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 – 20250678NX000000A88E **Date of Order: 13.06.2025**

F. No. S/10-70/2023-24/COMMR/CAC/NS-V/JNCH **Date of Issue: 13.06.2025**

SCN No.:645/2023-24/COMMR/GR.VA/CAC/JNCH

SCN Date: 16.06.2023

Passed by: Sh. Anil Ramteke

Commissioner of Customs, NS-V, JNCH

Order No: 90/2025-26/COMMR/NS-V/CAC/JNCH

Name of Noticees: M/s. Sanrad Medical Systems Private Limited & Others

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. 645/2023-24/Commr/NS-V/CAC/JNCH dated 16.06.2023 in case of M/s. Sanrad Medical Systems Private Limited (0711003301) - reg.

BRIEF FACTS OF THE CASE

1.1 M/s. Sanrad Medical Systems Private Limited (0711003301) having their registered address at 108/E2, 6th Main, 3rd Phase, Peenya Industrial Area, Bangalore (hereinafter referred to as "the Importer") is an importer of X-Ray Computed Tomography System (CT Scan) (hereinafter referred to as "subject goods") and classifying the same under Customs Tariff Heading (CTH) 90221200. The importer has cleared the goods on making payment of BCD @7.5 %, SWS @10% and IGST @12% and claimed the benefit of Health Cess vide Notification no. 08/2020 dated 02.02.2020 Sr. No 1 and paid Health Cess @0%. In terms of Sr. No. 1 of Notification No. 08/2020-Cus, exemption of Health Cess is applicable to "All goods falling under heading 9022, other than those for medical, surgical, dental or veterinary uses". The impugned goods (CT scan) are used for Medical uses so the exemption of the above notification (08/2020-Cus Sr. No. 1) is not available for the above said goods. It was observed that M/s. Sanrad Medical Systems Private Limited, had filed and cleared various Bills of Entry through Customs Broker, M/s. Sea Sky Exim containing the said descriptions, as detailed in Annexure-A to the Show Cause Notice (SCN).

1.2 On perusal of item description in bills of entry as detailed in Annexure- A to the SCN, it appears that the importer has imported "X-ray Computed Tomography System (CT scan)" under CTH 90221200 and had paid BCD @7.5 %, SWS and IGST @12% and claimed the benefit of Health Cess vide notification 08/2020 dated 02.02.2020 Sr. No. 1 and paid Health Cess @0%. However, these goods attract Health Cess @5%. Therefore, the subject goods were liable to be assessed for Health Cess @ 5% instead of @ 0%, which resulted in short payment of Customs duty.

1.3 Since, importer had evaded the duty on the subject goods by wrong claims of undue benefit of Health Cess vide Notification No. 08/2020 Sr. no. 1 in the said bills of entry, a Consultative Letter No. 829/2022-23/JNCH (A2) dated 20.07.2022, was issued to the importer to inter-alia, pay the differential duty amount along with applicable interest and penalty. On issuance of Consultative letter, importer came forward and admitted their mistake and calculated final differential duty to be paid by them. They paid differential duty along with applicable interest under section 28AA of Customs Act, 1962. They further said that the Notification was mis-interpreted by them, and there were no malafide intentions to evade the Health Cess amount and the above mistake had occurred unintentionally. Importer paid all the differential duty along with applicable interest u/ s 28AA of Customs Act, 1962. Details of the payment made by them towards differential duty and applicable interest is given below:

S. No.	Challan No. & date	Amount paid (Rs.	Nature of Payment
1	HC 366 dated 25.07.2022	1,00,00,000/-	Diff. Duty
2	HC 455 dated 29.07.2022	2,49,46,828/-	Diff. Duty
	Total	**3,49,46,828/-**	
1	HCM 61 dated 01.08.2022	47,86,958/-	Interest
	Total	**3,97,33,786/-**	Diff. Duty + Interest

1.4 Importer vide a letter dated 05.08.2022 addressed to "the Commissioner of customs, Audit, JNCH made a submission, where-in importer inter-alia stated that:-

a) on receipt of Consultative letters mentioned above, they accepted their mistake of wrong availment of exemption of Health Cess Notification No. 08/2020 Sr. No. 1 and also mentioned that the Notification was mis-interpreted by them, and there were no malafide intentions to evade the Health Cess amount and the above-mentioned mistake has occurred unintentionally.

b) after receiving the consultative letters they made full payment of differential duty along with applicable interest, the details of the payment made by them is mentioned above table.

c) their company had availed exemption of Health Cess (applicable @5%) and paid Nil Health Cess under Sr. No. 1 of Notification No. 08/2020 -Cus dated 02.02.2020; that in the bills of entry they had classified the impugned goods under correct Customs Tariff Heading 90221200 and also made correct description of goods; Most of their Bills of Entries were assessed by Custom officials; that the wrong availment of Customs Notification was not wilfull collusion as it was a matter of only mis- interpretation of the said Notification; they had not availed the exemption of the Notification by mis-declaring or by suppressing any fact; that they had correctly described their product as well as correctly classified their goods. On raising the objection, they accepted their mistake and paid all the differential duty along with applicable interest.

d) it was only a matter of mis- interpretation and there was no suppression of fact or wilful collusion for evading and duty, so as per Section 28(2) of Customs Act, 1962, there was no penalty liability if the payment of differential duty and applicable interest is made within 30 days of the notice served. Importer reproduced the Section 28(2) of the Customs Act, 1962 for reference as:

"Provided that where notice under clause (a) of sub-section (1) has been served and the proper officer is of the opinion that the amount of duty along with interest payable thereon under section 28AA or the amount of interest, as the case may be, as specified in the notice, has been paid in full within thirty days from the date of receipt of the notice, no penalty shall be levied and the proceedings against such person or other persons to whom the said notice is served under clause (a) of sub-section (1) shall be deemed to be concluded."

e) As per the provisions of section 28(2) of Customs Act, 1962 as explained above, if the differential duty or short levy raised without collusion or any wilful mis-statements or suppression of facts by the importer, and the payment of differential duty or such short levy along with applicable interest is made within 30 days of issuance of notice (Consultative letter in this case) in full then there is no provisions of penalty in this scenario.

f) they relied upon cases wherein Hon'ble CESTAT has relied on the fact that mis-classification for wrong availment of any notification is not wilful collusion or suppressment of fact for invoking or issuing any Show Cause Notice under section 28(4) of the Customs Act, 1962 for extended period of time.

i) Customs Appeal No. 85603 of 2017 Custom, Excise & Service Tax Tribunal Sirthai Superware India Ltd. vs. CC (Nhava Sheva-III);
ii) Customs Appeal No. 50927 of 2020 Custom, Excise & Service Tax Tribunal, New Delhi, Exclusive Motors Pvt. Ltd. vs. Commissioner, Customs;

In the above-mentioned judgment, the Hon'ble CESTAT placed reliance on the fact that the expression "suppression" has been used in the proviso to Section 11A of the Act accompanied by very strong words as "fraud" or "collusion" and, therefore, has to be construed strictly. Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty. Suppression means failure to disclose full information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. When the Revenue invokes the extended period of limitation under Section 11A, the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a wilful mis-statement. The latter implies making of an incorrect statement with knowledge that the statement was not correct.

In both the cases Hon'ble CESTAT has rejected the department contention of wilful collusion and suppression of facts under section 28(4) and directed the department to conclude the proceedings under section 28(2).

g) as they paid all the short levy and applicable interest and did not suppress any fact, so there is no provision of wilful collusion. Hence, no penalty is leviable under section 28(2) and requested to close the proceedings without any penalty and issuance of Show-cause notice.

1.5 This wrong claim of undue benefit of Health Cess led to a loss to the Government exchequer and accrued monetary benefits to the Importer. Therefore, it appears that importer has intentionally claimed undue benefit of Health Cess vide Notification No. 08/2020 Sr. no. 1 for the imported goods with the sole intention to evade legitimate Customs duty. Therefore, the subject goods were liable to be assessed at Health Cess @5% instead of @0% which resulted in short payment of Customs duty.

1.6 Hence, importer is liable to pay differential duty of Rs. 3,49,46,828/- (Rs. Three Crore Forty-Nine Lakh Forty-Six Thousand Eight Hundred and Twenty-Eight Only) under Section 28(4) of Customs Act, 1962 along with applicable interest under section 28AA of the Customs Act, 1962 as detailed in Annexure- A to the SCN. All the above-mentioned differential duty along with applicable interest was paid by the Importer and details of the payment made are given in Para 1.3 above.

1.7 After introduction of self-assessment vide Finance Act, 2011, the onus lies on the importer for making true and correct declaration in all aspects in the Bills of Entry and to pay the correct amount of duty. In the instant case, the subject goods are covered under the CTH 90221200 and cleared on availing wrong benefit of Health Cess vide Notification No. 08/2020 dated 02.02.2020 Sr. No. 1 and paid Health Cess @0%. Sr. No. 1 of Notification No. 08/2020-Cus states that exemption of Health Cess is applicable to "All goods falling under heading 9022, other than those for medical, surgical, dental or veterinary uses". In this instance, duty has been short paid due to wrong claim of Health Cess vide notification no. 08/2020 dated 02.02.2020 Sr. No. 1.

1.8 It is pertinent to mention that, if Consultative Letter would have not been issued to the importer by the department, they would not have come forward to pay the differential duty and would have continued claiming the wrong benefit of Health Cess vide notification no. 08/2020 dated 02.02.2020 Sr. No. 1 thereby evading Customs Duty. As the importer has come forward to pay the differential duty only after issuance of Consultative Letter and hence, they are liable to pay interest and penalty as applicable. It is further stated that importer could have availed the benefit of lower penalty in terms of Section 28(5) of the Customs Act, 1962 by early payment of differential duty and interest along with applicable penalty@15%.

1.9 In view of the above, as importer has knowingly availed the wrong benefit of Health Cess Notification to evade the customs duty. So, it is the suppression or mis-statement of facts by the importer.

1.10 Show Cause Notice relied upon various legal provisions viz. Section 28(4), 28AA, 111(m), 112, 114A & 114AA of the Customs Act, 1962.

1.11 The Importer has cleared the said goods as detailed in Annexure-A to the SCN by availing wrong benefit of Health Cess vide Notification No. 08/2020 dated 02.02.2020 Sr. No. 1 and paid Health Cess @0%, resulting in short levy of legitimate Customs duty amounting to Rs. 3,49,46,828/- (Rs. Three Crore Forty-Nine Lakh Forty-Six Thousand Eight Hundred and Twenty-Eight Only), therefore, the said goods having total assessable value of Rs. 62,40,50,487/- (Rs. Sixty-Two Crore Forty Lakh Fifty Thousand Four Hundred and Eighty-Seven Only) appear to be liable for confiscation under section 111(m) of the Customs Act, 1962.

1.12 Thus, it appears that importer has evaded Customs duty by wrong availment of Health Cess vide Notification No. 08/2020 dated 02.02.2020 (Sr. No. 1). These acts of commission and omission by the importer appears to have rendered the impugned goods liable to Confiscation under Section 111(m) of the Customs Act, 1962.

1.13 Therefore, it appears that importer M/S. Sanrad Medical Systems Private Limited (0711003301), willfully attempted to evade legitimate Customs duty by availing wrong benefit of Health Cess vide Notification No. 08/2020 dated 02.02.2020 (Sr. No. 1). Also, for their acts of omission and commission mentioned above, which rendered the subject goods liable to confiscation under Section 111 (m) of the Customs Act, 1962, importer have rendered themselves liable for penal action under Section 112(a) and/ or 114A and/or 114AA of the Customs Act, 1962.

1.14 Mr. Ratish Nair, Chief Executive Officer (CEO) of M/s. Sanrad Medical Systems Private Limited, is the person responsible for taking decisions regarding import of the impugned goods (CT SCAN Machine) like classification of goods, confirmation regarding eligibility of any Customs Notification for duty exemption. Mr. Ratish Nair willfully attempted to evade legitimate customs duty by availing wrong benefit of Health Cess vide notification no. 08/2020 dated 02.02.2020 Sr. No. 1. As they paid Health Cess 0% so being the trader of medical equipment if they had to pay less duty on their import, their product being cheaper than other importers became more competitive. Therefore, they appear to have willfully evaded legitimate duty which also rendered them liable for penal action under Section 112(a) and/ or 114A and/ or 114AA of the Custom Act, 1962.

2. In view of the above, in terms of Section 28(4) of the Customs Act, 1962, importer M/s. Sanrad Medical System Private Limited (0711003301) was called upon to show cause (Show Cause Notice No. 645/2023-24/Commr/NS-V/CAC/JNCH dated 16.06.2023) to the Commissioner of Customs, NS-V, JNCH, Nhava Sheva, Distt. Raigad, Maharashtra- 400707, within 30 days of the receipt of the SCN, as to why:

i The wrongly availed benefit of Health Cess vide Notification No. 08/2020 dated 02.02.2020 (Sr. No. 1), for the subject goods of the bills of entry as per Annexure- A to the SCN should not be rejected and Health Cess should not be re-assessed @5%.

ii The imported goods having assessable value of Rs. 62,40,50,487/- (Rs. Sixty-Two Crore Forty Lakh Fifty Thousand Four Hundred and Eighty-Seven Only), covered under various Bills of Entry as detailed in Annexure- "A" should not be held liable to confiscation under Section 111(m) of the Customs Act, 1962;

iii The differential duty of Rs. 3,49,46,828/- (Rs. Three Crore Forty-Nine Lakh Forty-Six Thousand Eight Hundred and Twenty-Eight Only), for the Bills of Entry as detailed in Annexure- A to the SCN should not be demanded under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962. Since the amount of Rs. 3,49,46,828/- has already been paid vide challan no. HC 366 dtd. 25.07.2022, the same should not be appropriated towards differential duty and Rs. 47,86,958/- paid vide challan no. HCM 61 dtd. 01.08.2022 should not be appropriated towards Interest applicable u/s 28AA of Customs Act, 1962;

iv Penalty should not be imposed on them under Section 112(a) and/ or 114A and/ or 114AA of the Customs Act, 1962.

2.1 Further, in terms of Section 28(4) of the Customs Act, 1962, Mr. Ratish Nair, CEO of M/s. Sanrad Medical System Private Limited (0711003301), was also called upon to show cause to the Commissioner of Customs, NS-V, JNCH, Nhava Sheva, Distt.- Raigad, Maharashtra- 400707, within 30 days of the receipt of the above said SCN, as to why:

i Penalty should not be imposed on him under Section 112(a) and/or 114AA of the Customs Act, 1962.

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

3. Noticees submitted written submissions dated 22.03.2024, 24.01.2025 and 03.06.2025. In their written submission, it is inter-alia submitted that:

3.1 Noticees submitted that they imported Medical Diagnosis Devices namely, X-Ray Computed Tomography System being classified at HSN 90221200, during the period 2021-2022. they with their best of ability to interpret the law/rules found that, the import of X-Ray Computed Tomography System was exempted from levy of Health CESS @5% vide Customs Notification 08/2020 (1), dated 02.02.2020 resultantly, they claimed the same.

3.2 Rationally, numerous Bills of Entry (Out of 31 Bills of Entry) were cleared by Human Intervention i.e. Through Physical Desk of Proper Officer whereby importer's interpretation

leading to exemption from Health CESS was duly validated and same was granted as 'True, Valid, Eligible & Bonafide' claim. This is evidently available in ICES System Records. These facts imply that, noticees did not suppress any fact while making declarations in 31 Bills of Entry.

3.3 The Post Clearance Department of Customs (PCA) in the routine standing process, carried out scrutiny of digital & manual records pertaining toi made under said 31 Bills of Entry for the 'Principle of Levy/Exemption of Health CESS' and, drew interpretation otherwise consequently proposed to deny duty exemption from Heath CESS to "all goods imported covered by 31 bills of entry", Accordingly, the Post Clearance Audit (PCA), JNCH issued Pre Consultation Notice No. 829/2022-2023/JNCH (A2) dated 20.07.2022 to M/s Sanrad Medical Systems Pvt. Ltd. to Pay the 'differential amount of duty along with applicable amount of interest'. Noticees upon agreeing with the interpretation drawn by PC Audit and complying the same paid the differential duty amounting to Rs. 3,49,46,828/- and interest amounting to Rs. 47,86,958/-. Therefore, as on 1st August, 2022 & onwards 'No Dues of Differential Duty & Interest, were left unpaid in the name of M/s. Sanrad Medical Systems Pvt. Ltd. with respect to 31 subject Bills of Entry.

3.4 Noticees submitted that they responded the said Pre-Consultation Notice vide their letter dated 05.08.2022, pleading their bonafide and requesting to close the proceedings. The pertinent contents of the said letter have been incorporated in SCN. In spite of complying all Pre-Consultations & making payments of dues resultantly attaining status of 'no dues', the Show Cause Notice (SCN) No. 645/2022-23/COMMR/NS-V/CAC/JNCH Dated 16.06.2023, was issued to the noticees.

3.5 The section 28 of the Customs Act, 1962 empowers 'jurisdictional proper officer/authority' to recover duties not levied or not paid or short-levied or short-paid or erroneously refunded in terms of the provisions of Section 28(1) & 28(4) of the Act. The Section 28 through its sub-section(s) 28(1) & 28(4) enforces identical objective of 'recovery of duties not levied or not paid or short-levied or short-paid or erroneously refund' but with 'differential terms & conditions' as summarised in table below:

Functional Objective		**Empowered Actions: Such as to Recover duties not levied or not paid or short-levied or short-paid or erroneously refund and PENALTIES, if leviable**	
-A-	**-B-**	**-C-**	**-D-**
Sub Section	**Subject**	**Differentiator**	**Maximum Time Available for Enforcement of Recovery of Duty**
28(1)	Bonafide	Non-Intentional	TWO Years
28(2)	Bonafide	No Penalty, No SCN	If 'Amount of Short/Non Levy' paid before issuance of SCN
28(4)	Malafide	a) collusion; or	FIVE YEARS

The above 'Data Analysis' implies that, the only 'Differentiator(s)' distinguishing away 'two otherwise identically placed provisions of section 28' read at subsection 28(1) & 28(4) are:

(a) collusion; or
(b) any wilful mis-statement; or
(c) suppression of facts.

3.6 The proper officer in terms of provision of sub-section 28{1(a)} shall, within two years from the relevant date serve notice on the person chargeable & desirable to pay short levy raised under sub-section 28(1), requiring noticee to show cause why he should not pay the amount specified in the notice. The proper officer in terms of provision of sub-section 28(4) shall within five years from the relevant date serve notice on the person chargeable & desirable to pay short levy raised under sub-section 28(4), requiring noticee to show cause why he should not pay the amount specified in the notice. Whereas, in terms of provision of sub-section 28{1(b)}, the 'Person' desirable to pay short levy, may pay before service of notice the amount of duty along with the interest payable thereon under section 28AA or the amount of interest which has not been so paid or part-paid. Whereas, in terms of provision of sub-section 28 (2), the 'Person' desirable to pay short levy, who has paid the duty along with interest or amount of interest under clause (b) of sub-section 28(1) shall inform the proper officer of such payment in writing. The proper officer on receipt of such information, shall not serve any notice under clause (a) of that sub-section i.e.

28(1) in respect of the duty or interest so paid. Further in case, the Show Cause Notice is served to 'Person Chargeable' to pay short levy and, the proper officer finds to his satisfaction that, 'Total Amount of shorty levy with interest has been paid within thirty days of the date of SCN than, no Penalty shall be levied and the said proceedings including SCN shall be deemed to be concluded, Per se section 28(1).

3.7 The CBIC, in exercise of the Powers entrusted under the provisions of Section 157 of Customs Act, 1962 and in consistence with this Act, made Pre-Notice Consultation Regulations (PNCR), 2018. The Board, while framing & enforcing the provisions of PNCR in consistence with Customs Act, 1962, ensured the adoption of very spirits of 'Findings of Select Committee of Parliament which drafted the 'Customs Act-1962 Bill. The 'Select Committee emphasised upon adoption of Differential & Sympathetic Approach' towards Bonafide & Genuine Importer/Exporter/Trader whereas enforcing 'Severe Penal Action against established/proven 'Will Full & Malafide Evaders'. It further infers that, the 'Proceedings initiated under the provisions of PNCR'18 read with provisions of sub-section 28{1(a)} of the Customs Act, 1962-

i cannot Escape out from 'Functional Scope & Closed Orbit of Empowerment' of 28{1(a)} of the Customs Act, 1962;

ii cannot Enter into 'Functional Scope & Orbit of Empowerment' of any other sub-section of 28 of CA'62;

iii cannot Enter into 'Functional Scope & Orbit of Empowerment' of subsection of 28(4) of CA'62.

iv Enforcing 'PNCR Compliant Cases' into domain of section 28(4) shall be 'Blatant Violation of Legal Intent of Legislation enacted PNCR'.

v This unwarranted act shall germinate 'Bulk of Litigations', which Hon'ble Courts of Country are buckling with.

3.8 The above propositions, were legally scrutinized & decided as settled law by judgments passed by the Hon'ble Delhi High Court in the case of Victory Electric Vehicles International Pvt. Ltd V/s Union of India as decided on 20-10-2009 and, as published vide 2022 (1) CENTAX 29 (DEL).

3.9 The interpretation is a humane approach to one issue/object from different & varied angle. It means that, different interpretation of one issue cannot be crowned as either 'Malafide' or 'Willful Mis-statement', if the fundamental data & details are correct. If the details such as Description, HSN, Unit Price, UQC, Quantity, Country of Origin, Currency, Total Value etc., are declared as true & correct than, same cannot be held as either 'Malafide' or 'Willful Mis-statement' or 'Suppression of Fact'. It means that, in absentia of 'any mis- declaration of details such as Description, HSN, Unit Price, UQC, Quantity, Country of Origin, Currency, Total Value etc. malafide role of proper officer of customs, the 'Acts of 'Willful Mis-statement' of 'Suppression of Fact' do not exist. The term 'Collusion' needs two actors on two terminals of event or instance. In the case of assessed Bills of Entry the 'two actors on two terminals' happen to be 'importer' and 'proper officer of customs. It cannot be performed by any importer himself in unilaterally. In absentia of any malafide role of proper officer of customs, the act of collusion does not exist. In support of their claim, they rely on following judgements:

- M/s Teracom Pvt Ltd v/s Commissioner of Customs, 2018 (363) E.L.T. 1013 (Tri. - Mumbai)
- M/s Anant Wines & Spirits v/s Commissioner of Customs, Amritsar, 2016 (342) E.L.T. 419 (Tri. - Chan)
- M/s Gajendra Enterprises v/s Commissioner of C.Ex, Daman, 2008 (232) E.L.T. 445 (Tri. - Ahmd)
- M/s G. V. Exim Pvt Ltd. v/s Commissioner of Customs(AP), Kolkata ,2003 (160) E.L.T. 990 (Tri. - Kolkata)
- M/s Unique Plastic Industries v/s Commissioner of C. Ex., Kolkata, 2002 (145) E.L.T. 604 (Tri. - Kolkata)

3.10 The proper officers of Customs located at various ports raised queries and by accepting the query reply assessed 11 B/Es out of Total 31 B/Es and validated 'Description, Specifications, Quantity, HSN & Duty Exemption of Health Cess. Further, proper officers examined the goods and found declared with respect to Description, Quantity, HSN & Value etc., satisfied & validated with all claims including exemption from Health Cess and granted Out of Charge. Hence, it can be inferred that no misdeclaration of details such as Description, HSN, Quantity & Value etc was found; No Aversion was Found; to the best judgment of officers who handled assessment & clearance, claimed Health Cess exemption was valid claim, which was duly permitted too; no suppression of facts was found.

3.11 Noticee submitted that CBIC vide Master Circular No. 1053/2/2017-CX., dated 10-3-2017 regulating the Issues like 'Show Cause Notice, adjudication proceedings, closure of proceedings and recovery of duty' has instructed that *"5.0 Consultation with the noticee before issue of Show Cause Notice : Board has made pre show cause notice consultation by the Principal Commissioner/Commissioner prior to issue of show cause notice in cases involving demands of duty above Rs. 50 lakhs (except for preventive/offence related SCN's) mandatory vide instruction issued from F. No. 1080/09/DLA/MISC/15, dated 21st December 2015. Such consultation shall be done by the adjudicating authority with the assessee concerned."* Hence, if on the date of issuance of SCN, any element of short levy or short payments finds absence than, SCN either cannot be issued or shall be infructuous. This legal binding is applied to those cases too, where assessee had made voluntary payment of dues & duty against received advices vide Pre-Notice Consultation, and payments have been made before issuance of SCN.

3.12 Noticee submitted that with regards to this issue of 'Legit Survival of Show Cause Notice' would like conclusively state that that, since they paid the said short levy along with applicable interest, and intimated the same to the proper officer of audit before the date of issuance of instant Show Cause Notice, therefore, in the given circumstances 'Proper Officer' shall not be empowered to issue any Show Cause Notice in terms of provisions of section 28{1(a)} read with 28(2) of Customs Act, 1962. Hence, the instant SCN issued under non-empowered authority ceases to its existence.

3.13 Noticee submitted that the statutory provisions are absolute that, Pre-Notice Consultation is regulated within periphery of provisions of section 28(1) of the Customs Act, 1962 hence, SCN cannot travel beyond limits of section 28(1) and transit to 28(4) without adducing any new ground the issuance of SCN under section 28(4) violated the very spirit of legal authority & legislation.

3.14 The SCN attempts to hold action of noticee by resorting different or varied interpretation leading to duty exemption of Health CESS as malafide act & willful suppression of facts, which resultantly empowers SCN for invoking 'Penal Provisions' under section 111(m), 112(a)/114A & 114AA. Further, interpretation of any law, rule or regulation does not accrue as 'Malafide or Willful Suppression of Facts'. In the instant case, declarations e.g. description, HSN, quantity and value were correctly made in the bills of entry and noticee did not make any Mis-declaration, thus 'No Suppression of Facts'. view of above, the instant SCN issued on 16.06.2023, 'when NO DUES was pending' stands infructuous and void and merits only to be set aside.

3.15 The noticee submitted that through the aforesaid submissions with all deep-rooted gravity has substantiated that, this issuance of SCN is illegal in itself therefore, the invoking the provisions of confiscation of goods under section 111(m) of the Customs Act, 1962 does also stand illegal and the SCN did not cite any evidence on record alleging mis-declaration of Description, Quantity or Value, hence, imports did not violate the provisions of section 111(m) of of the Customs Act, 1962.

3.16 Noticee submitted that invoking the provisions of confiscation of goods under section 112(a)/114A of the Customs Act, 1962 does also stand illegal. The SCN does not mention of any event of 'Manipulating Records, Document or Information' attempted or committed by noticee,

therefore SCN fails in justifying its claim of invoking the provisions of section 114AA of the Customs Act, 1962.

3.17 Noticee requested to adjudge the Show Cause Notice as null & void, invalid & infructuous, in view of above submissions. Noticee further requested to set aside the Show Cause Notice for all purpose and close the invoked proceedings under the provisions of section 28(4) of the Customs Act, 1962 considering as being under the provisions of section 28(2) of the Customs Act, 1962, as it not empowered authority when to read & execute with Pre-notice Consultation Regulations, 2018.

4. RECORD OF PERSONAL HEARINGS

4.1 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 Chandra Shekhar Gupta, consultant on behalf of Noticees attended the personal hearing on 06.05.2025 and argued the case and reiterated the written submission dated 22.03.2024 and 24.01.2025. He further stated that they have already paid the differential duty along with applicable interest before issuance of SCN. He further added that section 28(4) of the Customs Act, 1962 cannot be invoked as there is no suppression of facts against any of the bills of entry. Further, he through submitted data on Excel Sheet claimed that some of impugned Bills of Entry out of total 31 Bills of Entry invoked in instant SCN were duly assessed by manual intervention of proper officer, as (i). assessing officer raised queries raised to importer, (ii). importer replied to queries, (iii). assessing officer upon finding reply satisfactory finalised assessment, (iv). gave examination order, (v). examination & out of charge by docks officer etc. These recorded actions on some Bills of Entry validating claim of noticee by officers of customs, amount to 'No Suppression of Fact'.

4.2 Shri Chandra Shekhar Gupta, consultant on behalf of Noticees attended the personal hearing on 03.06.2025 also and reiterated the written submission dated 03.06.2025. He further stated that they had already paid the differential duty along with applicable interest before date of issuance of SCN by complying upon the advice received vide Pre-Notice Consultation Notice dated 20.07.2022, so the element of 'Short Levy & Short Duty Paid' was clearly absent on the date of SCN and it implies that, SCN issued in the circumstances of 'absence of said element stands illegal & infructuous. He stated that the legislative objective of enactment & enforcement of Pre-Notice Consultation Regulation, finds origin with mother provision of section 28(1) of the Customs Act, 1962, and clause 3(i) of regulation mutually reciprocates the same. Therefore, 'Compliant Proceedings invoked vide PNCR shall not move beyond section 28(1) & 28(2) of the act. He further added that 35% bills of entry were assessed by the assessment officers, however, the health cess was not imposed by pertinent proper officers, which further substantiates bonafide of importer. He further added that, since catena of judgment available on record upheld the fact that, 'Claiming of Exemption if otherwise ineligible does not amount to offence and act of wilful suppression of facts hence, in these circumstances SCN issued under section 28(4) of the Customs Act, 1962 cannot be survived.

DISCUSSION AND FINDINGS

5. The fact of the matter is that a Show Cause Notice (SCN) No. 645/2023-24/Commr/NS-V/CAC/JNCH dated 16.06.2023 was issued to M/s. Sanrad Medical Systems Private Limited (Noticee No. 1) and Shri Ratish Nair, CEO of M/s. Sanrad Medical Systems Private Limited (Noticee No. 2) alleging that the goods imported by them have been cleared without payment of applicable Health Cess @5% and claimed undue benefit of Health Cess vide Notification no. 08/2020 dated 02.02.2020 Sr. No 1 and paid Health Cess @0%. The SCN was served for said non-payment of applicable Health Cess demanding differential Customs duty of Rs. 3,49,46,828/- (Rs. Three Crore Forty-Nine Lakh Forty-Six Thousand Eight Hundred and Twenty-Eight Only) as detailed in Annexure-A to the SCN invoking extended period under Section 28 of the Customs Act, 1962 along with interest in terms of section 28AA of the Customs Act, 1962 and consequential penalties under section 112(a)/114A/114AA of the Customs Act,1962. Show cause Notice also proposed liability to confiscation of imported goods having assessable value of Rs. 62,40,50,487/- (Rs. Sixty-Two Crore Forty Lakh Fifty Thousand Four Hundred and Eighty-Seven Only) under Section 111(m) of the Customs Act, 1962.

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

5.3 I now proceed to frame the issues to be decided in the instant SCN before me. On a careful perusal of the subject show Cause Notice and case records, I find that following main issues are involved in this case, which are required to be decided: -

(i) Whether the benefit of Health Cess availed by the importer vide Notification No. 08/2020 dated 02.02.2020 (Sr. No. 1) for the subject goods imported vide the bills of entry as detailed in Annexure- A to the SCN should be rejected and Health Cess should be re-assessed @5% or otherwise;

(ii) Whether the differential duty of Rs. 3,49,46,828/- (Rs. Three Crore Forty-Nine Lakh Forty-Six Thousand Eight Hundred and Twenty-Eight Only) for the Bills of Entry as detailed in Annexure- A to the SCN should be demanded under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962 and the differential duty amounting to Rs. 3,49,46,828/- along with interest amounting to Rs. 47,86,958/- already paid should be appropriated towards differential duty demanded under section 28(4) and applicable interest u/s 28AA of Customs Act, 1962 or otherwise;

(iii) Whether the said goods having assessable value Rs. 62,40,50,487/- (Rs. Sixty-Two Crore Forty Lakh Fifty Thousand Four Hundred and Eighty-Seven Only) as detailed in Annexure-A to the SCN should be confiscated under Section 111(m) of the Customs Act, 1962 or otherwise;

(iv) Whether penalty should be imposed on importer M/s. Sanrad Medical System Private Limited under Section 112(a) and/ or 114A and/ or 114AA of Customs Act, 1962 and on Mr. Ratish Nair, CEO of M/s. Sanrad Medical System Private Limited under Section 112(a) and/or 114AA or otherwise;

5.4 After having identified and framed the main issues to be decided, I now proceed to examine each of the issues individually for detailed analysis based on the facts and circumstances mentioned in the SCN; provision of the Customs Act, 1962, as well as written submissions of notice and documents / evidences available on record.

6. Whether the benefit of Health Cess availed by the importer vide Notification No. 08/2020 dated 02.02.2020 (Sr. No. 1) for the subject goods imported vide the bills of entry as detailed in Annexure- A to the SCN should be rejected and Health Cess should be re-assessed @5% or otherwise

6.1 I find that importer M/s. Sanrad Medical Systems Private Limited (0711003301) has imported "X-Ray Computed Tomography System (CT Scan)" classifying under heading 90221200. The importer has cleared the goods on making payment of BCD @7.5 %, SWS @10% and IGST @12% and claimed the benefit of Health Cess vide Notification no. 08/2020 dated 02.02.2020 Sr. No. 1 and paid Health Cess @0%. In terms of Sr. No. 1 of Notification No. 08/2020-Cus against the bills of entry as detailed in Annexure-A to the SCN.

6.2 Relevant portion of Notification No. 08/2020-Cus is as follows:

Notification No.08/2020-Customs

New Delhi, the 2nd February, 2020.

G.S.R..... (E).- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) read with clause 139of the Finance Bill, 2020, which, by

virtue of the declaration made in the said Finance Bill under the Provisional Collection of Taxes Act, 1931 (16 of 1931), has the force of law, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (2) of the Table below and falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), from the whole of the Health Cess leviable thereon under the said clause of the Finance Bill:

Provided that in case of goods specified in the said Table, the exemption under this notification shall be subject to the condition, if any, specified under the respective exemption notifications mentioned therein.

Table

Sl. No.	*Description of goods*
(1)	*(2)*
1.	*All goods falling under heading 9022, other than those for medical, surgical, dental or veterinary uses.*
2.	.....

In view of the Sr. No. 1 of the above notification, "*All goods falling under heading 9022, other than those for medical, surgical, dental or veterinary uses*" has been exempted from whole of the Health Cess leviable thereon. The impugned goods "X-Ray Computed Tomography System (CT scan)" are used for Medical purposes, hence the exemption of Sr. No. 1 the above said notification No. 08/2020-Customs dated 02.02.2020 cannot be claimed against the said goods as detailed in Annexure-A to the SCN.

6.3 I find that one of the major changes in the duty structure was introduction of Customs Health Cess on imports vide clause 139 of the Finance Bill,2020. The relevant portion of letter from J.S (TRU) is reproduced for reference:

> *Vide clause of the Finance Bill,2020, Health Cess is being imposed on the import of medical devices falling under heading 9018 to 9022, at the rate of 5% ad valorem on the import value of such goods as determined under section 14 of the Customs Act, 1962. This Health Cess shall be a duty of Customs.*

Hence, Health Cess @5% is applicable on the import of medical devices falling under heading 9018 to 9022 unless any good is exempted falling under these headings.

6.4 In view of the above, I find that the imported goods "X-ray Computed Tomography System (CT scan)" as detailed in Annexure-A to the SCN attracts Health Cess @5%, hence, the subject goods were liable to be assessed at Health Cess @ 5% instead of @ 0%. I find that importer agreed with the objection raised by PCA and paid differential duty amounting to Rs. 3,49,46,828/- vide challan No. HC 366 dated 25.07.2022 and HC455 dated 29.07.2022 along with interest amounting to Rs. 47,86,958/- vide challan No. HCM 61 dated 01.08.2022.

7. Whether the differential duty of Rs. 3,49,46,828/- (Rs. Three Crore Forty-Nine Lakh Forty-Six Thousand Eight Hundred and Twenty-Eight Only) for the Bills of Entry as detailed in Annexure- A to the SCN should be demanded under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962 and the differential duty amounting to Rs. 3,49,46,828/- along with interest amounting to Rs. 47,86,958/- already paid should be appropriated towards differential duty demanded under section 28(4) and applicable interest u/s 28AA of Customs Act, 1962 or otherwise.

7.1 After having determined the applicability of Health Cess on the impugned imported goods, it is imperative to determine whether the demand of differential Customs duty as per the provisions of Section 28(4) of the Customs Act, 1962, in the subject SCN is sustainable or otherwise. The relevant legal provision is as under:

SECTION 28(4) of the Customs Act, 1962.

Recovery of duties not levied or not paid or short-levied or short- paid or erroneously refunded. –

(4) Where any duty has not been [levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of, -

(a) collusion; or
(b) any wilful mis-statement; or
(c) suppression of facts,

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

7.2 In the instant case, impugned goods are "X-ray Computed Tomography System (CT scan)" as detailed in Annexure-A to the SCN. However, the importer wrongly claimed the benefit of Health Cess under Sr. No. 1 of Notification no. 08/2020 dated 02.02.2020 and thus short paid the Health Cess by 5%. In view of this fact, I find that the importer has availed the benefit of the said notification benefit for which they were not eligible. By resorting to this deliberate suppression of facts and wilful availment 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, this wilful and deliberate act was done with the fraudulent intention to claim ineligible lower rate of duty and notification benefit.**

7.3 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 the impugned goods and claimed ineligible benefit of IGST Schedule/ 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.

7.4 I find that in the instant case, as elaborated in the foregoing paras, the Noticee had wilfully availed the benefit of the said notification against the imported goods at the time of filing of the Bills of Entry. Further, to evade payment of correctly leviable duty, they 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 declaration of notification benefit and claiming lower rate of duty. Instead, in the instant case, the Noticee deliberately chose to avail improper notification benefit in respect of the imported goods to claim lower rate of duty and ineligible notification benefit, being fully aware of the applicability of Health Cess @5% on 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. I find that noticee has relied on various case laws, however, the same are not squarely applicable in this case.

7.5 Under Section 28AA of the Customs Act, interest becomes payable on duty becoming payable in the set of cases as set out under the said section, which duty has not been levied or paid or has been short levied or short paid or erroneously refunded by reasons of collusion or wilful misstatement or suppression off facts. 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.

7.6 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 to 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. Secondly, when there is dispute as to whether there is breach of the notification, then section 28 can be resorted to.

7.7 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. Similarly, under section 28AA on duty being ascertained as under section 28 interest is payable by operation of law.

7.8 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.

7.9 In view of above, the importer is liable to pay the differential duty amount of **Rs. 3,49,46,828/- (Rs. Three Crore Forty-Nine Lakh Forty-Six Thousand Eight Hundred and Twenty-Eight Only)**, under the provisions of Section 28(4) of the Customs Act, 1962 by invoking extended period, along with the applicable interest under section 28AA of the Customs Act, 1962. Further, I find that importer has already paid the differential duty amounting to Rs. 3,49,46,828/- vide challan No. HC366 dated 25.07.2022 and HC455 dated 29.07.2022 along with interest amounting to Rs. 47,86,958/- vide challan No. HCM61 dated 01.08.2022, hence the said amount need to be appropriated towards differential duty demanded under section 28(4) and applicable interest u/s 28AA of Customs Act, 1962 respectively.

8. Whether the said goods having assessable value Rs. 62,40,50,487/- (Rs. Sixty-Two Crore Forty Lakh Fifty Thousand Four Hundred and Eighty-Seven Only) as detailed in Annexure-A to the SCN should be confiscated under Section 111(m) of the Customs Act, 1962 or otherwise;

8.1 I find that the Show Cause Notice proposes confiscation of goods under the provisions of Section 111(m) of the Customs Act, 1962. Provisions of Section 111(m) of the Customs Act, 1962 states as under:

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;

8.2 As the section 111(m) of the Customs Act, 1962 deals with any and all types of mis-declaration regarding any particular of entry inward, the declaration of importer herein by availing wrong notification benefit against 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 in respect of notification benefit. 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.

8.3 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 Act 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.

8.4 From the discussions above, I find that that the importer had failed to assess and discharge the customs duty correctly on the imported goods under Bills of entry as shown in the Annexure-A to the SCN, under wrong notification benefit by suppressing the facts and thereby contravened the provisions of Section 46 the Customs Act, 1962. Thus, I hold that the subject goods are liable for confiscation under Section 111(m) of the Customs Act, 1962.

8.5 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)."

8.5.1 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.).

8.5.2 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.

8.5.3 In view of above, I find that any goods improperly imported as provided in any sub-section (m) of the Section 111 of the Customs Act, 1962, the impugned goods become liable for confiscation. I opine that merely because the importer was not caught at the time of clearance of the imported goods, cannot be given different treatment. Accordingly, I observe that the present case also merits imposition of Redemption Fine having held that the impugned goods having assessable value amounting to **Rs. 62,40,50,487/- (Rs. Sixty-Two Crore Forty Lakh Fifty Thousand Four Hundred and Eighty-Seven Only)** are liable for confiscation under Section 111(m) of the Customs Act, 1962.

9. Whether penalty should be imposed on importer M/s. Sanrad Medical System Private Limited under Section 112(a) and/ or 114A and/ or 114AA of Customs Act, 1962 and on Mr. Ratish Nair, CEO of M/s. Sanrad Medical System Private Limited under Section 112(a) and/or 114AA or otherwise;

9.1 I find that the impugned SCN proposes imposition of penalty on the Noticee under Section 112(a) and/or 114A and/or 114AA of the Customs Act, 1962. Regarding imposition of penalty under Section 112(a), the Noticee has contended that there is no mis-declaration, therefore, the goods are not liable to confiscation under Section 111; and since the goods are not liable to confiscation, penalty under Section 112(a) cannot be imposed on them. Further, regarding imposition of penalty under Section 114A, the Noticee has contended that the same cannot be imposed on them as there is no collusion, willful mis-statement or suppression of facts on their part; the further contended that section 114AA cannot be invoked as the SCN did not mention of any event of 'Manipulating Records, Document or Information' attempted or committed by noticees.

9.2 Regarding the issue of imposition of penalty, it is appropriate to reproduce the provisions of Section 112, 114A and 114AA 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.

Section 114AA. Penalty for use of false and incorrect material. -

If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

9.3 I find that in the self -assessment regime, the importer is bound to correctly assess the duty on the imported goods. In the instant case, the importer has mis-declared the subject goods by availing the wrong notification benefit. Consequently, the importer has paid less duty by non-payment of applicable duty on the subject goods, which tantamount to suppression of material facts and willful 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 duty thereon, amply points towards their '*mens rea'* to evade the payment of duty. Thus, I find that the demand of differential 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.

9.4 Further, I find that the importer M/s. Sanrad Medical System Private Limited, has mis-declared the subject goods by availing wrong notification benefit, 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 notification 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 Annexure-A

to the SCN, therefore penalty under Section 114A is imposable / sustainable in respect of said goods on the importer.

9.5 Further, I find that the importer, by way of intentionally signing and using the Bills of Entry for the clearance of the impugned goods have made a false declaration by wrongly availing the notification benefit under Sr. No. 1 of notification No. 08/2020-Cus dated 02.02.2020, with an intention to evade the customs duty, have rendered themselves liable for penalty under Section 114AA of the Customs Act, 1962.

9.6 Upon careful scrutiny of the Show Cause Notice, it is observed that the proposed penalty under Section 112(a) and/or Section 114AA of the Customs Act, 1962 is based on the allegation that Mr. Ratish Nair, in his capacity as CEO, was the final decision-maker for customs-related matters within the company and had approved the ineligible notification benefit for the disputed goods. However, a thorough review of the SCN, the submissions made, the surrounding circumstances, and the nature of the case reveals that no material evidence has been presented to establish Mr. Nair's direct or indirect involvement in the alleged offense. I find that neither such approval letter highlighting the role of Mr. Nair, CEO of M/s. Sanrad Medical System Private Limited, has been brought on record nor it is a part of the said SCN. Further, there is nothing in the SCN to point that Mr. Nair knowingly made the false declaration or signed any such document. From the reading of the Section 114AA of the Customs Act, 1962, it is observed that if the person knowingly makes the false declaration or signed any document than only he will be liable for penalty under section 114AA of the said Act. In the present case, there is no case that the CEO of the importer company has done any act specified under Section 114AA. Further, there is also no such evidence as to the act of any commission or omission by Mr. Nair for which may render him liable for penalty under section 112(a) of the Customs Act, 1962. The absence of any conclusive facts indicating his personal role in misdeclaration, intentional approval of incorrect classification, or fraudulent intent necessitates a reconsideration of the proposed penalty.

9.6.1 It is well settled in various judicial pronouncements that liability for penalties under customs laws must be based on actual participation in the misdeclaration. Mere holding of an executive position within a company, without specific evidence of personal involvement or decision-making authority related to the customs compliance, does not automatically warrant the imposition of penalties under Section 112(a) and/or Section 114AA. Moreover, given the self-assessment regime introduced under Section 17 of the Customs Act, 1962, the importer itself bears the primary responsibility for ensuring compliance with classification, duty payment, and notification applicability. The role of corporate executives, unless explicitly established as directly influencing such transactions, does not necessarily invite penal action.

9.6.2 Therefore, in light of the lack of concrete evidence, the principles of natural justice, and judicial precedents, it is justified to drop the proposed penalty against Mr. Ratish Nair. The facts presented do not support a finding of culpability beyond mere assumption, and thus, Mr. Ratish Nair cannot be held liable for the penalty under Section 112(a) and/or Section 114AA of the Customs Act,1962.

10. In view of the above discussions and findings, I reject the arguments of the noticees and hold that the various case laws quoted are not relevant to the present case.

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

ORDER

(i) I reject the benefit of Health Cess availed by the importer vide Notification No. 08/2020 dated 02.02.2020 (Sr. No. 1) for the subject goods imported vide the bills of entry as detailed in Annexure- A to the SCN and order to re-assess Health Cess @5%.

(ii) I confirm the differential duty amounting to **Rs. 3,49,46,828/- (Rs. Three Crore Forty-Nine Lakh Forty-Six Thousand Eight Hundred and Twenty-Eight Only)** as detailed in Annexure-A to the SCN under section 28(4) along with applicable interest under Section 28AA of the Customs Act,1962 and order to recover the same from the Importer.

(iii) I order to appropriate the amount deposited against differential duty amounting to Rs. 3,49,46,828/- vide challan No. HC366 dated 25.07.2022 and HC455 dated 29.07.2022 along with interest amounting to Rs. 47,86,958/- vide challan No. HCM61 dated 01.08.2022, towards differential duty demanded under section 28(4) and applicable interest u/s 28AA of Customs Act, 1962 respectively.

(iv) I confiscate the imported goods having assessable value of **Rs. 62,40,50,487/- (Rs. Sixty-Two Crore Forty Lakh Fifty Thousand Four Hundred and Eighty-Seven Only)** as mentioned in Annexure-A to the SCN under Section 111(m) read with provisions of Section 46(4) of the Customs Act, 1962, even though the goods are not available for confiscation. However, I give an option to the importer to redeem these goods on payment of redemption fine of **Rs. 50,00,000/- (Rupees Fifty Lakhs Only)** under Section 125 of the Customs Act, 1962.

(v) I impose penalty of differential duty of **Rs. 3,49,46,828/- (Rs. Three Crore Forty-Nine Lakh Forty-Six Thousand Eight Hundred and Twenty-Eight Only) along with applicable interest under Section 28AA of the Customs Act, 1962** under Section 114A of the Customs Act, 1962, on the importer M/s. Sanrad Medical System Private Limited for the reasons aforesaid.

(vi) I impose penalty of **Rs. 1,00,00,000/- (Rupees One Crore Only)** on M/s. Sanrad Medical System Private Limited under Section 114AA of the Customs Act, 1962.

(vii) I refrain from imposing any penalty under section 112(a) and 114AA of the Customs Act, 1962, on Mr. Ratish Nair, CEO of M/s. Sanrad Medical System Private Limited, as discussed above.

12. 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,

1. M/s. Sanrad Medical System Private Limited
   108/E2, 6th Main, 3rd Phase,
   Peenya Industrial Area,
   Bangalore- 560058.

2. Mr. Ratish Nair
   CEO of Sanrad Medical System Private Limited
   EL- 42, Electronic Zone MIDC, Mahape,
   Navi Mumbai, Maharashtra- 400701.

Copy to :-

1. The Addl. Commissioner of Customs, Group VB, 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.