

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

**DIN – 20250678NX0000444D58**

**Date of Order: 11.06.2025**

**F. No. S/10-62/2023-24/COMMR/CAC/NS-V/JNCH**

**Date of Issue: 11.06.2025**

**SCN No.: 582/2023-24/COMMR/Gr.VA/CAC/JNCH**

**SCN Date: 13.06.2023**

**Passed by: Sh. Anil Ramteke**

**Commissioner of Customs, NS-V, JNCH**

**Order No: 85/2025-26/COMMR/NS-V/CAC/JNCH**

**Name of Noticees: M/s. Bharti Infotech**

**ORDER-IN-ORIGINAL**

**मूल - आदेश**

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

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

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

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

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

3. अपील दाखिल करने संबंधी मुख्य मुद्दे:-

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

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

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

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

**Fee -फीस-**

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

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

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

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

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

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

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

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

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



**Subject: Adjudication of Show Cause Notice No. 582/2023-24/COMMR/Gr.VA/CAC/JNCH dated 13.06.2023 in case of M/s. Bharti Infotech (IEC No. 511086008) - reg.**

**1. BRIEF FACTS OF THE CASE**

**1.1** 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), data pertaining to imports made by various importers through JNCH (INNSA1) was analysed in detail. It was observed that M/s. Bharti Infotech (IEC No. 0511086008), having address at Plot No. 9, Extn. HPSIDC Industrial Area, Baddi Solan, Himachal Pradesh - 173205 had imported goods having description as “Battery” falling under the CTH 8507 as detailed in Annexure- ‘A’ to the Show Cause Notice and paid lower rate of BCD and/or IGST under Sr. No. 302 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 or a lower IGST rate in other Schedule, however, the imported goods attracts levy of BCD & IGST as per Table-A below.

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

**Table-A**

Tariff Item	Description of goods	BCD% (Ntfn.)	SWS	IGST	IGST schedule/Sr. No.	Total Duty	Remarks
8507 (except 8507 6000 and 8507 90)	Battery pack of cellular mobile phones [Other than Lithium-ion]	15	10	28	IV-139	49.12	02.02.18-till date
85076000	Lithium-ion battery of cellular mobile phones	15	10	28	IV-139	49.12	02.02.18-26.07.18
		15	10	18	III-376AA	37.47	27.07.18-till date
85076000	Battery pack of cellular mobile phones [Lithium-ion]	20	10	18	III-376AA	43.96	30.01.19-till date
85076000	Power Bank [Lithium-ion]	20	10	18	III-376AA	43.96	30.01.19-till date

**1.3** From the above table, it appears that:

- Battery pack of cellular mobile phones except 85076000 and 850790 (other than lithium ion) falls under CTH 8507 & attracts BCD @ 15% & IGST @ 28% under Serial No. 139 of Schedule-IV of IGST notification No. 01/2017.
- Till 26.07.2018 lithium-ion battery of cellular mobile phones classifiable under CTH 85076000 attracted BCD @ 15% & IGST @ 28% under Serial No. 139 of Schedule-IV of IGST notification No. 01/2017.
- From 27.07.2018 to 30.01.2019 lithium-ion battery of cellular mobile phones, classifiable under CTH 85076000, attracted BCD @ 15% & IGST @ 18% under Serial No. 376AA of Schedule-III of IGST notification No. 01/2017.
- From 30.01.2019 till date lithium-ion battery of cellular mobile phones falling under CTH 85076000, attracts BCD @ 20% & IGST @ 18% under Serial No. 376AA of Schedule-III of IGST notification No. 01/2017.
- From 30.01.2019 power bank (lithium ion) falling under CTH 85076000, attracts BCD @ 20% & IGST @ 18% under Serial No. 376AA of Schedule-III of IGST notification No. 01/2017.



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

1.5 The total assessable value of the BE items so imported was Rs. 64,63,55,622/- and it appeared that a short levy of BCD and/ or IGST amounting to Rs. 11,53,79,372/- (as detailed in Annexure – ‘A’ to the SCN) is recoverable from the Importer along with applicable interest and penalty.

1.6 In view of the above, Consultative letter No. 2439 dated 06.02.2023 was issued to the importer to clarify the issue raised by the department and if agreed to the observation/ finding of the department, the importer was advised to pay the differential duty along with applicable interest and penalty. However, no reply or submission was given by importer in this regard.

1.7 Whereas, consequent upon amendment to 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) 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, and 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.

1.8 Therefore, in view of the above facts, it appears that the importer has deliberately not paid the duty by wilful mis-statement as it was his duty to declare the correct applicable rate of duty in the entry made under Section 46 of the Customs Act, 1962, and thereby has attempted to take undue benefit amounting to Rs. 11,53,79,372/- (as detailed in Annexure-A to the SCN). Therefore, the differential duty, so not paid, is liable for recovery from the importer under Section 28(4) of the Customs Act, 1962, by invoking the extended period of limitation, along with applicable interest at the applicable rate under Section 28AA of the Customs Act, 1962, and for their acts of omission/commission.

1.9 In view of the above, it appears that the importer has failed to comply with the conditions mentioned above; therefore, it also appears that the imported goods are liable for confiscation under Section 111(m) of the Customs Act, 1962. It further appears that the importer for the acts of omission and commission mentioned above has rendered themselves liable for penal action under Section 112(a) and/ or 114A of the Customs Act, 1962.

2. Accordingly, a Show Cause Notice (SCN) No. 582/2023-24/COMMR/Gr.VA/CAC/JNCH dated 13.06.2023 was issued to the importer, M/s. Bharti



Infotech calling upon them to show cause to the Commissioner of Customs, Gr. VA, NS-V, JNCH, Nhava Sheva, as to why:-

- (i) Differential/short paid Duty amounting to Rs. 11,53,79,372/- (Eleven Crore Fifty-Three Lakh Seventy-Nine Thousand Three Hundred Seventy-Two only) for the subject goods imported vide Bills of Entry as detailed in Annexure-A to the 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 SCN having assessable value of Rs. 64,63,55,622/- (Sixty-Four Crore Sixty-Three Lakh Fifty-Five Thousand Six Hundred Twenty-Two 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.

### **3. WRITTEN SUBMISSION AND PERSONAL HEARING:**

The noticee, M/s. Bharti Infotech submitted a written submission dated NIL received in this office on 17.08.2023 vide which they, *inter alia* submitted that:

**3.1** The grounds on which above allegations have been made are not true and the show cause notice is devoid of merits. Thus, the same deserves to be dropped forthwith on accounts of various submissions given below which are without prejudice to each other.

#### **3.2 Averments made in the impugned show cause notice are vague:**

**3.2.1** The noticee submitted that the averments made in the impugned show cause notice are baseless, vague and bad in law; therefore, the show cause notice is liable to be dropped. They added that the demand proposed in the impugned show cause notice was vague, arbitrary and was in complete ignorance of the legal provisions regarding availing benefit of exemption notification(s) on of the imported goods in India. Also, the show cause notice was cryptic without any reasons and was based on assumptions and presumptions, which are not sustainable in law. The show cause notice has not led in any substantial evidence in support of its allegations of levy of differential customs duty.

**3.2.2** In the SCN, Table-A has been provided in para-2 wherein the rate of customs duty applicable on the following items during the period 02.02.2018 till date has been mentioned:

- (i) battery pack of cellular mobile phones (other than lithium ion);
- (ii) lithium-ion battery of cellular mobile phones;
- (iii) battery pack of cellular mobile phones (lithium ion); and
- (iv) power bank (lithium ion).

**3.2.3** It has been further provided in the SCN that the Bills of Entry (as per Annexure-A) wherein goods have been classified under CTH 8507 attract levy of BCD and IGST as per Table-A. Noticee submitted that the subject Bill of Entries have been filed by the Noticee in respect of parts of battery packs which were being used by the Noticee in the manufacture of the battery packs for mobile phones in India. The noticee has not imported the products specified in Table – A under the subject Bill of Entries. The differential rate of customs duty (as per Annexure-A of the SCN) has been computed by comparing the rates mentioned in Table-A and the rate



mentioned in the subject Bill of Entries filed by the noticee. Therefore, it is evident that the amount of differential customs duty has been determined by the department in a mechanical manner without considering the facts of the present case.

**3.2.4** Further, the noticee submitted that the entire show cause notice has been issued on the presumption that customs duty has been short paid, without at all considering the fact that the noticee had paid applicable customs duty on these imports after availing the benefit of the Notification No. 57/2017-Cus and Notification No. 50/2017-Cus (as applicable). The fact that these benefits were availed and imports were made under these notifications is clear from the bills of entry itself and was also brought to the notice of the department in the reply to the pre-consultative notice. However, the said fact has all together not been considered. There is no averment in the show cause notice as to how and why the benefit of these notifications is not available to the noticee in respect of the subject imports. The notice merely presumes that the rate of BCD on these imports is 15 or 20% and since the noticee has paid BCD less than that, this demand has been made. Such presumption makes the entire case vague and bad in law.

**3.2.5** The noticee submitted that the para 3.1 of the SCN clearly showed the vagueness of the present SCN, it is not clear whether demand is being raised on account of short payment of BCD, IGST or both and at what rate. Infact, from Annexure A to the SCN it is clear that the entire demand is of alleged short paid of BCD @15% or 20% and does not involve any incorrect application of IGST rate on these imported goods. Thus, the entire SCN is vague and does not bring out the allegations and proposals clearly.

**3.2.6** The noticee relied on the following case laws:

- (i) Punjab Gas Cylinders Ltd. vs. Commissioner of C. Ex. Chandigarh-II, 2015 (322) ELT 747 (Tri-Del.),
- (ii) Rallis India Ltd. Vs. Commissioner of Customs, Chennai, 2009 (236) ELT 685 (Tri-Chennai),
- (iii) M/s. API Investments Pvt. Ltd. Vs. Assistant Commissioner of Central Goods and Service Tax Wazirpur Division CGST Delhi West, 2023 (7) TMI 95 – Delhi High Court,
- (iv) M/s. VDR Colors and Chemicals Pvt. Ltd. through its Director Mr. Surender Kumar Jain vs. Principal Commissioner, Delhi North Zone & Anr., 2023-VIL-137-DEL.

**3.2.7** In the light of above submissions and the case laws relied therein, the noticee submitted that the SCN has been issued in a mechanical manner without considering the submissions made in the reply to the pre-consultative notice.

### **3.3 Burden to prove taxability is on Department**

**3.3.1** The noticee submitted that the burden to prove taxability is on the department, and such burden can never be shifted onto the assessee. It is only when the burden to prove taxability stands discharged by the department in a reasonable manner, the burden shifts to the assessee to prove non-taxability. In this regard, reference is made to the decision of Hon'ble Supreme Court in Union of India vs. Garware Nylons Limited, (1996) 10 SCC 413.

**3.3.2** Further, in the case of LSE Securities Limited vs. Commissioner, 2013 (29) STR 591 (Tri-Del), it was held that it is a well settled law that there is nothing like an implied power to tax. The court further went on to observe that the source of power which does not specifically speak of taxation cannot be so interpreted by expanding its width as to include therein the power of tax by implication or by necessary inference.

**3.3.3** In this background, it is emphatically submitted that the allegations in the impugned SCN are vague and do not prove taxability on the part of the noticee in the case at hand. Therefore, the same is liable to be dropped on this ground alone.



### **3.4 Bill of entry is a deemed assessment order and can only be challenged by way of an appeal:**

**3.4.1** The noticee submitted that a bill of entry is considered as an assessment order and can only challenged by way of filing an appeal, as is already held by the Hon'ble Supreme Court in the case of ITC Limited vs Commissioner of Central Excise [2019 (368) ELT 216 (SC)].

**3.4.2** The noticee submitted that Section 17(1) of the Customs Act, 1962 (herein after referred to as "Customs Act") provides for self-assessment of the customs duty, if any, leviable on the imported goods by the importer. A self-assessed bill of entry becomes an order of assessment, once the same is accepted by the customs authorities and clearance is allowed thereon. It is only by way of an appeal that an assessment order can be challenged. Until and unless assessment order is modified and a fresh order of assessment is passed, no demand against the same can be raised. It is not open to the proper officer after accepting the self-assessment to make a demand in the matter in the absence of the self-assessment being questioned in the appeal. It is submitted that once the self-assessment/assessment attains finality and has not been questioned, it cannot be reopened at any point of time. Issuance of this show cause notice tantamounts to issuance of show cause notice against an assessment order, which is legally not possible.

**3.4.3** The noticee submitted that in the instant case, the bills of entry were filed and they were self-assessed at the time of import. In the absence of any challenge to such assessment of bills of entry by way of filing the appeal, demand of customs duty cannot be raised in the instant matter. As the self-assessment of bills of entry is an order of assessment *per se*, unless the order of assessment is appealed before the Commissioner (Appeals) for modification, no demand of duty can be made.

**3.4.4** The noticee relied on the following case laws:

- (i) Escorts Ltd. v. Union of India & Ors. [1998 (97) E.L.T. 211 (S.C.)],
- (ii) Priya Blue Industries Ltd. Versus Commissioner of Customs (Preventive) [2004 (172) E.L.T. 145 (S.C.)],
- (iii) Excise, Kanpur v. Flock (India) Pvt. Ltd. [2000 (120) E.L.T. 285 (S.C.)],
- (iv) CCE vs. Videocon Appliances [2008 (88) RLT 635 (T)]
- (v) Zenith Computers vs. CCE [2008 (227) ELT 133 (Tri.)]

**3.4.5** The noticee submitted that the subject bills of entry are deemed assessment orders which can only be challenged by way of filing an appeal against the same. Moreover, the above case has not laid down any new law. It has only interpreted the law as it has existed already. No new law has been introduced by the said judgment. Therefore the same is squarely applicable to the instant case also.

**3.4.6** The noticee submitted that in the instant case, it cannot be said that the duty is short levied since the Bills of Entry have already attained finality and have become assessment orders. In the light of the decision in the matter of ITC [supra] read along with Section 17, short levy can be only when the Bills of Entries are not finalized. The department has not challenged the assessment order made on the bills of entry by way of filing appeals against each and every order. Since, no appeal has been filed, no demand could be made and so, the impugned show cause notice is liable to be dropped.

### **3.5 There is no short payment of customs duty in the instant matter:**

**3.5.1** The noticee submitted that the majority demand in the instant matter pertains to import of Li-ion cell into India and small portion of the demand pertain to PCB and other items of battery pack. In respect of Li-ion cells imported by the noticee during the period of dispute, it has been alleged in the SCN that the applicable basic customs duty (BCD) payable is either 15% (w.e.f. 02.02.2018 to 29.01.2019) or 20% (w.e.f 30.01.2019 to till date) and the noticee has paid less BCD and accordingly, the differential BCD has been demanded in this show cause notice.



**3.5.2** It is submitted that the noticee has paid BCD on these imported Li-ion Cell as follows:

- (i) Nil BCD was paid - for the period 15.06.2018 till 29.01.2019 - on availing the benefit of exemption notification - Sl. No. 7 of Notification No. 57/2017-Cus dated 30.06.2017;
- (ii) 5% BCD was paid - for the period 30.01.2019 till 01.02.2021 - on availing the benefit of exemption notification - Sl. No. 17A of Notification No. 57/2017-Cus dated 30.06.2017; and
- (iii) 5% BCD was paid - for the period till 08.10.2022 - on availing the benefit of exemption notification - Sl. No. 527A of Notification No. 50/2017-Cus dated 30.06.2017.

**3.5.3 No BCD payable for the period 15.06.2018 till 29.01.2019** – The noticee submitted that no BCD was paid on the imported Li-ion Cells for the period 15.06.2018 till 29.01.2019 in terms of Sl. No. 7 of Notification No. 57/2017-Cus dated 30.06.2017. This notification at Sl. No. 7 *inter alia* provided exemption from payment of entire BCD on import of inputs / raw materials required for manufacture of 'Battery Pack'. Benefit of this notification was 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 (herein after referred to as the "IGCR Rules"). The noticee in respect of these imports was availing the benefit of the aforementioned notification and following the procedure set out in the IGCR Rules. Since the Li-ion Cells were imported by the noticee for use in manufacture of 'Battery Pack' of mobile phone, it is submitted that the benefit of this notification was rightly availed by the noticee. Further, it is also noteworthy that there is no exclusion in this notification on import of Li-ion Cells i.e., benefit of this notification will be available even on import of Li-ion Cells for use in manufacture of 'Battery Pack' of mobile phone. In the SCN, no averment/allegation has been made as to how and why benefit of this notification is not available to noticee in respect of these imported goods. Hence, the demand of customs duty thereon for the period from 15.06.2018 to 29.01.2019 is erroneous and deserves to be set aside.

**3.5.5 5% BCD payable for the period 30.01.2019 till 01.02.2021**- The noticee submitted that 5% BCD was paid on the imported Li-ion Cells for the period 30.01.2019 till 01.02.2021 in terms of Sl. No. 17A of Notification No. 57/2017-Cus dated 30.06.2017. This notification at Sl. No. 17A *inter alia* provided for payment of BCD at concessional rate of 5% on Li-ion Cells for use in manufacture of 'Battery Pack' of mobile phone. Benefit of this notification was 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. The noticee in respect of these imports was availing the benefit of the aforementioned notification and following the procedure set out in the IGCR Rules. Since the Li-ion Cells were imported by the noticee for use in manufacture of 'Battery Pack' of mobile phone, it is submitted that the benefit of this notification was rightly availed by the noticee. Further, it is also noteworthy that there is no exclusion in this notification on import of Li-ion Cells i.e., benefit of this notification will be available even on import of Li-ion Cells for use in manufacture of 'Battery Pack' of mobile phone. In the SCN, no averment/allegation has been made as to how and why benefit of this notification is not available to noticee in respect of these imported goods. Hence, the demand of customs duty thereon for the period from 30.01.2019 till 01.02.2021 is erroneous and deserves to be set aside.

**3.5.6 5% BCD payable for the period 02.02.2021 till 08.10.2022**- The noticee submitted that 5% BCD was paid on the imported Li-ion Cells for the period 02.02.2021 till 08.10.2022 in terms of Sl. No. 527A of Notification No. 50/2017-Cus dated 30.06.2017. This notification at Sl. No. 527A *inter alia* provided for payment of BCD at concessional rate of 5% on Li-ion Cells for use in manufacture of 'Battery Pack' of mobile phone. Benefit of this notification was 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. The noticee in respect of these imports was availing the benefit of the aforementioned notification and following the procedure set out in the IGCR Rules. Since the Li-ion Cells were imported by the noticee for use in manufacture of 'Battery Pack' of mobile phone, it is submitted that the benefit of this notification was rightly availed by



the noticee. Further, it is also noteworthy that there is no exclusion in this notification on import of Li-ion Cells i.e., benefit of this notification will be available even on import of Li-ion Cells for use in manufacture of 'Battery Pack' of mobile phone. In the SCN, no averment/allegation has been made as to how and why benefit of this notification is not available to notice in respect of these imported goods. Hence, the demand of customs duty thereon for the period from 02.02.2021 till 08.10.2022 is erroneous and deserves to be set aside.

### **3.6 Customs duty demand erroneous -Import of PCB and Other items of battery pack:**

**3.6.1** Noticee submitted that they have rightly paid BCD on imported PCB and other items of battery pack. The duty paid is as follows:

- a) PCB- NIL BCD paid on availing Sl. No. 7 of Notification No. 57/2017-Cus dated 30.06.2017 for the imports made between 03.06.2018 to 12.11.2018
- b) Other items of 'Battery Pack' — Demand made in the impugned SCN for imports made between 03.08.2018 to 15.10.2019
  - (i) Nil BCD was paid - for the period 15.06.2018 till 29.01.2019 — on availing the benefit of exemption notification - Sl. No. 7 of Notification No. 57/2017-cus dated 30.06.2017, and
  - (ii) NIL BCD was paid - for the period 30.01.2019 till 15.10.2019 - on availing the benefit of exemption notification - Sl. No. 7D of Notification No. 57/2017-Cus dated 30.06.2017.

**3.6.2** The said goods were imported for manufacture of battery pack availing benefit of notification No. 57/2017-Cus dated 30.06.2017 following the procedure set out in the Customs (Import of goods at concessional rate of duty) Rules, 2017. In the SCN, no averment/allegation has been made as to how and why benefit of this notification is not available to notice in respect of these imported goods. Hence, the demand of customs duty thereon is erroneous and deserves to be set aside.

### **3.7 The entire demand is time barred:**

**3.7.1** Noticee submitted that there is no element of collusion, or wilful mis-statement, or suppression of facts involved in short-payment of duty as mandated under section 28(4) of the Customs Act, 1962, then the normal period of limitation of two years from the date of import will be applicable for issuance of show cause notice. Extended period of limitation of five years can be invoked only when the case at hand involves collusion, suppression of facts or wilful mis-statement. Noticee submitted that the grounds for invoking extended period of limitation have to be first established from the totality of facts and circumstances of a particular case in light of the relevant legal provisions. In the present matter, the SCN has been issued on 13.06.2023 and the demand has been raised for the period 15.06.2018 till 08.10.2022. Thus, demand for the portion 15.06.2018 to 12.06.2021 is time barred and being beyond the normal period of limitation and therefore deserves to be set aside forth due to absence any wilful statement or mis-statement or fraud or suppression on part of the Noticee in the instant matter. Noticee submitted that the allegations in the SCN are without any merit as the noticee has always been of the bonafide belief that there is no short-payment of customs duty and the noticee has not suppressed any facts, let alone material facts, with any malafide intention. The noticee has been and is still of the bonafide view that it has duly discharged customs duty.

**3.7.2** In this regard, the Hon'ble Supreme Court in the case of Rainbow Industries vs. CCE, 1994 (74) ELT3 (SC) has held that in order for extended period to apply, two ingredients must be present wilful suppression, mis-declaration etc. and intention to evade payment of duty. In the present case neither of the two conditions is satisfied. Noticee has also relied on various case laws. In such a case, the extended period of limitation cannot be invoked, particularly, when there was no malafide on part of the noticee, and accordingly, the impugned SCN, being beyond normal period of limitation, is liable to be set-aside. Noticee submitted that collusion, wilful-



misstatement or suppression as envisaged under Section 28(4) of Customs Act must be 'intentional', 'wilful' or 'deliberate' act / omission on the part of the Company. Reliance in this regard is being Placed on Cosmic Dye Chemical v. Collector of Central Excise, Bombay, (1995) 6 SCC 1 17 and CCE, Aurangabad vs. Bajaj Auto Limited, 2010 (260) ELT 17 (SC).

### **3.8 Goods not liable for confiscation:**

**3.8.1** The provision provides for confiscation of goods which, inter alia, do not correspond in respect of value or in any other particular with the entry made under the Customs Act, 1962. An important aspect of the provision pertaining confiscation is the availability of goods. This means that if the goods are not physically available for confiscation, they certainly cannot be confiscated. In the case of Bussa Overseas & Properties P. Ltd. vs. C.L. Mahar, Assistant Commissioner of Customs, Bombay, 2004 (163) ELT 304 (Bom.), the Hon'ble Bombay High Court held that once the goods are cleared for home consumption, they cease to be imported goods as defined in Section 2(25) of the Customs Act and consequently are not liable to confiscation under Section 111 of the Customs Act. The Honble Supreme Court has upheld the aforementioned decision of the Bombay High Court in Assistant Collector vs. Bussa Overseas and Properties Pvt. Ltd., 2004 (163) E.L.T. A160 (S.C.). 6 It is therefore, respectfully submitted that the imported goods which have already been cleared for home consumption are not liable to confiscation under the provisions of Section 111 of the Customs Act.

**3.8.2** Additionally, the noticee relied on following precedents to substantiate that no confiscation can be ordered based on assumptions and surmises, without any actual act / omission rendering the goods liable for confiscation:

- a. Collector of Customs (Prev.), West Bengal vs. Kamala Ranjan Saha, 2003 (161) ELT 1047 (Tri.-Cal), and
- b. Commissioner of Customs, W.B. vs. Swapan Kr. Debnath, 2002 (148) ELT 840 (Tri.-Cal).

Noticee submitted that the imported goods are not liable for confiscation under section 111 of the Customs Act. The parameters required for invoking this section have not been fulfilled. The SCN therefore deserves to be set aside on this ground itself.

### **3.9 Penalty not imposable on the notice:**

**3.9.1** Noticee submitted that penalty is not imposable on the noticee in the instant case as the customs duty demand is itself legally not sustainable and the noticee have not contravened any of the provisions of the Customs Act. For this, reliance is placed on submissions made earlier. Further, noticee submitted that for the reasons given in the foregoing paragraphs, the demand in the present case is not sustainable in law. Once the demand is found to be non-sustainable, the question of levy of penalty does not arise. In the case of Collector of Central Excise vs. H.M.M. Limited, 1995 (76) ELT 497 (SC), the Hon'ble Supreme Court held that the question of penalty would arise only if the department is able to sustain the demand. Similarly, in the case of Commissioner of Central Excise, Aurangabad vs. Balakrishna Industries, 2006 (201) ELT 325 (SC), the Hon'ble Supreme Court held that penalty is not imposable when differential duty is not payable.

**3.9.2** On reading the provision of section 112, it becomes clear that if a person does or omits to do any act which act or omission would render such goods liable to confiscation shall be liable to penalty. In this regard it is submitted that the noticee has not done or omitted to do any act so as to render the goods liable for confiscation. The goods imported were duly cleared by the customs authority after passing the assessment order. The onus lies on the department to check / verify the exemption availed by the importer at the time of import. Additionally, as mentioned in preceding paragraphs that the provisions of section 111(m) are not applicable if there is no mis-declaration in respect of description or value of the goods. Also, the goods are not physically available for confiscation. In this regard, there becomes no occasion to attract the penal provisions under this section. This essentially means that the Noticee has not evaded customs



duty and thus, is not liable to penalty under the above-mentioned provision. As the goods are not liable for confiscation under section 111, the penalty imposed under section 112(a) also needs to be set aside.

**3.9.3** The SCN proposes to impose penalty on the noticee under section 114A of the Customs Act, 1962. It is a settled principle of law that no penalty under Section 114A of the Act is imposable when there is no act of suppression of facts with intent to evade payment of duty. Further, the penalty will not be imposed unless categorical finding of fraud, collusion, willful misstatement etc. with intent to evade payment of duty is established. In absence of such a finding, Imposition of penalty is not automatic and cannot be imposed. Noticee submitted that the SCN has merely stated that the noticee has suppressed the facts without stating any specific allegation against the noticee. In this regard, in the absence of specific allegation, levy of penalty is not warranted. Reliance is placed in the case of Dhillon Oil and Fats Pvt. Ltd. vs. Commissioner of C Ex., Ludhiana, 2015 (316) EL T. 242 (P & H), wherein the court observed that penalty may only be imposed if failure to deposit duty is occasioned by wilful misstatement, fraud and collusion, etc., i.e., mens rea.

**3.9.4** Further, noticee submitted that no penalty is imposable under section 114A, since the noticee is not liable to pay duty for the reasons stated in the above submissions, the. Additionally, the ingredients for imposing penalty under section 114A are absent in the present case as the noticee has never suppressed any fact relating to the exemption notification adopted by it with an intention to evade payment of duty. Noticee submitted that the SCN has failed to discharge the burden of proving mala fide in the instant case. The SCN has merely proceeded on the basis of assumptions. Thus, having failed to prove suppression on part of the Noticee, the proposed imposition of penalty under section 114A is not sustainable.

**3.9.5** Furthermore, in respect of the IGST portion of the demand (due to demand of BCD - cascading effect) no penalty is payable as the penalty provisions have not been borrowed for IGST levy under the Customs Tariff Act. For this reliance is placed on the following decisions:

- Mahindra and Mahindra Ltd. vs. Union of India (Bombay High Court – WRIT PETITION NO.1848 OF 2009) This judgement has been accepted by the Hon'ble Supreme Court of India in appeal (SLP (C) Diary No. 18824 2023);
- Tonira Pharma Ltd. vs. CCE, swat, 2007 (208) ELT38,
- Raj Traders vs. CC, 2002 (144) EIN 130;
- I.K. International vs. CC, 2002 (142) ELT 185;
- Supreme Woolen Mills Ltd vs. CC, 2004 (167) ELT439,
- Silkone International vs. CC, 2007 (208) ELT 271; and
- Bajaj Health & Nutrition Pvt. Ltd. vs. Commissioner of Customs, Chennai, 2004 (166) ELT 189.

**3.9.6** Noticee submitted that in view of the above submissions penalty is not imposable in the instant matter.

**3.10 Interest is not recoverable from the notice:-** Noticee submitted that the interest under section 28AA is not recoverable from the Noticee since the Noticee is not liable to pay any duty. The Noticee has not failed to discharge any liability towards payment of customs duty. Noticee further submitted that they rely on the following case laws:

- Star India (P) Ltd. vs. CCE-2006 (1) S.T.R. 73 (SC),
- M/s. Pratibha Processors Vs. Union of India 1996 (88) EL T. 12 (S.C.).

Noticee submitted that in view of the above, the demand of interest is liable to dropped. In respect of the IGST portion of the demand (due to demand of BCD -cascading effect) no interest is payable as the interest provision has not been borrowed for IGST under the Customs Tariff Act. Noticee mentioned various case law in support of their claim.



4. **RECORD OF PERSONAL HEARINGS**

Following the principal of natural justice, the Noticee was granted opportunities for personal hearing (PH) in terms of Section 28(8) read with Section 122A of the Customs Act, 1962. Shri Hemant Bajaj, Advocate on behalf of Noticee attended the personal hearing on 06.06.2025 and argued the case and reiterated the written submission dated NIL received in this office on 17.08.2023, the same has been taken on record. He further stated that the goods imported by them are inputs/raw materials for manufacture for mobile battery and they have availed the benefit of Notification No. 57/2017 and 50/2017, as applicable, complying the IGCR Rules, however, in the SCN it is nowhere alleged that they have wrongly availed the benefit of these notifications. He added that the SCN has been issued in mechanical manner on the basis of presumptions and assumptions. He further requested to drop the proceedings initiated against this SCN.

**DISCUSSION AND FINDINGS**

5. The fact of the matter is that a Show Cause Notice (SCN) No. 582/2023-24/Commr/GR-VA/CAC/JNCH dated 13.06.2023 was issued to M/s. Bharti Infotech (IEC No. 0511086008) alleging that the goods imported by them have been cleared without payment of applicable duty as detailed in Table-A above. The SCN was served for said non-payment of applicable differential Customs duty of Rs. 11,53,79,372/- (Rs. Eleven Crore Fifty-Three Lakh Seventy-Nine Thousand Three Hundred and Seventy-Two Only) as detailed in Annexure-A to the SCN invoking extended period under Section 28 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)/114A of the Customs Act, 1962. Show cause Notice also proposed liability to confiscation of imported goods having assessable value of Rs. 64,63,55,622/- under Section 111(m) of the Customs Act, 1962.

5.1 I find that the subject Show Cause Notice was issued on 13.06.2023. On 02.06.2024, the Chief Commissioner of Customs, JNCH, Mumbai Zone-II has granted extension of time limit to adjudicate the case up to 12.06.2025 as per the first proviso to Section 28(9) of the Customs Act, 1962. Therefore, the case has now been taken for adjudication proceedings within the time limit as per Section 28(9) of the Customs Act, 1962.

5.2 I have gone through the subject Show Cause Notice, charges levelled against the importer, relied upon documents, the written submission of the Noticees and material on record and accordingly, I proceed to decide the case on merit.

6. On going through the description of the imported goods as detailed in the annexure-A to the SCN, I find that most of the goods imported are having description “LITHIUM LI - ION CELL RAW MATERIAL FOR MOBILE PHONE BATTERY”. Further, on verifying from the ICES system, the duty paid against Li-ion Cells is as follows:

**Table-B**

Sr. No.	Description	Date range of bills of entry mentioned in Annexure-A to SCN	BCD paid	BCD Notification & Sr. No.	IGST Paid
1	LITHIUM LI - ION CELL (RAW MATERIAL FOR MOBILE PHONE BATTERY)	15.06.2018 to 26.12.2018	BCD @ 0%	057/2017-7	IGST @ 28%
2		01.01.2019 to 01.01.2019	BCD @ 0%	057/2017-7	IGST @ 18%
3		11.02.2019 to 01.02.2021	BCD @ 5%	057/2017-17A	IGST @ 18%
4		16.02.2021 to 08.10.2022	BCD @ 5%	050/2017-527A	IGST @ 18%



Goods other than Li-ion Cells are having description CAP, BOTTOM, HOUSING, PCB (RAW MATERIAL FOR MOBILE PHONE BATTERY) and the duty paid against these goods is as follows:

TABLE-C

Sr. No.	Description	Date range of bills of entry mentioned in Annexure-A to SCN	BCD paid	BCD Notification & Sr. No.	IGST Paid
1	CAP, BOTTOM, HOUSING, PCB (RAW MATERIAL FOR MOBILE PHONE BATTERY)	03.08.2018 to 12.11.2018	BCD @ 0%	057/2017-7	IGST @ 28%
2	CAPS (RAW MATERIAL FOR MOBILE PHONE BATTERY)	15.10.2019 to 15.10.2019	BCD @ 0%	057/2017-7D	IGST @ 28%

6.1 I find that the goods classifiable under 8507 attracts IGST @28% under Sr. No. 139 of Schedule-IV of the Notification No. 01/2017- Integrated Tax (Rate) dated 28.06.2017. However, vide Notification No. 25/2018-IT (Rate) dated 30.12.2018 (w.e.f. 01.01.19), the said Notification No. 01/2017- Integrated Tax (Rate) dated 28.06.2017 was amended and a new Sr. No. 376AAA was inserted under Schedule-III of the said notification for the goods classifiable under heading 8507 and description “Lithium-ion accumulators (other than battery) including lithium-ion power bank”. Hence, w.e.f. 01.01.2019, the Li-ion Cells being Li-ion accumulator were eligible to avail the Sr. No. 376AAA of schedule-III of Notification No. 01/2017- Integrated Tax (Rate) dated 28.06.2017.

7. In view of the above Table-B and Table-C, noticee has availed benefit of BCD against various Sr. Nos. of notification No. 57/2017 and 50/2017. The Sr. Nos. against which benefit has been availed are as follows:

7.1 Notification No. 57/2017 – Customs dated 30th June, 2017

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), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description as specified in column (3) of the Table below, as the case may be, and falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) as are specified in the corresponding entry in column (2) of the said Table, when imported into India, from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the standard rate as specified in the corresponding entry in column (4) of the said Table subject to any of the conditions, as specified in the Annexure to this notification, the condition number of which is mentioned in the corresponding entry in column (5) of the said Table.

S.No.	Chapter or Heading or Sub-heading or tariff item	Description of goods	Standard rate	Condition No.
(1) .	(2) .	(3) .	(4) .	(5) .
.....	.....	.....	.....	.....
7	Any Chapter	Inputs or raw material for use in manufacture of following parts of Cellular mobile phones; (i) Charger or adapter (ii) Battery pack	NIL	1
.....	.....	.....	.....	.....



ANNEXURE

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

7.2 Further, vide Notification No. 02/2019-Customs dated 29.01.2019, Notification No. 57/2017 – Customs dated 30.06.2017 was amended and new Sr. No. 7D and 17A along with other Sr. Nos. were inserted and the item (ii) against serial number 7 in column (3) was omitted. The relevant portion of the notification is as follows:

I. In the said notification, in the TABLE, -

- I. against serial number 7, in column (3), the item (ii) shall be omitted;
- II. after serial number 7C and the entries relating thereto, the following serial numbers and entries shall be inserted, namely: -

S.No.	Chapter or Heading or Sub-heading or tariff item	Description of goods	Standard rate	Condition No.
(1) .	(2) .	(3) .	(4) .	(5) .
7D	Any Chapter	Inputs or raw material other than: - (i) Lithium ion cell (falling under tariff item 8507 60 00); and (ii) Printed Circuit Board Assembly (PCBA) (falling under tariff item 8507 90 90), for use in manufacture of Battery pack of Cellular mobile phones.	NIL	1
.....	.....	.....	.....	.....

III.....

IV. after serial number 17 and the entries relating thereto, the following serial numbers and entries shall be inserted, namely: -

S.No.	Chapter or Heading or Sub-heading or tariff item	Description of goods	Standard rate	Condition No.
(1) .	(2) .	(3) .	(4) .	(5) .
17A	8507 6000	Lithium ion cell for use in the manufacture of battery pack of cellular mobile phone.	5%	1
.....	.....	.....	.....	.....

7.3 Further, vide notification No. 02/2021-Customs dated 01.02.2021, notification No. 50/2017-Customs dated 30.06.2017 was amended and Sr. No. 527A was inserted. The relevant portion of the said notification is as follows:

.....

(84) for S. No. 527 and the entries relating thereto, the following S. Nos. and entries shall be substituted, namely:



S. No.	Chapter or Heading or Sub-heading or tariff item	Description of goods	Standard rate	IGST	Condition No.
(1) .	(2) .	(3) .	(4) .	(5) .	(6) .
527	.....	.....	.....	.....	.....
527A	8507 6000	Lithium-ion cell for use in the manufacture of battery or battery pack of cellular mobile phone	5%	-	9
527B	.....	.....	.....	.....	.....

The condition 9 of the notification No. 50/2017-Customs dated 30.06.2017 is as follows.

Condition No.	Conditions
.....	.....
9	If the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.

8. As per above notifications, to avail the benefit of Sr. No. 17A of Notification No. 57/2017 – Customs dated 30.06.2017 and Sr. No. 527A of Notification No. 50/2017 – Customs dated 30.06.2017 the goods should be classifiable under CTI 85076000. I find that the noticee had classified the imported goods ‘Lithium Ion Cell’ under CTI 85076000. Therefore, it would be worthwhile to look at the Customs Tariff Heading 8507, which covers the goods of broad description as under:

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

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."*

On analysis of the Customs Tariff Heading 8507 and Explanatory Notes to heading 8507, I note that the imported goods viz. 'Lithium Ion Cell' are capable of charging and discharging, and are used in mobile battery / power bank for supplying current to cellular mobile phones. Further, I note that the Explanatory Notes mention *inter alia* that in many cases the accumulator container may be subdivided, each sub-division (cell) being an accumulator in itself; and that accumulators containing one or more cells and the circuitry to interconnect the cells amongst themselves, often referred to as "battery packs", are covered by the heading 8507. It is, therefore, observed that the impugned goods rightly fall under CTI 8507 6000. Even the Show Cause Notice does not challenge the description and classification of the goods under CTI 8507 6000. Thus, I find that in the instant case, there is no dispute regarding the description and classification under CTI 85076000 of the impugned goods imported by the noticee.

9. In view of the above para, I find that imported goods claiming benefit of Sr. No. 17A of Notification No. 57/2017 – Customs dated 30.06.2017 and Sr. No. 527A of Notification No. 50/2017 – Customs dated 30.06.2017, are classifiable CTI 85076000. Now, I have to decide, whether the goods as detailed in Annexure-A to the SCN fulfils all other condition laid down in these notifications and eligible to claim the benefit of these notifications or otherwise.

9.1 I find that importer has availed benefit of Sr. No. 7 of Notification No. 57/2017 – Customs dated 30.06.2017 against the goods mentioned at Sr. No. 1 and 2 of above Table-B. The goods imported are "LITHIUM LI - ION CELL (RAW MATERIAL FOR MOBILE PHONE BATTERY)" and as per the Sr. No. 7 of the said notification the goods of any chapter falling under the description "*Inputs or raw material for use in manufacture of following parts of Cellular mobile phones; (i) Charger or adapter (ii) Battery pack .....*" can avail the benefit of this Sr. No. and eligible for BCD exemption if they follow the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. I find that in the SCN, it is neither mentioned that the noticee has not followed the procedure laid down in Customs IGCRD Rules 2017 nor it has been alleged in the SCN that the goods do not fall under description of goods as mentioned in the respective Sr. No. of notification 50/2017-Customs dated 30.06.2017 or 57/2017-Customs dated 30.06.2017. I find that subject goods fall under the description of the goods of the said Sr. No. being raw materials for battery pack of cellular mobile and in the SCN, I do not find any fact which substantiate that noticee has not followed the IGCRD Rules 2017. On verifying from the documents uploaded in e-sanchit, I find that letters issued by jurisdiction customs officer mentioning that noticee is eligible for said exemption has also been uploaded against the bills of entry. Hence, noticee has correctly availed the benefit of the Sr. No. 7 of Notification No. 57/2017 – Customs dated 30.06.2017 against the goods mentioned at Sr. No. 1 and 2 of Table-B above and no differential duty arises against these goods.



9.2 I find that importer has availed benefit of Sr. No. 17A of Notification No. 57/2017 – Customs dated 30.06.2017 against the goods mentioned at Sr. No. 3 of Table-B above. The goods imported are “LITHIUM LI - ION CELL (RAW MATERIAL FOR MOBILE PHONE BATTERY)” and as per the Sr. No. 17A of the said notification the goods of CTI 85076000 falling under the description “*Lithium ion cell for use in the manufacture of battery pack of cellular mobile phone.*” can avail the benefit of this Sr. No. and eligible for import at concessional rate of BCD @5% if they follow the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. I find that subject goods fall under the description of the goods of the said Sr. No. being raw materials for battery pack of cellular mobile and in the SCN, I do not find any fact which substantiate that noticee has not followed the IGCRD Rules 2017. On verifying from the documents uploaded in e-sanchit, I find that letters issued by jurisdiction customs officer mentioning that noticee is eligible for said exemption has also been uploaded against the bills of entry. Hence, noticee has correctly availed the benefit of the Sr. No. 17A of Notification No. 57/2017 – Customs dated 30.06.2017 against the goods mentioned at Sr. No. 3 of Table-B above and no differential duty arises against these goods.

9.3 Further, I find that importer has availed benefit of Sr. No. 527A of Notification No. 50/2017 – Customs dated 30.06.2017 against the goods mentioned at Sr. No. 4 of Table-B above. The goods imported are “LITHIUM LI - ION CELL (RAW MATERIAL FOR MOBILE PHONE BATTERY)” and as per the Sr. No. 527A of the said notification the goods CTI 85076000 falling under the description “*Lithium ion cell for use in the manufacture of battery pack of cellular mobile phone.*” can avail the benefit of this Sr. No. and eligible for import at concessional rate of BCD @5% if they follow the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. I find that subject goods fall under the description of the goods of the said Sr. No. being raw materials for battery pack of cellular mobile and in the SCN, I do not find any fact which substantiate that noticee has not followed the IGCRD Rules 2017. Further, I find that letters issued by jurisdiction customs officer mentioning that noticee is eligible for said exemption has also been uploaded in e-sanchit in some bills of entry and others has been debited against the EI bond as mandated under IGCRD rules 2017. Hence, noticee has correctly availed the benefit of the Sr. No. 527A of Notification No. 50/2017 – Customs dated 30.06.2017 against the goods mentioned at Sr. No. 4 of Table-B above and no differential duty arises against these goods.

9.4 I find that importer has availed benefit of Sr. No. 7 of Notification No. 57/2017 – Customs dated 30.06.2017 and Sr. No. 7D of the said notification against the goods mentioned in above Table-C. The goods imported availing benefit of Sr. No. 7 of the said notification are “CAP, BOTTOM, HOUSING, PCB (RAW MATERIAL FOR MOBILE PHONE BATTERY)” and as per the Sr. No. 7 of the said notification the goods of any chapter falling under the description “*Inputs or raw material for use in manufacture of following parts of Cellular mobile phones; (i) Charger or adapter (ii) Battery pack .....*” can avail the benefit of this Sr. No. and eligible for BCD exemption if they follow the procedure set out in the Customs IGCR Rules, 2017. Further, The goods imported availing benefit of Sr. No. 7D of the said notification are “CAP, (RAW MATERIAL FOR MOBILE PHONE BATTERY)” and as per the Sr. No. 7D of the said notification the goods of any chapter falling under the description “*Inputs or raw material other than:-(i) Lithium ion cell (falling under tariff item 8507 60 00); and (ii) Printed Circuit Board Assembly (PCBA) (falling under tariff item 8507 90 90), for use in manufacture of Battery pack of Cellular mobile phones.*” can avail the benefit of this Sr. No. and eligible for BCD exemption if they follow the procedure set out in the IGCR Rules, 2017. I find that subject goods fall under the description of the goods of the said Sr. No. being raw materials for battery pack of cellular mobile and in the SCN, I do not find any fact which substantiate that noticee has not followed the IGCRD Rules 2017. I find that letters issued by jurisdiction customs officer mentioning that noticee is eligible for said exemption has also been uploaded against the bills of entry. Hence, noticee has correctly availed the benefit of the Sr. Nos. 7 and 7D of Notification No. 57/2017 –



Customs dated 30.06.2017 against the goods mentioned in Table-C above and no differential duty arises against these goods.

**9.5** Hence, after taking into consideration the discussions in the foregoing paras, I conclude that in respect of the impugned Bills of Entry as detailed in Annexure-A to the SCN, the Noticee has correctly paid the BCD by appropriately claiming the exemption / concessional rate benefit against Sr. Nos. 7, 17A and 7D of Notification No. 57/2017 – Customs dated 30.06.2017 and Sr. No. 327A of Notification No. 50/2017 – Customs dated 30.06.2017 and has also correctly paid the IGST as mentioned in above Table-B and Table-C.

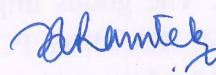
**10.** In view of the above, I do not find any merits in the instant SCN and thus, I am of the opinion that the demand of differential/short paid duty amounting to Rs. 11,53,79,372/- (Eleven Crore Fifty-Three Lakh Seventy-Nine Thousand Three Hundred Seventy-Two only) raised in the subject SCN under Section 28(4) of the Customs Act, 1962 does not sustain and thus, the same merits to be dropped. Resultantly, the confiscation proposed under Section 111(m) of the Customs Act, 1962 as well as the penal provisions invoked under Section 112(a) and/or Section 114A of Customs Act, 1962, are not sustainable. Thus, I am compelled that the liabilities so alleged, on account of short-payment of the applicable duty, do not survive and thus, the entire proceedings merits to be dropped.

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

### ORDER

I drop all the proceeding initiated against M/s. Bharti Infotech (IEC No. 0511086008) by the impugned Show Cause Notice No. 582/2023-24/Commr./Gr.VA/CAC/JNCH dated 13.06.2023.

**12.** 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.

  
11/6/23

(अनिल रामटेके / ANIL RAMTEKE)

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

To,

M/s. Bharti Infotech  
Plot No. 9, Extn. HPSIDC Industrial Area,  
Baddi, Solan, Himachal Pradesh - 173205

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, Admin, Audit Commissionerate, JNCH
5. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
6. Office copy.