

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

**DIN – 20250678NX000000FC2C**

**Date of Order: 13.06.2025**

**F. No. S/10-82/2023-24/NS-V/CAC/JNCH**

**Date of Issue: 13.06.2025**

**SCN No.:664/2023-24/COMMR/GR.VA/CAC/JNCH**

**SCN Date: 16.06.2023**

**Passed by: Sh. Anil Ramteke**

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

**Order No: 88/2025-26/COMMR/NS-V/CAC/JNCH**

**Name of Noticees: M/s. Nancy Impex Private Limited**

**ORDER-IN-ORIGINAL**

**मूल - आदेश**

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

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

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

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

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

3. अपील दाखिल करने संबंधी मुख्य मुद्दे:-

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

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

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

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

**Fee -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. 664/2023-24/Commr/Gr-VA/CAC/JNCH dated 16.06.2023 in case of M/s. Nancy Impex Private Limited (IEC-0597060312) - reg.**

**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) on the issue of “Short levy of Customs Duty by way of clearance of goods covered under CTH 8507 at lower rate of IGST” and by way of claiming incorrect Schedule and Serial number of IGST Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017, data pertaining to imports made by various importers through JNCH (INNSA1) was analysed in detail. It was observed that M/s. Nancy Impex Private Limited (IEC-0597060312) having address as 13/32, Arya Samaj Road, Karol Bagh, New Delhi, Delhi, PIN- 110005 had imported goods having description as “Battery” falling under the CTH 8507 as detailed in Annexure- ‘A’ to the Show Cause Notice. The imported goods attract IGST @28% under Sl. No. 139 of Schedule IV.

**1.2** The goods imported under Bills of Entry (as detailed in Annexure-A to the notice) had been classified under CTH 8507 which attracted levy of IGST as per Table-A. However, the said goods had been cleared under lower rate of IGST.

**Table-A**

Notification No.	Schedule / S. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods	IGST Rate
01/2017-Integrated Tax (Rate) dated 28.06.2017 w.e.f. 01.07.2017	IV / 139	8507	Electric accumulators, including separators therefor, whether or not rectangular (including square) other than [Lithium-ion batteries] <sup>1</sup> and [Lithium-ion accumulators (other than battery) including Lithium-ion power bank] <sup>2</sup> . 1. Inserted by Ntfn. 19/2018-IT (Rate) dated 26.07.2018 w.e.f. 27.07.2018. 2. Inserted by Ntfn. 25/2018-IT (Rate) dated 31.12.2018 w.e.f. 01.01.2019.	28%
19/2018-IT (Rate) dt. 26.07.18 w.e.f. 27.07.18	III/ 376AA	8507 60 00	Lithium-ion Batteries	18%
25/2018-IT (Rate) dt. 30.12.18 w.e.f. 01.01.19	III/ 376AAA	8507	Lithium-ion accumulators (other than battery) including lithium-ion power bank	18%
01/2017-Integrated Tax (Rate) dated 28.06.2017 w.e.f. 01.07.2017	II/203	85	Part for manufacture of telephones for cellular networks or for other wireless networks	12%

**1.3** Consequent upon the above notifications, it is amply clear that imported goods attract Sl. No. 139 of Schedule IV (IV-139) levies IGST rate of 28% for the CTH 8507 i.e. Electric accumulators, including separators therefore, whether or not rectangular (including square). Further, Sl. No. 203 of Schedule II (II-203 of IGST Notification No. 01/2017-Integrated Tax



(Rate) dated 28.06.2017 levying IGST rate of 12% for the CTH 85 i.e. Parts for manufacture of telephones for cellular networks or for other wireless networks, Sl. No. 376AA of Schedule III of IGST Notification No. 19/2018-Integrated Tax (Rate) dated 27.07.2018 levying IGST rate of 18% for the CTH 85076000 i.e. Lithium-ion Batteries & Sl. No. 376AAA of Schedule III of IGST Notification No. 19/2018-Integrated Tax (Rate) dated 27.07.2018 levying IGST rate of 18% for the CTH 8507 i.e. Lithium-ion accumulators (other than battery) including lithium-ion power bank are not applicable to the imported goods. The importer has imported goods having description Battery. After going through the description of the B/E items under deliberation, it was observed that the imported goods appear to attract IGST @28% against sr. no. 139 of Schedule IV of notification no. 01/2017- Integrated tax (Rate) dated 28.06.2017 and did not seem to justify clearance claiming a lower IGST rate @12% under sr. nos. 203 of Schedule II of IGST notification no. 01/2017- Integrated tax (Rate) dated 28.06.2017 and/or @18% under sr. nos. 376AA and 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.

**1.4** On scrutiny of the import data, it was observed that goods covered under CTH 8507 were cleared by declaring lower rate of IGST under Sl. No. 203 of Schedule II of IGST Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 @ 12% and/or @18% under sr. nos. 376AA or 376AAA of Schedule III of IGST notification no. 19/2018- Integrated tax (Rate) dated 27.07.2018 or a lower IGST rate in other Schedule, however, the goods falling under CTH 8507 were to be correctly covered under Sl. No. 139 of Schedule IV of the IGST Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 and attract higher rate of IGST @28%.

**1.5** The total assessable value of the B/Es items so imported is Rs. 13,51,77,632/- and it appears that a short levy of IGST amounting to Rs. 1,41,72,778/- (as detailed in Annexure-‘A’ to the notice) is recoverable from the Importer along with applicable interest and penalty.

**1.6** 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 importer in that regard.

**1.7** Show Cause Notice relied upon various legal provisions viz. Section 17, 28(4), 28(5), 46, 111(m), 112, 114A of the Customs Act, 1962.

**1.8** 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.

**1.9** Therefore, in view of the above facts, it appears 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 Rs. 1,41,72,778/- (as detailed in Annexure-‘A’ to the notice). Therefore, the differential duty, so not paid, was found to be liable for recovery from the Importer under Section 28 (4) of the Customs Act, 1962 by invoking extended period of limitation, along with applicable interest at the applicable rate under section 28AA of the Customs Act, 1962 and for their acts of omission/commission.

**1.10** 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.

**1.11** It appears that the importer has failed to comply with the conditions mentioned above; therefore, it also appears that the imposed goods are liable for confiscation under Section 111(m) of the Customs Act, 1962.

**1.12** It further appears that the Importer for the acts of omission and commissions mentioned above has rendered themselves liable for penal action under section 112(a) and 114A of the Customs Act, 1962.

**2.** In view of the above, Show Cause Notice No. 664/2023-24/Commr/Gr-VA/CAC/JNCH dated 16.06.2023 was issued to the importer, M/s. Nancy Impex Private Limited (IEC-0597060312) having address as 13/32, Arya Samaj Road, Karol Bagh, New Delhi, Delhi, PIN-110005 seeking as to why:

- i. Differential/short paid Duty amounting to Rs. 1,41,72,778/- for the subject goods imported vide Bills of Entry as detailed in Annexure-‘A’ should not be demanded under Section 28(4) of the Custom Act, 1962;
- ii. In addition to the duty short paid, interest on delayed payment of Custom Duty should not be recovered from them under section 28AA of the Customs Act, 1962;
- iii. The said subject goods imported vide Bills of Entry as detailed in Annexure-‘A’ having assessable value of Rs. 13,51,77,632/- 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.

#### **WRITTEN REPLY OF THE NOTICEE IN RESPONSE TO THE SHOW CAUSE NOTICE:**

**3.** Noticee submitted written submissions dated NIL received in this office on 21.09.2023 and written submissions dated 09.06.2025. In their written submission, it is inter-alia submitted that:

**3.1** Noticee submitted that all the allegation imposed upon them vide the aforesaid Show Cause Notice stating that the said SCN is harsh and punitive in the eye of IGST law and Rule



2017. Noticee submitted that they are indulged in the manufacturing and trading of Li-ion battery of mobile and cellular phones. The product of the noticee is usable as compatible mobile phone battery for various mobile phone brands like Samsung, Oppo, Nokia, Redme, Realme, Motorola etc. in the replacement market. The Bills of Entry starting from 28/07/2018 to 16/10/2019 are covered under the show cause notice. During this period covered under the show cause notice, the noticee had imported “raw material of Mobile and cellular phone battery” and “battery pack of mobile and cellular phone” as such on full payment of IGST under IGST Act. 2017. Raw material of mobile and cellular phone battery includes but not limited to barley paper, PCB, Frame, top and bottom, plastic granules.

3.2 Noticee further submitted that rate of IGST on finished battery of mobile and cellular phone was 28% from 01.07.2017 to 26.07.2018, thereafter the rate of IGST has been reduced from 28% to 18%. Similarly, the rate of IGST was 28% on the parts of Lithium ion Battery (Lithium-ion Cell) of mobile and cellular phone battery and the same has been reduced from 28% to 18% from 01.01.2019. The noticee submitted that the effective rate of IGST on the parts of Li-ion battery and finished Li-ion battery of mobile and cellular phone is as follows:

Period	Description of Goods	Schedule /Sl. No.	Rate of IGST	Remarks
01.07.2017 to 26.07.2018	Lithium Ion Battery HSN-85076000	Schedule IV Sr. No. 139	28%	
27.07.2018 to till date	Lithium Ion Battery HSN-85076000	Schedule III Sr.No. 376AA	18%	19/2018 IT (Rate) dt. 26.07.2018
01.07.2017 to 30.12.2018	Lithium Ion Accumulator (Other than battery) including lithium Ion Power Bank HSN-85076000	Schedule IV Sr. No. 139	28%	
01.01.2019 to till date	Lithium Ion Accumulator (Other than battery) including Lithium Ion Power Bank HSN-85076000	Schedule III Sr. No. 376AAA	18%	25/2018 IT (Rate) dt. 30.12.2018

3.3 The show Cause Notice issuing authority has calculated the IGST @28% as per Annexure-A to the SCN wherein 20 B/E's have been covered against the Sr. No. 1 to 95 of annexure. Noticee submitted that they have deposited a sum of Rs. 84,65,411/- including interest amounting to Rs. 9,06,163/- on 20.06.2019 on the direction of DRI on account of differential duty on import of Li-ion Cell. The DRI never said to deposit IGST on the import of finished battery as the rate of IGST on import of the finished battery has been reduced from 28% to 18% w.e.f. 27.07.2018 and all the bills of entry are after the date 27.07.2018.

3.4 Noticee submitted that they had imported “Battery pack of mobile and cellular phone” and all these finished batteries were made of lithium –ion rechargeable cells which were solely used in various models of mobile and cellular phones and they had imported lithium-ion battery pack to be used in mobile phone only. The noticee had always declared the correct HSN of lithium-Ion battery in all the B.O.E covered under the show cause i.e. 85076000. Electric accumulator of lithium-Ion like cell, Battery and Battery pack etc. are covered under HSN heading 85076000 and they had always classified battery for mobile and cellular phone under this heading.

3.5 Noticee further submitted that they had always mentioned product description as “Battery for Mobile Phone Riviera Brand BIS no. R-41133558, R-41043419, R-41041416, R-41044474, R-41044016”. All these BIS Licenses were obtained from Government organizations named



Bureau of Indian Standards (BIS Department) and for obtaining this license, noticee was required to submit sample battery pack for duly inspection and evaluation in government approved test labs.

**3.6** The reports of the approved test labs were submitted to BIS department for further issue of license. Noticee submitted the copies of BIS certificates having BIS certificate no. R-41133558, R-41041416 and R-41044474 in which the model of mobile phones of different brands were mentioned. It is submitted by the noticee that as per point no. 2 of these licences, any BIS licence was granted for the use in specific models of the mobile phone mentioned therein.

**3.7** Noticee submitted that during the period under show cause notice, they had always imported "raw material of Mobile and cellular phone battery" and "battery pack of mobile and cellular phone" and only the rechargeable lithium-ion batteries can only be used in mobile phones and this as per the chemistry of the mobile phones. No battery other than battery manufactured using lithium-ion cells can be used in mobile and cellular phones as rechargeable battery.

**3.8** Noticee submitted that they had always adopted the assessment methodology in which noticee has executed a continuity bond under the notification no. 68/2017 dated 30/06/2017 for the import of raw material which will be used to manufacture finished goods in India and promote employment in India. Under this notification (notification no. 68/2017), at the time of import, the bill of entries had been submitted to proper office (not below the rank of assistant commissioner) for his evaluation and calculation of duty foregone amount (duty foregone amount is duty as per tariff rate minus concessional rate as per prevailing notification) and this duty foregone amount was debited from executed bond value.

**3.9** Noticee submitted that they sold the mobile phone accessories including the lithium-ion batteries and this can be verified through invoice copies issued to customers, GST returns, CA certified financial statements, Income tax returns and Income tax forms i.e. for 3CA and 3CD meant for tax audit purpose. In all the bill of lading w.r.t. finished batteries, it is clearly mentioned that "Finished Batteries for mobile phone" were imported and in all the commercial import invoices of the foreign vendor w.r.t. finished batteries, it is clearly mentioned that "Batteries/battery pack for mobile phone" were imported. In all the packing list w.r.t. finished batteries, it is clearly mentioned that the batteries been imported were for various models of mobile and cellular phones.

**3.10** Noticee submitted that they have correctly paid the IGST on the "Mobile Phone Battery". The entry No. 139 of schedule IV has been shifted to Sr. No. 376AA of schedule III vide notification No. 19/2018 IT (Rate) dated 26.07.2018. Hence, it would be erred to say that the noticee has committed short payment of IGST on import of Finished Lithium-ion battery. Noticee further requested to drop the demand and set aside the SCN on merit.

#### **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 Manoj Kumar Sharma, Authorised Representative on behalf of noticee attended the personal hearing on 04.06.2025 and argued the case and reiterated the written submission dated NIL received in this office on 21.09.2023. He further stated that they have already paid 28% under Sr. No. 139 of Schedule IV of notification 01/2017 dated 28.06.2017 against all the goods except Lithium-ion battery and Lithium-ion Cells. He further added that they have mentioned the description in the B/E as "Mobile phone battery" which are actually Lithium-ion batteries for mobile phones, the same can be verified from the BIS No. mentioned in the description of the



goods, which are eligible to claim benefit of Sr. No. 376AA of Schedule III of the said notification. Further, he added that the item No. 75 mentioned in Annexure-A to the notice is actually Lithium-ion Cell (the same can be verified from the BIS No. mentioned in the description of the goods), however, they have wrongly classified the goods under Sr. No. 376AA of Schedule III instead of Sr. No. 376AAA of Schedule III and this does not impact the duty. He further stated that they will submit additional submissions in respect of li-ion cell/battery within three working days and the same had been submitted on 09.06.2025.

**DISCUSSION AND FINDINGS**

**5.1** I find that the subject Show Cause Notice was issued on 16.06.2023. On 11.06.2024, the Chief Commissioner of Customs, JNCH, Mumbai Zone-II has granted extension of time limit to adjudicate the case up to 15.06.2025 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 carefully gone through the SCN, evidence/material on record, facts of the case, and accordingly, I proceed to decide the case on merit.

**5.3** The fact of the matter is that a Show Cause Notice No. 664/2023-24/Commr/Gr-VA/CAC/JNCH dated 16.06.2023 was issued to M/s. Nancy Impex Private Limited, on the basis of the Alert Circular No. 11/2019 dated 30.03.2019 issued by the Commissioner of Customs (Audit), Mumbai, Zone-1 vide F. No. S/16-Misc-75/2018-19 Audit (P&C). It is alleged in the notice that the goods covered under CTH 8507 were cleared by declaring lower rate of IGST, however, the imported goods fall under CTH 8507 & attracts levy of IGST as per Table-A above, demanding Customs duty to the tune of Rs. 1,41,72,778/- (Rupees One Crore Forty-One Lakhs Seventy-Two Thousand Seven Hundred and Seventy-Eight Only) 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. Show Cause Notice also proposed confiscation of imported goods having assessable value of Rs. 13,51,77,632/- under Section 111(m) of the Customs Act, 1962.

**5.4** On-going through the bills of entry as detailed in the Annexure-A to the SCN, I find that the IGST against the goods mentioned at Sr. No. 1 to 10, 13 to 20, 22 to 26, 28 to 34, 36 to 40, 42 to 49, 51 to 59, 61 to 67, 69, 71 and 73 has already been paid @28% under Serial No. 139 of Schedule IV of the IGST Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017. Further, the bills of entry mentioned at Sr. No. 11, 12, 21, 27, 35, 41, 50, 60, 68, 70, 72 and 74 to 95 has been cleared by paying IGST @18% under Serial No. 376AA of Schedule III of the IGST Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017, details of the same are as follows:

**TABLE-B**

Sr. No. in SCN	BE No	BE Date	Item Description	Assess Value	Differenti al IGST as per SCN
11	7514664	06-08-2018	MOBILE PHONE BATTERY (BIS NO.- R-41043419 / R-41041416 / R-41044474)	2426078	282638.11
12	7840104	30-08-2018	BATTERY FOR MOBILE PHONE (RIVIERA BRAND) BIS NO R-41043419/R-41041416/R-41044474	3603297	419784.15
21	8007361	11-09-2018	BATTERY FOR MOBILE PHONE RIVIERA BRAND BIS NO. R-41043419 /R-4104016 / R-41044474	3953949	460635.00
27	8235476	28-09-2018	BATTERY FOR MOBILE PHONE RIVIERA BRAND BIS NO. R-41043419 /R-4104016 / R-41044474	3279469	382058.12
35	8256339	29-09-2018	BATTERY FOR MOBILE PHONE RIVIERA BRAND BIS NO. R-41043419 /R-4104016 / R-41044474	3384020	394238.29
41	8526492	20-10-2018	BATTERY FOR MOBILE PHONE RIVIERA BRAND BIS NO. R-41043419 /R-4104016 / R-41044474	2415138	281363.60



50	8621146	26-10-2018	BATTERY FOR MOBILE PHONE RIVIERA BRAND BIS NO. R-41043419 /R-4104016 / R-41044474	2680498	312277.98
60	8727132	03-11-2018	BATTERY FOR MOBILE PHONE RIVIERA BRAND BIS NO. R-41043419 /R-4104016 / R-41044474	3518562	409912.36
68	8896290	17-11-2018	BATTERY FOR MOBILE PHONE RIVIERA BRAND BIS NO. R-41043419 /R-4104016 / R-41044474	1433950	167055.20
70	9194720	10-12-2018	BATTERY FOR MOBILE PHONE RIVIERA BRAND BIS NO. R-41043419 /R-4104016 / R-41044474	2263933	263748.15
72	9448439	28-12-2018	BATTERY FOR MOBILE PHONE RIVIERA BRAND BIS NO. R-41043419 /R-41041416 / R-41044474	1751953	204102.56
74	9839234	29-01-2019	BATTERY FOR MOBILE PHONE RIVIERA BRAND BIS NO. R-41043419 /R-41041416 / R-41044474	1854240	216018.89
75	9839234	29-01-2019	RAW MATERIAL FOR USE IN MANUFACTURING OF MOBILE PHONE BATTERY PACK CELL FOR MOBILE PHONE BATTERY PACK BIS NO.R- 41043494,	9223669	922366.88
76	9839234	29-01-2019	RAW MATERIAL FOR USE IN MANUFACTURING OF MOBILE PHONE BATTERY PACK FRAME FOR MOBILE PHONE BATTERY PACK	5796.96	579.65
77	9839234	29-01-2019	RAW MATERIAL FOR USE IN MANUFACTURING OF MOBILE PHONE BATTERY PACK PCB FOR MOBILE PHONE BATTERY PACK	1520060	152006.03
78	9839234	29-01-2019	RAW MATERIAL FOR USE IN MANUFACTURING OF MOBILE PHONE BATTERY PACK PLASTIC TOP & BASE FOR MOBILE PHONE BATTERY PACK	12302.12	1230.19
79	9839234	29-01-2019	RAW MATERIAL FOR USE IN MANUFACTURING OF MOBILE PHONE BATTERY PACK STICKER WITH AWARD LOGO FOR MOBILE PHONE BATTERY PACK	76003.01	7600.34
80	9988469	08-02-2019	BATTERY FOR MOBILE PHONE RIVIERA BRAND BIS NO. R-41043419 /R-41041416 / R-41044474	221674.6	25825.05
81	2645582	30-03-2019	BATTERY FOR MOBILE PHONE RIVIERA BRAND BIS NO. R-41043419 /R-41041416 / R-41044474	267019.4	31107.73
82	2865687	16-04-2019	BATTERY FOR MOBILE PHONE RIVIERA BRAND BIS NO. R-41043419 /R-41041416 / R-41044474	566626.8	66012.05
83	3117794	06-05-2019	BATTERY FOR MOBILE PHONE RIVIERA BRAND BIS NO. R-41043419 /R-41041416 / R-41044474	637118.5	74224.25
84	3929144	04-07-2019	BATTERY FOR MOBILE PHONE BIS NO. R-41043419 /R-41041416 / R-41044474	285663.9	33279.85
85	4108109	18-07-2019	BATTERY FOR MOBILE PHONE RIVIERA BRAND BIS NO. R-41043419 /R-41041416 / R-41044474	1157000	134790.54
86	4336119	02-08-2019	BATTERY FOR MOBILE PHONE RIVIERA BRAND BIS NO. R-41043419 /R-41041416 / R-41044474	60980.21	7104.12
87	4406106	07-08-2019	BATTERY FOR MOBILE PHONE RIVIERA BRAND BIS NO. R-41043419 /R-41041416 / R-41044474	293852.9	34233.82
88	4552037	19-08-2019	BATTERY FOR MOBILE PHONE BIS NO. R-41043419 /R-41041416 / R-41044474	236303.4	27529.38
89	4673178	28-08-2019	BATTERY FOR MOBILE PHONE BIS NO. R-41043419 /R-41041416 / R-41044474 / R-41133558	534510.1	62270.39
90	4708013	30-08-2019	BATTERY FOR MOBILE PHONE BIS NO. R-41043419 /R-41041416 / R-41044474 / R-41133558	306834.4	35746.17
91	4868524	12-09-2019	BATTERY FOR MOBILE PHONE BIS NO. R-41043419 /R-41041416 / R-41044474 / R-41133558	252364.6	29400.44
92	4947601	18-09-2019	BATTERY FOR MOBILE PHONE BIS NO. R-41043419 /R-41041416 / R-41044474 / R-41133558	1126786	131270.64
93	5011878	23-09-2019	BATTERY FOR MOBILE PHONE (SAMPLE NOT FOR SALE) USE FOR R&D	381.47	44.43
94	5267278	12-10-2019	BATTERY FOR MOBILE PHONE BIS NO. R-41043419, R-41041416, R-41044474, R-41133558	1155495	134615.14
95	5311554	16-10-2019	BATTERY FOR MOBILE PHONE BIS NO. R-41043419, R-41041416, R-41044474, R-41133558	30098.57	3506.45
<b>Total</b>				<b>50535628</b>	<b>5708576</b>

**5.5** From the above para, I find that IGST has been correctly paid under Serial No. 139 of Schedule IV of the Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 against the goods mentioned at Sr. No. 1 to 10, 13 to 20, 22 to 26, 28 to 34, 36 to 40, 42 to 49, 51 to 59, 61 to 67, 69, 71 and 73 of Annexure-A to the SCN, as warranted in the SCN. Hence, no differential duty arises against these goods having assessable value Rs. 8,46,42,003/-.



**5.6** Further, on the other goods, importer has paid IGST under Serial No. 376AA of Schedule III of the said Notification against the goods mentioned at Sr. No. 11, 12, 21, 27, 35, 41, 50, 60, 68, 70, 72 and 74 to 95 of Annexure-A to the SCN. In the SCN, the assessable value of these impugned goods is Rs. 5,05,35,628/- and differential duty is Rs. 57,08,576/- as detailed in above Table-B. Now, I have to decide the case in respect of these goods mentioned at Sr. No. 11, 12, 21, 27, 35, 41, 50, 60, 68, 70, 72 and 74 to 95 of Annexure-A to the SCN as detailed in above Table-B.

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

- (i) Whether Differential/short paid Duty amounting to Rs. 57,08,576/- (Rupees Fifty-Seven Lakhs Eight Thousand Five Hundred and Seventy-Six Only) for the subject goods imported vide Bill of Entry as detailed in above Table-B should be demanded under Section 28(4) of the Custom Act, 1962 or otherwise;
- (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 or otherwise;
- (iii) Whether the goods imported vide Bill of Entry as detailed in above Table-B having assessable value Rs. 5,05,35,628/- is liable for confiscation under Section 111(m) of the Customs Act, 1962 or otherwise;
- (iv) Whether penalty should be imposed on M/s. Nancy Impex Private Limited under Section 112(a) of the Customs Act. 1962 for their acts of omission and commission, in rendering the goods liable for confiscation and under Section 114A of Customs Act, 1962 for short levy of duty or otherwise;

**5.** After having identified and framed the main issues to be decided, I now proceed to deal with each of the issues individually for analysis in light of facts, circumstances of the case, provision of the Customs Act, 1962 and nuances of various judicial pronouncements.

**5.1 Whether Differential/short paid Duty amounting to Rs. 57,08,576/- (Rupees Fifty-Seven Lakhs Eight Thousand Five Hundred and Seventy-Six Only) for the subject goods imported vide Bill of Entry as detailed in above Table-B should be demanded under Section 28(4) of the Custom Act, 1962 or otherwise.**

**5.1.1** I find that the importer M/s. Nancy Impex Private Limited has imported the goods having description "Battery for mobile phone" and "Cells, frame, PCB, plastic top and base, sticker declaring as raw material for use in manufacturing of mobile phone battery pack" as detailed in above Table-B and classified under CTH 8507 6000. CTH 8507 covers goods with description '*Electric accumulators, including separators therefor, whether or not rectangular (including square)*'.

**5.1.2** The details of Bills of Entry vide which the said goods were imported are as per above Table-B and the same are pertaining to the period from August 2018 to October 2019. For the relevant period, the IGST is levied as per Schedules of Notification No. 01/2017 dated 28.06.2017 as amended vide notification No. 19/2018 dated 26.07.2018 and notification No. 25/2018 dated 31.12.2018. The description of impugned goods is classifiable under three competing entries i.e. Sr. no. 139 of Schedule IV of IGST Notification No. 01/2017 dated 28.06.2017, Sr. No. 376AA of IGST Schedule III which was effective from 27.07.2018 and Sr. No. 376AAA of IGST Schedule III which was effective from 01.01.2019. The said schedule are as follows: -



**Table-C**

Schedule	Sr. No.	CTH	Description
IV	139	8507	Electric accumulators, including separators therefor, whether or not rectangular (including square) other than [Lithium-ion batteries] <sup>1</sup> and [Lithium-ion accumulators (other than battery) including Lithium-ion power bank] <sup>2</sup> . 1. Inserted by Ntfn. 19/2018-IT (Rate) dated 26.07.2018 w.e.f. 27.07.2018. 2. Inserted by Ntfn. 25/2018-IT (Rate) dated 31.12.2018 w.e.f. 01.01.2019.
III	376AA	85076000	Lithium-Ion Batteries [Inserted by Ntfn. 19/2018-IT (Rate) dated 26.07.2018 w.e.f. 27.07.2018.]
III	376AAA	8507	Lithium-ion accumulators (other than battery) including lithium-ion power bank [Inserted by Ntfn. 25/2018-IT (Rate) dated 31.12.2018 w.e.f. 01.01.2019]

**5.1.3** The imported goods having description Battery for mobile phone and raw material for use in manufacturing of mobile phone battery as detailed in above Table-B and have been classified by the importer under the tariff head 85076000. Ongoing through the bills of entry as detailed in above Table-B, I find that importer has claimed Sr. No. 376AA of Schedule-III of IGST Notification No. 01/2017 dated 28.06.2017 and paid IGST@18%. The description of the imported goods is mentioned as “Battery for mobile phone” and “Cells, frame, PCB, plastic top and base, sticker declaring as raw material for use in manufacturing of mobile phone battery pack” as detailed in above Table-B and to claim the Sr. No. 376AA of Schedule-III of the said IGST Notification, the goods must be Li-ion batteries and as per the description of imported goods mentioned in the B/Es, it cannot be confirmed that the said goods are Li-ion batteries or not. Since, the imported goods as detailed in above Table-B has two types of descriptions, I proceed to decide the matter separately for the following two types of goods:

- I. Battery for mobile phone
- II. Cells, frame, PCB, plastic top and base, sticker declaring as raw material for use in manufacturing of mobile phone battery pack

**5.1.4 Battery for mobile phone:** I find that, the importer cleared the goods having description “Battery for mobile phone” as mentioned at Sr. No. 11, 12, 21, 27, 35, 41, 50, 60, 68, 70, 72, 74 and 80 to 95, under Sr. No. 376AA of Schedule-III of IGST Notification No. 01/2017 dated 28.06.2017 and paid IGST @18%. To avail clearance under this schedule and serial number, the goods should fall under the description mentioned therein. Further, I find the importer has submitted that the imported goods are Li-ion batteries for mobile phone and Li-ion cells for manufacture of battery pack for mobile phone. I find that the subject goods had been classified by the importer under 85076000 which includes Li-ion accumulators. Further, I find that the goods having description as battery for mobile phone mentioned at Sr. No. 11, 12, 21, 27, 35, 41, 50, 60, 68, 70, 72, 74 and 80 to 88 of above table-B also mentions BIS No. R-41043419, R-41041416, R-41044474, on verifying the said BIS Nos., I find that these numbers pertains to Lithium-ion batteries, In view of this fact, it can be concluded that the goods imported against these BIS are Lithium-ion batteries. Hence, the goods mentioned at Sr. No. 11, 12, 21, 27, 35, 41, 50, 60, 68, 70, 72, 74 and 80 to 88 are Lithium-Ion batteries and the subject goods are eligible to claim the Sr. No. 376AA of Schedule-III of the said Notification.

**5.1.4.1** Further, I find that one additional BIS No. R-41133558 is mentioned in the description of the goods mentioned at Sr. No. 89 to 92, 94 and 95, on verifying the same the said BIS No. includes Lithium system battery, not Li-ion batteries. The goods mentioned at Sr. No. 93 does not mention any BIS No. and declared as mobile phone battery not as Li-ion battery. Hence the goods mentioned at the Sr. No. 89 to 95 cannot claim benefit of Sr. No. 376AA of Schedule-III of the said Notification as none of these goods can fall under the description of Li-ion batteries.



The imported goods are specifically covered and classified in 8507 by the importer and tariff heading 8507 include '*Electric accumulators, including separators therefor, whether or not rectangular (including square)*' which are classified under Sr. No. 139 of Schedule IV of IGST Notification No. 01/2017 dated 28.06.2017 and attract IGST @ 28%. Therefore, I find that the impugned goods mentioned at Sr. No. 89 to 95 self-assessed under sr. no. 376AA of Schedule III @18% IGST in respect of Bill of Entry detailed in above Table-B is liable to be rejected and the duty (IGST) need to be calculated under Sr. No. 139 of Schedule IV of Notification No. 01/2017 dated 28.06.2017 (as amended) @28% IGST.

**5.1.5 Cells, frame, PCB, plastic top & base and sticker declared as raw material for use in manufacturing of mobile phone battery pack:** I find that, the importer cleared the goods Cells, frame, PCB, plastic top & base and sticker declared as raw material for use in manufacturing of mobile phone battery pack as mentioned at Sr. No. 75 to 79, under Sr. No. 376AA of Schedule-III of IGST Notification No. 01/2017 dated 28.06.2017 and paid IGST @18%. To avail clearance under this schedule and serial number, the goods should fall under the description mentioned therein. Further, I find the importer has submitted that the imported goods are Li-ion batteries for mobile phone and Li-ion cells for manufacture of battery pack for mobile phone. I find that the subject goods had been classified by the importer under 85076000 which includes Li-ion accumulators, further, I find that the goods having description as "RAW MATERIAL FOR USE IN MANUFACTURING OF MOBILE PHONE BATTERY PACK CELL FOR MOBILE PHONE BATTERY PACK BIS NO. R-41043494" mentioned at Sr. No. 75 of above table-B also mentions BIS No. R-41043494, on verifying the said BIS Nos., I find that these numbers pertains to Lithium-ion Cell. Hence, the goods mentioned at Sr. No. 75 are Lithium-Ion Cells but the subject goods are not eligible to claim the benefit of Sr. No. 376AA of Schedule-III of the said Notification. I find that importer has also submitted that against the Sr. No. 75 of Table-B, they have wrongly availed the benefit of Sr. No. 376AA instead of correct Sr. No. 376AAA of Schedule-III. I find that Sr. No. 376AAA of Schedule-III includes "Lithium-ion accumulators (other than battery) including lithium-ion power bank" and Li-ion Cells being Li-ion accumulators are included in this Sr. No. Accordingly, the subject goods mentioned at Sr. No. 75 of above table-B are eligible to claim the Sr. No. 376AAA of Schedule-III of the said Notification. Further, I note that both the Sr. No. 376AA and 376AAA of schedule-III attract IGST at same rate i.e. 18%, hence, the availment of wrong IGST Sr. No. has not resulted into duty implication and no differential duty arises against the said goods.

**5.1.5.1** Further, I find that the goods mentioned at Sr. No. 76 to 79 of above table-B are frame, PCB, plastic top & base and sticker declared as raw material for use in manufacturing of mobile phone battery pack and noticee has claimed benefit of Sr. No. 376AA of Schedule-III of the said Notification and paid IGST @18%. To avail clearance under this schedule and serial number, the goods should fall under the description mentioned therein. However, the subject goods do not fall under "Li-ion batteries". Hence, the goods mentioned at the Sr. No. 76 to 79 cannot claim benefit of Sr. No. 376AA of Schedule-III of the said Notification as none of these goods can fall under the description of Li-ion batteries. The imported goods are specifically covered and classified in 8507 by the importer and tariff heading 8507 include '*Electric accumulators, including separators therefor, whether or not rectangular (including square)*' which are classified under Sr. No. 139 of Schedule IV of IGST Notification No. 01/2017 dated 28.06.2017 and attract IGST @ 28%. Therefore, I find that the impugned goods mentioned at Sr. No. 76 to 79 self-assessed under sr. no. 376AA of Schedule III @18% IGST in respect of Bill of Entry detailed in above Table-B is liable to be rejected and the duty (IGST) need to be calculated under Sr. No. 139 of Schedule IV of Notification No. 01/2017 dated 28.06.2017 (as amended) @28% IGST.



**5.1.6** In view of the above discussions, I hold that:

(i) the goods mentioned at Sr. No. 11, 12, 21, 27, 35, 41, 50, 60, 68, 70, 72, 74 and 80 to 88 being Lithium-ion batteries are eligible to claim Sr. No. 376AA of Schedule-III of the said IGST Notification.

(ii) the goods mentioned at Sr. No. 89 to 95 being Lithium system batteries are not eligible to claim Sr. No. 376AA of Schedule-III of the said IGST Notification and duty need to be calculated under Sr. No. 139 of Schedule IV of Notification No. 01/2017 dated 28.06.2017 (as amended) @28% IGST.

(iii) the goods mentioned at Sr. No. 75 are not eligible to claim Sr. No. 376AA of Schedule-III of the said IGST Notification, however, the goods being Li-ion Cells are eligible to claim the Sr. No. 376AAA of Schedule-III of the said Notification which also attracts same IGST rate i.e. 18%.

(iv) the goods mentioned at Sr. No. 76 to 79 being parts of mobile phone battery pack are not eligible to claim Sr. No. 376AA of Schedule-III of the said IGST Notification and duty need to be calculated under Sr. No. 139 of Schedule IV of Notification No. 01/2017 dated 28.06.2017 (as amended) @28% IGST.

**5.1.7** In view of the above, I find that duty has not been correctly paid against the following Sr. No. of Annexure-A to SCN:

**Table-D**

Sr. No. in anx-A	BE No	BE Date	Item Description	Assess Val	Differential IGST as per SCN
76	9839234	29-01-2019	RAW MATERIAL FOR USE IN MANUFACTURING OF MOBILE PHONE BATTERY PACK FRAME FOR MOBILE PHONE BATTERY PACK	5796.96	579.65
77	9839234	29-01-2019	RAW MATERIAL FOR USE IN MANUFACTURING OF MOBILE PHONE BATTERY PACK PCB FOR MOBILE PHONE BATTERY PACK	1520060.1	152006.03
78	9839234	29-01-2019	RAW MATERIAL FOR USE IN MANUFACTURING OF MOBILE PHONE BATTERY PACK PLASTIC TOP & BASE FOR MOBILE PHONE BATTERY PACK	12302.12	1230.19
79	9839234	29-01-2019	RAW MATERIAL FOR USE IN MANUFACTURING OF MOBILE PHONE BATTERY PACK STICKER WITH AWARD LOGO FOR MOBILE PHONE BATTERY PACK	76003.01	7600.34
89	4673178	28-08-2019	BATTERY FOR MOBILE PHONE BIS NO. R-41043419 / R-41041416 / R-41044474 / R-41133558	534510.09	62270.39
90	4708013	30-08-2019	BATTERY FOR MOBILE PHONE BIS NO. R-41043419 / R-41041416 / R-41044474 / R-41133558	306834.35	35746.17
91	4868524	12-09-2019	BATTERY FOR MOBILE PHONE BIS NO. R-41043419 / R-41041416 / R-41044474 / R-41133558	252364.63	29400.44
92	4947601	18-09-2019	BATTERY FOR MOBILE PHONE BIS NO. R-41043419 / R-41041416 / R-41044474 / R-41133558	1126786.45	131270.64
93	5011878	23-09-2019	BATTERY FOR MOBILE PHONE (SAMPLE NOT FOR SALE) USE FOR R&D	381.47	44.43
94	5267278	12-10-2019	BATTERY FOR MOBILE PHONE BIS NO. R-41043419, R-41041416, R-41044474, R-41133558	1155494.92	134615.14
95	5311554	16-10-2019	BATTERY FOR MOBILE PHONE BIS NO. R-41043419, R-41041416, R-41044474, R-41133558	30098.57	3506.45
<b>Total</b>				<b>5020633</b>	<b>558270</b>

In view of the above table, I find that importer has short paid duty amounting to Rs. 5,58,270/- against the Sr. No. 76 to 79 and 89 to 95 of Annexure-A to the SCN. The assessable value of these goods is Rs. 50,20,633/-.



**5.1.8** In terms of Section 46(4) of the Customs Act, 1962, the importer is required to make a true and correct declaration in the Bills of Entry submitted for assessment of Customs duty. In the instant case, I find that the goods cleared vide the Bills of Entry mentioned in Table-D above, were cleared by them by wilfully and deliberately indulging themselves in mis-declaration of goods by self-assessing wrong Sr. No. 376AA of Schedule III of IGST Notification No. 01/2017 dated 28.06.2017 (as amended) & cleared the goods by paying IGST @ 18% only with the clear intention to evade duty by claiming incorrect and lower rate of IGST of the said Notification instead of correct Sr. No. 139 of Schedule IV of IGST Notification No. 01/2017 dated 28.06.2017 (as amended).

**5.1.9** In view of the above, I find that the noticee had evaded correct Customs duty by intentionally avoiding the specific and the correct IGST Schedule and Sr. No. of the imported product at the time of filing of the Bills of Entry. By resorting to this deliberate and wilful mis-classification under IGST Schedule and Sr. No., the noticee has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer. **Thus, this wilful and deliberate act was done with the clear intention to claim ineligible lower rate of duty.**

**5.1.10** 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 importer has willfully mis-classified under wrong IGST Schedule and Sr. No., thereby evading payment of applicable duty resulting in a loss of Government revenue and in turn accruing monetary benefit to the importer. Since the 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.

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

**5.1.12** 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 declares the item description and picks the CTH/description of 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 Customs duty leviable, on the said imported goods.



**5.1.13** In view of the foregoing, I find that the duty demand against the importer has been correctly proposed under Section 28(4) of the Customs Act, 1962 by invoking the extended period of limitation. In support of my stand of invoking extended period, I rely upon the decision of the Tribunal:-

2013(294) E.L.T.222(Tri.-LB): Union Quality Plastic Ltd. Versus Commissioner of C.E. & S.T., Vapi [Misc. Order Nos.M/12671-12676/2013-WZB/AHD, dated 18.06.2013 in Appeal Nos. E/1762-1765/2004 and E/635- 636/2008]

*In case of non-levy or short-levy of duty with intention to evade payment of duty, or any of circumstances enumerated in proviso ibid, where suppression or wilful omission was either admitted or demonstrated, invocation of extended period of limitation was justified.*

**5.1.14** Accordingly, the differential duty amounting to **Rs. 5,58,270/- (Rupees Five Lakhs Fifty-Eight Thousand Two Hundred and Seventy Only)** resulting from correct classification of goods under Sr. No. 139 of Schedule IV of Notification No. 01/2017 dated 28.06.2017 against the goods mentioned in above Table-D, is recoverable from M/s. Nancy Impex Private Limited under extended period in terms of the provisions of Section 28(4) of the Customs Act, 1962.

**5.2 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 or otherwise.**

**5.2.1** It is apt to mention the scheme of assessment and collection of duty under the Customs Act, 1962. It is settled law that duty is payable only at the point when the goods leave the Customs barrier. On importation, the importer is required to file a bill of entry for home consumption under section 46(1) of the Act. The proper officer of customs then under Section 17 inspects and examines the goods and thereafter assess them. The importer then pays the assessed duty. The proper officer then passes an order for permitting clearance for home consumption in terms of Section 47(1) of the Customs Act. Further, Section 28 is a specific provision which confers power on the proper officer of customs to levy duty by issuance of show cause notice in those cases where duty has not been levied or has been short levied or erroneously refunded or when any interest payable has not been paid, part paid or erroneously refunded. Under section 28AA which was inserted by Finance Act, 2011, speaks of interest on delayed payment of duty in all cases covered by section 28 in addition to duty, interest is liable to repaid as set out under the section for the time being, in terms of the Notification affixed by the Central Government.

**5.2.2** Under Section 28AA of the Customs Act, the person who is liable to pay duty in accordance with the provisions of the Section 28, shall in addition to such duty, be liable to pay interest. In the case of M/s. Kamat Printers Pvt. Ltd., Hon'ble Bombay High Court observed that once duty is ascertained then by operation of law, such person in addition shall be liable to pay interest at such rate as fixed by the Board. The proper officer, therefore, in ordinary course would be bound once the duty is held to be liable to call on the party to pay interest as fixed by the Board.

**5.2.3** I find that the Courts in various judgments pronounced that Interest payable is compensatory for failure to pay the duty. It is not penal in character in that context. The Supreme Court under the provisions of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 in Collector of C.Ex., Ahmedabad vs. Orient Fabrics Pvt. Ltd 2003 (158) E.L.T. 545 (S.C.) was pleased to observe that when the breach of the provision of the Act is penal in nature or a penalty is imposed by way of additional tax, the constitutional mandate requires a clear authority of law for imposition for the same. The Court observed that, the law on the issue of charge of interest, stands concluded and is no longer res integra. We may only gainfully refer to



the judgment in India Carbon Ltd. v. State of Assam, (1997) 6 S.C.C. 497. The Court there observed as under:-

*“This proposition may be derived from the above: interest can be levied and charged on delayed payment of tax only if the statute that levies and charges the tax makes a substantive provision in this behalf”.*

Therefore, once it is held that duty is due, interest on the unpaid amount of duty becomes payable by operation of law under section 28AA.

**5.2.4** 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.

**5.2.5** In view of the above, I am of the considered opinion that imposition of interest on the duty not paid, short paid is the natural consequence of the law and the importers are liable to pay the duty in respect of the said imported goods along with applicable interest.

**5.3 Whether the goods imported vide Bill of Entry as detailed in above Table-B having assessable value Rs. 5,05,35,628/- is liable for confiscation under Section 111(m) of the Customs Act, 1962 or otherwise.**

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

**5.3.2** Provisions of Section 111(m) of the Customs Act, 1962 states that,

*111(m) the goods brought from a place outside India shall be liable to confiscation, 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;*

**5.3.3** As discussed supra in para 5.1, importer has wrongly availed Sr. No. 376AA of Schedule-III of IGST Notification No. 01/2017 dated 28.06.2017 against the Sr. No. 76 to 79 and 89 to 95 of Annexure-A to the SCN and paid IGST @18%. The assessable value of these goods is Rs. 50,20,633/- as detailed in above Table-D (Sr. No. 76 to 79 and 89 to 95 of Annexure-A to the SCN). Further, as the section 111(m) deals with any and all types of mis-declaration regarding any particular of entry inward, the declaration of importer herein by mis-classification under IGST Schedule/Sr. No. of the impugned goods, amounts to mis-declaration and shall make the goods liable to confiscation. 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 made under this act. I have to restrict myself only to examine the words "in respect any other particular with the entry made under this act" would also cover case of mis-declaration of the IGST Schedule/ Sr. No. As this act 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 & sustainable.

**5.3.4** Further, I find that goods mentioned at Sr. No. 75 of the Annexure-A to the SCN has wrongly availed the benefit of Sr. No. 376AA of schedule-III of said notification, however, the subject goods were not eligible to avail the same. As per Section 111(m) of Customs Act, 1962, when goods do not correspond in respect of value or any other particular are liable for confiscation. In the present case, importer has claimed wrong IGST Schedule and IGST Sr. No. which was eligible only for the goods i.e. "Lithium Ion Battery". Claiming the ineligible IGST Schedule and Sr. No. during import of the impugned goods, amounts to mis-declaration and shall make the goods liable to confiscation. In view of the above, I find that the confiscation of the



said imported goods invoking Section 111(m) is justified & sustainable. However, there is no change in IGST rate in respect of these S. Nos., nevertheless, a redemption fine is imposable due to incorrect Schedule/Sr. No. of aforesaid IGST notification used.

**5.3.5** I further find that Section 17(1) of the Customs Act, 1962 provides that “an importer entering any imported goods under Section 46, or an exporter entering any export goods under Section 50, shall save as otherwise provided in Section 85, self-assess the duty, if any, leviable on such goods”. Therefore, the responsibility to correctly assess duty has been cast on the importer. The government has thus placed huge reliance on the self-assessment made by the importer. Further, in terms of Section 46(4) of the said Act, the importers were required to make declaration as regards the truth of contents of the Bill of Entry submitted for assessment of Customs duty but they have contravened the provisions of Section 46(4) in as much as they have mis-declared and misclassified the goods imported under wrong IGST Schedule & Sr. No. knowingly and intentionally to evade payment of Customs duty. Thus, once the breach occurs, this attracts Section 111 of the Customs Act, 1962, so the goods covered under the impugned bills of entry imported by M/s. Nancy Impex Private Limited, as detailed in above Table-D, are liable for confiscation under Section 111(m) of the Customs Act, 1962.

**5.3.6** I find that once goods liable to confiscation under Section 111, their physical availability does not have significance on imposition of redemption fine under Section 125 of the Act. Therefore, redemption fine in lieu of confiscation needs to be imposed even if the imported goods are not available. In this regard, I rely on the judgment of M/s Visteon Automotive Systems India Limited reported as 2018 (9) G.S.T.L A2 (Mad.) wherein the Hon'ble High Court of Madras has held that:

*"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 regularized, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The operating words of Section 125, "Whenever confiscation of any goods is authorized by this Act....", brings out the point clearly. The power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. When once power of authorization for confiscation of goods gets traced to the said Section 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....."*

**5.3.7** 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.).

**5.3.8** 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.



**5.3.9** 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.

**5.3.10** Accordingly, I find that the impugned goods covered under Bills of Entry as detailed in above Table-D (Sr. No. 76 to 79 and 89 to 95 of Annexure-A to the SCN) having total Assessable Value of Rs. 50,20,633/- and goods mentioned at Sr. No. 75 of the Annexure-A to the SCN having total Assessable Value of Rs. 92,23,669/- are liable for confiscation under Section 111(m) of the Customs Act, 1962. However, since the said goods are not prohibited goods and the same are not available, said seized goods are allowed for redemption by the importer on payment of fine in lieu of confiscation under section 125 (1) of the Customs act, 1962. It is observed that the goods listed under Serial No. 75 of Annexure-A to the SCN are liable for confiscation due to the incorrect classification under IGST Serial No. 376AA, instead of the correct Serial No. 376AAA of Schedule III of the said IGST notification. However, this misclassification does not result in any duty implication, as both serial numbers attract the same IGST rate of 18%. In view of this, I am of the considered opinion that the imposition of a nominal redemption fine under Section 125(1) of the Customs Act, 1962 would be appropriate in respect of the said goods.

**5.4 Whether penalty should be imposed on M/s. Nancy Impex Private Limited under Section 112(a) of the Customs Act. 1962 for their acts of omission and commission, in rendering the goods liable for confiscation and under Section 114A of Customs Act, 1962 for short levy of duty or otherwise.**

**5.4.1** I find that in the era of self-assessment, the importer had self-assessed the Bills of Entry and mis-declared the subject goods and paid lower rate of IGST i.e. @18% under Sr. No. 376AA of Schedule III of Notification no. 01/2017- Integrated tax (Rate) dated 28.06.2017 instead of applicable IGST @ 28% imposable vide Sr. No. 139 of Schedule IV of the said Notification. As the importer got monetary benefit due to their wilful misdeclaration and evasion of applicable IGST on the subject goods, I find that duty was correctly demanded under section 28(4) of the Act by invoking extended period.

**5.4.2** Regarding the issue of imposition of penalty, it is appropriate to reproduce the provisions of Section 112 and 114A as under:

*Section 112 (Penalty for improper importation of goods etc.) reads as:*

*“Any person,-*

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

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

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

*(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of Section 114A, to a penalty not exceeding ten percent of the duty sought to be evaded or five thousand rupees, whichever is higher.....”*



**Section 114A. Penalty for short-levy or non-levy of duty in certain cases.**

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

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

**5.4.3** I find that in the self -assessment regime, the importer is bound to correctly assess the duty on the imported goods covered under Bills of Entry as detailed in above Table-D (Sr. No. 76 to 79 and 89 to 95 of Annexure-A to the SCN). In the instant case, the importer has declared the subject goods to be included under wrong IGST Schedule/Sr.No. Consequently, the importer has paid less duty by non-payment of applicable IGST duty on the subject goods, which tantamount to suppression of material facts and wilful mis-statement. The 'mens rea' can be deciphered clearly from 'actus Reus' and in the instant case, I find that the importer is an entity of repute and thus providing wrong information/declaration in the various documents filed with the Customs and thereby, claiming undue benefit by not paying the applicable IGST thereon, amply points towards their 'mens rea' to evade the payment of duty. Thus, I find that the demand of differential IGST duty is rightly invoked in the present case by invoking Section 28(4) of the Customs Act, 1962. Taking all the issues relating to the subject imports into account and in view of my findings that goods were mis-declared in the fashion discussed above, I find that the importer by his acts of omission have rendered the goods liable for confiscation and thus made themselves liable for penalty under Section 114A of the Customs Act, 1962. Further in terms of proviso to 114A, once penalty under section 114A has been imposed, no penalty can be imposed under section 112. Thus, the penalty under Section 112 cannot apply.

**5.4.4** Further, I find that the importer M/s. Nancy Impex Private Limited, has mis-declared the goods covered under Bills of Entry as detailed in above Table-D (Sr. No. 76 to 79 and 89 to 95 of Annexure-A to the SCN) by classifying it under wrong IGST Schedule and Sr. No., as discussed supra, by deliberately and knowingly giving inappropriate declaration on importation of the goods. I find that the importer has furnished documents such as Bill of Entry and its invoices, packing lists containing false or incorrect material particular with respect to Customs Tariff Heading for the purpose of clearance of the imported goods. As the demand under Section 28(4) is found to be sustainable in terms of discussion made in Paras above in respect of impugned goods mentioned in above Table-D, therefore penalty under Section 114A is imposable / sustainable in respect of said goods on the importer.

**5.4.5** I find that noticee has wrongly availed the benefit of Sr. No. 376AA instead of correct Sr. No. 376AAA of Schedule-III against the goods mentioned at Sr. No. 75 of Annexure-A to SCN. Further, I note that the availment of wrong IGST Sr. No. has not resulted into duty implication as both the Sr. Nos. attract same IGST rate of 18% and no differential duty arises against the said goods. As discussed supra in para 5.3.4 mis-declaration of the subject goods by claiming wrong IGST Sr. No. by the importer, has rendered the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962 and thereby made themselves liable for penalty under Section 112 ibid. In view of the absence of any duty implication on the goods listed at Serial No. 75 of Annexure-A to the SCN, the imposition of a nominal penalty under Section 112 of the Customs Act, 1962 is considered justifiable and sustainable in respect of said goods on the importer.

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



**ORDER**

6.1 I confirm the demand of differential duty amounting to **Rs. 5,58,270/- (Rupees Five Lakhs Fifty-Eight Thousand Two Hundred and Seventy Only)**, as detailed in above Table-D under Section 28(4) of the Customs Act, 1962 and order that the same be recovered from M/s. Nancy Impex Private Limited along with applicable interest under Section 28AA of the Customs Act, 1962.

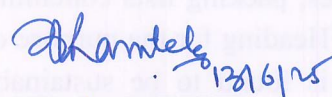
6.2 I order to confiscate the impugned goods totally valued at Rs. 50,20,633/- as detailed in above Table-D, under Section 111(m) of the Customs Act, 1962, even though the goods are not available for confiscation. However, I give an option to the importer to redeem the goods on payment of Redemption Fine of **Rs. 5,00,000/- (Rupees Five Lakhs only)** under the provisions of Section 125(1) of the Customs Act, 1962.

6.3 I impose penalty of differential duty of **Rs. 5,58,270/- (Rupees Five Lakhs Fifty-Eight Thousand Two Hundred and Seventy Only)** along with applicable interest under Section 28AA of the Customs Act, 1962 under Section 114A of the Customs Act, 1962, on the importer on M/s. Nancy Impex Private Limited for the reasons aforesaid.

6.4 I order to confiscate the impugned goods mentioned at Sr. No. 75 of Annexure-A to the SCN having assessable value Rs. 92,23,669/-, under Section 111(m) of the Customs Act, 1962, even though the goods are not available for confiscation. However, I give an option to the importer to redeem the goods on payment of Redemption Fine of **Rs. 1,00,000/- (Rupees One Lakh only)** under the provisions of Section 125(1) of the Customs Act, 1962.

6.5 I impose penalty amounting to **Rs. 5,000/- (Rupees Five thousand Only)** under Section 112(a) of the Customs Act, 1962 on M/s. Nancy Impex Private Limited, for the reasons discussed in paras supra.

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



(ANIL RAMTEKE)

Commissioner of Customs (NS-V),  
JNCH, Nhava Sheva

To:

M/s. Nancy Impex Private Limited  
13/32, Arya Samaj Road, Karol Bagh,  
New Delhi, Delhi, PIN- 110005

Copy to :-

1. The Addl. Commissioner of Customs, Group VA, JNCH, Nhava Sheva, Mumbai-II.
2. The AC/DC, Audit, JNCH.
3. The AC/DC (Review Cell), Chief Commissioner's Office, JNCH.
4. The AC/DC, Centralized Revenue Recovery Cell, JNCH.
5. Supdt.(P), CHS Section, JNCH – For display on JNCH Notice Board.
6. Office Copy.