

OFFICE OF THE COMMISSIONER OF CUSTOMS (NS-V)
सीमाशुल्कआयुक्त (एनएस - V) काकार्यालय
JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA SHEVA,
जवाहरलालनेहरुसीमाशुल्कभवन, न्हावाशेवा,
TALUKA – URAN, DISTRICT - RAIGAD, MAHARASHTRA -400707
तालुका - उरण, जिला - रायगढ़, महाराष्ट्र 400707

DIN – 20250778NX0000666BE6

Date of Order: 30.07.2025

F. No. S/10-102/2024-25/Commr./Gr.VA/NS-V/CAC/JNCH

Date of Issue: 30.07.2025

SCN No.: 1019/2024-25/Commr./Gr.VA/CAC/JNCH

SCN Date: 30.08.2024

Passed by: Sh. Anil Ramteke

Commissioner of Customs, NS-V, JNCH

Order No: 144/2025-26/COMMR/NS-V/CAC/JNCH

Name of Noticee: M/s Novomet Perm (IEC: AAGCN5888A)

ORDER-IN-ORIGINAL

मूल - आदेश

1. The copy of this order in original is granted free of charge for the use of the person to whom it is issued.

1. इस आदेश की मूल प्रति की प्रतिलिपि जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए निःशुल्क दी जाती है।

2. Any Person aggrieved by this order can file an Appeal against this order to CESTAT, West Regional Bench, 34, P D'Mello Road, Masjid (East), Mumbai - 400009 addressed to the Assistant Registrar of the said Tribunal under Section 129 A of the Customs Act, 1962.

2. इस आदेश से व्यथित कोई भी व्यक्ति सीमाशुल्क अधिनियम 1962 की धारा 129 (ए) के तहत इस आदेश के विरुद्ध सी.ई.एस.टी.ए.टी., पश्चिमी प्रादेशिक न्यायपीठ (वेस्ट रीज़नल बेंच), 34, पी. डी.मेलो रोड, मस्जिद (पूर्व), मुंबई - 400009 को अपील कर सकता है, जो उक्त अधिकरण के सहायक रजिस्ट्रार को संबोधित होगी।

3. Main points in relation to filing an appeal: -

3. अपील दाखिल करने संबंधी मुख्य मुद्दे:-

Form - Form No. CA3 in quadruplicate and four copies of the order appealed against (at least one of which should be certified copy).

फार्म - सीए3, चार प्रतियों में तथा उस आदेश की चार प्रतियाँ, जिसके खिलाफ अपील की गयी है (इन चार प्रतियों में से कम से कम एक प्रति प्रमाणित होनी चाहिए)।

Time Limit - Within 3 months from the date of communication of this order.

समय सीमा - इस आदेश की सूचना की तारीख से 3 महीने के भीतर

Fee -फीस-

(a) Rs. One Thousand - Where amount of duty & interest demanded & penalty imposed is Rs. 5 Lakh or less.

- (क) एक हजार रुपये जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 5 लाख रुपये या उस से कम है।
- (b) Rs. Five Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 5 Lakh but not exceeding Rs. 50 Lakh.
- (ख) पाँच हजार रुपये – जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 5 लाख रुपये से अधिक परंतु 50 लाख रुपये से कम है।
- (c) Rs. Ten Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 50 Lakh.
- (ग) दस हजार रुपये – जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 50 लाख रुपये से अधिक है।

Mode of Payment - A crossed Bank draft, in favor of the Asstt. Registrar, CESTAT, Mumbai payable at Mumbai from a nationalized Bank.

भुगतान की रीति – क्रॉस बैंक ड्राफ्ट, जो राष्ट्रीय कृत बैंक द्वारा सहायक रजिस्ट्रार, सी.ई.एस.टी.ए.टी., मुंबई के पक्ष में जारी किया गया हो तथा मुंबई में देय हो।

General - For the provision of law & from as referred to above & other related matters, Customs Act, 1962, Customs (Appeal) Rules, 1982, Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982 may be referred.

सामान्य - विधि के उपबंधों के लिए तथा ऊपर यथा संदर्भित एवं अन्य संबंधित मामलों के लिए, सीमाशुल्क अधिनियम, 1962, सीमाशुल्क (अपील) नियम, 1982, सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर अपील अधिकरण (प्रक्रिया) नियम, 1982 का संदर्भ लिया जाए।

4. Any person desirous of appealing against this order shall, pending the appeal, deposit 7.5% of duty demanded or penalty levied therein and produce proof of such payment along with the appeal, failing which the appeal is liable to be rejected for non-compliance with the provisions of Section 129E of the Customs Act 1962.

4. इस आदेश के विरुद्ध अपील करने के लिए इच्छुक व्यक्ति अपील अनिर्णीत रहने तक उसमें माँगे गये शुल्क अथवा उद्गृहीत शास्ति का 7.5 % जमा करेगा और ऐसे भुगतान का प्रमाण प्रस्तुत करेगा, ऐसा न किये जाने पर अपील सीमाशुल्क अधिनियम, 1962 की धारा 129 E के उपबंधों की अनुपालना न किये जाने के लिए नामंजूर किये जाने की दायी होगी।

Subject: Adjudication of Show Cause Notice No. 1019/2024-25/Commr./Gr.VA/CAC/JNCH dated 30.08.2024 issued to M/s Novomet Perm (IEC: AAGCN5888A) – reg.

1. BRIEF FACTS OF THE CASE

1.1 It is stated in the SCN No. 1019/2024-25/Commr./Gr.VA/CAC/JNCH dated 30.08.2024 on the basis of the Analytics Report 18/2021-22 dated 01/06/2021 issued by the NCTC, Mumbai, on the issue of “wrong availment of concessional BCD rate and lower IGST rates on certain imported INVERTERS of sub-heading 8504 40” the data pertaining to imports made under CTH 8504 made by the importer, through JNCH (INNSA1) was analysed in detail. It is observed that **M/s. NOVOMET PERM (IEC – AAGCN5888A)** (hereinafter also referred to as ‘the importer/the Noticee’) having address as 11A109, A Wing, Sea Woods Grand Central, Tower 1, Sector 40, Nerul Mumbai 400706, have imported goods having description as “[FOR OILFIELD EQUIPMENT) V3016010167 (SERIAL NO.190328SD130-5) CLESUS DRY TRX SDT-PST 130KVA 11KV/4x480V 50HZ IP-55, (FOR OILFIELD EQUIPMENT) V3016010170 (SERIAL NO.190328SU130-5) CLESUS DRY TRX SUT 130KVA 480V/1100-3000V 50HZ IP-55 etc.]” (hereinafter also referred to as ‘the impugned goods/the goods’) and paid IGST @ 5% as per serial no. 234B of Schedule -I of IGST levy Notification No. 01/2017 -Integrated Tax (Rate) dated 28.06.2017 (as amended by Notification No. 12/2019-Integrated Tax (Rate) dated 31/07/2019).

1.2 It is alleged that the Noticee had classified the goods under CTH 8504 3300 & 8504 5090 by paying IGST @ 5% (as per Annexure to the subject SCN) by claiming benefit of entry 234B of the Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 as amended by Notification No. 12/2019- Integrated tax (Rate) dated 31.07.2019 whereas, the said goods attract IGST @ 18% from 01/08/2019 in term of original IGST Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 as amended by Notification No. 12/2019-Integrated Tax (Rate) dated 31/07/2019 under serial no. 375 of Schedule-III. Therefore, the said goods were liable to be assessed at the IGST @ 18% instead of IGST @ 5%, which resulted in short payment of IGST.

1.3 The entry at serial no. 234B of Schedule -I @ 5% has been introduced with effect from 01.08.2019 [Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 as amended by Notification No. 12/2019- Integrated tax (Rate) dated 31.07.2019]. Accordingly, certain specified goods, namely, charger or charging station for electrically operated vehicles falling under 8504 attract a lower IGST @ 5%.

IGST Entry of Schedule-I at serial no. 234B (@5%) is reproduced below:

234 B	8504	Charger or charging station for electrically operated vehicles
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1.4 The goods “other than charger or charging station for electrically operated vehicles”, falling under heading 8504, attract a higher IGST rate @ 18% under serial No. 375 of Schedule-

III (18%) of IGST Notification No. 01/2017 dated 28.06.2017 as amended by Notification No. 12/2019- Integrated Tax (Rate) dated 31.07.2019.

The description of this entry is given below:

375	8504	Electrical Transformer, Static converters (for example, rectifiers) and inductors other than charger or charging station for electrically operated vehicles	18%
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1.5 The total assessable value of the BE items so imported is ₹ 5,60,67,307/- and it appears that a short levy of IGST amounting to ₹ 72,88,750/- (as detailed in Annexure to the) is recoverable from the Importer along with applicable interest and penalty.

1.6 In view of the above, Consultative letter bearing No. 2487/2021-22/JNCH(A2) dt.15.11.2021 was issued to the importer to clarify the issue raised by the department and if agreed to the observation/finding of the department, the importer was advised to pay the differential duty along with applicable interest and penalty. However, no reply or submission is given by importer in this regard.

1.7 The relevant provisions of law relating to import of goods in general, the Policy and Rules relating to imports, the liability of the goods to confiscation and the persons concerned are liable to penalty for illegal importation under the provisions of the Customs Act, 1962 and the other laws were mentioned in the subject SCN. The same are not reproduced in this Order in Original for the sake of brevity.

- (i) Section 46 - Entry of goods on importation
- (ii) Section 17 - Assessment
- (iii) Section 110 -Seizure
- (iv) Section 111 - Confiscation of improperly imported goods etc.
- (v) Section 112 - Penalty for improper importation of goods etc.
- (vi) Section 114 - Penalty for short-levy or non-levy of duty in certain cases
- (vii) Section 125 - Option to pay fine in lieu of confiscation
- (viii) Section 28 - Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded

1.8 Whereas, consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-assessment' has been introduced in customs clearance. Section 17 of the Customs Act, effective from 08.04.2011 [CBEC's (now CBIC) Circular No 17/2011 dated 08.04.2011] provides for self-assessment of duty on imported goods by the Importer himself by

filing a bill of entry, in the electronic form. Section 46 of the Customs Act, 1962 makes it mandatory for the Importer to make entry for the imported goods by presenting a bill of entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Declaration) Regulation, 2011 (issued under Section 157 read with Section 46 of the Customs Act, 1962), the bill of entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a bill of entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under self-assessment, it is the Importer who has to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the bill of entry. Thus, with the introduction of self-assessment by amendments to Section 17, since 08.04.2011, it is the added and enhanced responsibility of the Importer to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods

1.9 Therefore, in view of the above facts, it appears that the importer has deliberately not paid the duty by wilful mis-statement as it was his duty to declare correct applicable rate of duty in the entry made under Section 46 of the Customs Act, 1962, and thereby has attempted to take undue benefit amounting to ₹ 72,88,750/- (as detailed in Annexure to the subject SCN). Therefore, the differential duty, so not paid, is liable for recovery from the Importer under Section 28 (4) of the Customs Act, 1962 by invoking extended period of limitation, along with interest at the applicable rate under section 28AA of the Customs Act, 1962.

1.10 Section 111(o) of Customs Act, 1962 provides for confiscation of the goods if 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 condition is not observed unless the non-observance of the condition was sanctioned by the proper officer. Section 111(m) of Customs Act, 1962 provides for confiscation of the goods if any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54.

1.11 It appears that the Importer has failed to comply with the conditions mentioned above; therefore, it also appears that the imported goods are liable for confiscation under Section 111(m) and/or 111(o) of the Customs Act, 1962.

1.12 It further appears that the Importer for the acts of omission and commissions mentioned above has rendered themselves liable for penal action under section 112(a) and 114A of the Customs Act, 1962.

1.13 In view of the above, the importer M/s. NOVOMET PERM (IEC – AAGCN5888A), is hereby called to show cause to the **Commissioner of Customs**, NS-V, JNCH, Nhava-Sheva, Distt. Raigad, Maharashtra- 400707 (**Adjudicating Authority**), as to why:

- (i) Differential / short paid Duty amounting to ₹ 72,88,750/- for the subject goods imported vide Bills of Entry as detailed in Annexure should not be demanded under Section 28(4) of the Custom Act, 1962.
- (ii) In addition to the duty short paid, interest on delayed payment of Custom Duty should not be recovered from the Importer under section 28AA of the Customs Act. 1962.
- (iii) The said subject goods imported vide Bills of Entry as detailed in Annexure to the subject SCN having assessable value of ₹ 5,60,67,307/- should not be held liable for confiscation under Section 111(m) and/or 111(o) of the Customs Act, 1962.
- (iv) Penalty should not be imposed on them under Section 112(a) of the Customs Act. 1962 for their acts of omission and commission, in rendering the goods liable for confiscation, as stated above.
- (v) Penalty should not be imposed under Section 114A of Customs Act, 1962 for short levy of duty.

PERSONAL HEARING AND WRITTEN SUBMISSIONS

2. There is one Noticee in the subject SCN namely, M/s Novomet Perm.

2.1 In compliance with the provisions of Section 28(8) read with Section 122A of the Customs Act, 1962, and in terms of principle of natural justice, the Noticee was granted opportunities for personal hearing (PH) in terms of Section 28(8) read with Section 122A of the Customs Act, 1962.

2.2 An opportunity for PH was granted to the Noticee on 09.06.2025 and 18.06.2025. The importer did not attend the same. Further, an opportunity for PH was granted to the Noticee on 02.07.2025. In response of the PH, Shri Gangaram Popat Thube, Logistic Lead of M/s Novomet Perm appeared before me in person on behalf of the Noticee, M/s Novomet Perm, on 02.07.2025. During the PH, representative of M/s Novomet Perm, Shri Gangaram Popat Thube had submitted a written reply vide letter dated 25.06.2025. He *inter alia* submitted that:

- (i) M/s Novomet Perm was entered into a Contract Agreement with Oil & Natural Gas Corporation for Import of Oil well equipment's/parts vide Agreement No. WOU/B&S/MM/NBP-ESP/89/17-18/Q15AC18002/9030009043 dated 02.07.2019.

- (ii) The said goods were essential for Petroleum Operations/Production and these are exempted from basic duty by virtue of Notification No.50/2017-Customs dated 30.06.2017 and with applicable concessional IGST@5% before 18th July,2022 and @12% after 18th July, 2022, under Serial no. 404 of the Notification No. 50/2017-Customs dated 30.06.2017.
- (iii) He attached a List 33 (Serial no. 404) which is applicable for Customs Duty exemption, before 2022, subject to Essentiality Certificate issued by Directorate General of Hydrocarbons (DGH), Ministry of Petroleum, New Delhi that their items fall under List 33, at line no. 5, 9 & 24, that the goods supported by them used for Oil Production in India under ONGC Contract and accordingly, they got released Essentiality Certificate issued by the Directorate General of Hydrocarbon, Ministry of Petroleum, New Delhi.
- (iv) Also, they attached copies of Essentiality Certificate of each of Bills of Entry, as mentioned in Annexure of the subject SCN, issued by the Directorate General of Hydrocarbon, Ministry of Petroleum, New Delhi to be produced at the time of clearance of goods for home consumption.
- (v) They also reiterated that after Feb, 2022 List 33 (Serial no. 404) has been updated vide Notification No. 50/2017, and customs had withdrawn Essentiality Certificate (EC) benefit on many HSN Codes, accordingly, they did not apply or taken exemption on said items.

DISCUSSION AND FINDINGS

3. I have carefully gone through the entire records of the case, the subject SCN dated 30.08.2024, the relied upon documents, evidence/material on record, facts of the case, as well as written and oral submissions made by the Noticee/authorized representative on behalf of the Noticee in response to the subject SCN.

3.1 In compliance to provisions of Section 28(8) and Section 122A of the Customs Act, 1962 and in terms of the principles of natural justice, opportunity for Personal Hearing (PH) was granted to the Noticee on 09.06.2025, 18.06.2025 and 02.07.2025. The PH on 02.07.2025 was held before me. Having complied with the requirement of the principle of natural justice, I proceed to decide the case on merits, bearing in mind the submission / contention made by the Noticee and facts of the case.

3.2. I find that the Show Cause Notice issued to M/s Novomet Perm (IEC: AAGCN5888A) alleges "to paying IGST @ 5% by claiming benefit of entry 234B of Notification No. 01/2017- Integrated Tax (Rate) dated 28.06.2017 as amended by Notification No. 12/2019- Integrated tax

(Rate) dated 31.07.2019” by the importer. However, the said goods attract rate of IGST @ 18% from 01/08/2019 under Serial No. 375 of Schedule-III as per Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 as amended by Notification No. 12/2019- Integrated tax (Rate) dated 31.07.2019. It is seen that the Noticee imported goods having description as “[FOR OILFIELD EQUIPMENT) V3016010167 (SERIAL NO.190328SD130-5) CLESUS DRY TRX SDT-PST 130KVA 11KV/4x480V 50HZ IP-55, (FOR OILFIELD EQUIPMENT) V3016010170 (SERIAL NO.190328SU130-5) CLESUS DRY TRX SUT 130KVA 480V/1100-3000V 50HZ IP-55 etc.]” as detailed in Annexure to the subject SCN.

3.3 It is further alleged that the impugned goods covered under CTH 85043300 & 85045090 as detailed in Annexure to the subject SCN were cleared by paying IGST @ 5% by claiming benefit of entry 234B of the Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 as amended by Notification No. 12/2019- Integrated tax (Rate) dated 31.07.2019, however, the imported goods appeared to be assessed at IGST@ 18% under serial No. 375 of Schedule-III (18%) of the Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 as amended by Notification No. 12/2019- Integrated tax (Rate) dated 31.07.2019

3.4 Based on the above, the subject SCN proposed recovery of short-levied IGST amounting to Rs. 72,88,750/- by invoking the extended period under Section 28 (4) of the Customs Act, 1962, along with interest under Section 28AA and imposition of penalties. It also proposed confiscation of imported goods valued at Rs. 5,60,67,307/- under Section 111(m) and/or 111(o) of the Customs Act, 1962.

3.5 On a careful perusal of the Show Cause Notice and submission made by the importer, I find the core issues that need to be decided in the instant case are as below:

- (i) Whether differential / short paid Duty amounting to ₹ 72,88,750/- for the subject goods imported vide Bills of Entry as detailed in Annexure should be demanded under Section 28(4) of the Custom Act, 1962.
- (ii) Whether in addition to the duty short paid, interest on delayed payment of Custom Duty should be recovered from the Importer under section 28AA of the Customs Act, 1962.
- (iii) Whether the said subject goods imported vide Bills of Entry as detailed in Annexure to the subject SCN having assessable value of ₹ 5,60,67,307/- should be held liable for confiscation under Section 111(m) and/or 111(o) of the Customs Act, 1962.
- (iv) Whether penalty should be imposed on them under Section 112(a) of the Customs Act. 1962 for their acts of omission and commission, in rendering the goods liable for confiscation.

(v) Whether penalty should be imposed under Section 114A of Customs Act, 1962 for short levy of duty.

4. I now proceed to deal with each of the issues individually by analyzing them in light of facts and provisions of the Customs Act, 1962 bearing in mind the submission/contention of the importer.

4.1 (i) **Whether differential / short paid Duty amounting to ₹ 72,88,750/- for the subject goods imported vide Bills of Entry as detailed in Annexure should be demanded under Section 28(4) of the Custom Act, 1962.**

4.1.1 I find that the department has alleged that the Noticee had imported the impugned goods having description as “[(FOR OILFIELD EQUIPMENT) V3016010167 (SERIAL NO.190328SD130-5) CLESUS DRY TRX SDT-PST 130KVA 11KV/4x480V 50HZ IP-55, (FOR OILFIELD EQUIPMENT) V3016010170 (SERIAL NO.190328SU130-5) CLESUS DRY TRX SUT 130KVA 480V/1100-3000V 50HZ IP-55, Oil Well Spares etc.]” as detailed in Annexure to the subject SCN by paying IGST @ 5% by claiming benefit of 234B of Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 as amended by Notification No. 12/2019- Integrated tax (Rate) dated 31.07.2019 as detailed in Annexure to the subject SCN. However, the said goods appeared to be assessed at IGST@ 18% under serial No. 375 of Schedule-III (18) of Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 as amended by Notification No. 12/2019-Integrated tax (Rate) dated 31.07.2019.

4.1.2 I find that as per the subject SCN, the entry 234B of Schedule -I @ 5% has been introduced with effect from 01.08.2019 (Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 as amended by Notification No. 12/2019- Integrated tax (Rate) dated 31.07.2019). Accordingly, certain specified goods, namely, charger or charging station for electrically operated vehicles falling under 8504 attract a lower IGST @ 5%.

IGST Entry of Schedule-I at serial no. 234B (@5%) is reproduced below:

234 B	8504	Charger or charging station for electrically operated vehicles
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Goods “other than charger or charging station for electrically operated vehicles”, falling under heading 8504, attract a higher IGST rate @ 18% under serial No. 375 of Schedule- III (18%) of Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 as amended by Notification No. 12/2019- Integrated tax (Rate) dated 31.07.2019. The description of this entry is given below:

375	8504	Electrical Transformer, Static converters (for example, rectifiers) and inductors other than charger or charging station for electrically operated vehicles	18%
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4.1.3 The importer has submitted a copy of Contract Agreement with Oil & Natural Gas Corporation for Import of Oil well equipment's/parts vide Agreement No. WOU/B&S/MM/NBP-ESP/89/17-18/Q15AC18002/9030009043 dated 02.07.2019. They stated that the said goods were essential for Petroleum Operations/Production and are exempted from basic duty by virtue of Notification No. 50/2017-Customs dated 30.06.20217 and with applicable concessional IGST@5% under applicable Serial No. 404.

4.1.4 The importer stated that List 33 (Serial no. 404) as per Notification No. 50/2017 dated 30.06.2017 which is applicable before Year 2022, in order to avail the concessional exemption benefit upon basis of Essentiality Certificate issued by Directorate General of Hydrocarbons (DGH), Ministry of Petroleum, New Delhi. The goods under import fall under List 33, at line no. 5, 9 & 24, which are used for Oil Production in India under ONGC Contract and accordingly they got released Essentiality Certificate by Directorate General of Hydrocarbon, Ministry of Petroleum, New Delhi.

4.1.5 I find that as per Notification No. 50/2017- Customs dated 30.06.2017, at Serial No. 404, Chapter 84 or any other Chapter where Goods specified in List 33 attract IGST @5%. The same is reproduced below:

S.No.	Chapter or Heading or sub—heading or tariff item	Description of goods	Standard rate	Integrat ed Goods and Services Tax	Conditi on No
1	2	3	4	5	6
404.	84 or any other Chapter	Goods specified in List 33 required in connection with: (a) petroleum operations undertaken under petroleum exploration licenses or mining leases, granted by the Government of India or any State Government to the Oil and Natural Gas Corporation or Oil India Limited on nomination basis, (b) petroleum operations undertaken under specified contracts (c) petroleum operations undertaken under specified contracts under the New Exploration Licensing Policy (d) petroleum operations undertaken under specified contracts under the Marginal Field Policy (MFP) (e) coal bed methane operations undertaken under specified contracts under the Coal Bed Methane Policy	Nil	5%	48

4.1.6. On perusal of the copies of Bills of Entry, it is noticed that the importer has not taken any benefits under the exemption Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 as amended by Notification No. 12/2019- Integrated tax (Rate) dated 31.07.2019 as alleged in the SCN. I find that the importer/the Noticee had imported impugned goods after obtaining Essentiality Certificates form Directorate General of Hydrocarbons. The details of Bills of Entry as mentioned in the subject SCN are below:

Sr. No.	B/E No./Date	CTH	Essentiality Certificate issued vide Directorate General of Hydrocarbons for Import of Goods in terms of Custom Notification No. 50/2017-Customs dated 30.06.2017, [Clause (a) of Column (3) of S.No. 404 of Table, List 33 and Condition No. 48
1	5120507/30.09.2019	85043300	ECIN201908270034-N dated 27.08.2019 ECIN201908290042-N dated 29.08.2019
2	5709018/16.11.2019	85045090	ECIN201911010023-N dated 01.11.2019 ECIN201910300046-N dated 30.10.2019
3	9435764/03.11.2020	85045090	ECIN202010190017-N dated 19.10.2020
4	2144019/28.12.2020	85043300	ECIN20200918008-N dated 18.09.2020

4.1.7 I find that the importer has relied upon Notification No. 50/2017-Customs dated 30.06.2017, particularly Serial No. 404, which prescribes BCD@ Nil and IGST@ 5% on goods specified in List 33, subject to Condition No. 48. The relevant portion of the notification is reproduced:

Sl. No. 404

Chapter: 84 or any other Chapter

Description: Goods specified in List 33 required in connection with petroleum operations undertaken under contracts specified therein

IGST rate: 5%

Condition No.: 48 (Essentiality Certificate issued from Directorate General of Hydrocarbons)

4.1.8 I find that the importer submitted Essentiality Certificates issued by Directorate General of Hydrocarbons (DGH) for each Bill of Entry in terms of Custom Notification No. 50/2017-Customs dated 30.06.2017, [Clause (a) of Column (3) of S. No. 404 of Table, List 33 and Condition No. 48. The goods are listed in List 33 and are specifically required for petroleum production operations under an ONGC contract. The Essentiality Certificates submitted match the goods imported as per Bills of Entry as mentioned in the subject SCN.

4.1.9 I find that the SCN has alleged that the importer had claimed the benefit under Sr. No. 234B of Schedule-I of Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 as amended by

Notification No. 12/2019- Integrated tax (Rate) dated 31.07.2019. However, upon examining the bills of entry, it has been observed that the importer has availed IGST rate @5% under Sr. No. 404 of Notification No. 50/2017 dated 30.06.2017, in conjunction with the BCD. This provision under Sr. No. 404 applies uniformly, regardless of whether the IGST serial number declared for the goods corresponds to Schedule I or Schedule III of Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 as amended by Notification No. 12/2019- Integrated tax (Rate) dated 31.07.2019. This claim of Concessional IGST @5% under Sr. No. 404 of Notification No. 50/2017-Customs dated 30.06.2017 is independently valid and does not conflict with the provisions of Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 as amended by Notification No. 12/2019-Integrated tax (Rate) dated 31.07.2019.

4.1.10 Further, ongoing through the bills of entry, it is observed that Essentiality Certificates issued by Directorate General of Hydrocarbons (DGH) have been uploaded on e-sanchit which means the aforesaid certificate had been produced to the AC/DC Group (i.e. the proper officer) at the time of assessment of the bills of entry and the certificates were already accepted for the purpose of exemption of BCD. Therefore, the grant of IGST vide the same notification i.e. Notification No. 50/2017-Customs dated 30.06.2017 cannot be denied.

4.1.11 In view of the above, I find that the goods imported are eligible for concessional IGST@5% under Sr. No. 404 of Notification No. 50/2017-Customs dated 30.06.2017 which is supported by valid Essentiality Certificates issued by DGH, as required in condition no. 48 to the said Notification.

4.1.12 In view of above finding, I conclude that there is no short levy of IGST as alleged in the subject SCN.

4.2 Whether in addition to the duty short paid, interest on delayed payment of Custom Duty should be recovered from the Importer under section 28AA of the Customs Act. 1962.

4.2.1 As per Section 28AA of the Customs Act, 1962, the person, who is liable to pay duty in accordance with the provisions of Section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2) of Section 28AA, whether such payment is made voluntarily or after determination of the duty under that section.

4.2.2 However, as concluded in Para 4.1.12 above, the allegation of short levy of IGST amounting to ₹72,88,750/- is not sustainable since the importer had validly claimed exemption under Notification No. 50/2017-Customs dated 30.06.2017, based on Essentiality Certificates issued by the Directorate General of Hydrocarbons (DGH). The goods are covered under List 33, Serial No. 404 of the said notification, and concessional IGST @ 5% has been rightly availed.

4.2.3 Since no short levy of IGST has occurred, the condition precedent for invoking Section 28AA does not arise. Therefore, interest on delayed payment of duty is also not applicable.

4.2.4 Accordingly, I hold that no interest is recoverable from the importer under Section 28AA of the Customs Act, 1962.

4.3 Whether the said subject goods imported vide Bills of Entry as detailed in Annexure to the subject SCN having assessable value of ₹ 5,60,67,307/- should be held liable for confiscation under Section 111(m) and/or 111(o) of the Customs Act, 1962.

4.3.1 Section 111(m) of Customs Act, 1962 provides for confiscation of the goods if any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54 and Section 111(o) of Customs Act, 1962 provides for confiscation of the goods if 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 condition is not observed unless the non-observance of the condition was sanctioned by the proper officer.

4.3.2 In the instant case, the department has alleged that the goods were wrongly cleared at concessional IGST @5% by claiming benefit of entry 234B under Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 as amended by Notification No. 12/2019- Integrated tax (Rate) dated 31.07.2019. However, it is established from the findings in Para 4.1.12 above that the importer had in fact availed the exemption under Notification No. 50/2017-Customs dated 31.07.2019, Sl. No. 404, based on Essentiality Certificates issued by the Directorate General of Hydrocarbons (DGH).

4.3.3 Since the concessional rate of IGST @5% has been rightfully availed under Notification No. 50/2017-Customs and the goods are indeed covered under List 33, there is no misdeclaration or violation of any condition of the exemption notification and Essentiality Certificates issued by the Directorate General of Hydrocarbons (DGH) for each of Bills of Entry as detail in Annexure to the SCN.

4.3.4 Accordingly, I find that no grounds exist for invoking Section 111(m) or 111(o) of the Customs Act, 1962. The goods are not liable for confiscation under the said provisions.

4.4. Whether penalty should be imposed on them under Section 112(a) of the Customs Act, 1962 for their acts of omission and commission, in rendering the goods liable for confiscation.

4.4.1 Section 112(a) of the Customs Act, 1962 provides for imposition of penalty on any person who, by any act or omission, renders any goods liable to confiscation under Section 111.

4.4.2 As concluded in Para 4.3.4 above, the imported goods are not liable for confiscation under Section 111(m) or 111(o) since the exemption claimed under Notification No. 50/2017-Customs dated 31.07.2019 is validly supported by Essentiality Certificates, and there is no misdeclaration or contravention.

4.4.3 In the absence of liability to confiscation, Section 112 (a) of the Customs Act, 1962 is not admissible in the instant case. Hence, no act or omission attracting penalty under this provision is made out.

4.4.4 Accordingly, I hold that no penalty is imposable on the importer under Section 112(a) of the Customs Act, 1962.

4.5 Whether penalty should be imposed under Section 114A of Customs Act, 1962 for short levy of duty.

4.5.1 Section 114A of the Customs Act, 1962 provides for mandatory penalty in cases where duty has not been levied, or has been short-levied, due to reasons of fraud, collusion, willful misstatement or suppression of facts with intent to evade payment of duty.

4.5.2 In the instant case, as already concluded in Para 4.1.12, there is no short levy of duty, as the importer rightly claimed concessional IGST @5% under Notification No. 50/2017-Customs dated 31.07.2019, and produced valid Essentiality Certificates issued by the DGH. Therefore, penalty under Section 114A of the Customs Act, 1962 does not exist.

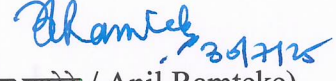
4.5.3 Accordingly, I hold that no penalty is imposable under Section 114A of the Customs Act, 1962.

5. In view of the above, I pass the following order:

ORDER

(i) I **drop** the proceeding initiated under the impugned Show Cause Notice No. 1019/2024-25/Commr./Gr.VA/CAC/JNCH dated 30.08.2024 against **M/s Novomet Perm (IEC: AAGCN5888A)**.

6. This Order is issued without prejudice to any other action that may be taken in respect of the above goods and/or the persons/firms mentioned in the notice under the provisions of the Act and/or any other law for the time being in force, in the Republic of India.



(अनिल रामटेके / Anil Ramteke)

आयुक्त/Commissioner of Customs

एनएस-V, जेएनसीएच/NS-V, JNCH

To:

M/s NOVOMET PERM (IEC – AAGCN5888A)
11A109, A Wing, Sea Woods Grand Central,
Tower 1, Sector 40, Nerul Mumbai-400706.

Copy to:

1. The Addl. Commissioner of Customs, Group VB, JNCH
2. AC/DC, Chief Commissioner's Office, JNCH
3. AC/DC, Centralized Revenue Recovery Cell, JNCH
4. The Dy. Commissioner of Customs, Circle – D1, Audit, JNCH
5. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
6. EDI Section
7. Office copy

