**अपर आयुक्त, सीमाशुल्क का कार्यालय**

**OFFICE OF THE ADDITIONAL COMMISSIONER OF CUSTOMS**

**एयर कार्गो काम्प्लेक्स,पुराना हवाईअड्डा, अहमदाबाद:380003**

**AIR CARGO COMPLEX, OLD AIRPORT,AHMEDABAD : 380003**

**Tel No. (079) 22865299, 22868477F*ax: (079)*-26554320**

## PREAMBLE

| | | | |
|---|---|---|---|
| A | **फाइल संख्या/File No.** | : | ACC/Asse/13/2025-ACC-AHMD-CUS-COMMRTE-AHMEDABAD |
| B | **कारण बताओ नोटिस संख्या और तारीख/ Show Cause Notice No. and date** | : | ACC/LAR-108/17-18/CRA/21 dated 26.04.2022 |
| C | **मूल आदेश संख्या/ Order- in–Original No.** | : | 55/ADC/ACC/OIO/LAMBDA/2025-26 |
| D | **द्वारापारित/Passed by** | : | ADDITIONAL COMMISSIONER |
| E | **आदेशतिथि /Date of Order** | : | 23.09.2025 |
| F | **जारी करने की तारीख/ Date of Issue** | : | 23.09.2025 |
| G | **आयातक का नाम और पता /Name and Address of Importer** | : | M/s. Lambda Therapeutic Research Limited,<br>Lambda House, Survey No. 388,<br>Plot No. 38, Nr Silver Oak,<br>S G Highway, Gota, Ahmedabad-382481<br><br>&<br><br>Shri Rakesh Oza,<br>A-502, Infinty Tower, Corporate Road,<br>Prahaladnagar, Ahmedabad-380 015. |
| H | **DIN NO.** | | **20250971MN000000C914** |

(1) This is granted free of charge for the use of person to whom it is issued.

(2) Any person deeming himself aggrieved by this order may appeal against the order to the Commissioner of Custom (Appeals), 4th Floor, HUDCO Building, Ishwar Bhuvan Road, Navrangpura, Ahmedabad – 380009 within sixty (60) days from the date of receipt of the order.

(3) The appeal should bear a Court Fee stamp of Rupees Two only (Rs. 2.00), and it must be accompanied by :

i. A copy of the appeal and,

ii. This copy or any copy of this order will must bear a Court fee Stamp of Rupees Two only (Rs. 2.00/-).

(4) Any person desirous of appealing against this order shall deposit 7.5% (subject to maximum of Rs. 10 crores) of duty demanded, in case where duty or penalty levied, where such penalty is in dispute and produce proof of such payment along with the appeal, falling which the appeal is liable to reject for non-compliance of the provisions of Section 129 of the Customs Act, 1962.

**Brief Facts of the Case:-**

M/s. Lambda Therapeutic Research Limited, having IEC No. 0899009174, is situated at Lambda House, Survey No. 388, Plot No. 38, Nr Silver Oak, S G Highway, Gota, Ahmedabad-382481 (hereinafter referred to as 'the said importer'). The said importer had imported goods at Air Cargo Complex (INAMD4) Ahmedabad, classifying the goods under CTH NO.3004 of the Customs Tariff for the purpose of trial/research and development and claimed benefit under Sl. NO.63 of Schedule II of Notification No.1/2017 Integrated Tax (Rate) dated 28.06.2017, which provided for the medicament for therapeutic or prophylactic uses put up in measured does or in forms or packing for retail sale.

2. The CERA vide LAR No.108/17-18 raised an objection that on verification of below mentioned Bills of Entry as shown in TABLE-"A", it was noticed that the commodity falling under CTH 3004 were imported for the purpose of trial/research and development. The commodity which are yet to be tried for its efficacy and suitability cannot be considered as Medicament for therapeutic or prophylactic uses put up in measured doses or in forms or packing for retail sale. Accordingly, the IGST of the imported goods is to be leviable @18% under residuary entry of Sr.No.453 of Schedule III of IGST Notification No.1/2017 Integrated Tax (Rate) dated 28.06.2017. This has resulted in short levy of IGST amounting to **₹5,36,556/-.**

TABLE"A"

| Sr. no. | BE | Date | Value | IGST 12% paid | total for 18% duty | Short paid IGST |
|---|---|---|---|---|---|---|
| 1 | 2313222 | 04-07-17 | 20023 | 2798 | 22024 | 1167 |
| 2 | 2390801 | 11-07-17 | 291616 | 38598 | 321653 | 19300 |
| 3 | 2392697 | 11-07-17 | 73970 | 9791 | 81589 | 4895 |
| 4 | 2433936 | 13-07-17 | 343952 | 45525 | 379379 | 22763 |
| 5 | 2529714 | 20-07-17 | 716890 | 94888 | 790730 | 47444 |
| 6 | 2532084 | 20-07-17 | 13687 | 1812 | 15097 | 906 |
| 7 | 2564664 | 23-07-17 | 399787 | 52916 | 440965 | 26458 |
| 8 | 2564666 | 23-07-17 | 57102 | 7558 | 62984 | 3779 |
| 9 | 2564670 | 23-07-17 | 16819 | 2226 | 18551 | 1113 |
| 10 | 2571066 | 24-07-17 | 880705 | 117282 | 971120 | 57520 |
| 11 | 2769354 | 08-08-17 | 75170 | 9950 | 82913 | 4975 |
| 12 | 2833786 | 13-08-17 | 2369400 | 313614 | 2613448 | 156807 |
| 13 | 2874668 | 17-08-17 | 85172 | 11273 | 93945 | 5637 |
| 14 | 2948796 | 23-08-17 | 60942 | 8066 | 67219 | 4033 |
| 15 | 3003031 | 28-08-17 | 2427878 | 321354 | 2677949 | 160677 |
| 16 | 3078541 | 02-09-17 | 25409 | 3363 | 28026 | 1682 |
| 17 | 3140335 | 07-09-17 | 103805 | 13740 | 114497 | 6870 |
| 18 | 3176967 | 11-09-17 | 13757 | 1821 | 15174 | 910 |
| 19 | 3182608 | 11-09-17 | 14295 | 1892 | 15767 | 946 |
| 20 | 3205615 | 12-09-17 | 104694 | 13857 | 115477 | 6929 |
| 21 | 3227584 | 13-09-17 | 26408 | 3495 | 29128 | 1748 |
| | | TOTAL | 8121481 | | | 536556 |

3. The importer has imported goods falling under CTH 3004 of the Customs Tariff Act Sl. No 63 of Schedule II of Notification No. 1/2017 dated 28.06.2017, Integrated Tax (Rate) and paid IGST @ 12% which provided for the medicament for therapeutic or prophylactic uses put up in measured doses or in forms or packing for retail sale. The 'imported goods' fall under CTH 3004 but are not medicaments consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packing for retail sale.

4. Therefore, imported goods under question imported under Bills of Entry mentioned in TABLE'A' were not for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packing for retail sale, hence, they did not appear to attract IGST @12% under entry of schedule-II-63 under Notification No.01/2017- Integrated Tax (Rate) dated 28.06.2017. The said imported goods were used for the purpose of R & D or Chemical trial purpose and therefore the same appeared to fall under Sr. No.453 of Schedule-III of Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017, which provides as under:-

*"453-Any chapter-Goods which are not specified in Schedule I, II, IV, V or VI."*

5. Accordingly, the imported goods appeared to fall under Sr.No.453 of Schedule-III of Notification No.01/2017- Integrated Tax (Rate) dated 28.06.2017 and attract IGST @18% and not @12%.

6. In the said matter, consultative letter dated 08.03.2021 was issued vide file No. ACC/LAR-108-17-18/CRA/21, wherein, the importer has been informed to pay differential duty amounting to ₹ 5,36,556/- along with applicable interest. A reply submitted by the importer vide letter dated 11.03.2021 wherein it is mentioned that, "the imported pharmaceutical goods were for purpose of clinical study and used in clinical study of the project and basically for therapeutic or prophylactic use". As reply of the importer was not satisfactory, the consultative letter dated 16-03-2021 and 09-11-2021 were again issued for payment of differential duty alongwith interest which was short levied at the time of clearance of goods.

6.1 In reply, the importer vide their letter dated 26.11.2021 has submitted that :-

- Under the said Bills of Entry, they have imported investigational medical product (Herein after referred as "IMP")

- The contention of the Department appears to be that, though the goods may be classifiable under Heading 3004 for the purpose of payment of customs duty, they are liable to suffer IGST @ 18% and not 12%, if the product is not used for therapeutic or prophylactic uses but for other uses like R&D or clinical trial purpose, as is the case in the present imports.

- In respectful submission, they were unable to concur with the aforesaid contention requiring them to pay IGST @ 18% by classifying the product under residuary entry of Schedule-III- 453.

- CTH 3004 which is accepted to be applicable without any objection for purpose of levy of Basic Customs Duty, etc. provides for the products or medicaments capability or suitability for use for therapeutic or prophylactic uses. The words 'for therapeutic or prophylactic uses' cannot be twisted or stretched to the extent of reading the same words as if the medicaments must be actually put to use for therapeutic or prophylactic purpose. In other words, the description of the said CTH 3004 does not prescribe any actual or even intended end-use requirement or fulfillment of end-use in a particular manner. The real meaning of the words 'for therapeutic or prophylactic uses" is simply that the medicaments should be suitable or capable of being used for therapeutic or prophylactic purpose.

- Just because they have used the Medicaments for R&D or clinical trial purpose, the medicaments cannot be denied its parentage to heading 3004. Just because, it was a matter of commercial expediency to use the medicament for R&D or clinical trial purpose, the subject medicament cannot and will not cease to be suitable or capable for therapeutic or prophylactic uses.

- Thus, the subject medicaments are correctly classified and classifiable under CTH 3004 and, therefore, the question of payment of differential IGST by relegating the medicament under Schedule-III-453 is not tenable in law.

- Incrementally, they may add that goods have to be assessed in the condition in which it has been imported. These products basically are Medicament for Therapeutic or Prophylactic uses. Therefore end-use is not relevant for the purpose of classification. Please note that, it may so happen that end consumer may not consume such goods but that will not change purpose of such goods. This position is already settled by Supreme Court in the case of Dunlop India Vs. UOI – 1983 (13) ELT 1566 (SC). It has been held that in the case of levy of Customs Duty the relevant taxing event is importing into India or exporting from India and what happens to the goods after the importation cannot be a criterion for deciding the levy of Customs Duty. The Supreme Court has observed in para 30 of this decision as under:

- "The relevant taxing event is the importing into or exporting from India. Condition of the article at the time of importing is a material factor, for the purpose of classification as to under what head, duty will be leviable. The reason given by the authority that V.P. Latex when coagulated as solid rubber cannot be commercially used as an economic proposition as even admitted by the appellants, is an extraneous consideration in dealing with the matter. We are, therefore, not required to consider the history and chemistry of synthetic rubber and V.P. Latex as a component of SBR with regard to which extensive arguments were addressed by both sides by quoting from different texts and authorities.

6.2. The reply of the importer was not satisfactory. The audit objection was not raised for any classification dispute. Audit objection was based specifically on payment of duty on incorrect rate of IGST, therefore, a pre-notice consultation letter dated 09-02-2022 was issued to the importer as per the provisions of Section 28 of the Customs Act, 1962. In reply to this, the importer submitted reply dated 17.02.2022 wherein they reiterated their earlier reply of dated 26.11.2021.

7. Further, it appeared that 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.

8. As per Section 17 of the Customs Act, 1962, an importer entering any imported goods under Section 46 of the Act shall 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 failed to exercise their statutory obligation and paid IGST at lower rate with an intent to evade IGST duty, by claiming benefit of wrong heading, which did not appear to be available to them. In view of same importer had knowingly, willfully and intentionally paid IGST at lower rate than the applicable rate by quoting wrong Schedule and heading under Notification No. 01/2017 dated 28.06.2017 (w.e.f.01.07.2017). All these material facts appeared to have been concealed from the Department by the said importer deliberately, consciously and purposely with an intent to evade payment of applicable Customs duty. Therefore, all essential ingredients existed in the present case, to invoke Section 28(4) of the Customs Act, 1962, to demand the applicable differential duty of IGST short paid by the importer.

9. Consequently, the differential duty of ₹ 5,36,556/- as detailed in Table A shown above in preceding paras appeared recoverable from the said importer under Section 28(4) of the Customs Act, 1944 along-with interest in terms of Section 28AA of the Customs Act, 1962. Also, the said goods totally valued at ₹81,21,481/- imported under above-mentioned Bills of Entry appeared to be liable for confiscation under the provision of Section 111(m) of the Customs Act, 1962 in as much as, the same had been imported by mis-declaring Sr. No. 63 of Scheduled II in place of Sr. No. 453 of Schedule - Ill of the Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017. Therefore, the said importer appeared liable for penalty under Section 112(a) of the Customs Act, 1962.

10. The said importer appeared to have wrongly taken the IGST benefit of Sr. No. 63 of Scheduled II in place of Sr. No. 453 of Schedule - III of the Notification No.01/2017 -IT(Rate) dated 28.06.2017 resulting in incorrect assessment of duty discharged on the goods in question. They had knowingly and intentionally with ulterior motive and by design, taken the benefit of Sr. No. 63 of Scheduled II in place of Sr. No. 453 of Schedule - III of the Notification No.01/2017 - IT(Rate) dated 28.06.2017. It appeared to

be a case of willful mis-statement of classification based on end use of goods with intention to avail ineligible benefit of the exemption to evade duty of IGST. This constitutes an offence of the nature covered in Section 111(m) of the said Act and the goods imported appeared liable for confiscation under Section 111(m) of the said Act.

11. For these acts of omission and commission, M/s. Lambda Therapeutic Research Limited appeared to be liable to penalty under Section 112(a) or 114 A of the Customs Act, 1962 in as much as they had intentionally made and used false and incorrect declaration / statements / documents to evade payment of legitimate Customs duties as discussed in the foregoing paras.

12. Further, by these acts of the omission and commission of the said importer, they appeared to attract the provisions of Section 114AA of the said Act. The said importer had mis-classified the goods in question with intent to avail undue benefit of the exemption Notification and thus they had rendered themselves liable to penalty under Section 114AA of the said Act.

13. Further, Customs Broker M/s. Rakesh A Oza, who was authorised by the said Importer to carry out the Customs clearing work of the goods imported by them at Air Cargo Complex, Ahmedabad on their behalf for the B/Es mentioned in table -A to the said SCN, appeared to have failed to take all the necessary steps at the time of filing of the said Bills of Entries, regarding proper declaration of the goods imported and its duty liability under proper head. This had resulted in the imported goods being liable for confiscation under Section 111 of the Customs Act, 1962. By act of omission and commission on the part of the Customs Brokers M/s. Rakesh A Oza had rendered themselves liable for penal action under the provisions of Section 117 of the Customs Act, 1962 and any other Act/law or rules for the time being in force.

14. Accordingly, vide Show Cause Notice bearing No. ACC/LAR-108/17-18/CRA/21 dated 26.04.2022 (herein after referred to as "the said SCN") issued by the Deputy Commissioner of Customs, Air Cargo, M/s. Lambda Therapeutic Research Limited, Ahmedabad (IEC No.0899009174), was called upon to show cause to the Deputy Commissioner of Customs as to why:-

(i) The incorrect rate of IGST @12% on impugned goods as detailed in Table-A above should not be denied and the said goods should not be assessed at correct IGST rate @18%.

(ii) The extended period of five (5) years should not be invoked as per the proviso to Section 28(4) of the Customs Act 1962 for having willfully suppressed the facts and grossly misstated as discussed in paras supra.

(iii) Total short paid/short-levied duty in respect of the past clearances as mentioned at Table "A", amounting to ₹536556/- (Rs. Five lacs thirty six thousand five hundred and fifty six only), should not be demanded and recovered from the Importer on the said imported goods in terms of provisions of Section 28 (4) of the Customs Act, 1962 along with applicable interest thereon as per section 28AA of the Customs Act, 1962;

(iv) All the impugned goods imported vide Bills of Entries mentioned in Table A valued at₹ 8121481/- (Rupees Eighty one lakh twenty one Thousand four Hundred and eighty one only) which were self-assessed and have already been cleared, should not be held liable to confiscation under Section 111 (m) of the Customs Act, 1962 since the goods are not available for confiscation, fine as contemplated under Section 125 should not be imposed on them in lieu of confiscation.

v) Penalty to the extent permissible should not be imposed on them under Section 112 (a) and 117 read with Section 147 of the Customs Act 1962, for violation of the provisions of Section 12 of the Customs Act, 1962 and for having done various acts of omission and commission in relation to the goods which have been rendered themselves liable to confiscation under Section 111 of the Customs Act, 1962. Under Section 125 should not be imposed on them in lieu of confiscation.

(vi) Penalty should not be imposed on the importer for short payment of duty amounting to ₹536556/- (Rs. Five lacs thirty six thousand five hundred and fifty six only) (detailed in Table A above) under section 114A of the Customs Act, 1962.

(vii) Penalty should not be imposed upon the importer under Section 114AA of the Customs Act, 1962 on account of wrong availment of benefit of notification for short payment of duty amounting to ₹ 536556/- (Rs. Five lacs thirty six thousand five hundred and fifty six only), (detailed in Table A above).

14.1. Similarly, M/s Rakesh A. Oza, CHA, A-502, Infinity Tower, Corporate Road, Prahalad nagar, Ahmedabad- 380015 was called upon to Show Cause to the Deputy Commissioner of Customs, Air Cargo Complex, Near Rameshwar Cross Roads, Meghaninagar, Shahibaug, Ahmedabad as to why:-

(i) Penalty should not be imposed on M/s Rakesh A Oza, under Section 117 of Customs Act, 1962, as they failed to comply with the provisions of Rule 10 of the CBLR rules, 2018.

15. After following the due process of law including the principles of natural justice, the said show cause notice came to be adjudicated by then Deputy Commissioner, Customs, Air Cargo Complex, Ahmedabad vide Order-in-Original No. 04/DC/ACC/OIO/Lambda/2023-24 dated 02.05.2023 holding as under :-

"ORDER"

a. I deny the incorrect rate of IGST @12% under Sr.No. 63 of Schedule II of Notificaiton NO. 01/2017 dated 28.06.2017 on the said goods imported by the said importer vide Bill of Entry as detailed in Table A to the said SCN. I order to re-assess the goods imported by M/s. Lambda Therapeutic Research Limited vide Bills of entry as detailed in Table'A' to said SCN at correct IGST@18% under Sr.No.453 (residuary entry) of Schedule III of IGST Notification No.1/2017 dated 28.06.2017.

b. I confirm the demand of short levy of duty amounting to ₹ 5,36,556/- (Rs. Five lacs thirty six thousand five hundred and fifty six only) against the importer M/s. Lambda Therapeutic Research Limited in terms of provisions of Section 28(4) of the Customs Act, 1962 alongwith applicable interest under Section 28AA of the Custom Act, 1962 and appropriate the said duty amounting to ₹ 5,36,556/- (Rs. Five lacs thirty six thousand five hundred and fifty six only) which is paid under protest vide TR-6 challan No.273 dated 20.05.2022.

c. I hold the imported goods covered under Bills of Entry as detailed in Table A to the said SCN dated 26.04.2022 having declared assessable value of ₹81,21,481/- (Eighty one lakh twenty one thousand four hundred and eighty one only) and cleared under CTH 3004 are liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962 and hence, I order confiscation of the goods. As the goods are not available physically for confiscation, I allow the said importer to redeem the same on payment of redemption fine of Rs. 10,00,000/- (Rs. Ten Lakhs only) under section 125(1) of the Customs Act, 1962 in lieu of confiscation.

d. I demand and order recovery of the interest at an appropriate rate on the short payment of duty under section 28AA of the Customs Act, 1962 from M/s. Lambda Therapeutic Research Limited.

e. I impose penalty of ₹5,36,556/- (Rs. Five lacs thirty six thousand five hundred and fifty six 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. Lambda Therapeutic Research Limited under Section 114A of the Customs Act, 1962. However, in view of the first and second proviso of Section 114A of the Customs Act, 1962, if the amount of Customs Duty confirmed and interest thereon is paid within a period of thirty days from the date of the

communication of this Order, the penalty shall be twenty five percent of the Duty, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days.

f. I impose penalty of ₹ 81,21,481/- (Eighty one lakh twenty one thousand four hundred and eighty one only) on M/s. Lambda Therapeutic Research Limited under Section 114AA of the Customs Act, 1962.

g. I refrain from imposing any penalty on M/s. Lambda Therapeutic Research Limited under section 112 of the Customs Act, 1962 for the reasons discussed at para 23.4 above.

h. I impose a penalty of ₹ 5,000/-(Rs. Five thousand only) on the Customs Broker, M/s. Rakesh A Oza in terms of the provisions of Section 112(a) of the Customs Act, 1962."

16. The said importer and the CHA/CB preferred appeals against the said Order-in-Original dated 02.05.2023 before the Commissioner (Appeals). The department also filed appeal against the said OIO before the Commissioner (Appeals). The Hon'ble Commissioner (Appeals) has decided all the above appeals vide Order-in-Appeal No.AHD-CUSTM-000-APP-213 to 215-24-25 dated 26.09.2024 by which the departmental appeal has been allowed by way of remand as it has been found that the Deputy Commissioner was not empowered to adjudicate upon the confiscation of the goods valued at more than Rs.10 lakhs in terms of Section 122 of the Customs Act, 1962 read with Notification No.50/2018-Cus (NT) dated 08.06.2018. Hence, now the appeal is directed to be decided by the competent authority. For the same reason, the appeals filed by the said importer and CHA have been allowed by way of remand to be decided by the proper adjudicating authority.

16.1 As Hon'ble Commissioner Appeals has noted that the Deputy Commissioner was not empowered to adjudicate the case wherein the value of goods is more than 10 lakhs in terms of Section 122 of Customs Act, 1962. Accordingly, a corrigendum dated 31.07.2025 to SCN was issued wherein the noticee was called upon to Show Cause before Additional Commissioner of Customs, Ahmedabad.

**DEFENCE REPLY:-**

17. Consequent upon the matter being getting remanded back by the Hon'ble Commissioner (Appeals), the importer M/s. Lambda Therapeutic Research Limited has submitted reply to the said SCN vide their written submissions dated 25.05.2022 as well as 07.07.2025, inter-alia stating that

the show cause notice alleges that the goods under question are not for Therapeutic or Prophylactic uses put up in a Measured doses (including those in the Form of Transdermal Administration systems) or in Forms or Packings for Retail sale; that hence, IGST is payable @18% vide Residuary entry No. 453 of Schedule-III of Notification No: 1/2017-Integrated Tax (Rate), dated 28.6.2017 in place of IGST @12% vide of entry No. 63 of Schedule-II to Notification No: 1/2017- Integrated Tax (Rate), dated 28.6.2017 ; that they have correctly paid IGST@12% on imported goods falling under CTH 30049099 ; that the goods imported were classified under CTH 30049099 of the First Schedule to the Customs Tariff Act, 1975 ; that the main heading 3004 of the First Schedule to the Customs Tariff Act, 1975, reads as under:

"MEDICAMENTS (EXCLUDING GOODS OF HEADING 3002, 3005 OR 3006) CONSISTING OF MIXED OR UNMIXED PRODUCTS FOR THERAPEUTIC OR PROPHYLACTIC USES, PUT UP IN MEASURED DOSES (INCLUDING THOSE IN THE FORM OF TRANSDERMAL ADMINISTRATION SYSTEMS) OR IN FORMS OR PACKINGS FOR RETAIL SALE.

That the aforesaid Tariff Entry does not prescribe end-use requirement or end-use fulfillment ; that it only requires that the subject medicaments should be capable of being used for therapeutic or prophylactic uses ; that the medicament imported by them are by all means suitable and capable for therapeutic or prophylactic uses ; that if, in the instant case, they have used it for R&D or clinical trial, which does not, per se, make the subject imported medicament, unfit or incapable for therapeutic or prophylactic uses ; that the word "for" is to be contradistinguished from the words "intended for use" or "actually used for" ; that the wording in the tariff entry does not stipulate the end-use but it merely suggests the suitability or capability for use of the imported medicament ; that therefore, the classification of imported goods in question under CTH 30049099 of the First Schedule to the Customs Tariff Act, 1975 is applicable even if the said imported goods are used for R&D or clinical trial, which does not, per se, make the subject imported medicament, unfit or incapable for therapeutic or prophylactic uses ; that if this be the legal position, IGST is payable @12% vide of entry No. 63 of Schedule-I1 to Notification No: 1/2017-IT(Rate) dated 28.6.2017 ; that when a specific rate of @12% is specified vide of entry No. 63 of Schedule-Il to Notification No: 1/2017-IT(Rate) dated 28.62017, they are not required to apply the rate of IGST specified under residuary entry No 453 of Schedule-Ill of Not. No.1/2017-IT(Rate) dtd 28.6.2017 ; that they have imported pharmaceutical products for the purpose of clinical study and that these products are known as Investigational Medical Product ; that these products are finished formulation only and having therapeutics or prophylactic uses ; that these products are procured by their Sponsor (Customer) from foreign market and

sent to them for conducting clinical study of their project ; that hence, these Pharmaceutical products which are imported, are already available in the local market of the respective Country hence it cannot be said that these are yet to be tried for its efficacy and suitability ; that it is well settled position that Goods have to be assessed in condition in which it has been imported ; that these products basically are Medicament for Therapeutic or Prophylactic uses, therefore, end use is not relevant for the purpose of classification of imported goods ; that it may so happen that end consumer may not consume such goods for intended purpose but that will not change purpose of such goods ; that this position is already settled by Supreme Court in the case of Dunlop India vs, UOI - 1983 (13) ELT 1566 (SC), wherein, it has been held by Hon'ble Apex Court that in the case of levy of Customs Duty the relevant taxing event is importing into India or exporting from India and what happens to the goods after the importation cannot be a criterion for deciding the levy of Customs Duty. The Supreme Court has observed in para 30 of this decision as under:

"The relevant taxing event is the importing into or exporting from India, Condition of the article at the time of importing is a material factor, for the purpose of classification as to under what head, duty will be leviable,. The reason given by thé authority that V.P. Latex when coagulated as solid rubber cannot be commercially used as an economic proposition as even admitted by the appellants, is an extraneous consideration in dealing with the matter. They are, therefore, not required to consider the history and chemistry of synthetic rubber and V.P. Latex as a component of SBR with regard to which extensive arguments were addressed by both sides by quoting from different texts and authorities".

That in view of the above, it is submitted that they have correctly paid IGST @12% as specified vide of entry No. 63 of Schedule-II to Noti. No: 1/2017-IT(Rate) dated 28.6.2017 as the imported goods are falling under CTH 30049099, and Show Cause Notice does not dispute classification of imported goods ; that proposed re-assessment of finally assessed 21 Bills of Entry not permitted under Customs Act 1962 ; that they have imported Medicaments falling under CTH 30049099 under 21 Bills of Entry during the period from 04.07.2017 to 13.09.2017 for assessable value of Rs. 8121481/- on which IGST was paid @12% as specified vide of entry No. 63 of Schedule-II to Notification No: 1/2017-Integrated Tax (Rate), dated 28.6.2017 ; that the aforesaid Bills of Entry were finally assessed and for the purpose of final assessment, they have submitted all relevant documents to Appraising Officers ; that the 21 Bills of Entry are covering different periods from 04.07.2017 to 13.09.2017 and no time the Appraising Officers of Air Cargo Complex, Ahmedabad raised any issue with regard to end use of the goods imported ; that in other words, the 21 Bills of Entry were finally

assessed on different dates were finally assessed on various dates during the period from 04.07.2017 to 13.09.2017 as shown in Table-A of the said Show Cause Notice ; that consequently, all the aforesaid 21 Bills of Entry having been finally assessed cannot be reviewed or reopened by way of fresh adjudication as proposed in the impugned Show Cause Notice, 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 ; that all the 21 Bills of Entry have attained finality after the Final Assessment, in the absence of any statutory Appeal filed there against under Section 128 of Customs Act, 1962, within the limitation period prescribed in the said Section 128 ; that thus, Section 17 of Customs Act, 1962 contemplates reassessment only in the following two situations : (i) Vide Section 17 (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 (ii) vide Section 17(5), where any re-assessment done under sub- section (4) is contrary to the self-assessment done by the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification issued therefor under the Customs Act, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be ; that therefore, in the present case, where there is neither a situation of correcting the self-assessment under Section 17(4) nor is there any situation of re-assessment arising for correcting reassessment done under Section 17(4) for reason of correcting error about valuation, classification, exemption, etc. as contemplated in Section 17(5) ; that in other words, the method and manner of assessment including provisional assessment, re-assessment as prescribed in Section 17 does not envisage a case, where a final assessment from provisional assessment is sought to be reviewed or re-opened as in the present case ; that the officer after final approval of Bill of Entry, cannot review an assessment order ; that as the Final Assessment of the Bills of Entry is an order of assessment per se, unless such an order of assessment passed under Section 2(2) of the Customs Act 1962, is appealed before Commissioner (Appeals) for modification, no demand of duty can be raised, by seeking review of such Final Assessment Order, which has attained finality in the eyes of law ; that they rely upon the following judgments :

2004 (172) ELT 145 (SC) Priya Blue Inds. Vs. CC

2007 (81) RLT 962 (Cestat-LB) CC (Imp.) Vs. Eurotex Inds. & Exports Ltd.

2019 (368) ELT 216 (SC) ITC Ltd. Vs. CCE

That the subject Show Cause Notice dated 26.4.2022 has been issued covering a period from 04.07.2017 to 13.9.2017 ; that the Show Cause Notice is barred by limitation specified under Section 28 of the Customs Act, 1962 ; that in terms of Section 28(1) of Customs Act, 1962, where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any willful mis-statement or suppression of facts, the proper officer shall, within two years from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied or paid or which has been 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 ; that under Section 28 (4)of Customs Act, 1962, where any duty has not been levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part paid or erroneously refunded, by reason of, —

(a) collusion; or
(b) any wilful mis-statement; or
(c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been [so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice ; that in their case the importer / Noticee has filed Bills of entry claiming classification of imported paid IGST @12% as specified vide of entry No. 63 of Schedule-II to Notification No: 1/2017-Integrated Tax (Rate), dated 28.6.2017 as the imported goods are falling under CTH 30049099. Show Cause Notice does not dispute classification and the 21 Bills of Entry were assessed finally at different periods from 4.7.2017 to 13.9.2017 ; that it is a settled position in law that suppression occurs when facts which an assessee knew he had to disclose were consciously not disclosed to evade the payment of tax ; that the settled position in law is that only an overt act of withholding of information would amount to suppression. Reliance in this regard is placed on the judgments in Collector of Central Excise, Hyderabad vs. Chemphar Drugs and Liniments, Hyderabad [1989 (40) E.L.T. 276 (S.C.)] and Anand NishiKawa Co. Ltd. vs. Commissioner of Central Excise Appeal, Meerut [2005

(188) E.L.T. 149 (SC)] ; that since the Noticee has conducted itself in bona fide manner, there is clear lack of any mala fide intention or action on the Noticee's part. Accordingly, the Show Cause Notice is liable to be dropped ; that in view of the above submissions, it is evident that the Noticee did not suppress or mis-declare any facts with the intention to evade payment of duty. Hence, it is submitted that in such circumstances, Section 28 (4) of Customs Act, 1962, cannot be invoked ; that in CCE vs. HMM Ltd. [1995 (76) EEL.T. 497 (S.C.)] wherein the Hon'ble Supreme Court held that where the demand itself is unsustainable, the imposition of interest and penalty cannot sustain. Further, reliance is placed on the following judgments:

- Commissioner of Customs, Chennai vs. Jayathi Krishna & Co. [2000 (119) E.L.T. 4 (S.C)];
- CCE, Aurangabad vs. Balakrishna Industries (2006 (201) ELT. 325 (S.C.)];
- Coolade Beverages Ltd. vs. CCE, Meerut [2004 (172) E.LT. 451 (All.)].

That once the proposed demand is found to be non-sustainable, the question of levy of penalty does not arise ; that in the case of Collector of Central Excise v. H.M.M. Limited, 1995 (76) ELT 497 (SC), Hon'ble Supreme Court held that the question of penalty would arise only if the Department is able to sustain the demand. Similarly, in the case of Commissioner of Central Excise, Aurangabad v. Balakrishna Industries, 2006 (201) ELT 325 (SC), Hon'ble Supreme Court held that penalty is not imposable when differential duty is not payable. It is submitted that since in the present case the demand Is not sustainable on merits, the penalty cannot be sustained and ought to be set aside ; that they placed reliance on the decision of the Tribunal in M/s Hindustan Lever vs. CCE, Lucknow reported in 2010 (250) E.L.T. 251 (Tri. - Del.), wherein it has held that no penalty is leviable where question of interpretation is involved. They also placed reliance on the decision of the Hon'ble Tribunal in AEON'S Construction Products Ltd. Vs. Commissioner of C.Ex., Chennai reported in 2005 (180) E.L.T. 209 (Tri. Chennai) , wherein it is held that

".. The non-payment of duty was on account of the fact that the assessee interpreted and understood the Notifications in the way they did in a bona fide manner without any mens rea. Hence no penalty is warranted under Rule 173Q either."

That it is evident beyond doubt that at no point of time could the Noticee be said to have intentionally sought to evade payment of duty and the Noticee is under the bonafide belief that they are in compliance with the provisions of Customs Act, 1962 and Rules made thereunder ; that therefore, penalty cannot be proposed to be imposed in the facts of the present case as proposed in the Show Cause Notice ; that the Larger Bench of Tribunal in the case of SHIV KRIPA ISPAT PVT. LTD., Versus COMMISSIONER OF C. EX. & CUS., NASIK reported in 2009 (235) E.L.T. 623 (Tri. - LB) has held as under :

"Confiscation and redemption fine - Non-availability of goods - Whether goods can be confiscated and redemption fine imposed even if they are not available for confiscation - Identical issue considered in 2008 (229) E.L.T. 185 (P&H) and such order is binding - High Court in said order held that redemption fine in lieu of confiscation was not Imposable when goods were allowed to be cleared without execution of bond/undertaking - Similar view taken by Tribunal also in 1999 (112) E.L.T. 400 (Tribunal) and affirmed by Supreme Court (2005 (184) E.L.T. A36 (S.C.)] - Binding precedents under Customs Act, 1962 applicable to impugned case relating to excisable goods - Goods cannot be confiscated when not available and redemption fine not imposable - Sections 111 and 125 ibid - Rule 25 of Central Excise Rules, 2002."

The Bombay High Court dismissed the Customs Appeal No. 70 of 2009 filed by the Commissioner of Customs (Import) (Respondent being Rishi Ship Breakers) -Commissioner v. Rishi Ship Breakers 2015 (318) E.L.T. A259 (Bom.), against the CESTAT Misc. Order Nos. M/43-44/2009-WZB/LB(SMB), dated 19-1-2009 as reported in 2009 (235) E.L.T. 623 (Tribunal-LB). (Shiv Kripa Ispat Pvt. Ltd. v. Commissioner). While dismissing the appeal, the High Court passed the following order : (Only relevant portion)

"1. The only point of law which needs consideration is "whether in the facts and circumstances of the case and in law the CESTAT is right in dismissing the appeal of Revenue and holding that no redemption fine can be imposed and penalty levied when the goods are physically not available for confiscation?"

2. In so far as redemption fine is concerned, they have, in the facts and the circumstances of the case, taken a view in the case of the Commissioner of Customs (Import) v. M/s. Flurose Creation INC. in Customs Appeal NO.66 of 2009, by judgment dated August 25, 2009 that as the goods are not available for confiscation no redemption fine can be imposed. This question therefore, does not arise."

That the Appellate Tribunal in its aforesaid impugned order had held that no redemption fine and penalty can be imposed when the goods are not physically available for confiscation ; that in view of the aforesaid settled position it is submitted that no redemption fine and penalty can be imposed when the goods are not physically available for confiscation.

17.1 Customs Broker M/s. Rakesh A Oza (hereinafter referred to as Noticee No.2) has submitted reply to the said SCN vide their written submission dated 17.05.2022 and 08.07.2025, wherein, they have, inter-alia pleaded that there is nothing to attribute any personal knowledge or belief or intention on this Noticee's part or personal involvement or any personal gain, if any, accruing to the noticee by the alleged offence ; that there is no specific material or allegation or evidence or proof against the Noticee in the impugned Show Cause Notice for warranting or justifying the proposed penal action ; that there is no exposition as to the manner in which he has played any role in the alleged evasion of duty or in the alleged evasion of duty or in the alleged contravention of the provisions of the relevant law ; that therefore, under the circumstances, no penalty can be imposed on the notice (CHA) as per settled law ; that it is well-settled principle of law, it is always for the Department to prove the guilt and not for the accused to prove his innocence ; that the burden to prove the offence is always on the revenue,

which remains totally un-discharged in the instant case and therefore, the benefit of doubt, must go the assessee ; that it is now well-settled that penalty is not imposable unless a party has acted contumaciously or in conscious disregard of its obligation under the law Penalty is also not imposable unless there is a clandestine act or intent or attempt to evade or avoid payment of duty ; that penalty is also not imposable unless there is unshakable and reliable evidence satisfying all legal tests meant for its dependability.

18. Personal hearing was given on 08.07.2025 which was attended by M/s Rakesh A. Oza, Customs Broker, wherein, it has been pleaded that the that the subject notice came to be issued on 26.04.2022 ; that the bills of entry relied in Table A to the show cause notice pertained to the period between July, 2017 and September, 2017. At this stage, reference is made to the provisions of section 28 of the said Act. Sub section (1) of section 23 provides for issuance of show cause notice by the proper Officer within a period of 2 years from the relevant date. The relevant date has been defined in explanation 1 to section 28 of the said Act. Clause (a) provides the relevant date in case where duty was short levied or short paid, the date on which the proper officer makes an order for clearance of goods. The said sub section (1) of section 28 stipulates that the said period of 2 years is available where duty has been not paid or short paid for any reasons other than the reasons of collusion or any wilful misstatement or suppression of fact. In the present case, no such allegation of collusion, willful misstatement or suppression of fact has been made and therefore the subject notice was required to be issued within a period of 2 years from the relevant date. The subject notice having been issued beyond the stipulate period of 2 years without jurisdiction and therefore no action under the said show cause notice could be taken ; that in the subject show cause notice reference to regulation 10 of the Customs Brokers Licensing Regulation, 2018 has been made, the said regulation 10 comprises of various clauses which are in the nature of obligation of the Custom Broker. Clause (d) has been referred in the subject show cause notice for imposition of penalty. The said clause (d) casts an obligation on the Customs Broker to advise his client to comply with the provisions of the Act. The subject show cause notice the impugned order does not bring on record as to what advise was required to be given to the importer for compliance of the provisions of the Act, which was not given by the appellant. In the present case, the entire allegation is based on the classification of the goods imported by the importer. The classification dispute has been raised based on an audit objection, wherein it was objected

that the imported goods were not put to therapeutic or prophylactic use and therefore the classification adopted by the importer was not correct. The classification of the goods imported is normally decided by the importer and conveyed to the customs broker who is required to the file the documents for clearance of the imported consignment. The goods in the present case were medicaments and therefore there was no reason for the appellant to believe that the classification adopted by the importer was not correct. There being no evidence brought on record contrary to the bonafide belief on the appellant and therefore the imposition of penalty on the importer is not justified ; that even otherwise, it is a settled law that in disputes involving classification of goods, no penalty is imposable ; that they rely on the case of Hera Shipping Solution Pvt. Ltd., Vs. Commissioner reported at 2022 (382} ELT 552 (Tri.Chennai), it was held by the Hon'ble Tribunal that the Customs Broker merely files the Shipping Bills based on the documents, and there was no mens-rea on his part and, therefore imposition of penalty under Section 114 and 114AA was not justified. Applying the ratio of the above case in the present matter, there being no evidence of any means-rea on their part, the imposition of penalty under Section 112(a)of the said Act is not justified ; that they have referred to Advisory No. 01/2022, dated 29.12.2022 issued from the office of the Principal of Chief Commissioner of Customs, Mumbai, In the said advisory it has been advised that the officers involved in audit should be advised not to invoke the violation of provisions of CBLR 2018 and make the Customs Broker co-noticee in cases involving interpretative disputes regarding classification, availment of benefit of exemption notification and valuation. Thereafter, the Chief Commissioner of Customs. JNPT. has vide letter dated 20.02.2023 has circulated wherein it has been requested to impress upon the adjudicating authority that the penal action should not be invoked against the Customs Broker in routine manner ; that the Board vide Instruction No.02/2024-Customs, date 03.09.2024, has clarified the implication of Customs Broker a co-noticee in a routine manner ; that in the present case there is no evidence brought on record which suggest that they were aware of the classification adopted by the importer being wrong and still he did not advise the importer. That being so, no penalty could be imposed on them ; that the Hon'ble Additional Commissioner may be pleased to quash and set aside Show Cause Notice dated 26.04.2022 ; that the Honble Additional Commissioner may further be pleased to hold that in the facts, circumstances and evidence on record of the case, no penalty is imposable on the noticee.

18.1 A personal hearing in this matter was also attended by M/s Lambda Therapeutic Research Limited on 07.07.2025. On the next day i.e. 08.07.2025, they have made brief submissions, inter alia stating that the tariff description does not prescribe end use requirement and it only prescribes that the medicaments should be capable of being used for therapeutic or prophylactic uses ; that medicaments imported are all capable for being used as therapeutic or prophylactic uses ; that just because the importer has used the goods for R & D and clinical trials , it does not, per se, make the said medicaments unfit or incapable of therapeutic or prophylactic uses ; that the assessed bills of entry cannot be re-assessed unless the assessment was challenged at that particular time ; that they have relied on following case laws :-

Priya Blue Industries : 2004 (172) ELT 145 (SC)

Eurotex Industries & Exports Ltd : 2007 (81) RLT 962 (Tri-LB)

ITC Limited : 2019 (368) ELT 216 (SC)

That the demand is time barred ; that it is well settled that suppression occurs when facts which an assesse knew he had to disclose were consciously not disclosed to evade the payment of tax ; that they rely on the case law of Chemphar Drugs & Liniments 1989 (40) ELT 276 (SC) and Anand Nishi Kawa Co. Ltd. reported in 2005 (188) ELT 149 (SC) ; that penalty is not imposable for which they have relied on Hindustan Lever 2010 (250) ELT 251 (SC) ; that confiscation is not permissible and redemption fine cannot be imposed when goods not physically available for which they have placed reliance on 2009 (235) ELT 623 (Tri-LB) ; 1999 (112) ELT 400 (Tri) which is upheld by the Hon'ble Supreme Court as reported in 2005 (184) ELT A-36 (SC).

18.2 Further, a fresh personal hearing in matter was fixed on 07.08.2025 vide letter dated 04.08.2025 issued to Noticee Shri Rakesh A. Oza, Customs Broker and M/s. Lambda Therapeutic Research Limited due to issuance of Corrigendum to SCN. Shri Rakesh A Oza vide mail dated 08.08.2025 informed that they did not required any Personal Hearing in the matter. Similarly vide mail dated 11.08.2025, M/s. Lambda Therapeutic Research Limited has informed that their advocate/authorized representative has already attended the PH on 08.07.2025. Therefore, they have no further grounds of appeal/submission apart from their earlier submission.

**Discussions and Findings:-**

19 I have carefully gone through the facts of the case, case records, the Order of the Hon'ble Commissioner (Appeals) and the replies submitted by the importer vide various letters as mentioned in the present notice.

19.1 I have also gone through the brief facts of the case, the extant provisions of the Customs Act, 1962 and the submissions of the said importer as well as Custom Broker. The crux of the issue lies in determining whether the said importer have availed correct benefit of Notification for payment of IGST or otherwise. The said importer had imported goods at Air Cargo Complex (INAMD4) Ahmedabad, classifying the goods under CTH NO.3004 of the Customs Tariff for the purpose of trial/research and development and claimed benefit under Sl. NO.63 of Schedule II of Notification No.1/2017 Integrated Tax (Rate) dated 28.06.2017, which provided for the medicament for therapeutic or prophylactic uses put up in measured does or in forms or packing for retail sale. The CERA vide LAR No.108/17-18 raised an objection that on verification of Bills of Entry as shown in TABLE-"A" above, it was noticed that the commodity falling under CTH 3004 were imported for the purpose of trial/research and development by the said importer. The CRA observed that the commodity/imported goods, which are yet to be tried for its efficacy and suitability cannot be considered as "Medicament for therapeutic or prophylactic uses put up in measured doses or in forms or packing for retail sale". Accordingly, the IGST of the imported goods is to be leviable @18% under residuary entry of Sr.No.453 of Schedule III of IGST Notification No.1/2017 Integrated Tax (Rate) dated 28.06.2017. This has resulted in short levy of IGST amounting to Rs.5,36,556/-.

19.2. Therefore, I find that the basic issue to be decided is whether there is short payment of IGST as observed by CERA Audit vide LAR NO.111/17-18 dated 16.03.2018 on the ground that the said importer had availed wrong benefit of IGST Notification No.01/2017 IT(Rate) dated 28.06.2017 (at Sr.No.63 of Schedule II) which had resulted in to short payment of IGST on the goods imported by them also whether the goods imported under the subject bills of entry are liable for confiscation under Section 111(m) of the Customs Act, 1962 since the goods are not available for confiscation, fine as contemplated under Section 125 should be imposed on them in lieu of confiscation.

19.3 I find that the said importer had opted for Sr.No.63 of Schedule II of IGST Notification No.01/2017 IT (Rate) dated 28.06.2017, which reads as under:

Schedule-12%

| Sr.No. | Chapter/Heading/ Sub-heading/Tariff item | Description of Goods |
|---|---|---|
| (1) | (2) | (3) |
| 63 | 3004 | Medicaments (excluding goods of heading 30.02, 30.05 or 30.06) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms of packing for retail sale, including Ayurvaedic, Unani, homoeopathic siddha or Bio-chemic systems medicaments, put up for retail sale |

The said importer had imported goods and classified the same under CTH 3004 of the Customs Tariff Act claiming and availing benefit under Sl. No. 63 of Schedule II of Notification No.1/2017 dated 28.06.2017 Integrated Tax (Rate) and paid IGST @12%. As shown above, benefit under Sl. No. 63 of Schedule II of Notification No. 1/2017 dated 28.06.2017 Integrated Tax (Rate) was provided in respect of medicament for therapeutic or prophylactic uses put-up in measured doses or in forms or packing for retail sale. The imported goods under question fall under CTH 3004 but are not medicaments consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packing for retail sale. I observe that the said importer has not disputed that goods imported under Bills of Entry mentioned in TABLE 'A' above were for the purpose of trial / research and development. The commodity/goods which are yet to be tried for its efficacy and suitability cannot be considered as "Medicament for therapeutic or prophylactic uses put-up in measured doses or in forms or packing for retail sale". Hence, such goods do not attract IGST @12% under entry of schedule-II-63 under Notification No.01/2017Integrated Tax (Rate) dated 28.06.2017. Further, it is also a matter of record that the said imported goods were used for the purpose of R & D or Chemical trial purpose and not "Put up for retail sale". The primary condition for availing the benefit under schedule-II-63 under Notification No.01/2017 is that the goods imported should be for the purpose of "therapeutic or prophylactic uses' and "put up for retail sale". By the submission of the said importer itself, the imported goods were neither used for "therapeutic or prophylactic uses" nor "put up for retail sale". Therefore, both the conditions of said notification were not fulfilled. Hence, benefit under SI. No. 63 of Schedule II of Notification No. 1/2017 dated 28.06.2017 Integrated Tax (Rate) is not

available to the said imported goods and therefore, the said imported goods correctly fall under residuary entry at Sr. No 453 of Schedule-IIl of Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017, which provides as under.

"453-Any chapter-Goods which are not specified in Schedule I, II, IV, V or V1."

Schedule III -18%

| Sr.No. | Chapter/Heading/ Sub-heading/Tariff item | Description of Goods |
|---|---|---|
| (1) | (2) | (3) |
| 453 | Any Chapter | Goods which are not specified in Schedule I, II, IV, V or VI |

19.4 I further find that the said importer had not agreed with the objection of short payment of IGST. The contention of the said importer is that classification of imported goods under CTH 3004 in question was not in dispute but dispute is only for their end use. I find it is true that there is no dispute regarding the correct classification of the goods, the dispute is with regard to availing benefit of IGST @ 12% instead of 18%. Notification No.01/2017-IT(Rate) dated 28.06.2017 notifies the rate of tax at different percentage on the basis of different schedules, such as, Schedule-I to Schedule-VI appended to the notification. Accordingly, the said importer opted for sr.no.63 of Schedule-II which reads for medicaments falling under CTH 3004 as under:-

"Medicaments (excluding goods of heading 30.02, 30.05 or 30.06) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale, including Ayurvaedic, Unani, homoeopathic siddha or Bio-chemic systems medicaments, put up for retail sale."

19.5. Thus, it is found that for falling under this entry, the medicaments have to be imported as put up in measured doses (including those in the form of transdermal admistration systems) or in form or packing for retail sale. The importer has to show that the medicaments were for retail sale, whereas, it is an undisputed fact that the medicaments were for trial purpose and not for retail sale. Accordingly, they have been erroneously covered under sr.no.63 of Schedule-II to the said notification. Another competitive entry is Sr.No.453 of Schedule-III which reads as "Medicaments (excluding goods of heading 30.02, 30.05 or 30.06) consisting of mixed or unmixed products for therapeutic or prophylactic

uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale, including Ayurvaedic, Unani, homoeopathic siddha or Bio-chemic systems medicaments, put up for retail sale". Hence, when the goods under import are not covered under Schedule-II, they will have to be covered under Schedule-III and would attract IGST @ 18%.

19.6. The said importer has relied upon the judgment of Apex Court in the case of Dunlop India vs. UOI - 1983 (13) ELT 1566 (SC) supra, by quoting that in the case of levy of Customs Duty the relevant taxing event is importing into India or exporting from India and what happens to the goods after the importation cannot be a criterion for deciding the levy of Customs Duty. I am of the view that conclusion in the case may be correct, but it cannot be applied universally without considering the hard realities and specific facts of each case. Those decisions were made in different contexts, with different facts and circumstances and the ratio cannot apply here directly. 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 Products [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 judgment in the case of *Escorts Ltd. Vs CCE, Delhi [2004(173) ELT 113(SC)]* wherein it has been observed that one additional or different fact may make huge 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 *CC(Port), Chennai Vs Toyota Kirloskar [2007(2013) ELT4(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. In the present case, goods were imported for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packing for retail sale, put up for retail sale, however during the course of audit it was observed that they were imported for the purpose of trial / research and development and not for intended purpose of retail sale as these products were yet to be tried for its efficacy and suitability and therefore, benefit of IGST @12% under entry of schedule-II-63 under Notification No.01/2017-Integrated Tax

(Rate) is not available. Hence, the ratio of judgment of Dunlop India supra is not applicable in this case as it was given in different pretext.

19.7 I further find that it is a settled issue that benefit under a conditional Notification cannot be extended in case of non-fulfillment of conditions prescribed therein. Conditions laid down in an exemption Notification are required to be strictly followed for the purpose of availing the benefit of exemption of Duty. In the instant case, the said importer had mis-declared that they had imported the goods for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packing for retail sale, put up for retail sale and availed benefit of IGST @12% under entry of schedule-II-63 under Notification No.01/ 2017-Integrated Tax (Rate) available for the said purpose. However, audit of the records of the said importer revealed that they have failed to fulfill the intended purpose prescribed in entry of schedule-II-63 under the said Notification No.01/2017-Integrated Tax (Rate). Accordingly, IGST @18% vide entry at Sr. No. 453-Schedule-Ill of Noti. No.01/2017-IT (Rate) dated 28.06.2017 instead of 12% is applicable for said imported goods. Thus, the said Importer were required to pay differential duty alongwith Interest for their act of non-fulfilment of the condition of Noti. No.01/2017-IT (Rate). Hon'ble Supreme Court in the case of Commissioner of Central Excise Chandigarh I Vs. Maahan Dairies reported in 2004 (166) E.L.T. 23 (S.C.) has observed that it is settled law that in order to claim benefit of a Notification, a party must strictly comply with the terms and conditions of the Notification.

19.8. Similarly, in the case of M/s Medreich Sterilab Ltd. reported at 2020(371) ELT 639 (Mad.) Hon'ble High Court of Madras has observed as under:

*"9. It is well-settled law that to avail the exemption of duty under any Notification, the Rules and Regulations and the conditions prescribed therein have to be strictly adhered and there is no place for equity or intendment in the interpretation of the taxing Statutes. By holding that the Rules of 1996 are only procedural or directory in nature, the Learned Tribunal has frustrated the very purpose of Rules 3 and 4 in question by holding that the Assessee is entitled to the exemption for import made on 28-6-2003. There is no dispute before us that the registration under Rules 1996 was granted in favour of the Assessee only on 14-7-2003 and not at any point of time prior to that and therefore we cannot uphold the order passed by the Learned Tribunal"*

19.9. The Hon'ble Supreme Court in the case of Krishi Upaj Mandi Samiti vs Commissioner of Central Excise ... on 23.02.2022, reported in 2022 (58)

G.S.T.L. 129 (S.C.} has observed that it is settled law that the notification has to be read as a whole. If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification. Relevant para of the said judgment is re-produced below-

*"8. The exemption notification should not be liberally construed and beneficiary must fall within the ambit of the exemption and fulfill the conditions thereof. In case such conditions are not fulfilled, the issue of application of the notification does not arise at all by implication.*

*8.1 It is settled law that the notification has to be read as a whole. If any of, the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification. An exception and/or an exempting provision in a taxing statute should be construed strictly and it is not open to the court to ignore the, conditions prescribed in the relevant policy and the exemption notifications issued in that regard.*

*8.2 The exemption notification should be strictly construed and given a meaning according to legislative intendment. The Statutory provisions providing for exemption have to be interpreted in light of the words employed in them and there cannot be any addition or subtraction from the statutory provisions."*

19.10. The Hon'ble Supreme Court, in the case of M/s Dilip Kumar & Co. reported at 2018 (361) ELT 577 (SC), has reiterated the above principle wherein it has been observed as under:

*"19. The well-settled principle is that when the words in a statute are clear, plain and unambiguous and only one meaning can be inferred, the Courts are bound to give effect to the said meaning irrespective of consequences. If the words in the statute are plain and unambiguous, it becomes necessary to expound those words in their natural and ordinary sense. The words used declare the intention of the Legislature. In Kanai Lal Sur v. Paramnidhi Sadhukhan, AIR 1957 SC 907, it was held that if the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.*

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

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

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

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

*Further, the various case laws relied upon by the said importer have different facts than the facts involved in the present case and hence are not applicable in the circumstance of the present case. In view of above, the*

*allegation and demand made in SCN dated 10.10.2022 is therefore acceptable to me as it is legal and sustainable in Law on the grounds discussed as above."*

19.11. In view of above, the IGST of the imported goods is to be levied @18% under residuary entry of Sr. No. 453 of Schedule III of IGST Notification No.1/2017 Integrated Tax(Rate) dated 28.06.2017. This has resulted in short levy of IGST totally amounting to **₹5,36,556/-.**

20. These act of omission on the part of the said importer had resulted in to mis-declaration and consequently into short payment of IGST to the tune of **₹5,36,556/-** for the goods imported under above Bills of Entry as detailed in Table mentioned at para 2 by wrong availment of benefit of the said notification. By this act of omission, they have rendered the imported goods liable for confiscation under Section 111(m) and Section 111(o) of the Customs Act, 1962.

21. I further find that 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 said importer has failed to exercise their statutory obligation and paid IGST at lower rate with an intent to evade GST duty, by claiming benefit of wrong heading. In view of same, the said importer has knowingly, willfully and intentionally paid IGST at lower rate than the applicable rate by quoting wrong Schedule and heading under Notification No.01/2017 dated 28.06.2017 (w.e.f. 01.07.2017). All these material facts have been concealed from the Department deliberately, consciously and purposely with an intent to evade payment of applicable Customs duty and the same came to the notice during the course of audit conducted by the CERA. Therefore, in the present case, all essential ingredients exist to invoke Section 28(4) of the Customs Act, 1962, to demand the applicable differential duty of IGST which is short paid by them. Hence, demand is not barred by limitation of time as contended by the said importer and various case laws cited by them in this regard are not applicable to this case.

22. Accordingly, IGST Customs Duty to the tune of **₹5,36,556/-**, is liable to be demanded and recovered from the said importer in terms of the provisions of Section 28(4) of the Customs Act. Further, according to Section 28AA of the Customs Act, 1962, 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, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under

that section. Therefore, the importer is required to pay interest at the appropriate rate under Section 28AA of the Customs Act, 1962.

23. The said importer has contended that the assessment of the Bills of Entry involved has been finalized and hence the matter of classification should not have been questioned or reopened without having been challenged the assessment in appeal. I find that the present show cause notice has been issued under sub-section (4) of Section 28 of the Customs Act, 1962. I observe that Section 28 of the Customs Act, 1962 stipulates as under:

*"Section 28. Recovery of duties not levied or not paid or short-levied or short paid or erroneously refunded. -*

*(1) Where any duty has not been levied or not paid or short-levied or short-paid or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any willful mis-statement or suppression of facts,-*
*(a) the proper officer shall, within two years from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied or paid or which has been 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;*

*Provided that before issuing notice, the proper officer shall hold pre-notice consultation .....*

*Provided that the proper officer shall not serve such show cause notice, where the amount involved is less than rupees one hundred.*

*(2) The person who has paid the duty along with interest or amount of interest under clause (b) of sub-section (1) shall inform the proper officer of such payment in writing, who, on receipt of such information, shall not serve any notice under clause (a) of that sub-section in respect of the duty or interest so paid or any penalty leviable under the provisions of this Act or the rules made thereunder in respect of such duty or interest:*

*(3) Where the proper officer is of the opinion that the amount paid under clause (b) of sub-section (1) falls short of the amount actually payable, then, he shall proceed to issue the notice as provided for in clause (a) of that sub-section in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of two years shall be computed from the date of receipt of information under sub-section (2).*

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

*(a) collusion; or*

*(b) any wilful mis-statement, or*

*(c) suppression of facts,*

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

Further, Section 47 of the Customs Act, 1962 states as under.

*Section 47. Clearance of goods for home consumption. -*

*(1) Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption:*

23.1. I have also gone through the following judgment of Apex Court: *U.O.I. Vs. Jain Shudh Vanaspati Ltd. (Civil Appeal No. 2360 of 1980, decided on 8-8-1996) [1996 (86) E.L.T. 460(S C}]*

"Demand - Show Cause Notice under Section 28 of the Customs Act, 1962 for demand of duty can be issued without revising under Section 130, the order of clearance passed under Section 47 of the Customs Act, 1962."

23.2. Therefore, I do not agree with the contention of the said importer that the assessment of the Bills of Entry finalized hence the matter of classification should not have been reopened without having been challenged the assessment in appeal. I find that the Apex court in the case of Jain Shudh Vanaspati Ltd. supra held that "It is patent that a show cause notice under the provisions of Section 28 for payment of Customs duties not levied or short-levied or erroneously refunded can be issued only subsequent to the clearance under Section 47 of the concerned goods. Further, Section 28 provides time limits for the issuance of the show cause notice thereunder commencing from the "relevant date"; "relevant date" is defined by sub-section (3) of Section 28 for the purpose of Section 28 to be the date on which the order for clearance of the goods has been made in a case where duty has not been levied; which is to say that the date upon which the permissible period begins to run is the date of the order under Section 47. The High Court was, therefore, in error in coming to the conclusion that no show cause notice under Section 28 could have been issued until and unless the order under Section 47 had been first revised under Section 130 (Appeal to High Court.)."

23.3. Further, the case laws relied upon by the said importer have different facts than the facts involved in the present case and hence are not applicable in the circumstance of the present case.

24. Now, I come to the issue of confiscation of goods and imposition of penalty.

24.1. 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.

24.2. I find that the said importer has willfully mis-declared the items imported under said bills of entry as detailed in TABLE 'A', to the said SCN with intention to evade duty of IGST. In view of the above findings, it appeared that the said importer has violated Section 17 (1) of the Customs Act, 1962, in as much as they had not made proper assessment of the goods imported by them Vide Bills of Entry for the purpose of evading Customs Duties(IGST duty). The said importer has knowingly and intentionally availed wrong benefit of Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017 (w.e.f. 01.07.2017) at SI. No. 63 to evade duty. Here, I find that the goods imported by the said importer do not correspond to the entries of Sr.No.63 of Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017, which is only available to medicaments consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packing for retail sale, including Ayurvaedic, Unani, homoeopathic siddha or Bio-chemic systems medicaments, put up for retail sale. Further, this is not a mere claiming of an allegedly wrong availment of Notification but willful mis-statement on the part of the said importer, knowing fully well that the goods that they imported was not eligible for the benefit for Sr.No.63 of Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017 under the aforementioned entries of the relevant Notifications. In view of the above facts, the goods imported by the said importer are liable for confiscation as per the provisions of Section 111(m) of the Customs Act, 1962.

24.3 I further find that 'Self-Assessment' system has been introduced in respect of Customs clearance of imported goods under Section 17 of Customs Act, 1962, with effect from 8-4-2011 and sub-rule (4) ibid provides that:

*"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."*

24.4 Thus, it was the responsibility of the importer, under self-assessment system, to declare the correct facts in regard to the imported goods and classify them under appropriate description and self-assess the goods correctly. As it was obviously mis-declaration on the part of the said importer with an intent to evade payment of IGST duty at higher side by wrong availment of Sr.No.63 of Notification No.01/2017-Integrated Tax (Rate), the goods were, therefore, considered to be liable for confiscation under Section 111(m) of Customs Act, 1962.

24.5 I further 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 Bills of Entry submitted for assessment of Customs duty but they have contravened the provisions of Section 46(4) in as much as they have mis-declared and misclassified the goods imported and thereby knowingly and intentionally evaded payment of IGST duty. When the said importer chose to pay IGST @ 12% instead of 18%, they were aware that the imported goods will have to be sold in retail market in the condition they are imported and they also knew that they were going to put these imported goods to use for R&D and clinical trials and not for retail sale, hence, there is clear suppression of facts on their part. If this would not have been pointed out by the Central Revenue Audit officers, this would have gone un-noticed and there would have been loss of revenue to the Government to that extent. Accordingly, the said importer has made willful mis-statement about the goods imported under said bills of entry as detailed in TABLE 'A' to the said SCN knowingly and intentionally to evade payment of IGST duty. Thus, I find that they have violated provisions of Section 46 of the Customs Act, 1962. All these acts on the part of the importer have rendered the imported goods, covered in the said SCN, liable to confiscation under Section 111(m) of the Customs Act, 1962.

25 As the impugned goods are found to be liable to confiscation under Section 111(m) of the Customs Act, 1962, 1 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. The Section 125(1) of the Customs Act, 1962 reads as under:

"125. Option to pay fine in lieu of confiscation.

*"(1) Whenever confiscation of any goods is authorized 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...:"*

25.1. The said importer has contended that Larger Bench of Tribunal in the case of SHIV KRIPA ISPAT PVT. LTD. supra has already held that Confiscation not permitted and redemption fine as contemplated under Section 125 of Customs Act, 1962 in lieu of confiscation not imposable when goods physically not available for confiscation. In this connection, I rely on the decision in the case of Weston Components Ltd. Vs. Commr. of Customs, New Delhi (2000 (115) 'E.L.T. 278 (S.C.)). In this case, it was held that:

*"Redemption fine imposable even after release of goods on execution of bond - Mere fact that the goods were released on the bond would not take away the power of the Customs Authorities to levy redemption fine if subsequent to release of goods import was found not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods - Section 125 of Customs Act, 1962."*

25.2. Further, Hon'ble High Court of Madras in the case of M/s Visteon Automotive Systems India Limited reported as 2018 (9) G.S.T.L 142 (Mad.) held as under:

> *"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..... "*
>
> *(Emphasis supplied)*

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

*"182. We would sum up our conclusion of the points raised in the writ applications as follows;*

(i) ……..
(ii) ……..

*(xv) Even in the absence of the physical availability of the goods or the conveyance, the authority can proceed to pass an order of confiscation and also pass an order of redemption fine in lieu of the confiscation. In other words, even if the goods or the confiscation has been released under Section 129 of the Act and, later, confiscation proceedings are initiated, then even in the absence of the goods or the conveyance, the payment of redemption fine in lieu of confiscation can be passed."*

25.4. Thus, the Hon'ble High Court of Gujarat vide above order held that that even in the absence of the physical availability of the goods or the conveyance, the authority can proceed to pass an order of confiscation and also pass an order of redemption fine in lieu of the confiscation. In other words, even if the goods or the conveyance has been released under Section 129 of the Act and, later, confiscation proceedings are initiated, then even in the absence of the goods or the conveyance, the payment of redemption fine in lieu of confiscation can be passed.

25.5. I find that the Hon'ble CESTAT in the case of M/s Sai International & others vide Final Order No. 20647-2

*"7. After considering the submissions of both the parties and the perusal of the various decisions, I am of the considered view that the issue of imposition of redemption fine and penalty has been settled and now various Benches of the Tribunal have consistently held that the redemption fine of 10% of the value of the goods and penalty of 5% of the value of the goods is sufficient punishment to the importer. Therefore, following the ratios of various decisions cited supra, I hold that the imposition of redemption fine to the extent of 10% of the value of the goods and penalty of 5% of the value of the goods is sufficient and I accordingly reduce the redemption fine and penalty to 10% and 5%, Accordingly, the appeals are disposed of in above terms."*

(Emphasis supplied)

25.6. In view of the above, redemption fine under Section 125(1) of the Customs Act, 1962 in lieu of confiscation is imposable on the said imported goods.

26. In view of the above discussion, I find that the importer is liable to pay differential duty of IGST as they had imported the goods and wrongly

availed benefit of Notification No.01/2017-Integrated Tax (Rate) (at Sr.No.63 of schedule Il). The said differential duty is recoverable under the provisions of Section 28(4) of the Customs Act, 1962 from them as they have resorted to intentional misdeclaration of the imported goods by suppressing the facts. Further, the said importer is also liable to pay interest at the appropriate rate on the differential duty as provided under Section 28AA of the Customs Act, 1962. Further, the imported goods as detailed in Table A above, totally valued at ₹81,21,481**/-** are liable to confiscation under Section 111(m) of the Customs Act, 1962 and redemption fine under Section 125(1) of the Customs Act, 1962 in lieu of confiscation is imposable on the said imported goods.

27. The said SCN also proposes imposition of penalty under Section 112 (a) of the Customs Act, 1962 on the said importer M/s. Lambda Therapeutic Research Limited. Further, the said importer is also liable for penalty under the provisions of Section 114A of the Customs Act, 1962, in as much as they have attempted to evade payment of IGST at higher side payable by them on the goods imported under Bills of Entry as in Table A, by reason of wilful mis-declaration of the goods and wrong availment of concessional rate of IGST under SI. No. 63 of Schedule II in place of SI. No. 453 of Schedule 111 of Notification No.01/2017-Integrated Tax (Rate) as discussed above, Section 114A of the Customs Act, 1962 provides for 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 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 amended under section 28 shall also be liable to pay a penalty equal to the Duty or interest so determined".*

27.1. In the captioned case, the mis-declaration of the imported goods and wrong availment of concessional rate of IGST under SI. No. 63 of Schedule II in place of Sl. No. 453 of Schedule III of Notification No.01/2017-Integrated Tax (Rate) on the imported goods was intentionally done by the said importer to evade payment of due Duty of IGST at higher side, the said act of the importer made goods liable to confiscation under Section 111(m) of the Customs Act. I therefore hold them liable to penalty under Section 114A of the Customs Act, 1962 as short payment of tax was on account of/due to reason of willful misdeclaration and wrong availment of concessional rate of IGST under SI. No. 63 of Schedule II of Notification

No.01/2017-Integrated Tax (Rate) of the imported goods or suppression of facts on the part of the said Importer as discussed above.

28. The Show Cause Notice proposes imposition of penalty under Section 112 (a) of the Customs Act, 1962 also on said importer M/s. Lambda Therapeutic Research Limited. In this regard, it is to mention that the 5th 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."

28.1. In the instant case, I have already found that the said importer M/s. Lambda Therapeutic Research Limited is liable to penalty under Section 114A of the customs, Act, 1962 and therefore penalty under Section 112 is not simultaneously imposable in terms of the 5th proviso to section 114A of the Customs Act, 1962.

29. The said SCN also proposes imposition of penalty under Section 114AA of the Customs Act, 1962 on the said importer M/s. Lambda Therapeutic Research Limited. In this connection, Section 114AA of the said Act, reads as under:

"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."

29.1. I find that the said importer has attempted to evade Duty of IGST at higher side on the goods imported under Bills of Entry as in Table A, by reason of willful mis-classification with intent to avail undue benefit of the concessional rate of IGST under Sl. No. 63 of Schedule II in place of SI. No. 453 of Schedule III of Notification No.01/2017-Integrated Tax (Rate) and thus by these acts of the omission and commission of the said importer, they have rendered themselves liable to penalty under Section 114AA of the said Act.

30. I further find that the importer has paid the differential duty vide TR-6 Challan No. 273 dated 20.05.2022 amounting Rs.5,36,556/-. However, since the applicable interest is not paid, therefore, the importer is liable to pay applicable interest under section 28AA of the Customs Act 1962. Also it is found that the said importer has paid this differential duty amount "under

protest", however, since there are ample evidences which prove that the importer is not eligible for discharging IGST @ 12%, the protest lodged by them is required to be vacated.

31. The said importer has contended that since as explained above there had been no collusion, wilful mis-statement, suppression of facts or false declaration, no penalty can be imposed under Section 114A and Section 114AA of the Customs Act, 1962. Further, since the goods were not liable to confiscation under Section 111(m) of the Customs Act 1962, no penalty could be imposed under Section 114A and Section 114AA of the Customs Act, 1962. They further contended that it was settled law as laid down in the various judgments cited by them in their reply to SCN and in the written submissions made on 08.07.2025, that claiming of a particular classification or Notification with which the Department does not agree does not justify imposition of penalty. Accordingly, no penalty was liable to be imposed upon them.

31.1. In this regard, I find that willful mis-statement and suppression of facts on the part of the said importer, the aspect of the liability for confiscation of the imported goods, imposition of penalties on the said importer have already been discussed in detail in the foregoing paras. I, therefore find that none of the aforementioned contentions are acceptable in the present case.

31.2 The Show Cause Notice also proposes penalty under Section 117 of the Customs Act, 1962 on importer Ms. Lambda Therapeutic Research Limited. I find that Section 117 of Customs Act, 1962 provide for imposition of penalty who contravenes any provision of the said Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, to be liable to a penalty not exceeding four lakhs rupees. The maximum amount of penalty prescribed under Section 117 originally was Rs. One lakh which was later enhanced to Four lakhs, with effect from 01.08.2019. The detailed discussions in the preceding paragraphs clearly establish that the noticee intentionally committed acts that resulted in the violation of multiple provisions of the Customs Act, 1962, leading to evasion of a huge amount of Customs duty, thereby causing loss to the Government Exchequer. In doing so, they failed to fulfill the legal obligations and responsibilities cast on them under the provisions of Customs Act, 1962. Accordingly, I find that this is a fit case for

imposition of penalty under Section 117 of the Customs Act, 1962 on importer M/s. Lambda Therapeutic Research Limited.

32. The present Show Cause Notice also proposes penalty under Section 117 of Customs Act, 1962 upon customs brokers, M/s. Rakesh A. Oza, the charge in the Show Cause Notice is that they have failed to take all the necessary steps at the time of filing of the said B/Es, regarding proper declaration of the goods imported and its duty liability under proper head. Total 21 bills of entry as detailed in Table A above were filed by Customs Broker M's. Rakesh A Oza. I find that as Customs Broker registered under Customs Brokers Licensing Regulations, 2018, it was their foremost duty to take all necessary step to ensure that due diligence is exercised to ascertain the correctness of information and their client is advised for compliance of the provisions of the act and in case of non-compliance to bring the matter to the notice of Customs authorities. This has resulted in the imported goods being liable for confiscation under Section 111(m) of the Customs Act, 1962.

33. The issue to decide is as to whether the Customs Brokers can be held responsible for the wrong declaration of the goods imported and its duty, liability under proper head resulted into wrong availment of the IGST Notification No. 1/2017 dated 28.06.2017( at entry Sl. No. 63-Schedule II) or not. The obligation, have been imposed upon the Customs Brokers by the Customs Broker License Regulations 2013/2018. These obligations cast upon the Customs Brokers created a link between Customs Authorities and the Importer with an object of facilitating the clearances at Customs as the Custom procedures are complicated. The Customs Brokers are thus supposed to safeguard the interests of both the Customs as well as the Importer. Hon'ble Supreme Court in KM Ganatra and Co. case while relying upon the decision of Mumbai Tribunal in the case of Noble Agency Vs. Commissioner of Customs, Mumbai reported in 2002 (142) E.L.T. 84 has held as follows:

> *"The CHA occupies a very important position in the Customs House. The Customs procedures are complicated. The importers have to deal with a multiplicity of agencies viz. carriers, custodians like BPT as well as the Customs. The importer would find it impossible to clear his goods through these agencies without wasting valuable energy and time. The CHA is supposed to safeguard the interests of both the importers and the Customs. A lot of trust is kept on CHA by the importers/exporters as well as by the Government Agencies. To ensure appropriate discharge of such trust, the relevant regulations are framed. Regulation 14 of the CHA Licensing Regulations lists out obligations of the CHA. Any*

*contravention of such obligations even without intent would be sufficient to invite upon the CHA the punishment listed in the Regulations..."*

I also rely on the decision of Hon'ble Delhi High Court in case of Jasjeet Singh Marwaha Vs. Union of India 2009 (239) ELT 407 (Del.) wherein it is held as

> *"since a CHA acts on behalf of the importer, it is not only his obligation to ensure that the entries made in the bill of entry are correct but also that a true and correct declaration of value and description of goods is made, and in the event of any infraction such as mis-declaration, he can be penalized under the Regulation 20 of CHALR, 2004 if it results in a misconduct which is of the nature which renders him unfit to transact the business of a CHA, at the Customs Station."*

33.1. It becomes clear from the above provisions and the decision of the Hon'ble Apex Court that CHA is not supposed to be a formal agent either of Customs House or of the importer. But the utmost due diligence in ascertaining the correctness of the information related to clearance of cargo is the CHA's duty. He is not only supposed to advise the importer/exporter about the relevant provisions of law and the mandate of true compliance thereof but is also responsible to inform the Department if any violation of the provisions of the Customs Act appeared to or have been committed by his client at the time of the clearances.

33.2. In the present case, I find that the CHA failed on their part to take necessary steps for payment of correct duty of IGST on the imported goods under question or to bring the matter to the notice of Customs authorities and the CHA have failed to take all the necessary steps for payment of correct duty of IGST on the imported goods, thereby exercising due diligence to ascertain the correctness of information with reference to work related to clearance of cargo, and also violating the provisions of Rule 10 of the Customs Brokers License Regulations, 2018, as amended. Further, they had consciously dealt with the, said goods which they knew or had reasons to believe, were liable to confiscation, under Section 111(m) of the Customs Act, 1962. Further, the case laws relied upon by the custom broker have different facts than the facts involved in the present case and hence are not applicable in the circumstance of the present case.

33.3 As per Regulation 10 (d), (e), (f) and (m) of CBLR, 2018, it was the responsibility of the Custom Broker to advise their client to comply with the provisions of the Act, other allied Act and the rules and regulation thereof, and in case of non-compliance, bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be and exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related

to clearance of cargo or baggage and also discharge his duties as Customs Broker with utmost speed and efficiency and without any delay. However, in the instant case, it is observed that the Custom Broker did not file the Bills of Entry correctly, on the basis of import documents and abetted the importer in availing the lower rate of duty. Thus, by their act of omission and commission, the Customs Broker M/s. Rakesh A Oza had rendered themselves liable for penal action under Section 117 of the Customs Act, 1962.

34. In view of the foregoing discussions and finding, I pass the following order:-

**O R D E R**

(i) I hereby reject the incorrect rate of IGST @12% under Sr.No. 63 of Schedule II of Notification No. 01/2017 dated 28.06.2017 and confirm the rate of IGST @ 18% under Sr.No.453 (residuary entry) of Schedule III of IGST Notification No.1/2017 dated 28.06.2017 for the said goods imported by the said importer vide Bill of Entry as detailed in Table A above.

(ii) I confirm the demand of short paid duty amounting to Rs. 5,36,556/- (Rs. Five lakhs thirty six thousand five hundred and fifty six only) against the importer M/s. Lambda Therapeutic Research Limited in terms of provisions of Section 28(4) of the Customs Act, 1962 ; since, the said amount of duty was paid by the said importer vide TR-6 Challan No.273 dated 20.05.2022, I order to appropriate the same towards the demand of duty confirmed above. I also ordered that the protest lodged by the said importer at the time of making the said payment of duty is discharged.

(iii) I order to charge and recover applicable interest under Section 28AA of the Custom Act, 1962 on the amount of differential duty confirmed at (ii) above ;

(iv) I order confiscation of the imported goods covered under Bills of Entry as detailed in Table A to the said SCN dated 26.04.2022 having declared assessable value of Rs. 81,21,481/- (Rupees Eighty one lakh twenty one thousand four hundred and eighty one only) and cleared under CTH 3004 under Section 111(m) of the Customs Act, 1962; As the goods are not available physically for confiscation, I allow the said importer to redeem the same on payment of redemption fine of Rs.10,00,000/- (Rs. Ten Lakhs only) under section 125(1) of the Customs Act, 1962 in lieu of confiscation.

(v) I impose penalty of Rs. 5,36,556/- (Rs. Five lakh thirty six thousand five hundred and fifty six 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. Lambda Therapeutic Research Limited under Section 114A of the Customs Act, 1962. However, in view of the first and second proviso of Section 114A of the Customs Act, 1962, if the amount of Customs Duty confirmed and interest thereon is paid within a

period of thirty days from the date of the communication of this Order, the penalty shall be twenty five percent of the Duty, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days.

(vi) I impose penalty of Rs. 81,21,481/- (Eighty one lakh twenty one thousand four hundred and eighty one only) on M/s. Lambda Therapeutic Research Limited under Section 114AA of the Customs Act, 1962.

(vii) I refrain from imposing any penalty on M/s. Lambda Therapeutic Research Limited under section 112 of the Customs Act, 1962 for the reasons discussed above.

(viii) I impose a penalty of Rs. 10,000/- (Rs. Ten thousand only) on the Customs Broker, M/s. Rakesh A Oza in terms of the provisions of Section 117 of the Customs Act, 1962

Digitally signed by Lokesh Damor
Date: 23-09-2025 18:17:26

(Lokesh Damor)
Additional Commissioner,
Air Cargo Complex, Ahmedabad

F.No. ACC/Asse/13/2025-ACC-AHMD-CUS-COMMRTE-AHMEDABAD
Dated: 23.09.2025

**DIN- 20250971MN000000C914**

To,

1) **M/s. Lambda Therapeutic Research Limited**,
Lambda House, Survey No. 388,
Plot No. 38, Nr Silver Oak,
S G Highway, Gota, Ahmedabad-382481

2) **Shri Rakesh Oza**,
A-502, Infinty Tower, Corporate Road,
Prahaladnagar, Ahmedabad-380 015.

Copy to:-

1. The Hon’ble Principal Commissioner, Customs, Ahmedabad;
2. The Dy./Asst. Commissioner, ACC, Ahmedabad;
3. The Dy./Asst. Commissioner, RRA, HQ, Ahmedabad;
4. The Dy./Asst. Commissioner, System, HQ, Ahmedabad;
5. Guard File.