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निबन्धितपावतीडाकद्वारा / By SPEED POST A.D.

फा. सं./ **F.No.GEN/ADJ/COMM/420/2024-TECH**

आदेशकीतारीख/Date of Order :4.3.2025

जारीकरनेकीतारीख/Date of Issue : 4.3.2025

द्वारापारित :- **शिव कुमार शर्मा, प्रधान आयुक्त**

Passed by :- Shiv Kumar Sharma, Principal Commissioner

मूलआदेशसंख्या : **Order-In-Original No: AHM-CUSTM-000-PR.COM-69-24-25**

Dated 4.3.2025 in the case of M/s. Sahajanand Medical Technologies Ltd Plot no. 32 to 25 & 52 to 54, Surat Special Economic Zone, Sachin, Surat -394230.

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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. इस आदेशसे असंतुष्ट कोई भी व्यक्ति इस आदेशकी प्राप्तिसे तीन माहके भीतर सीमाशुल्क, उत्पादशुल्क एवं सेवाकर अपीलीयन्यायाधिकरण, अहमदाबाद पीठको इस आदेशके विरुद्ध अपील कर सकता है। अपील सहायकरजिस्ट्रार, सीमाशुल्क, उत्पादशुल्क एवं सेवाकर अपीलीयन्यायाधिकरण, दुसरी मंज़िल, बहुमालीभवन , गिरिधरनगर पुलके बाजुमे, गिरिधरनगर, असारवा, अह्मदाबाद-380 004 को सम्बोधित होनी चाहिए।

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, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, *Ahmedabad* – 380004.

3. उक्तअपीलप्रारुपसं. सी.ए.3 मेंदाखिलकीजानीचाहिए।उसपरसीमाशुल्क (अपील) नियमावली, 1982 के नियम 3 के उपनियम (2) मेंविनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्तअपीलको चार प्रतियोंमें दाखिल किया जाए तथा जिस आदेशके विरुद्ध अपील की गई हो,

उसकीभीउतनीहीप्रतियाँसंलग्नकीजाएँ
(उनमेंसेकमसेकमएकप्रतिप्रमाणितहोनीचाहिए)।अपीलसेसम्बंधितसभीदस्तावेजभीचारप्रतियोंमेंअग्रेषित किएजानेचाहिए।

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, चार प्रतियोंमें दाखिल की जाएगी तथा उसके साथ जिस आदेशके विरुद्ध अपील की गईहो, उसकीभी उतनीही प्रतियाँ संलगनकी जाएंगी (उनमेंसेकमसेकमएकप्रमाणितप्रतिहोगी)।

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. अपीलका प्रपत्र अंग्रेजी अथवा हिन्दीमें होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरणके बिना अपीलके कारणोंके स्पष्टशीर्षोंके अंतर्गत तैयार करना चाहिए एवं ऐसे कारणोंको क्रमानुसार क्रमांकित करना चाहिए।

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. केंद्रिय सीमा शुल्क अधिनियम,1962 की धारा 129 ऐके उपबन्धोंके अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थितहै, वहांके किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरणकी पीठके सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँगड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

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. इस आदेशके विरूद्ध सीमाशुल्क, उत्पादशुल्क एवं सेवाकर अपीलीयन्यायाधिकरणमें शुल्कके 7.5% जहां शुल्क अथवा शुल्क एवं जुरमानाका विवादहै अथवा जुरमाना जहां शीर्फ जुरमानाके बारेमे विवादहै उसका भुकतान करके अपीलकी जा शकती है।

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, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेशकी प्रति पर उपयुक्तन्यायालय शुल्क टिकट लगा होना चाहिए।

8. The copy of this order attached therein should bear an appropriate court fee stamp as prescribed under the Court Fees Act, 1870.

Sub: Show Cause Notice No. GEN/ADJ/COMM/420/2024-TECH dated 10.10.2024 in case of M/s Sahajanand Medical Technologies Ltd , 32 to 35 & 52 to 54, Surat Special Economic Zone, Sachin, Surat,Gujarat issued by Principal Commissioner of Customs, Ahmedabad.

BRIEF FACTS OF THE CASE:

M/s. Sahajanand Medical Technologies Ltd. (Formerly M/s Sahajanand Medical Technologies Pvt. Ltd.) hereinafter referred to as "SMTL-SEZ", for the sake of brevity (GSTIN: 24AAFCS7694L2ZN), Plot No. 32 to 35 & 52 to 54, Surat Special Economic Zone, Sachin, Surat – 394 230, Gujarat are engaged in the manufacture of goods, namely, Coronary Stents, Catheters and various types of Medical & Surgical devices / systems falling under Chapter 90 of the First Schedule to the Customs Tariff Act, 1975, as per LOA No. SSEZ/1/17/2009-10/933 dated 05.12.2009, amended from time to time.

2. SMTL-SEZ are filing Bills of Entry for Home Consumption on behalf of their related Domestic Tariff Area units namely M/s. Sahajanand Medical Technologies Ltd. hereinafter referred to as "SMTL-DTA", for the sake of brevity) (GSTIN: 24AAFCS7694L1ZO) Sahajanand Estate, Wakharia Wadi, Near Dabholi Char Rasta, Ved Road, Surat, Gujarat – 395 004 having its additional place of business premises at 1st Floor, Plot No. 6511/10, Road No. 65/C, Sachin G.I.D.C., Sachin, Surat, Gujarat – 394 230 in terms of proviso to Sub Rule 1 of Rule 48 of the Special Economic Zones Rules, 2006 (herein after referred to as the "SEZ Rules, 2006") and clearing goods as per Rule 47(1) of the SEZ Rules, 2006.

3.1 Customs Receipt Audit (CRA) Objection Details:- During scrutiny of records of SMTL-SEZ (for the period from January, 2018 to March, 2022), the Customs Receipt Audit (CRA) have noticed that SMTL-SEZ had cleared various types of "PTCA Dilatation Catheters" (CTH 90183920) to SMTL-DTA warehouse/depot/unit in DTA on payment of appropriate duty of customs at a uniform price of Rs. 1200 per unit, for their further sale to end consumers. CRA in their audit, test checked three cases to co-relate this price (related party transaction) with the final price charged by the SMTL-DTA from its end consumer and it has been noticed that the SMTL-DTA had charged Rs. 3500 per unit (Invoice No. IN0193420135 dated 08.02.2020), Rs. 3125 per unit (Invoice No. IN0203407913 dated 02.11.2020) and Rs. 2925 per unit (Invoice No. IN0213420101 dated 10.01.2022) in these three sample cases. These three invoices are enclosed as RUD-1 to this SCN). Thus, the price difference in case of 'unrelated buyers' was at least 143.75% [viz., Rs. 2925 over Rs. 1200), which makes it apparent that the relationship had influenced the sale price between SMTL-SEZ and their related persons. Accordingly, the price of Rs. 1200 per unit was required to be rejected in terms of Custom Act / Valuation Rules and relevant provisions.

3.2 Accordingly, A Show Cause Notice F. No. GEN/ADJ/COMM/416/2022-TECH (DIN 20221271MN0000007E05) dated 26/12/2022 was issued by the Commissioner, Customs, Ahmedabad for the period from January-2018 to March-2022 to M/s. Sahajanand Medical Technologies Ltd, which was further confirmed by the adjudication authority vide Order in Original No. AHM-CUSTM-000-PR.COM-22-23-24 dated 15.12.2023.

4. Further, M/s. SMTL-SEZ had cleared the same materials (for the period from April, 2023 to March, 2024) on the undervalued price to their sister concern M/s Sahajanand Medical Technologies Limited, i.e. Rs. 1200 per unit for their further sale to end consumers.

5. RELEVANT LEGAL PROVISIONS

I.Special Economic Zones Act, 2005

Section 30. Domestic clearance by Units. - *Subject to the conditions specified in the rules made by the Central Government in this behalf,-*

> *(a) any goods removed from a Special Economic Zone to the Domestic Tariff Area shall be chargeable to duties of customs including anti-dumping,*

countervailing and safeguard duties under the Customs Tariff Act, 1975 (51 of 1975), where applicable, as leviable on such goods when imported; and

(b) the rate of duty and tariff valuation, if any, applicable to goods removed from a Special Economic Zone shall be at the rate and tariff valuation in force as on the date of such removal, and where such date is not ascertainable, on the date of payment of duty.

II.SEZ Rules, 2006;

RULE 47. Sales in Domestic Tariff Area — (1) A Unit may sell goods and services including rejects or wastes or scraps or remnants or broken diamonds or by-products arising during the manufacturing process or in connection therewith, in the Domestic Tariff Area on payment of customs duties under section 30, subject to the following conditions, namely, -

(a) ... ...

(b) ... ...

(2) ... ...

(3) ... ...

(4) Valuation and assessment of the goods cleared into Domestic Tariff Area shall be made in accordance with Customs Act and rules made there under.

(5) Refund, Demand, Adjudication, Review and Appeal with regard to matters relating to authorized operations under Special Economic Zones Act, 2005, transactions, and goods and services related thereto, shall be made by the Jurisdictional Customs and Central Excise Authorities in accordance with the relevant provisions contained in the Customs Act, 1962, the Central Excise Act, 1944, and the Finance Act, 1994 and the rules made there under or the notifications issued there under.

RULE 48. Procedure for Sale in Domestic Tariff Area. - (1) Domestic Tariff Area buyer shall file Bill of Entry for home consumption giving therein complete description of the goods and/or services namely, make and model number and serial number and specification along with invoice and packing list with the Authorised Officers :

***Provided** that the Bill of Entry for home consumption may also be filed by a Unit on the basis of authorization from a Domestic Tariff Area buyer.*

(2) Valuation of the goods cleared into Domestic Tariff Area shall be determined in accordance with provisions of Customs Act and rules made thereunder as applicable to goods when imported into India.

(3) ... ...

III. Customs Act, 1962

Section 14. Valuation of Goods. -

(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:

***Provided** that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work,*

royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf:

***Provided** further that the rules made in this behalf may provide for,-*

(i) the circumstances in which the buyer and the seller shall be

(ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;

(iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section:

(iv) the additional obligations of the importer in respect of any class of imported goods and the checks to be exercised, including the circumstances and manner of exercising thereof, as the Board may specify, where, the Board has reason to believe that the value of such goods may not be declared truthfully or accurately, having regard to the trend of declared value of such goods or any other relevant criteria.

***Provided** also that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill of export, as the case may be, is presented under section 50.*

(2) .....

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 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 [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;*

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

(4) to (11) .....

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

(a) in a case where duty is 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;

(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.

Explanation 2 to 4. ... ...

SECTION 28AA. Interest on delayed payment of duty. -

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

(2) Interest at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

(3) ... ...

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

(a) to (l) .....

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

(n) to (q) ...

SECTION 112. Penalty for improper importation of goods, etc. –*Any person -*

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

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section111,shall be liable, -

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

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

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

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

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

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

SECTION 114A - Penalty for short levy or non levy of duty in certain cases. - *Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful 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... ...

IV.Customs Valuation (Determination of Value of Imported Goods) Rules,2007

Rule 2. Definitions.- *(1) In these rules, unless the context otherwise requires,-*

... ...

(c) "goods of the same class or kind", means imported goods that are within a group or range of imported goods produced by a particular industry or industrial sector and includes identical goods or similar goods;

... ...

(f) "similar goods" means imported goods -

(i) which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;

(ii) produced in the country in which the goods being valued were produced; and

(iii) produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person,

but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

(g) "transaction value" means the value referred to in sub-section (1) of section 14 of the Customs Act, 1962;

(2) For the purpose of these rules, persons shall be deemed to be "related" only if –

(i)they are officers or directors of one another's businesses;

(ii)they are legally recognised partners in business;

(iii)they are employer and employee;

(iv) any person directly or indirectly owns, controls or holds five per cent or more of the outstanding voting stock or shares of both of them;

(v) one of them directly or indirectly controls the other;

(vi)both of them are directly or indirectly controlled by a third person;

(vii) together they directly or indirectly control a third person; or (viii) they are members of the same family.

Explanation I. - The term "person" also includes legal persons.

Explanation II. - Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other shall be deemed to be related for the purpose of these rules, if they fall within the criteria of this sub-rule.

Rule 3. Determination of the method of valuation.-

(1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;

(2) Value of imported goods under sub-rule (1) shall be accepted :

provided that –

(a) .....

(b) .....

(C) ..... and

(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time-

(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

(ii) the deductive value for identical goods or similar goods;

(iii) the computed value for identical goods or similar goods:

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to9.

Rule 4. Transaction value of identical goods. -

(1)(a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued;

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.

(C) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such

adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

(2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

Rule 5. Transaction value of similar goods.-

(1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued:

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods.

Rule 11. Declaration by the importer. -

(1) The importer or his agent shall furnish -

(a) a declaration disclosing full and accurate details relating to the value of imported goods; and

(b) any other statement, information or document including an invoice of the manufacturer or producer of the imported goods where the goods are imported from or through a person other than the manufacturer or producer, as considered necessary by the proper officer for determination of the value of imported goods under these rules.

(2) Nothing contained in these rules shall be construed as restricting or calling into question the right of the proper officer of customs to satisfy himself as to the truth or accuracy of any statement, information, document or declaration presented for valuation purposes.

(3) The provisions of the Customs Act, 1962 (52 of 1962) relating to confiscation, penalty and prosecution shall apply to cases where wrong declaration, information, statement or documents are furnished under these rules.

Rule 12. Rejection of declared value. -

(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation.-(1) For the removal of doubts, it is hereby declared that:-

(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases

where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.

(iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -

(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;

(b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;

(c) the sale involves special discounts limited to exclusive agents;

(d) to (f) .....

6.1 M/s. SMTL-SEZ (GSTIN:24AAFCS7694L2ZN) and M/s. SMTL-DTA (GSTIN: 24AAFCS7694L1ZO), are related as Permanent Account Number PAN (issued by Income Tax Department) of both these units is the same and both of these are different units of same company. M/s. SMTL-SEZ (GSTIN:24AAFCS7694L2ZN) is related as confirmed by M/s. SMTL-SEZ vide its letter dated 19.10.2022 (RUD-2).

6.2 Rule 3 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (herein after referred to as the "Customs Valuation Rules, 2007") provides the method of valuation. Rule 3(1) of Customs Valuation Rules, 2007 provides that "subject to Rule 12, the value of imported goods shall be the transaction value". Rule 3(3)(a) of the Customs Valuation Rules, 2007 provides that where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price. Rule 3(3)(b) of the Customs Valuation Rules, 2007 provides that in a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time, (i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India; (ii) the deductive value for identical goods or similar goods; (iii) the computed value for identical goods or similar goods. Rule 3(4) of the Customs Valuation Rules, 2007 states that if the value cannot be determined under the provisions of sub rule (1) of Rule 3, the value shall be determined by proceeding sequentially through Rule 4 to Rule 9 of the Customs Valuation Rules, 2007.

6.3 Consequent to CRA objection, this issue was taken up with M/s SMTL-SEZ. M/s SMTL-SEZ has submitted that they themselves are importing in Surat SEZ the identical goods from unrelated Party M/s. Natec Medical Limited, Mauritius regularly at a Unit price of Euro 15 for self consumption for manufacturing Stents. They have derived the valuation in terms of Rule 8 of Customs Valuation Rules, 2007 and submitted Cost Accountant's Certificate deriving manufacturing cost as Rs 1088/- per unit, whereas they are clearing the said goods at higher price of Rs 1200/- per unit. Further, their unit is very big unit as compared to M/s Purple Medical Solutions Pvt. Ltd. and have capacity to produce 50,000 units per month. Considering such a high capacity, they have several benefits of scale which ultimately helps them in lowering down the manufacturing cost (procurement of bulk quantity of Raw Material at discounted rates, reduced Overhead Cost, etc.) in comparison to peer companies. The unit price of Rs 1200/- and Rs. 1225/- adopted by them considers manufacturing cost only and load of other costs viz. R & D,

Clinical Trial, Logistics, Warehousing, Transportation, Marketing, Sales promotion, Administrative overhead etc. are not considered in SEZ as these are incurred outside SEZ and hence loaded into price of further sale from DTA unit.

6.4 Since the value declared by them before Customs is quite low than the selling prices to end user by their related concerns, and SMTL-SEZ have failed to demonstrate that their relationship had not influenced the price of their Goods i.e. various types of "PTCA Dilatation Catheters/Balloon Catheters" and also failed to demonstrate that price of their Goods i.e. various types of "PTCA Dilatation Catheters/Balloon Catheters" cleared in DTA to their related concern unit SMTL-DTA is closely approximate to the transaction Value of identical / similar goods, their reply is not acceptable and consequently, their transaction value, is also not acceptable in terms of Rule 3 of the Valuation Rules, the same is required to be rejected as provided under Rule 12 of the Customs Valuation Rules, 2007, and recourse is to be taken to the subsequent valuation rules. Accordingly, Rule 4 or Rule 5 is to be applied where the actual price of the identical or similar goods are available.

6.5 In terms of Rule 4 of the Customs Valuation Rules, 2007, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued. In terms of Rule 5 of the Customs Valuation Rules, 2007, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued. As per sub rule (3) of the Rule 4 if more than one transaction value of identical / similar goods is found, the lowest value shall be used to determine the value of imported goods.

6.6 M/s. SMTL-SEZ has not cleared identical goods viz. "PTCA Dilatation Catheters/Balloon catheters" to any independent buyers in DTA during the period of this notice.

6.7 It is noticed that similar goods (PTCA pre/post-Dilatation Catheters) were cleared by another SEZ unit ('M/s Purple Medical Solutions Pvt. Ltd.' earlier known as 'M/s MIV Therapeutic India Pvt. Ltd.' Now M/s Purple Microport Cardiovascular Pvt. Ltd) in DTA at an average rate of Rs. 3178 per unit (Invoice No 019/19-20 dated 25.06.2019, 016/20-21 dated 24.06.2020, 004/20-21 dated 29.07.2020, and 74/2021 dated 25.10.2021 are enclosed as RUD-3 to this SCN).The actual transaction value is therefore required to be computed by taking into account the prevailing price of the similar goods cleared into DTA by other SEZ, unit namely 'M/s Purple Medical Solutions Pvt. Ltd.' earlier known as 'M/s MIV Therapeutic India Pvt. Ltd.' (Now M/s Purple Microport Cardiovascular Pvt. Ltd).

6.8 Taking into consideration the goods cleared by 'M/s Purple Medical Solutions Pvt. Ltd.' (earlier known as 'M/s MIV Therapeutic India Pvt. Ltd.' & Now M/s. Purple Microport Cardiovascular Pvt. Ltd), it falls under the strict parameter of Rule 5 of the Customs Valuation Rules, 2007 for computation of the transaction value in respect of all consignments of referred goods cleared by SMTL-SEZ into DTA to their related concerns. SMTL-SEZ has declared lesser value for its DTA clearances in the invoices for Customs purposes and not declared the actual transaction value in order to escape and evade the customs duty liability. The said actual transaction value i.e. Rs 3178/- per unit appears reasonable and therefore is liable to be considered for computation of the assessable value in the instant case in terms of Section 14 of the Customs Act, 1962 read with Rule 5 of the Customs Valuation Rules, 2007 as discussed above.

7. By applying the rate of Rs. 3178 per unit, the actual assessable value comes to Rs. 15,12,06,062/- in respect of DTA clearances to related concerns during the period from April-2023 to March-2024 by M/s. SMTL-SEZ. Considering the value of Rs. 5,70,94,800/- declared at the time of DTA clearance before the Customs

authorities in respect of the referred goods on which the duty was paid and the actual transaction value of Rs. 5,70,94,800/-. Thereof, the differential value is Rs. 9,41,11,262/- for the said period, which was mis-declared to the department has been arrived at in the Annexure-A to this SCN and the differential duty of Rs. 2,57,86,486/- for the said period appears liable to be recovered from SMTL-SEZ under Section 28 of the Customs Act, 1962.

8. The said act of mis-declaration of value in respect of the subject goods on the part of SMTL-SEZ as discussed in the foregoing paras constitute an offence of the nature described in Section 111(m) of the Customs Act, 1962 and thereby render the said goods viz. "PTCA Dilatation Catheters /Balloon Catheters" cleared in DTA to their related Concern unit SMTL-DTA valued at Rs. 15,12,06,062/- (re-determined value) liable for confiscation under Section 111(m) of the Customs Act, 1962. However, as the said goods are not available for confiscation, hence the fine in lieu of confiscation is liable to be imposed. The differential amount of Customs duty of **Rs. 2,57,86,486/-** as worked out in **Annexure-A** to this SCN is required to be recovered from SMTL-SEZ under the provisions of Section 28(1) of the Customs Act, 1962 along with interest at the prescribed rate on Customs duty evaded in terms of Section 28AA of Customs Act, 1962. The aforesaid act of mis-declaration and evasion of duty of **Rs. 2,57,86,486/-** on the part of SMTL-SEZ constitute an offence of the nature described under Section 114A and 112 of the Customs Act,1962 and thereby rendering them liable for penalty under Section 114A and 112 of the Customs Act, 1962.

9. It further appeared that M/s. Sahajanand Medical Technologies Ltd. (GSTIN:24AAFCS7694L1ZO) (SMTL-DTA), while clearing subject goods from their SEZ related concern into DTA in collusion with SMTL-SEZ had entered into mis-declaration of value in respect of the subject goods and constitute an offence of the nature described in Section 111(m) of the Customs Act, 1962 and thereby rendered the said goods viz. "PTCA Dilatation Catheters/Balloon Catheters" cleared in DTA by their related concern SMTL-SEZ liable for confiscation under Section 111(m) of the Customs Act, 1962. The aforesaid act of mis-declaration with an intent of evasion of duty on the part of M/s. Sahajanand Medical Technologies Ltd., DTA constitutes an offence of the nature described under Section 112 of the Customs Act, 1962 and thereby rendering themselves liable for penalty under Section 112 of the Customs Act, 1962.

10. Therefore, a show cause notice F.No.GEN/ADJ/COMM/420/2024-TECH dated 10.10.2024 was issued to **M/s. Sahajanand Medical Technologies Ltd.** (GSTIN:24AAFCS7694L2ZN), located at Plot No. 32 to 35 & 52 to 54, Surat Special Economic Zone, Sachin, Surat-394230 calling upon them to show cause as to why:-

(i) The value of **Rs. 5,70,94,800/- (Rupees Five Crore Seventy Lakh Ninety Four Thousand Eight Hundred Only)** declared by them in respect of their goods "PTCA Dilatation Catheters/Balloon Catheters" cleared in DTA to their related Concern unit SMTL-DTA during the period from April-2023 to March-2024 as per Annexure-A to SCN should not be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re-determined as **Rs.15,12,06,062/- (Rupees Fifteen Crore Twelve Lakh Six Thousand Sixty Two Only)** as mentioned in the said Annexure, under Section 14 of the Customs Act, 1962 read with Rule 3 & Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 as applicable;

(ii) The goods i.e. "PTCA Dilatation Catheters/Balloon Catheters" cleared in DTA to their related Concern unit SMTL-DTA totally valued at **Rs. 15,12,06,062/- (Rupees Fifteen Crore Twelve Lakh Six Thousand Sixty Two Only))**(re-determined value) as detailed in the Annexure-A to SCN should not be

confiscated under Section 111(m) of the Customs Act, 1962. However, as the said goods are not available for confiscation, why redemption fine in lieu of confiscation should not be imposed;

(iii) Differential Customs duty amounting to **Rs. 2,57,86,486/- (Rupees Two Crore Fifty Seven Lakh Eighty Six Thousand Four Hundred Eighty Six only)**, as detailed in Annexure-A to SCN, evaded on the said goods, should not be demanded and recovered from them under Section 28 (1) of the Customs Act, 1962;

(iv) Interest should not be recovered from them on the said differential Customs duty as mentioned at (iii) above, under Section 28AA of the Customs Act, 1962;

(v) Penalty should not be imposed on them under Section 112 and 114A of the Customs Act, 1962.

11. M/s. Sahajanand Medical Technologies Ltd. (GSTIN: 24AAFCS7694L1ZO) Sahajanand Estate, Wakharia Wadi, Near Dabholi Char Rasta, Ved Road, Surat, Gujarat – 395 004 (SMTL-DTA) were also called upon to show cause as to why penalty should not be imposed on them under Section 112 of the Customs Act, 1962.

WRITTEN SUBMISSION :-

12. M/s. SMTL-SEZ, submitted written reply to show cause notice on 11.02.2025, wherein it has been *inter-alia* submitted that the salient issues to be addressed in this case are as follows –

(i) Whether the supply of goods by the SEZ unit to DTA buyer, who was liable for the custom duties as per sez & custom act. If DTA buyer who has filed BE, then demand from the sez unit of differential custom duty has been sustainable or not.

(ii) Whether the demand of differential duties without reassessment of the BE under section 17(4) has been sustainable or not.

(iii) Whether the SEZ unit & DTA unit has been treated as related unit, when both the unit has been operated under the different act or not.

(iv) Whether without following the Custom Valuations Rules, demand of differential custom duty is sustainable or not.

(v) Whether on the basis of third party clearance value and bill of entry, determination of clearance value & differential demand of duty is justifiable or not.

(vi) When the noticee has produced cost working & herewith submitting CAS-4, even though demand of differential duty is justifiable or not.

(vii) Whether if noticee liable for the differential custom duty wherein IGST amount is included, then IGST is allowable as a credit to DTA unit. So it has been revenue neutral.

(viii) Whether the recovery of interest is permissible in law or not:

(ix) Whether the confiscation and redemption fine thereon are justifiable or not

(x) Whether extended period demand can be invokable or not.

(xi) Whether noticee liable for the penalty u/s. 114A & 112 of the custom act, 1962.

13.1 Regarding the supply of goods by the SEZ unit to DTA buyer, who was liable for the custom duties as per sez & custom Act. If DTA buyer who has filed

BE, then demand from the sez unit of differential custom duty has been sustainable or not M/s SMTL-SEZ submitted that as per rule 48 of sez rule for the sale in domestic tariff area DTA buyer has to file BE & pay appropriate duties, so demand of the duties from the SEZ unit instead of the DTA is not sustainable & tenable.

13.2 Regarding the demand of differential duties without reassessment of the BE under section 17(4) has been sustainable or not, M/s SMTL-SEZ submitted that when department has assessed BE under custom act, without re-assessment under sec 17(4), demand of differential custom duties is sustainable in light of apex court decision in the case of ITC Ltd vs CCE Kolkatta- 2019 (368) E.L.T. 216 (S.C.).

13.3 Regarding the SEZ unit & DTA unit has been treated as related unit, when both the unit has been operated under the different act or not, M/s SMTL-SEZ submitted that as per sub-rule (7) of Rule 19 of the Special Economic Zone Rules, 2006 it clearly provides that if an enterprise is operating both as Domestic Tariff Area Unit as well as a Special Economic Zone Unit, it shall have two distinct identities with separate books of account, but it shall not be necessary for Special Economic Zone to be a separate legal entity.

14. As regarding the demand of differential Customs duty, it has been submitted by M/s. SMTL-SEZ that being a medical device manufacturer / implants pharmaceutical products, they have a team to research on product before development and commercial manufacturing and their research and development team is working from the DTA office located in Surat. It has been submitted that once the R & D is done and product is approved for manufacturing, the manufacturing is carried out in the SEZ unit of the company located in Sachin SEZ, which is engaged in manufacturing as well as export of goods and sale to the DTA in India through its warehouse located in DTA, from where the goods are further distributed to other warehouse as well as customers. It has been submitted that SMTL-SEZ is filing Bills of Entry for Home Consumption on behalf of related to DTA units namely M/s. SMTL-DTA in terms of proviso to sub-rule (1) of Rule 48 of the SEZ Rules, 2006 and clearing goods as per Rule 47(1) of the SEZ Rules, 2006.

15.1 M/s. SMTL-SEZ has referred to Rule 48 of the SEZ Rules, 2006 and has submitted that in respect of goods cleared from SEZ unit into Domestic Tariff Area, the valuation rules are applicable as they are applicable to goods when imported into India.

15.2 M/s. SMTL-SEZ has referred to CBEC (now CBIC) Circular No. 38/2007-Cus. dated 9.10.2007 and has submitted that as per Sr. No. 2 of Valuation Rules, the valuation applicable is same as applicable for identical goods. It has been submitted that in the present case, M/s. SMTL-SEZ had also exported the identical goods at the same clearance value. It has also been submitted that the Valuation Rules are applicable in sequence and in the present case, Rule 2 is applicable for valuation of clearance value, whereas the Department has followed Rule 6 of Customs Valuation Rules, 2007, wherein the mechanism has been given for rejection of declared value and thereby the department has rejected the valuation of the goods on the ground that M/s. SMTL-SEZ had cleared the goods with low valuation / price. It has further been submitted that M/s. SMTL-SEZ has cleared the identical goods to DTA unit as has been exported, and they have considered the same valuation for exported goods. Therefore, the department cannot deny the valuation of the noticee. M/s. SMTL-SEZ referred to Rule 4 of the Customs Valuation Rules, 2007 and has submitted that the valuation of imported goods for the identical goods is the same as valuation of identical exported goods.

15.3 M/s. SMTL-SEZ has further submitted that the next rule in sequence is Rule 5 of the Customs Valuation Rules, 2007, which pertains to determination of assessable value of imported goods on the basis of transaction value of similar

goods. It has been submitted that as per sub-rule (2) of Rule 5, clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3) of Rule 4 have been applied *mutatis mutandis* in respect of similar goods; that Rule 4(1)(b) of the Customs Valuation Rules, 2007 requires that the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods. Further, Rule 4(1)(c) of the Customs Valuation Rules, 2007 specifies that where no sale referred to in clause (b) of sub-rule (1) is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

15.4 M/s. SMTL-SEZ has submitted that the expression "commercial level" has been used in Rules 5, 6 and other Rules of the Customs Valuation Rules, 2007, though the said expression has not been defined statutorily, hence its meaning needs to be gathered from the judicial pronouncements. They have cited following decisions –

(i) New Holland Tractors (India) Pvt. Ltd. Vs. Commr. of Cus. [2002 (144) ELT 410 (Tri.)]

(ii) Narayan International Vs. Collr. of Cus. [1992 (58) ELT 126 (Tri.)]

(iii) Punjab Niryat Ayat Pvt. Ltd. Vs. Collr. of Cus. [1992 (58) E.L.T. 340 (Tri.)]

(iv) Collector Vs. ATCO Inds. Ltd. [1996 (86) E.L.T. A76 (SC)]

(v) Commissioner of Cus. Vs. Hewlett Packard Ltd. [1999 (108) ELT 221 (Tri.)]

(vi) Gemplus India Pvt. Ltd. Vs. Commr. of Cus. [2005 (185) ELT 269 (Tri.)]

(vii) Sellers Men Vs. Commr. of Cus. (Imp.) [2009 (248) ELT 338 (Tri.)]

(viii) D.R. Polymers Ltd. Vs. Commr. of Cus.][2004 (166) ELT 393 (Tri.)]

(ix) Commr. of Cus. Vs. Meera Impex [2004 (167) ELT 446 (Tri.)]

(x) Volvo India Pvt. Ltd. Vs. Commr. of Cus [2005 (180) ELT 489 (Tri.)]

15.5 M/s. SMTL-SEZ has also cited following case laws wherein imported goods have been held to be similar or transaction value of the similar goods have been used to determine the assessable value of the imported goods.

(i) Unit Traders Vs. Commr. of Cus. [2012 (28) STR 433 (Mad.)]

(ii) East African Traders Vs. Collr. [1998 (97) ELT A148 (SC)]

(iii) Shyam Antenna Electronic (P) Ltd. Vs. Collr. of Cus. [2003 (162) ELT 898 (Tri.)]

(iv) Big Byte Corporation Vs. Commr. of Cus. [2006 (201) ELT 70 (Tri.)]

(v) Seagram India Pvt. Ltd. Vs. C.C., ICD Tughlakabad [2009 (247) ELT 447 (Tri.)]

(vi) Lan Eseda Inds. Ltd. Vs. Commr. of Cus. [2010 (258) ELT 3 (SC)]

(vii) Commr. of Cus. Vs. Pioneer Impex [2015 (319) ELT 355 (SC)]

(viii) Commr. of Cus. Vs. Aryan Electronics [2015 (319) ELT 607 (SC)]

(ix) Commr. of Cus. Vs. National Lamination Inds. [2016 (331)ELT 18 (SC)]

(x) Dev Anand Agarwal Vs. Commr. of Cus. [2016 (337) ELT 397 (Tri.)]

Case laws wherein goods not held to be similar

(i) Glass Moulding Inds. Vs. Collr. of Cus. [1994 (69) ELT 590 (Tri.)]

(ii) Nitsoya Diamond Tools Vs. Collr. of Cus. [1994 (74) ELT 49 (Tri.)]

(iii) Puja International Vs. Collr. of Cus. [1995 (76) ELT 69 (Tri.)]

(iv) Dujodwala Paper Chemicals Ltd. Vs. Commr. of Cus. [1999 (110) ELT 901 (Tri.)]

(v) CEAT Ltd. Vs. Commr of Cus. [2000 (125) ELT 917 (Tri.)]

(vi) Commr. of Cus. Vs. Modern Overseas [2005 (184) ELT 65 (Tri.)]

(vii) Parag Sheth Vs. Commr. of Cus. [2005 (188) ELT 391 (Tri.)]

(viii) Sri Venkatesh Enterprises Vs. Commr. of Cus. [2005 (192) ELT 818 (Tri.)]

(ix) Keveeyam Company Vs. Commr. of Cus. [2006 (194) ELT 447 (Tri.)]

(x) Neha Intercontinental (P) Ltd. Vs. Commr. of Cus. [2006 (202) ELT 530 (Tri.)] – [2008 (221) ELT A32 (SC)]

(xi) Tech Tronix India Vs. Commr. of Cus. [2006 (203 ELT 301 (Tri.)]

(xii) Commr. of Cus. Vs. Inox India Ltd. [2007 (209) ELT 320 (Tri.)]

(xiii) Commr. of Cus. Vs. Frontline Printers Ltd. [2007 (211) ELT 545 (Tri.)]

(xiv) Vijay Leather Stores Vs. Commr. of Cus. [2007 (215) ELT 304 (Tri.)]

(xv) Commr. of Cus. Vs. B.C. Trading Company [2008 (223) ELT A133 (SC)] – [2006 (202) ELT 619 (Tri.-Bang.)]

(xvi) Samar Polytex Ltd. Vs. Commr. of Cus. [2009 (238) ELT 621 (Tri.)]

(xvii) Commr. of Cus. Vs. Misri Apparels Pvt. Ltd. [2009 (239) ELT 468 (Tri.)]

(xviii) Aneja Steels Vs. Commr. of C.Ex. [2016 (331) ELT 95 (Tri.)]

15.6 M/s. SMTL-SEZ has submitted that thus the department's act of demanding the differential Customs duty without following the provisions of the Customs Valuation Rules, 2007 is not justifiable and sustainable in the interest of law and justice.

16. As regards the issue whether determination of clearance value and differential demand of duty on the basis of third party clearance value and Bill of Entry, is justifiable or not, M/s. SMTL-SEZ has submitted that the department noticed that similar goods (PTCS pre / post Dilatation Catheters) were cleared by another SEZ unit M/s. Purple Medical Solutions Pvt. Ltd. in DTA at an average rate of Rs. 3178/- per unit, which appears reasonable and therefore liable to be considered for computation of the assessable value in terms of Section 14 of the Customs Act, 1962 read with Rule 5 of the Customs Valuation Rules, 2007. M/s. SMTL-SEZ has submitted that the SCN has considered the goods sold by M/s. Purple to its DTA unit as "Identical Goods" under Rule 4 of the Rules.

17.1 M/s. SMTL-SEZ has referred to the definition of expression "identical goods" given at Rule 2(d) of the Customs Valuation Rules, 2007 and has submitted that the goods for which the buyer incurs a certain cost are not identical with goods wherein no cost has been incurred by the buyer. It has further been submitted that in the present case, the DTA unit (the buyer) has incurred the cost of R & D as well as sales and marketing cost, accordingly the goods transferred by the noticee (SMTL-SEZ) as well as M/s. Purple are not identical goods. It has been submitted that if the goods cleared by the noticee (SMTL-SEZ) and M/s. Purple are not identical goods, then merely on the basis of valuation of M/s. Purple, the demand of differential Customs Duty is not justifiable.

17.2 It has been submitted that as per the provisions of Rule 7 of the Customs Valuation Rules, 2007, the value of goods is to be based on the unit price of goods sold in the greatest aggregate quantity to persons who are not related to the sellers in India. It has been further submitted that the import made by SMTL-SEZ from NATEC squarely falls into this category as the import is made by SEZ unit (SMTL-SEZ) in India from an unrelated party outside India and the value of imports from Natec is close to the value of transfer by SEZ unit (SMTL-SEZ) to the DTA unit

(SMTL-DTA) and hence the transaction value declared by the noticee should be acceptable.

17.3 M/s. SMTL-SEZ has submitted that it is clear from the above submission that the act of the department of demanding differential Customs duty on the basis of the third party valuation is not sustainable in the interest of law and justice.

18.1 M/s. SMTL-SEZ has submitted that they themselves are regularly importing the identical goods in Surat SEZ from unrelated party M/s. Natec Medical limited, Mauritius at a Unit price of Euro 15, for self-consumption in manufacturing Stents.

18.2 M/s. SMTL-SEZ has submitted that they have derived that valuation in terms of Rule 8 of the Customs Valuation Rules, 2007 and submitted Cost Accountant's Certificate, deriving manufacturing cost as Rs. 1088/- per unit, whereas, they are clearing the said goods at higher price of Rs. 1200/- per unit. M/s. SMTL-SEZ has submitted CAS-4 Certificate from Cost Accountant for Cost of Production during 2019-20, 2020-21 and 2021-22, wherein cost of balloon is as under

Year	**Total cost per Balloon (in Rs.)**
2019-20	1050.21
2020-21	1059.00
2021-22	990.58

18.3 It has been submitted that the unit price of Rs. 1200/- adopted by them by considering manufacturing cost only and load of other costs *viz.* R & D, Clinical Trial, Logistics, Warehousing, Transportation, Marketing, Sales Promotion, Administrative Overhead etc. are not considered in SEZ, as these are incurred outside SEZ.

18.4 M/s. SMTL-SEZ has further submitted that as compared to M/s. Purple Medical Solutions Pvt. Ltd., their unit has capacity to produce 50,000 units per month, therefore, they have several benefits of scale, which ultimately help them in lowering down the manufacturing cost due to procurement of bulk quantity of raw material at discounted rates, reduced overhead cost etc., as compared to peer companies.

18.5 M/s SMTL-SEZ submitted CAS-4 certificate from Cost Accountant for the cost of production for F.Y 2023-24 where total cost per balloon is Rs.1157.93.

18.6 It has been submitted that the relationship between SEZ unit and DTA unit has not impacted the value of transfer and hence the transaction value should be accepted as per Rule 3 of the Customs Valuation Rules, 2007. It has further been submitted that the SEZ unit has not only recovered the cost incurred but also earned a margin on the same, as substantiated by the Cost Certificates submitted by them. They have contended that the difference between value charged by SEZ unit to DTA unit and the value charged by DTA unit to customers is mainly to recover the cost incurred by the DTA unit at various stages; that since these are not the cost of the SEZ unit, they are not required to be added to the transaction value. Accordingly, the transaction value as per Rule 3 should itself be accepted and there is no need to verify the applicability of further provisions.

18.7 M/s. SMTL-SEZ has submitted that the goods imported by it from Natec should be considered as 'identical goods'. These goods are similar in nature and are at the same commercial value. Since the value of these goods is similar to the value in question, the transaction value in their case should be accepted. It has further been submitted that as there are no 'similar goods', as provided under Rule 5, this

provision is not applicable in their case. They have submitted that the value at which goods imported by SEZ unit from Natec should be accepted under Rule 7 of the Customs Valuation Rules, 2007 and since it is near to the value under question, their transaction value should be accepted.

19. M/s. SMTL-SEZ has submitted that in the show cause notice, sale of "Glide Angio Catheter -Pack of 5 Pcs" has also been considered, which are medical accessories and not "PTCA Dilatation Catheters or Balloon Catheters, therefore differential duty of Rs. 44,642/- is incorrect.

20. M/s. SMTL-SEZ has submitted that the duty demanded has a portion of basic Customs duty plus IGST, whereas IGST is allowable as credit to DTA unit, which can further be used for providing domestic and export supply, so it has revenue neutral situation. In the present case, the IGST amount is allowable as credit to DTA unit, so it is revenue neutral situation to that extent. They have relied upon the following decisions –

(i) Popular Vehicles & Services Ltd. Vs. Commissioner of Central Excise, Kochi [2010 (18) STR 493 (Tri. – Bang.)]

(ii) Dineshchandra R Agarwal Infracon Pvt. Ltd. Vs. CCE, Ahmedabad [2010 (18) STR 39 (Tri.- Ahmd.)]

(iii) Shakti Auto Components Ltd. Vs. Commissioner of Central Excise, Salem [2009 (14) STR 694 (Tri. – Chennai)]

21. M/s. SMTL-SEZ has submitted that as the alleged confiscation of the goods is invalid, unjustified and without authority of law and also the re-valuation of the subject goods under reference is not sustainable in law as aforesaid, rendering the consequential demand of duty raised against then also untenable in law, they are not liable for payment of any interest under Section 28AA of the Act.

22. As regarding the proposal for holding goods liable to confiscation, M/s. SMTL-SEZ has submitted that their act has been *bona-fide* and there was no *mala-fide* intention to evade Customs duty, therefore, the confiscation of goods is not justifiable in the interest of justice. So far as the alleged seizure of the goods is concerned, the same is absolutely unjustified and invalid as explained in detail hereinabove. They have relied upon the following decisions –

(i) G. M. Exports Vs. Commissioner of Customs, Bangalore [2008 (226) E.L.T. 571 (Tri. – Bang.)]

(ii) G E India Industrial Pvt. Ltd. Vs. Commissioner of Customs, Chennai [2010 (252) E.L.T. 78 (Tri. – Chennai)]

(iii) Amar Industries Vs. Commissioner of Customs, Bangalore [2010 (256) ELT 120 (Tri. – Bang.)]

(iv) Gitanjali Gems Ltd. Vs. Commissioner of Customs (CSI Airport), Mumbai [2011 (264) ELT 574 (Tri. – Mumbai)]

23. As regards invocation of extended period in the show cause notice, M/s. SMTL-SEZ has submitted that they have produced relevant certificate to the Customs authority at the time of clearance of imported goods, which has been allowed for clearance after due verification by the Customs officers. It has been submitted that nothing has been suppressed by them, therefore, extended period of limitation is not invocable in the notice issued on 26.12.2022 for the period January, 2018 to February, 2022. It has been submitted that when each fact has been in the knowledge of the department, then extended period is not invocable.

24.1 M/s. SMTL-SEZ has submitted that the Hon'ble Supreme Court, while dealing with the meaning of expression "suppression of facts" in proviso to Section 11A of the Act (Central Excise Act, 1944), in the case of Pushpam Pharmaceutical Company Vs. Collector of Central Excise, Bombay [1995 Supp (3)SCC 462], held that the term

must be construed strictly, it does not mean any omission and the act must be deliberate and willful to evade payment of duty. It has been further submitted that there was no deliberate intention on their part not to disclose the correct information or to evade payment of duty. They have further relied on the following decisions –

(i) Coastal Energy Pvt. Ltd. Vs. Commissioner of Cus., C. Ex., & S.T., Guntur [2014 (310) ELT 97 (Tri. – Bang.)]

(ii) Nizam Sugar Factory Vs. Collector of Central Excise, A.P. [2008 (9) S.T.R. 314 (S.C.)]

(iii) Commissioner of Customs Vs. Cochin Minerals & Rutiles Ltd. [2010 (259) E.L.T. 182 (Ker.)]

(iv) Continental Foundation Jt. Venture Vs. Commissioner of C. Ex., Chandigarh-I [2007 (216) E.L.T. 177 (S.C.)]

24.2 M/s. SMTL-SEZ has submitted that it is clear from the above that the show cause notice issued to them on 10.10.2024 for the period from April 2023 to March 2024 is barred by limitation and hence, the same deserves to be dropped at once. Thus, the demand of Customs duty on clearance of goods for the period prior to 1 year was time barred and required to be dropped.

25. As regards proposal for imposition of penalty under Section 112 and 114A of the Customs Act, 1962, M/s. SMTL-SEZ has submitted that they have acted *bona-fide*, there were no collusion with supplier for evasion of duty, fact of the case and test report was available at the time of clearance, so no penalty may be applicable on them.

26. M/s. SMTL-SEZ has therefore requested to drop the demand of Customs duty of Rs. 2,57,86,486/- and interest thereon and drop the demand of penalty under section 112 and 114A of the Customs Act, 1962. They also requested that they may be heard in person before taking any decision in this matter.

27. M/s. SMTL-DTA submitted written reply to show cause notice on 11.02.2025, wherein it has been *inter-alia* submitted that as per the department's contention, SMTL-SEZ has declared lesser value for its DTA clearances in the invoices for Customs' purposes and suppressed the actual transaction value in order to escape and evade the Customs duty liability; that the main noticee M/s. SMTL-SEZ, in its written submission, has denied all the allegations, therefore, the charges made in the show cause notice regarding failure to pay Customs duty is totally baseless and unsubstantiated.

28.1 M/s. SMTL-DTA has further submitted that M/s. SMTL-SEZ has filed their written reply in respect of the show cause notice and they desire to adopt all the arguments and submissions taken by the main noticee against the demand of Customs duty with interest and penalty, for their reply as well. M/s. SMTL-DTA has requested to take the same into account for their reply as well.

28.2 M/s. SMTL-DTA has also submitted that even though M/s. SMTL-SEZ was liable for higher rate of duty, they would be eligible for the Cenvat credit thereof and so it would be revenue neutral situation and there is no loss to the Government.

28.3 M/s. SMTL-DTA has submitted that they have not done anything which has rendered them liable for penalty, as proposed. The said section clearly provides that penalty will be imposable under Section 112(b) of the Customs Act, 1962 only when they have knowingly contravened the provisions of the Act. They had no special or extra benefit on saving any Customs duty, being purchaser of the main noticee. They did not have any such intention to save or evade any Customs duty for the main noticee and they have not acted in any manner in personal capacity, which was harmful for the revenue. Therefore, penalty is not imposable on them under Section 112 of the Customs Act, 1962, the show cause notice is not sustainable and requires

to be vacated. The show cause notice has not appreciated that penalty is not imposable on the purchaser of the company.

28.4 M/s. SMTL-DTA has requested to take lenient view in the interest of law and justice, drop the demand of penalty under Section 112 of the Customs Act, 1962. They also requested that they may be heard in person before taking any decision in this matter.

PERSONAL HEARING

29. Personal hearing was held on 14.02.2025 when Shri Vipul Khandhar, Chartered Accountant appeared on behalf of M/s SMTL-SEZ and M/s SMTL-DTA before me. He reiterated the submissions made on 13.02.2025. He further submitted additional submissions during personal hearing.

DISCUSSION AND FINDINGS :-

30. I have carefully gone through the subject show cause notice, submissions dated 11.02.2025 made by the noticees (M/s. SMTL-SEZ and M/s. SMTL-DTA) in written replies as well as during the course of personal hearing and other evidences and documents available on record.

31.1 Firstly, I would like to address the contention of M/s SMTL-SEZ whether the customs duty can be demanded from SEZ unit when DTA buyer filed BE. In this connection the primary contention raised by SMTL-SEZ is fallacious as the Bills of Entry were filed by M/s SMTL-SEZ themselves and not by M/s SMTL-DTA. I find that as per Section 30 of the SEZ Act, 2005, any goods removed from a Special Economic Zone to the Domestic Tariff Area shall be chargeable to duties of customs including anti-dumping, countervailing and safeguard duties under the Customs Tariff Act, 1975 (51 of 1975), where applicable, as leviable on such goods when imported. Further, Rule 47(1) of the SEZ Rules, 2005 provides that a SEZ Unit may sell goods and services including rejects or wastes or scraps or remnants or broken diamonds or by products arising during the manufacturing process or in connection therewith, in the Domestic Tariff Area on payment of Customs duties under section 30, subject to the following certain conditions. I also find that as per proviso to Rule 48(1), the Bill of Entry for home consumption may also be filed by a Unit on the basis of authorization from a Domestic Tariff Area buyer.

31.2 Thus, from the plain reading of the above provisions of law, it is evident that the liability to pay Customs duty is on the SEZ unit who filed the Bills of Entry and not on the buyer in DTA. In this case, the Bills of Entry for assessment were filed by M/s SMTL-SEZ and, therefore, the contention of M/s SMTL-SEZ that DTA buyer has to file BE and pay appropriate duties, so demand of the duties from the SEZ unit instead of the DTA is not tenable.

32.1 Secondly, M/s SMTL-SEZ contended that when department has assessed BE under Customs Act, without reassessment under sec 17(4), demand of differential custom duties is not sustainable in light of apex court decision in the case of ITC Ltd vs CCE Kolkata. In this regard, I find that Section 28 provides the machinery provision for making re-assessment under the provisions of Section 17(4) and 17(5). It provides for issuance of Show Cause Notice. Intertwining of these two sections is completed by way of sub-section 11 of section 28. Machinery provision cannot be separated from the provisions for making re-assessment of the Bill of Entry. In the case of *Canon India Pvt. Ltd.* v. *Commissioner of Customs* [2021 (376) E.L.T. 3 (S.C.)], the Hon'ble Supreme Court has observed as follows:-

> *"12. The nature of the power to recover the duty, not paid or short paid after the goods have been assessed and cleared for import, is broadly a power to review the earlier decision of assessment. Such a power is not inherent in any authority. Indeed, it has been conferred by Section 28 and other related provisions.*

32.2 In the case of *ITC Ltd-2019 (368) E.L.T. 216 (S.C.)*, the issue was related to filing refund application without challenging the assessment order and the issue is clearly distinguishable. I find that Hon'ble Tribunal in the case of *Asia Motor Works v. Commissioner — 2020 (371) E.L.T. 729 (Tri. - Ahmd.)* held that demand can be raised under Section 28 without challenging assessment. Hon'ble Tribunal held as under:

> *6. It has been argued by the Ld. Counsel for AMW that since the assessment has not been challenged, demand under Section 28 cannot be raised. In this regard Ld. AR had relied on decision of Ld. Apex Court in case of Jain Shudh Vanaspati Ltd. (supra) wherein it has been held that the demand can be raised under Section 28 even if challenging assessment. Consequently this argument of Ld. Counsel for AMW is rejected.*

32.3 In the case of *Jain Shudh Vanaspati Ltd* 1996 (86) E.L.T. 460 (S.C.), Hon'ble Supreme Court held as under:

> *5. It is patent that a show cause notice under the provisions of Section 28 for payment of Customs duties not levied or short-levied or erroneously refunded can be issued only subsequent to the clearance under Section 47 of the concerned goods. Further, Section 28 provides time limits for the issuance of the show cause notice thereunder commencing from the "relevant date"; "relevant date" is defined by sub-section (3) of Section 28 for the purpose of Section 28 to be the date on which the order for clearance of the goods has been made in a case where duty has not been levied; which is to say that the date upon which the permissible period begins to run is the date of the order under Section 47. The High Court was, therefore, in error in coming to the conclusion that no show cause notice under Section 28 could have been issued until and unless the order under Section 47 had been first revised under Section 130.*
>
> *Section 124 reads thus :-*
>
> *"S. 124. - Issue of show-cause notice before confiscation of goods, etc. - No order confiscating any goods or imposing penalty on any person shall be made under this Chapter unless the owner of the goods or such person -*
>
> *(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;*
>
> *(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and*
>
> *(c) is given 1a reasonable opportunity of being heard in the matter :*
>
> *Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral."*
>
> *6. The case of the appellants in the show cause notices is that the stainless steel containers in which the said oil was imported were banned, that the stainless steel containers were deliberately camouflaged by painting them to resemble mild steel containers, and that this was done with a view to enabling their clearance. A clearance order under Section 47 obtained by fraudulent means such as this (if it, in fact, be so) cannot debar the issuance of a show-cause notice for confiscation of goods under Section 124. Fraud, if established, unravels all. An order under Section 47 obtained by the employment of fraudulent methods does not have to be set aside by the exercise of revisional powers under Section 130 before the ill-effects of the fraud can be set right by initiation of the process of confiscation of the fraudulently cleared goods under Section 124.*

32.4 I also find that Hon'ble Tribunal in the case *of National Aluminium Company Ltd.-(2023) 8 Centax 31 (Tri.-Cal)*, has considered the order in the case of *ITC Ltd. (supra)* Section 28 provides the machinery provision for making re-assessment under the provisions of Section 17(4) and 17(5). It provides for issuance of Show Cause Notice. Intertwining of these two sections is completed by way of sub-section 11 of section 28. Machinery provision cannot be separated from the provisions for

making re-assessment of the Bill of Entry. Hon'ble Tribunal after discussing various case laws, including the case of *ITC Ltd.* (*supra*), held as under:

> *11. In our view Section 28 provides the machinery provision for making re-assessment under the provisions of Section 17(4) and 17(5). It provides for issuance of Show Cause Notice. Intertwining of these two sections is completed by way of sub-section 11 of section 28. Machinery provision cannot be separated from the provisions for making re-assessment of the Bill of Entry. If the argument of the Counsel for Appellant was to be admitted, it will make the provisions of Customs Act unworkable as in every case where Revenue do not agree with the self-assessment and Appeal will be filed before the Ld. Commissioner(Appeals) and only after decision of the Ld. Commissioner(Appeals) and an order under section 46 for clearance of the goods would be issued by the Customs Officer. This is going to cause undue hardship to the importers in every case. Accordingly, we are not inclined to agree with the submissions made by the Appellant/Appellant's Counsel in respect of the Miscellaneous Application filed. Therefore, the Miscellaneous Application is dismissed.*

32.5 In view of the above, the contention of M/s. SMTL-SEZ that when department has assessed BE under Customs Act, without reassessment under sec 17(4), demand of differential custom duties is not sustainable in light of apex court decision in the case of ITC Ltd vs CCE Kolkata.

33.1 Now coming to the merits of the case, the main issue involved in this case is whether the value of Rs. 1200/- per unit declared by M/s. SMTL-SEZ for clearance of "PTCA Dilatation Catheters" to related persons (SMTL-DTA) in DTA can be considered as transaction value and accepted under Rule 3(1) of the Customs Valuation Rules, 2007, as contended by the noticees or the said value is required to be rejected under Rule 12 of the Customs Valuation Rules, 2007 and determined under Rule 5 of the Customs Valuation Rules, 2007, as proposed in the show cause notice.

33.2 Rule 3 of Customs Valuation Rules, 2007 reads as follows –

> ***"Rule 3. Determination of the method of valuation.-***
>
> *(1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;*
>
> *(2) Value of imported goods under sub-rule (1) shall be accepted :*
>
> *provided that -*
>
> *(a) .....*
>
> *(b) .....*
>
> *(c) ..... and*
>
> *(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.*
>
> *(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.*
>
> *(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time-*
>
> *(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;*
>
> *(ii) the deductive value for identical goods or similar goods;*
>
> *(iii) the computed value for identical goods or similar goods:*

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9."

33.3 It is not in dispute that M/s. SMTL-SEZ and M/s. SMTL-DTA are related persons. Therefore, in view of the provisions of clause (d) of sub-rule (2) of Rule 3 of the Customs Valuation Rules, 2007, it requires to be examined whether the transaction value is acceptable for Customs purposes under the provisions of sub-rule (3) of Rule 3 of the said Rules.

33.4 It has been observed that M/s. SMTL-SEZ has cleared the goods in DTA only to two related persons viz. M/s. SMTL-DTA, at unit price of around Rs.1,200/-. These goods have subsequently been sold by the buyers (related persons) at much higher per unit price ranging from Rs.2,925/- to Rs.3,500/-. M/s. SMTL-SEZ has submitted that, they have derived the valuation in terms of Rule 8 of the Customs Valuation Rules, 2007. They submitted CAS-4 certificate from Cost Accountant for the cost of production for F.Y.2023-24 wherein total cost per balloon is Rs.1157.93 and they had declared the clearance value at Rs.1200/- per balloon. They have also submitted that the unit price of Rs. 1,200/- has been adopted by them by considering manufacturing cost only and other costs *viz.* R & D, Clinical Trial, Logistics, Warehousing, Transportation, Marketing, Sales Promotion, Administrative overhead etc. are not considered in SEZ as these are incurred outside SEZ. The noticees have not submitted anything which demonstrates that the price has been fixed in the present case by M/s. SMTL-SEZ and SMTL-DTA, in the manner in which unrelated buyers and sellers fix the price.

33.5 Rule 10 of the Customs Valuation Rules, 2007 contains provisions for addition of some of the cost / expenses incurred or payments made by the buyer, to the price actually paid or payable for the imported goods for determining the transaction value. In case of medical and surgical devices, like "PTCA Dilatation Catheters", substantial Research and Development costs may have to be incurred and the product may have to pass through clinical trials, before commencement of production and clearance. These are the costs without incurring of which manufacturing of such products cannot be undertaken. As the DTA unit of M/s. SMTL has incurred these costs, the same is required to be added in the value of the product for determining the transaction value in accordance with the provisions of Rule 10 of the Customs Valuation Rules, 2007. Similar is the case with some of the other expenses incurred by the DTA unit. However, objective and quantifiable data of these expenses are neither available nor provided by M/s. SMTL-SEZ, the transaction value cannot be determined under the provisions of Rule 3 of the Customs Valuation Rules, 2007.

33.6 M/s. SMTL-SEZ has neither contended nor submitted any evidence to the effect that the unit price of Rs. 1,200/- declared by them closely approximates to the transaction value of identical goods, or of similar goods in sales to unrelated buyers in DTA, or to the deductive value or computed value for identical goods or similar goods.

33.7 I, therefore hold that the value declared by M/s. SMTL-SEZ for payment of Customs duty on clearance of the said goods to related persons cannot be accepted as transaction value under Rule 3(1) and the same is required to be rejected as provided under Rule 12 of the Customs Valuation Rules, 2007.

34. As provided under sub-rule (4) of Rule 3 of the Customs Valuation Rules, 2007, if the value cannot be determined under the provisions of sub-rule (1) of Rule 3, the value shall be determined by proceeding sequentially through rule 4 to 9 of the Customs Valuation Rules, 2007.

34.1 Rule 4 and 5 of the Customs Valuation Rules, 2007 contains the provisions related to adoption of transaction value of "identical goods" and "similar goods" respectively, for value of imported goods. The definitions of "identical goods" and "similar goods" provided at clause (d) and (f) respectively of Rule 2 and provisions of Rule 4 and of the Customs Valuation Rules, 2007 are as follows :-

(d) "identical goods" means imported goods -

(i) which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of the goods,

(ii) produced in the country in which the goods being valued were produced, and

(iii) produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person,

but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

"(f) "similar goods" means imported goods -

(i) which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;

(ii) produced in the country in which the goods being valued were produced, and

(iii) produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person,

but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

Rule 4. Transaction value of identical goods. -

(1)(a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued;

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.

(c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

(2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are

significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

Rule 5. Transaction value of similar goods.-

(1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued:

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods.

34.2 M/s. SMTL-SEZ has submitted that the value of import made by them in SEZ unit from NATEC (M/s. Natec Medical Ltd., Mauritius) is close to the value of transfer by them from SEZ unit to the DTA unit and hence the transaction value declared by them should be acceptable. M/s. SMTL-SEZ has also contended that they have cleared identical goods to DTA unit as has been exported goods.

34.3 The definitions of "identical goods" and "similar goods" *inter-alia* provide that the imported goods should be produced in the country in which the goods being valued were produced and the imported goods should be produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person. In case of import made by M/s. SMTL-SEZ from M/s. Natec Medical Ltd., Mauritius, the said goods are not produced in the SEZ, therefore, the said goods can't be considered as "identical goods" or "similar goods" to goods cleared by M/s. SMTL-SEZ to DTA units inasmuch as those goods are not produced in the country in which the goods being valued were produced.

34.4 It has further been observed that Rule 4(1)(a) and 5(1)(a) of the Customs Valuation Rules, 2007 provides that the value of imported goods shall be the transaction value of identical goods or similar goods sold for export to India and imported at or about the same time as the goods being valued. The sample copies of Shipping Bills submitted by M/s. SMTL-SEZ are in respect of export of goods from SEZ to other countries outside India. Therefore, the said exported goods can't be considered as "identical goods" or "similar goods" to goods cleared by M/s. SMTL-SEZ to DTA units inasmuch as those goods were exported to other countries outside India.

35. Rule 4 of the Customs Valuation Rules, 2007 contains the provisions related to adoption of transaction value of identical goods for valuation of imported goods. No import of identical goods by any independent buyer in DTA from M/s. SMTL-SEZ has taken place during the period covered by the show cause notice. Therefore, the said Rule 4 is not applicable in the present case.

36. Rule 5 of the Customs Valuation Rules, 2007 contains the provisions related to adoption of transaction value of similar goods for valuation of imported goods.

36.1 It has been observed that "PTCA pre / post Dilatation Catheters" were cleared in DTA by another SEZ unit *viz.* M/s. Purple. The said goods, although might not be alike in all respect to "PTCA Dilatation Catheters" cleared by M/s. SMTL-SEZ to DTA, have like characteristics and like component materials which enable them to perform the same functions and are commercially interchangeable with "PTCA Dilatation Catheters" of M/s. SMTL-SEZ having regard to the quality, reputation and the existence of trade mark. The goods "PTCA pre / post Dilatation Catheters" cleared in DTA by M/s. Purple have been produced in the same SEZ in which M/s. SMTL-SEZ is situated. Further, M/s. Purple have cleared the said goods to DTA.

36.2 Sample Invoices of M/s. Purple are for clearance of 10 units to 111 units at per unit price of Rs. 3,178/-. M/s. SMTL-SEZ has cleared the goods to SMTL-DTA at per unit price of Rs. 1,200/-, whether it was a clearance of 1 unit or clearance of more than 4000 units. Therefore, value of goods cleared by M/s. Purple can be considered as value of similar goods for determination of value of goods cleared by M/s. SMTL-SEZ, even though the sale by M/s. Purple may not be at the same commercial level.

36.3 There is no contention by M/s. SMTL-SEZ that the sale by M/s. Purple is not at the same commercial level, though it has cited various decisions wherein the expression "commercial level" has been discussed. I have carefully gone through those decisions and find that the facts in each of those cases are different and hence ratio of none of those decisions is applicable in the present case. In the case *of New Holland Tractors (India) Pvt. Ltd. [2002 (144) ELT 410 (Tri.)]*, the issue involved was regarding valuation of goods imported for original equipment manufacturing (assembly) and goods imported as spare parts, which is not the issue in the present case. In that case, it was held that import by the manufacturer and import by trader are accepted as two different commercial level. Similar was the issue in case of *Volvo India Private Limited [2005 (180) E.L.T. 489 (Tri. – Bang.)]* wherein the price of Original Equipment supplied was proposed to the level of price of spare parts. In case of *Narayan International [1992 (58) ELT 126 (Tri.)]*, it was held that the impugned imports were from Singapore whereas imports of M/s. Durga was from Hong Kong, whereas in the present case import by DTA units are from the same SEZ, though the goods are produced by different units. In case of *Punjab Niryat Ayat Pvt. Ltd. [1992 (58) E.L.T. 340 (Tri.)]*, it was held that the appellant therein being regular importer and M/s. Mash Leather being a consumer, both the importers cannot be treated at the same commercial level, whereas, in the present case, the importers are DTA units of M/s. SMTL-SEZ and M/s. Purple and none of them is consumer. Similarly, in the case *of ATCO Industries Ltd. [1992 (57) ELT 654 (Tribunal) – 1996 (86) ELT A76 (SC)]* there was one set of goods imported by actual user and 24 sets imported by dealer for resale. In case of Hewlett Packard Ltd. *[1999 (108) ELT 221 (Tri.)]*, related person (subsidiary company) imported goods in bulk for stock and sale whereas individual consumer imported a small quantity for actual use. In case of *Gemplus India Private Limited [2005 (185) ELT 269 (Tri.)]*, it has inter-alia been held that the appellants regularly import the goods in huge quantities for testing the market conditions; that in doing so, they function as traders of the goods imported, but the independent buyers who imported goods directly are actual users; that the trader and the actual user are not at the same commercial level. In case of *Sellers Men [2009 (248) ELT 338 (Tri.)]*, it has been held that Manufacturer's price, wholesale price, retail price, auction of stock lot, etc. represent the different commercial levels of sale transactions, hence the auction price cannot be compared with the price of the impugned goods in the Indian market. In the present case, both the units *viz.* M/s. SMTL-SEZ and M/s. Purple are manufacturer situated in the same SEZ and the comparison of one manufacturer's price is being made with another manufacturer's price only. In case of *D.R. Polymers Ltd. [2004 (166) ELT 393 (Tri.-Del.)]*, the appellant had imported 34 MT of goods, the contemporaneous import was only for 17 MT which was 50% of the quantity imported by the appellants, hence the contemporaneous import was considered not on the same commercial level. In the case of *Meera Impex [2004 (167) ELT 446 (Tri. – Mumbai)]*, it was held that the transaction value cannot be altered / loaded on the basis of value declared in stray imports when the quantity / quality is not comparable; that LME prices are only indicative at best. In the present case, neither LME price nor value of stray import is being compared.

36.4 M/s. SMTL-SEZ has also cited various decisions on the issue of similar goods. In some of the decisions cited by M/s. SMTL-SEZ, the imported goods have been held to be similar goods whereas the imported goods have held to be not similar

goods in other decisions. In case of *Glass Moulding Industries [1994 (69) E.L.T. 590 (Tribunal)]*, the product involved was "Optical Raw Glass" meant for conversion into lenses for sunglasses and it was held that such glass of different shades and transparencies were not similar goods. In the present case, the product of M/s. SMTL-SEZ as well as that of M/s. Purple is "PTCA Dilatation Catheters" and it is not the contention of M/s. SMTL-SEZ that both the products are not similar. In case of *Nitisoya Diamond Tools [1994 (74) E.L.T. 49 (Tribunal)]*, it was held that the goods produced in Japan and those produced in France are not similar goods, whereas in the present case, the product is being manufactured by M/s. SMTL-SEZ as well as M/s. Purple in the same SEZ. In the case of *Puja International [1995 (76) ELT 69 (Tri.)]*, the goods imported by M/s. Subrose Ltd. (another importer) were "Cooling Unit Assembly" whereas the goods imported by the appellants were cooling coils with expansion valve. Hon'ble Tribunal in that case held that on going through the facts and seeing the items imported by M/s. Subrose Ltd. with reference to nature, type, quality and use, the items imported by M/s. Subrose were neither identical goods nor similar goods and cannot be said to be a contemporaneous evidence. In case of *Dujodwala Paper Chemicals Ltd. [1990 (110) E.L.T. 901 (Tribunal)]*, date of contract (15.1.1991 and 23.9.1990), country of origin (Denmark and France) and quantity (500 kgs. and 1000 kgs.) were different, therefore it was held that the goods could not be taken for purpose of enhancement of value. In case of *CEAT Ltd. [2000 (125) ELT 917 (Tri.)]*, the price of purchase made by other importer was held not acceptable as the period was entirely different, the quantity differed substantially and also there were unusual circumstances prevailing in international market, namely Gulf prices. In case of *Modern Overseas [2005 (184) ELT 65 (Tri. – Del.)]*, the Revenue took a print out of Godrej Locks from Internet and compared the same with imported locks. In case of *Parag Sheth [2005 (188) ELT 391 (Tri.-Mumbai)]*, the Bills of Entry produced by the appellant showing contemporaneous imports of similar goods was not considered by the adjudicating authority; Hon'ble Tribunal held that determination of price of imported goods on the basis of a proforma invoice supposed to have been issued by someone who later claims that he has not, cannot be sustained. In case of *Sri Venkatesh Enterprises [2005 (192) ELT 818 (Tri.-Chennai)]*, the issue involved was whether second-hand machinery of Japanese origin manufactured during 1995-2001 are comparable with goods of American / doubtful origin. In case *of Keveeyam Company [2006 (194) E.L.T. 447 (Tri.-Bang.)]*, it has been held that in the absence of quality, quantity and commercial level, no comparison can be made. In case of *Neha Intercontinental (P) Ltd. [2006 (202) E.L.T. 530 (Tri.-Mumbai)]*, Hon'ble Tribunal observed from the NIDB data that only one model shown therein tallied with one of the 4 models imported by the appellant; that the level of import was not comparable, therefore the NIDB data did not establish that the contemporaneous import was of similar goods imported from China. In case of *Tech Tronix India [2006 (203) E.L.T. 31 (Tri.-Kolkata)]*, it was held that a perusal of the data relied upon by the department revealed that the same did not indicate the level of imports in quantity terms & the comparable description of the goods compared as imported at Ahmedabad whose price was being adopted, described those goods as "Integrated Received Decoder (Set Top Box)", while goods under import were "Digital Satellite Receiver (Set Top Box). In the case of Inox India Limited [2007 (209) E.L.T. 320 (Tri. – Mumbai)], transaction value of import in June, 1997 was compared with the values of similar goods imported in October, 1996. In that case, Hon'ble Tribunal observed that there was material evidence that there was gradual down trend in the price of that commodity, hence historical data of import of similar goods supplied in October, 1996 cannot be considered as contemporaneous price for imports effected in June, 1997. In case of Frontline Printers Ltd. [2007 (211) E.L.T. 545 (Tri. – Chennai)], second hand offset printing machine was imported and Chartered Engineer's Certificate from abroad was submitted in support of declared value of the goods, which was rejected without stating reason and local Chartered Engineer's

report was considered. In case of Vijay Leather Stores [2007 (215) E.L.T. 304 (Tri. – Bang.)], it has been held that if the transaction value is to be rejected, one of the grounds mentioned in Rule 4(2) of the Customs Valuation Rules (erstwhile Customs Valuations Rules, 1988) has to be pin-pointed and Revenue should invoke the valuation rules in seriatim, after rejecting the transaction value. In case of B.C. Trading Company [2006 (202) E.L.T. 619 (Tri.-Bang.)], the Department relied on the price available on the website of the manufacturer and the Hon'ble Tribunal held that the Department has to do thorough investigation before rejecting the transaction value. In case of Samar Polytex Ltd. [2009 (238) E.L.T. 621 (Tri.-Del.)], Hon'ble Tribunal held that a comparison of prices of goods of two distinct varieties [i.e. nylon with polyester-nylon mix) and that too from two different countries (Taiwan and China) is not permissible. In case of Misri Apparels Pvt. Ltd. [2009 (239) E.L.T. 468 (Tri.-Bang.)], commercial level of the NIDB data was not comparable with the commercial level of imports, the import was made directly from the manufacturer whereas the NIDB data referred to the goods received from traders and NIDB data of one item was with regard to a branded item. In case of Aneja Steels [2016 (331) E.L.T. 95 (Tri.-Del.)], Hon'ble Tribunal observed that it did not find any evidence in the impugned order whether the NIDB data relied upon was relating to the comparable quantity of identical or similar goods; that the transaction value was sought to be rejected as per the show cause notice essentially because the goods were alleged to be mis-declared in description thereof, but once the goods were held to have been correctly described by the appellant, the very basis of rejecting the transaction value disappeared. It is therefore evident that the facts in the decisions cited by M/s. SMTL-SEZ are totally different than the facts of the present case, therefore, ration of none of those decisions is squarely applicable in the present case as there is quite difference in the facts of the cases relied upon by the M/s. SMTL-SEZ and facts and circumstances of the present case under consideration. In this regard, I would like to rely on the decision of the Hon'ble Apex court in case of **'Collector of Central excise, Calcutta Vs Alnoori Tobacco Products' (2004(170)ELT 135 SC),** where it was observed by the Hon'ble Apex Court-

> *"11. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes ……."*

36.5 It is proposed in the show cause notice to compute the value of PTCA Dilatation Catheters cleared by M/s. SMTL-SEZ by taking into account the value of similar goods (PTCA pre/post-Dilatation Catheters) cleared into DTA by M/s. Purple. M/s. SMTL-SEZ has not disputed that the PTCA pre/post-Dilatation Catheters produced and cleared by M/s. Purple and that produced and cleared by M/s. SMTL-SEZ are similar goods.

36.6 In fact, the entire argument of M/s. SMTL-SEZ is based on the difference in the cost structure of the products manufactured by them and M/s. Purple. M/s. SMTL-SEZ has contended that the goods for which the buyer incurs certain cost are not identical with goods wherein no cost has been incurred by the buyer. This contention is not tenable as some of the cost / expenses incurred or payments made by the buyer are required to be added to the price actually paid or payable for the imported goods for determining the transaction value of imported goods as per the provisions of Rule 10 of the Customs Valuation Rules, 2007, which has already been discussed.

36.7 I, therefore hold that PTCA Dilatation Catheters produced and cleared in DTA by M/s. Purple are similar goods to PTCA Dilatation Catheters produced and cleared in DTA by M/s. SMTL-SEZ and the value of Rs.3,178/- per unit of similar goods cleared in DTA by M/s. Purple is to be considered as assessable value of PTCA Dilatation Catheters cleared by M/s. SMTL-SEZ in DTA to related buyers, in terms of Section 14 of the Customs Act, 1962 read with Rule 5 of the Customs Valuation Rules, 2007.

37. As per Rule 6 of the Customs Valuation Rules, 2007, if the value of imported goods cannot be determined under the provisions of rules 3, 4 and 5, the value shall be determined under the provisions of rule 7 or, when the value cannot be determined under that rule, under rule 8. As already discussed, the value of PTCA Dilatation Catheters cleared by M/s. SMTL-SEZ in DTA to related buyers is required to be determined in terms of Section 14 of the Customs Act, 1962 read with Rule 5 of the Customs Valuation Rules, 2007. Therefore, it is not necessary to determine the value of said goods by "deductive value" method under Rule 7 or by "computed value" method under Rule 8 of the Customs Valuation Rules, 2007.

37.1 M/s. SMTL-SEZ has submitted that they have derived the value of PTCA Dilatation Catheters cleared in DTA in terms of Rule 8 of the Customs Valuation Rules, 2007 and submitted Cost Accountant's Certificate showing Cost of Production during 2023-24. Since the transaction value of similar goods is available in the present case, the assessable value is to be determined under Rule 5 of the Customs Valuation Rules, 2007, and not under Rule 8 of the Customs Valuation Rules, 2007, as contended by M/s. SMTL-SEZ.

37.2 It has been submitted by M/s. SMTL-SEZ that the unit price of Rs.1200/- adopted by them is by considering manufacturing cost only and load of other costs *viz.* R & D, Clinical Trial, Logistics, Warehousing, Transportation, Marketing, Sales Promotion, Administrative Overhead etc. are not considered in SEZ, as these are incurred outside SEZ. Even in case of determination of value of imported goods under Rule 8 of the Customs Valuation Rules, 2007 by "computed value" method, it shall consist of the sum of the cost or value of materials and fabrication or other processing employed in producing the imported goods, an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India. Therefore, in the present case, general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the SEZ for clearance in DTA, are required to be included in the computed value. As such, some of the costs not included by M/s. SMTL-SEZ in the value of PTCA Dilatation Catheters cleared in DTA, on the ground that the same are incurred outside SEZ, may have to be included for determining value under "computed value" method. Since, it has already been discussed that value of PTCA Dilatation Catheters cleared in DTA by M/s. SMTL-SEZ is not required to be determined under Rule 8 of the Customs Valuation Rules, 2007, I do not propose to further discuss on this issue.

37.3 I find that the demand for earlier period was confirmed by Order-in-Original No.AHM-CUSTM-000-PR-COMM-23-23-24 dated 15.12.2023. The said order was remanded back by CESTAT vide Final Order No.12708-12710/2023 dated 14.11.2024 which was relied upon by M/s SMTL-SEZ during personal hearing.

37.4 I find that one of the reasons that Hon'ble Tribunal has remanded back the case for de-novo consideration was for granting opportunity to explain the costing of the product arrived at in CAS-4 Certificate. Thus, M/s SMTL-SEZ was bound to explain before the adjudicating authority the costing of the product arrived at in CAS-4. I find that in the CAS-4 certificate produced by M/s SMTL-SEZ in the present

case they have failed to explain the same. They have also failed to explain the same either in their defence reply or at the time of personal hearing.

38.1 M/s. SMTL-SEZ has submitted that the duty demand includes Customs duty plus IGST, whereas IGST is allowable as credit to DTA unit. It has further been submitted that the IGST amount is allowable as credit to DTA unit, therefore demand is revenue neutral to that extent.

38.2 In this regard, it has been observed that admissibility or otherwise of Input Tax Credit of IGST paid on imported goods is not an issue before me in the present proceedings.

38.3 Further, the indirect tax system in our country, and particularly Goods and Services Tax Law provides for Input Tax Credit to the buyer in respect of taxes paid by the supplier, in accordance with the provisions of Integrated Goods and Services Tax Act, 2017, Central Goods and Services Tax Act, 2017 and State / Union Territory Goods and Services Tax Act, 2017. Basic Customs Duty paid on the goods cleared from SEZ to DTA is not admissible as Input Tax Credit under Goods and Services Tax Law. When M/s. SMTL-SEZ has not paid / short paid the duty (Basic Customs Duty and IGST), the question of admissibility of Input Tax Credit to DTA buyer does not arise. The decisions in the case of Popular Vehicles & Services Ltd. [2010 (18) STR 493 (Tri. – Bang.)], Dineshchandra R Agarwal Infracon Pvt. Ltd. [2010 (18) STR 39 (Tri.- Ahmd.)] Shakti Auto Components Ltd. and [2009 (14) STR 694 (Tri. – Chennai)] cited by M/s. SMTL-SEZ pertains to Service Tax which were dealt with on different footings and not squarely applicable to the facts and circumstances of the present case. Hon'ble Supreme Court of India in the case of **Escorts Ltd.- 2004 (173) E.L.T. 113 (S.C.),** observed that:

> *"10. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper."*

38.4 Further, revenue neutrality cannot be applied in all situations and at all times. The law laid down in judicial pronouncements cannot be stretched to plead revenue neutrality in case where liability to pay duty is cast upon a person other than the one availing the credit of duty so paid. Such interpretation would exempt all suppliers from the liability to pay duty as their customer/client avail credit. At the same time it must also be kept in mind that when a statutory obligation is casted upon a person to act in a particular manner (like to pay duty on supplies) then in such a situation it may be argued that there cannot be defiance of law by taking the plea of revenue neutrality. Such a situation will make the provision of law redundant. Merely because the buyer is entitled to avail Input Tax credit, that cannot give leverage to M/s. SMTL-SEZ to avoid payment of duty in time. Non-payment of any duty results in revenue loss in relation to the principal amount of tax as the same is retained away from the treasury and the treasury loses the interest which could otherwise accrue on such principal amount of tax. Therefore, I hold that the concept of revenue neutrality is not applicable in the present case.

39. As per Rule 11 of the Customs Valuation Rules, 2007, the importer or his agent is required to furnish a declaration disclosing full and accurate details relating to the value of imported goods. M/s. SMTL-SEZ in the present case has filed Bills of Entry on behalf of its DTA unit *viz.* M/s. SMTL-DTA in terms of proviso to Rule 48(1) of the SEZ Rules, 2006. As the transaction was between related persons, all the details and information with respect to valuation were available with M/s. SMTL-SEZ as well as its related buyers. Therefore, in terms of Rule 11 of the Customs Valuation Rules, 2007, M/s. SMTL-SEZ was required to disclose full and accurate details relating to the value of goods cleared by it into DTA to related buyers. The Government has placed full faith on the taxpayers. As per provisions of Section 17 of the Customs Act, 1962, an importer or exporter is required to self-assess the duty

leviable on such goods. Similarly, Rule 75 of the SEZ Rules, 2006 provides that all inward or outward movement of goods into or from the Zone by the Unit or Developer shall be based on self-declaration made and no routine examination of these goods shall be made unless specific orders of the Development Commissioner or the Specified Officer are obtained. As such, it was incumbent upon M/s. SMTL-SEZ and its related DTA buyers *viz.* M/s. SMTL-DTA to ensure that correct valuation as per the provisions of the Customs Valuation Rules, 2007 is adopted for clearance of PTCS Dilatation Catheters from SEZ unit to DTA. However, despite knowing that the DTA buyers (M/s. SMTL-DTA) are selling the product to unrelated buyers at much higher price than the price declared for clearance from SEZ unit to DTA (goods cleared to unrelated buyers at price of as high as Rs. 3500/- per unit against value of Rs.1200/- per unit declared for payment of Customs duty), they have adopted value on the basis of cost of manufacture, without determining the value under Rule 3 of the Customs Valuation Rules, 2007 or where value could not be determined under the said Rule, then by proceeding sequentially through rule 4 to 9 of the said Rules. Even in case of cost of manufacture, some of the costs which are required to be considered in terms of Rule 10 of the Customs Valuation Rules, 2007, have not been considered on the ground that those cost / expenses have been incurred outside SEZ. The goods were cleared from M/s. SMTL-SEZ to M/s. SMTL-DTA on the strength of invoices submitted along with respective Bills of Entry, which did not reflect the correct assessable value of the goods as per the provisions of Section 14 of the Customs Act, 1962 read with the Customs Valuation Rules, 2007, on which Customs duty was payable. The correct assessable value of the said goods was thus, willfully suppressed at the time of clearance from SEZ unit to related DTA unit and thereby Customs duty was evaded though the higher price of the goods was recovered by the related DTA units from independent buyers. Thus, it is evident that M/s. SMTL-SEZ has engaged in mis-declaration and suppression of facts with an intent to evade payment of Customs duties on the clearance of PTCA Dilatation Catheters from SEZ to related DTA buyers.

40.1 M/s. SMTL-SEZ has submitted that extended period of limitation is not invocable in the present case. However, I find that the show cause notice has been issued for the period April 2023 to March 2024 on 10.10.2024. As per Section 28 of 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 show cause notice is required to be served within two years from the relevant date and 'relevant date' in a case where duty is 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. Section 28(1) and Explanation 1 under Section 28 ibid read as under:

> ***Section 28. [1][Recovery of [2][duties not levied or not paid or short-levied or short- paid] or erroneously refunded.*** -
>
> *(1) Where any [3][duty has not been levied or not paid or short-levied or short-paid] or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any willful mis-statement or suppression of facts,-*
>
> *(a) the proper officer shall, within [4][two years] from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied [5][or paid] or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice;*
>
> ***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;

(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.

40.2 I find that the present notice has been issued for the clearances made by M/s SMTL-SEZ during the period April 2023 to April 2024 and the notice was issued on 10.10.2024. Therefore, the notice has been issued within the stipulated time limit and not invoked extended period of limitation contrary to the submissions made by M/s SMTL-SEZ. Hence all the case laws relied upon by them are not relevant in the present matter.

41. Section 28AA of the Customs Act, 1962 provides that 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. As M/s. SMTL-SEZ was liable to pay Customs duties, which was short paid and is recoverable under the provisions of Section 28 of the Customs Act, 1962, they are also liable to pay interest on the said amount of Customs duties at the applicable rate under the provisions of Section 28AA of the Customs Act, 1962.

42.1 Any goods which do not correspond in respect of value or in any other particular with the entry made under the Customs Act, 1962 are liable for confiscation under Section 111(m) of the Customs Act, 1962. In the present case, the goods covered by the Bills of Entry filed for clearance of goods from SMTL-SEZ to DTA units did not correspond in respect of value inasmuch assessable value was not correctly declared in the said Bills of Entry, which resulted in short payment of Customs duty.

42.2 M/s. SMTL-SEZ has cited decisions in case of G.M. Exports [2008 (226) E.L.T. 571 (Tri.-Bang.)] and Amar Industries [2010 (256) E.L.T. 120 (Tri.-Bang.)] wherein it has been held that redemption fine cannot be imposed in respect of goods which were not at all seized, but held liable for confiscation. I observe that the issue of imposition of redemption fine when goods are not available has been decided by the Hon'ble High Court of Madras in case of **Visteon Automotive Systems India Limited [2018 (9) G.S.T.L. 142 (Mad.)]**, wherein it has been held as follows –

"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)."

42.3 As clearly held by the Hon'ble High Court, the availability of goods is not necessary for imposing the redemption fine. Hon'ble High Court of Gujarat, in case of **Synergy Fertichem Pvt. Ltd. [2020 (33) G.S.T.L. 513 (Guj.)]** pertaining to GST has followed the aforesaid judgement of Hon'ble High Court of Madras. Therefore, since the goods cleared from SMTL-SEZ to DTA units are liable for confiscation under Section 111(m) of the Customs Act, 1962, and the goods are not available for confiscation, redemption fine in lieu of confiscation is required to be imposed under Section 125(1) of the Customs Act, 1962.

43.1 M/s. SMTL-SEZ has submitted that they had acted *bona-fide*, there was no collusion for evasion of duty, so no penalty may be applicable on them under Section 112 and 114A of the Customs Act, 1962.

43.2 Section 114A of the Customs Act, 1962 provides for imposition of penalty in cases where the duty has not been levied or paid or short levied or paid by reason of collusion or any wilful mis-statement or suppression of facts, as determined under Section 28 of the Customs Act, 1962. I find that there is no allegation of any wilful mis-statement or suppression of facts made in the show cause notice and the notice has been issued under Section 28(1) ibid. Therefore, I hold that penalty under Section 114A of the Customs Act, 1962 is not imposable in the present facts and circumstances of the case.

43.3 The show cause notice also proposes imposition of penalty under Section 112 of the Customs Act, 1962, which provides penalty for the omission and commission of a person which rendered goods liable to confiscation under section 111, or abets the doing or omission of such an act, or on the person who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111.

43.4 M/s. SMTL-SEZ failed to ensure that correct valuation as per the provisions of the Customs Valuation Rules, 2007 is adopted for clearance of the goods under dispute from SEZ unit to DTA, despite knowing that the DTA buyer (M/s. SMTL-DTA) are selling the product to unrelated buyers at much higher price than the price declared for clearance from SEZ unit to DTA. The goods were cleared from M/s. SMTL-SEZ to M/s. SMTL-DTA on the strength of invoices submitted along with respective Bills of Entry, which did not reflect the correct assessable value of the goods as per the provisions of Section 14 of the Customs Act, 1962 read with the Customs Valuation Rules, 2007. Therefore, the goods under dispute have been liable for confiscation under Section 111(m) of the Customs Act, 1962 and the Noticee-M/s. SMTL-SEZ by conciously dealing with the goods under dispute had acquired/removed/sold the goods which he knew or had reasons to believe that the goods were liable to confiscation under Section 111 of the Customs Act, 1962. For the act of omission and commission, M/s. SMTL-SEZ rendered themselves liable for penal action under Section 112(a) and (b)(ii) of the Customs Act,1962.

43.5 Show Cause Notice proposes penalty on M/s. SMTL-DTA under Section 112 of the Customs Act, 1962. M/s. SMTL-DTA has submitted that they had no special or extra benefit on saving any Customs duty, being purchaser from M/s. SMTL-SEZ, they have not acted in any manner in personal capacity, which was harmful for the revenue, therefore, penalty is not imposable on them under Section 112(b)(ii) of the Customs Act, 1962

43.6 I find that M/s. SMTL-DTA is a related person situated in DTA who has cleared the goods (PTCA Dilatation Catheter) to independent buyers at much higher price than the value declared for clearance of the said goods from SMTL-SEZ. This unit incurred various costs and expenses, in respect of which M/s. SMTL-SEZ has contended that the same have not been included in the value of goods cleared from SEZ as they have been incurred outside SEZ. Thus, the DTA unit was well aware that the value of the goods cleared by M/s. SMTL-SEZ to them is not correct assessable value as per the provisions of the Customs Act, 1962 and rules framed thereunder. M/s. SMTL-DTA has failed to ensure that correct value is declared in the Bills of Entry for home consumption filed for clearance of goods from SEZ, they abetted in the declaration of lower value in the Bills of Entry resulting in evasion of Customs duty, rendering such goods liable for confiscation under Section 111(m) of the Customs Act, 1962. They acquired possession of and were concerned in purchasing and selling of the said goods, which they knew or had reason to believe were liable to confiscation under Section 111. I therefore, hold that M/s. SMTL-DTA are liable to penalty as provided under Section 112b(ii) of the Customs Act, 1962.

44. In view of my findings in foregoing paras, I pass the following order –

ORDER

(i) I reject the value of **Rs. 5,70,94,800/- (Rupees Five Crore, Seventy Lakh, Ninety Four Thousand, Eight Hundred Only)** declared by them in respect of their goods "PTCA Dilatation Catheters/Balloon Catheters" cleared in DTA to their related Concern unit SMTL-DTA during the period from April-2023 to March-2024 as per Annexure-A to SCN under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re-determine as **Rs.15,12,06,062/- (Rupees Fifteen Crore, Twelve Lakh, Six Thousand and Sixty Two Only)** as mentioned in the said Annexure, under Section 14 of the Customs Act, 1962 read with Rule 3 & Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 as applicable;

(ii) I order to confiscate the goods i.e. "PTCA Dilatation Catheters/Balloon Catheters" cleared in DTA to their related Concern unit SMTL-DTA totally valued at **Rs. 15,12,06,062/- (Rupees Fifteen Crore, Twelve Lakh, Six Thousand and Sixty Two Only)**(re-determined value) as detailed in the Annexure-A to SCN under Section 111(m) of the Customs Act, 1962. However, as the said goods are not available for confiscation, I impose redemption fine of Rs.1,50,00,000/- (Rupees one crore fifty lakhs only) in lieu of confiscation.

(iii) I confirm the demand of Customs duty amounting to **Rs. 2,57,86,486/- (Rupees Two Crore, Fifty Seven Lakh, Eighty Six Thousand, Four Hundred and Eighty Six only)**, from M/s. Sahajanand Medical Technologies Ltd. (SEZ Unit) and order recovery of the same from them under Section 28 (1) of the Customs Act, 1962 by invoking extended period of limitation read with Section 30 of the SEZ Act, 2005;

(iv) I order to charge and recover interest at the applicable rate in terms of provisions of Section 28AA of the Customs Act, 1962 on the differential Customs duty as mentioned at (iii) above, from M/s. Sahajanand Medical Technologies Ltd. (SEZ Unit);

(v) I impose penalty of **Rs. 25,00,000/- (Rupees Twenty five lakhs only),** on M/s. Sahajanand Medical Technologies Ltd. (SEZ Unit) under Section 112(a) & (b)(ii) of the Customs Act, 1962.

(vi) I refrain from imposing any penalty under Section 114A of the Customs Act, 1962 on M/s. Sahajanand Medical Technologies Ltd. (SEZ Unit) for reasons discussed in the OIO.

(vii) **I impose penalty of Rs. 25,00,000/- (Rupees Twenty five lakhs only) on M/s. Sahajanand Medical Technologies Ltd.** (SMTL-DTA) (GSTIN: 24AAFCS7694L1ZO) Sahajanand Estate, Wakharia Wadi, Near Dabholi Char Rasta, Ved Road, Surat, Gujarat – 395 004 under Section 112(b) (ii) of the Customs Act.

Signed by
Shiv Kumar Sharma
Date: 04-03-2025 17:36:56

(Shiv Kumar Sharma)
Principal Commissioner
Customs, Ahmedabad

DIN-20250371MN0000919069

F.No. GEN/ADJ/COMM/420/2024-Tech Date : 4.3.2025

To,

1. M/s. Sahajanand Medical Technologies Ltd.(SEZ)
   Plot No. 32 to 35 & 52 to 54,
   Surat Special Economic Zone,
   Sachin, Surat – 394 230.

2. M/s. Sahajanand Medical Technologies Ltd.(DTA)
   Sahajanand Estate, Wakharia Wadi,
   Near Dabholi Char Rasta, Ved Road,
   Surat – 395 004.

Copy to:

1. The Specified Officer, Office of the Development Commissioner, Surat Special Economic Zone, Near Sachin Railway Station, Diamond Park, Sachin, Surat – 394 230.
2. The Superintendent (Systems), Customs Commissionerate, Ahmedabad, for uploading of the website.
3. Guard file.