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
Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62,
Email-adj-mundra@gov.in

आज़ादी का अमृत महोत्सव

A. File No.	:	GEN/ADJ/COMM/150/2023-Adjn-O/o Pr. Commr-Cus-Mundra
B. Order-in-Original No.	:	**MUN-CUSTM-000-COM- 043 -24-25**
C. Passed by	:	**K. Engineer,** **Principal Commissioner of Customs,** **Customs House, AP & SEZ, Mundra.**
D. Date of order and Date of issue:	:	06.02.2025. 06.02.2025.
E. SCN No. & Date	:	SCN F. No. GEN/ADJ/COMM/150/2023-Adjn-O/o Pr. Commr- Cus-Mundra, dated 07.08.2024.
F. Noticee(s) / Party / Importer	:	M/s. Nextera Management Services (IEC-0312008538), 6/82, Commercial Chambers, 173, Yusuf Meherali Road, Mumbai 400 003.
G. DIN	:	**20250271MO0000717867**

1. यहअपीलआदेश 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 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए3-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 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

   "केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004"

   "Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004."

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

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

4. उक्त अपील के साथ -/ 1000रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंचआहरितट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

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

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

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

6. अपील ज्ञापन के साथ ड्यूटि/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.

7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

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

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

   An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE:

Whereas, M/s Nextera Management Services, 6/82, Commercial Chambers, 173, Yusuf Meherali Road, Mumbai 400 003 (IEC-0312008538) (in short "the importer" or "the noticee") have imported three consignments of Sodium Saccharin declared under CTH 29251100 of the Customs Tariff Act, 1975 vide three self-assessed Bills of Entry as per the Table-A mentioned below and cleared the same without payment of CVD as per Notification No.02/2019-Customs (CVD) dated 30.08.2019.

TABLE-A

Sr. No	Bill of Entry No. and date	Description of goods declared with Chapter heading	Assessable value declared/Rs.	CVD payable as per Noti. No. 02/2019-Cus @ 20% of the assessable value (Rs.)	CVD paid /Rs.	Differential CVD payable/Rs. @ 20% of assessable value.
01	9995679/ 13.08.2022	Sodium Saccharin 28251100	1,22,19,900.00	24, 43,980.00	0	24,43,980.00
02	3511945/ 29.11.2022	Sodium Saccharin 29251100	1,15,50,000.00	23,10,000.00	0	23,10,000.00
03	3789259/ 18.12.2022	Sodium Saccharin Food Grade (Not for medical use) 29251100	1,22,91,354.00	2458271.00	0	24,58,271.00
	Total		3,60,61,254.00	72,12,251.00	0	72,12,251.00

Notification No,02/2019-Customs is reproduced below:-

Notification No. 2/2019-Customs (CVD)

G.S.R. (E). -Whereas, in the matter of "Saccharin in all its forms" (hereinafter referred to as the subject goods) falling under tariff item 2925 11 00 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act), originating in or exported from, People's Republic of China (hereinafter referred to as the subject countries), and imported into India, the Designated Authority in its final findings, published in the Gazette of India, Extraordinary, Part I, Section 1, vide notification No. 6/18/2018-DGAD, dated the 19th June, 2019, has come to the conclusion that:-

(a) the product under consideration has been exported to India from subject countries at subsidized value, thus resulting in subsidization of the product;

(b) the domestic industry has suffered material injury due to subsidization of the product under consideration; and

(c) the material injury has been caused by the subsidized imports of the subject goods originating in or exported from the subject country.

Now, therefore, in exercise of the powers conferred by sub-sections (1) and (6) of section 9 of the Customs Tariff Act, read with rules 20 and 22 of the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995, the Central Government, after considering the aforesaid final findings of the Designated Authority, hereby imposes definitive Countervailing Duty on the subject goods, the description of which is specified in column (3) of the Table below, falling under tariff item of the First Schedule to the Customs Tariff Act as specified in the corresponding entry in column (2),

originating in and exported from the countries as specified in the corresponding entry in column (4), produced by the producers as specified in the corresponding entry in column (5), and imported into India, countervailing duty of an amount as specified in the corresponding entry in column (6) of the said Table, namely:-

Duty Table

S. No.	Heading/Sub	Description of goods	Country of Origin/Export	Producer	Duty amount as % of CIF value
1	2	3	4	5	6
1	29251100	Saccharin in all its forms	Chiina	Any	20

2. The countervailing duty imposed under this notification shall be levied for a period of five years (unless revoked, superseded or amended earlier) from the date of publication of this notification in the Official Gazette and shall be payable in Indian currency.

Explanation: – For the purposes of this notification,

(1) "CIF value" means the assessable value as determined under section 14 of the Customs Act, 1962 (52 of 1962). [F. No. 354/ 61/2019-TRU]

(Gunjan Kumar Verma)

Under Secretary to the Government of India "

2. From the provisions of Notification No.02/2019-Cus dtd. 30.08.2019 it is amply Clear that CVD @ 20% of assessable value has to be paid by the importer who has imported "Saccharin in any form" falling under Tariff Heading No.29251100 of the Customs Tariff Act, 1975. However, in the instant case it is noticed that the importer have not paid the requisite CVD on the imported goods Sodium Saccharin declared under CTH 29251100, valued at Rs.3,60,61,254.00, and CVD amounting to the tune of Rs.72,12,251.00 resulting in non-payment/short payment of CVD in terms of the above notification.

3. On noticing the non-payment of CVD by the importer, a letter F.No. Cus/Apr/BE/96/2023-Gr.2/O/o Pr.Commr-Cus-Mundra dated 10.01.2023 was issued to the importer requesting them to make payment of the unpaid CVD which was liable to be paid in terms of Notification No.02/2019-(CVD) dated 30.08.2019 and amounting to Rs.72,12,251.00 along with interest. Vide their letter dated 25.01.2023, the importer stated that the product imported by them viz. Sodium Saccharin is not form of Saccharin but it is a different and distinct identifiable product. They also relied on various case laws and manufacturing process of Sodium Saccharin and informed that no payment has been made so far against the Government dues.

4. Whereas it appeared that the importer's explanation and argument is not acceptable to the Department and not sustainable in the present case in so far as –

i) facts and circumstances of the of the laws cited by the importer are different than the present case.

ii) cases cited by the importer were related to older period and prior to issue of the Notification No.02/2019-Cus (CVD) dated 30.08.2019.

iii) notification is very clear and free from doubt about payment of CVD on Saccharin in all its forms falling under Tariff Item No.29251100.

iv) Case laws cited by the importers were related to payment of ADD and not CVD.

5. In view of the above, it appeared that the Noticee i.e. M/s. Nextera Management Services, failed to pay the CVD on the imported goods Sodium Saccharin as stipulated in the Notification No.02/2019-Cus (CVD) vide above said three (3) Bills of Entry causing a loss to the Government exchequer.

6. Therefore, it appeared that CVD amounting to Rs.72,12,251/- (Rupees Seventy Two Lakhs Twelve Thousand Two Hundred Fifty One Only)(Detailed in Table in para 1 above) have not been paid by the noticee in respect of the above-mentioned imported items in above said three (03) Bills of Entry, which are required to be recovered under Section 28(1) of Customs Act, 1962 along with interest at applicable rate under Section 28AA of the Customs Act, 1962.

7. In terms of Section 46(4) of Customs Act, 1962, the importer is required to make a declaration as regards the truth of the contents of the Bill of entry submitted for assessment of Customs duty, details of which is reproduced below for reference:

> *"Section 46(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."*

Section 28 (1) of the Customs Act, 1962 reads as under:-

Section 28. [1]Recovery of [2][duties not levied or not paid or short-levied or short- paid] or erroneously refunded. -

(1) Where any [3][duty has not been levied or not paid or short-levied or short-paid] or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any wilful mis-statement or suppression of facts,-

(a) the proper officer shall, within [4][two years] from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied [5][or paid] or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice;

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

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

(i) his own ascertainment of such duty; or

(ii) the duty ascertained by the proper officer, the amount of duty along with the interest payable thereon under section 28AA or the amount of interest which has not been so paid or part-paid.

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

Section 28 (AA) of the Customs Act, 1962 reads as under: -

Section 28(AA) of Customs Act, 1962 provides interest on delayed payment of duty-
(1) Where any duty has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person who is liable to pay the duty as determined under sub-Section (2), or has paid the duty under sub-Section (2B), of Section 28, shall, in addition to the duty, be liable to pay interest at such rate not below ten per cent. and not exceeding thirty-six per cent per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first day of the month succeeding the month in which the duty ought to have been paid under this Act, or from the date of such erroneous refund, as the case may be, but for the provisions contained in sub-Section (2), or sub-Section (2B), of Section 28, till the date of payment of such duty:

Section 112 of the Customs Act, 1962 is reproduced as under:-

SECTION 112. Penalty for improper importation of goods, etc.-

Any person, -

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

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

shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [1] [not exceeding the value of the goods or five thousand rupees], whichever is the greater;

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

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

[3] [(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty [4] [not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;]

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty [5] [not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty [6] [not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.]

8. In order to sensitize the People of Trade (read Importer/Exporter) about its benefit and consequences of mis-use; Government of India has also issued 'Customs Manual on Self-Assessment 2011'. The publication of the 'Customs Manual on Self-Assessment 2011' was required as because prior to enactment of the provision of 'Self-Assessment', mis-classification or wrong-availment of duty exemption etc., in normal course of import, was not considered as mis-declaration or mis-statement. Under para-1.3 of Chapter-1 of the above manual, Importers/Exporters who are unable to do the Self-Assessment because of any complexity, lack of clarity, lack of information etc. may exercise the following options: **(a)** Seek assistance from Help Desk located in each Custom Houses, or **(b)** Refer to information on CBEC/ICEGATE web portal (www.cbic.gov.in), or **(c)** Apply in writing to the Deputy/Assistant Commissioner in charge of Appraising Group to allow provisional assessment, or **(d)** An importer may seek Advance Ruling from the Authority on Advance Ruling, if qualifying conditions are satisfied. Para 3 (a) of Chapter 1 of the above Manual further stipulates that the Importer/Exporter is responsible for Self-Assessment of duty on imported/exported goods and for filing all declarations and related documents and confirming these are true, correct and complete. Under para-2.1 of Chapter-1 of the above manual, Self-Assessment can result in assured facilitation for compliant importers. However, delinquent and habitually non-compliant importers/ exporters could face penal action on account of wrong Self-Assessment made with intent to evade duty or avoid compliance of conditions of notifications, Foreign Trade Policy or any other provision under the Customs Act, 1962 or the Allied Acts.

9. For details, all the above-referred Provisions, Act, Rules, Regulation, Foreign Trade Policy etc. may be viewed at **www.cbic.gov.in.**

10. The importer/noticee has seemingly mis-stated the facts and evaded payment of CVD which was liable to be paid by them as per Notification No. 02/2019-Cus (CVD) dated- 30.08.2019 and not paid CVD @ 20% of assessable value on the imported Sodium Saccharin vide above three Bills of Entry as per table above filed by them.

11. In the light of the documentary evidences as brought out above and the legal position, it appeared that it was a well thought out intent of the importer/noticee to defraud the exchequer by adopting the modus operandi to avoid payment of CVD in the present case.

12. Whereas, it is apparent that the importer/noticee was in complete knowledge of the correct nature of the goods and evaded payment of CVD as per Notification No. 02/2019-Cus (CVD) dated 30.08.2019 @ 20% of the assessable value as stipulated in the said Notification. With the introduction of self-assessment under Section 17, more faith is bestowed on the importers, as the practices of routine assessment, concurrent audit etc. have been dispensed with. As a part of self-assessment, the importer has been entrusted with the responsibility to correctly self-assess the duty. However, in the instance case, the importer intentionally abused

this faith placed upon him by the law of the land. Therefore, it appeared that the importer has contravened the provisions of Section 17(1) of the Act in as much as importer has failed to correctly self-assess the impugned goods and has also contravened the provisions of Sub-section (4) and (4A) of Section 46 of the Act rendering themselves liable to penalty under Section 117 of the Customs Act, 1962.

13. Therefore, it appeared that the importer claimed undue notifications benefit for the impugned goods resulting in short levy of duty. For such act/omissions, the importer also appeared to have rendered themselves liable to penalty under Section 112(a)of the Customs Act, 1962. Further, it appeared that in respect of the Bills of Entry mentioned in the table above, the CVD not paid by the importer has resulted in short levy of duty of Rs.72,12,251/- (Rupees Seventy two lakhs twelve thousand two hundred fifty one) which appeared recoverable from the importer under the provisions of Section 28(1) of the Customs Act, 1962 (hereinafter referred to as 'the Act') along with interest as applicable under Section 28AA of the Act.

14. From the foregoing discussions, it appeared that,

a. The importer has willfully and intentionally not paid CVD on the imported goods Sodium Saccharin valued at Rs.3,60,61,254.00 in terms of Notification No.02/2019-Cus (CVD) dated 30.08.2019 @ 20% of assessable value.

b. Thus, the short levy of duty amount to the tune of Rs. 72,12,251/- (Rupees Seventy Two Lakhs Twelve Thousand Two Hundred Fifty One only) **for 03 Bills of Entries (as detailed in table above)** filed by the importer was required to be recovered from the importer in terms of Section 28(1) of the Customs Act, 1962.

c. Interest (rate as applicable) on the short levy of duty of Rs.72,12,251/- (Rupees Seventy Two Lakhs Twelve Thousand Two Hundred Fifty one only) was required to be recovered from the importer/noticee in terms of Section 28AA of the Customs Act, 1962.

d. The goods having assessable value of Rs.3,60,61,254/- as detailed herein above, appeared liable for confiscation under Section 111(m) of the Customs Act, 1962

e. Importer is also liable for penalty under Section 112(a) of the Customs Act, 1962 for improper importation of the goods, failure to adhere to the relevant Notification and under Section 117 of the Customs Act for contravention of provision of sub-Section (4) of Section 46 of the Customs Act, 1962 and Section 17(1) of the Customs Act, 1962.

15. It appeared that the Noticee has contravened the provisions of sub section (4) of Section 46 of the Customs Act, 1962, in as much as, they had intentionally not paid the CVD on the imported goods of Sodium Saccharin covered under the above three Bills of Entry at the time of filling of Bills of Entries filed under the provisions of Section 46(4) of the Customs Act, 1962.

16. Further, under the provision of Section 17(1) of the Customs Act, 1962 an importer entering any imported goods shall self-assess the duty leviable on such goods. However, in the instant case the Noticee has self-assessed the subject Bills of Entries and has evaded CVD leviable in terms of Notification No.02/2019-Cus dtd. 30.08.2019 in respect of goods imported in above said three (03) Bills of Entry

as discussed above. Thus, it appeared that they have contravened the provision of Section 17(1) ibid.

17. In view of the facts discussed in the foregoing paras and material evidence available on record, it appeared that the importer has contravened the provisions of Section 46(4) read with Section 17(1) of the Custom Act, 1962 in as much as they had not paid CVD which was not exempted under Notification No.02/2019-Cus (CVD) dtd. 30.08.2019 in respect of the above-mentioned imported items in above said three (03) Bills of Entry seeking clearance at the time importation of the impugned goods. For the said act, the said importer also appeared liable for penal action under the provision of Section 117 of the Customs Act, 1962.

18. In view of above, a notice was issued to M/s Nextera Management Services (IEC-0312008538), on 07.08.2024, to show cause in writing to the Principal Commissioner of Customs, Mundra having office at 1st Floor, Customs House, 5B, Port User Building, Mundra port, Mundra, Kachchh within 30 (Thirty) days from the date of receipt of the notice, as to why:

(i) The goods having assessable value of Rs. **3,60,61,254/-** covered under Bills of Entry as detailed herein above, should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962;

(ii) The CVD total amounting to Rs. 72,12,251/-(Rupees Seventy Two Lakhs Twelve Thousand Two Hundred Fifty One Only) leviable on the impugned goods valued at Rs. 3,60,61,254/- and not paid by them should not be demanded and recovered from them in terms of Section 28(1) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.

(iii) Penalty should not be imposed upon them under Section 112(a) of the Customs Act, 1962.

(iv) Penalty should not be imposed under Section 117 of Customs Act, 1962 in respect of each of Bill of Entry.

19. Further, another Show Cause Notice F. No. CUS/APR/MISC/6748/2024-Gr 2-O/o Pr Commr-Cus-Mundra dated 09.08.2024 in respect of one Bill of Entry no. 9995679 dated 13.08.2022 on similar issue was issued to M/s Nextera Management Services, by the Additional Commissioner of Customs, Import Assessment, Custom House Mundra, asking them to Show Cause to the Additional Commissioner of Customs, Custom House Mundra, as to why –

(a) The imported goods having declared assessable value of Rs.1,22,19,900/- (Rupees One Crore Twenty-Two Lakh Nineteen Thousand and Nine Hundred only) as detailed in Table-A to this Show Cause Notice, should not be held liable for confiscation under Section 111(m) of the Customs Act 1962;

(b) The countervailing duty amounting to Rs. 24,43,980/- and the applicable IGST Rs. 4,39,916/- @ 18% on CVD = Total of Rs.28,83,896/- (Rupees Twenty-Eight Lakh Eighty-Three Thousand Eight Hundred and Ninety-Six only) as detailed in Table-A to this Show Cause Notice, leviable on the said imported goods "Sodium Saccharine" should not be demanded and recovered from them under Section 28(1) of the Customs Act, 1962.

(c) Interest as applicable should not be recovered from them on the Customs duty mentioned at (b) under Section 28AA of the Customs Act, 1962.

(d) Penalty should not be imposed upon them under the provisions of Section 112(a) and / or 114A of the Customs Act, 1962 for goods mentioned at (a) above.

20. It appeared from above two Show Cause Notices that one Bill of Entry no. 9995679 dated 13.08.2022 is common in both the Show Cause Notices, whereas, in the Notice issued by Commissioner of Customs, two more Bills of Entry were covered as per the Table-A to first Notice. Further, in the first Notice dated 07.08.2024, Only CVD has been demanded, whereas in the second notice dated 09.08.2024, CVD plus applicable IGST on CVD has been demanded. Further, the Noticee vide their letters dated 02.12.2024 and 19.12.2024 asked for clarification regarding which show Cause notice he has to respond to, and to withdraw the later show cause notice dated 09.08.2024.

21. In view of above duplicate demand in respect of Bill of Entry no. 9995679 dated 13.08.2022 and to correct the error of not including appliable IGST on CVD on the demand Show Cause Notice dated 07.08.2024, a letter F.No. GEN/ADJ/COMM/150/2023-Adjn dated 27.12.2024 was issued to the noticee vide DIN-20241271MO000022222B, wherein the noticee was informed as under –

"Please refer to your letter no. Nil dated 19.12.2024 on the above cited subject.

In this regard, it is informed that Annexure-R containing list of RUDs is enclosed herewith for your ready reference. The documents as mentioned in the Annexure-R are already available with you/reproduced in the Show Cause Notice.

Further, it is informed the competent authority has considered your request for clarification on two notices issued on same Bill of Entry, and it is hereby informed that for both the Show Cause Notices will now be answerable to Hon'ble Principal Commissioner, C.H. Mundra, during adjudication stage. Suitable Corrigendum to Show Cause Notice dated 07.08.2024 is being issued in the matter. Hence, it is requested to file your defence reply in the matter at the earliest. A new personal hearing date shall be given soon as per your request".

21.1 Subsequently, a corrigendum was issued by the Principal Commissioner, Custom House, Mundra on 27.12.2024, with changes to original notice dated 07.08.2024, which is reproduced as under –

"Corrigendum to the SCN No. GEN/ADJ/COMM/150/2023-Adjn dated 07.08.2024 issued by the Principal Commissioner, Custom House Mundra, in the matter of M/s Nextera Management Services, IEC No. " IEC-0312008538" and address at 6/82, Commercial Chambers, 173, Yusuf Meherali Road, Mumbai-400003.

(i) In the aforesaid Show Cause Cum Demand Notice, in Para 1, CVD may be read as "CVD (plus 18% IGST on CVD)" on page no. 1 of the Show Cause Notice.

(ii) Further, in page-1 of the Show Cause Notice, the calculation of differential duty, as provided in Table-A, shall be replaced by following Table-A –

Sr. No.	BE No. & Date	Description of goods declared with Chapter heading	Assessable Value	CVD payable (20% of A.V.) Rs.	IGST payable (18 % of CVD) Rs.	CVD plus IGST Paid / Rs.	Total Differential Duty (CVD + IGST) Rs.
1	9995679 Dated 13.08.2022	Sodium Saccharin 28251100	1,22,19,900	24,43,980	4,39,916	0	28,83,896
2	3511945 dated 29. 11.2022	Sodium Saccharin 29251100	1,15,50,000	23,10,000	4,15,800	0	27,25,800
3	3789259 dated 18. 12.2022	Sodium Saccharin 29251100	1,22,91,354	24,58,271	4,42,489	0	29,00,760
Total				**72,12,251**	**12,98,205**	**0**	**85,10,456**

(iii) Further, thereafter, wherever the term - "CVD" appears in the Show Cause Notice, the same shall be read as "CVD (plus 18% IGST on CVD)" and wherever the amount – "Rs.72,12,251/-" appears, the same shall be read as "Rs.85,10,456/- (Rs. Eighty Five Lakhs Ten Thousand Four Hundred and Fifty Six Only)"

(iv) Accordingly, in para 18 of the Show Cause Notice, part (ii) shall be read as –

" (ii) The CVD (plus 18% IGST on CVD) (total amounting to **Rs.85,10,456/- (Rs.Eighty Five Lakhs Ten Thousand Four Hundred and Fifty Six Only)** leviable on the impugned goods as per Table-A Supra, valued at Rs.3,60,61,254/- and not paid by them, should not be demanded and recovered from them in terms of Section 28(1) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962".

instead of

(ii) The CVD total amounting to **Rs.72,12,251/- (Rupees Seventy Two Lakhs Twelve Thousand Two Hundred Fifty One Only)** leviable on the impugned goods valued at Rs. 3,60,61,254/- and not paid by them should not be demanded and recovered from them in terms of Section 28(1) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962."

22. DEFENSE SUBMISSION:

22.1 M/s Nextera Management Services (IEC-0312008538), 6/82, Commercial Chambers, 173, Yusuf Meherali Road, Mumbai 400 003 submitted preliminary reply dated 04.01.2025 against impugned SCN wherein they submitted as under:

1. M/s. Nextera Management Services (hereinafter referred to as "Noticee" and or "importer") is located at 6/82, Commercial Chambers, 173, Yusuf Meherali Road, Mumbai-400 003. The Noticee have imported vide Bill of Entry No. 9995679 dated 13-8-2022, No.3511945 dated 29-11-2022 and 3789259 dated 18-12-2022 Sodium Saccharin falling under CTH 29251100 of the Customs Tariff Act, 1975.

2. On noting about the non-payment of countervailing duty by the Noticee, a letter F. No. Cus//Apr/BE/96/2023-Gr.2/O/Pr. Commr-cus-Mundra dated 10-1-2023 was issued to us, which was replied with.

3. Being not satisfied with the aforementioned Reply, a Show cause notice dated 7-8-2024 issued by your Honour to the Noticee proposing to recover countervailing duty of Rs.72,12,251/- under Section 28(1) of the Customs Act,1962 along with interest and proposing penalty under Section 112(a) and / or 117 of the Customs Act,1962 pertaining to the imports made vide Bill of Entry No.9995679 dated 13-8-2022, No.3511945 dated 29-11-2022 and 3789259 dated 18-12-2022 on the reasoning that aforementioned product attracts countervailing duty levied vide Notification no.2/2019-Customs (CVD) dated 30-8-2019.

4. In continuation thereof, on same reasoning the learned Additional Commissioner of Customs Show cause notice dated 9-8-2024, proposing to recover countervailing duty of Rs.24,43,980/- under Section 28(1) of the Customs Act,1962 along with interest and proposing penalty under Section 112(a) and / or 114A of the Customs Act,1962 pertaining to the imports made vide Bill of Entry No.9995679 dated 13-8-2022. The proposed demand made in the Show cause notice dated 9-8-2024 is already covered in the erstwhile Show cause notice dated 7-8-2024.

5. The Noticee submits that after following with the office of your Honour in connection with aforementioned Show cause notices, it was informed that both Show cause notices would be heard by your Honour.

6. Under this factual position, the Noticee would like to make submissions as follows:

6.A. <u>Pre-show cause notice consultation is a mandatory and binding provision:</u>

6.A.1. The Noticee submits that in the impugned proceedings, three Pre-show cause notices were issued Bills of Entry-wise by the learned Additional Commissioner, which are as follows:

Sr. No.	**Bill of Entry**	**Date of notice**	**Date of receipt of notice**	**Date of hearing**
1	No.9995679 dated 13-8-2022,	1-8-2024	8-8-2024	8-8-2024
2	No.3511945 dated 29-11-2022	1-10-2024	22-10-2024	9-10-2024
3	No.3789259 dated 18-12-2022	3-10-2024	22-10-2024	9-10-2024

On perusal of the aforementioned tabular statement, it would be clear that none of the notice of hearing is received on time i.e. either the notice is received on the date of hearing or after the date of hearing. The issue of Pre-show cause notice is not an empty formality but stipulated in statute itself and any act which is in non-compliance with statute is not sustainable in law. In the impugned proceedings also, no Pre-show cause notice is issued, which is not in consonance with the provisions of law and on this count alone, the impugned Show cause notice deserves to be dropped.

6.A.2. The Noticee submits that there is a violation of not only the safeguard provided in the proviso appended to Section 28(1)(a) of the 1962 Act requiring holding pre-notice consultation with the person chargeable with tax and interest but also infraction of the right of such person, to be accorded, in the very least, 15 days under sub-regulation (2) of Regulation 3 of the Pre-notice Consultation

Regulations, 2018 to respond to any such initiative of holding such consultation. The Noticee further submits that the importance of pre-show cause notice consultation is exemplified in the provisions of sub-regulation (4) of Regulation 3 of the Pre-notice Consultation Regulations, 2018. A plain perusal of the said provision would show, that it is quite possible, that after consultation, the concerned authority may decide to drop the proceedings if it is satisfied with explanation it receives during such process. It is to further submit that issue of pre-show cause notice as per Section 28 of the Customs Act,1962 read with Pre-notice Consultation Regulations, 2018 is necessary, as the object of having such provisions is to stem the tide of litigation between the revenue and the assessee. In the matter of **M/s. Bihar Foundry & Castings Limited – W.P.(T) No.5161 of 2022 with W.P. (T) No.4340 of 2022**, writ applications were allowed after placing reliance on the Order of the Hon'ble Supreme Court in the matter of Competent Authority Vs. Barangore Jute Factory reported in (2005) 13 SCC 477, wherein it was held that where statute requires an act to be done in a particular manner, the act has to be done in that manner. The Noticee reserves right to make additional submissions in this regard during the course of hearing.

6.B.1. The Noticee submits that classification of product precedes everything, as the rate of duty is applied to product based on classification. The rate of duty or other levies such as Anti-dumping duty, Countervailing duty etc., are secondary and classification of the product is primary. The Noticee submits that there are thousands of varieties of manufactured goods and all goods cannot carry the same rate of duty or amount of duty. It is also not possible to identify all products individually, therefore, to identifying the numerous products through groups and sub-groups and then decide a rate of duty on each group /sub-group. This is called "Classification of a product", which determines the heading or sub-heading under which the particular product would be covered. In the impugned proceedings, the imported product is Sodium Saccharin, which is different and distinct from Saccharin. It would not get covered under the heading "Saccharin in all its forms".

6.B.2. In this regard, the Noticee states as follows:

As per definition of "In all its forms" given in S.B.Sarkar's Words & Phrases of Excise & Customs, 2nd Edition, it is mentioned as "*The expression multiplies the same commodity in different forms.*".

The word "Form" is expressed as " *The word 'form' would connote a visible aspect in which the thing exists or manifests itself*".It was also stated therein that "*A mere change in form of the article in no way results in producing a new commodity*".

6.B.3. The Noticee submits that in the matter of State of Gujarat Vs. Sakarwala Brothers reported in LAWS (SC)-1966-9-5 dated 27-9-1966, the Hon'ble Apex Court, while granting exemption to "patasa","harda and "alchidana" under entry 47 of Schedule A by holding that these items should be *treated as forms of sugar* and not sweets or products of sugar. It is held in the context of "sugar" mentioned in entry 47 of Schedule A is exempt from tax.

6.B.4. Taking support from the ratio declared in State of Gujarat Vs. Sakarwala Brothers (supra), the Noticee submits that *Sodium Saccharine is not a form of Saccharine but it is a different and distinct identifiable product.* It is to state that Sodium is an intermediate product for manufacturing finished product i.e. Sodium Saccharine. There is a complex manufacturing process involves in manufacturing Sodium

Saccharine from Saccharine, which is annexed. On manufacturing final product, Sodium Saccharine from Saccharine, all the parameters are changed and said products are not at all comparable or Sodium Saccharine cannot be termed as form of Saccharine, which would get further fortified by following:

Parameters	Saccharine	Sodium Saccharine
PH	2	7
Nature	Acidic	Alkaline
Solubility	Insoluble in water	water soluble
Molecular weight	183.18	206.18

The Noticee submits that the expression "all forms" would only change physical characteristics or appearance but origin of the product would not alter. The crystal, powder, granules etc., can be termed as form, as the characteristic of the product remains same. In judicial pronouncement of State of Gujarat Vs. Sakarwala Brothers (supra), the product "sugar", "patasa","harda and "alchidana" have different physical appearance but the basic characteristic of sugar remains the same. In the impugned proceedings, Sodium Saccharine is not same as Saccharine but along with Saccharine, while carrying manufacturing process, other intermediates such as Methanol, Sodium Hydroxide was also added. In other words, the product's basic character has also changed from "insoluble in water" to "soluble in water" and also from "Acidic" to "Alkaline". Hence, by no stretch of imagination, Sodium Saccharine can be termed as a form of Saccharine.

6.B.5. The Noticee submits that he would like to place reliance on the Circular No.15/2023- Customs dated 7-6-2023 on the subject of Mandatory additional qualifiers in import/export declarations in respect of certain products w.e.f.1-7-2023, wherein it has been stated that in connection with imports, the declaration of IUPAC name and CAS number of the constituent chemicals under chapter 28,29,32,38 and 39 of the Customs Tariff Act,1975 is made mandatory. In this regard, it is to submit as follows:

- **CAS Registry** Number of **Saccharin** is 81-07-2

-**IUPAC** Name of **Saccharin** Standard InChlKey:CVHZOJJKTDOEJC-UHFFFAOYSA-N

- **CAS Registry** Number of **Sodium Saccharin** is 6155-57-3

- **IUPAC** Name of **Sodium Saccharin** Standard InChlKey: WINXNKPZLFISPD-UHFFFAOYSA-M

On perusal of the CAS Registry Number and IUPAC Name, it would be clear that Saccharin and Sodium Saccharin is a different and distinct product. In chemical science, both these products are recognized as different and distinct, hence, an attempt made by the Revenue to use both these products interchangeably for levying and recovering CVD is legally not sustainable. The manufacturing process shows and substantiates that Sodium Saccharin can be obtained from Saccharin but vice versa is not possible. This submission is getting further fortified based on opinion from experts, judicial pronouncements and technical literature.

6.B.6. The Noticee submits that the uses of Saccharin and Sodium Saccharin are also different. The Saccharin is primarily used in pesticide and for manufacture of.

Sodium Saccharin. Sodium Saccharin is primarily used as an additive in various food products and in the pharmaceutical industry. The Prevention of Food Adulteration Act only mentions Sodium Saccharin to be used as additive for various products. There is no mention of Saccharin to be permitted to be used as an additive product as per the Prevention of Food Adulteration Act. Therefore it is clear that the uses for both Saccharin and Sodium Saccharin are vastly different and as such Sodium Saccharin cannot be considered to be a form of Saccharin.

6.B.7. The Noticee submits that HSN explanatory notes for the sub-heading 29.25-Carboxyimide-function compounds (including saccharin and 1 its salts) and imine-function compounds. The Saccharin is an odorless, white crystalline. powder having a very sweet taste. The sodium and ammonium salts have a lower sweetening power but are more soluble. The tablets consisting solely of one of these products remain in this heading. It is to state that the Heading No. 2925.11 refers to saccharin and its salts. It is important to note that 'saccharin' and 'salts' are not one in the same. The aforesaid view was endorsed and accepted in the matter of **SANJAY CHEMICALS -2019 (367) E.L.T. 676 (Tri. - Mumbai).**For ready reference, the relevant extract is reproduced as follows:

> *Anti-dumping Duty - Sodium saccharin - 'Saccharin' and 'salts' not one and the same - Notification No. 41/2007-Cus., mentions the item to be only 'saccharin' falling under Tariff Item 2925 11 00 of Customs Tariff Act, 1975 and not Salts of Saccharin - Interpretation of notification to be done strictly in accordance with the wording of the notification, words cannot be added or deleted - Anti-Dumping duty not to be levied on sodium saccharin.*

6.B.8. The Noticee submits that entry **2925.11 is for Saccharin and its salts** as per Customs Tariff Act,1975 but Hon'ble Tribunal correctly held that "saccharin" and "salts" are not one and the same. To emphasis this aspect, the Hon'ble Tribunal relied upon the judgement of the Hon'ble Bombay High Court in the matter of **CLIMAX CHEMICALS VS. R.GOPALNATHAN – 1991(52) ELT 186(Bom),** wherein it was held that ***entry mentioned in the Notification as "chemical" will not include its salt.*** This shows that "saccharin" and "salt" are different identifiable products and when Notification mentions about "Saccharine" , it cannot be read to include its salts also.

6.B.9. Taking support from **SANJAY CHEMICALS (supra)** and **CLIMAX CHEMICALS Vs. R.GOPALNATHAN (supra)**, it is to submit that in the present proceedings CVD imposed vide Notification no.2/2019-Customs (CVD) dated 30-8-2019 is not applicable to "Sodium Saccharine" but it is restricted to "Saccharin in all its forms" only. Once Saccharin is processed by adding Methanol and Sodium Hydroxide then it ceases to be Saccharin and is known as a different and distinct commercial product "Sodium Saccharine". Hence, CVD is not leviable on Sodium Saccharin and demand deserves to be dropped.

6.B.10. The Noticee submits that decisions, judicial pronouncements are binding on lower authorities and they are bound by the same. In this regard, the Noticee would like to rely on the judgement of the Hon'ble Apex Court in the matter of **K.M. SHANKARAPPA** reported in **2001 (127) E.L.T. 8 (S.C.),** wherein it was held as follows:

> *Appellate Tribunal's orders - Revision/Review - Executive cannot sit in an appeal or review or revise a judicial order - Without enacting an appropriate*

legislation, the Executive or the Legislature cannot set at naught a judicial order - At the highest, the Government may apply to the Tribunal itself for a review, if circumstances so warrant - But the Govt. would be bound by the ultimate decision of the Tribunal. - The Executive has to obey judicial orders. Thus, Section 6(1) is a travesty of the rule of law which is one of the basic structures of the Constitution. The Legislature may, in certain cases, overrule or nullify the judicial or executive decision byenacting an appropriate legislation. However, without enacting an appropriate legislation, the Executive or the Legislature cannot set at naught a judicial order. The Executive cannot sit in an appeal or review or revise a judicial order. The Appellate Tribunal consists of experts and decides matters quasi-judicially. A Secretary and/or Minister cannot sit in appeal or revision over those decisions. At the highest, the Government may appeal to the Tribunal itself for a review, if circumstances so warrant. But the Government would be bound by the ultimate decision of the Tribunal.

The judicial discipline is to be followed and all the orders of the Courts are binding on quasi-judicial authorities and not following the same amounts to contempt. The ratio declared in the matter of **SANJAY CHEMICALS (supra)** and **CLIMAX CHEMICALS VS. R.GOPALNATHAN (supra)** is binding on the lower authorities and required to be followed.

6.B.11. The Noticee submits that Sodium Saccharin is not a form of Saccharin, which gets confirmed by various test reports of Custom House Laboratory (Central Revenues Control Laboratory – CRCL) in Mumbai and Baroda, to whom specific query was put, in connection with testing of Sodium Saccharin Sample and to verify whether the goods are different from Saccharin or not.

6.B.12. The Noticee submits that CRCL reports clearly indicated that Sodium Saccharine is not Saccharin. A copy of the test report i.e. Query and Test report of CRCL Customs Laboratory Mumbai is attached **(Ex. I)** along with an enclosed copy of Bill of Entry which was provisionally assessed at ICD Ahmadabad and subsequently finally assessed by release of test bond after receiving Test Report from CRCL Customs Laboratory, Baroda **(Ex. II).** This clearly indicates that Saccharin and Sodium Saccharin are different products.

6.B.13. It is to submit that testing has been done for query of this test at Customs Laboratory, Mumbai at CRCL almost 10 Years back, wherein it was observed that Sodium Saccharine is not saccharine and that test report have attained finality and binding on the Customs Department. It is to further submit that test reports from CRCL Custom Laboratory Baroda is more than 5 years old, which is also binding on the Customs Department.

6.B.14. The Noticee would like to place reliance on Certificates issued by technical experts and process flow chart, which shows that Saccharin and Sodium Saccharin are not one

and the same and Sodium Saccharin is not a form of Saccharin :-

a) Certificate from Mumbai University in which Professor & Head of Department of Chemistry (Autonomous) University Mumbai Shri. Dr. S.S. Garje clearly says that "Both the Compounds have different chemical compositions, molecular weights and different characteristics. Sodium Saccharin is manufactured from Saccharin which is an

intermediate/raw material. Sodium Saccharin is a salt of Saccharin and not a form of Saccharin." **(Ex. III)**

b) Certificate from President of Indian Society of Chemicals and Biologists (ISCB) & Ex. Vice Chancellor of Gujarat University Prof. Dr. Anamik Shah certifies that Saccharin and Sodium Saccharin are two different chemical entities. Sodium Saccharin is **derivatives** of Saccharin having altogether different physical characteristics and chemical form, classified and authenticated as two distinct & different chemical compounds. **(Ex. IV)**

c) Process Flow Chart of Sodium Saccharin for Manufacturing of Sodium Saccharin from Saccharin. **(Ex. V)**

6.C. The Noticee submits that Adjudication Authority's reliance on the Notification to hold that Sodium Saccharin is squarely covered under the scope of the products discussed in the final findings of the Designated Authority is not only erroneous but contrary to the product under dispute, based on the submissions as follows:

(a) the Designated Authority's finding cannot over-ride language of the Notification no.2/2019-Custom (CVD) dated 30-8-2019, wherein product "Sodium saccharin" is not mentioned. Hence, as per settled law, when no word can be added or deleted in the Notification, the said findings has no binding effect and deserved to be ignored as not sustainable in law;

(b) that when there is inherent contradiction in the CTA read with Notification issued by the Designated Authority then in the Customs classification dispute, the provisions of the Customs Tariff Act,1975 would prevail, hence, findings offered in the Notification issued by the Designated Authority are not sustainable in law and only recommendatory nature. The CTA mentions the word "Saccharin and its salts", which means **Saccharin and its salts** are distinct and different product and CTA acknowledges the same. It is to submit that Sodium saccharin is a salt of Saccharin. On the contrary, the Designated Authority's findings states that in market parlance soluble saccharin is called sodium saccharin whereas insoluble saccharin is called insoluble saccharin. The said finding is contradictory to the CTA, wherein Saccharin and its salts are treated as different products and Notification no.2/2019-Custom (CVD) dated 30-8-2019 mentions about Saccharin only and not sodium saccharin;

(c) that Countervailing duty is specifically made applicable to Saccharin and attempting to levy such duty on Sodium saccharin by placing reliance on the Designated Authority's findings offered in the Notification is an attempt to enlarge the scope the Notification no.2/2019-Custom (CVD) dated 30-8-2019, which is not sustainable in law;

6.D.1. The Noticee submits that they have imported goods, which were assessed to by the Proper Officer and certain objections were raised. The Noticee clarified the said objections through explanation etc., and thereafter, the order of clearance of said goods was given. As per settled position of law, the assessed Bill of Entry is an Order and unless the assessment is set aside, no further action is permissible. The Noticee submits that in the present proceedings, Bill of Entry was assessed to after inquiring / seeking calrifications, and such assessment has attained finality and

said ratio is declared in the matter of ITC LTD reported in 2019 (368) E.L.T. 216 (S.C.), wherein it was held as follows:

> *Appealable order - Self-assessment - Appeal under Section 128 of Customs Act, 1962 provided not just against speaking order but against "any order" which is of wide amplitude - Order of selfassessment nonetheless an assessment order passed under Act and would be appealable by any person aggrieved thereby - Sections 17 and 128 of Customs Act, 1962. - The expression 'Any person' is of wider amplitude. The revenue, as well as assessee, can also prefer an appeal aggrieved by an order of assessment. It is not only the order of reassessment which is appealable but the provisions of Section 128 make appealable any decision or order under the Act including that of selfassessment. The order of self-ssessment is an order of assessment as per Section 2(2), as such, it is appealable in case any person is aggrieved by it. There is a specific provision made in Section 17 to pass a reasoned/speaking order in the situation in case on verification, self-assessment is not found to be satisfactory, an order of reassessment has to be passed under Section 17(4). Section 128 has not provided for an appeal against a speaking order but against "any order" which is of wide amplitude. [1998 (97) E.L.T. 211 (S.C.) relied on.*

The Noticee submits that ratio of the aforementioned judgement is applicable to the Revenue Department as well as to him (the Noticee). In the impugned proceedings, the assessed Bill of Entry, which is an order was not challenged by the Revenue and it binds them. Hence, by issuing impugned Notice, such finalized assessment cannot be re-opened and it would amount to review of the Bill of Entry without challenging the same before the Appellate Authority.

6.D.2. The Noticee submits that assuming without admitting, an Order is wrong but it deemed to have been attained finality, unless that finality is disturbed by a process known to law or by a process authorised by law, the rights of the Noticee and the Revenue will continue to govern by that order and in this regard, reliance is placed on the decision of TISCO reported in 2001 (129) E.L.T. 434 (Tri. - Del.).

6.E. PROCEEDINGS ARE BARRED BY LIMITATION:

The Noticee is in receipt of Show cause notice dated 7-8-2024 proposing to recover countervailing duty of Rs.72,12,251/- under Section 28(1) of the Customs Act,1962 along with interest and proposing penalty under Section 112(a) and/or 117 of the Customs Act,1962 pertaining to the imports made vide Bill of Entry No. 9995679 dated 13-8-2022, No. 3511945 dated 29-11-2022 and 3789259 dated 18-12-2022. In continuation thereof, a Corrigendum dated 27-12-2024 was issued proposing to demand the countervailing duty of Rs.85,10,456/- plus 18% IGST on CVD, as said 18% IGST was not included in the Show cause notice dated 7-8-2024.In this regard it is to submit that the date of Bills of Entry are 13-8-2022,29-11-2022 and 18-12-2022 and Corrigendum was issued on 27-12-2024, which is barred by limitation. The said notice is issued under Section 28(1) of the Customs Act,1962, which prescribes limitation period of two years and Corrigendum dated 27-12-2024 to Show cause notice dated 7-8-2024 was issued after two years. Hence, entire proceedings are barred by limitation.

6.F. NOT CONCEALED ANY INFORMATION FROM THE DEPARTMENT:

The Noticee submits that he has imported said product at Kerala vide bill of entry No. 5845963 dated 08.05.2023 and on similar objections, proceedings were initiated against him. The Noticee approached the Hon'ble High Court Kerala at Ernakulam and the goods were released provisionally on furnishing Bond ans Security based on the findings at Para 10, which is as follows:

> *When the Custom Authorities themselves are in doubt whether the CVD is leviable on the imported goods of the petitioner or not? I feel that insistence upon furnishing bank guarantee for release of goods is not justified. Petitioner has not concealed any material fact from the Custom Authorities. He has filed self assessment disclosing everything to the Custom Authorities. In fact on representation of the petitioner, the CVD was deleted vide Exhibits P-8 and P-9 orders. Therefore, in my view, this is not a case where Custom Authorities should insist upon furnishing bank guarantee for 20% of the CVD which may be levied after adjudication. In view thereof, I set aside the Exhibit R-2(d) order dated 20.07.2023 to the extent for a direction for furnishing a bank guarantee for Rs.35,00,000/- (Rupees Thirty five lakh only) for provisional release of imported goods of the petitioner.*

In the present proceedings also the Noticee has not concealed any fact about imported goods. The Noticee would like to rely on the said Judgement during the course of hearing.

6.G. PROPOSAL TO CONFISCATE UNDER SECTION 110(m) OF THE CUSTOMS ACT,1962 IS NOT SUSTAINABLE:

6.G.1. The Noticee submits the importer makes an entry under Section 46 and also self-assesses duty under Section 17(1) by filing the Bill of Entry. There is no separate mechanism to self-assess duty. The columns pertaining to classification, valuation, rate of duty and exemption notifications which determine the duty liability are part of the Bill of Entry which is also an entry under Section 46. Thus, although the Bill of Entry requires the importer to make a true declaration and further to confirm that the contents of the Bill of Entry are true and correct, the columns pertaining to classification, exemption notifications claimed and in some cases even the valuation are matters of self-assessment and are not matters of fact. Self-assessment is also a form of assessment but the importer is not an expert in assessment of duty and can make mistakes and it is for this reason, there is a provision for re-assessment of duty by the officer. Simply because the importer claimed a wrong classification or claimed an ineligible exemption notification or in some cases, has not done the valuation fully as per the law, it cannot be said that the importer misdeclared. As far as the description of the goods, quantity, etc. are concerned, the importer is bound to state the truth in the Bill of Entry. Thus, simply claiming a wrong classification or an ineligible exemption notification is not a mis-statement. Assessment, including self-assessment is a matter of considered judgment and remedies are available against them. While self-assessment may be modified by through re-assessment by the proper officer, both self-assessment and the assessment by the proper officer can be assailed in an appeal before the Commissioner (Appeals) or reviewed through an SCN under Section 28. Therefore, any wrong classification or claim of an ineligible notification or wrong self-assessment of duty by an importer will not amount to mis-statement or suppression. The Noticee submits that the imported goods do not become liable to confiscation under section 111(m) on the ground that the importer have not paid

CVD on Sodium Saccharine. The Noticee submits that after filing of Bills of Entry, a query was raised by the proper officer and after noting the explanation given by them, the goods were allowed to be cleared. It is to submit that firstly, the Noticee-importer is not an expert in taxation and can make mistakes and he cannot be penalized for making mistakes. Secondly, understanding about the product i.e. Sodium Saccharine is different from the product Saccharine is a matter of opinion, which is fortified by the technical experts of the field and the Noticee-importer's goods cannot be confiscated nor can he be penalized for his opinion. Thirdly, the filing of the Bill of Entry and the self-assessment precede re-assessment by the proper officer and it is impossible for the importer to anticipate the view of the officer and file the Bill of Entry accordingly. Fourthly, there is no legal obligation on the Noticee- importer to conform to the possible subsequent view of the officer. The law cannot be read to obligate the Noticee-importer to do the impossible task of predicting the views of the officer and following them. For all these reasons, in the Bill of Entry even if they are found to be completely incorrect, do not attract section 111(m) or the consequential penalty under section 112 and in this regard, as a persuasive support, reliance is placed on the decision of AUREOLE INSPECS INDIA PRIVATE LIMITED – Final Order No.51024/2023 dated 9-8-2023 in Custom Appeal No.51191 of 2020.

6.G.2. The charge of misdeclaration and proposal to confiscate the goods under Section 110(m) of the Customs Act,1962 is contrary and conflicting with the fcats of the present proceedings. The imported goods i.e. Sodium Saccharin is declared as per import invoice and documents and it was found as Sodium Saccharin only. The claiming of benefit of exemption from CVD does not amount to misdeclaration, as it was a belief of the Noticee that he is eligible for the same. Hence, proposal to confiscate the goods is legally not sustainable and serves to be dropped.

6.H. PENALTY UNDER SECTION 112(a) AND 117 OF THE CUSTOMS ACT,1962 IS NOT APPLICABLE:

6.H.1. The Noticee submits that any act carried out under a bonafide belief can not be termed as contravention of the provisions of law and rules made thereunder, hence, penalty under Section 112(a) of the Customs Act,1962 is not imposable.

6.H.2. There is no reason to propose imposition of penalty in terms of Section 112(a) on the Noticee, as there was no reason for re-assessment of the Bills of Entry. As no orders for such re-assessments as proposed by this Show cause notice.

6.H.3. The Noticee submits that proposal to impose penalty under the Customs Act,1962 is not sustainable in law in the absence of contravention of any provisions of the Customs Act and /or Rules made thereunder. The Noticee submits that based on the aforementioned submissions, it would be clear that their acts are in consonance with the provisions of law and proposal to impose penalty deserves to be dropped.

6.H.4. The Noticee submits that penalty is ordinarily levied or proposed for some contumacious conduct or for a deliberate violation of the provisions of the particular statute as held in the **PRATIBHA PROCESSORS** reported in **1996 (88) E.L.T. 12 (S.C.).** In the impugned proceedings, there is nothing on record to arrive at a conclusion that Noticee's conduct was contumacious or for a deliberate violation of statute, hence, proposal of imposition of penalty under Section 112(a) and 117 of the Customs Act,1962 is deserves to be dropped.

6.H.5. The Noticee submits that issue involves classification of product, which involves interpretation of law, hence, penalty is not imposable. The Noticee submits that when the issue relates to dispute in connection with interpretation of law , the proposal to impose penalty under Section 112(a) and 117 of the Customs Act,1962 is not sustainable in law. In this regard, the Noticee would like to place reliance on the decision of ABRAHAM J. THARAKAN reported in 2007 (210) E.L.T. 112 (Tri. - Bang.), wherein it has been held that Penalty not imposable in cases of interpretation / classification disputes. The Noticee would also like to place reliance on the decisions as follows:

DABUR INDIA LTD. - 2005 (181) E.L.T. 225 (T)

INDOCOM PROJECTS EQUIP. LTD. - 2005 (185) E.L.T. 291 (T)

6.H.6. The Noticee submits that he has not done or omitted to do any act, which would amount to contravention of the provisions of the Customs Act, 1962. The Noticee submits that there is no direct or indirect evidence to allege that he was involved in the misdeclaration of imported goods and issue relates to applicability of CVD, which involves interpretation of Notification . The question abetment as mentioned in Section 117 of the Customs Act,1962 is also absent and Hon'ble Apex Court in the case of Shri Ram & another v. State of UP — AIR 1975 SC 175 has held that in order to constitute abetment, the abettor must be shown to have intentionally aided to the commission of the crime. In the present case no evidence has been brought on record to show that the Noticee had intentionally aided or abetted the commission of any offence, hence, in the absence of positive evidence, penalty under Section 117 is not imposable.

6.H.7. The Noticee submits that for imposition of penalty, presence of mens-era is a mandatory requirement and in the absence of which imposition of penalty is unjustified in the instant proceedings none of the acts were backed up with any ulterior motive or malafide intention. In this regard to substantiate their say the Noticee would like to rely on the decisions as follows:

KAMAL KAPOOR - (5) STR 251 (H.C.)

HINDUSTAN STEEL LIMITED 1978(2) ELT (J-159)(S.C.)

AKBAR BADRUDDIN JIWANI 1990(47) ELT 161(S.C.)

TAMILNADU HOUSING BOARD 1994(74) ELT 9(S.C.)

6.I. The Noticee submits that in the absence of misdeclaration of goods, proposal to confiscate goods under Section 111(m) of the Customs Act,1962 is not sustainable. It is to submit that at no point of time, the goods were misdeclared and the Noticee reserves right to make submissions in this regard during the course of hearing.

22.2 Further vide letter dated 18.01.2025, a final reply to Final Reply to Show cause notice dated 7-8-2024 and Corrigendum dated 27-12-2024, was submitted by the noticee, which is reproduced as under -

1. M/s. Nextra Management Services (hereinafter referred to as "Noticee" and or "importer") is located at 6/82, Commercial Chambers, 173, Yusuf Meherali Road, Mumbai-400 003. The Noticee have imported vide Bill of Entry No. 9995679 dated 13-8-2022, No.3511945 dated 29-11-2022 and 3789259 dated 18-12-2022 Sodium Saccharin falling under CTH 29251100 of the Customs Tariff Act,1975 .

2. On noting about the non-payment of countervailing duty by the Noticee, a letter F. No.Cus//Apr/BE/96/2023-Gr.2/O/Pr. Commr-cus-Mundra dated 10-1-2023 was issued to them, which was replied with. The said letter was nothing but a Show cause notice using the expression .....*You are, therefore, requested to pay up the CVD immediately along with applicable interest. Please note that if you fail to pay up the amount of CVD as cited above, action for recovery of government dues will be intiated under the Customs Act,1962,* The above show cause notice itself is issued with a closed and pre-determined mind-set as it clearly confirms duty liability and actions for recovery of government dues if not paid.

3. Being not satisfied with the aforementioned Reply, a Show cause notice dated 7-8-2024 issued by your Honour to the Noticee proposing to recover countervailing duty of Rs.72,12,251/- under Section 28(1) of the Customs Act,1962 along with interest and proposing penalty under Section 112(a) and / or 117 of the Customs Act,1962 pertaining to the imports made vide Bill of Entry No.9995679 dated 13-8-2022, No.3511945 dated 29-11-2022 and 3789259 dated 18-12-2022 on the reasoning that aforementioned product attracts countervailing duty levied vide Notification no.2/2019-Customs (CVD) dated 30-8-2019.

4. In continuation thereof, on same reasoning the learned Additional Commissioner of Customs Show cause notice dated 9-8-2024, proposing to recover countervailing duty of Rs.24,43,980/- under Section 28(1) of the Customs Act,1962 along with interest and proposing penalty under Section 112(a) and / or 114A of the Customs Act,1962 pertaining to the imports made vide Bill of Entry No.9995679 dated 13-8-2022. The proposed demand made in the Show cause notice dated 9-8-2024 is already covered in the erstwhile Show cause notice dated 7-8-2024.

5. The Noticee submits that after following with the office of your Honour in connection with aforementioned Show cause notices, it was informed that both Show cause notices would be heard by your Honour.

6. Under this factual position, the Noticee filed a preliminary Reply to the Show cause notice and availed an opportunity of personal hearing on 16-1-2024. The Noticee sought a week's time to file Final Reply, which is as follows:

7.A. <u>Pre-show cause notice consultation is a mandatory and binding provision:</u>

7.A.1. The Noticee submits that in the impugned proceedings, three Pre-show cause notices were issued by Additional Commissioner for Bills of Entry-wise, which are as follows;

Sr. No.	**Bill of Entry**	**Date of notice**	**Date of receipt of notice**	**Date of hearing**
1	No.9995679 dated 13-8-2022,	1-8-2024	8-8-2024	8-8-2024
2	No.3511945 dated 29-11-2022	1-10-2024	22-10-2024	9-10-2024
3	No.3789259 dated 18-12-2022	3-10-2024	22-10-2024	9-10-2024

On perusal of the aforementioned tabular statement, it would be clear that none of the notice of hearing is received on time i.e. either the notice is received on the date of hearing or after the date of hearing. The issue of Pre-show cause notice is not an

empty formality but stipulated in statute itself and any act which is in non-compliance with statute is not sustainable in law. This shows the arbitrary conduct with utter disregard to the provisions of law and on this count alone, the impugned Show cause notice deserves to be dropped.

7.A.2. The Noticee submits that there is a violation of not only the safeguard provided in the proviso appended to Section 28(1)(a) of the 1962 Act requiring holding pre-notice consultation with the person chargeable with tax and interest but also infraction of the right of such person, to be accorded, in the very least, 15 days under sub-regulation (2) of Regulation 3 of the Pre-notice Consultation Regulations, 2018 to respond to any such initiative of holding such consultation. The Noticee further submits that the importance of pre-show cause notice consultation is exemplified in the provisions of sub-regulation (4) of Regulation 3 of the Pre-notice Consultation Regulations, 2018. A plain perusal of the said provision would show, that it is quite possible, that after consultation, the concerned authority may decide to drop the proceedings if it is satisfied with explanation it receives during such process. It is to further submit that issue of pre-show cause notice as per Section 28 of the Customs Act,1962 read with Pre-notice Consultation Regulations, 2018 is necessary, as the object of having such provisions is to stem the tide of litigation between the revenue and the assessee. In the matter of **M/s. Bihar Foundry & Castings Limited – W.P.(T) No.5161 of 2022 with W.P. (T) No.4340 of 2022**, writ applications were allowed after placing reliance on the Order of the Hon'ble Supreme Court in the matter of Competent Authority Vs. Barangore Jute Factory reported in (2005) 13 SCC 477, wherein it was held that where statute requires an act to be done in a particular manner, the act has to be done in that manner.

7.B. <u>Delay in adjudication, as per Section 28(9) of the Customs Act,1962 Show cause notice is deemed to have been concluded as if no notice had been issued:</u>

The Noticee submits that a letter F. No. Cus//Apr/BE/96/2023-Gr.2/O/Pr. Commr-cus-Mundra dated 10-1-2023 was issued by the learned Asstt. Commissioner and as per Section 28(9) of the Customs Act, 1962, the impugned Show cause notice required to be adjudicated within 1 year (6 Month) from the date of notice and if the proper officer fails to adjudicate within the said period then such period can be extended by further 1 year (6 Months) by the officer senior in rank. In the impugned proceedings, when Show cause notice was issued on 10-1-2023 and till date it is not adjudicated. Hence, such proceedings are deemed to have concluded as if no notice has been issued. It is to submit that till date there is no reasoning given for causing delay in adjudication of aforementioned Show cause notice. In the matter of J. SHEIK PARITH reported in 2020 (374) E.L.T. 15 (Mad.) (a copy of the judgement is enclosed) , the Hon'ble Madras High Court taken cognizance of the phrase "***where it is possible to do so***" and held that prescription for limitation is mandatory, hence, based on the aforementioned submissions, the impugned Notice is deemed to have been concluded as if no notice had been issued.A reliance is also placed on the decision of KOPERTEK METALS PVT LTD reported in 2025-TIOL-08-CESTAT-DEL, wherein after discussing the provisions of the central Excise Act,1944, Customs Act,1962 , it was held that as adjudication was not completed within the time limit prescribed under sub-section (11) of section 11A of the Central Excise Act, the Order is set aside. The provisions of

Section 28(9) of the Customs Act,1962 is para material to the provisions of Section 11A(11) of the Central Excise Act,1944 (a copy of the decision is enclosed).

7.C. <u>Sodium Saccharin is a salt of Saccharin, which is a different and distinct product and can not be termed as *form of Saccharin*</u>:

7.C.1. The Noticee submits that CTA 2925 11 00 is for *<u>Saccharin and its salts</u>* while countervailing duty as per Notification no.2/2019-Customs (CVD) dated 30-8-2019 is applicable to *<u>Saccharin in all Its forms.</u>* It is to submit that Saccharin in all its forms means such form should contain and comprise of chemnical composition of Saccharin only and it would not cover salt of Saccharin, which is a different and distinct identifiable product. Sodium Saccharin is a salt of Saccharin and as per *<u>Balbharti Book on Chemistry of Standard Eight relied upon during the course of hearing, it would be clear Acid +Base =Salt</u>.*

In the present context Saccharin + Sodium Hydroxide= Sodium Saccharin and the

(Acid) + (Base) = (Salt)

Noticee has imported salt i.e. Sodium Saccharin and not Saccharin. The Noticee submits that classification of product precedes everything, as the rate of duty is applied to product based on classification. The rate of duty or other levies such as Anti-dumping duty, Countervailing duty etc., are secondary and classification of the

product is primary. The Noticee submits that there are thousands of varieties of manufactured goods and all goods cannot carry the same rate of duty or amount of duty. It is also not possible to identify all products individually, therefore, to identifying the numerous products through groups and sub-groups and then decide a rate of duty on each group /sub-group. This is called "Classification of a product", which determines the heading or sub-heading under which the particular product would be covered. In the impugned proceedings, the imported product is Sodium Saccharin, which is different and distinct from Saccharin. It would not get covered under the heading "Saccharin in all its forms".

7.C.2. In this regard, the Noticee states as follows:

As per definition of "In all its forms" given in S.B.Sarkar's Words & Phrases of Excise & Customs, 2nd Edition, it is mentioned as "***<u>The expression multiplies the same commodity in different forms.</u>***".

The word "Form" is expressed as " ***<u>The word 'form' would connote a visible aspect in which the thing exists or manifests itself</u>***".It was also stated therein that "***<u>A mere change in form of the article in no way results in producing a new commodity</u>***".

As per definition of "Form" given in The Law of Lexicon (The Encyclopedic Legal & Commercial Dictionary) which was edited by Honorable Justice Y. V. Chandrachud -The word "Form" is expressed as "<u>Form is a Shape around which an article is moulded, woven or wrapped."</u>(Copy Encl)

7.C.3. The Noticee submits that in the matter of **State of Gujarat Vs. Sakarwala Brothers** reported in **LAWS (SC)-1966-9-5 dated 27-9-1966**, the Hon'ble Apex Court, while granting exemption to "patasa","harda and "alchidana" under entry 47 of Schedule A by holding that these items should be ***<u>treated as forms of sugar</u>***

and not sweets or products of sugar. It is held in the context of "sugar" mentioned in entry 47 of Schedule A is exempt from tax.

7.C.4. Taking support from the ratio declared in State of Gujarat Vs. Sakarwala Brothers (supra), the Noticee submits that *Sodium Saccharine is not a form of Saccharine but it is a different and distinct identifiable product.* It is to state that Saccharin is an intermediate product for manufacturing finished product i.e. Sodium Saccharine. There is a complex manufacturing process involves in manufacturing Sodium Saccharine from Saccharine, which is annexed. On manufacturing final product, Sodium Saccharine from Saccharine, all the parameters are changed and said products are not at all comparable or Sodium Saccharine cannot be termed as form of Saccharine, which would get further fortified by following:

Parameters	Saccharine	Sodium Saccharine
PH	2	7
Nature	Acidic	Alkaline
Solubility	Insoluble in water	water soluble
Molecular weight	183.18	206.18

The Noticee submits that the expression "all forms" would only change physical characteristics or appearance but origin of the product would not alter. The crystal, powder, granules etc., can be termed as form, as the characteristic of the product remains same. In judicial pronouncement of State of Gujarat Vs. Sakarwala Brothers (supra), the product "sugar", "patasa", "harda and "alchidana" have different physical appearance but the basic characteristic of sugar remains the same. In the impugned proceedings, Sodium Saccharine is not same as Saccharine but along with Saccharine, while carrying manufacturing process, other intermediates such as Methanol, Sodium Hydroxide was also added. In other words, the product's basic character has also changed from "insoluble in water" to "soluble in water" and also from "Acidic" to "Alkaline". Hence, by no stretch of imagination, Sodium Saccharine can be termed as a form of Saccharine.

7.C.5. The Noticee submits that he would like to place reliance on the Circular No.15/2023- Customs dated 7-6-2023 on the subject of Mandatory additional qualifiers in import/export declarations in respect of certain products w.e.f.1-7-2023, wherein it has been stated that in connection with imports, the declaration of IUPAC name and CAS number of the constituent chemicals under chapter 28,29,32,38 and 39 of the Customs Tariff Act,1975 is made mandatory. In this regard, it is to submit as follows:

- **CAS Registry** Number of **Saccharin** is 81-07-2

-**IUPAC** Name of **Saccharin** Standard InChlKey:CVHZOJJKTDOEJC-UHFFFAOYSA-N

- **CAS Registry** Number of **Sodium Saccharin** is 6155-57-3

- **IUPAC** Name of **Sodium Saccharin** Standard InChlKey: WINXNKPZLFISPD-UHFFFAOYSA-M

On perusal of the CAS Registry Number and IUPAC Name, it would be clear that Saccharin and Sodium Saccharin is a different and distinct product. In chemical

science, both these products are recognized as different and distinct, hence, an attempt made by the Revenue to use both these products interchangeably for levying and recovering CVD is legally not sustainable. The manufacturing process shows and substantiates that Sodium Saccharin can be obtained from Saccharin but vice versa is not possible. This submission is getting further fortified based on opinion from experts, judicial pronouncements and technical literature.

7.C.6. The Noticee submits that the uses of Saccharin and Sodium Saccharin are also different. The Saccharin is primarily used in pesticide and for manufacture of Sodium Saccharin. Sodium Saccharin is primarily used as an additive in various food products and in the pharmaceutical industry. The Prevention of Food Adulteration Act only mentions Sodium Saccharin to be used as additive for various products. There is no mention of Saccharin to be permitted to be used as an additive product as per the Prevention of Food Adulteration Act. Therefore it is clear that the uses for both Saccharin and Sodium Saccharin are vastly different and as such Sodium Saccharin cannot be considered to be a form of Saccharin.

7.C.7. The Noticee submits that HSN explanatory notes for the sub-heading 29.25-Carboxyimide-function compounds (including saccharin and 1 its salts) and imine-function compounds. The Saccharin is an odorless, white crystalline powder having a very sweet taste. The sodium and ammonium salts have a lower sweetening power but are more soluble. The tablets consisting solely of one of these products remain in this heading. It is to state that the Heading No. 2925.11 refers to saccharin and its salts. It is important to note that 'saccharin' and 'salts' are not one in the same. The aforesaid view was endorsed and accepted in the matter of **SANJAY CHEMICALS -2019 (367) E.L.T. 676 (Tri. - Mumbai)**.For ready reference, the relevant extract is reproduced as follows:

> *Anti-dumping Duty - Sodium saccharin - 'Saccharin' and 'salts' not one and the same - Notification No. 41/2007-Cus., mentions the item to be only 'saccharin' falling under Tariff Item 2925 11 00 of Customs Tariff Act, 1975 and not Salts of Saccharin - Interpretation of notification to be done strictly in accordance with the wording of the notification, words cannot be added or deleted - Anti-Dumping duty not to be levied on sodium saccharin.*
>
> [Emphasis supplied]

7.C.8. The Noticee submits that entry **2925.11 is for Saccharin and its salts** as per Customs Tariff Act,1975 but Hon'ble Tribunal correctly held that "saccharin" and "salts" are not one and the same. To emphasise this aspect, the Hon'ble Tribunal relied upon the judgement of the Hon'ble Bombay High Court in the matter of **CLIMAX CHEMICALS VS. R.GOPALNATHAN – 1991(52) ELT 186(Bom),** wherein it was held that ***entry mentioned in the Notification as "chemical" will not include its salt.*** Further wherever it is intended to cover salt of a chemical it is categorically mentioned in the notification; for example "Aniline/Aniline oil and salts thereof, Cyclamic acid and it's salt, Hydrazine Hydrate/ Sulphate, Methapyrilene and its salt, Propranolol hydrochloride" (Vide Para No. 2). This shows that "saccharin" and "salt" are different identifiable products and when Notification mentions "Saccharine", it cannot be read to include its salts also.

it is to submit that the taxing mechanism (CVD or ADD) and the notifications does not make any difference as the above judgments clearly indicates that Saccharin cannot include it's salts also. It is also clearly mentioned that when Anti dumping

notification mentions the name of Saccharin it cannot be read to include it's salt also.

7.C.9. Taking support from **SANJAY CHEMICALS (supra)** and **CLIMAX CHEMICALS VS. R.GOPALNATHAN (supra)**, it is to submit that in the present proceedings CVD imposed vide Notification no.2/2019-Customs (CVD) dated 30-8-2019 is not applicable to "Sodium Saccharine" but it is restricted to "Saccharin in all its forms" only. Once Saccharin is processed by adding Methanol and Sodium Hydroxide then it ceases to be Saccharin and is known as a different and distinct commercial product "Sodium Saccharine". Hence, CVD is not leviable on Sodium Saccharin and demand deserves to be dropped.

7.C.10. The Noticee submits that decisions, judicial pronouncements are binding on lower authorities and they are bound by the same. In this regard, the Noticee would like to rely on the judgement of the Hon'ble Apex Court in the matter of **K.M. SHANKARAPPA** reported in **2001 (127) E.L.T. 8 (S.C.),** wherein it was held as follows:

> *Appellate Tribunal's orders - Revision/Review - Executive cannot sit in an appeal or review or revise a judicial order - Without enacting an appropriate legislation, the Executive or the Legislature cannot set at naught a judicial order - At the highest, the Government may apply to the Tribunal itself for a review, if circumstances so warrant - But the Govt. would be bound by the ultimate decision of the Tribunal. - The Executive has to obey judicial orders. Thus, Section 6(1) is a travesty of the rule of law which is one of the basic structures of the Constitution. The Legislature may, in certain cases, overrule or nullify the judicial or executive decision byenacting an appropriate legislation. However, without enacting an appropriate legislation, the Executive or the Legislature cannot set at naught a judicial order. The Executive cannot sit in an appeal or review or revise a judicial order. The Appellate Tribunal consists of experts and decides matters quasi-judicially. A Secretary and/or Minister cannot sit in appeal or revision over those decisions. At the highest, the Government may appeal to the Tribunal itself for a review, if circumstances so warrant. But the Government would be bound by the ultimate decision of the Tribunal.*
>
> [Emphasis supplied]

The judicial discipline is to be followed and all the orders of the Courts are binding on quasi-judicial authorities and not following the same amounts to contempt. The ratio declared in the matter of **SANJAY CHEMICALS (supra)** and **CLIMAX CHEMICALS VS. R.GOPALNATHAN (supra)** is binding on the lower authorities and required to be followed.

7.C.11. The Noticee submits that Sodium Saccharin is not a form of Saccharin, which gets confirmed by various test reports of Custom House Laboratory (Central Revenues Control Laboratory – CRCL) in Mumbai and Baroda, to whom specific query was put, in connection with testing of Sodium Saccharin Sample and to verify whether the goods are different from Saccharin or not.

7.C.12. The Noticee submits that CRCL reports clearly indicated that Sodium Saccharine is not Saccharin. A copy of the test report i.e. Query and Test report of CRCL Customs Laboratory Mumbai is attached along with an enclosed copy of Bill of Entry which was provisionally assessed at ICD Ahmadabad and

subsequently finally assessed by release of test bond after receiving Test Report from CRCL Customs Laboratory Baroda. This clearly indicates that Saccharin and Sodium Saccharin are different products.

7.C.13. It is to submit that testing has been done for query of this test at Customs Laboratory, Mumbai at CRCL almost 10 Years back, wherein it was observed that Sodium Saccharine is not saccharine and that test report have attained finality and binding on the Customs Department. It is to further submit that test reports from CRCL Custom Laboratory Baroda is more than 5 years old, which is also binding on the Customs Department.

7.C.14. The Noticee would like to place reliance on Certificates issued by technical experts and process flow chart, which shows that Saccharin and Sodium Saccharin are not one and the same and Sodium Saccharin is not a form of Saccharin :-

a) Certificate from Mumbai University in which Professor & Head of Department of Chemistry (Autonomous) University Mumbai Shri. Dr. S.S. Garje clearly says that "Both the Compounds have different chemical compositions, molecular weights and different characteristics. Sodium Saccharin is manufactured from Saccharin which is an intermediate/raw material. Sodium Saccharin is a salt of Saccharin and not a form of Saccharin."

b) Certificate from President of Indian Society of Chemicals and Biologists (ISCB) & Ex. Vice Chancellor of Gujarat University (Copy Encl. Ex. III) Prof. Dr. Anamik Shah certifies that Saccharin and Sodium Saccharin are two different chemical entities. Sodium Saccharin is derivatives of Saccharin having altogether different physical characteristics and chemical form, classified and authenticated as two distinct & different chemical compounds.

c) Process Flow Chart of Sodium Saccharin

d) Test Report From Dr. M. K. Rangnekar Memorial Testing Laboratory which clarifies that Sample of Sodium Saccharin does not complie for the Identification test for Saccharin,IS63851:1997 (Indian Standard of Saccharin, food grade specification second revision)

7.D. The Noticee submits that Adjudication Authority's reliance on the Notification to hold that Sodium Saccharin is squarely covered under the scope of the products discussed in the final findings of the Designated Authority is not only erroneous but contrary to the product under dispute, based on the submissions as follows:

(a) the Designated Authority's finding is recommendatory in nature and cannot over-ride language of the Notification no.2/2019-Customs (CVD) dated 30-8-2019, wherein product "Sodium saccharin" is not mentioned. Hence, as per settled law, when no word can be added or deleted in the Notification, the said findings has no binding effect and deserved to be ignored as not sustainable in law;

(b) that when there is inherent contradiction in the CTA read with Notification issued by the Designated Authority then in the Customs classification dispute, the provisions of the Customs Tariff Act,1975 would prevail, hence, findings offered in the Notification

issued by the Designated Authority are not sustainable in law. The CTA mentions the word "Saccharin and its salts", which means Saccharin and its salts are distinct and different product and CTA acknowledges the same. It is to submit that Sodium saccharin is a salt of Saccharin. On the contrary, the Designated Authority's findings states that in market parlance soluble saccharin is called sodium saccharin whereas insoluble saccharin is called saccharin. The said finding is contradictory to the CTA, wherein Saccharin and its salts are treated as different products and Notification no.02/2019-Cus (CVD), dated 30-8-2019 mentions about Saccharin only and not sodium saccharin;

(c) that Anti-dumping duty is specifically made applicable to Saccharin and attempting to levy such duty on Sodium saccharin by placing reliance on the Designated Authority's findings offered in the Notification is an attempt to enlarge the scope the Notification no. 02/2019-Cus (CVD), dated 30-8-2019, which is not sustainable in law;

7.E.1. The Noticee submits that they have imported goods, which were assessed to by the Proper Officer and certain objections were raised. The Noticee clarified the said objections through explanation etc., and thereafter, the order of clearance of said goods was given. As per settled position of law, the assessed Bill of Entry is an Order and unless the assessment is set aside, no further action is permissible. The Noticee submits that in the present proceedings, Bill of Entry was assessed to after inquiring / seeking calrifications, and such assessment has attained finality and said ratio is declared in the matter of ITC LTD reported in 2019 (368) E.L.T. 216 (S.C.), wherein it was held as follows:

> *Appealable order - Self-assessment - Appeal under Section 128 of Customs Act, 1962 provided not just against speaking order but against "any order" which is of wide amplitude - Order of selfassessment nonetheless an assessment order passed under Act and would be appealable by any person aggrieved thereby - Sections 17 and 128 of Customs Act, 1962. - The expression 'Any person' is of wider amplitude. The revenue, as well as assessee, can also prefer an appeal aggrieved by an order of assessment. It is not only the order of reassessment which is appealable but the provisions of Section 128 make appealable any decision or order under the Act including that of selfassessment. The order of self-ssessment is an order of assessment as per Section 2(2), as such, it is appealable in case any person is aggrieved by it. There is a specific provision made in Section 17 to pass a reasoned/speaking order in the situation in case on verification, self-assessment is not found to be satisfactory, an order of reassessment has to be passed under Section 17(4). Section 128 has not provided for an appeal against a speaking order but against "any order" which is of wide amplitude. [1998 (97) E.L.T. 211 (S.C.) relied on.*
>
> *[Emphasis supplied]*

The Noticee submits that ratio of the aforementioned judgement is applicable to the Revenue Department as well as to him (the Noticee). In the impugned proceedings, the assessed Bill of Entry, which is an order was not challenged by the Revenue and it binds them. Hence, by issuing impugned Notice, such finalized

assessment cannot be re-opened and it would amount to review of the Bill of Entry without challenging the same before the Appellate Authority.

7.E.2. The Noticee submits that assuming without admitting, an Order is wrong but it deemed to have been attained finality, unless that finality is disturbed by a process known to law or by a process authorised by law, the rights of the Noticee and the Revenue will continue to govern by that order and in this regard, reliance is placed on the decision of TISCO reported in 2001 (129) E.L.T. 434 (Tri. - Del.) same ratio will be applicable to Sanjay Chemical also.

7.F. <u>PROCEEDINGS ARE BARRED BY LIMITATION</u>:

The Noticee is in receipt of Show cause notice dated 7-8-2024 proposing to recover countervailing duty of Rs.72,12,251/- under Section 28(1) of the Customs Act,1962 along with interest and proposing penalty under Section 112(a) and / or 117 of the Customs Act,1962 pertaining to the imports made vide Bill of Entry No.9995679 dated 13-8-2022, No.3511945 dated 29-11-2022 and 3789259 dated 18-12-2022. In continuation thereof, a Corrigendum dated 27-12-2024 was issued proposing to demand the countervailing duty of Rs.85,10,456/- plus 18% IGST on CVD, as said 18% IGST was not included in the Show cause notice dated 7-8-2024.In this regard it is to

submit that the date of Bills of Entry are 13-8-2022,29-11-2022 and 18-12-2022 and Corrigendum was issued on 27-12-2024, which is barred by limitation. The said notice is issued under Section 28(1) of the Customs Act,1962, which prescribes limitation period of two years and Corrigendum dated 27-12-2024 to Show cause notice dated 7-8-2024 was issued after two years. Hence, entire proceedings are barred by limitation.

7.G. <u>NOT CONCEALED ANY INFORMATION FROM THE DEPARTMENT</u>:

The Noticee submits that he has imported said product at Kerala vide bill of entry No. 5845963 dated 08.05.2023 and on similar objections, proceedings were initiated against him. The Noticee approached the Hon'ble High Court Kerala at Ernakulam and the goods were released provisionally on furnishing Bond and Security based on the findings at Para 10, which is as follows:

> *When the Custom Authorities themselves are in doubt whether the CVD is leviable on the imported goods of the petitioner or not? I feel that insistence upon furnishing bank guarantee for release of goods is not justified. Petitioner has not concealed any material fact from the Custom Authorities. He has filed self assessment disclosing everything to the Custom Authorities. In fact on representation of the petitioner, the CVD was deleted vide Exhibits P-8 and P-9 orders. Therefore, in my view, this is not a case where Custom Authorities should insist upon furnishing bank guarantee for 20% of the CVD which may be levied after adjudication. In view thereof, I set aside the Exhibit R-2(d) order dated 20.07.2023 to the extent for a direction for furnishing a bank guarantee for Rs.35,00,000/- (Rupees Thirty five lakh only) for provisional release of imported goods of the petitioner.*

(A copy of the judgement is attached)

In the present proceedings also the Noticee has not concealed any fact about imported goods, which would get further amplified as follows:

The Noticee submits that they have imported goods, the details are as follows: Bill of Entry No. 9995679 dated 13-8-2022, Bill of Entry No. 3511945 dated 29-11-2022 and Bill of Entry No. 3789259 dated 18-12 -2022	A query was raised in first 2 bills of Entry's and an explanation was given, which is based on technical aspects, judicial decisions etc., and clearance was granted by the proper officer. It is to submit that in connection with Bill of Entry No. 3789259 dated 18-12 -2022, examination order for physical verification and verification regarding ADD/SAFEGUARD/ BIS/CVD/AIDC if Applicable was issued on 19-12-2022 and after completing the physical inspection, the imported goods were allowed to be cleared. For seeking information of such notings etc., from files, an Application was filed under Right to Information Act, 2005 which was awaited till date. This Noticee submits that allegation of delinquent and habitually non-compliant importer made in para graph 8 of the Show cause notice dated 7-8-2024 is not only harsh but contrary to the factual position, when every clearance of imported goods was granted by the proper officer after seeking every information.

There is no conspiracy or miss-statement by the noticee as all the information was submitted to the relevant authorities during the filling and processing of the Bill of Entries. All the queries of the department in these Bill of Entries were responded to and addressed. Upon verification and on application of mind of the competent authorities have assessed the Bill of Entries.

7.H. PROPOSAL TO CONFISCATE UNDER SECTION 110(m) OF THE CUSTOMS ACT, 1962 IS NOT SUSTAINABLE:

7.H.1. The Noticee submits the importer makes an entry under Section 46 and also self-assesses duty under Section 17(1) by filing the Bill of Entry. There is no separate mechanism to self-assess duty. The columns pertaining to classification, valuation, rate of duty and exemption notifications which determine the duty liability are part of the Bill of Entry which is also an entry under Section 46. Thus, although the Bill of Entry requires the importer to make a true declaration and further to confirm that the contents of the Bill of Entry are true and correct, the columns pertaining to classification, exemption notifications claimed and in some cases even the valuation are matters of self-assessment and are not matters of fact. Self-assessment is also a form of assessment but the importer is not an expert in assessment of duty and can make mistakes and it is for this reason, there is a provision for re-assessment of duty by the officer. Simply because the importer claimed a wrong classification or claimed an ineligible exemption notification or in some cases, has not done the valuation fully as per the law, it cannot be said that the importer misdeclared. As far as the description of the goods, quantity, etc. are concerned, the importer is bound to state the truth in the Bill of Entry. Thus, simply claiming a wrong classification or an ineligible exemption notification is not a mis-statement. Assessment, including self-assessment is a matter of considered judgment and remedies are available against them. While self-assessment may be modified by through re-assessment by the proper officer, both self-assessment and the assessment by the proper officer can be assailed in an appeal before the Commissioner (Appeals) or reviewed through an SCN under Section 28. Therefore, any wrong classification or claim of an ineligible notification or wrong self-

assessment of duty by an importer will not amount to mis-statement or suppression. The Noticee submits that the imported goods do not become liable to confiscation under section 111(m) on the ground that the importer have not paid CVD on Sodium Saccharine. The Noticee submits that after filing of Bills of Entry, a query was raised by the proper officer and after noting the explanation given by them, the goods were allowed to be cleared. It is to submit that firstly, the Noticee-importer is not an expert in taxation and can make mistakes and he cannot be penalized for making mistakes. Secondly, understanding about the product i.e. Sodium Saccharine is different from the product Saccharine is a matter of opinion, which is fortified by the technical experts of the field and the Noticee-importer's goods cannot be confiscated nor can he be penalized for his opinion. Thirdly, the filing of the Bill of Entry and the self-assessment precede re-assessment by the proper officer and it is impossible for the importer to anticipate the view of the officer and file the Bill of Entry accordingly. Fourthly, there is no legal obligation on the Noticee- importer to conform to the possible subsequent view of the officer. The law cannot be read to obligate the Noticee-importer to do the impossible task of predicting the views of the officer and following them. For all these reasons, in the Bill of Entry even if they are found to be completely incorrect, do not attract section 111(m) or the consequential penalty under section 112 and in this regard, as a persuasive support, reliance is placed on the decision of AUREOLE INSPECS INDIA PRIVATE LIMITED – Final Order No.51024/2023 dated 9-8-2023 in Custom Appeal No.51191 of 2020.

7.H.2. The charge of misdeclaration and proposal to confiscate the goods under Section 110(m) of the Customs Act,1962 is contrary and conflicting with the fcats of the present proceedings. The imported goods i.e. Sodium Saccharin is declared as per import invoice and documents and it was found as Sodium Saccharin only. The claiming of benefit of exemption from CVD does not amount to misdeclaration, as it was a belief of the Noticee that he is eligible for the same. Hence, proposal to confiscate the goods is legally not sustainable and serves to be dropped.

7.I. PENALTY UNDER SECTION 112(a) AND 117 OF THE CUSTOMS ACT,1962 IS NOT APPLICABLE:

7.I.1. The Noticee submits that any act carried out under a bonafide belief cannot be termed as contravention of the provisions of law and rules made thereunder, hence, penalty under Section 112(a) of the Customs Act,1962 is not imposable.

7.I.2. There is no reason to propose imposition of penalty in terms of Section 112(a) on the Noticee, as there was no reason for re-assessment of the Bills of Entry. As no orders for such re-assessments as proposed by this Show cause notice.

7.I.3. The Noticee submits that proposal to impose penalty under the Customs Act,1962 is not sustainable in law in the absence of contravention of any provisions of the Customs Act and /or Rules made thereunder. The Noticee submits that based on the aforementioned submissions, it would be clear that their acts are in consonance with the provisions of law and proposal to impose penalty deserves to be dropped.

7.I.4. The Noticee submits that penalty is ordinarily levied or proposed for some contumacious conduct or for a deliberate violation of the provisions of the particular statute as held in the **PRATIBHA PROCESSORS** reported in **1996 (88)**

E.L.T. 12 (S.C.). In the impugned proceedings, there is nothing on record to arrive at a conclusion that Noticee's conduct was contumacious or for a deliberate violation of statute, hence, proposal of imposition of penalty under Section 112(a) and 117 of the Customs Act,1962 is deserves to be dropped.

7.I.5. The Noticee submits that issue involves classification of product, which involves interpretation of law, hence, penalty is not imposable. The Noticee submits that when the issue relates to dispute in connection with interpretation of law , the proposal to impose penalty under Section 112(a) and 117 of the Customs Act,1962 is not sustainable in law. In this regard, the Noticee would like to place reliance on the decision of ABRAHAM J. THARAKAN reported in 2007 (210) E.L.T. 112 (Tri. - Bang.), wherein it has been held that Penalty not imposable in cases of interpretation / classification disputes. The Noticee would also like to place reliance on the decisions as follows:

DABUR INDIA LTD. - 2005 (181) E.L.T. 225 (T)

INDOCOM PROJECTS EQUIP. LTD. - 2005 (185) E.L.T. 291 (T)

7.I.6. The Noticee submits that he has not done or omitted to do any act, which would amount to contravention of the provisions of the Customs Act, 1962. The Noticee submits that there is no direct or indirect evidence to allege that he was involved in the misdeclaration of imported goods and issue relates to applicability of CVD, which involves interpretation of Notification . The question abetment as mentioned in Section 117 of the Customs Act,1962 is also absent and Hon'ble Apex Court in the case of Shri Ram & another v. State of UP — AIR 1975 SC 175 has held that in order to constitute abetment, the abettor must be shown to have intentionally aided to the commission of the crime. In the present case no evidence has been brought on record to show that the Noticee had intentionally aided or abetted the commission of any offence, hence, in the absence of positive evidence, penalty under Section 117 is not imposable.

7.I.7. The Noticee submits that for imposition of penalty, presence of mens-era is a mandatory requirement and in the absence of which imposition of penalty is unjustified in the instant proceedings none of the acts were backed up with any ulterior motive or malafide intention. In this regard to substantiate their say the Noticee would like to rely on the decisions as follows:

KAMAL KAPOOR - (5) STR 251 (H.C.)

HINDUSTAN STEEL LIMITED 1978(2) ELT (J-159)(S.C.)

AKBAR BADRUDDIN JIWANI 1990(47) ELT 161(S.C.)

TAMILNADU HOUSING BOARD 1994(74) ELT 9(S.C.)

7.I.8. The Noticee submits that in the absence of misdeclaration of goods, proposal to confiscate goods under Section 111(m) of the Customs Act,1962 is not sustainable. It is to submit that at no point of time, the goods were misdeclared.

8. The Noticee prays that based on various submission made before your Honour on merits as well as on facts in this reply, impugned Show Cause notices deserves to be dropped.

23. PERSONAL HEARING:-

23.1 I observe that *'Audi alteram partem'*, is an important principal of natural justice that dictates to hear the other side before passing any order. Therefore, personal hearing in the matter was granted to the noticee on 23.12.2024, 09.01.2025 and 16.01.2025. The noticee attended the final personal hearing dated 16.01.2025, via virtual mode before the adjudicating authority. The record of the PH dated 16.01.2025, is reproduced as under:

"Shri Durgesh Nadkarni, Advocate and authorized representative of M/s. Nextera Management Services, Mumbai, appeared before me for scheduled Personal hearing on today, i.e. 16.01.2025 at 11.45 AM, through virtual mode. Shri Durgesh Nadkarni, Advocate during the hearing relied upon and reiterated their preliminary reply to show cause notice dated 04.01.2025 and also added following points –

1. Sodium Saccharin is a different identifiable product than Saccharin, it is a salt. It also has different uses. Saccharin is primarily used in pesticide and for manufacture of sodium saccharin. Sodium saccharin is used as an additive in various food products and in the pharmaceutical industry.
2. That as per details mentioned in preliminary reply, show cause notice proceedings and corrigendum dated 27.12.2024 are barred by limitation.
3. He also relied upon and reiterated case laws of **Sakarwala Brothers and Sanjay Chemicals** wherein it was held that 'Anti-Dumping Duty not to be levied on sodium saccharin'.
4. He also submitted that final assessment of their Bills of Entry was already done by Customs authorities, after their detailed reply was submitted on the queries raised by customs during assessment of their Bills of Entry. Hence, the matter was concluded at that time without any further query.

24. DISCUSSION AND FINDINGS

24.1 I have carefully gone through the Show Cause Notice bearing *F.No.* GEN/ADJ/COMM/150/2023-Adjn *dated 07.08.2024 issued by the Principal Commissioner of Customs, Custom House, Mundra*, Show Cause Notice F.No. CUS/APR/MISC/6748/2024-Gr 2 dated 09.08.2024, Corrigendum to SCN dated 27.12.2024, facts of the case, the relied upon documents; submissions made by the Noticees, relevant legal provisions and the records available before me. The issues before me to decide are as under:

a) Whether the goods having assessable value of **Rs.3,60,61,254/-** covered under Bills of Entry 9995679 dated 13.08.2022, 3511945 dated 29.11.2022 and 3789259 dated 18.12.2022, are liable for confiscation under Section 111(m) of the Customs Act, 1962;

b) Whether, the CVD (plus 18% IGST on CVD) (total amounting to **Rs.85,10,456/- (Rs. Eighty Five Lakhs Ten Thousand Four Hundred and Fifty Six Only)** leviable on the impugned goods as per Table-A of the Corrigendum dated 27.12.2024, valued at Rs.3,60,61,254/- and not paid by them, is liable to be demanded and recovered from them in terms of Section 28(1) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962;

c) Whether, Penalty is imposable upon the noticee under Section 112(a) of the Customs Act, 1962;

d) Whether, Penalty is imposable upon the noticee under Section 117 of the Customs Act, 1962

24.2 I find that instant case arises out of importation of three consignments of Sodium Saccharin declared under CTH 29251100 of the Customs Tariff Act, 1975, vide three self-assessed Bills of Entry and clearing the same without payment of CVD as imposed in terms of Notification No.02/2019-Customs.

24.3 I find that, M/s. Nextera Management Services (IEC-0312008538), 6/82, Commercial Chambers, 173, Yusuf Meherali Road, Mumbai 400 003, have imported the goods which originated from China. The notification no. 02/2019-Customs dated 30.08.2019, which imposes CVD (*Countervailing Duty)* on goods imported from China is reproduced as under –

"New Delhi, the 30th August, 2019

Notification No. 2/2019-Customs (CVD)

G.S.R. (E). -Whereas, in the matter of "Saccharin in all its forms" (hereinafter referred to as the subject goods) falling under tariff item 2925 11 00 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act), originating in or exported from, People's Republic of China (hereinafter referred to as the subject countries), and imported into India, the Designated Authority in its final findings, published in the Gazette of India, Extraordinary, Part I, Section 1, vide notification No. 6/18/2018-DGAD, dated the 19th June, 2019, has come to the conclusion that:-

(a) the product under consideration has been exported to India from subject countries at subsidized value, thus resulting in subsidization of the product;

(b) the domestic industry has suffered material injury due to subsidization of the product under consideration; and

(c) the material injury has been caused by the subsidized imports of the subject goods originating in or exported from the subject country.

Now, therefore, in exercise of the powers conferred by sub-sections (1) and (6) of section 9 of the Customs Tariff Act, read with rules 20 and 22 of the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidized Articles and for Determination of Injury) Rules, 1995, the Central Government, after considering the aforesaid final findings of the Designated Authority, hereby imposes definitive Countervailing Duty on the subject goods, the description of which is specified in column (3) of the Table below, falling under tariff item of the First Schedule to the Customs Tariff Act as specified in the corresponding entry in column (2), originating in and exported from the countries as specified in the corresponding entry in column (4), produced by the producers as specified in the corresponding entry in column (5), and imported into India, countervailing duty of an amount as specified in the corresponding entry in column (6) of the said Table, namely:-

Duty Table

S. No.	Heading/Sub	Description of goods	Country of Origin/Export	Producer	Duty amount as % of CIF value	
1	2	3	4	5	6	
1	29251100	Saccharin in all its forms	Chiina	Any	20	

24.3.1 I observe that the **designated authority in its findings *published vide notification No. 6/18/2018-DGAD, dated the 19th June, 2019* has recommended to impose Countervailing Duty** *on "**the product under consideration has been exported to India from subject countries at subsidized value, thus resulting in subsidization of the product**"*. From the above wordings of the Notification, I find it necessary to find out the findings of the designated authority for recommending the said CVD of "product under consideration", which in this case is 'Saccharin in all its forms'. Para 7 of the said describes the Examination by the Authority of the Product under consideration, which is reproduced below –

"Examination by the Authority

7. The product under consideration in the present investigation is "Saccharin in all its forms". "Saccharin is a non-nutritive sweetener and considered to be low calorie substitute for cane sugar. **Primarily there are two types of Saccharin i.e. soluble and insoluble. In market parlance soluble saccharin is called sodium saccharin whereas insoluble saccharin is called saccharin or saccharin acid. Saccharin is produced in two physical forms, viz. granular and powder. Sodium saccharin in granular form is used in situations where saccharin will be dissolved, the powder form which has been grounded and spray dried is used in dry mixes and pharmaceuticals. It is slightly soluble in water.** Insoluble form of saccharin is used in many pharmaceutical and medical applications. Saccharin is used in a variety of industry such as food and beverage, personal care products, table top sweeteners, electroplating brighteners, pharmaceuticals, etc. **All forms of Saccharin are within the scope of the present investigation."**

24.3.2 After examination of issue and taking into consideration of all related parties, the designated authority – DGTR made recommendations in Para 89 and 90, which are reproduced as under –

89. The Authority notes that the investigation was initiated and notified to all interested parties including Government of China PR and adequate opportunity was given to provide information/evidence on the aspect of subsidization, injury and causal links in favour or against thereof. Having initiated and conducted the investigation into subsidization, injury and causal links in terms of the Rules laid down and having established positive subsidy margin as well as material injury to the domestic industry caused by such subsidized imports, the Authority is of the view that imposition of definitive countervailing duty is required to offset

subsidization and injury. Therefore, the Authority considers it necessary to recommend imposition of definitive countervailing duty on the imports of the subject goods from China PR in the form and manner described hereunder.

90. Having regard to the lesser duty rule followed by the Authority, the Authority recommends imposition of definitive countervailing duty equal to the lesser of margin of subsidy and margin of injury, from the date of notification to be issued in this regard by the Central Government, so as to remove the injury to the domestic industry. Accordingly, the definitive countervailing duty as a percentage of the landed value of imports as mentioned in Col 6 of the duty table below is recommended to be imposed from the date of notification to be issued in this regard by the Central Government, on all imports of the subject goods, originating in or exported from China PR.

Duty Table

S. No.	Heading/Sub	Description of goods	Country of Origin/Export	Producer	Duty amount as % of CIF value
1	2	3	4	5	6
1	29251100	Saccharin in all its forms	Chiina	Any	20

24.3.3 Thus I find that the designated authority has initiated Examination of Import of Saccharin on petition made to it by domestic Producers, and after examination of the issue they recommended to impose countervailing duty on Import of Saccharin from China. In their scope of finding they have included all forms of Saccharin, viz - **soluble saccharin - called sodium saccharin** and also **"insoluble saccharin - called saccharin or saccharin acid".** They have also clarified that **"Saccharin is produced in two physical forms, viz. granular and powder. Sodium saccharin in granular form is used in situations where saccharin will be dissolved, the powder form which has been grounded and spray dried is used in dry mixes and pharmaceuticals. It is slightly soluble in water".** At the end of their observation in Para 7 they have also made its very clear that **'All forms of Saccharin are within the scope of the present investigation',** and there is specific mention that the forms include sodium saccharin. To this end there is absolutely no doubt on the intent and coverage of sodium saccharin for imposition of cvd on product in question.

24.3.4 I find that based on the said recommendations, the Ministry of Finance issued Notification no. 02/2019-Customs dated 30th August, 2019, vide which CVD @ 20% was imposed on Saccharin in all its form imported from China. Thus, it is absolutely clear in my mind that the intention to issue the Notification no. 02/2019-customs was to issue CVD on all forms of Saccharin which includes Sodium Saccharin also, as is made clear vide Para 7 of the DGTR FINAL FINDING NOTIFICATION issued from F. No.6/18/2018-DGAD dated 19th June, 2019.

24.3.5 I find that in many cases that the Apex Court has made it very clear that which deciding the cases, the courts has to give priority to the intention of the Statute. In the matter of **Dr. Jaishri Laxmanrao Patil Vs The Chief Minister & Anr. in Civil Appeal No. 3123 of 2020**, the Supreme Court Observed that "The duty of the judicature is to act upon the true intention of the legislature, the mens

orsententia legis. (**See: G. Narayanaswami v. G. Pannerselvam5, South Asia Industries Private Ltd v. S. Sarup Singh and others6, Institute of Chartered Accountants of India v. Price Waterhouse7 and J.P. Bansal v. State of Rajasthan**). Hence, the Intention of the legislature has to be given utmost priority while interpreting the statute. In the present matter, it is abundantly clear that the Notification No. 02/2019-Customs, which based upon the DGTR FINAL FINDING NOTIFICATION issued from F. No.6/18/2018-DGAD, clearly intends to impose Countervailing Duty @20% on import of all forms of Saccharin including Sodium Saccharin also, when imported from China.

24.3.6 I find it pertinent to mention here that the US Food and Drug Administration vide website https://www.govinfo.gov › html › USCODE-2019-title21, have also observed that "(y) The term "saccharin" includes calcium saccharin, sodium saccharin, and ammonium saccharin". Thus, Internationally also, the term Saccharin is deemed to include Sodium Saccharin.

24.4 Further, I find that the tariff heading 29251100 covers the heading Saccharin and its salts, whereas the Notification no. 02/2019-Customs vide which CVD was imposed on Imported "Saccharin in all its forms" @ 20% on all such imports from China. From the records and evidence placed before me, I observe that Saccharin is a chemical compound, and sodium saccharin is its salt form. Both are used as sweeteners in food and drinks, but sodium saccharin is more soluble and stable. The noticee have also admitted in their reply to Noticee, that Sodium Saccharin is manufactured from Saccharin after processing and making some additions to it. Though both Saccharin and Sodium Saccharin are used as sweeteners, Sodium saccharin is easily soluble in water, therefore, easy to use in manufacturing of food grade products. However, the noticee has not denied that fact that Saccharin is the main product in manufacturing of Sodium saccharin. Further, the tariff heading classifies "Saccharin and its salts" into the CTH – "29251100". From the above, I observe that the notification covers Saccharin and its various forms, including salts also, as the same term is also squarely used in the classification in tariff heading, which is same for saccharin and also for its salts. The noticee have also submitted that sodium saccharin is a salt of saccharin. However, being a salt does not exclude Sodium saccharin from being a chemical as claimed by the noticee. I observe that Sodium saccharin is simply the sodium salt of saccharin, meaning it is a chemically similar compound with a sodium ion attached, making it one of the most commonly used forms of saccharin due to its high solubility and stability.

24.5 Further, the explanatory Notes to CTH 29251100, are reproduced as under –

"Saccharin or 1,2-benzisothiazolin-3-one 1,1-dioxide and its salts*. Saccharin is an odourless, white crystalline powder having a very sweet taste; its sodium and ammonium salts have a lower sweetening power but are more soluble. Tablets consisting solely of one of these products remain in this heading.
Preparations, used in human diets, consisting of a mixture of saccharin or its salts and a foodstuff, such as lactose, are however excluded from this heading and fall in heading 21.06 (see Note 1 (b) to Chapter 38). Those preparations consisting of saccharin or its salts and substances, other than a foodstuff, such sodium hydrogencarbonate (sodium bicarbonate) and tartaric acid fall in heading 38.24".

From the explanatory notes, I observe that for headings which are different from Saccharin, different heading have been proposed. The fact that the importer/noticee has put the imported goods Sodium Saccharin in the same heading as saccharin, i.e. 29251100, clearly implies that they are also in their knowledge that sodium saccharin in similar to saccharin as the same are derived from saccharin as a major component and both are used as a sweetener. Further, the CESTAT, Bombay, in the matter of Elegan Pharmaceuticals v. Collector Of Central Excise, Bombay, dated May 1, 1998, have observed as under –

- "Saccharin sodium is used for the same purposes as saccharin"
- "Saccharin is also used as saccharin sodium and saccharin sodium is used for the same purpose as saccharin and the appellants have been able to produce evidence to show that in the market, both chemicals are sold under the 'generic' name of saccharin in common parlance as well as trade parlance".
- "We are, therefore, of the view that the word 'saccharin' used in the Notification has to be given its generic and wider meaning to include preparations containing saccharin as the main component. Even going by the common parlance test it will be difficult to distinguish 'sodium salt of saccharin' from 'saccharin' as such".

From the above observation of CESTAT Bombay, in my mind, this leaves no room for any doubt that Saccharin and Sodium Saccharin are very similar in nature and not different products. Both are derived chemically and in Trade and common parlance both have same meaning. Thus, the notification no. 02/2019-Customs based on the DGTR FINAL FINDING NOTIFICATION dated 19th June, 2019, issued from F. No.6/18/2018-DGAD squarely covers Sodium Saccharin in the term used - "Saccharin in all its forms". Hence, I find that as the impugned goods 'Sodium Saccharin' covered under the said notification and are imported from China, the CVD @ 20% is leviable on the said goods. I hold so.

24.6 Further, the noticee has referred and relied on the decision of Kerala High Court, in M/s NEXTERA MANAGEMENT SERVICES Vs. Union of India and Ors., dated 05.10.2023, to support their claim that Sodium Saccharin is Different and distinct product from Saccharin. I observe that in the said Order/Judgment, the Hon'ble High Court has not gone into merits of the case, but have passed their order based on different facts. The same cannot be relied upon to decided the issue in question in the present matter.

Further, I find that the noticee has referred to a number of case laws in his reply to Show Cause Notice. I observe that decisions from Higher Courts cannot straight away be used as precedents for other cases, and must be decided based after comparison of facts. Further, cases with different facts and circumstances cannot be relied upon. This is because the facts and circumstances of each case are unique, and the principles of natural justice must be applied to the specific context of the case. A single additional or different fact can make a significant difference in the conclusions of two cases. Hence, I find that it is not proper to blindly rely on a decision when disposing of cases. In ***Bharat Petroleum Corporation Ltd. And ... vs N.R. Vairamani And Anr on 1 October, 2004***, the Supreme Court of India

observed that "*Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed.*" Further, I observe that the following words of Lord Denning in the matter of applying precedents have become locus classicus:

"*Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.*

From the above, I observe that each case has different sets of facts and circumstances, and the adjudicating authority has to observe merits of each case to arrive at conclusion. Therefore, I find that the case laws of State of Gujarat Vs. Sakarwala Brothers, and other case laws referred to by the noticee cannot be squarely applied to the present case.

24.6.1 I observe that the noticee has also relied on the case law in Sanjay Chemicals, decided by the CESTAT, Bombay. I find that in Sanjay Chemicals, the issue to be decided was imposition of ADD on Saccharin and not Imposition of CVD. The CESTAT has decided on imposition of ADD on Saccharin but not on CVD. Further, I find that the CESTAT in Sanjay Chemicals has also decided that the Show Cause Notice to be barred by Limitation and hence, the CESTAT has not given any further clarification on the case Laws quoted by the AR who argued in favour of the revenue. The CESTAT has also not discussed on the observation of CESTAT in the matter of M/s Elegan Pharmaceuticals v. Collector Of Central Excise, Bombay. I further find that the CESTAT has also not discussed the DGTR FINAL FINDING NOTIFICATION dated 19th June, 2019, issued from F. No.6/18/2018-DGAD, based on which the Notification no. 02/2019-customs was issued with regard to import of "Saccharin in all its Forms" when imported from China. Therefore, the case laws of M/s Sanjay Chemicals cannot be relied upon in the present case. I hold so.

24.7 The noticee in their defence replies have submitted a number of test reports of the goods 'sodium saccharin' and its conclusion. I find that as the product/subject goods reported upon was not from the same batch as the above said goods, the said test reports cannot be relied upon squarely in the present case, as any variable in the tested goods can significantly alter the test results and opinions of testing agency. Further, as discussed above, I have observed that Sodium Saccharin is derived from Saccharin only with few additions and chemical treatment and both have similar properties and also classified under same sub heading also, which covers Saccharin as well as its salts.

24.8 The noticee have also contended that they were not given any pre-show cause notice consultation. I observe that the noticee in their written submission have admitted that they received notices for pre SCN consultation on 08.08.2024 and 09.10.2024. They have contended that they have received the notices late and hence no Pre-SCN Consultation opportunity was given to them. I find no merit in the contention of the Noticee. Once, the first notice was given to them the noticee could have approached the customs authorities themselves to take consultation on the proposed Show Cause Notice. The customs office is a public office, wherein various

taxpayers, trade, importers and exporters daily approach to get clearance of their goods or to get guidance on some other issues. Further, the object of pre notice consultation is to inform the Noticee beforehand that a Show Cause notice is proposed to be given to them and that they may avoid payment of penalties and get their issues resolved before the matter going into litigation. I find that the first letter dated 08.08.2024 have served the purpose of informing the noticee about the action proposed to be taken against the impugned goods and that proper pre notice consultation opportunity was given to them by the Additional Commissioner of Customs, Custom house Mundra. I find that, as the pre notice consultation was given by the Additional Commissioner, there is no need to separately be given pre notice consultation by the Principal Commissioner also, before issuing the Show Cause Notice. I hold so.

24.9 Further, I observe that notice has been given to importer under Section 28(1) of the Customs Act, 1962 and not under Section 28(4). No fraud, collusion, or wilful misstatement has been alleged in the notice. The notice has only alleged that the importer has not paid CVD in terms of Notification no. 02/2019-Customs, even though the goods were falling squarely in the said notification. And hence, importer has tried to evade payment of CVD applicable in terms of Notification no. 02/2019-Customs. Therefore, I observe that due process of law has been followed in issuance of notice to the importer noticee. Further, I hold so.

24.10 Further, as the noticee have tried to evade payment of duty by not declaring the said goods under notification no. 02/2019-customs, by this mis statement the contention of the noticee that the goods are not liable to confiscation are not tenable. Under the self-assessment regime the importer/exporter have been given responsibility to declare their goods correctly and make payment of duties correctly under the correct notification as applying to the impugned goods. The importer, at the time of self assessment, is required to ensure that he declares correct classification, country of origin, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry. In EVERSHINE CUSTOMS (C & F) PVT LTD., New Delhi Vs. COMMISSIONER OF CUSTOMS, New Delhi, the CESTAT, Principal Bench observed as under -

"19. The responsibility therefore, rests entirely on the importer and without such a provision, the Customs law cannot function. Sub-section (1) of section 46 requires the importer to make an entry of the goods imported. Sub-section (4) requires him to make a declaration confirming the truth of the contents of the Bill of Entry." By taking the goods outside the ambit of Notification no. 02/2019-customs, the noticee have tried to evade payment of applicable CVD on the said goods. Hence, I find that the impugned goods are liable for confiscation under Section 111(m) of the Act, ibid.

24.10.1 As the impugned goods are found to be liable for confiscation under Section and 111(m) of the Customs Act, 1962, I find that it necessary to consider whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the goods imported under Bills of Entry 9995679 dated 13.08.2022, 3511945 dated 29.11.2022 and 3789259 dated 18.12.2022. The Section 125 ibid reads as under:-

"Section 125. Option to pay fine in lieu of confiscation.—(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods 1[or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit."

A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods, by paying redemption fine.

In the case of ***M/s Venus Enterprises vs CC, Chennai 2006(199) E.L.T. 661(Tri-Chennai)*** it has been held that:

"We cannot accept the contention of the appellants that no fine can be imposed in respect of goods which are already cleared. Once the goods are held liable for confiscation, fine can be imposed even if the goods are not available. We uphold the finding of the misdeclaration in respect of the parallel invoices issued prior to the date of filing of the Bills of Entry. Hence, there is misdeclaraiion and suppression of value and the offending goods are liable for confiscation under Section 111(m) of the Customs Act. Hence the imposition of fine even after the clearance of the goods is not against the law."

Further in case of ***VISTEON AUTOMOTIVE SYSTEMS INDIA LIMITED Versus CESTAT, CHENNAI, 2018 (9) G.S.T.L. 142 (Mad.)*** Hon'ble High Court of Madras has passed the landmark judgement contrary to the judgement of tribunal passed earlier. In the said judgement it has been held that:

"The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act ....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act."

In view of above discussions, based on the judgement of *M/s Venus Enterprises vs CC, Chennai 2006(199) E.L.T. 661(Tri-Chennai), M/s Asia Motor Works vs Commissioner of Customs 2020 (371) E.L.T. 729 (Tri. - Ahmd.)* & *M/sVisteon Automotive Systems India Limited Versus CESTAT, CHENNAI, 2018 (9) G.S.T.L. 142 (Mad.)*, I find that goods in the current case are liable for confiscation under Section 111 (m) of the Customs Act, 1962 and redemption fine is liable to be imposed on the said confiscated goods. I hold accordingly.

24.11 The noticee have also contended that limitation period applies on the Show Cause Notice and its corrigendum dated 27.12.2024. I observe that the date of the first Bill of entry was 13.08.2022. The notice was issued to the Noticee on 07.08.2024. In terms of the Provisions of Section 28(1), the relevant date in the present case is the date of Out of Charge of impugned goods. As the date of first Bill

of Entry is 13.08.2022, I find that both the notices dated 07.08.2024 and 09.08.2024 were issued well within time and are not barred by limitation. Further, I observe that in the Show Cause Notice issued by the Principal Commissioner all three Bills of Entry were covered however, IGST @ 18% of CVD was not inadvertently left out to be demanded alongwith the CVD. However, in the latter Show Cause Notice dated 09.08.2024, issued for single Bill of Entry, CVD as well as IGST @ 18% on CVD was demanded. Further the Noticee vide their letters dated 02.12.2024 and 19.12.2024 asked for clarification regarding which show Cause notice he has to respond to, and to withdraw the later show cause notice dated 09.08.2024. Hence, it was necessary to issue a corrigendum in the matter to rectify the mistake. As IGST @ 18% of CVD was already correctly demanded on one Bill of Entry for which SCN was issued on 09.08.2024 by the Additional Commissioner, and to avoid the confusion of duplicate demand to the importer, issuance of corrigendum was necessary, and the mistake of not including IGST @ 18% of CVD was rectified vide Corrigendum dated 27.12.2024. I observe that vide the above Corrigendum no new demand was raised to the noticee, but the demand of CVD and applicable IGST @ 18% on CVD was included to correct the error apparent on the face of record. Hence, as the original demand was issued well within time and merely a corrigendum was issued later on to correct the error, I find that as no new demand has been raised, the limitation period is not applicable on the First and second Show Cause notice as well as the corrigendum issued later on. I hold so.

24.12 I find that section 112(a) states that "*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,*

.....

(ii) in the case of dutiable goods, other than prohibited goods, to a penalty, not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is higher...

In the above Para no. 24.10, I have held that the impugned goods are liable to confiscation under Section 111(m) of the Customs Act, 1962. As the importer have not correctly assessed duty as applicable in terms of Notification no. 02/2019-Customs, I find that being dutiable goods, penalty under Section 1112(a)(ii) is applicable of the importer. I hold so.

24.13 As regards imposition of penalty under Section 117 of the Customs Act, 1962, I find that Section 117 proposes penalty where no express penalty s elsewhere provided for such contravention or failure, As already penalty has been proposed in the Show Cause Notice under Section 112(a)(ii) if the Customs Act, 1962, and nothing has been brought forth in the Show Cause Notices, which can justify additional penalty under Section 117 of the Act, ibid, therefore, I do not find any reason to impose penalty on the noticee under Section 117 of the Customs Act, 1962.

25. IN VIEW OF DISCUSSION AND FINDINGS SUPRA, I PASS THE FOLLOWING ORDER:

:ORDER:

(i) I order to confiscate the the goods having assessable value of **Rs.3,60,61,254/- (Rupees Three Crore Sixty Lakh Sixty-One Thousand Two Hundred and Fifty-Four only)** covered under Bills of Entry No. 9995679 dated 13.08.2022, 3511945 dated 29.11.2022 and 3789259 dated 18.12.2022 under Section 111(m) of the Customs Act, 1962; however, I give an option to the importer - M/s Nextera Management Services (IEC-0312008538), Mumbai, to redeem the said goods on payment of redemption fine amounting to **Rs 25,00,000 /- (Rupees Twenty Five Lakh only)** in lieu of confiscation, for the reasons as discussed above;

(ii) I confirm the demand of CVD (plus 18% IGST on CVD) (total amounting to **Rs.85,10,456/- (Rs. Eighty-Five Lakhs Ten Thousand Four Hundred and Fifty-Six Only),** leviable on the impugned goods as per Table-A of the Corrigendum dated 27.12.2024, valued at Rs.3,60,61,254/- and not paid by them, under the provisions of Section 28(1) of the Customs Act, 1962, along with applicable interest under Section 28 AA of the Customs Act, 1962;

(iii) I impose penalty of **Rs 7,00,000/- (Rupees Seven Lakh only)** on M/s. Nextera Management Services (IEC-0312008538) under Section 112(a)(ii) of the Customs Act, 1962.

(iv) I refrain from imposing penalty upon them under Section 117 of the Customs Act, 1962, for the reasons as discussed above.

26. This order is issued without prejudice to any other action which may be required to be taken against any person as per the provision of the Customs Act, 1962 or any other law for the time being in force.

6/2/2025

(K. Engineer)
Commissioner of Custom,
Custom House, Mundra.

F.No. GEN/ADJ/COMM/150/2023-Adjn-O/o Pr Commr-Cus-Mundra Date: 06.02.2025.

To,

M/s Nextera Management Services,
6/82, Commercial Chambers,
173, Yusuf Meherali Road,
Mumbai 400 003

Copy to:

(i) The Additional Commissioner (Import), Customs House, Mundra
(ii) The Additional Commissioner (RRA), CCO, Ahmedabad Customs.
(iii) Notice Board.
(iv) Guard file/Office Copy.