

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

DIN – 20250678NX000000C061

Date of Order: 05.06.2025

F. No. S/10-95/23-24/NS-V/CAC/JNCH

Date of Issue: 05.06.2025

SCN No.: 671/2023-24/COMMR/GR.VA/CAC/JNCH

SCN Date: 20.06.2023

Passed by: Sh. Anil Ramteke

Commissioner of Customs, NS-V, JNCH

Order No: 80/2025-26/COMMR/NS-V/CAC/JNCH

Name of Noticee: M/s. Integratedmobi Tech Private Limited

ORDER-IN-ORIGINAL

मूल - आदेश

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

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

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

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

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

3. अपील दाखिल करने संबंधी मुख्य मुद्दे:-

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

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

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

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

Fee -फ़ीस-

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

(क) एक हजार रुपये जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 5 लाख रुपये या उस से कम है।

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

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

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

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

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

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

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

Subject: Adjudication of Show Cause Notice No. 671/2023-24/Commr./Gr.VA/CAC/JNCH dated 20.06.2023 issued to M/s. Integratedmobi Tech Private Limited (IEC-1315013771) – reg.

1. BRIEF FACTS OF THE CASE

1.1 It is stated in the Show Cause Notice (SCN) No. 671/2023-24/Commr./Gr.VA/CAC/JNCH dated 20.06.2023 that on the basis of the Alert Circular No. 11/2019 dated 30.03.2019 issued by the Commissioner of Customs (Audit), Mumbai, Zone-I vide F. No. S/16-Misc-75/2018-19 Audit (P&C), on the issue of “Short Levy of Customs Duty by way of clearance of goods covered under CTH 8507 at lower rate of IGST” and by way of claiming incorrect Schedule and Serial Number of IGST Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017, data pertaining to imports made by various importers through JNCH (INNSA1) was analysed in detail. It was observed that M/s. Integratedmobi Tech Private Limited (IEC-1315013771) having address as 8-D, Bapu Nagar, Chittorgarh, Rajasthan, PIN-312001 have imported goods with description “Battery” under the aforesated CTH as detailed in Annexure-‘A’ to the subject SCN. The imported goods attracted IGST @ 28% under Sl. No. 139 of Schedule IV.

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

Table-A

Notification No.	Schedule / Sr. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods	IGST Rate
01/2017- Integrated Tax (Rate) dated 28.06.2017 w.e.f. 01.07.2017	IV / 139	8507	Electric accumulators, including separators therefor, whether or not rectangular (including square) other than [Lithium-ion batteries] ¹ and [Lithium-ion accumulators (other than battery) including Lithium-ion power bank] ² . 1. Inserted by Notfn. 19/2018-IT (Rate) dated 26.07.2018 w.e.f. 27.07.2018. 2. Inserted by Notfn. 25/2018-IT (Rate) dated 31.12.2018 w.e.f. 01.01.2019.	28%
19/2018-IT (Rate) dtd. 26.07.2018 w.e.f. 27.07.2018	III / 376AA	8507 60 00	Lithium-ion Batteries	18%
25/2018-IT (Rate) dtd. 30.12.2018 w.e.f. 01.01.2019	III / 376AAA	8507	Lithium-ion accumulators (other than battery) including lithium-ion power bank	18%
01/2017- Integrated Tax (Rate) dated 28.06.2017 w.e.f. 01.07.2017	II / 203	85	Part for manufacture of telephones for cellular networks or for other wireless networks	12%

1.3 As per the SCN, consequent upon the above notifications, it is amply clear that imported goods attract IGST @ 28% by virtue of Notification No. 01/2017- Integrated Tax (Rate) dated 28.06.2017, Sl. No.139 of Schedule IV (IV-139) for the CTH 8507 i.e. Electric accumulators, including separators therefor, whether or not rectangular (including square). Further, Sl. No.203 of Schedule II (II-203) of IGST Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 levying IGST rate of 12% for the CTH 85 i.e. Parts for manufacture of telephones for cellular networks or for other wireless networks, Sl. No. 376AA of Schedule-III of IGST Notification No.19/2018-Integrated Tax (Rate) dated 27.07.2018 levying IGST rate of 18% for the CTH 85076000 i.e. Lithium-ion Batteries & Sl. No. 376AAA of Schedule-III of IGST Notification No. 25/2018-Integrated Tax (Rate) dated 30.12.2018 levying IGST rate of 18% for the CTH 8507 i.e. Lithium-ion accumulators (other than battery) including lithium-ion power bank are not applicable to the imported goods. The importer has imported goods having description as Battery. After going through the description of the B/E items under deliberation, it appeared that the imported goods attract IGST @28% against Sr. No.139 of Schedule-IV of Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 and does not justify clearance claiming a lower IGST rate @12% under Sr. No. 203 of Schedule-II of IGST Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017 and/or @18% under Sr. Nos. 376AA or 376AAA of Schedule-III of IGST Notification No. 19/2018-Integrated Tax (Rate) dated 27.07.2018 & No. 25/2018-Integrated Tax (Rate) dated 30.12.2018 or a lower IGST rate in other Schedule.

1.3.1 As per the SCN, on scrutiny of the import data, it was observed that goods covered under CTH 8507 were cleared by declaring lower rate of IGST under Sl. No. 203 of Schedule-II of IGST Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 @12% and/or @18% under Sr. Nos. 376AA or 376AAA of Schedule-III of IGST Notification No.19/2018-Integrated Tax (Rate) dated 27.07.2018 & No.25/2018-Integrated Tax (Rate) dated 30.12.2018 or a lower IGST rate in other Schedule, however, the imported goods falling under CTH 8507 are to be correctly covered under Sl. No. 139 of Schedule IV of the IGST Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 and attract higher rate of IGST @28%.

1.3.2 The total assessable value of the B/E items so imported is ₹6,03,48,512/- and it appeared that a short levy of IGST amounting to ₹61,90,448/- (as detailed in Annexure-‘A’ to the subject SCN) is recoverable from the importer along with applicable interest and penalty.

1.4 In view of the above, Consultative letter was issued to importer to clarify the issue raised by the department and if agreed to the observation/finding of the department, the importer was advised to pay the differential duty alongwith applicable interest and penalty. However, no reply or submission was given by importer in this regard.

1.5 As per the SCN, the relevant legal provisions for recovery of duty that appeared to have been evaded are reproduced here:

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

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

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

1.6 As per the SCN, whereas, consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-assessment' has been introduced in customs clearance. Section 17 of the Customs Act, effective from 08.04.2011 [CBEC's (now CBIC) Circular No. 17/2011 dated 08.04.2011] provides for self-assessment of duty on imported goods by the Importer himself by filing a bill of entry, in the electronic form. Section 46 of the Customs Act, 1962 makes it mandatory for the Importer to make entry for the imported goods by presenting a bill of entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Declaration) Regulation, 2011 (issued under Section 157 read with Section 46 of the Customs Act, 1962), the bill of entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a bill of entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under self-assessment, it is the Importer who has to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the bill of entry. Thus, with the introduction of self-assessment by amendments to Section 17, since 08.04.2011, it is the added and enhanced responsibility of the Importer to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

1.7 In view of the above facts, it appeared that the importer had deliberately not paid the duty by wilful mis-statement as it was his duty to declare correct applicable rate of duty in the entry

made under Section 46 of the Customs Act, 1962, and thereby had attempted to take undue benefit amounting to ₹61,90,448/- (as detailed in Annexure-‘A’ to the subject SCN). Therefore, the differential duty, not so paid, is liable for recovery from the importer under Section 28(4) of the Customs Act, 1962 by invoking extended period of limitation, along with applicable interest at the applicable rate under Section 28AA of the Customs Act, 1962 for their acts of omission/commission.

1.8 Section 111(m) of Customs Act, 1962 provides for confiscation of the goods if any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which condition is not observed unless the non-observance of the condition was sanctioned by the proper officer.

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

1.10 It further appeared that the importer for the acts of omission and commissions mentioned above had rendered themselves liable for penal action under Section 112(a) and 114A of the Customs Act, 1962.

1.11 In view of the above, vide Show Cause Notice No. 671/2023-24/Commr./Gr.VA/CAC/JNCH dated 20.06.2023, M/s. Integratedmobi Tech Private Limited (IEC-1315013771) having address as 8-D, Bapu Nagar, Chittorgarh, Rajasthan, PIN-312001, was called upon to show cause to the Commissioner of Customs (NS-V), Jawaharlal Nehru Custom House, Nhava Sheva (the Adjudicating Authority), as to why:

- (i) Differential / short paid duty amounting to ₹61,90,448/- (Rupees Sixty One Lakh Ninety Thousand Four Hundred Forty Eight Only) for the subject goods imported vide Bills of Entry as detailed in Annexure-‘A’ to the subject SCN, should not be demanded under Section 28(4) of the Custom Act, 1962.
- (ii) In addition to the duty short paid, interest on delayed payment of Custom duty should not be recovered from the importer under Section 28AA of the Customs Act, 1962.
- (iii) The said subject goods imported vide Bills of Entry as detailed in Annexure-‘A’ to the subject SCN having assessable value of ₹6,03,48,512/- (Rupees Six Crore Three Lakh Forty Eight Thousand Five Hundred Twelve Only) should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962.
- (iv) Penalty should not be imposed on them under Section 112(a) of the Customs Act, 1962 for their acts of omission and commission, in rendering the goods liable for confiscation, as stated above.
- (v) Penalty should not be imposed under Section 114A of Customs Act, 1962 for short levy of duty.

2. WRITTEN SUBMISSION OF THE NOTICEE

The Noticee, M/s. Integratedmobi Tech Private Limited vide letter dated 10.07.2024 submitted written reply to the subject SCN. Vide above reply, they denied all the allegations made in the SCN and made following submissions:

2.1 That assessee being importer has imported Cell classifying same under CTH 8507 and in Para 2 of the notice it has been stated that importer has paid GST @ 28% under S. No. 376AA of Schedule-II of Notification No. 01/2017 dated 28.06.2017.

2.2 That in Para 3 of the notice, it has been stated that imported goods fall under S. No. 139 of Schedule-III wherein applicable IGST rate is 28% and on Assessable Value of Rs. 6,03,48,512/- differential IGST of Rs. 61,90,448/- has been determined mentioned in the notice.

2.3 In their case, they purchased cell for mobile phone battery and paid correct duty as mentioned in notification; that out of an amount of Rs.61,90,448/- mentioned in notice, they have already paid amount of Rs.45,79,290/- with interest on 22.03.2019 and 18.03.2020. The payment details were also provided by the Noticee. Balance amount of Rs.18,97,414/- has not been paid due to amendment in notification w.e.f. 01.01.2019 and all remaining Bs/E were filed after this notification i.e. Notification No. 25/2018-IT (Rate) dtd. 30.12.2018. Details of BE after 01.01.2019 were also provided.

2.4 That assessee company has acted bonafidely having no malafide intention as the issue is related to interpretation only, as regards to levy of IGST on Lithium-ion cell used in manufacturing of mobile battery and power bank is an industry vide issue as finished goods being charged @ 18% IGST but their raw material being charged @ 28%.

2.5 That matter has duly been discussed with DRI Noida & SIIB, Nhava Sheva and they have deposited the entire differential duty amount on all the Bill of Entry filed till 31.12.2018; that effective from 01.01.2019, the notification was amended and all goods falling under S. No. 376AA, 376AAA of IGST notification were charged at the same rate of 18% IGST and therefore, no demand remains now and they requested to withdraw the proceeding.

2.6 That the whole industry has cleared the goods at 18% as nobody thought of finished goods being taxed at lower rate than the raw material specially when the Prime Minister himself and government is actively pushing for Make in India. Hence, the duty of both 376AA and 376AAA Sl. Number were revised to 18% vide Notification No. 25/2018-IT(Rate) dated 30.12.2018 w.e.f. 01.01.2019.

2.7.1 CBDT instructions - The High Court held that the entire object of administration of tax is to secure revenue for the development of the country and not to charge the assessee more tax

than that which is due and payable by the assessee. On April 11, 1995, the Central Board of Direct Taxes issued a circular directing the Assessing Officer not to take advantage of the assessee's ignorance or mistake and referring the same, High Court directed the CIT to pass a fresh order –Sanchit Software and Solutions P. Ltd. V. CIT (2012) 349 ITR 40 (Bom).

2.7.2 As regard condonation of delay is concerned authority must consider the request liberally so as to advance substantial justice. The revenue is not to be regarded as interested in scoring points against the assessee. Certain relevant Supreme Court judgement were produced as under:

- (i) A party cannot be made to suffer on account of the negligence or inaction of his advocate. Miss Santosh Mehta v. Omprakash & Others AIR 1950 (SC) 1664
- (ii) The party cannot suffer for the inaction, deliberate omission or misdemeanor of his agent. Rafiq and Another v. Munshila & Another, AIR 1981 (SC) 1400
- (iii) Where the delay is caused due to the counsel, the same should be condoned even if counsel declined to give affidavit, but the affidavit to this effect is filled by the assessee. Areva T & D India Ltd. v. JCIT [2006] 287 ITR 555 (Mad.)

2.8 In view of the above fact, there is no willful default and default as discussed is due to bonafide reasons and therefore penalty need to be quashed. Further judgments also clearly favour the assessee and relief must be allowed under appeals for want of relief and justice. That they are not a willful defaulter neither evaded any payment of GST nor having any intention to evade payment of GST by paying lower tax rate than applicable rate.

3. RECORD OF PERSONAL HEARINGS

3.1 There is single Noticee in the subject SCN viz. M/s. Integratedmobi Tech Private Limited.

3.2 In compliance of provisions of Section 28(8) read with Section 122A of the Customs Act, 1962 and in terms of the principle of natural justice, the Noticee was granted opportunity of Personal Hearing (PH) on 07.06.2024, 11.04.2025, 23.04.2025, 30.04.2025, 14.05.2025 and 26.05.2025 and PH intimation letter was issued by speedpost. On 26.05.2025, Sh. Anuraag Nalwaya, Director, M/s. Integratedmobi Tech Pvt. Ltd., appeared virtually before me. During the PH, he made following submissions:

- 1) That they have submitted detailed reply to the SCN long back. The Adjudicating Authority informed that there is no reply of theirs on record, to which he stated that he will send his reply again and the same may be taken on record.
- 2) That there is no malafide intention of theirs involved in this case, as the subject issue of levy of IGST on Lithium-ion Cell used in manufacture of mobile battery and power bank is an industry wide issue which arose due to difference in interpretation of the matter due to finished goods being charged at 18% IGST but their raw material being charged at 28% of IGST.

- 3) That they had received notice from DRI, Noida and SIIB, Nhava Sheva on the issue and after discussion with the concerned agencies, they had deposited entire differential duty amount on all the Bills of Entry filed till 31.12.2018; that after 01.01.2019, the Notification was amended and all goods falling under Sl. No. 376AA & 376AAA of IGST Notification were charged at same rate of 18% IGST, therefore, no differential duty remains.
- 4) That as the Noticee has paid all the duties correctly, no demand remains against them and therefore, the SCN may be dropped.

4. DISCUSSION AND FINDINGS

4.1 I have carefully gone through the subject Show Cause Notice (SCN) and its Relied Upon Documents (RUDs), material on record and facts of the case, as well as written reply dtd. 10.07.2024 re-submitted by the Noticee on 29.05.2025 and oral submissions made by the Noticee during the PH. Accordingly, I proceed to decide the case on merit.

4.2 The Chief Commissioner of Customs, Mumbai Zone-II has granted extension of time limit to adjudicate the case up to 19.06.2025 as provided under Section 28(9) of the Customs Act, 1962, therefore, the case has been taken up for adjudication proceedings within the time limit as per Section 28(9) of the Customs Act, 1962.

4.3 In compliance to provisions of Section 28(8) and Section 122A of the Customs Act, 1962 and in terms of the principles of natural justice, opportunity for Personal Hearing (PH) on 07.06.2024, 11.04.2025, 23.04.2025, 30.04.2025, 14.05.2025 and 26.05.2025 was granted to the Noticee. Availing the said opportunity, the Noticee attended the PH on 26.05.2025. Thus, the principles of natural justice have been followed during the adjudication proceedings. Having complied with the requirement of the principle of natural justice, I proceed to decide the case on merits, bearing in mind the submission / contention made by the Noticee.

4.4 The fact of the matter is that a Show Cause Notice No. 671/2023-24/Commr./Gr.VA/CAC/JNCH dated 20.06.2023 was issued to M/s. Integratedmobi Tech Private Limited (IEC-1315013771), on the basis of the Alert Circular No.11/2019 dated 30.03.2019 issued by the Commissioner of Customs (Audit), Mumbai, Zone-1 vide F. No. S/16-Misc-75/2018-19/Audit (P&C). It is alleged in the SCN that the goods covered under CTH 8507 were cleared by declaring lower rate of IGST @18%, however, the imported goods falling under CTH 8507 attract levy of IGST @28% as per Table-A figuring in Para 1.2 above. Thus, the SCN demands duty to the tune of ₹61,90,448/- (Rupees Sixty One Lakh Ninety Thousand Four Hundred Forty Eight Only) invoking extended period under Section 28(4) of the Customs Act, 1962 along with interest in terms of Section 28AA of the Customs Act, 1962 and consequential penalties under Section 112(a) and 114A, ibid. The Show Cause Notice also propose for confiscation of

imported goods having assessable value of ₹6,03,48,512/- (Rupees Six Crore Three Lakh Forty Eight Thousand Five Hundred Twelve Only) under Section 111(m) of the Customs Act, 1962.

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

- (i) Whether differential/short paid duty amounting to ₹61,90,448/- for the subject goods imported vide Bills of Entry as detailed in Annexure-‘A’ to the subject SCN, should be demanded under Section 28(4) of the Custom Act, 1962.
- (ii) Whether in addition to the duty short paid, interest on delayed payment of Custom Duty should be recovered from the Importer under Section 28AA of the Customs Act, 1962.
- (iii) Whether the said subject goods imported vide Bills of Entry as detailed in Annexure-‘A’ to the subject SCN, having assessable value of ₹6,03,48,512/- should be held liable for confiscation under Section 111(m) of the Customs Act, 1962.
- (iv) Whether Penalty should be imposed on M/s. Integratedmobi Tech Private Limited under Section 112(a) of the Customs Act, 1962 for their acts of omission and commission, in rendering the goods liable for confiscation, as stated above.
- (v) Whether Penalty should be imposed under Section 114A of the Customs Act, 1962 for short levy of duty.

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

4.7 Whether differential / short paid duty amounting to ₹61,90,448/- for the subject goods imported vide Bills of Entry as detailed in Annexure-‘A’ to the subject SCN, should be demanded under Section 28(4) of the Custom Act, 1962.

4.7.1 I note that the Noticee i.e. M/s. Integratedmobi Tech Private Limited vide the impugned 19 Bills of Entry (covered under 159 item entries as detailed in Annexure-‘A’ to the subject SCN) filed during the period from 30.07.2018 to 09.10.2019 had imported the goods declaring the description in the Bills of Entry as ‘PARTS FOR MOBILE PHONE BATTERY - BATTERY CELL’ or ‘PARTS FOR MOBILE PHONE BATTERY - CELL’ or ‘PARTS FOR MOBILE PHONE PARTS’ or ‘PB10-BLUE / RED’ classifying the same under Customs Tariff Item (CTI) 85076000 (except in item Sl. No. 125 of Annexure-A for which it is 85079090). The details of Bills of Entry vide which the said goods were imported are as per Annexure-A to SCN. Further, the Noticee had mentioned in the description details of Model No., Brand Name / Brand Reference No., BIS Registration No. (except in 15 item entries viz. Sl. No. 28, 100, 107, 108 to 116 & 123 to 125 of Annexure-A) and technical specifications viz. 900, 1400, 1550, 1700, 2200, 2300, 2600, 2630, 3300, 3600 mAh etc. of the imported goods.

4.7.2 I note that the imported goods with the declared description as (i) ‘Parts for Mobile Phone Battery - Battery Cell’ & ‘Parts for Mobile Phone Battery - Cell’ are Battery Cells, (ii) ‘PB10-Blue / Red’ are Power Bank and (iii) ‘Parts for Mobile Phone Parts’ are mobile phone parts. The Noticee had classified the imported goods of category (i) & (ii) above under CTI 85076000 and of category (iii) above under CTI 85079090. Therefore, it would be worthwhile to look at the Customs Tariff Heading 8507, which covers the goods of broad description as under:

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

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

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

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

Accumulators consist essentially of a container holding the electrolyte in which are immersed two electrodes fitted with terminals for connection to an external circuit. In many cases the container may be subdivided, each subdivision (cell) being an

accumulator in itself; these cells are usually connected together in series to produce a higher voltage. A number of cells so connected is called a battery. A number of accumulators may also be assembled in a larger container. Accumulators may be of the wet or dry cell type.

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

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

4.7.3 On analysis of the Customs Tariff Heading 8507 and Explanatory Notes to Heading 8507, I find that the imported goods of category (i) & (ii) as mentioned in para 4.7.2 above i.e. 'Battery Cells' and 'Power Bank', are capable of charging and discharging. 'Battery Cells' are used in mobile battery / power bank, and 'Power Banks' are used as such for supplying current to cellular mobile phones. Further, I find that the Explanatory Notes mention *interalia* that in many cases the accumulator container may be sub-divided, each sub-division (cell) being an accumulator in itself; and that accumulators containing one or more cells and the circuitry to interconnect the cells amongst themselves, often referred to as 'battery packs', are covered by the heading 8507. Also, I find that the aforementioned technical specifications and description clearly indicate that the aforesaid goods are capable of charging and discharging and the same are being used in the manufacture of Mobile Phones. Further, goods of category (iii) being parts are also classified under heading 8507. It is, therefore, observed that the all the impugned goods of category (i), (ii) & (iii) above, rightly fall under CTH 8507.

4.7.4 Now coming to the issue of levy of IGST on the imported goods, I note that the Noticee has classified the imported goods under Sr. No. 376AA/376AAA of Schedule-III of IGST Notification No. 01/2017 dated 28.06.2017 whereas the SCN proposes that the goods should fall under Sr. No. 139 of Schedule-IV of the above notification. The description of goods classifiable under the said two competing entries i.e. Sr. No. 376AA/376AAA of Schedule-III and Sr. No. 139 of Schedule-IV of IGST Notification No. 01/2017 dated 28.06.2017, is as follows:

Schedule	Sr. No.	CTH	Description
IV	139	8507	<i>Electric accumulators, including separators therefor, whether or not rectangular (including square) other than [Lithium-ion batteries]¹ and [Lithium-ion accumulators (other than battery) including Lithium-ion power bank]².</i> <i>1. Inserted by Notfn. 19/2018-IT (Rate) dated 26.07.2018 w.e.f. 27.07.2018.</i> <i>2. Inserted by Notfn. 25/2018-IT (Rate) dated 31.12.2018 w.e.f. 01.01.2019.</i>
III	376AA	8507 6000	<i>Lithium-ion batteries</i> <i>[Inserted by Notfn. 19/2018-IT (Rate) dated 26.07.2018 w.e.f. 27.07.2018]</i>
III	376AAA	8507	<i>Lithium-ion accumulators (other than battery) including Lithium-ion power bank</i> <i>[Inserted by Notfn. 25/2018-IT (Rate) dated 31.12.2018 w.e.f. 01.01.2019]</i>

From the above, I find that all the goods of CTH 8507 having description ‘*Electric accumulators, including separators therefor, whether or not rectangular (including square)*’ were covered under Sr. No. 139 of Schedule-IV of the aforesaid notification and 28% IGST was leviable till 26.07.2018. Further, after introduction of Sr. No. 376AA of Schedule-III of the aforesaid IGST notification, for all the goods falling under CTI 8507 6000 having the description ‘*Lithium-ion batteries*’ IGST is leviable @18% w.e.f. 27.07.2018, and after introduction of Sr. No. 376AAA of Schedule-III of the aforesaid IGST notification, for all the goods falling under CTH 8507 having the description “*Lithium-ion accumulators (other than battery) including Lithium-ion power bank*” IGST is leviable @18% w.e.f. 01.01.2019.

4.7.5 I note from the documents available on record and details available in the ICES 1.5 System, that out of the total impugned 19 Bills of Entry, in respect of following 13 Bills of Entry (Sl. No. 1 to 86 of Annexure-‘A’ to the subject SCN) filed during the period from 30.07.2018 to 12.12.2018, IGST was paid @ 28% under Sr. No. 139 of Schedule-IV of the IGST Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017:

Sl. No.	BE No.	BE date	Sl. No.	BE No.	BE date	Sl. No.	BE No.	BE date
1	7431795	30.07.2018	6	7941069	06.09.2018	11	8835330	13.11.2018
2	7671266	17.08.2018	7	7992068	10.09.2018	12	9190819	10.12.2018
3	7702674	20.08.2018	8	8098782	18.09.2018	13	9222640	12.12.2018
4	7917981	05.09.2018	9	8499339	17.10.2018			
5	7926441	05.09.2018	10	8587077	24.10.2018			

Further, in respect of Bill of Entry No. 3123325 dtd. 06.05.2019 (Sl. No. 87 to 95 of Annexure-‘A’ to the subject SCN), I find that the Noticee has deposited differential duty (28% -

18%) of Rs.2,76,666/- alongwith applicable interest vide JNCH Challan No. HCM-1509 dtd. 18.03.2020 for Rs.3,73,650/- and Challan No. HCM-1510 dtd. 18.03.2020 for Rs.48,830/-. The genuineness of the aforesaid two challans stands verified by the Cash Section, JNCH vide their letter F. No. S/10-Gen-03/2017-18/CASH/JNCH Pt.III dated 02.06.2025. I note that IGST @ 28% is the highest rate of IGST payable. Therefore, I find that in respect of aforesaid 14 (13+1) Bills of Entry there is no duty recoverable from the Noticee on account of rate of IGST, as the rate at which IGST was paid by the Noticee is in accordance with the rate of IGST demanded in the SCN.

4.7.6 Out of remaining 5 Bs/E, in respect of 2 Bills of Entry (Bs/E) viz. 4936544 dtd. 17.09.2019 & 5219937 dtd. 09.10.2019 (Sl. No. 128 to 159 of Annexure-‘A’ to the subject SCN), on verifying the BIS Registration Number of the imported goods, I find that the said goods are Lithium-ion Cell. These imported goods being Lithium-ion Cells fall under the Sr. No. 376AAA of Schedule-III of the aforesaid IGST Notification which covers Lithium-ion accumulators (other than battery). Therefore, I find that the Noticee is eligible for IGST duty rate under Sl. No. 376AAA of Schedule-III of the aforesaid IGST Notification in respect of these goods. Hence, I find that these goods attract IGST @ 18% under Sr. No. 376AAA of Schedule-III of IGST Notification No. 01/2017 dated 28.06.2017. I note from the documents available on record and details available in the ICES 1.5 System, that the Noticee has paid IGST @ 18% in respect of these two Bills of Entry. Therefore, I find that in respect of aforesaid 2 Bills of Entry there is no duty recoverable from the Noticee on account of rate of IGST, as the rate at which IGST was paid by the Noticee is in accordance with the rate of IGST payable.

4.7.7 My findings in respect of remaining 3 Bs/E (32 item entries viz. Sl. No. 96 to 127 of Annexure-‘A’ to the subject SCN) viz. 3134804 dtd. 07.05.2019, 3226534 dtd. 14.05.2019 & 4073564 dtd. 15.07.2019, are as under:

- a) In respect of goods pertaining to 16 item entries viz. Sl. No. 96 to 99, 101 to 106, 117 to 122, the BIS Registration No. is mentioned as R-41034959. On verifying the said Registration Number from the website of BIS (<https://www.crsbis.in>), I find that the said goods are Lithium Polymer Cell. Thus, I find that these goods are not Lithium-ion Cell.
- b) In respect of goods pertaining to 2 item entries viz. Sl. No. 126 & 127, in the item description in the B/E, the type of power bank is not mentioned. Further, on verifying their BIS Registration No. mentioned as R-41108200 from the website of BIS (<https://www.crsbis.in>), I find that the said goods are described as power bank for use in portable applications. The Noticee has not submitted any document in support of the type of these power bank. Therefore, I find that in the absence of their type, these goods cannot be considered as Lithium-ion Power Bank.
- c) In respect of goods pertaining to 10 item entries viz. Sl. No. 100 & 107 to 115, the BIS Registration No. is not mentioned and in the item description in the B/E, the type of

battery cell is mentioned as for polymer battery. Therefore, I find that the said goods are Lithium Polymer Cell and not Lithium-ion Cell.

- d) In respect of goods pertaining to 3 item entries viz. Sl. No. 116, 123 & 124, the BIS Registration No. is not mentioned and in the item description in the B/E, the type of battery cell is not mentioned. The Noticee has not submitted any document in support of the type of these power bank. Therefore, I find that in the absence of their type, these goods cannot be considered as Lithium-ion Cell.
- e) In respect of goods pertaining to 1 item entry viz. Sl. No. 125, the goods are declared as mobile parts. Therefore, the same cannot fall under Sr. No. 376AAA of Schedule-III of IGST Notification No. 01/2017 dated 28.06.2017.

The imported goods under 32 item entries viz. Sl. No. 96 to 127 of Annexure-‘A’ to the subject SCN, mentioned under point (a) to (e) above, are power bank, mobile parts and battery cells for manufacture of mobile phone battery. They have been classified by the Noticee under the CTH 8507 and claimed the IGST Serial No. 376AAA of Schedule-III of IGST Notification No. 01/2017 dated 28.06.2017 paying the IGST @ 18%. I find that w.e.f. 01.01.2019, Sr. No. 376AAA of Schedule-III of the aforesaid IGST Notification covers all the goods falling under CTH 8507 having the description “*Lithium-ion accumulators (other than battery) including Lithium-ion power bank*”. As per my findings above, the imported goods as detailed at item Sl. No. 96 to 127 of Annexure-A to the SCN cannot be considered as Lithium-ion accumulators (Lithium-ion cells / power bank), therefore, in respect of these goods, classification under Sl. No. 376AAA of the Schedule-III of the aforesaid IGST Notification is liable to be rejected.

4.7.8 I find that the Noticee had cleared the goods mentioned under aforesaid 32 item entries viz. Sl. No. 96 to 127 of Annexure-A of the SCN under Sr. No. 376AAA of Schedule-III of IGST Notification No. 01/2017 dated 28.06.2017 and paid IGST @ 18%. To avail clearance under this Schedule and Serial Number, the goods should fall under the description mentioned therein. As held in the discussion supra, the goods under import are not Lithium-ion cells, hence they cannot fall under Sr. No. 376AAA of Schedule-III of aforesaid IGST Notification. The imported goods are specifically classified in CTH 8507 by the Noticee and are covered under specific entry under Sr. No. 139 of Schedule-IV of the aforesaid IGST Notification. Hence, these goods attract IGST @ 28% under Sr. No. 139 of Schedule-IV of IGST Notification No. 01/2017 dated 28.06.2017.

4.7.9 In view of the above discussions, the goods mentioned under item Sl. No. 96 to 127 of Annexure-A of the SCN cannot fall under Sr. No. 376AAA of Schedule-III, therefore, the duty (IGST) @ 28% need to be calculated under Sr. No. 139 of Schedule-IV of the aforesaid IGST Notification (as amended). Assessable value of the goods mentioned under Sl. No. 96 to 127 of Annexure-A of the SCN is Rs.67,57,748/- and applicable differential duty (IGST) is Rs.7,57,523/-.

4.7.10 In terms of Section 46(4) of the Customs Act, 1962, the importer is required to make a true and correct declaration in the Bill of Entry submitted for assessment of Customs duty. In the instant case, I find that the goods mentioned under item Sl. No. 96 to 127 of Annexure-A of the SCN were cleared by the Noticee by wilfully and deliberately indulging themselves in mis-declaration of goods by self-assessing under wrong Sr. No. 376AAA of Schedule-III of IGST Notification No. 01/2017 dated 28.06.2017 (as amended) and by paying IGST at a lower rate of 18% only. I find that the Noticee with the clear intention to evade duty claimed lower rate of IGST under the above incorrect Schedule and Sl. No. of IGST Notification No. 01/2017 dated 28.06.2017 (as amended) instead of correct Sr. No. 139 of Schedule-IV of the said Notification.

4.7.11 I find that in the present case, imported goods mentioned under Sl. No. 96 to 127 of Annexure-A of the SCN were found ineligible to be considered under the Sr. No. 376AAA of Schedule-III of IGST Notification No. 01/2017 dated 28.06.2017 as they were in form other than as described in the said Schedule / Sr. No. and hence, should appropriately be classified under Sr. No. 139 of Schedule-IV of the said Notification which attract higher duty @ 28%. As the importer has wrongfully assessed the goods under Sr. No. 376AAA of Schedule-III of the said Notification on the date of importation and there is no scope for the goods fulfilling the eligibility of the said Sl. No./Schedule No. of the IGST notification, the Noticee can only come clean of its liability by way of payment of duty not paid/ short paid due to availment of IGST under wrong Schedule and Serial Number. The Noticee has quoted some case laws / instructions in their defence, however, I find that the same are not applicable in this matter, therefore, do not support the Noticee's case.

4.7.12 In view of the above, I find that the Noticee had evaded correctly payable IGST on the imported goods mentioned under Sl. No. 96 to 127 of Annexure-A of the SCN, by intentionally avoiding the specific and correct IGST Schedule and Sr. No. at the time of filing of the Bills of Entry. By resorting to this deliberate and wilful mis-declaration of classification under wrong IGST Schedule and Sr. No., the Noticee has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer. Thus, I find that this wilfull and deliberate act was done with the clear intention to claim ineligible lower rate of duty.

4.7.13 Consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-assessment' has been introduced in Customs clearance. **Under self-assessment, it is the importer who has to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry.** Thus, with the introduction of self-assessment by amendments to Section 17, it is the added and enhanced responsibility of the importer, to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods. In the instant case, as explained in paras supra, the Noticee/importer has willfully mis-classified under wrong IGST Schedule and Sr. No., thereby evading payment of applicable duty resulting in a loss of Government revenue and in turn accruing monetary benefit. Since the Noticee/importer has

willfully mis-classified and suppressed the facts with an intention to evade applicable duty, provisions of Section 28(4) are invokable in this case and the duty, so evaded, is recoverable under Section 28(4) of the Customs Act, 1962.

4.7.14 Regarding the Noticee's argument that there was no willful default on their part, I find that in the instant case, as elaborated in the foregoing paras, the Noticee had wilfully mis-declared the correct IGST Schedule and Sr. No. of the imported goods by not declaring the same at the time of filing of the Bills of Entry. Further, to evade payment of correctly leviable duty, they mis-classified and suppressed the correct IGST Schedule and Sr. No. of the impugned goods, and also fraudulently claimed ineligible benefit under wrong IGST Schedule and Sr. No. Therefore, I find that in the instant case there is an element of 'mens rea' involved. The instant case is not a simple case of bonafide wrong IGST Schedule and Sr. No. Instead, in the instant case, the Noticee deliberately chose to mis-classify the imported goods to claim lower rate of duty and ineligible benefit, being fully aware of the correct IGST Schedule and Sr. No. of the imported goods. This wilful and deliberate act clearly brings out their 'mens rea' in this case. Once the 'mens rea' is established on the part of the Noticee, the extended period of limitation, automatically get attracted.

4.7.15 The scheme of RMS wherein the importers are given so many facilitations, also comes with responsibility of onus for truthful declaration. The Tariff classification of the items, are the first parameter that decides the rate of duty for the goods, which is the basis on which Customs duty is payable by any importer. However, if the importer does not declare complete item description and picks the notification benefit against the goods covered in the Bill of Entry in a false manner, it definitely amount to mis-leading the Customs authorities, with an intent to evade payment of legitimate Customs duty leviable, on the said imported goods.

4.7.16 In view of the above, I hold that the goods mentioned under Sl. No. 96 to 127 of Annexure-A of the SCN not being Lithium-ion cells fall under specific Sr. No. 139 of Schedule-IV of IGST Notification No. 01/2017 dated 28.06.2017. Thus, the Noticee, M/s. Integratedmobi Tech Private Limited, has paid less duty by non-payment of applicable IGST on the subject goods, which tantamount to suppression of material facts and wilful mis-statement. Thus, I hold that the demand of differential/short paid duty amounting to Rs.7,57,523/- in respect of subject imported goods figuring under Sl. No. 96 to 127 of Annexure-A of the SCN should be demanded from M/s. Integratedmobi Tech Private Limited under Section 28(4) of the Custom Act, 1962

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

4.8.1 As regards levy of interest, I find that per Section 28AA of the Customs Act, 1962, the person, who is liable to pay duty in accordance with the provisions of Section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2) of

Section 28AA, whether such payment is made voluntarily or after determination of the duty under that section. From the above provisions, it is evident that regarding demand of interest, Section 28AA of the Customs Act, 1962 is unambiguous and mandates that where there is a short payment of duty, the same along with interest shall be recovered from the person who is liable to pay duty. The interest under the Customs Act, 1962 is payable once demand of duty is upheld and such liability arises automatically by operation of law. In an umpteen number of judicial pronouncements, it has been held that payment of interest is a civil liability and interest liability is automatically attracted under Section 28AA of the Customs Act, 1962. Interest is always accessory to the demand of duty as held in case of *Pratibha Processors Vs UOI* [1996 (88) ELT 12 (SC)]. In *Directorate of Revenue Intelligence, Mumbai Vs. Valecha Engineering Limited*, Hon'ble Bombay High Court observed that, in view of Section 28AA, interest is automatically payable on failure by the assessee to pay duty as assessed within the time as set out therein.

4.8.2 I have already held in the foregoing paras that duty amounting to Rs.7,57,523/- against goods mentioned under item Sl. No. 96 to 127 of Annexure-A of the SCN, should be demanded and recovered from the Noticee under the provisions of Section 28(4) of the Customs Act, 1962 by invoking extended period. Therefore, I am of the considered opinion that in terms of the provisions of Section 28AA of the Customs Act, 1962, interest on the aforesaid amount of differential duty is also liable to be recovered from M/s. Integratedmobi Tech Private Limited.

4.9 Whether the said subject goods imported vide Bills of Entry as detailed in Annexure-'A' to the subject SCN, having assessable value of ₹6,03,48,512/- should be held liable for confiscation under Section 111(m) of the Customs Act, 1962.

4.9.1 I note that the SCN proposes confiscation of goods under the provisions of Section 111(m) of the Customs Act, 1962.

4.9.2 Section 111(m) of the Customs Act, 1962 states that 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 trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of Section 54;*

4.9.3 I find that Section 111(m) deals with any and all types of mis-declaration regarding any particular of Bill of Entry. Therefore, the suppression of applicable IGST amounting to Rs.7,57,523/- on the goods mentioned under item Sl. No. 96 to 127 of Annexure-A of the SCN, amounts to mis-declaration and shall make the said goods liable to confiscation.

4.9.4 I have already held in foregoing paras that in the present case, in respect of goods mentioned under item Sl. No. 96 to 127 of Annexure-A of the SCN, the Noticee has claimed wrong IGST Schedule and Sr. No. which was eligible only for the goods i.e. Lithium-ion cells/power banks. I have held that to evade payment of correctly leviable duty, the Noticee misclassified and suppressed the correct IGST Schedule and Sr. No. of the impugned goods, and also fraudulently claimed ineligible benefit under wrong IGST Schedule and Sr. No. The Noticee deliberately suppressed the correct IGST Schedule and Sr. No. applicable on the imported goods, resulting in short levy of duty. This deliberate suppression of facts and claiming the ineligible IGST Schedule and Sr. No. during import of the impugned goods, amounts to mis-declaration and renders the said goods liable to confiscation under Section 111(m) of the Customs Act, 1962. Accordingly, I find that acts of omission and commission on part of the Noticee has rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962.

4.9.5 I find that Section 111(m) provides for confiscation even in cases where goods do not correspond in respect of any other particulars in respect of which the entry is made under the Customs Act, 1962. I have to restrict myself only to examine the words "*in respect of any other particular with the entry made under this act*" would also cover case of suppression of facts. As this act of the importer has resulted in short levy and short payment of duty, I find that the confiscation of the imported goods invoking Section 111(m) is justified and sustainable.

4.9.6 As per Section 46 of the Customs Act, 1962, the importer of any goods, while making entry on the Customs automated system to the Proper Officer, shall make and subscribe to a declaration as to the truth of the contents of such Bill of Entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed. He shall ensure the accuracy and completeness of the information given therein and the authenticity and validity of any document supporting it.

4.9.7 I find that the importer while filing the Bill of Entry for the clearance of the subject goods had subscribed to a declaration as to the truthfulness of the contents of the Bill of Entry in terms of Section 46(4) of the Customs Act, 1962 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2011 in all their import declarations. Section 17 of the Act, w.e.f. 08.04.2011, provides for self-assessment of duty on imported goods by the importer themselves by filing a Bill of Entry, in the electronic form. Section 46 of the Act makes it mandatory for the importer to make an entry for the imported goods by presenting a Bill of Entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulation, 2011 (issued under Section 157 read with Section 46 of the Act), the Bill of Entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic integrated declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the Service Centre, a Bill of Entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under the

scheme of self-assessment, it is the importer who has to diligently ensure that he declares all the particulars of the imported goods correctly e.g., the correct description of the imported goods, its correct classification, the applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported goods when presenting the Bill of Entry. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 8th April, 2011, the complete onus and responsibility is on the importer to declare the correct description, value, notification, etc. and to correctly classify, determine and claim correct exemption notification and pay the applicable duty in respect of the imported goods.

4.9.8 Prior to 08.04.2011, sub-section (2) of Section 2 of the Customs Act, 1962 read as under:

(2) "assessment" includes provisional assessment, reassessment and any order of assessment in which the duty assessed is nil;

Finance Act, 2011 introduced provision for self-assessment by the importer. Subsequent to substitution by the Finance Act, 2011 (Act 8 of 2011), (w.e.f. 08.04.2011) sub-section (2) of Section 2 *ibid* read as under:

Section 2 - Definitions, Sub-section (2) – assessment:

(2) "assessment" includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;

With effect from 29.03.2018, the term ‘assessment’ in sub-section (2) of Section 2 *ibid* means as follows:

(2) "assessment" means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, with reference to-

- a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;*
- b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;*
- c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;*
- d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;*
- e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods,*

*f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods,
and includes provisional assessment self-assessment, re-assessment and any assessment in which the duty assessed is nil;*

4.9.9 From a plain reading of the above provisions related to assessment, it is very clear that w.e.f. 08.04.2011, the importer must self-assess the duty under Section 17 read with Section 2(2) of the Customs Act, and since 2018 the scope of assessment was widened. Under the self-assessment regime, it was statutorily incumbent upon the importer to correctly self-assess the goods in respect of classification, valuation, claimed exemption notification and other particulars. With effect from 29.03.2018, the term 'assessment', which includes provisional assessment also, the importer is obligated to not only establish the correct classification but also to ascertain the eligibility of the imported goods for any duty exemptions. From the facts of the case as detailed above, it is evident that M/s. Integratedmobi Tech Private Limited has deliberately failed to discharge this statutory responsibility cast upon them.

4.9.10 From the discussion above, I find that that the Noticee had in a planned manner suppressed the relevant facts and intentionally evaded IGST on the impugned goods and hence, contravened the provisions of Section 46 of the Customs Act, 1962.

4.9.11 Besides, as indicated above, in terms of the provisions of Section 46(4) of the Customs Act, 1962 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018, the importer while presenting a Bill of Entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such Bill of Entry. In terms of the provisions of Section 47 of the Customs Act, 1962, the importer shall pay the appropriate duty payable on imported goods and then clear the same for home consumption. However, in the subject case, the importer while filing the Bill of Entry has resorted to deliberate suppression of facts to evade payment of applicable duty. Thus, the Noticee has failed to correctly assess and pay the appropriate duty payable on the imported goods before clearing the same for home consumption. Therefore, I find that by not self-assessing the true and correct rate of IGST applicable on the subject goods, the importer willfully did not pay the applicable duty on the impugned goods.

4.9.12 In view of the foregoing discussion, I hold that the imported goods mentioned under item Sl. No. 96 to 127 of Annexure-A of the SCN and declared in the respective Bills of Entry filed by M/s. Integratedmobi Tech Private Limited having total assessable value of Rs.67,57,748/- should be held liable for confiscation under Section 111(m) of the Customs Act, 1962, on the grounds of willful mis-declaration and suppression of facts.

4.9.13 As the importer, through wilful suppression of facts, had evaded the applicable Customs duty, resulting in short levy and short payment of duty, I find that the confiscation of the imported goods under Section 111(m) is justified & sustainable in law. However, I find that the goods imported are not available for confiscation. But 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 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii)."

4.9.13.1 I further find 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.).

4.9.13.2 I also find that the decision 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.) and the decision of Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd. reported in 2020 (33) G.S.T.L. 513 (Guj.) have not been challenged by any of the parties and are in operation.

4.9.13.3 I find that the declaration under Section 46(4) of the Customs Act, 1962 made by the importer at the time of filing Bill of Entry is to be considered as an undertaking which appears as good as conditional release. I further find that there are various orders passed by the Hon'ble CESTAT, High Court and Supreme Court, wherein it is held that the goods cleared on execution of Undertaking/ Bond are liable for confiscation under Section 111 of the Customs Act, 1962 and Redemption Fine is imposable on them under provisions of Section 125 of the Customs Act, 1962.

4.9.13.4 In view of above, I find that any goods improperly imported as provided in any sub-section of the Section 111 of the Customs Act, 1962, the impugned goods become liable for confiscation. Hon'ble Bombay High Court in case of M/s Unimark reported in 2017(335) ELT (193) (Bom) held Redemption Fine (RF) imposable in case of liability of confiscation of goods under provisions of Section 111(o). Thus, I also find that the goods are liable for confiscation under other sub-sections of Section 111 too, as the goods committing equal offense are to be treated equally. I opine that merely because the importer was not caught at the time of clearance of the imported goods, can't be given different treatment.

4.9.13.5 In view of the above, I find that the decision 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.), which has been passed after observing 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. I observe that the present case also merits imposition of Redemption Fine having held that the impugned goods are liable for confiscation under Section 111(m) of the Customs Act, 1962. Accordingly, since the impugned goods are not prohibited goods, the said goods are required to be allowed for redemption by the owner on payment of fine in lieu of confiscation under Section 125(1) of the Customs Act, 1962.

4.10 Whether Penalty should be imposed on M/s. Integratedmobi Tech Private Limited under Section 112(a) of the Customs Act, 1962 for their acts of omission and commission, in rendering the goods liable for confiscation, as stated above.

4.10.1 I find that in the era of self-assessment, the Noticee had self-assessed the Bills of Entry and mis-declared the imported goods mentioned under item Sl. No. 96 to 127 of Annexure-A of the SCN, under wrong IGST Sr. No. 376AAA of Schedule-III of IGST Notification No. 01/2017 dated 28.06.2017 and paid IGST @ 18% instead of appropriate IGST under Sr. No. 139 of Schedule-IV of the above Notification having IGST rate @ 28%. As the Noticee got monetary benefit due to their wilfull mis-declaration and evasion of applicable IGST on the aforesaid goods, I find that duty was correctly demanded under Section 28(4) of the Act by invoking extended period.

4.10.2 As discussed above, I find that the subject Bills of Entry of the imported goods mentioned under item Sl. No. 96 to 127 of Annexure-A of the SCN were self-assessed by the Noticee, M/s. Integratedmobi Tech Private Limited. They were aware of the true nature and characteristics of the imported goods and accordingly, were knowing about the applicability of correct IGST Schedule and Sr. No. thereon. However, still they willfully suppressed this fact and claimed lower rate of duty under incorrect IGST Schedule and Sr. No. in the Bills of Entry filed before the Customs authorities. By resorting to the aforesaid suppression, they paid lower rate of duty and thereby evaded legitimately payable duty. Under the self-assessment scheme, it is obligatory on the part of importer to declare truthfully all the particulars relevant to the

assessment of the goods, ensuring their accuracy and authenticity, which the importer clearly failed to do with malafide intention. They suppressed the fact before the Customs Department regarding correct IGST Schedule and Sr. No, to claim the undue duty benefit at the time of clearance of the said imported goods. This willful and deliberate suppression of facts amply points towards the “mens rea” of the Noticee to evade the payment of legitimate duty. The willful and deliberate acts of the Noticee to evade payment of legitimate duty, clearly brings out their ‘mens rea’ in this case. Once the ‘mens rea’ is established, the extended period of limitation, as well as confiscation and penal provision will automatically get attracted. Thus, the Noticee, by their various acts of omission and commission discussed above, have rendered the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962 and thereby making themselves liable for penalty under Section 112(a) *ibid*.

4.10.3 Accordingly, I agree with the proposal made in the subject SCN and hold that penalty should be imposed on the Noticee, M/s. Integratedmobi Tech Private Limited under Section 112(a) of the Customs Act, 1962.

4.11 Whether Penalty should be imposed under Section 114A of the Customs Act, 1962 for short levy of duty.

4.11.1 I find that as per Section 114A, imposition of penalty is mandatory once the elements for invocation of extended period is established. Hon’ble Supreme Court in *Grasim Industries Ltd. V. Collector of Customs, Bombay* [(2002) 4 SCC 297=2002 (141) E.L.T.593 (S.C.)] has followed the same principle and observed:

“Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for Court to take upon itself the task of amending or altering the statutory provisions.” (para 10).

Hon’ble Supreme Court has again in *Union of India Vs. Ind-Swift Laboratories* has held: *“A taxing statute must be interpreted in the light of what is clearly expressed. It is not permissible to import provisions in a taxing statute so as to supply any assumed deficiency....”* [2011 (265) ELT 3 (SC)].

Thus, in view of the mandatory nature of penalty under Section 114A no other conclusion can be drawn in this regard. I also rely upon case reported in 2015 (328) E.L.T. 238 (Tri. - Mumbai) in the case of *SAMAY ELECTRONICS (P) LTD. Versus C.C. (IMPORT) (GENERAL)*, Mumbai, in which it has been held:

*Penalty - Imposition of - Once demand confirmed under Section 28 of Customs Act, 1962 read with Section 9A of Customs Tariff Act, 1975 on account of fraud, penalty under Section 114A *ibid* mandatory and cannot be waived - Therefore imposition of penalty cannot be faulted - Section 114A *ibid*.*

4.11.2 As I have held above, the extended period of limitation under Section 28(4) of the Customs Act, 1962 for the demand of duty is rightly invoked in the present case. Therefore, penalty under Section 114A is rightly proposed on the Noticee, M/s. Integratedmobi Tech Private Limited in the impugned SCN. Accordingly, the Noticee is liable for a penalty under Section 114A of the Customs Act, 1962 for wilful mis-declaration and suppression of facts, with an intent to evade duty.

4.11.3 Further, I have already held above that by their acts of omission and commission, the importer has rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962, making them liable for a penalty under Section 112(a) *ibid*. However, I find that the penalty under Section 114A and Section 112 of the Customs Act, 1962 are mutually exclusive and both cannot be imposed simultaneously. Therefore, in view of fifth proviso to Section 114A, no penalty is imposed on the Noticee under Section 112(a) *ibid*.

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

ORDER

- (i) I order that differential / short paid duty amounting to **Rs.7,57,523/- (Rupees Seven Lakh Fifty Seven Thousand Five Hundred Twenty Three Only)** for the goods imported vide Bills of Entry under item Sl. No. 96 to 127 of Annexure-A of the subject SCN, should be demanded from M/s. Integratedmobi Tech Private Limited under Section 28(4) of the Custom Act, 1962.
- (ii) I order that in addition to the duty short paid, interest on delayed payment of Custom Duty should be recovered from M/s. Integratedmobi Tech Private Limited under Section 28AA of the Customs Act, 1962.
- (iii) I hold the goods imported vide Bills of Entry under item Sl. No. 96 to 127 of Annexure-A of the subject SCN, having assessable value of **Rs.67,57,748/- (Rupees Sixty Seven Lakh Fifty Seven Thousand Seven Hundred Forty Eight Only)** liable for confiscation under Section 111(m) of the Customs Act, 1962.

However, since the goods are not available, I impose a redemption fine of **Rs.6,75,000/- (Rupees Six Lakh Seventy Five Thousand Only)** on M/s. Integratedmobi Tech Private Limited in lieu of confiscation under Section 125(1) of the Customs Act, 1962.

- (iv) I impose a penalty equivalent to differential duty of **Rs.7,57,523/- (Rupees Seven Lakh Fifty Seven Thousand Five Hundred Twenty Three Only)** along with applicable interest under Section 28AA of the Customs Act, 1962, on M/s. Integratedmobi Tech Private Limited under Section 114A of the Customs Act, 1962.

In terms of the first and second proviso to Section 114A ibid, if duty and interest is paid within thirty days from the date of the communication of this order, the 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.

As penalty is imposed under Section 114A of the Customs Act, 1962, I refrain from imposing penalty under Section 112 in terms of the fifth proviso to Section 114A ibid.

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

Anil Ramteke
27/6/23

(अनिल रामटेके / ANIL RAMTEKE)

आयुक्त/Commissioner of Customs

एनएस-V, जेएनसीएच/NS-V, JNCH

To,

1. M/s. Integratedmobi Tech Private Limited,
8-D, Bapu Nagar, Chittorgarh,
Rajasthan, PIN-312001

Copy to:

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