



सीमा शुल्ककार्यालय का आयुक्त के (निवारक), सीमा शुल्क भवन,
जामनगर- राजकोट हाइवे, विक्टोरिया ब्रिज के पास,
जामनगर गुजरात – (361 001)

Office of the Commissioner of Customs (Preventive),
'Seema Shulk Bhavan', Jamnagar – Rajkot Highway,
Near Victoria Bridge, Jamnagar (Gujarat) – 361 001
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DIN –20250971MM0000111B55

- फ़ाइल क्रमांक/ File Number F. No. CUS/4477/2023-Adjn
- मूल आदेश क्रमांक/
Order-in-Original No. 12/Additional Commissioner/ 2025-26
- द्वारा पारित/ passed by एन .श्रुजन कुमार/ N. Srujan Kumar
अपर आयुक्त/ Additional Commissioner,
सीमा शुल्क, निवारक/Customs (Preventive)
जामनगर/ Jamnagar.
- Date of Order /आदेश दिनांक 24.09.2025
- Date of issue / आदेश जारी किया 24.09.2025
- कारण बताओ नोटिस क्रमांक एवं दिनांक ADC-7/2024-25 dated 17.01.2025
Show Cause Notice Number & Date
- नोटिसी का नाम/ M/s Ester (India) Chemicals Pvt. Ltd.,
Name of Noticee Plot No. C-4, C-4/1, Site-IV, Industrial
Estate, Sahibabad, Ghaziabad (Uttar Pradesh) – 201 010.

01. इस आदेश की मूल प्रति संबन्धित व्यक्ति को निशुल्क प्रदान की जाती है।

The original copy of this order is provided free of cost to the person concerned.

02. इस मूल आदेश से व्यथित कोई भी व्यक्ति सीमा शुल्क अधिनियम, की धारा 1962 128A)(1)a सीमा शुल्क नियम (अपील), 1982 के नियम 3 के साथ पठित, के प्रावधानों के तहत, इस आदेश की प्राप्ति की तारीख से 60 दिन के भीतर फॉर्म सीए-1 में निम्नलिखित पते पर अपील दायर कर सकता है।फॉर्म सीए-1 में अपील का प्रपत्र, दो प्रतियों में दायर किया जाएगा और उसके साथ इस आदेश की समान संख्या में प्रतियाँ संलग्न की जाएंगी जिसके विरुद्ध अपील की गई है। जिनमें से कम से कम एक प्रमाणित प्रति हो

आयुक्त (अपील)
वी मंजिल 7, मृदुल टावर,
टाइम्स ऑफ इंडिया के पीछे,
आश्रम रोड,
अहमदाबाद – 380 009

	Any Person aggrieved by this Order-In-Original may file an appeal in Form CA-1, within sixty days from the date of receipt of this order, under the provisions of Section 128 of the Customs Act, 1962, read with Rule 3 of the Customs (Appeals) Rules, 1982 before the Commissioner (Appeals) at the above mentioned address. The form of appeal in Form No. CA.-1 shall be filed in duplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy).
03.	अपील पर 5/- रुपये का कोर्ट फीस स्टाम्प लगा होना चाहिए। जैसा कि भारतीय स्टाम्प अधिनियम, 1989 के तहत प्रदान किया गया है, या राज्य विधान द्वारा संशोधित किया जा सकता है, जबकि इस अपील के साथ संलग्न आदेश की प्रति पर रुपये 0.50 (पचास पैसे केवल) का कोर्ट फीस स्टाम्प होना चाहिए। जैसा कि न्यायालय शुल्क अधिनियम, 1870 की अनुसूची -I, मद 6 के तहत निर्धारित किया गया है।
	The appeal should bear the Court Fee Stamp of Rs. 5/- as provided under the Indian Stamp Act, 1989, modified as may be, by the State Legislation, whereas the copy of the order attached with this appeal should bear a Court Fee Stamp of Rs. 0.50 (Fifty paise only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.
04.	अपीलीय ज्ञापन के साथ शुल्क भुगतान /जुर्माना /अर्थ दंड का सबूत भी संलग्न करे अन्यथा सीमा शुल्क अधिनियम, 1962 की धारा 128 के प्रावधानों का अनुपालन ना होने के कारण अपील को खारिज किया जा सकता है।
	Proof of payment of duty / fine / penalty should also be attached with the appeal memo, failing to which appeal is liable for rejection for non-compliance of the provisions of Section 128 of the Customs Act, 1962.
05.	अपील प्रस्तुत करते समय यह सुनिश्चित करे की सीमा शुल्क अपील)) नियम, 1982 नियम (प्रोसीजर) और सिस्टेट प्रक्रिया, के सभी नियमों का पूरा पालन हुआ है। 1982
	While submitting the Appeal, the Customs (Appeals) Rules, 1982, and the CESTAT (Procedure) Rules, 1982, should be adhered to in all respects.
06.	इस आदेश के खिलाफ आयुक्त (अपील), सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपीलीय न्यायाधिकरण के समक्ष मांग की गई शुल्क के 7.5% के भुगतान पर होगी, जहां शुल्क या शुल्क और जुर्माना विवाद में है, या जुर्माना विवाद में है, या जुर्माना जहां जुर्माना है अकेले विवाद में है।
	An appeal, against this order shall lie before the Commissioner (Appeals), on payment of 7.5% of the duty demanded, where duty or duty and penalty are in dispute, or penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE

M/s Ester (India) Chemicals Pvt. Ltd., Plot No. C-4, C-4/1, Site-IV, Industrial Estate, Sahibabad, Ghaziabad (Uttar Pradesh) – 201 010 (hereinafter referred to as “the Noticee”) having IEC 0595053599 are engaged in the import of ‘Denatured Ethyl Alcohol’ through Pipavav Port (INPAV1) by classifying the imported goods under Customs Tariff Heading (In brief – CTH) 22072000. It is observed that they have imported 375 MT of ‘Denatured Ethyl Alcohol’ vide one Bill of Entry No. 8256863 dated 23.07.2020 for Ex-Bond filed on 23.07.2020 at the Port of Pipavav.

2. On scrutiny of the said Bill of Entry, it is noticed that the Noticee had availed the benefit of concessional rate of Basic Customs Duty (In brief – BCD) @ 2.5% under S. No. 107 of the table appended to the Notification No. 50/2017-Cus dated 30.06.2017, on import of “Denatured Ethyl Alcohol (or Denatured Ethanol)”.

3. In the table appended to Notification No. 50/2017-Cus dated 30.06.2017, following are the two entries in respect of CTH 2207 20 00 (Ethyl alcohol and other spirits, denatured, of any strength):

S. No.	Chapter or Heading or sub-heading or tariff item	Description of goods	Standard rate	Integrated Goods and Services Tax	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
106.	2207 20 00	All goods	5%	-	-
107.	2207 20 00	Denatured ethyl alcohol (ethanol) for use in manufacture of excisable goods.	2.5%	-	9

3.1 Conspicuously, the benefit of the concessional BCD @ 2.5% against S. No. 107- Denature ethyl alcohol (ethanol) for use in manufacture of excisable goods - has been granted subject to the condition 9 which is outlined as follows:

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

3.2 Vide 101th Amendment of the Constitution dated 08.09.2016, the List 1 of the Seventh Schedule of the Constitution has been amended, wherein the definition of the excisable goods, “the goods which have been listed in Schedule Four of Central Excise Act, 1944 defined as excisable goods i.e. (a) petroleum crude, (b) high speed

diesel, (c) motor spirit (commonly known as petrol), (d) natural gas, (e) aviation turbine fuel and (f) tobacco and tobacco products are the only excisable goods". However, since the implementation of Goods and Services Tax Act (In brief – GST) w.e.f. 01.07.2017, M/s Ester (India) Chemicals Pvt. Ltd. i.e. the Noticee is not engaged in the manufacturing of any "Excisable Goods" as mentioned in the Schedule Four of the Central Excise Act, 1944.

3.3 The benefit of the concessional BCD @ 2.5% under S. No. 107 is allowed only in case where the imported goods i.e. Denatured Ethyl Alcohol is further used in the manufacturing of the excisable goods. Although, it appears that the Noticee has never made a declaration that they would use the subject imported goods namely "Denatured Ethyl Alcohol" in the manufacture of the excisable goods, which have been listed in Schedule Four of the Central Excise Act, 1944 i.e. "Petroleum and Petroleum Products" and/ or "Tobacco and Tobacco Products" w.e.f. 01.07.2017. Whereas, on 28th July, 2020, the Noticee had intimated the department vide a declaration on Stamp Paper that the imported Denatured Ethyl Alcohol would be exclusively used in the manufacturing of 'Ethyl Acetate' in their factory premises located at Plot No. C-4 & C-4/1, Site IV, Industrial Estate Sahibabad, Ghaziabad (Uttar Pradesh) – 201 010. As per the declaration submitted by the Noticee, the Imported 'Denatured Ethyl Alcohol' is to be used in the manufacturing of 'Ethyl Acetate' which is not excisable goods after the implementation of Goods and Services Tax Act on 01.07.2017.

3.4 Accordingly, a letter F. No. VIII/48-23/AR 55/21-22/GPPL/22-23 dated 14.10.2022 having DIN 20221071MM00009429B4 was issued to the Noticee with the details of the said Bill of Entry and was asked to clarify the reasons for short payment of Customs duty and was also requested to pay the differential duties/ taxes along with the applicable interest and penalty. However, the Noticee did not respond in the matter. Thereafter, Summons dated 03.02.2023 bearing DIN-20230271MM0000459984 was issued to the Noticee to appear on 13.02.2023 and to produce the import documents for Denatured Ethyl Alcohol. Since no response was received, another Summons dated 14.02.2023 having DIN 20230271MM0000888D23 was issued to the Noticee to tender their Statement on 20.02.2023 and to produce the Documents related to Import of Denatured Ethyl Alcohol. However, no response from the Noticee was received in this regard despite being called for three times to tender statement or to clarify the matter.

4. Further, as the Noticee was given enough opportunity to place/ clear their stand on the issue before the department, it was observed that they had not availed the said opportunity and therefore, had not responded in the matter. Thus, it appears that the Noticee does not have any documents in support of their claim to avail the benefit of the concessional rate of customs duty on import of 'denatured ethyl alcohol' as mentioned at S. No. 107 of the said Notification.

4.1 It is a settled principle of law that exemption has to be construed strictly to ensure that the object and purpose thereof is achieved. When an importer wants to claim benefit of an exemption notification under the provisions of the Customs Act, 1962 then onus is squarely on them to prove that they fall within four corners of the

said notification; that the conditions, if any, which are imposed by the exemption notification have been fulfilled by him. An exemption notification must be interpreted in the light of the words employed by it i.e. by the plain terms of the exemption.

5. From the above facts as discussed above, it appears that:

- The Noticee manufactured "Ethyl Acetate" by using imported "Denatured Ethyl Alcohol" as a major raw material;
- that the final product i.e. 'Ethyl Acetate' is not listed in the Fourth Schedule of the Central Excise Act, 1944; i.e. it is not an excisable goods;
- that after 01.07.2017, the Noticee continued to import 'Denatured Ethyl Alcohol' by availing the benefit under S. No. 107 of the Notification No. 50/2017-Customs dated 30.06.2017 as amended even after knowing that their final products i.e. Ethyl Acetate, manufactured by them by using the imported 'Denatured Ethyl Alcohol', is no longer leviable to Excise Duty after implementation of the GST Act from 01.07.2017.

5.1 The Noticee before making any import of 'Denatured Ethyl Alcohol' from 01.07.2017 should have taken serious note of 101st Amendment of the Constitution dated 08.09.2016, wherein the definition of the "Excisable Goods" has been amended and accordingly, has been listed in the Schedule IV of the Central Excise Act, 1944, as it has been a major change in the tax regime of India. The Exemption Notification No. 12/2012-Customs was superseded by the Notification No. 50/2017-Customs which was brought into effect from 01.07.2017. Further, in the Notification No. 50/2017-Customs as amended, the description of the goods is clearly mentioned as "Denatured Ethyl alcohol" for use in manufacture of excisable goods":

Sr. No.	Chapter Heading or subheading or Tariff item	Description of goods	Standard Rate	Integrated Goods and Services Tax	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
107	2207 20 00	Denatured ethyl alcohol (ethanol) for use in manufacture of excisable goods.	2.5%	-	9

5.2 In view of the above, it appeared that the Noticee was well aware of the fact that they are not into the manufacturing of excisable goods, then how can they opt for the benefit of the exemption of a Notification which is meant only for the items to be used in the manufacture of excisable goods. The Noticee should have evaluated the applicability of the Notification No. 50/2017-Cus dated 30.06.2017 as amended and the conditions prescribed therein, on the goods being imported by them post 01.07.2017, before claiming the benefit of the said notification. The benefit of the Customs Notification No. 50/2017-Cus dated 30.06.2017 as amended involved a substantial concession of 2.5% in the rate of BCD (from @5% to @2.5%), therefore,

before making any import or discharging any duty, the Noticee should have evaluated the provisions which governed/ were applicable on the imports made by them in light of the new notification/provisions.

5.3 From the above, it appeared that the Noticee was not eligible for the benefit under S. No. 107 of Notification No. 50/2017-Customs, as the final products manufactured by them i.e. 'Ethyl Acetate' was no longer Excisable Goods since 01.07.2017 and hence, they are liable for payment of duty (BCD) at the rate of 5% mentioned as under S. No.106 of the said notification. In addition to the above, it is worth mentioning here that S. No. 107 of the Notification No. 50/2017-Cus dated 30.06.2017 has been omitted vide Notification No. 02/2021-Cus dated 01.02.2021 which came into force w.e.f. 02.02.2021.

6. From the language of the entries at S. No. 106 and 107 in the table appended to the Notification No. 50/2017-Customs dated 30.06.2017, it is clear that there are two concessional rates of BCD available to the importer of goods falling under CTH 2207 20 00, but the higher concession is available only in the specific circumstance that the imported 'Denatured Ethyl Alcohol (ethanol)' is for use in the manufacture of 'excisable goods' and that the importer, if choosing to claim the exemption on Denatured Ethyl Alcohol (ethanol) for use in the manufacture of 'excisable goods', has to follow the procedures as set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. In addition, it appeared that there is no ambiguity in the Notification No. 50/2017-Cus. dated 30.06.2017; that there is no vagueness in the language of the two relevant entries which may leave room for any equivocation, or any room for intendment that is different from what is explicated by the plain language of the two entries at S. Nos. 106 and 107 in the table contained therein.

6.1 Notification No. 50/2017-Customs dated 30.06.2017, was issued in supersession of the Notification No. 12/2012-Customs dated 17.03.2017. Initially under Notification No. 12/2012-Cus dated 17.03.2012 (Sl. No. 96), all goods under CTH 2207 20 00 attracted a uniform duty of 7.5%. The table, as it existed then, is reproduced as follows:

Sl. No.	Chapter or Heading or sub-heading or tariff item	Description of goods	Standard rate	Integrated Goods and Services Tax	Condition No.
1	2	3	4	5	6
96	2207 20 00	Denatured ethyl alcohol (ethanol) for use in manufacture of excisable goods.	7.5%	-	-

6.2 The above Notification No. 12/2012-Cus dated 17.03.2012 was amended vide Customs Notification No. 12/2016-Cus dated 01.03.2016 and a new entry 96A,

which was inserted below entry 96, for goods falling under CTH 22072000; the new entry was “Denatured ethyl alcohol (ethanol) for use in manufacture of excisable goods”:

Sl. No.	Chapter or heading or sub-heading or tariff item	Description of goods	Standard rate	Integrate d Goods and Service Tax	Cond ition No.
1	2	3	4	5	6
96 A	2207 20 00	Denatured ethyl alcohol (ethanol) for use in manufacture of excisable goods.	2.5%	-	5

6.3 The insertion of the new entry in Notification No. 12/2012-cus made import of ‘Denatured Ethyl Alcohol (Ethanol)’ for use in manufacture of excisable goods liable to concessional rate of duty of @ 2.5% subject to condition at Sl. No. 5 of the mother Notification No. 12/2012-cus i.e. the importers could avail benefit of concessional rate of duty provided they follow the procedure set out in Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016 notified vide Notification No 32/2016-Cus (NT) dated 01.03.2016.

6.4 With the introduction of GST Act on 1st July, 2017, Notification No. 12/2012-Cus was superseded by Notification No 50/2017-Cus dated 30.06.2017. The relevant entries in the Notification 50/2017-Cus have already been summarized above.

7. Further, it is worth mentioning that as far as the entry no. 107 in the table in the basic notification of 2017 is concerned; it remained unaffected through the changes from 2017 to 2020. However, post the presentation of the Union Budget of 2021, vide Notification No. 02/2021-Customs dated 1st February, 2021, the said entry no. 107 was omitted from the table appended in the Notification No. 50/2017-Customs.

8. Moreover, Post introduction of Goods and Services Tax Act, 2017, Central Excise duty has largely been subsumed under GST with the exception of a few items such petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel. There is no GST on Alcoholic liquor for human consumption as well.

8.1 Vide sub-section (1) of Section 5 of IGST Act, 2017, IGST was levied on the import of goods wherein it is stipulated that “*Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975 on the value as determined under the said act at the point when duties of customs are levied on the said goods under section 12 of the customs Act, 1962.*”

8.2 Further, as per Sub-Section 7 of Section 3 of Customs Tariff Act 1975, “any article which has been imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty per cent, as is leviable under section 5 of the IGST Act 2017 on a like article on its supply in India, on the value of the imported article as determine under Sub Section (8) or Sub Section (8A) as the case may be.”

8.3 Section 25 of the Customs Act, 1962, specifically empowers the Central Government to exempt, in public interest, by notification generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, goods of any specified description from the whole or any part of duty of customs leviable thereon.

9. The following inferences appear to exist in view of the above discussions:

- (i). Notification No. 50/2017-Customs dated 30.06.2017, reflected the changed scenario after the introduction of the GST in India.
- (ii). The relevance of the word “Excisable Goods” and “Manufacture” still exist even after the introduction of the GST Acts on 01.07.2017. Further, there has been a truncation of goods covered under ‘Excisable goods’ with the introduction of the Fourth Schedule to the Central Excise Tariff Act was on 04.05.2017, prior to the introduction of the IGST Act on 01.07.2017. Under the new Laws, items listed in Schedule IV of CETA, 1985 such as petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel are still chargeable to duty of Central Excise under Central Excise Act, 1944.
- (iii). Further as per the amendment to the Constitution (One hundred and First Amendment) Act 2016 dated 08.09.2016, only 6 entries including petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and tobacco and tobacco products were retained under Entry 84 for charging of duties of Central Excise under the Union List of taxes and duties under the Constitution.
- (iv). Imported ‘Denatured ethanol’ would therefore, be eligible for availing benefits under Notification 50/2017-Cus (S. No. 107) only when they are utilised in the manufacture of any of the above goods which are still leviable to Excise Duty. In all other cases, the importers are eligible for benefit of S. No. 106 of Notification 50/2017 which is an unconditional exemption.
- (v). From the provisions of Section 25(1) of Customs Act, 1962, it is evident that any conditions mentioned in a Notification have to be fulfilled to avail the benefit of the notification issued under the Section. In the instant case, under Notification 50/2017-Cus dated 30.06.2017 the condition at S. No. 107 is unambiguous and clear to the effect that to avail the benefit of exemption under this Sl. No., the importer has to use the imported ethanol in the manufacture of excisable goods and also follow the procedure set out under IGCRD Rules, 2017.

10. National Policy on Bio Fuels 2018

The Government of India vide National Policy on Bio Fuels 2018, issued from F.No.P-13032(16)/18/2017-CC dated 04.06.2018 issued by the Ministry of Petroleum and Natural Gas has in Para 6.1 discouraged the import of Bio-Fuels with an intention of encouraging domestic Bio-Fuel Industry.

11. Consequently, DGFT vide Notification No. 27/2015-20 dated 21.08.2018 has placed import of Ethyl Alcohol and other spirits, denatured, of any strength under "Restricted" category with policy condition "Import is allowed only for non-fuel purpose subject to actual user condition". This has further been amended by DGFT Notification 06/2015-20 dated 24.05.2019 to make all imports of Ethyl Alcohol and other spirits, denatured, of any strength under "Restricted" category with same policy condition as earlier.

11.1 The effect of the above said DGFT Notification 06/2015-20 dated 24.05.2019 on the import of 'Denatured Ethyl Alcohol' is that it has been made restricted and would require a DGFT licence for import and further such import is permitted only for non-fuel purpose. However, with respect to Notification No. 50/2017-Cus, if the lower BCD rate as permitted under Sl. No. 107 of the said Notification is to be availed, then the imported Denatured Ethyl Alcohol has to be utilised in the manufacture of "*excisable goods*". On a combined reading of relevant Acts and Notifications it is further observed that only certain goods including petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel fall into the category of said '*excisable goods*'. However, all these above commodities further fall in the category of fuels only, and therefore, would fall within the restricted category as per the DGFT Notification issued under the National Policy on Bio Fuels. The effect of the two said Notifications would imply that import of any denatured Ethyl alcohol is permitted only if utilised for a non-fuel purpose, and therefore would automatically become ineligible for being considered for the lower tariff rate of BCD as applicable under Sl. No. 107 for Denatured Ethanol and therefore, all imports under CTH 22072000 would automatically get covered only under Sl. No.106 which attracts 5% of Basic Customs Duty.

12. Further, the entry relating to Sl. No. 107 of the Notification No. 50/2017-Cus which provided for concessional Rate of BCD at 2.5% has been omitted during the Budget of 2021 vide Notification No.02/2021 dated 01.02.2021 with effect from 02.02.2021.

13. Conclusions of the investigations:

13.1 Based on the 101st amendment of the Constitution dated 08.09.2016, List 1 of Seventh Schedule of the Constitution has been amended to define the goods on which duties of excise is to levied and the listed goods are (a) petroleum crude, (b) high speed diesel, (c) motor spirit (commonly known as petrol), (d) natural gas, (e) aviation turbine fuel and (f) tobacco and tobacco products. The definitions of

excisable goods have also been amended to define excisable goods as the goods have been listed in Schedule Four of the Central Excise Act, 1944.

13.2 Based on investigation, it appeared that the Noticee, had used imported 'Denatured Ethyl Alcohol' in the manufacture/ production of **Ethyl Acetate** which do not fall under the category of 'excisable goods' i.e., Petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel which is the pre-condition for availing the benefit of Sl. No. 107 of Notification 50/2017 dated 30.06.2017 as amended. Therefore, it clearly appeared that the Noticee is not eligible for benefits under Sl. No. 107 of Notification no. 50/2017-Cus and are liable for payment of duty (BCD) at the rate of 5% under Sl. No. 106 of same notification instead of 2.5% as claimed. In addition, Sl. No. 107 of Notification No. 50/2017-cus dated 30.06.2017 has been omitted vide notification No. 2/21-Cus dated 01.02.2021 which came into effect from 02.02.2021.

13.3 Further, with respect to Notification No 50/2017-Cus dated 30.06.2017 as amended, if the lower BCD rate as permitted under Sl. No. 107 of the said Notification is to be availed, then the imported 'Denatured Ethyl Alcohol' has to be utilized in the manufacture of 'excisable goods'. On a combined reading of relevant Acts and Notifications, it is further observed that only certain goods including petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel fall into the category of said 'excisable goods' and these goods further fall in the category of fuels also. As per Directorate General of Foreign Trade (DGFT) Notification No. 27/2015-20 dated 21.08.2018, import of Ethyl Alcohol and other spirits, denatured, of any strength fall under "Restricted" category with policy condition "Import is allowed only for non-fuel purpose subject to actual user condition". This has further been amended by DGFT Notification 06/2015-20 dated 24.05.2019 to make all imports of Ethyl Alcohol and other spirits, denatured, of any strength under "Restricted" category with same policy condition as earlier. The effect of the above said DGFT Notification 06/2015-20 dated 24.05.2019 on the import of Denatured Ethyl Alcohol is that it has been made restricted and would require a DGFT license for import and further such import is permitted only for non-fuel purpose. The effect of the said DGFT notifications would imply that import of any denatured Ethyl alcohol is permitted only if utilized for a non-fuel purpose. Therefore, it would automatically become ineligible for being considered for the lower tariff rate of BCD as applicable under S. No 107 of Notification No. 50/2017-Cus dated 30.06.2017 for import of Denatured Ethyl Alcohol. Further, S. No. 107 of Notification No. 50/2017 dated 30.06.2017 has been omitted vide Notification No. 2/2021-Cus dated 01.02.2021 with effect from 02.02.2021.

13.4 Therefore, it appeared that the Noticee are liable to pay BCD at the rate of 5% under S. No. 106 of Notification No. 50/2017 dated 30.06.2017 (came into effect from 01.07.2017) on imported Denatured Ethyl Alcohol from 01.07.2017 onwards.

14. SUPPRESSION OF FACTS / WILFUL MIS-STATEMENT IN DOCUMENTS:

14.1 It appeared that for import of Denatured Ethyl Alcohol, the Noticee have only declared the details of products manufactured by them i.e. **Ethyl Acetate** and suppressed the facts that imported Denatured Ethyl Alcohol is not meant for use in the manufacture of the “Excisable Goods” and therefore, wrongly availed the concessional rate of BCD @ 2.5% in terms of Sl. No. 107 of Notification No. 50/2017-Cus dated 30.06.2017 by suppression of facts which was not available to them.

14.2 Further, it appeared that the Noticee was fully aware of the fact that the items imported by them attracts BCD @ 5% ad-valorem but have wilfully mis-stated the facts and wrongly availed the benefit under Sr. No. 107 of Notification No. 50/2017-Cus dated 30.06.2017 with an intention to evade the duty at the rate of 2.5% (BCD) even though they are fully aware of the fact that the products manufactured by them i.e. “Ethyl Acetate” by using imported ‘Denatured Ethyl Alcohol’, do not fall under the category of “Excisable Goods” as defined in Schedule IV of the amended Central Excise Act, 1944 with effect from 01.07.2017. Also, nowhere in the documents submitted to the customs has it been specified that the Denatured Ethyl Alcohol is being imported for purposes ‘other than’ manufacture of “Excisable Goods” and simultaneously, the benefit of exemption under Sl. No. 107 of the Notification No. 50/2017-Cus as amended, has been claimed by them. Therefore, it appears that the Noticee have wilfully mis-stated the facts before the department with a sole intention to avail lower BCD @ 2.5% of the exemption notification which is otherwise not available to them.

14.3 From plain reading of the said Notification No. 50/2017-Cus dated 30.06.2017, it is evident that the imported goods i.e. Denatured Ethyl Alcohol (ethanol) must be used in the manufacture of “Excisable goods” to be eligible for claiming exemption. The excisable goods as defined under the amended Schedule IV of the Central Excise Act, 1944 are (a) petroleum crude, (b) high speed diesel, (c) motor spirit (commonly known as petrol), (d) natural gas, (e) aviation turbine fuel and (f) tobacco and tobacco products. Thus, the “Use of imported goods for the intended purpose” is not fulfilled in the instant case and it appears that the Noticee is not eligible for exemption Notification *ab initio* and proves their wilful misstatement. This appears to have been done with an intention to evade applicable Customs duty.

14.4 It appeared that the Noticee, in terms of Section 46 of the Customs Act, 1962 while presenting the Bill of Entry shall make and subscribe to a declaration as to the truth of the contents and shall in support of such declaration, produce to the proper officer an invoice, if any, and such other documents relating to the imported goods as may be prescribed.

15. Various Legal provision of The Customs Act, 1962 –

- 15.1 **Section 11A Definitions – In this Chapter, unless the context otherwise requires, -**
(a) “illegal import” means the import of any goods in contravention of the provisions of this Act or any other law for the time being in force;
- 15.2 **Section 18. Provisional assessment of duty, - (1) Notwithstanding anything contained in this Act but without prejudice to the provisions of section 46 and Section 50 -**
*(a)
(b) Where the proper officer deems it necessary to subject any imported goods or exported goods to any chemical or other test; or
(c) Where the importer or exporter has produced all the necessary documents and furnished full information but the proper officer deems it necessary documents and furnished full information but the proper officer deems it necessary to make further enquiry; or
(d) Where necessary documents have not been produced or information has not been furnished and the proper officer deems it necessary to make further enquiry,
the proper officer may direct that the duty leviable on such goods, be assessed provisionally if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty as may be finally assessed or re-assessed as the case may be, and the duty provisionally assessed.*
- 15.3 **Section 18(2) - When the duty leviable on such goods is assessed finally or re-assessed by the proper officer in accordance with the provisions of this Act, then –**
*(a) in the case of goods cleared for home Consumption or exportation, the amount paid shall be adjusted against the duty (finally assessed or re-assessed, as the case may be) and if the amount so paid falls short of, or is in excess of the duty finally assessed or re-assessed, as the case may be, the importer or the exporter of the goods shall pay the deficiency or be entitled to a refund, as the case may be;
(b)*
- 15.4 **Section 18(3) - The importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order or re-assessment order under sub-section (2), at the rate fixed by the Central Government under section 28AB (now Section 28AA w.e.f. 08.04.2018) from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.**
- 15.5 **Section 28 – Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded –**
*(1) -----
(2) -----*

(3) -----

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

(a) collusion; or

(b) any wilful mis-statement; or

(c) suppression of facts,

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

.....

(8) The proper officer shall, after allowing the concerned person an opportunity of being heard and after considering the representation, if any, made by such person, determine the amount of duty or interest due from such person not being in excess of the amount specified in the notice.

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

15.7 Section 46. Entry of goods on importation –

.....

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

15.8 Section 111 - Confiscation of improperly imported goods, etc.- *The following goods brought from a place outside India shall be liable to confiscation:-*

(a) to (c)

(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;

(e) to (l)

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

(n)

(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;

(p) and (q)

15.9 Section 112- Penalty for improper importation of goods, etc. - Any person

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

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

shall be liable to penalty as envisaged in sub clause (i) to (v) of the said Section;

15.10 Section 114A- Penalty for short-levy or non-levy of duty in certain cases -

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of Section 28 shall also be liable to pay a penalty equal to the duty or interest so determined.

15.11 Section 114AA – Penalty for use of false and incorrect material – If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

15.12 SECTION 124. Issue of show cause notice before confiscation of goods, etc. — No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -

- (a) is given a notice in writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;
- (b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and
- (c) is given a reasonable opportunity of being heard in the matter :

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

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

15.13 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 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 :

Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, no such fine shall be imposed:

Provided further that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) *Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.*

(3) *Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.*

Explanation. — For removal of doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date on which the Finance Bill, 2018 receives the assent of the President and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received.

15.14 SECTION 143. Power to allow import or export on execution of bonds in certain cases. —

(1) Where this Act or any other law requires anything to be done before a person can import or export any goods or clear any goods from the control of officers of customs and the Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied that having regard to the circumstances of the case, such thing cannot be done before such import, export or clearance without detriment to that person, the Assistant Commissioner of Customs or Deputy Commissioner of Customs may, notwithstanding anything contained in this Act or such other law, grant leave for such import, export or clearance on the person executing a bond in such amount, with such surety or security and subject to such conditions as the Assistant Commissioner of Customs or Deputy Commissioner of Customs approves, for the doing of that thing within such time after the import, export or clearance as may be specified in the bond.

(2) If the thing is done within the time specified in the bond, the Assistant Commissioner of Customs or Deputy Commissioner of Customs shall cancel the bond as discharged in full and shall, on demand, deliver it, so cancelled, to the person who has executed or who is entitled to receive it; and in such a case that person shall not be liable to any penalty provided in this Act or, as the case may be, in such other law for the contravention of the provisions thereof relating to the doing of that thing.

(3) If the thing is not done within the time specified in the bond, the Assistant Commissioner of Customs or Deputy Commissioner of Customs shall, without prejudice to any other action that may be taken under this Act or any other law for the time being in force, be entitled to proceed upon the bond in accordance with law.

15.15 Section 156. General Power to Make rules –

(1) Without prejudice to any power to make rules contained elsewhere in this Act, the Central Government may make rules consistent with this Act generally to carry out the purposes of this Act.

(2)

15.16 Section 158. Provisions with respect to rules and regulations.

(1) All rules and regulations made under this Act shall be published in the Official Gazette.

(2) Any rule or regulation which the Central Government or the Board is empowered to make under this Act may provide -

- (i) for the levy of fees in respect of applications, amendment of documents, furnishing of duplicates of documents, issue of certificates, and supply of statistics, and for rendering of any services by officers of customs under this Act;
- (ii) that any person who contravenes any provision of a rule or regulation or abets such contravention or who fails to comply with any provision of a rule or regulation with which it was his duty to comply, shall be liable to a penalty which may extend to fifty thousand rupees (w.e.f. 01.08.2019 two lakh rupees).

15.17 The relevant portions of the Customs IGCRD (Import of goods at Concessional rate of duty) Rules, 2017 published in exercise of the powers conferred under Section 156 of the Customs Act, 1962 provides for the following:

Rule 4. Importer to give prior information—

The, importer shall provide the information to the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service except after-sales service, about the following particulars, namely:-

- (i) *the name and address of the importer and his job worker, if any;*
- (ii) *the goods produced or process undertaken at his manufacturing facility of the importer and/or his job worker, if any, or both;*
- (iii) *the nature and description of imported goods used in the manufacture of goods at the premises of the importer or job worker, if any;*
- (iv) *nature of output service rendered utilising imported goods.*

Rule 5. Procedure to be followed.—

(1) The importer who intends to avail the benefit of an exemption notification shall provide information –

- (a) in duplicate, to the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, the estimated quantity and value of the goods to be imported, particulars of the exemption notification applicable on such import and the port of import in respect of a particular consignment for a period not exceeding one year; and*
- (b) in one set, to the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs at the Custom Station of importation.*

(2) The importer who intends to avail the benefit of an exemption notification shall submit a continuity bond with such surety or security as deemed appropriate by the Deputy Commissioner of Customs or Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, with an undertaking to pay the amount equal to the difference between the duty leviable on inputs but for the exemption and that already paid, if any, at the time of importation, along with interest, at the rate fixed by notification issued under section 28AA of the Act, for the period starting from the date of importation of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay.

(3) The Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, shall forward one copy of information received from the importer to the Deputy Commissioner of Customs, or as the case may be, Assistant Commissioner of Customs at the Custom Station of importation.

(4) On receipt of the copy of the information under clause (b) of sub-rule (1), the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs at the Custom Station of importation shall allow the benefit of the exemption notification to the importer who intends to avail the benefit of exemption notification.

Rule (6) Importer to give information regarding receipt of imported goods and maintain records. –

(1) The importer shall provide information of the receipt of the imported goods in the premises, where the imported goods shall be put to use for manufacture of goods or job work or for rendering output service within two days (excluding holidays, if any) of such receipt to the jurisdictional Customs Officer.

(2) The importer shall maintain an account in such manner to clearly indicate the quantity,-

(i) and the value of goods imported;

(ii) of imported goods consumed;

(iii) of goods sent for job work, nature of job work carried out;

(iv) of goods received after job work;

(v) of goods re-exported, if any, under rule 7; and

(vi) remaining in stock, according to bills of entry,

and shall produce the said account as and when required by the Deputy Commissioner of Customs or as the case may, the Assistant Commissioner of Customs having jurisdiction over the premises or where the imported

goods shall be put to use for manufacture of goods or for rendering output service.

- (3) The importer shall submit a quarterly return, in the Form appended to these rules, to the Deputy Commissioner of Customs, or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, by the tenth day of the following quarter.

Rule 7. Re-export or clearance of unutilised or defective goods. -

- (1) The importer who has availed benefit of an exemption notification, prescribing observance of these rules may re-export the unutilised or defective imported goods, within six months from the date of import, with the permission of the jurisdictional Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service:

Provided that the value of such goods for re-export shall not be less than the value of the said goods at the time of import.

- (2) The importer who has availed benefit of an exemption notification, prescribing observance of these rules may also clear the unutilised or defective imported goods, with the permission of the jurisdictional Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, within a period of six months from the date of import on payment of import duty equal to the difference between the duty leviable on such goods but for the exemption availed and that already paid, if any, at the time of importation, along with interest, at the rate fixed by notification issued under section 28AA of the Act, for the period starting from the date of importation of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay.

.....

Rule 9: References in any rule, notification, circular, instruction, standing order, trade notice or other order pursuant to the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 and any provision thereof or to the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016 and any corresponding provisions thereof shall, be construed as reference to the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.

16. VIOLATIONS OF VARIOUS LEGAL PROVISIONS UNDER CUSTOMS ACT AND IGCRD RULES:

16.1 From the documentary evidences available on record, it appeared that the Noticee was fully aware of the fact that the item imported by them attracts BCD @ 5% ad Valorem but have wilfully mis-stated the facts and wrongly availed benefit under Sl. No. 107 of the Notification No. 50/2017 dated 30.06.2017. The benefit of Sl. No. 107 of the Notification No. 50/2017-Customs as amended is not available to them *ab-initio* as they are not engaged in the manufacture of "Excisable Goods" as defined in Schedule IV of the amended Central Excise Act, 1944. All this appeared to have been done with an intention to evade the Duty even though they were fully aware of the fact that they are not engaged in the manufacture of "Excisable Goods" as defined in Schedule IV of the amended Central Excise Act, 1944 with effect from 01.07.2017 onwards and hence, the differential duty is liable to be recovered from them as per the provisions of Section 28(4) of the Customs Act, 1962/ Rule 8 of IGCRD Rules, 2017. Further, for the violations of the provisions of the Customs Act, 1962 with a wilful intent to evade the payment of the applicable Customs duties, they appear to have rendered themselves liable for penal action too.

16.2 The Noticee appeared to have contravened the provisions of sub section (4) of Section 46 of the Customs Act, 1962, in as much as, they filed wrong declaration before the Customs authorities to the effect that they were fulfilling conditions of Sl. No.107 of Notification No.50/2017-Cus., dated 30.06.2017 in order to (wrongly) avail the benefit of the notification which is otherwise not available to them as they are not engaged in the manufacture of "Excisable Goods".

16.3 Since the Noticee is not eligible for benefit of Sl. No. 107 of notification no. 50/2017-Cus., dated 30.06.2017, denatured ethyl alcohol imported by them would attract applicable BCD at the rate of 5% as the imports made by them are covered under Sl. No. 106 of notification no. 50/2017-Cus., dated 30.06.2017. The benefits of Sl. No. 107 of the Notification No. 50/2017 Customs as amended is not available to them *ab-initio* as they are not engaged in the manufacture of "Excisable Goods" like (a) petroleum crude, (b) high speed diesel, (c) motor spirit (commonly known as petrol), (d) natural gas, (e) aviation turbine fuel and (f) tobacco and tobacco products as defined in Schedule IV of the amended Central Excise Act and the importer appears to be fully aware of this fact. The actions of the importer appears to have been done with an intent to evade the Duty at the rate of 5% BCD even though they were fully aware of the fact that they did not manufacture "Excisable Goods" as defined in Schedule IV of the amended Central Excise Act, 1944 with effect from 01.07.2017 onwards and hence the differential Duty is liable to be recovered from them as per the provisions of Section 28(4) of the Customs Act, 1962. The incorrect availment of the Notification benefits which is otherwise not available to them has resulted in the short payment of Customs Duty which is liable to be recovered from them under Section 28(4) of the Customs Act, 1962/ Rule 8 of the IGCRD Rules, 2017 along with applicable interest as provided under the provisions of Section 28 AA of the Customs Act, 1962.

16.4 It further appeared that the aforesaid acts of omission/ commission on the part of M/s Ester (India) Chemicals Pvt. Ltd. for wrong availment of benefit of Sl. No. 107 of Notification No. 50/2017-Cus. dated 30.06.2017 by M/s Ester (India) Chemicals Pvt. Ltd. on the basis of improper documents and wrong declaration of Sl. No. 107 of Notification No. 50/2017-Cus. dated 30.06.2017 while filing of Bill of Entry in respect of import of Denatured Ethyl Alcohol by them has rendered the goods liable for confiscation under section 111(d), 111 (m) and 111 (o) of the Customs Act, 1962. Hence, by the said acts of omission and commission, M/s Ester (India) Chemicals Pvt. Ltd. appears to have rendered themselves liable for penal action under the provisions of Section 112/ or Section 114A and Section 114AA of the Customs Act, 1962.

17. CALCULATION OF DUTY LIABILITY

The Noticee had filed 01 Bill of Entry No. 8256863 dated 23.07.2020 of Ex-bond at Pipavav port (INPAV1) for clearance of imported 'Denatured Ethyl Alcohol' at Concessional Rate of Duty for their operations at their Plant situated at Plot No. C-4, C-4/1, Site-IV, Industrial Estate, Sahibabad, Ghaziabad, Uttar Pradesh 201010 on 23-07-2020 as per table below:

Bill of Entry No. & Date	No. Of Bill Of Entries	Quantity Of Imported Denatured Ethyl Alcohol (MTs)	Port Of Import	Total Assessable Value (In Rs.)	Total Differential Duty Liability (In Rs.)
8256863 dated 23.07.2020	1	375	INPAV 1	1,66,44,452/-	5,40,112/-

The total differential duty liability of Rs. 5,40,112/- as mentioned above includes BCD of Rs. 4,16,111/-, SWS of Rs. 41,611/- and IGST of Rs. 82,390/-. The detail calculation of total differential duty in respect of the said imported goods is enclosed as **Annexure-I** to the impugned Show Cause Notice.

18. Accordingly, a Show Cause Notice No.: ADC-07/2024-25 dated 17.01.2025 was issued to the Noticee asking them as to why:

- I. The benefit of Sl.No.107 of Notification No. 50/2017-Cus, dated 30.06.2017 as amended, availed by them while clearance of 'denatured ethyl alcohol' imported by them, should not be denied, and denatured ethyl alcohol weighing **375 MTs** imported by them at concessional rate of duty (as detailed in Annexure-I to this Show Cause Notice) should not be charged to Basic Customs duty (BCD) @ 5% in terms of Sl. No. 106 of Notification No. 50/2017-Cus (as amended) in addition to other applicable duties;

- II. Denatured Ethyl Alcohol weighing 375 MTs having assessable value of Rs. 1,66,44,452/- (Rupees one crore, sixty six lakh, forty four thousand, four hundred and fifty two only), as detailed in Annexure-I to this Show Cause Notice, imported by them at concessional rate of duty during the period on 23-07-2020, should not be held liable to confiscation under the provisions of Section 111(d), 111(m) and 111(o) of the Customs Act, 1962;
- III. duty short-paid by them amounting to Rs. 5,40,112/- (Rupees five lakh, forty thousand, one hundred and twelve only) during the period on 23-07-2023, as detailed in Annexure-I to this Show Cause Notice, on account of wrong availment of Sl. No. 107 of Notification No. 50/2017 dated 30.06.2017 as amended, should not be demanded and recovered from the Noticee under Section 28(4) of the Customs Act, 1962
- IV. Applicable interest leviable on the duty short-paid by them as detailed at para no. 18(iii) above should not be recovered from them under Section 28AA of the Customs Act, 1962;
- V. penalty should not be imposed on the Noticee under Section 112 and or Section 114A of the Customs Act, 1962;
- VI. penalty should not be imposed on the Noticee under 114AA of the Customs Act, 1962;

DEFENCE REPLY

19. The Importer vide his letter dated 27.02.2025 in his written defense reply submitted as under:

- (i) The suppression is on the part of department and not on their part. Entire case has been made out on the basis of documents available on record at the time of filing of Bill of Entry. Attention in this regard is drawn towards the application dated 20.07.2020 filed before the jurisdictional Assistant Commissioner seeking permission to import goods under exemption. It was categorically declared that they were engaged in the manufacture of ethyl acetate having registration under GST for the import of denatured ethyl alcohol for use/ consume for manufacture of ethyl acetate in their factory. They also provided necessary details required under the relevant provisions. Copy of same was forwarded to the Deputy Commissioner of Customs where Bill of Entry was filed. In other words, at the time of import, the Jurisdictional authority and even the Customs authority were very well aware of the fact as to what was to be manufactured by them out of the said goods. Therefore, there had been clear declaration by them.
- (ii) The Show Cause Notice has suppressed the fact as to how the department came to know about so-called wrong availment of exemption notification by them. Even as per the case of the department, the Bill of Entry was filed on 23.07.2020 and the first letter was issued by the department on 14.10.2022 i.e. after more than 02 years. There is nothing in the SCN as to how and by whom such objection was raised. It would be pertinent to mentioned here that it is an

undisputed fact that there has been no mis-declaration on their part with regard to classification of the goods in the Bill of Entry and their final product in the declaration filed for import of goods.

- (iii) Attention is drawn towards letter dated 22.07.2020 issued by the office having jurisdiction over them to the Deputy/Assistant Commissioner of Customs Pipavav Port giving all the details of their final product and the product to be imported. The said letter has also been skipped over in the Show Cause Notice.
- (iv) It would be pertinent to mentioned here that on receipt of letter dated 14.10.2022, they vide letter dated 11.11.2022 filed a detailed reply contesting the stand of department. However, the said reply has not been referred in the notice at all, which amounted to suppression on the part of department and not on their part.
- (v) Further, the very fact that the Show Cause Notice has refer to constitutional amendment, various notification issued from time to time and statutory provisions while arriving at the conclusion that the exemption was wrongly availed by them, would be more than sufficient to show that there could be no scope for invocation of extended period.
- (vi) It would be pertinent to mention that the Bill of Entry was filed on 23.07.2020 whereas even according to the case of department itself, the first communication was made by the department on 14.10.2022 i.e. after more than two years. There has been no mention in the notice as to what prompted it to initiate such investigation after more than two years from the date of filing of Bill of Entry.
- (vii) The Show Cause Notice has relied upon a declaration which was filed by them on 28.07.2020. This clearly shows that the department was very well aware of all the facts in 2020 itself but still it choose to not take any action for over two years.
- (viii) Further, attention is drawn towards letter dated 11.11.2022 where it was also contended by them that it was an admitted fact that they filed Bill of Entry which was duly assessed by the concerned officer. Assessment of Bill of Entry being an appealable order, the department had no option but to file appeal against the same, if aggrieved. It was nowhere the case of department that some new evidences were unearthed by the department, which resulted in issuance of SCN. Hence, there has been no suppression at all on their part.
- (ix) As regard merits of the case, they have been made to understand that after introduction of GST, certain acts were merged into it, including the Central Excise Act due to which after 01.07.2017, they were not eligible to import goods at concessional rate of duty, which could not be noticed by them in the given circumstances.
- (x) It has been alleged that they were fully aware of the fact that the imported goods were not eligible for concessional rate of duty as the same were not to be used for the manufacture of excisable goods. Once that be so, the officer issuing the exemption certificate and the Custom officer assessing the Bill of Entry were equally at fault as they being revenue officers were supposed to be having more knowledge than the assessee. Therefore, when they did not raise

any objection at the relevant time, the sole responsibility could not be shifted upon them.

- (xi) It is settled law that for invoking extended period, the department is required to show something more than mere inaction on the part of the assessee. They relied upon the judgment of the Hon'ble Supreme Court in the case of *Uniworth Textiles Ltd. [2013 (288) ELT 161 (SC)]* in support of the same.

PERSONAL HEARING:

20. The personal hearing in the subject case was granted on 12.08.2025 in virtual mode as a natural justice. Shri Mangal Kumar Garg, duly authorized by the Noticee, appeared for Personal Hearing physically. During the personal hearing, he re-iterated submissions made vide their written reply dated 27.02.2025 and made additional submissions dated 12.08.2025. He agreed with the duty liability of 5% as demanded in SCN and agreed to pay the same alongwith interest. Further, as the goods are not seized / not available with customs, he submitted that these are not liable for confiscation. Further, as there is no suppression of facts, he requested not to impose any penalty. Vide additional submissions dated 12.08.2025, he submitted as under:

- (i) The adjudication proceeding is being initiated on 17.01.2025, which is beyond the normal period of adjudication. In similar matter, where there was delay in adjudication, various courts/CESTAT set aside the order on said ground and in support of the same, the Noticee relied upon the decision of CESTAT Final Order No. 59511-59720/2024 dated 25.11.2024 in the case of Kopertek Metals P. Ltd and the Hon'ble Delhi High Court judgment dated 10.12.2024 in the case of VOS Technologies India P. Ltd.
- (ii) With regard to invoking extended period, the Noticee relied upon the judgment of the Hon'ble Supreme Court in the case of *Uniworth Textiles Ltd. [2013 (288) ELT 161 (SC)]*.
- (iii) With regard to confiscation of goods, the Noticee relied upon the decision of CESTAT in the case of *Shiv Kripa Ispat P. Ltd. Vs. CC, Nashik*.

DISCUSSIONS AND FINDINGS:

21. I have carefully gone through the facts of the case, Show Cause Notice and written defense submissions and submission made during the personal hearing held on 12.09.2025 as well as available records on hand.

22. I find that the issues that arise for consideration are:

- (i) Whether the Noticee wrongly availed benefit of concessional Basic Customs duty @ 2.5% under Sl. No. 107 of Notification No. 50/2017-Cus dated 30.06.2017 on import of Denatured Ethyl Alcohol which in fact was to be charged to Basic

Customs duty @ 5% under Sl. No. 106 of Notification No. 50/2017-Cus dated 30.06.2017.

(ii) Whether the differential duty of Rs.5,40,112/- along with interest is recoverable from the Noticee under Section 28(4) read with Section 28AA of the Customs Act, 1962.

(iii) Whether the imported goods i.e. 375 MTs of Denatured Ethyl Alcohol having assessable value Rs.1,66,44,452/- are liable for confiscation under Sections 111(d), 111(m) and 111(o) of the Customs Act, 1962.

(iv) Whether the Noticee is liable to penalty under Sections 112, 114A and 114AA of the Customs Act, 1962.

23. I observe that the Noticee has not assailed the impugned Show Cause Notice on merit but contested the demand of duty mainly on the ground that there has been no mis-declaration on their part with regard to classification of the goods in the Bill of Entry No.8256863 dated 23.07.2025 and their final product as declared by them vide application dated 20.07.2020 before the jurisdictional Assistant Commissioner wherein in light of the provisions of Rule 5 of the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, they had sought permission to import "Denatured Ethyl Alcohol" at concessional Basic Customs duty @ 2.5% under Sl. No. 107 of Notification No. 50/2017-Cus dated 30.06.2017 and categorically declared that the imported "Denatured Ethyl Alcohol" would be used/consumed for manufacture of "Ethyl Acetate" in their factory. Copy of same was forwarded to the Deputy Commissioner of Customs, Pipavav where the said Bill of Entry was filed. Hence, at the time of import, the Jurisdictional authority and even the Customs authority were very well aware of the fact as to what was to be manufactured by them out of the said goods. Therefore, there had been clear declaration by them. The Noticee, during personal hearing, agreed that they were eligible to be charged to Basic Customs duty @ 5% under Sl. No. 106 of Notification No. 50/2017-Cus dated 30.06.2017 instead of concessional Basic Customs duty @ 2.5% under Sl. No. 107 of Notification No. 50/2017-Cus dated 30.06.2017 on import of Denatured Ethyl Alcohol and had shown willingness to pay the duty demanded in the Show Cause Notice alongwith interest. Vide email dated 23.09.2025, the Noticee has submitted Challan No.1455985177 dated 23.09.2025 whereby they have discharged their liability of Customs duty amounting to Rs.5,40,112/ and interest of Rs.4,18,600/-.

24. On careful consideration of the submission made by the Noticee and perusal of record, I find that the Noticee imported 375 MT of Denatured Ethyl Alcohol vide Bill of Entry No.8256863 dated 23.07.2020 and claimed concessional duty @ 2.5% under Sl. No. 107 of Notification No. 50/2017-Cus. The said entry allows concessional rate only when the imported goods are used in the manufacture of "excisable goods." After 01.07.2017, only six items (petroleum crude, HSD, MS, ATF, natural gas and tobacco products) remained excisable under Schedule IV of the Central Excise Act, 1944. Since Ethyl Acetate, the final product of the Noticee, does

not fall under this category, therefore, the benefit of Sl. No. 107 is not admissible, and the import is rightly classifiable under Sl. No. 106 of the said Notification attracting Basic Customs Duty @ 5%.

25.1 On examining the facts of the case in light of Section 28(4) of Customs Act, 1962 which envisages three circumstances viz. collusion; or any wilful misstatement; or suppression of facts for invocation of extended period, I find that the Noticee, vide application dated 20.07.2020, had intimated the jurisdictional Assistant Commissioner in terms of the provisions of Rule 5 of the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 as well as the Deputy Commissioner of Customs, Pipavav regarding import of "Denatured Ethyl Alcohol" at concessional Basic Customs duty @ 2.5% under Sl. No. 107 of Notification No. 50/2017-Cus dated 30.06.2017, which further was to be used for manufacture of "Ethyl Acetate" in their factory. Therefore, I do not find any misrepresentation of fact by the Noticee and no *mala fide* can be attributed to them in the given facts of the present case.

25.2 I observe that the case is also made on the basis of documents submitted by the Noticee at the time of import and no additional evidence emerged at later stage to prove collusion; or any wilful misstatement; or suppression of facts to evade duty. Hence, I find that duty is to be demanded and recovered under Section 28(1) of the Customs Act, 1962. In this regard, it is worth to reproduce below Section 28(10B) of the Customs Act, 1962:

"Section (10B) - A notice issued under sub-section (4) shall be deemed to have been issued under sub-section (1), if such notice demanding duty is held not sustainable in any proceeding under this Act, including at any stage of appeal, for the reason that the charges of collusion or any wilful misstatement or suppression of facts to evade duty has not been established against the person to whom such notice was issued and the amount of duty and the interest thereon shall be computed accordingly."

Hence, taking all these aspects into consideration and provisions contained under Section 28(10B) of the Customs Act, 1962, I hold demand of Customs duty of Rs.5,40,112/- and interest thereon i.e. interest of Rs.4,18,600/- under Section 28(1) of the Customs Act, 1962 and Section 28AA of the Customs Act, 1962 respectively, which have already been paid by the Noticee during adjudication proceedings. Thus, the issue related to demand of duty and interest is settled.

26. With regard to confiscation and penalties, the relevant provisions of Section 111, Section 112, Section 114A and Section 114AA of the Customs Act, 1962 are reproduced below for better understanding of the facts:

Section 111 - Confiscation of improperly imported goods, etc.- *The following goods brought from a place outside India shall be liable to confiscation:-*

(a) to (c)

(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;

(e) to (l)

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

(n)

(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;

(p) and (q)

Section 112- Penalty for improper importation of goods, etc. - Any person

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

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

shall be liable to penalty as envisaged in sub clause (i) to (v) of the said Section;

Section 114A- Penalty for short-levy or non-levy of duty in certain cases - *Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty has been erroneously refunded **by reason of collusion or any wilful mis-statement or suppression of facts**, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of Section 28 shall also be liable to pay a penalty equal to the duty or interest so determined.*

Section 114AA – Penalty for use of false and incorrect material – *If a person knowingly or intentionally makes, signs or uses, or causes to be*

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

From plain reading of the said three clauses 111(d), 111(m) and 111(o) of the Customs Act, 1962, I find that the fact to the effect that that the impugned goods correspond to declaration in respect of the description and value and the importer, vide application dated 20.07.2020 before the jurisdictional Assistant Commissioner, had sought permission to import "Denatured Ethyl Alcohol", at concessional Basic Customs duty @ 2.5% under Sl. No. 107 of Notification No. 50/2017-Cus dated 30.06.2017, for manufacture of "Ethyl Acetate" is sufficient to take the imported goods away from the application of the said three clauses. Under the circumstances, I hold that the goods are not liable for confiscation.

As regards imposition of penalties, I find that Section 112 of the Customs Act, 1962 provides for penalty only when the impugned goods are held liable to confiscation under Section 111 of the Customs Act, 1962, which is not so in the case in hand and hence, penalty under Section 112 of the Customs Act, 1962 fails on this count. Further, as discussed above, the Noticee has been set free from the charges of collusion or any wilful mis-statement or suppression of facts, therefore, penalty under Section 114A/114AA of the Customs Act, 1962 upon the Noticee would also not arise.

27. In view of the aforesaid discussions and findings, I pass the following order:

ORDER

- (a) I deny the benefit of Sl.No.107 of Notification No. 50/2017-Cus dated 30.06.2017 availed by the Noticee while clearance of 375 MTs of imported 'Denatured Ethyl Alcohol' and allow the benefit of Sl. No. 106 of Notification No. 50/2017-Cus dated 30.06.2017 which charges Basic Customs duty (BCD) @ 5% upon the said imported goods;
- (b) I do not confiscate 375 MTs of imported 'Denatured Ethyl Alcohol' having assessable value of Rs. 1,66,44,452/- (Rupees one crore, sixty six lakh, forty four thousand, four hundred and fifty two only) under the provisions of Section 111(d), 111(m) and 111(o) of the Customs Act, 1962;
- (c) I order to pay total Customs duty amounting to Rs. 5,40,112/- (Rupees five lakh, forty thousand, one hundred and twelve only) under Section 28(1) of the Customs Act, 1962 and since the Noticee has already paid the said duty i.e. vide Challan No.1455985177 dated 23.09.2025, I appropriate the same against the demand of Customs duty as confirmed;
- (d) I order to pay interest under Section 28AA of the Customs Act, 1962 and since the Importer has already paid the said interest of Rs.4,18,600/- (Rupees

four lakh, eighteen thousand, six hundred only) vide Challan No.1455985177 dated 23.09.2025, I appropriate the same against the demand of interest as confirmed; and

(e) I refrain to impose penalty under Section 112, 114A and Section 114AA of the Customs Act, 1962.

28. This order is issued without prejudiced to any other action which may be contemplated against the Importer or any other person in terms of any of the provisions of the Customs Act, 1962 and/or any other law for the time being in force.

29. This order is issued without prejudice to any other action that may be taken against the importer or any other person under the Customs Act, 1962 or any other law for the time being in force.



(N. Srujan Kumar)
Additional Commissioner
Date: 24.09.2025

DIN - 20250971MM0000111B55
BY Speed Post A.D

To,
M/s Ester (India) Chemicals Pvt. Ltd.,
Plot No. C-4, C-4/1, Site-IV,
Industrial Estate, Sahibabad,
Ghaziabad (Uttar Pradesh) – 201 010.

Copy to:-

- i. The Commissioner, Customs (Preventive), Jamnagar [Kind Attention: the Superintendent (Review-HQ), Customs (Preventive), Jamnagar]
- ii. The Deputy Commissioner of Customs, HQ, Preventive Section, Customs (P) Commissionerate, Jamnagar.
- iii. The Assistant Commissioner of Custom House, Pipavav for information and further necessary action.
- iv. Guard File.