



OFFICE OF THE COMMISSIONER

CUSTOM HOUSE, KANDLA

NEAR BALAJI TEMPLE, NEW KANDLA

Phone : 02836-271468/469 Fax: 02836-271467

DIN-20260471ML000000B503

A	File No.	GEN/ADJ/ADC/371/2021-Adjn-O/o Commr-Cus-Kandla
B	Order-in-Original No.	KDL/ADC/MR/23/2025-26
C	Passed by	Mukesh Rathore, Additional Commissioner, Custom House, Kandla.
D	Date of Order	30.03.2026
E	Date of Issue	01.04.2026
F	SCN No. & Date	F.No.GEN/ADJ/ADC/371/2021-Adjn-O/o Commr-Cus-Kandla
G	Noticee / Party / Importer / Exporter	M/s Aspen International Pvt Ltd, 304, Shapath-I, Opp. Rajpath Club, S G Highway Road, Bodakdev, Ahmedabad, Gujarat-380015.

1. यह मूल आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस मूल आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 12 8A के अंतर्गत प्रपत्रसीए- 1-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“सीमा शुल्क आयुक्त(अपील),

7वीं मंजिल, मृदुलटावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड़,अहमदाबाद 380 009”

“THE COMMISSIONER OF CUSTOMS (APPEALS),

7th Floor, Mridul Tower, Behind Times of India,

Ashram Road, Ahmedabad-380009.”

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इस के साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by -

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं.-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule - I, Item 6 of the Court Fees Act, 1870.

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

6. अपील प्रस्तुत करते समय, सीमा शुल्क) अपील (नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

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

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

BRIEF FACTS OF THE CASE:

M/s. Aspen International Pvt Ltd., 304, Shapath-t, Opp. Rajpath Club, S. G. Highway, Bodakdev, Ahmedabad - 380015 (hereinafter also referred to as the "importer/said importer" for the sake of brevity). The appellant had filed Bills of Entry as mentioned below for clearance of the imported goods declared as "Methylene Chloride" classified under Tariff Item No. 29031200 of the First Schedule to the Customs Tariff Act, 1975. The Assessing Officers had assessed the Bills of Entry and allowed clearance of the goods for home consumption without any objections. These Bills of Entry were filed against Bill of Entry No. 7216037, dated 24.10.2016 for ware house.

Sr. No.	Ex Bond Bill of Entry No.	Date	Quantity (MTS)	Assessable Value (Rs.)	Anti-dumping duty leviable @ 279.78 USD/MT	Anti-dumping duty leviable @ 122.14 USD/MT	Short levy of ADD (Rs.)
1	7250924	27.10.2016	60	1449110	1133948	495033	638915
2	8389062	31.01.2017	40	966073	755966	330022	425944
Total			100	2415183	1889914	825055	1064859

2. The subject goods i.e. "Methylene Chloride" are covered under Tariff Heading No. 29031200 and under the subject classification, during the relevant period, the originating in or exported from People's Republic of China attracted Anti-Dumping Duty (herein after referred as "ADD") under Notification No. 21/12016 - CUS (ADD) dated 31.05.2016.

3. During audit conducted on records of the appellant by the officers of the Customs Revenue Audit (CRA), it was found that import of "Methylene Chloride" classified under Tariff Heading No. 29031200 originating and exported from China were leviable to ADD @ USD 122.14 PMT, if the producer was "M/s. Shandong Liaocheng Luxi Sixth Chemical Fertilizer Co." and the exporter was M/s. Lu Xi Chemical (Hong Kong) Co. Ltd. However, ADD is leviable @ USD 279.78 PMT in case the country of origin and export was China and the combination of exporter and producer are other than those specified in Sr No 1 to 6 of the Notification No. 2L/2016-Cus (ADD) dated 31.05.2016. The relevant extract of the said Notification is reproduced as under: -

Sr. No.	Tariff Item	Description of goods	Country of Origin	Country of Export	Producer	Exporter	Amount	Unit	Currency
4	29031200	Dichloromethane (Methylene Chloride)	Peoples Republic of China	Peoples Republic of China	Shandong Liaocheng Luxi Sixth Chemical Fertilizer Co. Ltd	Luxi Chemical (Hongkong) Co. Ltd., Hongkong.	122.14	MT	USD
7	29031200	Dichloromethane (Methylene Chloride)	Peoples Republic of China	Peoples Republic of China	Any combination other than the combination specified above.		279.78	MT	USD

4. The officers of audit had noticed that in the relevant documents for assessment the name of the supplier and manufacturer were mentioned as M/s OCI (Shanghai) International Trading Ltd, China and M/s. Shandong Liaocheng Luxi Sixth Chemical Fertilizer Co. respectively. However, M/s. OCI (Shanghai) International Trading Ltd, China, as the supplier was not covered under Sr. No. 4 of the said Notification dated 31.05.2016 and therefore, ADD was leviable under Sr. No. 7 of the said Notification and the importer was liable to pay ADD @ 279.78 USD per MT. instead of 122.14 USD per MT. This appeared to have resulted in short payment of ADD amount of Rs.10,64,859/- which appeared to be liable to be demanded and recovered from the importer under Section 28(a) of the Customs Act, 1962 along with applicable interest at appropriate rate under Section 28AA of the Customs Act, 1962 as shown in Table at Para 1 above.

5. ISSUANCE OF SCN NO. F. No. GEN/ADJ/ADC/371/2021-ADJN-O/o COMMR-CUS-KANDLA DATED 20.10.2021.

The above investigation against the importer M/s Aspen International Pvt. Ltd. had resulted into issuance of Show Cause Notice F. No. GEN/ADJ/ADC/371/2021-ADJN-O/o COMMR-CUS-KANDLA dated 21.10.2021 issued by the Additional Commissioner of Customs, Custom House, Kandla requiring them to show cause as to why: -

- (i) The differential amount of Anti-dumping duty of Rs. 10,64,859/- in respect of the Bills of Entry in question should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962;
- (ii) Interest at the appropriate rate in respect of ADD amount as mentioned above should not be demanded and recovered under Section 28AAA of the Customs Act, 1962; and
- (iii) Penalty should not be imposed on them under Section 114(A) of the Customs Act, 1962.

6. ORDER IN ORIGINAL NO. KDL/ADC/RHM/22/2021-22 DATED 24.03.2022

Whereas, after observing the due process of law, the Additional Commissioner (Adjudication), Custom House, Kandla had decided the issue vide Order in Original bearing no. KDL/ADC/RHM/22/2021-22 dated 24.03.2022 wherein the Adjudicating Authority had confirmed the demand of differential Anti-dumping duty amounting to Rs.10,64,859/- under Section 28(4) of the Customs Act, 1962 along with interest under Section 28AA of the Act *ibid*. Further, the Adjudicating authority had also imposed penalty of Rs. 10,64,859/- under Section 114(A) of the Customs Act, 1962.

7. FILING OF APPEAL BY THE IMPORTER BEFORE THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD.

Being aggrieved by the above referred OIO bearing no. KDL/ADC/RHM/22/2021-22 dated 24.03.2022 passed by the Additional Commissioner, Customs House, Kandla, M/s Aspen International Pvt. Ltd. had filed an Appeal before the Commissioner of Customs (Appeals), Ahmedabad on the following grounds:

- A. *The adjudicating authority erred in demanding duty along with interest and imposing penalty on the fallacious grounds without appreciating the factual and legal aspects involved in the present matter.*
- B. *They placed an order to M/s. OCI who procured the goods from the producer/manufacturer i.e. M/s. Shandong Liaocheng Luxi Sixth Chemical Fertilizer Co. and the goods were exported from China by M/s. Lu Xi Chemical (Hong Kong) Co. Ltd. That M/s. Shandong Liaocheng Luxi Sixth Chemical Fertilizer Co. was the manufacturer, M/s. Lu Xi Chemical (Hong Kong) Co. Ltd. was the exporter and the Appellant was the importer in the entire transaction and therefore, they have rightly claimed the benefit under Sr. 4 of Notification No.21/2016- Cus (Add) (supra). In this case, M/s. OCI is only the beneficiary of goods as per the commercial invoice for the purpose of remittance.*
- C. *The Bill of Lading No. ZY03LXHG dated 16.09.2016 clearly mentions the name of M/s. Lu Xi Chemical (Hong Kong) Co. Ltd. as the shipper and the name of Appellant as the notified party which clearly established the fact that M/s. Lu Xi Chemical (Hong Kong) Co. Ltd. was the exporter/supplier and the Appellant was the importer. Accordingly, the Appellant was eligible for the benefit of Notification No. 21/2016-Cus (Add) (supra).*
- D. *M/s. Lu Xi Chemical (Hong Kong) Co. Ltd. vide certificate dated 20.09.2016 certified that M/s. Shandong Liaocheng Luxi Sixth Chemical Fertilizer Co. is the manufacturer of goods and the Appellant was the notified party. Once the fact of the exporter and manufacturer is satisfied then, in such circumstances, the benefit of Notification No. 21/2016- Cus (Add) (supra) cannot be denied.*
- E. *The words "Exporter" and "Supplier" are mutually exclusive and the Notification No. 21/2016- Cus (Add) (supra) only deals with the term "exporter" and not "supplier". In the present case, M/s Lu Xi Chemical (Hong Kong) Co. Ltd. was the exporter who exported the goods through M/s. OCI and therefore, the conditions of Notification No. 21/2016-Cus (Add) (supra) are duly complied with by the Appellant.*
- F. *Bill of Lading was issued by M/s. Lu Xi Chemical (Hong Kong) Co. Ltd. which clearly*

reflects the position that the exporter/shipper is M/s. Lu Xi Chemical (Hong Kong) Co. Ltd.

- G. They further submitted that the BOEs were never amended or challenged by the Revenue. Department has not issued any Show Cause Notice challenging the Bills of Entry filed by the Appellant. Bill of Entry which has been finally assessed cannot be opened through issuing show cause notice demanding Anti-dumping duty from the Appellant on the basis of CERA objection.*
- H. The Bill of Entry No. 7250924 was filed on 27.10.2016 whereas Bill of Entry No. 8389052 was filed on 31.01.2017 and the show cause notice was issued on 20.10.2021. Therefore, demand for the disputed period is barred by limitation and the extended period of limitation ought not to have been invoked. They have disclosed all the material facts before the department including the details of exporter. They have not suppressed any information and therefore, larger period of limitation is not invocable.*
- I. The issue involved is interpretational in nature as the Appellant bonofidely paid the Anti-dumping duty under Sr. No. 4 of Notification No. 21/2016-Cus (Add) (supra) as the goods were manufactured by M/s Shandong Liaocheng Luxi Sixth Chemical Fertilizer Co. and exported by M/s. Lu Xi Chemical (Hong Kong) Co. Ltd. through M/s OCI. It is settled principle in law that no penalty can be imposed where there is an interpretational issue/ambiguity in the relevant provisions.*
- J. They further submitted that there is no collusion or wilful mis-statement or suppression of facts that has resulted in any short payment of duty. Therefore, penalty under section 114A of the Customs Act is not imposable.*
- K. The Appellant submits that for the reasons set out hereinabove, the entire demand itself is unsustainable as the Appellant has rightly not paid Anti-dumping duty on the imported goods under Sr. No.7 of Notification No.21/2016-Cus (ADD) (supra). It is settled law, that where the demand itself is unsustainable, the imposition of interest and penalty cannot sustain.*

8. ORDER IN APPEAL PASSED BY COMMISSIONER OF CUSTOMS (APPEALS)

8.1 Whereas, the Commissioner of Customs (Appeal), Ahmedabad vide Order-in-Appeal No. KDL-CUSTM-000-APP-195-23-24 dated 28.03.2024 had upheld the demand of anti-dumping duty of Rs.10,64,859/- as confirmed vide OIO No. KDL/ ADC/ RHM /22 /2021-22 dated 24.03.2022 by the Adjudicating authority holding that M/s OCI

(Shanghai) International Trading Ltd is the shipper/exporter as per the invoice and the packing list and therefore, the benefit of Notification No. 21/2016-CUS (ADD) dated 31.05.2016 is not to be provided to the appellant. However, the Appellate Authority had remanded the case to the Adjudicating authority for fresh examination of the aspect of extended period of limitation under Section 28(4) of the Customs Act, 1962 and consequent imposition of penalty on the appellant namely Aspen International Pvt. Ltd. under Section 114A of the Act *ibid* after following the principles of natural justice. In this regard, the Appellate Authority had relied upon the judgment of the Hon'ble High Court of Gujarat in the case of Medico Labs - 2004(173) ELT 117 (Guj.), judgment of the Hon'ble Bombay High Court in the case of Ganesh Benzoplast Ltd- 2020(374) ELT-552 (BOM) and judgments of the Hon'ble Tribunals in case of Prem Steels Pvt. Ltd. - 2012-TIOL-1317-CESTAT-DEL and the case of Hawkins Cookers Ltd. -2012 (284) E.L.T. 677 (Tri. -Del) wherein it was held that the Commissioner of Customs (Appeals) continue to have power of remand even after the amendment of Section 35(A) of the Central Excise Act, 1944 by Finance Act, 2001 w.e.f. 11.05.2001.

8.2 Therefore, vide the above referred OIA No. KDL-CUSTM-000-APP-195-23-24 dated 28.03.2024, the Appellate Authority had held that the case was required to be remanded back for passing a fresh order by following the principles of natural justice and by freshly examining the aspect of extended period of limitation under Section 28(4) of the Customs Act, 1962 and consequent imposition of penalty under Section 114A of the Act *ibid*

9. APPEAL NO. 10393 OF 2024-DB FILED BY THE IMPORTER BEFORE THE HON'BLE CESTAT, AHMEDABAD.

9.1 Whereas, aggrieved by the aforesaid OIA No. KDL-CUSTM-000-APP-195-23-24 dated 28.03.2024 passed by the Commissioner of Customs (Appeals), Ahmedabad, M/s Aspen International Pvt. Ltd. had preferred an appeal against the said OIA dated 28.03.2024 before the Hon'ble CESTAT, West Zonal Bench at Ahmedabad.

9.2 In their appeal before the Hon'ble Tribunal, the importer had once again reiterated their submissions wherein it was submitted that they had rightly claimed the benefit as available under Sr. No. 4 of the Notification No. 21/2016-CUS (ADD) dated 31.05.2016 and that M/s OCI is only the beneficiary of the goods as per the commercial invoice for the purpose of remittance. They had also contended that the Bill of Lading is actually the document which decides the title of the goods and therefore when the Bill of Lading No. ZY03LXHG dated 16.09.2016 had clearly mentioned the name of M/s Lu Xi Chemical (Hong Kong) Co. Ltd as the shipper and their name as the importer, they were eligible for claiming the benefit of the exemption as available under the above referred notification dated 31.05.2016. In support, they had relied upon the following judgments:

- Mudit Enterprises Pvt. Ltd. v Commissioner of Customs, Mundra reported in 2024 (3) TMI 872 - CESTAT AHMEDABAD;
- P.P. Products Ltd. v Commissioner of Customs, Chennai reported in 2019 (367) E.L.T. 707 (Mad.)
- MMTC v. STO AIR 1999 SC 121;
- British India Steam Navigation Co. Ltd. Versus Shanmughavilas Cashew Industries 1990 (48) E.L.T. 481 (S.C.);
- J.V. Gokal & Co. (Private) Ltd. v. Assistant Collector of Sales-Tax (Inspection);
- Commissioner of Customs (Port), Kolkata Vs. Rudra Vyaparchem Pvt. Ltd.

9.3 Additionally, the importer had also contended that all the information regarding the invoicing by OCI and name of Lu Xi appearing on the above referred Bill of Lading was before the Customs Authority while filing the bill of entry. Therefore, there was absolutely no suppression of fact on the part of the appellant. Hence, extended period could not have been invoked. Hence, the demand was also not sustainable on the ground of time bar. They had also placed reliance in this regard on the following judgments:

- Graphite India Ltd. Vs. CC, reported in 2015 (325) E.L.T. 777 (Tri. - Kolkata);
- Orbit Fabrics Ltd. Vs. CCE, reported in 2009 (248) E.L.T. 359 (Tri. - Ahmd.), [Affirmed in 2011 (264) E.L.T. 53 (Guj.)];
- Simplex Infrastructures Ltd. Vs. Commissioner of Service Tax, Kolkata 2016-TIOL-779-HC-KOL-ST
- Delhi International Airport Ltd. Vs. Commissioner of CGST- 2019(24) GSTL 403 (T).
- Anand NishiKawa Co. Ltd. vs. CCE, Meerut [2005 (188) E.L.T. 149(SC)]

10. FINAL ORDER NO. 12777/2024 DATED 22.11.2024 PASSED BY THE HON'BLE TRIBUNAL AT AHMEDABAD.

10.1 Whereas, in the matter of the above referred Appeal filed by M/s. Aspen International Pvt. Ltd before Hon'ble Tribunal, Ahmedabad bearing no. Customs Appeal No. 10393 of 2024-DB had passed Final Order No. 12777/2024 dated 22.11.2024 wherein the learned Tribunal has held that the demand of anti-dumping duty amounting to Rs. 10,64,859/- under Section 28(4) of the Customs Act, 1962 vide SCN No. F.No.GEN/ADJ/ADC/371/2021-Adjn-O/o-Commr-Cus-Kandla dated 20.10.2021 is clearly time-barred and has allowed the appeal filed by M/s Aspen International Pvt Ltd. Accordingly, the learned Tribunal has set aside the demand made vide the above referred SCN dated 20.10.2021.

10.2 The above referred Final Order No. 12777/2024 dated 22.11.2024 has been accepted on lower monetary grounds by the Department on 13.01.2025.

10.3 Whereas, vide letter dated 21.03.2026, in continuation to their submissions made during the course of Personal Hearing on 30.07.2025, M/s Aspen International Pvt. Ltd. had submitted that considering the fact that the OIA dated 24.03.2022 has been set aside by the Hon'ble Tribunal on the ground of limitation, the directions given by the Commissioner of Customs (Appeals) for reconsideration of the issue of limitation does not sustain. Accordingly, they have requested to pass appropriate orders in this regard.

11. DISCUSSION AND FINDINGS.

11.1 I have carefully gone through the Show Cause Notice No. F.No.GEN/ADJ/ADC/371/2021-Adjn-O/o-Commr-Cus-Kandla dated 20.10.2021, Order-In-Original No. KDL/ADC/RHM/22/2021-22 dated 24.03.2022, Order-in-Appeal No. KDL-CUSTM-000-APP-195-23-24 dated 28.03.2024 and Final Order No. 12777/2024 dated 22.11.2024 issued by the Hon'ble CESTAT, Ahmedabad.

11.2 I observe that this proceeding arises out of the above referred Show Cause Notice dated 20.10.2021 alleging wrongful availment of the benefit as available under Notification No. 21/2016-CUS (ADD) dated 31.05.2016 leading to short payment/non-payment of Anti-dumping duty amounting to Rs.10,64,859/- in respect of Methylene Chloride imported vide Bill of Entry No.s 7250924 dated 27.10.2016 and 8389062 dated 31.01.2017 by the Noticee under Section 28(4) of the Customs Act, 1962, along with interest under Section 28AA and penalty under Section 114(A) of the Act *ibid*. The matter was earlier adjudicated by the then Additional Commissioner (Adjudication), Customs Kandla vide Order-In-Original No. KDL/ADC/RHM/22/2021-22 dated 24.03.2022 wherein the adjudicating authority had confirmed the demand of differential amount of Anti-dumping duty as shown above along with applicable interest under Section 28AA of the Act *ibid*. Further, penalty equivalent to the differential Anti-dumping duty of Rs.10,64,859/- was also imposed on the importer under Section 114(A) of the Customs Act, 1962.

11.3 Being aggrieved by the above referred OIO dated 24.03.2022, an appeal was filed by the importer before the Commissioner of Customs (Appeals), Ahmedabad wherein the said Appellate Authority vide OIA No. KDL-CUSTM-000-APP-195-23-24 dated 28.03.2024 had upheld the demand of anti-dumping duty of Rs.10,64,859/- as confirmed vide OIO No. KDL/ADC/RHM/22/2021-22 dated 24.03.2022 by the Adjudicating authority holding that M/s OCI (Shanghai) International Trading Ltd is the shipper/exporter as per the invoice and the packing list and therefore, the benefit of Notification No. 21/2016-CUS (ADD) dated 31.05.2016 is not to be provided to the appellant. However, the Appellate Authority had remanded the case to the Adjudicating

authority for fresh examination of the aspect of extended period of limitation under Section 28(4) of the Customs Act, 1962 and consequent imposition of penalty on the appellant namely Aspen International Pvt. Ltd. under Section 114A of the Act ibid after following the principles of natural justice.

11.4 Further, I find that being aggrieved by the aforesaid OIA No. KDL-CUSTM-000-APP-195-23-24 dated 28.03.2024 passed by the Commissioner of Customs (Appeals), Ahmedabad, M/s Aspen International Pvt. Ltd. had preferred an appeal against the said OIA dated 28.03.2024 before the Hon'ble CESTAT, West Zonal Bench at Ahmedabad. Finally, vide Final Order No. 12777/2024 dated 22.11.2024 passed by the Hon'ble CESTAT, Ahmedabad, the learned Tribunal has held that the demand of anti-dumping duty amounting to Rs. 10,64,859/- under Section 28(4) of the Customs Act, 1962 vide SCN No. F.No.GEN/ADJ/ADC/371/2021-Adjn-O/o-Commr-Cus-Kandla dated 20.10.2021 is clearly time-barred and has allowed the appeal filed by M/s Aspen International Pvt Ltd. Accordingly, the learned Tribunal has set aside the demand made vide the above referred SCN dated 20.10.2021. While passing the above referred Order dated 22.11.2024, the learned Tribunal had observed as under: -

"4. We have carefully considered the submissions made by both the sides and perused the records. We find that though, the appellant have made out a very strong prima facie case on merit in their favour but in our considered view the appeal can be disposed of on the ground of limitation itself. We find that dispute relates bill of entry No.7216037 filed on 24.10.2016, bill of entry No.7250924 filed on 27.10.2016 whereas bill of entry No.8389062 was filed on 31.01.2017, however the show cause notice was issued on 20.10.2021. We find that the dispute which was raised by the department is on the basis of the information available on import invoice, bill of lading which are vital documents for the purpose of processing the bill of entry and assessment thereof. In the bill of entry itself the name of OCI is mentioned. In the bill of lading name of Lu Xi is clearly mentioned. Therefore, for purpose of making the present case all the information were gathered only from those documents which were very much available at the time of filing of bill of entry. Therefore, there is absolutely no suppression of the fact on the part of the appellant. Accordingly, the ingredients to invoke extended period in terms of Section 28 (4) are not available in the facts of the present case. For the bill of entry dated 24.10.2016, 27.10.2016 and 31.01.2017, the show cause notice was issued on 20.10.2021 that is much after the normal period of limitation.

5. *Therefore, in our considered view the demand is clearly time barred. Hence, we set aside the demand only on the ground of time bar, as a result, the appeal is allowed."*

11.5 Thus, I find that the learned Tribunal has held that the demand of anti-dumping duty amounting to Rs. 10,64,859/- under Section 28(4) of the Customs Act, 1962 vide SCN No. F.No.GEN/ADJ/ADC/371/2021-Adjn-O/o-Commr-Cus-Kandla dated 20.10.2021 is clearly time-barred and has allowed the appeal filed by M/s Aspen International Pvt Ltd to set aside the demand made vide the above referred SCN dated 20.10.2021.

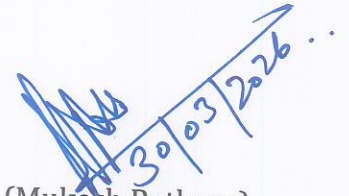
12. I finally find that the aforesaid Final Order No. 12777/2024 dated 22.11.2024 issued by the Hon'ble CESTAT, Ahmedabad has been accepted by the Department on 13.01.2025 on low monetary grounds and no further appeal is pending against the said Order dated 22.11.2024 before any higher forum. I also agree with the contention of the importer that considering the fact that the OIA dated 24.03.2022 has been set aside by the Hon'ble Tribunal on the ground of limitation, the directions given by the Commissioner of Customs (Appeals) for reconsideration of the issue of limitation does not sustain and further as the Final Order No. 12777/2024 dated 22.11.2024 has been accepted by the Department, *albeit*, on low monetary ground, I hold that the present issue regarding wrong availment of benefit available under Notification No. 21/2016-Cus (ADD) dated 31.05.2016 leading to non-payment of differential Anti-dumping duty of Rs. 10,64,859/- which was demanded u/s 28(4) of the Customs Act, 1962 along with interest u/s 28AA and penalty u/s 114(A) of the Act *ibid* vide the subject SCN No. F.No.GEN/ADJ/ADC/371/2021-Adjn-O/o-Commr-Cus-Kandla dated 20.10.2021, appear to have attained finality in view of the said Final Order No. 12777/2024 dated 22.09.202 and acceptance thereof by the Department.

In view of the above, I pass the following order.

-:ORDER:-

As the Show-Cause-Notice bearing F.No.GEN/ADJ/ADC/371/2021-Adjn-O/o-Commr-Cus-Kandla dated 20.10.2021 issued in respect of the alleged wrong availment of benefit available under Notification No. 21/2016-Cus (ADD) dated 31.05.2016 thereby leading to demand of differential Anti-dumping duty of Rs. 10,64,859/- along with applicable interest under Section 28AA and penalty u/s 114(A) of the Act *ibid*, has been set aside on the ground of time bar and the appeal has been decided in favour of the Noticee by the Hon'ble CESTAT, Ahmedabad vide their Final Order No. 12777 dated 22.11.2024 and giving due credence to the fact that the said Order dated 22.11.2024 has been accepted by the Department on low monetary ground, I hold that no further action

is required to be undertaken in the matter of Show-Cause-Notice bearing F. No. GEN/ADJ/ADC/371/2021-Adjn-O/o-Commr-Cus-Kandla dated 20.10.2021 issued to M/s. Aspen International Pvt Ltd., 304, Shapath-t, Opp. Rajpath Club, S. G. Highway, Bodakdev, Ahmedabad - 380015 for the reasons as stated in the foregoing paragraphs.

30/03/2026

(Mukesh Rathore)
Additional Commissioner,
Custom House, Kandla.

F. No. GEN/ADJ/ADC/ 371/2021-Adjn-O/o Commr-Cus-Kandla

DIN- 20260471ML000000B503

To:

M/s. Aspen International Pvt Ltd.,
304, Shapath-t, Opp. Rajpath Club,
S. G. Highway, Bodakdev,
Ahmedabad - 380015

Copy to: -

- 1) The Additional Commissioner, Customs Kandla for Review
- 2) The Assistant Commissioner (EDI) for uploading on the website.
- 3) The Assistant Commissioner (TRC) for necessary action.
- 4) Guard File.