प्रधान आयुक्त का कार्यालय,सीमा शुल्क सदन, एमपी और एसईजेड,
मुंद्रा, कच्छ-गुजरात - 370421

OFFICE OF THE PRINCIPAL COMMISSIONER OF
CUSTOMS, CUSTOMS HOUSE, MP & SEZ
MUNDRA, KUTCH-GUJARAT - 370421
EMAIL: group5-mundra@gov.in

A	**File No.**	**CUS/APR/MISC/1386/2025-Gr 5-6-O/o Pr Commr-Cus-Mundra**
B	**Order-in-Original No.**	**MCH/ADC/ZDC/09/2026-27**
C	**Passed by**	**Dipak Zala, Additional Commissioner, Custom House, Mundra**
D	**Date of Order**	**09-04-2026**
E	**Date of issue**	**09-04-2026**
F	**SCN No. & Date**	**SCN No. 09/2025-26/ADC/AKM/Gr-V/MCH dated 11/04/2025**
G	**Noticee/Party/ Importer/ Exporter**	**M/s INFRA COOL PRIVATE LIMITED (IEC-AABCI9701N) having address at Flat No. 602, Kasturi CHS Limited, G-1, Plot No. 1, Sec-16, Sanpada, Navi Mumbai-400705**
H	**DIN No.**	20260471MO000000B72F

1. यह अपील आदेश संबंधित को निःशुल्क प्रदान किया जाता है।

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

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128A के अंतर्गत प्रपत्र सीए-1 में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

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

"सीमा शुल्क आयुक्त (अपील),
7 वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड़, अहमदाबाद 380 009"
"THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380 009."

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

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

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

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

i. A copy of the appeal, and

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

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

6. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।
While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।
An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE

M/s INFRA COOL PRIVATE LIMITED (IEC-AABCI9701N) having address at Flat No. 602, Kasturi CHS Limited, G-1, Plot No. 1, Sec-16, Sanpada, Navi Mumbai-400705 (hereinafter also referred to as "the importer" for the sake of brevity") has filed Bill of Entry No. 9995614 dated 05.02.2024 for importation of “APPLES PROCESSING LINE-(FRUIT AND VEGITABLE SORTING/GRADING)” covered under CTH 84336010 by paying the IGST 12% (Schedule-II Sr. No. 197). Details as are as under:

Table-A

BE No	BE Date	CTH	Item No.	Item Desc	Assess Val	Duty @ 21.24% (BCD 7.5% SWS .75% and IGST 12%)
9995614	05-02-2024	84336010	1	APPLES PROCESSING LINE-(FRUIT AND VEGITABLE SORTING/GRADING) (FOR AGRICULTURE PRODUCE) CAPACITY 10 TON/H WITH STA	32922000	6992633

2. During the analysis of the data of import made at Custom House, Mundra for the period Oct 2023 to March 2024, Audit observed that M/s INFRA COOL PRIVATE LIMITED has filed Bill of entry no. 9995614 05.02.2024 of assessable value INR 3.29 crore for import of APPLES PROCESSING LINE-(FRUIT AND VEGITABLE SORTING/GRADING) under CTH 8433 6010. The importer has paid duty at the rate of 21.24% (BCD 7.5% SWS .75% and IGST 12%). The importer paid IGST at the rate of 12% as per sr. no. 197 of schedule II of Notification no. 01/2017-IGST.

3. As per Sl. no. 197 of schedule II of Notification no. 01/2017-IGST, 12% of IGST is applicable on Harvesting or threshing machinery, including straw or fodder balers; grass or hay mowers; parts thereof falling under CTH 8433. Further, as per Sl. No. 328A of schedule III of Notification no. 01/2017-IGST, 18% of IGST is applicable on **machines for cleaning, sorting or grading eggs, fruit or other agricultural produce** other than machinery of heading 8437; parts thereof [8433 90 00] falling **under CTH 8433**.

4. The importer has imported APPLES PROCESSING LINE-(FRUITAND VEGITABLE SORTING/GRADING) and claimed the benefit of IGST under Sl. no. 197 of schedule-II of Notification no. 01/2017-IGST, which is meant for Harvesting or threshing machinery, including straw or fodder balers; grass or hay mowers; parts thereof. Thus, claiming of benefit under Sl. No. 197 ibid was irregular.

5. It is amply clear that sl. no. 328A of schedule III of Notification no.01/2017-IGST is applicable on machines for cleaning, sorting or grading eggs, fruit or other agricultural produce other than machinery of heading 8437; parts thereof [8433 90 00] falling under CTH 8433". The goods "APPLES PROCESSING LINE" - are covered under Schedule-III, Sr.No.328A of Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017. The importer has wrongly claimed a lower IGST rate @ 12% for goods under Sr. No. 197 of Schedule-II, instead of paying correct applicable IGST @ 18% for said goods under Schedule-III, Sr.No.328A of Notification No.01/2017Integrated Tax (Rate) dated 28.06.2017. This has resulted in short payment of duty of Rs. 21,38,284/-. Details are as below:

Table-B

BE No	BE Date	CTH	Item No.	Item Desc	Assess Val	Duty @ 21.24% (BCD 7.5% SWS .75% and IGST 12%)	Duty leviable 27.735% (BCD 7.5% SWS .75% and IGST 18%)	Diff. duty payable
9995614	05-02-2024	84336010	1	APPLES PROCESSING LINE-(FRUIT AND VEGITABLE SORTING/GRADING) (FOR AGRICULTURE PRODUCE) CAPACITY 10 TON/H WITH STA	32922000	6992633	9130917	2138284

6. Relevant Legal provisions, in so far as they relate to the facts of the case:-

Section 17. Assessment of duty.
1. An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods
(4) Where it is found on verification, examination or testing of the goods or otherwise that the self- assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods

Section 28. 1[Recovery of 2[duties not levied or not paid or short levied or short- paid] or erroneously refunded.
(4) Where any duty has not been 10[levied or not paid or has been short levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,
(a) collusion; or
(b) any wilful mis-statement; or
(c) suppression of facts,
by the importer or the exporter or the agent or employee of the importer or exporter,

the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been 11[so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

[Section 28AA. Interest on delayed payment of duty.
(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section
(2), whether such payment is made voluntarily or after determination of the duty under that section. (2) Interest at such rate not below ten per cent. and not
exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

Section 46. Entry of goods on importation.
(4) The importer while presenting a bill of entry shall 12 [* *] make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, 13 [and such other documents relating to the imported goods as may be prescribed].*
14 [(4A) The importer who presents a bill of entry shall ensure the following, namely:
(a) the accuracy and completeness of the information given therein;
(b) the authenticity and validity of any document supporting it; and
(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.]

Section 111. Confiscation of improperly imported goods, etc. (m)
any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 3 [in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub section (1) of section 54;

Section 112. Penalty for improper importation of goods, etc.
(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or
(b)…… shall be liable,
2 [(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher.

[Section 114A. Penalty for short-levy or non-levy of duty in certain cases.-
Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has 2 [****]been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under 3 [sub-section (8) of section 28] shall also be liable to pay a penalty

equal to the duty or interest so determined:

[Section 125: Option to pay fine in lieu of confiscation.]

i. *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:*

7. It appears that the importer has willfully mis-stated the facts & wrongly paid IGST on lower side by categorizing its goods under Serial No. 197 of Schedule-II which prescribes IGST duty @ 12% whereas the goods attract correct IGST @ 18% under Serial No. 328A of Schedule-III of Notification No. 01/2017 – Integrated Tax (Rate).

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

9. As per Sub Section 7 of Section 3 of Customs Tariff Act, 1975 an article which has been imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty percent, as is leviable under Section 5 of the Integrated Goods and Service Tax, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section 8 or sub-section 8A as the case may be.

10. In light of the documentary evidences, as brought out above and the legal provisions, it appears that the importer has wilfully suppressed the facts and deliberately misclassified the imported goods with a malafide intention to evade the duty by wrongly taxing the said goods under Serial No. 197 of Schedule-II of IGST of the goods leading to short payment of customs duty.

11. Whereas, it is apparent that the importer/noticee was in complete knowledge of the correct nature of the goods nevertheless, the importer claimed undue notification benefit for the said goods in order to clear the goods by wrongly availed Customs duty on a lower side under Serial No. 197 of Schedule-II of IGST which prescribes IGST @ 12%. With the introduction of self-assessment under Section 17, more faith is bestowed on the importer, as the practices of routine assessment, concurrent audit etc. have been dispensed with. As a part of self-assessment, the importer has been entrusted with the responsibility to correctly self-assess the duty. Therefore, it appears that the importer has wilfully violated the provisions of Section 17(1) of the

Act in as much as importer has failed to correctly self-assess the impugned goods and has also willfully violated the provisions of Sub-section (4) and (4A) of Section 46 of the Act. Therefore, the goods having assessable value of Rs. 3,29,22,000/- as detailed above in Table-B, appears to be liable for confiscation under Section 111(m) of the Customs Act, 1962.

12. It appears that the importer willfully claimed undue notification benefit for the impugned goods resulting into short levy of duty. Further, it appears that in respect of the Bill of Entry as detailed in Table-B, such wrong claim of notifications benefit on the part of the importer has resulted into short levy of duty of **Rs. 21,38,284/- (Rupees Twenty One Lakh Thirty Eight Thousand Two Hundred Eighty Four only)** which is recoverable from the importer under the provisions of Section 28(4) of the Customs Act, 1962 read with Section 5 of the Integrated Goods and Service Tax Act, 2017 along with interest as applicable under Section 28AA of the Act read with Section 50 of the Central Goods and Service Tax Act, 2017. For such act of omission and commission, the importer also appears to have rendered themselves liable to penalty under Section 114A of the Customs Act, 1962.

13. Accordingly, a Show Cause Notice vide SCN No. 09/2025-26/ADC/AKM/Gr-V/MCH dated 11-04-2025 vide File No. CUS/APR/MISC/1386/2025-Gr 5-6-O/o Pr Commr-Cus Mundra were issued to **M/s INFRA COOL PRIVATE LIMITED (IEC-AABCI9701N)**, calling upon them to show cause as to why:-

i. The goods having assessable value of Rs. 3,29,22,000/- covered under Bill of Entry as detailed above in Table-B, should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962;

ii. the Serial No. 197 of Schedule-II of IGST on the goods should not be denied and the same should not be taxed and re-assessed at correct rate of IGST @18% under Sr. No. 328A of Schedule III of IGST Notification No. 01/2017;

iii. The differential duty worked out to **Rs. 21,38,284/- (Rupees Twenty One Lakh Thirty Eight Thousand Two Hundred Eighty Four only)** in respect of Bill of Entry as detailed in Table-B, should not be recovered under Section 28(4) of the Customs Act, 1962 read with Section 5 of the Integrated Goods and Service Tax Act, 2017 along with applicable interest thereon as per Section 28AA of the Customs Act, 1962.

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

PERSONAL HEARING AND WRITTEN SUBMISSIONS

14. Personal Hearing in the matter was held on 18.03.2026; Authorised Representative of M/s INFRA COOL PRIVATE LIMITED has appeared for the personal hearing and reiterated the written submission dated 17.03.2026. Vide their submission dated 17.03.2026 they have submitted the following:

"……..

We have imported the APPLES PROCESSING LINE-(FRUIT AND VEGITABLE SORTING/GRADING) and filed Bill of Entry No. 9995614 dated 05.02.2024 for clearance of same and correctly declared all material particulars including Description of goods, Chapter heading / classification, Assessable value, Country of origin, Quantity and invoice details. The Bill of Entry was assessed by the Customs authorities and the goods were cleared after payment of applicable duties. Subsequently, during audit scrutiny, the department observed that although all particulars in the Bill of Entry were correct, IGST was paid at 12% as per Sr. No. 197 of Schedule-II of Notification No. 01/2017-IGST whereas according to the audit observation the applicable rate should have been 18% as per Sl. No. 328A of Schedule-III of Notification No. 01/2017-IGST.

Extended period under Section 28(4) is not invocable in this case because there is no existence of fraud, collusion, wilful misstatement, suppression of facts, or intent to evade duty. When all the facts were disclosed and the department had complete knowledge of all the facts at the time of assessment and filing of bill of entry, extended period of limitation cannot be invoked.

The alleged short payment of IGST occurred only because IGST rate of 12% was selected instead of 18% while filing the Bill of Entry due to confusion regarding applicable IGST schedule and bonafide interpretation of rate notification. There was no deliberate attempt to evade duty. The conduct of the importer clearly demonstrates bonafide intention because full disclosure of facts was made and assessment was done by Customs. Mere wrong interpretation of law or classification cannot be treated as suppression unless there is deliberate intent to evade duty. Only wrong rate or classification under GST is an interpretational issue and cannot be equated with suppression of facts. Accordingly, allegation of willful mis-statement is unsustainable.

Higher IGST would have resulted in equivalent ITC. If the IGST had been paid @ 18% instead of 12%, the importer would have been entitled to Input Tax Credit of the same amount under GST law. Therefore the situation is completely revenue neutral. The following judgments are relied upon where it has been held that where duty paid would be available as credit and situation is revenue neutral, extended period cannot be invoked:

(i) Nirlon Ltd. v. Commissioner of Central Excise – 2015 (320) ELT 22 (SC): The Supreme Court held that when duty paid would be available as CENVAT credit to the same assessee, the situation becomes revenue neutral and therefore intention to evade duty cannot be alleged. Consequently, extended limitation cannot be invoked.

(ii) CCE v. Coca-Cola India Pvt. Ltd. – 2007 (213) ELT 490 (SC): The Supreme Court held that where the duty paid would be available as credit, the entire exercise becomes revenue neutral and extended limitation under Section 11A / Section 28 cannot be invoked.

(iii) LGW Industries Ltd. v. Union of India – 2021 (51) GSTL 369 (Calcutta High Court): The Court recognized the principle that when tax paid is available as credit in the supply chain, the situation is revenue neutral and intent to evade tax cannot be presumed.

(iv) TPL Plastech Ltd. v. Union of India – 2021 (52) GSTL 273 (Gujarat High Court): The Gujarat High Court held that where the dispute arises due to interpretation of tax provisions, the allegation of suppression or intent to evade tax cannot be sustained.

(v) Indsur Global Ltd. v. Union of India – 2014 (310) ELT 833 (Gujarat High Court): The Hon'ble Gujarat High Court held that where duty paid is available as credit to the assessee, the situation becomes revenue neutral and therefore allegation of intention to evade duty cannot be sustained.

Interest under Section 28AA is consequential and arises only if the duty demand is legally sustainable. Since extended period is not invocable, the case is revenue neutral, and no suppression exists, no interest liability arises.

Penalty under Section 114A can be imposed only when duty becomes payable due to fraud, suppression, willful misstatement, or intent to evade duty. In the present case there is no mis-declaration, no suppression, no intent to evade duty. Therefore penalty under Section 114A is completely unsustainable. The following judgments are relied upon:

(i) Union of India v. Rajasthan Spinning & Weaving Mills – 2009 (238) ELT 3 (SC): The Supreme Court held that penalty provisions apply only when there is

intention to evade duty, and cannot be invoked in cases of bonafide mistake or interpretational dispute.

(ii) Hindustan Steel Ltd. v. State of Orissa – 1978 (2) ELT J159 (SC): Penalty cannot be imposed in the absence of mens rea.

(iii) Bharat Aluminium Co. Ltd. v. UOI – 2024 (79) GSTL 321 (Del.): Penalty is not automatic in interpretational disputes under the GST regime.

Further, the assessment was accepted by Customs at the time of clearance; the same cannot be challenged without proper re-assessment or appeal mechanism.

In view of the facts and submissions made above, it is respectfully prayed that the Hon'ble Adjudicating Authority may kindly:-

(a) Drop the proceedings initiated under Section 28(4) of the Customs Act, 1962;

(b) Set aside the demand of differential IGST proposed in the SCN dated 11.04.2025;

(c) Drop the proposal for interest under Section 28AA;

(d) Drop the proposal for penalty under Section 114A."

DISCUSSIONS AND FINDINGS:

15. I have carefully gone through the Show Cause Notice, the written submissions dated 17.03.2026 submitted by the noticee, records of personal hearing on 18.03.2026, and all the documentary evidence available on record. The principles of natural justice stand duly complied with the Section 122A of the Customs Act, 1962 as the noticee has been afforded opportunity to present their case through written submission and personal hearing. Therefore, I proceed to decide the case on the basis of the facts, evidence on record and the submissions made by the noticee. The issues to be decided by me are:

I. The goods having assessable value of Rs. 3,29,22,000/- covered under Bill of Entry as detailed above in Table-B, should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962;

II. the Serial No. 197 of Schedule-II of IGST on the goods should not be denied and the same should not be taxed and re-assessed at correct rate of IGST @18% under Sr. No. 328A of Schedule III of IGST Notification No. 01/2017;

III. The differential duty worked out to **Rs. 21,38,284/- (Rupees Twenty One Lakh Thirty Eight Thousand Two Hundred Eighty Four only)** in respect of Bill of Entry as detailed in Table-B, should not be recovered under Section 28(4) of the Customs Act, 1962 read with Section 5 of the Integrated Goods and Service Tax Act, 2017 along with applicable interest thereon as per Section 28AA of the Customs Act, 1962.

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

16.1 Regarding the first issue, I need to examine whether the goods imported vide Bill of Entry No. 9995614 dated 05.02.2024 correspond in respect of IGST rate and applicable notification entry with the declaration made in the Bill of Entry and if not, whether they are liable for confiscation under Section 111(m) of the Customs Act, 1962.

16.2 I find that the importer has filed Bill of Entry No. 9995614 dated 05.02.2024 declaring the imported goods as "APPLES PROCESSING LINE-(FRUIT AND VEGITABLE SORTING/GRADING)" under CTH 84336010 and paid IGST @ 12% under Sr. No. 197 of Schedule-II of Notification No. 01/2017-Integrated Tax (Rate) dated

28.06.2017. The relevant entry at Sr. No. 197 covers "Harvesting or threshing machinery, including straw or fodder balers; grass or hay mowers; parts thereof" falling under CTH 8433. As per the Show Cause Notice and the analysis set out therein, the correct applicable IGST rate on the said goods is 18% under Sr. No. 328A of Schedule-III of Notification No. 01/2017-IGST, which covers "machines for cleaning, sorting or grading eggs, fruit or other agricultural produce other than machinery of heading 8437; parts thereof [8433 90 00]".

16.3 I have carefully considered the submissions made by the noticee in their written reply dated 17.03.2026 along with the documents submitted and the oral submissions made during personal hearing. The noticee has contended that (a) the selection of Sr. No. 197 was on account of bonafide interpretation of the notification; (b) all material particulars of the goods including description, CTH, assessable value and quantity were correctly declared; and (c) the Bill of Entry was assessed and goods were cleared by Customs without any objection to the IGST rate claimed.

16.4 I do not find merit in these contentions. Sr. No. 197 of Schedule-II of Notification No. 01/2017-IGST specifically and exclusively covers "Harvesting or threshing machinery, including straw or fodder balers; grass or hay mowers; parts thereof" falling under CTH 8433. These are field-use agricultural machines employed in harvesting standing crops from fields — they perform the primary agricultural operations of cutting, threshing and baling. An APPLES PROCESSING LINE meant for sorting and grading already-harvested fruit is categorically distinct from such machinery. The two categories — field harvesting machinery and post-harvest fruit processing/sorting equipment — are separate and mutually exclusive in both function and commercial understanding.

16.5 Sr. No. 328A of Schedule-III of Notification No. 01/2017-IGST, inserted specifically to cover "machines for cleaning, sorting or grading eggs, fruit or other agricultural produce other than machinery of heading 8437; parts thereof [8433 90 00]" under CTH 8433, squarely and precisely covers the imported goods. The noticee's own declaration in the Bill of Entry describes the goods as "FRUIT AND VEGITABLE SORTING/GRADING" — these are the very words used in Sr. No. 328A. There was therefore no ambiguity whatsoever. The importer was fully aware of the nature and function of the goods it imported and yet chose to declare the lower IGST rate applicable under Sr. No. 197.

16.6 It is a well-settled principle of interpretation of exemption/rate notifications that a specific entry must be applied in preference over a general entry. Sr. No. 328A is a specific entry inserted in Schedule-III to cover fruit sorting/grading machines; Sr. No. 197 is a general entry covering harvesting and threshing machinery. The noticee could not lawfully claim the benefit of the general entry Sr. No. 197 when the specific entry Sr. No. 328A unambiguously applied to its goods. To permit such a reading would render Sr. No. 328A otiose for all goods classifiable under CTH 8433 — a result that is contrary to the well-established canon of statutory interpretation that every provision of a statute must be given a meaningful and purposive operation.

16.7 I therefore find that the importer has wilfully violated the provisions of Section 17(1) of the Customs Act, 1962 inasmuch as the importer has failed to correctly self-assess the IGST on the impugned goods and has also wilfully violated the provisions of Sub-

sections (4) and (4A) of Section 46 of the Act. The imported goods "APPLES PROCESSING LINE-(FRUIT AND VEGITABLE SORTING/GRADING)" do not correspond in respect of the applicable IGST rate with the declaration made in the Bill of Entry. I accordingly hold that the goods imported vide Bill of Entry No. 9995614 dated 05.02.2024 having assessable value of Rs. 3,29,22,000/- are liable for confiscation under Section 111(m) of the Customs Act, 1962.

16.8 Once the goods are held liable for confiscation, the next question before me is whether to allow the release of the impugned goods on Redemption Fine. Sub-section (1) of Section 125 of the Customs Act, 1962 prescribes that:

"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."

16.9 Further, I find that the Hon'ble courts in various judicial pronouncements have held that the physical availability of the goods does not have any significance for imposition of Redemption Fine under Section 125 of the Act. In this regard, I place my reliance on the following judgments:

(i) In the case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) regarding imposition of Redemption Fine in absence of goods liable for confiscation, after observing the decision of the Hon'ble Bombay High Court in the case of M/s Finesse Creations Inc. reported vide 2009 (248) ELT 122 (Bom.) — upheld by the Hon'ble Supreme Court in 2010 (255) ELT A.120 (SC), the Hon'ble Madras High Court held that "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, the physical availability of goods is not so much relevant."

(ii) In the case of Synergy Fertichem Pvt. Ltd. v. State of Gujarat as reported in 2019 (12) TMI 1213, the Hon'ble High Court of Gujarat, relying on the judgment of the Apex Court in the case of Weston Components Ltd. v. Commissioner of Customs, New Delhi, has observed that "The pre-requisite for making an offer of fine under Section 130 of the Act is pursuant to the finding that the goods are liable to be confiscated. In other words, if there is no authorisation for confiscation of such goods, the question of making an offer by the proper officer to pay the 'redemption fine', would not arise."

16.10 It is amply clear from the said section that, where the confiscated goods are not prohibited for import, discretion has been vested in the adjudicating authority to decide the quantum of Redemption Fine on the basis of the facts and circumstances involved. Accordingly, even though the goods are not physically available for confiscation as they have already been cleared for home consumption, I am empowered to impose Redemption Fine in lieu of confiscation. Since the SCN proposed confiscation under Section 111(m),

imposition of redemption fine under Section 125 is consequential.

17.1 Regarding the second issue, I need to examine whether the benefit of Serial No. 197 of Schedule-II of Notification No. 01/2017-IGST is correctly available to the imported goods and whether the goods should be re-assessed at the correct rate of IGST @ 18% under Sr. No. 328A of Schedule-III of the said Notification.

17.2 As detailed in the discussion on the first issue above, I have held that the imported goods "APPLES PROCESSING LINE-(FRUIT AND VEGITABLE SORTING/GRADING)" are machines for sorting and grading fruit and squarely fall within the description of Sr. No. 328A of Schedule-III of Notification No. 01/2017-Integrated Tax (Rate), which prescribes IGST @ 18%. The goods do not correspond to the description under Sr. No. 197 of Schedule-II, which covers "Harvesting or threshing machinery, including straw or fodder balers; grass or hay mowers; parts thereof" — a completely different class of agricultural machinery.

17.3 The noticee has urged that the benefit of Sr. No. 197 should not be denied because (a) both entries fall under the same CTH 8433; (b) the goods are used in processing agricultural produce and therefore connect with agricultural machinery; and (c) the SCN itself acknowledges that the goods fall under CTH 84336010. I am unable to accept this argument. The fact that both Sr. No. 197 and Sr. No. 328A entries cover goods falling under the broad heading CTH 8433 does not mean that any machine classifiable under CTH 8433 can claim either rate at the importer's choice. The notification itself makes a clear distinction between two sub-categories within CTH 8433 — field harvesting machinery (Sr. No. 197) and fruit/produce sorting-grading machines (Sr. No. 328A) — and assigns different IGST rates to each. An importer must claim the benefit of the entry that correctly and specifically describes its goods.

17.4 The noticee's contention that the goods "connect with agricultural produce processing" is also unavailing. Sr. No. 197 is limited specifically to harvesting, threshing, baling and mowing machinery — the connection with agriculture is through the field operation of harvesting. An apple sorting and grading line is not a harvesting machine; it operates on already-harvested produce in a packhouse or processing facility. The legislature has specifically provided Sr. No. 328A to cover such machines precisely because they are a distinct category. The noticee cannot appropriate the benefit of an entry that describes a different category of goods.

17.5 The noticee also contends that since the CTH declared in the Bill of Entry is correct (CTH 84336010 for both Sr. No. 197 and Sr. No. 328A goods), there is no error in the entry and the benefit of Sr. No. 197 should not be disturbed. I reject this contention. The correct rate of IGST is not determined merely by the CTH but by which specific notification entry covers the goods. A declaration of CTH 84336010 in the Bill of Entry does not entitle the importer to choose any rate notification entry that falls within the broad CTH 8433 — the rate is determined by the specific description under which the goods fall. The noticee has correctly declared the CTH but incorrectly claimed the notification benefit of the wrong rate entry.

17.6 Accordingly, I hold that the benefit of Serial No. 197 of Schedule-II of Notification No. 01/2017-IGST (Rate) is not available to the imported goods and the same is hereby denied. The goods are liable to be taxed and re-assessed at the correct rate of IGST @ 18% under Sr. No. 328A of Schedule-III of Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017.

18.1 Regarding the third issue, I find that Section 28(4) of the Customs Act, 1962 provides that where any duty has not been levied or paid or has been short-levied or short-paid by reason of collusion, wilful mis-statement or suppression of facts by the importer, the proper officer shall, within five years from the relevant date, serve notice requiring payment of the short-levied/short-paid duty.

18.2 In the present case, as held under Issues I and II above, the imported goods are correctly chargeable to IGST @ 18% under Sr. No. 328A of Schedule-III of Notification No. 01/2017-IGST instead of IGST @ 12% under Sr. No. 197 of Schedule-II. The importer paid total duty @ 21.24% (BCD 7.5%, SWS .75%, IGST 12%) on an assessable value of Rs. 3,29,22,000/-, thereby resulting in short payment of differential duty amounting to Rs. 21,38,284/-. The short payment of duty was by reason of wilful mis-statement of facts in the Bill of Entry. The Show Cause Notice dated 11.04.2025 has been issued within the extended period of five years as provided under Section 28(4) of the Customs Act, 1962 for cases involving wilful mis-statement.

18.3 The noticee has contended that the extended period under Section 28(4) is not invocable as: (a) all facts were fully disclosed; (b) the mis-match was only in IGST rate and not in any other declared particulars; and (c) the situation is revenue neutral since higher IGST would have been available as ITC. I deal with each of these contentions in turn.

(i) On "full disclosure": The declaration of correct physical description and CTH in the Bill of Entry does not constitute disclosure of the correct applicable notification entry or the correct IGST rate. Under Section 46(4) of the Customs Act, the importer is required to make a truthful declaration as to the contents of the Bill of Entry — which necessarily includes the claim of notification benefit and the rate of IGST. Declaring the correct goods description while simultaneously claiming an inapplicable lower-rate notification entry is not full disclosure; it is a mis-statement of the applicable duty rate.

(ii) On "only IGST rate mis-match": The noticee's characterisation of the error as merely a "rate mis-match" trivialises what is substantively a deliberate selection of an inapplicable notification entry to secure a lower IGST rate. The Bill of Entry itself described the goods as "SORTING/GRADING" — wording that precisely corresponds to Sr. No. 328A. A trader engaged in the import of specialised fruit processing equipment must be presumed to know the correct IGST rate applicable to its goods. Selecting a lower-rate entry when the specific higher-rate entry unambiguously applies — and where one's own goods description matches the higher-rate entry word for word — constitutes wilful mis-statement within the meaning of Section 28(4).

(iii) On Revenue Neutrality: The noticee has relied upon Nirlon Ltd. v. CCE – 2015 (320) ELT 22 (SC), CCE v. Coca-Cola India – 2007 (213) ELT 490 (SC), LGW Industries Ltd. v. UOI – 2021 (51) GSTL 369 (Cal.), TPL Plastech Ltd. v. UOI – 2021 (52) GSTL 273 (Guj.) and Indsur Global Ltd. v. UOI – 2014 (310) ELT 833 (Guj.) to

argue revenue neutrality. These decisions are distinguishable on the following grounds: (a) All the cited decisions arise in the central excise / service tax framework where a manufacturer or service provider pays duty/tax that is simultaneously and automatically available as CENVAT credit to the same registered assessee. In that framework, an erroneous duty payment by the assessee in one account is offset by an equivalent CENVAT credit receipt in the same account — genuinely leaving the Revenue unaffected. (b) In the case of IGST on imports, the duty is paid to the Customs exchequer at the time of import. Any ITC entitlement thereafter arises under the CGST/IGST Act before a different authority and is a downstream entitlement entirely separate from the Customs short payment. The revenue loss to the Customs exchequer is real and immediate and cannot be treated as offset by potential downstream ITC. (c) Moreover, even within the excise framework, the revenue neutral principle has never been held to excuse deliberate misclassification where the assessee knowingly chose a lower-rate entry when a specific higher-rate entry was available. The noticee's case falls in that category.

18.4 In view of the foregoing, I hold that the extended period of five years under Section 28(4) of the Customs Act, 1962 has been correctly invoked. I accordingly confirm the differential duty demand of Rs. 21,38,284/- (Rupees Twenty One Lakh Thirty Eight Thousand Two Hundred Eighty Four Only) as detailed in Table-B, supra, recoverable under Section 28(4) of the Customs Act, 1962 read with Section 5 of the Integrated Goods and Service Tax Act, 2017 along with applicable interest thereon under Section 28AA of the Customs Act, 1962.

19.1 Regarding the fourth issue, I find that Section 114A of the Customs Act, 1962 provides for penalty equal to the duty determined where the duty has been short-levied by reason of collusion or any wilful mis-statement or suppression of facts. In the present case, as held above under Issues I, II and III, the importer has wilfully mis-stated the applicable IGST notification entry — claiming IGST @ 12% under Sr. No. 197 of Schedule-II when the goods, by their own declared description of "SORTING/GRADING", are squarely covered by Sr. No. 328A of Schedule-III attracting IGST @ 18% — resulting in short payment of differential duty of Rs. 21,38,284/-.

19.2 The noticee has urged that penalty under Section 114A is not imposable because: (a) there was no suppression of facts or wilful mis-statement; (b) the error was bonafide and interpretational; and (c) no mens rea is established. In support, the noticee has relied on Union of India v. Rajasthan Spinning & Weaving Mills – 2009 (238) ELT 3 (SC); Hindustan Steel Ltd. v. State of Orissa – 1978 (2) ELT J159 (SC); and Bharat Aluminium Co. Ltd. v. UOI – 2024 (79) GSTL 321 (Del.). I do not find merit in these contentions for the following reasons:

(i) The decisions in Rajasthan Spinning & Weaving Mills and Hindustan Steel deal with situations of genuine legal ambiguity where there was a real doubt as to the applicable provision and the assessee acted on a reasonable and bonafide interpretation. In the present case, there is no genuine ambiguity. Sr. No. 328A uses the precise words "machines for cleaning, sorting or grading eggs, fruit or other agricultural produce" — words that identically describe the goods as declared by the noticee itself in the Bill of Entry ("SORTING/GRADING"). An assessee that imports specialised fruit-processing equipment and declares it as a sorting/grading machine cannot claim a bonafide doubt about whether it falls under an entry for "sorting or grading...fruit" rather than one for "harvesting or

threshing machinery". The invocation of bonafide interpretation is a plea of convenience, not a defence of substance.

(ii) The decision in Bharat Aluminium Co. Ltd. v. UOI – 2024 (79) GSTL 321 (Del.) pertains to procedural requirements under the GST regime and does not lay down any principle that deliberate misstatement of the applicable notification rate at the time of filing a Bill of Entry is immune from penalty under Section 114A of the Customs Act, 1962. It is not applicable to the facts of this case.

(iii) Mens rea in the context of Section 114A is established by the conduct of the noticee itself. A commercial importer dealing in specialised agricultural processing machinery is presumed to know the correct IGST rate applicable to the machinery it regularly imports. Selecting a lower-rate notification entry — specifically one for "harvesting or threshing machinery" — for goods that its own Bill of Entry describes as "SORTING/GRADING" equipment demonstrates deliberate intent. There is no innocent explanation for claiming an entry that is wholly inapplicable to one's goods when a specific applicable entry exists at a higher rate.

19.3 Considering the nature and gravity of the violation, the quantum of duty short paid and the deliberate nature of the mis-declaration, I find it appropriate to impose penalty under Section 114A of the Customs Act, 1962. Accordingly, I hold that the importer M/s INFRA COOL PRIVATE LIMITED is liable to pay a penalty under Section 114A of the Customs Act, 1962 equal to the duty so determined i.e. Rs. 21,38,284/-. However, in terms of the proviso to Section 114A of the Customs Act, 1962, if the noticee pays 25% of the penalty amount along with the confirmed differential duty and applicable interest thereon within thirty (30) days from the date of communication of this order, the penalty payable shall stand reduced to 25% of the duty so determined.

ORDER

20. In view of the foregoing discussion and findings recorded hereinabove, I pass the following order:

(i) I hold that the goods covered under Bill of Entry No. 9995614 dated 05.02.2024 having assessable value of Rs. 3,29,22,000/- (Rupees Three Crore Twenty Nine Lakh Twenty Two Thousand Only) are liable for confiscation under Section 111(m) of the Customs Act, 1962. However, as the goods have already been cleared for home consumption, I impose a Redemption Fine of Rs.3,50,000/- (Rupees Three Lakh Fifty Thousand Only) under Section 125 of the Customs Act, 1962, in lieu of confiscation;

(ii) I hold that the benefit of Serial No. 197 of Schedule-II of Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 is denied to the importer and the goods are hereby re-assessed at IGST @ 18% under Sr. No. 328A of Schedule-III of the said Notification;

(iii) I confirm the differential duty demand of Rs. 21,38,284/- (Rupees Twenty One Lakh Thirty Eight Thousand Two Hundred Eighty Four Only) under Section 28(4) of the Customs Act, 1962 read with Section 5 of the Integrated Goods and Service Tax Act, 2017 along with applicable interest under Section 28AA of the Customs Act, 1962;

(iv) I impose a penalty of Rs. 21,38,284/- (Rupees Twenty One Lakh Thirty Eight Thousand Two Hundred Eighty Four Only) on M/s INFRA COOL PRIVATE LIMITED under Section 114A of the Customs Act, 1962. However, in case the importer pays the duty along with interest within 30 days of the communication of the order, the amount of penalty payable shall be twenty-five percent of the duty, as per proviso of Section 114A of the Customs Act, 1962.

21. This order is issued without prejudice to any other action that may be taken against notice/importer or any other person(s) 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.

22. The Show Cause Notice No. 09/2025-26/ADC/AKM/Gr-V/MCH dated 11/04/2025 vide File No. CUS/APR/MISC/1386/2025-Gr 5-6-O/o Pr Commr-Cus-Mundra against the noticee stands disposed of in the above terms.

Digitally signed by Dipakbhai Zala
Date: 09-04-2026 18:11:28

Zala Dipakbhai Chunnanbhai
ADDITIONAL COMMISSIONER
Additional Commissioner of Customs
Custom House, Mundra

To,

M/s INFRA COOL PRIVATE LIMITED (IEC-AABCI9701N)
Flat No. 602, Kasturi CHS Limited, G-1, Plot No. 1,
Sec-16, Sanpada, Navi Mumbai-400705

Copy to:

1. The Deputy Commissioner of Customs, Review Section, Custom House, Mundra.
2. The Deputy Commissioner of Customs, TRC, Custom House, Mundra.
3. The Deputy Commissioner of Customs, EDI, Custom House, Mundra.
4. The Deputy Commissioner of Customs, Audit, Custom House, Mundra.
5. Office copy.