OFFICE OF THE COMMISSIONER
CUSTOM HOUSE, KANDLA
NEAR BALAJI TEMPLE, NEW KANDLA
Phone : 02836-271468/469 Fax: 02836-271467

A	File No.	GEN/ADJ/COMM/547/2024-Adjn-O/o Commr-Cus-Kandla
B	Order-in-Original No.	KDL/ADC/MR/13/2026-27
C	Passed by	Mukesh Rathore, Additional Commissioner, Custom House, Kandla
D	Date of Order	08.05.2026
E	Date of Issue	08.05.2026
F	SCN NO. & Date	GEN/ADJ/COMM/547/2024-Adjn-O/o-Commr-Cus-Kandla dated 04.12.2024
G	Noticee / Party / Importer / Exporter	M/s. IOL Chemicals and Pharmaceuticals Limited, No. 85, Industrial Area A, Ludhiana, Punjab – 141003
H	DIN	20260571ML0000212012

1. यह मूल आदेश संबन्धित को नि:शुल्क प्रदान किया जाता है।

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

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

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

" सीमा शुल्क आयुक्त (अपील),

7 वीं मंजिल,मृदुलटावर,टाइम्सऑफ इंडिया के पीछे,आश्रम रोड़,अहमदाबाद 380 009"

"THE COMMISSIONER OF CUSTOMS (APPEALS),
Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380009."

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

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

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

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

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्यप्रति जिस पर अनुसूची-1 के अनुसार न्यायालयशुल्कअधिनियम-1870 के मदसं॰-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

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

5. अपील ज्ञापन के साथ ड्यूटि/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम,1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्कया शुल्क और जुर्माना विवाद में हो,अथवा दण्ड में,जहां केवल जुर्माना विवाद में हो,Commissioner (A)के समक्ष मांग शुल्क का7.5% भुगतान करना होगा।

8. An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

Brief Facts of the Case

M/s. IOL Chemicals and Pharmaceuticals Limited, No. 85, Industrial Area A, Ludhiana, Punjab – 141003 (hereinafter referred to as "the importer" or "the auditee" or "the noticee") are engaged in import of various types of chemicals namely acetic acid glacial, denatured ethyl alcohol, toluene, dicyandiamide, sodium metal, potassium carbonate, meta xylene, sodium dichromate, acetyl chloride, l+tartaric acid and they are also engaged in manufacturing & trading of chemicals namely ibuprofen, ethyl acetate, metformin.

2.1. As per Customs Audit Manual, the Auditee was informed about the proposed Customs Premises Based Audit of the Auditee for the period 2019-20 to 2022-23 (F.Y.), vide letter No. CADT/CIR/ADT/PBA/ 77/2023-PBA-Cir-B1-O/o-Commr-Cus-Adt-Delhi/2048 dated 17.10. 2023 **(RUD-1)**. The auditee was requested to produce their import/export documents along with financial documents like Balance Sheet, Profit & Loss account, Trial Balance, etc. before the auditors for the purpose of conducting the Customs Audit. The Customs Premises Based Audit (PBA) of the records of the Auditee covering the period FY 2019-20 to 2022-23 was conducted under Section 99A of the Customs Act, 1962 at the Room No. 139B, New Customs House, New Delhi by the Officers of Customs Audit Commissionerate, New Custom House, New Delhi - 110 037.

2.2. During the course of audit and on examination of records submitted by the Auditee, it was observed that the Auditee had imported items (as detailed in **Table-A)** falling under Customs Tariff Item No. (as detailed in Table-A) under cover of Bills of Entry (as detailed in Table-A) by paying BCD @ NIL (by claiming sr no 231(II) of the notification 46/2011) SWS @ NIL and IGST @ 18%.

2.3. During the Audit, scrutiny of the records of the imports made by the Auditee under the claim of sr no 231(II) of the notification 46/2011, revealed the following details as mentioned in **Table-A** here under: -

Table-A

Sr. No.	Bill of Entry Number and Date	Port of Impo rt	CTH	Descripti on of goods	Quantity Imported (in MTS)	Assessable value (CIF in Rs.)	Duty paid		
							BCD@ NIL (by Sr no 231(II) of the notification 46/2011)	SWS @ NIL	IGST (18%)
1.	3722518 dated 13.12.2022	INIXY1	2902 3000	TOLUENE	504.163	43195526	-	-	77,75,195
2.	4128344 dated 11.01.2023	INIXY1	2902 3000	TOLUENE	252.008	21591466	-	-	38,86,464
3.	4128616 dated 11.01.2023	INIXY1	2902 3000	TOLUENE	250	21419425	-	-	38,55,497

3. During the Audit, on scrutiny of the FTA certificates used to claim BCD @ NIL (by Sr no 231(II) of the notification 46/2011) for the BE's mentioned in **Table-A** above, it was observed that the originating criteria mentioned in FTA certificates was "***AIFTA CONTENT 42.77%***". Whereas, as per the format of the FTA certificate as provided in the Determination of Origin of Goods under the Preferential Trade Agreement between the Government of ASEAN and Indian Rules, 2009 notified vide Notification No. 189/2009(N.T.) dated 31.12.2009, the originating criteria should have been either "***WO***" (Wholly obtained) or "***RVC [%] (Regional Value content) + CTSH***". Therefore, it appeared that the FTA certificates used by the Auditee to claim BCD @ NIL (by Sr No. 231(II) of the notification 46/2011) for the BE's mentioned in Table-A were not as per the format provided in rules of origin of the INDIA-ASEAN and hence, the auditee was not eligible for the BCD exemption under Sr no 231(II) of the notification 046/2011. And thus, the goods imported vide above referred BoEs attracted BCD @ 2.5%, SWS@10% of BCD and IGST@18%. Therefore, the auditee appeared liable to pay the Customs Duty on the imported goods along with applicable interest and penalty. The Duty Liability was calculated to be **Rs. 27,97,398/-** {Rs. 14,01,695/- (for BE 3722518 dated 13.12.2022) + Rs. 7,00,643/- (for BE 4128344 dated

11.01.2023) + Rs. 6,95,060/- (for BE 4128616 dated 11.01.2023)}. The details are as follows: -

Table-B

Bill of Entry Number	CTH	Description of goods	Quantity (in MTs)	Assessable value (CIF in Rs.)	Duty Liability (in Rs.)		
					BCD (2.5%)	SWS (10% of BCD)	IGST (18%)
3722518 dated 13.12.2022	29023000	Toluene	504.163	43195526	1079888.15	107988.81	7989012.58
4128344 dated 11.01.2023	29023000	Toluene	252.008	21591466	539786.64	53978.66	3993341.60
4128616 dated 11.01.2023	29023000	Toluene	250	21419425	535485.62	53548.56	3961522.65

4. The above discussed audit objection was communicated to the auditee vide CADT/CIR/ADT/PBA/77/2023-PBA-Cir-B1-O/o-Commr-Cus-Adt-Delhi dated 29.02. 2024 **(RUD-2)** requesting the importer/auditee to deposit the differential custom duty for the same.

5. Auditee's Submission and Department contention are as under: -

5.1 Auditee Submission: - Auditee vide their letter dated 12.03.2024 has stated that in respect of observations made in Sr. No.6, they would like to submit that the originating criteria for imported products are as below:

(a) the AIFTA content is not less than 35 per cent of the FOB value; and

(b) the non-originating materials have undergone at least a change in tariff sub-heading (CTHS) level of the Harmonized System.

We would like to mention that both the above stated criterion was mentioned on the "FORM- I" prepared by Overseas Supplier and submitted at the time of import clearance at E-sanchit portal. Since both the conditions have been fulfilled in respect of the imported product, therefore the benefit of FTA has been correctly availed and the department observation needs to be set aside. We agree that the supplier to mention the CTH also on Certificate of Origin which is a procedural lapse as the fact of same is stated

in "Form-I" by vendor. When the criteria of Goods of Origin has been fulfilled and declared in Form-I by supplier of goods, non- mentioning of CTH should ***be condoned as procedural aspect****. Hence, we request you to kindly acknowledge our submissions and set aside the notice. Hope you will find the above information in order. In case any other information is required, kindly let us know, we shall be glad to furnish the same.*

6. Further the Final Audit Report No. **138/B1/Delhi/2023-24 issued vide CADT/CIR/ADT/PBA/77/2023-PBA-Cir-B1-O/o-Commr-Cus-Adt-Delhi (RUD- 3)** was communicated to the auditee**.**

7.1. Format of the FTA certificate as provided in the Determination of Origin of Goods under the Preferential Trade Agreement between the Government of ASEAN and Indian Rules, 2009 notified vide notification No. 189/2009(N.T.) dated 31.12.2009 is as follows:-

Space left blank intentionally.

Original (Duplicate/Triplicate/Quadruplicate)

1. Goods consigned from (Exporter's business name, address, country)	Reference No. ASEAN-INDIA FREE TRADE AREA PREFERENTIAL TARIFF CERTIFICATE OF ORIGIN (Combined Declaration and Certificate) FORM AI Issued in _____ (Country) See Notes Overleaf
2. Goods consigned to (Consignee's name, address, country)	
3. Means of transport and route (as far as known) Departure date Vessel's name/Aircraft etc. Port of Discharge	4. For Official Use ☐ Preferential Tariff Treatment Given Under ASEAN-India Free Trade Area Preferential Tariff ☐ Preferential Tariff Treatment Not Given (Please state reason/s) ..... Signature of Authorised Signatory of the Importing Country

5. Item number	6. Marks and numbers on Packages	7. Number and type of packages, description of goods (including quantity where appropriate and HS number of the importing country)	8. Origin criterion (see Notes overleaf)	9. Gross weight or other quantity and value (FOB)	10. Number and date of Invoices

11. Declaration by the exporter The undersigned hereby declares that the above details and statement are correct; that all the goods were produced in ..... (Country) and that they comply with the origin requirements specified for these goods in the ASEAN-INDIA Free Trade Area Preferential Tariff for the goods exported to ..... (Importing Country) ..... Place and date, signature of authorised signatory	12. Certification It is hereby certified, on the basis of control carried out, that the declaration by the exporter is correct. ..... Place and date, signature and stamp of certifying authority

13. Where appropriate please tick:

☐ Third Country Invoicing ☐ Exhibition ☐ Back-to-Back CO ☐ Cumulation

Overleaf Notes

1. Parties which accept this form for the purpose of preferential tariff treatment under the ASEAN-INDIA Free Trade Agreement (AIFTA):
   Brunei Darussalam
   Cambodia
   Indonesia
   India
   Laos
   Malaysia
   Myanmar
   Philippines
   Singapore
   Thailand
   Vietnam
2. Conditions: To enjoy preferential tariff under the AIFTA, goods sent to any Parties listed above:
   (i) must fall within a description of goods eligible for concessions in the Party of destination;
   (ii) must comply with the consignment conditions in accordance with Rule 8 of the Rules; and
   (iii) must comply with the origin criteria in the Rules.
3. Origin Criteria: For goods that meet the origin criteria, the exporter and/or producer must indicate in box 8 of this Form, the origin criteria met, in the manner shown in the following table:

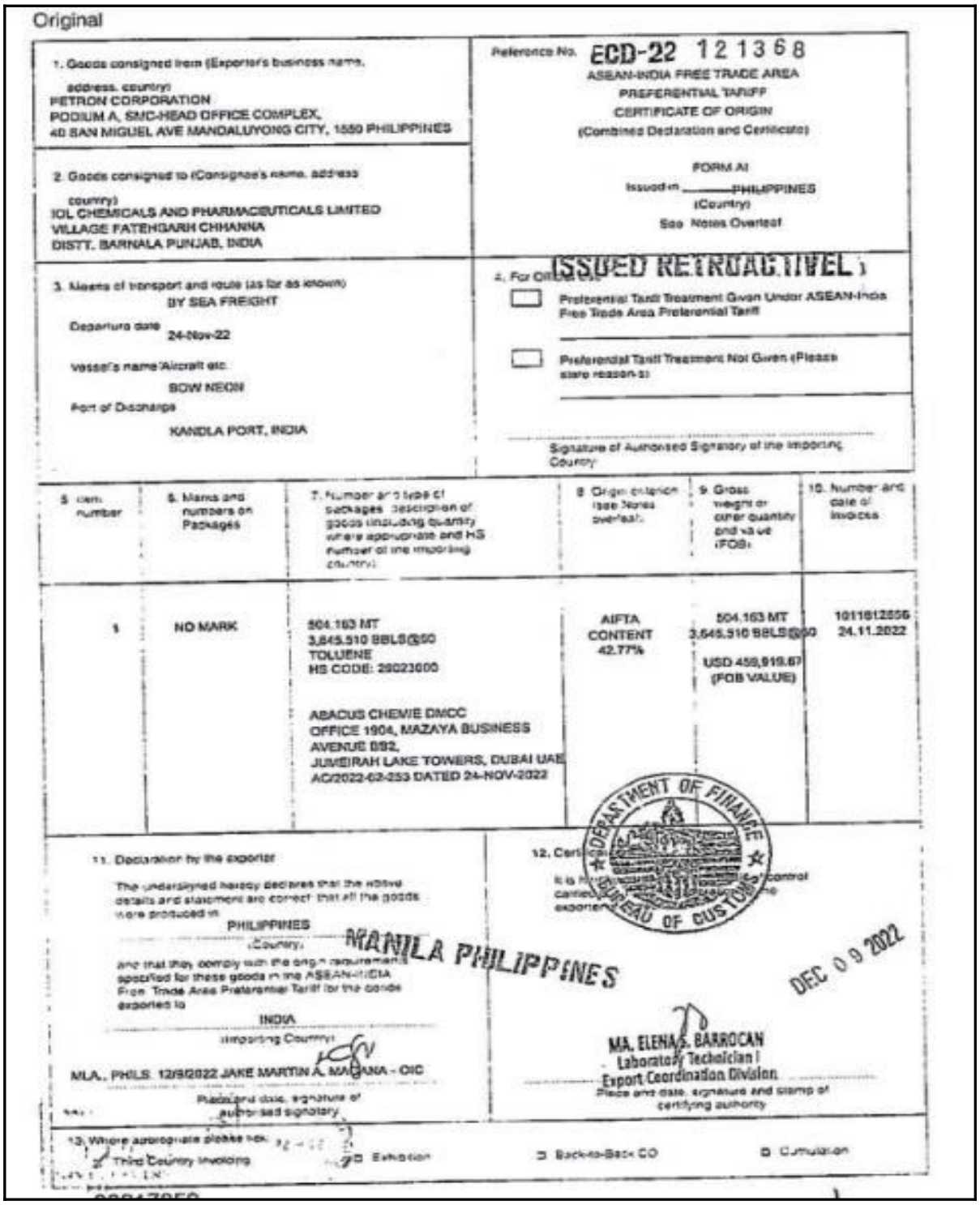
Circumstances of production or manufacture in the first country named in Box 11 of this form	Insert in Box 8
(a) Goods wholly obtained or produced in the territory of the exporting Party	"WO"
(b) Goods satisfying Rule 5 (Not Wholly Produced or Obtained Products) of the Rules	"RVC [ ]% + CTSH"

4. Each Article Must Qualify: It should be noted that all the goods in a consignment must qualify separately in their own right. This is of particular relevance when similar articles of different sizes or spare parts are sent.
5. Description of Goods: The description of goods must be sufficiently detailed to enable the goods to be identified by the Customs Officers examining them. Name of manufacturer, any trade mark shall also be specified.
6. Harmonized System Number: The Harmonized System number shall be that of the importing Party.
7. Exporter: The term "Exporter" in Box 11 may include the manufacturer or the producer.
8. For Official Use: The Customs Authority of the importing Party must indicate (√) in the relevant boxes in column 4 whether or not preferential tariff is accorded.
9. Third Country Invoicing: In cases where invoices are issued by a third country, "Third Country Invoicing" in Box 13 should be ticked (√) and such information as name and country of the company issuing the invoice shall be indicated in Box 7.
10. Exhibitions: In cases where goods are sent from the territory of the exporting Party for exhibition in another country and sold during or after the exhibition for importation into the territory of a Party, in accordance with paragraph 21 of the Operational Certification Procedures, "Exhibitions" in Box 13 should be ticked (√) and the name and address of the exhibition indicated in Box 2.
11. Back-To-Back Certificate of Origin: In cases of Back-to-Back Certificate of Origin, in accordance with paragraph 11 of the Operational Certification Procedures, "Back-to-Back CO" in Box13 should be ticked (√). The name of original exporting Party to be indicated in Box 11 and the date of the issuance of CO and the reference number will be indicated in Box 7.

7.2. On plain reading of the Point No. 3 of the Overleaf Notes as provided in the format of the FTA certificate as provided in the Determination of Origin of Goods under the Preferential Trade Agreement between the Government of ASEAN and Indian Rules, 2009 notified vide notification No. 189/2009(N.T.) dated 31.12.2009 it can be inferred that origin criteria to be mentioned in the FTA certificate will be either "***WO***" or "***RVC []%+ CTSH***"

7.3. The FTA certificate submitted by the Auditee at the time of filing of the Bills Of Entry (mentioned in Table-A) is as detailed below, the originating criteria

mentioned in these FTA certificates was "***AIFTA CONTENT 42.77%***".



Original

1. Goods consigned from (Exporter's business name, address, country)
PETRON CORPORATION
PODIUM A, SMC-HEAD OFFICE COMPLEX,
40 SAN MIGUEL AVE MANDALUYONG CITY, 1550 PHILIPPINES

Reference No. ECD-22 121368

ASEAN-INDIA FREE TRADE AREA
PREFERENTIAL TARIFF
CERTIFICATE OF ORIGIN
(Combined Declaration and Certificate)

FORM AI

Issued in PHILIPPINES
(Country)

See Notes Overleaf

2. Goods consigned to (Consignee's name, address, country)
IOL CHEMICALS AND PHARMACEUTICALS LIMITED
VILLAGE FATEHGARH CHHANNA
DISTT. BARNALA PUNJAB, INDIA

ISSUED RETROACTIVELY

3. Means of transport and route (as far as known)
BY SEA FREIGHT

Departure date 24-Nov-22

Vessel's name/Aircraft etc. BOW NEON

Port of Discharge KANDLA PORT, INDIA

4. For Official Use

☐ Preferential Tariff Treatment Given Under ASEAN-India Free Trade Area Preferential Tariff

☐ Preferential Tariff Treatment Not Given (Please state reason(s))

Signature of Authorised Signatory of the Importing Country

5. Item number	6. Marks and numbers on Packages	7. Number and type of packages, description of goods (including quantity where appropriate and HS number of the importing country)	8. Origin criterion (see Notes overleaf)	9. Gross weight or other quantity and value (FOB)	10. Number and date of Invoices
1	NO MARK	504.163 MT 3,845.510 BBLS@60 TOLUENE HS CODE: 29023000 ABACUS CHEMIE DMCC OFFICE 1904, MAZAYA BUSINESS AVENUE BB2, JUMEIRAH LAKE TOWERS, DUBAI UAE AC/2022-02-253 DATED 24-NOV-2022	AIFTA CONTENT 42.77%	504.163 MT 3,845.510 BBLS@60 USD 459,919.67 (FOB VALUE)	1011812556 24.11.2022

11. Declaration by the exporter

The undersigned hereby declares that the above details and statements are correct, that all the goods were produced in PHILIPPINES (Country) and that they comply with the origin requirements specified for these goods in the ASEAN-India Free Trade Area Preferential Tariff for the goods exported to INDIA (Importing Country)

MLA., PHILS. 12/9/2022 JAKE MARTIN A. MAGANA - OIC

Place and date, signature of authorised signatory

12. Certification

It is hereby certified, on the basis of control carried out, that the declaration by the exporter is correct.

DEPARTMENT OF FINANCE BUREAU OF CUSTOMS

MANILA PHILIPPINES

DEC 09 2022

MA. ELENA S. BARROCAN
Laboratory Technician I
Export Coordination Division

Place and date, signature and stamp of certifying authority

13. Where appropriate please tick

☐ Third Country Invoicing ☐ Exhibition ☐ Back-to-Back CO ☐ Cumulation

7.4. As per Para 3 (2) (a) of the Notification No. 81/2020 - Customs (N.T.) d*ated 21/08/2020 of Preferential tariff claim.–*

3. (2) *Notwithstanding anything contained in these rules, the claim of referential rate of duty may be* ***denied by the proper officer without verification if the certificate of origin****-*
(a) ***is incomplete and not in accordance with the format as prescribed by the Rules of Origin****;*

7.5. As per the format of the FTA certificate provided in the Determination of Origin of Goods under the Preferential Trade Agreement between the Government of ASEAN and Indian Rules, 2009 notified vide notification No. 189/2009 (N.T.) dated 31.12.2009, the originating criteria in the FTA submitted by the Auditee at the time of filing of the BEs mentioned in Table-A should have been either "***WO***" OR "***RVC [%] +CTSH***" whereas the originating criteria mentioned in FTA certificates submitted was ***AIFTA CONTENT 42.77%***. Therefore, it appeared that the FTA certificate was not in accordance with the format as prescribed by the Rules of Origin of the Preferential Trade Agreement between the Government of ASEAN notified vide notification No. 189/2009 (N.T.) dated 31.12.2009 and the claim of preferential rate of duty of the auditee needs to be denied by the proper officer without verification, in terms of Para 3 (2) (a) of the Notification No. 81/2020 - Customs (N.T.) dated 21/08/2020. Hence, the auditee appeared not eligible for the BCD exemption under Sr no 231(II) of the notification 046/2011 and thus the goods imported vide above referred BE as detailed in Table-A attracts BCD@2.5%, SWS@10% of BCD and IGST@18%. Hence, as discussed in para 3 above, the short levy of **duty** of **Rs. 27,97,398/-** appeared to be recoverable from the Auditee along with interest and penalty under the provision of the Customs Act, 1962.

8. The Form-I submitted by the Auditee at the time of clearance of the BEs mentioned in Table-A is as follows:

FORM - I
SECTION – I

We declare that these goods qualify as originating goods for preferential rate of duty under the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020, India notified vide Customs Notification No 81/2020 – Customs (N T) dated 21.08.2020

These goods were supplied to India via **Bow Neon** as per their Invoice No. **AC/2022-62-253** Dated: **NOVEMBER 24, 2022**

We hereby certify following details are correct.

Treaty/ Free Trade Agreement **AIFTA**

Certificate of Origin reference number along with date of issuance: **REF NO. ECD-22 121368 DATE OF ISSUE: DECEMBER 9, 2022**

xxvi. **Goods wholly Obtained (WO):** Goods produced or obtained without any non-originating input material incorporated: **NO**

xxvii. **Goods that are produced using non-originating materials,** i.e., not Wholly Obtained, are required to undergo substantial transformation in a country for the good to be qualified as originating. This criterion can be met using following method in combination of standalone, depending upon the criteria assigned for a good, -

p) Change in Tariff Classification (CTC): **NO**
q) Regional Or Domestic Value Content (RVC? DVC): and: **YES**
r) Process rule: **NO**

xxviii. **Value Control Method:** This rule requires that a certain minimum percentage of the good's value originates in a country for the good to be considered as originating. The components of value and formula for calculating such value addition may vary from agreement to agreement. : **YES**

xxix. **Change in Tariff Classification (CTC) Method:** To qualify under this origin criterion, non-originating materials that are used in the production of the good must not have the same HS classification (e.g., Chapter level, Heading level or Sub heading Level as may be required in the Rules of Origin) as the final good. Depending on the Trade Agreement requirements, the good would have to undergo either a change in Chapter (CC), Heading (CTH) or Sub Heading level (CTSH) in order to qualify for preferential treatment under the FTA. Producers and/or exporters should know the HS classifications of the final good and the non-originating raw material : **YES**

xxx. **Process Rule Method:** This rule requires the good which is being considered as originating, to be produced through specific chemical process in the originating Country: **NO**

8.1 In point (xxvii) (p) of the form I submitted by the auditee at the time of clearance states as follows:

> ***"xxvii.*** *Goods that are produced using non-originating materials, i.e., not Wholly Obtained, are required to undergo substantial transformation in a country for the good to be qualified as originating. This criterion can be met using following method in combination of standalone, depending upon the criteria assigned for a good, -*
>
> ***p) Change in Tariff Classification (CTC): NO***
>
> *q) Regional Or Domestic Value Content (RVC? DVC): and: YES*
>
> *r) Process rule: NO"*

8.2 Whereas in point **xxix** of the Form I submitted by auditee, it says that Change in Tariff classification (CTC) method has been used.

> ***"xxix. Change in Tariff Classification (CTC) Method****: To qualify under this origin criterion, non- originating materials that are used in the production of the good* ***must not have the same*** *HS classification (e.g., Chapter level, Heading level or Sub heading Level as may be required in the Rules of Origin) as the final good. Depending on the Trade Agreement requirements, the good* ***would have to undergo*** *either a change in Chapter (CC), Heading (CTH) or Sub Heading level (CTSH) in order to qualify for preferential treatment under the FTA. Producers and/or exporters should know the HS classifications of the final good and the non-originating raw material:* ***YES****"*

8.3 From the above it appeared that the details provided by the auditee at the time of clearance of the BE's mentioned in Table-A are contradictory in nature. Hence, the Form-I submitted by the auditee could not be relied upon.

Note: Same good may be assigned different originating criteria in different trade agreements

vi **General Rule vs Product Specific Rule (PSR):** Many trade agreements have a single rule for all goods that are produced using non-originating materials. In some agreements, for some or all tariff headings there are Product specific Rules (PSRs). Depending on the HS classification of the good, it needs to be seen which criteria has been used to claim origin.
: **PRODUCT SPECIFIC RULE**

Vii **De minimis:** This provision allows those non-originating materials that do not satisfy an applicable rule may be disregarded, provided that the totality of such materials does not exceed specific percentage in value or weight of the good. This provision may or may not be there in an agreement and the percentage also vary form agreement to agreement: **NO**

viii **Cumulation / Accumulation:** The concept of "accumulation" /" cumulation" allows countries which is part of a preferential trade agreement to share production and jointly comply with the relevant rules of origin provisions, i.e., a producer of one participating country of a trade agreement is allowed to use input materials form another participating county without losing the originating status of that input for the purpose of the applicable rules of origin. Otherwise said, the concept of accumulation/cumulation or cumulative rules of origin allows products of one participating country to be further processed or added to products in another participating country of that agreement. The nature and extent of such cumulation is defined in an agreement and may vary from agreement to agreement. Cumulation can bilateral, regional, diagonal, etc.: **NO**

ix **Indirect/Neutral elements** refer to material used in the production, testing or inspection of goods but not physically incorporated into the goods, or material used in maintenance of building or the operation of equipment associated with the production of goods. For example, energy and fuel, plant and equipment, goods which do not enter the final composition of the product, etc. Depending upon the trade agreement, the elements may be treated as originating or non-originating.: **NO**

X Rule on treatment of packages and packing materials for retail sale: Such rule provides the manner in which such material will be treated while calculating qualifying value content or tariff shift.: **NO**

xi **Direct Consignment:** Most agreements lay down the condition that good claiming originating status of a country should be directly transported from that country to the importing country. Certain relaxation may be provided in a trade agreement, subject to presentation of certain documents.: **YES**

For and on behalf of

PETRON CORPORATION

MR. JAKE MARTIN A. MAGANA
OIC - COMMERCIAL SERVICES

8.4 The point vi of the form I submitted by the auditee at the time of clearance of the BEs mentioned in Table-A states following:

> *"vi General Rule vs Product Specific Rule (PSR): Many trade agreements have a single rule for all goods that are produced using non-originating materials. In some agreements, for some or all tariff headings there are Product specific Rules (PSRs). Depending on the HS classification of the good, it needs to be seen which criteria has been used to claim origin. :* ***PRODUCT SPECIFIC RULE****"*

8.5 However, as per the Determination of Origin of Goods under the Preferential Trade Agreement between the Government of ASEAN and Indian Rules, 2009 notified vide Notification No. 189/2009 (N.T.) dated 31.12.2009, there is no mention of the Product Specific Rule specified by the Auditee. Therefore, the form I submitted by the auditee appeared to be contradictory in nature and could not be relied upon.

SECTION-III

Exporter Name in Originating Country with Address: **Petron Corporation, SMC HOC 40 San Miguel Avenue 1550 Mandaluyong City, Philippines**

Name of Importer in India with Address: **IOL CHEMICALS AND PHARMACEUTICALS LIMITED, VILALGE FATEHGARH, CHHANNA, DISTT. BARNALA PUNJAB, INDIA**

FORM AI NO. **ECD-22 121368** VESSEL NAME: **BOW NEON** BILL OF LADING DATE- **November 24, 2022**

Name of the Product: **Toluene** Product Classification – In the Exporting Country **2902.30.00**

Part A:

Description of goods	Production process	Originating Criterion
Toluene	Crude refining	AIFTA CONTENT 42.77%

Part B:

Sr No	Description of Originating materials or Components used in Manufacturing of the final good	Whether manufactured by producer of final good	Whether procured by producer locally from a third party	In case procured from third party, did producer of final goods seek conformation and documentary proof of origin of this component?
1	Arabian Light Crude Oil	No	No	Yes
2				
3				

* Note: Documentary Proof of Origin of above components shall be submitted upon request

Sr No	Heading	Declaration by Exporter	*Description or Explanation of Heading (wherever required)*
A	Is the de minimis provision used to determine whether the good subject to this request qualifies as an originating good?	No	
B	Is the accumulation/cumulation provision applied to determine whether the good subject to this request qualifies as an originating good?	No	
C	Has any other additional criteria such as indirect/neutral materials, packing materials, etc. used in ascertaining whether the good qualifies as an originating good.	No	
D	Is the originating criteria based on value content?	Yes	AIFTA CONTENT 42.77%
E	Has CTC rule been applied for meeting originating criteria?	Yes	HS OF NON-ORIGINATING MATERIAL/COMPONENTS USED IN PRODUCTION OF GOODS- ARABIAN LIGHT CRUDE OIL (2709.00.10000) → 2902.30.00
F	Has process rule been applied in ascertaining origin of good subject to this request?	No	
G	Rule on treatment of packages and packing materials	No	
H	Has the CoO been issued retrospectively?	No	
I	Has the consignment in question been directly shipped from country of origin?	Yes	

This declaration is made by PETRON CORPORATION, all declarations which have been provided in this form are true and correct as received.

8.6 The auditee vide his letter dated 12.03.2022 has submitted that "*We agree that the supplier to mention the CTH also on Certificate of Origin which is a procedural lapse* ***as the fact of same is stated in "Form-I" by vendor.*** *When the criteria of Goods of Origin has been fulfilled and declared in Form-I by supplier of goods, non- mentioning of CTH should be condoned as procedural aspect. Hence, we request you to kindly acknowledge our submissions and set aside the notice. Hope you will find the above information in order. In case any other information is required, kindly let us know, we shall be glad to furnish the same*"

8.7 As claimed by the auditee, on seeing the form-I nowhere the origin criteria ***(RVC[]%+CTSH***) as specified in the Determination of Origin of Goods under the Preferential Trade Agreement between the Government of ASEAN and Indian Rules, 2009 notified vide notification No. 189/2009 (N.T.) dated 31.12.2009 was mentioned. Therefore, the Form-I submitted by the auditee appeared to be **contradictory in nature and could not be relied upon**.

9. In view of the above, it appeared that the FTA certificate was not in accordance with the format as prescribed by the Rules of Origin of the Preferential Trade Agreement between the Government of ASEAN notified vide notification No. 189/2009 (N.T.) dated 31.12.2009 and the claim of preferential rate of duty of by the auditee needs to be denied by the proper officer in terms of Para 3 (2) (a) of the Notification No. 81/2020 - Customs (N.T.). Hence, the auditee appeared to be not eligible for the BCD exemption under Sr no 231(II) of the notification 046/2011 and thus the goods imported vide above referred BE as detailed in Table-A attracted BCD@2.5%, SWS@10% of BCD and IGST@18%. Hence, as discussed in Para 3 above, the short levy of **duty** of **Rs. 27,97,398/-** appeared to be recoverable from the Auditee under Section 28(4) of the Customs Act, 1962 along with interest and penalty under the provisions of the Customs Act, 1962 as there appeared to be suppression of facts. Had the Customs premise based audit been not conducted, this wrong availment of the BCD exemption under Sr no 231(II) of the Notification 046/2011 would not have come to the knowledge of the

department. It appeared that the importer was well aware of the conditions laid down in Notification No. 04/2011 as apparent in the auditee's letter dated 12.03.2024.

10.1. Relevant legal provisions of the Customs Act, 1962 are reproduced hereunder:-

> *"**SECTION 17. Assessment of duty.** — (1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self- assess the duty, if any, leviable on such goods.*
>
> ***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 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 wilful 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 with the person chargeable with duty or interest in such manner as may be prescribed;*
>
> *(b) the person chargeable with the duty or interest, may pay before service of notice under clause (a) on the basis of,—*
>
> *(i) his own ascertainment of such duty; or*
>
> *(ii) the duty ascertained by the proper officer,*
>
> *the amount of duty along with the interest payable thereon under section 28AA or the amount of interest which has not been so paid or part-paid.*
>
> ***Provided** that the proper officer shall not serve such show cause notice, where the amount involved is less than rupees one hundred.]*
>
> *(4) Where any duty has not been 10[levied or not paid or has been short- levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by*

reason of,-

(a) collusion; or

(b) any wilful mis-statement; or

(c) suppression of facts,

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

SECTION [28AA. Interest on delayed payment of duty. *— (1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.*

Section 46(4) *The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, [and such other documents relating to the imported goods as may be prescribed].*

Section 46(4A) *The importer who presents a bill of entry shall ensure the following, namely :—*

(a) the accuracy and completeness of the information given therein;

(b) the authenticity and validity of any document supporting it; and

(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.]

SECTION 111. Confiscation of improperly imported goods, etc. *— any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act*

or any other law for the time being in force, in respect of which the condition is not observed unless the nonobservance of the condition was sanctioned by the proper officer;

SECTION 112. Penalty for improper importation of goods, etc. —

Any person, -

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

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding the value of the goods or five thousand rupees], whichever is the greater;

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

Provided *that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;".*

Section 114A. Penalty for short-levy or non-levy of duty in certain cases. -

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis- statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub- section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined :

Provided that where such duty or interest, as the case may be, as determined under sub-section (8) of section 28, and the interest payable thereon under 28AA, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the duty or interest, as the case may be, so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

Provided also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:

Provided also that in a case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 28AA, and twenty-five per cent. of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect:-

Provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.

Explanation.- For the removal of doubts, it is hereby declared that-

(i) the provisions of this section shall also apply to cases in which the order determining the duty or interest under sub-section (8) of section 28] relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;

(ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the

first proviso or the fourth proviso shall be adjusted against the total amount due from such person.

Section 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.]

10.2. In order to sensitize the People of Trade (read Importer/Exporter) about its benefit and consequences of mis-use; Government of India has also issued 'Customs Manual on Self-Assessment 2011'. The publication of the 'Customs Manual on Self-Assessment 2011' was required as because prior to enactment of the provision of 'Self-Assessment', mis-classification or wrong-availment of duty exemption etc., in normal course of import, was not considered as mis- declaration or mis-statement. Under Para-1.3 of Chapter-1 of the above manual, Importers/Exporters who are unable to do the Self-Assessment because of any complexity, lack of clarity, lack of information etc. may exercise the following options:

(a) Seek assistance from Help Desk located in each Custom Houses, or

(b) Refer to information on CBEC/ICEGATE web portal (www.cbic.gov.in), or

(c) Apply in writing to the Deputy/Assistant Commissioner in charge of Appraising Group to allow provisional assessment, or

(d) An importer may seek Advance Ruling from the Authority on Advance Ruling, New Delhi if qualifying conditions are satisfied. Para 3 (a) of Chapter 1 of the above Manual further stipulates that the Importer/Exporter is responsible for Self-Assessment of duty on imported/exported goods and for filing all declarations and related documents and confirming these are true, correct and complete.

10.3 Under Para-2.1 of Chapter-1 of the above manual, Self-Assessment can result in assured facilitation for compliant importers. However, delinquent and habitually non-compliant importers/ exporters could face penal action on account of wrong

Self-Assessment made with intent to evade duty or avoid compliance of conditions of notifications, Foreign Trade Policy or any other provision under the Customs Act, 1962 or the Allied Acts.

11. CONFISCATION OF GOODS AND PENALTY-

It appeared that the importer had imported goods in contravention of the conditions specified in the format of the FTA certificate as provided in the Determination of Origin of Goods under the Preferential Trade Agreement between the Government of ASEAN and Indian Rules, 2009 notified vide Notification No. 189/2009(N.T.) dated 31.12.2009. In view of the same, it appeared that the importer had rendered the goods liable for confiscation under Section 111(o) of the Customs Act, 1962 and further for their action penal actions under Section 112(a), 114A and 114AA of the Customs Act, 1962 appear to be attracted.

12. ISSUANCE OF SCN TO THE NOTICEE

In view of the above, M/s. IOL Chemicals and Pharmaceuticals Limited, No. 85, Industrial Area A, Ludhiana, Punjab – 141003 were issued SCN bearing no. F.No.GEN/ADJ/COMM/547/2024-Adjn-O/o-Commr-Cus-Kandla dated 04.12. 2024 wherein *interalia* they were called upon to show cause to the Additional Commissioner of Customs, Customs House Kandla, as to why-

(i) The goods valued at **Rs. 8,62,06,417/- (Rupees Eight Crores Sixty-Two Lakhs Six Thousand Four Hundred and Seventeen only)** should not be confiscated under Section 111(o) of the Customs Act, 1962.

(ii) The customs duties totally amounting to **Rs. 27,97,398/-** {Rs. 14,01,695/- (for BE 3722518 dated 13.12.2022) + Rs.7,00,643/- (for BE 4128344 dated 11.01.2023) + Rs. 6,95,060/- (for BE 4128616 dated 11.01.2023)} (Rupees Twenty-Seven lakhs Ninety-Seven Thousand Three Hundred and Ninety-Eight only), should not be demanded and recovered from them in terms of Section 28(4) of the Customs Act, 1962 along with applicable interest in terms of Section 28AA of the Customs Act, 1962.

(iii) Penalties should not be imposed on them under Section 112(a) and 114A of the Customs Act, 1962.

(iv) Penalty should not be imposed on them under Section 114AA of the Customs Act, 1962.

13. The Show Cause Notice was issued to M/s IOL Chemicals and Pharmaceuticals Limited vide F. No. GEN/ADJ/COMM/547/2024-Adjn-O/o Commr-Cus-Kandla dated 04.12.2024. As per the provisions of Section 28(9)(b) of the Customs Act, 1962, the adjudication of the said notice was required to be completed within the stipulated time limit i.e. on or before 03.12.2025. However, the adjudication proceedings could not be completed within the prescribed time due to requirements of compliance with the principles of natural justice, including grant of adequate opportunity for submission of reply and personal hearing. Accordingly, an extension of time for completion of adjudication was sought from the competent authority in terms of the proviso to Section 28(9) of the Customs Act, 1962. The competent authority, being satisfied with the reasons recorded, has granted an extension of a further period of six months for completion of adjudication before expiry of original time limit.

DEFENCE REPLY

14.1. The noticee, M/s IOL Chemicals and Pharmaceuticals Ltd., in their replies dated 04.02.2025 and subsequent additional submissions, have denied all allegations made in the Show Cause Notice and requested that the proceedings initiated against them vide the above referred SCN dated 04.12.2024 be dropped. At the outset, they have raised a procedural objection stating that the SCN has been issued without conducting mandatory pre-show cause consultation under Section 28(1) of the Customs Act, 1962, thereby rendering the notice invalid. They have further contended that the invocation of the extended period under Section 28(4) is not sustainable as there is no suppression of facts, misstatement, or intent to evade duty. According to them, all relevant documents including Certificates of Origin and Form-I were duly uploaded on the e-Sanchit portal at the time of import and were available to the department, thereby negating any allegation of suppression. Reliance has also been placed on judicial precedents to argue that suppression must involve deliberate intent to evade duty and cannot be inferred from procedural lapses or bona fide interpretation.

14.2. On merits, the noticee has submitted that the substantive conditions of the India-ASEAN Free Trade Agreement (FTA) have been duly fulfilled. They have argued that the imported goods satisfy both the requirements of Regional Value Content (RVC) exceeding 35% and Change in Tariff Sub Heading (CTSH), as evidenced from Form-I and supporting documents. It is their contention that the mention of "AIFTA CONTENT 42.77%" in the Certificate of Origin instead of the prescribed expression "RVC + CTSH" is merely a procedural or formatting error and does not affect the substantive eligibility for exemption. They have emphasized that the department has not disputed the actual fulfillment of origin criteria but has only objected to the format of the certificate, which, as per settled legal principles, cannot be a ground for denial of substantive benefit. The noticee has also explained that any apparent contradiction in Form-I regarding Change in Tariff Classification is only a clerical or reporting inconsistency and does not negate the fact that the origin criteria are satisfied in substance.

14.3. The noticee has further challenged the computation of duty demand, stating that the department has incorrectly included both the into-bond Bill of Entry and the subsequent ex-bond Bills of Entry, resulting in double counting of duty. According to them, the correct duty liability is ₹13,95,703/- as against ₹27,97,398/- demanded in the SCN. They have also contended that the assessable value has been wrongly inflated by including the value of warehoused goods along with ex-bond clearances, whereas only the ex-bond value should be considered for duty calculation. Thus, the demand is stated to be excessive and erroneous.

14.4. On the issue of confiscation and penalty, the noticee has submitted that there is no violation of any substantive condition of exemption and all imports were made bona fide with proper documentation. Therefore, confiscation under Section 111(o) is not warranted. It has also been argued that penalties under Sections 112, 114A, and 114AA are not imposable as there is no element of mens rea, no false declaration, and no use of incorrect documents. The noticee maintains that the entire case is based on procedural interpretation and does not involve any deliberate wrongdoing.

14.5. Additionally, in their later submissions, the noticee has raised a legal ground regarding limitation for adjudication under Section 28(9) of the Customs Act. They have contended that since the SCN was issued on 04.12.2024, the adjudication order was

required to be passed within one year, i.e., by 03.12.2025, and since no order has been passed within the prescribed time, the proceedings have lapsed by operation of law and are deemed to be concluded. On these grounds, the noticee has prayed for setting aside the entire proceedings and dropping of the demand, interest, and penalties.

PERSONAL HEARING

15.1. Whereas, opportunities for personal hearing in the matter was granted to the notice on 18.03.2026 to remain present and produce all such documents which they intend to reply in support of their defense, in the case of Show Cause Notice dated 04.12.2024 issued to M/s IOL Chemicals and Pharmaceuticals Limited, No. 85, Industrial Area A, Ludhiana, Punjab – 141003, served to them through email dated 10.03.2026.

15.2. On 18.03.2026, Shri Ankur Mahajan, General Manager – Taxation, M/s IOL Chemical & Pharmaceuticals Ltd. and Shri Sanjay Malhotra, CS, Practicing Company Secretary appeared and reiterated their previous submission dated 04.02.2025 under which they requested to drop the proceedings initiated vide SCN dated 04.12.2024. Further, they have made an additional submission dated 18.03.2026 and requested to drop the proceedings and set aside the proposed demands for duty, interest and penalty.

DISCUSSION AND FINDING

16.1 I have carefully gone through the subject Show Cause Notice bearing no. F.No.GEN/ADJ/COMM/547/2024-Adjn-O/o-Commr-Cus-Kandla dated 04.12.2024, the defense reply dated 04.02.2025 submitted by the noticee, additional submissions made by them during the course of personal hearing held on 18.03.2026 and the case laws cited by them. I would now proceed to record my findings issue-wise as under.

16.2 ON THE ISSUE OF PRE-SCN CONSULTATION

16.2.1 I find that in their defense reply dated 04.02.2025, the noticee has raised a preliminary objection that the proviso to Section 28(1)(a) of the Customs Act, 1962 mandates holding of Pre-Notice consultation before issuance of the SCN, and that since no such consultation was undertaken by the Department before issuance of the above referred SCN dated 04.12.2025, the said SCN is liable to be set aside at the threshold itself. I have carefully considered this submission. It is seen that the proviso to Section 28(1)(a) requires

pre-notice consultation to be held in such manner as may be prescribed. However, it is well settled in law that the requirement of pre-SCN consultation is applicable only to cases falling under Section 28(1) i.e. cases involving no element of collusion, wilful mis-statement or suppression of facts, and therefore it transpires that the same is not applicable to cases falling under Section 28(4) which deal with cases involving collusion, wilful mis-statement or suppression of facts. I find that the subject SCN dated 04.12.2025 has been issued by invoking Section 28(4) of the Customs Act, 1962 in view of the suppression of facts on the part of the noticee. Therefore, the requirement of pre-notice consultation under the proviso to Section 28(1)(a) is not attracted in the present case.

16.2.2 Furthermore, I also find that the Customs Audit Commissionerate, New Delhi had issued letter dated 29.02.2024 communicating all the audit observations including the present observation regarding wrong availment of FTA benefit to the noticee, and had specifically requested the noticee to deposit the differential customs duty. The noticee had responded to the same vide their letter dated 12.03.2024. This exchange of communication prior to issuance of the SCN itself in a way constitutes sufficient opportunity to the noticee to represent its case before the Department. Therefore, I find that the preliminary objection made by the noticee citing that no pre-SCN consultation was held by the Department and on this ground the subject SCN should be set aside is not tenable in law and I hold the same to be liable to be rejected as being devoid of merit and without any legal basis in the context of proceedings under Section 28(4).

Having recorded my findings on the preliminary objection of the noticee regarding non-holding of the Pre-SCN consultation rendering the SCN dated 04.12.2024 liable to be set aside, I would now proceed to the main allegation levelled in the subject SCN on the issue of wrong availment of FTA Benefit. The same has been discussed in the subsequent paragraphs.

16.3 WRONG AVAILMENT OF FTA BENEFIT DUE TO INCORRECT FORMAT OF FTA CERTIFICATE.

(i) I find that the noticee in their defense reply dated 04.02.2025 and subsequent submissions made during the course of adjudication proceedings have time and again re-iterated that they have rightly availed the benefit available to them under FTA and that substantial benefit should not be disallowed to them on grounds of procedural lapses in furnishing of FTA Certificate. At this stage, before recording my findings on the issue, it is

quintessential to discuss the legal framework involving the ASEAN-India Free Trade Agreement. The same has been discussed as under.

(ii) I find that the ASEAN-India Free Trade Agreement benefit for customs duty exemption is governed by Notification No. 46/2011-Customs dated 01.06.2011. The Rules of Origin governing eligibility for such FTA benefit are contained in the Customs Tariff (Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India) Rules, 2009, notified vide Notification No. 189/2009(N.T.) dated 31.12.2009. I also find that the format of the Certificate of Origin to be submitted for claiming the FTA benefit is prescribed under these Rules. Further, as per the Overleaf Notes to Form AI, particularly Point 3 thereof, the origin criteria to be mentioned in Box 8 of the Form AI Certificate of Origin must be either "WO" for goods wholly obtained or produced in the territory of the exporting party, or "RVC [%] + CTSH" for goods satisfying Rule 5 (not wholly produced or obtained products) of the Rules. **These are the only two permissible formats in which the originating criteria is required to be declared in the Certificate of Origin under the prescribed Rules.**

(iii) Additionally, I find that Para 3(2)(a) of Notification No. 81/2020-Customs (N.T.) dated 21.08.2020 pertaining to Preferential Tariff Claims provides **that notwithstanding anything contained in those rules**, **the claim of preferential rate of duty may be denied by the proper officer without verification if the Certificate of Origin is incomplete and not in accordance with the format as prescribed by the Rules of Origin**. I hold that the said provision is of **critical importance** to the present case as it confers a specific statutory right upon the proper officer to deny preferential duty claims outrightly where the Certificate of Origin does not conform to the prescribed format, without any obligation to undertake verification.

Now, I shall proceed to record my findings on the examination of the FTA Certificate submitted by the noticee as below.

(iv) I find that from examination of the FTA Certificates of Origin submitted by the noticee at the time of filing the Bills of Entry mentioned in Table-A above, it is observed **that the originating criteria mentioned in Box 8 of all the said certificates was "AIFTA CONTENT 42.77%**". I find that this format **does not conform to the prescribed format under the Determination of Origin of Goods under the ASEAN-India PTA Rules, 2009,**

notified vide Notification No. 189/2009(N.T.) dated 31.12.2009. **The said Rules prescribe that the origin criteria in Box 8 must be stated either as "WO" or as "RVC [%] + CTSH". The mention of "AIFTA CONTENT 42.77%" in Box 8 of the COO is neither of these two prescribed formats and therefore does not satisfy the mandatory requirement of the Rules of Origin**.

I therefore find that the COO submitted by the noticee is **incomplete and not in accordance with the format as prescribed by the Rules of Origin**, and accordingly the noticee is not entitled to the benefit of BCD exemption under Sr. No. 231(II) of Notification No. 46/2011 in terms of Para 3(2)(a) of Notification No. 81/2020-Customs (N.T.).

(v) I find that the noticee has argued in their defense reply dated 04.02.2025 and subsequent submissions that the dispute in the present case relates only to the format of the Certificate of Origin (COO) and not to the fulfilment of the substantive conditions of origin. It has been contended by the noticee that since the AIFTA content (42.77%) exceeds the required 35% and the CTSH condition is also satisfied, the benefit of exemption should not be denied on account of a **procedural lapse** in the format of the COO. I have carefully examined this contention and find that the same is not acceptable. Firstly, the Rules of Origin under the ASEAN-India FTA clearly require that the originating criteria must be specifically mentioned in the prescribed format in the COO itself. I find that this requirement is **not merely procedural but is a substantive condition for claiming the benefit of preferential duty**. **The COO is the primary document issued by the authorized certifying authority of the exporting country, and it must clearly indicate whether the goods qualify as originating under "WO" or "RVC (%) + CTSH"**. A certificate which merely mentions "AIFTA Content 42.77%" without specifying the CTSH condition does not meet the prescribed requirement and is therefore I find that the same is not a valid COO for claiming exemption.

(vi) Secondly, I find that the reliance placed by the noticee on Form-I to establish compliance with the CTSH condition is not legally sustainable. I find that the Form-I is in the nature of a supporting declaration by the exporter and therefore it does not appear to have the same legal status as the COO. The Rules require that the originating criteria must be correctly stated in the COO itself. Therefore, I hold that any deficiency in the COO cannot be cured by referring to Form-I or any other document.

(vii) Thirdly, I find that the Form-I submitted by the noticee itself suffers from

contradictions as highlighted in the subject Show Cause Notice dated 04.12.2024. For instance, in one part, the Change in Tariff Classification (CTC) criterion is stated as "No", while in another part it is stated as "Yes". I find that such inconsistencies make the document unreliable. The explanation of clerical error given by the noticee is not acceptable, as documents submitted at the time of clearance for claiming exemption must be accurate and consistent. Further, I find that there is nothing on record to indicate that any attempts were made by the noticee to seek rectification of this error at the relevant time. The matter had come into light only when a Premise Based Audit was conducted by the Officers of the Customs Audit Commissionerate, New Custom House, New Delhi.

(viii) Fourthly, I find that the reference to "Product Specific Rule" in Form-I, which is not provided under the applicable Rules of Origin, further weakens the credibility of the document. Therefore, Form-I cannot be relied upon to establish compliance with the origin criteria.

(ix) Fifthly, I find that the contention that the Customs officer did not raise any objection at the time of clearance is also not acceptable. Under the self-assessment system, the responsibility to correctly claim exemption and comply with all conditions lies with the importer. The absence of objection at the time of clearance does not validate an incorrect claim. The law permits post-clearance audit and recovery of duty where irregularities are detected. Thus, I find that the contention of the noticee regarding lack of any objection during clearance is not tenable in law.

In view of the above, I hold that the Certificates of Origin submitted by the noticee are not in accordance with the prescribed format under the Rules of Origin notified vide Notification No. 189/2009 (N.T.) dated 31.12.2009. Accordingly, the noticee is not eligible for the benefit of exemption under Sr. No. 231(II) of Notification No. 46/2011-Customs. The goods imported under the Bills of Entry mentioned in Table-A are therefore liable to duty at the applicable rates, i.e., BCD @ 2.5%, SWS @ 10% of BCD, and IGST @ 18%.

I would now proceed to record my findings on the case laws relied upon by the noticee in their defense.

16.4.1 I find that the noticee has placed reliance on several judicial decisions to contend

that substantive benefit cannot be denied for procedural lapses. I have examined each of these decisions and find that they are distinguishable from the facts of the present case. The decisions cited by the noticee regarding procedural lapses generally deal with situations involving minor technical deficiencies in documentation such as clerical typographical errors, inadvertent omissions of non-material particulars, or cases where the substantive compliance was unambiguously established from all available records without any contradiction. In the present case, the deficiency is not a minor clerical error but goes to the root of the certification itself, namely the complete absence of the prescribed originating criteria format (RVC[%]+CTSH) in Box 8 of the COO. The COO instead states a format ("AIFTA CONTENT 42.77%") which is not recognized under the prescribed Rules of Origin at all. This is a **fundamental non-compliance** with the prescribed format of the COO and cannot be equated to a procedural or clerical lapse of a minor nature. Further, as discussed above, the Form-I which the noticee seeks to rely upon as establishing substantive compliance is itself internally contradictory and unreliable. The judicial decisions cited by the noticee are therefore not applicable to the facts of the present case and cannot be relied upon to save the noticee from the consequences of the non-compliant COO.

At this juncture, I would once again like to reproduce Para 3 (2) (a) of the Notification No. 81/2020 - Customs (N.T.) dated 21/08/2020 *of Preferential tariff claim.–*

> ***"3. (2)*** *Notwithstanding anything contained in these rules, the claim of preferential rate of duty may be* ***denied by the proper officer without verification if the certificate of origin-***
> *(a)* ***is incomplete and not in accordance with the format as prescribed by the Rules of Origin****;"*

16.4.2 Thus, placing reliance on the provision of law as stipulated under Para 3 (2) (a) of the Notification No. 81/2020 - Customs (N.T.) dated 21/08/2020 which clearly mandated that if the Certificate of Origin is incomplete and not in accordance with the format as prescribed by the Rules of Origin, the preferential rate of duty may be denied, I hold that the contention of the noticee citing the case laws as referred to in their defense reply dated 04.02.2025 and subsequent submissions depicting the matter on hands as "procedural lapse" is not tenable in law.

16.5.1 I also find that the noticee has contended that the extended period under Section 28(4) of the Customs Act, 1962 is not applicable in the present case, as there was no suppression of facts, no wilful mis-statement and no intention to evade duty. It has been

argued that all relevant documents, including the Certificate of Origin (COO) and Form-I, were uploaded on the e-Sanchit portal at the time of clearance and were available to the department. I have carefully examined this submission and find that the same is not acceptable. It is noted that the noticee is a regular and experienced importer dealing in imports under various Free Trade Agreements. Such an importer is expected to be fully aware of the conditions prescribed under the ASEAN-India FTA Rules of Origin for claiming exemption. The record shows that the noticee was aware that the originating criteria required compliance with "RVC (%) + CTSH". However, despite this knowledge, the noticee claimed BCD exemption on the basis of Certificates of Origin which did not mention the originating criteria in the prescribed format, but instead mentioned "AIFTA Content 42.77%". This shows that the exemption was claimed without ensuring compliance with the mandatory conditions.

16.5.2 The argument that all documents were uploaded on e-Sanchit and therefore there was no suppression is not acceptable. Under Section 28(4), suppression of facts does not mean only hiding documents. It also includes situations where incomplete or incorrect information is presented without bringing the deficiency to the notice of the department, resulting in incorrect assessment. In the present case, the noticee uploaded a non-compliant COO but did not disclose that it did not meet the prescribed requirements. Further, I find that there is nothing on record to indicate that any attempts were made by the noticee to seek rectification of this error at the relevant time. The matter had come into light only when a Premise Based Audit was conducted by the Officers of the Customs Audit Commissionerate, New Custom House, New Delhi which clearly indicates suppression of material facts.

16.5.3 Further, under the self-assessment system, the importer is required to ensure that all declarations are true and complete and that all conditions of exemption are satisfied. The noticee declared the goods as eligible for exemption while filing the Bills of Entry. Since the COO was not in the prescribed format, this declaration was not correct. Such incorrect declaration amounts to wilful mis-statement and suppression of facts within the meaning of Section 28(4) of the Customs Act, 1962. I also find that the case laws relied upon by the noticee are not applicable to the present case. In those cases, the issue involved interpretation of law where all facts were already known to the department. In the present case, the issue relates to non-compliance with a mandatory requirement, which came to

light only during audit. Therefore, the facts of those cases are different and do not help the noticee. In view of the above, I hold that the extended period of limitation under Section 28(4) of the Customs Act, 1962 has been rightly invoked in this case.

16.6 I find that the said noticee, vide additional submission dated 18.03.2026, has also contended that the present proceedings have lapsed in terms of Section 28(9) of the Customs Act, 1962, on the ground that the Show Cause Notice dated 04.12.2024 was not adjudicated within the prescribed period of one year i.e. up to 03.12.2025. I have carefully considered the above submission. In this regard, it is observed that the proviso to Section 28(9) of the Customs Act, 1962 empowers the competent authority to extend the time limit for completion of adjudication, subject to reasons being recorded in writing. In the present case, due to the requirements of compliance with the principles of natural justice, including granting adequate opportunity to the noticee for submission of reply and personal hearing, the adjudication proceedings could not be completed within the stipulated time. Accordingly, an extension of time was sought from the competent authority, who, being satisfied with the reasons recorded, has granted an extension of a further period of six months for completion of adjudication before the expiry of original time limit. Therefore, the contention of the noticee that the proceedings have lapsed is not sustainable in law. The proceedings are valid and continue to subsist within the extended period granted under the proviso to Section 28(9) of the Customs Act, 1962.

16.7.1 I have carefully considered the submissions of the noticee that confiscation under Section 111(o) of the Customs Act, 1962 is not warranted in the present case. Section 111(o) provides that goods imported under exemption, subject to certain conditions, are liable to confiscation if such conditions are not complied with, unless such non-compliance is specifically permitted by the proper officer. For the sake of ready reference, the relevant provision is reproduced as under:

> ***Section 111. Confiscation of improperly imported goods, etc. -***
>
> *The following goods brought from a place outside India shall be liable to confiscation: -*
> *----- ------- ---------*
>
> *o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;*

In the present case, I find that the goods were imported by claiming exemption from Basic Customs Duty under Sr. No. 231(II) of Notification No. 46/2011, which is subject to fulfilment of the conditions prescribed under the ASEAN-India FTA Rules of Origin, including submission of a valid Certificate of Origin (COO) in the prescribed format. As discussed *supra,* I find that the COO submitted by the noticee was not in the prescribed format and therefore did not satisfy the required conditions. Thus, the condition attached to the exemption has not been fulfilled. Accordingly, I hold that the goods are liable to confiscation under Section 111(o) of the Customs Act, 1962.

16.7.2 As I have already held these goods liable for confiscation in previous para under Section 111(o) of the Customs Act, 1962, I find it necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the impugned goods. The Section 125 ibid reads as under:-

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

16.7.3 A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods to redeem the goods by paying redemption fine. Section 125 of the Customs Act, 1962 empowers the adjudicating authority, in cases where goods are liable to confiscation, to grant an option to redeem the goods on payment of fine in lieu of confiscation. In view of the above discussion, I am of the considered view that the ends of justice would be met by allowing redemption of the subject goods. Therefore, exercising powers under Section 125 of the Customs Act, 1962, I deem it appropriate to allow the importer an option to redeem the goods on payment of redemption fine under the provisions of Section 125 of the Customs, Act, 1962.

16.8 I find that Section 112(a) of the Customs Act, 1962 provides that any person who, in relation to any goods, does or omits to do any act which renders such goods liable to confiscation under Section 111, shall be liable to penalty. In the present case, as discussed

supra the goods are liable to confiscation under Section 111(o) of the Customs Act, 1962. Therefore, I find that the noticee is liable for penalty under Section 112(a). In the present case, the noticee had claimed exemption from Basic Customs Duty on the basis of Certificates of Origin which were not in the prescribed format and suffered from inherent contradictions. This act resulted in wrongful availment of exemption and rendered the goods liable to confiscation. Accordingly, I hold that penalty under Section 112(a) of the Customs Act, 1962 is imposable on the noticee.

16.9.1 I find that Section 114A of the Customs Act, 1962 provides that where duty has not been levied or has been short-levied by reason of collusion, wilful mis-statement or suppression of facts, the person liable to pay such duty shall also be liable to a penalty equal to the duty so determined. In the present case, as discussed *supra* I find that the goods were imported by claiming exemption from Basic Customs Duty under Sr. No. 231(II) of Notification No. 46/2011, which is subject to fulfilment of the conditions prescribed under the ASEAN-India FTA Rules of Origin, including submission of a valid Certificate of Origin (COO) in the prescribed format. As discussed *supra,* I find that the COO submitted by the noticee was not in the prescribed format and therefore did not satisfy the required conditions. I also find that in the present case, the noticee uploaded a non-compliant COO but did not disclose that it did not meet the prescribed requirements. Further, I find that there is nothing on record to indicate that any attempts were made by the noticee to seek rectification of this error at the relevant time. The matter had come into light only when a Premise Based Audit was conducted by the Officers of the Customs Audit Commissionerate, New Custom House, New Delhi which clearly indicates suppression of material facts which has resulted into short payment/levy of Customs duties amounting to Rs.27,97,398/-. Therefore, I hold that penalty under Section 114A of the Customs Act, 1962 is imposable on the noticee.

16.9.2 At this juncture, I find that the fifth proviso to Section 114A of the Customs Act mandates that where any penalty has been levied under the said Section, no penalty shall be levied under Section 112 or Section 114. For the sake of ready reference, the relevant legal provision is reproduced as under:

Section 114A. Penalty for short-levy or non-levy of duty in certain cases. -

Where the duty has not been levied or has been short-levied or the interest has not been

charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:

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

In view of the above, the penalty imposable on the noticee u/s 112 of the Customs Act, 1962 is dropped herewith.

16.10 I find that Section 114AA of the Customs Act, 1962 provides for penalty on any person who 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 the Act, with a penalty of up to five times the value of goods. In the present case, the noticee made a declaration under Section 46(4) and 46(4A) of the Customs Act, 1962 at the time of filing the Bills of Entry declaring the contents to be true and correct, while claiming BCD exemption on the basis of COOs that were not in the prescribed format. This amounts to making or using a declaration or document that is incorrect in a material particular, for the purpose of claiming an FTA duty exemption to which the noticee was not entitled on the basis of the non-compliant COOs. The Noticee's argument that it had uploaded all documents in bonafide manner on e-Sanchit cannot be accepted as a defense against Section 114AA, since the provision covers any person who uses a document that is incorrect in a material particular, irrespective of whether the person was the author of the document. By using the non-compliant COO to claim the duty exemption at the time of filing the Bills of Entry, the noticee has attracted the penalty under Section 114AA.

ORDER

17.1. In view of the foregoing Discussion and Findings, I pass the following order:

(i) I hold that the goods valued at Rs.8,62,06,417/- (Rupees Eight Crores Sixty-Two

Lakhs Six Thousand Four Hundred and Seventeen only) imported under the cover of the Bills of Entry as shown in Table-A above liable for confiscation under Section 111(o) of the Customs Act, 1962. However, since the goods are not available for physical confiscation, I impose redemption fine of Rs.50,00,000- (Rupees Fifty Lakh Only) under Section 125 of the Customs Act, 1962 in lieu of the same.

(ii) The customs duties amounting to Rs. 27,97,398/- {comprising Rs. 14,01,695/- for B/E No. 3722518 dated 13.12.2022, Rs. 7,00,643/- for B/E No. 4128344 dated 11.01.2023, and Rs. 6,95,060/- for B/E No. 4128616 dated 11.01.2023} (Rupees Twenty-Seven Lakhs Ninety-Seven Thousand Three Hundred and Ninety-Eight only) are hereby confirmed and ordered to be recovered from M/s IOL Chemicals and Pharmaceuticals Limited under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.

(iii) I impose penalty of Rs.27,97,398/- (Rupees Twenty-Seven Lakh Ninety-Seven Thousand Three Hundred Ninety-Eight Only) under Section 114A of the Customs Act, 1962 on M/s IOL Chemicals and Pharmaceuticals Limited. I reframe from imposing penalty under Section 112(a) of the Customs Act, 1962.

(iv) I impose penalty of Rs.1,00,00,000/- (Rupees One Crore Only) under Section 114AA of the Customs Act, 1962 on M/s IOL Chemicals and Pharmaceuticals Limited.

17.2 The proceedings initiated vide Show Cause Notice F. No. GEN/ADJ/COMM/547/2024-Adjn-O/o Commr-Cus-Kandla dated 04.12.2024 stand disposed of accordingly. Further, this Order is issued without prejudice to any other action that may be contemplated under the Customs Act, 1962 or any other prevailing law in India.

Digitally signed by
Mukesh Malakhan Singh Rathore
Date: 08-05-2026 14:19:09

(Mukesh Rathore)
Additional Commissioner,
Custom House Kandla

F.No. GEN/ADJ/COMM/547/2024-Adjn-O/o Commr-Cus-Kandla

DIN- 20260571ML0000212012

To,

M/s. IOL Chemicals and Pharmaceuticals Limited,

No. 85, Industrial Area A, Ludhiana, Punjab – 141003

Copy to :-

(i) The Deputy/Assistant Commissioner (RRA/TRC) for necessary action.

(ii) The Superintendent (EDI) for uploading on the website.

(iii) Guard File.