



प्रधानआयुक्तकाकार्यालय, सीमाशुल्क, अहमदाबाद

सीमाशुल्कभवन, आलइंडीयारेडीओकिबाजुमे, नवरंगपुरा, अहमदाबाद 380009

दुरभाष (079) 2754 46 30 फैक्स (079) 2754 23 43

**OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, AHMEDABAD  
CUSTOMS HOUSE, NEAR ALL INDIA RADIO, NAVRANGPURA, AHMEDABAD 380009  
PHONE : (079) 2754 46 30 FAX (079) 2754 23 43**

**निबन्धितपावतीडाकद्वारा / By SPEED POST A.D.**

फा. सं./F. No.: VIII/10-21/Commr/O&A/2023-24

**DIN- 20241071MN0000222F6B**

आदेशकीतारीख/Date of Order : 03.10.2024  
जारीकरनेकीतारीख/Date of Issue : 03.10.2024

द्वारापारित :-

शिव कुमार शर्मा, प्रधान आयुक्त

Passed by :-

Shiv Kumar Sharma, Principal Commissioner

मूलआदेशसंख्या : **Order-In-Original No:AHM-CUSTM-000-PR.COMMR-50-2024-25 dtd. 03.10.2024** in the case M/s. Chetan Meditech Private Limited having registered office at Plot No. MD 4, Charal Industrial Estate, DEE GIDC 2, Sanand, Ahmedabad, Gujarat-382110

1. जिसव्यक्ति(यों) कोयहप्रतिभेजीजातीहै, उसेव्यक्तिगतप्रयोगकेलिएनिःशुल्कप्रदानकीजातीहै।

1. This copy is granted free of charge for private use of the person(s) to whom it is sent.

2. इसआदेशसेअसंतुष्टकोईभीव्यक्तिइसआदेशकीप्राप्तिसेतीनमाहकेभीतरसीमाशुल्क, उत्पादशुल्कएवंसेवाकरअपीलीयन्यायाधिकरण, अहमदाबादपीठकोइसआदेशकेविरुद्धअपीलकरसकताहै। अपीलसहायकरजिस्ट्रार, सीमाशुल्क, उत्पादशुल्कएवंसेवाकरअपीलीयन्यायाधिकरण, दुसरीमंजिल, बहुमालीभवन, गिरिधरनगरपुलकेबाजुमे, गिरिधरनगर, असारवा, अहमदाबाद-380 004 कोसम्बोधितहोनीचाहिए।

2. Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, BahumaliBhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, Ahmedabad – 380004.

3. उक्तअपीलप्रारूपसं.सी.ए.3 मेंदाखिलकीजानीचाहिए। उसपरसीमाशुल्क (अपील) नियमावली, 1982 केनियम3केउपनियम(2)मेंविनिर्दिष्टव्यक्तियोंद्वाराहस्ताक्षरकिएजाएंगे। उक्तअपीलकोचारप्रतियाँमेंदाखिलकियाजाएंतथाजिसआदेशकेविरुद्धअपीलकीगईहो, उसकीभीउतनीहीप्रतियाँसंलग्नकीजाएँ (उनमेंसेकमसेकमएकप्रतिप्रमाणितहोनीचा हिए)। अपीलसेसम्बंधितसभीदस्तावेजभीचारप्रतियाँमेंअग्रेषितकिएजानेचाहिए।

3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.
  
4. अपीलजिसमेंतथ्योंकाविवरणएवंअपीलकेआधारशामिलहैं,चारप्रतियोंमेंदाखिलकीजाएगीतथाउसकेसाथजिसआदेशकेविरुद्धअपीलकीगईहो,उसकीभीउतनीहीप्रतियाँसंलग्नकीजाएंगी(उनमेंसेकमसेकमएकप्रमाणितप्रतिवेदितहोगी)।
  
4. The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)
  
5. अपीलकाप्रपत्रअंगेजीअथवाहिन्दीमेंहोगाएवंइसेसंक्षिप्तएवंकिसीतर्कअथवाविवरणकेबिनाअपीलकेकारणोंकेस्पष्टशीर्षोंकिअंतर्गततैयारकरनाचाहिएएवंऐसेकारणोंकोक्रमानुसारक्रमानुसारकरनाचाहिए।
  
5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.
  
6. केंद्रियसीमाशुल्कअधिनियम, 1962कीधारा 129एकेउपबन्धोंकेअंतर्गतनिर्धारितफीसजिसस्थानपरपीठस्थितहै, वहांकेकिसीभीराष्ट्रीयकृतबैंककीशाखासेन्यायाधिकरणकीपीठकेसहायकरजिस्ट्रारकेनामपररेखांकितमाँगड्राफ्टकेजरिएअदाकीजाएगीतथायहमाँगड्राफ्टअपीलकेप्रपत्रकेसाथसंलग्नकियाजाएगा।
  
6. The prescribed fee under the provisions of Section 129A of the Customs Act, 1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.
  
7. इसआदेशकेविरुद्धसीमाशुल्क, उत्पादशुल्कएवंसेवाकरअपीलीयन्यायाधिकरणमेंशुल्कके7.5%जहांशुल्कअथवाशुल्कएवंजुरमानाकाविवादहैअथवाजुरमानाजहांशीर्फजुरमानाकेबारेमेविवादहैउसकाभुक्तानकरकेअपीलकीजाशक्तीहै।
  
7. An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute".
  
8. न्यायालयशुल्कअधिनियम, 1870केअंतर्गतनिर्धारितकिएअनुसारसंलग्नकिएगएआदेशकीप्रतिपरउपयुक्तन्यायालयशुल्कटिकटलगाहोनाचाहिए।
  
8. The copy of this order attached therein should bear an appropriate court fee stamp as prescribed under the Court Fees Act, 1870.

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Sub: Show Cause Notice No. VIII/10-21/Commr/O&A/2023-24 dated 06.10.2023 issued by the Commissioner of Customs, Ahmedabad, Ahmedabad to M/s. Chetan Meditech Private Limited having registered office at Plot No. MD 4, Charal Industrial Estate, DEE GIDC 2, Sanand, Ahmedabad, Gujarat-382110.

**Brief facts of the case:**

1. M/s. Chetan Meditech Private Limited having registered office at Plot No. MD 4, Charal Industrial Estate, DEE GIDC 2, Sanand, Ahmedabad, Gujarat-382110 (hereinafter referred to as "M/s. Chetan Meditech" or "the Importer" or 'the Noticee' for the sake of brevity) is a registered importer having IEC No.0803013906. M/s. Chetan Meditech is engaged in import & export of orthopaedic implant & instruments, medical/surgical instruments (hereinafter referred to as "the goods") such as Fiber Button Loop, Fiber Suture with /without Needle, Needle With Lateral Opening, Suture Passer under Customs Tariff Heading No.90211000 (Orthopaedics or fracture appliances) & 90189099 (Other) of the First Schedule to the Customs Tariff Act, 1975 (hereinafter referred to as the "CTA") mainly from, M/s RIVERPOINT MEDICAL, 825, NE 25<sup>th</sup> AVENUE PORTLAND, OR 97232, USA, BIOMATLANTE SAS, France and other suppliers. M/s. Chetan Meditech is importing the goods and exporting 70% of those goods out of India and distributing 30% of the same across the nation through their distributors and the distributors further supply the goods to hospitals/ patients.

2. M/s. Chetan Meditech at the time of import of the goods is availing benefit of Notification No.50/2017-Cus dated 30.06.2017 (Sl. No 578, List 30 Sl. No. E(9)) as amended and paying NIL Basic Customs Duty on the imported goods. Entry mentioned at Sl. No. 578 of the aforesaid Notification and the List 30, Entry No. E(9) is furnished as under :-

S. No.	Chapter/ Heading/ Sub- Heading/ Tariff item	Description of goods	Standard Rate	Integrated Goods and Services Tax	Condition No.
578	90 or any other Chapter	Assistive devices, rehabilitation aids and other goods for disabled, specified in List 30 appended to this Schedule.	Nil	--	--

**List 30**

E.(9) Instruments and implants for **severely physically handicapped patients** and joints replacement and spinal instruments and implants including bone cement.

3. During the assessment of Bill of Entry No. 7698947 dated 06.09.2023 at the time of out of charge, it was observed by the assessing/appraising officer (herein after referred to as "the officers") that M/s. Chetan Meditech is wrongly availing the benefit of above said Notification as the goods imported in this case are being used in orthopaedic surgeries of trauma injuries/sports injuries occurring during day-to-day activities of a normal person or due to age related issues, and are not being used for disabled persons. Thus, it appeared that M/s. Chetan Meditech had availed inappropriate and undue benefit of Notification No.50/2017-Cus dated 30.06.2017 (Sl. No 578, List 30 Sl. No. E (9)) as amended and was liable to pay the Duty not/short paid for the period 01.10.2018 to 30.09.2023 under Section 28(4) of the Customs Act, 1962 (hereinafter referred to as "the Act") along-with applicable interest under Section 28AA of the Act. Further, it appeared that as the subject goods were imported by reason of wilful mis-statement resulting in misuse of Notification benefit, the subject goods were liable for confiscation under Section 111(m) and Section 111(o) of the Act and M/s. Chetan Meditech had rendered themselves liable to applicable penalty under the Act.

4. Director of M/s. Chetan Meditech was summoned under Section 108 of the Customs Act, 1962, to record his statement at the office of the Deputy Commissioner of Customs, Air Cargo Complex, Ahmedabad. In compliance of the same, Shri Rajendra Gordhanbhai Patel appeared on 27.09.2023 and his statement was recorded under

Section 108 of the Customs Act, 1962. In his statement dated 27.09.2023, Shri Rajendra Gordhanbhai Patel inter alia stated that:

- He is the Chairman & Managing Director of M/s. ChetanMeditechsince 2003 and he manages R&D, Design and Development of products for the company. He is also looking after the Corporate Affairs Department which mainly includes licensing, compliance of various government Acts and Regulations and represents the Company before Central and State Government authorities;
- M/s. Chetan Meditech Private Limited is engaged in the business of manufacturing & importing orthopaedic implants & instruments and exporting 65% to 70% of these imported goods to countries like France, Australia, Malaysia, Thailand etc. and selling 30% to 35% domestically in India to their distributors, GEM portal (around 5%-10%). The Company is incorporated as a private limited company and is registered under the GST (with Registration no. GSTIN-24AACCC3035A1ZJ);
- On being asked about the procedure followed in M/s. Chetan Meditech to import goods & how these imported goods are used, he informed that there is a team in their company which prepares purchase order for the items to be imported by them on the basis of purchase order received from their customers of abroad & India. He further stated that they are exporting or selling the said imported goods in India through their distributors to various patients/hospitals and nursing home and **they do not have any data or documents to confirm as to, on which type of patients or hospitals these items have been/are being used.**
- On being asked that they had paid Basic Customs Duty at NIL rate on the import of Orthopaedic Implant, Orthopaedic Instruments, Medical Instruments etc. under chapter 90 (9018 & 9021), he informed that the imported goods are used by **orthopaedic surgeons which are implanted in physically disabled person who have inability to execute distinctive activities associated with movement of self and objects resulting from affliction of musculoskeletal disorders or injuries. These products are implanted in the body, to compensate for a defect or disability caused due to musculoskeletal disorders or injures. If the person is not treated through surgical intervention by implanting such products, remains permanent disabled** and that is why they are paying NIL Basic Custom Duty on such imported goods of Chapter Heading 90.21. Sr. No 578 read with List 30 as per the Notification No.50/2017- Cus dated 30.06.2017 as amended from time to time.
- On being asked whether they have any information/documents as on which type of patients the imported goods have been used/will be used, Shri Rajendra Gordhanbhai Patel stated that they do not have factual details as to where these imported goods have been used. He further stated that these items are mostly used in surgical procedures / orthopaedic problems as implants or as instruments. Therefore, they thought that these can be covered in exemption notification Sr. No. 578. Therefore, they are paying Nil Basic Customs Duty by availing the benefit of Notification No. 50/2017-Cus dated 30.06.2017.
- Upon going through the Section 2(s) of The Rights of Persons with Disabilities Act, 2016, where “person with disability” has been defined as “*a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full & effective participation in society equally with others*” and upon being informed that it appears that the imported goods are not being used for such persons, he reiterated that the imported goods are used in physically disabled person who have inability to execute distinctive activities associated with movement of self and objects resulting from affliction of musculoskeletal disorders or injuries. These products are implanted in the body, to compensate for a defect or disability caused due to musculoskeletal disorders or injures. If the person is not treated

through surgical intervention by implanting such products, remains permanent disabled. **Therefore, considering intended purpose of the product, these products are meant to cure physical disability caused due to Musculoskeletal disorders or soft tissue injuries.**

- On being asked whether the goods imported under Chapter 90 are assistive devices or rehabilitation aids, he stated that at present he is not able to answer this question. He will give his submission later within 1 week time & same is not submitted yet.
- Upon being asked specifically if any mechanism has been developed by their Company regarding use of particular orthopaedic implants imported by the company at NIL rate of Duty being used by disabled persons, or by persons having sports injury/normal injury/traumatic injury, he stated that **they do not have/maintain such data.**
- It was informed to him that since they are not paying the Customs Duty on the imported orthopaedic appliances on the pretext that they shall be used by the DISABLED persons (as per Sr. No. 578 of Notification No. 50/2017-Cus dated 30.06.2017) and upon being asked if they have gone through the Rights of Persons with Disabilities Act, 2016, specifically Sections 2, and 89 to 92 of the said Act, he informed to refer their submission vide letter dated 26.09.2023.
- He further vide letter dated 26.09.2023 submitted their submission regarding goods imported under Chapter 9018/9021 by M/s. Chetan Meditech alongwith copies of their product brochure BIOTEK Knee sports medicine & BIOTEK Shoulder Sports medicine.

**4.1** Letter dated 16.09.2023 was issued to M/s. Chetan Meditech in respect of Bill of Entry No. 7698947 dated 06.09.2023 alongwith previous Bills of Entry requesting them to submit clarification (with supporting documents such as catalogue etc.) regarding the end use of each items imported under the CTH 90211000 vide said Bills of Entry. It was also requested to justify Exemption under the Sr. No. 578 of Notification dated 050/2017 dated 30.06.2023 alongwith Payment of IGST in respect goods imported under CTH90211000. Shri Rajendra Gordhanbhai Patel on 27.09.2023 at the time of statement recording submitted their reply vide their letter 26.09.2023. In the said submission also M/s. Chetan Meditech has submitted that the imported goods are used in soft tissue injury which involves damage to the tendons, ligaments, and muscles of the body. These devices are intended to cure disability incurred from severe soft tissue injuries (Ligament or tendon tear, complete rupture) by reattaching soft tissue to bone or soft tissue reconstruction. Hence, they are availing the benefit of Notification No.50/2017 dated 30.06.2017 as per Sr. No. 578, List 30, and Entry No. B (1) (Orthopaedic appliances falling under heading No. 90.21 of the First Schedule).

**4.2** In reference to the Rights of Persons with Disabilities Act, 2016, it was submitted that this act specifies/categorizes the disabilities as Physical Disability, Behaviour Intellectual Disability, Mental Disorder and (Mental Multiple illness), Disability caused due to Chronic Neurological Conditions and Blood Disabilities. The Physical disability further categorized in other four categories as Locomotor Disability Visual Impairment, Hearing Disability as a Impairment, and Speech and Language Disability and painful conditions with locomotor impairment are rheumatoid arthritis and its variants, acute gouty arthritis, osteoarthritis, ankylosing spondylitis, the low backache syndrome (degenerative, disc prolapse, sprain, sciatica), fractures, soft tissue injuries (ligament, tendon injuries, meniscal injuries of knee), painful neuromas and phantom pain in amputees, causalgia, reflex sympathetic dystrophy etc. M/s. Chetan Meditech has further submitted that the surgical management of these soft tissue injuries are done by their soft tissue and bone fixation implants such as

ligament anchor, fixation buttons with closed suture loop, fixation buttons with adjustable suture loop etc. And, if the person is not treated through surgical intervention by implanting such products, remains permanent disabled.

5. M/s. Chetan Meditech in their submission dated 02.09.2023 stated that they are importing goods under CTH 9021 by availing the benefit of Notification No.50/2017 dated 30.06.2017 as per Sr. No. 578, List 30, and Entry No. B (1). However, upon checking details of the Bills of Entry, it has been noticed that M/s. Chetan Meditech had declared imported goods under CTH 9018/9021 by availing the benefit of Notification No. 050/2017 dated 30.06.2017 as per Sr. No. 578, List 30, and Entry No. E(9) for the Bills of Entry filed during the period from 01.10.2018 to 06.02.2021 and it also noticed that they paid IGST @ 12% under Sr. No. 221 of Schedule-II of the Notification No. 01/2017-Integrated Tax(Rate) dated 28.06.2017 for the said time period. However, for Bills of Entry filed during the period from 18.10.2022 to 30.09.2023 the importer has paid IGST @ 5% under Sr. No. 255A of Schedule-I of the Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017. The importer vide their letter dated 04.10.2023 has submitted that vide Notification No. 6/2022-Intergrated Tax (Rate) dated 13.07.2022 the Sr. No. 221 was omitted and a new Sr.No.255A in the Schedule-I was inserted w.e.f. from 18.07.2022.

S. No.	Chapter/ Heading/ Sub- Heading/ Tariff item	Description of goods	Standar d Rate	Integrate d Goods and Services Tax	Conditi on No.
578	90 or any other Chapter	Assistive devices, rehabilitation aids and other goods <b>for disabled</b> , specified in List 30 appended to this Schedule.	Nil	--	--

### List 30

E.(9) Instruments and implants for **severely physically handicapped patients** and joints replacement and spinal instruments and implants including bone cement.

S. No.	Chapter/ Heading/ Sub-Heading/Tariff item	Description of goods
221	9021	Splints and other fracture appliances; artificial parts of the body; other appliances which are worn or carried, or implanted in the body, to compensate for a <b>defect or disability</b> ; intraocular lens [other than orthopaedic appliances, such as crutches, surgical belts, and trusses, hearing aids]
255A	9021	Orthopaedic appliances, such as crutches, surgical belts, and trusses; Splints and other fracture appliances; artificial parts of the body; other appliances which are worn or carried, or implanted in the body, to compensate for a <b>defect or disability</b> ; intraocular lens [other than hearing aids]";

From the above, the imported goods classified under Sr.No.578of Notification No. 50/2017 dated 30.06.2017 are Assistive devices, rehabilitation aids and other goods for disabled, specified in List 30 appended to this Schedule. The same goods are also classified under Schedule-I of the Notification No. 01/2017 - Integrated Tax (Rate) dated

28.06.2017 (Sl. No. 257 of Schedule-I, List 3 Sl. No. E (9)) as amended for IGST @ 5% of CIF value of import. Entry mentioned at Sl. No. 257 of the aforesaid Notification and the List 3, Entry No. E(9) are furnished as under :-

S. No.	Chapter/ Heading/ Sub-Heading/Tariff item	Description of goods
257	90 or any other Chapter	Assistive devices, rehabilitation aids and other goods <b>for disabled</b> , specified in List 3 appended to this Schedule

### List 3

E(9) Instruments and implants for **severely physically handicapped patients** and joints replacement and spinal instruments and implants including bone cement

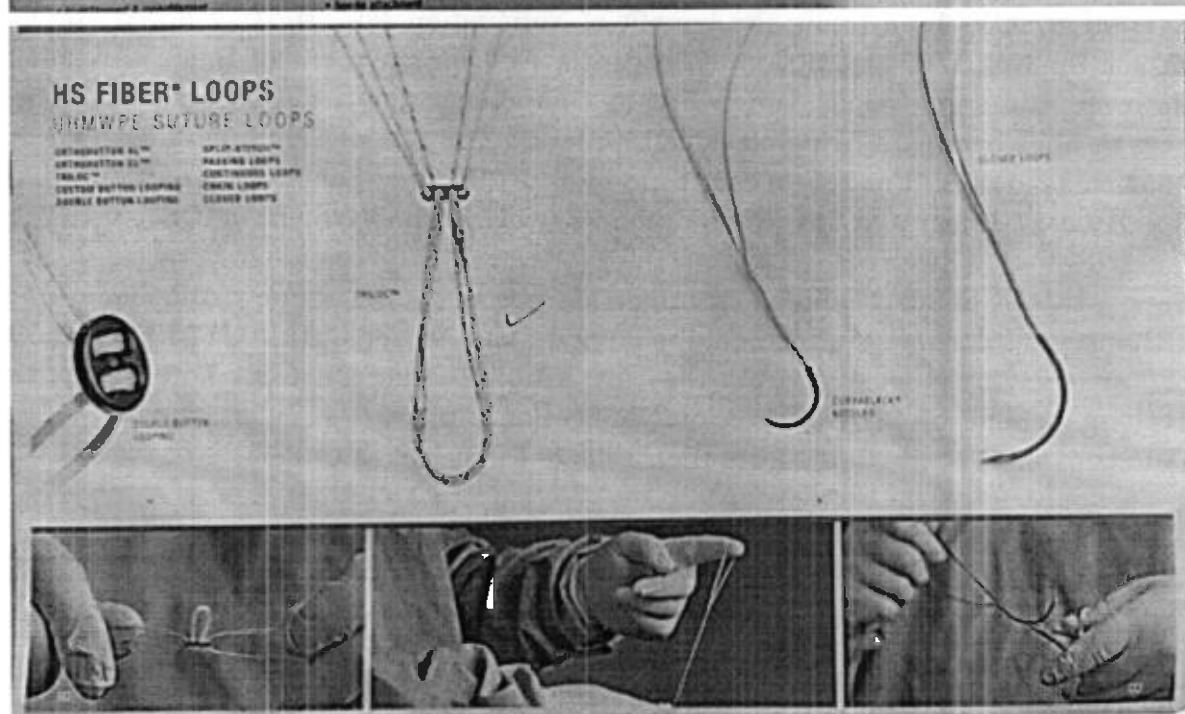
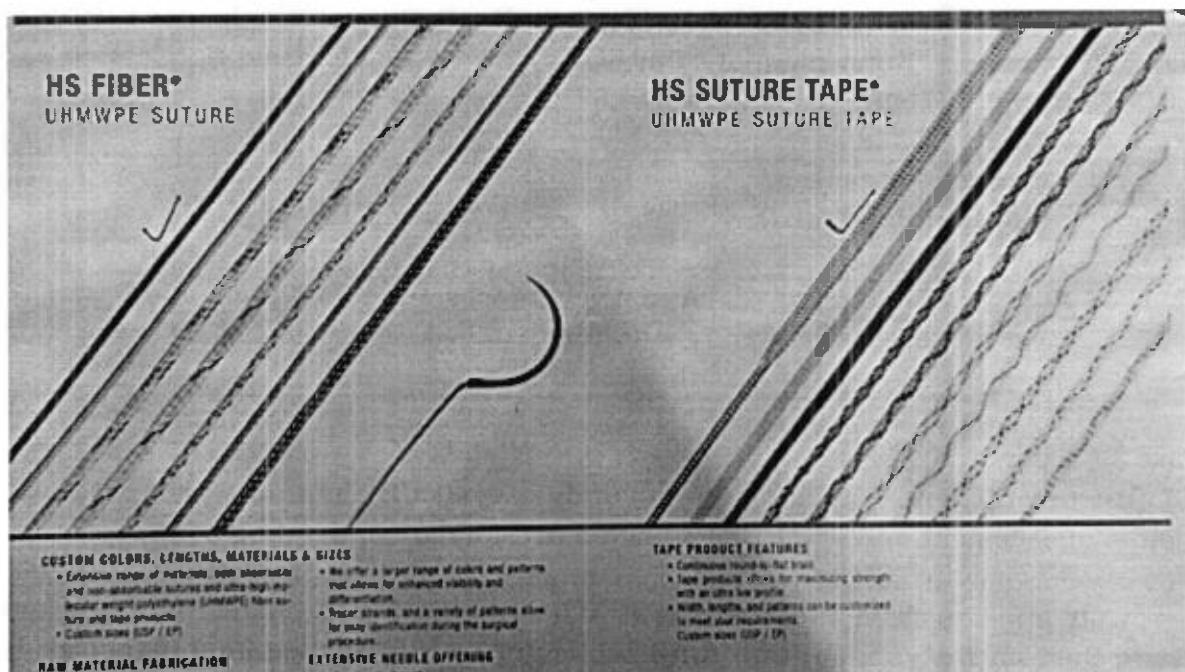
It appears from the above that M/s. Chetan Meditech has **wrongly availed Basic Custom Duty exemption for disabled** by classifying their imported goods under CTH 9018/9021 by availing the benefit of Notification No. 50/2017 dated 30.06.2017 as per Sr. No. 578, List 30, and Entry No. E(9) for payment of Basic Custom Duty. However, the same goods which are to compensate for a **defect or disability of a person** have been/are being classified under Sr. No. 221 of Schedule-II &under Sr. No. 255A instead of Sl. No. 257 of Schedule-I (for disabled) of Schedule-II of the Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 for payment of IGST.

6. M/s. Chetan Meditech is importing goods by the name orthopaedic implant, orthopaedic instruments, medical instruments etc. under CTH 90211000 (Orthopaedic or Fracture Appliances) wherein they are availing Basic Customs Duty exemption by availing benefit of Sl. No. 578 of Notification No. 50/2017-Cus dated 30.06.2017 Details of some of the items from their Bills of Entry are as under:

Imported Goods	Items details
Orthopaedic implant	HS FIBER BUTTON LOOP, HS FIBER SUTURE WITH NEEDLE, HS FIBER TAPE etc.
Medical instruments	SUTURE PASSER, NEEDLE etc.
Orthopaedic instrument	TISSUE GRASPER, SHAVER BLADE etc.

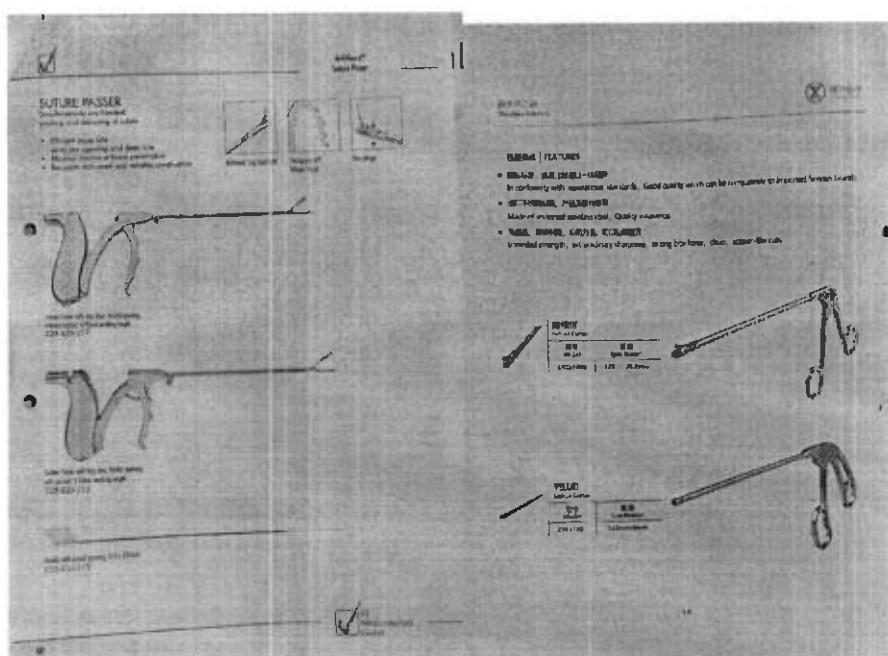
7. Upon seeking documents in respect of imported orthopaedic implants, ShriRajendraGordhanbhai Patel provided brochures/catalogues of their product company products & their supplier's production 27.09.2023, 03.10.2023& 04.10.2023. The Photograph of some items from the submitted brochures/catalogues is under:

**Supplier: M/s Riverpoint Medical, USA**



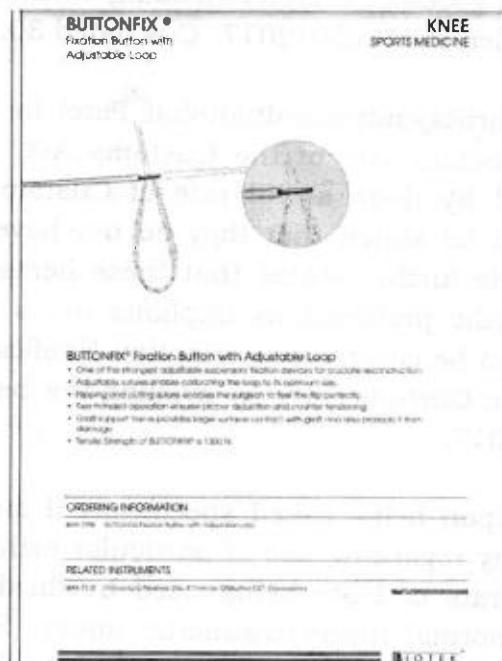
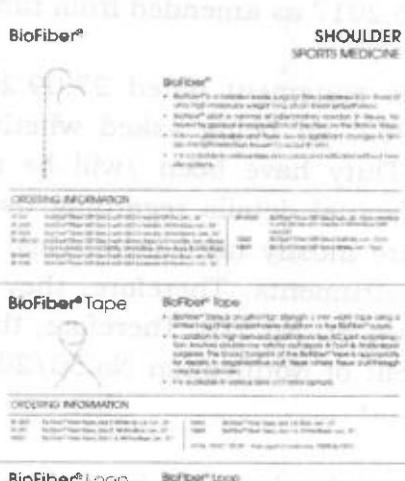
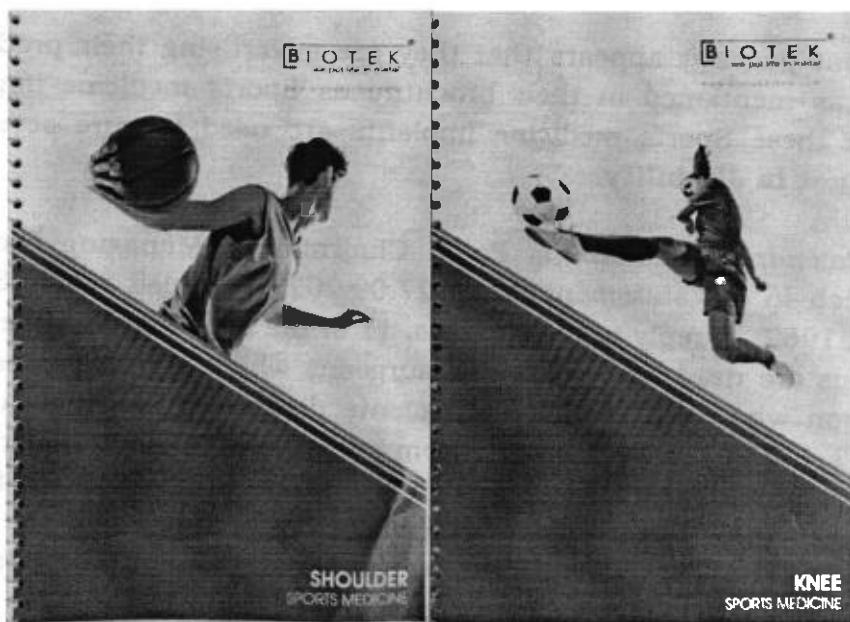
**Supplier:**  
**M/s RZ MEDIZINTECHNIK GMBH,**  
**Germany**

**Supplier:**  
**M/s QINGDAO ZHIXING MEDICAL  
INSTRUMENT CO., LTD., China**



Suppliers Brochures/Catalogues submitted M/s. Chetan Meditech nowhere specifies that they are the implants/instruments for disabled only. It appears that these orthopaedic implants/instruments can be used for any person.

8. At the front page of two product brochure of M/s. Chetan Meditech with their trade name BIOTEK, it is mentioned that these brochures are for Knee Sports Medicine & Shoulder Sports Medicine. Inside at first page of these brochures it is mentioned that their company focus on new product development in most advanced orthopaedic sector: SPORTS MEDICINE. These **Sports medicine implants** are used in soft tissue injury which involves damage to the tendons, ligaments and muscles of the body. These implants are intended to cure disability incurred from the severe soft tissue injuries (ligaments or tendon tear, complete rupture) by reattaching soft tissue to bone or soft tissue reconstruction. The screenshots of front pages & some of their products of shoulder & Knee are as below:





From the front pages it appears that they are advertising their product as sports medicine or as mentioned in their brochure as Sports medicine implants. It also appears that these Sports medicine implants are used to cure severe soft tissue injuries **and not in disability**.

**9.** Shri Rajendra Gordhanbhai Patel, Chairman & Managing Director of M/s. ChetanMeditech in his statement dated 27.09.2023 recorded under Section 108 of Customs Act, 1962, in reply to question no. 11 of the aforesaid statement, stated that imported goods are used by orthopaedic surgeons which are implanted in physically disabled person who have inability to execute distinctive activities associated with movement of self and objects resulting from affliction of musculoskeletal disorders or injuries. These products are implanted in the body, to compensate for a defect or disability caused due to musculoskeletal disorders or injuries. If the person is not treated through surgical intervention by implanting such products, he remains permanent disabled that is why they are paying NIL Basic Customs Duty on such imported goods of Chapter Heading 90.21 as per Sr. No. 578 read with List 30 as per the Notification No.50/2017- Cus dated 30.06.2017 as amended from time to time.

**10.** ShriRajendraGordhanbhai Patel in his statement dated 27.09.2023 recorded under Section 108 of the Customs Act, 1962, on being asked whether the goods imported by them at Nil rate of Customs Duty have been /will be used only for disabled, he stated that they do not have factual details regarding use of imported goods. He further stated that these items are mostly used in surgical procedures / orthopaedic problems as implants or as instruments. Therefore, they thought that these can be covered in exemption Notification Sr. No.578. Therefore, they are paying Nil Basic Custom Duty by availing the benefit of Notification No.50/2017-Cus dated 30.06.2017.

**11.** Upon being asked specifically if any mechanism has been developed by their Company regarding use of particular orthopaedic implants imported by the company at NIL rate of Duty being used by disabled persons, or by persons having sports injury/normal injury/traumatic injury, ShriRajendraGordhanbhai Patel stated that **they do not have/maintain such data. He also stated that they are exporting 65 to 70% of these imported goods to countries like France, Australia, Malaysia, Thailand etc. and selling 30% to 35% domestically in India to their distributors, GEM portal (around 5%-10%).**

**12.** M/s. ChetanMeditech vide their letter dated 26.09.2023 has submitted that the imported goods are used in soft tissue injury which involves damage to the tendons, ligaments, and muscles of the body. These devices are intended to cure disability

incurred from severe soft tissue injuries (Ligament or tendon tear, complete rupture) by reattaching soft tissue to bone or soft tissue reconstruction.

**13.** Upon being asked view of M/s. ChetanMeditech regarding "The Rights Of Persons With Disabilities Act.2016", specifically Section 2, Section 89 to 91 & Section 92 as they are paying Nil Customs Duty on imported orthopaedic appliances, ShriRajendraGordhanbhai Patel during the course of statement recording submitted their letter dated 26.09.2023 vide which he has submitted that the imported goods are used in soft tissue injury which involves damage to the tendons, ligaments, and muscles of the body. These devices are intended to cure disability incurred from severe soft tissue injuries (Ligament or tendon tear, complete rupture) by reattaching soft tissue to bone or soft tissue reconstruction. In reference to the Rights of Persons with Disabilities Act, 2016, it is submitted that this act specifies/categorizes the disabilities as Physical Disability, Behaviour Intellectual Disability, Mental Disorder and (Mental Multiple illness), Disability caused due to Chronic Neurological Conditions and Blood Disabilities. The Physical disability further categorized in other four categories as Locomotor Disability Visual Impairment, Hearing Disability as a Impairment, and Speech and Language Disability and painful conditions with locomotor impairment are rheumatoid arthritis and its variants, acute gouty arthritis, osteoarthritis, ankylosing spondylitis, the low backache syndrome (degenerative, disc prolapse, sprain, sciatica), fractures, soft tissue injuries (ligament, tendon injuries, meniscal injuries of knee), painful neuromas and phantom pain in amputees, causalgia, reflex sympathetic dystrophy etc. M/s. ChetanMeditech has further submitted that the surgical management of these soft tissue injuries are done by their soft tissue and bone fixation implants such as ligament anchor, fixation buttons with closed suture loop, fixation buttons with adjustable suture loop etc. And, if the person is not treated through surgical intervention by implanting such products, remains permanent disabled.

**14.** Upon being specifically asked whether the goods imported by them at Nil rate of Customs Duty have been /will be used only for disabled, ShriRajendraGordhanbhai Patel stated that they do not have factual details regarding use of imported goods and also stated that these items are mostly used in surgical procedures / orthopaedic problems as implants or as instruments. Upon being asked whether the imported orthopaedic implants are used for treatment of defined in Section 2(s) of "The Rights of Persons with Disabilities Act,2016, he submitted that these imported goods are meant to cure physical disability caused due to Musculoskeletal disorders or soft tissue injuries. The above two statements of M/s. ChetanMeditech appears to be contradictory in nature.

**15.** ShriRajendraGordhanbhai Patel in his statement dated 27.09.2023 has also informed that they are exporting 65% to 70% of these imported goods to countries like France, Australia, Malaysia, Thailand etc. and selling 30% to 35% domestically in India to their distributors, GEM portal (around 5%-10%).Upon being read with para no. **7 to 11** above, it can be inferred that the said orthopaedic implants are not for disabled and are instead intended for treatment of soft tissue injury, sports injury, ligament/tendon injuries, meniscal injuries of knee etc. occurring in day-to-day activities.

**16.** On the basis of the above, it appeared that M/s. ChetanMeditech in this case was importing goods which are intended to be used by persons suffering from soft tissue injury, ligament/tendon injuries, or Musculoskeletal disorders due to any mis-happening/accident etc. M/s. ChetanMeditech claim that persons using the aforesaid imported goods are severely physically handicapped appears to be incorrect.

**17.** On going through Section 2(s) of The Rights of Persons with Disabilities Act, 2016 which defines a "person with disability" as "*a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders*

his full & effective participation in society equally with others", it appears **that disability is a long term affliction/ impairment as opposed to a traumatic injury, which could be sudden and short term.** Further, in the guise of disabled persons, the goods are being used by persons suffering from Musculoskeletal disorders or soft tissue injuries, to avoid payment of Basic Customs Duty & IGST at the appropriate rate. M/s. ChetanMeditech has also not developed any mechanism or have any factual details which ascertain that the imported orthopaedic implants/instruments used by a disabled person and other than disabled person. M/s. ChetanMeditech is implying in their statement/submissions that all orthopaedic implants/instruments, which it is importing under Customs Tariff Heading No.9018/9021, are being used for treatment of severely physically handicapped persons, while accepting that they do not have/maintain such data. Instead, the imported goods are used for patients suffering from soft tissue injury, ligament/tendon injuries, or Musculoskeletal disorders etc. **M/s. ChetanMeditech is claiming all types of diseased/injured/ suffering from age related issues persons to be disabled persons.** This does not appear to be correct. Also, this does not appear to be in consonance with the spirit of the Government in fixing the Customs Tariff because if the Chapter Heading 9018/9021 is meant solely for classifying goods used by such persons (which the Government had specifically exempted by including Sl. No. 578 in Notification No. 50/2017-Cus dated 30.06.2017), then there would not have been any requirement of fixing a Basic Custom Duty rate of 7.5% (as amended from time to time), and the Government would have simply assigned the Chapter Heading 9018/9021 at NIL Basic Custom Duty rate in the Customs Tariff. Therefore, **the submissions of M/s. ChetanMeditech for claiming blanket exemption for goods under this Chapter Heading appear to be invalid.** Further, upon going through the technical specification of the imported goods in the catalogues/brochures submitted by M/s. ChetanMeditech, it appears that the imported implants are being sold by them as sports medicine and same can also be used by any diseased/injured person and not only by disabled person.

**18.** On the basis of the above, it appears that M/s. ChetanMeditech is wilfully wrongly availing the benefit of Notification No.50/2017-Cus dated 30.06.2017 as amended, in as much as the goods imported by them are being used by the persons suffering from soft tissue injury, ligament/tendon injuries, or Musculoskeletal disorders etc., whereas the said Notification exempts the goods for **disabled person only** (Sl. No 578 of Notification No. 50/2017-Cus dated 30.06.2017 as amended). ShriRajendraGordhanbhai Patel in his statement dated 27.09.2023 admitted that there is no mechanism developed by their Company to monitor use of particular orthopaedic implants being used by disabled persons, or by persons having sports injury/normal injury/ traumatic injury and they do not have/maintain such data. Thus, M/s. ChetanMeditech is availing blanket exemption for all goods by assuming them being used for disabled persons only.

**19.** Chapter Heading 9021 covers "Orthopaedic Appliances, including Crutches, Surgical Belts and Trusses; Splints and Other Fracture Appliances; Artificial Parts of the body; Hearing Aids and other appliances which are worn or carried, or implanted in the body, to compensate for a Defect or Disability". On going through the said Heading, it appears that orthopaedic appliances of said Chapter may be used to remove defects of a person arising after a general/ trauma injury and also can be used to remove the disability of a disabled person. For removal of defect, imported implants are leviable to Basic Custom Duty @ 7.5 % / 10% (as per the Customs Tariff Head), but to remove disability of a disabled person, Basic Custom Duty is exempted.

**20.** From the analysis of the documents submitted by M/s. ChetanMeditech for the imported orthopaedic implants, it appeared that they are used to treat the person suffering from soft tissue injury, ligament/tendon injuries, or Musculoskeletal disorders etc. due to various medical conditions arising out of general /accidental / traumatic injuries and other disease/age related mobility issues. As such, they do not

appear to be used for treatment of **disabled** persons. Further, M/s. ChetanMeditech in their catalogues has nowhere mentioned that such imported implants are used to remove disability of a disabled person.

**21.** During the statement dated 27.09.2023 tendered by Shri Rajendra Gordhanbhai Patel, he has accepted in response to question no. 11 that the List 30 under Sl. No. 578 of Notification No.50/2017-Cus dated 30.06.2017 is applicable for disabled persons. Upon going through the definition of "person with disability" as mentioned in Section 2(s) of The Rights of Persons with Disabilities Act,2016, he submitted in response to question no. 15 in his statement dated 23.01.2023 that the intended use of their implants is in sync with the said definition. However, in response to question no. 12, he clearly stated that they don't have any factual details as to where these imported orthopaedic implants have been used. As these items are mostly used in surgical procedures/orthopaedic problems as implants or as instruments, they thought that these can be covered in exemption under Sr.No.578 of Notification No.50/2017-Cus dated 30.06.2017. In response to question no. 20 he stated that they do not have any mechanism or any data which ascertains that these imported goods under Chapter Heading 9018/9021 are being used by disabled persons only.

**22.** Therefore, it appears that M/s. ChetanMeditech is directly considering List 30 of Sl. No. 578 given in the Notification No.50/2017-Cus dated 30.06.2017 which provides Basic Customs Duty exemption for severely physically handicapped persons, without considering entry No. 578 itself (under which List 30 is given) of the Notification which provides Basic Custom Duty exemption for DISABLED persons only.

**23.** M/s. ChetanMeditech has no mechanism to keep a record of a particular imported orthopaedic implant being used by disabled person or by diseased/traumatically injured person and assumed that all goods imported are meant for disabled. On going through the impugned Notifications it appears that the benefit is attracted by goods for disabled only.

**24.** It appears that M/s. ChetanMeditech in the instant case is importing the goods at Ahmedabad Air Cargo (INAMD4) Port and, they are specifically mentioning Notification No. 50/2017-Cus dated 30.06.2017 (Sl. No 578, List 30 Sl. No. E(9)) to avail exemption from payment of Basic Custom Duty. Serial No. 578 of the said Notification exempts Assistive devices, rehabilitation aids and other goods **for disabled**, of Chapter 90 or any other Chapter, specified in List 30 from payment of Basic Customs Duty. **However same goods as discussed above in para 5 are being** classified in different category with Sr. No. 221 & 255A for payment of IGST and Sl. No 578 alongwith List 30 Sl. No. E (9) is reproduced below :-

Sr. No.	Chapter/Heading/ Sub-heading/ Tariff item	Description of goods
578	90 or any other Chapter	Assistive devices, rehabilitation aids and other goods <b>for disabled</b> , specified in List 30 appended to this Schedule

The List 30 as referred in Sl. No. 578 above, is reproduced below:-

**List 30 (See S. No. 578 of the Table)**

- (A) (1) Braille writers and braille writing instruments
- (2) Hand writing equipment Braille Frames, Slates, Writing Guides, Script Writing Guides, Styli, Braille Erasers
- (3) Canes, Electronic aids like the Sonic Guide

- (4) Optical, Environmental Sensors
- (5) Arithmetic aids like the Taylor Frame (arithmetic and algebra types), Cubarythm, Speaking or Braille calculator
- (6) Geometrical aids like combined Graph and Mathematical Demonstration Board, Braille Protractors, Scales, Compasses and Spar Wheels
- (7) Electronic measuring equipment, such as calipers, micrometers, comparators, gauges, gauge blocks Levels, Rules, Rulers and Yardsticks
- (8) Drafting, Drawing aids, tactile displays
- (9) Specially adapted clocks and watches
- (B)** (1) Orthopaedic appliances falling under heading No.90.21 of the First Schedule
- (2) Wheel chairs falling under heading No. 87.13 of the First Schedule
- (C)** Artificial electronic larynx and spares thereof
- (D)** Artificial electronic ear (Cochlear implant)
- (E)** (1) Talking books (in the form of cassettes, discs or other sound reproductions) and large print books, braille embossers, talking calculators, talking thermometers
- (2) Equipment for the mechanical or the computerised production of braille and recorded material such as braille computer terminals and displays, electronic braille, transfer and pressing machines and stereotyping machines
- (3) Braille paper
- (4) All tangible appliances including articles, instruments, apparatus, specially designed for use by the blind
- (5) Aids for improving mobility of the blind such as electronic orientation and obstacle detection appliance and white canes
- (6) Technical aids for education, rehabilitation, vocational training and employment of the blind such as braille typewriters, braille watches, teaching and learning aids, games and other instruments and vocational aids specifically adapted for use of the blind
- (7) Assistive listening devices, audiometers
- (8) External catheters, special jelly cushions to prevent bed sores, stair lift, urine collection bags
- (9) Implants for severely physically handicapped patients and joints replacement and spinal instruments and implants including bone cement.**

**25.** From the description of goods under Notification No. 50/2017-Cus dated 30.06.2017 as amended (Sl.No.578, List 30 Sl. No. E(9)),it appears that:-

1. Assistive devices **for disabled**;
2. Rehabilitation aids and other goods **for disabled**;
3. Implants for severely physically handicapped patients and joints replacement and spinal instruments and implants including bone cement (Sl. No. E-9 of List 30 of Notification No.50/2017-Cus dated 30.06.2017);

**All above** (Sl. No. 1 to 3) are taxable at Basic Customs Duty @ NIL rate and for **other than disabled persons, Basic Custom Duty@7.5%/10% (as applicable)** and along with other taxes levied by the government from time to time appear to be applicable.

**26.** On the basis of the above, it appears that the Importer for the purpose of Basic Customs Duty exemption had availed benefit of Notification No.50/2017-Cus dated 30.06.2017 as amended (Sl.No.578 List 30, E9), but the benefit of said Notification is not attracted in the present case as the imported goods are for persons other than disabled. In this case, applicable Basic Custom Duty @ 7.5%/10% of the CIF value of import appears to be attracted as the imported goods are for persons other than disabled.

## **27. LEGAL / PENAL PROVISIONS:**

### **27.1 Section 12 of the Customs Act, 1962**

**Dutiable goods**:-**(1)** Except as otherwise provided in this Act, or any other law for the time being in force, Duties of Customs shall be levied at such rates as may be

specified under the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, on goods imported into, or exported from, India.

(2) The provisions of -----

### **27.2 Section 17 of the Customs Act, 1962**

**Assessment of duty:-** (1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

(2) The proper officer -----

### **27.3 Section 28(4) and 28(8) of the Customs Act, 1962**

**Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded:-**

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

- (a) collusion; or
- (b) any wilful mis-statement; or
- (c) suppression of facts,

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

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

### **27.4 Section 28AA of the Customs Act, 1962**

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

(2) Interest at such-----

### **27.5 Section 46(4) of the Customs Act, 1962**

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

### **27.6 Section 111 of the Customs Act, 1962**

**Confiscation of improperly imported goods, etc:-**

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

(a) -----

(b) -----

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof or in the case of goods under transhipment, with

the declaration for transhipment referred to in the proviso to sub-section (1) of section 54;

(n) -----

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

(p) -----

### **27.7 Section 114A of the Customs Act, 1962**

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

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

**Provided** further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

**Provided** also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:

**Provided** also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 28AA, and twenty-five percent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect:

**Provided** also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.

**Explanation.** - For the removal of doubts, it is hereby declared that –

- (i) the provisions of this section shall also apply to cases in which the order determining the duty or interest sub-section (8) of section 28 relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;
- (ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.]

### **27.8 Section 2 of the Customs Tariff Act, 1975**

**Duties specified in the Schedules to be levied..**

The rates at which duties of customs shall be levied under the Customs Act, 1962 (52 of 1962), are specified in the First and Second Schedules.

### **27.9 Section 3 of the Customs Tariff Act, 1975**

#### **Levy of additional duty equal to excise duty, sales tax, local taxes and other charges. –**

(1) Any article which is imported into India shall, in addition, be liable to a duty (hereafter in this section referred to as the additional duty) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article:

**Provided** -----

**Explanation** -----

(7) Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty percent as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (8) or sub-section (8A), as the case may be.

### **27.10 Section 5 of the Integrated Goods and Services Act, 2017 (IGST Act)**

#### **Levy and Collection:**

(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under **Section 15 of the Central Goods and Services Tax Act** and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person:

Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.

(2) -----

### **27.11 Section 110 of the Finance Act, 2018**

#### **Social Welfare Surcharge:**

(1) There shall be levied and collected, in accordance with the provisions of this Chapter, for the purposes of the Union, a duty of Customs, to be called a Social Welfare Surcharge, on the goods specified in the First Schedule to the Customs Tariff Act, 1975(hereinafter referred to as the Customs Tariff Act), being the goods imported into India, to fulfil the commitment of the Government to provide and finance education, health and social security.

(2) -----

(3) The Social Welfare Surcharge levied under sub-section (1), shall be calculated at the rate of ten per cent on the aggregate of duties, taxes and cesses which are levied and collected by the Central Government in the Ministry of Finance (Department of Revenue)under section 12 of the Customs Act, 1962 and any sum chargeable on the goods specified in sub-section (1) under any other law for the time being in force, as an addition to, and in the same manner as, a duty of customs, but not including—

- (a) the safeguard duty referred to in sections 8B and 8C of the Customs Tariff Act;
- (b) the countervailing duty referred to in section 9 of the Customs Tariff Act;

(c) the anti-dumping duty referred to in section 9A of the Customs Tariff Act;  
 (d) the Social Welfare Surcharge on imported goods levied under sub-section (1).

(4) The Social Welfare Surcharge on imported goods shall be in addition to any other duties of customs or tax or cess chargeable on such goods, under the Customs Act, 1962 or any other law for the time being in force.

(5) -----

### **27.12 Section 141 and Fourth Schedule of the Finance Act, 2020**

#### **Health Cess:**

(1) In the case of goods specified in the Fourth Schedule being goods imported into India, there shall be levied and collected for the purposes of the Union, a duty of customs, to be called the Health Cess, at the rates specified in the said Schedule, for the purposes of financing the health infrastructure and services.

(2) -----

(3) For the purposes of calculating the Health Cess under this Chapter on the goods specified in the Fourth Schedule, where such duty is leviable at any percentage of its value, the value of such goods shall be calculated in the same manner as the value of goods is calculated for the purpose of customs duty under the provisions of section 14 of the Customs Act, 1962 (hereafter in this Chapter referred to as the Customs Act).

(4) The Health Cess leviable under sub-section (1), chargeable on the goods specified in the Fourth Schedule, shall be in addition to any other duties of customs chargeable on such goods under the Customs Act or any other law for the time being in force.

(5) -----

#### **The Fourth Schedule (See Section 141)**

The rules for interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), the Section Notes, Chapter Notes and the General Explanatory Notes of the said First Schedule shall apply to the interpretation of this Schedule.

Item No.	Description of goods	Rate of duty
(1)	(2)	(3)
1.	All goods falling under headings 9018, 9019, 9020, <b>9021</b> and 9022 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)	5%

**28. VIOLATIONS OF VARIOUS PROVISIONS OF LAW BY M/s. CHETAN MEDITECH:** Whereas, from the acts of omission and commission discussed in foregoing paragraphs, it appears that the party has contravened the following provisions:

#### **28.1 Section 12 and Section 17 read with Section 28(4) under Customs Act, 1962.**

As a part of self-assessment, it is the responsibility of the Importer to present the correct facts, specifications of the imported goods in the Bill of Entry and declare the correct details of the goods, which also covers the correct availment of Customs Notification as per their eligibility. With the introduction of self-assessment for the clearance of the import goods, much faith is bestowed on the Importer. The practice of routine assessment, concurrent audit and examination has been dispensed with and the importer has been assigned the responsibility to assess their own goods under

Section 17 of the Customs Act, 1962. However, contrary to the said provision, M/s. ChetanMeditech failed to declare the correct Notification at the time of import. They were well aware of the amendment as brought about in Customs Notification No 50/2017-Cus dated 30.06.2017 as amended (Sl. No. 578, List 30 Sl. No. E(9) and wilfully availed the Basic Customs Duty benefits, in as-much-as they have imported the orthopaedic implants for patients suffering from general /accidental / traumatic injuries and other age/disease related mobility issues in the guise of disabled persons to evade tax. Further, they mis-stated that they are using the imported orthopaedic implants for severely physically handicapped persons. In absence of any such default inclusion of the Notifications as referred i.e. Notification No. 50/2017-Cus dated 30.06.2017 as amended (Sl.No.578, List 30 Sl. No. E(9)), they could not go into the details which were later on raised by the department during investigation. Therefore, in addition to Section 17 of the Customs Act, 1962, Section 28(4) of the Act ibid is also invokable in the instant case. Further, if the officers had not started the investigation, the misuse of above Notification would not have been detected. M/s. ChetanMeditech has suppressed the facts by mis-declaring that the imported orthopaedic appliances shall be used by the disabled, which establishes the *mensreaon* the part of M/s. ChetanMeditech to evade Customs Duty, therefore, extended period of limitation for demand of Duty is applicable in the present case.

### **28.2 Section 28AA of the Customs Act, 1962.**

As M/s. ChetanMeditech has not paid the applicable Duties at the time of import of orthopaedic implants, therefore, they are liable to pay interest under Section 28AA of the Customs Act, 1962.

### **28.3 Section 46(4)of the Customs Act, 1962**

As the said Importer was working under the regime of the self-assessment, where they had been given the liberty to determine every aspect of the import consignments, it is the duty of the Importer to file correct details which also covers the correct availment of Customs Notification in respect of the imported goods before the proper authority. Investigation revealed that they were well aware of the facts that goods imported by them shall not be used by the disabled; neither did they have any mechanism to keep a record of the implants being used by disabled / other than disabled persons. Thereby, the Importer M/s. ChetanMeditech availed the Basic Custom Duty benefits for which they were not eligible, causing evasion of Duty. Thus, M/s. ChetanMeditech had violated the provisions of Section 46(4) of the Customs Act, 1962 in as much as they have not mentioned the correct Notification in the import documents, i.e. Bill of Entry, etc. at the time of import of the goods.

### **28.4 Section 111(m) & 111(o) of the Customs Act, 1962**

Section 111(m) of the Customs Act, 1962 provides that any goods which do not correspond in respect of value or in any particulars with the entry made under this Act, and Section 111(o) provides that any goods exempted, subject to any condition, from Duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer, shall be liable to confiscation. In the instant case, the Importer has failed to comply with the provisions of Section 17 and Section 46 of the Customs Act, 1962 and deliberately suppressed the facts and mis-utilised the Basic Custom Duty exemptions by wrongful availment of Customs Notification as discussed above by way of mis-declaration, leading to the short payment of Customs Duty and IGST. The same is recoverable under the provisions of Section 28(4) along-with interest under the provisions of Section 28AA of the Customs Act, 1962. Thus, M/s. ChetanMeditech has made its imported goods liable for confiscation under the provisions of Section 111(m) & 111(o) of the Customs Act, 1962.

### **28.5 Section 114A of the Customs Act, 1962.**

As per Section 114A of the Customs Act, 1962, where the Duty has not been levied or has been short levied by reason of collusion or wilful mis-statement or suppression of facts, the person who is liable to pay the Duty or interest, as determined under Sub section (8) of Section 28 of the Customs Act, 1962, shall also be liable to pay a penalty equal to the duty or interest so determined. In the instant case, it appears that the Importer wilfully availed the Basic Custom Duty benefits and has also not paid Social Welfare Surcharge and Health Cess, and thus evaded Duty which is recoverable from them under Section 28(4) of the Customs Act, 1962 along with interest. Such an act of omission/commission on the part of the Importer that calls for the recovery of Duty under Section 28(4) of the Customs Act, 1962, also makes them liable for penalty under Section 114(A) of the Customs Act, 1962.

#### **29. QUANTIFICATION OF DUTY:**

**29.1** The Basic Customs Duty (BCD) is levied under Section 2 of the Customs Tariff Act, 1975, Social Welfare Surcharge (SWS) is levied and collected, as a Duty of Customs, vide Section 110 of the Finance Act, 2018 (13 of 2018), Health Cess is levied and collected, as a Duty of Customs, vide Section 141 of the Finance Act, 2020 (12 of 2020) and Integrated goods & Service Tax is levied under Section 5(1) of Integrated Goods & Service Tax 2017 (as amended), read with section 3(7) of Customs Tariff Act, 1975 (as amended). The applicable rate of Duty for the goods imported by M/s. ChetanMeditech under Customs Tariff Heading No.9021 of the Customs Tariff Act, 1975 are tabulated as below:-

S. No	Duty Rate	Period			
		01.10.2018 till 01.02.2020	02.02.2020 till 30.04.2022	01.05.2022 till 17.07.2022	18.07.2022 till 30.09.2023
1	BCD Rate	10%	10%	7.5%	7.5%
2	Health Cess Rate	0%	5%	5%	5%
3	SWS Rate	10%	10%	10%	10%
4	IGST Rate	12%	12%	12%	5%

The above said rates of Duties have been taken from the below mentioned Notifications/ Acts :-

Duty	Notification(s)
BCD	1) Section 103(a) of the Finance Act, 2018 (Second Schedule). By virtue of declaration under the Provisional Collection of Taxes Act, 1931, the tariff rate of 10% has come into force w.e.f. 02.02.2018. 2) Section 98(b) of the Finance Act, 2022 (Third Schedule) (decrease from 10% to 7.5% w.e.f. 01.05.2022)
SWS	Section 110 of the Finance Act, 2018. By virtue of declaration under the Provisional Collection of Taxes Act, 1931, this has come into force w.e.f. 02.02.2018.
Health Cess	Section 141 of the Finance Act, 2020 (Fourth Schedule). By virtue of declaration under the Provisional Collection of Taxes Act, 1931, this has come into force w.e.f. 02.02.2020.
IGST	1) Notification No.1/2017-Integrated Tax (Rate) dated 28.06.2017 w.e.f. 01.07.2017 2) Vide Notification No. 6/2022-Integrated Tax (Rate) dated 13.07.2022 the Sr. No. 221 was omitted and a new Sr. No. 255A in the

	Schedule-I was inserted w.e.f. from 18.07.2022
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The calculation of the Duty short paid/not paid is done on the basis of the data retrieved from the EDI Systems available at Air Cargo Complex, Ahmedabad office, for the products imported by M/s. ChetanMeditech under Customs Tariff Heading Nos.9018 and 9021 through 47 Bills of Entries during the period 01.10.2018 to 30.09.2023 by claiming Basic Customs Duty exemption under Notification No.50/2017-Cus dated 30.06.2017 (Sl.No.578, List 30 Sl. No. E(9)) as amended & IGST benefit under Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017 (Sl.No.257, List 3 Sl. No. E (9)) as amended.

## 29.2 Duty liability is as follows:

### (A) Ahmedabad Air Cargo (INAMD4) Port

Calculation of Duty liability short/not paid by M/s ChetanMeditech Private Limited						
S. No.	Description	01.04.2018 till 01.02.2020	02.02.2020 till 30.04.2022	01.05.2022 till 17.07.2022	18.07.2022 till 30.09.2023	Total
1	<b>Total Assessable Value</b>	<b>61466323</b>	<b>9710485</b>	<b>0</b>	<b>73997142</b>	<b>145173950</b>
2	BCD	Rate Applicable	10.00%	10.00%	10.00%	7.50%
3		BCD Amount Applicable	6146632	971049	0	5549786
4		BCD Paid by the party	0	0	0	0
5		<b>Differential BCD Payable</b>	<b>6146632</b>	<b>971049</b>	<b>0</b>	<b>5549786</b>
6		Rate Applicable on (1) above	0.00%	5.00%	5.00%	5.00%
7	Health Cess	Health Cess amount Applicable	0	485524	0	3699857
8		Health Cess paid by the party	0	229747	0	2195532
9		<b>Differential Health Cess Payable</b>	<b>0</b>	<b>255777</b>	<b>0</b>	<b>1504325</b>
10		Rate Applicable on (3+7)	10.00%	10.00%	10.00%	10.00%
11		SWS Amount Applicable	614663	145657	0	924964
12	SWS	SWS Paid by the party	0	22975	0	219553
13		<b>Differential SWS Payable</b>	<b>614663</b>	<b>122683</b>	<b>0</b>	<b>705411</b>
14		Rate Applicable	12.00%	12.00%	12.00%	5.00%
15		IGST Applicable on (1+3+7+11)	8187314	1357526	0	4208587
16		IGST paid by the Party	7375959	1195585	0	3820611
17	<b>Differential IGST Payable</b>	<b>811355</b>	<b>161941</b>	<b>0</b>	<b>387976</b>	<b>1361273</b>
18	<b>Total Differential Amount Payable</b>	<b>7572651</b>	<b>1511449</b>	<b>0</b>	<b>8147497</b>	<b>17231598</b>

From the above, it appears that M/s. ChetanMeditech have not paid/short paid Basic Customs Duty amounting to Rs. **1,26,67,466/-**, Health Cess amounting to Rs. **17,60,102/-**, Social Welfare Surcharge amounting to Rs. **14,42,757/-**, and IGST amounting to Rs. **13,61,273/-**, as they have paid the Basic Customs Duty @ Nil rate instead of 7.5% / 10% (as applicable), and have not paid/short paid applicable SWS, Health Cess & IGST on the imported goods by claiming undue exemption under the above said Notifications. Thus, the total Duty short paid/not paid by M/s. ChetanMeditech on the goods imported through Ahmedabad Air Cargo (INAMD4) is Rs. **1,72,31,598/-** as per Annexure-A to the Show Cause Notice.

**30.** In view of the above Show Cause Notice No. VIII/10-21/Commr/O&A/2023-24 dated 06.10.2023 was issued to **M/s ChetanMeditech Private Limited** having registered office at Plot No. MD 4, Charal Industrial Estate, DEE GIDC 2, Sanand, Ahmedabad, Gujarat-382110, calling upon them to Show Cause to the Commissioner of Customs, Ahmedabad as to why:

- a)** Benefit of Customs Notification No.50/2017-Cus dated 30.06.2017 as amended (Sl. No. 578, List 30 Sl. No. E (9)) as claimed by them for exemption from payment of Basic Customs Duty should not be denied to them;
- b)** Differential Duty amounting to **Rs. 1,72,31,598/- (Rupees One Crore Seventy Two Lakhs Thirty One Thousand Five Hundred and Ninety Eight Only)**[Basic Customs Duty amounting to 1,26,67,466/- (Rupees One Crore, Twenty Six Lakhs, Sixty Seven Thousand, Four Hundred and Sixty Six Only), Health Cess amounting to Rs.17,60,102/- (Rupees Seventeen Lakhs, Sixty Thousand, One Hundred and Two Only), Social Welfare Surcharge (SWS) amounting to Rs.14,42,757/- (Rupees Fourteen Lakhs, Forty Two Thousand, Seven Hundred and Fifty Seven Only) and IGST amounting to Rs.13,61,273/- (Rupees Thirteen Lakhs, Sixty One Thousand, Two Hundred and Seventy Three Only)], as discussed above in foregoing paras to the Notice, which was short paid during the period 01.10.2018 to 30.09.2023 should not be demanded and recovered from them under **Section 28(4)** of the Customs Act,1962, read with Section 5(1) of the Integrated Goods & Service Tax, 2017 (as amended) read with Section 3(7) of the Customs Tariff Act 1975 (as amended) as they have breached the provisions of Section 12, Section 17 and Section 46 of the Customs Act, 1962;
- c)** The interest amount on the aforesaid demand of Duty at (b) above as applicable should not be demanded from them in terms of **Section 28AA** of the Customs Act, 1962;
- d)** The goods imported during the period under consideration valued at **Rs.14,51,73,950/- (Rupees Fourteen Crores FiftyOne Lakhs Seventy Three Thousand Nine Hundred and Fifty only)** should not be held liable to confiscation under the provisions of **Section 111(m)** and **Section 111(o)** of the Customs Act, 1962 and why redemption fine should not be imposed in lieu of confiscation under Section 125 of the Customs Act, 1962;
- e)** Penalty should not be imposed upon them in terms of **Sections 114A** of the Customs Act, 1962.

**Written Submission:**

**31.** The Noticee have submitted their reply vide letter dated 16.01.2024 wherein they have submitted as under:

- They are a Private Limited Company engaged in the import and export of orthopaedic implant & instruments, medical/surgical instruments which are being imported under Chapter 90 of the Customs Tariff Act, 1975 mainly from

suppliers, namely, M/s. Riverpoint Medical, 825, NE 25<sup>th</sup> Avenue, Portland, or 97232, USA, Biomatlante SAS, France among others; that they are importing the goods and exporting 70% of those goods out of India to countries like France, Australia, Malaysia, Thailand etc. and distributing 30% of the same across the nation through their respective distributors.

- They import orthopaedic implants & instruments, medical/surgical instruments (hereinafter referred to as "impugned goods") such as Fiber Button Loop, Fiber Suture with/without Needle, Needle with Lateral Opening, Suture Passer under Customs Tariff Heading No. 90211000 (Orthopaedics or fracture appliances) & 90189099 (Other) of the First Schedule to the Customs Tariff Act, 1975 by availing the benefit of Notification No. 50/2017-Cus dated 30.06.2017 (SI. No. 578, List 30 SI. No. E (9)) as amended (hereinafter referred to as the "impugned notification") and paid NIL Basic Customs Duty on the impugned goods.
- The contended period of dispute, i.e., between 1.10.2018 to 30.09.2023 covers two parts of the impugned notification, one part being the pre-amendment entry and the other the post-amendment. The relevant portion of the impugned notification before and after amendment is as under: -

**Notification No. 50/2017 (Before Amendment)**

S.No.	Chapter or Heading or sub-heading or tariff item	Description of Goods	Standard Rate	Integrated Goods and Services Tax	Condition No
(1)	(2)	(3)	(4)	(5)	(6)
578.	90 or any other Chapter	Assistive devices, rehabilitation aids and other goods for disabled, specified in List 30	NIL	-	-

List 30

B	(1)	Orthopedic appliances falling under Heading no. 90.21 of the First Schedule.
E	(9)	Instruments and implants for severely physically handicapped patients and joints replacement and spinal instruments and implants including bone cement

**Notification No. 50/2017 (After Amendment)**

In the Union Budget 2020-2021, certain changes have been made in above Entry No. E (9) of List 30 *vide* NN 01/2020. The relevant portion of S.No. 578 and List 30 as it stands after the amendment is as below: -

S.No.	Chapter or Heading or sub-heading or tariff item	Description of Goods	Standard Rate	Integrated Goods and Services Tax	Condition No
(1)	(2)	(3)	(4)	(5)	(6)
578.	90 or any other Chapter	Assistive devices, rehabilitation aids and other goods for disabled, specified	NIL	-	-

		in List 30		
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## List 30

B	(1)	Orthopedic appliances falling under Heading no. 90.21 of the First Schedule.
E	(9)	Implants for severely physically handicapped patients including bone cement

The TRU letter to the proposed changes in the Finance Bill stated as below in respect of the above amendment in NN 50/2017:

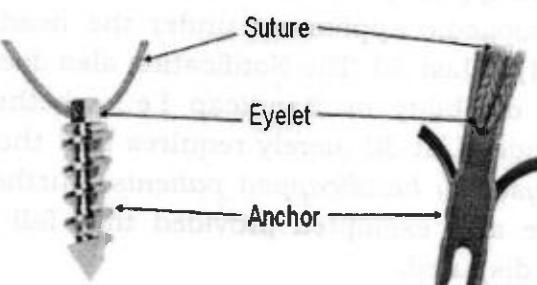
*"(2) S.No. 578 of NN 50/2017 dated 30<sup>th</sup> June 2017 provides BCD exemption on assistive devices, rehabilitation aids and other goods for disabled as mentioned in List 30 to the said notification. The item at E (9) is being amended to remove ambiguity about its scope. The intention has been to cover only such items which are for **use of the disabled**. This is clarificatory in nature [Notification No. 50/2017-Customs dated 30<sup>th</sup> June 2017, as amended by notification No. 1/2020 dated 2<sup>nd</sup> February,2020 refers]".*

It is important to note that, although, the Customs Notification was amended, the identical Entry in the IGST rate notification was not amended. It remained same throughout the period of dispute. The same has been detailed below-

Description of exemption:	Relevant extract from List enclosed with the exemption Notification-Pre-Amendment	Relevant extract from List enclosed with the exemption Notification-Post- Amendment
E.9 of List 30 of Notification No. 50/2017-Cus dated 30.06.2017	<p>Assistive devices, rehabilitation aids and other goods for disabled, specified in List 30:</p> <p>List 30:</p> <p>***</p> <p>E.9) Instruments and implants for severely physically handicapped patients <u>and joints replacement and spinal instruments and implants including bone cement.</u></p>	<p>Implants for severely physically handicapped patients including bone cement</p>
E.9 of List 3 of Schedule I of Notification No. 01/2017-IGST (Rate) dated 28.06.2017	<p>Assistive devices, rehabilitation aids and other goods for disabled, specified in List 3 appended to this Schedule</p> <p>List 3</p> <p>****</p> <p>Instruments and implants for severely physically handicapped patients and joints replacement and spinal instruments and implants including bone cement.</p>	<p>No Change.</p>

- The impugned goods have application in soft tissue injury which involves damage to the tendons, ligaments, and muscles of the body and are intended to cure disability incurred from severe soft tissue injuries (Ligament or tendon tear, complete rupture) by reattaching soft tissue to bone or soft tissue reconstruction; that they are commonly used in medicine surgeries; that it may happen due to an injury say, caused by falling from a bus, while playing etc. and due to sports injury, the ligaments and tendons are damaged, and joints become unstable and thus the movement of a person is restricted. In such injuries, there is detachment of tissues.
- The impugned goods as mentioned in the BOEs, namely, HS Fiber Button Loop, HS Fiber Suture with Needle, HS Fiber Tape, Suture Passer, Needle, Shaver Blade etc. are the implants used for fixing tendons and ligaments to bones; that just like trauma implants, they do not replace the original ligaments or tendons and are used to repair the damaged tendons and ligaments; that these are used for articular damage repairs.
- A person suffering from severe damage in ligaments or tendons require these implants; that there are three grades of ligament injury as under and the impugned goods are used only in Grade 2 or Grade 3 injury:
  - Grade 1- It is the least severe. It means that the ligament has been stretched but not torn.
  - Grade 2- It means that the ligament has been partially torn. This usually causes some instability in the knee joint.
  - Grade 3- It is the most severe type of ligament injury. It occurs when the ligament has been completely torn. Joint instability is common in a Grade 3 ligament injury.
- A brief description of parts of suture anchors imported by the Noticee and the photographs of the same are provided in below table:

These sutures are also called 'Fiber Sutures' for orthopaedic procedures.

Types of Implants	Pictures	Description
<b>Anchor</b>		It is inserted into the bone. This may be a screw mechanism, or an interference fit. They may be made of metal or biodegradable material (which dissolves in the body over time).
<b>Eyelet</b>		It is a hole or a loop in the anchor through which the suture passes. This links the anchor to the suture.
<b>Suture</b>		It is attached to the anchor through the eyelet of the anchor. It may be of non-absorbable material or of biodegradable material.

- Shri Rajendra Gordhanbhai Patel, Chairman and Managing Director of M/s. Chetan Meditech (Noticee) stated in his statement dated 27.09.2023 that they

are exporting or selling the said imported goods in India through their distributors to various patients/hospitals and that the Noticee had paid Basic Customs Duty at NIL because the impugned goods are used by orthopaedic surgeons which are implanted in physically disabled persons who have inability to execute distinctive activities associated with movement of self and objects resulting from affliction of musculoskeletal disorders; that these products are implanted in the body, to compensate for a defect or disability caused due to musculoskeletal disorders or injuries.

- The Noticee further stated that (i) the impugned goods imported by the Noticee are eligible for NIL rate of Basic Customs Duty under SI. No. 578 read with List 30 Entry (9) of Notification No.50/2017- Cus dated 30.06.2017; and (ii) The impugned goods imported by the Noticee are leviable to IGST @5% under SI. No. 257 of Schedule I of the Notification No. 01/2017- IGST (Rate) dated 28.06.2017.
- As per SI. No. 578, the benefit of exemption is available to an importer if the following conditions are satisfied cumulatively: -
  - (i) Goods are classified under Chapter 90 or any other Chapter, and
  - (ii) Goods are assistive devices, rehabilitation aids and other goods **for disabled, as enumerated under List 30.**
- In the present case, the department is concerned with Entry E.9 and B (1) of List 30 and pre and post amendment. As per the same, the following products are entitled for the exemption depending upon the concerned period:
  - (i) Instruments and implants for severely physically handicapped patients and joints replacement and spinal instruments; and
  - (ii) Bone cement  
Under B (1) orthopedic appliances falling under the heading 90.21 of the First Schedule are also entitled for exemption.
- In the present case, it is not in dispute that the impugned goods are classifiable under Heading 90.21. Thus, the primary requirement is met.
- On a perusal of description of the goods of S. No. 578 and description of Entry No. E (9) and B (1) of List 30 and, it is clear that the terms "*disabled*" and "*severely physically handicapped patients*" have not been defined in the Notification. Further, orthopaedic appliances under the head 90.21 are also exempted under Entry B (1) of List 30. The Notification also does not specify the duration of the physical disability or handicap i.e., whether temporary or permanent. Entry E (9) under List 30 merely requires that the imported goods be meant for *severely physically handicapped patients*. Furthermore, under B (1), orthopaedic goods are also exempted provided they fall under the head 90.21 which has not been disputed.
- It is a settled proposition in law that if the expressions or terms used in the act or Notification have not been defined under the said act or Notification, regard can be given to the natural and ordinary meaning of the said expression. To arrive at such a meaning, as per the rule of literal interpretation, one can possibly look into the dictionary meanings of the same.
- Various meanings attributed to the terms "disability" and "handicap" are as hereunder:
  - (i) **Collins Dictionary** - Physical Handicap is defined as loss of or failure to develop a specific bodily function or functions, whether of movement, sensation, coordination, or speech, but excluding mental disabilities.

(ii) **Merriam-Webster Dictionary -**

- Handicap<sup>1</sup> is defined as a disadvantage that makes achievement usually difficult.
- Disability<sup>2</sup> is defined as a physical, mental, cognitive, or developmental condition that impairs, interferes with, or limits a person's ability to engage in certain tasks or actions or participate in typical daily activities and interactions.

(iii) **World Health Organization-**

- Disability is a restriction or inability to perform an activity in the manner or within the range considered normal for a human being, mostly resulting from impairment.
- Handicap is the result of an impairment or disability that limits or prevents the fulfilment of one or several roles regarded as normal, depending on age, sex and social and cultural factors.

(iv) **Article 1 of the Convention on the Rights of Persons with Disabilities -**

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

- On perusal of the above definitions, it is clear that anything that hampers the normal functioning of a person in society, is regarded to be a disability. They have placed reliance on the decision of the Hon'ble Madras High Court in the case of **P Divya vs The Secretary to Government, Department of Health and Ors. MANU/TN/4676/2011.**
- The claim of customs department that sports medicine implants are used to cure severe soft tissue injuries and not in disability is erroneous; that since severe soft tissue injury itself comes under the definition of disability, the implants used to treat such injuries does not make them outside the scope of exemption provided in the Notification No. 50/2017-Cus dated 30.06.2017.
- Considering the fact that the Notification No.50/2017-Cus does not define the term "*severely physically handicapped*", regard must be had to the ordinary meaning of the same; they have relied on the judgement of the Hon'ble Supreme Court's decision of India in the case of **Commr. Of C. Ex., New Delhi V. Connaught Plaza Restaurant (P) Ltd. 2012 (286) E.L.T. 321 (S.C.)**, the decision of Delhi Tribunal in the case of **Instruments Orthopaedics versus Collector of C.Ex. Bombay 1998(99) ELT 60** and the decision of the Ld. Chennai Tribunal in the case of **Centerpulse India Ltd. versus Commissioner of Customs, Chennai 2013 (296) E.L.T. 44 (Tri - Chennai)** to support their contention.
- Further, **there is no end-use condition inbuilt in the above Sl.No. 578** as well as List 30 restricting the availability of exemption only to implants which are actually used by severely physically handicapped patients; that so long as the impugned goods are capable of being used by severely handicapped person, the exemption will be available; that the implants in question are designed and meant for List 30 is a mixed bag containing products which are used by all kinds of patients and not just disabled persons.
- In the present case, the impugned goods imported by the Noticee, are prescribed by registered Medical Professionals/Health Care Professionals only in case of severe disability. To support the same, they have enclosed the

certificates issued by various medical associations and authorities certifying that the imported products are meant for severely disabled patients, as tabulated below:

S. No.	Certificates issued by	Summary of the certificate
1.	Brigadier Dr. H.S. Agrawal, Ms, D Ortho, Fellow Arthroplasty, Germany. Director, Medi Health Hospital	Certifying that soft tissue and bone fixation devices such as Bone and Suture Anchor, Fixation buttons with/without suture loop, or adjustable suture loop, etc. are used to treat soft tissue injuries of various kinds which causes permanent physical disability if left uncured. These are permanent implantable devices which prevent and cure permanent impairment.
2.	Dr.Anshu Shekhar, MBBS, MS (Orthopaedics), FARS (ISAKOS), Heritage Hospital Kachna, Raipur	These devices treat various kinds of soft tissue injuries which causes permanent disability if uncured. These are permanent implantable devices which prevent and cure permanent impairment.
3.	Dr.Parag K. Shah, M.S. D.N.B. (Orthopaedics), Fracture and Orthopaedic Hospital, Ahmedabad	These devices treat various kinds of soft tissue injuries which causes permanent disability if uncured. These are permanent implantable devices which prevent and cure permanent impairment.

- Placing reliance on the above experts' opinions, it clearly indicates that the nature of the injury it treats is permanent as these are permanently implanted in the human body without which the injury could lead to a permanent disability. It is very clear that the nature of injury may be soft tissue injury, but the consequence is permanent disability. Thus, the goods imported are permanently implanted into the patient's body and thereby the usage is such that is eligible to avail the benefit of the Notification No.50/2017-Cus.
- The entire situation is revenue neutral since there is no loss to the government as the IGST payable in both the entries are the same percentage; that the Hon'ble Supreme Court has consistently held that where the demand raised by the Revenue is equal to the credit available to the assessee, then the demand is not maintainable. In this connection, reliance is placed on:
  - **CCE v. Narayan Polyplast [2005 (179) ELT 20 (SC)]**
  - **CCE v. Narmada Chematur [2005 (179) ELT 276 (SC)]**
  - **CCE v. Coca-cola India - [2007 (213) ELT 490 (SC)]**
- Taxation statutes and notifications are to be interpreted basis the definitions given in the Taxation statute or Notification. In the absence of such a definition, the understanding of the term in common parlance must be adopted. Definitions cannot be adopted from other specific laws, as the purpose for which those laws are enacted differ from the purpose of fiscal statutes. The above has been reiterated by the courts time and again in a catena of judgments. A few cases are highlighted below:
  - (i) **Commr.Of C. Ex., New Delhi V. Connaught Plaza Restaurant (P) Ltd. 2012 (286) E.L.T. 321 (S.C.)**
  - (ii) **CST v. Puran Chand & Sons, (1989) 72 STC 1 (SC)**
  - (iii) **Indo International Industrial v. CST, AIR 1981 SC 1079**

- In the instant case, Section 28(4) is not invokable since, there was no suppression or collusion. In the case of *Collector of Central Excise, Hyderabad vs. Chemphar Drugs and Liniments*, 1989 (40) ELT 276 (SC), the Hon'ble Court held that *something positive other than mere inaction or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information when the manufacturer knew otherwise, is required before it is saddled with any liability*, beyond the period of limitation. The same reasoning has been followed in a series of cases thereafter, some of which are listed below:

(i) *Padmini Products vs. Collector of Central Excise, Bangalore* 1989 (43) ELT 195 (SC);  
 (ii) *GopalZardaUdyog vs. Commissioner of Central Excise, New Delhi* 2005 (188) ELT 251 (SC);  
 (iii) *Anand Nishikawa Co. Ltd. vs. Commissioner of Central Excise, Meerut* 2005 (188) ELT 149 (SC);  
 (iv) *Lubri-Chem Industries Ltd. vs. Collector of Central Excise, Bombay* 1994 (73) ELT 257 (SC); and  
 (v) *Cosmic Dye Chemical vs. Collector of Central Excise, Bombay* 1995 (75) ELT 721 (SC).  
 (vi) *Pushpam Pharmaceuticals Company vs. Collector of Central Excise, Bombay*, 1995 (78) ELT 401 (SC).

- That they have notmis-declared the details of the imported goods but have submitted all the relevant documents at the time of filing of Bill of Entry like invoices, etc. clearly specified the nature of goods that are being imported; that the validity of these documents has not been contested by the Department and therefore it cannot be said that there was any mis-representation or suppression of the fact.
- That a mere claim for a particular classification does not amount to suppression. Reliance is also placed on the following decisions:  
 (i) The decision of the Hon'ble Tribunal in the case of *Commissioner of Customs, Trichy v. JSW Steels LTD.* [2018 (364) E.L.T. 874 (Tri. – Chennai)], (ii) The decision of the Hon'ble Tribunal in the case of *Global Exim v. Commissioner*, 2010 (253) E.L.T. 417 (Tri.-Mumbai). (iii) *The decision of the Hon'ble Karnataka High Court in the case of Kamath Packaging Ltd. v. U.O.I. — 1992 (61) E.L.T. 548 (Kar.)*
- They have provided all the required documents to the customs authorities and the imported goods in question were assessed by the Customs authorities after due scrutiny of the invoices and after examination of the goods; that applying correct classification and correct assessment of the goods was the responsibility of the Customs authorities and the role of Noticee was to provide the required documents; that in view of the abovementioned submission and the decision of various courts, they cannot be held responsible or charged for wilfulmis-statement or suppression of facts for claiming wrong exemption and therefore, extended period is not applicable in the present case.
- The case involves interpretation of the provisions of the Customs Act and Notification i.e. Classification of any item comes within the interpretation of law and therefore, cannot be construed to be a case of willful mis-statement or suppression of facts and therefore extended period cannot be invoked. They have relied upon the following judgements to support their contention: (i) *Singh Brothers vs. Commissioner of Customs & Central Excise, Indore*, 2009 (14) STR 552 (Tri.-Del.) (ii) *Steelcast Ltd. vs. Commissioner of Central Excise, Bhavnagar* [2009 (14) STR 129 (Tri.-Del.)] (iii) *P.T. Education & Training Services Ltd. vs. Commissioner of Central Excise, Jaipur* [2009 (14) STR 34 (Tri.-Del.)]; (iv) *P.T. Education & Training Services Ltd. vs. Commissioner of Central Excise, Jaipur*

*[2009 (14) STR 34 (Tri.-Del.)]; (v) K.K. Appachan vs. Commissioner of Central Excise, Palakkad [2007 (7) STR 230 (Tri.-Bang.)].*

- That the impugned goods cannot be held liable for confiscation under Section 111(m) of the Customs Act.; that there was no mis-declaration either in respect of value, description, classification or in any other particular with the entry made under the Customs Act and therefore the proposal for confiscation of the impugned goods under Section 111(m) of the Customs Act is not sustainable in law. They have relied on the decision of Hon'ble Supreme Court in *Northern Plastic Ltd. vs. Commissioner of Central Excise, the decision of the Tribunal in the case of Ace Kargoways vs. Commissioner of Customs, 2003 (158) ELT 505 (T)*, the Tribunal's decision in the case of *Commissioner of Customs vs. MarutiUdyog Ltd., 2002 (141) ELT 392 (T), Hindustan Lever Ltd. vs. Commissioner of Customs, 1996 (83) ELT 520 and Metro Tyres Ltd. vs. Commissioner of Central Excise, 1994 (74) ELT 964*
- That the impugned goods cannot be held liable to confiscation under Section 111(o) of the Act as the exemption was rightly claimed as these impugned goods are used for treating disability; that the imported goods were used to treat soft tissue injuries and these injuries can be of permanent nature if left uncured; that the goods are capable of use to treat disability and it is not necessary to show the end use. Reliance is placed on *P. Ripakumar & Co. vs. Union of India- 1991 (54) ELT 67* and in the case of *Porcelain Crafts and Components Exim Ltd. vs. CC, Calcutta- 2001 (198) ELT 471*.
- Section 111 of the Customs Act provides for liability for confiscation of the improperly imported goods, therefore, only imported goods can be confiscated under Section 111 of the Customs Act; that once the goods are cleared for home consumption, they cease to be imported goods as defined in Section 2(25) of the Act and consequently are not liable to confiscation under Section 111 of the Act. They have relied on the decision of the Hon'ble Bombay High Court in the case of *Bussa Overseas & Properties vs. C.L. Mahar, Assistant Commissioner of Customs, Bombay, 2004 (163) ELT 304 (Bom.)* which has been maintained by the Hon'ble Supreme Court of India reported at *2004 (163) E.L.T. A160 (SC)*.
- As per the provisions of the Act, interest could be demanded only if the assessee is liable to pay the principal amount. From the submissions made above, it is evident that since the demand of duty is not sustainable, the question of recovering interest does not arise. Thus, the SCN proposing interest is liable to be dropped. Reliance is placed on the judgement in the case of *Pratibha Processors vs. Union of India, 1996 (88) ELT 12 (SC)* and the judgement in the case of *Commissioner of Customs vs. Jayathi Krishna, 2000 (119) ELT 4 (SC)*.
- In the foregoing paragraphs, it has been submitted in detail that no further duty is payable as the Noticee had correctly taken benefit of the impugned notification; that for the same reasons, no penalty under Section 114A can be recovered; that for the sake of brevity and in order to avoid unnecessary repetition, it is requested that the submissions made with regard to the duty portion may be considered as part of the submissions relating to the imposition of penalty. Thus, since no demand is sustainable, for the same reason no penalty is imposable on the Noticee. Reliance is placed on the decisions in the case of *Collector of Central Excise vs. H.M.M. Limited, 1995 (76) ELT 497 (SC)*, the case of *Commissioner of Central Excise, Aurangabad vs. Balakrishna Industries, 2006 (201) ELT 325 (SC)*, on the case of *Commissioner of Customs vs. Videomax Electronics, reported at 2011 (264) ELT 0466 (Tri-Bom.)*, *Union of India vs. Rajasthan Spinning & Weaving Mills 2009 (238) E.L.T. 3 (S.C.)*, *Hindustan Steel Ltd. vs. State of Orissa, 1978 (2) E.L.T. (J159)*, *Akbar BadruddinJiwani vs. Page 30 of 53*

*Collector of Customs, 1990 (47) ELT 161, K. K. Arora vs. Commissioner of Customs, Mumbai, 2007 (212) E.L.T. 33 (Tri-Mumbai)*

- The Noticee has concluded his submission with the following prayer:

- (i) Drop the proceedings initiated vide SCN F. NO. VIII/10-21/COMM.R./O&A/2023-24 dated 06.10.2023;
- (ii) Allow the benefit of Customs Notification No. 50/2017-Cus dated 30.06.2017 as amended (SI. No. 578, List 30 SI. No. E (9)) for exemption from payment of Basic Customs Duty;
- (iii) Hold that the demand of duty aggregating to Rs. 1,72,31,598/- in the form of Basic Customs Duty, Health Cess, Social Welfare Surcharge and IGST under Section 28(4) of the Customs Act, 1962 is not sustainable;
- (iv) Hold that no interest is applicable on the aforesaid demand under Section 28AA of the Customs Act, 1962.
- (v) Hold that the goods imported during the period under consideration should not be held liable to confiscation under Section 111(m) and 111(o) and redemption fine should not be imposed.
- (vi) Hold that no penalty is imposable on the Noticee under Section 114A of the Customs Act, 1962;
- (vii) Grant a personal hearing;
- (viii) Pass such other order or orders as may be deemed fit and proper in the facts and circumstances of the case.

#### **PERSONAL HEARING:**

**32.** Personal Hearing in the matter was held on 11.09.2024 which was attended by Ms. Rakha Bhandari, Advocate (Lakshmikumaran & Sridharan Attorneys) on behalf of M/s. Chetan Meditech Pvt. Ltd. Advocate of the Importer reiterated the submissions as detailed in their written submission dated 16.01.2024 and further she submitted compilation of statutory provisions and case laws.

#### **DISCUSSION AND FINDINGS:**

**33.** I have carefully gone through the relevant records, the written submission dated 16.01.2024 made by the Noticee M/s. Chetan Meditech Pvt. Ltd. as well as compilation of statutory provisions and case laws submitted by their advocate during the personal hearing held on 11.09.2024.

**33.1** I find that the present case came into light when the assessing/appraising officer observed during the assessment of Bill of Entry No. 7698947 dated 06.09.2023 at the time of out of charge that M/s. Chetan Meditech was wrongly availing the benefit of Notification No.50/2017-Cus dated 30.06.2017 as the goods imported in this case were being used in orthopaedic surgeries of trauma injuries/sports injuries occurring during day-to-day activities of a normal person or due to age related issues, and are not being used for disabled persons. Thus, it appeared that M/s. Chetan Meditech had availed inappropriate and undue benefit of Notification No.50/2017-Cus dated 30.06.2017 (Sl. No 578, List 30 Sl. No. E (9)) as amended (which are available to imported goods used for disabled persons only) and was liable to pay the duty not paid/short paid for the period 01.10.2018 to 30.09.2023 under Section 28(4) of the Customs Act, 1962 (hereinafter referred to as "the Act") along-with applicable interest

under Section 28AA of the Act. Further, it appeared that as the subject goods were imported by reason of wilfulmis-statement resulting in misuse of Notification benefit, the subject goods were liable for confiscation under Section 111(m) and Section 111(o) of the Act and M/s. ChetanMeditech had rendered themselves liable to applicable penalty under the Act.

**34** From the facts of the case and submissions of the Noticee, following questions have arisen for consideration in the present case:-

- i Whether the benefit of Notification No.50/2017-Cus dated 30.06.2017 (Sl.No.578, List 30 Sl.No.E (9)) as amended (NIL BCD) is available on the goods imported by M/s. ChetanMeditech Pvt. Ltd. i.e. Orthopaedic or fracture appliances/implants such as Femoral Component and Tibial Base Plate under Customs Tariff Heading No.90213100 (Artificial Joints) & 90213900 (Other) of the First Schedule to the Customs Tariff Act, 1975 or they are liable to pay Customs Duty as per Customs Tariff rate at 7.5%/10% and the differential duty of IGST@ 12% under Sl. No. 221 of Schedule-II of Notification No.01/2017 - Integrated Tax (Rate) dated 28.06.2017 (upto 17.07.2022) and thereafter IGST@ 5% under Sr.No.255A of Schedule-I of Notification No.01/2017 - Integrated Tax (Rate) dated 28.06.2017 (as amended by Notification No.6/2022-Integrated Tax (Rate) dated 13.07.2022) is liable to be recovered from M/s. ChetanMeditech as proposed in the Show Cause Notice?**
- ii Whether the consequential actions such as re-determination of Customs Duty alongwith interest on differential Customs Duty, liability of confiscation of the imported goods and the penalties on M/s. Chetan Meditech Pvt. Ltd. arise or otherwise?**

**34.1** Points at Sr. No.(ii) supra, viz. Duty liability with interest and penal liabilities would be relevant only if the main point stated at Sr.No. (i) supra is decided in line with the view proposed in the Show Cause Notice. Thus, the main point is being taken up firstly for examination.

**35. Whether the benefit of Notification No.50/2017-Cus dated 30.06.2017 (Sl.No.578, List 30 Sl. No. E (9)) as amended (NIL BCD) is available on the goods imported by M/s. ChetanMeditech Pvt. Ltd. i.e. Orthopaedic or fracture appliances/implants such as Femoral Component and Tibial Base Plate under Customs Tariff Heading No.90213100 (Artificial Joints) & 90213900 (Other) of the First Schedule to the Customs Tariff Act, 1975 or they are liable to pay Customs Duty as per Customs Tariff rate at 7.5%/10% and the differential duty of IGST@ 12% under Sl. No. 221 of Schedule-II of Notification No.01/2017 - Integrated Tax (Rate) dated 28.06.2017 (upto 17.07.2022) and thereafter IGST @ 5% under Sr.No.255A of Schedule-I of Notification No.01/2017 - Integrated Tax (Rate) dated 28.06.2017 (as amended by Notification No.6/2022-Integrated Tax (Rate) dated 13.07.2022) is liable to be recovered as proposed in the Show Cause Notice?**

**35.1** I find that the Noticee M/s Chetan Meditech is engaged in import & export of orthopaedic implant & instruments, medical/surgical instruments (hereinafter referred to as "the goods") such as Fiber Button Loop, Fiber Suture with/without Needle, Needle With Lateral Opening, Suture Passer under Customs Tariff Heading No.90211000 (Orthopaedics or fracture appliances) & 90189099 (Other)of the First Schedule to the Customs Tariff Act, 1975 (hereinafter referred to as the "CTA") mainly from, M/s RIVERPOINT MEDICAL, 825, NE 25<sup>th</sup> AVENUE PORTLAND, OR 97232, USA, BIOMATLANTE SAS, France and other suppliers. M/s. Chetan Meditech is

importing the goods and exporting about 70% of those goods out of India and distributing about 30% of the same across the nation through their distributors and the distributors further supply the goods to hospitals/patients. At the time of import of the goods, they are availing benefit of Notification No.50/2017-Cus dated 30.06.2017 (Sl. No 578, List 30 Sl. No. E (9)) as amended and paying NIL BCD on the imported goods. Entry mentioned at Sl.No.578 of Notification No.50/2017-Cus dated 30.06.2017 and the List 30 reads as under :-

S. No.	Chapter/ Heading/ Sub- Heading/ Tariff item	Description of goods	Standard Rate	Integrated Goods and Services Tax	Condition No.
578	90 or any other Chapter	Assistive devices, rehabilitation aids and other goods for disabled, specified in List 30 appended to this Schedule.	Nil	--	--

#### **List 30 (See S. No. 578 of the Table)**

**(A)(1)** Braille writers and braille writing instruments

- (2) Hand writing equipment Braille Frames, Slates, Writing Guides, Script Writing Guides, Styli, Braille Erasers
- (3) Canes, Electronic aids like the Sonic Guide
- (4) Optical, Environmental Sensors
- (5) Arithmetic aids like the Taylor Frame (arithmetic and algebra types), Cubarythm, Speaking or Braille calculator
- (6) Geometrical aids like combined Graph and Mathematical Demonstration Board, Braille Protractors, Scales, Compasses and Spar Wheels
- (7) Electronic measuring equipment, such as calipers, micrometers, comparators, gauges, gauge blocks Levels, Rules, Rulers and Yardsticks
- (8) Drafting, Drawing aids, tactile displays
- (9) Specially adapted clocks and watches

**(B)(1)** Orthopaedic appliances falling under heading No.90.21 of the First

Schedule

- (2) Wheel chairs falling under heading No. 87.13 of the First Schedule

**(C)** Artificial electronic larynx and spares thereof

**(D)** Artificial electronic ear (Cochlear implant)

**(E) (1)** Talking books (in the form of cassettes, discs or other sound reproductions) and large print books, braille embossers, talking calculators, talking thermometers

(2) Equipment for the mechanical or the computerised production of braille and recorded material such as braille computer terminals and displays, electronic braille, transfer and pressing machines and stereotyping machines

(3) Braille paper

(4) All tangible appliances including articles, instruments, apparatus, specially designed for use by the blind

(5) Aids for improving mobility of the blind such as electronic orientation and obstacle detection appliance and white canes

- (6) Technical aids for education, rehabilitation, vocational training and employment of the blind such as braille typewriters, braille watches, teaching and learning aids, games and other instruments and vocational aids specifically adapted for use of the blind
- (7) Assistive listening devices, audiometers
- (8) External catheters, special jelly cushions to prevent bed sores, stair lift, urine collection bags
- (9) Implants for severely physically handicapped patients and joints replacement and spinal instruments and implants including bone cement.**

**35.2** I also find that M/s. Chetan Meditech had declared imported goods under CTH 9018/9021 by availing the benefit of Notification No. 050/2017 dated 30.06.2017 as per Sr. No. 578, List 30, and Entry No. E(9) for the Bills of Entry filed during the period from 01.10.2018 to 06.02.2021 and it is also noticed that they paid IGST @ 12% under Sr. No. 221 of Schedule-II of the Notification No. 01/2017-Integrated Tax(Rate) dated 28.06.2017 for the said time period. However, for Bills of Entry filed during the period from 18.10.2022 to 30.09.2023 the importer has paid IGST @ 5% under Sr. No. 255A of Schedule-I of the Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017. The importer vide their letter dated 04.10.2023 has submitted that vide Notification No. 6/2022-IntergratedTax (Rate) dated 13.07.2022 the Sr. No. 221 was omitted and a new Sr. No. 255A in the Schedule-I was inserted w.e.f. from 18.07.2022.

S. No.	Chapter/ Heading/ Sub-Heading/Tariff item	Description of goods
221	9021	Splints and other fracture appliances; artificial parts of the body; other appliances which are worn or carried, or implanted in the body, to compensate for a <b>defect or disability</b> ; intraocular lens [other than orthopaedic appliances, such as crutches, surgical belts, and trusses, hearing aids]
255A	9021	Orthopaedic appliances, such as crutches, surgical belts, and trusses; Splints and other fracture appliances; artificial parts of the body; other appliances which are worn or carried, or implanted in the body, to compensate for a <b>defect or disability</b> ; intraocular lens [other than hearing aids]";

It can be seen from the above that the imported goods classified under Sr.No.578 of Notification No. 50/2017 dated 30.06.2017 are Assistive devices, rehabilitation aids and other goods for **disabled**, specified in List 30 appended to this Schedule. It is also seen that the same goods are also classified under Schedule- I of the Notification No. 01/2017 - Integrated Tax (Rate) dated 28.06.2017 (Sl. No. 257 of Schedule-I, List 3 Sl. No. E (9)) as amended for IGST @ 5% of CIF value of import. Entry mentioned at Sl. No. 257 of the aforesaid Notification and the List 3, Entry No. E(9) is furnished as under :-

S. No.	Chapter/ Heading/ Sub-Heading/Tariff item	Description of goods
257	90 or any other Chapter	Assistive devices, rehabilitation aids and other goods for <b>disabled</b> , specified in List 3 appended to this Schedule

The List 3 of Schedule-I, as referred to in Sl. No. 257 above, is reproduced below:-

**List 3 (See S.No.257 of the Schedule I)****(A) Braille writers and braille writing instruments**

- (2) Hand writing equipment Braille Frames, Slates, Writing Guides, Script Writing Guides, Styli, Braille Erasers
- (3) Canes, Electronic aids like the Sonic Guide
- (4) Optical, Environmental Sensors
- (5) Arithmetic aids like the Taylor Frame (arithmetic and algebra types), Cubarythm, Speaking or Braille calculator
- (6) Geometrical aids like combined Graph and Mathematical Demonstration Board, Braille Protractors, Scales, Compasses and Spar Wheels
- (7) Electronic measuring equipment, such as calipers, micrometers, comparators, gauges, gauge blocks Levels, Rules, Rulers and Yardsticks (8) Drafting, Drawing aids, tactile displays
- (9) Specially adapted clocks and watches

**(B) Orthopaedic appliances falling under heading No. 9021 of the First Schedule**

- (2) Wheel chairs falling under heading No. 87.13 of the First Schedule

**(C) Artificial electronic larynx and spares thereof****(D) Artificial electronic ear (Cochlear implant)****(E) Talking books (in the form of cassettes, discs or other sound reproductions) and large-print books, braille embossers, talking calculators, talking thermometers**

- (2) Equipment for the mechanical or the computerized production of braille and recorded material such as braille computer terminals and displays, electronic braille, transfer and pressing machines and stereo typing machines

- (3) Braille paper

- (4) All tangible appliances including articles, instruments, apparatus, specially designed for use by the blind

- (5) Aids for improving mobility of the blind such as electronic orientation and obstacle detecting appliance and white canes

- (6) Technical aids for education, rehabilitation, vocational training and employment of the blind such as Braille typewriters, braille watches, teaching and learning aids, games and other instruments and vocational aids specifically adapted for use of the blind

- (7) Assistive listening devices, audiometers

- (8) External catheters, special jelly cushions to prevent bed sores, stat lift, urine collection bags.

**(9) Implants for severely physically handicapped patients and joints replacement and spinal instruments and implants including bone cement.**

**35.3** From a plain reading of the above entries, it is evident that Notification No. 50/2017-Cus dated 30.06.2017 as amended (Sl.No.578, List 30 Sl.No.E(9)) and Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017 as amended (Sl. No.257 of Schedule-I, List 3 Sl. No. E(9)) are alike. Entry at Sl.No.578, List 30 Sl.No.E(9)) of Notification No.50/2017-Cus dated 30.06.2017 as amended provides full exemption from payment of BCD for goods for disabled person whereas entry at Sl. No.257 of Schedule-I, List 3 Sl.No.E(9)) of Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017 provides lower rate of IGST i.e. 5% for goods for disabled person. Further, from the description of goods of above said serial nos., it is apparently clear that it covers:-

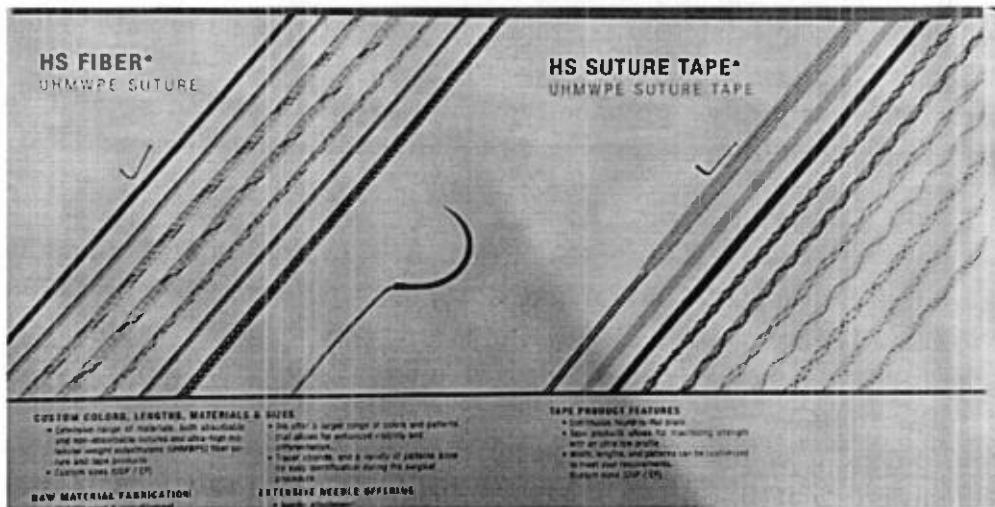
1. Assistive devices **for disabled**;
2. Rehabilitation aids and other goods **for disabled**;
3. Implants for severely physically handicapped patients and joints replacement and spinal instruments and implants including bone cement (Sl. No. E-9 of List 30 of Notification No.50/2017-Cus dated 30.06.2017 & List 3 of Schedule-I of Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017) **for disabled**;

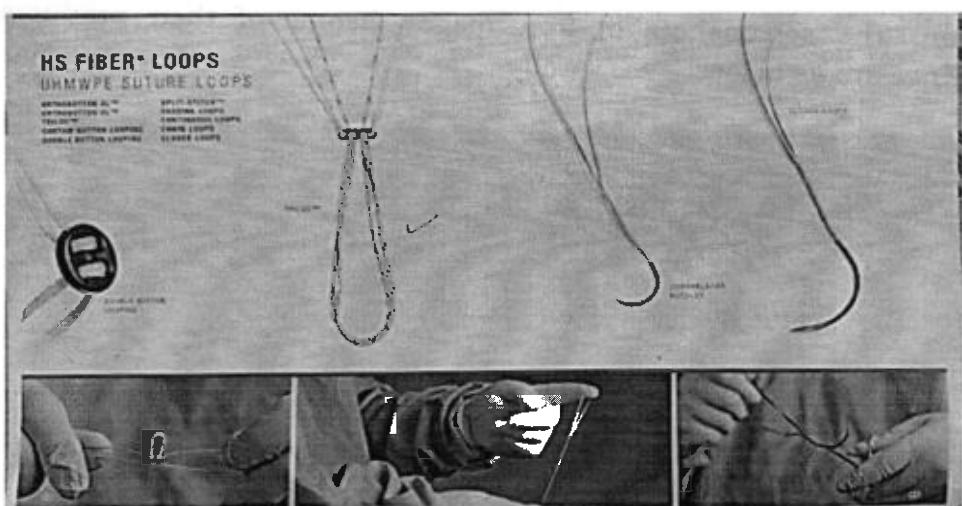
**All above (Sl.No.1 to 3) are taxable at BCD @ NIL rate & IGST @ 5% and for other than disabled persons, BCD @7.5%/ 10% (as applicable) and IGST @ 12% along with other taxes levied by the government from time to time appear to be applicable.**

**35.4** It is forthcoming from the above that M/s. Chetan Meditech has **wrongly availed Basic Custom Duty exemption for disabled** by classifying their imported goods under CTH 9018/9021 by availing the benefit of Notification No. 50/2017 dated 30.06.2017 as per Sr. No. 578, List 30, and Entry No. E(9) for payment of Basic Custom Duty. However, I find it extremely surprising that the same goods which the Noticee/Importer states are meant to compensate for a **defect or disability of a person** have been/are being classified under Sr. No. 221 of Schedule-II (duty payable @ 12% (upto 17.07.2022) & under Sr. No. 255A of Schedule-I (duty payable @ 5% w.e.f. 18.07.2022) of the Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 for payment of IGST when there is an entry exactly identical to Sr. No.578 of Notification No.50/2017-Cus available in Notification No.01/2017-Integrated Tax (Rate) i.e. Sl. No. 257 of Schedule-I (for disabled) of the Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 wherein the IGST payable is 5%.It is therefore, apparent from the above that M/s. Chetan Meditech was very much aware that Sr.No.221 of Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017 as amended aptly covers the goods imported by them as they are other than orthopaedic appliances, such as crutches, surgical belts, and trusses, hearing aids and these goods imported by them are implanted in the body of their patients solely to compensate for a defect or disability in the patient. This act of M/s. Chetan Meditech indicates that even though the Noticee was very much aware that the benefit of Sr.No.578 of Notification No.50/2017-Cus was not available to them, they deliberately availed the benefit of the same in order to avail full exemption from Basic Customs Duty.

**35.5** Further, upon seeking documents in respect of imported orthopaedic implants, Shri Rajendra Gordhanbhai Patel provided brochures/catalogues of their company products & their supplier's production The Photographs of some items from the submitted brochures/catalogues are as under:

**Supplier: M/s Riverpoint Medical, USA**

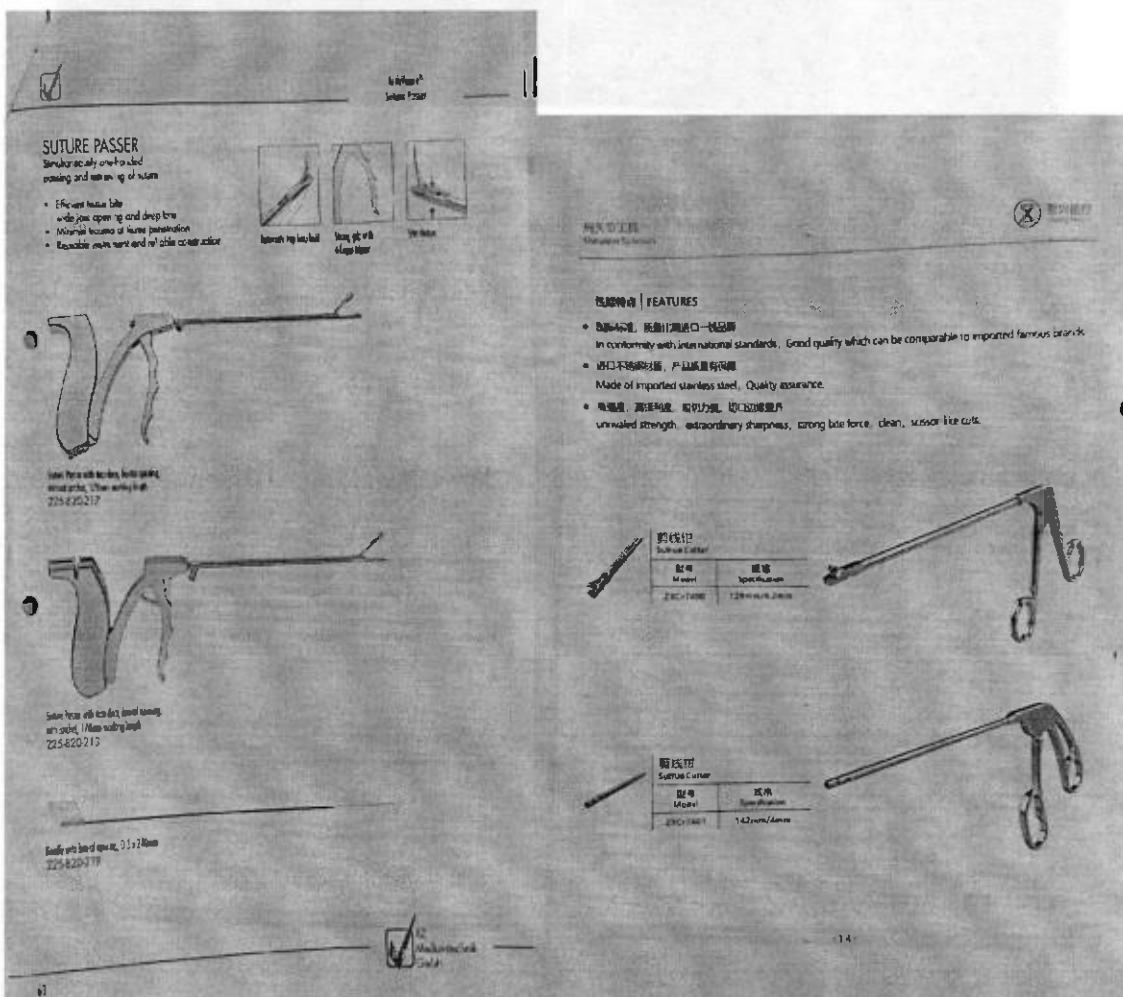


**Supplier:**

**M/s RZ MEDIZINTECHNIK GMBH,  
Germany**

**Supplier:**

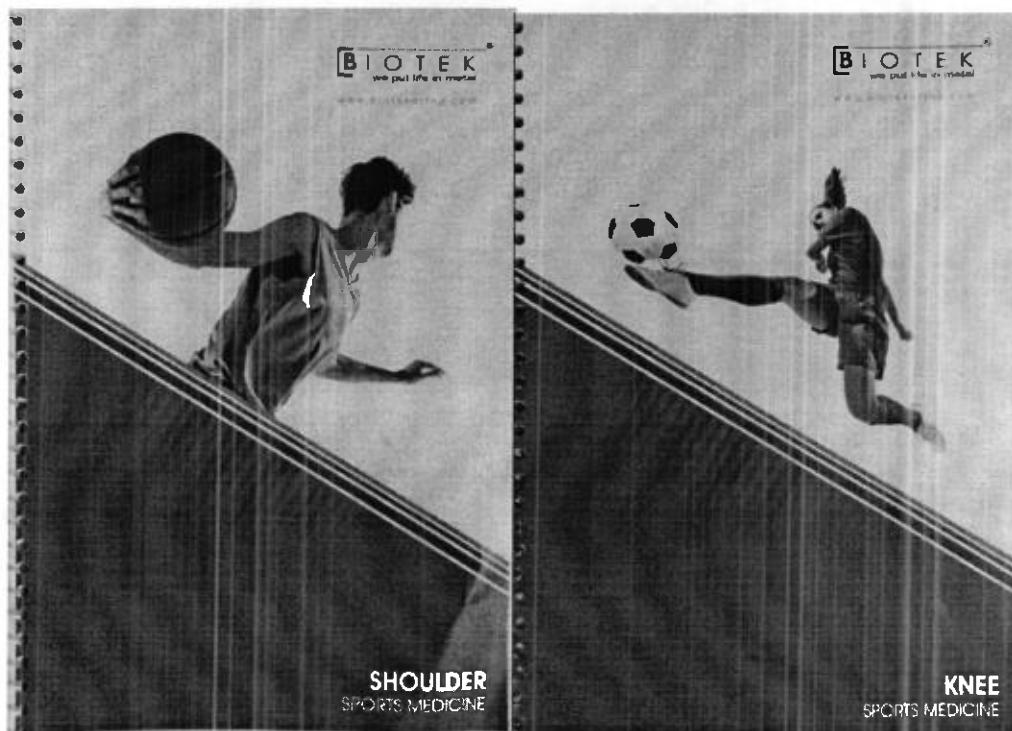
**M/s QINGDAO ZHIXING MEDICAL  
INSTRUMENT CO., LTD., China**



On going through the aforementioned Suppliers' Brochures/Catalogues submitted by M/s. Chetan Meditech, it is found that it is nowhere specified that they are the implants/instruments for **disabled** only. This implies that these orthopaedic implants/instruments can be used for any person including disabled persons.

**35.6** I further find that at the front page of two product brochure of M/s. Chetan Meditech with their trade name BIOTEK, it is mentioned that these brochures are for Knee Sports Medicine & Shoulder Sports Medicine. At first page of these brochures it is mentioned that their company focuses on new product development in most advanced orthopaedic sector: SPORTS MEDICINE. These **Sports medicine implants** are used in soft tissue injury which involves damage to the tendons, ligaments and muscles of the body and these implants are intended to cure disability incurred from the severe soft tissue injuries (ligaments or tendon tear, complete rupture) by reattaching soft tissue to bone or soft tissue

reconstruction. The screenshots of front pages & some of their products of shoulder & Knee are as below:



#### BioFiber®



#### SHOULDER SPORTS MEDICINE

##### BioFiber®

- BioFiber® is a balanced static suture that prepares three types of ultra-high molecular weight long chain linear polyethylene
- BioFiber® is also a means of intermaxillary fixation in trauma, followed by gradual encapsulation of the suture in tissue
- It is non-conductive and there are no significant changes in tension with either static linear suture or wire suture
- It decreases in volume over time and loses strength over time without heat or damage

##### ORDERING INFORMATION

01-0001	BioFiber® Tape 10' (30.5 cm) x 1/4" (6.4 mm) x 1/8" (3.2 mm) (100/box)
01-0002	BioFiber® Tape 10' (30.5 cm) x 1/4" (6.4 mm) x 1/8" (3.2 mm) (100/box)
01-0003	BioFiber® Tape 10' (30.5 cm) x 1/4" (6.4 mm) x 1/8" (3.2 mm) (100/box)
01-0004	BioFiber® Tape 10' (30.5 cm) x 1/4" (6.4 mm) x 1/8" (3.2 mm) (100/box)
01-0005	BioFiber® Tape 10' (30.5 cm) x 1/4" (6.4 mm) x 1/8" (3.2 mm) (100/box)

#### BioFiber® Tape



##### BioFiber® Tape

- BioFiber® tape is an ultra-high strength 2 mm wide tape using a unique long chain polyethylene structure of the BioFiber® suture
- In addition to high strength characteristics, the AC joint reconstruction, it is extremely easy to suture and can be used in conjunction with bone grafts. The direct suture of the BioFiber® tape is especially useful in repairing the cut tissue where tissue pull-through may be a problem.
- It is available in various sizes and colors options

##### ORDERING INFORMATION

01-0001	BioFiber® Tape 10' (30.5 cm) x 1/4" (6.4 mm) x 1/8" (3.2 mm) (100/box)
01-0002	BioFiber® Tape 10' (30.5 cm) x 1/4" (6.4 mm) x 1/8" (3.2 mm) (100/box)
01-0003	BioFiber® Tape 10' (30.5 cm) x 1/4" (6.4 mm) x 1/8" (3.2 mm) (100/box)

#### BioFiber® Loop



##### BioFiber® Loop

- BioFiber® loop is a continuous loop of BioFiber® with design to cause a curved results suture
- The surgeon can easily to handle and move easily on the suture to receive fast suture passing through tissue and facilitating suture
- Suturing using BioFiber® loop in conjunction with the suture, technique directly reduces the time spent preparing the graft, uniformly compresses the graft, imposes strength about four minute requirements in graft strength

##### ORDERING INFORMATION

01-0001	BioFiber® Loop 10' (30.5 cm) x 1/4" (6.4 mm) x 1/8" (3.2 mm) (100/box)
01-0002	BioFiber® Loop 10' (30.5 cm) x 1/4" (6.4 mm) x 1/8" (3.2 mm) (100/box)

#### BUTTONFIX®

##### Fixation Button with Adjustable Loop

#### KNEE SPORTS MEDICINE



##### BUTTONFIX® Fixation Button with Adjustable Loop

- One of the strongest adjustable suture fixation devices for cruciate ligament reconstruction
- Adjustable suture enable controlling the loop to its optimum size
- Ripping and pulling suture enables the surgeon to test the suture patency
- Two handed operation ensures proper reduction and counter tensioning
- Graft support frame provides large surface contact with graft and no objects in from damage
- Tensile Strength of BUTTONFIX® is 1300 N.

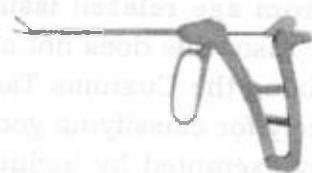
##### ORDERING INFORMATION

04-0001	BUTTONFIX® Fixation Button with Adjustable Loop
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##### RELATED INSTRUMENTS

04-0118	Buttonfix® Suture Driver Gun (Driver for Buttons) (1/2" Crosshead)
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**SHUTTLE FERRY®**  
Suture Passer Mini**SHUTTLE FERRY® Suture Passer Mini**

- The SHUTTLE FERRY® suture passer mini for the knee is designed specifically for Meniscus Repair procedures. It provides one-handed operation allowing the passage of sutures through the meniscus thus simplifying the suture passing and retrieval through the tight access in the knee. It's designed to pass suture<sup>®</sup> from 1.5<sup>mm</sup> to 3<sup>mm</sup> to 20<sup>mm</sup> fiber up to 1<sup>mm</sup> depending on the surgeon's preference.

**KNEE**  
SPORTS MEDICINE**Tendon Strippers, Closed / Open****KNEE**  
SPORTS MEDICINE**Tendon Strippers, Closed / Open**

- For safe release of tendons and grafts tendons for ACL and PCL reconstitution procedures.
- Aids for fast matheus tendons to be harvested without damage to surrounding soft tissue.
- Closed design allows full 360° enclosure for the tendon.
- Allows the harvesting tendons to be harvested primarily without detaching them from the bone.
- The diameter of the stripper is large enough to accommodate the broader semitendinosus tendon and the AC is sufficiently cut to prevent patellofemoral impingement of the graft.
- Available in closed and open versions.
- Available in sizes 3mm, 7mm and 10mm.

From a glimpse of the front pages of the aforementioned brochures, it is apparently clear that they are advertising their product as sports medicine or as mentioned in their brochure as Sports medicine implants i.e. they were being sold by them as sports medicine and the same can be used by any diseased/injured person and not by disabled persons only. It therefore follows that these Sports medicine implants are used to cure severe soft tissue injuries **and are not used in disability.**

**35.7** I also find that the statement of Shri Rajendra Gordhanbhai Patel, Chairman & Managing Director of M/s. Chetan Meditech was recorded on 27.09.2023 under Section 108 of Customs Act, 1962 wherein upon being specifically asked whether the goods imported by them at Nil rate of Customs Duty have been /will be used only for disabled, he stated that they do not have factual details regarding use of imported goods and also stated that these items are mostly used in surgical procedures / orthopaedic problems as implants or as instruments. Upon being asked whether the imported orthopaedic implants are used for treatment as defined in Section 2(s) of "The Rights of Persons with Disabilities Act,2016, he submitted that these imported goods are meant to cure physical disability caused due to Musculoskeletal disorders or soft tissue injuries. It is apparent that the above two statements of M/s. Chetan Meditech contradict each other. Further Shri Rajendra Gordhanbhai Patel in his statement dated 27.09.2023 has also informed that they are exporting 65% to 70% of these imported goods to countries like France, Australia, Malaysia, Thailand etc. and selling 30% to 35% domestically in India to their distributors, GEM portal (around 5%-10%).

**35.8** On going through Section 2(s) of The Rights of Persons with Disabilities Act, 2016 which defines a "person with disability" as "*a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full & effective participation in society equally with others*", it appears **that disability is a long term affliction/ impairment as opposed to a traumatic injury, which could be sudden and short term.** Further, in the guise of disabled persons, the goods are being used by persons suffering from Musculoskeletal disorders or soft tissue injuries, to avoid payment of Basic Customs Duty & IGST at the appropriate rate. M/s. Chetan Meditech has neither developed any mechanism nor have any factual details which ascertain that the imported orthopaedic implants/instruments are used by a disabled person and other than disabled person. M/s. Chetan Meditech is implying in their statement/submissions that all orthopaedic

implants/instruments, which it is importing under Customs Tariff Heading No.9018/9021, are being used for treatment of severely physically handicapped persons, while accepting that they do not have/maintain such data. Instead, the imported goods are used for patients suffering from soft tissue injury, ligament/tendon injuries, or Musculoskeletal disorders etc. **M/s. Chetan Meditech is claiming all types of diseased/injured/ suffering from age related issues persons to be disabled persons** which is absolutely incorrect. Also, this does not appear to be in consonance with the spirit of the Government in fixing the Customs Tariff because had the Chapter Heading 9018/9021 been meant solely for classifying goods used by such persons (which the Government had specifically exempted by including Sl. No. 578 in Notification No. 50/2017-Cus dated 30.06.2017), then there would not have been any requirement of fixing a Basic Custom Duty rate of 7.5% (as amended from time to time), and the Government would have simply assigned the Chapter Heading 9018/9021 at NIL Basic Custom Duty rate in the Customs Tariff. Therefore, **the submissions of M/s. Chetan Meditech for claiming blanket exemption for goods under this Chapter Heading appear to be invalid.** Further, upon going through the technical specification of the imported goods in the catalogues/brochures submitted by M/s. Chetan Meditech, it is apparently clear that the imported implants are being sold by them as sports medicine and same can also be used by any diseased/injured person and not only by disabled person. Further, M/s. Chetan Meditech in their catalogues has nowhere mentioned that such imported implants are used to remove disability of a disabled person. Thus the claim of M/s. Chetan Meditech that the imported goods are being used for persons who are severely physically handicapped does not hold any merit.

**35.9** In view of the facts mentioned above, it is evident that M/s. Chetan Meditech is wilfully wrongly availing the benefit of Notification No.50/2017-Cus dated 30.06.2017 as amended, in as much as the goods imported by them are being used by the persons suffering from soft tissue injury, ligament/tendon injuries, or Musculoskeletal disorders etc., whereas the said Notification exempts the goods for **disabled person only** (Sl. No 578 of Notification No. 50/2017-Cus dated 30.06.2017 as amended). Shri Rajendra Gordhanbhai Patel in his statement dated 27.09.2023 admitted that there is no mechanism developed by their Company to monitor use of particular orthopaedic implants being used by disabled persons, or by persons having sports injury/ normal injury/ traumatic injury and they do not have/maintain such data. Thus, M/s. Chetan Meditech is availing blanket exemption for all goods by assuming that the same are being used for disabled persons only.

**35.10** A plain reading of Chapter Heading 9021 reveals that it covers "Orthopaedic Appliances, including Crutches, Surgical Belts and Trusses; Splints and Other Fracture Appliances; Artificial Parts of the body; Hearing Aids and other appliances which are worn or carried, or implanted in the body, to compensate for a Defect or Disability". On going through the said Heading, it is discernible that orthopaedic appliances of said Chapter may be used to remove defects of a person arising after a general/ trauma injury and also can be used to remove the disability of a disabled person but for removal of defect, imported implants are leviable to Basic Custom Duty @ 7.5 % / 10% (as per the Customs Tariff), but to remove disability of a disabled person, Basic Custom Duty is exempted. Further, as discussed earlier, analysis of the documents submitted by M/s. Chetan Meditech for the imported orthopaedic implants revealed that they are used to treat the persons suffering from soft tissue injury, ligament/tendon injuries, or Musculoskeletal disorders etc. due to various medical conditions arising out of general /accidental / traumatic injuries and other disease/age related mobility issues. As such, they are not used for treatment of **disabled persons**.

**35.11** From the facts discussed above, it is apparently clear and discernible that M/s. Chetan Meditech is directly considering List 30 of Sl.No.578 given in the Notification No.50/2017-Cus dated 30.06.2017 which provides Basic Customs Duty exemption for

severely physically handicapped persons, without considering entry No. 578 itself (under which List 30 is given) of the Notification which provides Basic Custom Duty exemption for DISABLED persons only .I, therefore, find and hold that M/s. Chetan Meditech is not eligible to avail the benefit of Sr.No.578 of Notification No.50/2017-Cus dated 30.06.2017 in this case and applicable Basic Custom Duty @ 7.5%/10% of the CIF value of import is to be recovered as the imported goods are for persons other than disabled. Further, applicable duty of IGST@ 12% under Sl. No. 221 of Schedule-II of Notification No.01/2017-Integrated Tax(Rate) dated 28.06.2017 (upto 17.07.2022) and thereafter IGST @ 5% under Sr.No.255A of Schedule-I of Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017 (as amended by Notification No.6/2022-Integrated Tax (Rate) dated 13.07.2022) is also liable to be recovered from M/s. Chetan Meditech.

**35.12** M/s. Chetan Meditech has contended that it is a settled proposition in law that if the expressions or terms used in the act or Notification have not been defined under the said act or Notification, regard can be given to the natural and ordinary meaning of the said expression. To arrive at such a meaning, as per the rule of literal interpretation, one can possibly look into the dictionary meanings of the same. M/s. Chetan Meditech has also referred to various dictionaries for the definition of the terms 'disabled' and 'handicapped'. After referring to the said definitions, the Noticee has reached the conclusion that disability or handicap is used to describe a condition which hinders or interferes with the normal function of a person to engage in tasks as effectively as other persons can do; that none of the above definitions define disability as only permanent disability. In this regard, I find that when definitions of various terms are to be searched for, the first and foremost thing that one does is to take recourse to that particular Act where it is most likely to be found. For example, if one requires to refer to the definition of 'manufacture', 'factory', 'excise duty' or 'excisable goods', one would naturally refer to the Central Excise Act, 1944 where these terms are found to be defined under Section 2 of the said Act. Similarly, if one requires to refer to the definitions of 'bill of entry' or 'importer', it is but natural that one would turn to the Customs Act, 1962 where these terms are found to be defined under Section 2 of the said Act. Likewise, when there is a dispute with regard to the rate of Customs Duty in respect of goods imported for the use of disabled persons, as in the present case, and when: (i) Entry at Sl.No.578 of the relevant Notification No.50/2017-Customs dated 30.06.2017 prescribes NIL rate of Basic Customs Duty for *Assistive devices, rehabilitation aids and other goods for disabled* (covered under Chapter 90 or any other Chapter) *specified in List 30 appended to this Schedule* and (ii) Entry at Sl.No.257 of Schedule-I of Notification No.01/2017-IGST (Rate) dated 28.06.2017 prescribes IGST rate of 5% for *Assistive devices, rehabilitation aids and other goods for disabled* (covered under Chapter 90 or any other Chapter) *specified in List 3 appended to this Schedule*, it obviously means that the imported goods covered under these entries under the aforementioned Notifications cover **goods meant for disabled persons only**. It also means that all the goods that are covered under List 30 of Notification No.50/2017-Customs dated 30.06.2017 are meant for disabled persons only. Therefore in this context, it becomes absolutely necessary to refer to the definition of 'disabled'. Further, when the definition of the term 'disabled' is not available in the Customs Act, 1962 or in the relevant Notifications, it is but natural to refer to that Act of the Indian Law/Act of the Government of India where it is most likely to be found i.e. Rights of Persons with Disabilities Act, 2016. Ongoing through Rights of Persons with Disabilities Act, 2016, I find that 'person with disability' has been defined in Section 2(s) of the said Act. I, therefore, find that when the term 'person with disability' has been clearly defined in the Rights of Persons with Disabilities Act, 2016, the question of referring to the definitions of the above terms in common parlance or with regard to the natural and ordinary meaning of the said expressions would not arise at all in the present circumstances as contended by the Noticee. In support of my view, I rely on the decision of Larger Bench of CESTAT, SOUTH ZONAL BENCH, CHENNAI rendered in case of Commissioner v. Repco Home

Finance Limited 2020 (42) G.S.T.L. 104 (Tribunal) wherein it has been held that "In absence of its definition in a statute, its meaning as in Section 2(d) of Contract Act, 1872 could be considered"

Further, Section 2(s) of Rights of Persons with Disabilities Act,2016 reads as under:

(s) "person with disability" means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others;"

Upon going through the above definition, it is apparent that **disability is a long term affliction/impairment as opposed to a traumatic injury, which could be sudden and short term.** However, as discussed in the foregoing paras, it is found that in the guise of disabled persons, the goods imported by M/s. Chetan Meditech (classifiable under Customs Tariff Heading No.9021 of the Customs Tariff Act, 1975) are being used to treat the persons suffering from soft tissue injury, ligament/tendon injuries, or Musculoskeletal disorders etc. due to various medical conditions arising out of general /accidental / traumatic injuries and other disease/age related mobility issues. **M/s. Chetan Meditech is claiming all types of diseased/injured /suffering from age related issues persons to be disabled persons** which is not correct and completely against the policy of the Government in granting exemption because if the Chapter Heading 9021 was meant solely for classifying goods used by such persons (which the Government had specifically exempted by including Sl. No. 578 in Notification No. 50/2017-Cus dated 30.06.2017), then there would be no requirement of fixing a BCD rate of 7.5% (as amended from time to time), and the Government would have simply assigned the rate of NIL BCD to the Chapter Heading 9021 in the Customs Tariff. Further, upon going through the technical specification of the imported goods in the catalogues submitted by M/s. Chetan Meditech, it is apparent that the imported implants can be used by any diseased/injured person and not by a disabled person only. Further, Shri Rajendra Gordhanbhai Patel, Director of M/s. Chetan Meditech in his statement dated 27.09.2023 admitted that there is no mechanism developed by their Company to monitor use of particular orthopaedic implants being used by disabled persons, or by persons having sports injury/normal injury/ traumatic injury. Thus, M/s. Chetan Meditech is availing blanket exemption for all goods by assuming them as being used for disabled persons only which is completely wrong and in complete contradiction to the purpose for which the Government of India has granted these exemptions. I, therefore, do not find any force/substance in the contention of the Noticee and therefore, do not find it tenable.

**35.14** M/s. Chetan Meditech has contended that the demand of differential IGST ought to be set aside to the extent the Noticees are entitled to avail credit (Input Tax Credit) of the IGST paid, since the same would result in a revenue neutral situation. The Noticee has relied upon few judgements to support their contention. In this context, I find that the concept of revenue neutrality comes about only in relation to the credit available to the assessee on captive consumption and not by way of availability of credit to the buyer of the assessee's product. Thus, I do not find any merit in this contention. I find that ratio of decision rendered by Delhi Tribunal in the case of ACL Mobile Ltd. v. Commissioner reported as 2019 (20) G.S.T.L. 362 (Tribunal Del) is applicable here as in the said order it has been held *inter alia* as under :

**13. .... We note that no such categorical assertion can be recorded in the present case. Even otherwise we note that the availability or otherwise of credit on input service by itself does not decide the tax liability of output service or on reversecharge. The tax liability is governed by the legal provisions applicable during the relevant time in terms of Finance Act, 1994. The availability or otherwise of credit on the amount to be discharged as such tax liability cannot take away the tax liability itself. Further, the revenue neutrality cannot be**

extended to a level that there is no need to pay tax on the taxable service. This will expand the scope of present dispute itself to decide on the manner of discharging such tax liability. We are not in agreement with such proposition."

The Hon'ble Tribunal, Bombay bench in the case of ISMT Limited Versus Commissioner of Central Excise, Pune reported at 2017 (6) G.S.T.L. 298 (Tri. - Mumbai) held that:

**"9. ....Admissibility of Cenvat Credit is subject to scrutiny and claimant does not get right to immunity ipso facto. There are two different jurisdictions relating to product developer and user thereof. We may state that taxes paid today is more valuable for the country to fund public welfare than sacrificing public revenue on the palpable plea of Revenue neutrality which is subject to scrutiny to grant Cenvat credit to a different unit.**

**35.14.1 I find that the Hon'ble Supreme Court in the case of Star Industries v. Commissioner reported as 2015 (324) E.L.T. 656 (S.C.) has held as under:**

**"35. It was submitted by the learned counsel for the assessee that the entire exercise is Revenue neutral because of the reason that the assessee would, in any case, get Cenvat credit of the duty paid. If that is so, this argument in the instant case rather goes against the assessee. Since the assessee is in appeal and if the exercise is Revenue neutral, then there was no need even to file the appeal. Be that as it may, if that is so, it is always open to the assessee to claim such a credit."**

Relying upon the above decision of the apex court, the CESTAT, Chandigarh bench in the case of Vogue Textiles Ltd. Versus Commissioner of Central Excise, Delhi-III, reported at 2017 (351) E.L.T. 310 (Tri. - Chan.), held that:

**"9. As for the plea of the revenue neutrality, that cannot be an argument to justify wrong classification and availing the benefit of an exemption notification....."**

Further, in the case of Forbes Marshall Pvt. Ltd. Versus Commissioner Of Central Excise, Pune-I, reported at 2015 (38) S.T.R. 843 (Tri. - Mumbai), the Hon'ble CESTAT observed that:

**6. ....Simply because a situation leads to revenue neutrality does not imply that tax need not be paid on time. When law requires tax to be paid it has to be paid as per time specified. .... It cannot be said that the Government has not lost interest between the two dates, notwithstanding the fact that Cenvat credit could have been availed on the same date if duty had been paid on time. .... I hold that interest is payable under Section 75 of the Finance Act.**

**35.15** M/s. Chetan Meditech has contended that in the present case, the impugned goods imported by the Noticee, are prescribed by registered Medical Professionals/Health Care Professionals only in case of severe disability and have enclosed certificates issued by various medical associations and authorities certifying that the imported products are meant for severely disabled patients. In this regard, it would be worth to re-produce the content of Para A.24 of their written submission dated 16.01.2024 which is as under:

S. No.	Certificates issued by	Summary of the certificate
1.	Brigadier Dr. H.S. Agrawal, Ms, D Ortho, Fellow Arthroplasty, Germany. Director, Medi Health Hospital	Certifying that soft tissue and bone fixation devices such as Bone and Suture Anchor, Fixation buttons with/without suture loop, or adjustable suture loop, etc. are used to treat soft tissue injuries of various kinds which causes permanent physical disability if left uncured. These are permanent implantable devices which prevent and cure permanent impairment.
2.	Dr.Anshu Shekhar, MBBS, MS (Orthopaedics), FARS (ISAKOS), Heritage Hospital Kachna, Raipur	These devices treat various kinds of soft tissue injuries which causes permanent disability if uncured. These are permanent implantable devices which prevent and cure permanent impairment.
3.	Dr.Parag K. Shah, M.S. D.N.B. (Orthopaedics), Fracture and Orthopaedic Hospital, Ahmedabad	These devices treat various kinds of soft tissue injuries which causes permanent disability if uncured. These are permanent implantable devices which prevent and cure permanent impairment.

I find that summary of all the aforesaid three Certificate as submitted by the Noticee suggest that impugned goods are used to treat soft tissue injuries of various kinds which **causes permanent physical disability if left uncured/ prevent and cure permanent impairment**. Thus, I find that the aforesaid three certificates rather favour to the Revenue as none of the Certificate suggest that impugned goods are used for disabled. It says for cure/ to avoid permanent physical disability.

Without prejudice to the above findings on certificates, I find that expert opinion is a rather weak type of evidence and the Courts do not generally consider it as offering conclusive proof as the doctors are not expert in classification of the goods under Customs Act *valuation, determination of duty or availability of benefit of exemption notification*. In this context, I find that ratio of the decision of Hon'ble Kolkata Tribunal rendered in case of Commissioner of Customs (Port), Kolkata Vs. Chirag Corporation reported in 2020 (374) ELT 444 (Tri. Kolkatta) is squarely applicable to the case on hand wherein it has been interalia held as under:

**“14. We have gone through the letter/memo of the Ministry of Agriculture relied upon by the first appellate authority in the impugned order. This only mentions that the benefit of Notification No. 12/2012-Cus. (supra) available to Rotary Tiller, may also be extended to power tiller and requested the Under Secretary of their own Department, to take up the matter with the Finance Ministry in regard to eligibility of exemption notification or classification. We also note that the Ministry of Agriculture is not expert in classification of goods under the Customs Act, valuation, determination of duty or availability of benefit of exemption notification. They have rightly applied their mind from their point of view and felt that the exemption notification must be available to power tiller also. This view of the Ministry of Agriculture, cannot determine the eligibility or otherwise of the exemption notification to power tiller. It must be determined solely based on the way exemption notification as it is drafted. A bare perusal of the exemption notification, shows that it is available, *inter alia*, to rotary tiller/weeder. It does not suggest directly or indirectly that it is available to power tillers also. Therefore, in our considered view, the benefit of exemption notification is not available to the power tillers imported by the appellant.”**

**35.16** Next issue revolves around the consequential actions such as re-determination of Customs Duty with interest, liability of the confiscation of the imported goods, and penalty on the Importer/Noticee viz. M/s. Chetan Meditech.

**36. Whether the consequential actions such as re-determination of Customs Duty alongwith interest on differential Customs Duty, on M/s Chetan MeditechPrivate Limited arise or otherwise?**

**36.1** Keeping the aforesaid discussions in mind, I proceed to examine the matter further. After introduction of self-assessment through amendment in Section 17 of the Customs Act, 1962 vide Finance Act, 2017, the practice of routine assessment, concurrent audit and examination has been dispensed with and the importer has been assigned the responsibility to assess their own goods under Section 17 of the Customs Act, 1962. It is the responsibility of the Importer to correctly declare the description, classification, applicable exemption Notification, applicable Duties, rate of Duties and its relevant Notifications etc. as per their eligibility in respect of said imported goods and pay the appropriate Duty accordingly. However, contrary to the said provision, M/s. Chetan Meditech failed to declare the correct Notification at the time of import. They were well aware of the Customs Notification No 50/2017-Cus dated 30.06.2017 as amended (Sl. No. 578, List 30 Sl.No.E(9)) which they were availing and wilfully availed the benefit of exemption from BCD in as-much-as they have imported the orthopaedic implants for patients suffering from general/accidental/traumatic injuries and other age/disease related mobility issues in the guise of disabled persons to evade tax. Further, they mis-stated that they are using the imported orthopaedic implants for disabled/severely physically handicapped persons. Further, had the departmental officers not started the investigation, the misuse of above Notification would never have come to light. M/s. Chetan Meditech has suppressed the facts by mis-declaring that the imported orthopaedic appliances shall be used by the disabled, which establishes the *mensrea* on the part of M/s. Chetan Meditech to evade Customs Duty, therefore, extended period of limitation for demand of Duty is applicable in the present case. By way of adopting this modus in respect of impugned goods, M/s. Chetan Meditech Private Limited had got cleared goods with the assessable value of **Rs.14,71,73,950/- (Rupees Fourteen Crore, Seventy One Lakh, Seventy Three Thousand Nine Hundred and Fifty only)** from Air Cargo, Ahmedabad evading Customs Duty amounting to **Rs.1,72,31,598/- (Rupees One Crore, Seventy Two Lakh, Thirty One Thousand, Five Hundred and Ninety Eight Only)** in the process which merits invocation of extended period for demand of the said Customs Duty under the provisions of Section 28(4) of the Customs Act, 1962. Further, since the demand of Customs Duty also includes IGST, it is pertinent to refer to the relevant section of IGST Act, 2017. Section 5(1) of the IGST Act, 2017 reads as under:

**1. *SECTION 5 of the Integrated Goods and Services Act, 2017 (IGST Act)***

***Levy and Collection***

(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under **Section 15 of the Central Goods and Services Tax Act** and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person:

Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.

(2) -----

Section 3(7) & 3(8) of the Customs Tariff Act, 1975 reads as under:

**1. SECTION 3 of the Customs Tariff Act, 1975**

(7) Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty percent as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (8) or sub-section (8A), as the case may be.

(8) For the purposes of calculating the integrated tax under sub-section (7) on any imported article where such tax is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962 (52 of 1962), be the aggregate of —

- (a) the value of the imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962) or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and
- (b) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962 (52 of 1962), and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include the tax referred to in sub-section (7) or the cess referred to in sub-section (9).

**36.1.1** I, therefore, find and hold that the aforementioned Duty is recoverable from M/s. Chetan Meditech under the provisions of Section 28(4) of the Customs Act, 1962 read with Section 5(1) of the Integrated Goods & Service Tax, 2017 (as amended) and Section 3(7) of the Customs Tariff Act 1975 (as amended).

**36.2** It has also been proposed in the Show Cause Notices to demand and recover interest on the differential Customs Duty of **Rs. 1,72,31,598/- (Rupees One Crore, Seventy Two Lakh, Thirty One Thousand, Five Hundred and Ninety Eight Only)** in respect of the imports under Section 28AA of the Customs Act, 1962. Section 28AA ibid provides that when a person is liable to pay Duty in accordance with the provisions of Section 28 ibid, in addition to such Duty, such person is also liable to pay interest at applicable rate as well. Thus, the said Section provides for payment of interest automatically along with the Duty confirmed/ determined under Section 28 ibid. I have already held that the differential Customs Duties of **Rs. 1,72,31,598/- (Rupees One Crore, Seventy Two Lakh, Thirty One Thousand, Five Hundred and Ninety Eight Only)** is liable to be recovered from the Noticee under Section 28(4) of the Customs Act, 1962. I, therefore hold that the interest on the said Customs Duty determined/confirmed under Section 28(4) ibid is to be recovered under Section 28AA of the Customs Act, 1962.

**36.3** M/s. Chetan Meditech has contended that Section 28(4) is not invokable in this case since, there was no suppression or collusion; that they have not mis-declared the details of the imported goods but have submitted all the relevant documents at the time of filing of Bill of Entry like invoices, etc. clearly specifying the nature of goods that are being imported; that the validity of these documents has not been contested by the Department and therefore it cannot be said that there was any mis-representation or suppression of the fact. They have relied upon some judgements to support their contention. In this regard, I find that on referring to the relevant entries of the Notifications i.e. entry No.578 of Notification No.50/2017-Cus dated 30.06.2017 (as amended) as discussed in the earlier paras, there can be no dispute about the fact that the said entries cover those imported goods that are meant solely for disabled persons only and do not cover imported goods meant for persons suffering from soft

tissue injury, ligament/tendon injuries, or Musculoskeletal disorders etc. due to various medical conditions arising out of general /accidental / traumatic injuries and other disease/age related mobility issues. Further, Section 2(s) of Rights of Persons with Disabilities Act, 2016 defines "person with disability" as "*a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others;*". However, as discussed in the foregoing paras, it is found that in the guise of disabled persons, the goods imported by M/s. Chetan Meditech (classifiable under Customs Tariff Heading No.9021 of the Customs Tariff Act, 1975) are being used for patients suffering from soft tissue injury, ligament/tendon injuries, or Musculoskeletal disorders etc. due to various medical conditions arising out of general /accidental / traumatic injuries and other disease/age related mobility issues etc. **M/s. Chetan Meditech is claiming all types of diseased/injured /suffering from age related issues persons to be disabled persons** which is not correct and completely against the policy of the Government of India in granting exemption because if the Chapter Heading 9021 was meant solely for classifying goods used by such persons (which the Government had specifically exempted by including Sl. No. 578 in Notification No. 50/2017-Cus dated 30.06.2017), then there would be no requirement of fixing a BCD at the rate of 7.5% (as amended from time to time), and the Government would have simply assigned the rate of NIL BCD to the Chapter Heading 9021 in the Customs Tariff. Further, upon going through the technical specification of the imported goods in the catalogues submitted by M/s. Chetan Meditech, there is no specific mention therein that the impugned goods are to be used for the treatment of disabled persons. A mere glance through the brochures/technical specifications provided by them is enough evidence that the imported implants are being sold by them as sports medicines and the same can be used by any diseased/injured person and not by a disabled person only. Further, although M/s. Chetan Meditech has **wrongly availed Basic Custom Duty exemption for disabled** by classifying their imported goods under CTH 9018/9021 by availing the benefit of full exemption from Basic Customs Duty vide Notification No. 50/2017 dated 30.06.2017 as per Sr. No. 578, List 30, and Entry No. E(9) for payment of Basic Custom Duty which they state are to be used in the treatment of disabled persons only, I find it extremely surprising to note that the same goods which the Noticee/Importer states are meant to compensate for a **defect or disability of a person** have been/are being classified under Sr. No. 221 of Schedule-II (duty payable @ 12% (upto 17.07.2022) & under Sr. No. 255A of Schedule-I (duty payable @ 5% w.e.f. 18.07.2022) of the Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 for payment of IGST when there is an entry exactly identical to Sr. No.578 of Notification No.50/2017-Cus available in Notification No.01/2017-Integrated Tax (Rate) i.e. Sl. No. 257 of Schedule-I (for disabled) of the Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 wherein the IGST payable is 5% and pertains to imported goods which are used in the treatment of disabled persons only. Sr. No.221 of Schedule-II of Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017 as amended reads as under:

S. No.	Chapter/ Heading/ Sub- Heading/ Tariff item	Description of goods
221	9021	<b>Splints and other fracture appliances; artificial parts of the body; other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; intraocular lens [other than orthopaedic appliances, such as crutches, surgical belts, and trusses, hearing aids]</b>

As can be seen from the above, the description of goods mentioned in Sr. No. 221 above, covers “*Splints and other fracture appliances; Artificial parts of the body; Other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; Intraocular lens*”; are leviable to IGST @ 12% & *orthopaedic appliances, such as crutches, surgical belts, and trusses, hearing aids* are not leviable to IGST @ 12%. The above description of goods mentioned in Sr. No. 221 clearly implies that **everything other than the exceptions provided in brackets, [i.e. orthopaedic appliances, such as crutches, surgical belts, and trusses, hearing aids]**, which gets covered under Heading 9021 of Harmonized System of Nomenclature(HSN) should be classified under Sr. No. 221 of Schedule-II of Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017. Since the products imported by the Noticee are not covered under [orthopaedic appliances, such as crutches, surgical belts, and trusses, hearing aids], thus they will apparently be covered under Sr. No. 221 of Schedule-II of the Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017 as amended. It is apparent from the above that M/s. Chetan Meditech were very much aware that Sr.No.221 of Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017 as amended aptly covers the goods imported by them as they are other than orthopaedic appliances, such as crutches, surgical belts, and trusses, hearing aids and these goods imported by them are implanted in the body of their patients solely to compensate for a defect or disability in the patient. This act of M/s. Chetan Meditech itself is enough to doubt the bonafide of the Noticee and indicates that even though the Noticee was very much aware that the benefit of Sr.No.578 of Notification No.50/2017-Cus was not available to them, they deliberately availed the benefit of the same in order to avail full exemption from Basic Customs Duty. Further, it is only after the investigations were initiated by the Department, that the facts came to light that the goods imported by M/s. Chetan Meditech were not being used for disabled persons only. Thus, it is apparent from foregoing paras that the only purpose of the Noticee for taking benefit of entry No.578 of Notification No.50/2017-Cus dated 30.06.2017 (as amended) was to evade payment of appropriate Customs Duty which they were otherwise required to pay to the Government exchequer by wrongly availing the benefit of the aforementioned entry of the above Notification for which they were otherwise ineligible. M/s. Chetan Meditech has suppressed the facts by mis-declaring that the imported orthopaedic appliances shall be used by the disabled, which establishes the *mensrea* on the part of M/s. Chetan Meditech to evade Customs Duty. Therefore, extended period of limitation for demand of Duty is applicable in the present case. Therefore, the contention of the Noticee does not hold any water and extended period has been rightly invoked in the case in hand. Therefore, the contention of M/s. Chetan Meditech is not tenable and resultantly the ratio of judgements relied upon by them is also not applicable to the case in hand.

**36.4** M/s. Chetan Meditech has contended that the case involves interpretation of the provisions of the Customs Act and Notification i.e. Classification of any item comes within the interpretation of law and therefore, cannot be construed to be a case of willful mis-statement or suppression of facts and therefore extended period cannot be invoked. They have placed reliance on a few judgements to support their contention. In this regard, I find that the present case is neither a classification dispute nor an interpretation of law but intentional and wrong availment of benefit of entry No.578 of Notification No.50/2017-Cus dated 30.06.2017 (as amended) which were not available to M/s. Chetan Meditech as discussed in the foregoing paras by resorting to suppression of facts and mis-declaring in the Bills of Entry that the goods imported by them were to be used for disabled which in reality were being used for patients suffering from soft tissue injury, ligament/tendon injuries, or Musculoskeletal disorders etc. due to various medical conditions arising out of general /accidental / traumatic injuries and other disease/age related mobility issues etc.i.e. patients not covered under the definition of “person with disability” as defined under Section 2(s) of Rights of Persons with Disabilities Act, 2016. Thus, the extended period has been rightly invoked in the present case. I, therefore, find that contentions of the Noticee are

without merit and liable to be rejected outrightly. Subsequently, the ratio of judgements referred to by the Noticee fail to help their cause in the case in hand.

**37. Whether the goods valued at Rs.14,51,73,950 by M/s.Chetan Meditech Private Limited are liable for confiscation under Section 111(m) and 111(o) of the Customs Act, 1962?**

**37.1** Show Cause Notice proposes for the confiscation of the imported goods valued at Rs.14,51,73,950/- under the provisions of Sections 111(m) and 111(o) of the Customs Act, 1962.

**37.2** As discussed in paras supra, M/s. Chetan Meditech Private Limited have imported the impugned goods by wrongly availing the benefit of Sl.No.578 of Notification No.50/2017-Customs dated 30.06.2017 as amended (by paying NIL BCD) instead of paying Customs Duty at higher rate of 7.5%/10% BCD and by way of adopting this modus in respect of impugned goods, they had got cleared goods valued at Rs.14,51,73,950/- from Air Cargo Ahmedabad without paying Customs Duty at applicable rate. Thus M/s. Chetan Meditech has deliberately and knowingly indulged in suppression of facts in respect of their imported goods and has wilfully and wrongly availed the benefit of specific entries of the aforementioned Notifications which was not available to them, with an intent to evade payment of higher rate of Customs Duty and also contravened the provisions of Section 46(4) of the Customs Act, 1962. In terms of Section 46(4) of the Customs Act, 1962, the Importer is required to make and subscribe to a declaration as to the truth of the contents of the Bills of Entry submitted for assessment of Customs Duty. Section 111 (m) of the Customs Act, 1962 provides for confiscation of any imported goods which do not correspond in respect of value or in any other particular with the entry made under this Act. In this case, M/s. Chetan Meditech has resorted to wrong availment of benefit of the specific entry of the Notification as mentioned above in the Bills of Entry filed by them with an intention to avoid higher Duty liability that would have otherwise accrued to them. Thus, provisions of Section 111(m) of the Customs Act, 1962 would come into picture. Section 111(o) of the Customs Act, 1962 provides for confiscation of any imported goods exempted, subject to any condition, from Duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer. In the present case, M/s. Chetan Meditech has wilfully and wrongly availed the benefit of Sl.No.578 of Notification No.50/2017-Customs dated 30.06.2017 as amended which was not available to them with an intent to evade payment of applicable rate of Customs Duty, hence the provisions of Section 111(o) comes into play. I thus find that wilful and wrong availment of the benefit of the specific entry of the aforementioned Notification by M/s. Chetan Meditech Private Limited has rendered the impugned goods liable for confiscation under Sections 111(m) and 111(o) of the Customs Act, 1962. I, therefore, hold the goods valued at **Rs.14,51,73,950/- (Rupees Fourteen Crore, Fifty One Lakh, Seventy Three Thousand, Nine Hundred and Fifty only)** liable to confiscation under the provisions of Sections 111(m) and 111(o) ibid. Further, the aforementioned goods are not physically available for confiscation, and in such cases, redemption fine is imposable in light of the judgment in the case of **M/s. Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad)** wherein the Hon'ble High Court of Madras has observed as under:

*The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting*

confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. 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. We accordingly answer question No. (iii).

**37.3** Hon'ble High Court of Gujarat by relying on this judgment, in the case of **Synergy Fertichem Ltd. Vs. Union of India, reported in 2020 (33) G.S.T.L. 513 (Guj.)**, has held interalia as under:-

“

**174.** ..... In the aforesaid context, we may refer to and rely upon a decision of the Madras High Court in the case of M/s. Visteon Automotive Systems v. The Customs, Excise & Service Tax Appellate Tribunal, C.M.A. No. 2857 of 2011, decided on 11th August, 2017 [2018 (9) G.S.T.L. 142 (Mad.)], wherein the following has been observed in Para-23;

“23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. 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. We accordingly answer question No. (iii).”

**175.** We would like to follow the dictum as laid down by the Madras High Court in Para-23, referred to above.”

**37.4** M/s. Chetan Meditech has contended that the impugned goods cannot be held liable for confiscation under Section 111(m) of the Customs Act as there was

no mis-declaration either in respect of value, description, classification or in any other particular with the entry made under the Customs Act. They have also contended that the impugned goods cannot be held liable to confiscation under Section 111(o) of the Act as the exemption was rightly claimed as these impugned goods are used for treating disability; that the imported goods were used to treat soft tissue injuries and these injuries can be of permanent nature if left uncured; that the goods are capable of use to treat disability. They have cited few judgements to support their contention. In this context, as discussed in the foregoing paras, it is very much apparent that M/s. Chetan Meditech were well aware that they were not eligible to avail the benefit of Customs Notification No 50/2017-Cus dated 30.06.2017 as amended (Sl. No. 578, List 30 Sl.No.E(9)) and wilfully availed full exemption from BCD, in as-much-as they have imported the orthopaedic implants for patients suffering from soft tissue injury, ligament/tendon injuries, or Musculoskeletal disorders etc. due to various medical conditions arising out of general /accidental / traumatic injuries and other disease/age related mobility issues etc. in the guise of importing it/using it for disabled persons to evade tax. Further, they mis-stated that they are using the imported orthopaedic implants for disabled/severely physically handicapped persons. Further, had the departmental officers not started the investigation, the misuse of above Notification would never have come to light. M/s. Chetan Meditech has suppressed the facts by mis-declaring that the imported orthopaedic appliances shall be used by the disabled, which establishes the *mensrea* on the part of M/s. Chetan Meditech to evade Customs Duty. Further, as discussed in the foregoing para, Section 111 (m) of the Customs Act, 1962 comes into play as M/s. Chetan Meditech has resorted to wrong availment of benefit of the specific entry of aforementioned Notification as mentioned above in the Bills of Entry filed by them with an intention to avoid higher Duty liability that would have otherwise accrued to them. Also, the provisions of Section 111(o) of the Customs Act, 1962 comes into play as in the present case, M/s. Chetan Meditech has wilfully and wrongly availed the benefit of Sl.No.578 of Notification No.50/2017-Customs dated 30.06.2017 as amended which was not available to them with an intent to evade payment of higher rate of Customs Duty. In view of the above, the contentions of M/s. Chetan Meditech is not tenable and subsequently, the ratio of the judgements relied upon by them are also not applicable to the case in hand.

**38. Whether M/s. Chetan Meditech Private Limited is liable for penalty under Section 114A of the Customs Act, 1962 ?**

**38.1** The Show Cause Notice proposes penalty under the provisions of Section 114A of the Customs Act, 1962 on M/s. Chetan Meditech. The Penalty under Section 114A can be imposed only if the Duty demanded under Section 28 ibid by alleging wilful mis-statement or suppression of facts etc. is confirmed/determined under Section 28(4) of the Customs Act, 1962. As discussed in the foregoing paras, M/s. Chetan Meditech has deliberately and knowingly indulged in suppression of facts in respect of their imported product and has wilfully and wrongly availed the benefit of specific entry of Notification No.50/2017-Customs dated 30.06.2017 (Sl.No.578 of said Notification) as amended (by paying NIL BCD) which was not available to them with an intention to avoid the higher Duty liability that would have otherwise accrued to them. I have already held that the differential Customs Duty of **Rs.1,72,31,598/- (Rupees One Crore, Seventy Two Lakh, Thirty One Thousand Five Hundred and Ninety Eight Only)** is to be demanded and recovered from M/s. Chetan Meditech under the provisions of Section 28(4) of the Customs Act, 1962. As the provision of imposition of penalty under Section 114A ibid is directly linked to Section 28(4) ibid, I find that penalty under Section 114A of the Customs Act, 1962 is to be imposed upon M/s. Chetan Meditech.

**38.2** M/s. Chetan Meditech has contended that In the foregoing paragraphs, it has been submitted in detail that no further duty is payable as the Noticee had correctly

taken benefit of the impugned notification; that for the same reasons, no penalty under Section 114A can be recovered; that for the sake of brevity and in order to avoid unnecessary repetition, it is requested that the submissions made with regard to the duty portion may be considered as part of the submissions relating to the imposition of penalty. Thus, since no demand is sustainable, for the same reason no penalty is imposable on the Noticee. They have placed reliance on few judgements to support their contention. In this regard, the modus operandi resorted to by the Noticee by suppressing the facts that they have imported the orthopaedic implants for patients suffering from general/accidental/traumatic injuries and other age/disease related mobility issues in the guise of importing it/using it for disabled persons with an intention to evade payment of appropriate Customs Duty has been clearly brought out in the discussions in the foregoing paras. Further, I have already found and held that extended period for demand of Duty under Section 28(4) of the Customs Act, 1962 is sustainable in the present case. As the provision of imposition of penalty under Section 114A ibid is directly linked to Section 28(4) ibid, I find that penalty under Section 114A of the Customs Act, 1962 is to be imposed upon M/s. Chetan Meditech. Further, both the judgements referred to by the Noticee Collector of Central Excise vs. H.M.M. Limited, 1995 (76) ELT 497 (SC) and Commissioner of Central Excise, Aurangabad vs. Balakrishna Industries, 2006 (201) ELT 325 (SC), pertains to situations where penalty is not imposable when department is not able to sustain the demand which is not the issue in the present case since the grounds of confirmation of demand has already been discussed in details in the foregoing paras. As can be seen, the said issue being different, the ratio of the judgements cannot be made applicable to the case in hand. I, therefore, do not find any merits in the contention of the Noticee and also do not find ratio of any of the above judgements applicable to the case in hand.

**39.** In view of my findings in paras supra, I pass the following order:

**:ORDER:**

- a) I deny the benefit of Customs Notification No.50/2017-Cus dated 30.06.2017 as amended (Sl. No. 578, List 30 Sl. No. E (9)) as claimed by them for exemption from payment of Basic Customs Duty;
- b) I confirm the Differential Duty amounting to **Rs.1,72,31,598/- (Rupees One Crore, Seventy Two Lakh, Thirty One Thousand, Five Hundred and Ninety Eight Only)**[Basic Customs Duty amounting to 1,26,67,466/- (Rupees One Crore, Twenty Six Lakh, Sixty Seven Thousand, Four Hundred and Sixty Six Only), Health Cess amounting to Rs.17,60,102/- (Rupees Seventeen Lakh, Sixty Thousand One Hundred and Two Only), Social Welfare Surcharge (SWS) amounting to Rs.14,42,757/- (Rupees Fourteen Lakh, Forty Two Thousand, Seven Hundred and Fifty Seven Only) and IGST amounting to Rs.13,61,273/- (Rupees Thirteen Lakh, Sixty One Thousand, Two Hundred and Seventy Three Only)], as discussed above in foregoing paras to the Notice, which was short paid during the period 01.10.2018 to 30.09.2023 and order for recovery of the same under Section 28(4) of the Customs Act, 1962, read with Section 5(1) of the Integrated Goods & Service Tax Act, 2017 (as amended) read with Section 3(7) of the Customs Tariff Act 1975 (as amended) as they have breached the provisions of Section 12, Section 17 and Section 46 of the Customs Act, 1962;
- c) I order to recover the interest on the aforesaid demand of Duty confirmed at (b) above as applicable in terms of Section 28AA of the Customs Act, 1962;
- d) I hold the goods imported during the period under consideration valued at **Rs.14,51,73,950/- (Rupees Fourteen Crore, Fifty One Lakh, Seventy Three Thousand, Nine Hundred and Fifty only)** liable to confiscation

under the provisions of Section 111(m) and Section 111(o) of the Customs Act, 1962. However, as the goods are not physically available for confiscation, I impose redemption fine of Rs.1,45,00,000/- (Rupees One crore, forty five lakh, only) in lieu of confiscation under Section 125 of the Customs Act, 1962

f) I impose a penalty of **Rs. 1,72,31,598/- (Rupees One Crore, Seventy Two Lakh, Thirty One Thousand, Five Hundred and Ninety Eight Only)** on **M/s. Chetan Meditech Private Limited** plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed at (b) above under Section 114A of the Customs Act, 1962. However, in view of the first and second proviso to Section 114A of the Customs Act, 1962, if the amount of Customs Duty confirmed and interest thereon is paid within a period of thirty days from the date of the communication of this Order, the penalty shall be twenty five percent of the Duty, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days.

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

**41.** The Show Cause Notice VIII/10-21/Commr/O&A/2023-24 dated 06.10.2023 is disposed off in above terms.



3-10-2024

**(Shiv Kumar Sharma)**  
Principal Commissioner

**DIN-20241071MN0000222F6B**

F.No. VIII/10-21/Commr/O&A/2023-24

Date: 03.10.2024

**To**

**M/s. Chetan Meditech Private Limited,**  
Plot No. MD 4, Charal Industrial Estate,  
DEE GIDC 2, Sanand, Ahmedabad, Gujarat-382110.

**Copy to:**

- (1) The Chief Commissioner of Customs, Gujarat Customs Zone, Ahmedabad.
- (2) The Additional Commissioner, Customs, TRC, HQ, Ahmedabad.
- (3) The Deputy Commissioner, Air Cargo Complex, Ahmedabad
- (4) The Superintendent of Customs(Systems) in PDF format for uploading on the website of Customs Commissionate, Ahmedabad.
- (5) Guard File.