	आयुक्त सीमाशुल्क का कार्यालय, सीमाशुल्क सदन,कांडला, कच्छ, गुजरात **OFFICE OF THE COMMISSIONER OF CUSTOMS, CUSTOM HOUSE KANDLA, KUTCH, GUJARAT** **दूरभाष: 02836–271468/469** **e-mail: commr-cuskandla@nic.in**

F. No.:- GEN/ADJ/COMM/218/2026-Adjn-O/o Commr-Cus-Kandla_

SHOW CAUSE NOTICE

(Issued under Section 28(4) of Customs Act,1962)

1. Brief Facts

1.1 M/s Bhabani Pigments Private Limited, Sonepat-Rohtak Road, Kharkhoda, Sonepat - 131402, having IEC No. 0596013442, hereinafter referred to as the "**Noticee**" or "**Importer**", is engaged in the manufacture of Phthalocyanine Blue classifiable under CTH: 32041751 and had imported **Technical Grade Urea Prilled** for Industrial use only under Advance Authorisations issued under the Foreign Trade Policy.

1.2 Whereas, an analysis was carried out by CERA Audit vide LAR No. 05/2022-23 dated 15.07.2022 [**RUD-01**] in respect of non-payment of IGST on imports cleared through three Bills of Entry by claiming exemption not admissible in law. The audit objection pointed out that the Noticee had used Advance Authorisations governed by Notification No. 21/2015-Cus., dated 01.04.2015, relating to deemed exports, while simultaneously claiming exemption from IGST under Notification No. 18/2015-Cus., dated 01.04.2015, which applies to Advance Authorisations for physical exports.

1.3 As per the above referred LAR No. 05/2022-23 dated 15.07.2022, CERA had noticed that the said importer had cleared “Technical Grade Urea (for Industrial use)” (CTH: 31021000) through three (department assessed) Bills of Entry filed for home consumption availing duty exemption under “Advance Authorisation for deemed export” (Notification No. 21/2015-Cus., dated 01.04.2015). CERA had also ascertained the applicability of the said Notification No. 21/2015-Cus. dated 01.04.2015 to the **Advance Authorisation No. 0510415837 dated 12.11.2020** issued by RA-Delhi. However, it was noticed by CERA that the said importer had **incorrectly availed exemption from IGST despite the said Advance Authorisation (for deemed exports) being ineligible for**

the same, for which Notification No. 18/2015-Cus dated 01.04.2015 was wrongly quoted by them. Finally, CERA had observed that the above act on part of the said importer had resulted into incorrect availment of IGST exemption to the tune of Rs.54,81,750/- which appeared to be recoverable along with applicable interest. The details of the impugned Bills of Entry are shown as under (**Table-I**):

Table-I

Sr. No.	**Bill of Entry No.**	**Date**	**CTH**	**Description**	**Assessable Value (Rs.)**	**IGST involved (Rs.)**
1	4117272 [**RUD-02**]	28.05.2021	31021000	Technical Grade Urea Prilled for Industrial use only	86,15,514	15,50,793
2	4569515 [**RUD-03**]	05.07.2021	31021000	Technical Grade Urea Prilled for Industrial use only	78,36,872	14,10,637
3	5605588 [**RUD-04**]	27.09.2021	31021000	Technical Grade Urea Prilled for Industrial use only	1,40,01,778	25,20,320
Total					**3,04,54,164**	**54,81,750**

1.4 Whereas, in view of the above referred observations raised by CERA Audit [LAR No. 05/2022-23 dated 15.07.2022] regarding non-payment of IGST by wrongly claiming exemption under Notification No. 18/2015-Customs dated 01.04.2015 (Advance Authorization Scheme for Physical Exports), the records of the impugned imports were examined.

1.5 In context of the above, it is observed that, as per Notification No. 21/2015-Cus dated 01.04.2015, exemption is granted to the materials required for manufacture of final goods when imported into India, from the whole of the duty of Customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), and from the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of Section 3, safeguard duty leviable under Section 8B, countervailing duty leviable under Section 9 and anti-dumping duty leviable under Section 9A of the Customs Tariff Act, subject to fulfilment of the conditions specified therein.

1.6 Whereas, Section 5 of the Integrated Goods and Services Tax Act, 2017 provides for levy of IGST. In the case of goods imported into India, IGST is leviable and collectible in accordance with Section 3 of the Customs Tariff Act, 1975 at the point at which customs duties are levied under the Customs Act, 1962. Further, Section 3(7) of the Customs Tariff Act, 1975 provides that any article imported into India shall, in addition to other duties, be liable to integrated tax at the rate leviable under Section 5 of the IGST Act on a like article on its supply in India. Therefore, from the above referred statutory provisions, it transpires that IGST is **independently leviable on imported goods unless specifically exempted by a valid exemption notification**. It therefore transpires that any exemption from payment of IGST must be claimed strictly within the scope, conditions and field of operation of the relevant exemption notification. The burden of establishing eligibility to such exemption is on the person claiming such exemption.

1.7 Further, Notification No. 21/2015-Cus dated 01.04.2015 applies to materials imported against Advance Authorisations issued for **deemed exports** and grants exemption to the extent expressly provided therein as already discussed at **Para 1.5** *supra*. Further, one of the conditions of the subject notification is that the importer has been granted Advance Authorization by the DGFT for deemed export in terms of Paragraph 4.05(c)(iii) of the Foreign Trade Policy (FTP) permitting import of materials, as per the said Authorization. Investigation conducted by the Department has revealed that the **Advance Authorisation used/debited in the impugned Bills of Entry were authorisations governed by Notification No. 21/2015-Cus dated 01.04.2015**. The said notification <u>does not grant any exemption from payment of IGST leviable</u> under

Section 3(7) of the Customs Tariff Act, 1975.

1.8 Whereas, Notification No. 18/2015-Cus dated 01.04.2015, on the other hand, applies to materials imported against valid Advance Authorisations issued by the Regional Authority in terms of Para 4.03 of the Foreign Trade Policy, i.e. **Advance Authorisations for physical exports**. The benefit available under Notification No. 18/2015-Cus is authorisation-specific and condition-bound. It cannot be availed in respect of imports made under an authorisation which is not covered by the said notification.

1.9 Thus, Notification No. 18/2015-Cus. dated 01.04.2015 and Notification No. 21/2015-Cus. dated 01.04.2015 operate in **distinct fields**. While, Notification No. 18/2015-Cus applies to Advance Authorisations for physical exports under Para 4.03 of the FTP, on the other hand, Notification No. 21/2015-Cus applies to Advance Authorisations for deemed exports. As such, the exemption available under one notification cannot be selectively imported into another notification merely for claiming exemption from a particular component of duty viz. IGST.

1.10 It was also observed that DGFT Notification No. 33/2015-20 dated 13.10.2017 had amended Para 4.14 of the Foreign Trade Policy, 2015-20 and provided exemption from IGST in respect of imports under Advance Authorisation for physical exports, subject to prescribed conditions. Correspondingly, Notification No. 79/2017-Cus., dated 13.10.2017 amended the relevant customs exemption notifications, thereby maintaining the distinction between physical-export authorisations and deemed-export authorisations.

1.11 In the present case, the Noticee had used/debited Advance Authorisations governed by Notification No. 21/2015-Cus., dated 01.04.2015, but while self-assessing the impugned Bills of Entry as shown in **Table-I** above, they had simultaneously claimed exemption from IGST under Notification No. 18/2015-Cus., dated 01.04.2015. Such simultaneous and selective claim appear to have resulted into an impermissible hybrid benefit, namely, clearance under a deemed-export Advance Authorisation while claiming IGST exemption available only for physical-export Advance Authorisations.

For the sake of ease of reference, screenshot of the relevant part of the self- assessed Bills of Entries are reproduced as under which would establish that the said noticee had claimed exemption from payment of IGST by quoting **Notification No. 18/2015-Cus dated 01.04.2015** (governing Advance Authorisations for physical exports) as under:-

Bill of Entry No. 4117272 dated 28.05.2021 wherein exemption from payment of IGST has been claimed by quoting Notification No. 18/2015-Cus dated 01.04.2015

INDIAN CUSTOMS

PORT : CUSTOM HOUSE, NEAR BALAJI TEMPLE, KANDLA - 370210

BILL OF ENTRY FOR HOME CONSUMPTION

Port Code	BE No	BE Date	BE Type
INIXY1	4117272	28/05/2021	H
IEC/Br	0596013442/1		OOC COPY
GSTIN/TYPE	06AAACB0192R1ZH/G		
CB CODE	AABPM9092RCH001		
TYPE	INV	ITEM	CONT
Nos	1	1	15
PKG	6300	G.WT (KGS)	316320

BE1030620211720

PART - III - DUTIES

A. ITEM DETAILS

1.INVSNO	2.ITEMSN	3.CTH	4.CETH	5.ITEM DESCRIPTION	6.FS	7.PQ	8.DC	9.WC	10.AQ
1	1	31021000	NOEXCISE	TECHNICAL GRADE UREA PRILLED FOR INDUSTRIAL USE ONLY.(PACKEDIN 50KGS BAG)	N	N	N	N	N

11.UPI	12.COO	13.C.QTY	14.C.UQC	15.S.QTY	16.S.UQC	17.SCH	18.STND/PR	19.RSP	20.REIMP	21.PROV	22.END USE
1.31294	AE	315000	KGS	315000	KGS	03	S	N	N		GNX100

23.PRODN	24.CNTRL	25.QUALFR	26.CONTNT	27.STMNT	28.SUP DOCS		29.ASSESS VALUE	30. TOTAL DUTY
N	N	Y	N	N	Y		8615513.92	0

B. ITEM DUTY

DUTY	1. BCD	2.ACD	3.SWS	4.SAD	5.IGST	6.G. CESS	7.ADD	8.CVD	9.SG	10.T. VALUE
Notn No.	050/2017				018/2015	001/2017				
Notn SNo.	226				1	56				
Rate	0		10		0	0		0		
Amount	0		0		0	0	0	0		
Duty Fg	710779.9				1550792.5	0				

C. OTHER DUTIES

DUTY	1.SP EXD	2.CHCESS	3.TTA	4.CESS	5.CAIDC	6.EAIDC	7.CUS EDC	8.CUS HEC	9.NCD	10.AGGR
Notn No.					011/2021					
Notn SNo.					18					
Rate					0		0	0		
Amount				0	0		0	0	0	
Duty Fg					861551.39					0

IGST Exemption.

Bill of Entry No. 4569515 dated 05.07.2021 wherein exemption from payment of IGST has been claimed by quoting Notification No. 18/2015-Cus dated 01.04.2015

INDIAN CUSTOMS

PORT : CUSTOM HOUSE, NEAR BALAJI TEMPLE, KANDLA - 370210

BILL OF ENTRY FOR HOME CONSUMPTION

Port Code	BE No	BE Date	BE Type
INIXY1	4569515	05/07/2021	H
IEC/Br	0596013442/1	OOC COPY	
GSTIN/TYPE	06AAACB0192R1ZH/G		
CB CODE	AABPM9092RCH001		
TYPE	INV	ITEM	CONT
Nos	1	1	11
PKG	6050	G.WT (KGS)	303512

BE1090720211311

PART - III - DUTIES

A. ITEM DETAILS

1.INVSNO	2.ITEMSN	3.CTH	4.CETH	5.ITEM DESCRIPTION	6.FS	7.PQ	8.DC	9.WC	10.AQ
1	1	31021000	NOEXCISE	TECHNICAL GRADE UREA PRILLED FOR INDUSTRIAL USE ONLY.(PACKEDIN 50KGS BAG)	N	N	N	N	N

11.UPI	12.COO	13.C.QTY	14.C.UQC	15.S.QTY	16.S.UQC	17.SCH	18.STND/PR	19.RSP	20.REIMP	21.PROV	22.END USE
1.22578	AE	302500	KGS	302500	KGS	03	S	N	N		GNX100

23.PRODN	24.CNTRL	25.QUALFR	26.CONTNT	27.STMNT	28.SUP DOCS	29.ASSESS VALUE	30. TOTAL DUTY
N	N	Y	N	N	Y	7836871.59	0

B. ITEM DUTY

DUTY	1. BCD	2.ACD	3.SWS	4.SAD	5.IGST	6.G. CESS	7.ADD	8.CVD	9.SG	10.T. VALUE
Notn No.	050/2017				018/2015	001/2017				
Notn SNo.	226				1	56				
Rate	0		10		0	0		0		
Amount	0		0		0	0	0	0		
Duty Fg	646541.9				1410636.9	0				

C. OTHER DUTIES

DUTY	1.SP EXD	2.CHCESS	3.TTA	4.CESS	5.CAIDC	6.EAIDC	7.CUS EDC	8.CUS HEC	9.NCD	10.AGGR
Notn No.					011/2021					
Notn SNo.					18					
Rate					0		0	0		
Amount				0	0		0	0	0	
Duty Fg					783687.16					0

IGST Exemption

Bill of Entry No. 5605588 dated 27.09.2021 wherein exemption from payment of IGST has been claimed by quoting Notification No. 18/2015-Cus dated 01.04.2015

INDIAN CUSTOMS

PORT : CUSTOM HOUSE, NEAR BALAJI TEMPLE, KANDLA - 370210

BILL OF ENTRY FOR HOME CONSUMPTION

Port Code	BE No	BE Date	BE Type
INIXY1	5605588	27/09/2021	H
IEC/Br	0596013442/1		OOC COPY
GSTIN/TYPE	06AAACB0192R1ZH/G		
CB CODE	AABPM9092RCH001		
TYPE	INV	ITEM	CONT
Nos	1	1	15
PKG	8120	G.WT (KGS)	407217

BE1091020211709

PART - III - DUTIES

A. ITEM DETAILS

1.INVSNO	2.ITEMSN	3.CTH	4.CETH	5.ITEM DESCRIPTION	6.FS	7.PQ	8.DC	9.WC	10.AQ
1	1	31021000	NOEXCISE	UREA PRILLED- TECHNICAL GRADE (FOR INDUSTRIAL USE ONLY) (PACKED IN 50KG BAGS)(INVOICE:RCT/2021-22/29/SP29726)	N	N	N	N	N

11.UPI	12.COO	13.C.QTY	14.C.UQC	15.S.QTY	16.S.UQC	17.SCH	18.STND/PR	19.RSP	20.REIMP	21.PROV	22.END USE
1.6515	AE	406000	KGS	406000	KGS	03	S	N	N		GNX200

23.PRODN	24.CNTRL	25.QUALFR	26.CONTNT	27.STMNT	28.SUP DOCS		29.ASSESS VALUE	30. TOTAL DUTY
N	N	Y	N	N	Y		14001778.47	0

B. ITEM DUTY

DUTY	1. BCD	2.ACD	3.SWS	4.SAD	5.IGST	6.G. CESS	7.ADD	8.CVD	9.SG	10.T. VALUE
Notn No.	050/2017				018/2015	001/2017				
Notn SNo.	226				1	56				
Rate	0		10		0	0		0		
Amount	0		0		0	0	0	0		
Duty Fg	1155146.7				2520320.1	0				

C. OTHER DUTIES

DUTY	1.SP EXD	2.CHCESS	3.TTA	4.CESS	5.CAIDC	6.EAIDC	7.CUS EDC	8.CUS HEC	9.NCD	10.AGGR
Notn No.					011/2021					
Notn SNo.					18					
Rate					0		0	0		
Amount				0	0		0	0	0	
Duty Fg					1400177.85					0

IGST Exemption.

Thus, from the above referred reproduced screenshots, it transpires that the said importer had availed exemption from payment of IGST by invoking Notification No. 18/2015-Cus dated 01.04.2015 (governing Advance Authorisations for Physical Exports) while the Advance Authorisations debited in case of the said Bills of Entry

were authorisations for deemed exports governed by Notification No. 21/2015-Cus dated 01.04.2015. Accordingly, it appeared that the Noticee did not satisfy the eligibility condition for claiming exemption from IGST under Notification No. 18/2015-Cus., dated 01.04.2015, and that the exemption so claimed was inadmissible.

1.12 As discussed in the foregoing paragraphs, as the Advance Authorisations used in the impugned Bills of Entry were not authorisations covered by Notification No. 18/2015-Cus dated 01.04.2015, the Noticee appeared to have not satisfied the basic eligibility condition for claiming IGST exemption under the said notification. In above mentioned three (3) Bills of Entries, it is noticed that the Importer has used/debited Advance Authorization granted to them under Notification No. 21/2015 Cus dtd. 01.04.2015 (Advance Authorization for deemed exports), which does not allow exemption from IGST. In the instant case, it is noticed that the importer has claimed the exemption from the payment of customs duty under Notification No. 21/2015-Cus dtd. 01.04.2015 and has claimed for the exemption from IGST under Notification No. 18/2015-Cus dtd. 01.04.2015, which is not permitted, as the Advance Authorization covered in the said 03 Bills of Entry, were granted under Notification No.21/2015-Cus dtd. 01.04.2015 (Advance Authorization for deemed exports) and exemption Notification No. 021/2015- Cus dtd. 01.04.2015 does not give exemption for payment of IGST as discussed hereinabove. Consequently, the exemption from IGST claimed under Notification No. 18/2015-Cus appeared to be inadmissible and also the same appeared to have been wrongly claimed by them.

PRE SCN-CONSULTATIVE LETTER/ DEMAND-CUM-LESS CHARGE NOTICE

2.1 Whereas, in view of the findings emerging from the investigation conducted by the Department wherein it appeared that the said importer had wrongly availed exemption from payment of IGST as discussed in the foregoing paragraphs, a pre-notice consultative letter / demand-cum-less charge notice vide **F. No. CUS/APR/LC/7/2024-Gr-2 dated 23.01.2024** and **26.03.2026** [**RUD-05**]was issued to the Noticee, calling upon them to pay the differential duty along with applicable interest and penalty. However, no response has been received from the Noticee till date.

3. RELEVANT STATUTORY PROVISIONS

A. *The import of goods has been defined in the IGST Act, 2017 as bringing goods in India from a place outside India. All import shall be deemed as inter-state supplies and accordingly integrated tax shall be levied in addition to the applicable Custom duties. The IGST Act, 2017 provides that the integrated tax on goods imported into India shall be levied and collected in accordance with the provision of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when the duties of Customs are levied on the said goods under the Customs Act, 1962.* ***Section 5 of the integrated Goods and Service Tax Act, 2017*** *stipulates that "provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provision of* ***Section 3 of the Custom Tariff Act, 1975 (51 of 1975)*** *on the value as determined under the said Act at the point when the duties of Customs are levied on the said goods under* ***Section 12 of the Customs Act, 1962****.*

B. *As per* ***Sub Section 7 of section 3 of Customs Tariff Act, 1975*** *any article which has been imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty percent, as is leviable under Section 5 of the integrated Goods and Service tax, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section 8 or sub-section 8A as the case may be.*

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

> ***"Section 46(4): the importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such Bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed."***

D. ***Section 28(4) of the Customs Act, 1962*** *provides that*

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

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

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

E. ***Section28(AA)of Customs Act, 1962*** *provides for provisions of interest on delayed payment of duty-*

"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 percent. 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……"

F. ***Section 111 of the Customs Act, 1962*** *deals with the Confiscation of improperly imported goods, etc. The relevant provisions are reproduced below: -*

*"**Section 111(m)** - any goods which do not correspond in respect of value or in any other particular with the entry mode 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.*

Section 111(o) *- any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer."*

G. ***Section 112 of the Customs Act, 1962*** *deal with penalty for improper importation of goods, etc.*

- Any person,-

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

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

shall be liable, -

(i) *in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [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 hereinafter 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 (iii), to a penalty [not exceeding the difference between the declared value and the value thereof or five thousand rupees] whichever is the highest;

(v)in the case of goods falling both under clauses (ii) and (iii), to a penalty [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.]

H. Section 114A of the Customs Act, 1962 deals with the penalty by reason of collusion or any wilful mis- statement or suppression of facts. The relevant provision is reproduced below:-

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

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

I. Section 114AA of the Customs Act, 1962 deals with penalty for use of false and incorrect material. The relevant provision is reproduced below:

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

4. <u>DISCUSSION AND FINDINGS</u>

4.1 Notification No. 21/2015-Cus., dated 01.04.2015, applies to materials imported against Advance Authorisations issued for deemed exports. The exemption available under that notification is limited to what is expressly provided therein. No exemption from IGST leviable under Section 3(7) of the Customs Tariff Act, 1975 is available under that notification for the imports in question.

4.2 Notification No. 18/2015-Cus., dated 01.04.2015, on the other hand, applies to imports against Advance Authorisations for physical exports. Therefore, the benefit under Notification No. 18/2015-Cus. cannot be availed in respect of imports cleared under Advance Authorisations governed by Notification No. 21/2015-Cus dated 01.04.2015.

4.3 The claim made by the Noticee in the impugned Bills of Entry was not a mere clerical error. The Bills of Entry constituted self-assessment declarations by which the Noticee represented that it was eligible for the exemption from IGST claimed under Notification No. 18/2015-Cus., even though the authorisations used were not covered by the said notification.

4.4 The Noticee, being the holder and user of the Advance Authorisations, was fully aware of the nature, scope and conditions of the authorisations used by it. The simultaneous claim of exemption under Notification No. 21/2015-Cus. for customs duty and Notification No. 18/2015-Cus. for IGST in the same Bills of Entry cannot, therefore, be treated as a typographical or accidental mistake.

4.5 The same method of claim was adopted in three separate Bills of Entry. The repeated nature of the claim, the clear distinction between the two notifications, and the absence of any request for provisional assessment or clarification support the inference that the non-payment / short-payment of IGST occurred by reason of wilful misstatement and suppression of material facts.

4.6 It therefore appears that IGST amounting to **Rs. 54,81,750/-** (**Rupees Fifty-Four Lakhs Eighty-One Thousand Seven Hundred Fifty Only**) was not paid / short-paid in respect of the goods imported under the three Bills of Entry mentioned above and the said amount is recoverable from the Noticee under Section 28(4) of the Customs Act, 1962 read with Section 3(7) of the Customs Tariff Act, 1975 and Section 5 of the IGST Act, 2017, along with applicable interest under Section 28AA of the Customs Act, 1962.

4.7 It appears that the importer has contravened the provisions of sub section (4) of Section 46 of the Act, in as much as, they had intentionally mis-declared the Notifications while claiming the IGST benefits. The importer is eligible for exemption under Notification No. 21/2015-Cus.,. However, it is noticed that they have claimed the benefits of Notification No.18/2015-Cus dtd. 01.04.2015 for IGST, which is wrong and cannot be granted, in terms of provisions of Section 46(4) of Act.

4.8 Under Section 17(1) of the Customs Act, 1962, an importer is required to self-assess the duty leviable on imported goods. Under Section 46(4) of the Customs Act, 1962, the importer, while presenting a Bill of Entry, is required to make and subscribe to a declaration as to the truth of the contents of such Bill of Entry and to produce the relevant documents in support thereof. Further, under Section 46(4A), the importer is required to ensure the accuracy and completeness of the information given in the Bill of Entry.

4.9 In the present case, the Noticee self-assessed the impugned Bills of Entry by claiming exemption from IGST under Notification No. 18/2015-Cus dated 01.04.2015, even though the Advance Authorisations used/debited were governed by Notification No. 21/2015-Cus dated 01.04.2015. The declaration of eligibility under Notification No. 18/2015-Cus was a material declaration for assessment of duty, since the said claim directly resulted in non-payment of IGST.

4.10 The incorrectness does not lie merely in mentioning a wrong notification number. The material misstatement consists in the Noticee's positive claim of eligibility to IGST exemption under Notification No. 18/2015-Cus, despite the fact that the authorisations used/debited were not authorisations covered by the said notification. The Noticee, being the holder and user of the Advance Authorisations, was in special knowledge of the nature, scope and conditions of the authorisations used by it.

4.11 The simultaneous claim of Notification No. 21/2015-Cus for exemption from customs duty and Notification No. 18/2015-Cus for exemption from IGST in the same Bills of Entry cannot be treated as a mere clerical or typographical error. It was a conscious claim structure adopted at the time of self-assessment. Such claim enabled the Noticee to avail the benefit of a deemed-export authorisation while simultaneously taking the IGST exemption available only under a different notification meant for physical-export authorisations.

4.12 The fact that the notification numbers appeared in the Bills of Entry does not by itself absolve the Noticee from the charge of wilful misstatement or suppression of material facts. The Bills of Entry did not merely record notification numbers; they constituted self-assessment declarations by which the Noticee represented that it was eligible for the exemption claimed therein. The material fact suppressed/misstated was that the conditions and scope of Notification No. 18/2015-Cus were not satisfied in respect of the impugned imports.

4.13 Further, the same method of claim was adopted in three separate Bills of Entry. The repeated nature of the claim, the clear distinction between the two notifications, the Noticee’s special knowledge of the authorisations used, and the absence of any request for provisional assessment, clarification, or advance ruling despite the alleged ambiguity, indicate that the incorrect claim was not accidental but deliberate.

4.14 The Noticee was operating under the self-assessment regime and was responsible for correctly determining the applicable notification, correctly assessing the duty payable, and making true, correct and complete declarations. If the Noticee was of the view that there was any doubt regarding availability of IGST exemption, it was open to the Noticee to seek provisional assessment or clarification from the proper officer. Instead, the Noticee self-assessed the Bills of Entry in a manner that resulted in non-payment of IGST, which appears to be deliberate and intentional.

4.15 It therefore appears that the non-payment/short-payment of IGST was by reason of wilful misstatement and suppression of material facts within the meaning of Section 28(4) of the Customs Act, 1962. The extended period of limitation accordingly appears to be invokable for recovery of the IGST not paid by the importer along with interest and applicable penalty.

4.16 It further appears that by making a materially incorrect claim of exemption under Notification No. 18/2015-Cus dated 01.04.2015, the Noticee contravened the provisions of Section 17(1), Section 46(4), and Section 46(4A) of the Customs Act, 1962.

4.17 The impugned goods also appear liable to confiscation under Section 111(m) of the Customs Act, 1962, as the goods did not correspond in a material particular with the declaration made in the Bills of Entry, namely, the declaration of eligibility to exemption under Notification No. 18/2015-Cus. The goods further appear liable to confiscation under Section 111(o) of the Customs Act, 1962, since the exemption claimed was subject to fulfilment of the conditions of the relevant notification, which were not satisfied in respect of the impugned imports.

4.18 Since the goods have already been cleared and are not physically available for confiscation, the proposal in this notice is to hold the goods liable to confiscation under Section 111(m) and/or Section 111(o) of the Customs Act, 1962.

4.19 For the aforesaid acts and omissions, the Noticee appears liable to penalty under Section 114A of the Customs Act, 1962, as the IGST was not paid/short-paid by reason of wilful misstatement and suppression of material facts. In the alternative and without prejudice, the Noticee appears liable to penalty under Section 112(a) of the Customs Act, 1962, for acts and omissions rendering the goods liable to confiscation under Section 111(m) and/or Section 111(o) of the Customs Act, 1962.

4.20 The Noticee also appears liable to penalty under Section 114AA of the Customs Act, 1962, in as much as the Bills of Entry and self-assessment declarations contained a materially incorrect claim of eligibility under Notification No. 18/2015-Cus dated 01.04.2015, which was used in the transaction of import for the purpose of claiming inadmissible IGST exemption.

4.21 Now, therefore, **M/s Bhabani Pigments Private Limited, Sonepat–Rohtak Road, Kharkhoda, Sonepat – 131402, having IEC No. 0596013442**, are hereby called upon to show cause to the Commissioner of Customs, Custom House, Kandla, within the prescribed time, as to why:

(a) IGST amounting to **Rs. 54,81,750/- (Rupees Fifty Four Lakhs Eight One Thousand Seven Hundred Fifty Only)** not paid / short-paid on the goods imported under the three Bills of Entry detailed in **Table-I** above and **Annexure-A** appended to this Show Cause Notice should not be demanded and recovered from the Noticee under Section 28(4) of the Customs Act, 1962 read with Section 3(7) of the Customs Tariff Act, 1975 and Section 5 of the IGST Act, 2017;[1]

(b) interest at the applicable rate should not be demanded and recovered from the Noticee on the IGST not paid/short paid as shown at Para 4.21(a) above under Section 28AA of the Customs Act, 1962;[1]

(c) the goods imported under the aforesaid three Bills of Entry, having total assessable value of **Rs. 3,04,54,164/-**, should not be held liable to confiscation under Section 111(m) and/or Section 111(o) of the Customs Act, 1962, notwithstanding the fact that the goods are no longer physically available for confiscation;

(d) penalty should not be imposed upon the Noticee under Section 114A of the Customs Act, 1962 for non-payment / short-payment of IGST by reason of wilful misstatement and suppression of material facts;

(e) in the alternative and without prejudice to clause (d) above, penalty should not be imposed upon the Noticee under Section 112(a) of the Customs Act, 1962 for acts and omissions rendering the goods liable to confiscation under Section 111(m) and/or Section 111(o) of the Customs Act, 1962;

(f) penalty should not be imposed upon the Noticee under Section 114AA of the Customs Act, 1962 for knowingly or intentionally using materially incorrect declarations / documents in the transaction of import.

5. The importer is also required at the time of showing cause, to produce all the evidence upon which he intends to rely in support of his defense. He should also indicate whether he wishes to be heard in person before the case is adjudicated.

6. If no cause is shown against the action proposed to be taken or he does not appear before the adjudicating authority when the case is posted for hearing, the case will be decided ex-parte on merits.

7. The present Show Cause Notice is issued without prejudice to any other action that may be taken under any other provision of the Act and/or rules made thereunder and/or under the provisions of any other law for the time being in force in India. The department is also free to issue addendum to this Show Cause Notice if any further fact/ documents come to notice.

8. This Show Cause Notice is being issued as per the scrutiny of records conducted so far. Hence, the department reserves its rights under the provisions of Act, to conduct further Audit/Scrutiny of the records and issue subsequent or separate show cause notice(s), if any.

9. The importer/auditee is further informed that they have the right to opt for closure of these proceedings under Section 28(6) of Act. If they so decide, then in terms of Section 28(5) of the Act, they may pay the duty demanded in this Show Cause Notice in full or in part, as may be accepted by them, and the interest payable thereon under Section 28AA and penalty equal to fifteen percent of the duty specified in this notice or the duty so accepted by them, within 30 days of the receipt of the notice and inform the concerned Adjudicating and/or of such payment in writing.

10. The documents relied upon to this Show Cause notice are as listed at Annexure – 'R' are attached with this Show Cause Notice.

Commissioner of Customs,
Custom House Kandla

F. No.:- GEN/ADJ/COMM/218/2026-Adjn-O/o Commr-Cus-Kandla

To,

M/s Bhabani Pigments Private Limited,
Sonepat–Rohtak Road,
Kharkhoda, Sonepat – 131402.

Copy To:

1. The Deputy/Assistant Commissioner (Gr-II) House Kandla, Custom House, Kandla for information.
2. The Deputy/Assistant Commissioner (PCA) House Kandla, Custom House, Kandla
3. The Supdt. (EDI) for necessary action at their end.
4. Guard File.

LIST OF RELIED UPON DOCUMENTS (RUD's)

SCN File No. GEN/ADJ/COMM/218/2026-Adjn-O/o Commr-Cus-Kandla issued to M/s Bhabani Pigments Private Limited

Sr. No./ RUD No	Description of Documents	Remarks
1	LAR No.05/2022-23 dated 15.07.2022 issued by CERA Audit	Attatched
2	Bill of Entry No. 4117272 dated 28.05.2021	Available with assessee
3	Bill of Entry No. 4569515 dated 05.07.2021	Available with assessee
4	Bill of Entry No. 5605588 dated 27.09.2021	Available with assessee
5	Pre-SCN Consultative Letter bearing no. F. No. CUS/APR/LC/7/2024-Gr-2 dated 23.01.2024 and 26.03.2026	Attached
6	Annexure-A	Attached (Statement –VI of Audit Report)

Digitally signed by
Dinesh Singh
Date: 26-05-2026
17:55:06