F. No. VIII/10-272/ICD-Khod/O&A/HQ/2023-24
OIO No. 261/ADC/SRV/O&A/HQ/2024-25

प्रधान आयुक्त का कार्यालय, सीमा शुल्क ,अहमदाबाद

"सीमाशुल्क भवन ,"पहली मंजिल ,पुराने हाईकोर्ट के सामने ,नवरंगपुरा ,अहमदाबाद – 380 009.

दूरभाष :(079) 2754 4630 **E-mail:** cus-ahmd-adj@gov.in फैक्स :(079) 2754 2343

DIN: 20250271MN0000999C75

PREAMBLE

A	फ़ाइल संख्या/ File No.	:	VIII/10-272/ICD-Khod/O&A/HQ/2023-24
B	कारण बताओ नोटिस संख्या–तारीख / Show Cause Notice No. and Date	:	VIII/10-272/ICD-Khod/O&A/HQ/2023-24 dated 12.08.2024
C	मूल आदेश संख्या/ Order-In-Original No.	:	**261/ADC/SRV/O&A/2024-25**
D	आदेश तिथि/ Date of Order-In-Original	:	**24.02.2025**
E	जारी करनेकी तारीख/ Date of Issue	:	**24.02.2025**
F	द्वारापारित/ Passed By	:	**SHREE RAM VISHNOI**, ADDITIONAL COMMISSIONER, CUSTOMS AHMEDABAD.
G	आयातक का नाम औरपता / Name and Address of Importer / Passenger	:	**M/S STABICOAT VITAMINS,** 47, SARDAR PATEL INDUSTRIAL ESTATE, NAROL, AHMEDABAD-382405
(1)	**यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे यह जारी की गयी है।**		
(2)	**कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क(अपील), चौथी मंज़िल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।**		
(3)	**अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:**		
(i)	**अपील की एक प्रति और;**		
(ii)	**इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।**		
(4)	**इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।**		

BRIEF FACTS OF THE CASE:

M/S. STABICOAT VITAMINS, situated at 47, Sardar Patel Industrial Estate, Narol, Ahmedabad-382405 (hereinafter referred to as 'M/s. Stabicoat' or 'the importer' or 'the noticee') having **IEC No. 889010625**, had re-imported Pharmaceutical (Allopathic) Raw Materials '*Cyanocobalamin-1% in Gelatin (Vitamin B-12)*' (herein after referred to as 'the impugned goods' or 'the imported goods') under CTH 29362610 of the First Schedule to the Customs Tariff Act, 1975 at ICD- Khodiyar, Ahmedabad as under:-

TABLE- 1

Sr. No.	Bill of Entry No.	B/E Date	CTH	Assessed Value	IGST payable (@18%)	IGST Duty Amount paid
1	5072387	26-09-2019	29362610	35,04,588	6,30,826/-	0

2. The above Bill of Entry was filed availing benefit of the Notification No. 45/2017-Customs dated 30.06.2017. The said Bill of Entry was taken up for a detailed scrutiny and it appeared that the importer has not fulfilled the conditions of the Notification No. 45/2017- Cus dated 30.06.2017.

2.1 Notification No. 45/2017–Cus dated 30.06.2017 (herein after referred to as the "said Notification") reads as follows:

> *"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 exempts the goods falling within any Chapter of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and specified in column (2) of the Table below* ***when re- imported into India****, from so much of the duty of customs leviable thereon which is specified in the said First Schedule, and the whole of the, integrated tax , compensation cess leviable thereon respectively under sub-section (7) and (9) of section 3 of the said Customs Tariff Act, as is in* ***excess of the amount indicated in the corresponding entry in column (3) of the said Table****.*

TABLE - 2

Sl. No.	Description of goods	Conditions
(1)	(2)	(3)
1	Goods exported -	
	(a) under claim for drawback of any customs or excise duties levied by the Union	Amount of drawback of customs or excise duties allowed at the time of export;
	(b) under claim for drawback of any excise duty levied by a State	Amount of excise duty leviable by State at the time and place of importation of the goods. allowed at the time of export;
	(c) under claim for refund of integrated tax paid on export goods	Amount of refund of integrated tax, availed at the time of export;
	(d) under bond without payment of integrated tax	**Amount of integrated tax not paid**;

2.2 In view of the Sr. No. 1(d) of the said Notification, if the goods exported under bond without payment of integrated tax then "***amount of integrated tax not paid***" at the time of export, is to be paid at the time of subsequent import i.e. if the exporter sends the goods under bond then at the time of re-import, they should pay the amount of IGST not initially paid by them at the time of export.

3. During the data analysis, on verification of the said Bill of Entry (referred in Table- 1 above), it has been found that the importer had exported the goods under Bond/LUT without payment of integrated tax or IGST. Thus as per Sr. No. 1(d) of the said notification, at the time of re-import, the importer had to pay the amount of IGST not paid by them at the time of the export.

3.1 It appeared from the records that the importer re-imported goods, exported by them under Bond/LUT, without payment of IGST. The importer availed the benefit of Sr. No. 1(d) of the Notification 045/2017-Cus without fulfilling the condition of the said notification and cleared the re-imported goods without payment of IGST. Therefore, 'IGST amount not paid' amounting to **Rs. 6,30,826/- (Rs. Six lakh Thirty thousand Eight Hundred and Twenty Six only)**, were required to be demanded and recovered from the importer, which was foregone at the time of export.

3.2 The Deputy Commissioner of Customs, ICD Khodiyar vide her consultative letter F. No. VIII/48-86/AR-10/2G/2023 dated 01.11.2023, asked the importer to pay IGST amount of Rs.6,30,826/- as detailed in Table-1.

3.3 In response to above letter, the said importer made a submission on 08.01.2024 wherein, they submitted that subject re-import was ONLY on account of unacceptance of their export cargo and ONLY due to un-expected Trade Closure announced by the Government and NOT due to rejection by Consignee / Buyer. They submitted that for the circumstances entirely beyond their control, they have paid heavy demurrage charges at transit sea port, import Sea Freight and Shipping Line's other charges for getting cargo back to India; therefore, under the untoward situation, the subject re-import was made against their original exports from ICD-Khodiyar. The importer also submitted that since the said Bill of Entry was also not showing any IGST, hence, they were not liable to pay IGST and they have already repaid the Drawback amount (along with interest) against said exports.

4. If any of the conditions laid down in the notification is not fulfilled, the importer is not entitled to the benefit of that notification. An exception and/or an exempting provision, in a taxing statute, should be construed strictly and it is not open to the court to ignore the conditions prescribed in the relevant policy and the exemption notifications issued in that regard. The exemption notification should be strictly construed and given a meaning according to legislative intendment. Thus, as the reply filed by the said importer was not find to be satisfactory and the impugned goods falling under CTH 2936

that were exported under bond / LUT without payment of IGST (on re-import of the goods) the amount of integrated tax foregone at the time of export is required to be paid.

4.1 It is well known that with the introduction of the Self-Assessment Scheme, the onus is on the importer to comply with the various laws, to determine his tax liability correctly and to discharge the same. Section 17 of the Customs Act, effective from 8.4.2011, provides for self-assessment of duty on imported goods by the importer himself by filing a Bill of Entry, in the electronic form. As per Section 17 of the Customs Act, 1962, an importer entering any imported goods under Section 46 of the Act shall self-assess the duty leviable on such goods. Under self-assessment, the importers are required to declare the correct description, value, classification, notification number, if any, on the imported goods. Self-assessment is supported by Section 17, 18 and 46 of the Customs Act, 1962 and the Bill of Entry (Electronic Declaration) Regulation, 2011. The Importer is squarely responsible for self-assessment of duty on imported goods and filing all declaration and related documents and confirming these are true, correct, and complete. Self-Assessment can result in assured facilitation for compliant Importers. However, delinquent importers would face penal action on account of wrong self-assessment made with intent to evade duty **or avoid compliance of conditions of notifications,** Foreign Trade Policy or any other provisions under the Customs Act, 1962 or the allied acts.

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

5.1 Under Sub-Section 7 of Section 3 of the Customs Tariff Act, 1975, any article which has been imported into India shall, in addition, be liable to Integrated tax at applicable rate, as is leviable under Section 5 of the Integrated Goods and Service Tax, 2017 on a like article on its supply in India, on the value of the Imported article as determined under sub-section 8 or sub-section 8A as the case may be.

5.2 It appeared that the importer has failed to exercise their statutory obligation by not paying IGST @ 18% as applicable on the goods falling under CTH 2936, which resulted in non payment of IGST.

6. It appeared that the importer, despite being aware of the condition of the said Notification, has wrongly availed the benefit of the said Notification which resulted in short levy IGST. Accordingly, the short paid IGST amounting to **Rs. 6,30,826/- (Rs. Six lakh Thirty thousand Eight Hundred and Twenty Six only)** is required to be recovered from the said importer under the provisions of Section 28 (4) of the Customs Act, 1962 read with Section 5 of the Integrated Goods and Service Tax Act,2017, along with applicable interest thereon as per section 28AA of the Customs Act, 1962.

7. It also appeared that the importer chose to mislead the Department by preferring to avail the benefit of the said Notification. Had the Department not initiated inquiry against the Importer on the basis of Data analysis of such imported goods, the said act of suppression on the part of the Importer in order to evade the duty of Customs liable to be deposited to the Government Exchequer would not have come to light and remained un-noticed.

8. LEGAL PROVISIONS AND INVOCATION OF EXTENDED PERIOD:-

The legal provision under the Customs act, 1962 invocation are reciprocated as follows:

(a) Section 17(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.

(b) Section 28(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 willful 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 duly 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."

(c) Section 111(m):

"*The following goods brought from a place outside shall be liable to confiscation:*

....

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

(d) Section 112:

It provides for penalty for improper importation of goods according to which, "*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
…
Shall be liable;-
…
(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of Section 114 A, 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;
…"

(e) Section 114 A:

"Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section of Section 28 shall also be liable to pay a penalty equal to the duty or interest so determined."

(f) Section 124:

"no order confiscating any goods or imposing any penalty on any person shall be made unless the owner of the goods or such person:
(a) is given a notice in writing with the prior approval of the officer of Customs not below the rank of Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter;"

(g) Section 46(4)

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

(h) Section 46(4A)

"*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.]"

9. As discussed in foregoing Paras, it appeared that the importer has not fulfilled his obligation of furnishing correct information while filing the said Bill of Entry as required under Section 17 of the Customs Act, 1962 and have not paid / levied IGST as per condition 1(d) of the Notification 45/2017-Cus dated 30.06.2017. Due to reason of wilful mis-statement and suppression of facts on the part of the importer, the short paid IGST amounting to Rs. 6,30,826/- (Rs. Six lakh Thirty thousand Eight Hundred and Twenty Six only) is required to be recovered from the said importer under the provisions of Section 28 (4) of the Customs Act, 1962 read with Section 5 of the Integrated Goods and Service Tax Act,2017, along with applicable interest thereon as per section 28AA of the Customs Act, 1962.

9.1 It appeared that acts and omissions on the part of the said importer in relation to re-importation of the impugned goods valued at Rs. 35,04,588/- (Rs. Thirty Five Lakh Four Thousand Five Hundred Eighty Eight Only) cleared from ICD Khodiyar, have rendered such goods liable to confiscation under Section 111 (m) of the Customs Act, 1962.

9.2 it appeared that the said importer have indulged in willful mis-declaration of said notification on the impugned goods and suppressed correct declaration of eligibility of benefit of the said Notification on the impugned goods from the Customs, Ahmedabad with a view to avail the wrong benefit of the said Notification and thereby to evade payment of IGST at the appropriate rate. By way of adopting this modus in respect of

impugned goods, the importer have rendered themselves liable for penalty under Section 112 (a) of the Customs Act, 1962 for improper importation of goods.

9.3 It further appeared that the importer have also made themselves liable to be penalised under Section 114A of the Customs Act, 1962 by reason of wilful mis-statement and suppression of facts on the part of the importer.

9.4 It appeared that the importer have knowingly and intentionally made the wrong declaration for the benefit of the said Notification under Section 46 of the Customs Act, 1962 which is false and incorrect with regard to declaration of availment of benefit of the said Notification on the impugned goods and the said act and omission on their part have made them liable to a penalty under section 114AA of the Customs Act, 1962.

10. Thereafter, Show Cause Notice was issued vide F. No. VIII/10-272/ICD-Khod/O&A/HQ/2023-24 dated 12.08.2024 to M/s. Stabicoat Vitamins, situated at 47, Sardar Patel Industrial Estate, Narol, Ahmedabad-382405 to Show Cause to the Additional Commissioner of Customs having his office at 2nd Floor, Customs House, Nr. All India Radio, Ashram Road, Ahmedabad - 380008 as to why:

i. The IGST not paid/short paid in respect of the Bill of Entry No. 5072387 dated 26.09.2019, amounting to Rs. 6,30,826/- (Rs. Six Lakhs Thirty thousand Eight Hundred and Twenty Six only), should not be demanded and recovered from them in terms of provisions of Section 28 (4) of the Customs Act, 1962;

ii. The interest on the amount as mentioned at Sr. No. (ii), should not be demanded and recovered from them in terms of provisions of Section 28AA of the Customs Act, 1962;

iii. Impugned goods, having assessable value of Rs. 35,04,588/- (Rs. Thirty Five Lakh Four Thousand Five Hundred Eighty Eight Only) imported through ICD, Khodiyar, Ahmedabad, should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962;

iv. Penalty should not be imposed upon them under Section 112(a) of the Customs Act, 1962;

v. Penalty should not be imposed upon them under section 114A of the Customs Act, 1962.

WRITTEN SUBMISSION AND PERSONAL HEARING:-

11. M/s. Stabicoat Vitamins were given opportunity to be heard on 11.02.2025, which was attended by Shri Vipul Khandhar, CA. He submitted a written submission during the personal hearing and a copy of OIO No. MUN-CUSTM-000-COM-09-19-20

dated 14.08.2019 on the similar issue by the Principal Commissioner, Customs Mundra and requests to drop the proceedings initiated in the SCN on the similar lines. Vide above written submission, Shri Vipul Khandhar submitted the following:-

- The noticees denied all the allegation and averments made vide the subject show cause notice.
- The noticee had exported the goods from India to Pakistan under Bond, however due to unexpected trade closure by Pakistan Govt. with India, the exported goods were not accepted and due to this reason only, the noticee had to re-import the said goods from Pakistan to India. The noticee submitted that the situation was totally beyond their control and they had to pay heavy demurrage charges at transit sea port, import sea freight and shipping line's other charges to get cargo back in India. Further, out of 800 kgs of re-imported goods, 750 kgs have already been exported to the same customer after sometime.
- The export under Bond cannot be considered as supply as the goods were not received by the customers. The goods were re-imported, before its actual delivery to the customers. In terms of Section 7 of the CGST Act, for any activity or transaction to be considered a supply, it must satisfy twin tests namely-
  (i) it should be for a consideration by a person; and
  (ii) it should be in the course or furtherance of business.
- In the present case, the goods were not delivered to the customers and thereby there was no such consideration received from the customers. The goods were re-imported before its delivery to the customers. So, as per the provision of GST Act, there is no supply at all. Initially, the transaction was for export supply; however before its delivery to the customers the goods were returned back to India, the said transaction cannot be considered as supply or export supply.
- Since such activity is not a supply, the same cannot be considered as "Zero rated supply" as per the provisions contained in section 16 of the IGST Act. The subject & specified goods sent/taken out of India were brought back. Therefore, by any standard, the subject goods do not attract IGST.
- Further, the noticee wants to submit that as per Sr. No. 1(d) of the Notification no. 45/2017-Customs dated 30.06.2017 payment is required at the time of re-import of integrated tax not paid initially at the time of export, for availing exemption under the said Notification. As in the case of re-import of specified goods, no integrated tax was required to be paid for specified goods at the time of taking these out of India, the activity being not a supply, hence the said condition requiring payment of integrated tax at the time of reimport of specified goods in such cases is not applicable.
- The noticee wants to submit that the said goods exported were returned by the Pakistan Govt. without approval or acceptance, as the case may be, the basic requirement of 'supply' as defined cannot be said to be met as there has been no acceptance of the goods by the customer.
- The impugned notice is without there being any evidence on record. No demand can be made on the basis of assumption/presumption/figment of imagination/ surmise or suspicion since suspicion is not substitute of proof. The notice has

not produced an iota of evidence to show that IGST is wrongly not paid or self-assessment was made (since first check bills of entry, no self- assessment was made) wrongly for IGST under Notification No. 45/2017-Cus dated 30.06. 2017. It appears that the impugned notice is without any foundation or legal basis and disregarding the Notification No. 45/2017-Cus provisions for the subject goods and, as such hypothetical Notice was issued on the basis of CRA objection.

- The noticee relies on the order Principal Commissioner of Customs, in case of M/s. Jyoti CNC Automation Ltd, wherein dropped the demand of IGST on the re-import of goods after return from exhibition. The noticee has re-imported the earlier exported goods which were actually not delivered to the customers and so the said transaction cannot be considered as supply and thereby the noticee was not liable for IGST.
- Regarding Notwithstanding anything above, if the noticee would have paid IGST on reimport of goods, the noticee would be eligible for the said ITC against the GST liability paid on local sales; whether it is revenue neutral situation or not.
- The noticee had sold the re-imported goods by export supply to the same customer in Pakistan. If the noticee had paid IGST at the time of re-import of goods, the noticee would also be eligible to take set-off of the said IGST ITC against the GST liability on sale within India. So, there is no revenue loss to Govt. and this is revenue neutral situation.
- The noticee submitted that on exports or on import, the noticee neither taken/availed any export incentives including drawback or ITC (input tax credit) or refund of unutilized refund. The noticee was required to discharge duty liability on clearances of such goods to local sales, paying GST/IGST, which was paid on clearance in India.
- The noticee submitted that if the noticee had paid IGST on re-import of goods, then the noticee would be eligible for the said amount of IGST paid as ITC against the another export supply with payment of GST. In that case, there was no revenue loss to Govt. Even if, another export supply would have made without payment of IGST, the noticee would be eligible for the ITC of IGST paid against GST liability on sales made within India or the noticee would also be eligible for the refund under the category of Refund of ITC on export without payment of IGST. In that case also, there was no revenue loss to Govt.
- Further, the noticee submitted that if the noticee had paid IGST on re-import of goods, then the noticee would be eligible for the said amount of IGST paid against the GST liability on local sales made by the noticee in India. Thus, in any way there would be revenue neutral situation and so there is no revenue loss to Govt.
- The noticee relies on the following citations:-
    - Commissioner Of C. Ex., Pune versus Coca-Cola India Pvt. LTD 2007 (213) E.L.T. 490 (S.C.)
    - Commissioner Of C. Ex., Jamshedpur versus Jamshedpur Beverages 2007 (214) E.L.T. 321 (S.C.)

- Commissioner Of C. Ex. & Customs (Appeals), Ahmedabad versus Narayan Polyplast 2005 (179) E.L.T. 20 (S.C.)
- Commissioner Of C. Ex. & Customs, Vadodara versus Narmada Chematur Pharmaceuticals Ltd 2005 (179) E.L.T. 276 (S.C.)

- The Noticee submitted that there is no mala fide claim or intention in claiming the Notification benefit under Notification 4512017-Cus. and further relies on the ruling in the case of S. Rajiv & Co. vs. Commissioner of customs (CSI Airport), Mumbai - 2014 (302) E.L.T. 412 (Tri.- Mumbai) and on another ruling of Mumbai Tribunal in the case of Komal Trading Company v. Commissioner of Customs (Import), Mumbai - 2014 (301) E.L.T. 506 (Tri.-Mumbai), wherein it was held that importer may claim a wrong claim based on his understanding of Tariff and or Notification and that perse would not amount to mis-declaration or suppression because the respondents have claimed a wrong classification.
- The noticee further rely on the case law of M/s Surbhit Impex Pvt. Ltd Verses Commissioner of Customs (EP), Mumbai reported in 2012 (283) E.L.T. 556 (Tri.-Mumbai).
- The Noticee has mentioned the description & other parameters of the goods in the Bills of Entry correctly; the subject goods therefore, should not be liable for confiscation. Penalty as there was no mis-declaration of goods on the part of the noticee. Penalty as there was no mis-declaration of goods on the part of the noticee. Therefore, there is neither a malafide intention nor mens rea on the part of the noticee in the impugned imports.
- Noticee is hereby draw attention towards the fact & submission mention in paras supra, Noticee has worked in bonafide. It is undisputed fact that, there were no collusion with the supplier for the evasion of duty, Fact of the case & test report was available at the time of clearance. So no penalty may be applicable on the noticee.
- The noticee submitted that the demand, confiscation and penalty may be dropped.

DISCUSSIONS AND FINDINGS:

12. I have carefully gone through the show cause notice, written submissions and record of personal hearing in the present case. I find that the show cause notice was issued to M/s. Stabicoat Vitamins due to data analysis of the Bills of Entry in the EDI Systems and available records that the noticee availed the benefit of Sr. No. 1(d) of the Notification 045/2017-Cus without fulfilling the condition of the said notification and cleared the re-imported goods without payment of IGST in respect of the imported goods under Bill of Entry No. 5072387 dated 26.09.2019. Therefore, 'IGST amount not paid' amounting to **Rs. 6,30,826/- (Rs. Six lakh Thirty thousand Eight Hundred and Twenty Six only)**, appeared to be demanded and recovered from the importer, which was foregone at the time of export, along with applicable interest. Also, penalty appeared imposable on the importer under Section 112(a)/114A of the Customs Act, 1962 for the acts of omission and commission. Now therefore, the issues before me are to decide:-

a. Whether the IGST not paid/short paid in respect of the Bill of Entry No. 5072387 dated 26.09.2019, amounting to Rs. 6,30,826/- (Rs. Six Lakhs Thirty thousand Eight Hundred and Twenty Six only), is recoverable in terms of provisions of Section 28 (4) of the Customs Act, 1962 from the noticee with applicable interest under Section 28AA ?

b. Whether the imported goods of declared Assessable value of Rs. 35,04,588/- (Rs. Thirty Five Lakh Four Thousand Five Hundred Eighty Eight Only), are liable for confiscation under Section 111(m) of the Customs Act, 1962?

c. Whether penalty is imposable on the importer under Section 112(a)/114A of the Customs Act, 1962?

13.1 Now, I proceed to decide Whether the IGST not paid/short paid in respect of the Bill of Entry No. 5072387 dated 26.09.2019, amounting to Rs. 6,30,826/- (Rs. Six Lakhs Thirty thousand Eight Hundred and Twenty Six only), is recoverable in terms of provisions of Section 28 (4) of the Customs Act, 1962 from the noticee with applicable interest under Section 28AA?

13.1.1 I find that the subject goods were re-imported vide Bill of Entry No. 5072387 dated 26.09.2019 due to trade closure by Pakistan Govt. with India under availment of benefit of Sr. No. 1(d) of the Notification 045/2017-Cus dated 30.06.2017. I find that as per Sr. No. 1(d) of Notification No. 045/2017-Cus dated 30.06.2017, the goods exported under bond without payment of integrated tax, when re-imported into India are exempted from so much of the duty of Customs leviable thereon, and the whole of the integrated tax, compensation cess leviable thereon in excess of the amount indicated in the corresponding entry in column (3) of the said Table in the Notification i.e. "*amount of integrated tax not paid*".

13.1.2 I find that the noticee submitted that subject re-import was only on account of unacceptance of their export cargo by the Government of Pakistan due to un-expected Trade Closure announced by the Government and not due to rejection by Consignee/buyer. I find that they submitted that for the circumstances entirely beyond their control, they have paid heavy demurrage charges at transit sea port, import Sea Freight and Shipping Line's other charges for getting cargo back to India. However, I find that there is no such condition of acceptance / rejection by the consignee /buyer in respect of re-import. As per Section 20 of the Customs Act, 1962

"***Section 20. Re-importation of goods***. -
If goods are imported into India after exportation therefrom, such goods shall be liable to duty and be subject to all the conditions and restrictions, if any, to which goods of the like kind and value are liable or subject, on the importation thereof"

"***Section 2. Definitions*** -
…

(18) "export", with its grammatical variations and cognate expressions, means taking out of India to a place outside India;

(19) "export goods" means any goods which are to be taken out of India to a place outside India;"

13.1.3 I find that the noticee contended that the goods were re-imported, before its actual delivery to the customers and it is not a supply in terms of Section 7 of the CGST Act. I find that the definition of 'export' is relevant in this case, which as per Section 2 (5) of The Integrated Goods and Services Tax Act, 2017, is as under:

"(5) "export of goods" with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India;"

In view of the above, any cargo after exportation i.e. leaving the port for export, if returns, will be considered Re-import and subject to duties and conditions/restrictions as applicable.

13.1.4 I find that the noticee relied on the order of the ***Principal Commissioner of Customs, Mundra*** in the matter of ***M/s. Jyoti CNC Automation Ltd.***, wherein the adjudicating authority had dropped the demand of IGST on the re-import of goods after return from exhibition. However, I find that the position of law is clear in respect of re-import of goods sent for exhibition or consignment basis i.e. vide Circular No. 108/27/2019-GST dated 18.07.2019, *"It is, accordingly, clarified that the activity of sending / taking the goods out of India for exhibition or on consignment basis for export promotion, except when such activity satisfy the tests laid down in Schedule I of the CGST Act (hereinafter referred to as the "specified goods"), do not constitute supply as the said activity does not fall within the scope of section 7 of the CGST Act as there is no consideration at that point in time. Since such activity is not a supply, the same cannot be considered as „Zero rated supply" as per the provisions contained in section 16 of the IGST Act."* I find that it is clear that the said order is specific to the goods sent for exhibition or consignment basis only and not applicable in facts of present case, where goods have been sent for export and re-imported later.

13.1.5 I find that the noticee has contended that the whole exercise is revenue neutral as they would be eligible for the ITC for the integrated tax or IGST, if paid by them. In this connection, I rely on the judgment of Hon'ble High Court of Madras in the case of ***LAHARI IMPEX PVT. LTD. VERSUS COMMR. OF CUS. (SEAPORT-IMPORT), CHENNAI REPORTED AT 2020 (374) E.L.T. 716 (MAD.)*** where is was held that -

"5. The Learned Counsel for the Appellant/Assessee also emphasized that the second question framed by the Learned Tribunal that since the Assessee was entitled to claim a duty drawback on the duty, if paid by the Assessee on such re-export of the goods beyond the prescribed time-limit of one year,

under the Notification No. 158/95-Cus. and therefore, since it will be a revenue neutral situation, therefore, there is no point in the Assessee being required to first pay the said customs duty and then claim the duty drawback, and though the Learned Tribunal in its order quoted above has said that the Assessee will be entitled to claim duty back towards the duty suffered when the goods are re-exported but still held that the Assessee should first pay the customs duty because admittedly the re-export of the goods took place after the extended period of one year under the said Notification. The relevant portion of the said Notification is also quoted in the above extracted portion.

6. Since there is no dispute before us from the side of the Assessee that the reimport of the goods which had taken place to repair/recondition the goods in question were re-exported beyond the prescribed period of one year including the period of six months of extended period and therefore, the Assessee had admitted the breach of the condition of exemption from custody duty under the said Notification No. 158/95-Cus. Merely because the Assessee could claim the duty drawback later on, and it may give rise to a revenue neutral situation, it cannot be said that the period of one year prescribed in the said Notification is without any meaning. Whether the Assessee/Importer would actually get such duty drawback or not, is a question which was yet to be determined by the concerned Adjudicating Authority when such a claim of duty drawback was made by the Assessee. Therefore, that issue cannot be prejudged either by the Tribunal or by this Court. On the admitted breach of the Notification No. 158/95-Cus., the Assessee/Importer definitely became liable to pay the customs duty in question, denying the exemption under the said Notification in view of the admitted delay beyond the period of 12 months, for the re-export of the same goods. The Learned CESTAT therefore in our opinion was justified in denying the said exemption to the Assessee and also rejecting the Rectification Application filed by the Assessee. What Tribunal has done is nothing but asking the Assessee to comply with the law."

I find that the Hon'ble Supreme Court Bench on 1-7-2021 dismissed the Petition(s) filed by Lahari Impex Pvt. Ltd. against the above judgment of Madras High Court.

13.1.6 I also place my reliance in the judgment of Hon'ble High Court of Gujarat in the case ***ANJANI COTTON INDUSTRIES VERSUS PRINCIPAL COMMISSIONER OF CENTRAL GOODS AND SERVICES TAX REPORTED AT 2024 (88) G.S.T.L. 315 (GUJ.)***, wherein it was held that

"13. The contention of the petitioner that the entire exercise would be a revenue neutral, cannot accepted as the petitioner is not 100% EOU but is also only exporting 80% of its product and, therefore, payment of IGST on the export and getting refund of the same by the petitioner under the

provisions of the IGST read with Section 54 of the CGST Act cannot absolve the petitioner from the liability to pay GST on RCM basis under Section 9(3) of the CGST Act which is a charging section. Therefore, the submission made on behalf of the petitioner is not acceptable."

13.1.7 I find that Section 17 (5) of the CGST Act prescribes that:

"(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:-

…

(i) any tax paid in accordance with the provisions of [6][section 74 in respect of any period up to Financial Year 2023-24]

…"

Rule 36 of the GST prescribes the documentary requirements and conditions for claiming the input tax credit. Rule 36 of the GST Act reads as under:

"…

(3) No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, wilful misstatement or suppression of facts.

…"

In view of the above, I find that as the IGST paid at the time of re-import by the way of demand under Section 28 (4) of the Customs Act, 1962 cannot be claimed as ITC.

13.1.8 I find that the main issue here is IGST liability on re-import. In this regard, I would like to rely on the judgment of Hon'ble Supreme Court in the matter of ***M/S. NOVOPAN INDIA LTD. REPORTED AT 1994 (73) ELT 769 (SC)***, wherein the Hon'ble SC held that:

"18. We are, however, of the opinion that, on principle, the decision of this Court in Mangalore Chemicals - and in Union of India v. Wood Papers referred to therein - represents the correct view of law. The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee - assuming that the said principle is good and sound - does not apply to the construction of an exception or an exempting provision; they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State. This is for the reason explained in Mangalore Chemicals and other decisions, viz., each such exception/exemption increases the tax burden on other members of the community correspondingly. Once, of course, the provision is found applicable to him, full effect must be given to it. As observed by a Constitution Bench of this Court in Hansraj Gordhandas

v. H.H. Dave [1978 (2) E.L.T. (J 350) (SC) = 1969 (2) S.C.R. 253) that such a Notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, i.e., by the plain terms of the exemption."

13.1.9 Further, I would like to rely on the judgment of the Constitutional Bench in Hon'ble Supreme Court in the matter of ***M/S. DILIP KUMAR & COMPANY. REPORTED AT 2018 (361) ELT 577 (SC)***, wherein the Hon'ble SC held that:

"48. The next authority, which needs to be referred is the case in Mangalore Chemicals (supra). As we have already made reference to the same earlier, repetition of the same is not necessary. From the above decisions, the following position of law would, therefore, clear. Exemptions from taxation have tendency to increase the burden on the other unexempted class of taxpayers. A person claiming exemption, therefore, has to establish that his case squarely falls within the exemption notification, and while doing so, a notification should be construed against the subject in case of ambiguity.

49. The ratio in Mangalore Chemicals case (supra) was approved by a three-Judge Bench in Novopan India Ltd. v. Collector of Central Excise and Customs, 1994 Supp (3) SCC 606 = 1994 (73) E.L.T. 769 (S.C.). In this case, probably for the first time, the question was posed as to whether the benefit of an exemption notification should go to the subject/ assessee when there is ambiguity. The three-Judge Bench, in the background of English and Indian cases, in para 16, unanimously held as follows :

"We are, however, of the opinion that, on principle, the decision of this Court in Mangalore Chemicals - and in Union of India v. Wood Papers, referred to therein - represents the correct view of law. The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee - assuming that the said principle is good and sound - does not apply to the construction of an exception or an exempting provision, they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State...."

50. In Tata Iron & Steel Co. Ltd. v. State of Jharkhand, (2005) 4 SCC 272, which is another two-Judge Bench decision, this Court laid down that eligibility clause in relation to exemption notification must be given strict meaning and in para 44, it was further held -

"The principle that in the event a provision of fiscal statute is obscure such construction which favours the assessee may be adopted, would have no application to construction of an exemption notification, as in such a case it is for the assessee to show that he comes within the purview of exemption (See Novopan India Ltd. v. CCE and Customs)."

...

52. To sum up, we answer the reference holding as under -

(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/ assessee and it must be interpreted in favour of the revenue.

(3) The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export case (supra) stands overruled."

13.1.10 Further, I would like to quote the lines from the case of ***Collector of Customs, Bangalore & Anr. Vs. M/s. Maestro Motors Ltd. & Anr. 2004 (10) SCALE 253***, wherein the Court held:

"It is settled law that to avail the benefit of a notification a party must comply with all the conditions of the Notification. Further, a Notification has to be interpreted in terms of its language."

13.1.11 In view of above case laws, I find that the burden of proving the claim of IGST exemption is squarely on the noticee, which he failed to due to non-observance of conditions of the said notification 045/2017-Cus dated 30.06.2017. I hold that the contentions of the noticee are not sustainable in view of above mentioned paras.

13.1.12 I find that Differential duty of **Rs. 6,30,826/- (Rs. Six lakh Thirty thousand Eight Hundred and Twenty Six only)** has been proposed to be recovered under Show Cause Notice dated 12.08.2024 under Section 28(4) of the Customs Act, 1962. I find that the noticee had re-imported the exported goods availing the benefits of Sr. No.1(d) of Notification No.45/20174-Cus. without fulfilling the condition of the said notification and cleared the re-imported goods without payment of IGST.

13.1.13 Further, I find that M/s. Stabicoat Vitamins in spite of being fully aware about the conditions of the notification 45/2017-Cus in the said Bill of Entry, did not paid IGST, which establishes the clear intent to evade the payment of Customs Duty and therefore differential duty is rightly demanded under Section 28 (4) of the Custom Act, 1962 invoking the extended period. Therefore, I find that proposed differential duty

of **Rs. 6,30,826/- (Rs. Six lakh Thirty thousand Eight Hundred and Twenty Six only)** is required to be recovered along-with interest under Section 28AA of the Customs Act, 1962.

13.1.14 I find that M/s. Stabicoat Vitamins has contended that there is no mala fide claim or intention in claiming the Notification benefit under Notification 45/2017-Cus. and therefore, there is no scope of invocation of the extended period of limitation in the present case and have cited several case laws in this connection such as S. Rajiv & Co. vs. Commissioner of customs (supra), Komal Trading Company v. Commissioner of Customs (Import), Mumbai (supra) etc. I find that ratio of the judgment in above cases is not applicable to the present case as the set of facts are totally different wherein it was held that importer may claim a wrong claim based on his understanding of Tariff and or Notification and that perse would not amount to mis-declaration or suppression because the respondents have claimed a wrong classification. In present the noticee was claiming the correct notification without fulfilling the conditions of the said notification Range was well aware of the demand/ issue raised against the concerned assessee.

13.1.15 Further, to rebut the above contention of the noticee that there is no scope of invocation of extended period, I rely on the ratio of the decision of jurisdictional Hon'ble Gujarat High Court rendered in case of ***M/S. COMMISSIONER OF C.EX. SURAT-I VS. NEMINATH FABRICS PVT. LTD. REPORTED IN 2010 (256) E.L.T. 369 (GUJ.).*** Though the said case is relating to Section 11A of the Central Excise Act, 1944 but Section11A of the Central Excise Act, 1944 is *pari materia* with Section 28 of the Customs Act, 1962 as held by the Hon'ble Supreme Court in the case of ***UNIWORTH TEXTILES LTD. VS. COMMISSIONER REPORTED IN 2013 (288) E.L.T. 161 (S.C.).*** Hon'ble Gujarat High Court in the said case, interalia has held as under:

> ***"11.*** *A plain reading of sub-section (1) of Section 11A of the Act indicates that the provision is applicable in a case where any duty of excise has either not been levied/paid or has been short levied/short paid, or wrongly refunded, regardless of the fact that such non levy etc. is on the basis of any approval, acceptance or assessment relating to the rate of duty or valuation under any of the provisions of the Act or Rules thereunder and at that stage it would be open to the Central Excise Officer, in exercise of his discretion to serve the show cause notice on the person chargeable to such duty within one year from the relevant date.*
>
> ***12.*** *The Proviso under the said sub-section stipulates that in case of such non levy, etc. of duty which is by reason of fraud, collusion, or any mis-statement or suppression of facts, or contravention of any provisions of the Act or the rules made thereunder, the provisions of sub-section (1) of Section 11A of the Act shall have effect as if the words "one year" have been substituted by the words "five years".*

13. *The Explanation which follows stipulates that where service of notice has been stayed by an order of a Court, the period of such stay shall be excluded from computing the aforesaid period of one year or five years, as the case may be.*

14. *Thus the scheme that unfolds is that in case of non levy where there is no fraud, collusion, etc., it is open to the Central Excise Officer to issue a show cause notice for recovery of duty of excise which has not been levied, etc. The show cause notice for recovery has to be served within one year from the relevant date. However, where fraud, collusion, etc., stands established the period within which the show cause notice has to be served stands enlarged by substitution of the words "one year" by the words "five years". In other words the show cause notice for recovery of such duty of excise not levied etc., can be served within five years from the relevant date.*

15. *To put it differently, the proviso merely provides for a situation whereunder the provisions of sub-section (1) are recast by the legislature itself extending the period within which the show cause notice for recovery of duty of excise not levied etc. gets enlarged. This position becomes clear when one reads the Explanation in the said sub-section which only says that the period stated as to service of notice shall be excluded in computing the aforesaid period of "one year" or "five years" as the case may be.*

16. *The termini from which the period of "one year" or "five years" has to be computed is the relevant date which has been defined in sub-section (3)(ii) of Section 11A of the Act. A plain reading of the said definition shows that the concept of knowledge by the departmental authority is entirely absent. Hence, if one imports such concept in sub-section (1) of Section 11A of the Act or the proviso thereunder it would tantamount to rewriting the statutory provision and no canon of interpretation permits such an exercise by any Court. If it is not open to the superior court to either add or substitute words in a statute such right cannot be available to a statutory Tribunal.*

17. The proviso cannot be read to mean that because there is knowledge, the suppression which stands established disappears*. Similarly the concept of reasonable period of limitation which is sought to be read into the provision by some of the orders of the Tribunal also cannot be permitted in law when the statute itself has provided for a fixed period of limitation. It is equally well settled that it is not open to the Court while reading a provision to either rewrite the period of limitation or curtail the prescribed period of limitation.*

18. *The Proviso comes into play only when suppression etc. is established or stands admitted. It would differ from a case where fraud, etc. are merely*

alleged and are disputed by an assessee. ***Hence, by no stretch of imagination the concept of knowledge can be read into the provisions because that would tantamount to rendering the defined term "relevant date" nugatory and such an interpretation is not permissible.***

19. The language employed in the proviso to sub-section (1) of Section 11A, is, clear and unambiguous and makes it abundantly clear that moment there is non-levy or short levy etc. of central excise duty with intention to evade payment of duty for any of the reasons specified thereunder, the proviso would come into operation and the period of limitation would stand extended from one year to five years. This is the only requirement of the provision. Once it is found that the ingredients of the proviso are satisfied, all that has to be seen as to what is the relevant date and as to whether the show cause notice has been served within a period of five years therefrom.

20. *Thus, what has been prescribed under the statute is that upon the reasons stipulated under the proviso being satisfied, the period of limitation for service of show cause notice under sub-section (1) of Section 11A, stands extended to five years from the relevant date. The period cannot by reason of any decision of a Court or even by subordinate legislation be either curtailed or enhanced. In the present case as well as in the decisions on which reliance has been placed by the learned advocate for the respondent, the Tribunal has introduced a novel concept of date of knowledge and has imported into the proviso a new period of limitation of six months from the date of knowledge. The reasoning appears to be that once knowledge has been acquired by the department there is no suppression and as such the ordinary statutory period of limitation prescribed under sub-section (1) of Section 11A would be applicable. However such reasoning appears to be fallacious inasmuch as once the suppression is admitted,* ***merely because the department acquires knowledge of the irregularities the suppression would not be obliterated****."*

13.1.16 It is well known that with the introduction of the Self-Assessment Scheme, the onus is on the importer to comply with the various laws, to determine his tax liability correctly and to discharge the same. Section 17 of the Customs Act, effective from 8.4.2011, provides for self-assessment of duty on imported goods by the importer himself by filing a Bill of Entry, in the electronic form. As per Section 17 of the Customs Act, 1962, an importer entering any imported goods under Section 46 of the Act shall self-assess the duty leviable on such goods. Under self-assessment, the importers are required to declare the correct description, value, classification, notification number, if any, on the imported goods. Self-assessment is supported by Section 17, 18 and 46 of the Customs Act, 1962 and the Bill of Entry (Electronic Declaration) Regulation, 2011.

The Importer is squarely responsible for self-assessment of duty on imported goods and filing all declaration and related documents and confirming these are true, correct, and complete. Self-Assessment can result in assured facilitation for compliant Importers. However, delinquent importers would face penal action on account of wrong self-assessment made with intent to evade duty **or avoid compliance of conditions of notifications,** Foreign Trade Policy or any other provisions under the Customs Act, 1962 or the allied acts.

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

13.1.18 Under Sub-Section 7 of Section 3 of the Customs Tariff Act, 1975, any article which has been imported into India shall, in addition, be liable to Integrated tax at applicable rate, as is leviable under Section 5 of the Integrated Goods and Service Tax, 2017 on a like article on its supply in India, on the value of the Imported article as determined under sub-section 8 or sub-section 8A as the case may be.

13.1.19 Therefore, I hold that M/s. Stabicoat Vitamins is liable to IGST duty payment of **Rs. 6,30,826/- (Rs. Six lakh Thirty thousand Eight Hundred and Twenty Six only)** in respect of Bill of Entry No. 5072387 dated 26.09.2019 as per Sr. No. 1(d) of the Notification 045/2017-Cus.

13.2 Now I decide Whether the imported goods of declared Assessable value of Rs. 35,04,588/- (Rs. Thirty Five Lakh Four Thousand Five Hundred Eighty Eight Only), are liable for confiscation under Section 111(m) of the Customs Act, 1962.

13.2.1 I find from the foregoing Paras that M/s. Stabicoat Vitamins have not fulfilled their conditions of the notification No. 45/2017-Cus dated 30.06.2017 by not paying IGST.

13.2.2 I further find that as per clause (o) of Section 111 of the Customs Act, 1962, any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under the Customs Act, 1962 or any other law for the time

being in force, in respect of which the condition is not observed, shall be liable to confiscation. As the exemption under Notification No. 45/2017-Cus. was granted to the said re-imported goods subject to the condition of payment of IGST on the said goods, the said condition has not been observed, therefore, the aforesaid goods appear liable for confiscation under Section 111(o) of the Customs Act, 1962.

13.2.3 I find that in terms of Section 17 of the Customs Act, "self-assessment" has been provided for the duty on import and export goods by the importer or exporter himself by filing a bill of entry or shipping bill as the case may be, in the electronic form, as per Section 46 or 50 respectively. Thus, under self-assessment, it is the importer or exporter who will ensure that he declares the correct classification, applicable rate of duty, value, benefit, or exemption notification claimed, if any in respect of the imported/exported goods while presenting Bill of Entry or Shipping Bill. In the present case, it is evident that the actual facts were only known to the noticee and aforesaid fact came to light only subsequent to the in-depth investigation. I find that the said importer has failed to discharge the conditions laid down under Notification No. 45/2017-Cus. dated 30.06.2017 inasmuch as they have not paid IGST. Thus, I find that M/s. Stabicoat Vitamins have violated the provisions of Section 46 (4) of the Customs Act, 1962 and these acts on part of M/s. Stabicoat Vitamins I hold the imported goods valued at **Rs. 35,04,588/- (Rs. Thirty Five Lakh Four Thousand Five Hundred Eighty Eight Only),** liable to confiscation under Section 111 (o) of the Customs Act, 1962.

13.2.4 As the impugned goods are found liable to confiscation under Section 111 (0) of the Customs Act, 1962, I find it necessary to consider as to whether redemption fine under Section 125(1) of Customs Act, 1962 is liable to be imposed in lieu of confiscation in respect of the imported goods, which are not physically available for confiscation. The Section 125 (1) of the Customs Act, 1962 reads as under:-

"***125 Option to pay fine in lieu of confiscation*** –

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the 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…"

13.2.5 I find that though, the goods are not physically available for confiscation and in such cases redemption fine is imposable in light of the judgment in the case of ***M/S. VISTEON AUTOMOTIVE SYSTEMS INDIA LTD. REPORTED AT 2018 (009) GSTL 0142 (MAD)*** wherein the Hon'ble High Court of Madras has observed as under:

"….
….
….

23. *The penalty directed against the importer under Section 112 and the fine payable under Section 125 operates in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, , by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act ....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).*

....

...."

13.2.6 I also find that Hon'ble High Court of Gujarat by relying on this judgment, in the case of ***SYNERGY FERTICHEM LTD. VS. UNION OF INDIA, REPORTED IN 2020 (33) G.S.T.L. 513 (GUJ.),*** has followed the dictum as laid down by the Madras High Court. In view of the above, I find that subject goods can be allowed to be redeemed on payment of redemption fine under Section 125 of the Customs Act, 1962, hence redemption fine in lieu of confiscation is imposable on the said imported goods.

13.3 Whether penalty is imposable on the importer under Section 112(a)/114A of the Customs Act, 1962.

13.3.1 Section 112 reads as follows:

*"**SECTION 112. Penalty for improper importation of goods, etc.-***

Any person, -

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

...

shall be liable, -

...

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

13.3.2 I find from the foregoing Paras that M/s. Stabicoat Vitamins have not fulfilled their conditions of the notification No. 45/2017-Cus dated 30.06.2017 by not paying IGST on the re-imported goods, therefore, the goods were liable to confiscation under Section 111(o) and the importer is liable for penalty under Section 12(a)(ii) of the Customs Act, 1962.

13.3.3 **Penalty under Section 114A of the Customs Act, 1962:** I find that the demand of duty of Rs.6,30,826/- (Rs.Six Lakhs Thirty thousand Eight Hundred and Twenty Six only) has been made under provisions of the Customs Act, 1962 from M/s. Stabicoat Vitamins In the present case, it is evident that the actual facts were only known to the noticee and aforesaid fact came to light only subsequent to the in-depth investigation. Further I find that the noticee was not able to justify non-payment of IGST. I find that the said importer has failed to discharge the conditions laid down under Notification No. 45/2017-Cus dated 30.06.2017 inasmuch as they have not paid the IGST on the re-imported goods. Thus, I find that M/s. Stabicoat Vitamins have violated the provisions of Section 46 (4) of the Customs Act, 1962. In the instant case, the ingredient of suppression of facts by the importer has been clearly established as discussed in foregoing paras and hence, I find that this is a fit case for imposition of quantum of penalty equal to the amount of Duty plus interest in terms of Section 114A ibid as proposed in the Show Cause Notice.

13.3.4 I find that fifth proviso to Section 114A stipulates that *"where any penalty has been levied under this section, no penalty shall be levied under Section 112 or Section 114"*. Hence, I refrain from imposing penalty on M/s. Stabicoat Vitamins under Section 112 of the Customs Act, 1962 as penalty has been imposed on them under Section 114A of the Customs Act, 1962.

13.4 I also find that the ratio of case laws cited by the noticee in their submission are not squarely applicable in this case.

14. Therefore, I pass the following order -

ORDER

a) I confirm the demand of Customs Duty i.e. IGST not paid in respect of the Bill of Entry No. 5072387 Dated 26.09.2019, amounting to **Rs.6,30,826/- (Rs.Six Lakhs Thirty thousand Eight Hundred and Twenty Six only)** from M/s. Stabicoat

Vitamins and order to recover the same from them in terms of provisions of Section 28 (4) of the Customs Act, 1962;

b) I order to demand the interest from M/s. Stabicoat Vitamins on the duty as determined in para (a) above and to recover the same from them in terms of provisions of Section 28AA of the Customs Act, 1962;

c) I hold the imported goods of declared Assessable value of **Rs. 35,04,588/- (Rs. Thirty Five Lakh Four Thousand Five Hundred Eighty Eight Only)**, liable for confiscation under Section 111(o) of the Customs Act, 1962. However I give an option to M/s. Stabicoat Vitamins an option to redeem the said imported goods on payment of fine of **Rs. 3,50,000/- (Rupees Three lakhs Fifty Thousand Only)** under Section 125 of the Customs Act, 1962;

d) I impose a Penalty of **Rs.6,30,826/- (Rs.Six Lakhs Thirty thousand Eight Hundred and Twenty Six only) plus interest as determined in para (b) above** on the importer under Section 114A of the Customs Act, 1962 for the acts of omission and commission. I refrain from imposing penalty on them under Section 112 for the reasons discussed in foregoing Paras.

15. The Show Cause Notice No. VIII/10-272/ICD-Khod/O&A/HQ/2023-24 dated 12.08.2024 is disposed of in terms of the para above.

Signed by
Shree Ram Vishnoi
Date: 24-02-2025 13:06:41

(SHREE RAM VISHNOI)
ADDITIONAL COMMISSIONER

DIN: 20250271MN0000999C75

F. No. VIII/10-272/ICD-Khod/O&A/HQ/2023-24 Date:**24.02.2025**

M/S STABICOAT VITAMINS,
SITUATED AT 47,
SARDAR PATEL INDUSTRIAL ESTATE,
NAROL, AHMEDABAD-382405

Copy to:-

(i) The Principal Commissioner, Customs Ahmedabad (Kind Attention: RRA Section).

(ii) The Deputy Commissioner of Customs, ICD – Khodiyar, Ahmedabad

(iii) The Superintendent, Customs, H.Q. (Systems), Ahmedabad, in PDF format for uploading on website of Customs Commissionerate, Ahmedabad

(iv) The Superintendent (Task Force), Customs-Ahmedabad

(v) Guard File