

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 – 20251178NX000000AAB8

Date of Orde:18.11.2025

F. No. S/10-137/2024-25/GR-VA/NS-V/CAC/JNCH

Date of Issue:18.11.2025

SCN No.: 1404/2024-25/COMMR/GR-VA/CAC/JNCH

SCN Date: 21.11.2024

Passed by: Sh. Anil Ramteke

Commissioner of Customs, NS-V, JNCH

Order No:269/2025-26/COMMR/NS-V/CAC/JNCH

Name of Noticees: M/s. METEC ELECTRONICS PRIVATE LIMITED(IEC-AAMCM5259Q)

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. 1404/2024-25/Commr/Gr.VA/CAC/JNCH dated 21.11.2024 issued to Metec Electronics Private Limited (IEC-AAMCM5259Q) – reg.

1. BRIEF FACTS OF THE CASE

1.1 It is stated in the Show Cause Notice (SCN) No. 1404/2024-25/Commr/Gr.VA/CAC/JNCH dated 21.11.2024 that on analysis it was observed that Metec Electronics Private Limited (IEC-AAMCM5259Q) (hereinafter referred to as the ‘Importer’ or ‘Noticee’) having address at Flat No. 200, Kewal Kunj Apartment, Sector-13, Rohini, New Delhi - 110085 had imported goods with description “Battery” under the CTH 8507 as detailed in Annexure-A to the subject SCN and paid lower rate of BCD and/or IGST under Sl. No. 203 of Schedule-II of IGST Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 @12% and/or @18% under Sr. Nos. 376AA or 376AAA of Schedule-III of IGST Notification No. 19/2018-Integrated Tax (Rate) dated 27.07.2018 or a lower IGST rate in other Schedule, however, the imported goods attracted levy of BCD & IGST as per Table-A below.

1.2 The Bills of Entry (as per Annexure-A to the subject SCN) wherein goods had been classified under CTH 8507 attract levy of BCD & IGST as per Table-A. However, they have been cleared under lower rate of BCD.

TABLE-A

Tariff Item	Description of Goods	BCD % (Notfn.)	SWS	IGST	Total Duty	Remarks
8507 (except 8507 60 00 and 8507 90)	Battery pack of cellular mobile phones (Other than Lithium-Ion)	15	10	28	49.12	02.02.18 - till date
85076000	Lithium-ion battery of cellular mobile phones	15	10	28	49.12	02.02.18 - 26.07.18
		15	10	18	37.47	27.07.18 - till date
85076000	Battery pack of cellular mobile phones (Lithium-Ion)	20	10	18	43.96	30.01.19 - till date
85076000	Power Bank (Lithium-ion)	20	10	18	43.96	30.01.19 - till date

1.3 From the above table, it appeared that:

- Battery pack of cellular mobile phones under CTH 8507 except 85076000 and 850790 (other than lithium ion) attract BCD @ 15% & IGST @ 28% under Serial No. 139 of Schedule-IV of IGST Notification No. 01/2017.
- Till 26.07.2018, lithium ion battery of cellular mobile phones were classifiable under CTH 85076000 & attracted BCD @ 15% & IGST @ 28% under Serial No. 139 of Schedule-IV of IGST Notification No. 01/2017.
- From 27.07.2018 to 30.01.2019, lithium ion battery of cellular mobile phones were classifiable under CTH 85076000 & attracted BCD @ 15% & IGST @ 18% under Serial No. 376AA of Schedule-III of IGST Notification No. 01/2017.

- From 30.01.2019 to till date, lithium ion battery of cellular mobile phones falling under CTH 85076000 attracted BCD @ 20% & IGST @ 18% under Serial No. 376AA of Schedule-III of IGST Notification No. 01/2017.
- From 30.01.2019 to till date, power bank (lithium ion) falling under CTH 85076000 attracted BCD @ 20% & IGST @ 18% under Serial No. 376AA of Schedule-III of IGST Notification No. 01/2017.

1.3.1 As per the SCN, on scrutiny of the import data, it was observed that goods covered under CTH 8507 were cleared by declaring lower rate of BCD and/or IGST, however, the imported goods attracts levy of BCD & IGST under Sl. No. 203 of Schedule-II of IGST Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 @12% and/or @18% under Sr. Nos. 376AA or 376AAA of Schedule-III of IGST Notification No. 19/2018-Integrated Tax (Rate) dated 27.07.2018 or a lower IGST rate in other Schedule, as per Table-A above.

1.3.2 The importer imported 'Lithium-ion Cells' under CTI 85076000 and paid BCD @ 5% by claiming benefit of Sr. No. 17B of Notification No. 57/2017 dated 30.06.2017. However, the importer can avail the aforesaid benefit provided the importer satisfies the conditions mentioned at Rule 5(2) under Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, wherein, it is stated that *"The importer who intends to avail the benefit of exemption notification shall submit a continuity bond with such surety or security as deemed appropriate by the Deputy Commissioner of Customs or Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, with an undertaking to pay the amount equal to the difference between the duty leviable on inputs but for the exemption and that already paid, if any, at the time of importation, along with interest, at the rate fixed by notification issued under section 28AA of the Act, for the period starting from the date of importation of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay"*.

1.3.3 Further, on scrutiny of the Bills of Entry in the ICES (Indian Customs EDI System), it was observed that the importer has not furnished the requisite proof of Continuity Bond. Hence, it was not clear whether the importer had fulfilled the conditions at the time of import.

1.3.4 The total assessable value of the B/E items so imported is Rs. 7,17,90,930/- (Rupees Seven Crore Seventeen Lakh Ninety Thousand Nine Hundred Thirty Only) and it appeared that a short levy of BCD and/or IGST amounting to Rs. 1,39,77,694/- (Rupees One Crore Thirty Nine Lakh Seventy Seven Thousand Six Hundred Ninety Four Only) (as detailed in Annexure-A to the subject SCN) is recoverable from the importer along with applicable interest and penalty.

1.4 In view of the above, Consultative Letter No. 2629 dated 02.06.2023 was issued to 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 alongwith applicable interest and penalty. However, no reply or submission was given by importer in this regard.

1.5 As per the SCN, the relevant legal provisions for recovery of duty that appeared to be evaded are reproduced here which are applicable in this instant case:

1.5.1 After the introduction of self-assessment vide Finance Act, 2011, the onus is on the importer to make true and correct declaration in all aspects including classification and calculation of duty, but in the instant case the subject goods have been mis-classified and duty amount has not been paid correctly.

1.5.2 Further, the extracts of the following relevant provisions of the Customs Act, 1962 for the time being in force relating to import of goods, recovery of duties, liability of the goods to confiscation and the persons concerned to penalty for improper importation, were mentioned in the subject SCN. The same are not reproduced in this Order-in-Original for the sake of brevity:

- Section 17 - Assessment of duty.
- Section 28 - Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.
- Section 46 - Entry of goods on importation.
- Section 111(o) - Confiscation of improperly imported goods, etc.
- Section 112 - Penalty for improper importation of goods etc.
- Section 114A - Penalty for short-levy or non-levy of duty in certain cases.

1.6 As per the SCN, 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.

1.7 In view of the above facts, it appeared 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 Rs. 1,39,77,694/- (as detailed in Annexure-A 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 applicable interest at the applicable rate under Section 28AA of the Customs Act, 1962 and for their acts of omission/commission.

1.8 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.

1.9 It appeared that the importer, Metec Electronics Private Limited, had failed to comply with the conditions mentioned above; therefore, it also appeared that the imported goods are liable for confiscation under Section 111(o) of the Customs Act, 1962. It further appeared 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.

1.10 In view of the above, vide Show Cause Notice No. 1404/2024-25/Commr/Gr.VA/CAC/JNCH dated 21.11.2024, the importer, Metec Electronics Private Limited (IEC-AAMCM5259Q) having address as Flat No. 200, Kewal Kunj Apartment, Sector-13, Rohini, New Delhi - 110085, was called upon to show cause to the Commissioner of Customs (NS-V), Jawaharlal Nehru Custom House (the Adjudicating Authority), as to why:

- (i) Differential/short paid Duty amounting to Rs. 1,39,77,694/- (Rupees One Crore Thirty Nine Lakh Seventy Seven Thousand Six Hundred Ninety Four Only) for the subject goods imported vide Bills of Entry as detailed in Annexure-A 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-A to the SCN, having assessable value of Rs. 7,17,90,930/- (Rupees Seven Crore Seventeen Lakh Ninety Thousand Nine Hundred Thirty Only) should not be held liable for confiscation under Section 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 on them under Section 114A of Customs Act, 1962 for short levy of duty.

2. WRITTEN SUBMISSION OF THE NOTICEE

The Noticee, Metec Electronics Private Limited vide letter dated 20.12.2024 submitted written reply to the subject SCN. Vide above reply, they denied all the allegations made in the SCN. The brief of the submissions made by the Noticee, in their words, is as under:

2.1 The goods imported under Customs Tariff Heading (CTH) 85076000, classified as "Lithium-ion Cells," have been correctly assessed. A Basic Customs Duty (BCD) of 5% has been paid in accordance with Sr. No. 17B of Notification No. 57/2017-Customs, dated 30.06.2017. It is important to note that the Company manufactures Power Banks, and Lithium-ion Cells are used as one of the components in the manufacturing process.

2.2 In line with Sr. No. 17B and the relevant CTH 85076000, the Company had appropriately imported Lithium-ion Cells for use in the production of Lithium-ion power banks, subject to adherence to the procedure outlined in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.

2.3 They have duly complied with all conditions prescribed under the notification. Specifically, they have adhered to the requirements stipulated under Rule 5(2) of the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. To this effect, they submitted a continuity bond for Import of Goods at Concessional Rate ("IGCR Bond") supported by appropriate security and an undertaking, as mandated by the Deputy Commissioner of Customs. This bond not only guarantees compliance but also ensures that the imported goods are utilized in conformity with the terms of the exemption notification. The necessary proof of compliance is available and has been previously provided to the department. The relevant IGCR bonds was attached for reference.

2.4 Further, they have duly furnished all necessary intimations to the Customs Department as part of the procedural requirements. These include submissions of intimation to the Custom office situated at Greater Noida, Uttar Pradesh, which detail the bond execution, usage of the goods as per the exemption conditions, and other required documentation. These communications substantiate their position that all prescribed conditions were fully met, and there has been no deviation from the mandated procedures. Copies of these intimations were attached for reference.

2.5 The contents of the SCN are incorrect. Their business does not involve the sale of batteries; rather, they manufacture and sell power banks. This distinction is crucial as it directly impacts the classification of the imported goods and the applicable duty rates.

2.6 As a manufacturing unit, they have duly furnished the IGCR bond, which further establishes their compliance with the relevant regulations and demonstrates that the imported lithium-ion cells are used in the production of power banks. In accordance with the applicable notification, the import of lithium-ion cells for manufacturing purposes qualifies for a reduced Basic Customs Duty (BCD) rate of 5%.

2.7 The submitted IGCR bond not only validates their status as a manufacturing unit but also confirms their adherence to the conditions set forth for availing concessional duty rates under the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.

2.8 The benefit claimed under Notification No. 57/2017 was availed lawfully and was based on meticulous adherence to the outlined rules. The assertion of evasion or non-compliance, as implied in the notice, is unfounded and does not reflect the actual scenario. At no point did they misstate, suppress, or fail to disclose any material facts. Every declaration made in the Bills of Entry was true, complete, and in line with the self-assessment procedures enshrined under Section 17 of the Customs Act, 1962.

2.9 The demand for an additional 20% customs duty, along with penalties, is therefore, unfounded. Their actions have been in full compliance with the applicable legal framework, and there has been no underpayment of duty or improper claim of exemptions. The differential duty calculation outlined in the Show Cause Notice fails to consider the legitimate benefit they are entitled to under the law, as well as the supporting submissions previously provided to the department. They enclosed copies of all intimation letters submitted to the Customs Department with acknowledgment receipts, & copies of the relevant Bills of Entry.

2.10 In light of the above, the demand raised in the notice be reviewed and reconsidered. Their actions have been in full compliance with the applicable regulations. The demand for additional duties and penalties is unwarranted considering the company is a manufacturer of Power Banks and the company imports the battery exclusively for the production of the Power Banks at its factory in Gurgaon.

3. RECORD OF PERSONAL HEARINGS

3.1 There is single Noticee in the subject SCN viz. Metec Electronics Private Limited.

3.2 In compliance of provisions of Section 28(8) read with Section 122A of the Customs Act, 1962 and in terms of the principle of natural justice, the Noticee was granted opportunity of

Personal Hearing (PH) on 24.09.2025, 08.10.2025, 15.10.2025 and 03/04.11.2025 and PH intimation letters were issued by speedpost / email. On 04.11.2025, Mr. Shreyash Raj, Advocate appeared virtually before the Adjudicating Authority on behalf of the Noticee, Metec Electronics Pvt. Ltd. During the PH, he reiterated the submissions made vide letter dated 20.12.2024 as under:

- (i) The goods imported by the Noticee are 'Lithium-ion Cells' which are used in the manufacture of power banks. They have correctly discharged the due duty liability on the imported goods by appropriately claiming the concessional rate of duty under Sl. No. 17B of Notfn. No. 57/2017 dtd. 30.06.2017 (as amended by Notification No. 02/2019).
- (ii) They have imported the goods in the period 2019 to 2021 during which the benefit of concessional rate of duty under Sl. No. 17B of Notfn. No. 57/2017 dtd. 30.06.2017 was duly available to the imported goods.
- (iii) They have duly complied with all conditions prescribed under the Notification and submitted a continuity bond for import of goods at concessional rate of duty (IGCRD) alongwith appropriate security and an undertaking.
- (iv) As the Noticee has paid all the duties correctly, no demand remains against them and therefore, the SCN may be dropped.

4. DISCUSSION AND FINDINGS

4.1 I have carefully gone through the subject Show Cause Notice (SCN) and its Relied Upon Documents (RUDs), material on record and facts of the case, as well as written and oral submissions made by the Noticee. Accordingly, I proceed to decide the case on merit.

4.2 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) on 24.09.2025, 08.10.2025, 15.10.2025 and 03/04.11.2025 was granted to the Noticee. Availing the said opportunity, the Noticee attended the PH on 04.11.2025. 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 submission / contention made by the Noticee.

4.3 The fact of the matter is that a Show Cause Notice No. 1404/2024-25/Commr/Gr.VA/CAC/JNCH dated 21.11.2024 was issued to Metec Electronics Private Limited (IEC-AAMCM5259Q), alleging that they had imported goods having description as 'Battery' covered under CTH 8507 and the same were cleared by declaring lower rate of BCD and/or IGST. However, the imported goods falling under CTH 8507 attract levy of BCD & IGST as per Table-A figuring in Para 1.2 above. It is further alleged that they are not eligible to claim benefit of concessional rate of duty under Sr. No. 17B of Notification No. 57/2017 dated 30.06.2017, as they had not furnished the requisite proof of Continuity Bond and thus, not fulfilled the conditions mentioned at Rule 5(2) under Customs (Import of Goods at Concessional Rate of

Duty) Rules, 2017, at the time of import. Thus, the SCN propose demand of differential/ short paid duty of Rs. 1,39,77,694/- (Rupees One Crore Thirty Nine Lakh Seventy Seven Thousand Six Hundred Ninety Four Only) invoking extended period under Section 28(4) of the Customs Act, 1962 along with interest in terms of Section 28AA of the Customs Act, 1962 and imposition of consequential penalties under Section 112(a) and 114A, *ibid*. The Show Cause Notice also propose for confiscation of imported goods having assessable value of Rs. 7,17,90,930/- (Rupees Seven Crore Seventeen Lakh Ninety Thousand Nine Hundred Thirty Only) under Section 111(o) of the Customs Act, 1962.

4.4 On a careful perusal of the Show Cause Notice and case records, I find that following main issues are involved in the case which are required to be decided:

- (i) Whether differential/ short paid duty amounting to Rs. 1,39,77,694/- for the subject goods imported vide Bills of Entry as detailed in Annexure-A to the subject SCN, 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-A to the subject SCN having assessable value of Rs. 7,17,90,930/- should be held liable for confiscation under Section 111(o) of the Customs Act, 1962.
- (iv) Whether penalty should be imposed on Metec Electronics Private Limited 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) Whether penalty should be imposed on Metec Electronics Private Limited under Section 114A of Customs Act, 1962 for short levy of duty.

4.5 After having identified and framed the main issues to be decided, I now proceed to examine each of the issues individually based on the facts and circumstances mentioned in the SCN; provision of the Customs Act, 1962; nuances of various judicial pronouncements, as well as documents available on record.

4.6 Whether differential/ short paid duty amounting to Rs. 1,39,77,694/- for the subject goods imported vide Bills of Entry as detailed in Annexure-A to the subject SCN, should be demanded under Section 28(4) of the Custom Act, 1962.

4.6.1 From the data available on record and in ICES (Indian Customs EDI System), I note that the Noticee, Metec Electronics Private Limited vide the impugned 7 Bills of Entry (covering 30 item entries as detailed in Annexure-A to the subject SCN) filed during the period from 18.11.2019 to 15.12.2020 had imported the goods with description as 'Polymer Lithium Ion Cell/ Lithium Ion Polymer Cell' classifying the same under Customs Tariff Item (CTI) 85076000. I note that the Noticee had mentioned in the item description in the Bills of Entry, details of brand name, model name/ No., technical specification (mAh) and BIS Registration No. of the imported

goods and also mentioned that the said goods are ‘spare parts for power bank/ for power bank’. I also note that the said goods were cleared on payment of BCD @ 5% after availing exemption under Sr. No. 17B of Notification No. 57/2017 dtd. 30.06.2017 (as amended vide Notification No. 02/2019-Cus. dated 29.01.2019).

4.6.2 The Noticee had classified the imported goods ‘Polymer Lithium Ion Cell / Lithium Ion Polymer Cell’ under CTI 85076000. Therefore, it would be worthwhile to look at the Customs Tariff Heading 8507, which covers the goods of broad description as under:

8507	<i>Electric accumulators, including separators therefor, whether or not rectangular (including square).</i>
8507 10 00	- <i>Lead-acid, of a kind used for starting piston engines</i>
8507 20 00	- <i>Other lead-acid accumulators</i>
8507 30 00	- <i>Nickel-cadmium</i>
8507 50 00	- <i>Nickel-metal hydride</i>
8507 60 00	- <i>Lithium-ion</i>
8507 80 00	- <i>Other accumulators</i>
8507 90	- <i>Parts</i>

Further, for the sake of convenience, I find it appropriate to reproduce the relevant extract of the Explanatory Notes to Heading 8507 which read as under:

“85.07	<i>Electric accumulators, including separators therefor, whether or not rectangular (including square).</i>
8507.10	- <i>Lead-acid, of a kind used for starting piston engines</i>
8507.20	- <i>Other lead-acid accumulators</i>
8507.30	- <i>Nickel-cadmium</i>
8507.50	- <i>Nickel-metal hydride</i>
8507.60	- <i>Lithium-ion</i>
8507.80	- <i>Other accumulators</i>
8507.90	- <i>Parts</i>

Electric accumulators (storage batteries or secondary batteries) are characterised by the fact that the electrochemical action is reversible so that the accumulator may be recharged. They are used to store electricity and supply it when required. A direct current is passed through the accumulator producing certain chemical changes (charging); when the terminals of the accumulator are subsequently connected to an external circuit these chemical changes reverse and produce a direct current in the external circuit (discharging). This cycle of operations charging and discharging, can be repeated for the life of the accumulator.

Accumulators consist essentially of a container holding the electrolyte in which are immersed two electrodes fitted with terminals for connection to an external circuit. In many cases the container may be subdivided, each subdivision (cell) being an accumulator in itself; these cells are usually connected together in series to produce a higher voltage. A number of cells so connected is called a battery. A number of accumulators may also be assembled in a larger container. Accumulators may be of the wet or dry cell type.

Accumulators are used for supplying current for a number of purposes, e.g., motor vehicles, golf carts, fork-lift trucks, power hand-tools, cellular telephones, portable automatic data processing machines, portable lamps.

Accumulators containing one or more cells and the circuitry to interconnect the cells amongst themselves, often referred to as "battery packs", are covered by this heading, whether or not they include any ancillary components which contribute to the accumulator's function of storing and supplying energy, or protect it from damage, such as electrical connectors, temperature control devices (e.g., thermistors) circuit protection devices, and protective housings. They are classified in this heading even if they are designed for use with a specific device."

4.6.3 I find that 'Polymer Lithium Ion Cell / Lithium Ion Polymer Cell' is a sub-type of Lithium-ion Cell that use a polymer electrolyte (solid, semi-solid or gel like) instead of liquid electrolyte. Thus, I find that a Lithium-ion Polymer Cell fall within the ambit of broader category of Lithium-ion Cell technology.

4.6.4 Further, on analysis of the Customs Tariff Heading 8507 and Explanatory Notes to Heading 8507, I note that the imported goods viz. 'Polymer Lithium Ion Cell / Lithium Ion Polymer Cell' are capable of charging and discharging, and are used in power bank for supplying current to cellular mobile phones. Further, I note that the Explanatory Notes mention *interalia* that in many cases the accumulator container may be subdivided, each sub-division (cell) being an accumulator in itself; and that accumulators containing one or more cells and the circuitry to interconnect the cells amongst themselves, often referred to as "battery packs", are covered by the heading 8507. Also, I find that the aforementioned technical specifications and description clearly indicate that the aforesaid goods are capable of charging and discharging i.e. they are rechargeable, and the same are being used in the manufacture of Power Banks. It is, therefore, observed that the impugned goods rightly fall under CTI 8507 6000. Even the Show Cause Notice does not challenge the description and classification of the goods under CTI 8507 6000.

Thus, I find that in the instant case, there is no dispute regarding the description and classification under CTI 85076000 of the impugned goods imported by the Noticee.

4.6.5 Now coming to the issue of appropriate levy of Basic Customs Duty (BCD) on the imported goods, I note that during the relevant time period i.e. from 18.11.2019 to 15.12.2020, the impugned goods ‘Polymer Lithium Ion Cell / Lithium Ion Polymer Cell’ attracted BCD @ 20%. The Noticee cleared the said goods on payment of BCD @ 5% after availing BCD exemption under Sr. No. 17B of Notification No. 57/2017 dated 30.06.2017 (as amended) which provided exemption of Customs duties on certain goods imported into India for use in the manufacture of cellular mobile phones and other electronic devices. I find that in the present case, the subject issue of availability / non-availability of exemption under Sr. No. 17B of the Notification No. 57/2017-Cus dated 30.06.2017 (as amended by Notification No. 02/2019-Cus dated 29.01.2019) is of pivotal importance around which the entire case revolves.

4.6.6 I note that the Sr. No. 17B of the Notification No. 57/2017 dtd. 30.06.2017 was inserted vide Notification No. 02/2019-Cus. dated 29.01.2019. It would be worthwhile to go through the relevant entry viz. Sr. No. 17B of the said Notification, which reads as under:

<i>S. No.</i>	<i>Chapter or Heading or sub-heading or tariff item</i>	<i>Description of goods</i>	<i>Standard rate</i>	<i>Condition No.</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>
17B	8507 60 00	Lithium ion cell for use in the manufacture of power bank of Lithium ion.	5%	1

<i>Condition No.</i>	<i>Condition</i>
1	If the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.

From the above, I note that the benefit of concessional rate of BCD @ 5% under Sr. No. 17B is available only to Lithium ion cell for use in the manufacture of power bank of Lithium ion. The condition mentioned to avail such exemption benefit is that the importer should follow the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. It will be pertinent to mention here that the aforesaid Sr. No. 17B was subsequently omitted with effect from 02.02.2021 vide Notification No. 03/2021-Cus dated 01.02.2021. As observed above, the impugned goods are Lithium ion Cells for use in manufacture of power bank and are rightly classified under CTI 85076000. Thus, I find that during the relevant time period i.e. from 18.11.2019 to 15.12.2020, the benefit of aforesaid Sr. No. 17B of the Notification No. 57/2017 dtd. 30.06.2017, was available to the impugned imported goods.

4.6.7 As regards condition to be fulfilled to avail aforesaid notification benefit, I find that the only condition mentioned to avail such exemption benefit is that the importer should follow the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 (IGCR). I note that in the instant case, the Noticee had declared in the Item Description of the Bills of Entry that the goods are ‘spare parts for power bank/ for power bank’. Moreover, the

Noticee had declared the details of brand name, model name/ No., technical specification (mAh) and BIS Registration No. of the goods for which the imported goods are meant. I find that as the impugned imported 'Polymer Lithium Ion Cell / Lithium Ion Polymer Cell' are used in manufacture of Power Bank, therefore, the same do fall under the purview of Sl. No. 17B of Notification No. 57/2017-Cus dated 30.06.2017 (as amended). Further, from the documents available on record and details of the impugned Bills of Entry available in the ICES 1.5 System in the form of execution of Continuity Bond, declaration of the particulars of the IGCR registration with the jurisdictional Custom officer, intimation of intended import items to the jurisdictional Custom officer, letter/certificate issued by jurisdictional Custom officer intimating intended import to the port of import and debiting of Bond/Certificate, I find that the Noticee has fulfilled the Condition No. 1 mentioned in above Notification by complying with the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 (IGCR).

4.6.8 As already observed by me in Para 4.6.7 above, I find that as the impugned imported 'Polymer Lithium Ion Cell / Lithium Ion Polymer Cell' are used in manufacture of Power Bank, therefore, the same are covered under Sl. No. 17B of the Notification No. 57/2017-Cus dated 30.06.2017 (as amended vide Notification No. 02/2019-Cus. dated 29.01.2019). Further, as detailed above, the Noticee has fulfilled the Condition No. 1 mentioned in above Notification. In view of the above, I find that during the period 18.11.2019 to 15.12.2020 BCD @ 5% availing exemption under Sr. No. 17B of Notification No. 57/2017 dtd. 30.06.2017 (as amended vide Notification No. 02/2019-Cus. dated 29.01.2019), has been correctly claimed by the Noticee and accordingly, the due duty was paid by the Noticee in respect of subject 7 Bs/E. Therefore, I find that the demand of duty in respect of the impugned 7 Bills of Entry (covering 30 item entries as detailed in Annexure-A to the subject SCN) raised in the SCN is not sustainable.

4.6.9 As regards levy of correct IGST, from the documents available on record and details available in the ICES 1.5 System, I find that in respect of the impugned 7 Bills of Entry (covering 30 item entries as detailed in Annexure-A to the subject SCN), IGST was paid @ 18% under Sr. No. 376AA of Schedule III of the IGST Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 which is available for goods classifiable under CTI 85076000. Therefore, I find that there is no duty recoverable from the Noticee on account of difference in the rate of IGST paid and payable.

4.6.10 Hence, after taking into consideration the discussions in the foregoing paras, I conclude that in respect of the impugned 7 Bills of Entry (covering 30 item entries as detailed in Annexure-A to the subject SCN) the Noticee has correctly paid the BCD by appropriately claiming the concessional duty rate benefit under Sl. No. 17B of the Notification No. 57/2017 dtd. 30.06.2017 (as amended by Notification No. 02/2019-Cus dated 29.01.2019) and has also correctly paid the IGST.

4.7 In view of the above, I do not find any merit in the instant SCN and thus, I am of the opinion that the demand of differential/ short paid duty amounting to Rs. 1,39,77,694/- (Rupees

One Crore Thirty Nine Lakh Seventy Seven Thousand Six Hundred Ninety Four Only) raised in the subject SCN under Section 28(4) of the Customs Act, 1962 does not sustains and thus, the same merits to be dropped. Resultantly, the confiscation of the impugned imported goods proposed under Section 111(o) of the Customs Act, 1962 as well as the penal provisions invoked under Section 112(a) and/or Section 114A of Customs Act, 1962, are also not sustainable. Thus, I am compelled that the liabilities so alleged, on account of short-payment of the applicable duty, do not survive and thus, the entire proceedings initiated against Metec Electronics Private Limited by the impugned Show Cause Notice No. 1404/2024-25/Commr/Gr.VA/CAC/JNCH dated 21.11.2024, merits to be dropped.

5. In view of the facts of the case, the documentary evidences on record and findings as detailed above, I pass the following order:

ORDER

I drop all the proceeding initiated against Metec Electronics Private Limited by the impugned Show Cause Notice No. 1404/2024-25/Commr/Gr.VA/CAC/JNCH dated 21.11.2024.

6. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or the persons/firms concerned, covered or not covered by this show cause notice, under the provisions of Customs Act, 1962, and/or any other law for the time being in force in the Republic of India.



(अनिल रामटेके / ANIL RAMTEKE)

सीमा शुल्क आयुक्त / Commissioner of Customs,
एनएस-V, जेएनसीएच / NS-V, JNCH

To,

- 1(a) **Metec Electronics Private Limited,**
Flat No. 200, Kewal Kunj Apartment,
Sector-13, Rohini, New Delhi – 110085
- 1(b) **Metec Electronics Private Limited,**
E-262, Basement, East of Kailash,
New Delhi - 110065
- 1(c) **Metec Electronics Private Limited,**
Plot No. H-01, DMIC Integrated Industrial Township,
Greater Noida, Gautam Buddha Nagar, Uttar Pradesh - 201310

Copy to:

1. The Addl. Commissioner of Customs, Group VA, JNCH
2. AC/DC, Review Cell, Chief Commissioner's Office, JNCH
3. AC/DC, Centralized Revenue Recovery Cell, JNCH
4. AC/DC, Circle-C3, Audit Commissionerate, JNCH
5. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
6. EDI Section.
7. Office copy.

ORDER