



सीमा शुल्क आयुक्त का कार्यालय, एनएस-III
OFFICE OF THE COMMISSIONER OF CUSTOMS, NS-III
केंद्रीकृत अधिनिर्णयन प्रकोष्ठ, जवाहरलाल नेहरू सीमा शुल्क भवन
CENTRALIZED ADJUDICATION CELL, JAWAHARLAL NEHRU CUSTOM HOUSE,
न्हावा शेवा, तालुका-उरण, जिला- रायगढ़, महाराष्ट्र -400 707
NHAVA SHEVA, TALUKA-URAN, DIST- RAIGAD, MAHARASHTRA-400707

File No: S/10-21/2025-26/Commr/Gr.III/NS-III/CAC/JNCH Date : 16.09.2025
SCN No: 147/2025-26/Commnr./NS-III/Gr.III/CAC/JNCH dated 16.05.2025

DIN	: 20250978NX000000CBE4
आदेश की तिथि Date of Order	: 15.09.2025
जारी किए जाने की तिथि Date of Issue	: 16.09.2025
आदेश सं. Order No.	: 194/2025-26/आयुक्त/एनएस-III/ सीएसी/जेएनसीएच 194/2025-26 /Commr./NS-III /CAC/JNCH
पारितकर्ता Passed by	श्री विजय रिशी SH. VIJAY RISI : आयुक्त, सीमाशुल्क (एनएस-3), जेएनसीएच, न्हावा शेवा Commissioner of Customs (NS-III), JNCH, Nhava Sheva
पक्षकार (पार्टी)/ नोटिसी का नाम Name of Party/ Noticee	मेसर्स 3एम इंडिया लिमिटेड M/s. 3M India Limited

मूलआदेश

ORDER-IN-ORIGINAL

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

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

2. इस आदेश से व्यथित कोई भी व्यक्ति सीमाशुल्क अधिनियम १९६२ की धारा १२९(ए) (के तहत इस आदेश के विरुद्ध सी ई एस टी ए टी, पश्चिमी प्रादेशिक न्यायपीठ (वेस्ट रीज़नल बेंच), ३४, पी .डी .मेलोरोड, मस्जिद (पूर्व), मुंबई- ४०० ००९ को अपील कर सकता है, जो उक्तअधिकरण के सहायक रजिस्ट्रार को संबोधित होगी।

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.

3. अपील दाखिल करने संबंधी मुख्य मुद्दे:-

Main points in relation to filing an appeal:-

फार्म	: फार्म न .सीए ३, चार प्रतियों में तथा उस आदेश की चार प्रतियाँ, जिसके खिलाफ अपील की गयी है (इन चार प्रतियों में से कमसे कम एक प्रति प्रमाणित होनी चाहिए)
Form	

	Form No. CA3 in quadruplicate and four copies of the order appealed against (at least one of which should be certified copy)
समय सीमा	: इस आदेश की सूचना की तारीख से ३ महीने के भीतर
Time Limit	Within 3 months from the date of communication of this order.
फीस	: (क) एक हजार रुपये-जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्तिकी रकम ५ लाख रुपये या उस से कम है।
Fee	(a) Rs. One Thousand - Where amount of duty & interest demanded & penalty imposed is Rs. 5 Lakh or less. (ख) पाँच हजार रुपये- जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्तिकी रकम ५ लाख रुपये से अधिक परंतु ५० लाख रुपये 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 (ग) दस हजार रुपये-जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्तिकी रकम ५० लाख रुपये से अधिक है। (c) Rs. Ten Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 50 Lakh.
भुगतान की रीति	: क्रॉस बैंक ड्राफ्ट, जो राष्ट्रीयकृत बैंक द्वारा सहायक रजिस्ट्रार, सी ई एस टी ए टी, मुंबई के पक्षमें जारी किया गया हो तथा मुंबई में देय हो।
Mode of Payment	A crossed Bank draft, in favour of the Asstt. Registrar, CESTAT, Mumbai payable at Mumbai from a nationalized Bank.
सामान्य	: विधि के उपबंधों के लिए तथा ऊपर यथा संदर्भित एवं अन्य संबंधित मामलों के लिए, सीमाशुल्क अधिनियम, १९९२, सीमाशुल्क (अपील) नियम, १९८२ सीमाशुल्क, उत्पादन शुल्क एवं सेवा कर अपील अधिकरण (प्रक्रिया) नियम, १९८२ का संदर्भ लिया जाए।
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.

4. इस आदेश के विरुद्ध अपील करने के लिए इच्छुक व्यक्ति अपील अनिर्णीत रहने तक उस में माँगे गये शुल्क अथवा उद्गृहीत शास्ति का ७.५ % जमा करेगा और ऐसे भुगतान का प्रमाण प्रस्तुत करेगा, ऐसा न किये जाने पर अपील सीमाशुल्क अधिनियम, १९६२ की धारा १२८ के उपबंधों की अनुपालना न किये जाने के लिए नामंजूर किये जाने की दायी होगी ।
- 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 129 of the Customs Act 1962.

BRIEF FACTS OF THE CASE

The proceedings of the present case emanate out of Show Cause Notice No. 147/2025-26/Commnr./NS-III/Gr.III/CAC/JNCH dated 16.05.2025 (hereinafter called in short as “SCN”), issued by the Commissioner of Customs, NS-III, JNCH, Mumbai Customs Zone-II to **M/s. 3M India Limited (IEC:793012112)**. The brief facts of the case are as follows: -

2. M/s. 3M India Limited (IEC:793012112) having address at '48-51, Electronic City, Hosur Road, Bangalore, Karnataka-560100 (hereinafter referred to as 'the importer or Noticee') cleared their imported items vide Bills of Entry as mentioned in Annexure-A below (hereinafter referred to as 'the subject goods') at lower rate of basic customs duty (BCD) by availing benefit of Sr. No. 05 the Notification No. 20/2020-Cus., dated 09.04.2020. Said Notification benefit is **subject to the condition that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.**

2.1 The said goods were classified under Customs Tariff Item (hereinafter called in short as “CTI”) 5603.12000, 5603.9400, 7616.9990 & 8481.8090 having merit rate of **Basic Customs Duty @ 25%, 25%, 10% & 7.5% respectively** and cleared upon payment of **Basic Customs Duty @ Nil (availing benefit of Sr. No. 05 of the Notification No.20/2020)**, SWS@10% of BCD and applicable IGST@12%, 12% , 18% & 18% respectively (as per IGST Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017, as amended), as follows:

Bills of Entry as per Annexure-A

BE Number	BE Date	Eight Digit HS Code	Full Item Description	Assessable Value Amount (Rs.)	BCD exemption Notification availed	Duty paid (Rs.)
8131576	7/10/2020	56031200	NON WOVEN FABRICS(BETWEEN 25G/M2A) - HE8210TRIMMED INNERSHELL KOREA 8210,1860,1860W -WX700901068 (168 CS)	1,169,866		140,384
8077169	7/4/2020	56031200	NON WOVEN FABRICS (BETWEEN 25g/m2a- TRIMMED RESINLESS INNERSHELLS (103680 EACH)	352,145		42,258
7972242	6/22/2020	56031200	NON WOVEN FABRICS (BETWEEN 25G/M2A) : PREFORM ROLL 9913IN EN149 FFP 1(19760 LNYD)	2,826,653		339,198
8219232	7/20/2020	56031200	NON WOVEN FABRICS (BETWEEN 25G/M2A) : PREFORM ROLL 9913IN EN149 FFP 1(24946 LNYD)	3,417,812		410,138
8409207	8/8/2020	56031200	NON WOVEN FABRICS(BETWEEN 25G/M2A) - HE8210TRIMMED INNERSHELL KOREA 8210,1860,1860W -WX700901068 (61 CS)	376,365		45,164
7841846	6/6/2020	56031200	NON WOVEN FABRICS (BETWEEN 25g/m2a) - 9504IN P2 2L MINT ZALSLIT WEB W255MM(43640.00 M)	1,776,771		213,213
8631551	8/29/2020	56031200	NON WOVEN FABRICS(BETWEEN 25G/M2A) - HE8210TRIMMED INNERSHELL KOREA 8210,1860,1860W -WX700901068 (61 CS)	1,052,510		126,301
8265606	7/24/2020	56031200	NON WOVEN FABRICS (BETWEEN 25G/M2A) : PREFORM ROLL 9913IN EN149 FFP 1(22344 LNYD)	3,085,775		370,293
7841846	6/6/2020	56031200	NON WOVEN FABRICS (BETWEEN			

			25g/m2a) - 9504IN P2 2L MINT ZALSLIT WEB W255MM(141600.00 M)	5,765,142	Sr. No 5 of Notification No. 020/2020 dated 09.04.2020	691,817
7926591	6/17/2020	56031200	NON WOVEN FABRICS(BETWEEN 25G/M2A) - HE8210TRIMMED INNERSHELL KOREA 8210,1860,1860W -WX700901068 (168 CS)	1,164,527		139,743
7630998	5/11/2020	56031200	NON WOVEN FABRIC	2,881,430		345,772
8855175	9/18/2020	56031200	NON WOVEN FABRIC	980,295		117,635
8050391	7/1/2020	56039400	NON WOVEN FABRICS (>150G/M2) - 8710 IN PREFORM WX700901423 (61 MT)	427,746		51,330
8565376	8/24/2020	56039400	NON WOVEN FABRICS (>150G/M2) - 8710 IN PREFORM WX700901423 (58950 MT)	953,145		114,377
8291075	7/27/2020	56039400	NON WOVEN FABRICS (>150G/M2) - 8710 IN PREFORM WX700901423 (58950 MT)	309,828		37,179
8050891	7/1/2020	56039400	NON WOVEN FABRICS (>150G/M2) - 8710 IN PREFORM WX700901423 (61 MT)	434,112		52,094
8230715	7/21/2020	56039400	NON WOVEN FABRICS (>150G/M2) - 8710 IN PREFORM WX700901423 (61 MT)	317,955		38,155
7747738	5/26/2020	56039400	NON WOVEN FABRICS (>150G/M2) - 8710 IN PREFORM WX700901423 (13100 MT)	214,132		25,696
7745303	5/25/2020	56039400	NON WOVEN FABRICS (>150G/M2) - 8710 IN PREFORM WX700901423 (45850 MT)	754,211		90,505
7975679	6/22/2020	76169990	ALUMINIUM WIRE : DDD FLAT STITCHING WIRE GALVANIZED 1.55 X 0.43MM / K7 SPOOLS	373,041		67,147
8266708	7/24/2020	76169990	NOSE CLIP (ALUMINIUM) -EAF 304 NOSE CLIP#8706(398040 EACH)	413,882		74,499
8266708	7/24/2020	76169990	NOSE CLIP (ALUMINIUM) -EAF 304 NOSE CLIP#8706(398040 EACH)	413,882		74,499
7636428	5/11/2020	76169990	ALLUMINIUM	391,886		70,540
7972004	6/22/2020	84818090	INDUSTRIAL VALVES -CPC VALVE PRINTED -3M LOGO JAP AN REQ (240000 EACH)	1,644,622		296,032
			Total (Rs.)	31,497,736		

3. The Notification No. 20/2020-Cus., dated 09.04.2020 reads as follows: -

“G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) read with section 141 of Finance Act, 2020 (12 of 2020), the Central Government on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the said Customs Tariff Act specified in column (2) of the Table below, from whole of the duty of customs leviable thereon under the First Schedule to the said Customs Tariff Act and the whole of health cess leviable thereon under section 141 the said of Finance Act, 2020:

‘Table-A’

Sr. No.	Chapter of Heading or sub-heading or tariff item	Description of goods
1	9018 or 9019	Artificial respiration or other therapeutic respiration apparatus (Ventilators)
2	63 or any chapter	Face masks and surgical Masks

3	62 or any chapter	Personal Protection Equipment (PPE)
4	30, 38 or any chapter	Covid-19 testing kit
5	Any chapter	Inputs for manufacturing of items at Sr. No. 1 to 4 above, subject to the condition that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.

2. This notification shall remain in force upto and inclusive of the 30th September, 2020”

3.1 The above Notification was issued in the public interest for exempting the goods of the description specified in column (3) of the Table-A falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the said Customs Tariff Act specified in column (2) of the Table-A, from whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act and the whole of Health Cess leviable thereon under Section 141 of Finance Act, 2020. Benefits under Sr. No. 05 of the Notification No. 20/2020-Cus, is **subject to the condition that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017**

3.2 Relevant portion of Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 as Notified vide Notification 68-Cus (NT)/30.06.2017, is reproduced, as follows:

“5.Procedure to be followed

(1) The importer who intends to avail the benefit of an exemption notification shall **provide information (a) in duplicate, to the Deputy Commissioner of Customs or, as the case may be, 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, the estimated quantity and value of the goods to be imported, particulars of the exemption notification applicable on such import and the port of import in respect of a particular consign meant for a period not exceeding one year; and (b) in one set, to the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs at the Custom Station of importation.**

(2) The importer who intends to avail the benefit of an 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 in puts 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.**

(3) The Deputy Commissioner of Customs or, as the case may be, 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, **shall forward one copy of information received from the importer to the Deputy Commissioner of Customs, or as the case may be, Assistant Commissioner of Customs at the Custom Station of importation.**

(4) **On receipt of the copy of the information under clause (b) of sub rule (1), the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs at**

the Custom Station of importation shall allow the benefit of the exemption notification to the importer who intends to avail the benefit of exemption notification.

6. Importer who intends to avail the benefit of an exemption notification to give information regarding receipt of imported goods and maintain records:

(1) The importer who intends to avail the benefit of an exemption notification shall provide the information of the receipt of the imported goods in his premises where goods shall be put to use for manufacture, within two days (excluding holidays, if any) of such receipt to the jurisdictional Customs Officer.

(2) The importer who has availed the benefit of an exemption notification shall maintain an account in such manner so as to clearly indicate the quantity and value of goods imported, the quantity of imported goods consumed in accordance with provisions of the exemption notification, the quantity of goods re-exported, if any, under rule 7 and the quantity remaining in stock, bill of entry wise and shall produce the said account as and when required by the Deputy Commissioner of Customs or, as the case may be, 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.

(3) The importer who has availed the benefit of an exemption notification shall submit a quarterly return, in the Form appended to these rules, to the Deputy Commissioner of Customs or, as the case may be, 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, by the tenth day of the following quarter."

4. However, during post clearance audit conducted under section 99A of the Customs Act, it was noticed that the Noticee was engaged in imports of VTM (Viral Transport Media) kits and RNA extraction kits by availing benefit of Sr. No. 4 of the Notification No. 20/2020- Cus., dated 09.04.2020 and inputs for VTM kits such as nasopharyngeal swab and plastic tubes by claiming benefit of Sr. No. 5 of Notification No. 20/2020-Cus., dated 09.04.2020. On scrutiny of the items imported, it appeared that the VTM kits and RNA extraction kits are not the Covid-19 testing kits. The VTM kits are merely tools for nasopharyngeal sampling in flu like diseases and RNA extraction kits are used for extraction RNA from the samples. It was further observed that there are multiple uses of RNA extraction kits in medical science like research and diagnose of cancer apart from RNA extraction from swab sample collected for Covid-19 testing. For any Covid-19 RT-PCR testing, the extracted RNA is the starting material. Thus, the VTM kits and RNA extraction kits are not Covid-19 testing kits and the benefit under Sr. No. 04 of Notification No. 20/2020-Cus.dated 09.04.2020 appeared to be not available for the same. Therefore, only RT-PCR testing kits and Rapid Antigen/Antibody testing kits for Covid-19 would qualify for the benefit under Sr. No. 4 of Notification No. 20/2020-Cus., dated 09.04.2020.

Sample Bill of Entry filed by the Noticee, along with item description, 8 DIGIT HS Code, Notification benefit availed & duty paid is as follows:

BE Number	BE Date	Eight Digit HS Code	Full Item Description	Assessable Value Amount (Rs.)	BCD exemption Notification availed	Duty paid (Rs.)
8131576	7/10/2020	56031200	NON WOVEN FABRICS(BETWEEN 25G/M2A) - HE8210TRIMMED INNERSHELL KOREA 8210,1860,1860W -WX700901068 (168 CS)	1,169,866	Sr. No 5 of Notification No. 020/2020 dated 09.04.2020	140,384
8565376	8/24/2020	56039400	NON WOVEN FABRICS (>150G/M2) - 8710 IN PREFORM WX700901423 (58950 MT)	953,145		114,377
8266708	7/24/2020	76169990	NOSE CLIP (ALUMINIUM) -EAF 304 NOSE			

			CLIP#8706(398040 EACH	413,882	74,499
7972004	6/22/2020	84818090	INDUSTRIAL VALVES -CPC VALVE PRINTED -3M LOGO JAP AN REQ (240000 EACH)	1,644,622	296,032

5. Similarly, the raw material of inputs such as nasopharyngeal swab and plastic tubes required to prepare VTM kits and the raw material or inputs required to prepare RNA extraction kits are also not eligible for benefit under Sr. No. 5 of the Notification No. 20/2020-Cus., dated 09.04.2020. **Further, the raw material or inputs** in form of non-woven fabric or nose clips for face mask for Covid-19 would qualify for the benefit under Sr. No. 5 of the Notification No. 20/2020-Cus., dated 09.04.2020, only when the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty), Rules, 2017. However, it appeared that the notice was not following the said essential condition of the Notification No. 20/2020-Cus., dated 09.04.2020

6. Accordingly, a Consultative Letter No.1157/2021-22/PCA (C-3), dated 28.06.2021 (DIN No. 202107780000002782A2) was issued to the importer for payment of short levied BCD as mentioned in Annexure-A along with applicable interest and penalty. Vide the aforementioned Consultative letter, the importer was advised to pay the differential duty under Section 28 of the Customs Act, 1962 along with applicable interest and penalty thereon under Section 28AA of the Customs Act 1962. The Consultative letter was issued considering the Pre-Notice Consultation Regulations, 2018.

7. The importer neither paid the differential duty along with the applicable interest and penalty nor responded in reference to the Consultative letter issued by the Department.

8. In this case, it appeared that the importer M/s. 3M India Limited (IEC: 793012112) having address at 48-51, Electronic City, Hosur Road, Bangalore, Karnataka-560100, has imported the items as mentioned in Annexure-A and has availed benefit of concessional BCD rates under Sr. No. 05 of Notification No. 20/2020-Cus., dated 09.04.2020 for which they did not appear to be eligible.

9. Section 28(4) states that 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 facts, by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been [so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

9.1 In view of the above, it appeared that the importer had willfully wrongfully availed the benefit of concessional BCD rates under Notification No. 20/2020-Cus., dated 09.04.2020 which caused the loss of government revenue.

10. After the introduction of self-assessment vides 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 it appeared that the subject goods have been mis-classified and BCD amount has not been paid correctly.

11. As per Section 17(1) of the Act, “An Importer entering any imported goods under Section 46, shall, save as otherwise provided in Section 85, self-assess the duty, if any, leviable on such goods.” Further, all the impugned Bills of Entry as mentioned in Annexure- A to this notice were self-assessed and then facilitated by the Risk Management System (RMS) as per the data retrieved from the ICES system. Therefore, proper officer never verified the facts of self-assessment or of the declaration made by the importer. The wrong availment of the benefits of Sr. No. 05 of Notification No.- 20/2020-Cus., dated 09.04.2020 came to the light only at the time when the officer of the Department conducted post clearance audit under Section 99A of the Customs Act, 1962. Thus, in this case it appeared that the importer had wrongly self-assessed the impugned Bills of Entry and all the Bills of Entry as mentioned in Annexure-A. Therefore, it appeared that the importer has short-levied BCD at an exempted and lower rate due to wrongful availment of the benefit of concessional BCD rates under Sr. No 05 of Notification No. 20/2020-Cus., dated 09.04.2020. As the importer got monetary benefit due to said act, it appeared that the same was done deliberately by willfully availing the undue benefit of notification in the Bills of Entry during self-assessment. Therefore, differential duty is recoverable from the importer under Section 28(4) of the Customs Act, 1962 along with applicable interest and penalty.

11.1 The importer has given a declaration under Section 46(4) of the Act, for the truthfulness of the content submitted at the time of filing Bill of Entry. However, the applicable BCD rate on the subject goods was not paid by the Importer at the time of clearance of goods. It also appeared that the Importer has submitted a false declaration under Section 46(4) of the Act. By the act of presenting goods in contravention to the provisions of Section 111(m), it appeared that the importer has rendered the subject goods liable for confiscation under Section 111(m) of the Act. For the above act of deliberate omission and commission that rendered the goods liable to confiscation. Accordingly, the Importer also appeared liable to penal action under Section 112 (a), 114 A and Section 117 of the Customs Act, 1962.

11.2 From the foregoing, it appeared that the Importer has willfully mis-classification the goods; that the Importer has submitted a false declaration under section 46(4) of the said Act. Due to this act of omission of Importer, there has been loss to the government exchequer equal to the differential duty.

12. Accordingly, in exercise of the powers conferred by Section 124 read with Section 28(4) and Section 28AAA of the Customs Act, 1962, Show Cause Notice No.147/2025-26/Commnr./NS-III/Gr.III/CAC/JNCH dated 16.05.2025 was issued to M/s. 3M India Limited (IEC:793012112) '48-51, Electronic City, Hosur Road, Bangalore, Karnataka-560100, whereby the Noticee was called upon to show cause to the Commissioner of Customs, NS-III, JNCH, Mumbai Customs Zone-II having office situated at Jawaharlal Nehru Customs House (JNCH), Taluka- Uran, Distt: Raigad, Nhava Sheva, Maharashtra-400707, within 30 days from the date of receipt of this Notice as to why:-

(i) The benefit of concessional rate of BCD under Notification No.20/2020-Cus., dated 09.04.2020 for the subject goods should not be rejected and BCD rates under 56039400, 76169990 and 56031200 should not be levied.

(ii) The differential BCD amount of Rs.85,76,827/- (Rupees Eighty-Five Lakh Seventy-Six Thousand Eight Hundred and Twenty-Seven only) with respect to the items covered under Bill of entry as mentioned in Annexure-A to this notice should not be demanded under Section 28 (4) of the Customs

Act, 1962 along with applicable interest as per Section 28AA of the Customs Act, 1962.

(iii) The subject goods as detailed in Annexure-A to this notice having a total assessable value of Rs. 3,14,97,736/- (Rupees Three Crore Fourteen Lakh Ninety-Seven Thousand Seven Hundred and Thirty-Six only) should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962.

(iv) Penalty should not be imposed on the importer under Section 112, Section 114(A) read with Section 28(5) and Section 117 of the Customs Act, 1962.

DEFENCE REPLY

13. The Noticee vide letter dated 06.06.2025 submitted written reply to the SCN. The Noticee in his written submission has inter-alia submitted as follows: -

A. *At the outset, it is submitted that the SCN has been issued without appreciating the factual matrix in the right perspective, is contrary to settled law and deserves to be dropped on this ground alone.*

B. THE DISPUTED PRODUCTS ARE ELIGIBLE FOR DUTY BENEFIT UNDER S.NO 5, NOTIFICATION NO 20/2020 DATED 09.04.2020

B1 *Notification No 20/2020 dated 09.04.2020 exempts the goods from the whole of the duty of customs leviable thereon under the First Schedule to the said Customs Tariff Act and the whole of health cess leviable thereon under section 141 the said of Finance Act, 2020.*

Table S. No.	Chapter of Heading or sub-heading or tariff item	Description of goods
1	9018 or 9019	Artificial respiration or other therapeutic respiration apparatus (Ventilators)
2	63or anychapter	Face masks and surgical Masks
3	62or anychapter	Personal Protection Equipment(PPE)
4	30,38 or anychapter	Covid-19testingkit
5	Any chapter	Inputs for manufacturing of itemsatSr.No.1to4above, subject to the condition that the importer follows the procedure set out in the Customs(Import of Goods at Concessional Rate of Duty) Rules, 2017

B2 *The disputed products are neither imported VTM (Viral Transport Media) Kits nor RNA extraction kits nor raw materials of VTM (Viral*

Transport Media) Kits and RNA extraction kits as mentioned in the SCN.

B.3 *The disputed products are raw materials of face masks manufactured in the manufacturing facility of Noticee located at Ranjangaon, Pune. Catalogues of facemask are enclosed as **Annexure-7**.*

B.4 *It is submitted that the Noticee has obtained necessary permission from Customs Division, Pune which had jurisdiction over Ranjangaon, Pune where the noticee manufactured face masks using the imported raw materials.*

B.5 *Therefore the disputed products are eligible for claim of duty benefit under Notification No.20/2020-Cus dated 09.04.2020.*

Accordingly, the Noticee has prayed to drop the demand & proceedings initiated vide SCN."

RECORD OF PERSONAL HEARINGS

14. In order to follow principle of natural justice, an opportunity of personal hearing was granted to Noticee on **05.08.2025 vide this office letter dated 25.07.2025**. However, the same were not availed by the Noticee and the Noticee vide letter dated 05.08.2025 stated that they received the personal hearing letter on the day of hearing. Accordingly, they have requested to fix the personal hearing by third week of the August, 2025. Consequently, **another personal hearing was granted to Noticee on 20.08.2025 vide this office letter dated 06.08.2025**. However, the same were also not availed by the Noticee. **Accordingly, last opportunity was granted to Noticee on 08.09.2025** vide this office letter dated 01.09.2025. Shri Gokul Ramasamy, Sr. Manager, Transportation & Trade Compliance on behalf of Noticee **appeared before this adjudicating authority (virtually) on 08.09.2025**.

14.1 Shri Gokul Ramasamy, Sr. Manager, Transportation & Trade Compliance on behalf of Noticee appeared before this adjudicating authority (virtually) on 08.09.2025 and submitted as follows: -

"They have imported raw material of Covid Mask in the form of fabric and other parts like aluminium nose clips etc. They have not imported VTM Kits and RNA extraction kits.

- *Also stated that they have fulfilled the requisite compliances under IGCR Rule by sending emails to the local Pune Customs Office. However due to their global email policy they do not maintain emails beyond 6 months, therefore they are not accordingly able to reproduce them.*
- *Since 2014, their imports have been being assessed provisionally on account of valuation and related person issue. Therefore, the subject bills of entry were also provisionally assessed. Accordingly, they have got their PD bond debited.*
- *However, they have not submitted any continuity bond under IGCR Rules to the Customs at JNCH port. They have submitted permission letters issued by Pune Customs through e-Sanchit at the time of BOE filing, copies of permission letters were also submitted vide their letter dated 6th June 2025.*
- *Since it was Covid time and since they have used imported raw material in the manufacture of Covid mask a lenient view may be taken and demand may dropped. Nothing further to add."*

DISCUSSION AND FINDINGS

15. I have carefully gone through the Show Cause Notice (SCN), the applicable legal

provisions, defense submissions, material on record and facts of the case. Before going into the merits of the case, I would like to discuss whether the case has reached finality for adjudication.

PRINCIPLE OF NATURAL JUSTICE

16 . Before going into the merits of the case, I observe that in the instant case, in compliance of the provisions of Section 28(8) the Customs Act, 1962 and in terms of the principle of natural justice, personal hearing opportunity was granted to the Noticee and **Personal Hearing was attended by the authorized representative of the Noticee on 08.09.2025. The Noticee have already submitted their detailed defense reply** vide letter dated 06.06.2025. The Authorized Representatives of Noticee reiterated their written submissions and confirmed that nothing more they want to add to their submissions. Moreover, as per the provisions of Section 28(9) of the Customs Act, 1962, this adjudicating authority is under strict legal obligation to complete the adjudication proceedings within a time bound manner. I thus find that the principle of natural justice has been followed and I can proceed ahead with the adjudication process. I also refer to the following case laws on this aspect-

- Sumit Wool Processors Vs. CC, Nhava Sheva [2014 (312) E.L.T. 401 (Tri. - Mumbai)]
- Modipon Ltd. vs. CCE, Meerut [reported in 2002 (144) ELT 267 (All.)]

FRAMING OF ISSUES

17. Pursuant to a meticulous examination of the Show Cause Notice and a thorough review of the case records, the following pivotal issues have been identified as requisite for determination and adjudication:

- A. **As to whether the benefit of concessional rate of BCD under Notification No.20/2020-Cus., dated 09.04.2020 is extendable to goods imported vide Bills of Entry, as detailed in Annexure-A to Show Cause Notice.**
- B. **As to whether the differential duty is demandable under Section 28(4) along with Section 28AA thereon.**
- C. **As to whether the impugned goods are liable for confiscation under Section 111(m) of the Customs Act, 1962 and penalty is imposable on the Noticee under Section 112, 114A and 117 of the Customs Act, 1962.**

A. Now I take the first question/issue, as to whether the benefit of concessional rate of BCD under Notification No.20/2020-Cus., dated 09.04.2020 is extendable to goods imported vide Bills of Entry, as detailed in Annexure-A to Show Cause Notice.

18 I observe that Noticee has taken the benefit of Sr. No. 05 of Notification No.20/2020-Cus., dated 09.04.20, the relevant portion of the said notification is reproduced below: -

“G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) read with section 141 of Finance Act, 2020 (12 of 2020), the Central Government on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the said Customs Tariff Act specified in column (2) of the Table below, from whole of the duty

of customs leviable thereon under the First Schedule to the said Customs Tariff Act and the whole of health cess leviable thereon under section 141 the said of Finance Act, 2020:

‘Table-A’

Sr. No.	Chapter of Heading or sub-heading or tariff item	Description of goods
1	9018 or 9019	Artificial respiration or other therapeutic respiration apparatus (Ventilators)
2	63 or any chapter	Face masks and surgical Masks
3	62 or any chapter	Personal Protection Equipment (PPE)
4	30, 38 or any chapter	Covid-19 testing kit
5	Any chapter	Inputs for manufacturing of items at Sr. No. 1 to 4 above, subject to the condition that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.

2. This notification shall remain in force upto and inclusive of the 30th September, 2020”

18.1 I observe that under Sr. 05 of the said notification provides exemption from the whole of the BCD and the whole of the Health Cess leviable under Section 141 of the Finance Act, 2020, on the import inputs for manufacturing of certain goods, related to the COVID-19 pandemic **subject to the condition that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, till 30th September, 2020.** The goods covered under the exemption include:

- Artificial respiration or other therapeutic respiration apparatus (Ventilators) falling under tariff headings 9018 or 9019;
- Face masks and surgical masks classifiable under Chapter 63 or any chapter;
- Personal Protective Equipment (PPE) classifiable under Chapter 62 or any chapter;
- COVID-19 testing kits classifiable under Chapter 30, 38 or any chapter;
- Inputs used in the manufacture of the above-mentioned goods;

18.2 I further observe that Noticee has availed the benefit of concessional rate of BCD under Sr. No 05 of Notification 20/2020 dated 09.04.2020 for importing the following goods as mentioned in Annexure-A, as follows:

Bills of Entry as per Annexure-A

BE Number	BE Date	Eight Digit HS Code	Full Item Description	Assessable Value Amount (Rs.)	BCD exemption Notification availed	Duty paid (Rs.)
8131576	7/10/2020	56031200	NON WOVEN FABRICS(BETWEEN 25G/M2A) - HE8210TRIMMED INNERSHELL KOREA 8210,1860,1860W -WX700901068 (168 CS)	1,169,866		140,384
8077169	7/4/2020	56031200	NON WOVEN FABRICS (BETWEEN 25g/m2a-TRIMMED RESINLESS INNERSHELLS (103680 EACH)	352,145		42,258
7972242	6/22/2020	56031200	NON WOVEN FABRICS (BETWEEN 25G/M2A) : PREFORM ROLL 9913IN EN149 FFP 1(19760 LNYD	2,826,653		339,198
8219232	7/20/2020	56031200	NON WOVEN FABRICS (BETWEEN 25G/M2A) :			

			PREFORM ROLL 9913IN EN149 FFP 1(24946 LNYD)	3,417,812		410,138
8409207	8/8/2020	56031200	NON WOVEN FABRICS(BETWEEN 25G/M2A) - HE8210TRIMMED INNERSHELL KOREA 8210,1860,1860W -WX700901068 (61 CS)	376,365		45,164
7841846	6/6/2020	56031200	NON WOVEN FABRICS (BETWEEN 25g/m2a) - 9504IN P2 2L MINT ZALSLIT WEB W255MM(43640.00 M)	1,776,771		213,213
8631551	8/29/2020	56031200	NON WOVEN FABRICS(BETWEEN 25G/M2A) - HE8210TRIMMED INNERSHELL KOREA 8210,1860,1860W -WX700901068 (61 CS)	1,052,510		126,301
8265606	7/24/2020	56031200	NON WOVEN FABRICS (BETWEEN 25G/M2A) : PREFORM ROLL 9913IN EN149 FFP 1(22344 LNYD)	3,085,775		370,293
7841846	6/6/2020	56031200	NON WOVEN FABRICS (BETWEEN 25g/m2a) - 9504IN P2 2L MINT ZALSLIT WEB W255MM(141600.00 M)	5,765,142		691,817
7926591	6/17/2020	56031200	NON WOVEN FABRICS(BETWEEN 25G/M2A) - HE8210TRIMMED INNERSHELL KOREA 8210,1860,1860W -WX700901068 (168 CS)	1,164,527	Sr. No 5 of Notification No. 020/2020 dated 09.04.2020	139,743
7630998	5/11/2020	56031200	NON WOVEN FABRIC	2,881,430		345,772
8855175	9/18/2020	56031200	NON WOVEN FABRIC	980,295		117,635
8050391	7/1/2020	56039400	NON WOVEN FABRICS (>150G/M2) - 8710 IN PREFORM WX700901423 (61 MT)	427,746		51,330
8565376	8/24/2020	56039400	NON WOVEN FABRICS (>150G/M2) - 8710 IN PREFORM WX700901423 (58950 MT)	953,145		114,377
8291075	7/27/2020	56039400	NON WOVEN FABRICS (>150G/M2) - 8710 IN PREFORM WX700901423 (58950 MT)	309,828		37,179
8050891	7/1/2020	56039400	NON WOVEN FABRICS (>150G/M2) - 8710 IN PREFORM WX700901423 (61 MT)	434,112		52,094
8230715	7/21/2020	56039400	NON WOVEN FABRICS (>150G/M2) - 8710 IN PREFORM WX700901423 (61 MT)	317,955		38,155
7747738	5/26/2020	56039400	NON WOVEN FABRICS (>150G/M2) - 8710 IN PREFORM WX700901423 (13100 MT)	214,132		25,696
7745303	5/25/2020	56039400	NON WOVEN FABRICS (>150G/M2) - 8710 IN PREFORM WX700901423 (45850 MT)	754,211		90,505
7975679	6/22/2020	76169990	ALUMINIUM WIRE : DDD FLAT STITCHING WIRE GALVANIZED 1.55 X 0.43MM / K7 SPOOLS	373,041		67,147
8266708	7/24/2020	76169990	NOSE CLIP (ALUMINIUM) -EAF 304 NOSE CLIP#8706(398040 EACH)	413,882		74,499
8266708	7/24/2020	76169990	NOSE CLIP (ALUMINIUM) -EAF 304 NOSE CLIP#8706(398040 EACH)	413,882		74,499
7636428	5/11/2020	76169990	ALLUMINIUM	391,886		70,540
7972004	6/22/2020	84818090	INDUSTRIAL VALVES -CPC VALVE PRINTED - 3M LOGO JAP AN REQ (240000 EACH)	1,644,622		296,032
			Total (Rs.)	31,497,736		

I further observe that the imported goods are Non-Woven Fabrics, Aluminum Wire, Valves, and can be used as inputs for manufacturing of Face Masks. It is also observed that the imported goods are neither VTM (Viral transport Media) kits, RNA extraction kits, nor inputs for VTM kits such as nasopharyngeal swab and plastic tubes.

18.3 Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, relevant portion is reproduced, as follows:

“4. Information about intent to avail benefit of exemption notification.

An importer who intends to avail the benefit of an exemption notification shall provide the information to the Deputy Commissioner of Customs or, as the case may be, 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, the particulars, namely:

- i. *the name and address of the manufacturer;*
- ii. *(ii) the goods produced at his manufacturing facility;*
- iii. *(iii) the nature and description of imported goods used in the manufacture of goods or providing an output service.*

5. Procedure to be followed

(1) The importer who intends to avail the benefit of an exemption notification shall provide information (a) in duplicate, to the Deputy Commissioner of Customs or, as the case may be, 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, the estimated quantity and value of the goods to be imported, particulars of the exemption notification applicable on such import and the port of import in respect of a particular consign meant for a period not exceeding one year; and (b) in one set, to the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs at the Custom Station of importation.

(2) The importer who intends to avail the benefit of an 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 in puts 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.

(3) The Deputy Commissioner of Customs or, as the case may be, 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, shall forward one copy of information received from the importer to the Deputy Commissioner of Customs, or as the case may be, Assistant Commissioner of Customs at the Custom Station of importation.

(4) On receipt of the copy of the information under clause (b) of sub rule (1), the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs at the Custom Station of importation shall allow the benefit of the exemption notification to the importer who intends to avail the benefit of exemption notification.

6. Importer who intends to avail the benefit of an exemption notification to give information regarding receipt of imported goods and maintain records:

(1) The importer who intends to avail the benefit of an exemption notification shall provide the information of the receipt of the imported goods in his premises where goods shall be put to use for manufacture, within two days (excluding holidays, if any) of such receipt to the jurisdictional Customs Officer.

(2) The importer who has availed the benefit of an exemption notification shall maintain an account in such manner so as to clearly indicate the quantity and value of goods imported, the quantity of imported goods consumed in accordance with provisions of the exemption notification, the quantity of goods re-exported, if any, under rule 7 and the quantity remaining in stock, bill of entry wise and shall produce the said account as and when required by the Deputy Commissioner of Customs or, as the case may be, 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.

(3) The importer who has availed the benefit of an exemption notification shall submit a

quarterly return, in the Form appended to these rules, to the Deputy Commissioner of Customs or, as the case may be, 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, by the tenth day of the following quarter”

I observe the provisions of the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, which stated that an importer availing exemption or concessional rate of duty is mandatorily required to comply with the prescribed procedural conditions. This includes submission of prior intimation to the Customs officer jurisdiction over the premises where the imported goods shall be put to use for manufacture, execution of bond, declaration of intended use, intimation to the Customs officer at the Custom Station of importation, intimation of receipt and use of the imported goods for the specified purpose, and maintenance of proper accounts of receipt, consumption, and stock. The importer is also obligated to file periodic/quarterly returns and furnish information as and when required by the Customs authorities. Any deviation, mis-declaration, or non-compliance with the said rules renders the importer liable to pay the differential duty along with applicable interest and penalties, as per the provisions of the Customs Act, 1962. Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 as Notified vide Notification 68-Cus (NT)/30.06.2017.

18.4 Violation of the essential condition of exemption Notification No. 20/2020-Cus., dated 09.04.2020 and Import of Goods at Concessional Rate (IGCR) Rules, 2017: In the instant case, the Noticee has filed Bills of Entry, as detailed in Annexure-A and referred to in Para 18.2 above, for the clearance of goods such as Non-Woven Fabrics, Aluminum Wire, and Valves, while availing the benefit of customs duty exemption under Sl. No. 5 of Notification No. 20/2020-Customs, dated 09.04.2020. I observe that the impugned Bills of Entry were self-assessed by the importer and were facilitated through the Risk Management System (RMS). I further observe that the importer did not upload or submit the mandatory documents prescribed under the Import of Goods at Concessional Rate (IGCR) Rules, 2017 including the prior intimation in prescribed form and submission and debiting of continuity bond to the Customs Officer at the Port of Import, through e-Sanchit at the time of importation. The non-submission of these essential documents constitutes a substantial violation of the requirements under the said Rules. I find that the Noticee has completely failed to comply with the essential conditions of the exemption **Notification No. 20/2020-Cus., dated 09.04.2020 and Import of Goods at Concessional Rate (IGCR) Rules, 2017.** The Noticee has failed to provide any records of submission of intimation to the Customs officer at the Custom Station of importation, presentation and debiting of the continuity bond at the time of import under Rule 5 of IGCRD Rules, 2017. Same is evident from the PART-IV-ADDITIONAL DETAILS sub section:-L. SUPPORTING DOCUMENTS of Out of Charge Copy of the Bills of Entry as mentioned in Annexure-A, submitted by the Noticee vide written submissions dated 06.06.2025. Noticee has also not provided any documentary evidence of Intimation of receipt of the imported goods in his premises to the jurisdictional Customs Officer, use of the imported goods for the specified purpose and maintenance of account clearly indicating the quantity and value of goods imported, the quantity of imported goods consumed for manufacturing of the final product and stock left. The Noticee has also failed to file quarterly return, in the prescribed Form and furnish information as and when required by the Customs authorities under Rule 6 of IGCRD Rules, 2017. Noticee has not produced any evidence to the effect that they have actually manufactured and sold the exempted Covid Mask out of the imported material. These deviations in spite of clear -declaration in the subject BOEs to the contrary constitutes non-compliance with the essential condition of said exemption notification and said rules along with constituting misdeclaration which renders the Noticee liable to pay the differential

duty along with applicable interest and penalties, as per the provisions of the Customs Act, 1962. Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 as Notified vide Notification 68-Cus (NT)/30.06.2017. Therefore, it is evident that the Noticee has failed to comply with the mandatory procedural requirements prescribed under the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, which is a crucial condition for availing the exemption benefit under Sl. No. 5 of Notification No. 20/2020-Customs, dated 09.04.2020.

18.5 However, I observe that Noticee vide **written submissions dated 06.06.2025** has contended that the disputed products are eligible for Customs duty benefit under Sr. No 5, notification no 20/2020 dated 09.04.2020 and are neither imported VTM (Viral Transport Media) Kits and RNA extraction kits nor raw materials of VTM (Viral Transport Media) Kits and RNA extraction kits as mentioned in the SCN. Further, the Noticee has submitted that the disputed products are raw materials of face masks manufactured in the manufacturing facility of Noticee located at Ranjangaon, Pune and the Noticee has obtained necessary permission from Customs Division, Pune having jurisdiction over Ranjangaon, Pune where the Noticee manufactured face masks using the imported raw materials.

18.5.1 Further vide **Personal Hearing dated 08.09.2025** has submitted that stated that they have fulfilled the requisite compliances under IGCR Rule by sending emails to the local Pune Customs Office. However due to their global email policy they do not maintain emails beyond 6 months, therefore they are not accordingly able to reproduce them. It is also submitted that, since 2014, their imports have been being assessed provisionally on account of valuation and related person issue. Therefore, the subject bills of entry were also provisionally assessed. Accordingly, they have got their Provisional Duty bond debited. Also submitted that they have submitted permission letters issued by Pune Customs through e-Sanchit at the time of BOE filing, copies of permission letters were also submitted vide their letter dated 6th June 2025. However, they have not submitted any continuity bond under IGCRD Rules, 2017 to the Customs at JNCH port. Further, Noticee submitted that, since it was Covid time and since they have used imported raw material in the manufacture of Covid mask a lenient view may be taken and demand may dropped. They have nothing further to add.

18.5.2 I observe that the imported goods are Non-Woven Fabrics, Aluminum Wire, Valves, and can be used as inputs for manufacturing of Face Masks. However, it is also observed that the imported goods can be used in other final products, other than Covid Mask. I also observed that the imported goods are neither VTM (Viral transport Media) kits, RNA extraction kits, nor inputs for VTM kits such as nasopharyngeal swab and plastic tubes.

18.5.3 However, the submission of the Noticee that the imported goods were raw materials for the manufacture of face masks and are, therefore, eligible for exemption under Sl. No. 5 of Notification No. 20/2020-Customs, dated 09.04.2020, is found to be untenable and devoid of merit. As per the plain reading of the said Notification, the benefit under Sl. No. 5 is specifically available only to 'inputs for the manufacture of goods mentioned at Sl. Nos. 1 to 4', and subject to the condition that the importer strictly complies with the procedural requirements of the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. In the instant case, I find that the impugned Bills of Entry were self-assessed by the importer and facilitated through the Risk Management System (RMS), placing the responsibility squarely on the importer to ensure that all conditions of the notification and relevant rules were meticulously fulfilled. However, it is observed that the importer failed

to upload or submit the mandatory documents, prescribed under the Import of Goods at Concessional Rate (IGCR) Rules, 2017 including the prior intimation in prescribed form, submission & debiting of Continuity Bond to the Customs Officer at the Port of Import, through e-Sanchit at the time of importation.

18.5.3.1 I further observe that the Noticee vide Personal Hearing dated 08.09.2025 has submitted that they have submitted permission letters issued by Pune Customs through e-Sanchit at the time of BOE filing & copies of permission letters were also submitted vide their letter dated 6th June 2025. In this regard, I observe the copies of the Bills of Entry submitted by the Noticee vide written submission dated 06.06.2025. I observe the **PART-IV-ADDITIONAL DETAILS sub section:- L. SUPPORTING DOCUMENTS**. I find that said permission letters issued by Pune Customs, as claimed by the Noticee, are not mentioned in any of the Bills of Entry as detailed in Annexure-A and referred to in Para 18.2 above. Therefore I find this submission of the Noticee as false and misleading.

18.5.3.2 The non-submission of these essential documents constitutes a substantial violation of the requirements under the said Rules. Further, The Noticee has failed to provide any records of submission of intimation to the Customs officer at the Custom Station of importation, presentation and debiting of the continuity bond at the time of import under Rule 5 of IGCRD Rules, 2017. Same is evident from the PART-IV-ADDITIONAL DETAILS sub section:-L. SUPPORTING DOCUMENTS of Out of Charge Copy of the Bills of Entry as mentioned in Annexure-A, submitted by the Noticee vide written submissions dated 06.06.2025. Noticee has also not provided any documentary evidence of Intimation of receipt of the imported goods in his premises to the jurisdictional Customs Officer, use of the imported goods for the specified purpose and maintenance of account clearly indicating the quantity and value of goods imported, the quantity of imported goods consumed for manufacturing of the final product and stock left. The Noticee has also failed to file quarterly return, in the prescribed Form and furnish information as and when required by the Customs authorities under Rule 6 of IGCRD Rules, 2017. Noticee has not produced any evidence to the effect that they have actually manufactured and sold the exempted Covid Mask out of the imported material. These deviations in spite of clear -declaration in the subject BOEs to the contrary constitutes non-compliance with the essential condition of said exemption notification and said rules along with constituting misdeclaration which renders the Noticee liable to pay the differential duty along with applicable interest and penalties, as per the provisions of the Customs Act, 1962. Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 as Notified vide Notification 68-Cus (NT)/30.06.2017.

18.5.4 I also observe that, the findings of Para 18.5.3 supra are also accepted by the Noticee during Personal Hearing dated 08.09.2025, wherein Noticee has submitted that they have not submitted any continuity bond under Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 to the Customs at JNCH port (being the port of import in the present case) and instead has only submitted Provisional Duty Bond on account of their ongoing issue regarding valuation and related person issue. Further, they stated that they have informed the jurisdictional customs authorities only through e-mail which also they are not able to provide in the guise of their e-mail policy. Therefore, Noticee has not provided any evidence whatsoever to the effect that they have complied with **the essential conditions of exemption Notification No. 20/2020-Cus., dated 09.04.2020 and Import of Goods at Concessional Rate (IGCR) Rules, 2017**.

18.5.5 I also observe that, the Noticee during Personal Hearing dated 08.09.2025

submitted that they have fulfilled the requisite compliances under IGCRD Rules, 2017 by sending e-mails to the local Pune Customs Office. However due to their global e-mail policy they do not maintain e-mails beyond 6 months, therefore they are not accordingly able to reproduce them. That, they have used imported raw material in the manufacture of Covid mask.

18.5.6 I find no merit in the submission of the Noticee, as even though if they don't have e-mails regarding IGCRD, Rules 2017 compliance documents submitted to Pune Customs, an importer availing benefit of exemption Notification 20/2020 dated 09.04.2020, is required to intimate receipt of imported goods to the Jurisdictional Customs Officer under Rule 6 (1) of IGCRD Rules, 2017. Further, as per Rule 6 (2) *ibid*, an importer is required to maintain an account clearly indicating the quantity and value of goods imported, the quantity of imported goods consumed in accordance with provisions of the exemption notification, the quantity of goods re-exported, if any, under rule 7 and the quantity remaining in stock, bill of entry wise and shall produce the said account as and when required by the Jurisdictional Customs Officer. Also, as per Rule 6 (3) *ibid*, an importer is required to submit quarterly return in prescribed form, clearly indicating details of goods imported during the quarter, Bill of Entry No. and date, Goods manufactured during the quarter etc. However, it is observed that the Noticee has not produced any accounts, records, returns & document which are mandatory for compliance of Rule 6 of IGCRD, Rules 2017, as discussed *supra*. Further, it is also observed that the Noticee has also not produced acknowledgement or any other document received from Pune Customs, as a proof of submission of returns, proper maintenance of accounts/ records and proper utilization of impugned goods imported by availing benefit of exemption Notification 20/2020 dated 09.04.2020 as per the provisions of the Customs Act, 1962. Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 as Notified vide Notification 68-Cus (NT)/30.06.2017

18.6 In view of forgoing discussions, it is evident that the Noticee has failed to comply with the mandatory **and essential condition of exemption Notification No. 20/2020-Cus., dated 09.04.2020 and Import of Goods at Concessional Rate (IGCR) Rules, 2017**. I observe the said condition is a substantial and crucial condition for availing the exemption benefit under Sl. No. 5 of Notification No. 20/2020-Customs, dated 09.04.2020. In this regard, on 30 July 2018, the constitution bench of the Supreme Court of India (Court), in Commissioner of Customs (Import), Mumbai (Appellant) v Dilip Kumar and Company & Ors. (Respondent) [Civil Appeal No. 3327 OF 2007], has pronounced the principles for the interpretation of exemption notifications in taxation statutes in the following manner: -

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

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

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

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

Therefore the benefit under Sl. No. 5 of Notification No. 20/2020-Customs, dated 09.04.2020 cannot be granted the impugned goods, imported by the Noticee. These deviations in spite of clear declaration in the subject BOEs to the contrary constitutes non-compliance with the essential condition of said exemption notification and said rules along

with constituting misdeclaration which renders the importer liable to pay the differential duty along with applicable interest and penalties, as per the provisions of the Customs Act, 1962. Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 as Notified vide Notification 68-Cus (NT)/30.06.2017

B. Now, I take up the next issue, as to whether the differential duty is demandable under Section 28(4) along with Section 28AA thereon.

19. I observe that from the above discussions, it is an undisputed fact that the Noticee has failed to comply with the mandatory procedural requirements prescribed under the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, which is a crucial condition for availing the exemption benefit under Sl. No. 5 of Notification No. 20/2020-Customs, dated 09.04.2020.

19.1 I refer to Section 28(4), which states that 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 facts**, by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been [so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

19.2 I observe that from the advent of self-assessment in 2011, it is the responsibility of the importer under Section 46(4) and 46(4A) of Customs Act, 1962 while presenting the Bill of Entry under Section 46(1) that it shall make and subscribe to a declaration as to the truth and correctness of the contents of the Bill of Entry and to correct value, classification, description of the goods, exemption notification and self- assess duty, etc. Although the importer has subscribed that the declaration in the said Bills of Entry is true and correct, I observe that this is not the case.

19.2.1 I observe that the impugned Bills of Entry were self-assessed by the importer and were facilitated through the Risk Management System (RMS). I also observe that Noticee vide written submissions dated 06.06.2025 have submitted a copy of the letter ref. F. No. VIII/CUS/RJN/3M/IGCRD/48-164/2019-20/2155 dated 27.04.2020 issued by Pune Customs wherein it is informed that the Noticee intend to procure imported raw material at concessional rate of duty under Customs IGCRD Rules 2017, as per Notification 20/2020 dated 09.04.2020 and have executed continuity bond. Therefore, the Noticee was well aware about the procedural requirements of IGCRD Rules, 2017.

19.2.2 However, it is observed that Noticee did not upload or submit the mandatory documents prescribed under the Import of Goods at Concessional Rate (IGCR) Rules, 2017 including the prior intimation in prescribed form and continuity bond to the Customs Officer at the Port of Import, i.e. Customs at JNCH Port, through e-Sanchit at the time of importation. I also refer to the findings of Para 18.5.4, wherein this fact has been accepted by the Noticee during Personal Hearing dated 08.09.2025, wherein Noticee has submitted that they have not submitted any continuity bond under Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 to the Customs at JNCH port at the time of importation and instead has only submitted Provisional Duty Bond on account of their

ongoing related person valuation issue regarding valuation and related person issue. The said valuation issue and SVB Bond are entirely different proceedings under the provisions of Section 14 and rules made there under and have nothing to do with the issue at hand. Moreover, it is an undisputed fact in terms of findings at Para 18 above that Noticee has failed to comply with the essential condition of the exemption **Notification No. 20/2020-Cus., dated 09.04.2020 and Import of Goods at Concessional Rate (IGCR) Rules, 2017**. These deviations in spite of clear-declaration in the subject BOEs to the contrary constitutes non-compliance with the essential condition of said exemption notification and said rules along with constituting misdeclaration which renders the importer liable to pay the differential duty along with applicable interest and penalties, as per the provisions of the Customs Act, 1962. Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 as Notified vide Notification 68-Cus (NT)/30.06.2017.

19.3 Therefore, Noticee has willfully not complied with the mandatory procedural requirements prescribed under the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, which is a crucial condition for availing the exemption benefit under Sl. No. 5 of Notification No. 20/2020-Customs, dated 09.04.2020. From above discussions, it is evident that the Noticee has willfully wrongly availed benefits of exemption Notification No. 20/220 dated 09.04.2020, which was not extendable. Due to deliberate non-compliance, duty demand against the Noticee has been correctly proposed under Section 28(4) of the Customs Act, 1962 by invoking the extended period of limitation. In support of my stand of invoking extended period, I rely upon the following court decisions:

- a. 2013(294)E.L.T.222(Tri.-LB): Union Quality Plastic Ltd. Versus Commissioner of C.E. & S.T., Vapi [Misc. Order Nos.M/12671-12676/2013-WZB/AHD, dated 18.06.2013 in Appeal Nos. E/1762-1765/2004 and E/635- 636/2008]: *In case of non-levy or short-levy of duty with intention to evade payment of duty, or any of circumstances enumerated in proviso ibid, where suppression or willful omission was either admitted or demonstrated, invocation of extended period of limitation was justified*
- b. 2013(290)E.L.T.322 (Guj.): Salasar Dyeing & Printing Mills (P) Ltd. Versus C.C.E. & C., Surat-I; Tax Appeal No. 132 of 2011, decided on 27.01.2012: *Demand - Limitation - Fraud, collusion, willful misstatement, etc. - Extended period can be invoked up to five years anterior to date of service of notice - Assessee's plea that in such case, only one year was available for service of notice, which should be reckoned from date of knowledge of department about fraud, collusion, willful misstatement, etc., rejected as it would lead to strange and anomalous results;*
- c. 2005 (191) E.L.T. 1051 (Tri. - Mumbai): Winner Systems Versus Commissioner of Central Excise & Customs, Pune: Final Order Nos. A/1022-1023/2005-WZB/C-I, dated 19-7-2005 in Appeal Nos. E/3653/98 & E/1966/2005-Mum. : *Demand - Limitation - Blind belief cannot be a substitute for bona fide belief - Section 11A of Central Excise Act, 1944. [Para 5]*
- d. 2006 (198) E.L.T. 275 - Interscape Versus CCE, Mumbai-I: *It has been held by the Tribunal that a bona fide belief is not blind belief. A belief can be said to be bona fide only when it is formed after all the reasonable considerations are taken into account;*

19.4 Accordingly, I determine the differential duty of **Rs.85,76,827/- (Rupees Eighty-Five Lakh Seventy-Six Thousand Eight Hundred and Twenty-Seven only)** against the goods imported vide Bills of Entry, as detailed in Annexure-A to SCN, under Section 28(8)

of the Customs Act, 1962 read with Section 28AA thereon, as follows:

19.5 Further, the Noticee is also liable to pay applicable interest under the provisions of Section 28AA of the Customs Act, 1962. The relevant provision as under:

Section 28AA. Interest on delayed payment of duty—

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

(2) Interest at such rate not below ten percent 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.

19.5.1 In this regard, the ratio laid down by Hon'ble Supreme Court in the case of CCE, **Pune V/s. SKF India Ltd. [2009 (239) ELT 385 (SC)]** wherein the Apex Court has upheld the applicability of interest on payment of differential duty at later date in the case of short payment of duty though completely unintended and without element of deceit. The Court has held that

“....It is thus to be seen that unlike penalty that, is attracted to the category of cases in which the non-payment or short payment etc. of duty is “by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of the Act or of Rules made thereunder with intent to evade payment of duty”, under the scheme of the four Sections (11A, 11AA, 11AB & 11AC) interest is leviable on delayed or deferred payment of duty for whatever reasons.”

Thus, interest leviable on delayed or deferred payment of duty for whatever reasons, is aptly applicable in the instant case.

C. Now coming to next issue, as to whether the impugned goods are liable for confiscation under Section 111(m) of the Customs Act, 1962 and penalty be imposable on the Noticee under Section 112, 114A and 117 of the Customs Act, 1962.

20. I *mutis-mutandis* re-iterate my findings at Para at 19.2.2. I observe that from the above discussions, that the Noticee has willfully not complied with the mandatory procedural requirements prescribed under the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017, which is a crucial condition for availing the exemption benefit under Sl. No. 5 of Notification No. 20/2020-Customs, dated 09.04.2020 and has wrongly availed benefits of exemption Notification No. 20/220 dated 09.04.2020, which was not extendable.

20.1 Therefore, in the present case, it is evident that the goods imported vide the Bills of Entry, as detailed in Annexure-A, do not correspond to the exemption claimed therein under Sr. No. 05 of Notification No. 20/2020-Customs, dated 09.04.2020. The benefit of the said exemption has been availed despite the goods being ineligible under the specified conditions of the notification and without adherence to the mandatory procedural

requirements prescribed under the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. By doing so, the importer has contravened the provisions of Section 17(1), Section 46(4), and Section 46(4A) of the Customs Act, 1962, which require a truthful and accurate self-assessment, and submission of correct particulars in the Bill of Entry.

20.2 I find that the SCN proposes confiscation of goods under the provisions of Section 111(m) of the Customs Act, 1962. Provisions of these Sections of the Act are re-produced below:

“SECTION 111. Confiscation of improperly imported goods, etc. — The following goods brought from a place outside India shall be liable to confiscation: —

(m) 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;”

20.3 In the present case, it is evident that the goods imported vide the Bills of Entry, as detailed in Annexure-A, **do not correspond to the exemption claimed** therein under Sr. No. 05 of Notification No. 20/2020-Customs, dated 09.04.2020. The benefit of the said exemption has been availed despite the goods being ineligible under the specified conditions of the notification and without adherence to the mandatory procedural requirements prescribed under the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. Therefore, on account of the aforesaid mis-statement in the aforementioned Bills of Entry, the impugned goods having a total Assessable Value of Rs. 3,14,97,736/- (Rs. Three Crore Fourteen Lakh Ninety-Seven Thousand Seven Hundred Thirty-Six Only) imported vide bill of entry as per Annexure-A, are liable for confiscation under Section 111(m), of the Customs Act, 1962. The goods are liable for confiscation also under Section 111(o) of the Customs Act, 1962. However, the Section 111(o) has not been invoked in the SCN. However, it is a well-settled principle of law that merely quoting a wrong section or failing to quote the correct section in a Show Cause Notice (SCN) will not vitiate the notice, provided that the substance of the charge is clearly stated and the recipient is not prejudiced. The validity of the SCN hinges on the clarity of the allegations, not on a technical error in citing the law. In this regard, I rely on following case law:-

- In Pruthvirajsinh N Jadeja(D) By Lrs. v Jayeshkumar Chhakaddasm Shah, in Civil Appeal No. 10521 of 2013 **on 4 October, 2013** (and similar other cases like **AIR ONLINE 2019 SC 1172, 2019 (9) SCC 533, (2019) 137 ALL LR 703, (2019) 13 SCALE 572, (2019) 203 ALL IND CAS 22, (2019) 4 CURCC 12, (2019) 4 RECCIVR 919, (2020) 1 ALL RENTCAS 52, (2020) 1 CIVLJ 239** the Supreme Court reiterated that misstating an incorrect provision is not fatal if the power to grant the order is available to the court.
- Similarly, the court in N. Jagadeesanvs K.Selvam held that simply quoting a wrong provision of law is not a reason to deny relief to a party.
- The ruling in P.K Palanisamy v. N. Arumugham supports the idea that mentioning a wrong provision does not disentitle a person from obtaining the relief they seek.

Accordingly, I find that acts of omission and commission on part of the Noticee have rendered the goods liable for confiscation under Sections 111(m) and 111(o) of the Customs Act, 1962.

20.4 However, I observe that the goods imported vide bills of entry as detailed above are

not available for confiscation. I rely upon the order 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:

"23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operates in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularized, 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 authorized by this Act...", brings out the point clearly. The power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. When once power of authorization for confiscation of goods gets traced to the said Section III 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 the payment of the 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. We accordingly answer question No. (i)."

20.5 I further observe that the above view 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), has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.) and the same have not been challenged by any of the parties in operation. I also observe that any goods improperly imported as provided in any sub-section of Section 111 of the Customs Act, 1962 are liable to confiscation and merely because the importer was not caught at the time of clearance of the imported goods, can't be given differential treatment.

In view of the above, I find that the decision of the Hon'ble Madras High Court in the case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), which has been passed after observing the decision of Hon'ble Bombay High Court in case of M/s Finesse Creations Inc. reported vide 2009 (248) ELT 122 (Bom)-upheld by Hon'ble Supreme Court in 2010(255) ELT A. 120(SC), is squarely applicable in the present case. Accordingly, I find that the present case also merits the imposition of a Redemption Fine.

20.6 I observe that Penal action under Section 112(a) and/or 114A and 117 of the Customs Act, 1962 has been proposed against the Noticee in the Show Cause Notice.

20.6.1 As per my detailed findings in Para's 18 and 19 above, I find that with the introduction of self-assessment by amendments to Section 17, since 8th April, 2011, it is the added and enhanced responsibility of the importer to declare the correct description, value, quantity, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

20.6.2 I reiterate my findings from Para's 18 and 19 above for the question of penalty also as the same are mutatis mutandis applicable to this issue also. The provisions of Section

112, 114A and 117 of the Customs Act, 1962 are reproduced as under: -

“SECTION 112. Penalty for improper importation of goods, etc. — Any person, -

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

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

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

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

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

As per the plain reading of the said Notification, the benefit under Sl. No. 5 is specifically available only to 'inputs for the manufacture of goods mentioned at Sl. Nos. 1 to 4', and subject to the condition that the importer strictly complies with the procedural requirements of the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. In the instant case, I find that the impugned Bills of Entry were self-assessed by the importer and facilitated through the Risk Management System (RMS), placing the responsibility squarely on the importer to ensure that all conditions of the notification and relevant rules were meticulously fulfilled. However, it is observed that the importer failed to upload or submit the mandatory documents, prescribed under the Import of Goods at Concessional Rate (IGCR) Rules, 2017 including the prior intimation in prescribed form and submission and debiting of Continuity Bond to the Customs Officer at the Port of Import, through e-Sanchit at the time of importation. The non-submission of these essential documents constitutes a substantial violation of the requirements under the said Rules. Further, the Noticee has failed to provide any records of submission of intimation to the Customs officer at the Custom Station of importation, presentation and debiting of the continuity bond at the time of import under Rule 5 of IGCRD Rules, 2017. Same is evident from the PART-IV-ADDITIONAL DETAILS sub section:-L. SUPPORTING DOCUMENTS of Out of Charge Copy of the Bills of Entry as mentioned in Annexure-A, submitted by the Noticee vide written submissions dated 06.06.2025. Noticee has also not provided any documentary evidence of Intimation of receipt of the imported goods in his premises to the jurisdictional Customs Officer, use of the imported goods for the specified purpose and maintenance of account clearly indicating the quantity and value of goods imported, the quantity of imported goods consumed for manufacturing of the final product and stock left. The Noticee has also failed to file quarterly return, in the prescribed Form and furnish information as and when required by the Customs authorities under Rule 6 of IGCRD Rules, 2017. Noticee has not produced any evidence to the effect that they have actually manufactured and sold the exempted Covid Mask out of the imported material. These deviations in-spite of clear -declaration in the subject BOEs to the contrary constitutes non-compliance with the essential condition of said exemption notification and said rules along

with constituting misdeclaration which renders the Noticee liable to pay the differential duty along with applicable interest and penalties, as per the provisions of the Customs Act, 1962. Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 as Notified vide Notification 68-Cus (NT)/30.06.2017.

SECTION 114A Penalty for short-levy or non-levy of duty in certain cases. - *Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under [sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined :*

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

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

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

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

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

SECTION 117. Penalties for contravention, etc., not expressly mentioned. — Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding [four lakh rupees].”

20.6.3 It is a settled law that fraud and justice never dwell together (Fraus et Jus nunquam cohabitant). Lord Denning had observed that “no judgement of a court, no order of a minister can be allowed to stand if it has been obtained by fraud, for, fraud unravels everything” there are numerous judicial pronouncements wherein it has been held that no court would allow getting any advantage which was obtained by fraud. The Hon’ble Supreme Court in case of CC, Kandla vs. Essar Oils Ltd. reported as 2004 (172) ELT 433 SC at Para’s 31 and 32 held as follows:

“31. “Fraud” as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former

either by words or letter. **It is also well settled that misrepresentation itself amounts to fraud.** Indeed, innocent misrepresentation may also give reason to claim relief against fraud. **A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood.** It is a fraud in law if a party makes representations, which he knows to be false, although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (Ram Chandra Singh v. Savitri Devi and Ors.[2003 (8) SCC 319].

32. "Fraud" and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. Principle Bench of Tribunal at New Delhi extensively dealt with the issue of Fraud while delivering judgment in Samsung Electronics India Ltd. Vs commissioner of Customs, New Delhi reported in 2014(307)ELT 160(Tri. Del). In Samsung case, Hon'ble Tribunal held as under.

"If a party makes representations which he knows to be false and injury ensues there from although the motive from which the representations proceeded may not have been bad is considered to be fraud in the eyes of law. It is also well settled that misrepresentation itself amounts to fraud when that results in deceiving and leading a man into damage by wilfully or recklessly causing him to believe on falsehood. Of course, innocent misrepresentation may give reason to claim relief against fraud. In the case of Commissioner of Customs, Kandla vs. Essar Oil Ltd. - 2004 (172) E.L.T. 433 (S.C.) it has been held that by "fraud" is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill-will towards the other is immaterial. "Fraud" involves two elements, deceit and injury to the deceived.

Undue advantage obtained by the deceiver will almost always cause loss or detriment to the deceived. Similarly a "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (Ref: S.P. Changalvaraya Naidu v. Jagannath [1994 (1) SCC 1: AIR 1994 S.C. 853]. It is said to be made when it appears that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly and carelessly whether it be true or false [Ref :RoshanDeenv. PreetiLal [(2002) 1 SCC 100], Ram PreetiYadav v. U.P. Board of High School and Intermediate Education [(2003) 8 SCC 311], Ram Chandra Singh's case (supra) and Ashok Leyland Ltd. v. State of T.N. and Another [(2004) 3 SCC 1].

Suppression of a material fact would also amount to a fraud on the court [(Ref: Gowrishankarv. Joshi Amha Shankar Family Trust, (1996) 3 SCC 310 and S.P. Chengalvaraya Naidu's case (AIR 1994 S.C. 853)]. No judgment of a Court can be allowed to stand if it has been obtained by fraud. Fraud unravels everything and fraud vitiates all transactions known to the law of however high a degree of solemnity. When fraud is established that unravels all. [Ref: UOI v. Jain ShudhVanaspati Ltd. - 1996 (86) E.L.T. 460 (S.C.) and in Delhi Development Authority v. Skipper Construction Company (P) Ltd. - AIR 1996 SC 2005]. Any undue gain made at the cost of Revenue is to be restored back to the treasury since fraud committed against Revenue voids all judicial acts, ecclesiastical or temporal and DEPB scrip obtained playing fraud against the public authorities are non-

est. So also, no Court in this country can allow any benefit of fraud to be enjoyed by anybody as is held by Apex Court in the case of Chengalvaraya Naidu reported in (1994) 1 SCC 1: AIR 1994 SC 853. Ram PreetiYadavv. U.P. Board High School and Inter Mediate Education (2003) 8 SCC 311.

A person whose case is based on falsehood has no right to seek relief in equity [Ref: S.P. Chengalvaraya Naidu v. Jagannath, AIR 1994 S.C. 853]. It is a fraud in law if a party makes representations, which he knows to be false, and injury ensues there from although the motive from which the representations proceeded may not have been bad. [Ref: Commissioner of Customs v. Essar Oil Ltd., (2004) 11 SCC 364 = 2004 (172) E.L.T. 433 (S.C.)].

When material evidence establishes fraud against Revenue, white collar crimes committed under absolute secrecy shall not be exonerated as has been held by Apex Court judgment in the case of K.I. Pavunnyv.AC, Cochin - 1997 (90) E.L.T. 241 (S.C.). No adjudication is barred under Section 28 of the Customs Act, 1962 if Revenue is defrauded for the reason that enactments like Customs Act, 1962, and Customs Tariff Act, 1975 are not merely taxing statutes but are also potent instruments in the hands of the Government to safeguard interest of the economy. One of its measures is to prevent deceptive practices of undue claim of fiscal incentives.

It is a cardinal principle of law enshrined in Section 17 of Limitation Act that fraud nullifies everything for which plea of time bar is untenable following the ratio laid down by Apex Court in the case of CC. v. Candid Enterprises - 2001 (130) E.L.T. 404 (S.C.). Non est instruments at all times are void and void instrument in the eyes of law are no instruments. Unlawful gain is thus debarred."

20.6.4 In the present case, I find that importer has willfully availed exemption notification benefit in the impugned Bills of Entry with the willful intention to evade applicable Custom Duty, as stated supra. Further, Show Cause Notice was issued to Noticee under Section 28(4) of the Customs Act, 1962 and the differential duty in the present case is determined under Section 28(8) of the Customs Act, 1962 along with applicable interest under Section 28AA of the act *ibid*. Thus, I observe that the all the necessary ingredients to attract penalty under Section 114A of the Customs Act, 1962 have been made out. Therefore, I find that the importer is liable to penalty under Section 114A of the Customs Act, 1962. Further, I find that penalty under Section 112 of the Customs Act, 1962 is not imposable upon the importer by virtue of fifth proviso to Section 114A of the Customs Act, 1962. Therefore, I am of the view that penalty under Section 112(a) of the Customs Act, 1962 cannot be imposed upon the importer.

20.6.4 I observe that the impugned Show Cause Notice failed to explain as to how the importer attracts penalty under Section 117, therefore, I am of the view that imposition of penalty under Section 117 is legally not tenable.

21. In view of the foregoing discussion and findings, I pass the following order: -

ORDER

- i. I deny the benefit of Sr. No.5 of Notification No.20/2020-Cus., dated 09.04.2020 against the goods imported vide Bills of Entry, as detailed in Annexure-A to SCN;
- ii. I determine the differential duty of **Rs.85,76,827/- (Rupees Eighty-Five Lakh**

Seventy-Six Thousand Eight Hundred and Twenty-Seven only), in respect of goods imported vide Bills of Entry, as detailed in Annexure-A to SCN, under Section 28(8) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Act *ibid* read with Section 28(10) of the act *ibid*.

- iii. I order confiscation of the imported goods vide Bills of Entry listed in 'Annexure- A' above, **valued at Rs. 3,14,97,736/-**, under Sections 111(m) and 111(o) of the Customs Act, 1962 and impose Redemption Fine of **Rs. 80,00,000/- (Rupees Eighty Lakh Only)** under Section 125(1) of the Customs Act, 1962.
- iv. I impose penalty equivalent to differential duty of **Rs. 85,76,827/- (Rupees Eighty-Five Lakh Seventy-Six Thousand Eight Hundred and Twenty-Seven only) along with applicable interest**, on the importer under Section 114A of the Customs Act, 1962. However, the option for payment of reduced penalty under Section 114A is available to importer subject to fulfillment of the conditions prescribed in this Section. In terms of the first and second proviso to Section 114A *ibid*, if the entire duty and interest is paid within thirty days from the date of the communication of this order, the entire amount of penalty liable to be paid shall be twenty-five per cent of the duty and interest, subject to the condition that the amount of penalty is also paid within the period of thirty days of communication of this order.
- v. I do not impose penalty under Section 112(a) and 117 of the Customs Act, 1962 upon the importer.

**Digitally signed by
Vijay Risi
Date: 15-09-2025
20:38:26
COMMISSIONER OF CUSTOMS
NS-III, JNCH**

Regd. Ad/Speed Post

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M/s. 3M India Limited,
48-51, Electronic City, Hosur Road,
Bangalore, Karnataka-560100.

Copy to:-

- i. The Asst. /Dy. Commissioner of Customs, Chief Commissioner's Office, JNCH
- ii. The Asst. /Dy. Commissioner of Customs, Centralized Revenue Recovery Cell, JNCH
- iii. The Asst. /Dy. Commissioner of Customs, Group-III, JNCH
- iv. The Asst. /Dy. Commissioner of Customs, Customs Audit, NS-IV, JNCH
- v. The Asst. /Dy. Commissioner of Customs (CAC), JNCH: For uploading on CARMA Portal.
- vi. The Asst. /Dy. Commissioner of Customs, EDI, JNCH: For display on JNCH Website.
- vii. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
- viii. Office Copy.

