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 – 20250678NX000094129D **Date of Order: 13.06.2025**

F. No. S/10-75/2023-24/NS-V/CAC/JNCH **Date of Issue: 13.06.2025**

SCN No.:662/2023-24/COMMR/GR.VA/CAC/JNCH

SCN Date: 16.06.2023

Passed by: Sh. Anil Ramteke
Commissioner of Customs, NS-V, JNCH

Order No: 86/2025-26/COMMR/NS-V/CAC/JNCH

Name of Noticees: M/s. Cosmic Byte

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 नि:शुल्क 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 रुपय 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. 662/2023-24/COMMR/GR.VA/CAC/ JNCH dated 16.06.2023 issued to M/s. Cosmic Byte (IEC-3114004598) – reg.

1. BRIEF FACTS OF THE CASE

1.1 It is stated in the Show Cause Notice (SCN) No. 662/2023-24/COMMR/GR.VA/CAC/ JNCH dated 16.06.2023 that on the basis of the Alert Circular No. 01/2018 issued by the Audit Commissioner of Delhi, on the issue of "Short Levy of Customs Duty" by way of claiming ineligible benefits of Customs Notification No. 57/2017-Cus. dated 30.06.2017 (as amended by Notfn. No. 22/2018-Cus. dated 02.02.18), data pertaining to imports under CTH 8518 made by various importers through JNCH (INNSA1) was analysed in detail. It was observed that M/s. Cosmic Byte (IEC-3114004598) having address as Near YMCA, Next to HDFC Bank, 683, Nana Peth, Pune, Maharashtra-411002, had imported goods with description as "Headset or earphone or headphone" as detailed in Annexure- 'A' to the subject SCN. The imported goods attracted Basic Customs Duty (BCD) @ 15%.

1.2 As per the SCN, the following is relevant extract of Customs Notification No. 57/2017-Cus. dated 30.06.2017 (as amended by Notfn. No. 22/2018-Cus. dated 02.02.2018).

S. No.	***Notfn.***	***Chapter or Heading or Subheading or tariff item***	***Description of goods***	***Standard Rate (Notfn.)***	***Condition No.***
18	*Notfn.57/2017-Cus. dated 30.06.2017 (as amended by Ntfn.22/2018-Cus. dated 02.02.2018)*	*8518*	*All goods other than the following Parts of cellular Mobile phones* *i. Speakers &* *ii. Wired Headsets* *iii. Receiver*	*10%*	-

1.3 As per the SCN, consequent upon the above notifications, it was amply clear that Sr. No. 18 of Customs Notification No. 57/2017-Cus. dated 30.06.2017 (as amended by Notfn. No. 22/2018-Cus. dated 02.02.2018) applied to all goods other than the following parts of cellular mobile phones:

i. Speakers &
ii. Wired Headsets
iii. Receiver

Therefore, the imported goods being Headset or Earphone or Headphone did not qualify for the exemption of BCD under Sr. No. 18 of Customs Notification No. 57/2017-Cus. dated 30.06.2017 (as amended by Notfn. No. 22/2018-Cus. dated 02.02.2018).

1.3.1 The total assessable value of the Bill of Entry (B/E) items so imported was ₹9,81,77,497/- and it appeared that a short levy of BCD amounting to ₹63,71,720/- (as detailed

in Annexure-'A' to the subject SCN) was 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 along with applicable interest and penalty. However, no reply or submission was given by the 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 Therefore, 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 ₹63,71,720/- (as detailed in Annexure-'A' to the subject SCN). Therefore, the differential duty, so not paid, is liable for recovery from the importer under Section 28(4) of the Customs Act, 1962 by invoking extended period of limitation, along with applicable interest at the applicable rate under Section 28AA of the Customs Act, 1962 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. 662/2023-24/COMMR/Gr.VA/CAC/JNCH dated 16.06.2023, M/s. Cosmic Byte (IEC-3114004598) having address as Near YMCA, Next to HDFC Bank, 683, Nana Peth, Pune, Maharashtra-411002, was called upon to show cause to the Commissioner of Customs (NS-V), Group 5A, Jawaharlal Nehru Custom House, Nhava Sheva (the Adjudicating Authority), as to why:

(i) Differential/short paid Duty amounting to ₹63,71,720/- 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 ₹9,81,77,497/- 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 did not submit any written submission in their defence during the adjudication proceeding, inspite of the same being called vide subject Show Cause Notice dated 16.06.2023.

3. RECORD OF PERSONAL HEARINGS

3.1 There is single Noticee in the subject SCN viz. M/s. Cosmic Byte.

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 05.06.2024, 07.04.2025, 22.04.2025, 29.04.2025, 08.05.2025, 21.05.2025 and 27.05.2025 and PH intimation letters were issued by speedpost. However, the Noticee neither attended any of the PH nor submitted any response to the said PH letters.

4. DISCUSSION AND FINDINGS

4.1 I have carefully gone through the subject Show Cause Notice (SCN) and its enclosures, material on record and facts of the case. 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 15.06.2025 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 Section 122A of the Customs Act, 1962, stipulates that the adjudicating authority shall give an opportunity of being heard to a party in a proceeding, if the party so desires. The adjudicating authority may, if sufficient cause is shown, at any stage of proceeding, grant time, from time to time, to the parties or any of them and adjourn the hearing, provided that no such adjournment shall be granted more than three times to a party during the proceeding.

4.4 I find that in the instant case, 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, multiple Personal Hearings opportunities were granted by the Adjudicating Authority to the Noticee. It is observed that PH letters were sent on the address given in the SCN via speedpost. However, the Noticee neither appeared before the Adjudicating Authority in the Personal Hearings granted to them nor submitted any letter or email in response to the Personal Hearing intimation letters. From the aforesaid facts, it is observed that sufficient opportunities have been given to the Noticee but they chose not to join the adjudication proceedings.

4.5 The Noticee did not participate in the adjudication proceedings inspite of the fact of service of letters for personal hearings in terms of Section 153 of Customs Act, 1962. Section 153 of the Customs Act, 1962 reads as under:

> ***SECTION 153. Modes for service of notice, order, etc.*** *- (1) An order, decision, summons, notice or any other communication under this Act or the rules made thereunder may be served in any of the following modes, namely: -*
>
> ---
>
> *(b) by a registered post or speed post or courier with acknowledgement due, delivered to the person for whom it is issued or to his authorised representative, if any, at his last known place of business or residence;*
>
> ---

Therefore, in terms of Section 153 of the Customs Act, 1962, it is observed that PH letters were duly served to the Noticee, but they did not respond. From the aforesaid facts, it is observed that sufficient opportunities have been given to the Noticee but they chose not to join the adjudication proceedings. As the matter pertains to recovery of government dues, so even in absence of the Noticee from adjudication proceedings, I am compelled to decide the matter in the interest of revenue in time bound and logical manner.

4.6 In this regard, it is pertinent to refer to the case of *Sumit Wool Processors Vs. CC, Nhava Sheva [2014 (312) E.L.T. 401 (Tri. - Mumbai)]* wherein Hon'ble CESTAT, Mumbai has observed that natural justice not violated when opportunity of being heard given and notices sent to addresses given by the Noticee. If appellants fail to avail such opportunity, mistake lies on them - Principles of natural justice not violated.

> *"8.3 We do not accept the plea of Mr. Sanjay Kumar Agarwal and Mr. Parmanand Joshi that they were not heard before passing of the impugned orders and principles of natural justice has been violated. The records show that notices were sent to the addresses given and sufficient opportunities were given. If they failed in not availing of the opportunity, the mistake lies on them. When all others who were party to the notices were heard, there is no reason why these two appellants would not have been heard by the adjudicating authority. Thus, the argument taken is only an alibi to escape the*

consequences of law. Accordingly, we reject the plea made by them in this regard." 2014 (312) E.L.T. 401 (Tri. - Mumbai)"

4.7 Having complied with the requirement of the principle of natural justice and having granted Personal Hearings to the Noticee, I proceed to decide the matter being time bound in terms of Section 28(9) of the Customs Act, 1962. Considering the aforesaid scenario, I take up this SCN for discussion on the merit of the case. With regard to proceeding to decide the case following the principle of natural justice, reliance is placed on the decision of the Hon'ble High Court of Allahabad in the case of *Modipon Ltd. vs CCE, Meerut [reported in 2002 (144) ELT 267 (All.)]* effectively dealing with the issue of natural justice and personal hearing. The extract of the observations of Hon'ble Court is reproduced herein below for reference:

"Natural justice - Hearing - Adjournment - Adjudication - Principle of audi alteram partem does not make it imperative for the authorities to compel physical presence of the party for hearing and go on adjourning proceedings so long as party does not appear before them - What is imperative for the authorities to afford the opportunity- If the opportunity afforded is not availed of by the party concerned, there is no violation of the principles of natural justice. The fundamental principles of natural justice and fair play are safeguards for the flow of justice and not the instruments for delaying the proceedings and thereby obstructing the flow of justice.

Natural justice - Hearing - Adjudication - Requirement of natural justice complied with if person concerned afforded an opportunity to present his case before the authority - Any order passed after taking into consideration points raised in such application not invalid merely on ground that no personal hearing had been afforded, all the more important in context of taxation and revenue matters. [1996 (2) SCC 98 relied on][para 22]".

4.8 The fact of the matter is that a Show Cause Notice No. 662/2023-24/COMMR/GR.VA/CAC/JNCH dated 16.06.2023 was issued to the Noticee, M/s. Cosmic Byte (IEC-3114004598), on the basis of the Alert Circular No. 01/2018 issued by the Audit Commissioner of Delhi, on the issue of short levy of Customs duty by way of claiming ineligible benefits of Customs Notification No. 57/2017-Cus. dated 30.06.2017 (as amended by Notfn. No. 22/2018-Cus. dated 02.02.18). It is alleged in the SCN that the Noticee had imported goods having description as "Headset or earphone or headphone" wrongly availing BCD exemption benefit under Sr. No. 18 of the aforesaid Notification. Thus, the SCN demands duty to the tune of ₹63,71,720/- (Rupees Sixty Three Lakh Seventy One Thousand Seven Hundred Twenty 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. The Show Cause Notice also proposes confiscation of imported goods having assessable value of ₹9,81,77,497/- (Rupees Nine Crore Eighty One Lakh Seventy Seven Thousand Four Hundred Ninety Seven Only) under Section 111(m) of the Customs Act, 1962.

4.9 I now proceed to frame the issues to be decided in the instant SCN before me. 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 ₹63,71,720/- 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 ₹9,81,77,497/- should be held liable for confiscation under Section 111(m) of the Customs Act, 1962.

(iv) Whether Penalty should be imposed on M/s. Cosmic Byte 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 Customs Act, 1962 for short levy of duty.

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

4.11 Whether differential / short paid duty amounting to ₹63,71,720/- 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.

4.11.1 I note that the Noticee i.e. M/s. Cosmic Byte vide the impugned 44 Bills of Entry (covered under 286 item entries as detailed in Annexure-'A' to the subject SCN) filed during the period from 28.06.2018 to 22.10.2019 had imported the goods declaring the description in the Bills of Entry as 'MULTIMEDIA PC HEADSET / MULTIMEDIA HEADSET / RGB BACKLIT HEADSET' classifying the same under Customs Tariff Item (CTI) 85183000. The details of the 44 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 Model No., Colour and Brand Name of the imported goods.

4.11.2 I find that the Noticee had classified the impugned imported goods under Customs Tariff Item (CTI) 85183000. Therefore, it would be worthwhile to look at the Customs Tariff Heading 8518, which covers the goods of broad description as under:

> *"8518 Microphones and stands therefor: Loudspeakers, whether or not mounted in their enclosures:* ***Headphones and earphones, whether or not combined with a microphone,*** *and sets consisting of a microphone*

	and one or more loudspeakers; Audio-frequency electric amplifiers: electric sound amplifier sets
.....	
85183000	***Headphones and earphones, whether or not combined with a microphone**, and sets consisting of a microphone and one or more loudspeakers*
.....	
85189000	*Parts"*

I find that in the instant case, the SCN does not dispute the classification of the impugned imported goods by the Noticee under CTI 85183000 as "*Headphones and earphones, whether or not combined with a micro-phone, and sets consisting of a microphone and one or more loudspeakers*". Thus, I conclude that there is no dispute regarding the classification of the impugned goods under CTI 85183000.

4.11.3 I note that during the relevant time period the goods classified under CTI 85183000 attracted Basic Customs Duty (BCD) @15% as per the first schedule of the Customs Tariff Act, 1975. However, vide Notification No. 22/2018-Cus. dated 02.02.2018, some entries were inserted in Notification No. 57/2017-Cus. dtd. 30.06.2017 and consequently the goods falling under CTI 85183000 were partially exempted from duty and were liable to BCD @ 10% if the same do not fall in the category of specifically excluded goods. Therefore, it would be worthwhile to go through the relevant entry of the aforesaid Notification No. 57/2017-Cus. dtd. 30.06.2017 (as amended), which reads as under:

S. No.	***Chapter or Heading or Sub-heading or tariff item***	***Description of goods***	***Standard Rate***	***Condition No.***
18.	*8518*	*All goods other than the following parts of cellular mobile phones, namely :-* *(i) Microphone* *(ii) Wired Headset* *(iii) Receiver*	*10%*	-

The aforesaid Notification was further amended vide Notification No. 69/2018-Cus. dated 26.09.2018 and the same, after amendment, reads as follows:

S. No.	***Chapter or Heading or Sub-heading or tariff item***	***Description of goods***	***Standard Rate***	***Condition No.***

18	*8518*	*All goods other than :-* *(i) Speakers, and;* *(ii) the following parts of cellular mobile phones, namely :-* *(1) Microphone;* *(2) Wired Headset; and* *(3) Receiver*	*10%*	-

4.11.4 The aforesaid entry under Sl. No. 18 in the exemption Notification No. 57/2017-Cus. dated 30.06.2017 (as amended by Notification No. 22/2018-Cus. dated 02.02.2018) mentions and excludes 'Wired Headset' falling under CTH 8518. As, the said tariff entry does not contain or define the word 'headset', it will be proper to go through the common understanding of the term 'headphone' and 'headset'. Therefore, I take up the common dictionary meaning of the said terms and find that the said terms are defined as under:

(i) As per Cambridge dictionary:

Headset *- is a set of headphones, especially one with a microphone attached to it.*

Headphone *- is a device with a part to cover each ear through which you can listen to music, radio broadcasts etc. without other people hearing.*

(ii) As per Lexico.com

Headset *- is a set of headphones, typically with a microphone attached, used especially in telephony and radio communication.*

Headphones *- are a pair of earphones joined by a band placed over the head, for listening to audio signals such as music or speech.*

On the basis of the above definitions, I find that a pair of earphones joined by a band placed over the head is defined as 'Headphone', and a headphone having an attached microphone is defined as a 'Headset'. I note that the Noticee has declared the impugned imported goods as 'Headset' in item description in the Bills of Entry. Further, the Noticee has not submitted anything to prove that the impugned goods are not wired headsets. In view of the above definitions and description mentioned in the Bills of Entry, I find that the impugned imported goods are wired headsets.

4.11.5 I find that the instant SCN is based on the department's stand that the benefit of concessional rate of BCD @ 10% under Sl. No. 18 of Notification No. 57/2017-Cus dated 30.06.2017 (as amended by Notification No. 22/2018-Cus dated 02.02.2018) is not available to the impugned imported goods declared as 'Multimedia PC Headset / Multimedia Headset / RGB Backlit Headset' as the same are 'wired headsets'. As the impugned goods are compatible with cellular mobile phones, therefore, these 'wired headsets' were construed to be parts of cellular

mobile phones, which are explicitly excluded from the purview of the goods covered under the said Sl. No. 18 of the Notification.

4.11.6 I find that in the present case, the issue of availability / non-availability of concessional rate of duty (BCD) under Sl. No. 18 of Notification No. 57/2017-Cus dated 30.06.2017 (as amended by Notification No. 22/2018-Cus dated 02.02.2018) to the impugned goods is of pivotal importance around which the entire case revolves. Once this issue is decided, it will have a bearing on the other issues raised in the SCN like demand of differential duty & interest thereon, confiscation of the imported goods and imposition of penalties on the Noticee.

4.11.7 I find that to decide the aforesaid issue of availability / non-availability of concessional rate of duty (BCD) under entry at Sl. No. 18 of Notification No. 57/2017-Cus dated 30.06.2017, I have to examine and analyse the details of the impugned imported goods viz-a-viz the provisions of said entry at Sl. No. 18 of the above Notification. However, before proceeding to examine and analyse the provisions of said entry, it is pertinent to mention that exemption notification has to be strictly and narrowly construed. It is settled law that, in an exemption notification, there is no room for any change in the intendment which envisages the clear meaning of the words used therein. Therefore, the sense in which the law understands or interprets the true intention of the notification should remain intact. In other words, the admissibility of exemption, under a notification, from payment of duty / or availability of payment of duty at reduced rate on specified goods is governed wholly by the language of the notification.

4.11.7.1 It is well established that any exemption notification has to be strictly interpreted and in the case of doubt the benefit should go to the department. Hon'ble Apex Court in the case of *Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar & Company [2018 (361) E.L.T. 577 (S.C.)]* has held that exemption notification should be interpreted strictly and ambiguity in exemption notification must be interpreted in favour of the Revenue. The relevant paras, para 41 and 52 of the said order are reproduced below:

> *"41. After thoroughly examining the various precedents some of which were cited before us and after giving our anxious consideration, we would be more than justified to conclude and also compelled to hold that every taxing statute including, charging, computation and exemption clause (at the threshold stage) should be interpreted strictly. Further, in case of ambiguity in a charging provisions, the benefit must necessarily go in favour of subject/assessee,* ***but the same is not true for an exemption notification wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue/State."***

> *"52. To sum up, we answer the reference holding as under -*
>
> *(1)* ***Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee*** *to show that his case comes within the parameters of the exemption clause or exemption notification."*

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

4.11.7.2 In the case of *Saraswati Sugar Mills Vs. Commissioner of C. Ex., Delhi-III* reported at [*2011 (270) E.L.T. 465 (S.C.)*], it was held that an exemption notification has to be strictly construed and that when the wordings of notification are clear, then the plain language of the notification must be given effect to. Relevant portion of the judgment is extracted below:

"7. The Tariff Act prescribes the rate of duty for each chapter head and sub-head. The Tariff Act has authorized the Central Govt. to modify the rates/duty by issuing notifications. Since exemption notifications are issued under delegated legislative power, they have full statutory force. The Notification No. 67/95-C.E., dated 16-3-1995 specifically exempts capital goods as defined in Rule 57Q of the Rules. The other condition that is envisaged in the Notification is that the "capital goods' should be manufactured in a factory and used within the factory of production. If these twin conditions are satisfied, the capital goods are exempt from payment of excise duty. A party claiming exemption has to prove that he/it is eligible for exemption contained in the notification. ***An exemption notification has to be strictly construed. The conditions for taking benefit under the notification are also to be strictly interpreted. When the wordings of notification is clear, then the plain language of the notification must be given effect to. By way of an interpretation or construction, the Court cannot add or substitute any word while construing the notification either to grant or deny exemption. The Courts are also not expected to stretch the words of notification or add or subtract words in order to grant or deny the benefit of exemption notification.*** *In Bombay Chemicals (P) Ltd. v. CCE - (1995) Supp (2) SCC 64 = 1995 (17) E.L.T. 3 (S.C.), a three Judge Bench of this Court held that an exemption notification should be construed strictly, but once an article is found to satisfy the test by which it falls in the notification, then it cannot be excluded from it by construing such notification narrowly"*

4.11.7.3 I also find that it is a settled law that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession and the exemption has to be construed based upon the settings on which the provision has been placed in the statute and the object and purpose to be achieved. In this regard, I place reliance on the judgement of the Hon'ble Supreme Court in the case of *CCE, New Delhi Vs Hari Chand Shri Gopal and Others [2010 (260) ELT 3 (SC)]*, wherein, the issue of grant and claim of exemption has been clarified by holding as under:

"a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. ***A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the statute and***

the object and purpose to be achieved. *If exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption."*

4.11.7.4 Similarly, the Hon'ble Supreme Court of India in the case of *M/s Novopan India Ltd Vs. Collector of C. Ex and Customs, Hyderabad 1994 (73) E.L.T.769 (SC)*, has held that:

"a person, invoking an exception or exemption provisions, to relieve him of tax liability must establish clearly that he is covered by the said provisions and, in case of doubt or ambiguity, the benefit of it must go to the State."

4.11.7.5 In view of the above legal position and after having gone through the provisions of the subject Notification No. 57/2017-Cus dated 30.06.2017 (as amended by Notification No. 22/2018-Cus dated 02.02.2018), I find that when the words used in the exemption notification are plain and clear in meaning and do not admit of any doubt or ambiguity, such words, represent the legislative intent, leaving no room for any construction of the words to gather any other intention therefrom.

4.11.8 Against the above background, now I take up the issue of examining and analysing the provisions of entry at Sl. No.18 of Notification No. 57/2017-Cus dated 30.06.2017 (as amended) which provides concessional rate of duty to all goods of CTH 8518 other than the following parts of cellular mobile phones, namely, (i) Microphone, (ii) Wired Headset, and (iii) Receiver.

4.11.9 As regards correctness of the classification of the impugned imported goods under CTH 8518, I have already held in para 4.11.2 above that in the instant case there is no dispute regarding the classification of the impugned goods under CTI 85183000. Further, as regards the impugned goods being 'wired headset' or otherwise, I have already held in para 4.11.4 above that all the impugned imported goods are 'wired headsets'.

4.11.10 Now the core issue that remains to be decided is whether the impugned imported goods are 'parts of cellular mobile phones' or not. I note that Sl. No. 18 of the subject Notification has the description of the goods as "*All goods other than the following parts of cellular mobile phones*". From the said description, I find that the Notification entry itself clearly describes the impugned goods viz. wired headsets, as parts of cellular mobile phones. Thus, I find that the wordings of the Notification entry itself leaves no scope for any ambiguity. Further, the subject headsets are compatible with cellular mobile phones. Thus, I find that there is no doubt that the impugned imported goods are meant for use with mobile phones, therefore, the same should be considered as part of mobile phone for the intended purpose of the said notification.

4.11.11 It is well settled that the meaning of a word is to be judged by the company it keeps. Keeping the above principle in mind, I find that the term "parts of cellular mobile phones" used in the said notification has to be seen in light of the fact that 'wired headset' is specifically mentioned in the notification as parts of cellular mobile phones, and therefore it's meaning has to be understood accordingly. I, therefore, find that the wired headsets which are compatible with smartphones, should be considered as covered under the meaning of the words "parts of cellular mobile phones" used in the said notification.

4.11.12 I also find that it is well understood that with the wired headsets the users find it more comfortable to communicate thereby reducing the associated risk of any information slip due to lack of sound delivery. Moreover, with the headset, one can experience quality calls even in noisy environment, talk comfortably without necessity of involvement of hands and also control the calls distantly. In view of the above, I hold that the goods in question, are wired headset meant for the mobile phone users as a part of cellular mobile phone and therefore, excluded from the exemption under Sl. No. 18 of Notification No.57/2017-Cus (as amended) and are not eligible for concessional rate of duty (BCD) @ 10% under the aforesaid Notification.

4.11.13 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. However, in the instant case, I find that the impugned goods were cleared by the Noticee by wilfully and deliberately claiming ineligible benefit of lower rate of BCD @ 10% as provided under Sl. No. 18 of Notification No. 57/2017-Cus dated 30.06.2017.

4.11.14 I find that in the present case, the impugned goods were found ineligible for getting benefit of lower rate of BCD @ 10% as provided under Sl. No. 18 of Notification No. 57/2017-Cus dated 30.06.2017, as the same were explicitly excluded from the purview of the said Sl. No. Hence, the same should appropriately attract higher BCD duty @ 15%. As the importer has wrongfully assessed the impugned goods under Sl. No. 18 of Notification No. 57/2017-Cus dated 30.06.2017 on the date of importation and there is no scope for the goods fulfilling the eligibility of the said Sl. No. of the Notification, the Noticee can only come clean of its liability by way of payment of duty not paid/ short paid due to availment of ineligible notification benefit.

4.11.15 In view of the above, I find that the Noticee had evaded correctly payable BCD on the subject imported goods, by intentionally claiming ineligible notification benefit at the time of filing of the Bills of Entry. By resorting to this deliberate and wilful claim of ineligible notification benefit, 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 wilful and deliberate act was done with the clear intention to claim ineligible lower rate of duty.

4.11.16 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 claimed ineligible notification benefit, 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.

4.11.17 I find that in the instant case, as elaborated in the foregoing paras, the Noticee was fully aware of the nature of the impugned goods being wired headsets for use with cellular mobile phone. The said goods were explicitly excluded from the purview of Sl. No. 18 of the subject Notification. Still they had wilfully claimed ineligible notification benefit on the imported goods at the time of filing of the Bills of Entry with an intention to pay lower rate of duty. 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 claim of Notification benefit. Instead, in the instant case, the Noticee deliberately chose to claim lower rate of duty under ineligible exemption notification benefit, being fully aware of their ineligibility to claim the said notification benefit. 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.

4.11.18 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 amounts to mis-leading the Customs authorities, with an intent to evade payment of legitimate Customs duty leviable, on the said imported goods.

4.11.19 In view of the above discussions, I hold that the Noticee is not eligible for benefit of lower rate of BCD @ 10% as provided in Sl. No. 18 of Notification No. 57/2017-Cus dated 30.06.2017 (as amended vide Notification No. 22/2018-Cus dated 02.02.2018) in respect of import of the impugned goods. The Noticee, M/s. Cosmic Byte, has paid less duty by non-payment of applicable BCD @ 15% on the subject goods, by claiming ineligible notification benefit which tantamount to suppression of material facts and wilful mis-statement. Thus, I hold that differential/short paid duty amounting to Rs.63,71,720/- in respect of the impugned goods should be demanded from M/s. Cosmic Byte under Section 28(4) of the Custom Act, 1962.

4.12 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.

4.12.1 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.

4.12.2 I have already held in the foregoing paras that differential / short paid duty amounting to Rs.63,71,720/- in respect of the impugned goods, 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. Cosmic Byte.

4.13 Whether the said subject goods imported vide Bills of Entry as detailed in Annexure-'A' to the subject SCN having assessable value of ₹9,81,77,497/- should be held liable for confiscation under Section 111(m) of the Customs Act, 1962.

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

4.13.2 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*;

4.13.3 I find that Section 111(m) deals with any and all types of mis-declaration regarding any particular of Bill of Entry. Therefore, the claim of ineligible notification benefit amounts to mis-declaration and shall make the said goods liable to confiscation.

4.13.4 I have already held in foregoing paras that the impugned goods, are wired headset meant for mobile phone users as a part of cellular mobile phone and are therefore, excluded from the exemption under Sl. No. 18 of Notification No.57/2017-Cus (as amended). The Noticee was very well aware of the actual nature of the imported goods and their ineligibility to exemption notification benefit. However, they deliberately suppressed this correct nature of the imported goods, and claimed lower rate of BCD @ 10% as provided under Sl. No. 18 of Notification No. 57/2017-Cus dated 30.06.2017 (as amended vide Notification No. 22/2018-Cus dated 02.02.2018) in respect of import of the impugned goods. As discussed in the foregoing paras, it is evident that the Noticee deliberately suppressed the correct nature of the goods and willfully mis-classified the imported goods, resulting in short levy of duty. This deliberate suppression of facts and willful mis-classification resorted by the Noticee, therefore, renders the impugned goods liable for 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.

4.13.5 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. In the instant case, the Noticee suppressed the fact of their ineligibility to the claimed notification benefit. As this act of the Noticee 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.

4.13.6 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.

4.13.7 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.

4.13.8 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;

4.13.9 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. Cosmic Byte has deliberately failed to discharge this statutory responsibility cast upon them.

4.13.10 From the discussion above, I find that the importer had in a planned manner suppressed the relevant facts and intentionally evaded Customs duty by wrongfully claiming the benefit of Sl. No. 18 of Notification No. 57/2017-Cus dated 30.06.2017 on the impugned goods and hence, contravened the provisions of Section 46 of the Customs Act, 1962.

4.13.11 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/Noticee 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 BCD applicable on the subject goods, the Noticee willfully did not pay the applicable duty on the impugned goods.

4.13.12 Therefore, I find that by not self-assessing the true and correct rate of Customs duty applicable on the subject goods, the importer willfully did not pay the applicable duty on the

impugned goods. They suppressed and mis-declared certain facts in a planned manner at the time of clearance of the said goods so as to wrongly avail the exemption from duty on the impugned goods under Sl. No. 18 of Notification No. 57/2017-Cus dated 30.06.2017, by violating its conditions and thereby evaded applicable duty.

4.13.13 In view of the foregoing discussion, I hold that the impugned goods covered under the respective Bills of Entry filed by M/s. Cosmic Byte having total assessable value of ₹9,81,77,497/- 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.

4.13.14 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)."*

4.13.14.1 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.).

4.13.14.2 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.

4.13.14.3 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.

4.13.14.4 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.

4.13.14.5 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.

4.14 Whether Penalty should be imposed on M/s. Cosmic Byte 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.

4.14.1 I find that in the era of self-assessment, the Noticee had self-assessed the Bills of Entry and wrongly claimed the ineligible duty benefit under Sl. No. 18 of Notification No. 57/2017-Cus dated 30.06.2017 in respect of the impugned imported goods. As the Noticee got monetary benefit due to their wilful mis-declaration and evasion of applicable BCD on the aforesaid goods,

I find that duty was correctly demanded under Section 28(4) of the Act by invoking extended period.

4.14.2 As discussed above, I find that the subject Bills of Entry covering the impugned goods, were self-assessed by the Noticee, M/s. Cosmic Byte. They were aware of the true nature and characteristics of the imported goods and accordingly, were knowing about the applicability of correct BCD thereon. However, still they willfully suppressed this fact and claimed lower rate of duty under ineligible Sl. No. of exemption notification in the Bills of Entry filed before the Customs authorities. By resorting to the aforesaid suppression and mis-declaration, 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 correctly leviable BCD, 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. Also, the Noticee neither submitted any reply to the SCN nor joined the adjudication proceedings despite multiple Personal Hearing opportunities given to them. This prove that they have nothing to submit in their defence. Their deliberate evasion from joining the adjudication proceedings point towards their complicity in the said offence and their 'mens rea'. 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.

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

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

4.15.1 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.*

4.15.2 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. Cosmic Byte 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.

4.15.3 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

a) I order that the differential/short paid duty amounting to **₹63,71,720/- (Rupees Sixty Three Lakh Seventy One Thousand Seven Hundred Twenty Only)** for the subject goods imported vide Bills of Entry as detailed in Annexure-'A' to the subject SCN should be demanded from M/s. Cosmic Byte under Section 28(4) of the Custom Act, 1962.

b) I order that in addition to the duty short paid, interest on delayed payment of Custom duty should be recovered from M/s. Cosmic Byte under Section 28AA of the Customs Act, 1962.

c) I order that the said subject goods imported vide Bills of Entry as detailed in Annexure-'A' to the subject SCN having assessable value of ₹9,81,77,497/- (Rupees Nine Crore Eighty One Lakh Seventy Seven Thousand Four Hundred Ninety Seven Only) should be held liable for confiscation under Section 111(m) of the Custom Act, 1962.

However, since the goods are not available, I impose a redemption fine of **₹98,00,000/- (Rupees Ninety Lakh Only)** on M/s. Cosmic Byte in lieu of confiscation under Section 125(1) of the Customs Act, 1962.

d) I impose a penalty equivalent to differential duty of **₹63,71,720/- (Rupees Sixty Three Lakh Seventy One Thousand Seven Hundred Twenty Only) along with applicable interest** under Section 28AA of the Customs Act, 1962, on M/s. Cosmic Byte under Section 114A of the Customs Act, 1962 for short levy of duty.

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, no penalty is imposed 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.

13/6/25

(अनिल रामटेके / **ANIL RAMTEKE**)
आयुक्त/Commissioner of Customs
एनएस-V, जेएनसीएच/NS-V, JNCH

To,

1. M/s. Cosmic Byte,
Near YMCA, Next to HDFC Bank,
683, Nana Peth, Pune, Maharashtra-411002

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.