प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद
"सीमा शुल्क भवन", पहली मंजिल, पुराने हाई कोर्ट के सामने, नवरंगपुरा, अहमदाबाद-8009380
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DIN: 20261071MN00001BF663

PREAMBLE

A	फ़ाइल संख्या/ File No.		ACC/ASST/BE/MISC/51/2026-ACC-AHMD-CUS-COMMRTE-AHMEDABAD
B	कारण बताओ नोटिस संख्या–तारीख /Show Cause Notice No. and Date		Show Cause Notice F.No. VIII/48-89/ACC/Audit/Group-2/2025-26 dated 13.04.2026
C	मूल आदेश संख्या/ Order-In-Original No.		90/ADC/SR/O&A/HQ/2026-27
D	आदेश तिथि/ Date of Order-In-Original		**12.10.2026**
E	जारी करनेकी तारीख/ Date of Issue		**13.10.2026**
F	द्वारापारित/ Passed By		**SHRAVAN RAM** Additional Commissioner Customs Ahmedabad
G	आयातक का नाम औरपता / Name and Address of Importer/Noticee / Passenger		M/s Horster Life Science Pvt. Ltd., Plot No. 905/12/A, G.I.D.C. Panoli, Taluka-Ankleshwar, Panoli-394116 (IEC 3414002612)
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क(अपील), चौथी मंज़िल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		

(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।

BRIEF FACTS OF THE CASE

M/s Horster Life Science Pvt. Ltd., Plot No. 905/12/A, G.I.D.C. Panoli, Taluka-Ankleshwar, Panoli-394116 (IEC 3414002612), (hereinafter referred to as "the noticee" or "the claimant") had imported Intermediate: 5-Oxido-2-Oxohexahydro-1H- Thieno[3,4-D] Imidazol-4YL] Tentonic Acid Crude' falling under CTH 29420090 vide BE No.7403016 dated 18.08.2023 on payment of duty to the tune of 8,09,482/-. However, on testing of goods after its importation, it was found to be "Biotin" and not as an intermediate of Biotin or Crude form as declared in the Bill of Entry. The Central Drugs Standard Control Organisation (CDSCO) vide letters No.25A/1/2023-PO dated 13.09.2023 and again vide letter dated 29.09.2023 confirmed that the goods were Biotin and that the Biotin can be imported only with license obtained under Drugs and cosmetics Act and Rules. The claimant requested the CDSCO to allow it to re-export the goods to the supplier country and accordingly, the said goods were not cleared for home consumption and subsequently, the said goods were re-exported to the supplier located in China. At the time of import, the claimant had made prior payment of duty to the tune of Rs. 8,09,482/- paid in respect of the aforesaid BE dated 22.08.2023.

2. The claimant filed refund claim vide letter 22.11.2023 (received by the Department on 01.12.2023) seeking refund of aforesaid duty of Rs. 8,09,482/- on the ground that the Customs Duty paid on the goods which were not cleared for home consumption from Customs Jurisdiction to the claimant and were re-exported back to original supplier. As per the OIO, the claimant had paid redemption fine of Rs. 1,00,000/- under Section 125 of the Customs Act, 1962 in lieu of confiscation of the said goods and penalty of 50,000/- under Section 112(a)(i) of the Customs Act, 1962. Obviously, by admission, the goods were the one regarding which offence under Section 111(d) of the Customs Act, 1962.

3. On query being raised by the Department regarding applicability of Section 26A of the Customs Act, 1962 to the instant claim, the claimant itself admitted that it was entitled for refund under Section 26A of the Act and that it was claiming the refund under Section

27 ibid. Later, the refund of Rs. 8,09,482/- was sanction to the claimant vide OIO No.03/AC/ACC/OIO/ Horster/2024-25 dated 20.04.2024 vide cheque dated 20.04.2024.

4. During Audit, it was observed the refund of Rs. 8,09,482/- sanctioned to M/s Horster Life Science Pvt. Ltd. was erroneous and irregular. As per clause (d) of Section 111 of the Customs Act, 1962, any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force shall be liable to confiscation. Such action is an offence under clause (b) of Section 135 of the Act ibid.

5. As per Section 125(1) of the Customs Act, 1962, redemption fine is leviable on the import of such goods, prohibited under the Customs Act, 1962 or under any other law, which are authorised for confiscation by the said Act.

6. Second proviso to the Section 125(1) ibid states that without prejudice the proviso to Section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

7. As per Section 125(2) of the Act ibid, where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition to any duty and charges payable in respect of such goods.

8. Thus, redemption fine payable under Section 125 of the Customs Act, 1962 doesn't obliterate the liability of the importer to pay duty on such imported goods.

9. As discussed above-

i. The goods were restricted goods;

ii. Permission under Drugs and Cosmetics Act, 1940 was required for import of these goods. Such permission was not available to the claimant at the time of importation.

iii. Accordingly, it became prohibited goods.

iv. As per Section 125(2) of the Customs Act, 1962 (supra), the claimant was required to pay the applicable duties also on the said goods in addition to the redemption fine.

v. Hence, the duties paid by the claimant on the import of these prohibited goods were valid and eligible duties leviable under Section 12 of the Customs Act, 1962.

vi. Proviso to Section 23(2) of the Customs Act, 1962 created a bar on the Department by providing that the owner of such imported goods regarding which an offence appeared to have been committed under this Act or under any other law for the time being in force shall not be permitted to relinquish his title on the said goods. Accordingly, importer of

such goods were required to pay duty applicable on such goods and the benefit of remission of duty was not admissible to such goods. In the instant case, since the goods were prohibited goods as discussed above, the claimant was not entitled to relinquish his title to the goods and accordingly, he was liable to pay duty leviable on the impugned goods.

vii. The claimant also has not claimed that the duty so paid was in excess of the duties payable on these goods as required under clause (g) of first proviso to Section 27(2) of the Customs Act, 1962 (supra). Thus, the duties were paid at the rates applicable to the said goods and were not the case of excess payment of duty. Accordingly, the instant claim was not the subject matter of Section 27 of the Customs Act, 1962.

10. In view of above facts and in view of Section 27(3) of the Customs Act, 1962 (supra), the claimant was not eligible for refund of Rs. 8,09,482/-. This irregular refund sanction of Rs. 8,09,482/- liable to be recovered from the claimant.

11. Accordingly, the claimant was issued a letter/notice F.No. VIII/48-89/ACC/Audit/Group-2/2025-26 dated 30.09.2025 informing the above facts and requested them to pay irregular refund sanction of Rs. 8,09,482/- along with applicable interest.

12. The claiment vide their letter dated 06.11.2025 submitted that:-

1. This is in reference to the Show Cause Notice (hereinafter referred to as "SCN") F.No. VIII/48-89/ACC/Audit/Group-2/2025-26 dated 30.09.2025, whereby, the Noticee have been requested to pay the amount of Rs. 8,09,482/- with interest, which was duly sanctioned to the Noticee by the Ld. Adjudicating Authority vide Order-in-Original (OIO) No. 03/AC/ACC/OIO/Horster/2024-25 dated 20.04.2024.

2. The Noticee have carefully examined the contents of the SCN and submit that the impugned demand letter/notice is not sustainable in law or on the facts of the case. The proposal to recover the duly sanctioned refund is based on a misinterpretation of statutory provisions and is contrary to the settled legal position established by the Hon'ble Supreme Court of India. We are filing this detailed reply to contest the demand letter/ purported SCN on the grounds of jurisdiction as well as on merits.

A. PRELIMINARY OBJECTION: DEMAND LETTER/SCN IS WITHOUT JURISDICTION AND BARRED BY LAW.

3. At the outset, we submit that the impugned demand Letter/ purported SCN is void ab initio as it has been issued without jurisdiction. The refund of Rs. 8,09,482/- was sanctioned to us vide a quasi-judicial order, being OIO No. 03/AC/ACC/OIO/Horster/2024-25 dated 20.04.2024, passed by the Ld. Adjudicating Authority after due process of law and after considering our detailed written and oral submissions.

4. It is a settled principle of law that an order passed by an adjudicating authority is binding on the department unless it is challenged before a higher appellate forum through the statutory mechanism provided under the Act. If the department was of the view that the said OIO sanctioning the refund was erroneous or not legal and proper, the only recourse available was to file an appeal before the Ld. Commissioner of Customs (Appeals) under Section 129D of the Customs Act, 1962.

5. The department has not challenged the said OIO before the appellate authority within the prescribed time limit. Consequently, the OIO dated 20.04.2024 has attained finality and is binding on all subordinate and coordinate authorities of the Customs department. The present SCN, purportedly issued under Section 28 of the Customs Act, 1962, is a collateral attempt to review and set aside a quasi-judicial order, which is impermissible in law.

6. The Hon'ble Supreme Court in the case of Commissioner of C. Ex., Kanpur v. Flock (India) Pvt. Ltd., 2000 (120) E.L.T. 285 (S.C.) has held that an adjudicating authority cannot sit in judgment over the decision of another coordinate authority, and the only remedy is to file an appeal. The Hon'ble Court has observed that if this position is accepted then the provisions for adjudication in the Act and the Rules, the provision for appeal in the Act and the Rules will lose their relevance and the entire exercise will be rendered redundant. This position, in our view, will run counter to the scheme of the Act and will introduce an element of uncertainty in the entire process of levy and collection of excise duty. Such a position cannot be countenanced. The view taken by us also gain support from the provisions in sub-rule (3) of Rule 11 wherein it is laid down that where as a result of any order passed, in appeal or revision under Act, refund of any duty becomes due to any person, the proper office, may refund, the amount to such person without his having to make any claim in that behalf. The provision indicates the importance attached to an order of the appellate or revisional authority under the Act therefore, an order which is appealable under the Act is not challenged. Then the order is not liable to be quashed and, the matter is not to be reopened in a proceeding for refund which, if we may term it so is in the nature of execution of a decree/order. In this view, the impugned demand letter/purported SCN is not tenable and without any authority of law. It is an action, which is in clear defiance of judicial discipline.

7. Similarly, in Priya Blue Industries Ltd. v. Commissioner of Customs (Preventive), 2004 (172) ELT 145 (SC), the Apex Court held that an order which is not appealed against attains finality and cannot be reopened by way of a subsequent show cause notice.

8. In light of the above settled law, the present SCN is an abuse of the process of law and an attempt to circumvent the statutory appeal mechanism. The notice is, therefore, liable to be quashed on this preliminary ground alone.

9. Further, the impugned demand letter/purported SCN is not specify that under which provision, the impugned action is initiated and under what authority such a demand can be raised. The impugned demand letter/purported SCN does specify the

jurisdiction or the power to issue the said letter. In the absence of the same, such a demand is baseless and without any power and authority.

B. FACTUAL BACKGROUND:

Without prejudice to our preliminary objection, we make the following submissions on the merits of the case.

10. The Noticee imported a consignment declared as "5-oxido-2-oxohexahydo-1-H-Thieno (3, 4-D/ Imidazol 4-Y1] Pentatonic Acid Crude" vide Bill of Entry No. 7403016 dated 18.08.2023 and paid customs duty of Rs. 8,09,482/-.

11. Upon testing by the Mini Drugs Testing Laboratory, the goods were identified as "Biotin," which requires a license under the Drugs and Cosmetics Act and Rules for import.

12. The Noticee explained their bona fides in the letter dated 03.10.2023, stating that this was their first import for a new manufacturing facility and they were unaware of the licensing requirement. They requested permission to re-export the goods to the original supplier.

13. The Ld. Adjudicating Authority, vide OIO No. 155-ADC-VM-2023-24 dated 17.10.2023, ordered the confiscation of the goods but, considering the case pleaded, allowed the Noticee to redeem the goods for re-export upon payment of a redemption fine of Rs. 1,00,000/- under Section 125(1) and a penalty of Rs. 50,000/- under Section 112(a)(i) of the Customs Act, 1962. The Noticee paid the fine and penalty as per the Order In Original and sent back the goods out of the country as re-export well withing the time period prescribed under the law.

14. There was no objections/appeal preferred against the said order allowing the Noticee to re-export the goods and the situation have become neutral. The Customs Authority has duly accepted the redemption fine and penalty and after accepting the same, goods were allowed to re-export.

15. Since the goods were never cleared for home consumption and did not enter the commerce of the country, the Noticee filed a refund claim under Section 27 of the Customs Act, 1962, for the duty of Rs. 8,09,482/- paid at the time of import.

16. Pursuant to the refund application, Customs Authority raised an objection under letter F. No. VIII/48-33/Refund/Horster Life/ACC/2023-24 Dated 17.02.2024. The Noticee was called upon to explain as to why the refund of Rs. 8,09,482/- for the re-export of imported goods back to the Origin to the concerned foreign supplier should not be rejected in view of Section 26A(1) of the Customs Act, 1962. Therefore, the Customs Authorities have already invoked Section 26A(1) of the Act, 1962 to object the claim.

17. The Noticee filed a detailed reply vide letter dated 27.02.2024 to the department's initial objections, and dealt with every objections raised therein. The Noticee placed reliance of many case laws, which allows the refund of duty at the time of re-export of the goods. A copy of the reply dated 27.02.2024 is annexed herewith and marked as ANNEXURE - A hereto;

18. After considering the explanation given by the Notice, the Ld. Adjudicating Authority was pleased to sanction the refund vide OIO No. 03/AC/ACC/OIO/Horster/2024-25 dated 20.04.2024 after preaudit by the Assistant Commissioner (Audit), Ahmedabad. The Ld. Adjudicating Authority has examined all the aspect, including the Order In Original dated 17.10.2023, whereby the redemption fine of Rs. 1 lac and penalty of Rs. 50,000/- has been imposed against the Noticee. A copy of the Order In Original dated 20.04.2024 is annexed herewith and marked as ANNEXURE - B hereto;

19. After the statutory period of filing appeal against the Order In Original dated 20.04.2024, the impugned letter/purported SCN has been issued requesting the Noticee to pay the amount, which has been refunded as duty, on the totally erroneous and flimsy ground. The conduct of the authority is perverse and malafide. If the authority wants to initiate proceeding for the recovery of erroneous refund, there is a proper mechanism prescribed under the law, but not in the manner in which the impugned demand letter/purported SCN.

C. PARA WISE REPLY TO THE ALLEGATIONS IN THE DEMAND LETTER/PURPORTED SCN.

It is alleged in the impugned demand letter/purported SCN that Section 125(2) of the Customs Act, 1962, mandates the payment of duty in addition to the redemption fine, and therefore, the duty paid was not refundable. This allegation stems from a complete misreading of Section 125(2). The provision states that the owner shall be liable to any duty and charges "payable in respect of such goods." The term "payable" means duty that is legally leviable under the Act. The taxable event for the levy of customs duty is the import of goods into India for home consumption. Since the goods in question were never cleared for home consumption and were re-exported from customs control, the taxable event never occurred. Consequently, no duty was ultimately "payable" to be retained by the exchequer. The duty paid at the time of filing the Bill of Entry was in the nature of a deposit, which became refundable once the goods were re-exported.

20. It is further alleged that the duty paid was not an "excess payment" and hence, the claim was not the subject matter of Section 27 of the Customs Act, 1962.

This is an incorrect and narrow interpretation of Section 27. The section provides for a refund of "any duty" paid. When goods are reexported without entering the domestic tariff area, the entire duty paid at the time of import becomes refundable, as the very basis for its levy is frustrated. The refund was correctly claimed under Section 27, as the duty paid was not ultimately leviable on goods that were never cleared for home consumption.

21. The impugned demand letter/purported SCN alleges that as per the proviso to Section 23(2) of the Act, the importer cannot relinquish title to goods where an offence has been committed, making duty payment mandatory.

The reliance on Section 23(2) is entirely misplaced and irrelevant to the facts of this case. We never sought to relinquish our title to the goods under Section 23. On the

contrary, we redeemed the goods by paying the fine imposed under Section 125, thereby re-acquiring clear title, and subsequently exercised our right as the owner to reexport them. Section 23 deals with the abandonment of goods whereas Section 125 deals with the redemption of confiscated goods. The two provisions are mutually exclusive and operate in different circumstances.

D. RELIANCE ON JUDICIAL PRECEDENTS

The legal position that duty is refundable upon re-export, even when a redemption fine is paid, is firmly established by the highest courts of the land.

A. *Siemens Limited v. Collector of Customs, 1999 (113) E.L.T. 776 (S.C)*

In a case where the adjudicating authority had given an option to either redeem the goods for home consumption (on payment of fine and duty) or to re-export them, the Hon'ble Supreme Court held that since the goods were re-exported, "neither the redemption fine nor the duty were to be paid." The Court went on to order the refund of the redemption fine that had been paid by the appellant. This judgment is the law of the land and is squarely applicable. It unequivocally clarifies that upon re-export, the liability for both duty and fine is extinguished. Our case is on an even stronger footing, as we are only seeking the refund of duty, having accepted the imposition of the redemption fine and penalty. The SCN is in direct contravention of this binding precedent.

B. *M/s. Afzal Agency v. Customs, Excise & Service Tax Appellate Tribunal, 2006 (205) ELT 47 (Kar).*

The Hon'ble Kerala High Court, while holding that a redemption fine is payable even if goods are re-exported, made a crucial distinction between the fine and duty. The Court held: "By reexporting the goods the importer can avoid the payment of duty but not the fine in lieu of confiscation." This judgment directly demolishes the department's central argument. It explicitly states that re-export is a valid means to avoid duty liability, even after goods are held liable for confiscation and a fine is paid. This supports our position that the duty paid became refundable upon re-export.

C. *BASF India Ltd. v. Commissioner of Customs, 2006 (204) E.L.T. 474 (Tri. - Mumbai)*

The Tribunal held that where imported goods were not cleared for home consumption at any stage and were re-exported while under customs control, the appellant was entitled to a refund of the customs duty paid under Section 27 of the Act. This case confirms that the correct provision for claiming a refund in such a scenario is Section 27 and that the refund is legally admissible. This validates the OIO sanctioning our refund.

D. *CC, New Delhi v. Haldiram Manufacturing Co. P. Ltd., 2016 (337) E.L.T. 122 (Tri. - Del,)*

The Tribunal held that Section 26A(1) applies only to goods that have been cleared for home consumption. Where goods are reexported prior to such clearance (even

after payment of fine and penalty), Section 26A is not attracted, and a refund of duty is admissible.

This supports the reasoning in our original reply dated 27.02.2024, which was accepted by the Ld. Adjudicating Authority while sanctioning the refund. The SCN now seeks to overturn this correct legal position.

23. In view of the foregoing submissions, it is clear that the impugned SCN is without jurisdiction as it seeks to review a quasi-judicial order that has attained finality, which can only be done via an appeal under Section 129D. Further, the SCN's interpretation of Section 125(2) is contrary to the law laid down by the Hon'ble Supreme Court in the Siemens Ltd. case, which holds that duty is not payable upon re-export.

24. The distinction between a redemption fine (for an offence) and customs duty (a levy on consumption) is well-settled. Payment of the former does not create an absolute liability for the latter if the goods are not consumed in India. The refund was correctly claimed under Section 27 and was rightly sanctioned by the Ld. Adjudicating Authority vide OIO dated 20.04.2024.

25. We, therefore, humbly pray that the proceedings initiated by the Show Cause Notice F.No. VIII/48-89/ACC/Audit/Group-2/2025-26 dated 20.09.2025 be dropped as being devoid of merit and without Jurisdiction.

13. The reply of the importer did not appear to be convincing to stop the issuance of demand notice.

14. In the view of Pre-Notice Consultation Regulations, 2018 as notified vide customs notification No. 29/2018 (NT), dated 02.04.2018, a Pre-notice Consultation letter bearing F.No. ACC/ASST/BE/MISC/51/2026-ACC-AHMD-CUS-COMMRTE-AHMEDABAD dated 25.03.2026 was issued to the importer, wherein, a personal hearing was fixed on 30.03.2026.

15. The personal hearing was held on 30.03.2026 wherein Shri Daval Shah, Advocate attended the personal hearing on behalf of the claimant and he re-iterated their submissions made vide their reply dated 13.01.2026 and 27.03.2026.

16. It appeared that the claimant was not eligible for refund of Rs. 8,09,482/- (Rupees Eight Lakh Nine Thousand Four Hundred Eighty Two only) and the same is recoverable from the claimant along with interest and they are also liable for penalty.

17. The relevant legal provisions are as under:

17.1. As per Section 46(1) of the Customs Act, 1962, the importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed.

17.2 As per Section 46(4) of the Customs Act, 1962, 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 the such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.

17.3 As per Section 46(4A) of the Customs Act, 1962, the importer who presents a bill of entry shall ensure the following, namely:-

a. the accuracy and completeness of the information given therein;

b. the authenticity and validity of any document supporting it; and

c. compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

17.4 As per Section 28(1) of the Customs Act, 1962, Where any duty has not been levied or not paid or short-levied or short-paid] or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any willful mis-statement or suppression of facts,-

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

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

(i) his own ascertainment of such duty; or

(ii) the duty ascertained by the proper officer,

the amount of duty along with the interest payable thereon under section 28AA or the amount of interest which has not been so paid or part-paid.

Explanation 1. For the purposes of this section, "relevant date" means,-

(a) in a case where duty is 21[not levied or not paid or short-levied or short-paid], or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;

(b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;

24[(ba) in a case where duty is paid under clause (a) of sub-section (3) of section 18A, the date of payment of duty or interest;]

(c) in a case where duty or interest has been erroneously refunded, the date of refund;

(d) in any other case, the date of payment of duty or interest.

17.5 As per Section 28AA (1) of the Customs Act, 1962, 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.

18. Accordingly a Shoe Cause Notice F. No. VIII/48-89/ACC/Audit/Group-2/2025-26 dated 13.04.2026 was issued to M/s Horster Life Science Pvt. Ltd., Plot No. 905/12/A, G.I.D.C. Panoli, Taluka-Ankleshwar, Panoli-394116 by the Additional Commissioner of Customs, Air Cargo Complex, Ahmedabad, under Section 28(1) of the Customs Act, 1962, calling upon the Noticee to show cause as to why:

*"**a.** Irregular refund of Rs. 8,09,482/- (Rupees Eight Lakh Nine Thousand Four Hundred Eighty Two only) sanctioned and paid to the claimant should not be demanded and recovered from them, in terms of Section 28(1) of the Customs Act, 1962 along with the applicable interest under Section 28AA of the Customs Act, 1962."*

19. WRITTEN SUBMISSIONS AND DEFENSE CONTENTIONS

The Noticee, through its Director and authorized legal counsel, submitted a detailed written reply dated 27.04.2026 contesting the Show Cause Notice. The principal submissions and contentions raised by the Noticee are summarized below:

(i) Preliminary Jurisdictional Objection – Finality of Quasi-Judicial Order: The Noticee submitted that the refund of Rs. 8,09,482/- was sanctioned after full quasi-judicial adjudication by a competent proper officer vide a speaking Order-in-Original No. 03/AC/ACC/OIO/Horster/2024-25 dated 20.04.2024. That order was an appealable order under Section 128 of the Customs Act, 1962. The department did not file any review or appeal against the said order before the Commissioner (Appeals) under Section 129D of the Act. The order dated 20.04.2024 therefore attained finality. The Noticee relied upon the judgments of the Hon'ble Supreme Court in *Collector of Central Excise, Kanpur v. Flock (India) Pvt. Ltd.* [2000 (120) E.L.T. 285 (S.C.)] and *Priya Blue Industries Ltd. v. Commissioner of Customs (Preventive)* [2004 (172) E.L.T. 145 (S.C.)], contending that an adjudicating authority cannot sit in judgment over a coordinate authority and that Section 28 cannot be invoked as a substitute for an appeal or review.

(ii) Use of Non-Statutory Expression "Irregular Refund" vs. "Erroneous Refund": The Noticee argued that Section 28(1) of the Customs Act, 1962 is a strict taxing provision that only authorizes recovery where duty has been "*erroneously refunded*". The SCN and its proposal in Para 18(a) use the term "*irregular refund*", which is not recognized by Section 28(1). The shift from "*erroneous*" in the letter dated 30.09.2025 to "*irregular*" in the SCN shows non-application of mind, rendering the SCN void *ab initio*.

(iii) Goods Never Cleared for Home Consumption – Entitlement to Refund upon Re-Export:

The Noticee submitted that the imported consignment was never granted Out-of-Charge and was never cleared for home consumption. The goods were re-exported to China under Customs supervision. The taxable event for the retention of Customs duty is importation for home consumption. Once goods are re-exported under Customs control, the duty paid at the time of filing the Bill of Entry becomes refundable under Section 27 of the Act. In support of this contention, the Noticee placed reliance on the following judicial precedents:

1. *Siemens Ltd. v. Collector of Customs* [1999 (113) E.L.T. 776 (S.C.)];
2. *Afzal Agency v. CESTAT* [2006 (205) E.L.T. 47 (Kar.)];
3. *BASF India Ltd. v. Commissioner of Customs, Nhava Sheva* [2006 (204) E.L.T. 474 (Tri.-Mumbai)];
4. *Commissioner of Customs, New Delhi v. Haldiram Manufacturing Co. P. Ltd.* [2016 (337) E.L.T. 122 (Tri.-Del.)];
5. *Alchemist Foods Ltd. v. Commissioner of Customs* [2017 (358) E.L.T. 1174 (Tri.-Del.)];
6. *Hadeed Steels Pvt. Ltd. v. Commissioner of Customs, Cochin* [2017 (10) TMI 986 (CESTAT Bangalore)];
7. *DSM Nutritional Products India Pvt. Ltd. v. Commissioner of Customs, Chennai* [2023 (1) TMI 1194 (CESTAT Chennai)].

(iv) Misinterpretation of Section 125(2) and Section 23(2) of the Customs Act, 1962: The Noticee argued that Section 125(2) refers to duty "*payable*" in respect of goods, which means duty legally leviable and retainable. When goods are re-exported without home consumption, no duty is legally payable. As held in *Afzal Agency* (supra), an importer can avoid payment of duty by re-exporting the goods, although the redemption fine remains payable. Furthermore, Section 23(2) deals with relinquishment/abandonment of title, which was never sought by the Noticee; the Noticee paid the redemption fine, redeemed the goods, and exercised its right as owner to re-export them.

(v) Dropping of Interest and Penalty Proposals:

The Noticee submitted that as the principal demand is devoid of merit and jurisdiction, no interest under Section 28AA can be charged. Further, the Noticee acted with complete

transparency, bona fides, and cooperated fully, without any suppression, misstatement, or contumacious conduct; hence, no penalty is imposable.

RECORD OF PERSONAL HEARING

20. In adherence to the principles of natural justice, the Noticee was granted an opportunity of personal hearing, which was conducted through virtual mode on 09.09.2026 at 03:30 PM before the Additional Commissioner of Customs, Ahmedabad.

21. Shri Dhaval K. Shah, Advocate, appeared as the authorized representative of M/s Horster Life Science Pvt. Ltd. for the personal hearing on 09.09.2026 at 03:30 PM. During the hearing, he reiterated the submissions already made vide their written reply dated 27.04.2026. He requested that no further personal hearing be granted in the matter and that the case be decided on the basis of the records available on file and the written submissions already made.

22. DISCUSSION AND FINDINGS

22.1 I have carefully considered the Show Cause Notice dated 13.04.2026, the relied-upon documents including the Audit Objection, the written submissions dated 27.04.2026, the case laws cited by the Noticee, and the oral submissions made by their authorized representative during the personal hearing held on 09.09.2026.

22.2 The principal issues for consideration and determination before me in this proceeding are:

i. Whether the Show Cause Notice issued under Section 28(1) of the Customs Act, 1962 is maintainable and within jurisdiction, or whether the proceedings are barred on the ground that the refund had been sanctioned by a quasi-judicial order which was not challenged in appeal under Section 129D;

ii. Whether the refund of Customs duty of Rs. 8,09,482/- sanctioned vide Order-in-Original No. 03/AC/ACC/OIO/Horster/2024-25 dated 20.04.2024 was an *erroneous refund*, and whether the same is liable to be demanded and recovered from the Noticee under Section 28(1) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Act; and

iii. Whether any penalty is imposable upon the Noticee under the provisions of the Customs Act, 1962.

Whether the Show Cause Notice issued under Section 28(1) of the Customs Act, 1962 is maintainable and within jurisdiction, or whether the proceedings are barred on the

ground that the refund had been sanctioned by a quasi-judicial order which was not challenged in appeal under Section 129D;

22.3 The Noticee has contended that the refund of Rs. 8,09,482/- was sanctioned vide Order-in-Original No. 03/AC/ACC/OIO/Horster/2024-25 dated 20.04.2024 by a competent adjudicating authority after considering the facts of the case and the submissions made by the claimant. It has been argued that since the said order was not reviewed or challenged by the department under Section 129D of the Customs Act, 1962, the same attained finality and, therefore, the department is precluded from seeking recovery of the refund amount through proceedings under Section 28(1) of the Customs Act, 1962. In support of the said contention, reliance has been placed upon the judgments of the Hon'ble Supreme Court in Collector of Central Excise, Kanpur v. Flock (India) Pvt. Ltd. and Priya Blue Industries Ltd. v. Commissioner of Customs (Preventive).

22.4 I have carefully considered the above submissions. However, I do not find merit in the said contention. A plain reading of Section 28(1) of the Customs Act, 1962 reveals that the legislature has specifically conferred power upon the proper officer to recover duty which has been erroneously refunded. The provision creates an independent statutory mechanism for recovery of duties not levied, short levied, short paid or erroneously refunded and prescribes a separate period of limitation reckoned from the relevant date. In cases involving erroneous refund, Explanation 1(c) to Section 28 specifically provides that the relevant date shall be the date of refund. Thus, the statutory scheme itself contemplates recovery proceedings even after the refund has already been sanctioned and disbursed.

22.5 I further find that acceptance of the argument advanced by the Noticee would render the expression "erroneously refunded" appearing in Section 28(1) and Explanation 1(c) largely redundant. Every refund sanctioned under the Customs Act is ordinarily granted pursuant to an administrative or quasi-judicial determination. If recovery under Section 28 were to be held impermissible merely because a refund order had attained finality, the legislative intent behind specifically providing for recovery of erroneous refunds would stand defeated. Statutory provisions must be interpreted in a manner that gives meaning and effect to every expression employed by the legislature and not in a manner that renders any portion of the statute otiose.

22.6 I have also carefully gone through the judgments relied upon by the Noticee. However, I find that the same are distinguishable on facts as well as in law. In Flock (India) and Priya Blue Industries, the Hon'ble Supreme Court was considering situations where an assessee sought to challenge the correctness of an assessment order indirectly through refund proceedings without first challenging the assessment order before the

appellate forum. The issue before the Apex Court was whether an assessee could bypass the statutory appellate mechanism and seek refund contrary to an assessment order that had attained finality. The present proceedings stand on a completely different footing. The issue here is not a refund claim filed by an assessee against an assessment order, but recovery of an alleged erroneous refund through the specific statutory mechanism provided under Section 28 of the Customs Act, 1962. Therefore, the ratio of the aforesaid decisions does not advance the case of the Noticee. Relevant portion of Section 28(1) retaliated as under:

> Section 28(1) of the Customs Act, 1962 provides as under:
> *"Section 28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. –*
> *(1) Where any duty has not been levied or not paid or short-levied or short-paid or* ***erroneously refunded****, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any wilful mis-statement or suppression of facts, –*
> *(a) the proper officer shall, within two years from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied or paid or which has been short-levied or short-paid or* ***to whom the refund has erroneously been made****, requiring him to show cause why he should not pay the amount specified in the notice; ..."*
> Further, Explanation 1 to Section 28 explicitly defines the "relevant date" as follows:
> *"Explanation 1. – For the purposes of this section, 'relevant date' means, –*
> *...*
> *(c) in a case where duty or interest has been* ***erroneously refunded, the date of refund****; ..."*

22.7 I find that the power conferred under Section 28 for recovery of duties erroneously refunded is a substantive statutory power vested in the proper officer. The exercise of such power, subject to fulfillment of the conditions prescribed therein and observance of limitation, cannot be curtailed merely because the refund had earlier been sanctioned by an adjudicating authority. The validity or otherwise of the refund sanction is itself the subject matter of examination in proceedings initiated under Section 28. Therefore, initiation of proceedings under Section 28 cannot be treated as an impermissible review of a quasi-judicial order but constitutes exercise of a specific statutory remedy expressly provided under the Customs Act, 1962.

22.8 As regards the objection that the Show Cause Notice uses the expression "irregular refund" instead of "erroneous refund", I find that the said objection is merely technical in nature. The Show Cause Notice specifically invokes Section 28(1) and clearly

proposes recovery of the amount refunded on the ground that the refund was not legally admissible. The substance of the allegations and the statutory basis of the proceedings are clearly spelt out in the notice. It is a settled principle that proceedings are to be examined on the basis of their substance and not on account of mere use of a particular expression, provided no prejudice is caused to the noticee. I therefore find that no legal infirmity arises on this account.

22.9 In view of the foregoing discussions and findings, I hold that the Show Cause Notice dated 13.04.2026 has been validly issued under Section 28(1) of the Customs Act, 1962 within the period of limitation prescribed under law. I further hold that the proceedings are not barred merely because the refund had earlier been sanctioned vide Order-in-Original No. 03/AC/ACC/OIO/Horster/2024-25 dated 20.04.2024.

Whether the refund of Customs duty of Rs. 8,09,482/- sanctioned vide Order-in-Original No. 03/AC/ACC/OIO/Horster/2024-25 dated 20.04.2024 was an *erroneous refund*, and whether the same is liable to be demanded and recovered from the Noticee under Section 28(1) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Act

22.10 I have carefully considered the facts of the case, the submissions made by the Noticee, the judicial pronouncements relied upon by them, and the relevant statutory provisions of the Customs Act, 1962. I find that the material facts are not in dispute. The goods imported vide Bill of Entry No. 7403016 dated 18.08.2023 were declared as an intermediate product; however, subsequent testing established the goods to be Biotin, the import of which required a valid licence under the provisions of the Drugs and Cosmetics Act, 1940 and the Rules framed thereunder. Admittedly, the Noticee did not possess the requisite licence at the time of importation. Consequently, the goods were held liable to confiscation under Section 111(d) of the Customs Act, 1962 and were adjudicated accordingly vide Order-in-Original No. 155/ADC/VM/O&A/2023-24 dated 17.10.2023. The Noticee accepted the said order, paid the redemption fine and penalty imposed therein and thereafter re-exported the goods.

22.11 The principal contention of the Noticee is that since the goods were never cleared for home consumption and were re-exported under Customs control, the customs duty paid at the time of import became refundable under Section 27 of the Customs Act, 1962. I have carefully considered the said contention. However, I do not find merit in the same. The present case is not a routine case of re-export of imported goods. The goods in question were prohibited goods imported in violation of the Drugs and Cosmetics Act, 1940 and were consequently held liable to confiscation under Section 111(d) of the Customs Act, 1962. Therefore, the rights and liabilities of the Noticee are required to be

examined in the context of Sections 125, 23 and 27 of the Customs Act, 1962 and not merely on the basis that the goods were subsequently re-exported.

22.12 I find that Section 125(2) of the Customs Act, 1962 specifically provides that where a fine in lieu of confiscation is imposed under Section 125(1), the owner of such goods shall, in addition, be liable to any duty and charges payable in respect of such goods. The language employed by the legislature is mandatory and leaves no ambiguity. The payment of redemption fine does not extinguish the statutory liability to duty. Rather, the scheme of Section 125 contemplates that the liability to duty survives independently of the redemption fine. Therefore, once the Noticee exercised the option of redemption granted under the adjudication order and paid the redemption fine, the liability towards customs duty continued to subsist in terms of Section 125(2) of the Act.

22.13 I further find that the proviso to Section 23(2) of the Customs Act, 1962 specifically provides that relinquishment of title shall not be permitted in respect of goods regarding which an offence appears to have been committed under the Customs Act or any other law for the time being in force. In the instant case, the import was admittedly in contravention of the provisions of the Drugs and Cosmetics Act, 1940 and the goods stood confiscated under Section 111(d) of the Customs Act, 1962. Therefore, the Noticee was statutorily barred from escaping duty liability through the mechanism of relinquishment or abandonment. The legislative intent underlying the proviso to Section 23(2) is clear, namely that a person committing an offence in relation to imported goods cannot avoid the statutory consequences attached to such importation.

22.14 I also find that the refund sanctioned vide Order-in-Original No. 03/AC/ACC/OIO/Horster/2024-25 dated 20.04.2024 does not satisfy the conditions prescribed under Section 27(2) of the Customs Act, 1962. Clause (g) of the first proviso to Section 27(2), which governs refunds relating to duty paid before clearance for home consumption, applies only where the duty paid is in excess of the duty legally payable and such excess payment is evident from the Bill of Entry or from a reassessment. In the present case, the Noticee has never contended that the duty of Rs. 8,09,482/- was paid in excess of the tariff liability or that the Bill of Entry was reassessed reducing the duty demand. Therefore, the refund does not fall within the scope of clause (g) of the first proviso to Section 27(2).

22.15 I further find that Section 27(3) contains a non-obstante provision which mandates that no refund shall be made except as provided under Section 27(2). Thus, unless a claimant is able to demonstrate that his case falls squarely within one of the categories recognized under Section 27(2), no refund can be granted. The Noticee has

failed to establish such entitlement. Therefore, the sanction of refund was contrary to the statutory scheme governing refunds under the Customs Act, 1962.

22.16 I have carefully examined the judgments relied upon by the Noticee, namely Siemens Ltd., Afzal Agency, BASF India Ltd., Haldiram Manufacturing Co. Pvt. Ltd., Alchemist Foods Ltd., Hadeed Steels Pvt. Ltd. and DSM Nutritional Products India Pvt. Ltd.. I find that the aforesaid decisions are distinguishable on facts as well as law and do not address the statutory consequences flowing from the conjoint operation of Section 125(2), the proviso to Section 23(2) and Section 27(3) of the Customs Act, 1962. I further find that upon exercise of the option of redemption under Section 125(1), the liability to pay duty under Section 125(2) arises as a direct statutory consequence and is not dependent upon the subsequent disposal or re-export of the goods. The proviso to Section 23(2) expressly excludes relief in cases where redemption of confiscated goods has been opted for, while Section 27(3), by virtue of its non-obstante clause, mandates that no refund shall be granted except in accordance with the provisions of Section 27. Therefore, re-export of the goods cannot create a refund entitlement contrary to the express mandate of the statute. Accordingly, I hold that the decisions relied upon by the Noticee are inapplicable to the present proceedings and do not confer any legal right to refund. The contention of the Noticee is therefore devoid of merit and liable to be rejected.

22.17 In view of the foregoing discussions and findings, I hold that the goods imported by the Noticee were prohibited goods; that the same were confiscated under Section 111(d) of the Customs Act, 1962; that redemption fine was imposed and paid under Section 125(1); that duty remained payable in terms of Section 125(2); that no entitlement to refund existed under Section 27(2); and that the refund sanctioned vide Order-in-Original No. 03/AC/ACC/OIO/Horster/2024-25 dated 20.04.2024 was contrary to the statutory provisions of the Customs Act, 1962. Accordingly, I hold that the refund of Rs. 8,09,482/- constituted an erroneous refund within the meaning of Section 28(1) of the Customs Act, 1962 and is liable to be recovered from the Noticee.

22.18 I further find that Section 28AA of the Customs Act, 1962 mandates recovery of interest in cases where duty becomes recoverable under Section 28. The levy of interest is statutory and consequential in nature. Therefore, the Noticee is also liable to pay applicable interest under Section 28AA of the Customs Act, 1962 on the amount of erroneous refund from the date prescribed under law until the date of payment.

22.19 Accordingly, I hold that the refund of Rs. 8,09,482/- sanctioned vide Order-in-Original No. 03/AC/ACC/OIO/Horster/2024-25 dated 20.04.2024 was an erroneous refund and is liable to be demanded and recovered from the Noticee under Section 28(1)

of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.

Whether any penalty is imposable upon the Noticee under the provisions of the Customs Act, 1962.

22.20 I have carefully considered the Show Cause Notice, the facts of the case, the submissions made by the Noticee and the statutory provisions relied upon by the department. I find that the present proceedings have been initiated under Section 28(1) of the Customs Act, 1962 for recovery of an alleged erroneous refund of duty amounting to Rs. 8,09,482/- along with applicable interest. The issue involved in the present proceedings is thus confined to the recoverability of the refund earlier sanctioned to the Noticee and the consequential liability to interest under Section 28AA of the Customs Act, 1962.

22.21 I further find that although Para 16 of the Show Cause Notice contains a general observation that the Noticee may be liable for penalty, the operative portion of the Show Cause Notice, which delineates the precise allegations and proposals for adjudication, calls upon the Noticee only to show cause as to why the amount of Rs. 8,09,482/- should not be recovered under Section 28(1) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Act. No proposal has been made in the operative part of the Show Cause Notice for imposition of penalty under any specific provision of the Customs Act, 1962.

22.22 I find that it is a settled principle of adjudication that an adjudicating authority cannot travel beyond the allegations and proposals contained in the Show Cause Notice. A noticee must be put to clear notice regarding the precise statutory provision under which penal action is proposed so as to enable him to effectively defend himself. In the absence of a specific proposal for imposition of penalty under any particular provision of the Customs Act, 1962, any penal action at the stage of adjudication would be contrary to the principles of natural justice.

22.23 In view of the foregoing discussions and findings, I hold that while the refund amount of Rs. 8,09,482/- is recoverable as an erroneous refund under Section 28(1) of the Customs Act, 1962 along with applicable interest under Section 28AA, no separate penalty is imposable upon the Noticee in the facts and circumstances of the present case. Accordingly, I refrain from imposing any penalty upon the Noticee under the provisions of the Customs Act, 1962.

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

ORDER

i. I hold that the refund of Customs duty amounting to Rs. 8,09,482/- (Rupees Eight Lakhs Nine Thousand Four Hundred Eighty-Two only) sanctioned vide Order-in-Original No. 03/AC/ACC/OIO/Horster/2024-25 dated 20.04.2024 was an erroneous refund within the meaning of Section 28(1) of the Customs Act, 1962.

ii. I confirm the demand and order recovery of the said amount of Rs. 8,09,482/- from the Noticee under Section 28(1) of the Customs Act, 1962 along with applicable interest on the aforesaid amount under Section 28AA of the Customs Act, 1962.

iii. I refrain from imposing any penalty upon the Noticee under the provisions of the Customs Act, 1962 in the facts and circumstances of the present case.

12.10.26

(Shravan Ram)
Additional Commissioner
Air Cargo Complex, Ahmedabad

To
M/s Horster Life Science Pvt. Ltd.,
Plot No. 905/12/A, G.I.D.C. Panoli,
Taluka-Ankleshwar,
Panoli-394116 (IEC 3414002612)

Copy to :-

1. The Asst./Dy. Commissioner of Customs (Review Cell), Customs, HQ, Ahmedabad.
2. The Assistant Commissioner of Customs, Air Cargo Complex, Ahmedabad.
3. The Asst./Dy. Commissioner of Customs (EDI/Systems), Customs, HQ, Ahmedabad.
4. Office Copy.
5. Guard file.