	सीमा शुल्क के प्रधान आयुक्त का कार्यालय **सीमा शुल्क सदन, मुंद्रा, कच्छ, गुजरात** **OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS** **CUSTOMS HOUSE, MUNDRA, KUTCH, GUJARAT** **Email-adj-mundra@gov.in**	

A	**FILE NO.** फ़ाइल संख्या	GEN/ADJ/ADC/2685/2024-Adjn-O/o Pr. Commr- Cus-Mundra
B	**OIO NO.** आदेश संख्या	MCH/ADC/ZDC/185/2026-27
C	**PASSED BY** जारीकर्ता	**Dipak Zala,** Additional Commissioner of Customs/अपर आयुक्त सीमा शुल्क, Custom House, Mundra/कस्टम हाउस, मुंद्रा।
D	**DATE OF ORDER** आदेश की तारीख	11.06.2026
E	**DATE OF ISSUE** जारी करने की तिथि	11.06.2026
F	**SCN F. No. & Date** कारण बताओ नोटिस क्रमांक	VIII/48-1868/Gr-II/PCA/Skylife/2019-20 Dated 10.07.2020
G	**NOTICEE/ PARTY/ IMPORTER** नोटिसकर्ता/पार्टी/ आयातक	M/s Sky Lifecare Private Limited, A-4 Dev City RC Technical Road, Ghatlodia, Ahmedabad-380061

1. यह अपील आदेश संबन्धित को नि:शुल्क 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 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 के अंतर्गत प्रपत्र

सीए- 1- में 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 128 of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

" सीमा शुल्क आयुक्त (अपील),

चौथी मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा, अहमदाबाद-380 009"

"THE COMMISSIONER OF CUSTOMS (APPEALS),

Having his office at 4th Floor, HUDCO Building, Ishwar Bhuvan Road,

Navrangpura, Ahmedabad-380 009."

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए ।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by –

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं°-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए ।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ ड्यूटि/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये ।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम,1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए ।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and

other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Commissioner (A) 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 Sky Lifecare Private Limited, A-4 Dev City RC Technical Road, Ghatlodia, Ahmedabad-380061 (holder of IEC No.0815908008) (hereinafter also referred to as "the importer"/"Noticee") had presented three Bills of Entry No. 7203770 dated 13.07.2018, 7433651 dated 30.07.2018 and 9168559 dated 07.12.2018 (detailed in Annexure I to the Show Cause Notice) through their appointed Customs Broker M/s Pravin Bhatt & Sons, Gandhidham, at Custom House, Mundra for clearance of imported goods declared as "Nitrile Powder Free Glove" classifying the same under Tariff Item 40159099 of First Schedule of the Customs Tariff Act, 1975.

1.1 The subject three Bills of Entry were self-assessed by the importer as provided under Section 17(1) of the Customs Act, 1962 and paid IGST@ 12% under Sr.No. 85 of Schedule II of the Notification No.1/2017-Integrated Tax(Rate) dated 28.06.2017.

1.2 Under the impugned three Bills of Entry, the importer imported "Nitrile Powder Free Glove" classifying the same under Tariff Item 40159099 using Sr.No. 85 of Schedule II of the Notification No.1/2017-Integrated Tax(Rate) dated 28.06.2017 and paid IGST@ 12%. However, the said entry is applicable for "gloves is sterilized and meant for medical examination rubber gloves". The relevant entry in Notification No.1/2017-Integrated Tax(Rate) dated 28.06.2017 reads:

Sr. No.	**Chapter/ Heading/ Subheading/ Tariff item**	**Description of Goods**
85	4015	Surgical rubber gloves or medical

		examination rubber gloves

1.3 The subject goods covered in the three Bills of Entry are "Nitrile Powder Free Glove" and have not been claimed to be Surgical Rubber Gloves or Medical Examination Rubber Gloves. Therefore, it appeared that all gloves other than Surgical Rubber Gloves or Medical Examination Rubber Gloves are covered under Sr. No. 123 of Schedule-III of Notification No.1/2017-Integrated Tax(Rate) dated 28.06.2017. The said serial number reads:

Sr. No.	**Chapter/ Heading/ Subheading/ Tariff item**	**Description of Goods**
123	4015	Articles of apparel and clothing accessories (including gloves, mittens and mitts), for all purposes of vulcanised rubber other than hard rubber [other than surgical gloves]

1.4 Thus, it appeared that in the subject three Bills of Entry, the importer has wrongly self-assessed IGST duty @ 12% under Sr. No. 85 of Schedule II of Notification No.1/2017-Integrated Tax (Rate) dated 28.06.2017. Therefore, it appeared that in the impugned three Bills of Entry IGST was liable to be charged at the prevailing rate i.e. 18%. Further, it appeared that though the importer was aware that the imported goods i.e. 'Nitrile Powder Free Glove' attract IGST at the rate of 18% but the importer wrongly self-assessed said three Bills of Entry availing benefit under Sr.No.85 of Schedule II of the said Notification and paid IGST @ 12%. Thus, it appeared that the subject three Bills of Entry are liable to be reassessed charging IGST @ 18%, as discussed above, and the differential duty totally amounting to Rs. 6,88,164/- is liable to be demanded and recovered from them under Section 28(1) of the Customs Act, 1962 along with applicable interest at appropriate rate under Section 28AA of the Customs Act, 1962. Further, it appeared that the importer has contravened the provisions of Section 17(1) of the

Customs Act, 1962 and have rendered themselves liable to penalty under Section 117 of the Customs Act, 1962.

2. In view of the above, vide Show Cause Notice F.No. VIII/48-1868/Gr-II/PCA/Skylife/2019-20 dated 10.07.2020, the importer M/s Sky Lifecare Private Limited, A-4 Dev City RC Technical Road, Ghatlodia, Ahmedabad-380061 was called upon to show cause to the Additional Commissioner of Customs (Import), Custom House, Mundra having his office at PUB Building 5B, Adani Port, Mundra, as to why:

(i) the benefit of Sr. No. 85 of Schedule-ll of the Notification No.1/2017-Integrated Tax (Rate) dated 28.06.201750/2017-Cus dated 30.06.2017 i.e. IGST @ 12%, claimed and availed by them in the three Bills of Entries detailed in Annexure-I should not be denied and the said Bills of Entries be re-assessed charging IGST at the rate of 18% under Sr. No. 123 of Schedule III of the said Notification.

(ii) the differential IGST duty amounting to Rs. 6,88,164/-, not paid by the importer in the three Bills of Entry mentioned in Annexure-l should not be demanded and recovered from them under Section 28(1) of the Customs Act, 1962 along with interest at appropriate rate under Section 28AA ibid.

(iii) penalty should not be imposed on them under section 117 of the Customs Act, 1962.

3. Further, the said Show Cause Notice dated 10.07.2020 was adjudicated vide Order-in-Original No. MCH/ADC/AK/63/2020-21 dated 10.09.2020 by the then adjudicating authority, wherein the adjudicating authority, inter alia,

(i) rejected the importer's claim of benefit of Sr. No. 85 of Schedule-II of Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017 i.e. IGST @ 12% in respect of the three Bills of Entry and ordered re-assessment of the said Bills of Entry charging IGST @ 18% under Sr. No. 123 of Schedule-III of the said Notification;

(ii) confirmed and ordered recovery of the differential IGST amounting to Rs. 6,88,164/- (Rupees Six Lakh Eighty Eight Thousand One Hundred and Sixty Four only) from the importer under Section 28(1) of the Customs Act, 1962;

(iii) ordered recovery of interest on the confirmed duty under Section 28AA of the Customs Act, 1962; and

(iv) imposed a penalty of Rs. 50,000/- (Rupees Fifty Thousand only) on the importer under Section 117 of the Customs Act, 1962.

3.1 Being aggrieved by the aforesaid Order-in-Original No. MCH/ADC/AK/63/2020-21 dated 10.09.2020, the importer M/s Sky Lifecare Private Limited filed an appeal before the Commissioner of Customs (Appeals), Ahmedabad. The Commissioner of Customs (Appeals), Ahmedabad, vide Order-in-Appeal No. MUN-CUSTM-000-APP-284-21-22 dated 02.02.2022, rejected the appeal filed by the appellant and upheld the Order-in-Original. The Commissioner (Appeals) agreed with the finding of the adjudicating authority that the entry at Sr. No. 85 of Schedule-II of Notification No. 1/2017-Integrated Tax (Rate) specifically covers "surgical rubber gloves or medical examination rubber gloves" whereas the gloves imported by the appellant had been declared as "Nitrile Powder Free Glove" and had not been claimed or declared to be surgical rubber gloves or medical examination rubber gloves. The Commissioner (Appeals) further held that all gloves other than surgical rubber gloves or medical examination rubber gloves are covered under Sr. No. 123 of Schedule-III attracting IGST @ 18%, and that the penalty imposed under Section 117 of the Customs Act, 1962 was also justified as the importer had self-assessed the IGST wrongfully in contravention of Section 17(1) of the Customs Act, 1962.

3.2 Being aggrieved by the aforesaid Order-in-Appeal No. MUN-CUSTM-000-APP-284-21-22 dated 02.02.2022, the importer M/s Sky Lifecare Private Limited filed an appeal before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Ahmedabad, being Customs Appeal No. C/10243/2022. The Hon'ble CESTAT, Ahmedabad, vide Final Order No. 11588/2024 dated 15.07.2024, set aside the impugned Order-in-Appeal and remanded the matter to the original adjudicating authority for fresh adjudication. The Hon'ble Tribunal, while observing that the appellant had not produced any concrete evidence before the lower authorities to establish that the goods imported were indeed surgical gloves or gloves for medical use, noted that the appellant had submitted certain literature and documents before the Tribunal which had not been placed before the lower authorities. Accordingly, the Hon'ble Tribunal held that it was constrained to send the matter back to the original adjudicating authority for fresh adjudication after examining the literature submitted by the appellant before the Tribunal or any other documents that the appellant may submit for examination. In compliance

with the said remand order of the Hon'ble CESTAT, Ahmedabad, the present proceedings are being taken up for fresh adjudication.

WRITTEN SUBMISSION

4. The Noticee, M/s Sky Lifecare Private Limited, vide their letter dated 04.03.2025 and 10.07.2025, filed their written submissions in compliance with the remand order of the Hon'ble CESTAT, Ahmedabad, wherein they have, inter alia, contended as under:

4.1 The Noticee submitted that they had imported "Nitrile Powder Free Glove" of various sizes classifying the same under CTH 40159099 of the Customs Tariff and cleared the goods after payment of Customs duty and IGST @ 12% vide Bill of Entry Nos. 7203770 dated 13.07.2018, 7433651 dated 30.07.2018 and 9168559 dated 07.12.2018.

4.2 The Noticee submitted that the use of sub-classification "40159099" in the said Bills of Entry was a *bona-fide* mistake on their part at the time of self-assessment. They contended that the goods imported by them are undisputedly "Gloves" and therefore fall under the sub-heading "Gloves, Mittens and Mitts" under Heading 4015, which is further divided into two sub-classifications viz. "Surgical" (40151100) and "Other" (40151900). Therefore, the correct sub-classification ought to have been either 40151100 (Surgical) or 40151900 (Other), and the use of 40159099 (a three-dash "other" residuary entry) was a bona-fide error on their part, as the goods clearly fall under the double-dash sub-heading of "Gloves, Mittens and Mitts" and not under the residuary "Other" category.

4.3 The Noticee contended that their bona-fide intention that the imported gloves are Surgical or Medical Examination Rubber Gloves is very much evident from the Bills of Entry themselves, inasmuch as they had claimed IGST at 12% as provided under Sr. No. 85 of Schedule-II of Notification No. 1/2017-Integrated Tax (Rate), which entry is specifically meant for "Surgical or Medical Examination Gloves." The Noticee submitted that they had claimed 12% IGST in the Bills of Entry because it was their bona-fide belief that the gloves imported by them are for sales in the domestic market to various Hospitals, Doctors and Pharmacists, as they were regularly doing.

4.4 The Noticee contended that the Nitrile Gloves imported by them are meant for Medical Examination and accordingly they have correctly paid IGST @ 12%

under Sr. No. 85 of Schedule-II of Notification No. 1/2017-Integrated Tax Rate. They submitted that gloves are of different varieties with regard to their usage and material viz. Latex Rubber, Nitrile Rubber, woolen fabrics, cotton fabrics, PVC coated fabrics and even leather. However, gloves manufactured out of Latex Rubber and Nitrile Rubber have specific use in surgical and medical examination, whereas gloves manufactured with other materials are ordinarily used by people depending upon season such as winter, monsoon etc. for household use. They submitted that the demarcation between Sr. No. 85 and Sr. No. 123 of Notification No. 1/2017-Integrated Tax Rate is on account of the usage of the gloves.

4.5 The Noticee further submitted that Sr. No. 123 of Notification No. 1/2017-Integrated Tax Rate is not applicable to their case. They contended that the classification under Sr. No. 123 is applicable to gloves that are ordinary articles of apparel and clothing accessories mainly used by public at large like woolen mittens, cotton gloves, mitts etc. — gloves used for general household or industrial purposes such as safety rubber gloves for industrial purposes, silicone gloves for cleaning kitchen utensils, poly gloves used by restaurants, nylon safety hand gloves used in factory or household work. Since the gloves imported by them are Nitrile Gloves having specific application in surgical or medical examination, Sr. No. 123 is not applicable to their case.

4.6 In support of the claim that the Nitrile gloves are used in Surgical and Medical Examination, the Noticee relied upon the literature/brochure of their supplier M/s Biomax Rubber Industries SdnBhd (www.biomaxcorporation.com), wherein the product has been described as "Nitrile Examination Gloves" which provides an alternative for latex-sensitive users, with exceptional durability, strength and barrier protection. They also submitted photographs of Nitrile Rubber Gloves vis-à-vis other varieties of gloves to visually demonstrate the distinction between the two categories. Further, the Noticee submitted a usage table of rubber gloves across various sectors including Hospitals, Dental Clinics, Private Healthcare, Nursing Homes, Social Services, Research and Scientific Laboratories etc., to demonstrate that Nitrile gloves have usage in the surgical and medical examination sector. They also submitted that they had been importing the same category of gloves from M/s Biomax Rubber Industries SdnBhd and clearing them at 12% IGST, and at no point of time had any objection been raised at the time of clearance.

4.7 The Noticee submitted that the Noticee has been supplying the said gloves in the domestic market to Doctors, Hospitals, Pharmacists and vendors, and in support thereof enclosed specimen copies of sales invoices, vendor certificates and Drugs License copy, thereby evidencing that their Nitrile Powder Free Gloves are used for medical purposes only.

4.8 On the question of end use and the common parlance test for classification, the Noticee submitted that the words "Surgical" and "Medical Examination" are not defined in any of the statutes viz. CGST/SGST Act, IGST Act, Customs Act or the First Schedule to the Customs Tariff Act, 1975. Therefore, the classification of gloves under Sr. No. 85 of Schedule-II of Notification No. 1/2017-Integrated Tax (Rate) has to be governed according to the common parlance test. The Noticee contended that as per the common parlance test, when anyone asks for Surgical or Medical Examination Gloves, the supplier would supply Nitrile Gloves. The Noticee relied upon the following decisions in support of the common parlance test:

(i) Commissioner of Central Excise vs. Shree Baidyanath Ayurved Bhawan Ltd. reported at 2009 (237) E.L.T. 225 (S.C.)

(ii) Hamdard (WAKF) Laboratories vs. Commissioner of Commercial Tax reported at 2019 (20) G.S.T.L. 46 (All.)

(iii) Dabur India Ltd. vs. Commissioner of CGST, Ghaziabad reported at 2020 (34) G.S.T.L. 9 (All.)

4.9 The Noticee further relied upon the decision in the case of Commissioner of Customs, Cochin vs. Midland Latex Products Ltd. reported at 2001 (129) E.L.T. 344 (Tri. - Bang.), wherein the Hon'ble Tribunal held that in the absence of any evidence on record that gloves cannot be used in medical examination, goods eligible for concessional rate of duty under Notification No. 5/98-C.E. dated 02.06.1998, Sl. No. 80, Revenue appeal was rejected. The Noticee submitted that similarly, in their case, the department failed to produce any evidence to the effect that the gloves imported by them are not used in Surgical or Medical Examination, while neither the adjudicating authority nor the Commissioner (Appeals) put forth any evidence to the contrary, despite the Noticee having submitted invoices and certificates from hospitals and doctors.

4.10 The Noticee further contended that assuming without admitting that the gloves imported by them have multipurpose use with medical application, they

would be classifiable as a medical appliance, relying upon the decision in the case of Prosoya Industries Ltd. vs. Collector of Customs, New Delhi reported at 1995 (78) E.L.T. 344 (Tribunal), wherein it has been held that a multipurpose product having medical application is classifiable as a medical appliance under sub-heading No. 9018.90 of the Customs Tariff Act, 1975.

4.11 As regards the demand of differential IGST of Rs. 6,88,164/- and interest thereon, the Noticee submitted that since they have rightly claimed IGST @ 12% as per Sr. No. 85 of Schedule-II of Notification No. 1/2017-Integrated Tax (Rate), they have not violated the provisions of Section 17 of the Customs Act, 1962, and accordingly no differential IGST amount is payable by them.

4.12 As regards the penalty of Rs. 50,000/- imposed under Section 117 of the Customs Act, 1962, the Noticee submitted that since they have not violated any provisions of the Customs Act, 1962 including Section 17, they are not liable to any penalty under Section 117 of the Customs Act, 1962.

4.13 The Noticee further submitted that they had submitted all documents at the time of filing of the Bills of Entry, that they had been importing and clearing these goods at 12% IGST since long, that no objection was ever raised at the time of clearance or subsequent thereto, that the issue was raised post-clearance after a lapse of almost two years, and that there is no suppression of any material facts on their part. They accordingly submitted that the demand of differential IGST is not sustainable in the absence of any suppression of material facts.

4.14 In view of the foregoing, the Noticee prayed that the rate of 12% IGST paid on import of goods vide the subject Bills of Entry be held to have been rightly claimed and that no differential amount of IGST is payable by them.

PERSONAL HEARING

5. Shri Rushabh N. Patel (Director) of M/s. Sky Life Care Private Limited and Shri Natwar Bhai Patel, representative of M/s. Sky Life Care Private Limited, appeared for personal hearing, in person, on 04.03.2025, wherein they submitted their written submission dated 04.03.2025 and sought adjournment in the present case and requested to grant another date for PH to submit the further relevant/supporting documents.

5.1 Further, on next personal hearing on 11.07.2025 and 03.06.2026 , Sh. Rushabh Natwarbhai, Director of M/s Sky life Care Private Limited, appeared, in person, wherein he re-iterated their written submission dated 10.07.2025 attached therewith their pictorial product catalogue and a excel sheet covering the Bills of Entry mentioned in the said SCN. The said list has been certified by their Chartered Accountant (CA) which indicates that the goods under question were sold to their customers @ 12% IGST. Further, he humbly requested to drop the proceedings initiated under the said SCN and no fine, & penalty be imposed upon them and demand of differential duty be dropped on the basis of their written submission.

DISCUSSION AND FINDINGS

6. I have carefully gone through the Show Cause Notice F.No. VIII/48-1868/Gr-II/PCA/Skylife/2019-20 dated 10.07.2020, the Order-in-Original No. MCH/ADC/AK/63/2020-21 dated 10.09.2020, the Order-in-Appeal No. MUN-CUSTM-000-APP-284-21-22 dated 02.02.2022, the Final Order No. 11588/2024 dated 15.07.2024 of the Hon'ble CESTAT, Ahmedabad, the written submissions dated 10.07.2025 filed by the Noticee in pursuance of the personal hearings granted on 04.03.2025, 11.07.2025 and 03.06.2026, the literature and documents submitted by the Noticee before the Hon'ble Tribunal and before this authority, and the available records of the case. I find that the following main issues are involved in the subject matter, which are required to be decided in compliance with the directions of the Hon'ble CESTAT, Ahmedabad:

(i) Whether the benefit of Sr. No. 85 of Schedule-II of the Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017 i.e. IGST @ 12%, claimed and availed by the importer in the three Bills of Entry detailed in Annexure-I of the SCN is liable to be denied and the said Bills of Entry be re-assessed charging IGST @ 18% under Sr. No. 123 of Schedule-III of the said Notification.

(ii) Whether the differential IGST duty amounting to Rs. 6,88,164/- not paid by the importer in the three Bills of Entry mentioned in Annexure-I is required to be demanded and recovered from the importer under Section 28(1) of the Customs Act, 1962 along with interest at appropriate rate under Section 28AA ibid.

(iii) Whether the importer is liable for penalty under Section 117 of the Customs Act, 1962.

6.1 Before proceeding to examine the above issues on merits, I note that the present proceedings arise in pursuance of the remand order of the Hon'ble

CESTAT, Ahmedabad vide Final Order No. 11588/2024 dated 15.07.2024. The Hon'ble Tribunal, while setting aside the Order-in-Appeal, had observed that the appellants had not produced any concrete evidence before the lower authorities to establish that the goods imported by them are indeed surgical gloves or gloves for medical use, and that the literature and documents submitted by the appellant before the Tribunal had not been placed before the lower authorities. The Hon'ble Tribunal accordingly remanded the matter to the original adjudicating authority for fresh adjudication after examining the literature submitted by the appellant before the Tribunal or any other documents that the appellant may submit. In compliance with the said remand, personal hearings were granted to the Noticee on 04.03.2025, 11.07.2025 and 03.06.2026, and the Noticee has filed their written submissions dated 10.07.2025 along with supporting documents including literature/brochure of their supplier M/s Biomax Rubber Industries SdnBhd, photographs of Nitrile Rubber Gloves, specimen sales invoices, vendor certificates and Drugs License copy. I have carefully examined all the said documents and submissions now placed before me by the Noticee in compliance with the CESTAT remand, and my findings thereon are set out in the following paragraphs.

6.2 I find that the importer M/s Sky Lifecare Private Limited had filed three Bills of Entry No. 7203770 dated 13.07.2018, 7433651 dated 30.07.2018 and 9168559 dated 07.12.2018 for clearance of imported goods declared as "Nitrile Powder Free Glove" classifying the same under Tariff Item 40159099 of the First Schedule to the Customs Tariff Act, 1975, and self-assessed IGST @ 12% under Sr. No. 85 of Schedule-II of Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017. The two contesting entries under the said Notification, as relevant to the present dispute, are reproduced hereunder for ready reference:

Sr. No.	**Chapter/ Heading/ Subheading/ Tariff item**	**Schedule**	**Description of Goods**	**Rate of IGST**
85	4015	II	Surgical rubber gloves or medical examination rubber gloves	12%

Sr. No.	Chapter/ Heading/ Subheading/ Tariff item	Schedule	Description of Goods	Rate of IGST
Sr. No.	**Chapter/ Heading/ Subheading/ Tariff item**	**Schedule**	**Description of Goods**	**Rate of IGST**
123	4015	III	Articles of apparel and clothing accessories (including gloves, mittens and mitts), for all purposes of vulcanised rubber other than hard rubber [other than surgical gloves]	18%

6.3 I find that the entry at Sr. No. 85 of Schedule-II specifically covers goods of the description "surgical rubber gloves or medical examination rubber gloves" at the concessional IGST rate of 12%. In contrast, Sr. No. 123 of Schedule-III covers the residuary category of all other rubber gloves, i.e. "articles of apparel and clothing accessories (including gloves, mittens and mitts), for all purposes of vulcanised rubber other than hard rubber [other than surgical gloves]" at the standard rate of 18%. It is thus evident that the demarcation between the two entries is based squarely on the nature and end use of the gloves — Sr. No. 85 is a specific entry restricted only to surgical rubber gloves and medical examination rubber gloves, while Sr. No. 123 is the residuary entry covering all other rubber gloves. The critical question to be decided, therefore, is whether the subject goods — "Nitrile Powder Free Gloves" — qualify as "surgical rubber gloves or medical examination rubber gloves" within the meaning of Sr. No. 85 of Schedule-II. I find, for the detailed reasons set out hereinafter, that they do not.

6.4 I find that the goods covered in the three Bills of Entry have been declared by the importer themselves as "Nitrile Powder Free Glove." At no point in the Bills of Entry have the goods been declared or claimed to be "Surgical Rubber Gloves" or "Medical Examination Rubber Gloves." The description "Nitrile Powder Free Glove" is a generic commercial description referring to the material of composition (Nitrile rubber) and a physical characteristic (powder free), and does not by itself establish the nature of the goods as surgical or medical examination gloves. I find that the

mere fact that a glove is manufactured from Nitrile rubber does not ipso facto make it a surgical glove or a medical examination glove. Nitrile rubber gloves are manufactured and used for a wide variety of purposes including industrial use, automobile industry, food handling, laboratory use and household purposes, in addition to medical use. The Noticee's own claim that gloves manufactured from Nitrile rubber are exclusively used for surgical and medical examination purposes is factually incorrect and is not borne out by any credible or conclusive evidence on record.

6.5 I have carefully examined all the documents and literature submitted by the Noticee in their post-remand submissions dated 10.07.2025. The Noticee has submitted the brochure/literature of their supplier M/s Biomax Rubber Industries SdnBhd, which describes the product as "Nitrile Examination Gloves" and states that the gloves are *"suitable for use in the medical examinations and procedures, laboratory practices and automobile industry."* I find that this very description in the supplier's own brochure is self-defeating for the Noticee's case, inasmuch as it explicitly mentions "automobile industry" as one of the end uses of the said Nitrile gloves. This clearly establishes that the subject goods are multi-purpose gloves having applications beyond surgical or medical examination use. A product that has admitted application in the automobile industry cannot, by any stretch of logic or common parlance, be exclusively categorized as a surgical rubber glove or a medical examination rubber glove for the purpose of availing the concessional rate of IGST @ 12% under Sr. No. 85 of Schedule-II. The benefit of a concessional notification entry must be construed strictly and cannot be extended to goods that do not squarely fall within the specific description of that entry.

6.6 I further find a material inconsistency in the documents and literature submitted by the Noticee in support of their claim. The Noticee, as discussed in above para, has placed reliance upon the brochure and product literature of **M/s. Biomax Rubber Industries SdnBhd** (website: www.biomaxcorporation.com) to contend that the goods imported by them are "Nitrile Examination Gloves" intended for medical examination purposes. However, I find that the Bills of Lading, the commercial invoice and the Certificates of Origin in respect of all three Bills of Entry — documents that are the foundational commercial and legal documents governing the said imports — unanimously establish that the actual exporter and supplier of the subject goods is **M/s. ACE GLOVE (M) SDN BHD**, No. 32A, 36, Jalan BIE 1/15, Kota Malim Prima, 35900 Tanjong Malim, Perak, Malaysia.

Specifically, BL No. SHLPK18000467 dated 30.06.2018, BL No. SHLPK18000468 dated 13.07.2018 and BL No. 0458A40984 dated 25.11.2018 all name M/s. ACE GLOVE (M) SDN BHD as the shipper; the commercial invoice No. INV000161 dated 09.11.2018, INV000110 dated 11.07.2018 and INV000103 dated 27.06.2018 with respect to all 3 subject import consignment, were issued by M/s. ACE GLOVE (M) SDN BHD; and all three COO certificates are issued in the name of M/s. ACE GLOVE (M) SDN BHD as the exporter. M/s. Biomax Rubber Industries SdnBhd is an entirely different and unconnected entity, and there is no document on record — not the invoice, not the BL, not the packing list, not the COO — that establishes any connection whatsoever between the subject imported goods and M/s. Biomax Rubber Industries SdnBhd. The product literature of M/s. Biomax Rubber Industries SdnBhd, therefore, cannot be held to describe or characterize the goods supplied by M/s. ACE GLOVE (M) SDN BHD, which is the actual manufacturer/exporter. Even if the Biomax brochure described its own products as "Nitrile Examination Gloves," it does not and cannot establish that the goods of M/s. ACE GLOVE (M) SDN BHD imported vide the three Bills of Entry are surgical rubber gloves or medical examination rubber gloves. This reliance on literature of a completely unconnected company to establish the nature of goods imported from a different manufacturer is wholly misplaced and cannot be accepted as credible or reliable evidence for the purpose of determining the classification of the subject goods. I accordingly hold that the brochure of M/s. Biomax Rubber Industries SdnBhd has no probative value in establishing the nature and character of the goods imported from M/s. ACE GLOVE (M) SDN BHD under the three Bills of Entry in question, and this piece of evidence submitted by the Noticee is accordingly disregarded.

6.7 I have also examined the specimen sales invoices, vendor certificates and Drugs License copy submitted by the Noticee to demonstrate that the gloves were sold to Doctors, Hospitals and Pharmacists. I find that merely showing that some sales were made to hospitals and doctors does not conclusively establish that the imported goods are surgical rubber gloves or medical examination rubber gloves as specified in Sr. No. 85. Nitrile gloves being sold to hospitals, doctors or pharmacists may be used for a variety of purposes in those establishments and does not necessarily mean that the gloves are specifically surgical gloves or medical examination gloves. Further, I note that the sales invoices and certificates submitted by the Noticee pertain to domestic sales made after import, and do not constitute evidence of the fundamental nature and character of the imported goods

themselves at the time of importation. It is the nature and character of the goods at the time of importation that determines the applicable classification and rate of duty, not the subsequent use to which the goods may be put by select buyers. I further note that the Noticee has not submitted any test report, technical specification certificate, regulatory approval or any other documentary evidence from a competent authority establishing that the subject goods conform to the standards prescribed for surgical rubber gloves or medical examination rubber gloves as per any applicable Indian or international standard such as BIS, ISO or any equivalent specification. In the absence of such credible technical evidence, the claim of the Noticee that the goods are surgical or medical examination rubber gloves cannot be accepted.

6.8 I have examined the Noticee's contention regarding the Tariff classification under the First Schedule to the Customs Tariff Act, 1975. The Noticee has contended that the use of Tariff Item 40159099 in the Bills of Entry was a bona-fide mistake and that the correct sub-classification ought to have been either 40151100 (Surgical) or 40151900 (Other). I find that this submission, rather than helping the Noticee's case, in fact exposes the very weakness of their position. I find that if the Noticee themselves admit that the correct sub-classification could either be 40151100 (Surgical) or 40151900 (Other), this admission reflects that the Noticee was not certain at the time of importation whether the goods are surgical gloves (40151100) or other gloves (40151900). Such uncertainty is wholly inconsistent with the Noticee's claim that the goods are admittedly and exclusively surgical rubber gloves or medical examination rubber gloves entitled to the concessional IGST rate of 12% under Sr. No. 85 of Schedule-II. Furthermore, I find that the plea of bona-fide mistake in sub-classification is an afterthought raised in the post-remand proceedings to overcome the adverse findings of the earlier authorities, and cannot be accepted as a valid ground for extending the benefit of a specific concessional entry.

6.9 I find a crucial piece of evidence emerging from the documents uploaded by the Noticee itself on the e-Sanchit portal at the time of filing of the three Bills of Entry — the Certificates of Origin (COO) issued under the ASEAN-India Free Trade Area Preferential Tariff (Form AI) by the Ministry of International Trade and Industry, Malaysia. The COO bearing Reference No. KL-2018-AI-21-008592 dated 06.07.2018 pertaining to BE No. 7203770, the COO bearing Reference No. KL-2018-AI-21-009225 dated 18.07.2018 pertaining to BE No. 7433651, and the COO bearing Reference No. KL-2018-AI-21-015249 dated 29.11.2018 pertaining to BE

No. 9168559, have all been issued by the certifying authority in Malaysia in respect of the subject goods "Nitrile Powder Free Glove." I find that in all three COO certificates, the HS Code declared in Column 7 — which captures the HS number of the importing country (India) as well as the exporting country (Malaysia) — is consistently stated as **4015 19 00 19**, which corresponds to **CTH 40151900**, i.e., "Gloves, Mittens and Mitts — Other" under Heading 4015 of the Customs Tariff Act, 1975. It is significant to note that CTH **40151100** covers "Surgical" gloves, while CTH **40151900** covers all "Other" gloves that are not surgical in nature. The exporter/supplier M/s. ACE GLOVE (M) SDN BHD, being the manufacturer of the goods in Malaysia, has themselves declared the goods under the HS Code for "Other" gloves (non-surgical) — not under the HS Code for "Surgical" gloves (40151100) — in the officially issued COO certificates. This declaration in the COO, made by the exporter before the Malaysian certifying authority, represents the exporter's own understanding and classification of the nature of the goods being exported. The fact that even the exporting country's classification places the goods squarely under the "Other" gloves category (not surgical gloves) is a strong and independent indicator — sourced from the Noticee's own documents — that the subject goods are not "surgical rubber gloves or medical examination rubber gloves" within the meaning of Sr. No. 85 of Schedule-II of Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017. The Noticee cannot, on the one hand, rely upon the description in the COO certificates to claim preferential tariff treatment under the ASEAN-India FTA, and on the other hand, ignore the HS Code classification declared in those very same COO certificates when it militates against their claim. I accordingly find that the HS Code declared in the COO certificates further fortifies the Revenue's position that the subject goods are correctly classifiable under Sr. No. 123 of Schedule-III of the said Notification, attracting IGST @ 18%, and not under Sr. No. 85 of Schedule-II.

6.10 I have examined the contention of the Noticee that the terms "Surgical" and "Medical Examination" are not defined in any statute and therefore the classification has to be governed by the common parlance test. I find that while it is correct that these terms are not statutorily defined, the application of the common parlance test cannot lead to the result that any and all Nitrile rubber gloves are to be treated as surgical or medical examination rubber gloves. The common parlance test requires that the goods be understood in the sense in which they are known in the market and trade, and it is common knowledge that Nitrile rubber gloves are widely traded and used for multiple purposes — including industrial, laboratory,

food handling, automobile and household purposes — and not exclusively for surgical or medical examination. The Noticee's own submitted literature, as noted in para 6.5 above, admits as much. The benefit of the concessional entry at Sr. No. 85 of Schedule-II is specifically restricted to goods that are known in common trade parlance as surgical rubber gloves or medical examination rubber gloves, and is not available to all Nitrile rubber gloves merely because they can, in some instances, be used for medical purposes.

6.11 I have examined the decision of the Hon'ble Tribunal in Commissioner of Customs, Cochin vs. Midland Latex Products Ltd. [2001 (129) E.L.T. 344 (Tri. - Bang.)] relied upon by the Noticee. I find that the said decision is clearly distinguishable from the facts of the present case. In that case, the notification in question — Notification No. 5/98-C.E. dated 02.06.1998 — did not contain any express condition restricting the benefit to goods used for medical purposes only, and the Tribunal had held that in the absence of any evidence that gloves cannot be used in medical examination, the benefit could not be denied. In the present case, however, the entry at Sr. No. 85 of Schedule-II specifically and expressly describes the goods as "surgical rubber gloves or medical examination rubber gloves." The benefit under this entry is therefore available only to goods that are specifically surgical rubber gloves or medical examination rubber gloves, and not to all rubber gloves that may incidentally be used for medical purposes. The burden of establishing that the goods fall squarely within the specific description of a concessional entry lies on the importer, and in the present case the Noticee has failed to discharge this burden by adducing cogent and conclusive evidence. The ratio of the Midland Latex decision is therefore not applicable to the facts of the present case.

6.12 I find that the Noticee in their written defence submission have quoted and have placed reliance on various case laws/judgements in support of their contention on some issues raised in the SCN. In this regard, I am of the view that the conclusions arrived may be true in those cases, but the same cannot be extended to other case(s) without looking to the hard realities and specific facts of each case. However, I have gone through the case laws quoted by the notice in their submissions. I find that case law in case of (i) Commr of C.Ex. Nagpur Vs Shree Baidyanath Ayurved Bhawan Ltd. [2009(237) E.L.T..225(S.C.) is related to classification of " Dant Manjan Lal" (DML) in which the manufacturer Shree Baidyanath Ayurved Bhawan Ltd. Contended that the product DML is a medicament under Chapter heading 3003.21 of Central Excise Tariff Act, 1985

whereas the stand of the department was that the said product is a cosmetic/toiletry preparation/tooth powder classifiable under chapter heading 33.06. More importantly the Hon'ble Apex Court in said case has given decision in favour of revenue by allowing the department's appeal, (ii) Hamdard (Wakf) Laboratories Vs Commissioner of Commercial Taxes [2019(20) GSTL0046 (All)] is related to classification of commodity " Sharbat Rooh Afza" in which the Tribunal had held in favour of Revenue that the said product is an unclassified item falling under the residuary entry of Schedule V of UP VAT Act, 2008 and further the Hon'ble High Court of Allahabad has also dismissed the applicant's appeal, (iii) Dabur India Ltd. Vs Commissioner of CGST, Ghaziabad [2020(34) GSTL 0009(All)] is related to classification of product "Odomos" wherein M/s Dabur claimed the product Odomos as medicament falling under CTH 3004 whereas the department took stand that the said product is mosquito repellant falling under tariff item 38089191 of Customs Tariff Act, 1975, and further the writ petition of the petitioner is also dismissed by Hon'ble High Court of Allahabad, (iv) Ashwini Homeo Pharmacy Vs Commr. Of C.Ex. & S.T. Hyderabad-IV [2019 (367) E.L.T. 478 (Tri-Hyd) is related to classification of product as Medicament falling under Chapter Heading 30039014 and claiming concessional rate of duty under Notification No.18/2012-C.E. dated 17.03.2012 whereas the department claimed that aforesaid goods are preparation for use on the hair and are classifiable under chapter heading 33059019 and are liable to duty according to as Cosmetic. In view of the above, I find that those decisions/judgements were delivered in different context and under different facts and circumstances, which cannot be made applicable in the facts and circumstances of this case. Therefore, I find that while applying the ratio of one case to that of the other, the decisions of the Hon'ble Supreme Court are always required to be borne in mind. The Hon'ble Supreme Court in the case of CCE, Calcutta Vs Alnoori Tobacco Products [2004(170)ELT 135(SC) has stressed the need to discuss, how the facts of decision relied upon fit factual situation of a given case and to exercise caution while applying the ratio of one case to another. This has been reiterated by the Hon'ble Supreme Court in its judgement in the case of Escorts Ltd. Vs CCE, Delhi [2004(173) ELT 113(SC)] wherein it has been observed that one additional or different fact may make difference between conclusion in two cases, and so, disposal of cases by blindly placing reliance on a decision is not proper. Again in the case of CC(Port), Chennai Vs Toyota Kirloskar [2007(2013) ELT4(SC)), it has been observed by the Hon'ble Supreme Court that, the ratio of a decision has to be understood in factual matrix involved therein and that the ratio of a decision has to culled from facts of given case, further, the

decision is an authority for what it decides and not what can be logically deduced there from.

6.13 In view of the foregoing, I find that the subject goods — "Nitrile Powder Free Gloves" — do not qualify as "surgical rubber gloves or medical examination rubber gloves" within the meaning of Sr. No. 85 of Schedule-II of Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017, and that the Noticee has failed to produce any cogent, conclusive or technically credible evidence to establish that the subject goods are surgical rubber gloves or medical examination rubber gloves. I accordingly hold that the benefit of Sr. No. 85 of Schedule-II of the said Notification as claimed by the Noticee in the three Bills of Entry is not admissible, and the subject goods are correctly classifiable under Sr. No. 123 of Schedule-III of the said Notification attracting IGST @ 18%. The subject three Bills of Entry are accordingly liable to be re-assessed charging IGST @ 18%.

6.14 I now proceed to decide the proposal for demand and recovery of differential IGST of Rs. 6,88,164/- under Section 28(1) of the Customs Act, 1962. Having held in para 6.13 above that the subject goods are correctly chargeable to IGST @ 18% under Sr. No. 123 of Schedule-III of the said Notification and not @ 12% as claimed by the Noticee, I find that the Noticee has short paid IGST to the extent of Rs. 6,88,164/- in respect of the three Bills of Entry. I find that with the introduction of self-assessment under Section 17 of the Customs Act, 1962, greater responsibility and faith has been reposed in the importer to correctly assess their own goods. As a part of self-assessment, it is the statutory obligation of the importer to correctly classify the goods and apply the applicable rate of duty. The Noticee, contrary to this obligation, wrongly availed the benefit of the concessional entry at Sr. No. 85 of Schedule-II of the said Notification and paid IGST @ 12% instead of the applicable rate of 18%, resulting in short payment of IGST to the tune of Rs. 6,88,164/-. I accordingly hold that the differential IGST of Rs. 6,88,164/- is required to be demanded and recovered from the Noticee under Section 28(1) of the Customs Act, 1962.

6.15 As regards interest under Section 28AA of the Customs Act, 1962, I find that the provisions of Section 28AA are unambiguous and automatic in their operation — whenever a person is liable to pay duty in accordance with the provisions of Section 28 of the Customs Act, 1962, they are also liable to pay interest on the said amount of duty. Having held that the differential IGST of Rs. 6,88,164/- is required to be recovered from the Noticee under Section 28(1) of the Customs Act, 1962, I accordingly hold that the Noticee is also liable to pay interest

at the applicable rate on the said amount of Rs. 6,88,164/- under the provisions of Section 28AA of the Customs Act, 1962 from the date such payment was due.

6.16 As regards the proposal for imposition of penalty under Section 117 of the Customs Act, 1962, I find that Section 117 provides that any person who contravenes any provision of the Customs Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding four lakh rupees. I find that Section 17(1) of the Customs Act, 1962 authorises an importer to self-assess the duty leviable on import of goods, and in doing so, the importer is obligated to correctly classify the goods and apply the correct rate of duty. In the instant case, I find that the Noticee was fully aware that the goods being imported were "Nitrile Powder Free Gloves" and that the entry at Sr. No. 85 of Schedule-II of the said Notification specifically and exclusively covers "surgical rubber gloves or medical examination rubber gloves." Despite this, the Noticee availed the benefit of the concessional entry at Sr. No. 85 of Schedule-II and paid IGST @ 12%, without establishing through any credible technical or regulatory evidence that the subject goods conform to the description of surgical rubber gloves or medical examination rubber gloves. I find that even in the post-remand proceedings, despite being given a specific opportunity by this authority in compliance with the Hon'ble CESTAT's direction, the Noticee has been unable to produce any cogent or conclusive evidence to establish that the goods are surgical rubber gloves or medical examination rubber gloves. The Noticee's failure to discharge their statutory self-assessment obligation correctly has resulted in short payment of IGST of Rs. 6,88,164/-, which constitutes a contravention of the provisions of Section 17(1) of the Customs Act, 1962. I accordingly hold that the Noticee is liable to penalty under Section 117 of the Customs Act, 1962.

6.17 I have considered the Noticee's plea that there was no suppression of material facts and that the issue was raised post-clearance after almost two years. I find that the question of suppression is relevant in the context of limitation under Section 28 of the Customs Act, 1962, and the SCN in the present case has been issued within the permissible time limit under the applicable provisions. The absence of suppression does not by itself absolve the Noticee of the liability to pay the correct duty and the consequential penalty for contravention of Section 17(1) of the Customs Act, 1962. I accordingly do not find merit in this plea of the Noticee.

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

ORDER

(i) I reject the Noticee's claim of benefit of Sr. No. 85 of Schedule-II of Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017 i.e. IGST @ 12% in respect of the three Bills of Entry [as detailed in Annexure-I to the Show Cause Notice] and order to re-assess the said three Bills of Entry charging IGST @ 18% under Sr. No. 123 of Schedule-III of the said Notification.

(ii) I confirm and order to recover the differential IGST amounting to **Rs. 6,88,164/- (Rupees Six Lakh Eighty Eight Thousand One Hundred and Sixty Four only)** from the Noticee M/s Sky Lifecare Private Limited, A-4 Dev City RC Technical Road, Ghatlodia, Ahmedabad-380061, under Section 28(1) of the Customs Act, 1962.

(iii) I order to charge and recover interest from the Noticee M/s Sky Lifecare Private Limited, A-4 Dev City RC Technical Road, Ghatlodia, Ahmedabad-380061, on the confirmed duty amount at Sr. No. (ii) above at the applicable rate under Section 28AA of the Customs Act, 1962.

(iv) I impose a penalty of **Rs. 50,000/- (Rupees Fifty Thousand only)** on the Noticee M/s Sky Lifecare Private Limited, A-4 Dev City RC Technical Road, Ghatlodia, Ahmedabad-380061, under Section 117 of the Customs Act, 1962.

8. This order is issued without prejudice to any other action which may be contemplated against the importer or any other person under provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.

Digitally signed by Dipakbhai Zala
Date: 11-06-2026 17:30:34

(DIPAK ZALA)

Additional Commissioner of Customs,

Mundra

Customs

To,

M/s Sky Lifecare Private Limited,
A-4 Dev City RC Technical Road,
Ghatlodia, Ahmedabad-380061

Copy to:

1. The Dy./Assistant Commissioner, EDI, Customs Mundra (For uploading on official website)
2. The Dy./Asstt. Commissioner (RRA/TRC), Customs House, Mundra