**OFFICE OF THE Pr. COMMISSIONER OF CUSTOMS, NS-I**
सीमाशुल्कआयुक्तकाकार्यालय, एनएस-I
**CENTRALIZED ADJUDICATION CELL, JAWAHARLAL NEHRU CUSTOM HOUSE,**
केंद्रीकृतअधिनिर्णयनप्रकोष्ठ, जवाहरलालनेहरूसीमाशुल्कभवन,
**NHAVA SHEVA, TALUKA-URAN, DIST- RAIGAD, MAHARASHTRA 400707**
न्हावाशेवा, तालुका-उरण, जिला- रायगढ़, महाराष्ट्र -400 707

**DIN:** 20251078NW000510503

**Date of Order: 15.10.2025**
**Date of Issue: 16.10.2025**

**F.No. S/10-111/2024-25/Commr./Gr.II(C-F)/NS-I/CAC/JNCH**
**SCN No. 1099/2024-25/Commr./Gr.II(C-F)/NS-I/CAC/JNCH**

आदेशकीतिथि: **15.10.2025**
जारीकिएजानेकीतिथि: **16.10.2025**

**Passed by: Shri Yashodhan Wanage**
पारितकर्ता: श्री. यशोधन वनगे
**Principal Commissioner of Customs (NS-I), JNCH, Nhava Sheva**
प्रधान आयुक्त, सीमाशुल्क (एनएस-1), जेएनसीएच, न्हावाशेवा
**Order No.: 234/2025-26 /Pr. Commr/NS-I /CAC /JNCH**

आदेशसं. : **234/2025-26**/प्र. आयुक्त/एनएस-1/ सीएसी/जेएनसीएच
**Name of Party/Noticee: M/s BASF India Limited & others**

पक्षकार (पार्टी)/ नोटिसीकानाम: मेसर्स बीएएसएफ इंडिया लिमिटेड और अन्य

## ORDER-IN-ORIGINAL
मूलआदेश

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. इसआदेशकीमूलप्रतिकीप्रतिलिपिजिसव्यक्तिकोजारीकीजातीहै, 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.इसआदेशसेव्यथितकोईभीव्यक्तिसीमाशुल्कअधिनियम१९६२कीधारा१२९(ए) केतहतइसआदेशकेविरुद्धसीईएसटीएटी, पश्चिमीप्रादेशिकन्यायपीठ (वेस्टरीज़नलबेंच), ३४, पी. डी. मेलोरोड, मस्जिद (पूर्व), मुंबई– ४००००९कोअपीलकरसकताहै, जोउक्तअधिकरणकेसहायकरजिस्ट्रारकोसंबोधितहोगी।

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 - फार्मन. सीए३, चारप्रतियोंमेंतथाउसआदेशकीचारप्रतियाँ, जिसकेखिलाफअपीलकीगयीहै (इनचारप्रतियोंमेंसेकमसेकमएकप्रतिप्रमाणितहोनीचाहिए(.

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

समयसीमा- इसआदेशकीसूचनाकीतारीखसे३महीनेकेभीतर

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

फीस- (क(एकहजाररुपये—जहाँमाँगेगयेशुल्कएवंब्याजकीतथालगायीगयीशास्तिकीरकम५लाखरुपयेयाउससेकमहै।

(b) Rs. Five Thousand - Where amount of duty &Page 2 of 48

interest demanded & penalty imposed is more than Rs. 5 Lakh but not exceeding Rs. 50 lakh.

(ख( पाँचहजाररुपये— जहाँमाँगेगयेशुल्कएवंब्याजकीतथालगायीगयीशास्तिकीरकम५लाखरुपयेसेअधिकपरंतु५०लाखरुपयेसेकमहै।

(c) Rs. Ten Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 50 Lakh.

(ग( दसहजाररुपये—जहाँमाँगेगयेशुल्कएवंब्याजकीतथालगायीगयीशास्तिकीरकम५०लाखरुपयेसेअधिकहै।

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

भुगतानकीरीति— क्रॉसबैंकड्राफ्ट, जोराष्ट्रीयकृतबैंकद्वारासहायकरजिस्ट्रार, सीईएसटीएटी, मुंबईकेपक्षमेंजारीकियागयाहोतथामुंबईमेंदेयहो।

**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 - विधिकेउपबंधोंकेलिएतथाऊपरयथासंदर्भितएवंअन्यसंबंधितमामलोंकेलिए, सीमाशुल्कअधिनियम, १९९२, सीमाशुल्क (अपील) नियम, १९८२सीमाशुल्क, उत्पादनशुल्कएवंसेवाकरअपीलअधिकरण (प्रक्रिया) नियम, १९८२कासंदर्भलियाजाए।

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 129 of the Customs Act 1962.

5.इसआदेशकेविरुद्धअपीलकरनेकेलिएइच्छुकव्यक्तिअपीलअनिर्णीतरहनेतकउसमेंमाँगेगयेशुल्कअथवाउदृहीतशास्तिका७.५ % जमाकरेगाऔरऐसेभुगतानकाप्रमाणप्रस्तुतकरेगा, ऐसानकियेजानेपरअपीलसीमाशुल्कअधिनियम, १९६२कीधारा१२८केउपबंधोंकीअनुपालनानकियेजानेकेलिएनामंजूरकियेजानेकीदायीहोगी।

## 1. BRIEF FACTS OF THE CASE:

**1.1** M/s BASF India Limited (IEC-0388007257) (hereinafter referred to as the noticee) filed various Bills of Entry, as detailed in Annexure-A to the notice, for the clearance of imported goods declared under CTH 38237090 and 38237020. The goods under subject Bills of Entry were imported under lower/Nil rate of ADD, subject to certain conditions as mentioned in the Notification No. 28/2018-Customs (ADD) dated 25.05.2018 including producer, exporter, country of origin, country of export etc. The analysis of the import data revealed that the noticee had mis-used the above notification in order to avail the benefit of lower duty rate.

**1.2** The noticee had imported the goods falling under CTI 29051700/38237090 and 38237020 without paying the applicable Anti-Dumping Duty as per the Notification No. 28/2018-Customs (ADD) dated 25.05.2018, further amended vide Notification No 48/2018 dated 25.09.2018. The extract of the said notification is given below: -

**Table-I**

| Sr No | Sub-headings | Description of goods | Country of origin | Country of export | Producer | Exporter | Amount | Unit | Currency |
|---|---|---|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 1 | 2905 17, 2905 19, 3823 70 | All types of Saturated Fatty Alcohols excluding Capryl Alcohols (C8) and Decyl Alcohols (C10) and blends of C8 and C10 | Indonesia | Singapore | M/s PT Eco green Oleochemicals | M/s Eco green Oleochemicals (Singapore) Pte Ltd. | NIL | MT | USD |
| 2 | 2905 17, 2905 19, 3823 70 | -do- | Indonesia | Indonesia | M/s PT Musim Mas | M/s Inter-Continental Oils & Fats PteLtd, Singapore | 7.1 | MT | USD |
| 3 | 2905 17, 2905 19, 3823 70 | -do- | Indonesia | Indonesia | M/s PT Wilmar Nabati | M/s Wilmar Trading Pte Ltd., Singapore | 52.23 | MT | USD |
| 4 | 2905 17, 2905 19, 3823 70 | -do- | Indonesia | Indonesia | Any combination other than Sl. Nos. 1, 2 & 3 | Any combination other than Sl. Nos. 1, 2 & 3 | 92.23 | MT | USD |
| 5 | 2905 17, 2905 19, 3823 70 | -do- | Indonesia | Any | Any | Any | 92.23 | MT | USD |
| 6 | 2905 17, 2905 19, | -do- | Any count | Indonesia | Any | Any | 92.23 | MT | USD |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | 3823 70 | | ry other than those subject to antidumping duty | | | | | | |
| 7 | 2905 17, 2905 19, 3823 70 | -do- | Malaysia | Malaysia | M/s FPG OleochemicalsSdnBhd | M/s Procter & Gamble International Operations SA, Singapor | 17.64 | MT | USD |
| 8 | 2905 17, 2905 19, 3823 70 | -do- | Malaysia | Malaysia | M/s KL - Kepong Oleomas SdnBhd | M/s KL - Kepong OleomasSdnBhd | NIL | MT | USD |
| 9 | 2905 17, 2905 19, 3823 70 | -do- | Malaysia | Malaysia | Any combination other than Sl. Nos. 7 & 8 | Any combination other than Sl. Nos. 7 & 8 | 37.64 | MT | USD |
| 10 | 2905 17, 2905 19, 3823 70 | -do- | Malaysia | Any Country | Any | Any | 37.64 | MT | USD |
| 11 | 2905 17, 2905 19, 3823 70 | -do- | Any country other than those subject to antidumping duty | Malaysia | Any | Any | 37.64 | MT | USD |
| 12 | 2905 17, 2905 19, 3823 70 | -do- | Thailand | Thailand | M/s Thai Fatty Alcohols Co. Ltd. | M/s Thai Fatty Alcohols Co. Ltd. | NIL | MT | USD |
| 13 | 2905 17, 2905 19, 3823 70 | -do- | Thailand | Thailand | Any combination other than Sl. No. 12 | Any combination other than Sl. No. 12 | 22.5 | MT | USD |
| 14 | 2905 17, | -do- | Any | Thaila | Any | Any | 22.5 | M | USD |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | 2905 19, 3823 70 | | country other than country of origin | nd | | | | T | |
| 15 | 2905 17, 2905 19, 3823 70 | -do- | Thailand | Any country | Any | Any | 22.5 | MT | USD |

Whereas, Para 2 of Notification No. 28/2018-Customs (ADD) dated 25.05.2018 mentioned as follows:-

*"The anti-dumping duty imposed shall be effective for the period of five years (unless revoked, amended or superseded earlier) from the date of publication of this notification in the Official Gazette and shall be payable in Indian Currency".*

Thus, it appeared that the noticee was required to pay ADD as per the said notification. However, the importer had not paid the ADD.

**1.3** Further, amendment was done vide Notification No.13/2019-Customs (ADD), 14th March, 2019, wherein relevant para read as below:

*"And Whereas, M/s. PT. Energi Sejahtera Mas (Producer) Indonesia and through M/s. Sinarmas Cepsa Pte Ltd (Exporter/trader), Singapore have requested for review in terms of rule 22 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, in respect of exports of the subject goods made by them, and the designated authority, vide new shipper review notification No.7/38/2018-DGTR, datedthe15thJanuary2019, published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 15thJanuary 2019, has recommended provisional assessment of all exports of the subject goods made by the above stated party till the completion of the review by it;*

*Now Therefore, in exercise of the powers conferred by sub-rule (2) of rule 22 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Central Government, after considering the aforesaid recommendation of the designated authority, hereby orders that pending the outcome of the said review by the designated authority, the subject goods, when originating in or exported from the subject country by M/s. PT. Energi Sejahtera Mas (Producer) Indonesia and through M/s. Sinarmas Cepsa Pte Ltd (Exporter/trader), Singapore and imported into India, shall be subjected to provisional assessment till the review is completed.*

*2. The provisional assessment may be subject to such security or guarantee as the proper officer of customs deems fit for payment of the deficiency, if any, in case a definitive antidumping duty is imposed retrospectively, on completion of investigation by the designated authority.*

*3. In case of recommendation of anti-dumping duty after completion of the said review by the designated authority, the importer shall be liable to pay the amount of such anti-dumping duty recommended on review and imposed on all imports of subject goods when originating in or exported from the subject country by M/s. PT. Energi Sejahtera Mas (Producer) Indonesia and through M/s. Sinarmas Cepsa Pte Ltd (Exporter/trader), Singapore and imported into India, from the date of initiation of the said review"*

**1.4** Further Notification No 23/2022-Customs (ADD) dated 12.07.2022 makes the following amendment in the notification 28/2018-Customs(ADD) dated 25.05.2018 and below entry is added:

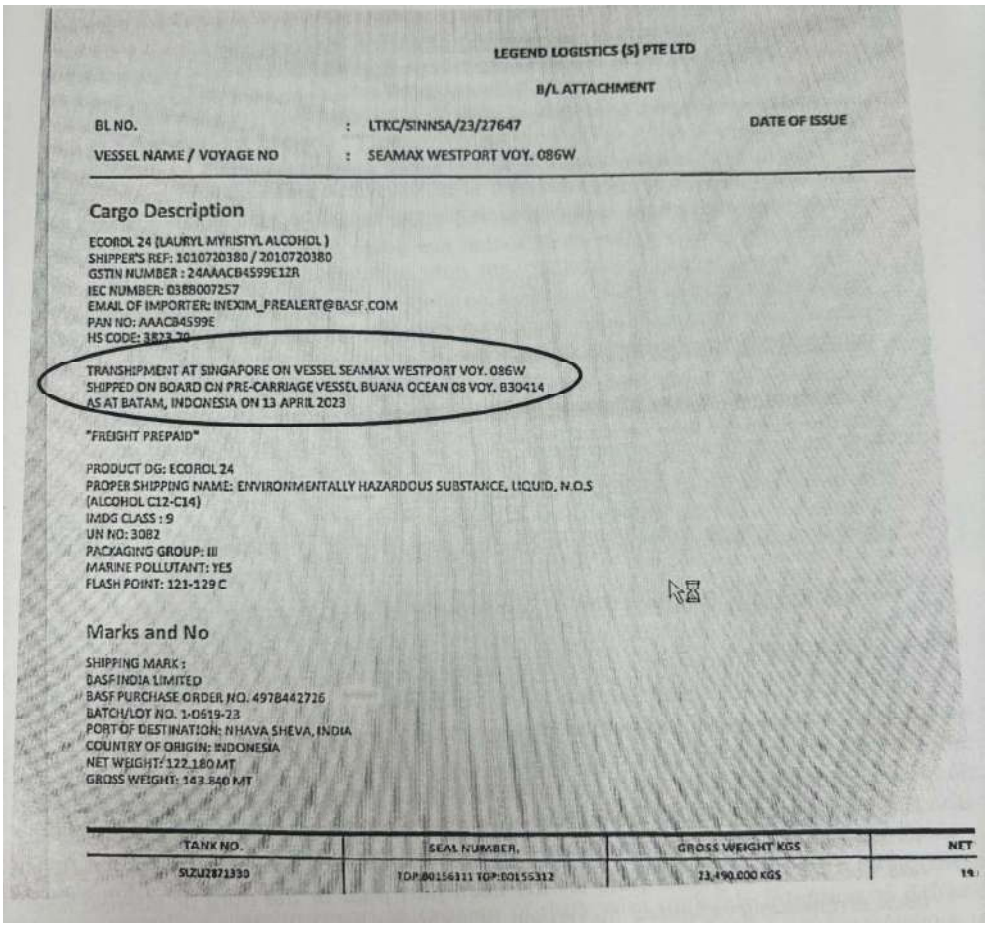
**Table-II**

| S.No. | Sub-headings | Description of goods | County of origin | County of export | Producer | Exporter | Amount | Unit | Currency |
|---|---|---|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 16 | 2905 17, 2905 19, 3823 70 | -do- | Indonesia | Any country including Indonesia | PT. ENERGI SEJAHTERA MAS | Sinarmas CEPSA Pte. Ltd. | 51.64 | MT | USD |

***Note. - The principal notification No. 28/2018 Customs (ADD), dated the 25th May, 2018 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 498(E), dated the 25th May, 2018 and last amended by notification No. 41/2019-Customs (ADD), dated the 25th October, 2019, published in the official Gazette vide number G.S.R. 812 (E), dated the 25th October, 2019.*

**1.5** Further, during the investigation, it was seen that the importer had opted the benefit of S. No. 1 of Notification 28/2018-Customs (Nil Anti-Dumping) as shown in Table-I for various consignments under the condition that the Producer is "PT Ecogreen Oleochemicals" & Exporter is "Ecogreen Oleochemicals (Singapore) Pte Ltd" along with other mentioned conditions in the said notification. On scrutiny of the relevant documents, it was seen that the goods have not been exported from Singapore, but the same have been transshipped at Singapore. The details mentioned on the Bill of Lading for these consignments clearly indicated that the goods were for "Transshipment at Singapore on Vessel - Shipped on Board on Pre-Carriage Vessel at Batam, Indonesia,". This also indicated that there was no 'Export Declaration/ Bill of Export/Shipping Bill' presented at Singapore, Thus the mandatory condition of country of export as Singapore is not being fulfilled by the Exporter. Consequently, it appeared that the noticee inappropriately claimed the benefit of Sr. No. 1 of Notification 28/2018-Customs.

Copy of one such Bill of Lading uploaded in e-sanchit by the noticee is as below:



LEGEND LOGISTICS (S) PTE LTD

B/L ATTACHMENT

BL NO. : LTKC/SINNSA/23/27647 DATE OF ISSUE

VESSEL NAME / VOYAGE NO : SEAMAX WESTPORT VOY. 086W

Cargo Description

ECOROL 24 (LAURYL MYRISTYL ALCOHOL )
SHIPPER'S REF: 2010720380 / 2010720380
GSTIN NUMBER : 24AAACB4599E1ZR
IEC NUMBER: 0388007257
EMAIL OF IMPORTER: INEXIM_PREALERT@BASF.COM
PAN NO: AAACB4599E
HS CODE: 3823.70

TRANSHIPMENT AT SINGAPORE ON VESSEL SEAMAX WESTPORT VOY. 086W
SHIPPED ON BOARD ON PRE-CARRIAGE VESSEL BUANA OCEAN 08 VOY. B30414
AS AT BATAM, INDONESIA ON 13 APRIL 2023

"FREIGHT PREPAID"

PRODUCT DG: ECOROL 24
PROPER SHIPPING NAME: ENVIRONMENTALLY HAZARDOUS SUBSTANCE, LIQUID, N.O.S (ALCOHOL C12-C14)
IMDG CLASS : 9
UN NO: 3082
PACKAGING GROUP: III
MARINE POLLUTANT: YES
FLASH POINT: 121-129 C

Marks and No

SHIPPING MARK :
BASF INDIA LIMITED
BASF PURCHASE ORDER NO. 4978442726
BATCH/LOT NO. 1-0619-23
PORT OF DESTINATION: NHAVA SHEVA, INDIA
COUNTRY OF ORIGIN: INDONESIA
NET WEIGHT: 122.180 MT
GROSS WEIGHT: 143.840 MT

| TANK NO. | SEAL NUMBER. | GROSS WEIGHT KGS | NET |
|---|---|---|---|
| SIZU2871330 | TOP:00156111 TOP:00155312 | 23,490.000 KGS | 19 |

**1.6** The noticee had imported the goods from Supplier (UNILEVER ASIA PRIVATE LIMITED, PROCTER & GAMBLE INTERNATIONAL OPERATIONS SA SINGA) without paying the applicable Anti-Dumping Duty as per the ADD notification. The amount of Anti-Dumping Duty payable is calculated and is mentioned in the attached Annexure-A.

The brief details of the Bills of Entry is tabulated below:

| Sr. No | BE Number | BE Date | QUANTITY | UQC | Assessable Value Amount | ADD Rate (In USD per Mtr Ton) | Differential ADD (In Rs) | IGST on Differential ADD (In Rs) @18% |
|---|---|---|---|---|---|---|---|---|
| 1 | 7621299 | 09-05-2020 | 137090 | KGS | 15213342.72 | 37.64 | 395777.1849 | 71239.89329 |
| 2 | 7626500 | 09-05-2020 | 138710 | KGS | 15393119.63 | 37.64 | 400454.1055 | 72081.73899 |
| 3 | 7672958 | 15-05-2020 | 138330 | KGS | 14392874.76 | 37.64 | 399357.05 | 71884.26901 |
| 4 | 7961653 | 20-06-2020 | 119240 | KGS | 27600299.71 | 37.64 | 345815.3169 | 62246.75704 |
| 5 | 8352493 | 02-08-2020 | 138610 | KGS | 12809021.2 | 37.64 | 397035.0384 | 71466.30692 |
| 6 | 8419961 | 10-08-2020 | 157610 | KGS | 14497834.27 | 37.64 | 449382.3603 | 80888.82485 |
| 7 | 9340238 | 27-10-2020 | 99410 | KGS | 8755275.28 | 37.64 | 277828.0857 | 50009.05543 |
| 8 | 9873463 | 08-12-2020 | 96990 | KGS | 10397519.07 | 37.64 | 272707.5589 | 49087.36061 |
| 9 | 2322343 | 12-01-2021 | 97460 | KGS | 10504985.34 | 37.64 | 271461.1856 | 48863.01341 |
| 10 | 2337929 | 13-01-2021 | 156750 | KGS | 16895715.71 | 37.64 | 436605.18 | 78588.9324 |
| 11 | 2442009 | 21-01-2021 | 78380 | KGS | 8448396.79 | 37.64 | 218316.5168 | 39296.97302 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 12 | 2969588 | 01-03-2021 | 93310 | KGS | 14097741.35 | 37.64 | 258848.2851 | 46592.69131 |
| 13 | 3078157 | 09-03-2021 | 19610 | KGS | 2420592.67 | 37.64 | 54547.09756 | 9818.477561 |
| 14 | 3078927 | 09-03-2021 | 117640 | KGS | 14521087.28 | 37.64 | 327226.9534 | 58900.85162 |
| 15 | 3078157 | 09-03-2021 | 117750 | KGS | 14534665.3 | 37.64 | 327532.929 | 58955.92722 |
| 16 | 3211218 | 19-03-2021 | 137970 | KGS | 20445333.44 | 37.64 | 380920.5452 | 68565.69813 |
| 17 | 3402188 | 02-04-2021 | 117160 | KGS | 17550921.87 | 37.64 | 326994.263 | 58858.96733 |
| 18 | 3688842 | 23-04-2021 | 117650 | KGS | 18890062.08 | 37.64 | 337218.5479 | 60699.33862 |
| 19 | 3835007 | 05-05-2021 | 137240 | KGS | 22035462.13 | 37.64 | 393369.0906 | 70806.43632 |
| 20 | 4935324 | 05-08-2021 | 118260 | KGS | 22508688.35 | 37.64 | 335628.5026 | 60413.13046 |
| 21 | 4935324 | 05-08-2021 | 19720 | KGS | 3753351.38 | 37.64 | 55966.46432 | 10073.96358 |
| 22 | 4935132 | 05-08-2021 | 118170 | KGS | 22491558.44 | 37.64 | 335373.0775 | 60367.15395 |
| 23 | 5320084 | 05-09-2021 | 118920 | KGS | 20225364.97 | 37.64 | 331011.2038 | 59582.01668 |
| 24 | 5532656 | 21-09-2021 | 118790 | KGS | 19964634.26 | 37.64 | 332661.4166 | 59879.055 |
| 25 | 5860813 | 16-10-2021 | 1210 | KGS | 206913.96 | 37.64 | 3447.71108 | 620.5879944 |
| 26 | 5860813 | 16-10-2021 | 117650 | KGS | 20118534.95 | 37.64 | 335225.7922 | 60340.6426 |
| 27 | 6010944 | 27-10-2021 | 99120 | KGS | 15392940.32 | 37.64 | 282800.4614 | 50904.08306 |
| 28 | 6221255 | 12-11-2021 | 20880 | KGS | 3231886.12 | 37.64 | 59376.49776 | 10687.7696 |
| 29 | 6221255 | 12-11-2021 | 98000 | KGS | 15168814.16 | 37.64 | 278682.796 | 50162.90328 |
| 30 | 6586465 | 08-12-2021 | 97590 | KGS | 15175331.28 | 37.64 | 278802.5288 | 50184.45519 |
| 31 | 6585804 | 08-12-2021 | 118710 | KGS | 18459509.93 | 37.64 | 339139.75 | 61045.15499 |
| 32 | 6586465 | 08-12-2021 | 1290 | KGS | 200596.14 | 37.64 | 3685.37004 | 663.3666072 |
| 33 | 7010474 | 08-01-2022 | 59310 | KGS | 9162046.17 | 37.64 | 168325.1014 | 30298.51824 |
| 34 | 7044462 | 12-01-2022 | 158340 | KGS | 24459929.04 | 37.64 | 449377.787 | 80888.00167 |
| 35 | 7392470 | 07-02-2022 | 158500 | KGS | 27413675.78 | 37.64 | 451919.955 | 81345.5919 |
| 36 | 7493516 | 15-02-2022 | 59360 | KGS | 10266724.25 | 37.64 | 169249.0128 | 30464.8223 |
| 37 | 8323315 | 18-04-2022 | 155160 | KGS | 35274119.07 | 37.64 | 448529.0803 | 80735.23446 |
| 38 | 8323315 | 18-04-2022 | 58180 | KGS | 13226657.96 | 37.64 | 168183.9514 | 30273.11124 |
| 39 | 8861402 | 27-05-2022 | 174800 | KGS | 42115976.74 | 37.64 | 517146.4992 | 93086.36986 |
| 40 | 9011308 | 07-06-2022 | 158510 | KGS | 38142506.2 | 37.64 | 468355.8374 | 84304.05073 |
| 41 | 9709491 | 25-07-2022 | 156760 | KGS | 39117971.52 | 37.64 | 477641.1361 | 85975.40449 |
| 42 | 9941538 | 09-08-2022 | 78400 | KGS | 18953256.25 | 37.64 | 0.024 | 0.00432 |
| 43 | **2547971** | 21-09-2022 | 58840 | KGS | 12681258.23 | 37.64 | 0.00304 | 0.0005472 |
| 44 | **2564348** | 22-09-2022 | 98000 | KGS | 21121062.31 | 37.64 | 118508.188 | 21331.47384 |
| 45 | 3793689 | 18-12-2022 | 58820 | KGS | 13006136.14 | 37.64 | 0.03004 | 0.0054072 |
| 46 | **5100029** | 17-03-2023 | 195980 | KGS | 28291653.39 | 37.64 | 0.01864 | 0.0033552 |
| 47 | 5488623 | 12-04-2023 | 119400 | KGS | 14343820.5 | 92.23 | 912365.9067 | 164225.8632 |
| 48 | 5676216 | 25-04- | 101570 | KG | 12246040.9 | 92.23 | 778932.6615 | 140207.8791 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | | 2023 | | S | 9 | | | |
| 49 | 5676216 | 25-04-2023 | 20610 | KGS | 2484896.18 | 92.23 | 158056.5339 | 28450.17611 |
| 50 | **6001163** | 17-05-2023 | 117700 | KGS | 16767859.55 | 37.64 | 0.0328 | 0.005904 |
| | | | | | | | **14529790.63** | **2615362.313** |

**1.7** From the investigation, it appeared that the said goods have been imported by the importer by not paying applicable Anti-dumping duty leviable under Notification 28/2018-Customs (ADD) dated 25.05.2018 which resulted into short payment of Anti-dumping duty of Rs. 1,45,29790.6/-& IGST on not paid Anti-dumping Duty amounting to Rs. 26,15,362/- (total amounting to Rs 1,71,45,152.6/-).

**1.8** Further, two (02) Customs Brokers namely M/s. Indian Seaways (AAAPD4532ECH001) and M/s. Mandar Clearance & Forwarders Pvt Ltd (AAECM1616MCH002) had filed the bills of Entry as mentioned in Annexure-A to the notice on behalf of the importer M/s BASF INDIA LIMITED without verifying the information as mentioned in the Bills of lading and Invoice while filing the Bills of Entry, which resulted in non-levy/short-levy of correct ADD. The Customs brokers failed to file the said Bills of Entry as per correct serial no. 6 & 9 (details as per Annexure-a) of the ADD Notification no. 28/2018-Customs (ADD) dated 25.05.2018 even though it is evident from the Bills of lading and Invoices of the respective Bills of Entry that the said goods have been transshipped at Singapore & Malayisa but were Shipped on Board on Pre-Carriage Vessel at Batam, Indonesia. However, there was no 'Export Declaration/ Bill of Export/Shipping Bill' presented at Singapore by the importer, despite this both the CBs filed Bills of entry and claimed benefit of S.No. 01 of Notification 28/2018-Customs instead of filing under ADD Sr. No. 6 & 9 of the notification. Therefore, it appears that both these Customs Brokers namely M/s. Indian Seaways and M/s. Mandar Clearance & Forwarders Pvt Ltd also failed to exercise due diligence to ascertain the correctness of information while filing BEs for clearance of cargo, and this failure on the part of CB resulted in revenue loss to the exchequer. Accordingly, Customs Brokers namely M/s. Indian Seaways and M/s. Mandar Clearance & Forwarders Pvt Ltd, have committed these infirmities with a view to resort to evasion of duty with malafide intention to defraud the exchequer of the rightful duty thereby clearly attracting the penal provisions of Section 112(a) and /or 114A and Section 114AA of the Customs Act, 1962.

**1.9** Accordingly, Show Cause Notice bearing no. 1099/2024-25/Commr/NS-1/Gr. IIC-F/CAC/JNCH dated 20.09.2024 was issued to M/s BASF India Limited seeking as to why:

**1.9.1** The Anti-dumping duty vide Notification No. 28/2018-Customs (ADD) dated 25.05.2018, further amended vide Notification No 48/2018 dated 25.09.2018 should not be levied on the import of the goods "Saturated Fatty Alcohol" imported against the Bills of Entry, as tabulated in attached Annexure-A of this Show Cause Notice.

**1.9.2** The differential Anti-dumping duty amounting to Rs. 1,45,29790.6/-& IGST on not paid Anti-dumping Duty amounting to Rs. 26,15,362/- (total amounting to Rs 1,71,45,152.6/-) as explained in the preceding paras should not be demanded and recovered as per section 28(4) of the Customs Act, 1962, and accordingly, the applicable interest against the same should not be demanded and recovered under section 28AA of the Customs Act, 1962.

**1.9.3** The goods covered under the Bills of Entry as tabulated in attached Annexure-A of this Show Cause Notice should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962.

**1.9.4** Penalty should not be imposed on M/s BASF INDIA LIMITED under the provisions of Sections 112(a) and/or 114A, and/or 114AA of the Customs Act, 1962.

**1.9.5** Penalty should not be imposed on the Customs brokers i.e. M/s. Indian Seaways (AAAPD4532ECH001) and M/s. Mandar Clearance & Forwarders Pvt Ltd

(AAECM1616MCH002) under the provisions of Section 112(a) and /or 114A and Section 114AA of the Customs Act, 1962.

**WRITTEN SUBMISSIONS:**

**2.** M/s. BASF India Limited gave written submissions vide their letter 24.01.2025, wherein they *inter-alia* submitted as below:

**2.1** The Noticee is engaged in the manufacture and trade of chemical products. One of the products dealt with by the Noticee is the imported goods, viz., '*Palmerol 1214 Lauryl-Myristyl alcohol/MB*' classified as 'Saturated Fatty Alcohol'. The Noticee was importing the impugned goods from Malaysia and Indonesia vide the Bills of Entry mentioned in Annexure-A to the Impugned SCN. During the period, the Noticee imported goods from different producers and exporters. The Noticee imported the imported goods from the following producers and exporters:

| Sr. No. | Date of Bills of Entry | Producer | Exporter | Third party invoicing | Differential Duty involved (In INR) |
|---|---|---|---|---|---|
| 1. | 09.05.2020 to 21.01.2021, 09.03.2021 to 17.03.2023, 17.05.2023 | KL-Kepong Oleomas Sdn Bhd | KL-Kepong Oleomas Sdn Bhd | Unilever Asia Pte Ltd | 1,46,57,473/- |
| 2. | 01.03.2021 | KL-Kepong Oleomas Sdn Bhd | KL-Kepong Oleomas Sdn Bhd | Procter & Gamble International Operations SA Singapore | 3,05,441/- |
| 3. | 12.04.2023 to 25.04.2023 | PT Ecogreen Oleochemicals, Indonesia | Ecogreen Oleochemicals (Singapore) Pte Ltd. | N.A. | 21,82,239/- |

**2.3** The Noticee discharged ADD at *Nil* rate for the imports mentioned in Table above according to the following Sl. Nos. of the ADD Notification:

| Sr. No. | Producer | Exporter | Sl. No. of the ADD Notification |
|---|---|---|---|
| 1. | KL-Kepong Oleomas Sdn Bhd | KL-Kepong Oleomas Sdn Bhd | 8 |
| 2. | PT Ecogreen Oleochemicals, Indonesia | Ecogreen Oleochemicals (Singapore) Pte Ltd. | 1 |

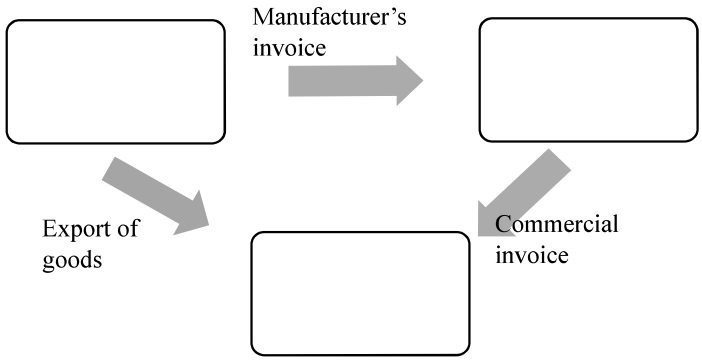
**2.4** Accordingly, a Consultative letter dated 08.10.2021 was issued to the noticee. As per the Department, the rate of ADD shall be *Nil* as per Sr. No. 1 of the ADD Notification only when the country of origin is Indonesia, country of export is Singapore, the producer is 'M/s PT Ecogreen Oleochemicals' and the exporter is 'M/s Ecogreen Oleochemicals (Singapore) Pte Ltd'. Hence, the Noticee was advised to pay the differential duty (ADD + IGST) in terms of Section 28(4) of the Act along with applicable interest and penalty. In response to the same, Noticee vide Letter dated 26.10.2021, replied that they had discharged *Nil* ADD as per Sr. No. 7 of the ADD Notification eligible for imports from Producer and Exporter 'M/s KL Kepong Oleomas Sdn Bhd'. They submitted that the imported goods are originating in Indonesia and produced by 'M/s KL Kepong Oleomas Sdn Bhd' and the imported goods are shipped directly from Malaysia by 'M/s KL Kepong Oleomas Sdn Bhd' to the Noticee and therefore, the imports falling under Sr. No. 7 of the Table in the ADD Notification are applicable to *Nil* ADD.

**2.5** They filed another reply dated 20.07.2022 to the Consultative Letter. They further submitted that they had inadvertently mentioned Sr. No. 7 of the ADD Notification instead of Sr. No. 8 of the ADD Notification which is applicable for the imported goods.

**2.6** They paid the differential duty amounting to Rs.34,67,258/- for the imported goods mentioned in Annexure-A to the Consultative Letter vide Challan Nos. HC-43 and HCM-339 dated 05.01.2023, under protest. They also paid differential ADD amounting to Rs.1,10,50,372/- under protest for other imported goods vide Challan No. HC-182 dated 19.05.2023 which was intimated to the Department vide Letter dated 19.05.2023. Pursuant to the receipt of the Impugned SCN, the Noticee made payment of ADD, IGST for the following Bills of Entry and also intimated the department.

**2.7** The Impugned SCN has not provided any allegation or reasoning for imposing ADD on imports from Producers and Exporters M/s. KL Kepong Oleomas Sdn Bhd. There is no reference to such imports in the Impugned SCN at all, barring the inclusion of such imports in the differential duty demand calculation given in Annexure-A to the Impugned SCN. They submitted that the right to being provided reasons for affixing any demand of tax is a right of the taxpayer arising out of the principles of natural justice. In this regard they relied upon the decision of the Hon'ble Supreme Court in Cyril Lasardo (Dead) v. Juliana Maria Lasarado - 2004 (7) SCC 431, Asst. Commissioner, Commercial Tax Department v. Shukla & Brothers reported at 2010 (254) ELT 6 (SC).

**2.8** In respect of goods imported from Producer and Exporter 'KL Kepong Oleomas Sdn Bhd', the Commercial Invoice for purchase of the imported goods was raised on the Noticee by 'Unilever Asia PTE Ltd'.




The aforesaid imported goods are applicable to ADD at *Nil* rate as per Sr. No. 8 of the ADD Notification. Relevant portion of ADD Notification is extracted below for the ease of reference:

**Table-5**

| Sl. No. | Tariff Item | Description of goods | Country of Origin | Country of export | Producer | Exporter | Amount | Unit | Currency |
|---|---|---|---|---|---|---|---|---|---|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) |
| 8 | 2905 17, 2905 19, 3823 70 | -do- | Malaysia | Malaysia | KL – Kepong Oleomas Sdn Bhd | KL – Kepong Oleomas Sdn Bhd | Nil | MT | USD |

**2.9** The country of origin of the imported goods is Malaysia. They relied upon the Country of Origin certificate issued to them and reproduced a copy the same in their submissions. Box 11 in the Certificate of Origin provides for the declaration by the exporter that the imported goods are produced in Malaysia. Correspondingly, in Box 12, the Issuing Authority in Malaysia has issued the Certificate of Origin certifying that the declaration made by the exporter is correct and that the imported goods are originating in Malaysia. Further, the imported goods have been produced

by 'KL Kepong Oleomas Sdn Bhd'. In the present case, the application for Certificate of Origin was made by the Exporter/Producer 'KL Kepong Oleomas Sdn Bhd'. Furthermore, the Overleaf Notes to the Certificate of Origin prescribed by Rules of Origin Notification also clarifies that the exporter mentioned in Box 11 of the Certificate of Origin may include the manufacturer or the producer. In the present case, the declaration in Certificate of Origin has been made by the Exporter/Producer 'KL Kepong Oleomas Sdn Bhd'.

**2.10** They Referred to the definition of 'export' provided by Black's Law Dictionary, wherein export is defined as below:

> "***export,*** *vb. 1. To send, take, or carry abroad. 2. To send, take, or carry (a good or commodity) out of the country; to transport (merchandise) from one country to another in the course of trade. 3. To carry out or convey (goods) by sea*"

From the above definitions, it can be inferred that export means to send, take, or carry out goods from one country to another. In the present case, the Bill of Lading filed by 'KL Kepong Oleomas Sdn Bhd' mentions the port of loading of the imported goods as 'Port Klang, Malaysia' and the port of discharge as 'Nhava Sheva, India'. Relevant portion of the Bill of Lading is extracted below for ready reference:

**FOR COMBINED TRANSPORT OR OCEAN TRANSPORT OR MULTIMODAL TRANSPORT**

| | |
|---|---|
| **SHIPPER**<br>KL-KEPONG OLEOMAS SDN BHD<br>NO. 25 JALAN BUNGAI PINANG 5/18, FASA 2D, TAMAN PERINDUSTRIAN<br>PULAU INDAH,<br>42920 PELABUHAN KLANG, SELANGOR DARUL EHSAN, MALAYSIA | BILL OF LADING NO.: LTK/PKGNSA/21/12889<br>LEGEND logistics<br>LEGEND LOGISTICS (ASIA) PTE. LTD.<br>**BILL OF LADING**<br>**1st ORIGINAL** |
| **CONSIGNEE (IF 'TO ORDER' SO INDICATE)**<br>BASF INDIA LIMITED<br>4B, GIDC DAHEJ VAGHARA<br>BHARUCH, BHARUCH<br>392130 GUJARAT<br>INDIA | |
| **NOTIFY PARTY (NO CLAIM SHALL ATTACHED FOR FAILURE TO NOTIFY)**<br>BASF INDIA LIMITED<br>4B, GIDC DAHEJ VAGHARA<br>BHARUCH, BHARUCH<br>392130 GUJARAT<br>INDIA | **SHIPPING AGENT REFERENCES (COMPLETE NAME AND ADDRESS)**<br>LEGEND LOGISTICS (INDIA) PVT LTD<br>402, RUSTOMJEE ASPIREE, MAX ROAD, EVERARD NAGAR, OFF EASTERN EXPRESS HIGHWAY<br>SION, MUMBAI 400022 INDIA<br>GST NO. 27AADCL0941P1ZT<br>CIN NO. U74999MH2016PTC283029<br>TEL : +9122 6659 4750 / EMAIL: IMPORT.INDIA@LEGENDLOGISTICS.LTD.COM |
| **VESSEL / VOYAGE NO.**<br>SHIMIN VOY. 21006W | **PRE-CARRIAGE BY** |
| **PORT OF LOADING**<br>PORT KLANG , MALAYSIA | **PLACE OF RECEIPT**<br>PORT KLANG, MALAYSIA |
| **PORT OF DISCHARGE**<br>NHAVA SHEVA , INDIA | **PLACE OF DELIVERY**<br>NHAVA SHEVA, INDIA |

**PARTICULARS FURNISHED BY SHIPPER - NOT CHECKED BY CARRIER- CARRIER NOT RESPONSIBLE**

| CONTAINER NO., SEAL NO. MARKS AND NUMBERS | Description of Packages & Goods (Continued on attached Bill of Lading Rider Page(s),if applicated) | GROSS WEIGHT KGS NET WEIGHT KGS | MEASUREMENT M3 |
|---|---|---|---|
| | | TOTAL GROSS WEIGHT 140,470.00 KGS | TOTAL MEASUREMENT 198.00 M3 |

The Bill of Lading evidently shows that the imported goods have been taken out, i.e. exported from 'Port Klang, Malaysia' to 'Nhava Sheva, India'. Therefore, the country of export of the imported goods is 'Malaysia'. They stated that the imported goods have indeed been exported by 'KL Kepong Oleomas Sdn Bhd'.

**2.11** They referred to the definition of 'exporter' provided by the Cambridge Advanced Learner's Dictionary, wherein exporter is defined as below:

> "*a person, country, or business that sells goods to another country.*"

Therefore, 'KL Kepong Oleomas Sdn Bhd' is the Exporter in the present case as they have exported the goods from Malaysia to India. In support, they relied on the Certificate of Origin, extracted *supra*, to show that the imported goods have been exported by 'KL Kepong Oleomas Sdn Bhd'. Box 1 of the Certificate of Origin provides for the name of the exporter, where it is evidently mentioned as 'KL Kepong Oleomas Sdn Bhd'.

**2.12** As mentioned above, the commercial invoice for the imported goods had been raised by 'Unilever Asia PTE Ltd' on the Noticee and the same is permissible under the AIFTA and is done so in accordance with commercial requirements of the Noticee. This arrangement has no bearing

on the transaction for the purposes of the ADD Notification and 'Unilever Asia PTE Ltd' shall only be considered as an entity facilitating a financial transaction between the Noticee and the Exporter and cannot be considered as the exporter. They relied upon judgment in case of *Sanghi Polysters Ltd. v. Commr. of Cus., Chennai 2003 (155) E.L.T. 152 (Tri.-Chennai)*.

**2.13** The case of the Department in the Impugned SCN is that the imported goods imported from Producer 'PT Ecogreen Oleochemicals, Indonesia' and Exporter 'Ecogreen Oleochemicals (Singapore) Pte Ltd.' are not exported from Singapore, therefore, the mandatory condition of the country of export being Singapore as mentioned in Sr. No. 1 of the ADD Notification is not fulfilled. SCN has relied upon the wordings 'Transshipment at Singapore on Vessel – Shipped on Board on Pre-Carriage Vessel at Batam, Indonesia' mentioned in the Cargo Description portion of the Bill of Lading of the said imported goods to allege that the imported goods are transshipped from Singapore and not exported from Singapore. Therefore, as per the Department, the said imported goods are not leviable to *Nil* ADD as per Sr. No.1 to the ADD Notification. The Impugned SCN has conveniently ignored the portion of the Bill of Lading which clearly mentions the Port of Loading as 'Singapore' which evidently shows that the place of export of the imported goods is indeed Singapore. Relevant portion of the Bill of Lading is extracted below for ready reference:

**FOR COMBINED TRANSPORT OR OCEAN TRANSPORT OR MULTIMODAL TRANSPORT**

| | |
|---|---|
| **SHIPPER**<br>PT. ECOGREEN OLEOCHEMICALS<br>JL. PELABUHAN KAV.1, KABIL<br>BATAM 151 AND 29467 INDONESIA<br>TELEPHONE : (62-778) 711002<br>FACSIMILE : (62-778) 711007 | *BILL OF LADING NO.: LTKC/SINNSA/23/27016*<br>LEGEND \| tank<br>Exceeding expectations, Beyond boundaries<br>LEGEND TANK LOGISTICS PTE. LTD.<br>**BILL OF LADING**<br>**NON-NEGOTIABLE** |
| **CONSIGNEE (IF 'TO ORDER' SO INDICATE)**<br>BASF INDIA LIMITED<br>PLOT NO. 4/8, GIDC,<br>VILLAGE - DAHEJ, TALUKA - VAGRA,<br>DIST. BHARUCH, DAHEJ 392130 INDIA<br>GSTIN NUMBER: 24AAACB4569E1ZR | |
| **NOTIFY PARTY (NO CLAIM SHALL BE ATTACHED FOR FAILURE TO NOTIFY)**<br>BASF INDIA LIMITED<br>3RD FLOOR, SHREE SAWAN KNOWLEDGE PARK,<br>PLOT NO D-507, MIDC, TURBHE,<br>NAVI MUMBAI 400705<br>ATTN : EXIM OPERATIONS TEAM<br>EMAIL: INEXIM_PREALERT@BASF.COM<br>PHONE: +91 22 6238 4666 | **SHIPPING AGENT REFERENCES (COMPLETE NAME AND ADDRESS)**<br>LEGEND LOGISTICS (INDIA) PVT LTD<br>NO. 401, RUSTOMJEE ASPIREE, IMAX ROAD,EVERARD NAGAR,<br>OFF EASTERN EXPRESS HIGHWAY SION, MUMBAI 400022, INDIA<br>GST NO. 27AADCL0941P1ZY<br>CIN NO. U74999MH2018PTC303029<br>TEL.: +9122 6859 0000<br>EMAIL: IMPORT.INDIA@LEGENDLOGISTICSLTD.COM |
| **VESSEL / VOYAGE NO.**<br>SEASPAN ADONIS VOY. 069W | **PRE-CARRIAGE BY** |
| **PORT OF LOADING**<br>SINGAPORE | **PLACE OF RECEIPT**<br>BATAM, INDONESIA |
| **PORT OF DISCHARGE**<br>NHAVA SHEVA, INDIA | **PLACE OF DELIVERY**<br>NHAVA SHEVA, INDIA |

The Noticee submits that as seen from above, the imported goods are loaded in Singapore and exported thereafter. This is also evident from the fact that the Bill of Lading has been issued and signed in Singapore. Relevant portion of the Bill of Lading evidencing the same is extracted below for ready reference:

| PORT OF LOADING<br>SINGAPORE | PLACE OF RECEIPT<br>BATAM, INDONESIA | | |
|---|---|---|---|
| PORT OF DISCHARGE<br>NHAVA SHEVA, INDIA | PLACE OF DELIVERY<br>NHAVA SHEVA, INDIA | | |
| PARTICULARS FURNISHED BY SHIPPER - NOT CHECKED BY CARRIER- CARRIER NOT RESPONSIBLE | | | |
| TANK NO., SEAL NO.<br>MARKS AND NUMBERS | Description of Packages & Goods<br>(Continued on attached Bill of Lading Rider Page(s),if applicated) | GROSS WEIGHT KGS<br>NET WEIGHT KGS | |
| | 6 X 20' ISO TANK<br>PLEASE REFER ATTACHED LIST IN ANEXURE<br>FOR TANK NOS, DESCRIPTION, PACKAGES, WEIGHT AND MEASUREMENTS<br><br>SURRENDER<br><br>FREE 14 DAYS AT DESTINATION PORT<br>THEREAFTER AT USD 35 / DAY / TANK | TOTAL GROSS WEIGHT<br>140,960.000 KGS<br><br>TOTAL NET WEIGHT<br>119,400.000 KGS | |
| FREIGHT PAYABLE<br>SINGAPORE | NO. OF ORIGINAL B/L ISSUED<br>ZERO | LADEN ON BOARD<br>03-04-2023 | PLACE & DATE OF ISSUE<br>SINGAPORE , SINGAPORE<br>03-04-2023 |

Therefore, evidently, the country of export of the imported goods is 'Singapore'. Furthermore, the imported goods are loaded in Singapore, taken out of Singapore and shipped to India. Therefore, the export of the imported goods has been affected from Singapore itself. Department has merely assumed that the act of transshipment and export of goods are mutually exclusive to each other, however, such an interpretation is wholly erroneous and legally untenable. The term 'trans-ship' has neither been defined under the Customs Act, 1962 nor the Customs Tariff Act, 1975. Therefore, to understand the connotation of the meaning of 'trans-shipped' recourse must be taken to supplementary means. Definition of transshipment as provided in S.B Sarkar's '*Words and Phrases of Central Excise and Customs*' is reproduced below:

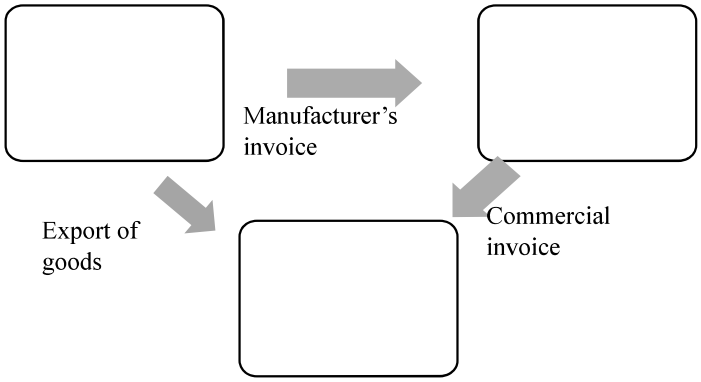
> "*Transship, or Trans-shipment means to transfer from one ship or conveyance to another. Transshipment of imported goods without payment of duty is provided for in Section 54 of the Customs Act, 1962.*"

Further, the term transshipment has been defined under Chapter 2, *International Convention on the Simplification and Harmonization Of Customs Procedures* as follows:

> ""*transhipment" means the Customs procedure under which goods are transferred under Customs control from the importing means of transport to the exporting means of transport within the area of one Customs office which is the office of both importation and exportation.*"

From the above definitions, it is evident that definition of the term transshipment does not by any means exclude the act of export. The trans-shipment in the present case is such that the goods are shipped to Singapore from Indonesia, by the Producer to the Exporter. Given the geographical location of the Producer, the nearest port is unable to load large vessels. Therefore, smaller vessels carrying batches of the imported goods are sent to Singapore to their related party, wherein multiple Orders are fulfilled through a large ship. Here, an invoice is raised upon the Exporter and the same is then shipped to India. During this transaction the imported goods are in the control the Customs Territory of Singapore. Once the goods are imported into Singapore, the Customs Authority of Singapore is in control of the goods. Subsequently, the goods are exported to India. This can be clearly demonstrated vide the Bill of Lading extracted *supra* which is issued and signed in Singapore. They relied upon the judgment in case of *M/s Vinayak Trading v. Commr. of Cus., Mundra 2024-TIOL-1162-CESTAT-AHM.* In view of the above, they submitted that the imported goods have been exported from Singapore and therefore, fulfil the criteria of country of export mentioned in Sr. No.1 to the ADD Notification.

**2.14** The Impugned SCN at Sr. No. 12 to Annexure-A has incorrectly mentioned 'Procter & Gamble International Operations SA Singapore' as the manufacturer. They submitted that the goods imported vide Bill of Entry No. 2969588 dated 01.03.2021, are manufactured by Producer and Exporter 'KL Kepong Oleomas Sdn Bhd'. Accordingly, the manufacturer mentioned at Sr. No. 12 to Annexure A ought to be 'KL Kepong Oleomas Sdn Bhd'. In respect of goods imported vide Bill of Entry No. 2969588 dated 01.03.2021 the Commercial Invoice was raised on the Noticee by 'Procter & Gamble International Operations SA Singapore'. The 'Bill to – Ship to' model, a well-known method in commercial transactions, was adopted by the Noticee for goods imported from the said Producer and Exporter. Therefore, the role of 'Procter & Gamble International Operations SA Singapore' is only restricted to third-party invoicing The transaction between the parties involved is as follows:




In respect of import through Procter & Gamble International Operations SA, Singapore, the noticee gave the similar submissions as made in respect of third-party invoicing through Unilever Asia Pte Ltd., Singapore.

**2.15** They submitted that the goods were imported on the basis of assessed Bills of Entry which are in themselves to be considered as appealable orders under Section 47 of the Act and the Bills of Entry being a quasi-judicial order, can only be set aside by a competent appellate authority in an appeal and the quasi-judicial orders cannot be set aside by a mere show cause notice while declaring the duty to be short levied and liable to recovery. They relied upon judgment in case of *ITC Ltd. Vs. CCE, Kolkata -IV, 2019 (368) ELT 216*.

**2.16** The demand of differential IGST ought to be dropped as the Noticee is entitled to avail credit of the IGST paid, since the same would result in a revenue neutral situation. They relied upon judgment in case of *Neuvera Wellness Ventures P. Ltd. vs. C.C. Mundra, 2023 (10) TMI 964,* Birla NGK Insulators Vs. CC – 2014 (309) E.L.T. 501 (Tri.- Ahmd.) etc.

**2.17** The allegations in the Impugned SCN are incorrect and there was no suppression or mis-statement by them with intention to evade payment of duty. It has been frequently held by the Apex Court that extended period of limitation cannot be invoked for mere non-payment or short payment of duty and can only be invoked when the duty was not paid or short paid with intention to evade payment of duty. They relied upon judgment in case of *Aban Lloyd Offshore Ltd. vs. Commissioner of Customs, 2006 (200) ELT 370 (SC), Maruti Udyog Ltd. vs. Commissioner of C. Ex., Delhi, 2002 (147) ELT 881 (Tri. - Del.).* In the present case, they have been issued SCN dated 20.09.2024, therefore, demand made in respect of imports made 20.09.2022 onwards alone will be within normal period of limitation. As part of the self-assessment scheme, they had correctly classified the imported goods and paid ADD and IGST on the same correctly. Also, the Impugned SCN has not produced any evidence to prove that the Noticee acted with intention to evade payment of duty. As is evident from the table, the Noticee has described the goods in accordance with the invoices. There is no allegation or evidence suggesting that the Noticee has not followed the description of the imported goods in the invoices while making the declarations in the import documents. Also, as explained in the foregoing paras, the imported goods fulfilled all criteria set out by relevant Sr. Nos. to the ADD Notification applicable to the imported goods. Therefore, Noticee's actions are bonafide and the Impugned SCN is incorrect in alleging that the Noticee has wilfully mis-stated and suppressed facts pertaining to the imported goods with

intention to evade payment of duty. It is pertinent to note that several Bills of Entry were examined by the Customs Department since 2020. Also, a Consultative Letter dated 08.10.2021 was issued to the Noticee, therefore, the Department was aware of the fact that the Noticee was clearing imported goods at *Nil* rate of ADD. It is settled legal position that suppression cannot be alleged when all the relevant facts are known to the authorities. They placed reliance on the decision of Apex Court in *Nizam Sugar Factory v. CCE [2006 (197) E.L.T. 465 (S.C.)].*

**2.18** They submitted that there was no mis-declaration either in respect of value or in any other particular with the entry made under the Customs Act. The Impugned SCN has only alleged wilful mis-declaration on the ground that the Noticee did not pay applicable ADD & IGST on the imported goods whereas, in the preceding grounds, the Noticee has already established that the imported goods are applicable to *Nil* rate of ADD. Therefore, the imported goods are not liable for confiscation under the provisions of Section 111(m) of the Act._They further submitted that only imported goods can be confiscated under Section 111. Imported goods have been defined under Section 2(25) as:

> *"imported goods means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption"*

In case of *Bussa Overseas & Properties P. Ltd. vs. C.L. Mahar, Assistant Commissioner of Customs, Bombay [ 2004 (163) ELT 304 (Bom.)],* the Hon'ble Bombay High Court held that once the goods are cleared for home consumption, they cease to be imported goods as defined in Section 2(25) of the Customs Act, 1962 and consequently are not liable to confiscation under Section 111 of the Customs Act, 1962. The above cited decision was maintained by the Hon'ble Supreme Court reported in *2004 (163) ELT A160.* Further, this view has also been reiterated by the Hon'ble Tribunal in the case of *Southern Enterprises vs. Commissioner of Customs, 2005 (186) ELT 324* As the imported goods have been cleared for home consumption and therefore, the question of confiscation under the provisions of Section 111 does not arise.

**2.19** By virtue of Section 3(12) of the Customs Tariff Act only the provisions relating to levy of duty under the Customs Act including the provisions relating to drawback, refunds and exemption from duties, have been borrowed for the purpose of IGST chargeable under Section 3(7) of the Customs Tariff Act respectively. However, the provisions of the Customs Act, relating to levies of penalty and interest are not applicable in respect of levy/non-levy/short-levy of IGST under the provisions of Section 3(7) of the Customs Tariff Act. In contradistinction with the wordings of Section 3(12), the provisions of Sections 8B(4A), 8C(5A), 9(7A) & 9A(8) of the Tariff Act, expressly provide for applicability of various provisions of the Customs Act, including inter-alia, the provisions relating to levy of penalty. From the above, it is evident that the Legislature has consciously adopted different provisions of the Customs Act, for different types of duties leviable under the Customs Tariff Act. Recently, Hon'ble Ahmedabad Tribunal while relying upon the judgment of Mahindra and Mahindra in the case of *Chiripal Poly Films Ltd. Vs. CC-Ahmedabad – 2024-VIL-876 CESTAT-AHM-CU* held that there is no specific provision made for recovery or charging of interest, fine and penalty in Customs Tariff Act, 1975. Similarly, the Hon'ble Tribunal in the decision of *Philips India Limited v. Commr. of Cus. (I) [Final Order No. A/86879/2024]* also followed the decision of *Mahindra & Mahindra* supra.

**2.20** Imported goods are not liable for confiscation under Section 111 of the Customs Act,1962. Therefore, Section 112 is not attracted in the present case. The Impugned SCN alleges that the imported goods are liable for confiscation under Section 111(m) of the Act. Further, the Noticee has not done any act which has rendered the goods liable for confiscation. Hence, Section 112(a) cannot be applied. Also, Penalty under Section 112 cannot be imposed if penalty under Section 114A is imposed. Penalty under Section 114A can only be imposed in cases where duty has not been paid or short/part paid because of collusion or willful mis-statement or suppression of facts. As laid down in *CC vs. Videomax Electronics, 2011 (264) ELT 0466 (Tri.-Bom),* if the extended period of limitation under Section 28 is not invokable, penalty under Section 114A of the Customs Act, 1962 cannot be imposed. It has already been submitted and clarified in the foregoing paras that the Noticee has committed no offence or made no omissions or commissions in the entire matter. Thus, penalty under Section 114A of the Customs Act, 1962 is not sustainable. Also, penalty cannot be imposed in the absence of mens rea.

**2.21** In the instant case, the Noticee has not knowingly or intentionally made, signed or used any declaration, statement or document which was false or incorrect in any material particular. All the details mentioned in the Bills of Entry, including the description of the imported goods (as established in the preceding grounds), are correct. Thus, there is no false or incorrect declaration or statement, or documents furnished by the Noticee warranting imposition of penalty under Section 114AA. Penalty under Section 114AA is imposable only in those situations where exports benefits are claimed without exporting the goods and by presenting forged documents. They relied upon the Twenty Seventh Report of the Standing Committee of Finance. According to the legislatures, Section 114 of the Customs Act provided penalty for improper exportation of goods, and did not cover situations where goods were not exported at all. Therefore, it is submitted that penalty under Section 114AA is imposable only in those circumstances where export benefits are availed without exporting any goods. They relied upon judgment in case of *Commissioner of Customs, Sea Chennai vs. Sri Krishna Sounds and Lightings, 2018 (7) TMI 867-CESTAT Chennai*. Further, the Noticee also placed reliance on the case of *Parag Domestic Appliances vs. Commissioner of Customs, Cochin, 2017 (10) TMI 812-CESTAT Bangalore* wherein it has been held that no penalty can be imposed under Section 114AA of the Act in absence of any mala fide on the part of the assessee.

**2.22** The Impugned SCN also proposes recovery of interest under Section 28AA of the Customs Act. In this regard, they submitted that the question of levy of interest arises only if the demand of duty is sustainable. As mentioned in the foregoing paragraphs, the demand of duty is not sustainable, therefore, the question of levy of any interest under Section 28AA on such duty would not arise.

**3.** M/s. Mandar Clearance & forwarders Pvt. Ltd. (Customs Broker) gave written submissions vide their letter dated 17.02.2025 wherein they *inter-alia* submitted as below:

**3.1** Thy had filed two Bills of Entry bearing no. 5488623 dated 12.04.2023 & 5676216 dated 25.04.2023 out of the list of Bills of Entry mentioned in the Show Cause Notice. There has been no loss of revenue to the exchequer in import of goods under impugned two bills of Entry for the reason that the goods were of Indonesian origin and the country of export was Singapore which is duly covered in the notification no. 28/2018. They submitted copies of the Bills of Entry and stated that the country of origin is mentioned as Indonesia while country of export is mentioned as Singapore which is duly covered in the notification no.28/2018 supra and as such the nil ADD was correctly availed by the importer. The Department has assumed that merely because the imported goods have been transshipped, no Export declaration / Bill of Export / Shipping Bill has been presented in Singapore. However, the Department has not produced any documentary evidence to establish that the goods have not been exported from Singapore. On the contrary it is evident from the Bill of Lading and other import documents that the impugned goods have been exported from Singapore. In the Bill of Lading it is clearly mentioned that the Port of Loading is 'Singapore' which evidently shows that the place of export of the imported goods is indeed Singapore. This is also evident from the fact that the Bill of Lading was issued and signed in Singapore. They reproduced the copy of the Bill of Lading. Therefore, evidently, the country of export of the imported goods is 'Singapore' which is well covered in the ADD notification for NIL applicable ADD.

**3.2** The imported goods were imported on the basis of assessed Bills of Entry which are in themselves to be considered as appealable orders under Section 47 of the Act. The self-assessed Bills of Entry is a quasi-judicial order as per judgment of Hon'ble Apex Court in the case of ITC Ltd. V/s. Commissioner of Central Excise IV, Kolkata which is reported in 2019 (368) ELT 216 and can only be set aside by a competent appellate authority in an appeal. Quasi-judicial orders cannot be set aside by a mere show cause notice while declaring the duty to be short levied and liable to recovery. They also relied upon judgment in case of Escorts Ltd., (1994) Supp. 3 SCC.

**3.3** Despite being eligible to avail nil ADD on the imported goods, the differential anti-dumping duty of sum total Rs. 21,82,239/- in respect of the goods cleared under the said two

Bills of entry is paid by the importer vide challan No. HCM 1620 and HC 221 dated 20.12.2024 under protest as the same was not payable. They submitted copy of the said Challans.

**3.4** The documents after due scrutiny by internal team of the importer are received under OPTIEXIM (SAP SOFTWARE) in which there is no access to the Custom Broker to change in duty structure, notification or the supplier name etc. Also, in the instant case there was found no necessity to suggest for any change in the duty structure as the same was being claimed correctly as such no change was suggested to the importer.

**3.5** In the instant case there has been no collusion, no willful misstatement or suppression of any information from Customs with intention to evade payment of duty and as such provisions of Section 28(4) are not applicable to invoke extended period of limitation of five years and as such the show Cause notice is hit by time limitations and hence not sustainable.

**3.6** In para 13 of the show cause notice it is alleged that as a Custom Broker they had incorrectly mentioned Sr. No. 1 of the Notification No. 28/2018-Cus ADD to claim Nil ADD as against S. No. 8 & 9 of the said notification whereas it may be observed that the goods were of Indonesian origin, port of loading was Singapore and the supplier company was Ecogreen Oleo Chemicals(Singapore) Pte. Ltd., which is duly covered at Sr. No.1 of the said notification and as such there was correct claim of ADD in the two bill of entries cleared under their authorization and the allegations that they did not act diligently is devoid of facts and merits and the imputation of charges are based on hypothesis and surmises, hence not sustainable.

**3.7** Penalty under Section 114A of the Customs Act, 1962 cannot be imposed on them as in the instant case the provisions of Section 28(4) are inapplicable due to no collusion, no willful misstatement or no suppression of facts. Further, the instant show cause notice failed to establish any act of omission or commission on their part and hence the ingredients of the Section 112(a) of the Customs Act,1962 are not satisfied for imposition of penalty under Section 112(a) of the Customs Act,1962 on them.

**3.8** The instant SCN proposes for imposition of penalty upon this noticee under Section 114AA of the Customs Act,1962 but the notice has failed to prove that this Noticee had intentionally made, signed or used or cause any wrong doing with reference to any declaration, statement or document which was false and incorrect and hence no penalty can be imposed upon them under Section 114 AA of the Customs Act,1962.

**4.** M/s. Indian Seaways (Customs Broker) gave written submissions vide their letter dated 12.02.2025 wherein they *inter-alia* submitted as below:

**4.1** They acted as Customs Broker on behalf of the importer M/s. BASF India Limited and filed Bills of Entry mentioned at Sr. No. 1 to 46 and 50 of Table 4 of the SCN. They submitted that the SCN is vague and general as it does not specifically indicate which of the transgressions alleged in the SCN are arising out of the acts of omissions & commission. In the said Bills of Entry filed by them, the name of the shipper/supplier/exporter is shown as KL-Kepong Oleomos SDN BHD, Malaysia and the goods were shipped directly from Port Kelang, Malaysia. They submitted the copies of the Bills of Entry along with the Commercial Invoice/Bills of Lading/Country of Origin Certificates etc. On basis of the documents provided by the importer, it was established that the goods were produced and exported by KL-Kepong Oleomos SDN BHD, Malaysia and shipped on board at Port Kelang, Malaysia and on the advice of the importer, the impugned Bills of Entry were filed without applying ADD.

**4.2** The goods were directly shipped by KL-Kepong Oleomos SDN BHD, Malaysia from Port Kelang, Malaysia and the allegation that the goods were transshipped from Singapore & Malaysia and shipped on board on Pre-carriage vessel at Batham, Indonesia is factually incorrect. In respect of the impugned Bills of Entry filed by them, the importer has not claimed any benefit under Sr. No. 1 of the Notification no. 28/2018-Cus (ADD) and in light of the aforementioned

documents they were eligible for the Nil ADD in terms of Sr. No. 8 of the ADD notification. Accordingly, the allegation of failure to exercise due diligence to ascertain correctness of information while filing Bes cannot be legally sustained. Accordingly, the invocation of penal proceedings under the Customs Act, 1962 against them cannot be sustained.

**4.3** There is no such finding in the notice against them that they rendered the goods liable for confiscation under Section 111 of the Customs Act, 1962 and therefore, no penalty is imposable on them under Section 112(a) of the Customs Act, 1962. They relied upon judgment in case of P.S. Bedi & Company Vs Commissioner of Customs, New Delhi {2001 (133) ELT 86 (Tri-Del.)}, Rajesh Maikhuri Vs Commissioner of Customs, New Delhi {2018 (363) ELT 274 (Tri- Del.)}, Air Freight Ltd. Vs Commissioner of Customs (Airport), Mumbai {2004 (172) ELT 229 (Tri-Mum.)}.

**4.4** They further submitted that wrong/ineligible claim of exemption from duty or wrong assessment cannot be considered as any misdeclaration rendering the goods liable to confiscation under Section 111 of the Customs Act, 1962. For this view, they relied upon the judgment in case of Northern Plastic {1998(101) ELT 549 (SC)}. They further submitted that even if it is assumed that the goods were wrongly self-assessed, no penalty under Section 112(a) of the Customs Act, 1962 is imposable if the goods were correctly declared in the Bill of Entry. They relied upon the judgment in case of Challenger Cargo Carriers Vs Pr. CC {2022(12) TMI 621-CESTAT New Delhi}. They further submitted that the provisions of Section 46 of the Act cannot be claimed to be violated if the assessee claims wrong classification of goods or untenable exemption from duty in terms of Notification and it would not be correct to say that the noticee Customs Broker was responsible for short levy of ADD in any manner. For their this view they relied upon the judgment in case of Samsung India Electronics Vs Pr. CC ACC (Import), Delhi {2023 (12) TMI 1155-CESTAT New Delhi}.

**4.5** It is well settled that no penalty can be imposed on the Customs Broker if they file Bill of Entry on the basis of the import documents provided to him by the importer and when there is no evidence to indicate that the Customs Broker had any prior knowledge of any mis-declaration or irregularity committed by the importer. They relied upon judgment in case of Adani Wilmar Ltd Vs CC (Prev.), Jamnagar {2015 (330) ELT 549 (Tri.- Ahmd)}, Prime Forwarders Vs Commr of Customs, Kandla {2008 (222) ELT 137 (Tri-Ahmd.)} and Escorts Heart Institute & Research Centre Vs CC, New Delhi {2016 (336) ELT 185 (Tri-Del.)} etc.

**4.6** Penalty under Section 114A of the Customs Act, 1962 is imposable on the person liable to pay duty subject to establishment of Collusion/Suppression of facts/Willful misstatement of facts. The Custom Broker is not the person liable to pay duty therefore, no question would arise for imposition of penalty under Section 114A of the Customs Act, 1962. They relied upon judgment in case of Sandor Medicaids {2019 (367) ELT 486 (Tri-Hyd)}.

**4.7** In the past, the department had issued queries regarding applicability of ADD in terms of Notification no. 28/2018-Cus ADD in respect of Bill of Entry no. 5320084 dated 05.09.2021 (Sr. No. 23 of Table) and Bill of Entry no. 9709491 dated 25.07.2022 (Sr. No. 41 of Table). However, on basis of the reply submitted by the importer vide letter dated 20.09.2021 to the effect that the goods were supplied by KL-Kepong Oleomos SDN BHD, Malaysia and shipped from Malaysia, the impugned goods were released by the proper officer without levy of ADD. Therefore, the department was well aware that no ADD is chargeable on the goods supplied/exported by KL-Kepong Oleomos SDN BHD, Malaysia.

**4.8** No such evidence has been led by the department that the Customs Broker knowingly or intentionally falsified the declaration or made incorrect declaration. Once it is established that the Customs Broker had prepared the Bill of Entry on the basis of the documents provided by the importer, no case of any falsification of documents/furnishing incorrect information by Customs Broker would arise and accordingly, no penalty under Section 114AA can be imposed. They relied upon judgment in case of Fast Cargo Movers Vs Commissioner of Customs, Jodhpur

{2018 (362) EKT 184 (Tri-Del)}, Hera Shipping Solutions Pvt. Ltd. Vs Commissioner of Customs, Chennai-IV {2022 (382) ELT 552 (Tri-Chennai)}. Also, penalty under Section 114AA is invokable only in case of mis-declaration of goods at the time of export and not where the imported goods have been allegedly mis-declared. They relied upon the recommendation of the 27th Stabding Committee of Finance vide which Section 114AA was enacted. They relied upon judgment in case of Commr. Of Cus, Sea, Chennai-II Vs Sri Krishna Sound and Lightings {2019 (370) ELT 594 (Tri.- Chennai)}, V.R. Tools Vs Commissioner of Customs, Chennai {2021 (11) TMI 847-CESTAT, Chennai and Interglobe Aviation Ltd. Vs Pr. Commissioner of Customs, Bangalore {2022 (379) ELT 235 (Tri-Banglore)}.

**4.9** Under the Customs Act, 1962 neither there is any empowerment nor any delegation of power in favor of Customs Broker to classify the goods under a particular heading of Customs Tariff Act, 1972 or to determine appropriate duty payable on goods and this job is exclusively the domain of the proper officer of Customs. In this position, it would be neither legal nor proper to hold the Customs Broker responsible for short levy of ADD. It was the responsibility of proper officer of Customs to verify the self-assessment made by the importer by calling for additional I information in the manner as provided under Section 17 of the Customs Act, 1962 and Customs Broker had no role to play in the correct determination of ADD payable. They relied upon judgment in case of Fairdeal Shipping Agency Pvt. Ltd. Vs Commissioner of Customs (General), Mumbai {2019-TIOL-990-CESTAT-Mum., Classic Shipping & Co. Vs Commissioner of Customs, Tuticorin {2024 (9) TMI 1326-CESTAT Chennai.

**4.10** They further relied upon the Instructions no. 20/2024-Customs dated 03.09.2024 issued by CBIC, New Delhi clarifying that implicating Customs Broker as co-noticee in a routine manner in matters involving interpretation of statute must be avoided unless the element of abetment of Customs Brokers in the investigation is established by the investigating authority. In the instant case, applicability of ADD is a matter of interpretative dispute and as such in absence of any findings in SCN to establish abetment, no question of imposition of any penalty on the Noticee under the provisions of Customs Act, 1962 would arise. Pr. Chief Commissioner of Customs, Mumbai Zone-II followed the said instruction of CBIC and issued advisory no. 02/2024 dated 23.10.2024 reiterating the instructions contained thereunder.

**4.11** The importer has paid the differential ADD under protest in terms of the said SCN amounting to Rs. 34,67,258/- vide challan no. HC-43 and HCM-339 dated 05.01.2023 and differential ADD amounting to Rs. 1,10,50,372/- vide challan no. HC-182 dated 19.05.2023. Importer also paid differential ADD in respect of Bills of Entry no. 2969588 dated 01.03.2021 & 2564348 dated 22.09.2022 vide Challan No. HC-225 dated 20.12.2024 and Challan no. HC-1672 dated 20.12.2024.

**4.12** They submitted that the Bills of Entry at Sr. No. 42 to 46 and 50 mentioned in Para 4 of the SCN are assessed provisionally against PD bond. It is settled law that no penalty is imposable on any person when the assessment is provisional.

## PERSONAL HEARING

**5.** Opportunity for personal hearing was granted to the noticees on 22.07.2025 which was attended by all the three noticees through virtual mode on the said date.

**5.1** M/s BASF India Ltd appeared for Personal Hearing through their authorized representative Ms. Anjali Hirawat & Ms. Antara BHide both advocates and Mr. Tushar Thorat-Manager- Customs & Foreign Trade of M/s. BASF India Limited. During the personal hearing they *inter-alia* submitted as below:

**5.1.1** With respect to Transaction 1 [Producer: KL-Kepong Oleomas Sdn Bhd, Exporter: KL-Kepong Oleomas Sdn Bhd, Third party invoicing: Unilever Asia Pte Ltd], it is evident from the Certificate of Origin and the Bill of Lading that the imported goods fulfil all criteria laid down vide Sr. No. 8 to the ADD Notification and are entitled to Nil rate of ADD.

**5.1.2** Similarly, documents pertaining to Transaction 2 [Producer: KL-Kepong Oleomas Sdn Bhd, Exporter: KL-Kepong Oleomas Sdn Bhd, Third party invoicing: Procter & Gamble International Operations SA Singapore] also evidence that the imported goods are entitled to Nil rate of ADD as per Sr. No. 8 of the ADD Notification.

**5.1.3** Furthermore, there is no discussion or averment in the Impugned SCN with respect to the imported goods imported vide Transaction 1 and 2. Accordingly, the Impugned SCN is liable to be dropped as far as the proposal for demand of differential duty for these imported goods is concerned.

**5.1.4** With respect to Transaction 3 [Producer: PT Ecogreen Oleochemicals, Exporter: Ecogreen Oleo-chemicals (Singapore) Pte Ltd, Third party invoicing: N.A.], it is the contention of the Department that the goods have been transshipped from Singapore and not exported from Singapore and thus, are not entitled to Sr. No. 1 of the ADD Notification. The Customs Department has not taken notice of Corrigendum dated 13.07.2018 to the Final Findings dated 23.04.2018 which rectified the column (S) pertaining to 'country of export' mentioned in Sr. No. 1 to the ADD Notification from Singapore to Indonesia. Even as per the Impugned SCN, the country of export is Indonesia only. Even if it is assumed that the imported goods are to be exported from Singapore, the imported goods are still 'transshipped' at Singapore which amounts to export from Singapore. They placed reliance on the Bill of Lading for the imported goods read with Sections 40 and 54 of the Customs Act, 1962. In view of the same, the imported goods imported vide Transaction 3 are also entitled to Nil ADD as per Sr. No. 1 to the ADD Notification.

**5.1.5** The extended period of limitation cannot be invoked in the present case as all documents relevant to the present dispute were available with the Department at the time of import itself. Further, certain bills of entry were examined by the Department as well. Thus, the present case is not of misrepresentation or suppression of facts warranting invocation of extended period of limitation. Consequently, proposals for confiscation of imported goods and imposition of penalty are also unsustainable.

**5.2** During the hearing Mr. Girish Nadkarni, advocate and Mr. Suresh Dalvi, proprietor of M/s. Indian Seaways appeared on behalf of the Customs Broker M/s. Indian Seaways. During the hearing they reiterated their written submissions dated 12.02.2025. They submitted that all (41) Bills of entry filed by them as CB were on the basis of documents such as Invoice, COO, Bill of Lading etc. provided by the importer. As per the Bill of Lading and the Country-of-Origin certificates, the goods were supplied by the supplier M/s KL-Kepong Oleomos SDN BHD Malaysia and the goods were shipped from Port Kelang, Malaysia and as such, the benefit of concessional ADD in excess of Nil was available in terms of Sr no 8 of the Notification no. 28/2018-Cus (ADD). They denied the allegation of failure to exercise due diligence and any revenue loss. Even assuming that there was some failure to exercise due diligence, such omission per say would not result in imposition of penalty under section 112(a) of the Customs Act, 1962 as held in the case of Rajesh Maikhuri vs Commissioner of Customs, New Delhi - 2018(363) ELT274(Tri-Del). In any case as provisions of section 111(m) of the Act have not been invoked against their acts of omission/commission, no question of imposition of penalty under Section 112(a) would arise. For the same reasons, in the absence of any mens rea and any evidence to show filing of any false declaration, penalty under Section 114AA would not be imposable on them. They also referred to the instructions issued by the Chief Commissioner of JNCH and CBIC New Delhi on the issue of implicating CB in the matters of interpretation of statutes. Accordingly, they requested for dropping the SCN.

**5.3** During the hearing Mr. Sarvesh K. Mathur, advocate and Mr. Keshav Kerkar, Director appeared on behalf of M/s. Mandar Clearance & Forwarders Pvt. Ltd. During the hearing they reiterated their written submissions and stated that they handled Custom clearance of only two bill of entries out of 50 bill of entries mentioned in the show cause notice and the impugned goods were of Indonesian origin and exported from supplier M/s. Ecogreen Oleo Chemicals (Singapore) Pte. Ltd from the port of Singapore and as such they were entitled for the exemption

under Notification No. 28/2018-Customs ADD dated 25.05.2018 which was correctly availed by the importer and hence there has been no Revenue implication involved. However, as a gesture of fairness and being a true tax payer, the importer paid the anti-dumping duty of Rs. 18,49,355.10 involved in the two bills of entries. They further stated that they are the authorized Custom broker of the importer and working in the SAP system put in place by the importer which does not enable the Customs Broker to make any changes in the classification, rate of duty mentioned therein and the same information is fed in to the EDI system and therefore there has been no act of omission or commission in violation of any provisions of the Customs Act, 1962 rendering the goods confiscable on their part and hence they are not liable for imposition of any penalty under the Customs Act, 1962. They also stated that the impugned goods were subjected to assessment and were cleared under Customs examination and no infirmity in the duty was pointed out. They requested that no penalty be imposed upon them as the issue is of technical nature and there was no intention to evade any payment of duty by the importer and show cause notice be dropped against them.

## DISCUSSIONS AND FINDINGS

**6.1** I have carefully gone through the Show Cause Notice, 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.

**6.2** The adjudicating authority has to take the views/objections of the noticee on board and consider before passing the order. In the instant case, the personal hearing was granted to the noticees on 22.07.2025 which was attended by the respective Authorised representatives of all the three noticees through virtual mode. During the hearing, all the three noticees gave their submissions which have been duly taken on record as detailed in preceding paras. In the instant case, as per Section 28(9) of the Customs Act, 1962 the last date to adjudicate the matter was 19.09.2025 which was extended by the Chief Commissioner of Customs in terms of first proviso to Section 28(9) of the Act *ibid* up to 19.12.2025 vide his order dated 14.09.2025. Accordingly, I am bound to decide the matter on the basis of the submissions made by the noticees and the documents on record. Therefore, the case was taken up by me for adjudication proceedings within the time limit.

**6.3** I find that in compliance to the provisions of Section 28(8) and Section 122A of the Customs Act, 1962 and in terms of the principles of natural justice, opportunities for Personal Hearing (PH) were granted to the Noticees. Thus, the principles of natural justice have been duly followed during the adjudication proceedings. Having complied with the requirement of the principle of natural justice, I proceed to decide the case on merits, bearing in mind the allegations made in the SCN as well as the submissions / contentions made by the Noticee.

**6.4** The present proceedings emanate from Show Cause Notice No. 1099/2024-25/COMMR/NS-I/Gr. II(C-F)/CAC/JNCH dated 20.09.2024 issued to M/s. BASF India Ltd. & two Customs Brokers, alleging wrongful availment of exemption from Anti-Dumping Duty (ADD) on imports of 'Saturated Fatty Alcohols' under 50 Bills of Entry by resorting to mis-declaration. The SCN has raised two points against the importer M/s. BASF India Limited. It is alleged that in some Bills of Entry (Serial No. 47 to 49), the importer inappropriately claimed the benefit of Serial no. 1 of Notification no. 28/2018-Customs (ADD) dated 25.05.2018 (NIL ADD) by showing that the goods were exported from Singapore, even though the goods were actually shipped from Batam, Indonesia and merely transhipped from Singapore, without any declaration being filed there. The SCN contends that the goods fall under Sr. No. 6 of the said Notification attracting ADD at the rate of USD 92.23 per MT. The Notice has further alleged that in other set of Bills of Entry (Sr. no. 1 to 46 & 50) the importer has inappropriately claimed the benefits of Serial no. 08 of the impugned Notification by claiming that the exporter of the goods was M/s. KL-Kepong Oleomas SDN BHD, Malaysia, even though the goods were actually shipped by either M/s. Unilever Asia Private Limited or Procter & Gamble International Operations. The SCN contends that the said goods (mentioned at Sr. No. 1 to 16 & 50) falls under Sr. No. 10 of the ADD Notification attracting ADD at the rate of USD 37.64 Per MT. Accordingly, SCN alleged that differential ADD amounting to Rs. 1,45,29,791 along with IGST amounting to Rs. 26,15,362/- (totally amounting to Rs. 1,71,45,153/-) is

recoverable from the importer under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA. The SCN further proposes holding the goods liable for confiscation under Section 111(m) of the Act, and seeks imposition of penalties upon M/s. BASF India Limited under Sections 112(a), 114A and 114AA of the Customs Act, 1962. It also proposes penal action against the Customs Brokers, M/s. Mandar clearance & forwarders Pvt. Ltd. and M/s. Indian Seaways, under Sections 112(a), 114A and 114AA for their alleged failure to exercise due diligence while filing the impugned Bills of Entry.

**6.5** I find that the importer, M/s. BASF India Limited, has contended that the exemption from Anti-Dumping Duty (ADD) has been availed by them correctly under Serial No. 1 & Serial no. 8 of the Notification no. 28/2018-Cus ADD dated 25.05.2018.

**6.5.1** In relation to the goods imported vide Bills of Entry mentioned at Serial No. 47 to 49, the importer stated that the benefit under Sr. No. 1 of Notification No. 28/2018-Customs (ADD) was rightly claimed, as the consignments were produced by M/s. PT Ecogreen Oleochemicals, Indonesia and exported through their related entity, M/s. Ecogreen Oleochemicals (Singapore) Pte. Ltd. The importer has submitted that the goods were loaded at Singapore which showed that the place of export was Singapore and Ecogreen Singapore was the actual exporter. It has been argued that third-country invoicing is a well-recognized practice in international trade. It has denied any misdeclaration, asserting that the country of origin was correctly declared as Indonesia, the exporter as Ecogreen Singapore, and the port of loading as Singapore in line with shipping practice. Accordingly, the importer has prayed for dropping of the demand, interest, penalty, and confiscation proposed in the Show Cause Notice in relation to such goods imported vide Bills of Entry mentioned at Serial No. 47 to 49 of Annexure-A to the notice.

**6.5.2** In relation to the goods imported vide Bills of Entry mentioned at Serial no. 01 to 46 and 50 of Annexure-A to the notice, the importer stated that the benefit under Serial no. 8 of Notification no. 28/2018-Customs (ADD) was rightly claimed, as the goods were actually produced by M/s. KL- Kepong Oleomas Sdn Bhd, Malaysia and the same were exported from Malaysia only by the same company i.e. M/s. KL- Kepong Oleomas Sdn Bhd, Malaysia through M/s. Unilever Asia Private Limited, Singapore or M/s. Procter & Gamble International Operations SA, Singapore. They submitted that the invoices were raised on the importer by the Singapore companies under 'Bill to- Ship to model' well known method in commercial transactions. The importer further stated that the impugned goods were produced by M/s. KL-Kepong Oleomas Sdn Bhd, Malaysia and the goods were exported from Malaysia only, as the Port of Loading of the imported goods is Port Kelang, Malaysia for discharge at Nhava Sheva, India. They further submitted that M/s. KL-Kepong Oleomas Sdn Bhd, Malaysia is the exporter in the present case as they exported the goods from Malaysia to India and only commercial invoices were raised by Unilever Asia PTE Ltd. or Procter & Gamble International Operations, Singapore. The invoices were generated only for the purpose of facilitating the financial transaction and this arrangement has no bearing on the transaction for the purpose of ADD notification.

**6.6** I have carefully gone through the records of the case, the allegations made in the Show Cause Notice, and the written and oral submissions made by the importer. There are two issues for determination in the matter. Firstly, whether the importer, M/s. BASF India Limited, was eligible to claim exemption from Anti-Dumping Duty (ADD) under Sr. No. 1 of Notification No. 28/2018 Customs (ADD) dated 25.05.2018, in respect of consignments of 'Saturated Fatty Alcohols' produced by M/s. PT Ecogreen Oleochemicals, Indonesia and invoiced by M/s. Ecogreen Oleochemicals (Singapore) Pte. Ltd. The department has alleged that since no export declaration was filed at Singapore and the consignments were merely transhipped through Singapore, the benefit of the said notification was not available, and consequently, the imports were liable to ADD under Sr. No. 6 of the notification. On the other hand, the importer has argued that Ecogreen Singapore was the actual exporter in terms of international trade practice. Therefore, the demand of ADD along with interest and the proposals for confiscation and penalties are liable to be dropped. Secondly, whether the importer M/s. BASF India Limited was eligible to claim exemption from Anti-Dumping Duty (ADD) Serial no. 8 of Notification no. 28/2018-Customs (ADD) dated 25.05.2018 in respect of the consignments from KL- Kepong Oleomas SDN BHD, Malaysia wherein the invoices were generated by M/s. Unilever Asia Pte

Ltd., Singapore or M/s. Procter & Gamble International Operations, Singapore. In second case, the department has alleged that the goods were produced by KL- Kepong Oleomas SDN BHD, Malaysia & exported by the Singapore companies viz. M/s. Unilever Asia Pte Ltd., Singapore or M/s. Procter & Gamble International Operations, Singapore and consequently, the imports were liable to ADD under Sr. No. 10 of the notification. Whereas the importer has argued that M/s. KL-Kepong Oleomas SDN BHD was the producer as well as the exporter as the goods were loaded from Port Kelang, Malaysia for discharge at Nhava Sheva, India and the invoices generated through the Singapore companies was only for the purpose of facilitating a financial transaction.

**6.7** On careful perusal of the Show Cause Notice, reply filed by the Noticee, and the case records, I find that the following main issues arise for determination in this case:

A. Whether or not the goods "Saturated Fatty Alcohols" imported under the Bills of Entry (mentioned at Serial no. 47 to 49) from Ecogreen Oleochemicals (Singapore) are rightly covered for the purpose of Anti-Dumping Duty under Serial No. 1 of Notification No. 28/2018-Customs (ADD) dated 25.05.2018, attracting NIL rate of ADD, or under Serial No. 6 of the said Notification, attracting ADD @ USD 92.23 per MT.

B. Whether or not the goods "Saturated Fatty Alcohols" imported under the Bills of Entry (mentioned at Serial no. 1 to 46 & 50) from KL- Kepong Oleomas Sdn Bhd, Malaysia through Unilever Asia Pte Ltd. Singapore & M/s. Procter & Gamble International Operations Singapore are rightly covered for the purpose of Anti-Dumping Duty under Serial No. 8 of Notification No. 28/2018-Customs (ADD) dated 25.05.2018, attracting NIL rate of ADD, or under Serial No. 10 of the said Notification, attracting ADD @ USD 37.64 per MT.

C. Whether or not the differential Anti-Dumping Duty of ₹1,45,29,791/- and IGST thereon of ₹26,15,362/- (totalling ₹1,71,45,153/-) is recoverable from the importer M/s. BASF India Ltd. under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA.

D. Whether or not the imported goods covered under the Bills of Entry in question are liable to confiscation under Section 111(m) of the Customs Act, 1962.

E. Whether or not penalty is imposable on the importer M/s. BASF India Ltd. under Sections 112(a), 114A and 114AA of the Customs Act, 1962.

F. Whether or not penalties are imposable on the Customs Brokers, namely M/s. Mandar clearance & forwarders Pvt. Ltd. and M/s. Indian Seaways, under Sections 112(a), 114A and 114AA of the Customs Act, 1962.

**6.8** After having framed the substantive issues raised in the SCN which are required 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; nuances of various judicial pronouncements, as well as Noticee's oral and written submissions and documents / evidences available on record.

**A. Whether or not the goods "Saturated Fatty Alcohols" imported under the Bills of Entry (mentioned at Serial no. 47 to 49) from Ecogreen Oleochemicals (Singapore) are rightly covered for the purpose of Anti-Dumping Duty under Serial No. 1 of Notification No. 28/2018-Customs (ADD) dated 25.05.2018, attracting NIL rate of ADD, or under Serial No. 6 of the said Notification, attracting ADD @ USD 92.23 per MT.**

**6.9** I find that in respect of the above-mentioned consignments imported through Singapore, the Noticee's submission that the goods were produced by M/s. PT Ecogreen Oleochemicals, Indonesia and exported through M/s. Ecogreen Oleochemicals (Singapore) Pte. Ltd., thereby attracting NIL ADD under Serial No. 1 of Notification No. 28/2018-Customs (ADD), is borne out from the records. The import documents on file, including the commercial invoices, packing lists, and Certificates of Origin, clearly establish Indonesia as the country of origin, PT Ecogreen Oleochemicals as the producer, and Ecogreen Singapore as the exporter. The Bills of Lading further confirm that the consignments were first shipped from Batam, Indonesia on feeder

vessels, and subsequently loaded onto mother vessels at Singapore, thus identifying Singapore as the port of loading.

**6.10** I find that Notification No. 28/2018-Customs (ADD) dated 25.05.2018 was issued pursuant to the Final Findings of the Designated Authority (DGAD) in the anti-dumping investigation concerning imports of Saturated Fatty Alcohols. In the said findings, the Authority clearly recorded that exports made by M/s. PT Ecogreen Oleochemicals, Indonesia were affected through their related trading arm, M/s. Ecogreen Oleochemicals (Singapore) Pte. Ltd. It was precisely on this basis that Sr. No. 1 of the Notification prescribed a NIL rate of duty for such exports. Thus, the legislative intent underlying the exemption entry was to exempt the exports of PT Ecogreen routed through Ecogreen Singapore, recognizing that such transactions were not causing injury to the domestic industry. In light of this background, it would not be correct to interpret the entry in a manner that defeats the very objective for which it was created.

**6.11** I further find merit in the contention that Ecogreen Singapore was the actual exporter of the goods in terms of international trade practice. The commercial invoices, packing lists, and payment remittances were all issued to and settled with Ecogreen Singapore. It is a well-recognized practice in international trade that goods produced in one country may be invoiced and exported through a related entity in another country, without such practice affecting the eligibility for benefits where the policy intent clearly permits the same. In the present case, although the consignments were loaded at Batam, Indonesia on feeder vessels and transhipped at Singapore onto mother vessels, the port of loading as per the bill of lading was Singapore, which is consistent with global shipping practice. The absence of a shipping bill filed at Singapore cannot by itself negate the fact that Ecogreen Singapore was the exporter of record for the purposes of the notification, since the exemption entry does not prescribe such a procedural requirement.

**6.12** I also take note of the findings of the Designated Authority in the Sunset Review vide Final Findings Notification No. 7/01/2022-DGTR dated 02.02.2023, wherein it was categorically recorded that exports made by M/s. PT Ecogreen Oleochemicals, Indonesia attract a NIL rate of anti-dumping duty, irrespective of the country of export. This clarification from the authority which originally conducted the anti-dumping investigation leaves no ambiguity as to the policy intent. Accordingly, the reliance placed in the SCN on procedural aspects such as non-filing of a shipping bill at Singapore is of no consequence, as the binding clarification of the Designated Authority leaves no scope for denying the NIL duty benefit to PT Ecogreen's exports. Para 146 of Sunset Review vide Final Findings Notification No. 7/01/2022-DGTR dated 02.02.2023 is quoted below for reference:-

*"146. Therefore, Authority recommends continuation of anti-dumping measure as fixed rate duty. Accordingly, definitive anti-dumping duty equal to the amount mentioned in Column 7 of the Duty Table below is recommended to be imposed for five (5) years from the date of the Notification to be issued by the Central Government, on imports of the subject goods described at Column 3 of the Duty Table, originating in or exported from Indonesia, Malaysia and Thailand."*

**DUTY TABLE**

| S. No. | Heading/Sub-Heading | Description of Goods | Country of Origin | Country of Export | Producer | Amount (USD/MT) |
|---|---|---|---|---|---|---|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) |
| 1. | 2905.17, 2905.19, 3823.70 | Saturated Fatty Alcohol of Carbon Chain length C12 to C18 and their blends | Indonesia | Any including Indonesia | M/s. PT Ecogreen Oleochemicals | Nil |

**6.13** Section 9A and 9B of Customs Tariff Act, 1975 are quoted below for reference: -

***"Section 9A. Anti- dumping duty on dumped articles. -***

*(1) Where any article is exported by an exporter or producer from any country or territory (hereinafter in this section referred to as the exporting country or territory) to India at less than its normal value, then, upon the importation of such article into India, the Central Government may, by notification in the Official Gazette, impose an anti-dumping duty not exceeding the margin of dumping in relation to such article.*

***Explanation**. For the purposes of this section, -*

*(a)"margin of dumping", in relation to an article, means the difference between its export price and its normal value;*

*(b) "export price", in relation to an article, means the price of the article exported from the exporting country or territory and in cases where there is no export price or where the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported articles are first resold to an independent buyer or if the article is not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as may be determined in accordance with the rules made under sub-section (6);*

*(c)"normal value", in relation to an article, means -*

*(i) the comparable price, in the ordinary course of trade, for the like article when 2 [destined for consumption] in the exporting country or territory as determined in accordance with the rules made under sub section (6); or*

*(ii) when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either -*

*(a) comparable representative price of the like article when exported from the exporting country or [territory to] an appropriate third country as determined in accordance with the rules made under sub-section (6); or*

*(b) the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6):*

***Provided** that in the case of import of the article from a country other than the country of origin and where the article has been merely transhipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.*

*(1A) Where the Central Government, on such inquiry as it may consider necessary, is of the opinion that circumvention of anti-dumping duty imposed under sub-section (1) has taken place, either by altering the description or name or composition of the article subject to such anti-dumping duty or by import of such article in an unassembled or disassembled form or by changing the country of its origin or export or in any other manner, whereby the anti-dumping duty so imposed is rendered ineffective, it may extend the anti-dumping duty to such article or an article originating in or exported from such country, as the case may be, from such date, not earlier than the date of initiation of the inquiry, as the Central Government may, by notification in the Official Gazette, specify.*

*(1B) Where the Central Government, on such inquiry as it may consider necessary, is of the opinion that absorption of anti-dumping duty imposed under sub-section (1) has taken place whereby the antidumping duty so imposed is rendered ineffective, it may modify such duty to counter the effect of such absorption, from such date, not earlier than the date of initiation of the inquiry, as the Central Government may, by notification in the Official Gazette, specify.*

***Explanation**. - For the purposes of this sub-section, "absorption of anti-dumping duty" is said to have taken place,-*

*(a) if there is a decrease in the export price of an article without any commensurate change in the cost of production of such article or export price of such article to countries other than India or resale price in India of such article imported from the exporting country or territory; or*

*(b) under such other circumstances as may be provided by rules.*

*(2) The Central Government may, pending the determination in accordance with the provisions of this section and the rules made thereunder of the normal value and the margin of dumping in relation to any article, impose on the importation of such article into India an anti-dumping duty on the basis of a provisional estimate of such value and margin and if such anti-dumping duty exceeds the margin as so determined :-*

*(a) the Central Government shall, having regard to such determination and as soon as may be after such determination, reduce such anti-dumping duty; and*

*(b) refund shall be made of so much of the anti-dumping duty which has been collected as is in excess of the anti-dumping duty as so reduced.*

*(2A) Notwithstanding anything contained in sub-section (1) and sub-section (2), a notification issued under sub-section (1) or any anti-dumping duty imposed under sub-section (2) shall not apply to articles imported by a hundred percent export-oriented undertaking or a unit in a special economic zone, unless,-*

*(i) it is specifically made applicable in such notification or to such undertaking or unit; or*

*(ii) such article is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area, in which case, anti-dumping duty shall be imposed on that portion of the article so cleared or used, as was applicable when it was imported into India.*

***Explanation**. - For the purposes of this section,-*

*(a) the expression"hundred percent export-oriented undertaking" shall have the same meaning as assigned to it in clause (i) of Explanation 2 to sub-section (1) of section 3 of the Central Excise Act, 1944 (1 of 1944);*

*(b) the expression"special economic zone" shall have the same meaning as assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005).*

*(3) If the Central Government, in respect of the dumped article under inquiry, is of the opinion that–*

*(i) there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury; and*

*(ii) the injury is caused by massive dumping of an article imported in a relatively short time which in the light of the timing and the volume of imported article dumped and other circumstances is likely to seriously undermine the remedial effect of the anti-dumping duty liable to be levied, the Central Government may, by notification in the Official Gazette, levy anti-dumping duty retrospectively from a date prior to the date of imposition of anti-dumping duty under sub-section (2) but not beyond ninety days from the date of notification under that sub-section, and notwithstanding anything contained in any law for the time being in force, such duty shall be payable at such rate and from such date as may be specified in the notification.*

*(4) The anti-dumping duty chargeable under this section shall be in addition to any other duty imposed under this Act or any other law for the time being in force.*

*(5) The anti-dumping duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition:*

***Provided** that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period 8 [upto five years] and such further period shall commence from the date of order of such extension :*

***Provided further*** *that where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the anti-dumping duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year.*

***Provided*** *also that if the said duty is revoked temporarily, the period of such revocation shall not exceed one year at a time.*

*(6) The margin of dumping as referred to in sub-section (1) or sub-section (2) shall, from time to time, be ascertained and determined by the Central Government, after such inquiry as it may consider necessary and the Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner in which articles liable for any anti-dumping duty under this section may be identified, and for the manner in which the export price and the normal value of, and the margin of dumping in relation to, such articles may be determined and for the assessment and collection of such anti-dumping duty.*

*(6A) The margin of dumping in relation to an article, exported by an exporter or producer, under inquiry under sub-section (6) shall be determined on the basis of records concerning normal value and export price maintained, and information provided, by such exporter or producer:*

*Provided that where an exporter or producer fails to provide such records or information, the margin of dumping for such exporter or producer shall be determined on the basis of facts available.*

*(7) Every notification issued under this section shall, as soon as may be after it is issued, be laid before each House of Parliament.*

*(8) The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.]*

***Section 9B. No levy under section 9 or section 9A in certain cases. -***

*(1) Notwithstanding anything contained in section 9 or section 9A, -*

*(a) no article shall be subjected to both countervailing duty and anti-dumping duty to compensate for the same situation of dumping or export subsidization;*

*(b) the Central Government shall not levy any countervailing duty or anti-dumping duty -*

*(i) under section 9 or section 9A by reasons of exemption of such articles from duties or taxes borne by the like article when meant for consumption in the country of origin or exportation or by reasons of refund of such duties or taxes;*

*(ii) under sub-section (1) of each of these sections, on the import into India of any article from a member country of the World Trade Organisation or from a country with whom Government of India has a most favoured nation agreement (hereinafter referred as a specified country), unless in accordance with the rules made under sub-section (2) of this section, a determination has been made that import of such article into India causes or threatens material injury to any established industry in India or materially retards the establishment of any industry in India; and*

***(iii) under sub-section (2) of each of these sections, on import into India of any article from the specified countries unless in accordance with the rules made under sub-section (2) of this section, a preliminary findings has been made of subsidy or dumping and consequent injury to domestic industry; and a further determination has also been made that a duty is necessary to prevent injury being caused during the investigation:***

***Provided*** *that nothing contained in sub-clauses (ii) and (iii) of clause (b) shall apply if a countervailing duty or an anti-dumping duty has been imposed on any article to prevent injury or threat of an injury to the domestic industry of a third country exporting the like articles to India;*

*(c) the Central Government may not levy –*

*(i) any countervailing duty under section 9, at any time, upon receipt of satisfactory voluntary undertakings from the Government of the exporting country or territory agreeing to eliminate or limit the subsidy or take other measures concerning its effect, or the exporter agreeing to revise the price of the article and if the Central Government is satisfied that the injurious effect of the subsidy is eliminated thereby;*

*(ii) any anti-dumping duty under section 9A, at any time, upon receipt of satisfactory voluntary undertaking from any exporter to revise its prices or to cease exports to the area in question at dumped price and if the Central Government is satisfied that the injurious effect of dumping is eliminated by such action.*

*(2) The Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner in which any investigation may be made for the purposes of this section, the factors to which regard shall be at in any such investigation and for all matters connected with such investigation."*

**6.14** I note that under the statutory framework of Section 9A of the Customs Tariff Act, 1975, the levy of Anti-Dumping Duty (ADD) is contingent upon the Final Findings and recommendations of the Designated Authority (DA) functioning under the Directorate General of Trade Remedies (DGTR), Ministry of Commerce and Industry. The DA alone is empowered to conduct a detailed investigation into alleged dumping, determine the margin of dumping, assess the injury to domestic industry and recommend the imposition of ADD at specific rates for specific producer-exporter combinations. The Customs authorities cannot travel beyond their scope or reinterpret them at the assessment or adjudication stage.

**6.15** I also note the mandate of Section 9B(1)(b)(iii) of the Customs Tariff Act, 1975, which categorically stipulates that no anti-dumping duty shall be levied on imports from a country unless two specific preconditions are met:

1. A **preliminary finding** of dumping or subsidy and the consequent injury to the domestic industry; and

2. A **further determination** that imposition of such duty is necessary to prevent injury during the pendency of investigation.

**6.16** This statutory provision reflects the legislative intent that ADD cannot be imposed automatically or on mere suspicion, but only after due inquiry and determination in strict accordance with the rules framed under Section 9B(2) of the act, *ibid*. In the present case, the Designated Authority (DGTR), in its Final Findings of 2018 as well as the subsequent Sunset Review of 2023, has clearly determined that exports from M/s PT Ecogreen Oleochemicals, Indonesia, through M/s Ecogreen Oleochemicals (Singapore) Pte. Ltd., attract a NIL rate of ADD. There is no preliminary finding, nor any subsequent determination, justifying levy of ADD on these specific consignments. Hence, imposition of ADD by disregarding such findings would be contrary to Section 9B(1)(b)(iii) of the Customs Tariff Act, 1975 and *ultra vires* to the statutory framework.

**6.17** The Hon'ble Bombay High Court in *Mahle Anand Thermal Systems Pvt. Ltd. v. Union of India* [2023 (383) E.L.T. 32 (Bom.)] categorically held that the levy and collection of Anti-Dumping Duty (ADD) in disregard of the statutory framework under Section 9A read with Section 9B(1)(b)(iii) of the Customs Tariff Act, 1975 is impermissible. The Court, while granting relief to the petitioner, declared that the impugned levy was "incorrect and contrary to Section 9A read with 9B(b)(iii)", as the goods in question stood excluded under the Final Findings. Para 12 to 14 of the said judgement is quoted below: -

*"12. Of course, in the notification issued being Notification No. 23 of 2017 the description of the goods not included in the goods on which anti-dumping duty is leviable is worded as under :-*

*"(vii) Clad with compatible non-clad Aluminium Foil : Clad with compatible non-clad Aluminium Foil is a corrosion-resistant aluminium sheet formed from aluminium surface layers metallurgically bonded to high-strength aluminium alloy core material for use in engine cooling*

*and air conditioner systems in automotive industry; such as radiator, condenser, evaporator, intercooler, oil cooler and heater."*

*13. Subsequently, there is a clarification issued by the Directorate General of Anti-Dumping and Allied Duties on 1st February, 2018 which is quoted earlier. Therefore, it is quite clear that clad as well as clad with compatible non-clad or unclad aluminium foil has been excluded from anti-dumping duty. Respondent No. 4 therefore was not justified in insisting on payment of antidumping duty for clearance of unclad or non-clad consignment of aluminium foil, more so, when the same product is allowed to be imported from other ports without insisting on payment of levy of anti-dumping duty.*

*14. In view of the above, we allow the petition in terms of prayer clauses (a1) and (e) and the same read as under:-*

*"(a1) that this Hon'ble Court be pleased to issue a writ of Mandamus or a writ in the nature of Mandamus or any other writ, order or direction under Article 226 of the Constitution of India declaring that levy and collection of ADD on unclad or non-clad aluminium foils for automobile industry imported from China PR in terms of Notification No.23/2017-Cus. (ADD), dated 16-5-2017, is incorrect and contrary to Section 9A read with 9B(b)(iii) of the Customs Tariff Act, 1975 and read with paragraph(s) 9(ii)(c), 12, 31, 79 and 136(xlix) of Final Findings dated 10-3-2017.*

*(e) that this Hon'ble Court be pleased to issue a writ of Mandamus or a writ in the nature of Mandamus or any other writ, order or direction under Article 226 of the Constitution of India ordering and directing the respondents by themselves, their officers, subordinates, servants and agents to forthwith grant refund of Anti-dumping Duty paid by the petitioner under protest on import of unclad/non-clad aluminium foil from China PR in terms of Notification No. 23/2017Cus.(ADD), dated 16-5-2017 during the period from August 2017 to December 2018;"*

**6.18** Applying the above legal position to the facts of the present case, I find that the DA in its Final Findings of 2018 clearly determined that exports of goods produced by M/s PT Ecogreen Oleochemicals, Indonesia, through M/s Ecogreen Oleochemicals (Singapore) Pte. Ltd., attract NIL ADD. Further, the Sunset Review of 2023 reaffirmed this position by recording that the NIL rate applies to exports of the said producer with "Country of Export – Any including Indonesia," thereby recognizing that routing or transhipment through Singapore does not disqualify the goods from levy of NIL ADD.

**6.19** Therefore, any denial of benefit on the basis of objections relating to exporter-of-record or transhipment would amount to re-interpreting or overriding the DA's binding determinations, which is impermissible under Section 9A, Section 9B, and the ratio laid down by the Hon'ble Bombay High Court. Consequently, I hold that the demand of ADD proposed in the SCN in respect of the Bills of Entry mentioned at Serial no. 47 to 49 of Annexure-A to the SCN is unsustainable in law.

**6.20** I further find that the Hon'ble Gujarat High Court, in *Realstrips Pvt. Ltd. v. Union of India* [2023 (11) Centax 272 (Guj.)], has laid down the binding principle that the recommendations of the Designated Authority (DA) constitute the **jurisdictional facts** for any levy, withdrawal, or continuation of Anti-Dumping Duty or Countervailing Duty. In para **7.6.1**, the Court categorically held:

*"7.6.1 The recommendations of the designated authority would contain the findings on these facts and aspects. They are the jurisdictional facts. They are the foundations for the Central Government to take a decision and to issue the notification. The jurisdictional facts cannot be bypassed."*

**6.21** The above ratio squarely applies to the present case. It reinforces that the levy, continuation, or withdrawal of duty must strictly follow the statutory procedure and be founded upon DA's findings. Any attempt by Customs authorities to impose or interpret Anti-Dumping Duty beyond the DA's determinations amounts to bypassing jurisdictional facts and is ultra vires the Customs Tariff Act.

**6.22** I find that the Department's position appears to be based on a narrow interpretation of the term "exported from Singapore," focusing on the physical movement of goods from Batam to

Singapore via feeder vessel rather than the legal and commercial role of the exporter. However, this stance seems inconsistent with the Designated Authority's findings and the intent of Notification No. 28/2018-Customs (ADD) for the following reasons:

**6.22.1** In international trade and anti-dumping investigations, the "exporter" is typically the entity responsible for the commercial transaction, not necessarily the entity at the port of physical shipment. Here, M/s Ecogreen Oleochemicals (Singapore) Pte Ltd is clearly identified as the exporter as invoices were raised by them and the financial transactions occurred between the Singapore firm and the Noticee. The Designated Authority explicitly recognized this role in its findings.

**6.22.2** The definition of transshipment as provided in S.B Sarkar's 'Words and Phrases of Central Excise and Customs' is reproduced below:

*"Transship, or Trans-shipment means to transfer from one ship or conveyance to another. Transshipment of imported goods without payment of duty is provided for in Section 54 of the Customs Act, 1962."*

Further, the term transshipment has been defined under Chapter 2, International Convention on the Simplification and Harmonization Of Customs Procedures (Kyoto Convention) as follows:

*""transhipment" means the Customs procedure under which goods are transferred under Customs control from the importing means of transport to the exporting means of transport within the area of one Customs office which is the office of both importation and exportation."*

From the above definitions, it is evident that definition of the term transshipment does not by any means exclude the act of export. In the instant case, the goods were shipped from Indonesia to Singapore to their related party, which were subsequently exported to India. This can also be seen from the Bill of Lading issued & signed in Singapore. In the instant case, the export would tantamount to goods being taken outside of Singapore. The fact that the goods are being transshipped has no bearing on the fact that the imported goods are indeed exported from Singapore.

**6.22.3** Transhipment does not alter exporter status. Transhipment through Singapore from Batam to the main vessel is a common logistical practice and does not change the identity of the exporter. The Sunset Review Findings vide F. No. 7/01/2022-DGTR explicitly state that the country of export is "Any including Indonesia," indicating that the NIL ADD rate applies regardless of whether the goods were shipped directly from Indonesia or transhipped through another port, such as Singapore. The Department's focus on the port of loading Singapore as evidence of non-export from Singapore ignores this clarification.

**6.22.4** Had the exporter itself been based in Indonesia, the movement through Singapore could have been characterised as mere transhipment. However, since the exporter was M/s Ecogreen Oleochemicals (Singapore) Pte Ltd, the shipment cannot be so treated; rather, it represents a valid export from Singapore by the entity expressly recognised in Serial No. 1 of the Notification.

**6.22.5** The intent of Serial No. 1 of Notification No. 28/2018-Customs (ADD) specifically covers the producer-exporter combination of M/s PT Ecogreen Oleochemicals and M/s Ecogreen Oleochemicals (Singapore) Pte Ltd. The Designated Authority's investigation considered the entire export chain, including the ex-factory sale and costs incurred by the Singapore entity for example inland freight. Assigning a NIL injury margin to this combination indicates that the arrangement was thoroughly evaluated and deemed non-injurious to the domestic industry. Denying the NIL ADD rate-by alleging/interpreting movement of goods through Singapore as mere transhipment-would effectively nullify Serial No. 1, as it would prevent the very transaction it was designed to cover from receiving the intended benefit.

**6.22.6** The invoices and payment remittances all align with the requirements of Serial No. 1. The Department's contention that the goods were not exported from Singapore lacks support and is not sustainable, as the documentation clearly establishes M/s Ecogreen Oleochemicals (Singapore) Pte Ltd as the exporter.

**6.22.7** In anti-dumping cases, the focus is on the commercial and legal roles of the parties involved, not merely the physical movement of goods. The Designated Authority's findings and the Sunset Review explicitly account for the transhipment process and affirm the applicability of the NIL ADD rate. The Department's interpretation appears to contradict these findings, which carry legal weight as they form the basis of the notification.

**6.23** Therefore, I find that the importer is correct in claiming Serial No. 1 of Notification No. 28/2018-Customs (ADD) in the Bills of Entry as mentioned at Serial no. 47 to 49 of Annexure-A to the notice as it specifically covers the transaction involving goods produced by M/s PT Ecogreen Oleochemicals (Indonesia) and exported by M/s Ecogreen Oleochemicals (Singapore) Pte Ltd. The Department's denial of the NIL ADD rate on the grounds that the goods were transhipped through Singapore and not exported from Singapore is not supported by the Designated Authority's Final Findings or the Sunset Review. The notification and its underlying findings clearly account for the export arrangement, including transhipment, and assign a NIL ADD rate to this specific producer-exporter combination.

**6.24** I find that the Department's reliance on Serial No. 6 of the Notification, which prescribes an Anti-Dumping Duty of US$ 92.23 per MT, is misplaced. A careful reading of the Notification reveals that Serial No. 6 applies **only** to imports of the subject goods **originating from countries other than** those subjected to anti-dumping duty. In the present case, the country of origin is Indonesia which has been subjected to anti-dumping duty, and the producer-exporter combination has been clearly covered under Serial No. 1 of the Notification, which prescribes NIL rate of ADD. As such, Serial No.6 clearly cannot be applied to the subject imports originated from Indonesia. Thus, invoking Serial No. 6 to impose ADD is legally untenable as it amounts to expanding the scope of the Notification beyond its express terms.

**6.25** I find that the proposal contained in the Show Cause notice in respect of Bills of Entry mentioned at Sr. No. 47 to 49 of Annexure-A to the Notice are not supported by cogent evidence or sustainable reasoning. The case of the Department rests on the assertion that the benefit of Serial No. 1 of Notification No. 28/2018-Cus. (ADD) is not available because no export declaration was filed at Singapore and that the goods were merely transhipped through Singapore. However, the SCN does not cite any provision of law or condition in the Notification which prescribes filing of a shipping bill at Singapore as a prerequisite for claiming the exemption. It is a settled principle that conditions not expressly provided in the Notification cannot be read into by implication.

**6.25.1** Further, the SCN overlooks the fact that the Designated Authority, in its Final Findings as well as the Sunset Review, has already examined the export channel of PT Ecogreen Indonesia through Ecogreen Singapore and granted NIL ADD to this producer–exporter combination. The very foundation of the Serial No.1 of the Notification rests on these findings, and the SCN has failed to show how the importer's claim falls outside their scope. In fact, all the documents relied upon—Certificates of Origin, Bills of Lading, commercial invoices, and payment remittances support the importer's stand that the goods originated in Indonesia and were exported through Ecogreen, Singapore.

**6.25.2** Therefore, I find that the SCN is fundamentally flawed in its reasoning, proceeds on presumptions rather than evidence, and fails to establish the statutory grounds.

**6.26** In light of the foregoing discussion, including the statutory framework under Sections 9A and 9B of the Customs Tariff Act, 1975, the DGTR's Final Findings, and binding judicial precedents of the Hon'ble Gujarat High Court, Hon'ble Bombay High Court, I conclude that the goods imported by the Noticee vide Bills of Entry mentioned at Serial No. 47 to 49 of Annexure-A were correctly assessed under Serial No. 1 of Notification No. 28/2018-Customs (ADD) attracting NIL rate of Anti-Dumping Duty. The Department's reliance on Serial No. 6 is misplaced and unsustainable, as it amounts to an interpretation contrary to the Final Findings and the express scope of the Notification. Accordingly, I hold the impugned goods imported by the noticee through Singapore are not liable for levy of Anti-Dumping Duty.

**B. Whether or not the goods "Saturated Fatty Alcohols" imported under the Bills of Entry mentioned at Serial no. 1 to 46 & 50 of Annexure- A to the Notice from KL- Kepong Oleomas Sdn Bhd, Malaysia through M/s. Unilever Asia Pte Ltd., Singapore or M/s.**

**Procter & Gamble International Operations, Singapore are rightly covered for the purpose of Anti-Dumping Duty under Serial No. 8 of Notification No. 28/2018-Customs (ADD) dated 25.05.2018, attracting NIL rate of ADD, or under Serial No. 10 of the said Notification, attracting ADD @ USD 37.64 per MT.**

**6.27** I find that in respect of the consignments manufactured by M/s. KL-Kepong Oleomas Sdn Bhd, Malaysia mentioned at Serial no. 1 to 46 & 50 of Annexure-A to the notice, the noticee has submitted that they are eligible for NIL rate of duty by virtue of Serial no. 8 of the Notification no. 28/2018-Cus (ADD). I find that out of the aforementioned 47 entries mentioned in Annexure-A, one Bill of Entry bearing no. 2969588 dated 01.03.2021 was supplied by M/s. Procter & Gamble International Operations, Singapore and rest of the goods were supplied by M/s. Unilever Asia Pte Ltd., Singapore. However, all the goods were manufactured by M/s. KL-Kepong Oleomas Sdn Bhd, Malaysia. I find that in the instant case the importer has claimed NIL rate of duty under the pretext the goods were produced and exported by M/s. KL-Kepong Oleomas Sdn Bhd, Malaysia as the goods were loaded at Port Kelang, Malaysia for Nhava Sheva, India. The importer has submitted that as the goods moved directly from Malaysia to India and the Singapore companies which raised the invoices on the importer cannot be considered as an exporter and shall only be considered as an entity for facilitating financial transaction. However, the SCN has demanded duty on the impugned goods as per Serial no. 10 of the said Notification on the ground that the exporter of the goods is other than M/s. KL-Kepong Oleomas Sdn Bhd, Malaysia as the goods were either supplied by M/s. Unilever Asia Pte Ltd., Singapore or M/s. Procter & Gamble International Operations, Singapore.

**6.28** I find that two serial numbers i.e. Sr. no. 8 & 10 of the Notification no. 28/2018-Cus (ADD) are under dispute and the same are as reproduced below:

| **Sr No** | **Sub-headings** | **Description of goods** | **Country of origin** | **Country of export** | **Producer** | **Exporter** | **Amount** | **Unit** | **Currency** |
|---|---|---|---|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| …. | …… | …… | ….. | ….. | ….. | ….. | ….. | …. | ….. |
| 8 | 290517, 290519, 382370 | All types of saturated Fatty Alcohols excluding Capryl Alcohols (C8) and Decyl Alcohols (C10) and blends of C8 and C10 | Malaysia | Malaysia | M/s. KL-Kepong Oleomas Sdn Bhd | M/s. KL-Kepong Oleomas Sdn Bhd | NIL | MT | USD |
| …. | …. | …. | …. | …. | …. | …. | …. | …. | …. |
| 10 | -do- | -do- | Malaysia | Any Country | Any | Any | 37.64 | MT | USD |

**6.29** As can be seen from relevant part the notification above, to qualify for Serial no. 8 of the Notification, the producer and Exporter of the goods MUST be M/s. KL-Kepong Oleomas Sdn Bhd along with the Country of Origin & Country of Export MUST be Malaysia. In the instant case, as it is evident from the documents on record, the manufacturer/producer of the goods is M/s. KL-Kepong Oleomas Sdn Bhd, Malaysia and the Country of Origin of the impugned goods is established as Malaysia. I find that the issue under dispute is whether M/s. KL-Kepong Oleomas Sdn Bhd, Malaysia can be considered as Exporter as the goods were loaded from Port

Kelang, Malaysia even though the invoices were raised by M/s. Unilever Asia Pte Ltd, Singapore or M/s. Procter & Gamble International Operations, Singapore.

**6.30** I find that in the instant case, the invoices were raised by the companies viz. M/s. Unilever Asia Pte Ltd. or M/s. Procter & Gamble International Operations and both of these firms are established in Singapore. Upon close examination of the facts and commercial documents presented in this case, several material aspects emerge relating to the determination of the "exporter" for customs purposes and the eligibility for duty exemption benefit as available in aforementioned Notification no. 28/2018-Cus (ADD).

**6.30.1** I find that under customs law, the exporter is not solely defined by the geographic location from which goods are shipped but by the entity responsible for fulfilling export formalities viz. issuing the invoice, receiving payment, and bearing the commercial and contractual risk of the transaction. I find that the exporter is the principal party in interest who determines and controls the movement of goods out of the originating customs territory. In the present case, even though the goods physically originated from Malaysia, the commercial trail reveals that the sale contract for the goods was executed between the Singapore company viz. M/s. Unilever Asia Pte. Ltd. or M/s. Procter & Gamble International Operations SA, and the noticee i.e. M/s. BASF India Limited. I find that the Singapore company raised the Commercial invoice on the importer and accordingly, received the payment for the goods. The Malaysian entity's role was restricted to supplying goods to the Singapore company, without any direct commercial relationship with the importer.

**6.30.2** I find that to qualify for Serial no. 8 of the Notification, Country of Export MUST be Malaysia and the exporter MUST be M/s. KL-Kepong Oleomas Sdn Bhd. However, in the instant case, the invoices were raised by the Singapore companies which shows that the remittance for the goods was made to the Singapore company which showed that the transfer of risk and title under the sale agreement has occurred between Singapore and India. Also, the commercial documents produced for customs clearance—the invoice, packing list etc. designate the Singapore companies as the seller and exporter.

**6.30.3** I find that for ADD notification, the exporter is the contracting party documented as the seller in the commercial invoice and who receives the import considerations. Also, as per the international trade practices and Customs valuations principles, the entity issuing the commercial invoice to the importer is considered as the exporter of record. In the instant case, the Malaysian producer i.e. M/s. KL-Kepong Oleomas Sdn Bhd did not receive the payment directly from the Indian buyer thereby ruling a direct export transaction between Malaysia and India. Accordingly, I am of the considered opinion that the movement of goods from Port Kelang, Malaysia to India does not alter the fact that the exporter of the goods in the case are Singapore companies i.e. M/s. Unilever Asia Pte Ltd., Singapore or M/s. Procter & Gamble International Operations, Singapore.

**6.31** I find that in the instant case, the noticee's claim of Serial no. 8 of Notification No. 28/2018-Cus (ADD) dated 25.05.20181 on the basis that the goods were exported by Malaysian company M/s. KL-Kepong Oleomas Sdn Bhd would not sustain and M/s. Unilever Asia Pte Ltd., Singapore and M/s. Procter & Gamble International Operations, Singapore will be considered as the actual exporter of the goods. I find that even in the Bills of Entry, the noticee has mentioned M/s. Unilever Asia Pte Ltd., Singapore as the supplier of the goods. Had they considered M/s. KL-Kepong Oleomas Sdn Bhd as the exporter & supplier, they ought to have declared the Malaysian firm as the supplier in the import documents.

**6.32** I find that as per Serial no. 8, benefit of NIL ADD duty is given only in the case wherein the goods were produced & exported by M/s. KL-Kepong Oleomas, Sdn Bhd, Malaysia and this benefit was accorded by Designated Authority after thorough investigation and after due considering the facts of the individual cases. As detailed in paras *supra,* in earlier situation wherein the manufacturer/producer was M/s. PT Ecogreen Oleochemicals & the exporter was M/s. Eco Green Oleochemicals (Singapore) Pte. Ltd., Singapore, the benefit of NIL rate of duty was accorded to them as the said two companies were related to each other and the exports were affected through their related trading arm. I find that after thorough investigations, Designated Authority came to the conclusion and benefit of NIL ADD cannot be granted to other conditions

but only in case where the producer & exporter both are M/s. KL-Kepong Oleomas Sdn Bhd, Malaysia.

**6.33** I find that as detailed in preceding paras the Hon'ble Gujarat High Court, in *Realstrips Pvt. Ltd. supra*, has laid down the binding principle that the recommendations of the Designated Authority (DA) constitute the jurisdictional facts for any levy, withdrawal, or continuation of Anti-Dumping Duty or Countervailing Duty. The above ratio squarely applies to the present situation also in as much as it reinforces that the levy, continuation, or withdrawal of duty must strictly follow the statutory procedure and be founded upon DA's findings.

**6.34** In light of the foregoing discussion, including the statutory framework under Sections 9A and 9B of the Customs Tariff Act, 1975, the DGTR's Final Findings and binding judicial precedents, I conclude that the goods imported by the Noticee vide Bills of Entry mentioned at Serial No. 1 to 46 & 50 of Annexure-A to the notice were not eligible for Serial No. 8 of Notification No. 28/2018-Customs (ADD) and ADD at the rate of USD 37.64 per MT is liable to be recovered from the importer as per Serial no. 10 of the impugned Notification.

**C. Whether or not the differential Anti-Dumping Duty of ₹1,45,29,791/- and IGST thereon of ₹26,15,362/- (totalling ₹1,71,45,153/-) is recoverable from the importer M/s. BASF India Ltd. under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA.**

**6.35** After having determined the applicability of the ADD notification on the subject 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.*

**6.36** As discussed in paras *supra,* I find that the Noticee is eligible for serial no. 1 of the ADD notification no. 28/2018-Cus (ADD) dated 25.05.2018 in case of the goods imported vide Bills of Entry mentioned at Serial No. 47 to 49 of Annexure-A to the notice. Accordingly, the demand of ADD amounting to Rs. 18,49,356/- and IGST thereon amounting to Rs. 3,32,884/-, totally amounting to Rs. 21,82,240/- is liable to be dropped.

**6.37** I find that the importer M/s. BASF India Limited had evaded payment of correct Anti-Dumping Duty on the goods imported vide Bills of Entry mentioned at Serial no. 1 to 46 and 50 by intentionally opting the Serial no. 8 of Notification no. 28/2018-Cus (ADD) dated 25.05.2018 even though they were aware that they were ineligible for the same. In the case of these Bills of Entry, the importer intentionally availed wrong Serial number of the notification even when they were aware that M/s. KL-Kepong Oleomas Sdn Bhd, Malaysia was not the actual Shipper/exporter of the impugned goods. They were aware that M/s. Unilever Asia Pte Ltd., Singapore & M/s. Procter Gamble International operation, Singapore were actual exporter and the same had correctly been declared by them in the impugned Bills of Entry. However, inspite of the exporter the goods being the Singapore companies, the noticee kept on availing ineligible serial no. 8 of the ADD notification. This clearly shows that the importer intentionally opted for

wrong serial number of the impugned notification to claim NIL rate of duty even though they were aware that they were not eligible for the same. By resorting to this deliberate and wilful suppression of facts, the Noticee has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer.

**6.38** 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. I find that the importer kept on availing wrong serial number of the notification even though they were completely aware that the actual exporters in the case were the Singapore companies. The noticee intentionally misguided the authorities and did not come clean and did not inform the authorities with clear intention to hoodwink the Customs authorities by wrongly availing the benefits of ineligible notification. 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 wilfully supressed the facts in the import of impugned goods and claimed ineligible notification benefit, 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 wilfully 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.

**6.39** It is also Noticee's contention that the Final Assessment Order is not challenged by filing an appeal and hence, SCN issued under section 28 of the Customs Act, 1962 is without jurisdiction. In this regard, I find that Section 28 of the Customs Act, 1962 has an exclusive provision covering the aspect pertaining to non-levy, short levy and erroneous refund. There is no provision or requirement under the Customs Act, 1962 of review of an assessment order before raising demand under Section 28 of the Customs Act, 1962. Under Section 129D for review of an order by the department, the limitation is to an extent of a period of three month only, whereas Section 28 provides period of 2 years/5 years for raising demand of short paid or short levied duty. Under Section 129D, any decision or order can be examined and reviewed by the competent authority. But the provisions of Section 28 of the Act are for matters only pertaining to non-levy, short-levy and erroneous refund. The provisions of demand of non-levy, short-levy and for recovery of erroneous refund under Section 28 of the Act are independent provisions. Similarly, the provisions of Section 129D are independent of Section 28 of the Act. Provisions of Section 28 satisfy the principles of natural justice by making it mandatory for issuance of Show Cause Notice and to allow the party to have a full hearing on the charges that would be made against them. The proceedings under Section 28 are of exclusive nature, in as much as, independent proceedings are held by issue of Show Cause Notice by the Department by which it sets out the reason for claiming non-levy, short-levy relying on evidence. The noticee gets full opportunity to know the charges levelled against him as well as the evidence on which the charges are levelled and in turn place his case with supporting evidence in defence. Thus, Section 28 is to be considered independent of the provisions of Section 129D of the Act. The issue is well settled by the higher judicial fora wherein it is held that Section 28 can be invoked for short-levy or non-levy of customs duty even if assessment order is not appealed under Section 129 of the Act. The Hon'ble High Court of Madras in the case of M/s. Venus Enterprise V/s. CC, Chennai, reported as 2006 (199) ELT 405 (Mad.) and affirmed by the Hon'ble Supreme Court [2007 (209) ELT A61 (S.C.)], after considering the Apex Court's earlier judgment in the case of M/s. Priya Blue Ind [2004 (172) E.L.T. 145 (S.C.)] has held that in case of short levy, there is no lack of jurisdiction on the part of the adjudicating authority to issue Show Cause Notice under Section 28 of the Act after clearance of the goods

**6.40** In view of the foregoing, I find that, due to deliberate / wilful mis-classification of goods, duty demand against the Noticee has been correctly proposed under Section 28(4) of the Customs Act, 1962 by invoking the extended period of limitation. In support of my stand of invoking extended period, I rely upon the following court decisions:

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

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

(b) 2013(290)E.L.T.322 (Guj.): Salasar Dyeing & Printing Mills (P) Ltd. Versus C.C.E. & C., Surat-I; Tax Appeal No. 132 of 2011, decided on 27.01.2012.

*Demand - Limitation - Fraud, collusion, wilful misstatement, etc. - Extended period can be invoked up to five years anterior to date of service of notice - Assessee's plea that in such case, only one year was available for service of notice, which should be reckoned from date of knowledge of department about fraud, collusion, wilful misstatement, etc., rejected as it would lead to strange and anomalous results;*

(c) 2005 (191) E.L.T. 1051 (Tri. - Mumbai): Winner Systems Versus Commissioner of Central Excise & Customs, Pune: Final Order Nos. A/1022-1023/2005-WZB/C-I, dated 19-7-2005 in Appeal Nos. E/3653/98 & E/1966/2005-Mum.

*Demand - Limitation - Blind belief cannot be a substitute for bona fide belief - Section 11A of Central Excise Act, 1944. [para 5]*

(d) 2006 (198) E.L.T. 275 - Interscape v. CCE, Mumbai-I.

*It has been held by the Tribunal that a bona fide belief is not blind belief. A belief can be said to be bona fide only when it is formed after all the reasonable considerations are taken into account;*

**6.41** I find that the noticee M/s. BASF India Limited has paid the differential ADD duty along with IGST thereon vide different Challans in respect of the Bills of Entry as detailed in Annexure-A to the notice. The details of the payment are as below:

| Sr. No. | Bill of Entry Sr. No. in Annexure-A to the Notice | Challan No. & Date | Amount Paid (in Rs.) |
|---|---|---|---|
| 1. | 1 to 8 | HC 43 and HCM 339 dated 05.01.2023 | 34,67,258/- |
| 2. | 9 to 11, 13 to 41 | HC 182 dated 19.05.2023 | 1,10,50,372/- |
| 3. | 12 and 44 | HC 225 and HCM 1672 dated 20.12.2024 | 4,45,280/- |
| 4. | 47 to 49 | HC 221 and HCM 1620 dated 20.12.2024 | 21,82,239/- |
| | | TOTAL | 1,71,45,149/- |

I find that the Noticee M/s. BASF India Limited paid the differential Anti-Dumping Duty along with IGST thereon as demanded in the Show Cause Notice. However, the said payment was made under protest. I also find that with regard to Bills of Entry mentioned at Serial no. 42 to 46 and 50, the Customs Broker M/s. Indian Seaways has submitted that the said Bills of Entry have been assessed provisionally. I find that in respect of five Bills of Entry mentioned at Serial no. 42, 43, 45, 46 and 50 the importer had paid applicable ADD at the time of clearance of the consignments. The said fact was also verified from the EDI system and the copies of the Bills of Entry submitted by the Customs Broker. Further, I find that in Annexure-A to the Show Cause Notice also, differential ADD and consequential IGST in case of these five provisionally assessed Bills of Entry has been calculated as NIL. I find that in respect of provisionally assessed Bill of Entry no. 2564348 dated 22.09.2022 (mentioned at Serial no. 44), the importer had paid partial duty at the time of clearance of the goods. However, the differential duty amounting to Rs. 1,39,840/- (ADD of Rs. 1,18,508/- + IGST of Rs. 21,332/-) demanded in Annexure-A to the

SCN was paid by the importer vide Challan No. HC 225 and HCM 1672 dated 20.12.2024 as detailed in Table above.

**6.42.1** I find that the six provisionally assessed Bills of Entry mentioned at Serial no. 42 to 46 and 50 of Annexure-A to the notice, shall be finalised after imposing ADD & consequential IGST as per Serial no. 10 of ADD Notification no. 28/2018-Cus ADD. In respect of provisionally assessed Bills of Entry mentioned at Serial no. 42, 43, 45, 46 and 50, the importer had paid the applicable Anti-Dumping duty & consequential IGST at the time of clearance only, therefore, no differential duty is liable to be recovered from them. Whereas, in case of provisionally assessed Bill of Entry no. 2564348 dated 22.09.2022 (mentioned at Serial no. 44), the importer paid only partial duty at the time of clearance of the goods and accordingly, the differential Anti-Dumping Duty and IGST thereon totally amounting to Rs. 1,39,840/- (ADD of Rs. 1,18,508/- + IGST of Rs. 21,332/-) is liable to be recovered from the importer M/s. BASF India Limited along with applicable interest at the time of finalization of the same.

**6.42.2** I find that for the reasons discussed hereinabove, the Bills of Entry mentioned at Serial no. 47 to 49 are eligible for NIL rate of ADD as per Serial no. 1 of ADD Notification. I find that the importer has paid the differential duty demanded against such Bills of Entry totally amounting to Rs. 21,82,240/- (ADD of Rs. 18,49,356/- + IGST thereon of Rs. 3,32,884/-) under protest. As the Noticee is eligible for NIL rate of ADD, the demand of differential duty amounting to Rs. 21,82,240/- in respect of such Bills of Entry is liable to be dropped.

**6.42.3** I find that for the reasons discussed hereinabove, the goods imported vide Bills of Entry mentioned at Serial no. 1 to 41 as detailed in Annexure-A to the notice, the importer is not eligible for Serial no. 8 of the ADD Notification no. 28/2018-Cus (ADD) and Anti-Dumping Duty is liable to be imposed on such goods as per Serial no. 10 of the impugned ADD notification. As the importer had wilfully availed wrong Serial no. of the ADD notification, therefore, the differential Anti-Dumping Duty and IGST thereon is liable to be recovered from them in terms of Section 28(4) of the Customs Act, 1962. I find that in the SCN, total demand of Rs. 1,71,45,153/- has been demanded from the importer. Out of the total demand of Rs. 1,71,45,153/-, the duty demand of Rs. 21,82,240/- (as detailed in para 6.42.2 above) does not sustain and the demand of Rs. 1,39,840/- in respect of six provisionally assessed Bills of Entry (as detailed in Para 6.42.1 above) cannot be demanded under Section 28, as the said bills of Entry are assessed on provisional basis. Therefore, the demand of Rs. 1,48,23,073/- {Rs. 1,71,45,153/- - Rs. 23,22,080/- (Rs. 21,82,240/- + Rs. 1,39,840/-)} in respect of Bills of Entry mentioned at Serial no. 1 to 41 is confirmed from the importer under Section 28(4) of the Customs Act, 1962 and is also liable to be recovered from them.

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

**6.44** Under Section 28AA of the Customs Act, the person who is liable to pay duty in accordance with the provisions of the Section 28, shall in addition to such duty, be liable to pay interest. In case M/s Kamat Printers Pvt. Ltd. the 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.

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

**6.46** In case of 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.

**6.47** 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. Accordingly, the noticee is liable to pay interest under Section 28AA of the Customs Act, 1962 on the differential duty of Rs. 1,48,23,073/- as detailed in para 6.42.3 above. I find that the amount deposited by the noticee totally amounting to Rs. 1,71,45,149/- as tabulated in Para 6.41 above, shall be appropriated towards the aforementioned demand of differential duty and interest.

**D. Whether or not the imported goods covered under the Bills of Entry in question are liable to confiscation under Section 111(m) of the Customs Act, 1962.**

**6.48** I find that the importer had subscribed to a declaration as to the truthfulness of the contents of the bills of entry in terms of Section 46(4) of the Act 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. Thus, under the scheme of self-assessment, it is the importer who has to diligently ensure that he declares 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 while presenting the bill of entry. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 8th April, 2011, there is an 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.

**6.49** I also find that, it is very clear that w.e.f. 08.04.2011, the importer must self-assess the duty under Section 17. Such onus appears to have been deliberately not discharged by M/s. BASF India Limited. In terms of the provisions of Section 46(4) of the Customs Act, 1962, the importers 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 and in support of such declaration, produce to the proper officer the invoice, of any, relating to the imported goods. 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. In the instant case, the impugned Bills of Entry being self-assessed were substantially mis-declared by the importer in respect of the classification while being presented to the Customs. I find that during the relevant period, the importer had filed Bills of Entry by choosing ineligible notification even when their matter was sub-judiced and the matter had already been decided in favour of the department. The importer never came clean and informed the department about the matter being sub-judiced.

**6.50** I find that the SCN proposes confiscation of goods under the provisions of Section 111(m) of the Customs Act, 1962. Provisions of these Sections of the Act, are re-produced herein below:

*"SECTION 111. **Confiscation of improperly imported goods,** etc. — 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 3 [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];*

**6.51** I find that evidences are placed on record substantiating that the Importer M/s. BASF India Limited by way of willful mis-statement, mis-representation and suppression of facts, imported the goods by wrongly availing Serial no. 8 of the ADD Notification No. 28/2018-Cus (ADD) with intent to clear goods at lower rate of duty. It is a settled law position that when an importer is claiming a duty benefit, it is the responsibility of the importer to exercise reasonable care to the accuracy and truthfulness of the information supplied. Therefore, the burden of proof naturally falls on the importer to prove the eligibility of the notification for the impugned goods. I therefore find that the said import of goods by wrongly availing the notification benefit of the notification, squarely falls within the ambit of 'illegal import' as defined in section 11 of the Customs Act, 1962 in as much as the same was done in contravention of various provisions of the Customs Act, 1962.

**6.52** I find that the importer has intentionally and knowingly opted for the said notification while filing the Bills of Entry even when they were aware that the good were actually exported by M/s. Unilever Asia Pte Ltd., Singapore & M/s. Procter & Gamble International Operations, Singapore and would not fall within the ambit of Serial No. 8 of the ADD notification. I find that the goods imported by M/s. BASF India Limited vide Bills of Entry mentioned at Serial no. 1 to 46 and 50 in Annexure-A to the notice, did not correspond with the notification claimed by them and therefore were imported in violation of Section 111(m) of the Customs Act, 1962 and are accordingly liable for confiscation. I also find that the case is established on documentary evidences in respect of past imports, though the department is not required to prove the case with mathematical precision but what is required is the establishment of such a degree of probability that a prudent man may on its basis believe in the existence of the facts in issue [as observed by the Hon'ble Supreme Court in CC Madras V/s D Bhuramal – [1983 (13) ELT 1546 (SC)]. Further in the case of K.I. International Vs Commissioner of Customs, Chennai reported in 2012 (282) E.L.T. 67 (Tri. - Chennai) the Hon'ble CESTAT, South Zonal Bench, Chennai has held as under: -

> *"Enactments like Customs Act, 1962, and Customs Tariff Act, 1975, are not merely taxing statutes but are also potent instruments in the hands of the Government to safeguard interest of the economy. One of its measures is to prevent deceptive practices of undue claim of fiscal incentives. Evidence Act not being applicable to quasi-judicial proceeding, preponderance of probability came to rescue of Revenue and Revenue was not required to prove its case by mathematical precision. Exposing entire modus operandi through allegations made in the show cause notice on the basis of evidence gathered by Revenue against the appellants was sufficient opportunity granted for rebuttal. Revenue discharged its onus of proof and burden of proof remained un-discharged by appellants. They failed to lead their evidence to rule out their role in the offence committed and prove their case with clean hands. No evidence gathered by Revenue were demolished by appellants by any means. '*

**6.53** In view of the fraud and intentional wrong availment of the impugned Notification for the imported goods, the goods having assessable value of Rs. 80,63,03,207/- (Total Assessable value of the goods mentioned in Annexure-A to the notice i.e. Rs. 83,53,77,965/- minus Assessable value of the goods which were eligible for Serial no. 1 of the ADD notification i.e. Rs. 2,90,74,758/-) as detailed in the notice are liable for confiscation under Section 111(m) of the Customs Act, 1962.

**6.54** The subject imported goods, 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)."*

**6.55** 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.). 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.

**6.56** It is established under the law that the declaration under section 46 (4) of the Customs Act, 1962 made by the importer at the time of filing Bills 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. A few such cases are detailed below:

**a.** M/s Dadha Pharma h/t. Ltd. Vs. Secretary to the Govt. of India, as in 2000 (126) ELT 535 (Chennai High Court);

**b.** M/s Sangeeta Metals (India) Vs. Commissioner of Customs (Import) Sheva, as reported in 2015 (315) ELT 74 (Tri-Mumbai);

**c.** M/s SacchaSaudhaPedhi Vs. Commissioner of Customs (Import), Mu reported in 2015 (328) ELT 609 (Tri-Mumbai);

**d.** M/s Unimark Remedies Ltd. Versus. Commissioner of Customs (Export Promotion), Mumbai reported in 2017(335) ELT (193) (Bom)

**e.** M/s Weston Components Ltd. Vs. Commissioner of Customs, New Delhi reported in 2000 (115) ELT 278 (S.C.) wherein it has been held that:

> *"if subsequent to release of goods import was found not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods - Section 125 of Customs Act, 1962, then the mere fact that the goods were released on the bond would not take away the power of the Customs Authorities to levy redemption fine."*

**f.** Commissioner of Customs, Chennai Vs. M/s Madras Petrochem Ltd. As reported in 2020 (372) E.L.T. 652 (Mad.) wherein it has been held as under:

*"We find from the aforesaid observation of the Learned Tribunal as quoted above that the Learned Tribunal has erred in holding that the cited case of the Hon'ble Supreme Court in the case of Weston Components, referred to above is distinguishable. This observation written by hand by the Learned Members of the Tribunal, bearing their initials, appears to be made without giving any reasons and details. The said observation of the Learned Tribunal, with great respect, is in conflict with the observation of the Hon'ble Supreme Court in the case of Weston Components."*

**6.57** 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.

**6.58** In view of above facts, findings and legal provisions, I find that it is an admitted fact with documentary evidences that the importer had willfully wrongly availed Serial No. 8 of the notification no. 28/2018-Customs ADD in respect of the impugned goods. Therefore, I hold that the acts and omissions of the importer, by way of collusion, wilful mis-statement, mis-declaration and suppression of facts of the imported goods, have rendered the goods mentioned at Serial no. 1 to 46 and 50 of Annexure-A to the notice is liable for confiscation under section 111 (m) of the Customs Act, 1962. Accordingly, I observe that the present case also merits imposition of Redemption Fine, regardless of the physical availability, once the goods are held liable for confiscation.

**E. Whether or not penalty is imposable on the importer M/s. BASF India Ltd. under Sections 112(a), 114A and 114AA of the Customs Act, 1962.**

**6.59** The provisions of Section 112(a) and 114A of the Customs Act, 1962 are reproduced as under:

***SECTION 112. Penalty for improper importation of goods, etc.*** *— 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,*

*Shall be liable*

*(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 the 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 the greater:*

***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 (2) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:*

***Provided*** *that where such duty or interest, as the case may be, as determined under sub-section (8) of section 28, and the interest payable thereon under section 28AA, is paid within thirty days from the date of the communication of the orders of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be* ***twenty-five per cent*** *of the duty or interest, as the case may be, so determined:*

***Provided** further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:*

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

*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.*

**6.60** It is a settled law that fraud and justice never dwell together (Frauset Jus nunquam cohabitant). Lord Denning had observed that "no judgement of a court, no order of a minister can be allowed to stand if it has been obtained by fraud, for, fraud unravels everything". There are numerous judicial pronouncements wherein it has been held that no court would allow getting any advantage which was obtained by fraud. The Hon'ble Supreme Court in case of CC, Kandla vs. Essar Oils Ltd. reported as 2004 (172) ELT 433 SC at paras 31 and 32 held as follows:

> *"31. "Fraud" as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (Ram Chandra Singh v. Savitri Devi and Ors.[2003 (8) SCC 319].*
> *32. "Fraud" and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. Principle Bench of Tribunal at New Delhi extensively dealt with the issue of Fraud while delivering judgment in Samsung Electronics India Ltd. Vs commissioner of Customs, New Delhi reported in 2014(307)ELT 160(Tri. Del). In Samsung case, Hon'ble Tribunal held as under.*
> *"If a party makes representations which he knows to be false and injury ensues there from although the motive from which the representations proceeded may not have been bad is considered to be fraud in the eyes of law. It is also well settled that misrepresentation itself amounts to fraud when that results in deceiving and leading a man into damage by wilfully or recklessly causing him to believe on falsehood. Of course, innocent misrepresentation may give reason to claim relief against fraud. In the case of Commissioner of Customs, Kandla vs. Essar Oil Ltd. - 2004 (172) E.L.T. 433 (S.C.) it has been held that by "fraud" is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill-will towards the other is immaterial. "Fraud" involves two elements, deceit and injury to the deceived.*
> *Undue advantage obtained by the deceiver will almost always cause loss or detriment to the deceived. Similarly a "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (Ref: S.P. Changalvaraya Naidu v. Jagannath [1994 (1) SCC 1: AIR 1994 S.C. 853]. It is said to be made when it appears that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly and carelessly whether it be true or false [Ref :RoshanDeenv. PreetiLal [(2002) 1 SCC 100], Ram Preeti Yadav v. U.P. Board of High School and*

*Intermediate Education [(2003) 8 SCC 311], Ram Chandra Singh's case (supra) and Ashok Leyland Ltd. v. State of T.N. and Another [(2004) 3 SCC 1].*

*Suppression of a material fact would also amount to a fraud on the court [(Ref: Gowrishankarv. Joshi Amha Shankar Family Trust, (1996) 3 SCC 310 and S.P. Chengalvaraya Naidu's case (AIR 1994 S.C. 853)]. No judgment of a Court can be allowed to stand if it has been obtained by fraud. Fraud unravels everything and fraud vitiates all transactions known to the law of however high a degree of solemnity. When fraud is established that unravels all. [Ref: UOI v. Jain Shudh Vanaspati Ltd. - 1996 (86) E.L.T. 460 (S.C.) and in Delhi Development Authority v. Skipper Construction Company (P) Ltd. - AIR 1996 SC 2005]. Any undue gain made at the cost of Revenue is to be restored back to the treasury since fraud committed against Revenue voids all judicial acts, ecclesiastical or temporal and DEPB scrip obtained playing fraud against the public authorities are non est. So also no Court in this country can allow any benefit of fraud to be enjoyed by anybody as is held by Apex Court in the case of Chengalvaraya Naidu reported in (1994) 1 SCC I : AIR 1994 SC 853. Ram Preeti Yadav v. U.P. Board High School and Inter Mediate Education (2003) 8 SCC 311.*

*A person whose case is based on falsehood has no right to seek relief in equity [Ref: S.P. Chengalvaraya Naidu v. Jagannath, AIR 1994 S.C. 853]. It is a fraud in law if a party makes representations, which he knows to be false, and injury ensues there from although the motive from which the representations proceeded may not have been bad. [Ref: Commissioner of Customs v. Essar Oil Ltd., (2004) 11 SCC 364 = 2004 (172) E.L.T. 433 (S.C.)].*

*When material evidence establishes fraud against Revenue, white collar crimes committed under absolute secrecy shall not be exonerated as has been held by Apex Court judgment in the case of K.I. Pavunnyv.AC, Cochin - 1997 (90) E.L.T. 241 (S.C.). No adjudication is barred under Section 28 of the Customs Act, 1962 if Revenue is defrauded for the reason that enactments like Customs Act, 1962, and Customs Tariff Act, 1975 are not merely taxing statutes but are also potent instruments in the hands of the Government to safeguard interest of the economy. One of its measures is to prevent deceptive practices of undue claim of fiscal incentives.*

*It is a cardinal principle of law enshrined in Section 17 of Limitation Act that fraud nullifies everything for which plea of time bar is untenable following the ratio laid down by Apex Court in the case of CC. v. Candid Enterprises - 2001 (130) E.L.T. 404 (S.C.). Non est instruments at all times are void and void instrument in the eyes of law are no instruments. Unlawful gain is thus debarred."*

**6.61** I find that in the instant case, the impugned imports under the ambit of the subject SCN were affected in the name of M/s. BASF India Limited. I note that the importer had wrongly availed the benefit of Serial no. 8 of the Notification No. 28/2018-Cus (ADD) in relation to the impugned goods mentioned at Serial No. 1 to 46 and 50 with intention to evade payment of proper duties of Customs. In view of the provisions discussed above, I find that the correct applicable duty had not been levied by reasons of willful mis-statement and suppression of facts. As per provisions of Section 114A of the Customs Act, 1962, where duty has been short-levied by reason of wilfull misstatement or suppression of facts, the person who is liable to pay duty under Section 28(4) of the Customs Act, 1962, shall also be liable to pay a penalty under the said section. In the instant case, as discussed in paras *supra,* the duty has been short-levied for the reasons of misstatement and suppression of facts at the end of the importer in respect of the goods imported vide Bills of Entry mentioned at Serial no. 1 to 41 of Annexure-A to the notice, therefore, the importer i.e. BASF India Limited is also liable for penal action under Section 114A of the Customs Act, 1962 in such cases. I find that the Bills of Entry mentioned at Serial no. 42 to 46 and 50 of Annexure-A to the notice are assessed provisionally and the demand against them cannot be made under Section 28(4) of the Customs Act, 1962. I also find that the importer had paid appropriate Anti-Dumping Duty and IGST thereon in relation to the five Bills of Entry mentioned at Serial no. 42, 43, 45, 46 and 50 of Annexure-A to the notice at the time of clearance and in respect of Bill of Entry no. 2564348 dated 22.09.2022 (mentioned at Serial no. 44) only paid partial duty as detailed in paras *supra*. As the importer did not pay appropriate ADD in relation to such goods (BE mentioned at Serial no. 44) by wrongly availing Serial no. 8 of the

ADD notification with the intent to evade payment of proper duties of Customs, they are liable for penal action under Section 112(a) of the Customs Act, 1962.

**6.62** As per Section 114AA of the Customs Act, 1962 if a person intentionally signs any declaration or document which is false in any material particular is liable to penalty. Also, as per Section 46(4) of the Customs Act, 1962, the importer shall make a declaration as to the truth of the contents of the Bill of Entry filed by them. In the instant case, M/s. BASF India Ltd. filed the Bills of Entry and they were aware that the goods imported by them were not eligible for NIL rate of duty as per Serial no. 8 of notification no. 28/2018-Customs (ADD), however, the noticee intentionally made wrong declaration and availed the notification for which they were otherwise not eligible, with the clear intention of evading payment of proper duties of Customs. Conjoint reading of Section 46(4) and Section 114AA of the Customs Act, 1962 and discussions as detailed in paras supra, it has been established beyond doubt that the importer gave wrong declaration in the Bills of Entry and wrongly availed the notification with the clear intent to evade duty. Accordingly, penalty is imposable on M/s. BASF India Ltd. under Section 114AA of the Customs Act, 1962. I also find that in the following cases, it is held that penalty under Section 114AA of the Customs Act is imposable for the circumstances mentioned therein related to imports and these cases have precedence value:

(i) S. M. Taufeek vs Comm of Customs, Chennai-IV [2017(358) ELT 326 (Tri. Chennai)]

(ii) Brij Kishor Goel Vs Commissioner of Customs, Ahmedabad [2019(367) ELT 656(Tri-Ahmd)]

**F. Whether or not penalties are imposable on the Customs Brokers, namely M/s. Mandar clearance & forwarders Pvt. Ltd. and M/s. Indian Seaways, under Sections 112(a), 114A and 114AA of the Customs Act, 1962.**

**6.63** I find that the notice has proposed penalty on the Custom Broker M/s. Mandar Clearance & Forwarders Pvt. Ltd. and M/s. India Seaways under Section 112(a) and/or Section 114A and Section 114AA of the Customs Act, 1962. Section 112(a) of the Customs Act, 1962 reads as below:

***SECTION 112. Penalty for improper importation of goods, etc.*** *— 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*

*Shall be liable*

*(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 the greater;*

*(ii)in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is the greater:*

*……."*

**6.64** I find that the penalty under Section 114A of the Customs Act, 1962 can be imposed only on the person who is liable to pay duty. As discussed in preceding paras, the importer M/s. BASF India Limited is liable to pay duty, therefore, no penalty under Section 114A of the Customs Act, 1962 can be imposed on the Customs Brokers.

**6.65** I find that the Custom Broker M/s. Mandar Clearance & Forwarders Pvt. Ltd. filed Bills of Entry as mentioned at Serial No. 47 to 49 of Annexure-A to the notice, wherein the goods were imported from M/s. P T Ecogreen Oleochemicals through Ecogreen Oleochemicals Singapore Pte Ltd., Singapore by opting Serial no. 1 of the Notification No. 28/2018-Cus (ADD). As discussed in paras *supra,* the importer has rightly availed the notification in respect of the said goods and no differential duty is confirmed against such Bills of Entry. I find that as the Bills of Entry filed through Customs Broker M/s. Mandar Clearance & Forwarders Pvt. Ltd. were eligible for NIL rate of duty and were appropriately filed, therefore, no penalty can be imposed on them either under Section 112(a) or 114AA of the Customs Act, 1962.

**6.66** I find that the Customs Broker M/s. Indian Seaways filed rest of the Bills of Entry for M/s. BASF India Ltd. wherein the goods were produced by M/s. KL-Kepong Oleomas Sdn Bhd, Malaysia, however, the same were exported by the Singapore companies i.e. M/s. Unilever Asia Pte Ltd., Singapore or M/s. Procter & Gamble International Operations, Singapore. For the reasons discussed hereinabove, I find that the importer was not eligible for NIL rate of duty as per Serial No. 8 of the ADD notification as the goods were exported from M/s. Unilever Asia Pte Ltd., Singapore or from M/s. Procter & Gamble International Operations, Singapore. In the Bills of Entry filed by M/s. Indian Seaways the supplier has been shown as Singaporean companies, even then they opted for Serial No. 8 of the ADD notification wherein eligible was only when the goods were exported by M/s. KL-Kepong Oleomas Sdn Bhd, Malaysia. This act of Commission on part of the Customs Broker, by intentionally opting for wrong Serial Number even when on the face of the documents it is clearly visible that they were not eligible NIL rate of duty under the notification, has made the goods liable for confiscation under Section 111 of the Act, *ibid*. I find that the Customs Broker has not produced any discussion between them and the importer wherein they have suggested the importer that they are not eligible for NIL rate of duty. I find that the Customs Broker M/s. Indian Seaways has relied upon various judgments and also on the instructions issued by CBIC and stated that they simply filed the Bills of Entry on the basis of the documents. I find that CBIC and various other judicial forums has granted immunity to the Customs Broker only on the issues involving interpretation and not in the cases wherein the case has been booked on the basis of the documents. In the instant case, the invoices were generated by the Singapore Companies and the NIL rate of duty as per the impugned ADD notification was granted specifically to one Malaysian based company i.e. KL-Kepong Oleomas Sdn Bhd and it was clear from the import documents that importer was not eligible for NIL rate of duty. Therefore, I find that the Customs Broker cannot take shield behind the CBIC instructions wherein the immunity has been granted only on interpretative issues. Had the Customs Broker behaved more diligently and responsibly, there would not have been any loss to the government exchequer. This act of commission on part of the Customs Broker by opting wrong Serial number of the ADD notification and giving wrong declaration while filing the Bills of Entry has made the impugned goods liable for confiscation. Accordingly, I uphold the penalties proposed on the Customs Broker M/s. Indian Seaways under section 11 2(a) and Section 114AA of the Customs Act, 1962.

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

## ORDER

**7.1** I hold that the importer M/s. BASF India Limited is not eligible for Serial no. 8 of the ADD Notification no. 28/2018-Cus dated 25.05.2018 in respect of the Bills of Entry mentioned at Serial No. 1 to 41 of Annexure A to the Notice and Anti-Dumping Duty & consequential IGST shall be levied in terms of Serial no. 10 of the Notification no. 28/2018-Cus dated 25.05.2018 and order that the said Bills of Entry shall be reassessed accordingly.

**7.2** I confirm the demand of differential duty amounting to Rs. 1,48,23,073/- (as detailed in para 6.42.3 above) in respect of the Bills of Entry mentioned at Serial no. 1 to 41 of Annexure A to the Notice, under Section 28(4) of the Customs Act, 1962 and order that the same shall be recovered from the importer M/s. BASF India Limited along with applicable interest thereon under Section 28AA of the Customs Act, 1962.

**7.3** I order that the provisionally assessed Bills of Entry mentioned at Serial no. 42 to 46 and 50 of Annexure-A to the notice, shall be finalized after imposing ADD & consequential IGST in terms of Serial no. 10 of the Notification no. 28/2018-Cus dated 25.05.2018.

**7.4** I confirm the demand of differential duty amounting to Rs. 1,39,840/- in respect of provisionally assessed Bill of Entry no. 2564348 dated 22.09.2022 mentioned at Serial no. 44 of Annexure-A to the notice and order that the same shall be recovered along with applicable interest thereon from M/s. BASF India Limited at the time of finalization of such Bill of Entry. As the importer had paid appropriate duty at the time of clearance in provisionally assessed Bills of Entry mentioned at Serial no. 42, 43, 45, 46 & 50 in terms of Serial no. 10 of ADD notification no. 28/2018-Cus (ADD) dated 25.05.2018 and no demand has been raised against them in the SCN also, therefore, no differential duty is liable to be recovered from them at the finalisation of such Bills of Entry.

**7.5** I hold that the importer M/s. BASF India Limited is eligible for NIL rate of duty under Serial no. 1 of the ADD Notification no. 28/2018-Cus dated 25.05.2018 in respect of the Bills of Entry mentioned at Serial No. 47 to 49 of Annexure-A to the notice. Accordingly, I drop the demand of Rs. 21,82,239/- in respect of the Bills of Entry mentioned at Serial No. 47 to 49 of Annexure-A to the notice for the reasons mentioned hereinabove.

**7.6** I hold the goods valued at Rs. 80,63,07,207/- in respect of the Bills of Entry mentioned at Serial no. 1 to 46 and 50 of Annexure-A to the Notice liable for confiscation. I order that such goods shall be confiscated under Section 111(m) of the Customs Act, 1962, even though the same are not physically available for confiscation. However, I give an option to M/s. BASF India Limited to redeem such goods under Section 125 of the Customs Act, 1962 on payment of fine of Rs 4,00,00,000/- (Rupees Four Crores Only).

**7.7** I impose a penalty equal to differential duty of Rs. 1,48,23,073/- along with the applicable interest thereon, on the importer M/s. BASF India Limited under Section 114A of the Customs Act, 1962.

**7.8** I impose a penalty equal to Rs 10,000/- on M/s. BASF India Limited under Section 112(a) of the Customs Act,1962 in relation to the provisionally assessed Bills of Entry mentioned at Serial no. 42 to 46 & 50 of Annexure-A to the notice.

**7.9** I impose a penalty of Rs. 4,00,00,000/- on M/s. BASF India Limited under Section 114AA of the Customs Act, 1962.

**7.10** I impose a penalty of Rs. 5,00,000/- on the Customs Broker M/s. Indian Seaways under Section 112(a) of the Customs Act, 1962.

**7.11** I impose a penalty of Rs. 5,00,000/- on the Customs Broker M/s. Indian Seaways under Section 114AA of the Customs Act, 1962.

**7.12** I refrain from imposing penalty on M/s. Indian Seaways under Section 114A of the Customs Act, 1962.

**7.13** I refrain from imposing penalty on M/s. Mandar Clearance & Forwarders Pvt. Ltd. under Section 112(a), Section 114A and Section 114AA of the Customs Act, 1962

**7.14** I order that the amount of Rs. 1,71,45,149/- paid by M/s. BASF India Limited shall be appropriated towards the demand of differential duty, interest and penalty imposed on them.

**8.** 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.

Digitally signed by
Yashodhan Arvind Wanage
Date: 15-10-2025
17:16:06

**(Yashodhan Arvind Wanage)**
**Pr. Commissioner of Customs,**
**NS-1, JNCH, Nhava Sheva.**

To,

1) M/s BASF INDIA LIMITED (IEC-0388007257),
4B GIDC Dahej Vaghara, Bharuch, Gujarat, India -392120.

2) CB M/s. Indian Seaways (AAAPD4532ECH001),
202, 2nd Floor, Thakkar Height, Opposite CEAT Tyre Co., Subhash Nagar, Village Road, Nahur(W), Mumbai-400078.

3) CB M/s. Mandar Clearance & Forwarders Pvt Ltd (AAECM1616MCH002),
607, Thacker Tower, Plot No. 86, Sector-17, Vashi, Navi Mumbai, Maharashtra 400706.

Copy to:

1. Asst./Dy. Commissioner of Customs, SIIB (Import), JNCH.
2. The Additional Commissioner of Customs, Group II(C-F), JNCH.
3. AC/DC, Chief Commissioner's Office, JNCH
4. AC/DC, Centralized Revenue Recovery Cell, JNCH
5. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
6. EDI Section for displaying on website
7. Office Copy.