



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद
सीमा शुल्क भवन, आल इंडीया रेडियों के बाजू में, नवरंगपुरा, अहमदाबाद 380009
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निबन्धित पावती डाक द्वारा / By SPEED POST A.D.

फा. सं./ F. No.: VIII/10-36/Pr.Commr/O&A/2023-24

DIN- 20240871MN0000804453

आदेश की तारीख/Date of Order	:05.08.2024
जारी करने की तारीख/Date of Issue	:05.08.2024

द्वारा पारित/Passed by:- शिव कुमार शर्मा, प्रधान आयुक्त
Shiv Kumar Sharma, Principal Commissioner

मूल आदेश संख्या :

Order-In-Original No: AHM-CUSTM-000-PR.COMMR- 36-2024-25 dated 05.08.2024 in the case of M/s. Panama Petrochem Ltd., Survey No. 78/2, Village Kadaiya, Daman Industrial Estate, Nani Daman, Daman-396210

1. जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान की जाती है।
1. This copy is granted free of charge for private use of the person(s) to whom it is sent.
2. इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, दुसरी मंज़िल, बहुमाली भवन, गिरिधर नगर पुल के बाजू में, गिरिधर नगर, असारवा, अहमदाबाद-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. उक्त अपील प्रारूप सं. सी.ए.3 में दाखिल की जानी चाहिए। उसपर सीमा शुल्क (अपील) नियमावली, 1982 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को

चार प्रतियों में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए)। अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियों में अग्रेषित किए जाने चाहिए।

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. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलग्न की जाएंगी (उनमें से कम से कम एक प्रमाणित प्रति होगी)।
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. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को 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. केंद्रीय सीमा शुल्क अधिनियम, 1962 की धारा 129 ऐ के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट 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 आदेश के विरुद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुर्माना का विवाद है अथवा जुर्माना जहां शीर्ष जुर्माना के बारे में विवाद है उसका भुक्तान करके अपील की जा सकती 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. न्यायालय शुल्क अधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर उपयुक्त न्यायालय 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 F.No. VIII/10-36/Pr.Commr/O&A/2023-24 dated 26.04.2024 issued by the Principal Commissioner, Customs, Ahmedabad to M/s. Panama Petrochem Ltd., Survey No. 78/2, Village Kadaiya, Daman Industrial Estate, Nani Daman, Daman-396210.

Brief facts of the case:

M/s. Panama Petrochem Ltd., Survey No. 78/2, Village Kadaiya, Daman Industrial Estate, Nani Daman, Daman-396210 having (IEC-039301969)(hereinafter referred to as "The Importer" for the sake of brevity) are engaged in manufacturing of

petroleum specialty products viz., Ink oils, Rubber process oils, Textile Oils and other grades of Oils, and they import various grades of Base oil.

2. On the basis of Analytic Report No. 04/2022-23 dated 10.05.2022 issued by the Directorate General of Analytics and Risk Management, National Customs Targeting Centre, Mumbai, on the subject of 'Wrong availment of IGST duty for goods imported claiming benefit of Notification No.021/2015-Cus dtd 01.04.2015', an Investigation was initiated bySIIB, Customs-Suraton the subject of Advance Authorizations issued under Notification No.021/2015-Cus dtd 01.04.2015 obtained by the Importer from Directorate General of Foreign Trade (DGFT).

2.1 During the investigation it has been observed that M/s Panama Petrochem Ltd., Survey no. 78/2, Village Kadaiya, Daman Industrial Estate, Nani Daman, had obtained Advance Authorization License No. 0311004991 & 0311004993both dated 29.06.2021 issued by the DGFT in the name of M/s Panama Petrochem Limited. These Advance Authorizations were issued under Notification No.21/2015-Cus dated 01.04.2015 to the Importer for procuring Imported Goods i.e. "BASE OIL" which was to be used in manufacturing of their final product to be sold as deemed exports(in Advance Authorization items to be exported/supplied is mentioned as- PANOILTW 255 (PETROLEUM DISTILLATE)/ PAN Oil TS/SH 150/Spindle Oil).These Advance Authorizations were issued under Notification No.21/2015-Cus dated 01.04.2015, which exempts the whole of the duty of customs leviable thereon specified in the First Schedule to the Customs Tariff Act, 1975 and from the whole of the additional duty, safeguard duty, transitional product specific safeguard duty and anti-dumping duty leviable thereon, respectively, under sections 3, 8B, 8C and 9A of the said Customs Tariff Act. However, this notification nowhere allows the exemption on the Integrated tax i.e. IGST on Imports levied thereon under sub-section (7) of section 3 of the said Customs Tariff Act.

2.2 Whereas, on verifying the Imports against these Advance Authorization License No. 0311004991 & 0311004993 both dated 29.06.2021, it was found that the Importer had imported Base Oil (different grades) vide Bill of Entry No. 5131600 dated 21.08.2021 with utilization of Advance License No. 0311004993 dated 29.06.2021 and Bill of Entry No. 5131286 dated 21.08.2021 with utilization of Advance License No. 0311004991 dated 29.06.2021. The details of the Import vide the above said Bills of Entry are as follows:

TABLE- I

Sr. No.	Bill of Entry No. & Date	Item No.	Details of Goods Imported	Quantity (in MT)	Assessable Value (in Rs.)	Import duty paid (in Rs.)	Advance Authorization License No
1	5131600 dated 21.08.2021	1	Base Oil 70N (CTH 27101971)	510	34037946.99	NIL	0311004993 dated 29.06.2021
2	5131286 dated 21.08.2021	1	Base Oil 225N (CTH 27101971)	510	27854641.82	NIL	0311004991 dated 29.06.2021

2.3 The Importer has claimed exemption from all kind of Import Duties and paid NIL Import duty on the Imports made vide above referred Bills of Entry Nos. 5131600 & 5131286 both dated 21.08.2021. On examining the said Bills of Entry, it has been noticed that while filing both the Bills of Entry the Importer had availed exemption from payment of Basic Customs Duty by availing the benefit of Notification No. 21/2015-Cus dated 01.04.2015 and the Importer had also availed exemption from payment of IGST by availing the benefits of Notification No. 18/2015-Cus dated

01.04.2015, however the benefits of the Notification No. 18/2015-Cus dated 01.04.2015 were not available to them as both the Advance Authorizations 0311004993 dated 29.06.2021 & 0311004991 dated 29.06.2021 were issued to them under Notification No. 21/2015-Cus dated 01.04.2015. Therefore, the Importer had wrongly availed the exemption of Notification No. 18/2015-Cus dated 01.04.2015. There is no exemption from payment of IGST on the imports done under Advance Authorization issued under Notification No. 21/2015-Cus dated 01.04.2015. The exemption is available from payment of IGST on the imports done under Advance Authorization issued under Notification No. 18/2015-Cus dated 01.04.2015 only. Therefore, it appears that the Importer intentionally had wrongly availed exemption from payment of IGST on the said imports.

2.4 In view of the above, it appears that the Importer had short paid/ not paid the IGST on the Imports done vide Bills of Entry Nos. 5131600 & 5131286 both dated 21.08.2021. The amount of short paid/ not paid import duty i.e. IGST is calculated in the following table:-

TABLE- 2

S. No.	Bill of Entry No. & Date	Item No.	Details of Goods Imported	Assessable Value (in Rs.)	IGST Payable (in Rs.)	IGST paid (in Rs.)	Difference (in Rs.)
1	5131600 dated 21.08.2021	1	Base Oil 70N (CTH 27101971)	34037946.99	6463806.00	NIL	6463806.00
2	5131286 dated 21.08.2021	1	Base Oil 225N (CTH 27101971)	27854641.82	5289597.00	NIL	5289597.00
TOTAL				61,892,588.81	11753403	NIL	11753403

Therefore, the Importer had short paid/ not paid IGST of Rs. **1,17,53,403/-** on the above imports which is required to be recovered from the Importer as per provisions of Section 28 of the Customs Act, 1962.

3. Enquiry Conducted With M/s Panama Petrochem Ltd.,

3.1 During the course of Enquiry, Summons dated 08.10.2022 was issued to M/s Panama Petrochem Ltd., for recording the Importer's version of facts. Shri Pradipkumar Vishwanath Nikam, Vice President of M/s Panama Petrochem Ltd., appeared before the Superintendent (SIIB) on 12.10.2022 and his statement dated 12.10.2022 was recorded which is reproduced hereunder:-

“Q. No.1:- Please explain in details of business activity of M/s Panama Petrochem Limited?

Answer: M/s Panama Petrochem Limited is engaged in manufacturing of petroleum specialty products viz., Ink oils, Rubber process oils, Textile Oils and other grades of Oils since 1982. We import various grades of Base oil. Our manufacturing facility is at Survey No: 78/2, Village – Kadalya, Daman Industrial Estate, Nani Daman, Daman – 396210, Plot No.3303 & 3311, GIDC, Ankleshwar and at H-12, MIDC, Taloja, District- Raigad.

Q.No. 02:- Please give the details of imports made under Advance Authorization Scheme since April, 2017.

Answer:- We are regularly importing various grades of Base Oil. We are submitting the details of imports made under Advance Authorization

Scheme since April, 2017 to till date. We are also submitting the import dockets pertaining to the imports made under Advance Authorization Scheme.

Q. No. 03:-Kindly peruse the copies of Bills of Entry No. 5131286 and 5131600 both dated 21.08.2021 and Advance Authorization license Nos. 0311004991 and 0311004993 both dated 29.06.2021 and explain the exemption benefits taken?

Answer: I have perused the Bills of Entry No. 5131286 and 5131600 both dated 21.08.2021 and Advance Authorization license Nos. 0311004991 and 0311004993 both dated 29.06.2021 and state that the exemption of Basic Customs Duty (BCD) was availed by claiming the benefit of Notification of No.21/2015-Cus dated 01.04.2015 and the exemption of IGST was claimed under No.18/2015-Cus dated 01.04.2015.

Q. No. 04:-Kindly peruse the Customs Notification No. 18/2015 dated 01.04.2015; Customs Notification No. 21/2015 dated 01.04.2015 and Customs Notification No. 79/2017 dated 13.10.2017 and offer your comments regarding the applicability of IGST.

Answer: I have perused the Customs Notification No. 18/2015 dated 01.04.2015, Customs Notification No. 21/2015 dated 01.04.2015 and Customs Notification No. 79/2017 dated 13.10.2017 and in token of perusal I put my dated signature on the said Notifications. As per the conditions of Notification No. 18/2015 dated 01.04.2015 and amendment of the said notification vide Notification No.79/2017 dated 13.10.2017, there is exemption from the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3, integrated tax leviable thereon under sub-section (7) of section 3, goods and services tax compensation cess leviable thereon under sub-section (9) of section 3, safeguard duty leviable thereon under section 8B, countervailing duty leviable thereon under section 9 and anti-dumping duty leviable thereon under Section 9A.

As per Customs Notification No. 21/2015 dated 01.04.2015 and amendment of the said notification vide Notification No.79/2017 dated 13.10.2017, there is exemption from safeguard duty leviable thereon under section 8B, countervailing duty leviable thereon under section 9 and anti-dumping duty leviable thereon under Section 9A of Customs Tariff Act, 1975.

From the explanation to the notifications shown to me above, it is clear that there is no exemption of IGST when the goods are imported by claiming the benefit of under Customs Notification No. 21/2015 dated 01.04.2015 and amendment of the said notification vide Notification No.79/2017 dated 13.10.2017.

Q. No. 05:- On scrutiny of the Bills of Entry No. 5131286 and 5131600 both dated 21.08.2021 and also Advance Authorization license nos. 0311004991 and 0311004993 both dated 29.06.2021, it is noticed that at the time of seeking clearance from Customs Authorities at Hazira Port, the exemption of Basic Customs Duty (BCD) was availed by claiming the benefit of Notification of No.21/2015-Cus dated 01.04.2015 and the exemption of IGST was claimed under No.18/2015-Cus dated 01.04.2015. As per the provisions of Foreign Trade Policy and also as per the conditions laid down in both the aforesaid Notifications amended by Notification

No.79/2017 dated 13.10.2017, it appears that an importer who has been granted Advance Authorization in the respective Notifications can avail the benefit of the said Notification only. However, in the instant case it is noticed that M/s. Panama Petrochem Ltd have claimed the benefit of Notification No.021/2015-Cus dtd.01.04.2015 for goods imported, and have claimed the benefit of IGST duty under Notification No.018/2015-

Cus dtd.01.04.2015 which is not permitted, as an exemption claimed under notification No 21/2015-Cus does not give exemption for payment of IGST duty as explained by you above. It may be noted that Notification No 018/2015-Cus dtd 01.04.2015 is applicable for advance licenses for physical export whereas notification No 21/2015-Cus dtd 01.04.2015 is applicable for advance licenses for deemed exports. Kindly offer your comments.

Answer:-Yes, we agree that we have sought the clearance of the goods imported by our company under the aforesaid bills of entry by wrongly claiming the exemption of IGST under Notification No. 18/2015 dated 01.07.2015. I confirm that we are liable to pay IGST along with applicable interest and the applicable penalty for the purpose of concluding the proceedings under Section 28 of Customs Act, 1962. In token of it, I hereby produce letter dated 12.10.2022 signed by me as per the directions of the Director of the company for the payment of the said Government dues.

This statement of mine has been voluntarily given by me which have been typed by the recording officer on computer on my request. I have not been subjected to any pressure, threat, coercion, duress etc. by the recording officer during recording of my statement. None of my religious feelings were hurt during recording of my statement. I have once again gone through my above statement and I confirm the facts stated above are true and correct and as per my say and version. In token of its correctness, I put my dated signatures on all the pages of my said statement. I also assure that I will remain present before the officers of Customs as and when required".

3.2 Further, Summons dated 08.10.2022 was issued to M/s ACT Infraport Pvt. Ltd. (CHA of M/s Panama Petrochem Ltd. for Hazira Port) for recording their version of facts. Shri Sandeep T S, Branch Manager of M/s ACT Infraport Pvt. Ltd. appeared before the Superintendent (SIIB) on 08.10.2022 and his statement dated 08.10.2022 was recorded which is reproduced hereunder:-

"On being asked, I state that M/s ACT Shipping Ltd, Gandhidham, Kandla was established in the year 1983 as Clearing & Forwarding agent and later on the firm name was changed to M/s ACT Infraport Pvt. Ltd. in 2011 and I state that Surat Branch was started in the year 2012. On being asked regarding Directors of the company, I state that Shri Gopal Sujan Thundathil is the Managing Director and Ms. Wilma, Shri Bharat Thacker, Shri Sudhirkumar Satapathy and Shri Rajan Narikutty are other directors of the company, On being asked, I state that M/s. ACT Infraport Ltd is holding CHA licence No. KDL/CHA/R/34/2011 since 2011 and the company's PAN based no. is AAECA9098HCH005.

On being asked, I state that M/s ACT Infraport Pvt Ltd, Surat Branch is operating bank accounts from (i) ICICI Bank, L.P. Savani Road Branch, Adajan, Surat having account No.183705001230 (Current Account) (ii)

ICICI Bank, Sevasram Road Branch, Bharuch (Current Account No. 017805006013) and (iii) State Bank of India, Bhai Pratap Circle Branch, Gandhidham (OD Account No.66012793483).

On being asked regarding the activities carried out by M/s ACT Infraport Pvt Ltd, I state that we approach the importer / exporter for Customs clearance of their goods from various ports in Kandla, Mundra, Mumbai, NhavaSheva, Mangalore, Pipavav, Vizag, Cochin, Chennai, Dahej, and Surat.

On being asked regarding CHA norms followed by us, I state that we have taken authorization letters from importers/exporters for the clearance of the goods from Customs. Further, I state that as per new policy of Government, we started to fill up the KYC form of our new clients and we do have the KYC form of our old clients.

On being asked regarding KYC form of M/s. Panama Petrochem Ltd., I state that I will produce the same within 02-03 days.

On being asked regarding the commodities dealt with by us, I state that we deal with the clearances of all legal commodities. On being asked regarding CHA charges taken by us, I state that we charge based on our clients. For 20' container, it ranges between Rs. 2500-3000 and for 40' container; it ranges between Rs. 4000-4500.

On being asked specifically regarding clearance & consignments of M/s. Panama Petrochem Ltd, I state that I have handled the imports of the above mentioned company. On being asked regarding mode of payment received from M/s. Panama Petrochem Ltd, I state that payment is received either by Cheque, NEFT or RTGS.

On being asked regarding the goods imported by M/s. Panama Petrochem Ltd, I state that the said company is engaged in imports of various grades of Base Oil.

Today I produce copies of Bill of Entry No. 5131286 dated 21.08.2021 and Bill of Entry No. 5131600 dated 21.08.2021 along with all import documents and copies of Advance Licence No. 0311004991 and 0311004993 both dated 29.06.2021 of M/s. Panama Petrochem Ltd and I undertake that I will recheck regarding the imports made by the said company under Advance Authorization scheme and I will submit the relevant import documents within few days time. In token of above submission, I put my dated signature on all page of the documents by M/s. Panama Petrochem Ltd, submitted by me.

This statement of mine has been voluntarily given by me which have been typed by the recording officer on computer on my request. I have not been subjected to any pressure, threat, coercion, duress etc. by the recording officer during recording of my statement. None of my religious feelings were hurt during recording of my statement. I have once again gone through my statement and finding the same to be true and correct and as per my say and version I put my dated signatures on all the pages of my statement".

3.3 The Importer vide their letter dated 12.10.2022 addressed to the Superintendent, SIIB Surat, submitted that they had imported the goods "Base Oil" under CTH 27101971 vide BE Nos. 5131286 & 5131600 both dated 21.08.2021. They

further stated that they do not want any show cause notice and they are ready to pay the IGST with Interest and Penalty. Therefore, they requested to allow them payment of IGST with applicable interest and penalty.

3.4 On the request of the Importer, the Additional Commissioner of Customs, SIIB Surat, vide letter F. No. VIII/09-04/SIIB/Inq.-Noti.21-2015/2022-23 dated 12.10.2022, requested the Deputy Commissioner of Customs (Imports), Adani Hazira Port, to recall and re-assess the Bills of Entry Nos. 5131286 & 5131600 both dated 21.08.2021, so as to enable the Importer to pay the IGST on the imports vide these Bills of Entry. The Bills of Entry Nos. 5131286 & 5131600 both dated 21.08.2021, were recalled and re-assessed and the Importer has paid the IGST Rs.1,17,53,403/- along with Interest Rs.22,33,738/- and penalty Rs.17,63,010/- vide Challans Nos. 2041265419(Total amounting to Rs. 72,32,981/-Icegate Ref. ID-IG131022025909598225)& 2041266685(Total amounting to Rs.85,17,171/-Icegate Ref. ID-IG131022025554640008)both dated 13.10.2022 on the re-assessed Bills of Entry.

LEGAL PROVISIONS RELEVANT TO THE CASE:-

4. The following legal provisions are applicable to the case, which are detailed hereunder:

- 4.1 Para 4.03 of the Foreign Trade Policy (2015-20);
- 4.2 Para 4.05 of the Foreign Trade Policy (2015-20);
- 4.3 Para 4.14 of the Foreign Trade Policy (2015-20);
- 4.4 DGFT Notification No.16/2015-20 dated 01.07.2022;
- 4.5 Notification No. 37/2022- Customs dated 30.06.2022;
- 4.6 Notification No. 18/2015-Customs dated 01.04.2015;
- 4.7 Notification No. 21/2015-Customs dated 01.04.2015;
- 4.8 Notification No. 79 /2017-Customs dated 13.10.2017;
- 4.9 Section 17 (1) of the Customs Act. 1962;
- 4.10 Section 46(4) of the Customs Act, 1962;
- 4.11 Section 111(o) of the Customs Act, 1962;
- 4.12 Section 112(a) of the Customs Act, 1962;
- 4.13 Section 28(4) of the Customs Act, 1962;
- 4.14 Section 114A of the Customs Act, 1962;
- 4.15 Section 114AA of the Customs Act, 1962;
- 4.16 Section 117 of the Customs Act, 1962;

4.1 Para 4.03 of the Foreign Trade Policy(2015-20):-

- (a) Advance Authorization is issued to allow duty free import of input, which is physically incorporated in export product (making normal allowance for wastage). In addition, fuel, oil, catalyst which is consumed / utilized in the process of production of export product, may also be allowed.
- (b) Advance Authorization is issued for inputs in relation to resultant product, on the following basis:
 - (i) As per Standard Input Output Norms (SION) notified (available in Hand Book of Procedures); OR
 - (ii) On the basis of self declaration as per paragraph 4.07 of Handbook of Procedures. OR
 - (iii) Applicant specific prior fixation of norm by the Norms Committee OR
 - (iv) On the basis of Self Ratification Scheme in terms of Para 4.07A of Foreign Trade Policy

4.2 Para 4.05 of the Foreign Trade Policy (2015-20):-

Eligible Applicant / Export / Supply

- (a) Advance Authorization can be issued either to a manufacturer exporter or merchant exporter tied to supporting manufacturer.

(b) Advance Authorization for pharmaceutical products manufactured through Non-Infringing (NI) process (as indicated in paragraph 4.18 of Handbook of Procedures) shall be issued to manufacturer exporter only.

(c) Advance Authorization shall be issued for:

(i) Physical export (including export to SEZ)

(ii) Intermediate supply; and/or

(iii) Supply of goods to the categories mentioned in paragraph 7.02 (b), (c), (d), (e), (f) and (g) of this FTP.

(iv) Supply of 'stores' on board of foreign going vessel / aircraft, subject to condition that there is specific Standard Input Output Norms in respect of item supplied.

4.3 Para 4.14 of the Foreign Trade Policy (2015-20)

Imports under Advance Authorization are exempted from payment of Basic Customs Duty, Additional Customs Duty, Education Cess, Antidumping Duty, Countervailing Duty, Safeguard Duty, Transition Product Specific Safeguard Duty, wherever applicable. Import against supplies covered under paragraph 7.02 (c), (d) and (g) of FTP will not be exempted from payment of applicable Anti-dumping Duty, Countervailing Duty, Safeguard Duty and Transition Product Specific Safeguard Duty, if any. However, imports under Advance Authorization for physical exports are also exempt from whole of the integrated tax and Compensation Cess leviable under sub-section (7) and sub-section (9) respectively, of section 3 of the Customs Tariff Act, 1975 (51 of 1975), as may be provided in the notification issued by Department of Revenue, and such imports shall be subject to pre-import condition. Imports against Advance Authorizations for physical exports are exempted from Integrated Tax and Compensation Cess upto 31.03.2018 only.

The Para 4.14 was later amended vide Notification No.16/2015-20 dated 01.07.2022, which after amendment reads as:

Details of Duties exempted

Imports under Advance Authorization are exempted from payment of Basic Customs Duty, Additional Customs Duty, Education Cess, Anti-dumping Duty, Countervailing Duty, Safeguard Duty, Transition Product Specific Safeguard Duty, wherever applicable. Import against supplies covered under paragraph 7.02 (c) & (g) of FTP will not be exempted from payment of applicable Anti-dumping Duty, Countervailing Duty, Safeguard Duty and Transition Product Specific Safeguard Duty, if any. However, imports under Advance Authorization for physical as well as deemed exports are also exempt from whole of the integrated tax and Compensation Cess leviable under sub-section (7) and sub-section (9) respectively, of section 3 of the Customs Tariff Act, 1975 (51 of 1975).¹⁵

¹⁵ (Para 4.14 amended vide Notification No.16/2015-20 dated 01.07.2022)

4.4 DGFT Notification No.16/2015-20 dated 01.07.2022

In exercise of powers conferred by Section 5 of FT(D&R) Act, 1992, read with Paragraph 1.02 of the Foreign Trade Policy, 2015-20, as amended from time to time, the Central Government hereby makes the following amendments in Foreign Trade Policy 2015-20.

1. Integrated Tax and Compensation Cess under Advance Authorization as per Para 4.14 of FTP 2015-20 is exempted as provided in the Notification No. 37/2022-Customs dated 30th June 2022 issued by Department of Revenue.
2. -----
3. -----

4.5 Notification No. 37/2022- Customs dated 30.06.2022;

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in each of the

notifications of the Government of India, Ministry of Finance (Department of Revenue) specified in Column (2) of the Table below, in the manner as specified in the corresponding entry in Column (3) of the said Table, namely :-

TABLE S. No.	Notification number and date	Amendments
(1)	(2)	(3)
1.	16/2015-Customs, dated the 1st April, 2015 [vide number G.S.R. 252(E), dated the 1st April, 2015]	In the said notification, in the opening paragraph, the proviso to clause (iii) shall be omitted.
2.	18/2015-Customs, dated the 1st April, 2015 [vide number G.S.R. 254 (E), dated the 1st April, 2015]	In the said notification, in the opening paragraph, clause (xiii) shall be omitted.
3.	20/2015-Customs, dated the 1st April, 2015 [vide number G.S.R. 256 (E), dated the 1st April, 2015]	In the said notification, in the opening paragraph, clause (xiv) shall be omitted.
4.	22/2015-Customs, dated the 1st April, 2015 [vide number G.S.R. 258 (E), dated the 1st April, 2015]	In the said notification, in the opening paragraph, clause (xiii) shall be omitted.
5.	45/2016-Customs, dated the 13th August 2016 [vide number G.S.R. 795(E), dated the 13th August, 2016]	In the said notification, in the opening paragraph, clause (xii) shall be omitted.
6.	52/2003-Customs, dated the 31st March, 2003 [vide number G.S.R. 274(E), dated the 31st March, 2003]	In the said notification, in the opening paragraph, in the proviso, for the brackets, letters and figures “nothing contained in clause (B) above shall apply on or after the 01st July, 2022, subject to the following conditions” the words “exemption under this notification shall be subject to the following conditions” shall be substituted.

4.6 Notification No. 18/2015-Customs dated 01.04.2015

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts materials imported into India against a valid Advance Authorization issued by the Regional Authority in terms of paragraph 4.03 of the Foreign Trade Policy (hereinafter referred to as the said Authorization) from the whole of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and from the whole of the additional duty, safeguard duty, transitional product specific safeguard duty and anti-dumping duty leviable thereon, respectively, under sections 3, 8B, 8C and 9A of the said Customs Tariff Act, subject to the following conditions, namely :-

4.7 Notification No. 21/2015-Customs dated 01.04.2015

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts materials required or the manufacture of the final goods when imported into India, from whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as Customs Tariff Act) and from the whole of the additional duty, safeguard

duty, transitional product specific safeguard duty and anti-dumping duty leviable thereon respectively under sections 3, 8B, 8C and 9A of the said Customs Tariff Act, except to the extent specified in para 2 to this notification, subject to the following conditions, namely:-

4.8 Notification No. 79 /2017-Customs dated 13.10.2017

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in each of the notifications of the Government of India in the Ministry of Finance (Department of Revenue), specified in column (2) of the Table below, in the manner as specified in the corresponding entry in column (3) of the said Table, namely :-

(Relevant Provisions only)

Table S. No.	Notification number and date	Amendments
(1)	(2)	(3)
2.	18/2015-Customs, dated the 1 st April, 2015 [vide number G.S.R. 254 (E), dated the 1 st April, 2015]	In the said notification, in the opening paragraph,- (a) for the words, brackets, figures and letters "from the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3, safeguard duty leviable thereon under section 8B and anti-dumping duty leviable thereon under section 9A", the words, brackets, figures and letters "from the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3, integrated tax leviable thereon under sub-section (7) of section 3, goods and services tax compensation cess leviable thereon under sub-section (9) of section 3, safeguard duty leviable thereon under section 8B, countervailing duty leviable thereon under section 9 and anti-dumping duty leviable thereon under section 9A" shall be substituted; ----- -----
4.	21/2015-Customs, dated the 1 st April 2015 [vide number G.S.R. 257(E), dated the 1 st April, 2015]	In the said notification, (a) in the opening paragraph, for the words, figures, and letters "safeguard duty leviable thereon under section 8B and anti-dumping duty leviable thereon under section 9A" the words, figures and letters "safeguard duty leviable thereon under section 8B, countervailing duty leviable thereon under section 9 and anti-dumping duty leviable thereon under section 9A" shall be substituted. ----- -----

4.9 Section 17 (1) of the Customs Act. 1962

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

4.10 Section 46(4) of the Customs Act, 1962

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

The importer who presents a bill of entry shall ensure the following, namely:-

- (a) the accuracy and completeness of the information given therein;*
- (b) the authenticity and validity of any document supporting it; and*
- (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.*

4.11 Section 111(o) of the Customs Act, 1962

111. Confiscation of improperly imported goods, etc. -

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

- (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.*

4.12 Section 112(a) of the Customs Act;

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 percent 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;

4.13 Section 28(4) of the Customs Act, 1962;

Recovery of [duties not levied or not paid or short-levied or short-paid or erroneously refunded. -

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

(a) collusion; or

(b) any wilful mis-statement; or

(c) suppression of facts,

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

4.14 Section 114A of the Customs Act, 1962

Penalty for short-levy or non-levy of duty in certain cases.—

Where the duty has not been levied or has not been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (2) of section 28 shall, also be liable to pay a penalty equal to the duty or interest so determined:] 2[Provided that where such duty or interest, as the case may be, as determined under sub-section (2) of section 28, and the interest payable thereon under section 28AA, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the duty or interest, as the case may be, so determined: Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso: Provided also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account: Provided also that where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 28AA, and twenty-five per cent. of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect: Provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114. Explanation.—For the removal of doubts, it is hereby declared that—

(i) the provisions of this section shall also apply to cases in which the order determining the duty or interest under sub-section (2) of section 28 relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President*;

(ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.]

4.15 Section 114AA of the Customs Act, 1962

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 for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

4.16 Section 117 of the Customs Act, 1962

Penalties for contravention, etc., not expressly mentioned. -
Any person who contravenes any provision of this Act or abets any such contravention

or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding four lakh rupees.

5. Discussion on provisions of Law:-

5.1 Para 4.14 of the Foreign Trade Policy (2015-20) states that Imports under Advance Authorization are exempted from payment of Basic Customs Duty, Additional Customs Duty, Education Cess, Antidumping Duty, Countervailing Duty, Safeguard Duty, Transition Product Specific Safeguard Duty, wherever applicable. Further, Para 4.14 was later amended vide Notification No.16/2015-20 dated 01.07.2022, which after amendment provides that imports under Advance Authorization for physical as well as deemed exports are also exempt from whole of the integrated tax and Compensation Cess leviable under sub-section (7) and sub-section (9) respectively, of section 3 of the Customs Tariff Act, 1975 (51 of 1975).

5.2 DGFT Notification No.16/2015-20 dated 01.07.2022, amended Foreign Trade Policy 2015-20, wherein Integrated Tax and Compensation Cess under Advance Authorization as per Para 4.14 of FTP 2015-20 is exempted as provided in the Notification No. 37/2022-Customs dated 30th June 2022 issued by Department of Revenue. Further, Notification No. 37/2022-Customs dated 30th June 2022 amended various Notifications of Customs but did not amend Notification No. 21/2015-Customs dated 01.04.2015

5.3 Notification No. 18/2015-Customs dated 01.04.2015 as amended by Notification No.79/2017-Customs dated 13.10.2017, exempts materials imported into India against a valid Advance Authorization issued by the Regional Authority in terms of paragraph 4.03 of the Foreign Trade Policy, from the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3, integrated tax leviable thereon under sub-section (7) of section 3, goods and services tax compensation cess leviable thereon under sub-section (9) of section 3, safeguard duty leviable thereon under section 8B, countervailing duty leviable thereon under section 9 and anti-dumping duty leviable thereon under section 9A of the said Customs Tariff Act. Therefore, the Advance Authorizations issued under Notification No. 18/2015-Customs dated 01.04.2015, provided exemptions from payment of IGST on imports into India.

5.4 Notification No. 21/2015-Customs dated 01.04.2015 as amended by Notification No. 79 /2017-Customs dated 13.10.2017, exempts materials required or the manufacture of the final goods when imported into India, from 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, safeguard duty leviable thereon under section 8B, countervailing duty leviable thereon under section 9 and anti-dumping duty leviable thereon under section 9A of the said Customs Tariff Act. Therefore, the Advance Authorizations issued under Notification No. 21/2015-Customs dated 01.04.2015, did not provide any exemption from payment of IGST on imports into India.

5.5 As per Section 17 (1) of the Customs Act. 1962, an Importer shall self-assess the duty leviable on imported goods under section 46. Further, as per Section 46(4) of the Customs Act, 1962, the importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall ensure (a) the accuracy and completeness of the information given therein;(b) the authenticity and validity of any document supporting it; and(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

5.6 Section 111(o) of the Customs Act, 1962 provides for Confiscation of improperly imported goods, in respect of which the condition is not observed. In the instant case, the Importer did not pay the IGST on the imports under Advance Authorization issued under Notification No. 21/2015-Customs dated 01.04.2015 which did not provide any exemption from payment of IGST on imports into India. Further, Section 112(a) of the Customs Act, 1962, provides for Penalty for improper importation of goods under Section 111 of the Act.

5.7 Section 28(4) of the Customs Act, 1962 provides for Recovery of any duty which 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.

5.8 Section 114A of the Customs Act, 1962, provides for Penalty for short-levy or non-levy of duty in certain cases. Further, Section 114AA of the Customs Act, 1962 prescribes penalty for *knowingly or intentionally making, signing or using, or causing 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* whereas Section 117 of the Customs Act, 1962 provides for penalty for contraventions not expressly mentioned in the Customs Act, 1962.

6. Discussion on Contraventions:

6.1 The Importer, in the instant case, had availed exemption from payment of IGST on the Imports done vide Bills of Entry Nos. 5131286 & 5131600 both dated 21.08.2021 by entering exemption Notification No. 18/2015-Cus dated 01.04.2015 in the Bills of Entry mentioned above which was not available to the Importer since the Advance Authorization was not issued under Notification No. 18/2015-Cus dated 01.04.2015 but instead it was issued under Notification No. 21/2015-Cus dated 01.04.2015. Therefore, the Importer had wrongly availed the exemption of Notification No. 18/2015-Cus dated 01.04.2015. There is no exemption from payment of IGST on the imports done under Advance Authorization issued under Notification No. 21/2015-Cus dated 01.04.2015 but exemption is available from payment of IGST on the imports done under Advance Authorization issued under Notification No. 18/2015-Cus dated 01.04.2015. Therefore, it appears that the Importer intentionally had wrongly availed exemption from payment of IGST on the said imports by mentioning the exemption notification which was not mentioned in their license issued by DGFT to avail the benefit, therefore Importer evaded payment of IGST Rs.1,17,53,403/- on the Assessable Value Rs.61,892,588.81/-.

6.2 The Importer, shall self-assess the duty leviable on imported goods under section 46, as per Section 17 (1) of the Customs Act, 1962 and as per Section 46(4) of the Customs Act, 1962, shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall ensure (a) the accuracy and completeness of the information given therein; (b) the authenticity and validity of any document supporting it; and (c) compliance with the restriction or prohibition while presenting a bill of entry. The Importer, by wrongly claiming exemption from payment of IGST on the above-mentioned imports, has contravened the provisions of Section 17 (1) and 46(4) of the Customs Act, 1962.

6.3 The Importer, by not paying the IGST on the above mentioned imports, did not follow the condition for the subject imports and therefore, as per Section 111 of the Customs Act, 1962, the goods were improperly imported which renders the goods imported vide above mentioned Bills of Entry, liable for Confiscation as per Section 111(o) of the Customs Act, 1962. Further, Section 112(a) of the Customs Act, 1962, provides for Penalty for improper importation of goods under Section 111 of the Act.

6.4 In the instant case, the Importer knew that the Advance Authorization which was issued to them, was issued under Notification No.21/2015-Customs dated 01.04.2015. The Importer had intentionally claimed exemption from payment of IGST by availing the Notification No. 18/2015-Customs dated 01.04.2015 which was not available to them. Therefore, the Importer, intentionally, by entering exemption Notification No. 18/2015-Customs dated 01.04.2015 for IGST on the imports mentioned above, has knowingly misstated in the Bills of Entry mentioned above. It appears that on being investigated by the department after being pointed out in the Analytic Report, the importer paid the duty alongwith interest and penalty, which otherwise could have not been recovered and the importer might have been successful in evasion of duty. Thus, it appears that the Importer, had will-fully misstated in the Bill of Entry and evaded the payment of IGST on the said imports amounting to Rs. 1,17,53,403/- which is liable to be recovered from the Importer as per Section 28(4) of the Customs Act, 1962 along with Interest under Section 28AA of the Customs Act, 1962. The importer has rendered themselves liable for Penalty under Section 114A of the Customs Act, 1962.

6.5 The Importer tried evading the payment of IGST on the said imports by wrongly mentioning the exemption Notification No. 18/2015-Customs dated 01.04.2015 for IGST whereas the Advance Authorisation was issued to them under Notification No.21/2015-Customs dated 01.04.2015. Therefore, it appears that the Importer knowingly or intentionally used the declaration of the wrong exemption Notification for IGST payment which is incorrect and inconsistent with the Advance Authorisation issued to them. Therefore, it appears that for the said contravention, they have rendered themselves liable for Penalty under Section 114AA of the Customs Act, 1962.

6.6 The Importer had tried to mis-use the Advance Authorisation issued for evasion of IGST payment on the imports on the said imports, therefore, for the misuse of Advance Authorisation, it appears that the Importer has rendered themselves liable for Penalty under Section 117 of the Customs Act, 1962.

7. In view of the above, Show Cause Notice No. VIII/10-36/Pr.Commr/O&A/2023-24 dated 26.04.2024 issued to M/s Panama Petrochem Ltd., Survey no. 78/2, Village Kadaiya, Daman Industrial Estate, Nani Daman, (IEC-0393019691), calling upon to Show Cause to the Principal Commissioner of Customs, Ahmedabad, as to why:-

- (a) Customs Duty amounting to Rs. 1,17,53,403/- (Rupees One Crore, Seventeen Lakh, Fifty Three Thousand, Four Hundred and Three only) in the form of IGST saved in course of imports of the goods through Adani Hazira Port under the Advance Authorization and the corresponding Bills of Entry as mentioned in **TABLE- 2** in Para 2.4 above in this Show Cause Notice, in respect of which benefit of exemption under Customs Notification No.18/2015 dated 01.04.2015 as amended (incorrectly availed exemption from IGST payment as the Advance Authorization was issued to under Notification No. 21/2015 dated 01.04.2015), should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 and the Customs Duty amounting to Rs. 1,17,53,403/- (Rupees One Crore Seventeen Lakh Fifty Three Thousand Four Hundred Three only) in the form of IGST, paid by them (as per details in Para 3.4 in this Show Cause Notice) should not be appropriated against the above demand;
- (b) Subject goods having assessable value of Rs.**6,18,92,589/-** (Rupees Six Crore, Eighteen Lakh, Ninety Two Thousand, Five Hundred and Eighty Nine only) imported through Adani Hazira Port, under the subject Advance Authorization shall not be held liable for confiscation under Section 111(o) of the Customs Act, 1962 for being imported availing incorrect exemption of

IGST in terms of the Notification No.18/2015 dated 01.04.2015, as amended by Notification No.79/2017-Cus dated 13.10.2017, as the Advance Authorization was issued under Notification No.21/2015 dated 01.04.2015;

- (c) Interest should not be demanded and recovered from them under Section 28AA of the Customs Act, 1962 on the Customs Duty demanded at (a) above and the Interest amount of Rs.22,33,738/-(Rupees Twenty Two Lakh, Thirty Three Thousand, Seven Hundred and Thirty Eight only) paid should not be appropriated against Interest liability;
- (d) Penalty should not be imposed upon them under Section 112(a) of the Customs Act, 1962 for improper importation of goods availing exemption under Notification No.18/2015 dated 01.04.2015, as amended by Notification No.79/2017-Cus, dated 13.10.2017, availing exemption of Notification other than the Notification under which Advance Authorization was issued i.e. Notification No. 21/2015-Cus dated 01.04.2015, resulting in non-payment of Customs Duty, which rendered the goods liable to confiscation under Section 111(o) of the Customs Act, 1962;
- (e) Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962, for improper importation of goods availing exemption of Notification other than the Notification under which Advance Authorization was issued to the Importer and also by reasons of wilful misstatement and suppression of facts with an intent to evade payment of Customs Duty as elaborated above resulting in non-payment of Duty, which rendered the goods liable to confiscation under Section 111(o) of the Customs Act, 1962, and also rendered Customs Duty recoverable under Section 28(4) of the Customs Act, 1962;
- (f) Penalty under Section 114AA of the Customs Act, 1962 for knowingly or intentionally using the declaration of the wrong exemption Notification for IGST payment which is incorrect and inconsistent with the Advance Authorisation issued to them;
- (g) Penalty under Section 117 of the Customs Act, 1962 for knowingly or intentionally misusing the Advance Authorisation issued to them, for evasion of IGST duty payment on the said imports;

8. Defence submission: The importer vide letter dated 03.05.2024 submitted that they had agreed with the points raised by the department and during the investigation, they have paid differential duty of IGST of Rs. 1,17,53,403/- alongwith interest of Rs. 22,33,738/- and Penalty@15% Rs. 17,63,011/-. Further, they have stated that as they have paid entire dues alongwith interest and penalty requested that issuance of written Show Cause Notice may waived and the proceeding may be closed under Section 28(5) of the Customs Act, 1962. Further submitted that issue may be treated as closed with the provisions of the Customs Act, 1962 and further they confirmed that aforesaid amounts are paid voluntarily and no appeal will be filed in future against the said payments or will not claim any refund in future in this regard. Further, he reiterated that as they have already paid the duties alongwith interest and penalty, **they do not require any personal hearing against the Show Cause Notice** and requested to finalised the matter at an early date on basis of records available with the office.

9. Discussion and findings: I have carefully gone through the Show Cause Notice dtd. 26.04.2024 and written submission dtd. 03.05.2024. Basic issue involved in the present case is whether the Importer is eligible for exemption from payment of IGST as claimed under Notification No. 18/2015-Cus dated

01.04.2015 or otherwise. Further, importer has waived the opportunity of person hearing.

9.1 I find that Importer had imported 'Base Oil' vide Bill of Entry No. 5131600 dated 21.08.2021 with utilization of Advance License No. 0311004993 dated 29.06.2021 and Bill of Entry No. 5131286 dated 21.08.2021 with utilization of Advance License No. 0311004991 dated 29.06.2021 claiming the exemption from payment of Basic Customs Duty under Notification No. 21/2015- Cus dated 01.04.2015 and IGST under Notification No. 18/2015-Cus dated 01.04.2015. I find that said both the Advance Authorization No. License No. 0311004993 dated 29.06.2021 and 0311004991 dated 29.06.2021 were issued for deemed export by the Regional Authority (DGFT) in **terms of paragraph 4.05(c)(iii) of the Foreign Trade Policy** permitting import under Notification No. 21/2015-Cus dated 01.04.2015.

9.2 The said Notification No. 21/2015- Cus dated 01.04.2015 exempts the whole of the duty of customs leviable thereon specified in the First Schedule to the Customs Tariff Act, 1975 and from whole of the additional duty and anti-dumping duty leviable thereon, respectively, under Section 3, 8B, 8C and 9A of the Customs Tariff Act 1975. The Integrated Goods & Service Tax (IGST) falls under sub-section (7) of Section 3 of the Customs Act, 1975. No such exemption from IGST under Section 3(7) of the Customs Tariff Act, 1975 is mentioned therein in the said Notification No. 21/2015-Cus dated 01.04.2015.

9.3 I find that **Notification No. 18/2015-Cus dated 01.04.2015** exempts materials imported into India against a valid Advance Authorisation issued by the Regional Authority **in terms of paragraph 4.03 of the Foreign Trade Policy** (hereinafter referred to as the said authorisation) from the whole of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and from the whole of the additional duty, safeguard duty, transitional product specific safeguard duty and anti-dumping duty leviable thereon, respectively, under sections 3, 8B, 8C and 9A of the said Customs Tariff Act, 1975. I find that Advance Authorisation No. 0311004993 dated 29.06.2021 and 0311004991 dated 29.06.2021 are issued by the DGFT in **terms of paragraph 4.05(c)(iii) of the Foreign Trade Policy for the exemption of duty as mentioned in** Notification No 21/2015- Cus dated 01.04.2015 and not **in terms of paragraph 4.03 of the Foreign Trade Policy for the exemption of duty as mentioned in Notification No 18/2015- Cus dated 01.04.2015**. Therefore, the importer is not eligible for exemption of IGST under Notification No 18/2015- Cus dated 01.04.2015.

9.4 I find that Notification No. 18/2015-Customs dated 01.04.2015 was amended by Notification No.79/2017-Customs dated 13.10.2017, whereby BCD, additional duty leviable under sub-sections (1), (3) and (5) of section 3, integrated tax leviable under sub-section (7) of section 3, goods and services tax compensation cess leviable under sub-section (9) 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, 1975 were exempted. Thus, only the Advance Authorizations issued under Notification No. 18/2015-Customs dated 01.04.2015, provided exemptions from payment of IGST on imports into India.

Whereas Notification No. 21/2015-Customs dated 01.04.2015 was amended by Notification No. 79 /2017-Customs dated 13.10.2017, whereby BCD, additional duty, safeguard duty under section 8B, countervailing duty leviable under section 9 and anti-dumping duty leviable under section 9A of the Customs Tariff Act were exempted. Thus, the Advance Authorizations issued

under Notification No. 21/2015-Customs dated 01.04.2015, did not provide any exemption from payment of IGST on imports into India.

9.5 I find from the above discussion, that the importer is not eligible for exemption from payment of IGST as the Advance Authorisation were issued for the benefit of Notification No. 21/2015-Customs dated 01.04.2015 and even in subsequent amendment vide Notification No. 79/2017-Customs dated 13.10.2017, the benefit of exemption from IGST leviable under Section 3(7) of the Customs Tariff Act, 1975 was also not extended. However, with malafide intention to evade the payment of IGST, the importer inspite of having the knowledge that Advance Authorisation No. 0311004993 dated 29.06.2021 and 0311004991 dated 29.06.2021 were issued by the DGFT in **terms of paragraph 4.05(c)(iii) of the Foreign Trade Policy for the exemption of duty as mentioned in** Notification No 21/2015- Cus dated 01.04.2015, they claimed the benefit of Exemption Notification No. 18/2015-Customs dated 01.04.2015 as amended vide Notification No. 79/2017-Customs dated 13.10.2017 and did not pay the IGST on the import of 'Base Oil' vide Bill of Entry No. 5131600 dated 21.08.2021 and 5131286 dated 21.08.2021 under the Advance Authorisation No. 0311004993 dated 29.06.2021 and 0311004991 dated 29.06.2021 respectively. Therefore, demand is rightly issued invoking the provision of extended period under Section 28 (4) of the Customs Act, 1962 along with Interest under Section 28AA of the Customs Act, 1962 and penalty under Section 114A of the Customs Act, 1962. Further, Since the importer has wrongly availed the benefit of exemption of Notification No.18/2015-Customs dated 01.04.2015 as amended **which act has rendered the imported goods liable** for confiscation under Section 111 (o) of the Customs Act, 1962 with consequently penalty under Section 112 (a) of the Customs Act, 1962. Further, I find that since the importer with clear intent to evade the payment of IGST has mis-declared the Notification No. 18/2015-Customs dated 01.04.2015 in Bills of Entry and thereby Penalty under Section 114AA found imposable for false declaration in Bills of Entry.

9.6 I find that the importer vide their letter dated 03.05.2024 submitted that they had agreed with the contention raised by the department and during the investigation, they have paid differential duty of IGST of Rs. 1,17,53,403/- alongwith interest of Rs. 22,33,738/- and Penalty Rs. 17,63,011/- (15% of IGST of Rs.1,17,53,403/-) and stated that no appeal will be filed in future against the said payments or will not claim any refund in future in this regard. Further, they stated that as they have paid entire dues alongwith interest and penalty requested that issuance of written Show Cause Notice may be waived and the proceeding may be closed under Section 28(5) of the Customs Act, 1962.

10. I find that importer has paid differential duty of IGST of Rs. 1,17,53,403/- as proposed in Show Cause Notice alongwith interest of Rs. 22,33,738/- and Penalty Rs. 17,63,011/-(15% of IGST of Rs.1,17,53,403/-). Further, they have requested to conclude proceeding under the provisions of the Customs Act,1962.

10.1 In the instant case, Show Cause Notice is issued to the importer for demand of differential duty under Section 28 (4) of the Customs Act, 1962 alongwith interest under Section 28 AA and penal action under Section 114A and 114AA of the Customs Act, 1962. Further, proposal for confiscation of the goods under Section 111 (o) of the Customs Act, 1962 with consequent penalty under Section 112 of the Customs Act, 1962 has been proposed for the reason that the importer has wrongly claimed the benefit of exemption from the payment of IGST under Notification No. 18/2015-Customs dated 01.04.2015, for the import of goods viz. 'Base Oil' imported vide Bill of Entry No. 5131600 dated 21.08.2021 and 5131286 dated 21.08.2021 having total

assessable value of Rs.6,18,92,589/-. Since the importer has paid the differential duty along with interest and penalty of 15% of the duty specified in the Show Cause on 13.10.2020 i.e. before the issuance of the Show Cause Notice dated 26.04.2024, I find that proceeding initiated vide Show Cause Notice No. VIII/10-36/Pr.Commr/ O&A/2023-24 dated 26.04.2024 needs to be concluded in terms of the provision of Section 28 (6) (i) of the Customs Act, 1962 without prejudice to the provisions of Section 135, 135A and 140 of the Customs Act, 1962.

10.2 I find that once the goods are held liable for confiscation, penalty under Section 112 of the Customs Act, 1962 are attracted. Penal provisions under Section 112 of the Customs Act, 1962 in the case of dutiable goods, other than prohibited goods are subject to the provisions of Section 114A of the Customs Act, 1962 and as per fifth proviso to Section 114A of the Customs Act, 1962, where any penalty has been levied under Section 114A, no penalty shall be levied under Section 112 of the Customs Act, 1962. In the present case, since the Customs Duty of Rs. 1,17,53,403/- involved in the imported goods having total assessable value of Rs.6,18,92,589/- is proposed to be demanded and confirmed under Section 28(4) of the Customs Act, 1962 alongwith interest under Section 28AA and penal action under Section 114A of the Customs Act, 1962, penal action under Section 112 of the Customs Act, 1962 is not invocable. Further, the Importer has paid the duty alongwith interest and penalty @15% of the duty specified in the Show Cause Notice issued under Section 28 (4) before receipt of the Notice. In view of the entire factual matrix stated above, I find that the proceeding against the importer under Section 28 (4), 28AA, Section 114A and 114AA of the Customs Act, 1962 are deemed to be conclusive as per the provision of Section 28 (6) (i) of the Customs Act, 1962.

10.3 Regarding the issue of fine in lieu of confiscation, I find that as per Section 125 (1) of the Customs Act, 1962, it is mandatory for the officer adjudging confiscation of the goods, other than the goods the importation or exportation whereof is prohibited under the Customs Act, 1962 or under any other law for the time being in force, to give to the owner of goods, or where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit. However, first proviso to Section 125 (1) of the Customs Act, 1962 provides that where the proceeding are deemed to be concluded under provision to sub-section (2) of Section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, no such fine shall be imposed. In the present case, goods having assessable value of Rs. 6,18,92,589/- is held liable for confiscation is neither prohibited nor restricted and the proceedings are deemed to be concluded under Section 28 (6)(i) of the Customs Act, 1962 and therefore, no fine in lieu of confiscation is to be imposed.

11. In view of the foregoing discussion and findings, I pass the following order.

::ORDER::

11.1 M/s. Panama Petrochem Ltd., Survey no. 78/2, Village Kadaiya, Daman Industrial Estate, Nani Daman has paid the differential duty alongwith interest demanded under Section 28 (4) and Section 28AA, respectively of the Customs Act, 1962 vide the Show Cause Notice No. VIII/10-36/Pr.Commr/O&A/2023-24 dated 26.04.2024 and they have also paid the penalty equal to fifteen percent of the duty demanded in the notice as provided under Section 28 (5) of the Customs Act, 1962. I order to confirm the

demand of duty and interest demanded in the said Show Cause Notice and order to appropriate the total amount of Rs. 1,57,50,152/- (Rupees One Crore, Fifty Seven Lakh, Fifty Thousand, One Hundred and Fifty Two only) paid by Importer against duty of Rs. 1,17,53,403/-, Interest of Rs. 22,33,738/- and Penalty Rs. 17,63,011/-. Hence, the proceeding in respect of Show Cause Notice No. VIII/10-36/Pr.Commr/O&A/2023-24 dated 26.04.2024 is hereby treated as concluded in terms of the provision of Section 28 (6)(i) of the Customs Act, 1962 without prejudice to the provisions of Section 135, 135A and 140 of the Customs Act, 1962.

11.2 I hold the imported goods 'Base Oil' Vide Bill of Entry No. 5131600 dated 21.08.2021 and 5131286 dated 21.08.2021 having total assessable value of Rs. 6,18,92,589/- are liable for confiscation under Section 111 (o) of the Customs Act, 1962. However, in view of the first Proviso to Section 125 (1) of the Customs Act, 1962 and deemed conclusion of the proceeding under Section 28 (6) (i) of the Customs Act, 1962, I do not impose any fine in lieu of confiscation under Section 125 (1) of the Customs Act, 1962.

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

13. The Show Cause Notice No. VIII/10-36/Pr.Commr/O&A/2023-24 dated 26.04.2024 is disposed off in above terms.


(Shiv Kumar Sharma)
Principal Commissioner

F. No. VIII/10-36/Pr.Commr/O&A/2023-24

Date: 05.08.2024

DIN: 20240871MN0000804453

BY SPEED POST A.D.

To,
M/s. Panama Petrochem Ltd.,
Survey no. 78/2,
Village Kadaiya,
Daman Industrial Estate,
Nani Daman.

Copy To:

- 1) The Chief Commissioner of Customs, Gujarat Customs Zone, Ahmedabad
- 2) The Additional Commissioner of Customs, Customs Hazira Port, Hazira-Choryashi, Surat-395007
- 3) The Deputy/ Assistant Commissioner, HQ Systems, Customs Ahmedabad, for uploading on the official website;
- ✓ 4) Guard File.