प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

सीमा शुल्क भवन, **आल इंडीया रेडीऑ के बाजु मे**, **नवरंगपुरा** ,**अह्मदाबाद** 380009

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निबन्धितपावतीडाकद्वारा / By SPEED POST A.D.

फा. सं./F. No.: GEN/ADJ/COMM/302/2025-TECH

DIN-20260571MN000072277C

आदेशकीतारीख/Date of Order :27.05.2026
जारीकरनेकीतारीख/Date of Issue : 27.05.2026

द्वारापारित :- **मनीष कुलहरी, आयुक्त**
Passed by :- Manish Kulhary, Commissioner

मूलआदेशसंख्या **: Order-In-Original No: AHM-CUSTM-000-PR.COMMR-01-2026-27 dated 27.05.2026** in the case of **M/s Camlin Fine Sciences Ltd,** Plot No. Z-96/D, Dahej SEZ - II, Dahej, Tal. Vagra, District Bharuch, Gujarat 392130

1 जिस व्यक्ति (यों) को यह प्रति भेजी जाती है, उसे व्यक्तिगत प्रयोग के लिए निःशुल्क प्रदान कीजातीहै।

1. This copy is granted free of charge for private use of the person(s) to whom it is sent.

2. इसआदेश से असंतुष्ट कोई भी व्यक्ति इसआदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पादशुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवा करअपीलीय न्यायाधिकरण, दुसरी मंज़िल, बहुमाली भवन, गिरिधर नगर पुल के बाजुमे, गिरिधर नगर, असारवा, अह्मदाबाद-380 004 को सम्बोधित होनी चाहिए।

2. Any person deeming himself aggrieved by this Order may appeal against this Order to the Customs, Excise and Service Tax Appellate Tribunal, Ahmedabad Bench within three months from the date of its communication. The appeal must be addressed to the Assistant Registrar, Customs, Excise and Service Tax Appellate Tribunal, 2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Girdhar Nagar, Asarwa, Ahmedabad – 380004.

3. उक्तअपीलप्रारुपसं. सी.ए.3 मेंदाखिलकीजानीचाहिए।उसपरसीमाशुल्क (अपील) नियमावली, 1982 केनियम 3 केउपनियम (2) मेंविनिर्दिष्टव्यक्तियों द्वारा हस्ताक्षर किएजाएंगे। उक्त अपीलको चारप्रतियोँमें दाखिल किया जाए तथा जिस आदेशके विरुद्ध अपीलकी गईहो, उसकीभीउतनीहीप्रतियाँसंलग्नकीजाएँ (उनमेंसे कमसेकमएकप्रतिप्रमाणितहोनीचाहिए)। अपीलसेसम्बंधितसभीदस्तावेजभीचारप्रतियोँमेंअग्रेषितकिएजानेचाहिए।

3. The Appeal should be filed in Form No. C.A.3. It shall be signed by the persons specified in sub-rule (2) of Rule 3 of the Customs (Appeals) Rules, 1982. It shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate.

4. अपीलजिसमेंतथ्योंकाविवरणएवंअपीलकेआधारशामिलहैं, चार प्रतियोंमें दाखिलकी जाएगी तथा उसके साथ जिस आदेशके विरुद्ध अपीलकीगईहो, उसकीभीउतनीहीप्रतियाँसंलगनकीजाएंगी (उनमेंसे कमसेकम एक प्रमाणितप्रति 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.अपीलकाप्रपत्रअंग्रेजीअथवाहिन्दीमेंहोगाएवंइसेसंक्षिप्तएवंकिसीतर्कअथवाविवरणकेबिनाअपीलकेकारणोंकेस्पष्टशीर्षोंकेअंतर्गततैयारकरनाचाहिएएवंऐसेकारणोंकोक्रमानुसारक्रमांकितकरनाचाहिए।

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. केंद्रियसीमाशुल्कअधिनियम,1962 कीधारा 129 ऐकेउपबन्धोंकेअंतर्गतनिर्धारितफीसजिसस्थानपरपीठस्थितहै, वहांकेकिसीभीराष्ट्रीयकृतबैंककीशाखासेन्यायाधिकरणकीपीठकेसहायकरजिस्ट्रारकेनामपररेखांकितमाँगड्राफ्टकेजरिएअदाकीजाएगीतथायहमाँगड्राफ्टअपीलकेप्रपत्रकेसाथसंलग्नकियाजाएगा।

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. इसआदेश के विरूद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवाकरअपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्कअथवा शुल्क एवं जुरमाना का विवाद है अथवा जुरमाना जहां सिर्फ जुरमाना के बारे मे विवाद है उसका भुकतान करकेअपीलकी जा सकतीहै।

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

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

Sub: Show Cause Notice No. F.No.GEN/ADJ/COMM/302/2025-TECH dated 29.05.2025 issued by the Principal Commissioner, Customs, Ahmedabad to M/s Camlin Fine Sciences Ltd., Plot No. Z-96/D, Dahej SEZ - II, Dahej, Tal. Vagra, District Bharuch, Gujarat 392130

Brief facts of the case:

M/s. CAMLIN FINE SCIENCES LTD., Plot No. Z/96-D, Dahej SEZ-II, Taluka-Vagra, District- Bharuch, Gujarat-392130, (hereinafter referred to as the “Noticee” for the sake of brevity) are engaged in manufacture of taxable goods viz. Addor Vanillin Premium, Ethyl Vanillin Premium, Catechol Flakes etc. falling under Chapters 29 of the ITC (HS). The Noticee have been granted permission to set up manufacturing unit and carry-on commercial production in Dahej SEZ vide LOA No. DAHEJ-SEZ/II/12/2014-15/627, dated 10.03.2015 (as amended & extended time to time), in terms of Rule 19(4) of the SEZ Rules, 2006. The Noticee have executed Bond-Cum Legal Undertaking in Form-H regarding their obligations for proper utilization and accounting of goods including capital goods, spares, raw materials, components and consumables including fuels, imported or procured duty free and regarding achievement of Positive Net Foreign Exchange earning in terms of provisions of Rule 22(i) of the SEZ Rules, 2006.

2. Whereas on 03.06.2020, a blast and fire incident happened at the factory premises of M/s. Yashasvi Rasayan Pvt. Ltd. situated at Plot No. Z/96-E, Dahej SEZ-II, Dahej, Taluka- Vagra, District- Bharuch, Gujarat-392130.

2.1 Subsequently, a unit adjacent to M/s. Yashasvi Rasayan Private Limited, namely, M/s. Milan laboratories situated at Plot No. Z/96-A, Dahej SEZ-II, Dahej, Taluka- Vagra, District- Bharuch, Gujarat-392130 reported to the office of Specified Officer, Dahej SEZ vide letter dated 02.07.2020 that due to fire incident occurred on 03.06.2020 at M/s. Yashasvi Rasayan Private Limited, they had also incurred huge losses. On the basis of said letter, other units adjacent to M/s. Yashasvi Rasayan Pvt. Ltd. were asked to report any losses suffered due to fire incident on 03.06.2020.

2.2 Subsequently, the Specified Officer, Multi-Product SEZ, Dahej (hereinafter referred to as the "Specified Officer") vide letter dated 17.02.2022 enquired from the noticee that they reportedly suffered losses due to fire incident on 03.06.2020 but failed to intimate the same to the Customs Authorities and asked the Noticee to provide the details of said losses in the prescribed format.

2.3 Whereas, the Noticee vide their letter dated 28.02.2022 informed that they incurred huge losses to the tune of Rs. 13,83,32,598/-. Out of the said figure, the amount of Rs.2,03,21,280/- which was loss of profit for 12 days is excluded and remaining amount of Rs.11,80,11,319/- is arrived at, due to the said fire incident they also provided break-up of the losses incurred. Further, they informed that the details of the said losses were intimated by them to General Manager & Group Head, F&A, Yashasvi Rasayan Pvt. Ltd. vide letter dated 07.09.2020. The break-up of the losses reported by the Noticee is as follows:

Summary for total loss		
S. No.	**Contents**	**Assessable value (In INR)**
1.	Material damaged (Plant, Machinery & Parts thereof)	3,61,12,426/-
2	Services	55,57,268/-
3	Loss of RM, Process and Utility	7,63,41,625/-
		11,80,11,319/-

The Noticee also submitted detailed list of 129 materials (Plant, Machinery & Parts thereof) damaged during the incident valuing at Rs. 3,61,12,426/-, list of 107 items for which repairing services amounting to Rs. 55,57,268/- were procured, and list of raw materials lost during the incident amounting to Rs.7,63,41,625/-.

2.4 The Authorized officer, Multi-Product SEZ, Dahej (hereinafter referred to as the "Authorized Officer") vide letter dated 04.04.2022 asked the Noticee to provide the details in prescribed format, of the goods destroyed during the said incident of 03.06.2020. This was followed by reminders dated 28.07.2022, 11.10.2022, 29.11.2022 & 28.06.2023 issued by the Specified Officer. Meanwhile, the notices vide letters dated 03.03.2023 and 23.06.2023 sought some more time to submit their reply. However, the noticee made the submissions vide letter dated 30.06.2023 wherein it was reported that the loss suffered by the company was re-assessed and requested to consider the loss of Rs. 81.68 Lakh as their final loss in respect of materials damaged (Plant, Machinery & Parts thereof) instead of previously submitted loss of Rs. 3.61 crores and also furnished the documents.

2.5 In reply, the Specified Officer vide their letter dated 14.07.2023 asked the noticee to justify the reason for huge difference in losses reported on two occasions and also asked the unit to submit insurance claim report. In reply, the Noticee vide letter dated 21.07.2023 submitted that the previous estimate of loss reported by them was based on cursory observation and reiterated to consider the loss of Rs. 81.68 lakhs i.r.o. materials damaged (Plant, Machinery & Parts thereof). Also, they failed to submit any clarification regarding difference in values in the category of Raw materials, Process and utility. The unit also submitted the surveyor report No. BM/ST/0910/2020 dated 28.09.2020. On perusal of the said report, it was learnt that the claim of the Noticee was rejected by the insurer due to expiration of their policy. Further, it was also noticed that the no amount was claimed by the Noticee from insurer in respect of losses suffered on account of Raw Materials, Process and Utility totaling to Rs.7,63,41,625/-.

2.6 On being asked vide letter dated 09.08.2023 to furnish certificate from Chartered Accountant, justifying their claims in insurance report, the Noticee vide letter dated 25.08.2023 reiterated their request to consider the loss of Rs.81.68 lakhs only in case of materials damaged (Plant, Machinery & Parts thereof). The Noticee also refused to submit Chartered Accountant certificate in support of their claim from insurer.

2.7 The office of Specified Officer vide their letter dated 26.03.2024 again asked the Noticee to clarify the difference in losses reported by them. The unit vide their letter dated 26.04.2024 re-submitted their previous submissions on the issue. The Authorized Officer vide letter dated 24.10.2024 asked noticee to submit requisite clarification on reported losses and to provide procurement documents of material destroyed in fire to ascertain whether duty benefits were taken by the unit or not in reply, the noticee vide submission dated 17.12.2024 reiterated to consider the loss of Rs.81.68 lakhs instead of Rs. 3.61 crores for materials damaged (Plant, Machinery & Parts thereof) during the incident and also submitted the procurement documents. However, on verification none of the procurement documents were found to bore inward gate entry seal or gate entry no. of Dahej SEZ. Hence, the veracity of invoices submitted could not be ascertained.

2.8 Regarding the loss on account of service charge portion amounting to Rs.55,57,268/-, the office of Specified Officer vide letter dated 10.02.2025 asked the Noticee to clarify whether the services procured were indigenous or imported. In reply the Noticee vide letter dated 12.02.2025 clarified that all the services procured were indigenous only.

2.9 On the basis facts discussed in the foregoing paras, it is stated that copies of procurement documents of damaged goods provided by the noticee didn't bear the SEZ gate-in stamp and therefore weren't relied upon for the purpose of valuation of damaged/destroyed material. Further, the Loss of Raw material, Utility & Process amounting to Rs. 7,63,41,625/-, initially reported as part of total loss reported by the noticee, is not reported as a loss in the Final Survey Report by the Surveyor. Therefore, the said amount is not considered for computation of duty liability on the damaged/destroyed material. Also, the reassessed figures of reported loss on account of lost/damaged Plant, Machinery & Parts thereof, amounting to Rs.81.68 Lakh, is not considered for valuation purpose as the Noticee couldn't substantiate the said figures with supporting documents. Consequently, the valuation of assessed loss amounting to Rs.4,16,69,693/- as per Final Insurance Survey Report No. BM/ST//0910/2020 dated 28.09.2020, submitted by the noticee vide letter dated 21.07.2023, is considered for computation of duty forgone on the damaged/destroyed material. Further, in the instant case, the insurance claim of the noticee reportedly got rejected due to expiration of policy. Thus, the loss assessed by the surveyor is taken as final figures for valuation of loss incurred by the noticee. Also, the noticee failed to submit material wise HSN of damaged goods.

Therefore, in the absence of procurement documents, details/description of goods provided by the noticee is relied upon for HSN wise duty liability calculation. Accordingly, the details regarding value and duty forgone are summarized herein below:

(Amount in Rs.)

S. No.	Contents	Assessable value	Duty Forgone
1	Plant & Machinery and parts thereof	3,61,12,425/-	1,08,32,103/-
2	Services	55,57,268/-	10,00,308/-
	Total	**4,16,69,693/-**	**1,18,32,411/-**

Therefore, it appears that the total amount of value of material damaged/destroyed in the fire incident comes to Rs.4,16,69,693/- and the duty involved therein comes to Rs. 1,18,32,411/- as detailed in Annexure-A & B attached to this Show Cause Notice.

2.10 From the above facts, it appears that the material destroyed in the fire incident happened in the factory premises of the Noticee, had not been utilized for the authorized operations, as envisaged in the LOA issued to the Noticee. Further, it also appears that Noticee had failed to account for the material so destroyed in the fire in the manner provided in the SEZ Act/Rules.

3. CALCULATION OF DUTIES INVOLVED IN THE GOODS DESTROYED IN THE FIRE INCIDENT

3.1 Whereas, the Final Insurance Survey Report No. BM/ST/0910/2020 dated 28.09.2020 submitted by the noticee vide their letter dated 21.07.2023 is taken into consideration for computation of duty liability of the damaged material as per which estimated loss of material damaged and service charge were Rs.3,61,12,425/- and Rs. 55,57,268/-, respectively, which is the same as provided by the noticee vide their letter dated 28.02.2022. Accordingly, the value of damaged/destroyed material and duty foregone thereon are worked out as per details mentioned in the table below:

Particulars	**Assessable Value**	**BCD@ applicable rate**	**SW cess on BCD@ applicable rate**	**IGST@ applicable rate**	**Duty Forgone**
Plant, Machinery	3,61,12,425/-	33,25,959/-	3,32,596/-	71,73,548/-	1,08,32,103/-

& Parts thereof (As per annexure A)					
Services (As per annexure B)	55,57,268/-	0	0	10,00,308/-	10,00,308/-
Total	**4,16,69,693/-**	**33,25,959/-**	**3,32,596/-**	**81,73,856/-**	**1,18,32,411/-**

Accordingly, the total amount of value of goods destroyed in the fire incident comes to be Rs. 4,16,69,693/- and the duty involved therein comes to be Rs.1,18,32,411/- as detailed in Annexure – A & B attached to the SCN.

4. LEGAL PROVISIONS

4.1 Section 7 of SEZ Act, 2005 provides that;

7. Any goods or services exported out of, or imported into, or procured from the Domestic Tariff Area by, -

(i) a Unit in a Special Economic Zone; or

(ii) a Developer;

shall, subject to such terms, conditions and limitations, as may be prescribed, be exempt from the payment of taxes, duties or cess under all enactments specified in the First Schedule.

4.2 Section-26 of SEZ Act, 2005 provides that;

"26. Exemptions, drawbacks and concessions to every Developer and entrepreneur Subject to the provisions of sub-section (2), every Developer and the entrepreneur shall be entitled to the following exemptions, drawbacks and concessions, namely:-

a. *exemption from any duty of customs, under the Customs Act, 1962 (52 of 1962) or the Customs Tariff Act, 1975 (51 of 1975) or any other law for the time being in force, on goods imported into, or services provided in, a Special Economic Zone or a Unit, to carry on the authorized operations by the Developer or entrepreneur;*

…..

c. exemption from any duty of excise, under the Central Excise Act, 1944 (1 of 1944) or the Central Excise Tariff Act, 1985 (5 of 1986) or any other law for the time being in force, on goods brought from Domestic Tariff Area to a Special Economic Zone or Unit, to carry on the authorized operations by the Developer or entrepreneur;

…."

2. The Central Government may prescribe, the manner in which, and, the terms and conditions subject to which, the exemptions, concessions, draw back or other benefits shall be granted to the Developer or entrepreneur under sub-section (1).

4.3 Whereas, an SEZ unit is allowed to import from abroad or procure from domestic tariff area without payment of applicable duties/taxes in terms of Section 26(1) of the SEZ Act, 2005 read with Rule 27 of the SEZ Rules, 2006. Further, such exemptions from duties and Taxes on inputs procured from domestic area or imported, are subject to provisions of Section 26(2) of the SEZ Act, 2005 and terms and conditions, as imposed vide Rule 22 of SEZ Rules, 2005, which interalia requires that

"the Unit shall execute a Bond-cum-Legal Undertaking in Form H, with regard to its obligations regarding proper utilization and accounting of goods, including capital goods, spares, raw materials, components and consumables including fuels, imported or procured duty free and regarding achievement of positive net foreign exchange earning."

Provided that the Bond-cum-Legal Undertaking executed by the Unit or the Developer including Co-Developer shall cover one or more of the following activities, namely: -

(a) …….;

(b) the authorized operations, as applicable to Unit or Developer;

(c) ……..

…………………………….

…………………………….

(2) Every Unit and Developer shall maintain proper accounts, financial year wise, and such accounts which should clearly indicate in value terms the goods imported or procured from Domestic Tariff Area, consumption or utilization of goods, production of goods, including by-products, waste or scrap or remnants, disposal of goods manufactured or produced, by way of exports, sales or supplies in the domestic tariff area or transfer to Special Economic Zone or Export Oriented Unit or Electronic Hardware Technology Park or Software Technology Park Units or Bio-technology Park Unit, as the case may be, and balance in stock:

4.4 Whereas, Rule 25 of the SEZ Rules, 2005 specifies that

"Where an entrepreneur or Developer does not utilize the goods or services on which exemptions, drawbacks, cess and concessions have been availed for the authorized operations or unable to duly account for the same, the entrepreneur or the Developer, as the case may be, shall refund an amount equal to the benefits of exemptions, drawback, cess and concessions availed without prejudice to any other action under the relevant provisions of the Customs Act, 1962, the Customs Tariff Act, 1975, the Central Excise Act, 1944, the Central Excise Tariff Act, 1985, the Central Sales Tax Act, 1956, the Foreign Trade (Development and Regulation) Act, 1992 and the Finance Act, 1994 (in respect of service tax) and the enactments specified in the First Schedule to the Act, as the case may be: Provided that if there is a failure to achieve positive net foreign exchange earning, by a Unit, such entrepreneur shall be liable for penal action under the provisions of Foreign Trade (Development and Regulation) Act, 1992 and the rules made there under."

4.5 Whereas, Rule 27 of SEZ Rules, 2006 specifies that

27. Import and Procurement-

(1) A Unit or Developer may import or procure from the Domestic Tariff Area without payment of duty, taxes or cess or procure from Domestic Tariff Area after availing export entitlements or procure from other Units in the same or other Special Economic Zone or from Export Oriented Unit or Software Technology Park unit or Electronic Hardware Technology Park Unit or Bio-technology Park Unit, all types of goods, including capital goods (new or second hand), raw materials, semi-finished goods, (including semi-finished Jewellery) component, consumables, spares goods and materials for making capital goods required for authorized operations except

prohibited items under the Import Trade Control (Harmonized System) Classifications of Export and Import Items:

4.6 Further, Rule 34 of the SEZ Rules, 2006 provides that

"The goods admitted into a Special Economic Zone shall be used by the Unit or the Developer only for carrying out the authorized operations but if the goods admitted are utilized for purposes other than for the authorized operations or if the Unit or Developer fails to account for the goods as provided under these rules, duty shall be chargeable on such goods as if these goods have been cleared for home consumption

Provided that in case a Unit is unable to utilize the goods imported or procured from Domestic Tariff Area, it may export the goods or sell the same to other Unit or to an Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-technology Park Unit, without payment of duty, or dispose off the same in the Domestic Tariff Area on payment of applicable duties on the basis of an import licence submitted by the Domestic Tariff Area buyer, wherever applicable".

4.7 Further, Rule 47 of the SEZ Rules, 2006 provides that

"47. Sales in Domestic Tariff Area-

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

(a) Domestic Tariff Area sale under sub-rule (1), of goods manufactured by a Unit shall be on submission of import licence, as applicable to the import of similar goods into India, under the provisions of the Foreign Trade Policy:

……

……

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

4.8 From the provisions discussed above, it can be seen that benefit of non-levy/non- payment of Customs duty in respect of all the goods imported/procured by a SEZ unit is available only when such goods are utilized for authorized operation and accounted for by way of exports, sales or supplies in the domestic tariff area or transfer to Special Economic Zone or Export Oriented Unit or Electronic Hardware Technology Park or Software Technology Park Units or Bio-technology Park Unit, as the case may be, and balance in stock and not otherwise.

4.9 Further, from the submissions made by the Noticee, it appears that they had also procured duty free goods indigenously without payment of Central Excise Duty/Goods & Service Tax goods and therefore, in terms of provisions of Rule 34 of the SEZ Rules, 2006 if the goods admitted in SEZ are utilized for purposes other than for the authorized operations or if the Unit or Developer fails to account for the goods as provided under Rule 22 of SEZ Rules, 2006, duty shall be chargeable on such goods as if these goods have been cleared for home consumption. Further, as per Rule 47(4) of the SEZ Rules, 2006, valuation and assessment of the goods cleared/provided into Domestic Tariff Area shall be made in accordance with the Customs Act and rules made thereunder.

4.10 Whereas, in the instant case, it appears that being an SEZ unit, the Noticee were legally bound to follow the provisions of Rule 22, 25, 27 & 34 of the SEZ Rules, 2006 in respect of the goods procured duty free under the provisions of Section 26 of the SEZ Act,2005. It appears that the Noticee had failed to utilize the aforesaid goods in their unit for their authorized operation and to follow the prescribed procedure as provided in Rule 22(2) and Rule 34 of the SEZ Rules, 2006 to the extent said goods were destroyed in fire.

4.11 From the above discussion, it appears that the Noticee have contravened Provisions of Section 26(1) of SEZ Act, 2005 read with Rule 27 of the SEZ Rules, 2006 in as much as they failed to utilize the goods procured duty free for authorized operations; Section 26(2) of the SEZ Act, 2005 and Rule 22 of SEZ Rules, 2006 in as much as they had failed to follow terms and conditions for duty free procurement of goods.

4.12 Whereas, the Noticee had, in terms of Rule 22 of the SEZ Rules, 2006 executed Bond-cum-Legal undertaking, whereby they had undertaken for proper utilization and accounting of goods procured duty free. It appears from the discussion herein above that the Noticee have breached the said bond-cum-legal undertaking, thereby making themselves liable for payment of applicable duties on goods destroyed in fire, as the same were not utilized for authorized operations and were not accounted for in terms of SEZ Rules, 2006.

4.13 It therefore, appears that the Noticee are liable to pay an amount equal to the applicable duties leviable on the aforesaid materials damaged/destroyed in the fire incident and which were procured duty/tax free in the SEZ premises, along-with applicable interest on the said amount of duties as per the details in the Annexure-A & B attached to the SCN, at a rate as specified in the Notification of the Government of India, Ministry of Finance (Department of Revenue), issued under Section 28AA of the Customs Act, 1962, from the material date till the date of payment of such duties.

4.14 Whereas, the provision of Section 23(1) of the Customs Act, 1962 that; "where it is shown to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Custom that any imported goods have been lost (otherwise than as a result of pilferage) or destroyed, at any time before clearance for home consumption, the Assistant Commissioner of Customs or Deputy Commissioner of Customs shall remit the duty on such goods. However, the said provisions are not applicable in the present case as no such provisions exist in the SEZ Act and Rules. Hence, it appears that the remission on such imported goods is not permissible to the Noticee in the instant case. It further appears that there is no provision in the SEZ Statute for claiming such duty remission, and also, by virtue of Section 51 of the SEZ Act, 2005, the SEZ Act has the overriding effect.

5. CONCLUSION:

5.1 Whereas, it appears that in the instant case, being an SEZ unit, the Noticee were legally bound to follow the provisions of Rule 22, 25, 27 & 34 of the SEZ Rules, 2006 in respect of the goods procured duty-free under the provisions of Section 7 and 26 of the SEZ Act, 2005. It appears that the Noticee has failed to utilize the aforesaid goods in their unit for authorized operations and failed to follow the procedure prescribed in Rule 22(2) and Rule 34 of the SEZ Rules, 2006. As the goods procured duty-free have not been utilized in 'Authorized Operations' nor have been accounted for in the manner prescribed in Rule 22(2), resulting in contravention of the aforesaid provisions of the SEZ Act, 2005 and SEZ Rules, 2006. It, therefore, appears that the Noticee is liable to pay an amount equal to duty forgone totally amounting to Rs.1,18,32,411/- (as detailed in Annexure- A & B to this notice) along with interest at a rate as specified in the Notification of the

Government of India, Ministry of Finance (Department of Revenue) issued under Section 28AA of the Customs Act, 1962, on the said duty, from the date of duty-free Import/Procurement of the said goods till the date of payment of such duty.

5.2 Whereas, Section 112(b) (ii) of Customs Act, 1962 reads as under;

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 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 ibid, 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.

In the present case, when the goods in question have not been used for authorized operation in SEZ, the same may be treated as goods improperly imported/procured by the Noticee and their act constitute the offence as described under Section 112 of the Customs Act, 1962, and hence, they have rendered themselves liable for penalty under the said Section.

5.3 Whereas, in the instant case, the noticee failed to report the occurrence of loss to the Customs authorities. The matter came to light only when another unit adjacent to M/s. Yashasvi Rasayan Private Limited reported the losses suffered by them to the Specified Officer. Acting on the information, the Specified Officer suo moto took cognizance of the matter and asked the noticee to report losses suffered by them due to the fire incident. Moreover, there appears deliberate attempt on the part of noticee to procrastinate the submission of requisite details for computation of Customs Duty Liability as multiple reminders were issued to them for submission of said information. The Noticee were aware that as per the provisions of SEZ Act and Rules they were liable to make good the duty forgone on the goods destroyed in the fire incident. Despite having knowledge of occurrence of loss and its implications under the SEZ Act and Rules, the noticee never came forward to discharge the applicable Customs Duty liabilities on the same. Till date, no amount has been paid by the noticee towards the said liabilities. Thus, the act of non-reporting of material facts to Customs Authorities and undue delay in submission of requisite information appears deliberate act on the part of noticee to willfully suppress material facts from the concerned authorities with intent to evade government revenue. Had the fact regarding suffering of loss by the noticee not come to the knowledge of Customs Authorities, the same would have gone un-noticed causing substantial revenue loss to the Govt. Exchequer. Thus, it appears that the duties of Customs amounting to Rs. 1,18,32,411/- not paid is required to be recovered by invoking extended period of limitation under Section 28(4) of the Customs Act, 1962 alongwith interest at appropriate rate as applicable under Section 28AA of the Customs Act, 1962.

5.4 It also appears that being an SEZ unit, the Noticee have undertaken to fulfill all the conditions stipulated in various Notifications/Circulars etc. related to the SEZ unit. The Noticee, by way of furnishing Bond-Cum Legal Undertaking in Form H, have undertaken to pay duty, interest, penalty etc. in case of any demand for violation of any of the conditions mentioned in the said Bond-Cum Legal Undertaking. Therefore, above mentioned dues such as duty, interest and Penalty etc. can be made by enforcing the Bonds, executed by them.

6. In view of the above, Show Cause Notice No. GEN/ADJ/COMM/302/2025-Tech dated 29.05.2025 was issued to M/s. Camlin Fine Sciences Limited, Plot No. Z/96-D, Dahej SEZ-II, Taluka- Vagra, District- Bharuch, Gujarat-392130 calling upon to show cause to the Principal Commissioner of Customs, Ahmedabad as to why:-

i. The duties of Customs amounting to Rs.1,18,32,411/- (Rupees one crore eighteen lakhs thirty two thousand four hundred eleven only) equal to duty leviable/foregone on the goods destroyed in the fire incident, should not be demanded and recovered from the noticee by invoking extended period of limitation under Section 28(4) of the Customs Act, 1962, read with Section 26 of the SEZ, Act,2005 and Rules 22, 25, 34 and 47 of the SEZ Rules, 2006;

ii. Interest at the appropriate rate on the total duty demanded at Sr. No.(i) above should not be demanded and recovered from them under Section 28AA of the Customs Act, 1962,

iii. Penalty should not be imposed upon them under Section 112 of the Customs Act, 1962;

iv. Bond-Cum Legal Undertaking in Form H furnished by the Noticee should not be enforced towards the above liabilities.

7. DEFENCE SUBMISSION:

1. We, M/s. Camlin Fine Sciences Limited are a SEZ Unit, holding LOA No. DAHEJ-SEZ/II/12/2014-15/627 dated: 10.03.2015 (as amended and extended from time to time) and having a unit at Plot No. Z/96-D, Dahej SEZ-II, Taluka-Vagra, District- Bharuch, Gujarat-392130 (hereinafter referred to the "Noticee").

2. The Noticee, inter alia, is engaged in the business of research, development, manufacturing, marketing and supply of speciality chemicals, ingredients and additive blends. The Noticee supplies its high-quality products in domestic as well as international markets.

3. At the outset, the Noticee submits that the SCN is incorrect on facts as well as on law. The Noticee submits that allegations contained in the SCN are incorrect and perverse. The Noticee submits that it does not agrees with the various allegations made in the SCN. Therefore, the present SCN is liable to be dropped in its entirety.

4. The Noticee has received from time to time multiple letters on the captioned matter from the Development Commissioner Office, Dahej SEZ, Gujarat.

5. The Noticee has filed their detailed responses from time to time along with the supporting documents with respect to the above-mentioned letters at the office of the Development Commissioner, Dahej SEZ, Gujarat explaining the facts of the case and deducing that no duties are liable to be paid on the

alleged losses on account of insurance claim. The details of reply letter filed are as follows –

Letter Inward No.	**Date**
4233	28-02-2022
2572	03-03-2023
825	26-06-2023
907	03-07-2023
1247	24-07-2023
1842	25-08-2023
312	30-04-2024
3189	17-12-2024
3891	12-02-2025
663	28-05-2025

6. As per the SEZ Act, a Special Economic Zone (SEZ) is a geographically delineated duty-free enclave and shall be deemed to be a foreign territory for the purpose of trade operations and duties and tariffs.

7. As per the provisions of SEZ Act and Customs Act,1962, SEZ unit is allowed to make duty free import/procurement of goods & services for its authorised operations as well as for development, operation & maintenance.

8. All the goods & services supplied by SEZ units to DTA are treated as imports into India and subject to all procedures and rules applicable in case of normal imports into India.

9. SEZ itself has an in-house Customs Clearance.

10. The Noticee procures imported and indigenous goods without payment of duty in accordance with SEZ Act and Rules as well as Customs Act and Rules made thereunder. The goods so procured are utilized for its authorised operations as well as for development, operation & maintenance of the SEZ unit.

11. The finished goods so manufactured are cleared as per rules and regulations applicable to a SEZ unit.

12. The Noticee submits that, on 03.06.2020, a blast and fire incident occurred at the factory premises of M/s. Yashasvi Rasayan Pvt. Ltd. situated at Plot No. Z/96-E, Dahej SEZ-II, Dahej, Taluka-Vagra, District-Bharuch, Gujarat-392130 which is adjacent to the factory premises of the noticee. Due to this incident, the noticee suffered financial and operational losses, which is an undisputed fact.

13. The said incident was unavoidable, beyond control, and it was not due to negligence or wrong doing by the noticee.

14. The incident was sudden and beyond the control of the noticee. This aspect is also proved from thorough survey conducted by insurance company. It established beyond doubt that there was no carelessness or any negligence on the part of the noticee, and the loss on account of incident could not be avoided. Copy of insurance surveyor Report is attached as Annexure – “B” to the SCN.

15. The total amount of losses incurred by the noticee as per the insurance surveyor report is Rs. 4,16,64,155/- (Tradable Material Loss Rs. 91,84,570/-, Plant & Machinery and other administrative items Rs. 2,69,22,317/- and Services Rs. 55,57,268/-). However, the Noticee has not received the insurance claim amount on account of expiration of insurance policy and not due to any act of carelessness or any negligence on the part of the noticee. Copy of Insurance Claim rejection letter of SBI General Insurance Company Limited is attached as Annexure – “C” to the SCN.

16. Section 23 of the Customs Act,1962 deals with remission of customs duty on lost and destroyed goods. For ready reference, Section 23(1) is reproduced below –

Section 23. Remission of duty on lost, destroyed or abandoned goods -

(1) [Without prejudice to the provisions of Section 13, where it is shown] to the satisfaction of the 2 [Assistant Commissioner of Customs or Deputy Commissioner of Customs] that any imported goods have been lost 3 [(otherwise than as a result of pilferage)] or destroyed, at any time before clearance for home consumption, the 2 [Assistant Commissioner of Customs or Deputy Commissioner of Customs] shall remit the duty on such goods.

17. Perusal of Section 23(1) reveals that to claim remission of duty, the important condition is that it should be shown to the satisfaction of the Assistant Commissioner or the Deputy Commissioner that -

I. The imported goods have been lost or destroyed at any time, before clearance for home consumption.

II. Imported goods have been lost or destroyed otherwise than by pilferage.

There is no other requirement as far as Section 23(1) is concerned. The Section is applicable irrespective of the nature of exemption claimed.

18. Thus, the destroyed goods lying in the factory of noticee, which is in SEZ premises can be considered as bonded warehouse premises as per the Customs Act,1962 and goods kept in the factory cannot prime-facie be considered to have been cleared for home consumption and hence duty could not have been demanded.

19. Revenue has not shown that the goods have been destroyed because of pilferage. The fact of the unfortunate incident is not under dispute. Therefore, all the conditions for claiming remission under Section 23(1) of the Customs Act,1962 have been fulfilled.

20. We would like to draw your kind attention towards the decision of the Ahmedabad CESTAT in the case of Yashashvi Rasayan Pvt. Ltd. Vs Commissioner of Customs – Ahmedabad Final Order No. 12156/2024 dated: 24/09/2024. Copy of Order is attached as Annexure – “D”.

As per the said order, it was held that where any goods are destroyed by fire in the SEZ Unit and where there is no carelessness and negligence on part of the appellant, the appellant is eligible for remission of custom duty in terms of Section 23 of the Customs Act, 1962.

Further, we would draw your kind attention to the above-mentioned judgement wherein M/s. Yashashvi Rasayan Pvt. Ltd. has been granted relief by CESTAT Ahmedabad of duty remission under Section 23 of the Customs Act, 1962. This relief was granted towards blast and fire incidents that took place at factory premises of M/s. Yashashvi Rasayan Pvt. Ltd. on 03.06.2020 and 22.08.2020 wherein the imported goods on which duty was foregone were destroyed.

It is pertinent to note that the Noticee has incurred losses in the blast and fire incident that took place at factory premises of M/s. Yashashvi Rasayan Pvt. Ltd. on 03.06.2020, which is the subject matter of the aforesaid order. Hence as a corollary to the duty remission granted under Section 23 of the Customs Act, 1962 to M/s. Yashashvi Rasayan Pvt. Ltd. for the same incident, the Noticee is naturally eligible for the similar relief as the facts are the same.

Thus, the noticee humbly requests kindly drop the SCN on this ground.

21. There are various case laws on the captioned matter, wherein it was held that where any goods are destroyed by fire in the SEZ Unit and there is no carelessness and negligence on part of the appellant, the appellant is eligible for remission of customs duty in terms of Section 23 of the Customs Act,1962. Once again, your attention is cited to the same decision in case of –

- P I Industries Limited Vs Commissioner of Customs – Ahmedabad – 2024 (6) TMI 203 - CESTAT Ahmedabad.
- ONGC Petro Additions Ltd. vs. C.C., Ahmedabad – 2023 (12) TMI 530 - CESTAT Ahmedabad.
- Satguru Polyfab Pvt. Ltd. vs. C.C., Kandla – 2011 (267) ELT 273 (Tri. – Ahmedabad).
- Arihant Studes Ltd. vs. Commissioner of Central Excise, Ghaziabad – 2016 (332) ELT 827 (Tri. Delhi).
- Jindal International vs. C.C. Kandla – 2013 (290) ELT 729 (Tri. Ahmedabad).
- Sami Labs Ltd. vs. C.C. – 2007 (216) ELT 59 (Tri. Bangalore).

22. We humbly submit that, in view of the above, the said destroyed goods itself are eligible for duty remission under Section 23 of the Customs Act, 1962.

23. It is therefore submitted that since there is no dispute that the imported material has been destroyed in fire, as such in the noticee factory, which is in SEZ, the impugned goods are rightly eligible for remission of duty under Section 23 of the Customs Act,1962. Thus, the noticee submits that the present SCN demanding the duty payable is liable to be dropped.

IGST Implications on Goods Destroyed in Fire in SEZ Unit

24. Relevant extract of Section 16 of IGST Act, 2017 - Zero rated supply, read as under -

1. "zero rated supply" means any of the following supplies of goods or services or both, namely: -

(a) export of goods or services or both; or

(b) supply of goods or services or both 1[for authorised operations] to a Special Economic Zone developer or a Special Economic Zone unit.

Thus, from the above, supplies to or by an SEZ Unit are generally treated as zero-rated supplies under Section 16 of the IGST Act, 2017. This means that no tax is levied on such supplies.

25. Relevant extract of Section 17 of CGST Act, 2017 - Apportionment of credit and blocked credits, read as under –

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

(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples;"

Thus, from the above, as per Section 17(5)(h) of the CGST Act, 2017, ITC is not available on goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.

So, if goods are destroyed in a fire, any ITC availed on those goods must be reversed, even in an SEZ unit.

However, in the case of noticee, all the supplies made to the noticee by the supplier are zero rated supply (no GST charged on invoice). These are undisputed facts.

The noticee has not availed and claimed any input tax credit (ITC) in its GST returns on the goods destroyed in fire incident.

Thus, the question of reversal of ITC on goods and services destroyed in fire incident does not arise at all.

26. The Taxable event in GST – "Supply" –

Taxable event is that event, happening of which attracts liability to tax. Taxable event is a very important event in any law as the levy and collection of tax is based on the happening of the taxable event. Although, the taxable event happens to be at a particular point of time, the levy and collection of such tax may be postponed for administrative convenience, to a later date.

The taxable event in GST is supply of goods or services or both. Therefore, supply will hold the greatest significance and shall be an important event in determining the taxability of all transaction whether commercial or otherwise under the GST regime. The term, "supply" has been inclusively defined in the Act. Supply includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. Supply also includes: import of services for a consideration whether or not in course of furtherance of business, the activities specified in schedule I (without consideration) and the activities as referred in schedule II. Though these terms are not defined in the Act, dictionary meaning of the same are elaborated below:

- Sale - Transferring the property in goods from one to another, upon valuable consideration.
- Transfer - Any transfer of goods or right in goods or of undivided share in goods without transfer of title thereof.
- Barter - To exchange one commodity for another without use of money.
- Exchange - To swap, to part with, give or transfer for an equivalent with the use of money.
- Licence - Permission granted by competent authority to exercise certain privileges without such authorization the activity would have constituted as an illegal act.
- Rental - Periodical payment for the use of another property.
- Lease - Contractual agreement by which one party conveys an estate in property to another party, for a limited period, subject to various conditions, in exchange for something of value, but still remain ownership.
- Disposal - To pass or into the control of someone else; to alienate, bestow, or part with.

The meaning and scope of supply under GST can be understood in terms of following five parameters, which can be adopted to characterize a transaction as Supply:

a. Supply of goods or services. Supply of anything other than goods or services does not attract GST;

b. Supply should be made for a consideration;

c. Supply should be made in the course or furtherance of business;

d. Supply should be made by a taxable person;
e. Supply should be a taxable supply.

27. No IGST is payable on the destruction of goods per se, unless it results in a taxable event. If the goods or services were never supplied (i.e., not sold or exported), and were destroyed in fire, then it is not a taxable event and IGST is not payable, but only ITC reversal applies, if any.

28. Thus, from the above, noticee is not liable to pay IGST on Goods and Services destroyed in blast and fire incident.

29. Thus, the noticee submits that the present SCN demanding the IGST payable is liable to be dropped.

Common Submission –

30. In light of the above submissions, it is an undisputed fact that the noticee is not liable to pay the customs duty and IGST of Rs. 1,18,32,411/- and thus the present SCN is liable to be dropped in its entirety.

Interest is not leviable under Section 28AA of the Customs Act, 1962

31. The present SCN has proposed to impose interest under Section 28AA of the Customs Act, 1962, on the noticee.

32. The Noticee submits that it is a settled principle of law in cases where the demand is not sustainable, interest cannot be levied. In view of the aforesaid submissions, it is clear that the demand itself is not sustainable and hence, the question of recovering interest does not arise.

33. The above submissions apply in case of interest on IGST payment under CGST Act, 2017.

34. The Noticee submits that the interest cannot be demanded and recovered in terms of Section 28AA of the Customs Act, 1962 and liable to be dropped.

Penalty is not imposable under Section 112 of the Customs Act, 1962

35. The present SCN has proposed to impose interest under Section 28AA of the Customs Act, 1962, on the noticee.

36. The noticee submits that the loss by fire was beyond its control and was not on part of its carelessness and negligence nor was there any fraud and willful act of the noticee. Thus, the penalty should not be levied on the noticee.

37. The Noticee submits that for the reasons explained in the above submissions, demand of recovery of tax in the present issue is not tenable. Hence, when the demand itself is not tenable, the question of imposition of penalty does not arise.

38. In view of the aforesaid submissions, the Noticee submits that the imposition of penalty under Section 112 of Customs Act, 1962 is incorrect and liable to be dropped.

Enforcement of Bond-Cum Legal Undertaking in Form H towards the above liabilities

39. The present SCN has proposed to enforce Bond-Cum Legal Undertaking in Form H furnished by the noticee towards the above liabilities.

40. The Noticee submits that for the reasons explained in the above submissions, demand of recovery of tax, interest and penalty in the present issue is not tenable. Hence, when the demand itself is not tenable, the question to enforce Bond-Cum Legal Undertaking in Form H does not arise.

41. In view of the aforesaid submissions, the Noticee submits that the enforcement of Bond-Cum Legal Undertaking in Form H furnished by the noticee is incorrect and liable to be dropped.

42. In view of the aforesaid submissions, the allegations made in the present SCN should be dropped in toto.

43. The Noticee craves leave to add, alter, amend and/or rescind any of the above submissions at the time of, before or during the course of personal hearing or thereafter.

44. The Noticee craves leave to refer and rely upon any case law and/or judgment, as and when produced.

45. The Noticee craves leave to file additional documents/affidavits, if any.

PRAYER

In view of the aforementioned submissions, it is respectfully prayed that the Hon'ble Principal Commissioner may be pleased to:

a. Drop the proceedings initiated vide show cause notice No. GEN/ADJ/COMM/302/2025 dated: 29.05.2025, in its entirety with consequential relief to the Noticee;

b. Grant opportunity of personal hearing to the noticee before adjudicating the aforesaid matter, in any case; and

c. Pass such other order or orders as may be deemed fit and proper in the facts and circumstances of the case.

8. Record of Personal Hearing:

Opportunity of Personal Hearing was granted to the noticee M/s.Camlin Fine Sciences Ltd in compliance with the principles of natural justice in terms of Section 122A of Customs Act, 1962. The Personal Hearing in the matter was fixed on 12.05.2026 at 11:30 A.M. Shri Nitin Agarwal, Deputy General Manager-Taxation & Authorized representative appeared for personal hearing online and produced a Board resolution dated 15.03.2024 authorizing him to sign, execute and deliver all notices etc., and to represent the instant matter. Shri Nitin Agarwal, Deputy General Manager-Taxation reiterated their written submission dated 09.06.2025.

9. <u>Discussion and Finding</u>:

9.1 I have gone through the Show Cause Notice dated 29.05.2025, written submission dated 09.06.2025 and record of personal hearing held on 12.05.2026 and all the documents available on record.

9.2 The issues to be decided before me in this case are as under:

(i) Whether the noticee is liable to pay duties of Customs amounting to Rs.1,18,32,411/- equal to the duty forgone on the goods burnt/destroyed in the fire under Section 28 (4) of the Customs Act, 1962 along with interest under Section 28AA of the Customs Act, 1962 read with the provision of SEZ Act,2005 & SEZ Rules,2006?

(ii) Whether noticee is liable for penalty under Section 112 or 114A of the Customs Act, 1962?

(iii) Whether the Bond-Cum Legal Undertaking in Form H furnished by the Noticee is enforceable towards the above liabilities?

9.3 I find that the Noticee is an SEZ unit at Dahej SEZ. The Noticee has been granted permission to set up manufacturing unit and carry-on commercial production in Dahej SEZ vide Letter of Approval No. DAHEJ-SEZ/II/12/2014-15, dated 10.03.2015 as amended, in terms of Rule 19(4) of SEZ Rules, 2006, for undertaking Authorized Operations & extended for 2nd block of 5 years i.e. from 21.02.2025 to 20.02.2030. I find that a blast and fire incident happened on 03.06.2020 at the factory premises of M/s. Yashasvi Rasayan Pvt. Ltd. situated nearby the noticee, at Plot No. Z/96-E, Dahej SEZ-II, Dahej, Taluka- Vagra, District- Bharuch, Gujarat-392130 and a unit adjacent to M/s. Yashasvi Rasayan Pvt. Ltd namely M/s. Milan Laboratories situated at Plot No. Z/96 on 03.06.2020, which were intimated to the Specified Officer, Dahej Multi-Product SEZ, vide letter dated 02.07.2020. On the basis of said blast and fire incident reported by the aforesaid unit to specified officer vide letter dated 02.07.2020, the Specified Officer issued letters to other units asking for the losses faced due to said fire incident. Accordingly, Specified Officer vide his letter dated 17.02.2022 requested the noticee M/s. Camlin Fine Sciences Ltd., Plot No. Z/96-D, Dahej SEZ-II, Taluka- Vagra, District- Bharuch, and Gujarat-392130 to report the losses suffered due to fire incident on 03.06.2020 in the prescribed format.

9.4 Wherein the case, the noticee vide letter 28.02.2022 informed that they incurred huge losses to the tune of Rs.13,83,32,598/-.Out of the said figure, the amount of Rs.2,03,21,280/- which was loss of profit for 12 days is excluded and remaining amount of Rs.11,80,11,319/- is arrived at, due to the said fire incident they also provided break-up of the losses incurred. They also informed that the details of the said losses were intimated by them to General Manager & Group Head, F&A, Yashasvi Rasayan Pvt. Ltd. vide letter dated 07.09.2020. However, the report submitted by the Noticee was not in proper prescribed format. The Authorized officer, Multi-Product SEZ, Dahej (hereinafter referred to as the "Authorized Officer") vide letter dated 04.04.2022 asked the Noticee to provide the details in prescribed format, of the goods destroyed during the said incident of 03.06.2020 followed by several reminders dated 28.07.2022, 11.10.2022, 29.11.2022 & 28.06.2023. In reply, the noticee made the submissions vide letter dated 30.06.2023 wherein it was reported that the loss suffered by the company was re-assessed and requested to consider the loss of Rs.81.68 Lakh as their final loss in respect of materials damaged (Plant, Machinery & Parts thereof) instead of previously submitted loss of Rs.3.61 crores and also furnished the supporting documents. As there were substantial differences in estimated loss value of both submission of Noticee, the Specified Officer, vide letter dated 14.07.2023 sought the justification on the huge difference in the damages on two opportunities in order to ascertain the value of particular goods damaged in the fire incident and also asked to submit insurance claim report. In reply, the Noticee vide letter dated 21.07.2023 submitted that the previous estimate of loss reported by them was based on cursory observation and reiterated to consider the loss of Rs. 81.68 lakhs i.r.o. materials damaged (Plant, Machinery & Parts thereof). Also, they failed to submit any clarification regarding difference in values in the category of Raw materials, Process and utility. The unit also submitted the surveyor report No. BM/ST/0910/2020 dated 28.09.2020. On perusal of the said report, it was learnt that the claim of the Noticee was rejected by the insurer due to expiration of their policy. Further, it was also noticed that no amount was claimed by the Noticee from insurer in respect of losses suffered on account of Raw Materials, Process and Utility totaling to Rs.7,63,41,625/-. Further, on being asked by the letter dated 09.08.2023 to furnish certificate from Chartered Accountant, justifying their claims in insurance report, the Noticee vide letter dated 25.08.2023 reiterated their request to consider the loss of Rs.81.68 lakhs only in case of materials damaged (Plant, Machinery & Parts thereof). The Noticee also failed to submit Chartered Accountant certificate in support of their claim from insurer. The office of Specified Officer vide their letter dated 26.03.2024 again asked the Noticee to clarify the difference in losses reported by them. The unit vide their letter dated 26.04.2024 re-submitted their previous submissions on the issue. The Authorized Officer vide letter dated 24.10.2024 asked noticee to submit requisite clarification on reported losses and to provide procurement documents of material destroyed in fire to ascertain whether duty benefits were taken by the unit or not. In reply, the noticee vide submission dated 17.12.2024 reiterated to consider the loss of Rs.81.68 lakhs instead of Rs.3.61 crores for materials damaged (Plant, Machinery & Parts thereof) during the incident and also submitted the procurement documents. However, on verification none of the procurement documents were found to bore inward gate entry seal or gate entry no. of Dahej SEZ. Hence, the veracity of invoices submitted could not be ascertained.

9.5 I find that the Noticee centers on deliberate bargaining for time regarding the submission of crucial clarifications required by the SEZ Authority. Specifically, the Authority sought an explanation for a massive, irreconcilable difference between the loss figures presented in the Noticee's initial submission dated 28.02.2024 and their subsequent revised submission dated 30.06.2023. Furthermore, to rule out the possibility of the Surveyor's Report being compromised, the Noticee was explicitly directed to produce a Chartered Accountant (CA) Certificate to corroborate and validate the estimated loss shown in said report. The Noticee failed to produce this mandatory certification.

9.6 I find that in response to the opportunities granted, the Noticee, vide their written submission dated 17.12.2024, again requested the SEZ-Authority to consider a revised loss figure of Rs.81.68 lakhs instead of the previously claimed Rs.3.61 crores for materials damaged (Plant, Machinery & Parts thereof) during the incident. In support of this drastically reduced claim, the Noticee submitted various procurement documents/invoices was sought to verify the claim of the Noticee. The duty computation, the details of the destroyed goods submitted by the Noticee to the insurance company and its surveyor report dated 28.09.2024 has been considered and on verification none of the procurement documents were found to bore inward gate entry seal or gate entry no. of Dahej SEZ. Hence, the veracity of invoices submitted could not be ascertained.

9.7 I further find that the Noticee drastically scaled down their claim from Rs.3.61 crores to Rs.81.68 lakhs. However, no logical, accounting, or physical justification was provided for how such a massive variance occurred between the two submissions, validating the allegation that time was bargained for merely to manipulate figures. Further, I find that the Noticee completely failed to submit the requested CA Certificate. In the absence of certification by Chartered Accountant, the estimated loss in the surveyor's report remains uncorroborated and verified.

9.8 I find that loss on the duty portion on Civil Structures has not been taken into account by the noticee. Thus, the value of losses suffered have been confined to Plant & Machinery works & Services works done. The individual losses in respect of Plant & Machinery works out to Rs.3,61,12,425/- and Services works out to Rs.55,57,268/-. Thus, total assessable value is arrived at Rs.4,16,69,693/- for computation of the Customs Duty which comes to Rs.1,18,32,411/-. Thus, the said duties of Customs amounting to Rs.1,18,32,411/- were forgone on the goods while importing them into SEZ unit for authorized operations and the same has been demanded on account of non-utilization of the said goods for Authorized Operations and failure to account for the said goods as prescribed under Rule 34 and Rule 22 of the SEZ Rules, 2006, respectively.

10. Whether the noticee is liable to pay duties of Customs amounting to Rs.1,18,32,411/- equal to the duty forgone on the goods burnt/destroyed in the fire under Section 28 (4) of the Customs Act, 1962 along with interest under Section 28AA of the Customs Act, 1962 read with the provision of SEZ Act,2003 & SEZ Rules,2006?

10.1 I find it worth to refer the relevant provisions of SEZ Act, 2005 and Rules, 2006 applicable in this case to understand the legal position before proceeding further, which are reproduced as under:

(i) As per Section 7 of SEZ Act, 2005, any goods or services exported out of, or imported into, or procured from the Domestic Tariff Area by a unit in a SEZ shall be exempt from the payment of taxes, duties or cess under all enactments specified in the First Schedule.

(ii) Rule 22 of the SEZ Rules, 2006 specifies the terms and conditions for availing exemptions. As per sub rule (2) of Rule 22 every unit and Developer shall maintain proper accounts, financial year-wise, and such accounts which should clearly indicate in value terms the goods imported or procured from Domestic Tariff Area, consumption or utilization of goods, production of goods, including by-products, waste or scrap or remnants, disposal of goods manufactured or produced, by way of exports, sales or supplies in the domestic tariff area or transfer to Special Economic Zone or Export Oriented Unit or Electronic Hardware Technology Park or Software Technology Park Units or Biotechnology Park Unit, as the case may be, and balance in stock.

(iii) Rule 25 of SEZ Rules, 2006 specifies that where an entrepreneur or Developer does not utilize the goods or services on which exemptions, drawbacks, cess and concessions have been availed for the authorized operations or unable to duly account for the same, the entrepreneur or the Developer, as the case may be, shall refund an amount equal to the benefits of exemptions, drawback, cess and concessions availed.

(iv) As per Section 26 of SEZ Act, 2005, exemption from any duty of customs under the Customs Act, 1962 (52 of 1962) or the Customs Tariff Act, 1975 (51 of 1975) on goods imported into, or services provided in, a SEZ or a Unit and any duty of excise, under the Central Excise Act, 1944 or the Central Excise Tariff Act, 1985 (5 of 1986) or any other law for the time being in force, is granted on goods brought from Domestic Tariff Area to a SEZ or Unit, to carry on the authorized operation by the developer or entrepreneur subject to observance to procedure prescribed in the section.

(v) Rule 27 of SEZ Rules, 2006 specifies that the unit may import or procure from Domestic Tariff Area without payment of duty, taxes or cess, all types of goods required for authorized operations except prohibited items.

(vi) Rule 34 of SEZ Rules, 2006 specifies that the goods admitted in SEZ shall be used by the unit for carrying out the authorized operations.

(vii) Ru1e 47 of SEZ Rules, 2006 specifies that a Unit may sell goods and services, in the Domestic Tariff Area on payment of customs duties under section 30, subject to the following conditions, namely:

....

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

10.2 It is pertinent to mention that SEZ units have been granted special privileges such as exemption from Duty of Customs on imported goods, exemption from Central Excise Duty on goods which are brought into SEZ from DTA, exemption from Service Tax on the services received by them, etc. The rationale to advance such privileges is forthcoming from the provisions of Section 5 of the SEZ Act, 2005 which reads as under:

The Central Government, while notifying any area as a Special Economic Zone or an additional area to be included in the Special Economic Zone and discharging its functions under this Act, shall be guided by the following, namely:

a) *generation of additional economic activity;*
b) *promotion of exports of goods and services;*
c) *promotion of investment from domestic and foreign sources;*
d) *creation of employment opportunities;*
e) *development of infrastructure facilities; and*

f) *maintenance of sovereignty and integrity of India, the security of the State and friendly relations with foreign States.*

The above provisions clearly indicate that one of the objectives behind the SEZ scheme is promotion of exports of goods and services. Thus, export of goods or services by utilizing the Duty-free goods/ services procured either from indigenous or overseas market becomes an integral part of the obligation cast upon the SEZ in lieu of the exemptions granted to them. It is a well-accepted principle that privileges walk hand-in-hand with obligations/ responsibilities. This phenomenon is well-explained by the 'two sided coin' principle. As each coin has two sides, obligation/ responsibility is the other side of accrued privilege. In the event that the obligation cast upon the SEZ unit is not fulfilled, the entire rationale behind grant of exemptions is defeated.

10.3 The exemption of Duty of Customs has been granted to SEZ unit in terms of the provisions of Section 26 of the SEZ Act, 2005. The relevant text of which reads as under:

SECTION 26-

(1) Subject to the provisions of sub-section (2), every Developer and the entrepreneur shall be entitled to the following exemptions, drawbacks and concessions, namely: -

(a) exemption from any duty of customs, under the Customs Act, 1962 (52 of 1962) or the Customs Tariff Act, 1975 (51 of 1975) or any other law for the time being in force, on goods imported into, or services provided in, a Special Economic Zone or a Unit, to carry on the authorised operations by the Developer or entrepreneur

10.4 Further Rule 25 of the SEZ Rules, 2006 mandates refund of benefit of exemption/ concession availed on imported goods, if the goods are not put to use in authorized operations, as given below-

Rule 25 of SEZ Rules, 2006

Where an entrepreneur or Developer does not utilize the goods or services on which exemptions, drawbacks, cess and concessions have been availed for the authorized operations or unable to duly account for the same, the entrepreneur or the Developer, as the case may be, shall refund an amount equal to the benefits of exemptions, drawback, cess and concessions availed without prejudice to any other action under the relevant provisions of the Customs Act, 1962, the Customs Tariff

Act, 1975, the Central Excise Act, 1944, the Central Excise Tariff Act, 1985, the Central Sales Tax Act, 1956, the Foreign Trade (Development and Regulation) Act, 1992 and the Finance Act, 1994 (in respect of service tax) and the enactments specified in the First Schedule to the Act, as the case may be: Provided that if there is a failure to achieve positive net foreign exchange earning, by a Unit, such entrepreneur shall be liable for penal action under the provisions of Foreign Trade (Development and Regulation) Act, 1992 and the rules made there under.

On conjoint reading of the above provisions of the Section 26 of the SEZ Act, 2005 and Rule 25 of the SEZ Rules, 2006 it is evident that the exemption has been granted subject to the condition that the imported goods are put to use or utilized in carrying out the 'Authorised Operations'. In the instant case, the goods under consideration have not been used or put to use for such 'Authorised Operations' i.e. manufacture of taxable goods as listed in the LOA. Also, the noticee was not able to duly account for the utilisation of goods or services. In such circumstances, the exemption availed by the Noticee is required to be paid back in terms of the Rule 25 of the SEZ Rules. In other words, the exemption in respect of the goods under consideration has to be relinquished which in turn implies that the duty, which was foregone at the material time, has to be demanded in terms of the provisions of Section 28(4) of the Customs Act, 1962.

10.5 Further, the argument of the noticee that the demand of duty is not tenable as, the goods lost in fire does not amount to utilizing the goods for purposes other than authorized operations as clearly, the provisions of Rule 25 mandates that if the SEZ unit does not utilize the goods on which exemption has been availed, the SEZ unit shall refund the amount equal to the benefit of exemption availed on such goods. The provisions of Rule 25 clearly mandate refund in cases where goods are not utilized unlike Rule 34 of SEZ Rules, 2006 wherein the situation of utilizing duty free goods for unauthorized operations is provided.

10.6 I find that the noticee has claimed that subject goods have been used for authorised operation and therefore alleged demand of duty is incorrect and have relied on some case laws and further claimed that the noticee is eligible for remission of duty under Section 23 of the Customs Act, 1962.

10.7 I find that the claim of subject goods have been used for authorised operation is not tenable as it is beyond doubt that subject goods have not been used due to fire incident and have not been accounted for the authorised use, the authorized operation of the noticee was to manufacture taxable goods viz. Addor Vanillin Premium, Ethyl Vanillin Premium, Catechol Flakes etc. falling under Chapters 29 of the ITC (HS). and had it been used in manufacturing process, it would have been considered as used for 'authorized operation'. Further, I rely on the ratio of final Order No. 51936/2025 dated 07.11.2025 in Customs Appeal No. 51089/2020 filed by M/s. Ajanta Soya Limited, Alwar wherein it has been interalia held as under:

"18. What is evident from the above is that in view of the specific Explanation in the Central Excise (Removal of Goods at Concessional a Rate of Duty for Manufacture of Excisable Goods) Rules 2001, the Karnataka High Court held that the goods lost or destroyed must be treated as having been used. The dispute in this case is relating to the exemption from the input duty under the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016. We do not find any Explanation similar to the Explanation in the Central Excise Rules, which were the subject matter of dispute before the Karnataka High Court. Therefore, this judgment cannot come to aid of the appellant in this case.

19. The other judgments and orders relied on by the learned counsel pertain to the Central Excise.

20. In view of the above, we find that the appellant was liable to pay customs duty on the 230.77 M.T. of Crude Palm Oil which was imported by it but which was not used in the manufacture of final products specified in the Notification No. 12/2012-CUS in view of the fire accident."

10.8. Further, I find it proper to reproduce Section 13 and Section 23 of the Customs Act, 1962.

Section 13: Duty on pilfered goods.—lf any imported goods are pilfered after the unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a warehouse, the importer shall not be liable to pay the duty leviable on such goods except where such goods are restored to the importer after pilferage.

Section 23: Remission of duty on lost, destroyed or abandoned goods.—

(1) [Without prejudice to the provisions of section 13, where it is shown] to the satisfaction of the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] that any imported goods have been lost [otherwise than as a result of

pilferage)] or destroyed, at any time before clearance for home consumption, the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] shall remit the duty on such goods.

[(2) The owner of any imported goods may, at any time before an order for clearance of goods for home consumption under section 47 or an order for permitting the deposit of goods in a warehouse under section 60 has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon;] 5 [Provided that the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.]"

Clearly the provisions of Section 23 talks about remission of duty on lost, destroyed or abandoned goods before such goods are cleared for home consumption.

11.0 As far as goods imported and destroyed in SEZ are concerned, they are to be dealt in accordance with the provisions of SEZ Act, 2005 and rules made there under. SEZ Act, 2005 and SEZ Rules, 2006 have clearly provided for importation of various sections of the Customs Act, 1962 in order to make them applicable to units operating in SEZ. Certain provisions of the SEZ Act, 2005 and SEZ Rules, 2006 are reproduced here for better appreciation of the facts

(i) Section 30. Domestic clearance by Units.—

Subject to the conditions specified in the rules made by the Central Government in this behalf:—

(a) any goods removed from a Special Economic Zone to the Domestic Tariff Area shall be chargeable to duties of customs including anti-dumping, countervailing and safeguard duties under the Customs Tariff Act, 1975 (5 1 of 1975), where applicable, as leviable on such goods when imported; and

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

(ii) Rule 47 of SEZ rules, 2006-

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

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

Clearly the above-mentioned provisions of SEZ Act, 2005 and SEZ Rules, 2006 provide for assessment, valuation, levy of Custom duty, demand, refund and appeal in respect of authorized operations.

11.1 Further, the Ministry of Commerce and Industry vide Notification S.O. 2665(E) issued in exercise of power under Section 21 (1) of the SEZ act, 2005, has notified, interalia, the offences contained in Sections 28, 28AA, 111, 124 of the Customs Act, 1962 as the offences in the SEZ Act, 2005. However, there is no such provision for remission of duty on lost goods in the SEZ Act, 2005 as provided in Section 23 of the Customs Act, 1962. SEZ Act is a separate legislation and does not specifically import section 23 of the Customs Act, 1962 as there are other parallel provisions within the SEZ Act which allow assessment, valuation, refund etc. under Customs Act, 1962. It is pertinent to mention that since it appears that there is no provision in the SEZ Statute for claiming such duty remission, and also, by virtue of Section 51 of the SEZ Act, 2005, the SEZ Act has the overriding effect, establishes the legal supremacy of the Act. It dictates that the provisions of the Special Economic Zones Act will have an overriding effect, prevailing over any conflicting provisions in other existing laws or legal instruments.

11.2 According to Supreme Court precedent, the principle is that if a law does not explicitly provide for something, it cannot be executed or enforced. In this regard, I rely on the decision of Union of India v. Kamlakshi Finance Corporation Ltd. " (1991), where the Supreme Court of India held that if a particular provision or specific provision is not explicitly provided under the Customs Act, the authorities cannot enforce penalties or take actions that are not supported by clear legislative backing. Clearly, Section 23 of the Customs Act, 1962 doesn't provide for remission of duties of Customs on goods lost/ destroyed which were imported duty free into SEZ for the purpose of authorized operations. Further, there is no provision either in SEZ Act, 2005 or SEZ Rules, 2006 for remission of duties of Customs.

11.3 I find that the noticee has relied upon decisions of the Hon'ble CESTAT, Ahmedabad in the matter of Satguru PolyfabPvt. Ltd. V/ s. CC, Kandla reported in 2011 (267) ELT 273 (Tri.-Ahmd.) and M/S. Jindal International Vs. CC, Kandia 2012 (6) TMI 255 CESTAT, Ahmedabad and PI Industries Vs. Principal Commissioner of Customs 2024 (6) TMI 203 CESTAT Ahmedabad and ONGC Petro Additions Ltd Vs. C.C. Ahmedabad 2023 (12) TMI(530) CESTAT Ahmedabad and have claimed remission of duty under Section 23 of the Customs Act, 1962.

11.4 I find that the said decisions had examined the provisions of SEZ Rules, 2003 which were notified vide Notification No. 52/2003-Cus (N.T) issued in exercise of the powers conferred by sub-section (1) of Section 156 read with Chapter X A of the Customs Act, 1962. Further, Section 76B of the Customs Act, 1962 allowed applicability of all the provisions of other chapters of the Act (Customs Act, 1962) to the special economic zones. Therefore, the remission was allowed under Section 23. However, with the enactment of SEZ Act, 2005 and SEZ Rules, 2006, the provisions of Section 76B were omitted with effect from 11.05.2007.

11.5 Further, it is pertinent to note that the Hon'ble Tribunal had examined the provision of Rule 8 of the SEZ Rules, 2003 to hold that there was no unauthorized use of duty-free imported goods. However, it is crucial to note that Rule 25 of SEZ Rules, 2006 entrust the onus on SEZ unit to refund the exemption availed on duty free goods if the same are not utilized. The SEZ Rules, 2003 had no such provisions for refund of amount of exemption availed on duty free goods. Thus ratio of both the judgments of Hon'ble Tribunal are clearly inapplicable in the instant case. Further, the case law of PI Industries, cannot be relied as the order has been issued on different set of facts. Further judgment of the Hon'ble Tribunal in the case of ONGC Petro Additions Ltd Vs CC, cannot be relied on as the provisions of Rule 25 of SEZ, Rules, 2006 have not been taken into consideration while deciding the issue of remission of duty of Customs and therefore, I am of the view that the ratio of the judgment of the Hon 'ble CESTAT in the case of ONGC Petro Additions Ltd. Vs. CC- 2023 (12) TMI 530 is not applicable in the instant case.

11.6 In view of the above discussion and findings, I find that said noticee is not eligible for the remission of duties of customs under the provisions of SEZ Act, 2005 and rules made thereunder.

11.7 Thus, in view of foregoing discussion, I hold that the Customs Duty amounting to Rs.1,18,32,411/- is required to be demanded and recovered from the Noticee in terms of the provisions of Section 28(4) of the Customs Act, 1962 read with the relevant provisions of SEZ Act and the rules made thereunder.

11.8 Further, with regard to issue at No. ii discussed at per Para No.9.2 on interest under Section 28AA of Customs Act, 1962, I find that the noticee has not specifically argued that there are no substantive provisions for recovery of interest or penalty. Their argument solely based on the repercussion of invalidating the demand of duty under Section 28(4). I find that the said argument is not tenable as the Show Cause Notice is issued on 29.05.2025 and vide the Finance Act, 2024 under Amendment vide Section 106, Section 3 of the Customs Tariff Act amended and sub para (12) of the Section 3 of the Customs Tariff Act,1975 substituted with the following amendment.

"(12) The provisions of the Customs Act, 1962 (52 of 1962) and all rules and regulations made thereunder, including but not limited to those relating to the date for determination of rate of duty, assessment, non-levy, short-levy, refunds, exemptions, interest, recovery, appeals, offences and penalties shall, as far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to duties leviable under that Act or all rules or regulations made thereunder, as the case may be.".

11.9 Further, to negate the said argument, I rely on the ratio of decision of Hon'ble Supreme Court which dismissed Civil Appeal filed by Atul Kaushik (Oracle India Ltd) on 11-3-2016 reported in *Oracle India Pvt. Ltd.* v. *Commissioner - 2016 (339) E.L.T. A136 (S.C.)].*

Hon'ble Supreme Court on 11-3-2016 dismissed Civil Appeal filed by Atul Kaushik (Oracle India Ltd) reported in *Oracle India Pvt. Ltd.* v. *Commissioner - 2016 (339) E.L.T. A136 (S.C.)]* against the CESTAT Final Order Nos. A/52353-52355/2015-CU(DB) dated 29-7-2015 as reported in <u>2015 (330) E.L.T. 417</u>(Tri.-Del.)(Atul Kaushik v. Commissioner) holding that " We see no reason to interfere with the impugned order passed by Customs, Excise & Service Tax Appellate Tribunal". Relevant Para of the decision of Final Order Nos. A/52353-52355/2015-CU(DB) dated 29-7-2015 of CESTAT reported in <u>2015 (330) E.L.T. 417</u> **(Tri.-Del.)** (Atul Kaushik v. Commissioner) is re-produced as under:

"16. The appellants have also contended that penalty, interest and confiscation cannot be invoked in respect of evasion of countervailing duty (levied under Section 3 of the Customs Tariff Act, 1975) on the ground that the provisions relating to these aspects have not been borrowed into Section 3 of the Customs Tariff Act, 1975. In support of the principle that the penalty cannot be levied in the absence of penalty provision having been borrowed in a particular enactment, the appellants cited the judgments in the case of Khemka & Co. (supra) and Pioneer Silk Mills Pvt. Ltd. (supra). We are in agreement with this proposition and therefore we refrain from discussing the said judgments. The appellants also cited the judgment in the case of Supreme Woollen Mills Ltd. (supra), Silkone International (supra) and several others to advance the proposition that penalty provisions of Customs Act were not applicable to the cases of non-payment of anti-dumping duty and that the same principle is applicable with regard to leviability of interest [India Carbon Ltd. (supra) and V.V.S. Sugar (supra)]. We have perused these judgments. Many of them dealt with Anti-dumping duty/Special Additional Duty (SAD) leviable under various sections (but not Section 3) of Customs Tariff Act, 1975 and in those sections of the Customs Tariff Act, 1975 or in the said Act itself, during the relevant period, there was no provision to apply to the Anti-dumping duty/SAD the provisions of Customs Act, 1962 and the rules and regulations made thereunder including those relating to interest, penalty, confiscation. In the case of Pioneer Silk Mills (supra), the duty involved was the one levied under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 and its Section 3(3) only borrowed the provisions relating to levy and collection from the Central Excise Act, 1944 and in view of that it was held that the provisions relating to confiscation and penalty could not be applied with regard to the duties collected under the said Act of 1957. None of these judgments actually deal with the CVD levied under Section 3 of the Customs Tariff Act, 1975. The impugned countervailing duty was levied under Section 3 of Customs Tariff Act, 1975. Sub-section (8) of Section 3 of the said Act even during the relevant period stipulated as under : -

"S. 3(8) The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties shall, so far as may be, apply to the duty chargeable under this section as they apply in relation to the duties leviable under that Act."

It is evident from Section 3(8) of the Customs Tariff Act, 1975 quoted above that all the provisions of Customs Act, 1962 and the rules and regulations made thereunder have been clearly borrowed into the said Section 3 to apply to the impugned CVD and so it is obvious that provisions relating to fine, penalty and interest contained in Customs Act, 1962 are expressly made applicable with regard to the impugned countervailing duty. We must, however, fairly mention that in case of Torrent Pharma Ltd. v. CCE, Surat, CESTAT set aside penalty for evasion of Anti-dumping duty, CVD and SAD (para 16 of the judgment) on the ground that penal provisions of Customs Act, 1962 had not been borrowed in the respective sections of Customs Tariff Act, 1975 under which these duties were levied, but this decision of CESTAT regarding CVD suffered from a fatal internal contraction inasmuch as CESTAT itself in para 14 of the said judgment had expressly taken note of the fact that vide Section 3(8) of the Customs Tariff Act, 1975, the provisions of Customs Act, 1962 and the rules and regulations made thereunder had been made applicable to CVD charged (under Section 3 of Customs Tariff Act, 1975). In the light of this analysis, we hold that this contention of the appellant is legally not sustainable."

Thus, the said order of Tribunal has been affirmed by the Hon'ble Supreme Court whereas Special Leave Petition in case of Mahindra & Mahindra Ltd bearing Diary No. 18824/2023 has been dismissed by Hon'ble Supreme Court holding that "No merit found in the Special Leave Petition". Whereas, the Hon'ble Supreme Court has dismissed the **Civil Appeal** filed by Oracle India Pvt. Ltd (Atul Kaushik) against the CESTAT Final Order Nos. A/52353-52355/2015-CU(DB) dated 29-7-2015.

In the case of **Workmen of Cochin Port Trust Vs. Board of Trustees of the Cochin Port Trust and Another 1978 AIR 1283**, the Hon'ble Three Judges Bench held as under:

"The effect of non-speaking order of dismissal without anything more indicating the grounds or reasons of its dismissal must by necessary implication be taken to have decided that it was not a fit case where special leave should be granted. It may be due to several reasons. It may be one or more. It may also be that the merits of the award were taken into consideration and this Court felt that it did not require any interference. But since the order is not a speaking order it is difficult to accept the argument that it must be deemed to have necessarily decided implicitly all the questions in relation to the merits of the award."

The dismissal of special leave petition by the Supreme Court by a non-speaking order of dismissal where no reasons were given does not constitute res judicata. All that can be said to have been decided by the Court is that it was not a fit case where special leave should be granted."

11.10 Further, Hon'ble Gujarat High Court in the case of Commissioner v. Ashok Fashion Ltd. reported in 2002 (141) E.L.T. 606 (Guj.) has held as under:

"9.1*Chapter VI of the Central Excise Act, relates to 'Adjudication of Confiscation and Penalties'. Under Section 33, it is provided that, where by the rules made under this Act, anything is liable to confiscation or any person is liable to a penalty, such confiscation or penalty may be adjudged by the authorities mentioned therein. Section 34A lays down that, no confiscation made or penalty imposed under the provisions of the Act or of any rule made thereunder shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of the Act or under any other law. Section 37(2)(ib) of the Central Excise Act empowers the Central Government, inter alia, to make such rules as may, "provide for the assessment and collection of duties of excise, the authorities by whom functions under this Act are to be discharged, the issue of notices requiring payment, the manner in which the duties shall be payable, and the recovery of duty not paid".*

9.2 *If excisable goods are deposited in or removed from any specified place in contravention of Rule 9(1) of the Central Excise Rules, the producer or manufacturer is made liable to pay penalty which may exceed up to Rs. 2,000.00 and the goods would be liable to confiscation over and above the liability to pay the duty. Then there are provisions imposing penalty for misdeclarations as laid down in Rules 92E(iv), 96M(iii) 96S(iv), 96ZL(iii). Rule 173Q provides for 'confiscation and penalty' in respect of the excisable goods notified under Rule 173A(1) of Chapter VII-A of the Rules, and Chapter XXII of the Excise Rules deals with penalties and confiscations. Accordingly, the acts and omissions covered by Rules 173Q and 209 entail confiscation of goods and imposition of a penalty to the extent prescribed thereunder. There are also provisions of penalty under Rule 209A and for general penalty, in Rule 210.*

9.3 *It will thus be seen that penalty provisions are an integral part of assessment and collection of duties of which the necessary adjuncts are confiscation and penalty without which the imposition of taxes will lack teeth and become ineffective. If power* *to impose penalty for violation of the obligation to pay additional duty of excise is excluded in respect of the goods enumerated in the First Schedule of the Additional Duties Act, then these taxation provisions would be reduced to a donation drive in respect of these very items for which duty of excise is also imposed under the Central Excise Act, 1944 and the Rules made thereunder and violation of which would entail both confiscation and penalty.*

10. *The provisions of penalties are devised to ensure that the excise regulations are enforced and the recovery of excise dues is secured. The process of collection of revenue involves enacting methods of collection. The procedure of assessment and collection are intertwined with confiscation and penalty, once violation of excise regulations is established, as contemplated by the Rules imposing penalties. The object of the provisions to impose heavy penalties is to ensure that the revenue is protected against procrastination, carelessness or deceit which if practiced on a large scale, would make collection of the taxes a difficult task.*

11. *For the above reasons, it is clear to us that all the provisions of the Central Excise Act, 1944 and the Rules made thereunder, including the provisions relating to confiscation and imposition of penalty contained therein, are applicable to the levy and collection of the additional duty of excise under Section 3(1) of the Additional Duties of Excise Act, 1957 in the same manner as they already apply in relation to the levy and collection of such goods under the Central Excise Act, 1944 and Rules framed thereunder.*

12. *We accordingly hold that the provisions relating to confiscation and imposition of penalty contained in the Central Excise Act, 1944 and the Rules thereunder are applicable to man-made fabrics which are liable to additional duty of excise under the First Schedule of Section 3(1) of the Additional Duties of Excise Act and are 'excisable goods' mentioned in Schedule to the Central Excise Tariff Act, 1985, by virtue of incorporation by reference under Section 3(3) of the Additional Duties Act, of all the provisions contained in the Central Excise Act, 1944 Rules made thereunder."*

11.11 In view of the findings hereinabove, since the differential Customs duty has been held recoverable from the Noticee by invoking the extended period of limitation under Section 28(4) of the Customs Act, 1962 on account of deliberate mis-statement and suppression of facts with an intent to evade payment of duty regarding the bonafide assessment of losses/damage induced by the fire incident at the adjoining premises of M/s. Yashasvi Rasayan Private Limited, the Noticee is consequentially liable to pay interest on the said demanded duty. Accordingly, in terms of Section 28AA of the Customs Act, 1962, interest at the prescribed rate is hereby confirmed and ordered to be recovered from the Noticee. This interest shall accrue from the date on which the said duty became payable/was short-paid until the actual date of its payment, as the liability to pay interest under Section 28AA is mandatory and automatic upon the confirmation of duty demand."

11.12 I rely on the ratio of decision of Hon'ble Gujarat High Court rendered in case of Commissioner v. Neminath Fabrics Pvt. Ltd. Reported in 2010 (256) E.L.T. 369 (Guj.) whrein it has been held interalia as under:

"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."*

11.13 Therefore, in view of foregoing discussion, I hold that the interest at the appropriate rate on the total duty demanded of Rs.1,18,32,411/- under Section 28AA of Customs Act, 1962 is sustainable and liable to be recovered.

12. Whether the said noticee is liable for penalty under Section 112 or 114A of the Customs Act, 1962?

12.1 Having held that the differential Customs duty is recoverable from the Noticee, M/s. Camlin Fine Science Ltd., under Section 28(4) of the Customs Act, 1962 by invoking the extended period of limitation; I now proceed to determine whether the penal liability of the Noticee under Section 112 of the Act is indeed viable.

12.2 The facts on record clearly demonstrate that the Noticee has fundamentally failed to comply with the conditions of the authorized operations mandated by the Letter of Approval (LoA) endowed upon them by the SEZ Authority. As an SEZ unit, the Noticee was permitted to import/procure goods duty-free strictly for specific, authorized operations subject to the provisions of the SEZ Act, 2005, and SEZ Rules, 2006. The noticee viz. M/s. Camlin Fine Sciences Ltd. failing to properly account the damage/lost cause due to fire and failing in properly discharge the applicable Customs duty liabilities thereon, the Noticee has rendered the said goods liable to confiscation, thereby directly attracting the penal provisions of Section 112.

12.3 I find that the Noticee submission that the loss by fire was beyond their control and was not on part of their carelessness and negligence nor was there any fraud and wilful act of noticee remained unsustainable as non-reporting was a mere procedural delay; however, their conduct speaks otherwise and firmly establishes mens rea (guilty intention). An explosion / blast, the fire incident occurred on 03.06.2020 at the adjoining factory premises of M/s. Yashasvi Rasayan Pvt. Ltd. (Plot No. Z/96-E) and extended to M/s. Milan Laboratories (Plot No. Z/96). Despite having full knowledge of the occurrence of loss and its immediate legal and financial implications under the Customs & SEZ laws, the Noticee maintained a calculated silence. They only chose to intimate the Specified Officer via a letter dated 28.02.2022 nearly two years after the incident.

12.4 I further, find that when the Specified Officer, Dahej Multi-Product SEZ, repeatedly requested details of the damages in the prescribed format via letter dated 04.04.2022 and subsequent reminders dated 28.07.2022, 11.10.2022, 29.11.2022, and 28.06.2023, the Noticee engaged in a pattern of obfuscation. The details of the losses/damages submitted by the Noticee kept varying dramatically. Crucially, the final figures, which they claimed were based on a surveyor's report dated 28.09.2020, could neither be verified nor corroborated with physical or documentary evidences.

12.5 The record reveals an act of grave irresponsibility and lack of due diligence on the part of the Noticee, who allowed their asset and stocks insurance to expire without renewal prior to the incident. In a highly telling sequence of events, once the Noticee realized they would receive no financial compensation or claim settlement from the insurance company due to this lapsed coverage, they unilaterally lowered their estimated loss figures from their earlier official submissions. This manipulative shifting of data was done entirely without proper justification or corroboration, explicitly to downplay the volume of unaccounted/destroyed duty-free goods and artificially minimize their revenue liability.

12.6 Since, the goods lost due to fire incidence have not been put to an authorized operation in SEZ, neither the noticee submitted the proper accounts and documentary evidences in respect of loss of goods and the admission of the same in SEZ premises, the import of such goods is treated as improper importation and liable for confiscation under Section 111 of Customs Act, 1962 and the same may be treated as improperly imported. Therefore, the proposal for imposition of penalty under Section 112 of the Customs Act, 1962 levelled on M/s. Camlin Fine Sciences Ltd in the notice is the repercussion for their failure to comply with authorized SEZ operations, deliberate mis-statement, and wilful suppression of material facts with intent to evade payment of Customs duty.

12.7 However, I hold different opinion that in present case, at the time of issuance of the Show Cause Notice dated 29.05.2025, the facts suppressed by the said noticee to evade the payment of Customs Duty have been clearly spelled out in the Show Cause Notice and accordingly Customs duty has been demanded under Section 28 (4) of the Customs Act, 1962. Hence as a naturally corollary, penalty is imposable on noticee under Section 114A of the Customs Act, which provides for penalty equal to Duty plus interest in cases where the Duty has not been levied or has been short levied or the interest has not been charged or paid or has been part paid or the Duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts. However, while proposing penalty inadvertently it was mentioned as Section 112 of the Customs Act, 1962 instead of Section 114 A of the Customs Act, 1962. I find that it is time and again settled by the various judicial forum that wrong mention of section does not vitiate the proceedings. I rely on the ratio of decision of Hon'ble Supreme Court in the case of Collector v. Pradyumna Steel Ltd. Reported in 1996 (82) E.L.T. 441 (S.C.) wherein it has been held interalia as under:

"3. *It is settled that mere mention of a wrong provision of law when the power exercised is available even though under a different provision, is by itself not sufficient to invalidate the exercise of that power. Thus, there is a clear error apparent on the face of the Tribunal's order dated 23-6-1987. Rejection of the application for rectification by the Tribunal was, therefore, contrary to law."*

Further, the aforesaid decision of Hon'ble Supreme Court was relied on by the Hon'ble Chennai Tribunal in the case of Maruti Suzuki India Ltd. Vs. Commissioner of Service Tax, Delhi reported in (2024) 22 Centax 112 (Tri.-Chan) wherein it has been held interalia as under:

"20.1. *We also find that Hon'ble Apex Court held in the case of Pradyumna Steel Ltd. (supra) that mere mention of wrong provision of law, when the power exercised is available even though under a different provision is by itself not sufficient to invalidate the exercise of that power. We find that the show-cause notice was issued alleging that the appellants have not paid the service tax for the various services received by them from their overseas dealers/ distributors and that such services fall under "Business Auxiliary Service". We find that the show-cause notice mentions at Para 7 that the appellants are incurred an expense on account of advertisement for* *sale promotion which appear to be covered under BAS. Thus, it is seen that in the instant case, the purport of the show-cause notice is to put the appellants on notice that they have received services from their foreign dealers and have not discharged due service tax under the BAS. Though, the specific sub-clauses have not been enumerated, the intent of the notice has been made clear and therefore, in view of the judgment of the Hon'ble High Court cited above, we find that the proceedings are not vitiated. In view of the same, we find that judgments cited by the appellant are not applicable in the particular facts of the case."*

Further, I rely on the ratio of decision of Hon'ble Kolkatta Tribunal rendered in the case of Fortune Impex Vs. Commissioner of Customs, Kolkata reported in 2001 (138) E.L.T. 556 (Tri. - Kolkata) and affirmed by the Hon'ble Supreme Court reported in 2004 (167) E.L.T. A134 (S.C.)] wherein it has been held interalia as under:

*"**14.** We find no substance in the plea of the learned Advocate that there was no mis-declaration since the goods were not goods meant for export which is evident from the fact that the value of goods was only Rs. 80,000/- as against Rs.29,88,500/- declared by them. It is immaterial and irrelevant that the goods were not shipped and G.R. Form was not negotiated. If the contention of the learned Advocate is accepted there cannot be any offence in respect of goods entered for export as in case of violation of any provisions of law, the goods would not be shipped. We find that provisions of Section 18(1) of FERA was specifically mentioned in the show cause notice and non-mention of specific Section of the Customs Act would not vitiate the proceedings as the allegations and charges against all the Appellants have been detailed in the show cause notice in clear terms and it cannot be claimed that they did not have sufficient notice to represent against those allegations. The submissions made by the learned Advocate for not relying upon the decision of the Larger Bench in the case of Om Prakash Bhatia, 2001 (127) E.L.T. 81 (T-LB) = 2000 (41) RLT 871 is of no avail as this Bench cannot question the correctness of the decision. Judicial propriety demands that the decision of the Larger Bench should be followed by all the Division/Single Bench of the Appellate Tribunal. The Supreme Court in the case of Bharat Petroleum Corporation v. Mumbai Shramik Sangh, 2001 (3) SCALE 531 has emphasised that "the decision of a Constitution Bench binds a Bench of two judges of this Court and that judicial discipline obliges them to follow it, regardless of their doubts about its correctness." The Larger Bench of the Tribunal, after considering the decisions in Shilpi Exports, held that over-invoicing of goods for exportation was an*

offence under the Customs Act, 1962. The Larger Bench also distinguished the decision in Shilpi Exports by observing that the charge of over-valuation was not proved, the goods were not under a claim for drawback and the exporter had realised the full export value and the Supreme Court dismissed the appeal without touching the legal issue as the matter was decided on the basis of the facts of that case. Accordingly, we hold that the impugned goods are liable for confiscation and penalty is imposable on the Appellant Nos. 1 to 3. The penalty is also imposable on Shri Y.K. Gandhi as he was the Senior Executive of M/s. Fortune Impex and he was looking after the export of the goods. We are also of the view that redemption fine of Rs. 80,000/- is not on higher side and the penalty imposed on the Appellant Nos. 1 to 3 is also not on the higher side. We, therefore, uphold this part of the impugned order. However, penalty on Shri Y.K. Gandhi, being an employee, is reduced to Rs. 25,000/-."

Further, I rely on the ratio of decision of Hon'ble Delhi High Court rendered in the case of AVI Steel Traders v. Commissioner reported in 2010 (260) E.L.T. 43 (Del.) wherein it has been held interalia as under:

***"6.** In the instant appeal, we are concerned in this appeal only with the imposition of penalty under Rule 25 of the Rules. The appellant challenged this penalty by filing the appeal before the Commissioner (Appeals) raising the contention that as Rule 25 of the Rules was not invoked in the show cause notice no penalty could be imposed under this provision. This contention was rejected by the Commissioner (A) in the following terms:*

"6. So far as imposition of penalty of Rs. 1,00,000/- under Rule 25 of the Central Excise Rules, 2002 is concerned, there is no doubt that the appellants had contravened the provisions of Central Excise Law and had rendered themselves liable to penal action. The show cause notice specifically allege that the appellants had contravened the provisions of Rule 11 of the Central Excise Rules, 2002 and the Adjudicating Authority in para 9.6 of the impugned Order-in-Original has also held that the appellants had violated the provisions of Rule 11 of the Rules ibid with an ulterior motive of passing on the Cenvat credit in respect of the entire quantity of 132.395 MTs of goods, found short. Though I agree that in the show cause notice, rule 25 of the Rules ibid has not been specifically invoked, but the show cause clearly mentioned the allegation and charges against the appellants under Central Excise Rules, 2002. The Adjudicating Authority in para 909 of the Order-in-Original has rightly held that non-mentioning or wrong mentioning of a rule, will not vitiate the

present proceedings in view of the case laws discussed therein. Besides, there are number of judgments where the various Hon'ble courts have held that non-mentioning or mere wrong mention of provisions of law in the show cause notice, does not vitiate the proceedings if the allegations and charges against the assessee (appellants) are mentioned in clear terms in the show cause notice. In this regard, the Hon'ble CESTAT in the case of Commissioner of Central Excise, Chandigarh v. Dabur India Ltd. - 2004 (178) E.L.T. 819 (Tri. - Delhi) has held that "Mere wrong mention of provisions of law did not vitiate show cause notice when all allegations are contained in the show cause notice." Further the Hon'ble CESTAT in the case of Standard Industries Ltd. v. Commissioner of C. Ex. Mumbai - 2003 (158) E.L.T. 623 has held that "non mention of Rule in show cause notice not fatal if the facts lead to understanding of the same". Similar views were taken by the Hon'ble Supreme Court in the case of Fortune Impex v. Commissioner - 2004 (167) E.L.T. A 134 (S.C.), wherein the Hon'ble Apex Court has held that "non-mentioning of particular Section of Customs Act 1962 would not vitiate the proceedings when allegations and charges against all the appellants were mentioned in clear terms in the show cause notice." Therefore, in view of the above settled proposition of law, the non-mentioning of the provisions of law in the impugned show cause notice, had not vitiated the present proceedings and the Adjudicating Authority has rightly held the appellants liable to penal action under Rule 25 of the Central Excise Rules, 2002. It will not be out of place to mention here that in respect of Invoices Nos. 1 to 10 issued by the appellants during the period 22-4-2002 to 14-5-2002, the investigations made by the Central Excise Authorities at the appellants' end, had revealed that in number of cases the appellants had made only paper transaction just to pass on the Cenvat credit to the buyers without actually supplying the goods physically. For example, the investigations in respect of Invoice No. 6 dated 30-4-2002 had revealed that the vehicle No. HNU-1813 mentioned on the said invoice, was found to be a Moped, on which the appellants had shown to carry a load of 13 tonnes of excisable goods. Similarly the vehicle No. HR-37A-3694 mentioned in invoice No. 4 dated 29-4-2002 was found a HTV Bus as reported by the Transport office, Ambala and the owner of the bus in his statement dated 11-2-2004 had denied of ever having used his bus for transporting the goods from the appellants' premises to the buyers' premises at Rohtak. Though investigation in respect of the invoices issued by the appellants as mentioned in the Order-in-Original, are not the part of the present proceedings as the Central Excise authorities had not concluded the said investigations at their logic end in as much as the investigations on the part of the buyers' end, were never carried *out, but the above modus operandi adopted by the appellants unequivocally, leaves no doubt that the appellants had indulged themselves only in paper transactions with the ulterior motive to pass on the Cenvat credit to the buyers without selling/delivering the excisable goods with the alleged invoices. Therefore, I do not see any reason to interfere with the Order-in-Original so far as the imposition of penalty under Rule 25 of the Rules, is concerned and to that extent, I uphold the Order-in-Original."*

7. *Not satisfied with the aforesaid decision, the appellant moved to Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal'). The Tribunal affirmed the order of the Commissioner (Appeal) and giving the same reasoning and rejected the contention of the appellant in the following manner:*

"6. I have carefully gone through the submissions from both sides and perused the record. As a registered dealer, their obligation to account for the duty paid goods received by them and in respect of which they are entitled to pass on credit is well settled. Accounting does not merely mean accounting in RG-23D but accounting the disposal of the goods as specifically permitted under the Rules. It is strange that while the applicant's record showed such huge quantity of more than 1.3 lakshs kgs. Of inputs, yet no trace of such inputs were found on the date of visit of the officers. One of the explanations offered for the shortage of the inputs was that the goods were sold without bills which a dealer is allowed registration. The provision of Rule 11 of the Central Excise Rules relating to issue of invoice is clearly applicable in terms of Rule 11(7) to the first stage dealer as well as second stage dealer. The failure of the appellant in not issuing invoices for goods sold by them clearly stands admitted. The ingredient of the offence clearly stands disclosed in the show cause notice and subsequently in the orders of the lower authorities. Mere non-mention of the Rule or non-mention of sub-rule cannot act as a prejudice as long as the nature of violation has been disclosed to the assessee. Under these circumstances, the submission of the learned Consultant that Rule 25 has not been invoked in the show cause notice and therefore, no penalty can be imposed does not merit acceptable. The decision of the Hon'ble Supreme Court in Amrit Foods does not apply to the facts of the present case. Similarly, the decision on the case of M.H. Steel Corpn., Ashish Gupta cited supra are of no help to them as the facts of the present case are clearly different from the facts of those cases. It is a clear case of registered dealer admittedly failing in their obligation in accounting the goods received by them. As already observed, accounting does not merely mean accounting in RG-23D but

accounting the disposal of the goods as permitted under the Rules. As there is a clear violation on the part of the noticed that stock as per book was 1,32,395 kgs. Of various inputs like alloy steel ingots, alloy steel bars, rods, SS flats but no stock whatsoever was available. The appellants claimed that parts of the goods have been stolen but admitted that no complaint was filed in connection with the alleged theft with the police. They further admitted that the rest of the goods have been sold without bills in the grey market on receipt of cash. The credit of Rs.3,92,449/- attributable to the above inputs was lying intact and was not passed on. In pursuance of the show cause notice issued, the original authority imposed a penalty of Rs. 1 lakh under Rule 25 of Central Excise Rules, 2002 and Rs. 1 lakh under Rule 13(1) of Cenvat Credit Rules, 2002. On appeal, the Commissioner (Appeals) partly allowed the appeal by setting aside the penalty imposed under Rule 13 of erstwhile Cenvat Credit Rules, 2002 while upholding the penalty imposed under Rule 25 of the Central Excise Rules, 2002."

10. *It is in this context, we have to examine the matter. In the show cause notice, as pointed above, not only the allegations are made in detail as to how the appellant removed the goods from its factory without invoice but it is also specifically mentioned that by the aforesaid act, the appellant had contravened the provisions of Rule 11 of the Rules. Thus, the appellant was put on clear notice as to what kind of violation it had made. The penalty is a consequence thereof and, therefore, non-mentioning of Rule 25 of the Rules was mere inadvertent omission."*

In view of the above, I find that the said noticee is liable for penalty under Section 114A of the Customs Act, 1962 and not under Section 112 (b) (ii) of Customs Act, 1962 as it is inadvertently proposed in Show Cause Notice.

12.8 Whether the Bond-Cum Legal Undertaking in Form H furnished by the Noticee should not be enforced towards the above liabilities?

I find that the Noticee, in terms of Rule 22 of the SEZ Rules, 2006 had executed Bond cum-Legal Undertaking in Form H, whereby they had undertaken for proper utilization and accountal of goods procured Duty-free and to pay duty, interest, penalty etc. in case of violation of any of the conditions mentioned therein. I find that by not ensuring proper safeguard of the goods imported/ procured Duty free, the Noticee has breached the said Bond-cum-Legal Undertaking and made themselves liable for payment of applicable duties on goods, which were burnt/ destroyed in the fire incident and hence, the same were not utilized for Authorized

Operations and were not accounted for in terms of the SEZ Rules, 2006. Therefore, I find that the Noticee is liable to pay an amount equal to Duty foregone on the aforesaid goods burnt/ destroyed in the fire incident along with interest in terms of the provisions of Section 28AA of the Customs Act, 1962 from the date of duty free import/ procurement of the said goods till the date of payment of such duty. In view of the above, I find that dues such as duty, interest and penalty etc. is recoverable by enforcing the Bond executed by them. And plea of the noticee that no Bond-Cum Legal Undertaking can be invoked in the present case is not tenable.

13. In view of above discussion and findings, I pass the following order:

ORDER

(i) I confirm the demand of Customs Duty of Rs.1,18,32,411/- (Rupees One Crore, Eighteen Lakh, Thirty Two Thousand, Four Hundred and Eleven Only) on the goods destroyed in the fire incident and order to recover the same from them under Section 28(4) of the Customs Act, 1962, read with Section 26 of the SEZ, Act, 2005 and Rule 25 of the SEZ Rules, 2006.

(ii) I order the Noticee M/s. Camlin Fine Sciences Ltd, Plot No. Z/96-D, Dahej SEZ - II, Dahej, Tal. Vagra, District Bharuch, Gujarat 392130 to pay Interest at the appropriate rate, on the total duty confirmed at Sr. No.13 (i) above, under Section 28AA of the Customs Act, 1962.

(iii) I impose penalty of Rs.1,18,32,411/- (Rupees One Crore, Eighteen Lakh, Thirty Two Thousand, Four Hundred and Eleven Only) plus penalty equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded and confirmed above on M/s. Camlin Fine Sciences Ltd., Plot No. Z/96-D, Dahej SEZ - II, Dahej, Tal. Vagra, District Bharuch, Gujarat 392130 under Section 114A of the Customs Act, 1962.

However, I give an option, under proviso to Section 114A of the Customs Act, 1962, to the Noticee, to pay 25% of the amount of total penalty imposed, subject to the payment of total duty amount and interest confirmed and the amount of 25% of penalty imposed within 30 days of receipt of this order.

(iv) I order to enforce Bond-Cum Legal Undertaking in Form-H furnished by the M/s. Camlin Fine Sciences Ltd, Plot No. Z-96/D, Dahej SEZ - II, Dahej, Tal. Vagra, District Bharuch, Gujarat 392130 to recover duty, interest & penalty from the said Noticee.

14. 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.

15. The Show Cause Notice bearing F.No. GEN/ADJ/COMM/302/2025-TECH dated 29.05.2025 is disposed of in above terms.

Digitally signed by
Manish Kulhary
Date: 27-05-2026
20:46:05

(**Manish Kulhary**)
Commissioner,
Customs Ahmedabad.

F.No. GEN/ADJ/COMM/302/2025-TECH

DIN-20260571MN000072277C

BY SPEED POST / E-MAIL / HAND DELIVERY / THROUGH NOTICE BOARD

To,
M/S. CAMLIN FINE SCIENCES LTD.,
Plot No. Z/96-D, Dahej SEZ - II,
Dahej, Tal. Vagra, District Bharuch,
Gujarat 392130

Copy to:-

1. The Additional Commissioner, Chief Commissioner Office, Customs, Ahmedabad Zone (Kind Attention: RRA Section).
2. The Specified Officer, Dahej SEZ, Dahej.
3. The System In–Charge, Customs HQ, Ahmedabad for uploading on the official website i.e. http://www.gujaratcustoms.gov.in.
4. The Assistant Commissioner (Task Force), Customs HQ, Ahmedabad
5. Guard File/Office copy.