

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 – 20250678NX000061616D

Date of Order: 16.06.2025

F. No. S/10-94/2023-24/COMMR/CAC/NS-V/JNCH

Date of Issue: 16.06.2025

SCN No.: 685/2023-24/COMMR/GR.VA/CAC/JNCH

SCN Date: 20.06.2023

Passed by: Sh. Anil Ramteke

Commissioner of Customs, NS-V, JNCH

Order No: 91/2025-26/COMMR/NS-V/CAC/JNCH

Name of Noticee: M/s. IMS Mercantiles Pvt. Ltd.

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 रीजनल 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. 685/2023-24/Commr./Gr.VA/CAC/JNCH dated 20.06.2023 issued to M/s. IMS Mercantiles Pvt. Ltd. (IEC-503046116) – reg.

1. BRIEF FACTS OF THE CASE

1.1 It is stated in the Show Cause Notice (SCN) No. 685/2023-24/Commr./Gr.VA/CAC/JNCH dated 20.06.2023 that on the basis of the Alert Circular No. 11/2019 dated 30.03.2019 issued by the Commissioner of Customs (Audit), Mumbai, Zone-I vide F. No. S/16-Misc-75/2018-19 Audit (P&C), on the issue of “Short Levy of Customs Duty by way of clearance of goods covered under CTH 8507 at lower rate of IGST” and by way of claiming incorrect Schedule and Serial number of IGST Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017, data pertaining to imports made by various importers through JNCH (INNSA1) was analysed in detail. It was observed that M/s. IMS Mercantiles Private Limited (IEC-503046116) having address as 704, 7th Floor, Ring Road Mall, Outer Ring Road, Nr. Kali Mandir, Sector-3, Rohini, Delhi, PIN-110085 have imported goods with description “Battery” under the aforesaid CTH as detailed in Annexure- ‘A’ to the subject SCN. The imported goods attracted IGST @ 28% under Sl. No. 139 of Schedule IV.

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

Table-A

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

1.3 As per the SCN, consequent upon the above notifications, it is amply clear that imported goods attract IGST @ 28% by virtue of Notification No. 01/2017- Integrated Tax (Rate) dated 28.06.2017, Sl. No.139 of Schedule IV (IV-139) for the CTH 8507 i.e. Electric accumulators,

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

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

1.3.2 The total assessable value of the B/E items so imported is ₹10,52,37,014/- and it appeared that a short levy of IGST amounting to ₹1,17,06,968/-(as detailed in Annexure-‘A’ to the subject SCN) is recoverable from the importer along with applicable interest and penalty.

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

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

1.5.1 After the introduction of self-assessment vide Finance Act, 2011, the onus is on the importer to make true and correct declaration in all aspects including classification and

calculation of duty, but in the instant case the subject goods have been mis-classified and duty amount has not been paid correctly.

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

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

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

1.7 In view of the above facts, it appeared that the importer had deliberately not paid the duty by wilful mis-statement as it was his duty to declare correct applicable rate of duty in the entry made under Section 46 of the Customs Act, 1962, and thereby had attempted to take undue benefit amounting to ₹1,17,06,968/- (as detailed in Annexure-'A' to the subject SCN).

Therefore, the differential duty, not so paid, is liable for recovery from the importer under Section 28(4) of the Customs Act, 1962 by invoking extended period of limitation, along with applicable interest at the applicable rate under Section 28AA of the Customs Act, 1962 for their acts of omission/commission.

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

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

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

1.11 In view of the above, vide Show Cause Notice No. 685/2023-24/Commr./Gr.VA/CAC/JNCH dated 20.06.2023, M/s. IMS Mercantiles Private Limited (IEC-503046116) having address as 704, 7th Floor, Ring Road Mall, Outer Ring Road, Nr. Kali Mandir, Sector-3, Rohini, Delhi, PIN-110085, was called upon to show cause to the Commissioner of Customs (NS-V), Jawaharlal Nehru Custom House, Nhava Sheva (the Adjudicating Authority), as to why:

- (i) Differential / short paid duty amounting to ₹1,17,06,968/- (Rupees One Crore Seventeen Lakh Six Thousand Nine Hundred Sixty Eight Only) for the subject goods imported vide Bills of Entry as detailed in Annexure-‘A’ to the subject SCN, should not be demanded under Section 28(4) of the Custom Act, 1962.
- (ii) In addition to the duty short paid, interest on delayed payment of Custom duty should not be recovered from the importer under Section 28AA of the Customs Act, 1962.
- (iii) The said subject goods imported vide Bills of Entry as detailed in Annexure-‘A’ to the subject SCN having assessable value of ₹10,52,37,014/- (Rupees Ten Crore Fifty Two Lakh Thirty Seven Thousand Fourteen Only) should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962.
- (iv) Penalty should not be imposed on them under Section 112(a) of the Customs Act, 1962 for their acts of omission and commission, in rendering the goods liable for confiscation, as stated above.
- (v) Penalty should not be imposed under Section 114A of Customs Act, 1962 for short levy of duty.

2. WRITTEN SUBMISSION OF THE NOTICEE

The Noticee, M/s. IMS Mercantiles Private Limited vide their letter submitted on 02.11.2023 gave written reply to the subject SCN. Vide the above reply, they denied all the allegations made in the SCN and stated interalia as under:

2.1 The Differential / short paid duty to the tune of Rs.1,17,06,968/- should not be demanded under Section 28(4) of the Customs Act, 1962.

2.1.1 The impugned Notice has been issued with an erroneous assumption that all goods imported under the subject Bills of Entry are exactly similar and all such goods falls under CTH 8507 covered under Serial No. 139 of the Schedule IV of the IGST rate Notification attracting IGST at the rate of 28%. The correct position of fact is that the subject goods are distinctive and covered under different Tariff items. The products imported vide the specified Bills of Entry can be categorized in four parts viz., power banks, parts of power banks, lithium-ion batteries and nickel-based batteries. The rate of IGST for Lithium-ion batteries as well as Lithium-ion accumulators (other than battery) including lithium-ion power banks are subject to IGST at the rate of 18%.

2.1.2 The same was submitted by the Noticee vide letter dated 15.01.2021 to the Audit Commissionerate clarifying that the lithium-ion based batteries, power banks as well parts of such power banks (three items out of four items imported) had been correctly classified and the IGST liability at the rate of 18% had been rightly discharged. However, the Noticee realised that in case of nickel-based batteries, the applicable IGST rate was 28%. Thereafter, in admission of its inadvertent error, the Noticee paid the differential duty of Rs.31,79,334/- along with the applicable interest of Rs.7,47,329/-.

2.1.3 There has been no collusion, wilful mis-statement or suppression of facts as alleged in the impugned Notice. The imported goods mentioned in the specified Bills of Entry have been declared and assessed to the best of the knowledge and belief of the Noticee. Furthermore, the Noticee has never shied away from discharging their tax obligations as evidenced by the payment of differential duty to the tune of Rs.39,44,916/-. Since, the Issuing Authority has not disclosed any incriminating evidence alleging collusion, wilful mis-statement or suppression of facts, the impugned Notice is liable to be set aside.

2.2 Extended period of limitation cannot be invoked in any case.

It is a settled principle that to invoke extended period of limitation, it has to be established beyond reasonable doubt that the actions of the Assessee were such that there was a specific act and *mens rea* to evade the making of such payment. That as per the facts and details of the case, an extended period of limitation cannot be invoked against the Noticee under any

circumstance. The impugned Notice is unable to provide any evidence against the mala fide intentions of the Noticee for the invocation of the extended period.

2.3 Revenue Neutrality.

The Noticee has nothing to gain in as much as IGST paid on imports is available as legit input tax credit under the provisions of the GST read with Customs Act and therefore, there would have been no benefit gained by the Noticee had the IGST at higher rate been payable on all goods imported by the Noticee under the subject Bills of Entry.

2.4 Show cause notice is bad in law, if it is issued without proper evidence, is not clear, vague or is issued on frivolous grounds and not supported by proper reasoning.

The Noticee placed reliance on the below mentioned case law, wherein it has been held that a show cause notice is bad in law, if it is issued without proper evidence or when the said show cause notice is issued on frivolous grounds and not supported by proper reasoning. It has been held that a show cause notice should be clear and not vague.

- Commissioner of Central Excise, Bangalore Vs. Brindavan Beverages (P.) Ltd. and Ors., 2007 (213) E.L.T. 487 (S.C.)
- Cargill India Pvt. Ltd. Vs. Dy. Commissioner of Income-tax; [2008] 300 ITR 223 (Delhi)
- Rameshchand Jethmalji Tawarawala Vs. The State of Maharashtra; MANU/MH/0805/2009
- Commissioner of Central Excise Vs. Bhikhlal Dwarkadas; 1998 (99) ELT 438 (Tri-Del)
- Madhumilan Syntex Pvt. Ltd. Vs. Union of India; 1985 (19) ELT 329 MP

2.5 Interest computed in consonance with Section 28AA of the Customs Act, 1962 should not be levied for delayed payment of Custom Duty.

The imposition of interest under Section 28AA of the Customs Act, 1962 is rendered null and void by virtue of non-maintainability of the impugned Notice under Section 28(4). The Noticee has already accepted and paid the differential duty that was required to be paid on import of Nickle based batteries along with applicable interest. To this extent, there is no further requirement of paying any interest. With respect to other products, the Noticee has already submitted that there is no differential duty required to be paid as the Noticee has rightly discharged the IGST amount on such products as per the IGST rate Notification. Hence, when there is no further principal duty payable, the question of payment of interest does not arise.

2.6 Section 111(m) cannot be invoked in the instant factual scenario as the matter pertains to availment of duty concession as per the exemption Notification.

2.6.1 Confiscation of the goods under Section 111(m) of the Customs Act, 1962 is completely unreasonable and beyond the purview of the statute. There has been no mis-declaration as the

quantity, description and values ascertained in the import documents were found to be appropriate and in conformity with the prevalent legal standards.

2.6.2 However, the issuing authority has incorrectly referred to Section 111(m) as the provision speaks of confiscation of any goods which do not correspond in respect of value or in any other particular with the entry made under this Act. Moreover, there are no conditions attached. The Noticee has rightly paid IGST on the 3 categories of goods imported (out of 4 categories) and hence, Section 111(m) simply cannot be invoked.

2.6.3 With respect to the fourth category of goods viz., Nickle based batteries, the differential duty has been paid by the Noticee at the stage of Pre-Consultation Stage and hence, as per Section 28(2), the impugned notice is not even required to be issued in the first place. It is reiterated that the said provision places legal embargo on the issuing authority to issue a show cause notice when the differential duty along with interest under Section 28AA has already been paid by the Noticee.

2.6.4 Merely on the basis of classification and availment of benefit exemption / concession notification, the goods cannot be held liable for confiscation. The facts on record are sufficient to prove that there is no case of mis-declaration or contravention by the Noticee.

2.6.5 Under the self-assessment regime, it is the prerogative of the importer to classify and declare the goods as it appears correct to him. Similarly, the Issuing Authority is bound to exercise their powers of assessment conferred under Section 17 of the Customs Act, 1962 and subsequently approve or differ from the assessment made by the importer. However, in case the authorities are of the opinion that there has been an instance of misclassification, it implies a difference of opinion and no *mala fide* intention can be attached to it.

2.6.6 The Noticee has been importing the subject imported goods since the year 2018-2019 and has adopted the same classification during the entire period and the Issuing Authority has only now altered its stance with regard to the classification of the subject imported goods. Therefore, the allegations of confiscation be set aside as they are grounded on opinions of mis-classification of goods which do not impute any kind of *mala-fide* intention.

2.6.7 It is held in the catena of Judgments that when there is no specific evidence against the misdeclaration of any kind, confiscation under Section 111 is unwarranted. Whereas, since the provisions of Section 111 cannot be invoked, no penalty can be imposed on the Noticee under Section 112 of the Act.

2.6.8 The Section 111(m) is applicable only to imported goods. Therefore, the confiscation of purported imported goods via the Impugned Notice is barred by law since goods have already been cleared for home consumption and therefore, cease to have the characteristic or nature of being “imported goods” as per the provisions of the Customs Act.

2.6.9 It is a settled law that when the goods have been cleared and not available for confiscation, then such goods cannot be confiscated under the realm of Section 111(m) of the Customs Act, 1962 especially in the given circumstances pertaining to the Noticee.

2.7 Penalty cannot be charged under Section 112(a) of the Customs Act, 1962 when Section 111 itself is not invocable.

The penalty under Section 112(a) is inapplicable as the imported goods are not liable for confiscation under Section 111 of the Customs Act, 1962. The proposed confiscation and subsequent penalty vide the impugned Notice is invalidated on the grounds that the present issue is with respect to the classification of the subject goods and the law does not permit sanctions for *bona-fide* conduct.

2.8 Penalty should not be imposed under Section 114A of the Customs Act, 1962 for short levy of duty.

There can be no imposition of penalty under Section 114A, since there has been no infraction of the law on the part of the Noticee. If, *arguendo*, there has been any infraction, the same is unintended and *bona fide* without any intent to evade duty. Furthermore, since the impugned Notice under Section 28 is not sustainable, the imposition of penalty under Section 114A is *de hors* law.

3. RECORD OF PERSONAL HEARINGS

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

3.2 In compliance of provisions of Section 28(8) read with Section 122A of the Customs Act, 1962 and in terms of the principle of natural justice, the Noticee was granted opportunity of Personal Hearing (PH) on 10.06.2024, 08.04.2025, 23.04.2025 and 30.04.2025 and PH intimation letter was issued by speedpost. On 30.04.2025, Sh. Ankur Jain, Advocate, appeared virtually before the Adjudicating Authority on behalf of the Noticee, IMS Mercantiles Private Limited. During the PH, he submitted a synopsis dtd. 30.04.2025 which was taken on record. Further, he reiterated the submissions made vide their letter submitted on 02.11.2023 as under:

- a) That the products imported by the Noticee vide the impugned Bills of Entry covered in the subject SCN can be categorized in four parts viz. (i) Power banks, (ii) Parts of power banks, (iii) Lithium-ion batteries, and (iv) Nickel based batteries.
- b) The first three items were correctly classified and IGST liability at the rate of 18% had been rightly discharged. For the fourth item, the Noticee realised that in case of nickel-based batteries, the applicable IGST rate was 28% and accordingly, the Noticee paid the differential duty along with the applicable interest.

- c) As no further cause lies, the entire demand should be dropped.
- d) The extended period of demand under Section 28(4) is not invocable as the subject case is of classification dispute and the Noticee has not indulged in any collusion, mis-statement or suppression of facts. Further, goods are not liable for confiscation and the Noticee is not liable for any penalty.

4. DISCUSSION AND FINDINGS

4.1 I have carefully gone through the subject Show Cause Notice (SCN) and its enclosures, material on record and facts of the case, as well as written and oral submissions made by the Noticee. Accordingly, I proceed to decide the case on merit.

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

4.3 In compliance to provisions of Section 28(8) and Section 122A of the Customs Act, 1962 and in terms of the principles of natural justice, opportunity for Personal Hearing (PH) on 10.06.2024, 08.04.2025, 23.04.2025 and 30.04.2025 was granted to the Noticee. Availing the said opportunity, the Noticee attended the PH on 30.04.2025. Having complied with the requirement of the principle of natural justice, I proceed to decide the case on merits, bearing in mind the submission / contention made by the Noticee.

4.4 The fact of the matter is that a Show Cause Notice No. 685/2023-24/Commr./Gr.VA/CAC/JNCH dated 20.06.2023 was issued to M/s. IMS Mercantiles Private Limited (IEC-503046116), on the basis of the Alert Circular No. 11/2019 dated 30.03.2019 issued by the Commissioner of Customs (Audit), Mumbai, Zone-1 vide F. No. S/16-Misc-75/2018-19/Audit (P&C). It is alleged in the SCN that the goods covered under CTH 8507 were cleared by declaring lower rate of IGST, however, the imported goods falling under CTH 8507 attract levy of IGST as per Table-A figuring in Para 1.2 above. Thus, the SCN demands duty to the tune of ₹1,17,06,968/- (Rupees One Crore Seventeen Lakh Six Thousand Nine Hundred Sixty Eight Only) invoking extended period under Section 28(4) of the Customs Act, 1962 along with interest in terms of Section 28AA of the Customs Act, 1962 and consequential penalties. The Show Cause Notice also proposes confiscation of imported goods having assessable value of ₹10,52,37,014/- (Rupees Ten Crore Fifty Two Lakh Thirty Seven Thousand Fourteen Only) under Section 111(m) of the Customs Act, 1962.

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

- (i) Whether differential/short paid duty amounting to ₹1,17,06,968/- for the subject goods imported vide Bills of Entry as detailed in Annexure-‘A’ to the subject SCN, should be demanded under Section 28(4) of the Custom Act, 1962.
- (ii) Whether in addition to the duty short paid, interest on delayed payment of Custom Duty should be recovered from the Importer under Section 28AA of the Customs Act, 1962.
- (iii) Whether the said subject goods imported vide Bills of Entry as detailed in Annexure-‘A’ to the subject SCN, having assessable value of ₹10,52,37,014/- should be held liable for confiscation under Section 111(m) of the Customs Act, 1962.
- (iv) Whether Penalty should be imposed on M/s. IMS Mercantiles Private Limited under Section 112(a) of the Customs Act, 1962 for their acts of omission and commission, in rendering the goods liable for confiscation, as stated above.
- (v) Whether Penalty should be imposed under Section 114A of the Customs Act, 1962 for short levy of duty.

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

4.7 Whether differential /short paid duty amounting to ₹1,17,06,968/- for the subject goods imported vide Bills of Entry as detailed in Annexure-‘A’ to the subject SCN, should be demanded under Section 28(4) of the Custom Act, 1962.

4.7.1 I note that the Noticee i.e. M/s. IMS Mercantiles Private Limited vide the impugned 29 Bills of Entry (having 419 item entries as detailed in Annexure-‘A’ to the subject SCN) filed during the period from 30.07.2018 to 24.10.2019 had imported the goods declaring the description in the Bills of Entry as ‘Battery’ or ‘Rechargeable Battery’ or ‘Instant Power’ or ‘Parts for Power Bank’ classifying the same under Customs Tariff Items (CTI) 85075000, 85076000 & 85079090. The details of Bills of Entry vide which the said goods were imported are as per Annexure-A to the SCN. Further, the Noticee had mentioned in the description in the Bills of Entry details of Brand Name, Model Name / No. and BIS Registration No. (except in some cases) of the imported goods.

4.7.2 I note that the imported goods with the declared description as (i) ‘Battery’ or ‘Rechargeable Battery’ are Battery, (ii) ‘Instant Power’ are Power Bank and (iii) ‘Parts for power bank’ are power bank parts. The Noticee had classified the imported goods of category (i) & (ii) above under CTI 85075000 & 85076000 and of category (iii) above under CTI 85079090. Therefore, it would be worthwhile to look at the Customs Tariff Heading 8507, which covers the goods of broad description as under:

8507

Electric accumulators, including separators therefor, whether or not rectangular (including square).

- 8507 10 00 - Lead-acid, of a kind used for starting piston engines
- 8507 20 00 - Other lead-acid accumulators
- 8507 30 00 - Nickel-cadmium
- 8507 50 00 - Nickel-metal hydride
- 8507 60 00 - Lithium-ion
- 8507 80 00 - Other accumulators
- 8507 90 - Parts

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

“85.07 Electric accumulators, including separators therefor, whether or not rectangular (including square).

8507.10 - Lead-acid, of a kind used for starting piston engines

8507.20 - Other lead-acid accumulators

8507.30 - Nickel-cadmium

8507.50 - Nickel-metal hydride

8507.60 - Lithium-ion

8507.80 - Other accumulators

8507.90 - Parts

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

Accumulators consist essentially of a container holding the electrolyte in which are immersed two electrodes fitted with terminals for connection to an external circuit. In many cases the container may be subdivided, each subdivision (cell) being an accumulator in itself; these cells are usually connected together in series to produce a higher voltage. A number of cells so connected is called a battery. A number of accumulators may also be assembled in a larger container. Accumulators may be of the wet or dry cell type.

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

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

4.7.3 On analysis of the Customs Tariff Heading 8507 and Explanatory Notes to Heading 8507, I find that the imported goods of category (i) & (ii) as mentioned in para 4.7.2 above i.e. Battery and Power Bank, are capable of charging and discharging. Both ‘Battery’ and ‘Power Banks’ are used for supplying current to cellular mobile phones. Therefore, the said goods are rightly classifiable under CTH 8507. Further, goods of category (iii) above, being parts for power bank are also classified under tariff heading 8507.

4.7.4 I note that at eight-digit level in CTH 8507, the Electric accumulators (Battery/Power Bank) are classifiable as per their type viz. Nickel-cadmium accumulator is classifiable under CTI 85073000, Nickel-metal hydride accumulator is classifiable under CTI 85075000 and Lithium-ion accumulator is classifiable under CTI 85076000. In respect of imported goods of category (i) & (ii) above, on verifying their BIS Registration No. from the website of BIS (<https://www.crsbis.in>) and as per their details available in the ICES 1.5 System, I find that in many cases the Noticee has wrongly classified even the Nickel-cadmium battery/power bank and Nickel-metal hydride battery/power bank under CTI 85076000, whereas the same are rightly classifiable under CTI 85073000 and CTI 85075000, respectively. I note that the Noticee after receipt of Consultative Letter from Audit department had acknowledged their error and deposited differential duty. I have discussed about the same in my subsequent findings below.

4.7.5 Now coming to the issue of levy of IGST on the impugned imported goods, I note that the Noticee has classified the imported goods under Sr. No. 376AA / 376AAA of Schedule-III of IGST Notification No. 01/2017 dated 28.06.2017 attracting IGST @ 18% whereas the SCN proposes that the goods should fall under Sr. No. 139 of Schedule-IV of the above notification attracting IGST @ 28%. The description of goods classifiable under the said two competing entries i.e. Sr. No. 376AA / 376AAA of Schedule-III and Sr. No. 139 of Schedule-IV of IGST Notification No. 01/2017 dated 28.06.2017, is as follows:

Schedule	Sr. No.	CTH	Description
IV	139	8507	Electric accumulators, including separators therefor, whether or not rectangular (including square) other than [Lithium-ion batteries] ¹ and [Lithium-ion accumulators (other than battery) including Lithium-ion power bank] ² . 1. Inserted by Notfn. 19/2018-IT (Rate) dated 26.07.2018

			w.e.f. 27.07.2018. 2. Inserted by Notfn. 25/2018-IT (Rate) dated 31.12.2018 w.e.f. 01.01.2019.
III	376AA	8507 6000	Lithium-ion batteries [Inserted by Notfn. 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 Notfn. 25/2018-IT (Rate) dated 31.12.2018 w.e.f. 01.01.2019]

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

4.7.6 On the basis of the documents available on record, details available in the ICES 1.5 System and verification of BIS Registration No. from the website of BIS (<https://www.crsbis.in>), my findings in respect of the impugned imported goods covered under 419 entries in Annexure- 'A' to the subject SCN, are as under:

- a) In respect of goods pertaining to 19 entries (Sl. No. 1, 19, 105, 106, 107, 122, 123, 201, 231, 252, 253, 308, 309, 348, 367, 368, 371, 373 & 409), I note that the goods are battery/power bank/battery cells. In these 19 entries, either the BIS Registration No. is not mentioned or where it is mentioned, the BIS Registration No. gives general description of the goods. Further, in the item description in the B/E, the type of battery / accumulator is not mentioned. In these cases, the Noticee has also not submitted any document in support of the type of these batteries / accumulators. Therefore, I find that in the absence of their type, these goods cannot be considered as Lithium-ion batteries / accumulators. Therefore, the same cannot fall under Sr. No. 376AA / 376AAA of Schedule-III of IGST Notification No. 01/2017 dated 28.06.2017 which is only for Lithium-ion batteries and Lithium-ion accumulators. In view of the above, differential IGST (28%-18%) in respect of goods covered under above 19 entries is liable to be recovered from the Noticee.
- b) In respect of goods pertaining to 22 entries (Sl. No.347, 349, 350, 351, 353 to 359, 361 to 363, 399, 401 to 403, 405 to 407 & 413 of Annexure-A of the SCN), I note that the goods are declared as parts of power bank. As Sr. No. 376AA / 376AAA of Schedule-III of IGST Notification No. 01/2017 dated 28.06.2017 does not include parts, therefore, the

said goods covered under aforesaid 22 entries cannot fall under the Sr. No. 376AA / 376AAA of Schedule-III of the said IGST Notification. In view of the above, differential IGST (28%-18%) in respect of goods covered under above 22 entries is liable to be recovered from the Noticee.

- c) In respect of goods pertaining to 46 entries (Sl. No.2, 191 to 200, 228, 275 to 281, 287, 289 to 294, 307, 317 to 325, 369, 374, 410, 411 & 414 to 419 of Annexure-A of the SCN), I find that the said goods are Nickel-cadmium batteries and Nickel-metal hydride batteries. Therefore, the same cannot fall under Sr. No. 376AA / 376AAA of Schedule-III of IGST Notification No. 01/2017 dated 28.06.2017 which is only for Lithium-ion batteries and Lithium-ion accumulators. In view of the above, differential IGST (28%-18%) in respect of goods covered under above 46 entries is liable to be recovered from the Noticee.

I note that the Noticee has submitted that in response to the Consultative Letter (C.L.) No. 4486/2020-21/PCA(C-3) dtd. 17.12.2020 issued by the Audit Commissionerate, they admitted their error that in case of Nickel based batteries, the applicable IGST rate was 28% instead of 18%. In admission of their error, the Noticee has paid the differential IGST of Rs.31,79,334/- vide JNCH Challan No. HCM-1798 dtd. 29.01.2021 along with the interest of Rs.7,65,582/- vide JNCH Challan No. HCM-1799 dtd. 29.01.2021. The genuineness of the aforesaid two challans stands verified by the Cash Section, JNCH vide their letter F. No. S/10-Gen-03/2017-18/CASH/JNCH Pt.III dated 09.06.2025. In view of the above, I find that the Noticee has paid an amount of Rs.31,79,334/- against the differential IGST duty along with interest of Rs.7,65,582/- in respect of aforesaid 46 entries. However, I find that the Noticee has not paid any penalty equal to 15% of the aforementioned differential duty amount.

- d) In respect of remaining 332 [419-(19+22+46)] entries, from verification of BIS Registration Number, I find that the said goods are Lithium-ion cells / batteries / power banks. These imported goods being Lithium-ion cells / batteries / power banks fall under the Sr. No. 376AA & 376AAA of Schedule-III of the IGST Notification No. 01/2017 dated 28.06.2017 which covers Lithium-ion batteries and Lithium-ion accumulators, respectively. Therefore, I find that the Noticee is eligible for IGST duty rate under Sl. No. 376AA / 376AAA of Schedule-III of the aforesaid IGST Notification in respect of these goods. Hence, I find that these goods attract IGST @ 18% under Sr. No. 376AA / 376AAA of Schedule-III of IGST Notification No. 01/2017 dated 28.06.2017. I note from the documents available on record and details available in the ICES 1.5 System, that the Noticee has paid IGST @ 18% in respect of these 332 entries. Therefore, I find that in respect of these 332 entries, there is no differential IGST recoverable from the Noticee on account of rate of IGST, as the rate at which IGST was paid by the Noticee is in accordance with the rate of IGST payable.

4.7.7 In view of my findings as above, I conclude that no differential IGST is recoverable from the Noticee on account of rate of IGST in respect of 332 entries mentioned in point (d) above.

4.7.8 As regards goods covered under 87 entries (19 + 22 + 46) mentioned in point (a), (b) & (c) above, I note that the same have been classified by the Noticee under the CTH 8507 and claimed the IGST Serial No. 376AA / 376AAA of Schedule-III of IGST Notification No. 01/2017 dated 28.06.2017 paying the IGST @ 18%. I find that w.e.f. 27.07.2018, Sr. No. 376AA of Schedule-III of the aforesaid IGST Notification covers all the goods falling under CTH 85076000 having the description "*Lithium-ion batteries*" and w.e.f. 01.01.2019, Sr. No. 376AAA of Schedule-III of the aforesaid IGST Notification covers all the goods falling under CTH 8507 having the description "*Lithium-ion accumulators (other than battery) including Lithium-ion power bank*". As per my findings above, the imported goods as detailed at point (a), (b) & (c) in para 4.7.6 above cannot be considered as Lithium-ion battery / accumulators, therefore, in respect of these goods, classification under Sl. No. 376AA / 376AAA of the Schedule-III of the aforesaid IGST Notification is liable to be rejected.

4.7.9 I find that the Noticee had cleared the goods mentioned under aforesaid 87 item entries under Sr. No. 376AA / 376AAA of Schedule-III of IGST Notification No. 01/2017 dated 28.06.2017 and paid IGST @ 18%. To avail clearance under this Schedule and Serial Number, the goods should fall under the description mentioned therein. As held in the discussion supra, the goods under import are not Lithium-ion battery / accumulators, hence they cannot fall under Sr. No. 376AA / 376AAA of Schedule-III of aforesaid IGST Notification. The imported goods are specifically classified in CTH 8507 by the Noticee and are covered under specific entry under Sr. No. 139 of Schedule-IV of the aforesaid IGST Notification. Hence, these goods attract IGST @ 28% under Sr. No. 139 of Schedule-IV of IGST Notification No. 01/2017 dated 28.06.2017.

4.7.10 In view of the above discussions, the goods mentioned under aforesaid 87 item entries of Annexure-A of the SCN cannot fall under Sr. No. 376AA / 376AAA of Schedule-III, therefore, the duty (IGST) @ 28% need to be calculated under Sr. No. 139 of Schedule-IV of the aforesaid IGST Notification (as amended). Assessable value of the goods mentioned under aforesaid 87 item entries of Annexure-A of the SCN is ₹4,47,86,172/- and applicable differential duty (IGST) is ₹49,96,926/-.

4.7.11 In terms of Section 46(4) of the Customs Act, 1962, the importer is required to make a true and correct declaration in the Bill of Entry submitted for assessment of Customs duty. In the instant case, I find that the goods mentioned under aforesaid 87 item entries of Annexure-A of the SCN were cleared by the Noticee by wilfully and deliberately indulging themselves in mis-declaration of goods by self-assessing under wrong Sr. No. 376AA / 376AAA of Schedule-III of IGST Notification No. 01/2017 dated 28.06.2017 (as amended) and by paying IGST at a lower rate of 18% only. I find that the Noticee with the clear intention to evade duty claimed lower rate

of IGST under the above incorrect Schedule and Sl. No. of IGST Notification No. 01/2017 dated 28.06.2017 (as amended) instead of correct Sr. No. 139 of Schedule-IV of the said Notification.

4.7.12 I find that in the present case, imported goods mentioned under aforesaid 87 item entries of Annexure-A of the SCN were found ineligible to be considered under the Sr. No. 376AA / 376AAA of Schedule-III of IGST Notification No. 01/2017 dated 28.06.2017 as they were in form other than as described in the said Schedule / Sr. No. and hence, should appropriately be classified under Sr. No. 139 of Schedule-IV of the said Notification which attract higher duty @ 28%. As the importer has wrongfully assessed the goods under Sr. No. 376AA / 376AAA of Schedule-III of the said Notification on the date of importation and there is no scope for the goods fulfilling the eligibility of the said Sl. No./Schedule No. of the IGST notification, the Noticee can only come clean of its liability by way of payment of duty not paid/ short paid due to availment of IGST under wrong Schedule and Serial Number.

4.7.13 In view of the above, I find that the Noticee had evaded correctly payable IGST on the imported goods mentioned under aforesaid 87 item entries of Annexure-A of the SCN, by intentionally avoiding the specific and correct IGST Schedule and Sr. No. at the time of filing of the Bills of Entry. By resorting to this deliberate and wilful mis-declaration of classification under wrong IGST Schedule and Sr. No., the Noticee has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer. Thus, I find that this wilful and deliberate act was done with the clear intention to claim ineligible lower rate of duty.

4.7.14 Consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-assessment' has been introduced in Customs clearance. **Under self-assessment, it is the importer who has to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry.** Thus, with the introduction of self-assessment by amendments to Section 17, it is the added and enhanced responsibility of the importer, to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods. In the instant case, as explained in paras supra, the Noticee/importer has willfully mis-classified under wrong IGST Schedule and Sr. No., thereby evading payment of applicable duty resulting in a loss of Government revenue and in turn accruing monetary benefit. Since the Noticee/importer has willfully mis-classified and suppressed the facts with an intention to evade applicable duty, provisions of Section 28(4) are invokable in this case and the duty, so evaded, is recoverable under Section 28(4) of the Customs Act, 1962.

4.7.15 Regarding the Noticee's argument that there was no willful default on their part, I find that in the instant case, as elaborated in the foregoing paras, the Noticee had wilfully mis-declared the correct IGST Schedule and Sr. No. of the imported goods by not declaring the same at the time of filing of the Bills of Entry. Further, to evade payment of correctly leviable duty, they mis-classified and suppressed the correct IGST Schedule and Sr. No. of the impugned

goods, and also fraudulently claimed ineligible benefit under wrong IGST Schedule and Sr. No. Therefore, I find that in the instant case there is an element of 'mens rea' involved. The instant case is not a simple case of bonafide wrong IGST Schedule and Sr. No. Instead, in the instant case, the Noticee deliberately chose to mis-classify the imported goods to claim lower rate of duty and ineligible benefit, being fully aware of the correct IGST Schedule and Sr. No. of the imported goods. This wilful and deliberate act clearly brings out their 'mens rea' in this case. Once the 'mens rea' is established on the part of the Noticee, the extended period of limitation, automatically get attracted.

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

4.7.17 In view of the above, I hold that the goods mentioned under aforesaid 87 item entries of Annexure-A of the SCN not being Lithium-ion battery / accumulator fall under specific Sr. No. 139 of Schedule-IV of IGST Notification No. 01/2017 dated 28.06.2017. Thus, the Noticee, M/s. IMS Mercantiles Private Limited, has paid less duty by non-payment of applicable IGST on the subject goods, which tantamount to suppression of material facts and wilful mis-statement. Thus, I hold that the demand of differential/short paid duty amounting to ₹49,96,924/- in respect of subject imported goods figuring under aforesaid 87 item entries of Annexure-A of the SCN should be demanded from M/s. IMS Mercantiles Private Limited under Section 28(4) of the Custom Act, 1962.

4.7.18 I have already noted in point (c) of para 4.7.6 above, that the Noticee has paid an amount of Rs.31,79,334/- against the differential IGST duty along with interest of Rs.7,65,582/- in respect of 46 entries mentioned therein. In view of my upholding the demand of differential/short paid duty amounting to ₹49,96,924/- from the Noticee, I hold that the aforesaid duty and interest amount paid by the Noticee should be appropriated against the differential duty, interest and penalty recoverable from the Noticee.

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

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

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

4.8.2 I have already held in the foregoing paras that duty amounting to ₹49,96,924/- against goods mentioned under aforesaid 87 item entries of Annexure-A of the SCN, should be demanded and recovered from the Noticee under the provisions of Section 28(4) of the Customs Act, 1962 by invoking extended period. Therefore, I am of the considered opinion that in terms of the provisions of Section 28AA of the Customs Act, 1962, interest on the aforesaid amount of differential duty is also liable to be recovered from M/s. IMS Mercantiles Private Limited.

4.9 Whether the said subject goods imported vide Bills of Entry as detailed in Annexure-'A' to the subject SCN, having assessable value of ₹10,52,37,014/- should be held liable for confiscation under Section 111(m) of the Customs Act, 1962.

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

4.9.2 Section 111(m) of the Customs Act, 1962 states that the following goods brought from a place outside India shall be liable to confiscation:

- (m) *Any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77, in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of Section 54;*

4.9.3 I find that Section 111(m) deals with any and all types of mis-declaration regarding any particular of Bill of Entry. Therefore, the suppression of applicable IGST amounting to ₹49,96,924/- on the goods mentioned under aforesaid 87 item entries of Annexure-A of the SCN, amounts to mis-declaration and shall make the said goods liable to confiscation.

4.9.4 I have already held in foregoing paras that in the present case, in respect of goods mentioned under aforesaid 87 item entries of Annexure-A of the SCN, the Noticee has claimed wrong IGST Schedule and Sr. No. which was eligible only for the goods i.e. Lithium-ion batteries / accumulators. I have held that to evade payment of correctly leviable duty, the Noticee mis-classified and suppressed the correct IGST Schedule and Sr. No. of the impugned goods, and also fraudulently claimed ineligible benefit under wrong IGST Schedule and Sr. No. The Noticee deliberately suppressed the correct IGST Schedule and Sr. No. applicable on the imported goods, resulting in short levy of duty. This deliberate suppression of facts and claiming the ineligible IGST Schedule and Sr. No. during import of the impugned goods, amounts to mis-declaration and renders the said goods liable to confiscation under Section 111(m) of the Customs Act, 1962. Accordingly, I find that acts of omission and commission on part of the Noticee has rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962.

4.9.5 I find that Section 111(m) provides for confiscation even in cases where goods do not correspond in respect of any other particulars in respect of which the entry is made under the Customs Act, 1962. I have to restrict myself only to examine the words "*in respect of any other particular with the entry made under this act*" would also cover case of suppression of facts. In the instant case, the Noticee suppressed the correct IGST Schedule and Sr. No. applicable on the imported goods. As this act of the Noticee has resulted in short levy and short payment of duty, I find that the confiscation of the imported goods invoking Section 111(m) is justified and sustainable.

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

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

ICEGATE or by way of data entry through the Service Centre, a Bill of Entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under the scheme of self-assessment, it is the importer who has to diligently ensure that he declares all the particulars of the imported goods correctly e.g., the correct description of the imported goods, its correct classification, the applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported goods when presenting the Bill of Entry. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 8th April, 2011, the complete onus and responsibility is on the importer to declare the correct description, value, notification, etc. and to correctly classify, determine and claim correct exemption notification and pay the applicable duty in respect of the imported goods.

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

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

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

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

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

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

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

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

- e) *the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods,*
 - f) *any other specific factor which affects the duty, tax, cess or any other sum payable on such goods,*
- and includes provisional assessment self-assessment, re-assessment and any assessment in which the duty assessed is nil;*

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

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

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

4.9.12 In view of the foregoing discussion, I hold that the imported goods mentioned under aforesaid 87 item entries of Annexure-A of the SCN and declared in the respective Bills of Entry filed by M/s. IMS Mercantiles Private Limited having total assessable value of ₹4,47,86,172/- should be held liable for confiscation under Section 111(m) of the Customs Act, 1962, on the grounds of willful mis-declaration and suppression of facts.

4.9.13 As the importer, through wilful suppression of facts, had evaded the applicable Customs duty, resulting in short levy and short payment of duty, I find that the confiscation of the imported goods under Section 111(m) is justified & sustainable in law. However, I find that the goods imported are not available for confiscation. But I rely upon the order of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited [reported in 2018 (9) G.S.T.L. 142 (Mad.)] wherein the Hon'ble Madras High Court held in para 23 of the judgment as below:

"23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii)."

4.9.13.1 I further find that the above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd. reported in 2020 (33) G.S.T.L. 513 (Guj.).

4.9.13.2 I also find that the decision of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) and the decision of Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd. reported in 2020 (33) G.S.T.L. 513 (Guj.) have not been challenged by any of the parties and are in operation.

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

Redemption Fine is imposable on them under provisions of Section 125 of the Customs Act, 1962.

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

4.9.13.5 In view of the above, I find that the decision of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), which has been passed after observing decision of Hon'ble Bombay High Court in case of M/s Finesse Creations Inc. reported vide 2009 (248) ELT 122 (Bom)- upheld by Hon'ble Supreme Court in 2010(255) ELT A. 120 (SC), is squarely applicable in the present case. I observe that the present case also merits imposition of Redemption Fine having held that the impugned goods are liable for confiscation under Section 111(m) of the Customs Act, 1962. Accordingly, since the impugned goods mentioned under aforesaid 87 item entries of Annexure-A of the SCN, are not prohibited goods, the said goods are required to be allowed for redemption by the owner on payment of fine in lieu of confiscation under Section 125(1) of the Customs Act, 1962.

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

4.10.1 I find that in the era of self-assessment, the Noticee had self-assessed the Bills of Entry and mis-declared the imported goods mentioned under aforesaid 87 item entries of Annexure-A of the SCN, under wrong IGST Sr. No. 376AA / 376AAA of Schedule-III of IGST Notification No. 01/2017 dated 28.06.2017 and paid IGST @ 18% instead of appropriate IGST under Sr. No. 139 of Schedule-IV of the above Notification having IGST rate @ 28%. As the Noticee got monetary benefit due to their wilfull mis-declaration and evasion of applicable IGST on the aforesaid goods, I find that duty was correctly demanded under Section 28(4) of the Act by invoking extended period.

4.10.2 As discussed above, I find that the subject Bills of Entry of the imported goods mentioned under aforesaid 87 item entries of Annexure-A of the SCN were self-assessed by the Noticee, M/s. IMS Mercantiles Private Limited. They were aware of the true nature and characteristics of the imported goods and accordingly, were knowing about the applicability of correct IGST Schedule and Sr. No. thereon. However, still they willfully suppressed this fact and claimed lower rate of duty under incorrect IGST Schedule and Sr. No. in the Bills of Entry filed

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

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

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

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

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

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

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

Penalty - Imposition of - Once demand confirmed under Section 28 of Customs Act, 1962 read with Section 9A of Customs Tariff Act, 1975 on account of fraud, penalty under

Section 114A ibid mandatory and cannot be waived - Therefore imposition of penalty cannot be faulted - Section 114A ibid.

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

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

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

ORDER

- (i) I order that the differential / short paid duty amounting to **₹49,96,924/- (Rupees Forty Nine Lakh Ninety Six Thousand Nine Hundred Twenty Four Only)** for the subject goods imported vide 87 item entries of Bills of Entry as detailed in Annexure-A of the SCN, should be demanded from M/s. IMS Mercantiles Private Limited under Section 28(4) of the Custom Act, 1962.

I order that the differential IGST duty of Rs.31,79,334/- and interest of Rs.7,65,582/- paid by M/s. IMS Mercantiles Private Limited should be appropriated against the amount of differential duty, interest and penalty recoverable from the Noticee.

- (ii) I order that in addition to the duty short paid, interest on delayed payment of Custom duty should be recovered from M/s. IMS Mercantiles Private Limited under Section 28AA of the Customs Act, 1962.
- (iii) I order that the said subject goods imported vide 87 item entries of Bills of Entry as detailed in Annexure-A of the SCN having assessable value of **₹4,47,86,172/- (Rupees Four Crore Forty Seven Lakh Eighty Six Thousand One Hundred Seventy Two Only)** should be held liable to confiscation under Section 111(m) of the Custom Act, 1962.

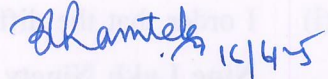
However, since the goods are not available, I impose a redemption fine of **Rs.45,00,000/- (Rupees Forty Five Lakh Only)** on M/s. IMS Mercantiles Private Limited in lieu of confiscation under Section 125(1) of the Customs Act, 1962.

- (iv) I impose a penalty equivalent to differential duty of **₹49,96,924/- (Rupees Forty Nine Lakh Ninety Six Thousand Nine Hundred Twenty Four Only)** along with applicable **interest** under Section 28AA of the Customs Act, 1962, on M/s. IMS Mercantiles Private Limited under Section 114A of the Customs Act, 1962 for short levy of duty.

In terms of the first and second proviso to Section 114A *ibid*, if duty and interest is paid within thirty days from the date of the communication of this order, the amount of penalty liable to be paid shall be **twenty-five per cent of the duty and interest**, subject to the condition that the amount of penalty is also paid **within the period of thirty days** of communication of this order.

As penalty is imposed under Section 114A of the Customs Act, 1962, no penalty is imposed under Section 112 in terms of the fifth proviso to Section 114A *ibid*.

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


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

To,

1. M/s. IMS Mercantiles Private Limited,
704, 7th Floor, Ring Road Mall, Outer Ring Road,
Nr. Kali Mandir, Sector-3, Rohini, Delhi, PIN-110085

Copy to:

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