited vs CC
2021 (378) E.L.T. 187 (Tri. - Bangalore)
 - i) ALCA Technologies vs CC

2019 (369) E.L.T. 1447 (Tri. - Mumbai)

j) J. S. Gupta & Sons vs CCE, Meerut

2005 (180) E.L.T. 486

k) Hetero Labs Limited vs Assistant Commissioner

2019 (370) E.L.T. 234 (Telengana)

9.4.1. It is settled preposition of law that when the raw material procured under Advance Authorization is redeemed by DGFT itself, then such goods are not liable for confiscation under Section 111 of the Customs Act.

- o D. K. Biopharma imported the raw material under advance authorization which is used in manufacturing Cholesterol and is exported to Fermenta (SEZ unit) which was later redeemed by DGFT through their Redemption letter dated 12.10.2023.
- o The allegations made in the impugned Show Cause Notice for contravention of FTP and Exemption Notification does not survive and thereby the allegation of Section 111 of Customs Act stands negated.
- o It is submitted that the Section 111(d) and Section 111(o) of the Custom Act 1962, states about confiscation of goods in case of goods imported by non-observing the prohibitions imposed by or under this Act or by non-observing conditions sanctioned by proper officer.
- o Whereas, the competent authority under the DGFT has redeemed and regularized the said license and hence there are no contraventions on the part of D. K. Biopharma qua our client which renders the goods liable for confiscation.
- o Therefore, in the absence of confiscability of imported goods the proposal for imposition of penalty under Section 112(a) and (b) of the Customs Act, 1962 is not sustainable.
- o In view of the aforesaid the reliance is placed on the following judgments:

Hindustan Unilever Ltd vs. CC- 2012 (278) E.L.T 618 (Tri-Bom)

Affirmed by Bombay High Court in CC, EP vs HUL-2012 (285) E.L.T 500 (Bom)

9.4.2. It is settled preposition of law that no penalty should be imposable under Section 112(a) and 112(b) of Custom Act in the absence of mens-rea.

- It is alleged that our client is responsible person for the import of Crude Fish Body Oil under the Advance Authorization obtained by D. K. Biopharma.
- It is submitted that our client is not the employee of M/s. D. K. Biopharma and hence not responsible for the alleged act or omissions on the part of M/s. D. K. Biopharma.

- It is submitted that our client has acted in good faith and in bonafide as employee of M/s. Fermenta and there is no mens rea attributable to our client in the impugned import under advance authorization.
- It is submitted that our client has not acted or omitted to do something which rendered the impugned raw material imported under advance authorization for confiscation.
- It is submitted that the Competent Authority under the DGFT has only jurisdiction to decide the contravention of Advance Authorization and in the absence of dictum from the DGFT, the Customs Authority precluded from alleging violations of terms of conditions of Advance Authorization or the provisions of FTP.
- Whereas, the Competent Authority under DGFT has redeemed said Advance Authorization and hence there is no violation of terms and conditions of the Advance Authorization.
- In view of the aforesaid it is submitted that in the absence of essential ingredients for imposition of penalty under Section 112(a) and (b), no penalty is imposable on our client.
- In support of the above contention, the reliance is placed on the following judgments:
 - a) Jindal waterway Ltd V/s. CC Export- Nhava Sheva
2019 (370) E.L.T 1451 (Tri-Mum)
 - b) Agarwal industries Corporation Ltd V/s. CC, Mangalore
2020 (373) E.L.T 280 (Tri-Bang)
 - c) Baby Marine Sea Food retail Pvt Ltd V/s CC Cochin
2021 (377) E.L.T 872 (Tri-Bang)

PERSONAL HEARING

10. Following the principles of natural justice and the provisions laid down in Customs Act, 1962, opportunity of personal hearing in the case was given to the noticees on 04.04.2024.

10.1. Shri H.G. Dharmadhikari, Advocate appeared in the personal hearing on 04.04.2024 on behalf of Noticee No. 1(M/s. D.K. Biopharma Private Ltd.) and Noticee No. 2(M/s. Fermenta Biotech Limited). He reiterated the written submissions filed by him in respect of both noticees in the present case.

10.2. Ms. Lalita S. Phadke, Advocate appeared in the personal hearing on 04.04.2024 on behalf of Noticee No.3 (Shri Rakesh Kasturilal Bakshi). She reiterated the written submissions filed by her. She further stated that she has filed additional submission today and requested to consider submissions and replies.

10.3. Shri D.A. Bhalerao, Advocate appeared in the personal hearing on 04.04.2024 on behalf of Noticee No.4 (Shri Arun Balkrishna Khedwal). He reiterated the written

submissions filed by him. During the hearing Shri Arun Balkrishna Khedwal was also present.

DISCUSSION AND FINDINGS

11. I have carefully gone through the show Cause Notice; relied upon documents, legal provisions, submissions made by the Noticees and the records available before me. The main issues involved in the above cases which are required to be decided in the present adjudication are as below: -

- (i) Whether the goods i.e., 104090 kgs of imported FAT DETOX FOC-27 (fish body oil crude) valued at Rs. 4,20,76,942/- imported in the name of M/s. DK Pharma Lab by utilising the advance authorisation No. {0310816992} dated 13.11.2017 under 5 bills of entry are liable for confiscation under Section 111(d) and 111(o) of the Customs Act, 1962, for being imported under the exemption notification No. 18/2015-cus dated 01.04.2015, without observing various conditions laid down under the said notification as well as for contraventions of the provisions of the Foreign Trade Policy (2015-2020) read with the Hand Book of Procedures 2015-2020;
- (ii) Whether duty concession availed under 5 bills of entry as detailed in Annexure A to the show because notice is liable to be denied and total Customs duty of **Rs. 2,02,08,932/-** (Rupees Two crores Two lakhs eight thousand nine hundred and thirty two only), foregone/saved on the said imports are liable to be demanded and recovered along with applicable interest, in terms of conditions specified in the Notification No. 18/2015 -Cus dated 01.04.2015 and relevant paras of Foreign Trade Policy 2015-2020 and Hand Book of Procedures 2015-2020, the conditions specified in the advance authorisation license issued to them and in terms of the bond furnished by them read with Section 143(3) of the Customs Act, 1962;
- (iii) Whether the amount of Rs. 50,00,000/- (Rupees fifty lakhs only), voluntarily deposited by M/s. DK Bio Pharma Private Limited is liable to be appropriated against the liabilities at (ii) above and as to balance amount should not be recovered from them;
- (iv) Whether the Bond furnished against the consignments imported duty free under Advance Authorisations in terms of Notification No. 18/2015-Customs dated 01.04.2015 is liable to be enforced and the bank guarantee amounting to **Rs. 60,00,000/-** furnished by them should be adjusted and appropriated from the duty payable now and the proceeds thereof be credited to the government account by enforcing the Bank Guarantees executed by M/s. DK Pharma/DK Biopharma Private Limited in terms of Section 143(3) of Customs Act, 1962;
- (v) Whether penalty under Section 112(a) and 112(b) is liable to be imposed on M/s. D.K. Biopharma Private Ltd.
- (vi) Whether penalty under Section 112(a) and 112(b) is liable to be imposed on M/s. Fermenta Biotech Limited.

(vii) Whether penalty under Section 112(a) and 112(b) is liable to be imposed on Shri Rakesh Kasturilal Bakshi, Director, M/s. D.K. Bio Pharma Private Limited.

(ix) Whether penalty under Section 112(a) and 112(b) is liable to be imposed on Shri Arun Balkrishna Khedwal, General Manager (Supply Chain), M/s. Fermenta Biotech Limited.

12. I find that M/s. DK Pharma Lab and M/s. DK Biopharma Private Limited had imported "**DETOX FOC-27 FISH BODY OIL CRUDE (crude fish body oil)**" falling under Customs Tariff Heading 15042010, vide 12 bills of entry (5 bills of entry were filed by DK Pharma Lab and 7 bills of entry were filed by DK Biopharma Private Limited) without payment of duty of Customs under advance authorisation number 0310816992 dated 13.11.2017 and 0310826158 dated 04.01.2019 through Nhava Sheva Port and Mundra Port. The importers have availed benefit of exemption extended by notification No. 018/2015 dated 01.04.2015, as amended. On going through the case records, I further find that the importer has registered the advance authorisation number 0310816992 dated 13.11.2017 at Mundra port only and the same have has been utilized for import of goods under 05 Bills of entry, whereas, the Advance Authorisation No. 0310826158 dated 04.01.2019 was registered at Nhava Sheva Port. An intelligence gathered by the DRI indicated that the importer have not fulfilled the required export obligation and hence they have contravened the conditions of Customs notification and FTP subject to which import was allowed. Accordingly, an investigation was initiated by the DRI, Mangalore. The above investigation of DRI culminated in issuance of present show cause notice. The foremost issue before me to decide in this case whether the duty concession availed under Notification No. 18/2015-Cus dated 01.04.2015 on the goods imported under 5 bills of entry through Mundra Port is liable to be denied and the customs duty is required to be demanded under the provisions of Section 143(3) of the Customs Act, 1962.

12.1 I find that M/s D. K. Pharma Lab was a partnership firm, originally set up during the year, 2017 and Shri Rakesh Kasturi Lal Bakshi and his wife Mrs. Alka Rakesh Bakshi were two partners of firm. However, due to operational difficulties, the firm was closed and as per the Memorandum of Understanding its liabilities were taken over by M/s. D.K. Biopharma Private Ltd on 11.08.2018. At present, M/s. D.K. Pharma Lab does not exist and hence M/s. D.K. Biopharma Private Ltd is legally responsible in respect of actions of M/s. D.K. Pharma Lab.

12.2. During the course of investigation to collect the evidences/corroborative evidences statements of Shri Rakesh Kasturi Lal Bakshi, Director of M/s. D.K. Biopharma Private Limited was recorded under the provision of Section 108 of Customs Act, 1962. Shri Rakesh Kasturi Lal Bakshi repeatedly stressed that all the paper work, correspondence with the suppliers, DGFT in respect of import of crude fish body oil under advance authorisation were all managed and undertaken by M/s. Fermenta Biotech Limited and Shri Arun Balkrishna Khedwal, General Manager

(Supply Chain) of M/s. Fermenta Biotech Limited was handling all the correspondences with DGFT. Accordingly, statement of Shri Arun Balkrishna Khedwal of also recorded under the provisions of Section 108 of Customs Act, 1962. Shri Rakesh Kasturi Lal Bakshi in his statement tendered before the DRI has stated as under:-

- M/s. Fermenta Biotech Limited are the firm behind the import of crude fish oil and M/s. DK Pharma/ DK Bio pharma are processing the imported crude fish oil on behalf of M/s. Fermenta Biotech Ltd; that they had exclusive tie up with M/s. Fermenta Biotech Ltd for the manufacture of cholesterol and have no other buyers; that M/s. Fermenta Biotech Ltd. has initiated the process to import the fish body oil crude on their behalf including identifying the seller, negotiating the price, related paper work etc.; that once they confirm the same, DK Pharma used to make payment to the buyer; that in this connection, they have entered into a CDA (Mutual Confidential Agreement) with M/s. Fermenta Biotech Ltd.
- they were importers of crude fish body oil, all the paper work in this regard was undertaken by M/s. Fermenta Biotech Ltd on behalf of them and also cholesterol manufactured by them was sold to their unit situated at Dahej SEZ, Bharuch; hence, he is not aware of the procedures involved under advance authorisation; that Shri Arun Balakrishna Khedwal, working as General Manager (Supply Chain) with M/s. Fermenta Biotech Ltd was handling all the correspondences and he has requested Shri Arun to come here to answer the queries and Shri Arun has already arrived here; further, he requested that questions regarding the import of these goods under advance authorisation may please be put to him who will be in a better position to answer the same
- DGFT related work are all managed and undertaken by M/s. Fermenta Biotech Limited; that as far as M/s DK Pharma Lab, he knows that they could not fulfil export obligation due to low output and process optimization loss and he was told by representative of M/s Fermenta Biotech Ltd that they were doing correspondence with the DGFT authorities for taking time extension to fulfil the obligation; that they do not have any stock of imported goods under the said authorisation; that as far as M/s. D.K. Biopharma Private Limited is concerned, they have completed export obligation by way of exporting the resultant product Cholesterol to the SEZ unit of M/s. Fermenta Private Limited situated in Dahej SEZ at Baruch, Gujarat;
- that after discussion with the DRI officials, he understood the entire mechanism involved and he was also of the opinion that they are liable to pay the entire duty involved in the import of crude fish body oil; that he has already taken up the matter with the officials of M/s. Fermenta Biotech Ltd and undertake to pay the entire duty involved as per the applicable rates; that in this regard, as a matter of commitment, he will be depositing Rs. 1 crore (by way of two demand drafts of Rs. 50 lakhs each in respect of

two advance authorisation) tomorrow and balance amount with interest in a month's time.

12.3. Further, Shri Arun Balkrishna Khedwal, General Manager (Supply Chain) of M/s. Fermenta Biotech Limited during statement proceedings under Section 108 of Customs Act, 1962 has stated as under: -

➤ that at Fermenta, they require 'cholesterol' for their manufacturing unit at Bharuch, Gujarat; that for the said purpose, they have decided to import 'crude fish body oil' from Chile; that they came to know that 'crude fish body oil' is restricted and can be imported only under the license of DGFT; hence, they decided to import crude fish body oil under advance authorisation; that further, as they were not having manufacturing facility of cholesterol at their business premises, they approached M/s. D.K. Biopharma Private Limited, Plot no. 15,16 & 21/12 & 21/13, Morivali MIDC Ambarnath West, Maharashtra - 421501 and signed a contract with them for manufacture of cholesterol; that they have also requested M/s. D.K. Biopharma for import of crude fish body oil under advance authorisation, for which all the paperwork, correspondence with the DGFT and guidance was rendered by M/s. Fermenta Biotech; that accordingly, the following two advance licenses were obtained in the name of M/s. DK Pharma Lab and M/s. DK Biopharma private limited

12.4. From the above voluntarily statements of Shri Rakesh Kasturi Lal Bakshi, Director of M/s. D.K. Biopharma Private Limited and Shri Arun Balkrishna Khedwal, General Manager (Supply Chain), M/s. Fermenta Biotech Limited, it emerges that M/s. Fermenta Biotech Limited is the firm behind the import of crude fish oil. M/s. D.K. Pharma Lab had exclusive tie up with M/s. Fermenta Biotech Ltd for the manufacture of cholesterol. M/s. Fermenta Biotech Ltd. has initiated the process to import the fish body oil crude on behalf of M/s. D.K. Pharma Lab. M/s. D.K. Pharma Lab have entered into a CDA (Mutual Confidential Agreement) with M/s. Fermenta Biotech Ltd., in this regard.

12.5. I observe that the importers had applied to DGFT for obtaining advance authorisation under 'no- norms' basis, ie., on self-declaration basis as provided under para 4.07 of HBP. After obtaining the advance authorisation, the importers approached the norms committee for fixation of norms. However, norms committee vide its meeting dated 20.09.2019 (in respect of advance authorisation No. 0310826158) and 06.09.2019 (in respect of advance authorisation No. 0310816992) have rejected the said applications. Being aggrieved with the said order, the importers preferred representation before DGFT which was again rejected as per the minutes of meeting dated 24.09.2021. However, the importer in their submission have informed that M/s. D. K. Biopharma Pvt. Ltd had applied for fixation of norms to the norms committee of DGFT which was rejected initially but in the subsequent meeting held on 27.05.2022, Norms Committee was pleased to ratify the ad hoc

norms under para 4.07 of HBP/ Vol. 1. The relevant extract of said ad hoc norms is as under:

Export product	Quantity	Sr. No.	Import Items	Qty.
Cholesterol (Assay by GC not less than 91.0%)	1 Kg	1	Detox FOC 27 [fish body Kg. oil crude] (Non edible grade, FFA content not less than 20%)	4.00 Kgs

12.6. During the investigation, on analysis of GST Data, it also emerged that after the import, the goods used to be transferred to another entity M/s. DK Pharma Chem on job work basis and such transfer of goods for job work was in violation to Customs Notification 018/2015 – Cus dated 01.04.2015, Para 4.16 of the Foreign Trade Policy, para 4.35 of HBP / 4.10 of Handbook of Procedure, conditions prescribed in the advance authorisation.

12.7. For better understanding of Customs Notification No. 018/2015-cus dated 01.04.2015, relevant Conditions of Foreign Trade Policy- 2015-20 and Handbook of Procedures 2015-20, it will be relevant to take reference of such statutory provisions permitting import of the materials under Advance Authorization. The notification no. 018/2015-cus dated 01.04.2015, relevant Conditions of Foreign Trade Policy- 2015-20 and Handbook of Procedures 2015-20 are produced hereunder for sake of clarity.

12.7.1. The Notification No. 18/2015-Cus dtd.01.04.2015 reads as under: -

Notification No. 18/ 2015 – Customs

New Delhi, the 1 st April, 2015.

G.S.R. 254 (E).- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts materials imported into India against a valid Advance Authorisation issued by the Regional Authority in terms of paragraph 4.03 of the Foreign Trade Policy (hereinafter referred to as the said authorisation) from the whole of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and from the whole of the additional duty, safeguard duty, transitional product specific safeguard duty and anti-dumping duty leviable thereon, respectively, under sections 3, 8B, 8C and 9A of the said Customs Tariff Act, subject to the following conditions, namely :-

- (i) *that the said authorisation is produced before the proper officer of customs at the time of clearance for debit;*
- (ii) *that the said authorisation bears,-*
 - (a) *the name and address of the importer and the supporting manufacturer in cases where the authorisation has been issued to a merchant exporter; and*

- (b) the shipping bill number(s) and date(s) and description, quantity and value of exports of the resultant product in cases where import takes place after fulfillment of export obligation; or
- (c) the description and other specifications where applicable of the imported materials and the description, quantity and value of exports of the resultant product in cases where import takes place before fulfillment of export obligation;
- (iii) that the materials imported correspond to the description and other specifications where applicable mentioned in the authorisation and are in terms of para 4.12 of the Foreign Trade Policy and the value and quantity thereof are within the limits specified in the said authorisation;
- (iv) that in respect of imports made before the discharge of export obligation in full, the importer at the time of clearance of the imported materials executes a bond with such surety or security and in such form and for such sum as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself to pay on demand an amount equal to the duty leviable, but for the exemption contained herein, on the imported materials in respect of which the conditions specified in this notification are not complied with, together with interest at the rate of fifteen per cent per annum from the date of clearance of the said materials;
- (v) that in respect of imports made after the discharge of export obligation in full, if facility under rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) or sub-rule (2) of rule 19 of the Central Excise Rules, 2002 or of CENVAT Credit under CENVAT Credit Rules, 2004 has been availed, then the importer shall, at the time of clearance of the imported materials furnish a bond to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself, to use the imported materials in his factory or in the factory of his supporting manufacturer for the manufacture of dutiable goods and to submit a certificate, from the jurisdictional Central Excise officer or from a specified chartered accountant within six months from the date of clearance of the said materials, that the imported materials have been so used :

Provided that if the importer pays additional duty of customs leviable on the imported materials but for the exemption contained herein, then the imported materials may be cleared without furnishing a bond specified in this condition and the additional duty of customs so paid shall be eligible for availing CENVAT Credit under the CENVAT Credit Rules, 2004;

(vi) that in respect of imports made after the discharge of export obligation in full, and if facility under rule 18 (rebate of duty paid on materials used in the manufacture of resultant product) or sub-rule (2) of rule 19 of the Central Excise Rules, 2002 or of CENVAT credit under CENVAT Credit Rules, 2004 has not been availed and the importer furnishes proof to this effect to the satisfaction of the Deputy Commissioner of Customs or the Assistant Commissioner of Customs as the case may be, then the imported materials may be cleared without furnishing a bond specified in condition (v);

(vii) that the imports and exports are undertaken through the seaports, airports or through the inland container depots or through the land customs stations as mentioned in the Table 2 annexed to the Notification No. 16/2015-Customs, dated 1-4-2015 or a Special Economic Zone notified under section 4 of the Special Economic Zones Act, 2005 (28 of 2005) :

Provided that the Commissioner of Customs may, by special order or a public notice and subject to such conditions as may be specified by him, permit import and export through any other seaport, airport, inland container depot or through a land customs station within his jurisdiction;

(viii) that the export obligation as specified in the said authorisation (both in value and quantity terms) is discharged within the period specified in the said authorisation or within such extended period as may be granted by the Regional Authority by exporting resultant products, manufactured in India which are specified in the said authorisation :

Provided that an Advance Intermediate authorisation holder shall discharge export obligation by supplying the resultant products to exporter in terms of paragraph 4.05(c)(ii) of the Foreign Trade Policy;

(ix) that the importer produces evidence of discharge of export obligation to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, within a period of sixty days of the expiry of period allowed for fulfillment of export obligation, or within such extended period as the said Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, may allow;

(x) that the said authorisation shall not be transferred and the said materials shall not be transferred or sold :

Provided that the said materials may be transferred to a job worker for processing subject to complying with the conditions specified in the relevant Central Excise notifications permitting transfer of materials for job work :

Provided further that, no such transfer for purposes of job work shall be effected to the units located in areas eligible for area based exemptions from the levy of excise duty in terms of notification Nos. 32/1999-Central Excise, dated 8-7-1999; 33/1999-Central Excise, dated 8-7-1999; 39/2001-Central Excise, dated 31-7-2001; 56/2002-Central Excise, dated 14-11-2002; 57/2002-Central Excise, dated 14-11-2002; 49/2003-Central Excise, dated 10-6-2003; 50/2003-Central Excise, dated 10-6-2003; 56/2003-Central Excise, dated 25-6-2003; 71/03-Central Excise, dated 9-9-2003; 8/2004-Central Excise, dated 21-1-2004 and 20/2007-Central Excise, dated 25-4-2007;

.....
.....
.....

12.7.2. The above notification no. No. 18/2015 dated 01.04.2015 was amended vide Notification No. 26/2017-Cus., dated 29-6-2017 to the following extent:

In the said notification, in the opening paragraph,-

(i) for the words, figures and letters "from the whole of the additional duty, safeguard duty, transitional product specific safeguard duty and anti-dumping duty leviable thereon, respectively, under sections 3, 8B, 8C and 9A", the words, figures, letters and brackets "from the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3, safeguard duty leviable thereon under section 8B and anti-dumping duty leviable thereon under section 9A" shall be substituted;

12.7.3. Further, the Notification No. 18/2015 dated 01.05.2015 amended vide Notification no. 79/2017-Cus., dated 13-10-2017 to the following extent:

In the said notification, in the opening paragraph, -

(a) for the words, brackets, figures and letters "from the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of

section 3, safeguard duty leviable thereon under section 8B and anti-dumping duty leviable thereon under section 9A", the words, brackets, figures and letters "from the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3, **integrated tax leviable thereon under sub-section (7) of section 3, goods and services tax compensation cess leviable thereon under sub-section (9) of section 3**, safeguard duty leviable thereon under section 8B, countervailing duty leviable thereon under section 9 and anti-dumping duty leviable thereon under section 9A" shall be substituted;

(b) in condition (viii), after the proviso, the following proviso shall be inserted, namely :-

"Provided further that notwithstanding anything contained hereinabove for the said authorisations where the exemption from **integrated tax and the goods and services tax compensation cess leviable thereon under sub-section (7) and sub-section (9) of section 3 of the said Customs Tariff Act, has been availed, the export obligation shall be fulfilled by physical exports only";**

(c) after condition (xi), the following conditions shall be inserted, namely :-

"(xii) that the exemption from **integrated tax and the goods and services tax compensation cess leviable thereon under sub-section (7) and sub-section (9) of section 3 of the said Customs Tariff Act shall be subject to pre-import condition;**

(xiii) that the exemption from integrated tax and the goods and services tax compensation cess leviable thereon under sub-section (7) and sub-section (9) of section 3 of the said Customs Tariff Act shall be available up to the 31st March, 2018.

12.7.4. Further, the Notification No. 18/2015 dated 01.05.2015, further amended vide Notification no. 1/2019-Cus., dated 10-1-2019 to the following extent:

In the said notification,-

(a) after condition (vi), the following conditions shall be inserted, namely :-

"(vi)(a) that in respect of imports made after the discharge of export obligation in full, if facility of input tax credit under relevant Goods and Services Tax law on inputs used for manufacture and supply of goods exported has been availed, then the importer shall, at the time of clearance of the imported materials, furnish a bond to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself, to use the imported materials in his factory or in the factory of his supporting manufacturer for the manufacture and supply of taxable goods (other than nil rated or fully exempt supplies) and to submit a certificate from a chartered accountant within six months from the date of clearance of the said materials, that the imported materials have been so used;

Provided that if the importer pays integrated tax and the goods and services tax compensation cess leviable on the imported materials under sub-section (7) and sub-section (9) respectively of section 3 of the said Customs Tariff Act on the imported materials but for the exemption contained herein, then such imported materials may be cleared without furnishing a bond specified in this condition;

(vi)(b) that in respect of imports made after the discharge of export obligation in full, and if facility of input tax credit under relevant Goods and Services Tax law

has not been availed on inputs used in the manufacture and supply of goods exported and the importer furnishes proof to this effect to the satisfaction of the Deputy Commissioner of Customs, or the Assistant Commissioner of Customs, as the case may be, then the imported materials may be cleared without furnishing a bond specified in condition (vi)(a);”;

(b) in condition (viii), for the second proviso, the following proviso shall be substituted, namely:-

“Provided further that notwithstanding anything contained hereinabove for the said authorisations where the exemption from integrated tax and the goods and services tax compensation cess leviable thereon under sub-section [7] and sub-section [9] respectively of section 3 of the said Customs Tariff Act, has been availed, the export obligation shall be fulfilled by physical exports or by making domestic supplies mentioned at serial numbers 1, 2 and 3 of the Table contained in notification No.48/2017-Central Tax, dated the 18th October, 2017 [published vide number G.S.R. 1305(E), dated the 18th October, 2017];”;

(c) condition (xii) shall be omitted.

12.8. The relevant provisions of Foreign Trade Policy 2015-2020 stipulate as under: -

2.01 Exports and Imports- ‘Free’, unless regulated

(a) Exports and Imports shall be ‘Free’ except when regulated by way of ‘prohibition’, ‘restriction’ or ‘exclusive trading through STE..... The list of ‘prohibited’, ‘restricted’ items can be viewed by clicking on ‘Downloads’ at <http://dgft.gov.in>.

2.08 Export/Import of Restricted Goods/Services:

“Any goods/service, the export or import of which is ‘Restricted’ may be exported or imported only in accordance with an Authorisation /Permission or in accordance with the Procedures prescribed in a Notification /Public Notice issued in this regard”.

2.10 Actual User Condition

Goods which are importable freely without any ‘Restriction’ may be imported by any person. However, if such imports require an Authorisation, actual user alone may import such goods unless actual user condition is specifically dispensed with by DGFT.

4.03 Advance Authorisation

(a) Advance Authorisation is issued to allow duty free import of input, which is physically incorporated in export product (making normal allowance for wastage). In addition, fuel, oil, catalyst which is consumed/ utilized in the process of production of export product, may also be allowed.

(b) Advance Authorisation is issued for inputs in relation to resultant product, on the following basis:

(i) As per Standard Input Output Norms (SION) notified (available in Hand Book of Procedures);

OR

(ii) On the basis of self-declaration as per paragraph 4.07 of Handbook of Procedures.

OR

(iii) Applicant specific prior fixation of norm by the Norms Committee

OR

(v) On the basis of Self Ratification Scheme in terms of Para 4.07A of Foreign Trade Policy.

4.11 Ineligible categories of import on self-declaration basis

- (a) Import of following products shall not be permissible on self-declaration basis:
- (i) All vegetable /edible oils classified under Chapter 15 and all types of oil seeds classified under Chapter 12 of ITC (HS) book;

4.14 Details of Duties exempted:

Imports under Advance Authorisation are exempted from payment of Basic Customs Duty, Additional Customs Duty, Education Cess, Antidumping Duty, Countervailing Duty, Safeguard Duty, Transition Product Specific Safeguard Duty, wherever applicable.

4.16 Actual User Condition for Advance Authorisation

(i) Advance Authorisation and/ or material imported under Advance Authorisation shall be subject to 'Actual User' condition. The same shall not be transferable even after completion of export obligation. However, Authorisation holder will have option to dispose of product manufactured out of duty-free input once export obligation is completed.

4.22. Export Obligation Period and its Extension:

Period for fulfilment of export obligation and its extension under Advance Authorisation shall be as prescribed in Handbook of Procedures.

Definitions

9.22 "Export Obligation" means obligation to export product or products covered by Authorisation or permission in terms of quantity, value or both, as may be prescribed or specified by Regional or competent authority.

9.47 "Restricted" is a term indicating the import or export policy of an item, which can be imported into the country or exported outside, only after obtaining an Authorisation from the offices of DGFT.

12.8.1. The relevant paragraphs of Hand Book of Procedures 2015-20 are produced as under:-

2.18 Validity of Authorisation/License for import/export

(b) export obligation period of an Authorisation must be valid on the date of export.

2.50 Import of Restricted Items

"An application for grant of an Authorisation for import or export of items mentioned as 'Restricted' in ITC (HS) may be made to RA, with a copy to DGFT Hqrs in ANF 2M along with documents prescribed therein".

2.51 EXIM Facilitation Committee

"(a) Restricted item Authorisation may be granted by DGFT or any other RA authorised by him in this behalf. DGFT / RA may take assistance and advice of a

Facilitation Committee while granting authorisation. The Assistance of technical authorities may also be taken by seeking their comments in writing. Facilitation Committee will consist of representatives of Technical Authorities and Departments/ Ministries concerned”.

(b) “import authorisation for a restricted item, if so, directed by the competent authority, shall be issued for import through one of the sea ports.... all imports against the said authorisation shall be made only through that port, unless the authorisation holder obtains permission from customs authority concerned to import through any other specified port”.

4.04 Advance Authorisation

Advance Authorization Applicant shall file application online in ANF 4A. Same form is applicable where Standard Input Output Norms (SION) have been notified or on the basis of adhoc norms or on self-declaration basis as per paragraph 4.07 of Hand Book of Procedures.

4.06 Fixation of Norms

- (i) In case where norms have not been notified or where applicant wants to get the ad-hoc norms fixed before making an application for Advance Authorisation, application in ANF 4B, along with prescribed documents, shall be uploaded online to concerned Norms Committee (NC) in DGFT headquarters for fixation of SION/Adhoc norm.
- (ii) An applicant shall indicate a valid email address for communication purpose and to ensure that this email address is active.
- (iii) The decisions of Norms Committees shall be available on the website of DGFT (<http://dgft.gov.in>) periodically and the applicants shall update themselves the status of norms fixation in respect of Authorisation obtained by them.

4.07 Self-Declared Authorizations where SION does not exist

- (i) Regional Authority may also issue Advance Authorisation where there is no SION/ valid Ad hoc Norms for an export product or where SION/ Ad hoc norms have been notified/ published but exporter intends to use additional inputs in the manufacturing process, based on self-declaration by applicant. Wastage so claimed shall be subject to wastage norms as decided by Norms Committee. The applicant shall submit an undertaking to abide by decision of Norms Committee. The provisions in this regard are given in paragraph 4.03 and 4.11 of FTP.
- (ii) In case of revision / rejection, applicant shall pay duty and interest as notified by DoR within thirty days from the date of hosting of Norms Committee decision on DGFT website.

4.10 Advance Authorisation for applicants with multiple units

- (i) Transfer of any duty-free material imported or procured against Advance Authorisation from one unit of a company to another unit for manufacturing purpose shall be done with prior intimation to jurisdictional Customs Authority. Benefit of CENVAT shall not be claimed on such transferred input.

(v) Imported duty free inputs can be taken from the port / domestic supplier's premises to the factory or the premises of the authorization / co- authorisation holder or the factory of the supporting manufacturer (whose name is endorsed in the authorization or allowed by the Jurisdictional Customs authority).

4.15 Undertaking

Applicant shall give an undertaking that he shall abide by norms fixed by Norms Committee and accordingly take following actions without any demur:

(ii) In case application is rejected by Norms Committee, authorization holder shall pay duty saved amount along with interest on inputs, as applicable as notified by DoR.

4.17 Time Limit for Representation

Applicant may file representation against the decision of the Norms Committee with regard to the fixation of norms within a period of 90 days from the date of hosting of decision on DGFT website. Representation beyond 90 days shall be subject to payment of composition fee of Rs.5000/-.

4.35 Facility of Supporting Manufacturer/Jobber/co-licensee

(a) Imported material may be used in any unit of holder of Advance Authorisation subject to condition of paragraph 4.10 of this Handbook or jobber/ supporting manufacturer provided same is endorsed on authorisation by Regional Authority. If applicant desires to have name of any manufacturer or jobber added to authorisation, he may apply. Such endorsement shall be mandatory where prior import before export is a condition for availing Advance Authorisation scheme and authorisation holder desires to have material processed through any other manufacturer or jobber.

4.42 Export Obligation (EO) Period and its Extension:

(a) Period for fulfilment of export obligation under Advance Authorisation shall be 18 months from the date of issue of authorisation. Period of EO fulfilment under an Advance Authorisation shall commence from date of issue of Authorisation, unless otherwise specified.

(e) Regional Authority may consider a request of Advance Authorisation holder for one extension of EO period upto six months from the date of expiry of EO period subject to payment of composition fee of 0.5% of the shortfall in EO. Authorisation holder will have to submit a self-declaration to RA stating that unutilised imported/domestically procured inputs are available with the applicant.

(f) Request for further extension of six months after first extension can be considered by Regional Authority, provided Authorisation holder has fulfilled minimum 50% export obligation in quantity as well as in value, on pro-rata basis. This will be subject to payment of composition fee @ 0.5% per month on unfulfilled FOB value of export obligation. No further extension shall be allowed by Regional Authority. This provision shall also be applicable to Advance Authorisations issued during FTP 2009-2014. However, only two extensions of six months each as mentioned above can be allowed subject to

payment of composition fee and under no circumstance Regional Authority shall allow any extension beyond 12 months from the date of expiry of EO period. At the time of filing application for second EO extension, the Authorisation holder will have to submit a self-declaration to RA stating that unutilised imported/domestically procured inputs are available with the applicant.

4.51 Maintenance of Proper Accounts

Every Advance Authorisation holder shall maintain a true and proper account of consumption and utilisation of duty free imported / domestically procured goods against each authorisation as prescribed in Appendix 4H or 4I, as applicable.

12.9. On plain reading of notifications no. 18/2015-Cus dated 01.04.2015 as amended from time to time, it is understood that the exemption under Notification No. 18/2015-Cus dated 01.04.2015 is granted to the materials imported into India against a valid Advance Authorisation issued by the Regional Authority in terms of para 4.03 of the Foreign Trade Policy from the whole of the duty of Customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and from whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3, integrated tax leviable thereon under sub-section (7) of Section 3, goods and service tax compensation cess leviable thereon under sub-section (9) of Section 3, safeguard duty leviable thereon under Section 8B, countervailing duty leviable thereon under Section 9 and anti-dumping duty leviable thereon under Section 9A of the Customs Tariff Act, 1962 subject to the conditions laid down under the said notification. Further, Condition (viii) of the notification No. 018/2015-customs dated 01.04.2015, as amended, require an importer to discharge the export obligation as specified in the Authorisation both in terms of value and quantity within the specified period as specified in the Authorisation or within the extended period as may be granted by the Regional Authority of DGFT by exporting resultant products manufactured out of the duty-free materials imported. Condition (ix) of the Notification No. 018/2015 -customs dated 01.04.2015, required an importer to produce evidence of discharge of export obligation to the satisfaction of the Customs authority within a period of sixty days of the expiry of period allowed for fulfilment of export obligation.

12.10. I find that the advance authorisation no. 0310816992 was issued to the importer on 13.11.2017 and it was initially valid for 18 months i.e., up to 12.05.2019 therefore the importer was requiring to export entire quantity of good manufacture from imported material as specified in the advance authorisation on or before 12.05.2019. However, the importer did not fulfil the required export obligation within the initial time frame. Further, they choose to apply for extension of the period and the same granted to them by DGFT for the fulfilment of export obligation upto 12.11.2019. The importer again failed to export any goods against imported material under the said authorization within the such extended period. The importer further applied for second extension upto the period of 31.12.2020. The PRC

Committee Meeting No. 22/AM 21 dated 19.01.2021 & 02.02.2021 held that "the committee heard the submission made by the firm and discussed the matter at length and accordingly decided to accede to the request and allowed EOP extension of Advance Authorisation No. 0310816992 dated 13.11.2017 for a further period of 6 months from the date of endorsement subject to payment of composition fee @1% per month of the extension period granted, on the unfulfilled FOB value. The firm shall approach RA within 30 days from the date of uploading of the minutes of meeting". However, during the investigation, no documents evidencing that the importer have paid the composition fee and got the extension from DGFT were produced before the investigating agency .

12.11. I observe that M/s. D.K. Biopharma Pvt. Ltd. has failed to fulfil the export obligation against the imported exempted goods with regard to quantity and value as prescribed under mandatory condition of Advance Authorization within the specified time limit, thus they are liable to pay the entire duty foregone amount/duty saved amount in their import under advance authorisation No. 0310816992 dated 13.11.2017 in terms of Notification No. 18/2015-Cus dated 01.04.2015(as amended) read with the FTP 2015-20 and Hand Book of Procedures 2015-20 read with Section 143(3) of Customs Act, 1962. Therefore, I find that M/s. D.K Biopharma Pvt. Ltd. is liable to pay the duty amounting to **Rs. 2,02,08,932/-** along with interest in respect of goods imported under following five bills of entry at Mundra Port :-

Bill of entry no.	Bill of entry date	bond no.	lic no.	lic reg at	Bond executed at	Duty payable
3984568	13-11-2017	2001323664	310816992	inmun1	inmun1	3956516
4630396	30-12-2017	2001323664	310816992	inmun1	inmun1	3810264
7071685	04-07-2018	2001323664	310816992	inmun1	inmun1	4157773
8821412	12-11-2018	2001323664	310816992	inmun1	inmun1	4160797
7500806	04-08-2018	2001323664	310816992	inmun1	inmun1	4123583

12.12. I find that during the course of investigation Shri Rakesh Kasturi Lal Bakshi, Director of M/s. D.K. Biopharma Private Limited had undertaken to pay the entire duty involved as per the applicable rate and as a matter of commitment he deposited Rs. 1 crore (by way of two demand drafts of Rs. 50 lakhs each in respect of two advance authorisation). The said amount had been credited to the government account, adjusted towards their liability in respect of imports through Mundra and Nhava Sheva respectively, as detailed below:-

advance authorisation No.	Total value of the imported goods	Total duty forgone/ duty saved amount (in Rs.)	Total duty paid consequent on DRI investigation (in Rs.)	Balance duty payable
0310816992 dt 13.11.2017 registered at Mundra Port (inmun1)	42076942	20208932	5000000	15208932
0310826158 dt 04.01.2019 registered at Nhava Sheva port (innsa1)	58205928	28497622	5000000	23497622

Total	100282870	48706554	10000000	38706554
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The details of the duty paid by them as per the TR 6 challans received are as under:-

Sl. No.	Port of import	Demand draft no. and date	Amount paid (Rs.)		TR6 Challan No	Date of credit to the Bank
			Duty	Interest		
1	Mundra (inmun1)	Demand Draft bearing No. 010721 dated 05.05.2022 issued by DNS Bank, Thane, Mumbai	5000000	0	385	13.05.2022
2	Nav Sheva sea port (inns1)	Demand Draft No. 010646 dated 12.04.2022 issued by DNS Bank, Thane, Mumbai	5000000	0	HC-87, and HCM-1034	13.04.2022

12.12.1. Further, the importer in their written submission have informed that they have paid entire duty amount along with the interest and regularization cum redemption Certificate dated 12.10.2023 has been issued by the DGFT in respect of Advance Authorisation 0310816992 dt 13.11.2017. The payment details mentioned in the said Redemption certificate are as under:-

Sr. No.	Challan No.	Challan Date	Challan Value (In Rs.)
1	2044396172	13.06.2023	71,97,504.00
2	2044396170	13.06.2023	71,66,830.00
3	2044396164	13.06.2023	71,88,935.00
4	2044396167	13.06.2023	69,14,627.00
5	2044396158	13.06.2023	69,01,275.00
			3,53,69,171/-

12.12.2. The importer in their submission has also stated that in the present case admittedly the competent authority under DGFT has regularized the advance authorisation and redeemed the same on payment of duty foregone amount along with interest vide Redemption cum Regularization Certificate dated 12.10.2023. In these circumstances, the Show Cause Notice issued for same foregone duty is suffering from doctrine of double taxation and without jurisdiction qua Exim Policy. The importer has also placed reliance on plethora of case of laws in support of their submissions.

12.13. I have carefully examined the submissions of importer, I find that the Regularisation cum Redemption Certificated dated 12.10.2023 has been issued to the importer only when the importer paid the duty and interest vide above 05 Challans. The payment against the said Advance Authorisation clearly shows that the importer did not fulfil the required export obligation and hence they choose to pay the duty along with interest on applicable rate in respect of the goods imported by them availing the benefit of Advance Authorisation for redemption of the same. The Advance Authorisation Scheme is implemented by DGFT under the Foreign Trade Policy however demand of Customs Duty is governed by the Customs Act,

1962. I further find that the Redemption cum Regularization Certificate dated 12.10.2023 issued by the DGFT also provides that "**This EO Discharge/Redemption Certificate is issued without prejudice and will not preclude Custom Authority to take action against the licensee at any stage, in case any sort of mis declaraction, misrepresentation or misuse of the scheme is noticed**". The Hon'ble Supreme Court of India in case of M/s SHESHANK SEA FOODS PVT. LTD. V/s. UNION OF INDIA [1996 (88) E.L.T. 626 (S.C.)] has ruled that "That the licensing authority is empowered [to] conduct such an investigation does not by itself preclude the Customs authorities from doing so." The relevant paras of said judgment is produced hereunder: -

10. We do not find in the provisions of the Import and Export Policy or the Hand Book of Procedure issued by the Ministry of Commerce, Government of India, anything that even remotely suggests that the aforesaid power of the Customs authorities had been taken away or abridged or that an investigation into such alleged breach could be conducted only by the licensing authority. That the licensing authority is empowered [to] conduct such an investigation does not by itself preclude the Customs authorities from doing so.

12.13.1. It is a settled principle of laws that the beneficiary has to abide by any condition and have to fulfill all the conditions in cases where they are availing the tax exemption. In the present case, the importer did not fulfil the compulsory condition to export the goods against the import has made them liable to pay the duty along with interest and they have executed the bond under the provision of Section 143 of the Customs Act, 1962 for payment of duty in case of non-fulfillment of export obligation. I place my reliance on judgement of Hon'ble Apex Court in case of COMMISSIONER OF CUSTOMS, HYDERABAD V/s. PENNAR INDUSTRIES LTD.[2015 (322) E.L.T. 402 (S.C.)] wherein the Apex Court has held as under:-

12. It would mean that not only the raw material imported (in respect of which exemption from duty is sought) is to be utilised in the manner mentioned, namely, for manufacture of specified products by the importer/ assessee itself, this very material has to be utilised in discharge of export obligation. It, thus, becomes abundantly clear that as per this notification, in order to avail the exemption from import duty, it is necessary to make export of the product manufactured from that very raw material which is imported. This condition is admittedly not fulfilled by the assessee as there is no export of the goods from the raw material so utilised. Instead, export is of the product manufactured from other material, that too through third party. Therefore, in stricto senso, the mandate of the said Notification has not been fulfilled by the assessee.

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19. Since the conditions of the exemption notification are not fulfilled and the law requires strict compliance of the exemption notification, the assessee becomes liable to pay the import duty which was payable, but for the benefit of exemption Notification No. 30/1997, which was obtained by the assessee.

12.13.2. I further place my reliance on judgment of Hon'ble Apex Court in case of COMMISSIONER OF C. EX., NEW DELHI V/s. HARI CHAND SHRI GOPAL [2010 (260) E.L.T. 3 (S.C.)] wherein the Apex Court has held as under:-

22. The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the Statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption. In *Novopan Indian Ltd. (supra)*, this Court held that a person, invoking an exception or exemption provisions, to relieve him of tax liability must establish clearly that he is covered by the said provisions and, in case of doubt or ambiguity, the benefit of it must go to the State. A Constitution Bench of this Court in *Hansraj Gordhandas v. H.H. Dave - (1996) 2 SCR 253*, held that such a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, i.e., by the plain terms of the exemption.

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24. The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably expected of it, but failed or faulted in some minor or inconsequential aspects which cannot be described as the "essence" or the "substance" of the requirements. Like the concept of "reasonableness", the acceptance or otherwise of a plea of "substantial compliance" depends upon the facts and circumstances of each case and the purpose and object to be achieved and the context of the prerequisites which are essential to achieve the object and purpose of the rule or the regulation. Such a defence cannot be pleaded if a clear statutory prerequisite which effectuates the object and the purpose of the statute has not been met. Certainly, it means that the Court should determine whether the statute has been followed sufficiently so as to carry out the intent for which the statute was enacted and not a mirror image type of strict compliance. Substantial compliance means "actual compliance in respect to the substance essential to every reasonable objective of the statute" and the court should determine whether the statute has been followed sufficiently so as to carry out the intent of the statute and accomplish the reasonable objectives for which it was passed. Fiscal statute generally seeks to preserve the need to comply strictly with regulatory requirements that are important, especially when a party seeks the benefits of an exemption clause that are important. Substantial compliance of an enactment is insisted, where mandatory and directory requirements are lumped together, for in such a case, if mandatory requirements are complied with, it will be proper to say that the enactment has been substantially complied with notwithstanding the non-compliance of directory requirements. In cases where substantial compliance has been found, there has been actual compliance with the statute, albeit procedurally faulty. The doctrine of substantial compliance seeks to preserve the need to comply strictly with the conditions or requirements that are important to invoke a tax or duty exemption and to forgive non-compliance for either unimportant and tangential requirements or requirements that are so confusingly or incorrectly written that an earnest effort at compliance should be accepted. The test for determining the applicability of the substantial compliance doctrine has been the subject of a myriad of cases and quite often, the critical question to be examined is whether the requirements relate to the "substance" or "essence" of the statute, if so, strict adherence to those requirements is a precondition to give effect to that doctrine. On the other hand, if the requirements are procedural or directory in that they are not of the "essence" of the thing to be done but are given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not strict compliance. In other words, a mere attempted compliance may not be sufficient, but actual compliance of those factors which are considered as essential.

12.14. As regards the concern of importer regarding the double taxation, I find that the amount of Rs. 50,00,000/- paid during the investigation and Rs. 3,53,69,171/- paid by them vide 05 challans are liable to be appropriated against the duty and interest being demanded and this appropriation will not cast a burden of double taxation on the importer.

12.15. In view of above findings, I hold that the importer is liable to pay the duty along with interest on applicable rate for the goods imported under 05 bills of Entry. I, further, hold that the amount of duty during the investigation and after issuance of show cause notice for obtaining redemption certificate is liable to be appropriated against the demand and interest.

Confiscation of the goods under section 111 (d) and 111 (o) of the customs act, 1962:

13. The show cause notice has also proposed confiscation of 104090 kgs of imported FAT DETOX FOC-27 (fish body oil crude) valued at Rs. 4,20,76,942/- imported in the name of M/s. DK Pharma Lab by utilizing the advance authorisation No. {0310816992} dated 13.11.2017 under 5 bills of entry through Mundra under Section 111(d) and 111(o) of the Customs Act, 1962 for the reasons of non-observance of exemption notification No. 18/2015-cus dated 01.04.2015 as well as for contraventions of the provisions of the Foreign Trade Policy (2015-2020) read with the Hand Book of Procedures 2015-2020.

13.1. I find that Chapter XIV of Customs Act, 1962 deals with Confiscation of goods and conveyances and imposition of penalty. Section 111 of the Customs Act, 1962, defines the Confiscation of improperly imported goods. The relevant legal provisions of Section 111(d) and 111(o) of the Customs Act, 1962 are reproduced below: -

(d)any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

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

13.1 On plain reading of the above provisions of 111(d) of the Customs Act, 1962 it is clear that goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force.

13.1.1. Albeit the impugned goods were restricted under the policy condition however the same was imported under a valid Advance authorization No.

0310816992 dt 13.11.2017 and the authorization has been redeemed by the DGFT, a regulatory body of framing such policy condition, I find that after issuance of Redemption cum Regularization certificate by DGFT the proposal of confiscation of goods under the provisions of Section 111(d) no longer exists.

13.1.2. As far as confiscation of goods under Section 111(o) of the Customs Act, 1962, Section 111(o) of Customs Act, 1962 provides for confiscation of any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed.

13.1.2.1. During the investigation it has emerged that M/s. DK Biopharma Private Limited was transferring the 'crude fish body oil' to another entity by name M/s. DK Pharma Chem for job work. Shri Rakesh Bakshi and Shri Arun Khedwal in their respective statements have deposed that due to lack of facility and short capacity, they used to send the cargo to another entity M/s. DK Pharma Chem situated at F-32, Maharashtra Industrial Development Corporation, Badlapur, Maharashtra 421503, which is about 4 to 5 kms from this unit for the purpose of further manufacturing. They in principle agreed that such activity was clear violation of conditions prescribed.

13.1.2.2 I find that Para 4.16 of Foreign Trade Policy, Para 4.35 and 4.10 of Hand Book of Procedures, notification No. 018/2015, conditions sheet attached to their advance authorisation all very clearly states that the imported goods cannot be transferred to another unit even for job work unless it is mentioned in the relevant advance authorisation. Para 4.16 of Foreign Trade Policy restricts use of such duty-free imported goods and stipulates that such import will be subject to actual user condition. It further demands that even after fulfilment of the export obligations, such goods remaining cannot be transferred. Para 4.35 of the foreign trade policy stipulates that imported material may be used in any unit of holder of Advance Authorisation subject to condition of paragraph 4.10 of this Handbook or jobber/supporting manufacturer provided same is endorsed on authorisation by Regional Authority. If applicant desires to have name of any manufacturer or jobber added to authorisation, he may apply. Such endorsement **shall be mandatory** where prior import before export is a condition for availing Advance Authorisation scheme and authorisation holder desires to have material processed through any other manufacturer or jobber. Para 4.10 of the HBP clearly states that Transfer of any duty-free material imported or procured against Advance Authorisation from one unit of a company to another unit for manufacturing purpose shall be done with prior intimation to jurisdictional Customs Authority. In the case of the advance authorisation the importers have transferred the duty-free import goods to another manufacturing unit violating these conditions. Further, condition no. (x) of the Notfn. No. 018/2015, prohibits any transfer or sale of the goods imported by availing benefit of the said notification. Therefore, I, hold that impugned goods are liable for confiscation under the provisions of and Section 111(o) of Customs Act, 1962 for the reasons of non-adherence to such stipulated restrictions .

13.1.2.3. I find that the importer in their submissions have contended that in present case the raw materials were imported under valid Advance Authorization and were used in the manufacture of finished product for export on realization of Foreign Exchange. Further, the procedural aspects w.r.t. compliance of Advance Authorization has been regularized by the competent authority i.e., DGFT vide Redemption cum Regularization Letter dated 12.10.2023. They have also submitted that there is no contravention or non-observation as contemplated under Section 111(d) and Section 111(0) of Customs Act, 1962 and therefore, proposal for confiscation of raw material imported by utilizing impugned Advance Authorization is not sustainable in the light of following judgments:

- a) Hindustan Uniliver Ltd vs. CC
2012 (278) E.LT 618 (Tri-Bom)
- b) Affirmed by Bombay High Court in Commissioner of Customs EP vs Hindustan Uniliver Ltd
2012 (285) E.LT 500 (Bom)

13.1.2.4. I have gone through the above submissions of importer and the case laws relied by them. I find that the importer used to transfer the imported duty-free goods to another entity M/s. DK Pharma Chem on job work basis but the importer neither endorsed the name of the job work unit in their advance authorisation which is mandatory to avail duty free concession nor intimated to the jurisdiction customs authority regarding transfer of imported duty-free material.

13.1.2.5. I find that Hon'ble Apex Court in case of MOTIRAM TOLARAM Versus UNION OF INDIA [1999 (112) E.L.T. 749 (S.C.)] has held that **Onus on assessee to show that conditions if any which are imposed by the notification have been satisfied** the relevant para of the said order is as under: -

“9. When under the provisions of the Excise Act an assessee wants to claim benefit of an exemption notification, then the onus is on him to prove and show that the conditions, if any, which are imposed by the exemption notification have been satisfied. In the notification in question, the condition for getting the benefit of the lower rate of duty is that on the raw material used appropriate amount of duty has been paid here. If per chance or for any reason, the manufacturer of polyvinyl alcohol in India is unable to prove or show that the same has been manufactured from vinyl acetate monomer on which appropriate amount of duty of excise has been paid, then the said manufacturer would not be entitled to get the benefit of the said notification. That in fact the sole Indian manufacturer may have been able to prove in every case that appropriate duty-paid raw material has been used in the manufacture of polyvinyl alcohol, does not mean that the requirement of proving the same is dispensed with.

10. It is, no doubt, true that for the purpose of Section 3 of the Customs Tariff Act, one has to assume that the importer of polyvinyl alcohol had actually manufactured the same in India. One can further assume, possibly without any difficulty, that the said polyvinyl alcohol has been manufactured from vinyl acetate monomer, but it is not possible to assume or presume or imagine that the raw material used is the one on which appropriate amount of duty of excise has been paid in India. The condition which is contained in the

said Notification has to be fulfilled in order to get the benefit of the Notification. There is a limit to which one can extend the fiction. It is not possible to assume that on the polyvinyl alcohol which is imported it must be presumed that excise duty has been paid on the vinyl acetate monomer.

13.1.2.6. Further, I find that it is settled proposition of law that any exemption notification has to be strictly interpreted and it is obligation of the importer/beneficiary to satisfy the terms and conditions of the Exemption Notification. In this regard, I place reliance on following case laws: -

- The Hon'ble Supreme Court in the case of Commissioner of Customs(Import) Vs Dilip Kumar and Company, in the Civil Appeal No. 3327 of 2007 held that exemption notification should be interpreted strictly.
- The Hon'ble Supreme Court, in the case of Novopan India Ltd., Vs Collector of Central Excise and Customs, reported in 1994 (73) E.L.T. 769 (S.C.) held that "Exemption being in the nature of exception to be construed strictly at the stage of determination whether assessee falls within its terms or not and in case of doubt or ambiguity, benefit of it must go to the State".
- The Hon'ble Supreme Court, in the case of BOI India Ltd Vs State of Jharkhand, reported in 2009(237) ELT 7 (SC), held that "For purpose of claiming exemption from payment of tax/special rate of tax applicable to a commodity, assessee must bring on record sufficient materials to show that it comes within the purview of notification".
- The Hon'ble Supreme Court, in the case of Star Industries Vs Commissioner of Customs (Import) Raigad, reported in 2015 (324) E.L.T. 656 (S.C.), held that exemption notifications have to be construed strictly and if there is some doubt, benefit thereof shall not ensure to assessee but would be given to Revenue.
- The Hon'ble Supreme Court, in the case of M/s. Gammon India Ltd., Vs Commissioner of Customs, Mumbai reported in 2011(7) TMI 17-SC, held that since the language condition of the exemption notification is clear and unambiguous, there is no need to resort to the interpretative process in order to determine whether the said condition is to be imparted strict or liberal construction.
- Hon'ble Supreme Court in the case of Hotel Leela Venture Ltd. Vs. Commr. of Customs (General), Mumbai [2009(234) ELT-389(SC) held that the burden was on the appellant to prove that the appellant satisfies the terms and conditions of the Exemption Notification. It is well settled that Exemption Notification have to be read in the strict sense.
- Hon'ble Supreme Court in the case of Krishi Upaj Mandi Samiti v/s. CCE reported in 2022 (58) GSTL 129 (SC) held that law of the issue of interpretation of taxing statute has been laid down in catena of decisions that plain language capable of defined meaning used in a provision has to be preferred and strict interpretation has to be adopted except in cases of ambiguity in statutory provisions.

➤ Hon'ble Supreme Court in the case of Uttam Industries V/s. CCE reported in 2011 (265) ELT 14(SC) held that it is well settled law that exemption notification should be construed strictly and exemption notification is subject to strict interpretation by reading it literally.

13.2. In view of above judicial pronouncements, I find that there is no force in the contention of importer and these laws strengthen my views that the impugned goods liable for confiscation under Section 111(o) of Custom Act, 1962. I hold so.

13.3. As the impugned goods are found to be liable for confiscation under Section 111(o) of the Customs Act, 1962, I find that it necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation. The Section 125 ibid reads as under: -

"Section 125. Option to pay fine in lieu of confiscation.—(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods 1[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."

13.3.1. A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods, by paying redemption fine. I find that redemption fine can be imposed in those cases where goods are either physically available or the goods have been released against appropriate bond binding concerned party in respect of recovery of amount of redemption fine as may be determined in the adjudication proceedings. I place reliance on the judgment of Hon'ble Apex Court in the case of Weston Components Ltd. Vs. Commr. of Customs, New Delhi (2000 (115) E.L.T.278(S.C.) wherein the Hon'ble Apex Court has held as under:

"It is an admitted fact that the goods were released to the appellant on an application made by it and on the appellant executing a bond. Under these circumstances if subsequently it is found that the import was not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods, then the mere fact that the goods were released on the bond being executed, would not take away the power of the customs authorities to levy redemption fine".

13.3.2. M/s. DK Pharma have imported the goods under the scheme of Advance Authorization and the said goods have been cleared by proper officer against a Bond which was a statutory requirement under the conditions of Notification No. 18/2015-Cus dated 01.04.2015, therefore, I find that redemption fine under Section 125 of Customs Act, 1962 is liable to be imposed in lieu of confiscation on such goods. Further, it is also a fact that the DGFT has issued Redemption Cum Regularization certificate on 12.10.2022 against the said Advance Authorization

0310816992 dated 13.11.2017 and goods are held liable for confiscation under the provision of Section 111(o) of the Customs Act, 1962 only for violation of procedural conditions as laid down in Customs Notification, FTP and Hand Book of Procedures. I will take due cognizance of the same in deciding the quantum of fine and penalty to be imposed on them.

Imposition of Penalty on M/s. D.K. Biopharma Private Limited under Section 112(a) and/or 112(b) of Customs Act, 1962.

14. I find that section 112(a) stipulates the penalty for improper importation of goods on any person who in relation to 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 omissions of such an act.

14.1. I find that M/s DK Biopharma Private Limited have transferred substantial quantity of imported crude fish body oil to another entity namely, M/s. DK Pharma Chem, on job work basis in violation of conditions laid down in Para 4.10 and 4.35 of Hand book procedures, Customs notification No. 018/2015 –customs dated 01.04.2015 and conditions sheet attached to the advance authorisations issued to them. These act of M/s. DK Bio has rendered the goods liable for confiscation under the provisions of section 111(o) of Customs Act, 1962. I hold that for this commissions and omissions M/s DK Biopharma are liable for penalty under Section 112(a)(ii) of the Customs Act, 1962, in relation to the said goods.

14.2. As regards, imposition under Section 112(b) of Customs Act, 1962, it is applicable in the case where a person “*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*”. M/s. D.K. Biopharma Private Limited have been held liable for penalty under Section 112(a)(ii) of Customs Act, 1962, I find that the same person cannot be penalized two times for same offence, therefore, I refrain from imposing a penalty on them under Section 112(b) of customs Act, 1962. **I hold so.**

Imposition of Penalty on Shri Rakesh Kasturi Lal Bakshi, Director of M/s. D.K. Bio Pharma Private Limited, M/s. Fermenta Biotech Limited and Shri Arun Balkrishna Khedwal, General Manager (Supply Chain) of M/s. Fermenta Biotech Limited under Section 112(a) and/or 112(b) of Customs Act, 1962.

15. The show cause notice also proposes penalty on Shri Rakesh Kasturi Lal Bakshi, Director of M/s. D.K. Bio Pharma Private Limited, M/s. Fermenta Biotech Limited and Shri. Arun Balkrishna Khedwal, General Manager (Supply Chain) of M/s. Fermenta Biotech Limited under Section 112(a) and/or 112(b) of Customs Act, 1962. I find that the goods imported under the said authorization have been held liable for confiscation only for the reason of violations procedural conditions of Para 4.10 and 4.35 of Hand book procedures, Customs notification No. 018/2015 –customs dated 01.04.2015 and conditions sheet attached to the advance authorizations. M/s. D.K. Biopharma Private Limited who transferred the goods to other another entity M/s.

DK Pharma Chem have been held liable for penalty under the Section 112(a)(ii) of the Customs Act, 1962 and it is also a fact of the case that Authorisation No. 0310816992 dt 13.11.2017 has been regularized and redeemed by the DGFT, I do not find any substantial reason to impose penalty on other noticees.

16. In view of above discussion and findings, I pass the following order: -

ORDER

- (i) I order to confiscate the goods i.e., 104090 kgs of imported FAT DETOX FOC-27 (fish body oil crude) valued at Rs. 4,20,76,942/- imported in the name of M/s. DK Pharma Lab by utilising the advance authorisation No. {0310816992} dated 13.11.2017 under 5 bills of entry as detailed in **Annexure A** to show cause notice imported through Mundra Port under Section 111(o) of the Customs Act, 1962. However, I give M/s D.K. Biopharma Private Ltd. to redeem the impugned confiscated goods on payment of redemption fine of Rs.10,00,000/- (Rs. Ten Lakh Only) in lieu of confiscation under Section 125 of the Customs Act, 1962;
- (ii) I deny the duty exemption availed by M/s. D.K. Biopharma Private Ltd under Notification No. 18/2015 -Cus dated 01.04.2015 in respect of goods covered under 5 bills of entry as detailed in Annexure A to the Show Cause Notice by M/s. D.K. Biopharma and I confirm the demand of **Rs. 2,02,08,932/-** (Rupees Two crores Two lakhs Eight thousand Nine hundred and thirty two only) alongwith interest, in terms of conditions specified in the Notification No. 18/2015 -Cus dated 01.04.2015 and relevant paras of Foreign Trade Policy 2015-2020 and Hand Book of Procedures 2015-2020, the conditions specified in the advance authorisation license issued to them and in terms of the bond furnished by them read with Section 143(3) of the Customs Act, 1962;
- (iii) I order to appropriate the total amount of Rs. 4,03,69,171/- (Rs. 50,00,000/- deposited during the investigation vide Challan No. 385 dated 13.05.2022 and Rs. 3,53,69,171/- as detailed in para-12.12.1 above) paid by M/s. DK Bio Pharma Private Limited towards duty and interest confirmed at para-ii above;
- (iv) I refrain from enforcing the Bond furnished by M/s. DK Pharma/DK Biopharma Private Limited and encashment of the bank guarantee furnished by them;
- (v) I impose a penalty of Rs. 10,00,000/- (Rs. Ten Lakhs Only) on M/s. DK Biopharma Private Limited under the provisions of Section 112(a)(ii) of the Customs Act, 1962;
- (vi) I refrain from imposing any penalty on M/s. DK Biopharma Private Limited under the provisions of Section 112(b) of the Customs Act, 1962 for the reason as discussed above.
- (vii) I refrain from imposing penalty on Shri Rakesh Kasturi Lal Bakshi, Director, M/s. D.K. Bio Pharma Private Limited under the provisions of

Section 112(a) and 112(b) of the Customs Act, 1962 for the reasons as discussed above.

(viii) I refrain from imposing penalty on M/s. Fermenta Biotech Limited, A-1501, Thane one, DIL Complex, GHOD Bunder Road, Majiwada, Thane West, Maharashtra - 400610 under the provisions of Section 112(a) and 112(b) of the Customs Act, 1962 for the reasons as discussed above.

(ix) I refrain from imposing penalty on Shri Arun Balkrishna Khedwal, General Manager (Supply Chain) of M/s. Fermenta Biotech Limited under the provisions of Section 112(a) and 112(b) of the Customs Act, 1962 for the reasons as discussed above

This OIO is issued without prejudice to any other action that may be taken against the claimant under the provisions of the Customs Act, 1962 or rules made there under or under any other law for the time being in force.

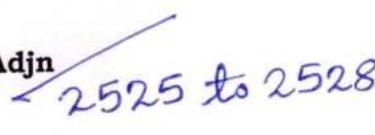
O/C


(K. Engineer)

Pr. Commissioner of Customs
Custom House, Mundra.

F.No. GEN/ADJ/COMM/86/2023-Adjn

DIN: 20240671MO00009479B0


Date: 20.06.2024

By RPAD/Hand Delivery/Email/Speed Post

To,

1. M/s. D.K. Biopharma Private Ltd.,
Plot No 15, 16 & 21/12 & 21/13,
Morivali, MIDC, Ambernath West,
Maharashtra - 421501.
(Email: info@dkbiopharma@com, accounts@dkbipharma.com)
2. M/s. Fermenta Biotech Limited,
A-1501, Thane one, DIL Complex,
GHOD Bunder Road, Majiwada,
Thane West, Maharashtra - 400610.
(Email:info@fermentabiotech.com)
3. Shri. Rakesh Kasturilal Bakshi,
Son of Late Shri. Kasturilal Deshraj Bakshi,
Director, M/s. D.K. Bio Pharma Private Limited,
Plot No.15, 16, 21/12 & 21/13 MIDC,
Morivali, Ambernath, Thane, Maharashtra - 421501
(Email: info@dkbiopharma@com, accounts@dkbipharma.com)

4. Shri Arun Balkrishna Khedwal,
Son of Balakrishna Khedwal,
General Manager (Supply Chain),
M/s. Fermenta Biotech Limited, A-1501,
Thane one, DIL Complex, GHOD Bunder Road,
Majiwada, Thane West, Maharashtra – 400610.
(Email:info@fermentabiotech.com)

Copy for information and further necessary action / information/ record to:

- a. The Chief Commissioner of Customs, CCO, Ahmedabad.
- b. The Additional Director, DRI, BZU: No. 8(P)2,1st Stage, 3rd Block, Opp. B.D.A. Complex, H.B.R. Layout, Kalyan Nagar Post, Bengaluru-560 043.
- c. The Dy. Director, DRI, Bharathi Bhavan, Bejai Church Road, Bejai, Manglore-575004
- d. The Deputy/Assistant Commissioner (Import Assessment Group, 2G, Legal/Prosecution), Customs House, Mundra
- e. The Deputy/Assistant Commissioner (Recovery/TRC), Customs House, Mundra.
- f. The Deputy/Assistant Commissioner (EDI), Customs House, Mundra.
- g. Notice Board.Guard File