प्रधानआयुक्तकाकार्यालय, सीमाशुल्क, अहमदाबाद

सीमाशुल्कभवन, आलइंडीयारेडीऑकेबाजुमे, नवरंगपुरा ,अह्मदाबाद 380009

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निबन्धितपावतीडाकद्वारा / By SPEED POST A.D.

फा. सं./F. No.: VIII/10-31/Pr.Commr./O&A/2024-25

DIN- **20251271MN0000666B8A**

आदेशकीतारीख/Date of Order : 24.12.2025

जारीकरनेकीतारीख/Date of Issue : 24.12.2025

द्वारापारित :- **शिव कुमार शर्मा, प्रधान आयुक्त**

Passed by :- Shiv Kumar Sharma, Principal Commissioner

मूलआदेशसंख्या :

Order-In-Original No: AHM-CUSTM-000-PR.COMMR-41-2025-26 dated 24.12.2025 in the case of M/s. Bharat Parenterals Ltd. (IEC-3400000744), Survey No. 144 & 146, Village-Haripura, Tal-Savli, Dist-Vadodara, Gujarat-391 520.

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

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

2. इस आदेश से असंतुष्ट कोई भी व्यक्ति इस आदेश की प्राप्ति से तीन माह के भीतर सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, अहमदाबाद पीठ को इस आदेश के विरुद्ध अपील कर सकता है। अपील सहायक रजिस्ट्रार, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण, दुसरी मंज़िल, बहुमाली भवन , गिरिधर नगर पुल के बाजु मे, 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. उक्त अपील प्रारुप सं. सी.ए.3 में दाखिल की जानी चाहिए। उसपर सीमा शुल्क (अपील) नियमावली, 1982 के नियम 3 के उप नियम (2) में विनिर्दिष्ट व्यक्तियों द्वारा हस्ताक्षर किए जाएंगे। उक्त अपील को चार प्रतियाँ में दाखिल किया जाए तथा जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ

संलग्न की जाएँ (उनमें से कम से कम एक प्रति प्रमाणित होनी चाहिए)। अपील से सम्बंधित सभी दस्तावेज भी चार प्रतियोँ में अग्रेषित किए जाने चाहिए।

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

4. अपील जिसमें तथ्यों का विवरण एवं अपील के आधार शामिल हैं, चार प्रतियों में दाखिल की जाएगी तथा उसके साथ जिस आदेश के विरुद्ध अपील की गई हो, उसकी भी उतनी ही प्रतियाँ संलगन की जाएंगी (उनमें से कम से कम एक प्रमाणित प्रति होगी)।

4. The Appeal including the statement of facts and the grounds of appeal shall be filed in quadruplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy.)

5. अपील का प्रपत्र अंग्रेजी अथवा हिन्दी में होगा एवं इसे संक्षिप्त एवं किसी तर्क अथवा विवरण के बिना अपील के कारणों के स्पष्ट शीर्षों के अंतर्गत तैयार करना चाहिए एवं ऐसे कारणों को क्रमानुसार क्रमांकित करना चाहिए।

5. The form of appeal shall be in English or Hindi and should be set forth concisely and under distinct heads of the grounds of appeals without any argument or narrative and such grounds should be numbered consecutively.

6. केंद्रिय सीमा शुल्क अधिनियम,1962 की धारा 129 ऐ के उपबन्धों के अंतर्गत निर्धारित फीस जिस स्थान पर पीठ स्थित है, वहां के किसी भी राष्ट्रीयकृत बैंक की शाखा से न्यायाधिकरण की पीठ के सहायक रजिस्ट्रार के नाम पर रेखांकित माँग ड्राफ्ट के जरिए अदा की जाएगी तथा यह माँग ड्राफ्ट अपील के प्रपत्र के साथ संलग्न किया जाएगा।

6. The prescribed fee under the provisions of Section 129A of the Customs Act,1962 shall be paid through a crossed demand draft, in favour of the Assistant Registrar of the Bench of the Tribunal, of a branch of any Nationalized Bank located at the place where the Bench is situated and the demand draft shall be attached to the form of appeal.

7. इस आदेश के विरूद्ध सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण में शुल्क के 7.5% जहां शुल्क अथवा शुल्क एवं जुरमाना का विवाद है अथवा जुरमाना जहां शीर्फ जुरमाना के बारेमे विवाद है उसका भुकतान करके अपील की जा शकती है।

7. An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute".

8. न्यायालय शुल्क अधिनियम, 1870 के अंतर्गत निर्धारित किए अनुसार संलग्न किए गए आदेश की प्रति पर उपयुक्त न्यायालय शुल्क टिकट लगा होना चाहिए।

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

Sub: Show Cause Notice No. VIII/10-31/Pr.Commr./O&A/2024-25 dated 11.06.2025 issued by the Principal Commissioner of Customs, Ahmedabad to M/s. Bharat Parenterals Ltd. (IEC-3400000744), Survey No. 144 & 146, Village-Haripura, Tal-Savli, Dist-Vadodara, Gujarat-391 520.

BRIEF FACTS OF THE CASE:

M/s. Bharat Parenterals Ltd., having IEC No. 3400000744, situated at Survey No. 144 & 146, Village-Haripura, Tal-Savli, Dist-Vadodara, Gujarat-391 520 (hereinafter referred to as 'the Importer' for the sake of brevity) had imported "POTASSIUM CLAVULANATE WITH MICROCRYSTALLINE CELLULOSE/SILICON DIOXIDE (1:1) - I.P, E.P" classifying under Customs Tariff Item 30039090 of the Customs Tariff Act, 1962, availing benefit of paying duty @12% (BCD 0%+SWS 0%+IGST 12%) vide Bills of Entry (mentioned in TABLE-C of the show cause notice) from Ahmedabad Air Cargo Complex (INAMD4).

2. As per Sr. No. 62 of Schedule II, 12% IGST is leviable on goods falling under Customs Tariff Heading 3003 provided the goods is for medicament for therapeutic or prophylactic uses not put up in measured doses or in forms or packing for retail sale. In respect of "All organic chemical other than Gibberellic acid" falling under Chapter 29, IGST is leviable @ 18% as per Sl. No.40 of Schedule III of IGST (Rate) Notification. Further, as per Note 1(e) of Chapter 30, this chapter does not cover "Preparation of heading 3303 to 3307, even if they have therapeutic or prophylactic properties." Furthermore, as per Note 1(a) of Chapter 29, this chapter applies to "Separately chemically defined organic compound, whether or not containing impurities."

3. Pharmaceutical preparations intended for human or veterinary use, presented in their finished dosage form include, materials used in the preparation and/or formulation of the finished dosage form. Microcrystalline cellulose (MCC) because of its characteristics and grades, it is available for various requirements and its physical properties that help in different uses. MCC is used as pharmaceutical excipient, can be utilized as a bulking agent, disintegrate, binding agent, lubrication, and glidant other than being a stability enhancer and an auxiliary suspending agent. It can be utilized as a part of the direct pressure of most medications and helps in cost cutting of material, capital, machinery and men. Its regularly expanding applications in medicate look into incorporate its utility in the prompt discharge of medicine, in any form such as tablets, oral fluids, organoleptic upgrades as in chewable and mouth dissolving tablets, hostile to reflux, furthermore, nutraceuticals. Silicon dioxide (also known as colloidal silicon dioxide). In the pharmaceutical industry, has many uses in tablet-making, including as an anti-caking agent, adsorbent, disintegrate, or glidant to allow powder to flow freely when tablets are processed. Hence, Microcrystalline cellulose (MCC) & Silicon dioxide are used as pharmaceutical preparations.

4. On verification of documents (Technical write up) uploaded by the importer, it was noticed that the imported item (Potassium clavulanate with microcrystalline cellulose/silicon dioxide (1:1) IPEP) was input for manufacturing of finished product (Amoxyllin & clavulanate potassium tablet usp). Thus, it was raw material imported for manufacture of finished product.

5. The CERA vide LAR No. 11/2020-21 dated 04.03.2021 for the period July-2020 to September-2020, raised an objection that on verification of bills of entry (mentioned in **TABLE-A** hereunder), it was noticed that the items imported were "Potassium Clavulanate with Microcrystalline Cellulose/silicon dioxide" it merits classification under Customs Tariff Item 29419090 being input used for manufacturing of medicament. Further, imported item consists only one input Potassium Clavulanate used for therapeutical or prophylactic uses, hence it does not merit classification under Customs Tariff Heading 3003. Hence item imported merits classification under Sl. No. 40 of Schedule III – where IGST is leviable @ 18% on goods which are not specified under Schedule I, II, IV& V of the schedule.

TABLE-A

Sl. No.	BE No	BE Date	Invoice No.	Item No.	Item Desc	Assess Val	IGST Paid @12%	IGST Payable @18%
1	8089014	06-07-20	1	1	POTASSIUM CLAVULANATE WITH MICROCRYSTALLINE CELLULOSE (1:1) I.PE.P.	7945600	953472	1430208
2	8373660	04-08-20	1	1	POTASSIUM CLAVULANATE WITH SILICON DIOXIDE (1:1) I.P.,E.P.	4748640	569837	854755
3	8618901	28-08-20	1	1	POTASSIUM CLAVULANATE WITH SILICON DIOXIDE (1:1) I.P.,E.P.	3157440	378893	568339
					Total	**15851680**	**1902202**	**2853302**

6. Further, during the course of verification/ scrutiny of Bills of Entry on the basis of aforesaid CERA objection for the period from 01.10.2020 to 30.11.2024, it has been observed that the importer also filed Bills of Entry (Mentioned in **TABLE-B** hereunder) under Customs Tariff Item 30039090 having items as mentioned in TABLE-B and paid duty @12% (BCD 0%+SWS 0%+IGST 12%). As per the CERA objection, the goods are classifiable under Customs Tariff Item 29419090 and attract IGST @18%.

TABLE-B

Sl. No.	BE No	BE Date	Invoice No.	Item No.	Item Desc	Assess Val	IGST Paid @12%	IGST Payable @18%
1	2933041	27-02-21	1	1	POTASSIUM CLAVULANATE WITH MICROCRYSTALLINE CELLULOSE (1:1) I.P, E.P	7664800	919776	1379664
2	3040497	06-03-21	1	1	POTASSIUM CLAVULANATE WITH MICROCRYSTALLINE CELLULOSE (1:1) I.P, E.P	4611360	553363	830045
3	4150478	01-06-21	1	1	POTASSIUM CLAVULANATE WITH MICROCRYSTALLINE CELLULOSE (1:1) I.P., E.P.	3853200	462384	693576
4	4150478	01-06-21	1	2	POTASSIUM CLAVULANATE WITH SILICON DIOXIDE (1:1) I.P., E.P.	770640	92477	138715

5	4712414	17-07-21	1	1	POTASSIUM CLAVULANATE WITH MICROCRYSTALLINE CELLULOSE (1:1) I.P., E.P.	4704960	564595	846893
6	4712414	17-07-21	1	2	POTASSIUM CLAVULANATE WITH SILICON DIOXIDE (1:1) I.P., E.P	4704960	564595	846893
7	6574841	25-06-23	1	1	POTASSIUM CLAVULANATE WITH MICROCRYSTALLINE CELLULOSE (1:1)I.P, E.P	5761594	691391	1037087
					Total	**32071514**	**3848582**	**5772872**

7. A letter bearing F.No. HM-8-14-20/ACC/CRA/21-Gr-5 dated 03.02.2021 in respect of LAR-11/2020-21 dated 04.03.2021 was issued to the importer for payment of duty along with interest. In reply to the above letter the importer vide their letter dated 10.02.2021, submitted that:-

> *This has reference to your query that the product attracts 18% IGST according to the IGST tariff whereas 12% IGST is charged. In this connection, please refer to page no. 73 of GST tariff (attached) The HS code of the product is 3003 which mentioned in Certificate of Origin by the customer of Korea. The IGST tariff description of code 3003 is "MEDICAMENTS (excluding goods of heading 30.02, 30.05 or 30.06) considering of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured dosses or in forms or packing for retail sale". The actual product is a 'mixture for theraphutic use and is a bulking (not is measured dosage or packing). Hence, it attracts 12% IGST which is rightly charged.*

7.1 Further, another letter bearing F.No. HM-8-14-20/ACC/CRA/21-Gr-5 dated 11.06.2021 was issued to the importer for payment of differential duty along with interest. In reply, the importer vide their letter dated 18.06.2021 submitted that:-

> *We have paid IGST 12%. CERA Audit Party is of the view that IGST @12% is not payable as per Sr.No. 62 of Schedule II of Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017. The said entry is given below for reference:*

S. No.	*Chapter / Heading / Subheading / Tariff item*	*Description of Goods*
62.	*3003*	*Medicaments (excluding goods of heading 30.02, 30.05 or 30.06) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale, including Ayurvaedic, Unani, siddha, homoeopathic or Bio-chemic systems medicaments*

CERA Audit party proposes classification of goods under CTH 29419090 as inputs used for manufacturing of medicament and proposes payment of IGST @18% against Sl.No. 40 of Schedule III of notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017. The said entry reads as under:

S. No.	Chapter / Heading / Subheading / Tariff item	Description of Goods
40.	29	All organic chemicals other than giberellic acid

We have filed Bill of entry claiming classification under CTH 30039090 and the Bills of Entry were finally assessed by following proper procedure. Unless the technical reasons are given to us as to why the said goods fall under CTH 29419090 (as proposed by you) it will not be possible for us to properly explain the case.

The term "Medicine" or "Drugs" have not been defined under GST Act. Therefore, we need to consider the definition "Drugs" given in Drugs and Cosmetics Act, 1940. Section 3(b) of the Drugs and Cosmetics Act, 1940 defines a "drug" in the following terms:

> *"(i) All medicines for internal or external use of human beings or animals and all substances intended to be used for or in the diagnosis, treatment, mitigation or preventions of any disease or disorder in human beings, or animals, including preparations applied on human body for the purpose of repelling insects like mosquitoes;*
>
> *Clause (i) of Section 3(b) defines a 'drug' as all medicines for internal or external use of human beings or animals and all substances "intended to be used for or in the disgnosis, treatment, mitigation or prevention of any disease or disorder in human being, or animals", including specified preparations.*
>
> *The bulk drugs are raw material /ingredient of pharmaceutical and they are the Active Pharmaceutical Ingredients (i.e. API) of the medicine. In other words, it is the substance responsible for the product being a medicine. The bulk drug would inevitably remain the same as it is the identity of the medicine. When the bulk drug is absent, the product is no longer a medicine and when it is changed. it is a new medicine. Bulk dugs is not defined in GST, therefore. in common parlance we can say that Bulk drugs is basically an Active Pharmaceutical Ingredients (API) meaning any pharmaceutical, chemical, biological or plant product, which is used as such or as an ingredient in any formulation.*

It is therefore submitted that Potassium Clavulanate with Microcrystaline Cellulose (1:1)-IP.E.p and Potassium Clavulanate with Silicon Dioxide (1:1) I.P.E.P are covered under CTH 30039090and attract IGST @ 12% vide Sr.No. 62 of Schedule II of Notification No.1/2017-Integrated Tax (Rate) dated 28.6.2017.

Neither CERA Audit Party nor in your letter, no technical or scientific evidence has been provided as to how the impugned goods viz. Potassium Clavulanate with Microcrystalline Cellulose (1:1)- I.P.E.P and Potassium Clavulanate with Silicon Dioxide (1:1) I.P.E.P, fall under CTH 29419090 (as proposed by you) on place of CTH 30039090 (as claimed by us). As you are aware classification of goods cannot be determined based on general perception and there is a manner and method to determine classification of goods.

In view of the above, it is submitted that payment of IGST 12% on impugned goods is proper and correct.

8. The reply is not accepted by the department as Chapter -29 of the first schedule of Customs Tariff Act, 1975, covers all the Organic Chemical, except the exclusions provided in chapter notes. Further, the Customs Tariff Heading 2941 covers the Antibiotics. As per the literature available on the various websites, in chemistry, the definition is based solely on chemical structure and very few exceptions a chemical is classified as organic if it contains at least one carbon atom, regardless of its source (source https:fyi.extension.wisc.edu/safefood/2017/11/02/safe-healthy-what-does-organic-really-mean/). The Chemical formula of imported goods i.e. Potassium Clavulanate with Microcrystalline Cellulose (1:1) I.P.,W.P, is C8H8KNO5 (source: https://www.simsonpharma.com/product/potassium-clavulanate-microcrystalline-cellulose-1-1). As per the literature available on Clavulanate, 'Clavulanate is used as an inhibitor of bacterial β-lactamase enzymes. It is produced by the fermentation of Streptomyces clavuligerus. It has weak antibacterial activity when used alone but is very active when used with amoxicillin. With Amoxicillin, it is used to treat infections caused by *Staph. aureus*, *Bacteroides fragilis*, *H. influenza* and *E. coli*. It has been used to treat acute bacterial sinusitis in children and chronic adenotonsillar hypertrophy." (source: https://www.sigmaaldrich.com/IN/en/product/sigma/c9874). In view of the above, it can safely conclude that the imported goods are organic chemical having antibiotic properties. Hence, the imported goods is rightly classifiable under CTH 2941 and under Customs Tariff Item No. 29419090 as "others".

9. Further, the importer availed benefit of Notification No. 152/2009-Customs dated 31.12.2009 in Bills of Entry (as mentioned in TABLE-A and TABLE-B), wherein, the Basic Custom duty was exempted when imported from Republic of Korea. However, it has been noticed that under FTA benefit, Country of Origin certificates (issued by the Korea chamber of commerce and Industry) are for Customs Tariff Heading 3003, whereas, the Bills of Entry (as mentioned in TABLE-A and TABLE-B) are correctly classifiable in Customs Tariff Item 29419090.

9.1 Therefore, the benefit under Notification No. 152/2009-Customs dated 31.12.2009 is not available to the Importer in Bills of Entry (as mentioned in TABLE-C) and duty @27.735% (BCD @7.5% + SWS @10% + IGST @18%) is applicable on imported goods under Customs Tariff Item 29419090. In view of the above, the Importer is liable to pay total differential duty to the tune of Rs.75,40,712/- (Rupees Seventy Five Lakh, Forty Thousand, Seven Hundred and Twelve Only).

TABLE-C

Sl. No.	BE No	BE Date	Invoice No.	Item No.	Assess Val	Duty paid @ 12% (BCD @0% + SWS @0% + IGST @12%)	Duty Payable @27.735% (BCD @7.5% + SWS @10% + IGST @18%)	Differential Duty
1	8089014	06-07-20	1	1	7945600	953472	2203712	1250240
2	8373660	04-08-20	1	1	4748640	569836.8	1317035	747198
3	8618901	28-08-20	1	1	3157440	378892.8	875716	496823
4	2933041	27-02-21	1	1	7664800	919776	2125832	1206056

5	3040497	06-03-21	1	1	4611360	553363.2	1278961	725597
6	4150478	01-06-21	1	1	3853200	462384	1068685	606301
7	4150478	01-06-21	1	2	770640	92476.8	213737	121260
8	4712414	17-07-21	1	1	4704960	564595.2	1304921	740325
9	4712414	17-07-21	1	2	4704960	564595.2	1304921	740325
10	6574841	25-06-23	1	1	5761594	691391.3	1597978	906587
Total					**47923194**	**5750783.3**	**13291498**	**7540712**

10. With the introduction of self-assessment and consequent amendments to Section 17, since April-2011, it is the responsibility of the Importer to correctly classify, determine and pay the duty applicable in respect of the imported goods.

11. As per Section 17 of the Customs Act, 1962, an importer entering any imported goods under Section 46 of the Act shall self-assess the duty leviable on such goods. The government has placed huge reliance on the self – assessment made by the importer. It appeared that the said Importer had failed to exercise their statutory obligation and paid duty at lower rate with an intent to evade duty, by claiming benefit of wrong heading, which did not appear to be available to them. It further appeared that all these material facts have been concealed from the Department deliberately, consciously and purposely with an intent to evade payment of applicable Customs duty. Therefore, in this case, all essential ingredients exist to invoke Section 28(4) of the Customs Act, 1962, to demand the applicable differential duty which is short paid by them.

12. Consequently, the differential duty of Rs. 75,40,712/- (Rupees Seventy Five Lakh, Forty Thousand, Seven Hundred and Twelve Only), as detailed in TABLE-C shown above in preceding para is liable to be recovered from the Importer under Section 28(4) of the Customs Act, 1962 alongwith interest in terms of Section 28AA of the Customs Act, 1962.

13. As per Section 111(m) of the Customs Act, 1962, any goods which do not correspond in respect of value or in any other particular with the entry made under the Customs Act, 1962 are liable for confiscation under the said Section. Therefore, the said goods totally valued at Rs. 4,79,23,194/- imported under Bills of Entry (as mentioned in TABLE-C) appeared to be liable for confiscation under the provision of Section 111(m) and Section 111(o) of the Customs Act, 1962 in as much as the same have been imported by mis-classifying under Customs Tariff Item 30039090 in place of Customs Tariff Item 29419090.

14. It appeared that the importer has mis-classified the goods in CTI 30039090 instead of Customs Tariff Item 29419090 and wrongly taken benefit of Notification No. 152/2009-Customs dated 31.12.2009, which was not available to them. Hence, the imported goods should be re-classified under Customs Tariff Item 29419090 and the benefit of Notification No. 152/2009-Customs dated 31.12.2009 should be denied on the items as mentioned in TABLE-C.

15. It further appeared that the Importer has knowingly and intentionally with ulterior motive and by design, taken the benefit by mis-classifying under CTI 30039090 in place of CTI 29419090. It appeared to be a case of wilful mis-statement of classification based on end use of goods with intention to avail ineligible benefit of the exemption to evade duty. Therefore, the goods imported under the Bills of Entry mentioned above appeared liable for confiscation under Section 111(m) and Section 111(o) of the said Act.

16. For these acts of omission and commission, the Importer appeared to be liable to penalty under Section 112/114A of the Customs Act, 1962 in as

much as they have intentionally made and used false and incorrect declaration / statements / documents to evade payment of legitimate Customs duties as discussed in the foregoing paras.

17. Further, by these acts of the omission and commission of the Importer, they appear to attract the provisions of Section 114AA of the said Act. The importer has mis-classified the goods in question with intent to avail undue benefit of lower rate of duty and thus the importer liable to penalty under Section 114AA of the said Act.

18. Therefore, a Show Cause Notice bearing F.No. VIII/10-31/Pr.Commr./O&A/2024-25 dated 11.06.2025 was issued to the Importer viz. M/s. Bharat Parenterals Ltd. (IEC No. 3400000744), Survey No. 144 & 146, Village-Haripura, Tal-Savli, Dist-Vadodara, Gujarat-391 520, asking them to Show Cause to the Principal Commissioner, Customs House, Ahmedabad, as to why:

(i) The imported goods should not be re-classified under Customs Tariff Item 29419090 instead for Customs Tariff Item 30039090 and the benefit of Notification No. 152/2009-Customs dated 31.12.2009 should not be denied on the items as mentioned in TABLE-C;

(ii) Total non-levied/short-levied duty in respect of goods imported vide bills of entry as detailed in TABLE-C, amounting to Rs. 75,40,712/- (Rupees Seventy Five Lakh, Forty Thousand, Seven Hundred and Twelve only), should not be demanded and recovered from the Importer on the said imported goods by invoking extended period of five years as per the provisions of Section 28 (4) of the Customs Act, 1962;

(iii) The imported goods having declared assessable value of Rs.4,79,23,194/-(Rupees Four Crore, Seventy Nine Lakh, Twenty Three Thousand, One Hundred and Ninety Four only) should not be held liable to confiscation under Section 111 (m) and Section 111(o) of the Customs Act, 1962 for the act of willful mis-statement and intentional suppression of facts with regard to classification of the said goods by way of submitting false declaration leading to unlawful, illegal and wrong availment of concessional duty by mis-classifying under Customs Tariff Item 30039090 in place of Customs Tariff Item 29419090. Since the goods are not available for confiscation, fine as contemplated under Section 125 should not be imposed on them in lieu of confiscation;

(iv) Interest at an appropriate rate as applicable, on the short paid/short levied IGST, as mentioned in TABLE-C, should not be recovered from them under Section 28AA of the Customs Act, 1962;

(v) Penalty should not be imposed upon the Importer under Section 112(a) of the Customs Act, 1962;

(vi) Penalty should not be imposed on the Importer for short payment of duty under Section 114A of the Customs Act, 1962 and

(vii) Penalty should not be imposed upon the Importer, under Section 114AA of the Customs Act, 1962.

DEFENCE:

19. M/s. Bharat Parenterals Limited, Vadodara vide letter dated 26.06.2025 have submitted their defence reply to the above show cause notice dated 11.06.2025, under which they have interalia submitted that :-

19.1 Notification No. 152/2009-Customs, dated 31.12.2009, as amended by Notification No. 66/2016-Customs, dated 31.12.2016, exempts goods falling under CTH 294190 as well as CTH 30, when imported into India from the Republic of Korea as under :

Sl.No.	Chapter, Heading, Sub-heading or Tariff Item	Description of goods	Rate (in percentage unless otherwise specified)
(1)	(2)	(3)	(4)
252	294190	All Goods	0.00
254	Chapter 30 (except 300660)	All Goods	0.00

19.2 The goods reassessed by Customs under CTH 294190 also are exempted vide S.No. 252 of Notification No. 152/2009-Customs dated 31.12.2009, as amended by Notification No. 66/2016-Customs, dated 31.12.2016. In other words, both (i) Goods originally classified by them under Chapter 30 and (ii) Goods reclassified by Customs under CTH 294190 are covered under the scope of Notification No. 152/2009-Customs dated 31.12.2009, as amended by Notification No. 66/2016-Customs, dated 31.12.2016.

19.3 While admitting that they have imported the subject goods from South Korea, the Show Cause Notice alleges that the exemption is not available in terms of Notification No.152/2009-Customs dated 31.122009, as amended by Notification No. 66/2016-Customs, dated 31.12.2016, just because the Certificate of Origin issued by the Korea Chamber of Commerce and Industry for goods imported is under CTH 3003. The only condition / requirement under Notification No: 152/2009-Customs, dated 31.12.2009 is that the importer needs to prove to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the goods in respect of which the benefit of this exemption is claimed are of the origin of Republic of Korea. In other words, the classification of imported goods shown in Certificate of Origin is not relevant.

19.4 The product i.e. Potassium Clavulanate with Microcrystalline Cellulose (1:1) IP. EP is exported by Korean Supplier under the ITHS Code 30039090 to importers all over the world and they have imported goods from same foreign vendor who has exported classifying the goods under this ITHS Code.

19.5 That even the Bulk Drugs which are imported for manufacture of Medicaments are classifiable under CTH 30. In this regard, they have relied on the orders passed by the Advance Ruling Authority in the case of (i) M/s. Laurus Labs Limited, vide Order dated 28/03/2018, reported in 2018 (6) TMI 460 and (ii) M/s. Biocon Ltd. , reported in 2020 (11) TMI 527.

19.6 In this case the demand is related to payment of differential 6% IGST. It is well known fact that such differential IGST paid js available as Input Tax Credit to them. Therefore, the situation is revenue neutral and the Show Cause Notice is liable to be dropped on the ground of revenue neutrality.

19.7 It cannot be said that they have not disclosed any relevant information at the time of import, from the customs officers. They have filed BOE and the subject goods have been cleared from the port of import / Air Cargo Complex without any dispute by the department. Even if an importer has wrongly claimed the benefit of the exemption or concession or lower duty, it is for department to find out the correct legal position and to allow or disallow the same. It is thus manifest that merely because they have claimed the benefit of the notification cannot be held that there was wilful suppression

of facts by them with intent to evade duty. Thus the Show Cause Notice invoking extended period of limitation is patently unsustainable and deserves to be dropped as time-barred. In this regard, they have relied on the case laws (i) Shri Charnajit Singh Vs. Commissioner of Customs (Pod), Kolkata [2022(12) TM1897 -CESTAT Kolkata], (ii) Sands Hotels Pvt. Ltd. Vs. CST [2009 (16) STR 329], (iii) CCE, Kanpur Vs. Ganges Soap Works (P) Ltd [2002 (146) EL T 470 (Tri. Del.)] and (iv) Northern Plastics Ltd. [1998 (101) E.L.T. 549 (SIC.)].

19.8 All the impugned Bills of Entry having been finally assessed cannot be reviewed or reopened by way of fresh adjudication, as such finally assessed Bills of Entry' may only be appealed against, under Section 128 of the Customs Act, 1962, if the Revenue is aggrieved by such final assessment. The Bill of Entry has attained finality after the Assessment, in the absence of any statutory Appeal filed against the assessment order, under Section 128 of Customs Act, 1962, within the limitation period prescribed in the said Section 128. The Show Cause Notice is required to be dropped in limine on this ground itself. In this regard, they have relied on the case laws (i) Priya Blue Inds. Vs. CC [2004 (172) ELT 145 (SC)], (ii) CC (Imp.) Vs. Eurotex Inds. & Exports Ltd. [2007 (81) RLT 962 (Cestat-LB)] and [(iii) ITC Ltd. vs. CCE [2019 (368) ELT 216 (SC)].

19.9 It is a settled law, that when malafides are not there on the part of Importer Penalty cannot be imposed under Section 114 A of the Customs Act, 1962. In this regard, they have relied on various laws.

19.10 In the present case, they have not, knowingly or otherwise, made, signed or used or caused to be made, signed or used any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business. Thus, the invocation of the provision of Section 114AA against them is patently erroneous and mis-conceived.

19.11 The subject goods are not improperly imported goods. Thus the said goods are not liable for confiscation and the provisions of Section 111(o) are not attracted in the present case. Consequently, they are not guilty of any act or omission whereby they have rendered any goods liable for confiscation and thus no penalty is imposable on them under the provisions of Section 112 (a) of the Customs Act, 1962.

19.12 It is submitted that the Customs Officers have assessed Bill of Entry finally and the Department has not filed any Appeal against the same. In view of this, the question of invoking Section 111 (m) does not arise.

19.13 There are plethora of judgments wherein it is consistently held that the claim of wrong classification or an ineligible exemption benefit does not constitute mis-declaration so as to initiate penal action against the importer and classification or effective rate of duty is a departmental function and therefore an importer cannot be accused of having 'mis-ciassified' the goods imported by him. In this regard, they have relied on various case laws.

19.14 That no redemption fine and penalty can be imposed when the goods are not physically available for confiscation. In this regard, they have relied on the case law Shiv Kripa Ispat Pvt. Ltd., Vs. Commissioner of C. Ex. & Cus, Nasik reported in 2009 (235) E.L.T. 623 (Tri. - LB).

19.15 In view of the above, they have prayed that the Show Cause Notice be dropped in its entirety and requested for an opportunity of Personal Hearing, before any Order of Adjudication, is passed in the present case.

PERSONAL HEARING:

20. Personal hearing in the instant case was held on 25.11.2025 wherein Shri Kaza Subrahmanyam, Indirect Tax Consultant appeared for personal hearing virtually (online mode) on behalf of the Importer. He reiterated the contents of their defence reply dated 26.06.2025 and Synopsis submitted on 25.11.2025 and requested to consider the said submissions.

FINDINGS:

21. I have carefully gone through the show cause notice dated 11.06.2025, defence reply dated 26.06.2025 and Synopsis dated 25.11.2025 submitted by the Importer and relevant case records. I have also gone through Para 02 of LAR No. 11/2020-21 dated 04.03.2021 issued by CRA, Ahmedabad, based on which the present show cause notice was issued to the Importer.

22. The core issues before me for decision in the present case are as under:

(i) Whether the imported goods should be re-classified under Customs Tariff Item 29419090 instead of Customs Tariff Item 30039090 and the benefits of Notification No. 152/2009-Customs dated 31.12.2009, should be denied on the items as mentioned in TABLE-C of the show cause notice?

(ii) Whether total non-levied/short-levied duty amounting to Rs. 75,40,712/- (Rupees Seventy Five Lakh, Forty Thousand, Seven Hundred and Twelve Only), in respect of the goods imported vide bills of entry, as detailed in TABLE-C of the show cause notice, should be demanded and recovered from the Importer, by invoking extended period of five years as per the provisions of Section 28 (4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962?

(iii) Whether the imported goods having declared assessable value of Rs. 4,79,23,194/- (Rupees Four Crore, Seventy Nine lakh, Twenty Three Thousand, One Hundred and Ninety Four only) should be held liable to confiscation under Section 111 (m) and Section 111(o) of the Customs Act, 1962 for the act of willful mis-statement and intentional suppression of facts with regard to classification of the said goods by way of submitting false declaration leading to unlawful, illegal and wrong availment of concessional duty by mis-classifying under Customs Tariff Item 30039090 in place of Customs Tariff Item 29419090 and since the goods are not available for confiscation, fine as contemplated under Section 125 of the Customs Act, 1962, should be imposed on the Importer in lieu of confiscation?

(iv) Whether penalty should be imposed upon the Importer under Section 112(a), Section 114A and Section 114AA of the Customs Act, 1962?

23. The brief issue involved in the instant case is that during the course of test check of records of the Customs, Air Cargo Complex, Ahmedabad for the period from July, 2020 to September, 2020 by the Auditors of the CRA, Ahmedabad team, it was noticed that the Importer has imported goods viz. "POTASSIUM CLAVULANATE WITH MICROCRYSTALLINE CELLULOSE (1:1) - I.P, E.P" and "POTASSIUM CLAVULANATE WITH SILICON DIOXIDE (1:1) - I.P, E.P" and filed Bills of Entry at Customs, Air Cargo Complex, Ahmedabad for clearance of the said imported goods, by mis-classifying the said goods under Customs Tariff Item 30039090 of the Customs Tariff Act, 1975, which attracts

IGST @12%, as per Serial No. 62 of Schedule II to the Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017. The Importer has also availed exemption benefit of Basic Customs Duty under Serial No. 254 of Notification No. 152/2009-Customs, dated 31.12.2009, as amended. It is alleged in the show cause notice that "POTASSIUM CLAVULANATE WITH MICROCRYSTALLINE CELLULOSE/SILICON DIOXIDE (1:1) - I.P, E.P" imported by the Importer has been used as inputs for manufacture of pharmaceutical products and the same is rightly classifiable under Customs Tariff Item 29419090 of the Customs Tariff Act, 1975, which attracts IGST @ 18%, as per Serial No. 40 of Schedule III to the Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017. It is also alleged in the show cause notice that the exemption benefit of Basic Customs Duty availed by the Importer under Serial No. 254 of Notification No. 152/2009-Customs, dated 31.12.2009, as amended, is not available to the Importer, as the Country of Origin Certificates (issued by Korea chamber of commerce and industry) are for Customs Tariff Heading 3003. Therefore, by mis-classifying the said goods under Customs Tariff Item 30039090 and by wrongly availing the exemption benefit of Basic Customs Duty under Serial No. 254 of Notification No. 152/2009-Customs, dated 31.12.2009, as amended, the Importer has evaded Customs duty amounting to Rs.75,40,712/- in respect of 10 (Ten) Bills of Entry, as detailed in TABLE-C of the show cause notice.

24. Now, I proceed to examine the issues to be decided by me one by one in the light of the records of the case and the submissions made by the Importer.

24.1 The most important issue before me for decision in the present case is whether the imported goods viz. "POTASSIUM CLAVULANATE WITH MICROCRYSTALLINE CELLULOSE/SILICON DIOXIDE (1:1) - I.P, E.P" should be held classifiable under Customs Tariff Item 29419090 of the Customs Tariff Act, 1975 or under Customs Tariff Item 30039090 of the Customs Tariff Act, 1975, as claimed by the Importer in the subject Bills of Entry and the exemption benefit under Serial No. 254 of Notification No. 152/2009-Customs dated 31.12.2009, should be denied on the imported goods.

24.1.1 The dispute being classification of the imported goods, it would be appropriate to make a reference to the Customs Tariff Headings 3003 and 2941 as appearing in the Customs Tariff Act, 1975.

24.1.2 Customs Tariff Heading 3003 of the Customs Tariff Act, 1975, reads as under:

3003		**MEDICAMENTS (EXCLUDING GOODS OF HEADING 3002,3005 OR 3006) CONSISTING OF TWO OR MORE CONSTITUENTS WHICH HAVE BEEN MIXED TOGETHER FOR THERAPEUTIC OR PROPHYLACTIC USES, NOT PUT UP IN MEASURED DOSES OR IN FORMS OR PACKINGS FOR RETAIL SALE**
3003 90	-	*Other:*
	---	*Ayurvedic, Unani, siddha, Homoeopathic or bio-chemic systems medicaments*
3003 90 90	**---**	**Other**

24.1.3 Customs Tariff Heading 2941 of the Customs Tariff Act, 1975, reads as under:

2941		**ANTIBIOTICS**
294190	-	*Other :*
	---	*Rifampicin & its salts:*
2941 90 90	**---**	**Other**

24.1.4 In the instant case, the Importer has imported Potassium Clavulanate with Microcrystalline Cellulose I.P, EP and Potassium Clavulanate with Silicon Dioxide I.P, EP. As per information available on various websites, Microcrystalline Cellulose (MCC) is a purified, powdered form of cellulose, derived from wood pulp or other plant fibers, used widely in pharmaceuticals as a binder, filler, and disintegrant for tablets (especially via direct compression). It's a safe, inert, fiber-rich material that forms a strong, white powder, valued for its excellent compressibility and binding properties in formulations, providing bulk and improving texture. It is used in Pharmaceutical Industry as primary excipient for tablet manufacturing (direct compression), adding bulk, binding ingredients, and helping tablets disintegrate. Similarly, Silicon Dioxide IP refers to high-purity, amorphous silica used in pharmaceuticals as a crucial excipient, acting as a glidant, anti-caking agent, and viscosity enhancer to improve powder flow and stability in tablets, capsules, and suspensions, meeting strict quality standards for medicinal use. In view of the above, I find that Microcrystalline Cellulose I.P and Silicon Dioxide IP are used in pharmaceuticals as excipient for manufacture of tablets and liquid formulations. Potassium Clavulanate (or clavulanic acid) is a beta-lactamase inhibitor added to antibiotics like amoxicillin to stop bacteria from destroying the antibiotic, making it effective against resistant infections in ears, sinuses, skin, lungs, and urinary tracts, working by blocking bacterial enzymes to let the amoxicillin kill the bugs.

24.1.5 The Importer has classified the imported goods viz. "POTASSIUM CLAVULANATE WITH MICROCRYSTALLINE CELLULOSE/SILICON DIOXIDE (1:1) - I.P, E.P" under Customs Tariff Heading 3003 and under Customs Tariff Item 30039090 –"Other". I find that Customs Tariff Heading 3003 covers "Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale". It is an admitted fact that the Importer has used the impugned imported goods for manufacture of Amoxylline and Clavulanate Potassium Tablets USP, a medicament. The dictionary meaning of "medicament" is "a substance used for medical treatment" and I find that the imported goods cannot be used directly for medical treatment. Therefore, I find that the imported goods viz. "POTASSIUM CLAVULANATE WITH MICROCRYSTALLINE CELLULOSE/SILICON DIOXIDE (1:1) - I.P, E.P" are not medicaments as claimed by the Importer, but are inputs for manufacture of medicaments viz. Amoxylline and Clavulanate Potassium Tablets USP. Further, in the instant case, the imported goods contain only one constituent i.e. Potassium Clavulanate. Microcrystalline Cellulose IP and Silicon Dioxide IP contained in the imported goods are excipients used in pharmaceuticals for manufacture of tablets and liquid formulations. Therefore, I am of the opinion that the subject goods falls outside the purview of Customs Tariff Heading 3003 of the Customs Tariff Act, 1975.

24.1.6 I find that the Importer has utilised the imported goods for manufacture of medicaments viz. Amoxylline and Clavulanate Potassium Tablets USP. Therefore, the imported goods viz. "POTASSIUM CLAVULANATE WITH MICROCRYSTALLINE CELLULOSE/SILICON DIOXIDE (1:1) - I.P, E.P" is an input or a chemical/substance other than medicament, which is rightly classifiable under Customs Tariff Heading 2941 and specifically under Customs Tariff Item 29419090 of the Customs Tariff Act, 1975.

24.1.7 Further, I find from the following previous Bills of Entry that the Importer had imported the same goods viz. "POTASSIUM CLAVULANATE WITH MICROCRYSTALLINE CELLULOSE (1:1) - I.P, E.P" from the same supplier, during the period from 15.07.2016 to 01.03.2017, classifying the said goods under Customs Tariff Heading 2941 of the Customs Tariff Act, 1975:

Sl. No.	Bill of Entry No. & Date	Description of goods	CTH	Name of the supplier
1.	9906486 dt. 15.07.2015	Potassium Clavulanate with Microcrystalline Cellulose	2941	CKD Bio Corporation, South Korea
2.	3207756 dt. 09.11.2015	-do-	2941	-do-
3.	4142797 dt. 04.02.2016	-do-	2941	-do-
4.	8733118 dt. 01.03.2017	-do-	2941	-do-

24.1.7.1 It is crystal clear from the above mentioned Bills of Entry that the Importer was well aware of the fact that the impugned goods are rightly classifiable under Customs Tariff Heading 2941 of the Customs Tariff Act, 1975.

24.1.8 I further find from the copy of Certificate of Business Registration No. 134-85-20776 issued in November, 2001 to M/s. CKD Bio Corporation, 292, Sinwon-Ro, Danwon-Gu, Ansan Si, Gyeonggi Do, Republic of South Korea, who has supplied the imported goods viz. "POTASSIUM CLAVULANATE WITH MICROCRYSTALLINE CELLULOSE/SILICON DIOXIDE (1:1) - I.P, E.P", that their business item has been certified as – "manufacture of pharmaceutical goods **other than medicaments** and wholesale of cosmetics and related products." Therefore, it is very much clear that the imported goods viz. "POTASSIUM CLAVULANATE WITH MICROCRYSTALLINE CELLULOSE/SILICON DIOXIDE (1:1) - I.P, E.P" is not a medicament but a chemical/substance "other than medicament".

24.1.9 Further, the Importer has been issued a MSME Registration Certificate No. UDYAM GJ-24-0005108/Medium/manufacturing on 23.09.2020, which has following details under National Industry Classification Code –

> *"21001 – **Manufacture of medical substances used in the manufacture of pharmaceuticals** : antibiotics, endocrine products, basic vitamins; opium derivative; suplpha drugs; serums and plasmas; salicylic acid, its salts and esters; glycosides and vegetable alkaloids; chemically pure suger etc."*

24.1.9.1 It is revealed from the above that the imported goods viz. "POTASSIUM CLAVULANATE WITH MICROCRYSTALLINE CELLULOSE/SILICON DIOXIDE (1:1) - I.P, E.P" is a chemical/substance for manufacturing of pharmaceuticals viz. Amoxylline and Clavulanate Potassium Tablets USP.

24.1.10 In view of my findings in the paras supra, I hold that the imported goods viz. "POTASSIUM CLAVULANATE WITH MICROCRYSTALLINE CELLULOSE/SILICON DIOXIDE (1:1) - I.P, E.P" merits classification under Customs Tariff Item 29419090 of the Customs Tariff Act, 1975 and not under Customs Tariff Item 30039090 of the Customs Tariff Act, 1975, as claimed by the importer.

24.1.11 As regards the admissibility of exemption of Basic Customs Duty (BCD) under Serial No. 254 of Notification No. 152/2009-Customs, dated

31.12.2009, as amended, I would like to make a reference to the said notification. As per Notification No. 152/2009-Customs, dated 31.12.2009, as amended, goods of specified descriptions, when imported into India from Republic of Korea, are exempted from so much of the duty of customs leviable thereon as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the Table, provided that the exemption shall be available only if importer proves to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the goods in respect of which the benefit of this exemption is claimed are of the origin of Republic of Korea, in accordance with the provisions of the Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of the Republic of India and the Republic of Korea) Rules, 2009.

24.1.12 The exemption available under Serial No. 254 of Notification No. 152/2009-Customs, dated 31.12.2009, as amended, is reproduced as under:

Table

S.No.	Chapter or Heading or sub-heading or tariff item	Description	Rate
(1)	(2)	(3)	(4)
254	Chapter 30 (except 300660)	All goods	0

24.1.13 I find that the importer has availed the benefit of exemption of BCD available under Serial No. 254 of Notification No. 152/2009-Customs, dated 31.12.2009, as amended, by mis-classifying the imported goods viz. "POTASSIUM CLAVULANATE WITH MICROCRYSTALLINE CELLULOSE/SILICON DIOXIDE (1:1) - I.P, E.P", under Customs Tariff Item 30039090 of the Customs Tariff Act, 1975. I have already held that the said imported goods is classifiable under Customs Tariff Item 29419090 of the Customs Tariff Act, 1975 and not under Customs Tariff Item 30039090 of the Customs Tariff Act, 1975, as claimed by the importer. Therefore, the importer is not entitled for the benefit of exemption of BCD available under Serial No. 254 of Notification No. 152/2009-Customs, dated 31.12.2009, as amended, which is only available to the goods falling under Chapter 30 (except 300660). The Importer has contended in their defence reply that the exemption of BCD is also available for the goods falling under Customs Tariff Heading 294190, under Serial No. 252 of Notification No. 152/2009-Customs, dated 31.12.2009, as amended. I have gone through the contents of Serial No. 252 of Notification No. 152/2009-Customs, dated 31.12.2009, as amended and I agree with the above contention of the Importer. However, I find that the Country of Origin Certificates issued by Korea Chamber of Commerce and Industry in respect of the imported goods is for Customs Tariff Heading 3003 and hence the said Country of Origin Certificates cannot be considered as valid for the imported goods which are actually classifiable under Customs Tariff Heading 2941. Therefore, I find that the Importer has not fulfilled the stipulated conditions of the subject notification and hence they are not entitled for the benefit of exemption of BCD available under Serial No. 252 of Notification No. 152/2009-Customs, dated 31.12.2009, as amended, in respect of the imported goods. Accordingly, I reject the benefit of exemption of BCD availed by the importer under Notification No. 152/2009-Customs, dated 31.12.2009, as amended, in respect of the 10 (ten) Bills of Entry, as detailed in TABLE-C of the show cause notice. I hold that the Importer is liable to pay customs duty at the normal rate i.e. BCD @7.5%, SWS @10% of BCD and IGST @18% in respect of the subject ten Bills of Entry.

24.2 The second issue for decision before me is whether non-levied/short-levied Customs duty amounting to Rs. 75,40,712/- (Rupees Seventy Five Lakh, Forty Thousand, Seven Hundred and Twelve Only), in respect of the goods imported vide bills of entry, as detailed in TABLE-C of the show cause notice, should be demanded and recovered from the Importer, by invoking extended period of five years under the provisions of Section 28 (4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.

24.2.1 As discussed at paras supra, the imported goods "POTASSIUM CLAVULANATE WITH MICROCRYSTALLINE CELLULOSE/SILICON DIOXIDE (1:1) - I.P, E.P" is found as wrongly classified under Customs Tariff Item 30039090 of the Customs Tariff Act, 1975 in order to pay IGST at lower rate. As per Serial No. 62 of Schedule II to the Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017, Customs Tariff Item 30039090 attracts IGST @ 12%. Correct classification of the product in question is determined under Customs Tariff Item 29419090 of the Customs Tariff Act, 1975, which attracts IGST @18%, as per Serial No. 40 of Schedule III to the Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017. Further, the Importer has availed the benefit of exemption under Notification No. 152/2009-Customs, dated 31.12.2009, as amended, without having valid Country of Origin Certificate, therefore, benefit of exemption under the said notification would not be available to the goods imported under the Bills of Entry, as detailed in TABLE-C of the show cause notice. The above acts on the part of the Importer has resulted in evasion of Customs duty amounting to Rs. 75,40,712/- (Rupees Seventy Five Lakh, Forty Thousand, Seven Hundred and Twelve Only), in respect of ten Bills of Entry, as detailed in TABLE-C of the show cause notice, by the said Importer. I find that in order to sensitize the Trade about its benefit and consequences of mis-use, Government of India has issued 'Customs Manual on Self-Assessment 2011'. The publication of the 'Customs Manual on Self Assessment 2011 ' was required as prior to enactment of the provision of 'Self-Assessment', mis-classification or wrong availment of duty exemption etc., in normal course of import, was not considered as mis-declaration or mis-statement. Under para 1.3 of Chapter-I of the above manual, Importers/Exporters, who are unable to do the Self-Assessment because of any complexity, lack of clarity, lack of information etc. may exercise the following options:

(a) Seek assistance from Help Desk located in each Custom Houses, or
(b) Refer to information on CBIC/ICEGATE web portal www.cbic. gov.in, or
(c) Apply in writing to the Deputy/Assistant Commissioner in charge of Appraising Group to allow provisional assessment, or
(d) An Importer may seek Advance Ruling from the Authority on Advance Ruling, New Delhi if qualifying conditions are satisfied.

Para 3(a) of Chapter 1 of the above Manual further stipulates that the Importer/Exporter is responsible for Self-Assessment of duty on imported/exported goods and for filing all declarations and related documents and confirming these are true, correct and complete. Under para 2.1 of Chapter-1 of the above manual, Self-Assessment can result in assured facilitation for compliant Importers. However, delinquent and habitually noncompliant Importers/Exporters could face penal action on account of wrong Self-Assessment made with intent to evade Duty or avoid compliance of conditions of Notifications, Foreign Trade Policy or any other provision under the Customs Act, 1962 or the Allied Acts.

24.2.2 After introduction of self-assessment through amendment in Section 17 of the Customs Act, 1962 vide Finance Act, 2017, it is the responsibility of the Importer to correctly declare the description, classification,

applicable exemption Notification, applicable Duties, rate of Duties and its relevant Notifications etc. in respect of said imported goods and pay the appropriate duty accordingly. In the instant case, it is apparent that the Importer despite being in knowledge of the fact that the imported goods are to be used in the manufacture of pharmaceutical products viz. Amoxylline and Clavulanate Potassium Tablets USP, which is rightly classifiable under Customs Tariff Item 29419090 of the Customs Tariff Act, 1975, they intentionally and knowingly mis-classified the said goods under Customs Tariff Item 30039090 of the Customs Tariff Act, 1975 in the subject ten Bills of Entry and paid IGST @12% instead of 18%, if the imported goods had been classified under Customs Tariff Item 29419090 of the Customs Tariff Act, 1975. The Importer has also wilfully claimed the undue benefit of exemption of BCD under Serial No. 254 of Notification No. 152/2009-Customs, dated 31.12.2009, as amended, without having valid Country of Origin certificate, with malafide intention to evade payment of Customs duty at appropriate rate. It is therefore very much apparent that Importer has wilfully violated the provisions of Section 17(1) of the Customs Act, 1962 in as much as they have failed to correctly self-assess the impugned goods and have also wilfully violated the provisions of Sub-section (4) and (4A) of Section 46 of the Customs Act, 1962. Thus, Importer has indulged in mis-classification and wrong availment of exemption of BCD under Serial No. 254 of Notification No. 152/2009-Customs, dated 31.12.2009, as amended, with clear intent to evade payment of Customs Duty. By adopting this modus in respect of the impugned goods viz. "POTASSIUM CLAVULANATE WITH MICROCRYSTALLINE CELLULOSE/SILICON DIOXIDE (1:1) - I.P, E.P", the Importer has short paid Customs duty amounting to Rs. 75,40,712/- (Rupees Seventy Five Lakh, Forty Thousand, Seven Hundred and Twelve Only), which merits invocation of extended period for demand of the said Customs Duty under the provisions of Section 28(4) of the Customs Act, 1962.

24.2.3 Further, I find that Importer had imported the impugned goods classifying the same under Customs Tariff Item 29419090 of the Customs Tariff Act, 1975, during the period from 15.07.2016 to 01.03.2017, therefore, the Importer was well aware of the fact that the imported goods are rightly classifiable under Customs Tariff Item 29419090 of the Customs Tariff Act, 1975. In spite of the same, the Importer deliberately and willingly mis-classified the imported goods under Customs Tariff Item 30039090 of the Customs Tariff Act, 1975, in the subject ten Bills of Entry, with sole intent to pay IGST at lower rate i.e. @12% instead of 18%. Therefore, I find that there is an element of *'mens rea'* involved in the instant case. The instant case is not a simple case of bona fide wrong classification. Instead, the Importer has deliberately selected incorrect Customs Tariff Item 30039090 to claim lower rate of IGST, being fully aware of the correct Customs Tariff Item 29419090 for the imported goods which were imported by them earlier by classifying the same under Customs Tariff Item 29419090. Once *'mens rea'* is established on the part of the Importer, the extended period automatically get attracted. I, therefore, find and hold that the differential Customs Duty amounting to Rs. 75,40,712/- in respect of the imported goods "POTASSIUM CLAVULANATE WITH MICROCRYSTALLINE CELLULOSE/SILICON DIOXIDE (1:1) - I.P, E.P" under Bills of Entry, as detailed in TABLE-C of the Show Cause Notice, is recoverable from the Importer invoking the provision of extended period under Section 28(4) of the Customs Act, 1962.

24.2.4 It has also been proposed in the Show Cause Notice to demand and recover interest on the aforesaid Customs Duty under Section 28AA of the Customs Act, 1962. Section 28AA ibid provides that when a person is liable to pay duty in accordance with the provisions of Section 28 ibid, in addition to such duty, such person is also liable to pay interest at applicable rate as well. Thus, the said Section provides for payment of interest automatically along with the duty confirmed/determined under Section 28 ibid. I have already held

that Customs Duty amounting to Rs. 75,40,712/- is liable to be recovered under Section 28(4) of the Customs Act, 1962. Therefore, I hold that interest on the said Customs Duty determined/confirmed under Section 28(4) ibid is required to be recovered under Section 28AA of the Customs Act, 1962.

24.3 The third issue for decision before me is whether the imported goods viz. "POTASSIUM CLAVULANATE WITH MICROCRYSTALLINE CELLULOSE/SILICON DIOXIDE (1:1) - I.P, E.P" valued at Rs. 4,79,23,194/- (Rupees Four Crore, Seventy Nine lakh, Twenty Three Thousand, One Hundred and Ninety Four only), imported under ten Bills of Entry as detailed in TABLE-C of the show cause notice, should be held liable to confiscation under Section 111 (m) and Section 111(o) of the Customs Act, 1962 for the act of wilful mis-statement and intentional suppression of facts with regard to classification of the said goods by way of submitting false declaration leading to unlawful, illegal and wrong availment of exemption by mis-classifying under Customs Tariff Item 30039090 in place of Customs Tariff Item 29419090 and since the goods are not available for confiscation, fine as contemplated under Section 125 of the Customs Act, 1962, should be imposed on the Importer in lieu of confiscation.

24.3.1 I find that the Show Cause Notice proposes confiscation of the impugned imported goods under Section 111(m) and Section 111(o) of the Customs Act, 1962. I find that if the goods have been described wrongly or the value of the goods has been incorrectly declared, such goods would come under the purview of Section 111(m) of Customs Act, 1962. I also find that Section 111(o) of the Customs Act, 1962, speaks about confiscation of any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof, in respect of which the condition is not observed. Since, the issue involved in the present case is mis-classification of imported goods and wrong availment of exemption notification without fulfilling the stipulated conditions of the notification, the provisions of both Section 111(m) and Section 111(o) of the Customs Act, 1962 will be applicable to the present case.

24.3.2 In the instant case, the Importer has mis-classified the imported goods viz. "POTASSIUM CLAVULANATE WITH MICROCRYSTALLINE CELLULOSE/SILICON DIOXIDE (1:1) - I.P, E.P" under Customs Tariff Item 30039090 instead of Customs Tariff Item 29419090 of the Customs Tariff Act, 1975, deliberately with an intent to evade payment of IGST at higher rate, even though they were importing the impugned goods classifying the same under Customs Tariff Item 29419090 during the period from 15.07.2016 to 01.03.2017. The importer has also availed undue benefit of exemption of BCD under Serial No. 254 of Notification No. 152/2009-Customs, dated 31.12.2009, as amended, without having valid Country of Origin certificates, thereby they have failed to fulfil the conditions of the Notification, with an intent to evade payment of Basic Customs Duty. Therefore, the said imported goods totally valued at Rs. 4,79,23,194/- imported vide Bills of Entry, as mentioned in TABLE-C of the show cause notice, by mis-classifying under Customs Tariff Item 30039090 of the Customs Tariff Act, 1975 instead of Customs Tariff Item 29419090 of the Customs Tariff Act, 1975, are liable for confiscation under the provisions of Section 111(m) and Section 111(o) of the Customs Act, 1962.

24.3.3 I find that in terms of Section 46 (4) of the Customs Act, 1962, the Importer was required to make declaration as regards the truth of contents of the Bill of Entry submitted for assessment of Customs Duty. However, the Importer has contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they have mis-classified the imported goods viz. "POTASSIUM CLAVULANATE WITH MICROCRYSTALLINE CELLULOSE/SILICON DIOXIDE (1:1) - I.P, E.P" under Customs Tariff Item 30039090 of the Customs Tariff Act, 1975, with an intent to pay IGST at lower

rate i.e. @12% instead of @18%, if they had classified the imported goods under the correct Customs Tariff Item 29419090 of the Customs Tariff Act, 1975, and they have availed undue benefit of exemption of BCD under Serial No. 254 of Notification No. 152/2009-Customs, dated 31.12.2009, as amended, without fulfilling the stipulated conditions of the notification, thereby they have short paid the duty with clear intent to evade payment of Customs Duty. Thus, I find that they have violated the provisions of Section 46(4) of the Customs Act, 1962. All these acts on the part of Importer have rendered the imported goods liable for confiscation under Section 111 (m) and Section 111(o) of the Customs Act, 1962.

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

> ***"SECTION 125. Option to pay fine in lieu of confiscation.*** *— (1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit"*

24.3.5 In the instant case, the Importer has mis-classified the imported goods viz. "POTASSIUM CLAVULANATE WITH MICROCRYSTALLINE CELLULOSE/SILICON DIOXIDE (1:1) - I.P, E.P" under Customs Tariff Item 30039090 of the Customs Tariff Act, 1975 with an intent to pay IGST at lower rate i.e. @12% instead of @18% and they have availed undue benefit of exemption of BCD under Serial No. 254 of Notification No. 152/2009-Customs, dated 31.12.2009, as amended, without fulfilling the stipulated conditions of the notification, in respect of the said imported goods. I find that in the case where goods are not physically available for confiscation, redemption fine is imposable in light of the judgment in the case of M/s. Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad) wherein the Hon'ble High Court of Madras has observed as under:

> "23. *The penalty directed against the Importer under Section 112 and the fine payable under Section 125 operates in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act ....",brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fines in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not*

have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).

....
....
...."

24.3.6 The Hon'ble High Court of Gujarat by relying on aforesaid judgment, in the case of Synergy Fertichem Ltd. Vs. Union of India, reported in 2020 (33) G.S.T.L. 513 (Guj.), has held interalia as under: -

"174. ..... *In the aforesaid context, we may refer to and rely upon a decision of the Madras High Court in the case of M/s. Visteon Automotive Systems v. The Customs, Excise & Service Tax Appellate Tribunal, C.M.A. No. 2857 of 2011, decided on 11th August, 2017 [2018 (9) G.S.T.L. 142 (Mad.)], wherein the following has been observed in Para-23;*

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

175. We would like to follow the dictum as laid down by the Madras High Court in Para-23, referred to above."

24.3.7 I find ratio of decision of jurisdictional Hon'ble Tribunal, Ahmedabad rendered in the case of M/s. Van Oord India Pvt. Ltd Vs. Commissioner of Customs, Ahmedabad vide Final Order No. 11039-11040/2025 dated 13.11.2025 is squarely applicable to the present case as the Hon'ble Tribunal after having considered the aforesaid decisions of Hon'ble Madras High Court in case of M/s. Visteon Automotive Systems India Ltd. reported at 2018 (009) GSTL 0142 (Mad) and Hon'ble Gujarat High Court rendered in case of Synergy Fertichem Ltd. Vs. Union of India, reported in 2020 (33) G.S.T.L. 513 (Guj.), have upheld the confiscation and redemption fine even in absence of physical availability of the goods. Relevant Para of the said Final Order No. 11039-11040/2025 dated 13.11.2025 is re-produced as under:

"5.7 Relying on the decision in the case of Shiv Kripa Ispat Pvt. Ltd. and Chinku Exports, the appellant have challenged confiscation of the imported tugs on the ground that these are not physically available as the

same were re-exported. We find that this has elaborately been discussed by the Adjudicating Authority in para 20.1 and 20.2 of the impugned order. We find that Hon'ble Madras High Court in the case of Visteon Automotive Systems India Limited reported at 2018 (009) GSTL 0142 (Madras) and Hon'ble Gujarat High Court in the case of Synergy Fertichem Pvt. Ltd. reported at 2020 (33) G.S.T.L. 513 (Guj.), have held that availability of the goods is not necessary for confiscation of the seized goods. The opening words of Section 125 mention that, "Whenever confiscation of any goods is authorized by this Act....." brings out the point clearly. Qua power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. Once power of authorization of confiscation of goods gets traced to that Section, physical availability of the goods is not so much relevant. The redemption is in fact, to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves goods from getting confiscated. Therefore, physical availability of goods does not have any significance for imposition of redemption fine under Section 125 of the Act. We therefore, agree with the learned Adjudicating Authority that non availability of goods physically does not impact their confiscation and imposition of redemption fine. We however find that the learned Adjudicating Authority has imposed very heavy redemption fine equal to 10% of the value of the tugs. What has been saved by the appellant in this case is an amount equal to 5% of the duty because if the appellant had paid full duty, they would have been entitled to 95% of the duty amount as draw back. Therefore, quantum of redemption fine to be imposed in lieu of confiscation in this case should be governed by the amount of benefit that would have been accrued to the appellant."

24.3.8 In view of the above, I hold that redemption fine under Section 125 (1) is liable to be imposed in lieu of confiscation of the imported goods viz. "POTASSIUM CLAVULANATE WITH MICROCRYSTALLINE CELLULOSE/SILICON DIOXIDE (1:1) - I.P, E.P", totally valued at Rs. 4,79,23,194/- imported vide ten Bills of Entry, as mentioned in TABLE-C of the show cause notice, though the said goods are not available for confiscation.

24.4 Now, I proceed to decide the fourth issue i.e. the proposal for imposition of penalty under Section 114A, Section 112(a) and Section 114AA of the Customs Act, 1962 against the Importer. In the present case, the show cause notice has been issued under Section 28 (4) of the Customs Act, 1962.

24.4.1 I find that the Show Cause Notice has proposed penalty under the provisions of Section 114A of the Customs Act, 1962 on the Importer. The penalty under Section 114A can be imposed only if the duty demanded under Section 28 ibid by alleging wilful mis-statement or suppression of facts etc. is confirmed/determined under Section 28(4) of the Customs Act, 1962. As discussed in the foregoing paras, the Importer has deliberately and knowingly indulged in suppression of facts in respect of their imported goods. Though they were importing the impugned goods classifying the same under Customs Tariff Item 29419090, during the period from 15.07.2016 to 01.03.2017, they wilfully mis-declared the imported goods under Customs Tariff Item 30039090 of the Customs Tariff Act, 1975, with an intent to pay IGST at low rate i.e. @12% instead of @18%. The Importer has also wilfully and wrongly availed the benefit of exemption of BCD under Serial No. 254 of Notification No. 152/2009-Customs, dated 31.12.2009, as amended, without fulfilling the conditions of the Notification, with an intent to avoid the payment of Customs Duty.

24.4.2 Further, I find that demand of Customs Duty amounting to Rs.75,40,712/- has been made under Section 28(4) of the Customs Act, 1962, which provides for demand of duty not levied or short levied by reason of collusion or wilful mis-statement or suppression of facts. Hence as a naturally

corollary, penalty is imposable on the Importer 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. In the instant case, the ingredient of suppression of facts and wilful mis-statement by the Importer has been clearly established as discussed in foregoing paras and hence, I find that this is a fit case for imposition of quantum of penalty equal to the amount of duty plus interest in terms of Section 114A ibid.

24.4.3 The fifth proviso to Section 114A of the Customs Act, 1962 provides that penalty under Section 112 shall not be levied if penalty under Section 114A of the Customs Act, 1962 has been imposed and the same reads as under:

> *"Provided also that where any penalty has been levied under this Section, no penalty shall be levied under Section 112 or Section 114."*

24.4.3.1 In the instant case, I have already found that the Importer is liable to penalty under Section 114A of the Customs Act, 1962 and therefore, I hold that penalty under Section 112 is not imposable in terms of the 5th proviso to Section 114A of the Customs Act, 1962.

24.4.4 I find that the show cause notice has also proposed imposition of penalty under Section 114AA of the Customs Act, 1962 on the Importer. The text of the said statute is reproduced hereunder for ease of reference:

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

24.4.5 I find that importer was well aware that the imported goods which have been ordered for confiscation, were to be used in the manufacture of pharmaceutical products and rightly classifiable under Customs Tariff Item 29419090 of the Customs Tariff Act, 1975, which attracts IGST @18%, as per Serial No. 40 of Schedule III to the Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017. Further, the Importer was importing the subject goods classifying the same under Customs Tariff Item 29419090, during the period from 15.07.2016 to 01.03.2017. However, they intentionally and knowingly mis-classified the imported goods under Customs Tariff Item 30039090 of the Customs Tariff Act, 1975 in the Bills of Entry, which attracts IGST @ 12%, as per Serial No. 62 of Schedule II to the Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017, with an intent to pay lesser amount of IGST. The Importer also wrongly and wilfully availed the benefit of exemption under Notification No. 152/2009-Customs, dated 31.12.2009, as amended, without having valid Country of Origin Certificates, with clear intent to evade payment of BCD and contravened the provision of Section 46 (4) of the Customs Act, 1962 by making false declarations in the Bill of Entry. Hence, I find that the importer has knowingly and intentionally mis-classified the imported goods in the Bills of Entry with an intent to avail (i) undue benefit of paying IGST at lower rate i.e. @12% instead of @18% and (ii) undue benefit of the exemption of BCD under Serial No. 254 of Notification No. 152/2009-Customs, dated 31.12.2009, as amended. Hence, for the said act of contravention on their part, the Importer is liable for penalty under Section 114AA of the Customs Act, 1962.

24.4.6 Further, to fortify my stand on applicability of Penalty under Section 114AA of the Customs Act, 1962, I rely on the decision of Principal Bench, New Delhi in case of Principal Commissioner of Customs, New Delhi (import) Vs. Global Technologies & Research (2023)4 Centax 123 (Tri. Delhi) wherein it has been held that "Since the importer had made false declarations in the Bill of Entry, penalty was also correctly imposed under Section 114AA by the original authority".

25. The importer has contented in their defence reply that in the event they are held liable to pay IGST, they would be entitled to claim ITC of the same, therefore, the demand of IGST is revenue neutral. I do not agree with the above contention of the importer, as revenue neutrality is not an excuse for non-payment of applicable duty. I find that the Hon'ble Delhi Tribunal in the case of ACL Mobile Ltd. v. Commissioner reported in 2019 (20) G.S.T.L. 362 (Tribunal Del) has held that revenue neutrality cannot be extended to a level that there is no need to pay tax on the taxable service. The relevant para is reproduced hereunder:

> ***"13.*** *Regarding the last issue with reference to tax liability of the appellant on the facility of availing server/web hosting provided by the Foreign Service provider, we note that providing space in the server is essential and important infrastructure requirement for the appellant. Though, the explanation to BSS gives only inclusive definition of infrastructure support, examining the present context of the support received by the appellant by way of server hosting, we are of the considered view that the same will fall under the overall category of infrastructural support service, which is part of the BSS. Regarding the contention of the appellant, that they need not pay service tax as the situation is revenue neutral, we note that the question of revenue neutrality as a legal principle to hold against a tax liability is not tenable. In other words, no assessee can take a plea that no tax need have been paid as the same is available to them as a credit. This will be against the very basic canon of value added taxation. The revenue neutrality can at best be pleaded as principle for invoking bona fideness of the appellant against the demand for extended period as well as for penalty which require ingredients of mala fide. Reliance was placed by the Ld. Consultant regarding the submission on revenue neutrality, on the decision of the Tribunal in Jet Airways (supra). We have noted that in the said decision the Tribunal recorded as admitted facts that the appellant are using the said facility for the taxable output services. We note that no such categorical assertion can be recorded in the present case. Even otherwise we note that the availability or otherwise of credit on input service by itself does not decide the tax liability of output service or on reverse charge. The tax liability is governed by the legal provisions applicable during the relevant time in terms of Finance Act, 1994. The availability or otherwise of credit on the amount to be discharged as such tax liability cannot take away the tax liability itself. Further, the revenue neutrality cannot be extended to a level that there is no need to pay tax on the taxable service. This will expand the scope of present dispute itself to decide on the manner of discharging such tax liability. We are not in agreement with such proposition."*

25.1 Further, I find that the Hon'ble Supreme Court in the case of Star Industries Vs. Commissioner reported in 2015 (324) E.L.T. 656 (S.C.) has held as under:

> ***"35.*** *It was submitted by the learned counsel for the assessee that the entire exercise is Revenue neutral because of the reason that the assessee would, in any case, get Cenvat credit of the duty paid. If that is so, this argument in the instant case rather goes against the assessee.*

*Since the assessee is in appeal and if the exercise is Revenue neutral, then*there was no need even to file the appeal. Be that as it may, if that is so, it is always open to the assessee to claim such a credit."

25.2 In the present case, the importer has mis-classified the imported goods with an intent to pay IGST at a low rate i.e. @12% instead of @18%. The Importer has also wrongly availed the benefit of exemption Notification No. 152/2009-Customs, dated 31.12.2009, as amended, without fulfilling the stipulated conditions of the Notification. I, therefore, hold that in absence of payment of applicable customs duty by the importer, their plea of revenue neutrality is not tenable. The ratio of the judgements related to revenue neutrality relied upon by the importer is not applicable to the present case, as the fact and circumstance of the said cases are different from the present case.

26. The importer in their defence reply has pleaded that no appeals were filed by the Department against the assessment orders i.e., assessed bills of entry, passed by the proper officer and any issues arising out of finalisation of such Bills of Entry cannot be questioned or agitated by the Department subsequently by initiating show cause proceedings against the importer. The said plea of the importer is not tenable.

26.1 It can be seen that Section 28 of the Customs Act, 1962 has an exclusive provisions covering the aspect pertaining to non-levy, short levy and erroneous refund. There is no provision or requirement under the Customs Act, 1962 of review of an assessment order before raising demand under Section 28 of the Customs Act, 1962. For raising demand under Section 28 on grounds of short payment/short levy in final assessment etc., no review /appeal against final assessment is required. The demand of non-levy, short-levy and of recovery of erroneous refund under Section 28 of the Act is an independent provision. Provisions of Section 28 satisfy the principles of natural justice by making it mandatory for issuance of show cause notice and to allow the party to have a full hearing on the charges that would be made against them. The proceeding under Section 28 are of exclusive nature, inasmuch as, independent proceedings are held by issue of show cause notice by the Department by which it sets out the reason for claiming non-levy, short-levy relying on evidence. The importer gets full opportunity to know the charges levelled against them as well as the evidence on which the charges are levelled and in turn place their case with supporting evidence in defence.

26.2 The aforesaid issue is settled by the higher judicial fora wherein it is held that Section 28 of the Customs Act, 1962 can be invoked for short levy or non levy of customs duty even if assessment order is not appealed under Section 129 of the Customs Act, 1962. The Hon'ble High Court of Madras in the case of M/s. Venus Enterprise Vs CC, Chennai, reported in 2006 (199) ELT 405 (Mad.) and affirmed by the Hon'ble Supreme Court [2007 (209) ELT A61 (S.C.)], after considering the Apex Court's earlier judgment in the case of M/s. Priya Blue Ind [2004 (172) E.L.T. 145 (S.C.)] has held that in case of short levy, there is no lack of jurisdiction on the part of the adjudicating authority to issue show cause notice under Section 28 of the Act after clearance of the goods. Relevant Para 6 of the judgment is reproduced hereunder:

"6. With regard to question No. l, the law is well settled that a show cause notice under the provisions of Section 28 of the Act for payment of customs duties not levied or short-levied or erroneously refunded can be issued only subsequent to the clearance of the goods under Section 47 of the Act vide Union of India v. Jain Shudh Vanaspati Ltd. [1996 (86) E.L.T. 460 (S.C.)].Therefore, as rightly held by the Tribunal, if the contention of the appellant's counsel that when the goods were already cleared, no demand notice can be issued under Section 28 of the Act is accepted, we will be rendering the words "where any duty has been short-levied" as found in

Section 28(1) of the Act as unworkable and redundant, inasmuch as the jurisdiction of the authorities to issue notice under Section 28 of the Act with respect to the duty, which has been short levied, would arise only in the case where the goods were already cleared. In view of the clear finding with regard to the mis-declaration and suppression of value, which led to the under-valuation and proposed short levy of duty, we do not see any lack of jurisdiction on the part of the adjudicating authority to issue notice under Section 28(1) of the Act."

26.3 The Hon'ble CESTAT in the case of Rajesh Gandhi Vs CC(Import), Mumbai reported in 2019 (366) ELT 529 (Tri-Mumbai), has held that demand can be raised without challenging the assessment under Section 17 of the Customs Act,1962. The relevant Part of the order is reproduced below: -

"6. *Before we proceed to adjudge the legality and propriety of the confirmation of differential duty, the confiscation and the imposition of penalties, the preliminaries must be dealt with. These pertain to the permissibility for invoking proviso to Section 28 of Customs Act, 1962 without challenge to the assessment effected under Section 17 of Customs Act, 1962 before the goods were cleared from control of Customs Authorities and the extent of applicability of judicial precedent from the decisions cited by Learned Authorised Representative.*

7. *The Tribunal, in re Rahul Ramanbhai Patel, as pointed out by Learned Authorised Representative, besides examining the relevancy of statements to fasten the consequences of undervaluation, did also consider the first supra and followed earlier decisions to render the finding that -*

'6..... One of the questions of law framed by the Hon'ble High Court reads thus :-
'Whether the Tribunal was right in holding that the order of assessment on which no appeal was preferred, can be reopened by issue of fresh show cause notice under Section 28A of Customs Act, in the light of the apex court's decision reported in 2004 (172) E.L.T. 145 (S.C.) in the case of Priya Blue Industries Ltd. v. Commissioner of Customs?'

The Hon'ble High Court answered the above question in favour of the Revenue in paragraph 6 of its judgment, which is reproduced below :-

'6. With regard to question No. 1, the law is well-settled that show cause notice under the provisions of Section 28 of the Act for payment of customs duties not levied or short-levied or erroneously refunded can be issued only subsequent to the clearance of goods under Section 47 of the Act vide Union of India v. Jain Shudh Vanaspati Ltd. [1996 (86) E.L.T. 460 (S.C.)]. Therefore, as rightly held by the Tribunal, if the contention of the appellant's counsel that when the goods were already cleared, no demand notice can be issued under Section 28(1) of the Act is accepted, we will be rendering the words "whether any duty has been short-levied" as found in Section 28(1) of the Act as unworkable and redundant, inasmuch as the jurisdiction of the authorities to issue notice under Section 28 of the Act with respect to the duty, which has been short-levied, would arise only in the case where the goods were already cleared. In view of the clear finding with regard to the misdeclaration and suppression of value, which led to the evaluation and proposed short-levy of duty, we do not see any lack of jurisdiction on the part of the adjudicating authority to issue notice under Section 28(1) of the Act.'

7. We are told that the SLP filed against the above decision of the High Court was dismissed by the Apex Court [Venus Enterprises v. Commissioner - 2007 (209) E.L.T. A61 (S.C.)].

8. We also note that this Tribunal followed Jain Shudh Vanaspati Ltd. (supra) and Venus Enterprises (supra) in Ford India Private Limited v. Commr. of Customs, Chennai [2008 (228) E.L.T. 71 (Tri.-Chennai)]. On the other hand, in the cases of Hitaishi Fine Kraft Indus Pvt. Ltd. (supra) and Shimnit Machine Tools & Equipment Ltd. (supra), the decision of the Supreme Court in Jain Shudh Vanaspati (supra) was not considered.

9. In the result, we reject the plea made by the Ld. Counsel that it was not open to the Department to reopen the assessment under Sec. 28 of the Customs Act.'

8. *Though in a different context, the ratio of the decision of the Tribunal in disposing of the appeal of Knowledge Infrastructure Systems Private Ltd. &Others v. Additional Director General, Directorate of Revenue Intelligence, Mumbai [Final Order Nos. A/86617-86619/2018, dated 31st May, 2018] is that after the clearances of imported goods effected under Section 47 of Customs Act, 1962, subject as it is to satisfaction of the proper officer that the goods had discharged the appropriate duty liability and were not prohibited for import, subsequent discovery of non-eligibility for such clearance, on either of these two counts, deems such clearances to have been tentative, and rectifiable, under proceedings that invoke Section 28 and/or specific provisions of Section 111 of Customs Act, 1962, is unequivocally applicable here.*

9. *In the light of this consistent stand, demonstrated in judicial precedent reiterated across time and space, the claim of the appellant that the assessment of the impugned goods at the time of clearance precludes any remedy other than appeal is not acceptable.*

26.4 In light of the above well settled principle of law, contention raised by the importer that Show Cause Notice is invalid in the absence of valid appeal against the assessment orders in respect of the Bills of Entry is not tenable. Accordingly, I hold that the Show Cause Notice issued under Section 28 (4) of the Customs Act is proper, correct and legal.

27. I find that the importer in their written submission has placed reliance on various case laws/judgments in support of their contention on issues raised in the Show Cause Notice. In this regard, I am of the view that the conclusions arrived may be true in those cases, but the same cannot be extended to other case(s) without looking to the hard realities and specific facts of each case. Thus decisions/judgements were delivered in different context and under different facts and circumstances, which cannot be made applicable in the facts and circumstances of this case. Therefore, I find that while applying the ratio of one case to that of the other, the decisions of the Hon'ble Supreme Court are always required to be borne in mind. The Hon'ble Supreme Court in the case of CCE, Calcutta Vs. Alnoori Tobacco Produced reported in 2004 (170) ELT 135 (SC) has stressed the need to discuss, how the facts of decision relied upon fit factual situation of a given case and to exercise caution while applying the ratio of one case to another. This has been reiterated by the Hon'ble Supreme Court in its judgement in the case of Escorts Ltd. Vs. CCE, Delhi reported in 2004 (173) ELT 113(SC) wherein it has been observed that one additional or different fact may make difference between conclusion in two cases, and so, disposal of cases by blindly placing reliance on a decision is not proper. Again, in the case of Commissioner of Customs(Port), Chennai Vs. Toyato Kirloskar Motor P. Ltd. reported in 2007 (213) ELT 4 (SC), it has been observed by the Hon'ble Supreme Court that, the ratio of a decision has to be understood in factual matrix involved therein and that the ratio of a decision has to be culled from facts of given case, further, the decision is an authority for what it decides and not what can be logically deduced there from.

28. In view of my findings in the paras supra, I pass the following order:

ORDER

28.1 I reject the declared classification of the subject goods viz. "POTASSIUM CLAVULANATE WITH MICROCRYSTALLINE CELLULOSE/SILICON DIOXIDE (1:1) - I.P, E.P" under Customs Tariff Item 30039090, imported vide the Bills of Entry mentioned in TABLE-C of the show cause notice, and order to re-classify the said goods under Customs Tariff Item 29419090 of the first schedule to the Customs Tariff Act, 1975, with applicable rate of duty i.e. BCD @7.5%, SWS @10% of BCD and IGST @18%.

28.2 I deny the exemption benefit of Basic Customs Duty (BCD) under Serial No. 254 of Notification No. 152/2009-Customs, dated 31.12.2009, as amended, availed by the Importer on the impugned goods, as detailed in TABLE-C of the show cause notice.

28.3 I confirm the demand of Customs duty amounting to Rs. 75,40,712/- (Rupees Seventy Five Lakh, Forty Thousand, Seven Hundred and Twelve Only) in respect of the goods imported vide bills of entry as detailed in TABLE-C of the show cause notice issued under Section 28(4) of the Customs Act, 1962, under the provisions of Section 28(8) of the Customs Act, 1962 and order to recover the same from M/s. Bharat Parenterals Ltd. (IEC No. 3400000744), Survey No. 144 & 146, Village-Haripura, Tal-Savli, Dist-Vadodara, Gujarat-391 520.

28.4 Interest at the appropriate rate shall be charged and recovered from M/s. Bharat Parenterals Ltd. (IEC No. 3400000744), Survey No. 144 & 146, Village-Haripura, Tal-Savli, Dist-Vadodara, Gujarat-391 520, under Section 28AA of the Customs Act,1962 on the duty confirmed at Para 28.3 above.

28.5 I hold that the imported goods viz. "POTASSIUM CLAVULANATE WITH MICROCRYSTALLINE CELLULOSE/SILICON DIOXIDE (1:1) - I.P, E.P", totally valued at Rs. 4,79,23,194/- (Rupees Four Crore, Seventy Nine Lakh, Twenty Three Thousand, One Hundred and Ninety Four only) imported vide Bills of Entry, as mentioned in TABLE-C of the show cause notice, are liable for confiscation under Section 111(m) and Section 111(o) of the Customs Act, 1962. However, I give M/s. Bharat Parenterals Ltd. (IEC No. 3400000744), Survey No. 144 & 146, Village-Haripura, Tal-Savli, Dist-Vadodara, Gujarat-391 520, the option to redeem the goods on payment of Fine of Rs.48,00,000/- (Rupees Forty Eight Lakh only) under Section 125 of the Customs Act, 1962 in lieu of confiscation.

28.6 I impose penalty of Rs. 75,40,712/- (Rupees Seventy Five Lakh, Forty Thousand, Seven Hundred and Twelve 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. Bharat Parenterals Ltd. (IEC No. 3400000744), Survey No. 144 & 146, Village-Haripura, Tal-Savli, Dist-Vadodara, Gujarat-391 520, 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 Importer 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.

28.7 I refrain from imposing penalty under Section 112 of the Customs Act,1962, since as per fifth proviso of Section 114A, penalty under Section 112 and 114A are mutually exclusive.

28.8 I impose penalty of Rs.5,00,000/- (Rupees Five Lakh only) on M/s. Bharat Parenterals Ltd. (IEC No. 3400000744), Survey No. 144 & 146, Village-Haripura, Tal-Savli, Dist-Vadodara, Gujarat-391 520, under Section 114AA of the Customs Act, 1962.

29. 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.

30. The Show Cause Notice bearing F. No. VIII/10-31/Pr.Commr./O&A/2024-25 dated 11.06.2025 is disposed off in above terms.

24.12.2025

(Shiv Kumar Sharma)
Principal Commissioner of Customs

F. No. VIII/10-31/Pr.Commr./O&A/2024-25 Date: 24.12.2025

DIN- 20251271MN0000666B8A

By Speed Post/E-Mail/By Hand

To:

M/s. Bharat Parenterals Ltd.,
Survey No. 144 & 146,
Village-Haripura, Tal-Savli,
Dist-Vadodara, Gujarat-391520.

Copy to:

(1) The Chief Commissioner of Customs, Ahmedabad Zone
(2) The Additional Commissioner, Customs, TRC, HQ, Ahmedabad.
(3) The Deputy Commissioner of Customs, Air Cargo Complex, Ahmedabad for information please.
(4) The Superintendent (System), Customs HQ., Ahmedabad for uploading on the Official website of Customs Commissionerate, Ahmedabad.
(5) Guard File.