
 <p>सत्यमेव जयते</p>	<p>भारतसरकार / Government of India वित्तमंत्रालय / Ministry of Finance आयुक्त सीमाशुल्क एन.एस.-II का कार्यालय Office of Commissioner of Customs NS-II Jawaharlal Nehru Custom House, Nhava Sheva, Dist- Raigad, Maharashtra - 400 707</p>	
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F. No.: S/10-831/2024-25/ADC/LIC/NS-II/CAC/JNCH

CUS/LIC/MISC/770/2024-O/o- Commr-Cus-NS-I Date of Order: 12.08.2025

SCN NO. 1415/2024-25/AC/LIC/NS-II/CAC/JNCH Date of Issue: 12.08.2025

Order Passed by: Dr. Chittaranjan Prakash Wagh डॉ. चित्तरंजन प्रकाश वाघ

Addl. Commissioner of Customs, अपर आयुक्त सीमा शुल्क
License (NS-II), JNCH, Nhava Sheva

O-IN-O No: 660 /2025-26/ADC/NS-II/CAC/JNCH

M/s. Century Pharmaceuticals Ltd (IEC No. 0889010374)

DIN: 20250878 NT0000 888 FEA

मूलआदेश

- यह प्रति जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए निःशुल्क दी जाती है।
- इस आदेश के विरुद्ध अपील सीमाशुल्क अधिनियम 1962 की धारा 128 (1) के तहत इस आदेश की संसूचना की तारीख से साठ दिनों के भीतर सीमाशुल्क आयुक्त) अपील (, जवाहरलाल नेहरू सीमाशुल्क भवन, शेवा, ता. उरण, जिला - रायगढ़, महाराष्ट्र 400707 - को की जा सकती है। अपील दो प्रतियों में होनी चाहिए और सीमाशुल्क (अपील (नियमावली, 1982 के अनुसार फॉर्म सी.ए.1- संलग्नक में की जानी चाहिए। अपील पर न्यायालय फीस के रूप में 2.00 रुपये मात्र का स्टॉप लगाया जायेगा और साथ में यह आदेश या इसकी एक प्रति लगायी जायेगी। यदि इस आदेश की प्रति संलग्न की जाती है तो इस पर न्यायालय फीस के रूप में 2.00 रुपये का स्टॉप भी लगाया जायेगा जैसा कि न्यायालय फीस अधिनियम 1870 की अनुसूची 1, मद 6 के अंतर्गत निर्धारित किया गया है।
- इस निर्णय या आदेश के विरुद्ध अपील करने वाला व्यक्ति अपील अनिर्णीत रहने तक, शुल्क या शास्ति के संबंध में विवाद होने पर माँगे गये शुल्क के 7.5% का, अथवा केवल शास्ति के संबंध में विवाद होने पर शास्ति का भुगतान करेगा।

ORDER-IN-ORIGINAL

- This copy is granted free of charge for the use of the person to whom it is issued.
- An appeal against this order lies with the Commissioner of Customs (Appeals), प्राप्त किया / RECEIVED

सी.ई.ए.सी. / C.E.A.C.
जवाहरलाल नेहरू सीमाशुल्क भवन, मुंबई-II
Jawaharlal Nehru Custom House, Mumbai-II

Jawaharlal Nehru Custom House, Sheva, Taluka: Uran, Dist: Raigad, Maharashtra – 400707 under Section 128(1) of the Customs Act, 1962 within sixty days from the date of communication of this order. The appeal should be in duplicate and should be filed in Form CA-1 annexed to the Customs (Appeals) Rules, 1982. The appeal should bear a Court Fee stamp of Rs.2.00 only and should be accompanied by this order or a copy thereof. If a copy of this order is enclosed, it should also bear a Court Fee Stamp of Rs. 2.00 only as prescribed under Schedule 1, Item 6 of the Court Fees Act, 1870.

3. Any person desirous of appealing against this decision or order shall, pending the appeal, make 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.

Sub: Adjudication of Show Cause Notice No. 1415/2024-25/AC/LIC/NS-II/CAC/JNCH dtd. 28.11.2024 and corrigendum dated 21.01.2025 issued to M/s. Century Pharmaceuticals Ltd (IEC No. 0889010374).

BRIEF FACTS OF THE CASE

It is observed that some of the Exporters have availed wrong MEIS benefit @3% of FOB value by mis-classifying the goods under CTH 29420090 instead of correct CTH 2901 to 2941 where MEIS benefit was @2% of FOB value. Accordingly, an Audit was conducted to verify correct CTH of respective goods and found that M/s Century Pharmaceuticals Ltd (IEC No. 0889010374) (hereinafter referred to as the "Exporter"), having address at 406, World Trade Centre, Sayajigunj, Vadodara, Gujarat-390020 was engaged in the export of goods declared as "Sevelamer Hydrochloride HIS & Sildenafil Citrate EP" (hereinafter referred to as the "the said goods"), classifying the goods under CTH 29420090 of the first schedule of the Customs Tariff Act, 1975 which covers "Other organic compounds; other;" and claimed MEIS benefit @ 3% of FOB value.

2. During the post-clearance audit, export data of M/s Century Pharmaceuticals Ltd (IEC No. 0889010374) was scrutinized and it was noticed that they had filed Shipping bills as mentioned in Annexure-A to show cause notice for export of goods viz. "Sevelamer Hydrochloride HIS & Sildenafil Citrate EP", classifying them under CTH 29420090 of the first schedule of the Customs Tariff Act, 1975 which covers "OTHER ORGANIC COMPOUNDS; other;" claiming MEIS benefit @ 3% of FOB value. However, the said goods appeared to be correctly classifiable under CTH 39119090 and 29359090.

3. Classification of exported goods.

For better understanding of the above relevant tariff headings, explanatory notes to the relevant chapter notes are reproduced as below:

A) Custom Tariff Heading 2942 is reproduced as under:

2942 Other Organic Compound (Not classified elsewhere) :

This heading covers separate chemically defined organic compounds not classified elsewhere.

1. Ketenes*. Like ketones, these are characterised by a carbonyl group ($>C=O$) but it is linked to the neighbouring carbon atom by a double bond (e.g., ketene, diphenylketene). This heading however excludes diketene which is a lactone of heading 29.32.
2. Boron trifluoride complexes with acetic acid, diethyl ether or phenol*.
3. Dithymol di-iodide.

294200 - Other organic compound:

--- Cefadroxil & its salts, Ibuprofane, Diazepam, Nifedipine, Ranitidine, Danes salt of D(-) Phenyl Glycine, D(-) para hydroxyl Dane's Salts:

29420090--- Other

3911-PETROLEUM RESINS, COUMARONE-INDENE RESINS, POLYTERPENES, POLYSULPHIDES, POLYSULPHONES AND OTHER PRODUCTS SPECIFIED IN NOTE 3 TO THIS CHAPTER, NOT ELSEWHERE SPECIFIED OR INCLUDED

391 1 9090---other

2935-SULPHONAMIDES

29359090---other

4. EXPORT INCENTIVES UNDER DUTY CREDIT SCRIPS-MERCHANDISE EXPORTS FROM INDIA SCHEME (MEIS): -

4.1 In terms of Chapter 3 of the Foreign Trade Policy (FTP) 2015-2020 exporters are issued duty credit scrips under two schemes for exports of Merchandise and Services namely (i) Merchandise Exports from India Scheme (MEIS) & (ii) Service Exports from India Scheme (SEIS) with an objective to provide rewards to the exporter to offset infrastructural inefficiencies and associated costs involved in export of goods/ products, which are produced/ manufactured in India, especially those having high export intensity, employment potential and thereby enhancing India's export competitiveness.

4.2 The Merchandise Exports from India Scheme (MEIS) provides benefits to exports of notified goods with the ITC (HS) code made to the notified markets, listed under Appendix 3B of the Hand book of Procedures (HBoP) in the form of Duty Credit Scrips. Appendix 3B also lists the rate(s) of rewards on various notified products [ITC (HS) code wise]. The basis of calculation of reward would be FOB value of exports realized in free foreign exchange, or on FOB value of exports as given in the Shipping Bills in free foreign exchange, whichever is less, unless otherwise specified.

Sr. No.	ITC (HS) Code 2017 (Eight Digit)	Description of goods as per ITC(HS) 2017	MEIS Sr. No.	MEIS Reward Rate (In%)
01.	29420090	Other Organic Compound	1633	3%
02.	391 19090	Sevelamer Hydrochloride HIS	0	0%
03.	29359090	Sildenafil Citrate EP	1547	2%

5. It appeared that the said Exporter had not made correct and truthful declaration of the material facts in their shipping bills by misclassifying their goods and thereby claimed undue MEIS benefits @ 3%, instead of applicable 2% and 0%, amounting to Rs.3,44,865/-

(Rupees Three Lakh Forty-Four Thousand Eight Hundred Sixty Five Only) which were utilized for payment of customs duty towards the imports by them vide advised C. L. No. 113/2023-24/JNCH(A1) dt.03.05.2023.

6. From the Chapter notes, chapter headings and reasons as elaborated in foregoing paras, it appears that M/s. Century Pharmaceuticals Ltd (IEC No. 0889010374) have wilfully mis-stated the classifications of the subject goods exported by them and suppressed the actual classification in their export documents filed before the Customs authorities as well as DGFT with an intent to avail undue benefit of MEIS scheme and therefore the MEIS scrips obtained by them on the basis of such manipulated documents becomes invalid and it can be termed that they were obtained fraudulently. It appears that M/s. Century Pharmaceuticals Ltd (IEC No. 0889010374) by resorting to such acts, have contravened various provisions of Customs Act, 1962.

7. Vide Finance Act, 2011 with effect from 08.04.2011 "Self-Assessment" has been introduced under the Customs Act, 1962. Section 17 of the said Act provides for self-assessment of duty on import and export goods by the importer or the exporter by filing a bill of entry or shipping bill as the case may be, in the electronic form, as per Section 46 or 50 respectively. Thus, under self-assessment, it is the importer or exporter who will ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported/exported goods while presenting Bill of Entry or Shipping Bill. In the present case, M/s. Century Pharmaceuticals Ltd (IEC No. 0889010374) have deliberately contravened the above said provisions with an intention to wrongfully avail excess MEIS benefit fraudulently, which were legitimately due to them.

8. From the facts discussed in the foregoing paras, it appears that:

8.1 The Exporter M/s. Century Pharmaceuticals Ltd (IEC No. 0889010374) had misclassified the goods declared as "Sevelamer Hydrochloride HIS & Sildenafil Citrate EP" under CTH 29420090 instead of correct CTH 39119090 and 29359090. Accordingly, it appears that M/s Century Pharmaceuticals Ltd (IEC No. 0889010374) had deliberately claimed wrong classification with intent to fraudulently avail the benefit of MEIS at higher rate of 3% instead of 2% and 0% of FOB value. Further, the undue benefits of MEIS availed and utilized by mis-classifying the said exported goods is required to be denied.

8.2 M/s. Century Pharmaceuticals Ltd (IEC No. 0889010374) presented a large number of shipping bills before DGFT to obtain MEIS License/Scrips. The duty credit/granted on such MEIS License/Scrips includes MEIS credit earned on correctly classifiable goods at appropriate eligible rates. However, it appears that M/s. Century Pharmaceuticals Ltd (IEC No. 0889010374) has deliberately mis-classified the export goods under CTH 29420090 in shipping bills having FOB value of Rs. 1,28,25,865.20 /- as mentioned in calculation sheet to the SCN and MEIS benefits amounting to Rs. 3,44,865-/(Rupees Three Lakh Forty-Four Thousand Eight Hundred Sixty Five Only) appears to be recoverable as per section 28(4) and/or 28AAA of the Customs Act, 1962, as applicable.

9. M/s. Century Pharmaceuticals Ltd (IEC No. 0889010374) had contravened the

provisions of Section 50(2) of the Customs Act, 1962 by willfully mis-declaring/misclassifying their export goods and intentionally claimed undue MEIS benefit which resulted in loss of government revenue of Rs. 3,44,865/- (Rupees Three Lakh Forty-Four Thousand Eight Hundred Sixty Five Only) On culmination of the investigation, the subject show cause notice was issued to M/s. Century Pharmaceuticals Ltd (IEC No. 0889010374), calling upon them to show cause as to why:

- i. The declared classification of the subject goods i.e. **Sevelamer Hydrochloride HIS & Sildenafil Citrate EP** as mentioned in the shipping bills under CTH 29420090 should not be rejected and the subject goods should not be re-classified under CTH 39119090 and 29359090 of the first schedule to the Customs Tariff Act, 1975 and the said shipping bills should not be re-assessed.
- ii. The exported goods, having total declared FOB value of Rs. **1,28,25,865.20 /-** (Rupees One Crore Twenty-Eight Lakhs Twenty-Five Thousand Eight Hundred Sixty-Five and point Twenty only) as mentioned in calculation sheet, should not be held liable to confiscation under Section 113(i) of Customs Act, 1962 although the same are not available for confiscation;
- iii. Export benefit availed by the Exporter in terms of MEIS through shipping bills as detailed in Annexure- A for Rs. **3,44,865/-** (Rupees Three Lakh Forty-Four Thousand Eight Hundred Sixty Five Only) should not be recovered as per Section 28(4) read with Section 28AAA of the Customs Act, 1962 along with interest as applicable thereon under Section 28AA, 28(5) of the Customs Act, 1962.
- (iv) Penalty should not be imposed upon them under the provisions of sections 114(iii), 114AA & 114AB of the Customs Act, 1962.

RECORD OF PERSONAL HEARING

10. In line with the principles of natural justice, letters were issued to the Exporter with a request to appear before Adjudicating Authority for personal hearing. On 15.07.2025 Dhruvank Parikh, Chartered Accountants attended personal hearing on virtual mode on the said dated 15.07.2025 and stated that they have classified the goods under correct HSN code and they will submit their written submission for the same and requested for leniency and close the matter amicably.

WRITTEN SUBMISSION OF THE EXPORTER

11. The Exporter in their written submission dated 16.01.2025 received to this office on 15.07.2025 through email submitted that; They deny the liability and all the allegations, contentions, submissions, and averments raised in the impugned Notice unless specifically accepted herein below. The grounds on which demand is contested are exclusive and are without prejudice to the other, unless specifically mentioned.

A. No reference as to MEIS scrip issued to them and whether for the Shipping Bills:

The Show Cause Notice is proposing to recover duties of Customs. At the threshold, the proposal for duties of customs is not tenable on the face of allegation in as much as the impugned show cause notice is alleging that they have availed ineligible benefits under MEIS. The scrips obtained under the scheme is used for payment of duties of Customs. Hence, it can be said that the scrips of MEIS are just a method of making payment of duties of customs. Any imports, for which duties of customs are paid from MEIS scrips cannot be

regarded as non-duty paid, in case there is any discrepancy regarding MEIS scrips is found. Further, impugned Show Cause Notice has not given the details of Bill of entries, for which the MEIS scrips were used, for which department is alleging that it was obtained by way of mis declaration. Hence, the Show Cause Notice would not be sustainable in absence of details of import for which MEIS scrips were used for making duty payment.

It is submitted that the issuance of MEIS scrips, the exporter is required to make application on the portal of DGFT. Thereafter, the authorised office (RA) would scrutinize the application and issue MEIS Scrip. In impugned Show Cause Notice, there is no reference as to MEIS scrip issued to them and whether for the Shipping Bills, which are indicated in the impugned show cause notice are covered by MEIS Scrips issued to them. In absence of these vital facts, proposal for recovery of MEIS benefits is purely presumption, assumption and surmises. The same would not succeed. Show Cause Notice, being a basic document to the any proposal for demand or offence, has to clearly spell out and give details on the basis of which department intends to build its case for such allegation. In absence of these facts, impugned show cause notice is required to be dropped. In this regard, Noticee wishes to rely upon judgment of Hon'ble Supreme Court in case of (i) COMMISSIONER OF C. EX., BANGALORE vs BRINDAVAN BEVERAGES (P) LTD. [2007(213) E.L.T. 487 (S.C.)]

(ii) Hon'ble High Court of Madhya Pradesh "BALAJI ELECTRICALS Vis. APPELLATE AUTHORITY & JOINT COMMISSIONER STATE TAX, SAGAR DIVISION [2023 (74) G.S.T.L. 284 (M.P.)]",

B. Customs has no jurisdiction, since MEIS is governed by DGFT: MEIS is a scheme declared under Foreign Trade Policy, issued under Foreign Trade (Development and Regulation) Act, 1992 by the Ministry of Commerce. The said scheme, alongwith other Export promotion schemes are managed by Directorate General of Foreign Trade, working under Ministry of Commerce. The text of relevant portion of the said Foreign Trade Policy is reproduced herein below for ease of reference;

Duty Credit Scrips shall be granted as rewards under MEIS and SEIS. The Duty Credit Scrips and goods imported / domestically procured against them shall be freely transferable. The Duty Credit Scrips can be used for:

- i. Payment of Customs Duties for import of inputs or goods, including capital goods, as per DOR notification, except items listed in Appendix 3A. (Amended vide Notification No 8/2015-20 dated 4th June, 2015)
- ii. In pursuance of the provisions of paragraph 1.03 of Foreign Trade Policy (FTP), the Director General of Foreign Trade (DGFT) hereby notifies the procedure to be followed by an exporter or importer or by the licensing/Regional Authority or by any other authority for purpose of implementing the provisions of Foreign Trade (Development & Regulation) Act, the Rules/orders made thereunder and the provisions of Foreign Trade Policy. The said procedure is contained in following compilations:

From the above, it is clear that RA (Regional Authority) of DGFT, working in Ministry of Commerce is the proper authority for scrutiny and issuance of MEIS Scrips. Accordingly, if any modification, revocation, or annulment of MEIS scrip is to be done, the same would be done by the issuing authority, i.e. Regional Authority of DGFT. It is trite law that officers of Customs would not be proper authority to revoke, amend or annul any scrip/licence, etc issued by DGFT, under foreign Trade Policy or Foreign Trade (Development and Regulation) Act, 1992. In this regard,

Noticee wishes to rely upon following case laws:

(i) EAST INDIA COMMERCIAL CO. LTD., CALCUTTA vs COLLECTOR OF CUSTOMS,

CALCUTTA [1983 (13)E.L.T. 1342 (S.C.)]

ii. RAMA NEWS PRINTS & PAPER LTD. vs COMMISSIONER OF CUS., KANDLA [2000 (122)E.L.T. 473 (Tribunal)]

iii. COMMISSIONER OF CUSTOMS, MUMBAI vs RYBEN PHARMACEUTICALS [2001 (128) E.L.T. 215 (Tri. Mum.)]

iv. East India Commercial case - 1983 (13) E.L. T 1342 and Sampatraj Dugarcase 1992 (58) E.L.T 739.

v. HICO ENTERPRISES vs COMMISSIONER OF CUSTOMS, MUMBAI [2005 (189) E.L.T. 135 (Tri. -42)]

(C) The Subject Goods Correctly Classified and Correctly Claimed the Benefit of MEIS

The impugned show cause notice has been issued without any analysis of the products in question, its composition, use and its general perception in market.

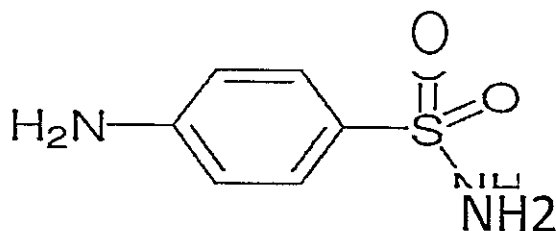
Product 'Sevelamer Hydrochloride HIS' is an Active Pharmaceuticals and is an organic compound. The product is manufactured from Polyallylamine. Further, it is worth mentioning that although certain organic chemical has specific structure, it has not been classified as per its structure but functional group. Also, some chemicals have been classified under residual Customs Tariff Heading (CTH) 2942 although they are classifiable under earlier CTH due to their specific structure.

As per Rule 3(a) of the General Rules for the Interpretation of the Schedule to the Customs Tariff Act for classification of goods, "the heading, which provides the most specific description, shall be preferred to heading providing a more general description". Even if the chemicals are classifiable under two headings, Note 3 to the Chapter 29 has not been followed for classification of goods under later heading. The said note specifies that "goods, which could be included in two or more of the headings of the Chapter, are to be classified in that one of those headings which occurs last in numerical orders".

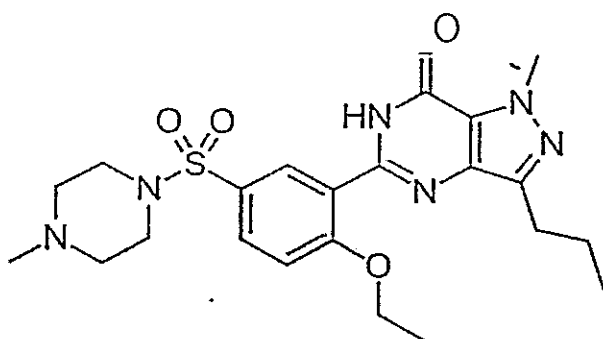
On the other hand, Chapter 39 deals with Plastics and Articles thereof which has no relevance with the product covered. Further, chapter heading 3911 is for the petroleum resins, which are obtained from chemicals synthesis and the product Sevelamer Hydrochloride cannot be considered under this chapter heading.

Sildenafil Citrate EP are Active Pharmaceuticals Ingredients and widely used for formulations of medicaments. Certain organic chemical has specific structure, it has not been classified as per its structure but functional group. Also, some chemicals have been classified under residual Customs Tariff Heading (CTH) 2942 although they are classifiable under earlier CTH due to their specific structure. As per Rule 3(a) of the General Rules for the Interpretation of the Schedule to the Customs Tariff Act for classification of goods, "the heading, which provides the most specific description, shall be preferred to heading providing a more general description". In organic Chemistry the sulfonamide functional group (also spelled sulphonamide) is an organosulfur group with the structure $R-S(=O)_2-NR_2$. It consists of a sulfonyl group ($O=S=O$) connected to an amine group ($-NH_2$). Relatively speaking this group is unreactive. Normal structure of

Sulfonamide class is as follows:



Sildenafil is a pyrazolo [4,3-d] pyrimidin-7-one having a methyl substituent at the 1-position, a propyl substituent at the 3-position and a 2-ethoxy-5-[(4-methylpiperazin-1-yl)sulfonyl] phenyl group at the 5-position.



Based on the above structure it is submitted that Sildenafil is having a pyrazolo pyrimidine functional group and not an organosulfur group. So, it is to be considered in other Organic Compounds in HSN Code 29420090 and not in Sulfonamide HSN code as proposed in the impugned Show Cause Notice. The said product could also merit classification under Chapter sub heading 29339900, however based on the rules for interpretation of Customs Tariff, the chapter heading occurring last among the two alternative sub headings will have to be preferred. In any case, the MEIS rate for 29339900 is also 3%. Hence, there would not be any effect on the MEIS availed, if any.

As per Minutes of the 3rd meeting of Board of Approval (BOA) of Ministry of Commerce. The said Board has accorded approval to the proposal of pharmaceutical company, which had proposed manufacture of the two products viz. 'Sevelamer Hydrochloride HIS' with classification under 2942 0090 and "Sildenafil Citrate EP" with classification under 2933 5990 MEIS rate for chapter sub heading 2933 5990 is also 3%. Hence, even if the classification is to be accepted under 2933 5990, the same would also have a MEIS benefit of 3%.

(D) There is no Collusion or Mis-Statement or Suppression of facts by the Noticees.

Show Cause Notice is devoid of any merits, substance and is based on presumptions, assumptions and surmises. Show Cause Notice has merely narrated chapter sub headings as per first schedule to the Customs Tariff Act, 1985, without even analyzing as to what kind of goods would fall under chapter sub heading. Show Cause Notice has not analyzed the goods exported by them, what are the characteristics, composition, use, etc. Simply narrating the text of two separate chapter sub heading, department cannot allege mis-

classification. Especially, when the department is alleging fraud, misstatement, suppression of facts. Where, department wants to invoke extended period based on allegation of fraud, misstatement, suppression of facts, department is required to give clear facts and in which manner the Noticee has indulged in such acts. In the present case, the impugned show cause notice has not given iota of evidence as how the Noticee has indulged in any of these acts. Department is required to prove that there was affirmative and conscious act on part of the Noticee, which led to such allegation. Only allegation forthcoming from the Show Cause Notice is that we have made wrongful declaration while presenting the Shipping Bills at the time of Export. Without giving such specifics, the allegation of fraud, suppression of facts or misstatement would be merely academic and cannot be sustained in law. In support of this contention, Noticee rely upon the judgment of Hon'ble Supreme Court in case of CONTINENTAL FOUNDATION JT. VENTURE Vis. COMMR. OF C. EX., CHANDIGARH-I [2007 (216) E.L.T. 177 (S.C.)], Hon'ble Supreme Court in case of COSMIC DYE CHEMICAL Vis. COLLECTOR OF CENTRAL EXCISE, BOMBAY [1995 (75)E.L.T. 721 (S.C.)]

Further they are exporting the said goods with the disputed classification even before 2011. It is alleged in the impugned show cause notice that exporter, under self-assessment regime, was obliged to given correct classification for the goods under export. Products 'Sevelamer Hydrochloride HIS' and "Sildenafil Citrate EP" are Active Pharmaceuticals Ingredients. In the entire Show Cause there is no allegation that we have mis-declared these products. It is not the case of the department that the goods declared as 'Sevelamer Hydrochloride HIS' and "Sildenafil Citrate EP" were some other products. Hence, there cannot be any allegation of misstatement. Once, we have given the correct description of goods in question, only dispute which remains is that the goods in question were correctly classified or not. That be the case, the department cannot allege misstatement or suppression of facts. There is difference between misstatement mis-classification. This being a dispute of classification of goods, the description of which is not disputed, there cannot be any-allegation of misstatement or suppression of facts. The assessing officer, who had cleared the goods for export were very well aware of the description of goods provided. Once, the shipping bill with correct description were cleared with the classification, it has to be presumed that the assessing officer had accepted the classification. Hence, in such a situation, allegation of misstatement or suppression of facts would not stand test of law. They rely on the judgment of Hon'ble Tribunal in case of SIRTHAI SUPERWARE INDIA LTD. vs COMMR. OF CUSTOMS,NHAVA SHEVA-III [2020 (371) E.L.T. 324 (Tri. - Mumbai)],

(E) Section 28(4) or 28AAA cannot be invoked in this case:

There is no provision under the section 28(4) of the Customs Act, 1962 to recovery "Export benefits'. The said section provides for recovery of duties of Customs. Further, without prejudice to above submission, Noticee further submits that Section 28AAA of the Customs Act, 1962 provides for recovery of customs duty equivalent to Custom duty benefit availed under scrips issued. However, the said Section also provides for recovery of such amount only in case where the scrips is obtained by means of collusion or willful misstatement or suppression of facts. In the present case, department has not demonstrated that MEIS scrips were obtained by us by indulging in these acts. Further, impugned show cause notice has not given the details of MEIS scrips, for which it has been alleged, were obtained by way of mis-classification. In any case, Noticee also contests invoking of provisions of Section 28AAA of the Customs Act, 1962 without the Regional Authority of DGFT having revoked or amended the MEIS scrip. Hence, the demand for any amount under section

28(4) or Section 28AAA of the Customs Act, 1962 is not sustainable in law.

(F) No misdeclaration/classification suppression by the Noticee, hence goods are not liable to confiscation under section 111(i) of the Customs Act, 1962:

Notice has proposed confiscation of goods, which were imported, were cleared after assessment by the proper officer of Customs. Notice has proposed confiscation of goods under the provisions of Section 111 (i) of the Customs Act, 1962. For ease of reference, the said provision is re-produced herein below:

- i. Any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof; In the entire Show Cause Notice, there is no allegations as to any concealment while exporting the goods. Hence, the proposal for confiscation under the above provision is not tenable.
- ii. Further, without prejudice to above submission, in the present case, there is no allegation that the goods in question did not match with the description given in the Shipping bill for export. They say this because, the entire case of department is that the classification of products as stated above was incorrect. Hence, there is no dispute as to the products 'Sevelamer Hydrochloride HIS' and "Sildenafil Citrate EP" as declared in the Shipping Bills. Hence, it can be said that there is no allegation of goods not matching the description of the goods. There is a difference between mis-declaration and misclassification. Without prejudice to our claim of goods having been correctly classified, we humbly submit that the present case at best can be that of mis-classification and not mis-declaration as there is no dispute as to the description of goods in question. Hence, invoking of provision of Section 111 of the Customs Act, 1962 is out of place and not legally tenable.

They rely on the judgment of Hon'ble Tribunal in case of SIRTHAI SUPERWARE INDIA LTD. vs COMMR. OF CUSTOMS, NHAVA SHEVA-III [2020(371) E.L.T. 324 (Tri. - Mumbai)],

Hence, in the present case, the proposal for confiscation under Section 111 (i) and consequential penalty under Section, 114(iii) and 114AA of the Customs act, 1962 is required to be set aside. Further, in the entire show cause Notice, there is no allegation that MEIS scrips were obtained by fraud, collusion, willful misstatement or suppression of facts. Hence, proposal for penalty under Section 114AB also is not sustainable.

(G) No redemption fine imposed where goods have not been seized:

Noticee contest proposal of confiscation of goods as it is trite law that no confiscation of goods can be ordered, no redemption fine can be imposed on the goods, which have not been seized. In the present case, admittedly, there has not been any seizure of goods at the time of import. They rely on following case laws:

- i. SHIV KRIPA ISPAT PVT. LTD. vs COMMISSIONER OF C.EX. & CUS., NASIK [2009 (235) E.L.T. 623 (Tri. - LB)]
- ii. CHINKU EXPORTS vs COMMISSIONER OF CUSTOMS, CALCUTTA [1999 (112) E.L.T. 400 (Tribunal)]

In light of above case law proposals for confiscation under Section 111 (i) and consequential penalty under Sections 114(iii), 114AA and 114AB of the customs Act, 1962 is not sustainable in law.

DISCUSSION AND FINDINGS

12. I have carefully gone through the entire records of the case and the case has been examined in the light of the evidences produced by the department, applicable laws/rules in the matter. I find that the subject Show Cause Notice was issued on 28.11.2024 under Section 124 read with Section 28(4) read with Section 28AAA of the Customs Act 1962 for alleged misclassification of goods. Further, in compliance to the provisions of Section 28(8) and Section 122(b) of the Customs Act, 1962 and in terms of the principles of natural justice, opportunities for Personal Hearing (PH) were granted to the Exporter. Thus, the principles of natural justice have been followed during the adjudication proceedings. Having complied with the requirement of the principle of natural justice, I proceed to decide the case on merits, bearing in mind the allegations made in the SCN as well as the submissions / contentions made by the Exporter.

13 The main issues for consideration before me are as under:

- i. whether the impugned export goods, i.e. "Sevelamer Hydrochloride HIS & Sildenafil Citrate EP" was misclassified by the Exporter under CTH 29420090 instead of correct CTH 39119090 and 29359090, as per the show cause notice.
- ii. Whether the alleged mis-classification, if any, was done wilfully and deliberately with an intent to avail inadmissible MEIS benefits.
- iii. whether the Exporter are liable for further consequential action under various sections of Customs Act, 1962 as detailed in the subject show cause notice.

14. Further, I find that Exporter has placed reliance on various judgments of Tribunals, High Court and Apex Court, however, I find that the **Hon'ble Supreme Court of India in case of Ambica Quarry Works vs. State of Gujarat & Others [1987(1) S.C. C. 213]** observed that "the ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides and not what logically follows from it."

- i. Further in the case of *Bhavnagar University vs. Palitana Sugar Mills (P) Ltd.* 2003 (2) SCC 111, the Hon'ble Apex Court observed "It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."
- ii. One other reference on the situation I have found in the decision of the Hon'ble Supreme Court in *Ispat Industries vs. Commissioner of Customs, Mumbai* [2004 (202) ELT 56C (SC)], wherein, the Hon'ble Court has quoted Lord Denning and ordered as under:

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly reliance on a decision is not proper.

The following words of Lord Denning in the matter of applying precedents have become locus classicus:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all

decisive."

15. RELEVANT PROVISIONS OF LAW APPLICABLE IN THIS CASE

The relevant provisions of the Customs Act relating to export of goods in general, the liability of the goods to confiscation and liability to penalty for improper exportation under the provisions of the Customs Act, 1962, Foreign Trade (Development & Regulation) Act, 1992, Foreign Trade (Regulation) Rules, 1993 are summarized as under:

- i. **Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992:** "No export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made there under and the export and import policy (now termed as Foreign Trade Policy) for the time being in force".
- ii. **Section 11H(a) of the Customs Act, 1962:** "illegal export" means the export of any goods in contravention of the provisions of this Act or any other law for the time being in force;
- iii. **Section 17(1) of the Customs Act, 1962:** After an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50, the imported goods or the export goods, as the case may be, or such part thereof as may be necessary may, without undue delay, be examined and tested by the proper officer.
- iv. **Section 28 (4) of the 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 willful mis-statement; or
 - (c) suppression of fact.

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.

v. SECTION 28AA Of the Customs Act, 1962: 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 an other provision of this Act or the rules made there under, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

(2) Interest at such rate not below ten per cent and not exceeding thirty-six per cent per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

(3) Notwithstanding anything contained in sub-section (1), no interest shall be payable where,

(a) The duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A; and

(b) Such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.

(v i) **SECTION 28AAA Of the Customs Act, 1962 : Recovery of duties in certain cases.** (1) Where an instrument issued to a person has been obtained by him by means of

(a) collusion; or

(b) willful misstatement; or

(c) suppression of facts,

for the purposes of this Act or the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992), by such person or his agent or employee and such instrument is utilised under the provisions of this Act or the rules made or notifications issued there under, by a person other than the person to whom the instrument was issued, the duty relatable to such utilisation of instrument shall be deemed never to have been exempted or debited and such duty shall be recovered from the person to whom the said instrument was issued. Provided that the action relating to recovery of duty under this section against the person to whom the instrument was issued shall be without prejudice to an action against the importer under section 28.

(vii) **Section 50 (2) of the Customs Act, 1962;** The exporter of any goods, while presenting a Shipping bill or bill of export, shall at the foot thereof make and subscribe to a declaration as to the truth of its contents.

(viii) **Section 50 (3) of the Customs Act, 1962:** The exporter who presents a Shipping bill or bill of export under this section shall ensure the following, namely:- The accuracy and completeness of the information given therein; The authenticity and validity of any document supporting it; and Compliance with restriction or prohibition, if any, relating to the goods under this Act or under any law for the time being in force.

(ix) **Section 113 (i) of the Customs Act, 1962:** Confiscation of goods attempted to be improperly exported, etc. The following export goods shall be liable to confiscation- any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act.

(x) **Section 114 (iii) of the Customs Act, 1962 :** in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.

(xi) **Section 114AA of the Customs Act, 1962 :** 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.

(xii) **Section 114 AB of the Customs Act, 1962:** (Penalty for obtaining Instrument by fraud etc.): Where any person has obtained any instrument by fraud, collusion, wilful

misstatement or suppression of facts and such instrument has been utilised by such person or any other person for discharging duty, the person to whom the instrument was issued shall be liable for penalty not exceeding the face value of such instrument.

16. Now, I consider the first issue i.e. classification of the impugned export goods. In this regard, I have carefully gone through the entries related to Heading and the relevant Subheading and the information from available on the open source internet and I observed from relevant chapter notes that- tariff headings, explanatory notes to the relevant chapter heading issued by the World Customs Organization very specifically states that tariff heading 2942 covers other organic compound (Not classified elsewhere). This heading covers separate chemically defined organic compounds not classified elsewhere ex- Ketenes; Boron trifluoride complexes with acetic acid, diethyl ether or phenol; Dithymol di-iodide.

A) Custom Tariff Heading 2942 is reproduced as under:

2942 Other Organic Compound (Not classified elsewhere) :This heading covers separate chemically defined organic compounds not classified elsewhere.

1. Ketenes*. Like ketones, these are characterised by a carbonyl group ($>C=O$) but it is linked to the neighbouring carbon atom by a double bond (e.g., ketene, diphenylketene). This heading however excludes diketene which is a lactone of heading 29.32.
2. Boron trifluoride complexes with acetic acid, diethyl ether or phenol*.
3. Dithymol di-iodide.

294200 - Other organic compound:

--- Cefadroxil & its salts, Ibuprofane, Diazepam, Nifedipine, Ranitidine, Danes salt of D(-) Phenyl Glycine, D(-) para hydroxyl Dane's Salts:

29420090--- Other

B) Custom Tariff Heading 3911 is reproduced as under:

3911-PETROLEUM RESINS, COUMARONE-INDENE RESINS, POLYTERPENES, POLYSULPHIDES, POLYSULPHONES AND OTHER PRODUCTS SPECIFIED IN NOTE 3 TO THIS CHAPTER, NOT ELSEWHERE SPECIFIED OR INCLUDED

3911 9090---other

C) Custom Tariff Heading 2935 is reproduced as under:

2935-SULPHONAMIDES

29359090---other

SILDENAFIL CITRATE (29359090) The chemical formula for sildenafil citrate is $C_{22}H_{30}N_6O_4S$ indicating its specific arrangement of carbon (C), hydrogen (H), nitrogen (N), oxygen (O), and sulfur (S) atoms. IUPAC name for sildenafil citrate is "1-[[3-(6,7-dihydro-1-methyl-7-oxo-3-propyl-1H-pyrazolo[4,3-d]pyrimidin-5-yl)-4-ethoxyphenyl]sulfonyl]-4-methylpiperazine citrate. The chemical formula $C_{22}H_{30}N_6O_4S$ contains a sulfonamide functional group (SO_2NH_2), which is characteristic of sulphonamides. Sildenafil citrate contains this functional group within its structure. The sulfonamide functional group consists of a sulfur atom (S) bonded to two oxygen atoms (O) and a nitrogen atom (N), which is further bonded to a hydrogen atom (H). This functional group is present in various sulfonamide drugs such as Sildenafil

Citrate.

The Exporter in their written submission contested the classification the goods **SILDENAFIL CITRATE (29359090)** and stated that "Certain organic chemical has specific structure, it has not been classified as per its structure but functional group".

In this regard, I find that the functional group in the subject goods **SILDENAFIL CITRATE (29359090)** is sulfonamide. Accordingly, the same appears to be correctly classifiable under CTH 29359090.

16.1 Further, from above it is evident that only those organic compounds which are not specified elsewhere can be classified under heading 2942. In the present case, as per chapter notes and Subheading explanatory notes as discussed supra, the exported items, i.e. "Sevelamer Hydrochloride HIS & Sildenafil Citrate EP" would be out of the scope of Tariff Heading 2942 as claimed by the exporter which attracts MEIS @ 2% and 0% instead of 3% as claimed by the exporter. In view of these findings, I conclude that the Exporter had mis-classified the impugned export goods under CTH 29420090 instead of the correct classification under CTH 39119090 and CTH 29359090.

17. Now, the next issue before me is whether the Exporter s had mis-classified the impugned goods wilfully and deliberately with the intention to avail MEIS benefits on higher side. In this regard, I find that the Merchandise Exports from India Scheme (MEIS) provides benefits to exports of notified goods with the ITC (HS) code made to the notified markets, listed under Appendix 3B of the Handbook of Procedures (HBoP) in the form of Duty Credit Scrips. Besides, Appendix 3B also lists the rate(s) of rewards on various notified products [ITC (HS) code wise] which are based on the FOB value of exports realized in free foreign exchange, or on FOB value of exports as given in the Shipping Bills in free foreign exchange, whichever is less, unless otherwise specified.

18. I find that Directorate General of Foreign Trade (DGFT), Ministry of Commerce vide Public Notice No. 61/2015-20 dated 07.03.2017 had re-notified the MEIS Schedule Appendix 3B (Table-2) harmonising MEIS Schedule with ITC(HS), 2017. The MEIS entitlement as per Public Notice No. 61/2015-20 dated 07.03.2017 as amended, on the products classifiable under relevant HS code are as under: Table-

Sr. No.	ITC (HS) Code 2017 (Eight Digit)	Description of goods as per ITC(HS) 2017	MEIS Sr. No.	MEIS Reward Rate (In%)
01.	29420090	Other Organic Compound	1633	3%
02.	391 19090	Sevelamer Hydrochloride	0	0%
		HIS		
03.	29359090	Sildenafil Citrate EP	1547	2%

18.1 I find from Table above that goods classifiable under Customs Tariff Headings 29359090 are entitled to benefit under MEIS Schemes at the rate of 2% instead of 3% of FOB value and goods classifiable under CTH 39119090 are entitled under MEIS Scheme at the rate of 0%. I find that goods classifiable under CTH 29359090 are covered under Appendix-3B (MEIS Schedule) and goods classifiable under CTH 39119090 are not covered under Appendix-3B (MEIS Schedule)

18.2 Further, I find that the Exporter had mis-declared the classification of the goods in their Shipping Bills and other documents to avail excess MEIS benefit. By no stretch of imagination, such mis-declaration and mis-statement can be regarded as without the exporter's will and intention, especially when such mis-declaration leads to availment of inadmissible benefit of MEIS by them. As already observed M/s **Century Pharmaceuticals Ltd (IEC No. 0889010374)** had classified the impugned goods under CTH 29420090 to claim inadmissible MEIS benefits. This shows that the decision to classify the export product under wrong CTH was taken to avail higher MEIS benefit, which clearly indicate that it is not due to lack of knowledge or unintentional mistake, but it is a wilful "decision" to misclassify the goods with the intention to wrongfully avail undue MEIS benefit and as such it constitutes wilful misstatement fit for invoking provisions of Section 28AAA of the Customs Act, 1962.

18.3. I observe from the Chapter notes, chapter headings and reasons as elaborated in foregoing paras that M/s **Century Pharmaceuticals Ltd (IEC No. 0889010374)** had wilfully mis-stated the classifications of the subject goods exported by them and suppressed the actual classification in their export documents filed before the Customs authorities with an intent to avail undue benefit of MEIS scheme and therefore the MEIS scrips obtained by them on the basis of such manipulated documents become invalid and hence, it can be said that the same were obtained fraudulently. I find that by resorting to such acts, M/s **Century Pharmaceuticals Ltd (IEC No. 0889010374)**, had contravened the various provisions of Customs Act, 1962.

18.4 I notice that vide Finance Act, 2011 with effect from 08.04.2011 "Self-Assessment" had been introduced under the Customs Act, 1962. With the introduction of self-assessment under the Customs Act, more faith is bestowed on the exporter, as the practice of routine assessment, concurrent audit and examination has been dispensed with and the exporters have been assigned with the responsibility of assessing their own goods under Section 17(1) of the Customs Act, 1962. Section 17(1) of the said Act provided for self-assessment of duty on import and export goods by the importer or the exporter by filing a bill of entry or shipping bill, as the case may be, in the electronic form, as per Section 46 or 50 respectively. As a part of self-assessment by the said exporter, it is their duty to present correct facts and declare to the Customs authority about their inability to classify the subject goods rather to mis-classify the goods. The onus is on the exporter to ensure that accurate and complete information is given in the shipping bill, as mandated under section 50(2) & 50(3) of the Customs Act, 1962. As per substantive provisions of section 50(3) of the Customs Act, 1962, the Exporter who presents a shipping bill or bill of export under this section 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 restrictions or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

Thus, under self-assessment, it is the importer or exporter who would ensure that they declare the correct classification, applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported/exported goods while presenting Bill of Entry or Shipping Bill. In the present case, I find that M/s. **Century Pharmaceuticals Ltd (IEC No. 0889010374)** had deliberately contravened the above said provisions with an intention to avail MEIS benefits fraudulently which are not legitimately due to them.

18.5 However, I observe that the Exporter had not fulfilled the statutory obligation of correct and truthful declaration of the material facts of the exports document i.e. shipping bills, wherein the Exporter had mis-classified the goods with an intention to claim higher export benefits in form of the MEIS as explained above. Thus, by misclassifying the goods, undue MEIS benefits amounting to **Rs.3,44,865/- (Rupees Three Lakh Forty-Four Thousand Eight Hundred Sixty Five Only)** had been wrongly claimed by the Exporter.

18.6 I find that in the instant case that the exporter had given a declaration under section 50(2) of the Customs Act, 1962 for the truthfulness of the content submitted at the time of filing Shipping bills. However, the exporter had not correctly classified the exported goods and therefore wrong MEIS benefit @ 3% instead of applicable MEIS @ 2% and 0% of FOB value on the subject goods was claimed by the exporter. Hence the Exporter had submitted a false declaration under section 50(2) of the Customs Act, 1962 which amounts to wilful mis-declaration. Further, I observe that the Exporter had suppressed the facts of applicability of Correct MEIS benefit @2%and 0% while claiming MEIS benefit from DGFT and intentionally claimed undue MEIS benefit on the goods exported vide Shipping bills as mentioned in Annexure-A. This act of exporter had resulted into loss of government revenue of **Rs. Rs.3,44,865/- (Rupees Three Lakh Forty-Four Thousand Eight Hundred Sixty Five Only)** and had accrued monetary benefit to the Exporter. Therefore, Exporter had wilfully mis-stated, mis-represented and suppressed the facts with an intention to gain undue MEIS benefit. As the Exporter got the undue monetary benefit, due to the said act of mis-classification of the subject exported goods and the same was done deliberately by mis-classification of the said goods in the above said Shipping bills during self-assessment which amounts to wilful mis-declaration.

18.7 I further observe that the exporter presented a large number of shipping bills before DGFT to obtain MEIS License/Scripts under dispute. The duty credit granted on such MEIS License/Scripts included MEIS credit earned on correctly classifiable goods at appropriate eligible rates as well as on mis-classified products. I further find that M/s. Century Pharmaceuticals Ltd (IEC No. 0889010374) had deliberately mis-classified the export goods under CTH 29420090 in all the shipping bills having FOB value of Rs. **1,28,25,865.20 /- (Rupees One Crore Twenty-Eight Lakhs Twenty-Five Thousand Eight Hundred Sixty-Five and point Twenty only)** as mentioned in the calculation sheet to the subject SCN, to claim and avail undue higher rate of MEIS benefits which are not due to them. M/s Century Pharmaceuticals Ltd (IEC No. 0889010374)., thus claimed undue export benefit in terms of MEIS through Shipping Bills for **Rs.3,44,865/- (Rupees Three Lakh Forty-Four Thousand Eight Hundred Sixty Five Only)** as indicated in Annexure-A to the subject notice. The amount of **Rs.3,44,865/- (Rupees Three Lakh Forty-Four Thousand Eight Hundred Sixty Five Only)** is therefore liable to recovered under per section 28(4) and/or 28AAA of the Customs Act, 1962, as applicable alongwith the applicable interest.

18.8 . I find that the classification of goods, presented the subject goods for export before the designated authority of Customs with intent to fraudulently avail benefit of MEIS on higher side. M/s. Century Pharmaceuticals Ltd (IEC No. 0889010374) had violated the provisions of Section 17 and 50 of the Customs Act, 1962 which is their duty to comply with. In view of the above, I therefore, find that M/s. Century Pharmaceuticals Ltd (IEC No. 0889010374) had indulged in fraudulent export of the goods by mis-declaring the actual classification of goods so exported, which squarely fell within the ambit of 'illegal export' as defined in Section 11H(a) of the Customs Act, 1962 in as much as the same was in contravention of various provisions of Customs Act, 1962, Foreign Trade (Development and Regulation) Act, 1992, Foreign Trade (Regulation) Rules 1993 and Foreign Trade

Policy.

Moreover, as the Exporter has been working under the regime of self assessment, where they have been given liberty to determine every aspect of a consignment from the classification to declaration of value of the goods, it was the sole responsibility of the Exporter to place correct facts and figures before the Assessing Authority. In the instant case, the Exporter had the full knowledge of the fact that they did not follow the correct MEIS Reward Rate in respect of the declared export goods but they preferred suppressing the fact from the Customs Authority for claiming the MEIS Reward Rate on higher side.

19. Now, before proceeding to the third issue, I will deal with the contentions raised by the Exporter in their written submissions. With regard to the Exporter's submission that Customs has no jurisdiction, since MEIS is governed by DGFT, I find that the issue involved in the instant SCN is not concerned with the interpretation of the FTP. In the instant matter, the core issue is that of the correct classification of the impugned exported goods under Customs Tariff Act. The secondary issue is availment of MEIS under the CTH i.e CTH 29359090 and CTH 39119090 wherein the rate of MEIS was 2% and 0% of FOB value but the Exporter had, by classifying the impugned goods under CTH 29420090 availed the MEIS benefits at the rate 3%. Therefore, I find that illegitimately availed MEIS benefits amounting to Rs.3,44,865/- (Rupees Three Lakh Forty-Four Thousand Eight Hundred Sixty Five Only) which were not available in respect of the subject goods under merit classification of CTH 29094900 are recoverable under the provisions of the Customs Act, 1962. With regard to the context of the case laws relied upon by the Exporter, I find that the ratios of the decisions therein are distinguishable to subject case as there is no interpretation of FTP involved in this case and the MEIS is different to other Schemes like Advance Authorization, DEPB, FMS, EPCG etc., of the DGFT in many ways.

20. With regard to the argument made by the Exporter that the subject goods have not been seized hence cannot be confiscated under section 111(i) of the Customs Act and cannot imposed redemption fine. I find that in the instant case the goods means exported goods not imported goods hence the subjects goods are liable to confiscation under section 113(i) of the Customs Act, 1962 not under section 111(i). Further the physical availability of the goods is irrelevant for ordering confiscation and imposition of redemption fine in lieu of confiscation. In this regard I place reliance on the order of Hon'ble Madras High Court in the case of **Visteon Automotive Systems India Limited Vs CESTAT, Chennai, [2018(9) GSTL 142(Mad.)]**, wherein it has been held that the availability of goods is not necessary for imposing redemption fine. Vide the said order it was inter alia held by the Hon'ble Court as under:

" 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."

The said judgment of Honorable Madras High Court was also relied upon by the Hon'ble Gujarat High Court in the case of Synergy Fertichem Pvt. Ltd. Vs. State of Gujarat

[2020(33) GSTL 513(Guj.)

20.1 . I also rely upon the landmark judgment by Hon'ble Supreme Court in the case of WESTON COMPONENTS LTD. Versus COMMISSIONER OF CUSTOMS, NEW DELHI as reported in 2000 (115) E.L.T. 278 (S.C.) [Civil Appeal No. 7144 of 1999, decided on 4-1-2000], wherein it has been 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. [para 1]

21. I find that Rule 14(2) of Foreign Trade (Regulation) Rules, 1993 prohibits employing of any corrupt or fraudulent practice for the purpose of exporting any goods for obtaining any license. Further, I find that the said goods are liable for confiscation in terms of Section 113(i) of the Customs Act, 1962 as the same were exported by mis-declaring the classification. The above-mentioned acts of commission and omission on the part of M/s. Century Pharmaceuticals Ltd (IEC No. 0889010374) had rendered the goods exported by resorting to mis-declaration in terms of classification of goods, liable for confiscation under the provisions of Section 113(i) of the Customs Act, 1962. The above mentioned acts of commission and omission on the part of M/s. Century Pharmaceuticals Ltd (IEC No. 0889010374) have rendered the goods exported having declared FOB value of Rs. 1,28,25,865.20/- (Rupees One Crore Twenty-Eight Lakhs Twenty-Five Thousand Eight Hundred Sixty-Five and point Twenty only) (as mentioned in the calculation sheet to the subject SCN), liable for confiscation under the provisions of Section 113(i) of the Customs Act, 1962.

21.1 I find that by misclassifying the goods with an intention to avail wrongful/ineligible/undue MEIS benefits, M/s. Century Pharmaceuticals Ltd (IEC No. 0889010374) had violated the provisions of Customs Act and thereby rendered the goods liable for confiscation under the provisions of Section 113(i) of the Customs Act, 1962. Further, all the above-mentioned acts of commission and omission on the part of M/s. Century Pharmaceuticals Ltd (IEC No. 0889010374) had rendered themselves liable for penal action under Section 114(iii), 114AA & 114AB of the Customs Act, 1962 with respect to the goods exported.

21.2. I find that the Exporter had argued that the section 28(4) of the Customs Act, 1962 is not invocable in the present case. In this context, I find that the investigation has conclusively proved the fact that there are omissions and commission on the part of the Exporter as clearly brought out in the forgoing paras. Thus, extended period in terms of section 28(4) of the Customs Act, 1962 is rightly invocable.

21.3. I further notice that the Exporter had argued in their submission that section 28AAA is not invocable in the present case. In this regard, I find that the subject show cause notice was issued to recover the duty equivalent to the MEIS scrip value in terms of section 28(4) and/or 28AAA of the Customs Act, 1962 alongwith applicable interest thereon, which is as per the existing provisions. The ratio of the case laws relied upon by the exporter in this regard is not covered with the facts of this case.

21.4 I notice that the Exporter had argued in their submissions that the subject goods are not liable for confiscation under section 113(i) of the Customs Act, 1962. Further, the exporter had submitted that no penalty can be imposed under section 114(iii) or 114AA or

114AB of the Customs Act. They had also relied upon several case laws in this regard. In this context, I find that the department has conclusively proved the fact that there are established omission and commission on the part of the Exporter s as clearly brought out in the forgoing paras.

21.5 Further, the Exporter submitted that there are no evidence has been put on record to demonstrate any utilization of MEIS scrips by the Importer (if any) that resulted in a short levy of duties. In this context, I find that the MEIS scrips issued to the Exporter but it is established that the said MEIS scrips were obtained against the export of those goods which are correctly classifiable under CTH 29359090 and CTH 39119090 wherein MEIS was 2% and 0% instead of 3%.

In this regard the Exporter had not provided no incentive certificate for proving their point regarding non utilization of duty scrips till date. In this way, the Exporter had obtained the undue MEIS benefits amounting to **Rs.3,44,865/- (Rupees Three Lakh Forty-Four Thousand Eight Hundred Sixty Five Only)** is liable to be recovered under the provisions of the Customs Act, 1962.

22 In view of the above discussion, I find that MEIS benefit, covered by Customs Notification No.24/2015-Customs dated 08/04/2015, as amended, was a custom duty exemption by way of debit through MEIS Scrips. The power to exempt would include within its ambit the power to demand duty in the event such exemption is wrongly claimed/mis-used. Since the MEIS Scrips/Licenses had been obtained by **M/s Century Pharmaceuticals Ltd (IEC No. 0889010374)** by mis-classification of the export goods, as discussed in the preceding paras, they are therefore liable for suspension/cancellation /restriction. Hence, I find that the exemptions claimed by the importers are not admissible and duty at the appropriate rate is leviable on the imports to the extent of duty credit denied and the same is required to be recovered from **M/s Century Pharmaceuticals Ltd (IEC No. 0889010374)**. Therefore, I find that undue benefit of MEIS availed amounting to **Rs.3,44,865/- (Rupees Three Lakh Forty-Four Thousand Eight Hundred Sixty Five Only)** is liable to be denied and recovered under the provisions of section 28(4) and /or 28AAA of the Customs Act, 1962 alongwith interest under section 28AA of the Customs Act, 1962.

23 I notice that by misclassifying the subject goods with an intention to avail wrongful/ ineligible /undue MEIS benefit amounting to **Rs.3,44,865/- (Rupees Three Lakh Forty-Four Thousand Eight Hundred Sixty Five Only)**, **M/s. Century Pharmaceuticals Ltd (IEC No. 0889010374)** had violated the provisions of Customs Act and other violations on the part of the exporter as discussed hereinabove and subsequently, have rendered the impugned goods liable for confiscation under the provisions of Section 113(i) of the Customs Act, 1962. Further, I find that for all the above-mentioned acts of commission and omission on the part of **M/s. Century Pharmaceuticals Ltd (IEC No. 0889010374)** had rendered themselves liable for penal action under Section 114(iii), 114AA & 114AB of the Customs Act, 1962 with respect to the goods exported.

24. I find that the Exporter had violated the provisions of Rule 11 of the Foreign Trade (Regulations), 1993 as well as the provision of section 50(2) of the Customs Act, 1962 by mis-classifying the subject exported goods and claimed undue MEIS which was not admissible to them, thereby rendered the exported goods covered by Shipping Bills as detailed in the Annexure-A of the subject show cause notice, liable to confiscation under Section 113(i) of the Customs Act, 1962. I find that the exported goods are not physically available for confiscation. In this regard, I rely upon the judgement of Hon'ble Madras High

Court in case of **M/s. Visteon Automotive Systems India Limited** reported in **2018(9) G.S.T.L. 142 (Mad.)** wherein the Hon'ble Madras High Court held in para 23 of the judgment as below:

'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 the 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 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.'

24.1. The above judgement is squarely applicable in this case also where the goods are already exported and physically not available.

24.2 I find that since the above acts of omission and commission on the part of the Exporter had rendered the goods liable for confiscation u/s 113(i) of the Customs Act, 1962, the Exporter had rendered themselves liable to penalty under Section 114(iii) of the Customs Act, 1962.

24.3 I also find that the Exporter have knowingly and intentionally made the declaration in the subject shipping bills which is false or incorrect with respect to the classification of the subject goods for undue claim of export benefits under MEIS. Therefore, this act of **M/s. Century Pharmaceuticals Ltd (IEC No. 0889010374)**, had rendered themselves liable to penal action under Section 114AA of the Customs Act, 1962 for signing false declaration in the shipping bill.

24.4. I find that **M/s Century Pharmaceuticals Ltd (IEC No. 0889010374)** had claimed the instrument viz. MEIS benefits @ 3% of the FOB value instead of 2% and 0% by intentional mis-declaration of classification of the exported goods in respect of subject shipping bills as mentioned in Annexure A of the Notice. Therefore, the exporter **M/s Century Pharmaceuticals Ltd (IEC No. 0889010374)** are also liable for penalty under section 114 AB of Customs Act, 1962 for this intentional mis-declaration of classification.

25. In view of foregoing discussion above made in the light of the facts of investigation and relied upon documents, I pass following order: -

ORDER

(i) I reject the declared classification under 29420090 of the subject goods mentioned in the Shipping Bills and re-classify the said goods under Customs Tariff Heading 29359090 and 39119090 of the First Schedule to the Customs Tariff Act, 1975 and order to

re-assess the said Shipping Bills accordingly;

(ii) I confiscate the impugned exported goods, having total declared FOB value of Rs 1,28,25,865.20 /- (Rupees One Crore Twenty-Eight Lakhs Twenty-Five Thousand Eight Hundred Sixty-Five and point Twenty only) as mentioned in calculation sheet under Section 113(i) of Customs Act, 1962. However, in lieu of confiscation, I impose redemption fine of Rs. 50,00,000 /- (Rs. Fifty Lakh Only) under section 125 of the Customs Act, 1962;

(iii) I reject the export benefit availed in terms of MEIS through Shipping Bills as detailed in Annexure-A to the SCN amounting to Rs.3,44,865/- (Rupees Three Lakh Forty-Four Thousand Eight Hundred Sixty Five Only) and I order to recover the same from M/s. Century Pharmaceuticals Ltd (IEC No. 0889010374) under section 28(4) and/or 28AAA of the Customs Act, 1962 along with interest thereon under section 28AA of the Customs Act, 1962, as applicable.

(iv) I impose penalty of Rs. 1,50,000 /- (Rs. One Lakh Fifty Thousand only) under section 114(iii) of the Customs Act, 1962 upon M/s. Century Pharmaceuticals Ltd (IEC No. 0889010374).

(v) I impose penalty of Rs. 1,50,000/- (Rs. One Lakh Fifty Thousand only) under section 114AA of the Customs Act, 1962 upon M/s. Century Pharmaceuticals Ltd (IEC No. 0889010374).

(vi) I impose penalty of Rs. 1,50,000/- (Rs. One Lakh Fifty Thousand only) under Section 114AB of the Customs Act, 1962 upon M/s. Century Pharmaceuticals Ltd (IEC No. 0889010374).

26. This order is issued without prejudice to any other action that may be taken against the Exporter (s) or against any other person(s)/ Entities concerned, under the Customs Act, 1962, and/or under any other law for the time being in force in India.

Digitally signed by
Wagh Chittaranjan Prakash Wagh
Date: 12-08-2025 12:14:24
Addl. Commissioner of Customs
NS-II, JNCH, Nhava Sheva.

To,

M/s. Century Pharmaceuticals Ltd (IEC No. 0889010374)
406, World Trade Centre,
Sayajgunj, Vadodara, Gujrat-390020 EM9810947951N

Copy to :

1. The Commissioner of Customs, NS-II, JNCH, Zone-II.
2. The Addl. Director General of Foreign Trade, CGO Office, Churchgate, Mumbai-400020. EM9864078371N
3. The Asst./Deputy Commissioner of Customs, Audit(A1), JNCH.
4. The Asst./Deputy Commissioner of Customs, CRRC, JNCH.

- 5. The Asst./Deputy Commissioner of Customs, Review Cell
- 6. The Asst./Deputy Commissioner of Customs, CEAC
- 7. The Asst./Deputy Commissioner of Customs, EDI, JNCH for uploading on website
- 8. CHS Section for display on notice board.
- 9. Master File

10. ~~DC / CRAC / JNCH~~

