	<p><b>OFFICE OF THE Pr. COMMISSIONER OF CUSTOMS, NS-I</b> सीमाशुल्कआयुक्तकाकार्यालय, एनएस-I <b>CENTRALIZED ADJUDICATION CELL, JAWAHARLAL NEHRU</b> <b>CUSTOM HOUSE,</b> केंद्रीकृतअधिनिर्णयनप्रकोष्ठ, जवाहरलालनेहरूसीमाशुल्कभवन, <b>NHAVA SHEVA, TALUKA-URAN, DIST- RAIGAD,</b> <b>MAHARASHTRA 400707</b> न्हावाशेवा, तालुका-उरण, जिला- रायगढ़, महाराष्ट्र -400 707</p>
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DIN: 20250978NW0000222F54

Date of Order: 04.09.2025

Date of Issue: 04.09.2025

F.No. S/10-409/204/Gr.VII JNCH/Part I

SCN No. S/10-409/204/Gr.VII JNCH/Part I dated 01.01.2005

आदेशकीतिथि: 04.09.2025

जारीकिएजानेकीतिथि: 04.09.2025

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.: 186/2025-26 /Pr. Commr/NS-I /CAC /JNCH

आदेशसं. : 186/2025-26/प्र. आयुक्त/एनएस-1/ सीएसी/जेएनसीएच

Name of Party/Noticee: M/s Eternis Fine Chemicals (Formerly known as Atlas Fine Chemicals) & others

पक्षकार (पार्टी)/ नोटिसीकानाम: मेसर्स एटरनिस फाइन केमिकल्स (पूर्व एटलस फाइन केमिकल्स) और दूसरे

### 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, उसकेउपयोगकेलिएनिःशुल्कदीजातीहै।

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 (वेस्टरीजनलबेंच), ३४, पी. डी. मेलोरोड, मस्जिद (पूर्व), मुंबई- ४००००९कोअपीलकरसकताहै, जोउक्तअधिकरणकेसहायकरजिस्ट्रारकोसंबोधितहोगी।

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

3. अपीलदाखिलकरनेसंबंधीमुख्यमुद्दे:-

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) (एक हजार रुपये—जहाँ माँगये शुल्क एवं ब्याज की तथालगायी गयी शास्ति की रकम ५ लाख रुपये या उससे कम है।

(b) Rs. Five Thousand - Where amount of duty & Page 2 of 41

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

(ख) (पाँच हजार रुपये— जहाँ माँगये शुल्क एवं ब्याज की तथालगायी गयी शास्ति की रकम ५ लाख रुपये से अधिक परंतु ५० लाख रुपये से कम है।

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

(ग) (दस हजार रुपये—जहाँ माँगये शुल्क एवं ब्याज की तथालगायी गयी शास्ति की रकम ५० लाख रुपये से अधिक है।

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

भुगतान की रीति— क्रॉस बैंक ड्राफ्ट, जो राष्ट्रीय कृत बैंक द्वारा सहाय कर जस्ट्रार, सीईएसटीएटी, मुंबई के पक्ष में जारी किया गया हो तथामुंबई में देय हो।

**General** - For the provision of law & from as referred to above & other related matters, Customs Act, 1962, Customs (Appeal) Rules, 1982, Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982 may be referred.

सामान्य - विधिके उपबंधों के लिए तथा ऊपर यथासंदर्भित एवं अन्य संबंधित मामलों के लिए, सीमा शुल्क अधिनियम, १९९२, सीमा शुल्क (अपील) नियम, १९८२ सीमा शुल्क, उत्पादन शुल्क एवं सेवा कर अपील अधिकरण (प्रक्रिया) नियम, १९८२ का संदर्भ लिया जाए।

4. Any person desirous of appealing against this order shall, pending the appeal, deposit 7.5% of duty demanded or penalty levied therein and produce proof of such payment along with the appeal, failing which the appeal is liable to be rejected for non-compliance with the provisions of Section 129 of the Customs Act 1962.

5. इस आदेश के विरुद्ध अपील करने के लिए इच्छुक व्यक्ति अपील अनिवार्य रूप से तब तक उसमें माँगये शुल्क अथवा उद्घृहीत शास्ति का ७.५ %

जमा करेगा और ऐसे भुगतान का प्रमाण प्रस्तुत करेगा, ऐसा न किये जाने पर अपील सीमा शुल्क अधिनियम, १९६२ की धारा १२८ के उपबंधों की अनुपालना न किये जाने के लिए नामंजूर किये जाने की दायी होगी।

## **BRIEF FACTS OF THE CASE**

**1.1** M/s. Atlas Fine Chemicals situated at Plot No.948/2, STICE, Sinnar, Dist. Nashik (herein after called as "AFC") holding Central Excise Registration No. AAACA3780A XM001 mainly manufacture the excisable products namely Coumarin falling under Sub-Heading No.2932.00 of Central Excise Tariff Act, 1985. AFC were issued advance licenses from time to time under Import & Export Policy 1997-2002/2002-2007 for importing duty free 1,2 Benzopyrone. AFC exported Coumarin manufactured out of imported 1,2 Benzopyrone. AFC availed Modvat /Cenvat credit on various indigenous raw materials.

**1.2** Section 12 of the Customs Act, 1962 mainly stipulates that duties of Customs shall be levied on goods imported into India. The Central Government exempted the materials imported into India against an advance licence from the whole duty of Customs under Customs Notification Nos. 30/97 dated 01.04.97, 31/97 dated 01.04.97, 50/2000 dated 27.04.2000, 51/2000 dated 27.04.2000 and 43/2002 dated 19.04.2002, subject to one of the condition that the exempt materials are utilized for the manufacture of final goods and no portion of such materials shall be loaned, transferred, sold or disposed off in any manner; that the exempt materials shall not be disposed off or utilized in any manner except for utilization in discharge of export obligation; that the said licence and the materials shall not be transferred or sold:

**1.3** Intelligence was collected that AFC were engaged in clandestine removal of Coumarin. On the basis of intelligence, the vehicle was intercepted and offending goods were seized from the vehicle. The offending goods were also seized from the transporter's godown. In follow up actions the factory & office premises of AFC were searched. Similarly, the residence of Managing Director & General Manager of AFC was searched. The premises of the consignee who purchased the offending goods and the premises of various, registered dealers who supplied the inputs to AFC were also searched. The several documents were recovered in the actions. The documents were scrutinized and the statements of various concerned persons were recorded. The Officers further unearthed the Customs Duty evasion worth Rs. 2,46,41,880.28 (Rupees Two Crore forty six lakhs forty one thousand eight hundred eighty & paise twenty eight only) from the scrutiny of records and from the statements of various witnesses.

**1.4** During the course of investigation it was revealed that AFC mainly manufactured Coumarin from two independent process, first from the indigenous raw material viz. Phenol & other inputs (called as Phenol route) and second from the 1,2 Benzopyrone imported from China (called as Benzopyrone route). AFC exported the Coumarin manufactured out of the said imported material under the advance license scheme. AFC submitted the details of manufacturing process for obtaining, Coumarin from the imported material and claimed 17.36% process loss and further claimed the utilization of certain indigenous raw material in the said process. During the investigation it was however revealed that the imported material i.e. 1-2 Benzopyrone is nothing but Coumarin may be with small impurities. It is further revealed that no manufacturing process as claimed by AFC was ever carried out in respect of Coumarin obtained from Benzopyrone route. AFC obtained more quantity of Coumarin than actually shown in the statutory record by claiming excess process loss. AFC further removed some quantity of this excess production clandestinely without payment of Central Excise duty and remaining quantity of Coumarin was shown as if manufactured from indigenous raw material (from Phenol route). Simultaneously AFC had raised and utilized Modvat/Cenvat credit under Central Excise Act and Rules, on the inputs claimed to be utilized in the manufacturing of Coumarin from imported material. The partial quantity of Coumarin was shown as manufactured from Phenol route and accordingly credit was availed and utilized on all those inputs supposedly utilized in the manufacture of Coumarin by this route. But as stated above, no manufacturing process was carried out for this quantity and hence credit availed was irregular. It therefore appeared that AFC had diverted the product (Coumarin) obtained from Customs duty free imported raw material (1,2 Benzopyrone) in the domestic market without authority of law. In view of the above facts, AFC appeared to have evaded total Customs duty of Rs. 2,67,29,485.77 and Central Excise duty of Rs. 1,02,07,588/-.

**1.5** Whereas AFC totally imported 11,80,950.00 Kg of 1, 2 Benzopyrone through Bombay Port Trust port, Mumbai & Jawaharlal Nehru Port Trust, Raigad during September 1999 to

October 2004. Out of this quantity, 36,500 Kg of 1, 2 Benzopyrone was imported initially on payment of Customs Duty & subsequently 11,44,450 Kg of 1, 2 Benzopyrone was imported duty free under Advance Licences. AFC showed process loss of 17.36% for obtaining Coumarin from the imported 1, 2 Benzopyrone. The process loss for the above quantity of 1, 2 Benzopyrone has been shown by AFC to the tune of 2,05,012.92 Kgs & AFC showed that they have obtained 9,75,937.08 Kg. of Coumarin. But the process loss of 17.36% did not occur. Process loss of only 3% occurred which comes to 35,428.50 Kg. AFC therefore showed excess process loss of 14.36%, which came to 1,69,584.42 Kg. This quantity of process loss, which was not actually lost, was partially diverted by AFC by clandestine removal to the tune of 72,400 Kg. & partially cleared as if manufactured from Phenol route to the tune of 97,184.42 Kg. AFC appears to have evaded duty as under:

**1.5.1** Customs duty of Rs. 2,46,41,880.28 on the 1,2 Benzopyrone imported (duty free) through Jawaharlal Nehru Port Trust Port, Raigad and contained in Coumarin removed clandestinely and contained in Coumarin diverted in local market (as if manufactured from indigenous raw material).

**1.5.2** Customs duty of Rs. 20,87,605.49 on the 1,2 Benzopyrone imported (duty free) through Bombay Port Trust Port, Mumbai and contained in Coumarin removed clandestinely and contained in Coumarin diverted in local market (as if manufactured from indigenous raw material).

**1.5.3** Central Excise Duty of Rs. 36000/- (Rupees Thirty Six Thousand) on the 500 Kgs. of Coumarin under seizure and removed clandestinely from the factory.

**1.5.4** Central Excise Duty of Rs. 73,24,975/- (Rupees Seventy Three Lakhs Twenty Four Thousand Nine Hundred and Seventy Five only) on the 72,400 Kgs. of Coumarin removed clandestinely from time to time.

**1.5.5** Modvat/Cenvat credit of Rs. 1,44,180/- raised on the inputs viz. Caustic Soda, Sulphuric acid, Toluene and Methanol shown as receipt in factory and shown as utilized in the process of manufacture of Coumarin from imported 1-2 Benzopyrone but in fact not received and not utilized in the manufacturing process.

**1.5.6** Modvat/Cenvat credit of Rs. 27,02,433/- raised on the indigenous raw material shown as receipt and shown as utilized for manufacture of Coumarin diverted from non-accounted excess stock obtained from the imported 1,2 Benzopyrone, but in fact not manufactured from indigenous raw material as claimed by AFC.

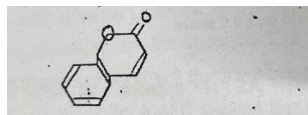
**1.5.7** The demand cum show cause notice-bearing F.No. V (29)15-53/Adj/2004 dt. 16.09.2004 under Central Excise Act and Rules was issued by the Commissioner Central Excise, Nasik for the evasion mentioned at paras above.

**1.6** AFC had imported duty free 10,51,400 Kgs. of 1,2 Benzopyrone through J.N.P.T. port, Raigad and manufactured / exported 8,68,876.96 kgs of Coumarin from the said material during the period from January 2000 to October 2004 as detailed in Annexure B & B-I to the notice. AFC submitted the manufacturing process & flow chart (as shown at Sl. No. 79 to Annexure D-II to the SCN). AFC claimed to have incurred 17.36% as a process loss in the process to obtain Coumarin from 1,2 Benzopyrone. However; it was revealed during the investigation that while obtaining the Coumarin from 1,2 Benzopyrone no such process loss up to 17.36 % was occurred. It is further revealed that the process loss maximum up to 3% was occurred during the said process. It therefore appeared that AFC in fact obtained 10,19,858 Kgs. of Coumarin instead of 8,68,876.96 Kgs (as shown in their Annexure-21 register). AFC appears to have not accounted for this excess production of 1,50,981.04 Kgs. of Coumarin. AFC out of the said quantity diverted the Coumarin clandestinely and also diverted the Coumarin on payment of Central Excise Duty as if manufactured from Indigenous raw material. In view of conditions as laid down in Customs Notification No. 30/97, 31/97 dated 01.04.97, 50/2000, 51/2000 dated 27.04.2000 and 43/2002 dated 19.04.02 and as per the conditions of advance licence, AFC are not legally permitted to divert the imported raw material or the products obtained from such imported material in the domestic market. AFC appears to have not fulfilled the said conditions and had diverted total 1,50,981.04 Kgs. of Coumarin without authority of law. It therefore

appears that AFC illegally imported 1,50,981.04 Kg of 1-2 Benzopyrone without authority of law. The Customs duty amounting to Rs. 2,46,41,880.28 (Rupees Two Crores forty six lakhs forty one thousand eight hundred eighty & paise twenty eight only) (as detailed in Annexure B-I to the notice) appears to be recoverable from AFC.

**1.7** The description of Coumarin and chemical formula as given in "Merck Index; 10<sup>th</sup> Edition, page No. 2548" is as below:

"Coumarin-2H-1-Benzopyrone-2-one; 1-2 Benzopyrone; Cis-a-Coumarinic acid lactone; Coumarin; Coumarinic anhydride; tonka bean camphor. C<sub>9</sub>H<sub>6</sub>O<sub>2</sub>".



It is clear from the above description and chemical formula that 1-2 Benzopyrone is nothing but Coumarin. 1-2 Benzopyrone is the chemical name of the product and which is commercially known as Coumarin. The physical/chemical properties, chemical formula of Coumarin and 1-2 Benzopyrone are one and the same it therefore appears that no chemical process is required to obtain Coumarin from Coumarin itself i.e. from 1-2 Benzopyrone. The assay reports received from the foreign supplier by AFC (as detailed in Column No.10 A of Annexure A to assessee's letter dated 26.07.04) and as confirmed by AFC vide their letter-dated 26.07.04 showed that the purity of product ranges from 97 % to 99.6 %. It therefore appeared that 1-2 Benzopyrone imported by AFC was pure and there were no huge impurities as such.

**1.8** AFC imported total 10,51,400 Kgs of 1,2 Benzopyrone without payment of Customs duty under Advance Licenses. Out of the said quantity AFC utilized 1,50,981.04 Kgs. of 1,2 Benzopyrone for manufacture of un-accounted Coumarin, which was partially cleared clandestinely & partially cleared as domestic production (i.e. as if manufactured out of indigenous raw material from Phenol route): This 1,50,981.04 Kgs of 1,2 Benzopyrone procured & imported by AFC was utilized for the purpose otherwise than the purpose for which it was permitted. This import of 1,50,981.04 Kgs. of 1,2 Benzopyrone was therefore illegal, without authority of law & without payment of Customs Duty, and in violation of section 12 of the Customs Act, 1962. Out of 10,51,400 Kgs of 1,2 Benzopyrone imported by AFC under Advance, Licenses 1,50,981.04 Kgs. of 1,2 Benzopyrone was not required / utilized by them to meet the export obligation under the said licenses. The quantity of Coumarin cleared clandestinely without payment of duty & the quantity of Coumarin cleared as domestic production, was apparently disposed off by AFC in violation of condition of Notification No. 30/97 Cus. 31/97. Cus. both dated 01-4-1997; 50/2000 Cus., 51/2000 both dated 27-04-2000 & 43/2002 Cus. dated 19-04-2002.

**1.9** The facts and observations as evident in the notice shows that AFC had clandestinely removed Coumarin without payment of duty from time to time. This clandestinely removed Coumarin was obtained as excess production (not accounted for in Appendix - 21 register) from the imported 1,2 Benzopyrone. This quantity of 1, 2 Benzopyrone utilized in this clandestine removal of Coumarin, was imported by AFC without payment of Customs duties. Non - receipts of various indigenous raw materials, shows that no manufacturing process as claimed by AFC was ever carried out.

**1.10** The E-mail message sent by Shri S.N. Sanwal from USA to Mrs. H. A. Lakhapatwalla (HAL) on May 2003, 23.05.2003, 31.05.2003, 11.06.2003, and 19.06.2003 reads as follows:

"If you are getting a new B/L without word 'Coumarin' by K-line Bombay, which has no word 'Coumarin', then the problem is solved. If not, then send B/L back to our supplier today so that it can come back sooner. Supplier is agreeing to give us a new B/L from China."

"I am happy to receive your E-mail on K-Line. But please be sure that word 'Coumarin' is removed completely. No doubts. Confirm this."

(This message in response to Mrs. Lakhapatwalla's E-mail that

"Sir, please note K-Line Mumbai has amended the B/L by blacking the word Coumarin. Shankar can start processing the documents on the basis of faxed copies of invoices, but ultimately he will require the original copies of invoices."

"Import of 17 MT is of extremely good quality and need only drying for 3 hours. Hence it saves washing time. We will get 5MT production per day by drying this BP (I.e. Benzopyrone). Mhetre has already reported this to you."

"The quality of product going exports is very important. Therefore, please advice if material from Jiangsu 14.5 MT that has come previously, if need be wash it second time. But be sure all BP (Benzopyrone) odour is gone. Has this been done?"

Same thing for this 12MT that you received. Please wash it twice if needed. Next shipment to Phoenix leaving by next week has to be of good quality, all 15MT."

The fax message dated 19.06.2003 (page 41, 59 to 63) shows the production activities for obtaining Coumarin from 1,2 Benzopyrone. From the observation of these summaries for the month of May 2003 and June 2003, it is noticed that there were only activities of washing and drying and in many cases only drying was carried out. The above fax message clearly showed that the material which was being imported by AFC, was nothing but Coumarin chemically known as 1,2 Benzopyrone with some odour. The impurities of odour were being removed by the process of washing and drying.

**1.11** AFC fraudulently obtained input-output ratio fixed from the authority viz. Advance licensing Committee (ALC) by submitting false and incorrect manufacturing process / flowchart as is evident from their applications dated 20.11.1999 (as shown at Sr. No.250 of annexure D-II to the notice). AFC further on the basis of said process claimed the abnormal process loss. The export obligations got fixed was, therefore not correct. It therefore cannot be held that AFC had correctly fulfilled the export obligations fixed by the authority. Under the circumstances it appeared that under the guise of exemption of duty, AFC illegally imported excess quantity of 1-2 Benzopyrone without payment of Customs duties.

**1.12** The Officers of C.Ex. & Cus., Nashik further collected intelligence to the effect that an Anti-dumping Duty had been imposed by the United States of America on all forms of Coumarin of Chinese Origin. Hence a reference was made to that effect on e-mail to International Trade Administration, Department of Commerce of U.S. Government. A reply was received from the concerned Department of U.S.A. vide their e-mail dated 06-07-2004 in which it was clarified that an Anti-Dumping Duty of 50.35% has been imposed on Coumarin of all forms, of Chinese Origin manufactured by Tianjin Native Produce: I/E Corp. & Anti-Dumping Duty of 160.80% was imposed on Coumarin of all forms of Chinese Origin manufactured by all others. This appears to show the viability of export of Chinese Coumarin via Indian Territory.

**1.13** During the relevant period, when AFC, was exporting Coumarin to USA, there was anti-dumping duty in USA in addition to the normal duties on all forms of the Coumarin procured from China. Due to the anti-dumping duty, Chinese Coumarin became costly when imported in to USA. Under these circumstances AFC through their sister concern viz. Aims Impex (P) Ltd. and Monolith Chemicals (P) Ltd. imported Coumarin from China and exported the same after doing some nominal process of manufacturing and avoid antidumping duty in USA by showing the product as if of Indian origin. This showed the viability of export of Chinese goods, after minor processing. AFC in fact exported Chinese Coumarin after removing odour if any in the product, AFC however to show that the Coumarin was an Indian product, showed the manufacturing process which was never carried out.

**1.14** Shri R.P. Menon, the production Supervisor and in charge of the whole plant of AFC, explained in his statement dated 05.07.2004 that he was reporting to Mr. Sanwal about the day to day manufacturing activities and other administrative works; that during his service several tonnes of 1-2 Benzopyrone was received at the Sinnar plant; that as 1-2 Benzopyrone itself was Coumarin, the question of any chemical reaction did not arise; that generally the imported material had some foreign odour which could be removed by drying ; that 1-2 Benzopyrone itself was Coumarin and was as good as indigenous manufactured Coumarin except for some foreign odour; that the process chart shown to him was totally wrong and only drying was, done to

remove the foreign odour, that drying process involved negligible loss, only and handling loss was there during loading and unloading the material from dryer and it was in the range of 0.5% to 1%.

**1.15** Shri Avinash P. More the Production Officer of AFC explained in his statement dated 16.07.2004 that the Coumarin was produced from 1-2 Benzopyrone which was imported; that the treatment given was purification by dissolving in hot water and recrystallisation; that occasionally they were using Methanol for purification depending on the existence of smell of 1-2 Benzopyrone, and after that centrifuging and drying; that sometimes the imported 1-2 Benzopyrone was simply dried in the dryer to remove the smell of impurity and then repacked; that the process loss in the process of obtaining Coumarin from imported 1-2 Benzopyrone was around 3% including handling loss.

**1.16** On scrutiny of the records of AFC, the details of inputs required for manufacture of Coumarin from Phenol route and 1,2 Benzopyrone route during the period from 01.09.1999 to 24.01.2004 by AFC, Nasik and the receipt of inputs as per their records viz. RG-23A Pt.I Register, was found to be as under :-

Quantity of Coumarin manufactured from Phenol route  
(Worked out from Daily Stock Account Register RG-1  
& from annexure 21 Register maintained by the assessee  
for import of 1,2, benzopyrone, under advance licence

442821 Kg

Quantity of Coumarin manufactured from 1, 2 Benzopyrone  
route (worked out from Annexure 21 register maintained  
by the assessee for import of 1,2 Benzopyrone, under Advance  
Licence and from the data furnished by the assessee regarding  
the import of 1,2, Benzopyrone on payment of Customs duty

833990 Kg

Table-A

Sr. No	Description of Inputs	Quantity of the input required for manufacture of 1 Kg Coumarin by Phenol route as detailed in letter of AFC dated 27-05-04 (in Kg)	Total quantity of input required for manufacture of 4,42,821 Kg Coumarin by phenol route as per formula submitted by AFC (in Kg)	Quantity of the input required for manufacture of 1 Kg Coumarin by 1,2 Benzopyrone route as detailed in letter of AFC dated 27-05-04 (in Kg)	Total Quantity of input required for manufacture of 8,33,990 Kg of 1, 2 Benzopyrone route as per formula submitted by AFC	Total Quantity of inputs required for both the two routes (Total of Col, 4 & 6) (in Kg.)	Input consumed by the assessee as per their RG-23A Pt. I register (i.e. records for accounting the inputs) (in kg.)
1	2	3	4	5	6	7	8
1	Phenol	2.4725	1094875	0	0	1094875	951094
2	Formaldehyde	0.6325	280084	0	0	280084	197190
3	Sulphuric Acid	1.4375	636555	0.125	104249	740804	676508
4	Caustic Soda	2.1275	942102	0.25	208498	1150599	882220
5	Boric Acid	1.6675	738404	0	0	738404	565050
6	Toulene	0.2415	106941	0.125	104249	211190	153038
7	Acetic Anhydride	1.4000	619949	0	0	619949	705342
8	Methanol	0.5000	221411	0.125	104249	325659	208528

From column No.7 and 8 it is seen that as per the formula submitted by AFC the quantity required for manufacture of Coumarin is far more than the quantity actually shown as consumed in their statutory records. It therefore appeared that it was not possible to manufacture the said quantity of Coumarin out of short quantity of raw material and it established that this excess quantity shown as manufactured from indigenous raw material is nothing but diverted quantity of Coumarin obtained from imported 1,2- Benzopyrone. This simultaneously also showed that no manufacturing process as declared by AFC was carried out for manufacture of Coumarin from 1,2-Benzopyrone as no sufficient inputs as claimed by AFC were available in stock with AFC. Further Shri. S. N. Sanwal, Managing Director of AFC, who was a technically qualified person, has informed to the C.Ex. Department vide his letter dated 27/05/2004 while submitting the formula of inputs required for manufacture of Coumarin from Phenol route & 1, 2 Benzopyrone route, that the actual quantity required for manufacture of Coumarin from both the routes is more than the given formula because of various reasons.

**1.17** Dr. A.R. Sawale, General Manager (Technical) of AFC explained in his statement dated 18.06.2004 that they had dried 1,2 Benzopyrone in the factory to remove the impurities of acetic acid, which was contained in the product in very small quantity; that they were doing this process to enhance the purity of 1-2 Benzopyrone; that this drying process was carried out by using fans or in tray dryer at 50-52°C; that the product arise after this drying process is pure 1-2 Benzopyrone, commercially known as Coumarin; that there was no bi-product or waste arise during this process; that no inputs other than 1-2 Benzopyrone were used during the process; that there was loss at 2% to 3% of the material during the process; that no manufacturing process other than drying was carried out in the factory during the period. This statement of Dr. Sawale showed that though there was process loss only up to 3%, AFC claimed the process loss of 17.36 % while obtaining Coumarin from 1-2 Benzopyrone which resulted in the non-account of 1,50,981.04 Kgs of Coumarin.

**1.18** In view of the above facts and observations, it therefore, appeared that AFC had contravened the provisions of Section 12 of the Customs Act 1962 and conditions of Customs Notification No. 30/97 Cus., 31/97 Cus. both dated 01-4-1997; 50/2000 Cus., 51/2000 both dated 27-04-2000 & 43/2002 Cus. dated 19-04-2002 issued under sub section (1) of Section 25 of Customs Act, 1962; read with conditions of advance licences issued under the Foreign Trade (Development & Regulations) Act, 1992 in as much as AFC illegally imported 1,50,981.04 Kgs of 1,2 Benzopyrone without payment of duties of Customs by reasons of wilful mis - statement and suppression of facts; and in as much as AFC had diverted the material viz. Coumarin manufactured out of raw material viz. 1, 2 Benzopyrone imported without payment of duty, as discussed above and in as much as AFC failed to maintain a true and correct account of consumption and utilization of imported goods and failed to utilize exempted goods imported against advance licence in accordance of the provisions of the aforesaid Customs Notifications and the Export- Import Policy 1997-2002 / 2002-2007. The Customs Duty of Rs. 2,46,41,880.28 (Rupees Two crores forty six lakhs forty one thousand eight hundred eighty & Paise twenty eight only) (as detailed in Annexure B-I to this Show Cause Notice), appears to be recoverable from AFC on the 1-2 Benzopyrone imported without authority of law and in respect of which the condition specified in the Notifications have not been complied with, under the provisions of proviso to Section 28(1) of Customs Act 1962. The interest at appropriate rate is also recoverable from AFC on the total Customs duty evaded of Rs. 2,46,41,880.28 (Rupees Two Crores forty six lakhs forty one thousand eight hundred eighty & Paise twenty eight only) from the date of import of the said material under the provisions of Section 28A (1) read with 28 AB of Customs Act 1962.

**1.19** Whereas it appears that - AFC had removed 20 boxes [as detailed in Annexure B-1 to the notice] under seizure - each containing 25 kgs of Coumarin, valued at Rs. 2,25,000/- involving Central Excise duty of Rs. 36,000/- clandestinely without payment of duty, it further appears that AFC had removed 72,400 Kgs. of Coumarin, valued Rs.4,57,81,094/- involving Central Excise Duty of Rs.73, 24,975/- (As detailed in Annexure- B-II to this notice) clandestinely from time to time without payment of duty as is evident from the following facts:-

**1.19.1** 16 boxes each containing 25 kgs of Coumarin seized during transit from vehicle No. MWN 1897 were found without cover of Central Excise invoice showing duty payment.

**1.19.2** 4 boxes each containing 25 kgs of Coumarin seized from Godown of Sai Roadways, Sinnar were not covered with Central Excise Invoice showing duty payment.

**1.19.3** M/s AFC vide their letter dt. 16-2-2004, communicated that the goods under seizure belong to them and were Coumarin; that the goods were cleared from their factory inadvertently on 23.01.2004 without payment of duty. They subsequently paid duty of Rs.36000/- @ 16% on these goods by TR 6 challan No. 7 dated 07.02.2004 under protest.

**1.19.4** From the careful observation of delivery challans and LR, seized along with goods, it was noticed that the goods shown in the challan was "Sodium Sulphate and Organic Acid" however in fact the goods, which were seized, was Coumarin. Even though the goods were consigned by AFC Sinnar, the name of the consigner and consignee on the L.R's were shown as Mihir Enterprises and Mak Aromas. No delivery challans / invoice of M/s AFC was found along with the goods.

**1.19.5** AFC were removing Coumarin from time to time under delivery challans of either Mihir Enterprises, Adarsh Aromas or MAK Aromas and showing therein the goods as Sodium Sulphate / Organic Acid. AFC were getting prepared lorry receipts for transport of Coumarin under the guise of Sodium Sulphate/Organic Acid from Nashik to Bhiwandi showing the consignor and consignee as one and the same person either in the name of Mihir Enterprises, Adarsh Aromas or MAK Aromas. One of such consignment seized during transit and from transporter's godown unfolds the truth and throw light on the novel modus operandi adopted by AFC for removal of Coumarin without payment of duty from time to time.

**1.19.6** The lorry receipts recovered from M/s Sai Roadways at STICE Musalgaon and Malegaon and Bhiwandi (as detailed in Annexure C-II to this SCN) shows that AFC removed clandestinely total 2896 boxes containing 72,400 kgs. of Coumarin from time to time without payment of duty. The copies of lorry receipts in the names of M/s MAK Aromas, Mihir Enterprises, and Adarsh Aromas and delivery challans were also found during the search of office premises of AFC and from the residence of Mrs. H.A. Lakhpatwala.

**1.19.7** Shri Natwarlal Hiraji Bathia, Proprietor of Adarsh Aromas, Mumbai, on perusal of delivery challan and lorry receipt seized from residential premises of H.A. Lakhpatwala, explained in his statement dated 10.02.2004 that on both the documents the name of his company was appearing and stated that the name of his company was being misused, as they had never issued such documents. It appears that to avoid legal action Shri Bathia denied the receipts of clandestine Coumarin. He has however not stated to have received Sodium Sulphate or Organic acid under those lorry receipts as claimed by AFC.

**1.19.8** Shri Makrand Prabhakar Ghate, Manager of MAK Aromas, on perusal of lorry receipts of Sai Roadways explained in his statement dated 17.02.2004 that all the LR were in favour of MAK Aromas and the material had been received from AFC Sinnar, that they used to receive the L.R's on his FAX No.25373592 on the strength of which he would take delivery of the goods from Bhiwandi godown of Sai Roadways, that the material was then delivered to brokers at Bhiwandi and he would get his commission of Rs.10 per Kg; that he perused LR's of Sai Roadways and the goods were Coumarin he had received from AFC, that the sale proceeds of the Coumarin were handed over to Mrs. Lakhpatwala in cash @ Rs.450/- per Kgs; that he perused the evidences of despatches collected from the residence of Mrs. HA. Lakhapatwalla of the despatches to MAK Aroma's Fax No.25373592; that he had disclosed the factual position.

**1.19.9** Shri Jaimin Uday Thakore, stated in his statement dated 17.02.2004 that he worked as commission agent in respect of Coumarin received from AFC under lorry receipts and delivery challans of M/s Mihir Enterprises which was a fictitious firm which facilitated AFC to accommodate their consignments cleared without payment of duty; that somewhere in March 2002 Mr. Sanwal had telephoned him and called him at Bank of India Nariman Point Branch, Mumbai and discussed with him as to how to overcome the problem of short demand of Coumarin; that in the meeting it was decided that AFC would clear Coumarin from their factory without preparing Central Excise invoice and without discharging Central Excise duty on the same, that it was also decided that it would be responsibility of AFC to send the consignment through Sai Roadways Sinnar up to Bhiwandi and from Bhiwandi it would be responsibility of purchaser to lift the same with his help; that as per the understanding whenever the consignments

of Coumarin cleared from the factory without payment of duty had to be sent to Bhiwandi under LR/delivery challan prepared mentioning M/s Mihir Enterprises as consignor and consignee; that a fax of LR/delivery challan was being sent to Shri Sakpal's PCO followed by a telephone call to him either by Mrs. Lakhpatwalla or some of the employee of AFC; that to camouflage the identity of Coumarin the LR/delivery challan used to bear the description of the product as Sodium Sulphate or Organic acid; that the fictitious name of M/s Mihir Enterprises was decided by Shri Sanwal; that the consignment of Coumarin were received in standard packing of 25 kgs.; the Coumarin was packed in polythene bags to prevent it from moisture and these bags were packed in corrugated boxes and then wrapped in HDPE bags; that it was his responsibility to collect cash towards sale of clandestinely removed Coumarin from AFC without payment of duty, that the cash amount so collected was handed over to Mrs. Lakhpatwala periodically within a period of 5 days after sale of Coumarin during her visit to Mumbai; that through all LR's mentioned in Annexure 'A' to his statement, Coumarin had been transported from the Sai Roadways Sinnar to Bhiwandi; that clandestinely removed Coumarin from the premises of AFC Sinnar and transported to Bhiwandi by M/s Sai Roadways under the L.R's mentioned in the Annexure to his statement had been received by him and distributed to various parties at Bhiwandi and Mumbai; that on an average he used to receive Coumarin for Mihir Enterprises approximately 500 Kgs. per month, which comes to approximately 12 MT and during this period cash amounting to approximately Rs.60 Lakhs was handed over by him to Mrs. Lakhpatwala from time to time during her visits to Mumbai.

**1.19.10** 72,400 Kgs of Coumarin sold by AFC under the delivery challans & Lorry Receipts of M/s Mak Aromas; M/s Mihir Enterprises & M/s Adarsh Aromas was out of the non-accounted quantity of Coumarin obtained by showing the excess process loss by describing the Coumarin either as 'Sodium Sulphate' or 'Organic Acid'. When in fact the Coumarin was sold by them. This clearly showed that AFC removed the material clandestinely.

**1.19.11** Shri Arun Madhav Naphade, Senior Accountant of AFC explained in his statement dated 11.05.2004 that as per the directions of Mrs. Lakhpatwala he used to make payments in cash to Mr. Vilas Darade of Sai Roadways Sinnar in the names of M/s MAK Aromas, M/s Mihir Enterprises and M/s Adarsh Aromas; that Mr. Vilas Darade was visiting their head office on monthly basis and was submitting lorry receipts of Ms Sai Roadways in the names of M/s MAK Aromas, M/s Mihir Enterprises and M/s Adarah Aromas to Mrs. Lakhpatwala and after scrutiny she was giving the lorry receipts to him for payment in cash and she also instructed to him not to keep any records for the payment and this procedure was followed for the last 3-4 years.

**1.19.12** Shri Alok Kumar T, Singh, the excise and despatch officer of AFC stated in his statement dated 10.06.2004 that in connection of lorry receipts of MAK Aromas, Mihir Enterprises and Adarsh Aromas no excise gate passes were prepared, only delivery challans in the name of MAK Aromas were prepared at Nashik Road Office as consignor and consigned to Self, that goods were described on these delivery challans as Sodium Sulphate instead of Coumarin; that actual despatch was of Coumarin to MAK Aromas, Mihir Enterprises and Adarsh Aromas; that no records were maintained at Sinnar factory only LR copy of despatches were maintained at Nashik Road office by Mrs. H. A. Lakhpatwalla in respect of MAK Aromas, Mihir Enterprises and Adarsh Aromas; that AFC was paying the transportation charges for the said clearances in cash; that to sale non accounted Coumarin, AFC were preparing delivery challans of Sodium Sulphate. He further explained that AFC were importing 1-2 Benzopyrone (Crude) from China; that after receipt of imported material AFC were washing and drying the said material and after this process the finished goods i.e. Coumarin was obtained; that during the process whatever quantity of Coumarin was obtained was in fact higher than the quantity accounted for in RG 1 and Annexure 21; that the excess Coumarin being obtained and out of this Coumarin some stock was sold in the market without payment of duty through MAK, Mihir and Adarsh Aromas and the balance of excess stock is shown in RG1 register as a production from local raw material; that no manufacturing process as explained by Mr. Sanwal was being carried out in the factory during the period.

**1.19.13** In this connection AFC through their Managing Director Shri S.N.Senwal and General Manager Mrs. HA. Lakhpatwala mainly explained that they were removing Sodium

Sulphate under these L.R.'s. However, the consignee accepted that what they had received was Coumarin. The consignment removed on the similar documents and seized during transit and in the transporters godown proved beyond doubt that what AFC were removing under these L.R.'s was Coumarin. In the statement of S/Shri Alok Singh, Jaimin Thakore and Makrand Ghate they all stated that AFC were removing, Coumarin under these LR's. S/Shri R.P. Menon, Dr. A.R. Sawale, General Manager (Toch & RD) of AFC, in their statement explained that during the relevant period there was no manufacturing of Sodium Sulphate. Sodium Sulphate itself is also excisable. Sodium Sulphate does not have much value in the market. Under these circumstances it is not understood as to why the so-called Sodium Sulphate was not accounted for in the statutory records and removed on excisable invoices. It is also not understood as to why there be a requirement of such a costly and uniform packing for each 25 kg of the material for so called very cheap Sodium Sulphate. It is further not understood as to how so far it is economical to pack in costly packing and bear huge expenditure on account of transportation of such a cheap material, when the Sodium Sulphate at Rs.1.50 to Rs.2.00 per kg was readily available at Mumbai. It further appears that it was the pre-planned evasion of duty on Coumarin under the guise of so called Sodium Sulphate.

**1.19.14** Shri R.P. Menon, the Production Superintendent of AFC explained in his statement recorded on 05.07.2004 that he could confirm that during his service no Sodium Sulphate, was recovered. Dr. A. R. Sawale, the General Manager (Technical and R&D) explained in his statement dated 18.06.2004 that there was no facility / plant to recover the Sodium Sulphate and Boric acid separately from the wastage till he was in service. Shri A.T. Singh, Despatch and Excise in charge of AFC, explained in his statement dated 10.06.2004 that the wastage arose during the course of manufacturing of Coumarin from local raw materials; that the said wastage was directly drained outside the plant which was subsequently absorbed by the ground; that Sodium Sulphate was therefore not manufactured or stored in the factory. These statements show that Sodium Sulphate was not obtained /collected from the wastage by AFC.

**1.19.15** The show cause notice in relation to above evasion of Central Excise duty was issued to the assessee by the Commissioner Central Excise, Nasik.

**1.20** It appeared that AFC had imported 1,2 Benzopyrone and manufactured and exported the Coumarin from the said material during the period from September 1999 to October 2004 (as detailed in annexure B to this notice). AFC submitted the manufacturing process and flow chart (produced by Shri S.N. Sanwal and enclosed to his statement recorded on 11.05.2004), AFC claimed to have utilized caustic soda, sulphuric Acid, toluene and methanol in the process to obtain Coumarin from 1-2 Benzopyrone however it is revealed during the investigation that while obtaining Coumarin from 1,2 Benzopyrone no such process was ever carried by AFC. It further revealed that at majority period of time AFC carried out only drying of 1-2 Benzopyrone to obtain Coumarin and in few cases washing with water prior to drying was carried out. In exceptional cases the 1-2 Benzopyrone was dissolved in methanol prior to filtration, crystallization and drying. It therefore appears that AFC never used Caustic Soda, Toluene and Sulphuric acid in the process to obtain Coumarin and further not used Methanol in most of the time. It further appeared that AFC had imported 10,51,400 Kgs of 1, 2 Benzopyrone duty free through JNPT Port, Raigad and manufactured and exported 8,68,876.96 Kgs of Coumarin from the said material during the period from January 2000 to October 2004 (as detailed in Annexure B-1 to this SCN). However, AFC in fact manufactured 10,19,858 Kgs of Coumarin but accounted for 8,68,876.96 Kgs of Coumarin in Annexure-21 by showing the process loss of 17.36% instead of 3%. AFC therefore appears to have not accounted for this excess production of 1,50,981.04 Kgs of Coumarin, AFC disposed off the said non-accounted quantity of Coumarin partially by clandestine removal as discussed in paras above and partially by clearing it in domestic market on payment of Central Excise Duty as if manufactured from Indigenous raw material from Phenol route. AFC submitted the manufacturing process of Coumarin from Indigenous raw material i.e. from phenol & other inputs, (as detailed in AFC's letter dated 27.05.2004 submitted by Shri S.N. Sanwal). AFC claimed to have utilized the indigenous raw material viz. Phenol (2.47 kg), Oxygen (0.52 kg), Formaldehyde (0.63 kg), Sulphuric Acid (1.44 kg), Caustic Soda (213 kg), Boric Acid (1.67 kg), Toluene (0.24), Acetic Anhydride (1.4 kg) and Methanol (0.50 kg) respectively for manufacture of one Kg of Coumarin. As discussed above AFC diverted the Coumarin obtained from imported Benzopyrone as if manufactured from

Indigenous raw material. AFC had shown to have procured & utilized various indigenous raw materials for the manufacture of the said quantity of Coumarin. However, in fact the indigenous raw material as detailed in annexure C-I & C-IV to this notice, were not physically received in the factory of AFC. It therefore appears that the afore-said inputs were not received in the factory of AFC, however on the basis of bogus dealer invoices AFC availed and utilized inadmissible Modvat/Cenvat credit, as is evident from the following facts.

**1.20.1** Dr. A. R. Sawale, General Manager (Technical) of AFC explained in his statement recorded on 18.06.2004, that they had dried 1,2 Benzopyrone in the factory to remove the impurities of acetic acid which was contained in the product in very small quantity; that they were doing this process to enhance the purity of 1-2 Benzopyrone, that this drying process was carried out by using fans or in tray dryer at 50-52° C; that the product arise after this drying process is pure 1-2 Benzopyrone commercially known as Coumarin; that there was no bi-product or waste arise during this process, that no inputs other than 1-2 Benzopyrone were used during the process; that there was a loss of 2% to 3% of the material during the process, that no manufacturing process other than drying was carried out in the factory during the period.

**1.20.2** Shri Alok Kumar T. Singh, the excise and despatch officer of AFC stated in his statement dated 10.06.2004 that AFC were importing 1-2 Benzopyrone (Crude) from China, that after receipt of imported material AFC were washing and drying the said material and after this process the finished goods i.e. Coumarin was obtained, that during the process whatever quantity of Coumarin was obtained was in fact higher than the quantity accounted for in RG 1 and Annexure 21; that the excess Coumarin being obtained and out of this Coumarin some stock was sold in the market without payment of duty through MAK, Mihir and Adarsh Aromas and the balance of excess stock is shown in RGI register as a production from local raw material; that no manufacturing process as explained by Mr. Sanwal was being carried out in the factory during the period.

**1.20.3** During the scrutiny of documents it was revealed that the inputs (as detailed in Annexure C (III) & C (IV) of the notice) were not transported from dealers' godown to AFC's factory as neither AFC nor dealers could produce documentary evidences such as lorry receipts, payments particulars to transporter, ledger, etc. In many cases the vehicle number shown in the dealer's invoices were found from the Regional Transport Officer's record that vehicles were either scooter/motor cycle, Auto Rickshaw, Car, Jeep with which the inputs cannot be transported from Bhiwandi/ Mumbai to Sinnar. In connection of vehicle number of transport vehicles, it was revealed that the vehicle had not travelled from Mumbai to Sinnar as is evident from Nashik Municipal Corporation's record. This fact was confirmed from the statement of S/Shri Alok Kumar Tribhuvan Singh and Arun Naphade recorded on 10.06.2004 & 24.06.2004, the employees of AFC, the reports received from RTO 's offices and letter dated 15.06.2004 of Nasik Municipal Corporation.

**1.20.4** During the scrutiny of security registers of AFC it was noticed that there were no corresponding entries in the said registers showing the receipt of input/raw material on the day when the AFC shown the receipt in Cenvat account i.e. RG 23 A Part-I. In this connection S/Shri Alok Singh and Arun Naphade explained that they were raising the credit on the basis of dealers' invoices received through courier. This showed that in connection with said credit no goods were actually received in the factory of AFC.

**1.20.5** Shri Alok Kumar T. Singh the employee of AFC explained in his statement recorded on 10.06.04 that most of the raw material received through dealers was in fact not physically received and he was taking credit of Modvat on the basis of Modvat copy, which was received through the courier and their office boys were putting on the reverse of Modvat invoice vehicle No. Time and date of goods arrival and then handed over to him for taking Modvat credit.

**1.20.6** Shri Arun Madhav Naphade, Senior Accountant of AFC explained in his statement recorded on 24.06.04 that in most cases they were receiving the original and duplicate copies of the dealers' invoices through courier and after directions form Mr. Sanwal or Mrs. H. A. Lakhapatwalla, he was making entries in the ledger.

**1.20.7** During the course of physical verification of stock of various raw materials on the day of search of the factory premises of AFC i.e. on 24.01.04, it was noticed there was shortage of stock

of Phosphoric Acid, Caustic Soda, Acetic Anhydride, Sulphuric Acid, Methanol and Furnace oil of 1280 litres, 11950 kg, 5118 kg, 9330 litres, 200 litres and 8271 litres (as detailed in panchanama dated 24.01.04). This supports that all the quantity of input shown as receipt by AFC were not received.

**1.20.8** Shri Pankaj Vadilal Shah, Proprietor of M/s Nisarg Chemicals, Mumbai explained in his statement dated 16.06.2004 that he had never arranged for transportation of goods and neither did they make any payments for transportation of the goods; he was not sure as to who had arranged for transportation and who made the payments; that he could not confirm as to whether each time the goods were transported to AFC or otherwise; that they had delivered the goods at their godown gate. On being asked that the vehicle number shown in the invoices No.219, 220, 221 dated 25.03.2003 and 26.03.03, were of motorcycle he explained that he had written the vehicle numbers, on these invoices on the basis of telephonic message received from Shri Jayesh Bhai of Adinath Petrochems; that he sold the goods to Adinath Petrochemicals, Mumbai, but he could not confirm as to whether they were actually delivered to AFC Sinnar or otherwise; that he accepted his mistake of not ascertaining the correctness of the vehicle number, mode of transport and that he had failed to prepare the invoice complete and correct in all respect. Further the authorized representative of the input suppliers viz. M/s Khetan Brothers, M/s Chembro, M/s Chandranile Dye Chem Corp., R.R. Enterprises, Unni Chemicals, Rajvi Chemicals Corporation; Time Chemicals, I.V. Chem (Indis), Ketul Enterprises, Chem Trade have explained in their statements that they have not arranged for transportation of the inputs from their godown to AFC's factory, that they have given ex-godown delivery to AFC; that the transportation is arranged by AFC. On the other hand, Shri. Naphade, Manager Accounts of AFC stated in his statement recorded on 24.06.2004 stated that they were receiving most of the dealer's invoices by courier without actual receipt of the inputs; that they are not having any documents to show that they have arranged for transportation to transport the inputs from dealer's godown to AFC's factory.

**1.20.9** The E-mail message sent by Mrs. H.A. Lakhpatwala to Shri Shiv N. Sanwal, USA on 28.05.2003 reads as follows:

*" Please note that we are running out of credit amount on Modvat, details are being sent to you. Since there is no purchase except Caustic and F.O which is not much - bills we can take -viz. Caustic, Phenol, Methanol, and Toluene even though we may be short. Please advice."*

This clearly shows that Mrs. H. A. Lakhpatwala was procuring only Modvatable /Cenvatable invoices without actual purchase of material to raise credit. She was doing this with prior approval of Shri S.N Sanwal.

**1.20.10** Shri R.P. Menon, the production Supervisor and in charge of the whole plant of AFC, explained in his statement dated 05.07.2004 that he was reporting to Mr. Sanwal about the day to day manufacturing activities and other administrative works; that during his service several tonnes of 1-2 Benzopyrone was received at the Sinnar plant; that as 1-2 Benzopyrone itself was Coumarin, the question of any chemical reaction did not arise; that generally the imported material had some foreign odour which could be removed by drying; that 1-2 Benzopyrone itself was Coumarin and was as good as indigenous manufactured Coumarin except for some foreign odour, that the process chart shown to him was totally wrong and only drying was done to remove the foreign odour; that drying process involved negligible loss only and handling loss was there during loading and unloading the material from dryer and it was in the range of 0.5% to 1%.

**1.20.11** Shri Avinash P. More the Production Officer of AFC explained in his statement dated 16.07.2004 that the Coumarin was produced from 1-2 Benzopyrone which was imported; that the treatment given was purification by dissolving in hot water and recrystallisation; that occasionally they were using Methanol for purification depending on the existence of smell of 1-2 Benzopyrone and after that centrifuging and drying; that sometimes the imported 1-2 Benzopyrone was simply dried in the dryer to remove the smell of impurity and then repacked; that the process loss in the process of obtaining Coumarin from imported I-2 Benzopyrone was around 3% including handling loss.

**1.20.12** Shri J.P. Bhangale, Production in charge of AFC explained in his statement dated 24.01.2004, recorded on the day of search of the factory premises that 1-2 Benzopyrone is their raw material and undergoes several processes such as re crystallisation with Methanol and water, washing, centrifuge and drying. This statement shows that the process carried for obtaining Coumarin from Benzopyrone is simple and do not require other chemicals viz. Caustic Soda, Sulphuric Acid and Toluene.

**1.20.13** During the scrutiny of statutory records (RG-1 register) maintained by AFC it is revealed that AFC had shown manufacture of 442821 kg of Coumarin from indigenous raw material during the period from 01.09.99 to 24.01.2004, Shri S.N. Sanwal submitted under his letter dated 27.05.04 that for the manufacture of 1 kg of Coumarin they require the indigenous raw material viz. Phenol (2.47kg), Formaldehyde (0.63kg), Sulphuric acid (1.44kg), Caustic Soda (2.13kg), Boric Acid (1.67 kg), Toluene (0.24 kg), Acetic anhydride(1.4 kg), and Methanol(0.50kg). The consumption of these indigenous raw material for phenol route as well as 1,2 benzopyrone route, when checked from RG23 A Part I register, it is noticed that they have shown the consumption of these raw material as 951094 kg, 197190 kg, 676508 kg, 882220 kg, 565050 kg, 153038 kg, 705342 kg, and 208528 kg respectively. However as per the formula submitted by Shri S.N.Sanwal, the material required for both the route would have been as 1094875, 28084, 740804, 1150599, 738404, 211190, 619949 and 325659 respectively. From careful observation of these figures it appears that the production of Coumarin shown in the RG-1 is much higher than the production possible out of the raw material purchased/ consumed. It therefore appears that AFC had shown this excess production of Coumarin, out of Coumarin obtained from excess non-accounted stock of Coumarin (shown as process loss) manufactured from 1,2 Benzopyrone.

**1.21** In view of the above, Show Cause Notice No. S/10-49/2004 Gr VII JNCH dated 01.01.2005 was issued to M/s. Atlas Fine Chemicals seeking as to why:

**1.21.1** The Customs duty of Rs. 2,46,41,880.28 (Rupees Two Crore forty six lakhs forty one thousand eight hundred eighty & Paise twenty eight only) on 1-2 Benzopyrone imported illegally through Mumbai Port and contained in Coumarin removed clandestinely without payment of duty and diverted in the local market as if the Coumarin was manufactured from indigenous raw material, as discussed above and as detailed in Annexure - B & B-I to the notice, should not be recovered from them by invoking extended period available under the proviso to Section 28(1) of the Customs Act, 1962;

**1.21.2** The interest as applicable on amount of total Customs duty of Rs. 2,46,41,880.28 (Rupees Two Crore forty six lakhs forty one thousand eight hundred eighty & Paise twenty eight only) evaded by them should not be recovered from them from the dates on which AFC had illegally imported 1-2 Benzopyrone, under the provisions of Section 28(1), read with Section 28AB of the Customs Act, 1962.

**1.21.3** A penalty should not be imposed on them for their involvement in the alleged evasion of Customs Duty to the tune of Rs. 2,46,41,880.28 (Rupees Two Crore forty six lakhs forty one thousand eight hundred eighty & paise twenty eight only) as discussed above, under the provisions of Section, 112(a), 112(b) read with Section 114A of the Customs Act 1962.

**1.22** The noticee at Sr.No.2 to 8 were called upon to show cause to the adjudicating authority as to why penalty should not be imposed upon them under Section 112(a), 112(b) of the Customs Act 1962 for their alleged involvement and in the evasion of Customs Duty to the tune of Rs. 2,46,41,880.28 (Rupees Two Crore forty six lakhs forty one thousand eight hundred eighty & Paise twenty eight only) for the reason that they acquired possession of and were concerned in dealing with the goods which they know are liable for confiscation, as discussed above.

### **WRITTEN SUBMISSIONS**

**2.** M/s. Eternis Fine Chemicals Ltd (earlier known as Atlas Fine Chemicals) submitted their written reply vide their letter dated 21.04.2025 submitted that based on the allegations mentioned in the SCN, excise department had also issued SCN which was set aside by Hon'ble CESTAT vide order A/91672-91681/2017 dated 29.12.2017 by holding that the process loss while

converting 1,2 Benzopyrone into Coumarin is over 17% as declared by the company and there is no clandestine removal as alleged by the department, furthermore, the company has rightly availed credit on inputs. They submitted that no appeal has been filed by the department against the said order of the Tribunal. Accordingly, they requested to drop the demand made in the notice. They further submitted that the notice pertains to very old period and the adjudication is pending for 20 years and if the adjudications allowed now after 20 years, the same would be invalid and in excess of jurisdiction. They stated that the inordinate delay by itself is a proof of injustice, even more so when the delay is attributable to the department. For delay in adjudication, they requested to set aside the notice. They relied upon judgment in case of Bhagwandas S. Totani Vs B.c. Agarwal & others [1983 (12) ELT 44 (Bom.)], Cambata Indus Pvt. Ltd. Vs Additional Dir. Of Enforcement, Mumbai [2011 (254) ELT 269 (Bom.)], Universal Generics Pvt. Ltd. Vs UOI [1993 (68) ELT 27 (Bom.)] etc. They further submitted that they had already filed Writ Petition no. 15717 of 2022 before Hon'ble High Court of Bombay challenging the SCN on ground of inordinate delay in adjudication. They submitted that since subject matter is sub-judice before the Hon'ble High Court, no adverse action may be taken against them.

3. M/s. Eternis Fine Chemicals (earlier known as Atlas Fine Chemicals) gave written submissions vide their letter dated 05.06.2025 and submitted as below:

3.1 The Noticee is engaged, *inter alia*, in the manufacture of Flavours, Fragrances, Pharmaceuticals and Specialty Chemicals, *inter alia* Coumarin. Coumarin is a whitish crystalline powder with characteristic odour and mainly used as an aroma chemical in perfume industry. The product being an aromatic compound, its acceptability to customers is a factor of the purity and its odour, also referred as olfactory characteristics. Coumarin can be manufactured by following two different production processes: a) the Phenol route which involves Perkin reaction and b) the o-Cresol route which involves Rasching reaction. However, Coumarin produced through these two processes has the same basic physical and chemical characteristics and has the same use. The Noticee during the period in dispute was manufacturing Coumarin through both the aforesaid methods. In the present case the dispute is regarding Coumarin manufactured from 1,2 Benzopyrone (crude) and not from Phenol Method.

3.2 1,2 Benzopyrone (crude) which is the main input required for manufacturing Coumarin out of 1,2 Benzopyrone method was imported by the Noticee. In order to avail the benefit of Advance Licence Scheme, the Noticee approached the DGFT for grant of Advance licence under para 7.5 of the HBP, Vol-I, for import of 1,2 Benzopyrone and for fixation of norms for import of the same to be used in manufacturing and exporting Coumarin. The Norms were fixed by the ALC and communicated to the Noticee. The Norms fixed are reproduced below:

Export Product	Unit	Import Item	Quantity allowed
Coumarin	One Kg	1,2 Benzopyrone crude (78-84%) average 82%.	1.21.kg

3.3 The Noticee imported 1,2 Benzopyrone under the Advance licences from Chinese suppliers and the same were declared in the supplier invoices as 1,2 Benzopyrone Crude (78-84%). Along with the invoice the supplier used to forward certificate of analysis where the olfactory character was mentioned. In all the cases the olfactory strength of the product was within the range of 78% or higher but lower than 84%. The same supports the stand of the Noticee that in trade parlance (78-84%) mentioned in 1,2 benzopyrone refers to olfactory strength/characteristic. Further, the said Bills of Entry also show that the purity mentioned in the certificate of analysis is between 80-81% or 91-93% instead of 97-99% as alleged by the department in SCN. Since the imported 1,2 Benzopyrone did not have the preferred olfactory character as required in the international market, therefore they used to undertake 10 different processes to obtain Coumarin and thereafter invariably exported the same. The inputs used and different processes involved in the manufacture of Coumarin from 1,2 Benzopyrone (crude) is explained by Mr Sanwal in his statement dated 25.01.2004. The Noticee had claimed process

loss of about 17.36% for obtaining Coumarin from 1,2 benzopyrone (crude) method. The said process loss was in line with DGFT SION norms i.e., SION Number A2935.

**3.4** In parallel proceedings by the Excise Department, Show cause notice No. V (29)115-53/adj/2004 dated 16.09.2004 (“excise SCN”) was issued by the Central Excise Department alleging that they had imported goods i.e. 1,2 Benzopyrone for manufacture of Coumarin is nothing but Coumarin itself as properties of both are same and no chemical process is required. In view of above allegations it was proposed to demand duty of ₹ 36000/- on 500 Kgs on said Coumarin alleged to have been cleared from the factory and seized by the officers; Also central excise duty of ₹ 73,24,975/- was demanded on 72,400 Kgs of Coumarin allegedly removed from time to time; demand of modvat credit of ₹ 1,44,180/- on inputs viz Caustic Soda, Sulphuric acid, Toluene and Methanol and of ₹ 27,02,433/- shown to have utilized in factory but in fact not received was also made; Penalties was also proposed on other Noticees i.e., Manager Ms Hema Lakhpatawala, Shri Jaymin Uday Thakore, Adarsh Aroma and transporter Sai Roadways. On the basis of same investigation, the show cause notices were issued for the subsequent period viz. SCN dt. 06.04.2005 for the period April 2004 to December 2004 towards duty of ₹ 16,95,268/-; SCN dt. 02.02.2006 for the period Jan 2005 to Oct 2005 towards duty demand of ₹ 18,16,137/-; SCN dt. 08.11.2006 for the period Nov 2005 to May 2006 towards duty demand of ₹ 11,64,442/-; SCN dt. 07.06.2007 for the period June 2006 to March 2007 for demand of ₹ 4,18,608/-.

**3.5** They had fulfilled their export obligations under each of the advance licenses and each of the licenses were redeemed by the licensing authority, i.e., the Director General of Foreign Trade (‘DGFT’) in full. Furthermore, there is no proceeding initiated by the DFGT in relation to any of advance licenses issued to the Noticee. Further, no show cause notice has been issued alleging contravention of FT D&R Act.

**3.6** On the basis of show cause notice issued by the excise authorities, the customs authorities also made the same allegation as made in the excise case. Furthermore, the customs authorities relied upon the very same evidences as relied upon in the excise show cause viz. Statements of ex-employees of the Noticee i.e., Dr A.R. Savale, Shri Arun Madhav Naphade, Shri Avinash More, Shri Santosh Thorat, Shri Sunil Kasture, Shri Alok Singh and Shri Raghavan Menon.; Email correspondences between Shri Sanwal and Mrs Hema; Statements of brokers i.e., Shri Makrand Ghate (Manager of M/s Mak Aromas), Shri Jamin Thakore (Proprietor of M.A Aromas); Statements of supplier of inputs; Statements of transporter i.e., Sai roadways; LR copies recovered from Sai roadways and Report of Prof K.D Deodhar, Deptt of Chemistry, IIT Bombay.

**3.7** After issuance of the captioned show cause notice there was no personal hearing granted in relation to the same. However, in relation to excise case the demand was dropped by the Hon’ble CESTAT vide order dated 29.12.2017. Considering the fact that no personal hearing was scheduled in the matter, the Noticee itself addressed letter dated 15.02.2022 and 13.04.2022, inquired about the status of the captioned show cause notice and informed that the excise SCNs which was issued to the Noticee by the Central Excise Department has been finally decided by the Hon’ble CESTAT, Mumbai vide Final Order No. A/91672-91681/2017 dated 29.12.2017 wherein they were pleased to set aside the excise demand by holding that the process loss while converting 1,2, Benzopyrone into Coumarin is over 17% as declared by the Company and there is no clandestine removal of Coumarin as alleged by the Department, furthermore, the Company had rightly availed credit on inputs. They submitted copy of the reply received by them from the department in response to RTI filed by them seeking information on the following questions:

- *Whether the Department has accepted the Order No. A/91672-91681/2017 dated 29.12.2017 passed by Hon’ble CESTAT in the matter of M/s Atlas Fine Chemicals Pvt. Ltd. and others’?*

- *Whether the Department is intending to file an appeal against Order No.A/91672-91681/2017 dated 29.12.2017 passed by Hon'ble CESTAT' in the matter of M/s Atlas Fine Chemicals Pvt. Ltd. and others*

In response to the aforesaid RTI application, the Noticee received the following reply dated 27.09.2018 wherein it was informed that the said order has been accepted on 15.03.2018 and the Department is not contemplating to file appeal.

**3.8** Further, they filed a Writ Petition No. 15717 of 2022 before the Hon'ble High Court of Bombay, challenging the captioned show cause notice, *inter alia* on the ground of inordinate delay in adjudication. Thereafter, after a long delay of 20 years in adjudication of the Impugned Show Cause Notice, Personal Hearing was scheduled on 15.04.2025 which was rescheduled to 02.05.2025. In response to personal hearing on 02.05.2025, they gave additional written submissions on merits of the case as detailed in subsequent paragraphs.

**3.9** The action of the Department in taking up proposed adjudication of the captioned show cause notice after 20 years from date of the Impugned Show Cause Notice dated 01.01.2005 is in breach of principles of natural justice and is manifestly arbitrary and in violation of Article 14 of the Constitution of India. There is no justification whatsoever in not adjudicating the Impugned Show Cause Notice for 20 years by the Department from date of the impugned show cause notice, i.e., 01.01.2005. Thus, the inordinate delay in adjudicating the impugned Show Cause Notice is without any cause. In no way, the Noticee is responsible for the said inordinate delay in adjudication of the impugned Show Cause Notice. Thus, on account of failure of the Department to adjudicate the same within reasonable time, the impugned show cause notice is required to be quashed and set aside. It is settled law that inordinate delay in adjudication of show cause notice by itself is a proof of injustice more so when the delay is solely attributable to the Department and not to the Noticee. They placed reliance on the decision of Hon'ble Supreme Court of India in the case of Union of India & Ors. V. Ata Freight Line (I) Pvt. Ltd. [2023 (2) TMI 1131-SC], RDC Concrete India Limited And Anr. Versus Union Of India And Ors. [2024 (12) TMI 1044 - Bombay High Court], M/s. Esjaypee Impex Pvt. Ltd. & Ors vs. Union of India & Ors [2024 (11) TMI 622 – Bombay High Court], Elite Aromas, Bharat Shetty, Gupta And Co. Pvt. Ltd., Pragati Aroma Oil Distillers Pvt. Ltd., S. Kushalchand & Company, Global Exim, Kejal Mehta, Akni Futuristic Technologies, Amit Gupta, One World Corporation Pvt. Ltd., Dipak Spices Export LLP Versus Union Of India And Anr. [2024 (12) TMI 970 - BOMBAY HIGH COURT]

**3.10** The present issue is no longer *res integra* and settled in favour of the Noticee in its own decision in the adjudication of Excise SCNs by the Hon'ble CESTAT Mumbai *vide* Final Order No. A/91672-91681/2017 dated 29.12.2017. they relied upon the said judgment and reproduced the part of the order relevant to their case. The Hon'ble CESTAT in the said case held as under:

**3.10.1** The demand was raised mainly basis statement of the employees and dealers which were resiled during cross-examination. It was accordingly held that in terms of settled law that no demand can be confirmed on uncorroborated statements.

**3.10.2** Based on the evidence produce, there was no adversity in Atlas Fine Chemicals Pvt. Ltd. claiming process loss of 17.6%.

**3.10.3** No evidence has been brought to prove malafide on part of Atlas Fina Chemicals Pvt Ltd.

**3.10.4** That the advance licenses have been redeemed by Atlas Fine Chemicals Pvt Ltd, despite revenue's allegations that it was declaring incorrect ratio of input-output. This shows that DGFT was satisfied with the process loss claimed by Atlas Fine Chemicals Pvt Ltd.

**3.10.5** Allegation of shortage against Atlas Fine Chemicals Pvt. Ltd. was not sustainable as no evidence of non-receipt or diversion has been brought on record.

**3.11** The facts and evidences relied upon in the excise case of the Noticee are identical to the facts of the present case and the same is admitted in the captioned show cause notice at para 13 that imputation basis which the charges set out therein are based on clandestine removal of goods

by showing excess process loss for which excise duty is demanded. For ease of reference, the facts in excise case and the present case is tabulated herein below:

S.N.	Facts in excise case	Facts of the present case
1.	The Noticee made duty free import of 1,2 Benzopyrone for manufacture of Coumarin under advance licenses. That the product 1-2 Benzopyrone is Coumarin itself with small impurities and no manufacturing process was carried out by them on such imported goods except washing and drying the same.	The Noticee had imported goods i.e., 1,2 Benzopyrone for manufacture of Coumarin under advance licenses. That the product 1-2 Benzopyrone is Coumarin itself with small impurities and no manufacturing process was carried out by them on such imported goods except washing and drying the same.
2.	Noticee has claimed process loss of 17.6%	The Noticee has claimed excess process loss to the extent of 17.36%.
3.	It was alleged that by claiming excess process loss, Noticee had clandestinely removed Coumarin under the guise of Sodium Sulphate	It was alleged that by claiming excess process loss, the Noticee had clandestinely removed Coumarin.
4.	The Department has relied upon the statements of ex-employees of AFC, Email correspondences between Shri Sanwal and Mrs Hema; Statements of brokers i.e., Shri Makrand Ghate (Manager of M/s Mak Aromas), Shri Jamin Thakore (Proprietor of M.A Aromas); Statements of supplier of inputs; Statements of transporter i.e., Sai roadways; LR copies recovered from Sai roadways and Report of Prof K.D Deodhar, Deptt of Chemistry, IIT Bombay	Same evidence is relied upon by the Department in the present case.

**3.12** Thus, it can be seen that the facts and evidence of excise case are identical to the facts of the present case. They submitted that the department has accepted the decision passed in the said case as there is no appeal filed against the same. Accordingly, the aforesaid decision of the Hon'ble CESTAT would be squarely applicable in the present case also. Thus, the basis of the aforesaid decision of the Hon'ble CESTAT, Mumbai the demand in the captioned show cause should be dropped.

**3.13** They submitted that the Impugned Show Cause Notice as well as the Excise SCN has relied upon the statements of ex-employees viz., Dr. A.R. Sawale, Mr. Alok Singh, Mr. R.P. Menon, Mr. Arun Naphade, Mr. Avinash More to allege claim of excess loss of 17.36% in the manufacture of Coumarin. The aforesaid ex-employees were cross-examined by the Noticee in the adjudication of Excise SCN. During the cross examination the ex-employees admitted that they were not aware about the process of manufacturing of Coumarin from 1,2 benzopyrone method. It was also mentioned by Mr. Alok Singh that statement relating to shortage of inputs was given without verifying the stock and the same was not based on his personal knowledge but hearsay. Shri Jaimin Thakore and Shri Makrand Ghate (Dealers) and Mr. Deodhar did not present themselves for cross examination. Since the statement of Shri Jaimin Thakore and Shri

Makrand Ghate were inconsistent and they refused to appear for cross examination. Accordingly, the Hon'ble CESTAT in **Atlas Fine Chemicals case** (*supra*), at para 9 and 9.2, has held that since persons have resiled from their statements, reliance cannot be placed upon their statements. They reproduced para 9 and para 9.2 of the order. Since the ex-employee i.e., Dr A.R Sawale had changed his stand during cross examination before the Hon'ble CESTAT, credence cannot be given to his statement in absence of any corroboration. Similarly, all the other ex-employees have changes their stance during the cross examination and therefore the said statements cannot be relied upon in the present case as well to allege excess claim of process loss.

**3.14** The Noticee submitted that all the advance licenses issued by DGFT for import of 1,2 benzopyrone (crude) 78-84 % has been redeemed by them and there are no proceedings initiated for cancellation of the same. It is submitted that the present issue pertained to duty free imports under advance licenses for use in manufacture of export goods. The issue therefore pertains to interpretation of FTP and the Appendices thereunder, which falls within the exclusive jurisdiction of the DGFT. Hon'ble CESTAT in Atlas Fine Chemicals case (*supra*) at para 9 had held that the fact that the licences were redeemed by the DGFT goes on to show that the DGFT was satisfied with the ratio of process loss declared by the Noticee. It is settled law that the decision of DGFT shall be final and binding on all matters relating to interpretation of policy and provision in the Handbook of Procedures, Appendices as well as classification etc. In terms of the foregoing, any action in relation to non-compliance with the FTP provisions must be initiated by the DGFT authorities itself, and it is not open for the Customs authorities to sit in judgment over the powers exercised by DGFT. In a catena of judgments, the Courts have also recognized that the DGFT is the authority which is entrusted to clarify issue on interpretation of any provision in FTP, and such clarification / decision shall be final and binding. They placed reliance on decision of the Hon'ble High Court of Delhi in the case of Designco, M/s. Amit Exports and M/s. Sharma International vs. Union of India & Ors. [2024 (11) TMI 1150- Delhi High Court]. The Hon'ble Court held that it would be impermissible for the customs authorities to either doubt the validity of an instrument issued under the FTDR Act or go behind benefits availed pursuant thereto absent any adjudication having been undertaken by the DGFT. An action for recovery of benefits claimed and availed would have to necessarily be preceded by the competent authority under the FTDR Act having found that the certificate or scrip had been illegally obtained. They also placed reliance on the decision of the Hon'ble Supreme Court of India in the case of Titan Medical Systems Pvt. Limited v. Collector of Customs [2003 (151) ELT 254 (SC)] wherein the Hon'ble Supreme Court has held that once license granted to the assessee is not questioned by the licensing authority, the customs authorities cannot refuse exemption on the allegation of misrepresentation. DGFT is the licensing authority with the power to issue and cancel any licenses. The advance licenses being an instrument/document issued under the Foreign Trade (Development and Regulation) Act, 1992 by the DGFT, there can be no cause for the Customs department, which has no such powers under the Foreign Trade (Development and Regulation) Act, 1992 to unilaterally negate the benefit granted under the FTP. Proceedings under the Act towards recovery of duty could only have been initiated subsequent to review/cancellation of licenses by the DGFT. In the present case, there is no dispute that the licenses have not only been cancelled but have also been redeemed by the DGFT on being satisfied of being compliant with the conditions of the advance licenses. Thus, for the demand of Customs duty is without any jurisdiction and not sustainable.

**3.15** They submitted that the process loss claimed by the Noticee in manufacture of Coumarin is in line with the SION Norms and thus it cannot be said that there has been excess production of Coumarin which was removed without payment of duty. It is submitted that same has been held in the excise case, by Hon'ble CESTAT at para 9 of the decision dated 29.12.2017, wherein it has categorically held as under:

*We also find that the Appellant had imported goods under Advance licence for import of 1,2 Benzopyrone (crude) 78 84% and the licences were redeemed by the DGFT inspite of revenue s allegation of Appellant declaring incorrect ratio of input-output. The Appellant in their communication with the DGFT always maintained that the ratio of input output declared by them*

*towards SION Norms is in terms of olfactory strength of 1,2 benzopyrone 78.84% (crude). In spite of communication of revenue with the DGFT that the norms pertain to GLC Purity and not olfactory strength the licences were redeemed by the DGFT which also goes on to show that the DGFT was satisfied with the ratio of process loss declared by the Appellant. In view of above we are of the view that the norms relied upon by the Appellant are correct as the DGFT has not raised any doubt about the same. We thus agree with the Appellant's submission that in absence of any objection by the DGFT, the Excise & Custom Authorities cannot question the same. Our views are based upon the judgments in case of Titan Medical Systems Pvt. Ltd 2003 (151) ELT 254 (SC) and Autolite (India) Ltd 2003 (157) ELT 13 (BOM.). Since the process loss claimed by the Appellant is correct as per SION Norms it cannot be said that there has been excess production of Coumarin which was removed without payment of duty. Furthermore, they placed reliance on the decision of the Hon'ble Bombay High Court in the case of Agarwal metals and alloys unit-II v/s Commissioner reported in 2015, wherein the Department had raised the demand of clandestine removal based on SION norms and the same was upheld by this Hon'ble Tribunal and the Bombay High court. The said decision was upheld by the Hon'ble Apex court reported in **2016 (336) E.L.T A130 (S.C)**. In the present case, the Impugned Show Cause Notice has chosen to not follow the SION norms fixed by the DGFT, despite the fact that the Noticee has fulfilled their export obligation which was in line with the SION norms and the Licences have been redeemed. Hence, for this reason as well the Impugned SCN is not sustainable.*

**4.1** Personal hearing in the matter was granted to the noticees on 15.04.2025, 30.04.2025. In response to the same M/s. Eternis Fine Chemicals (Earlier known as Atlas Fine Chemicals) attended hearing on 30.04.2025 through their representative viz. Mr. Chirag Shetty, Advocate from ELP advocates & Solicitors. Mr. Chirag reiterated his written submissions 21.04.2025 and sought two weeks' time to file additional submissions. Additional submissions were given by M/s. Eternis Fine Chemicals vide their letter dated 05.06.2025 as detailed in paras supra. However, none of the other noticees attended the hearing on the said date. Accordingly, another opportunity for personal hearing was given to rest of the noticees on 29.07.2025. Ms. Ayushi Agrawal, Advocate from ELP advocates & Solicitors appeared for personal hearing through virtual mode on 29.07.2025 on behalf of Noticees no. 2 to 8. During the hearing, she stated that the instant SCN has been issued on the basis of the Central Excise Show Cause Notice which has already been dropped by CESTAT, Mumbai vide their order dated 29.12.2017. Accordingly, she requested to drop the proceedings in the instant case also. She informed that Noticee No. 02 i.e. Mr. S. N. Sanwal and Noticee No. 06 i.e. Smt. Gopi Sanwal have expired. She requested for one week's time for filing written submissions. Ms. Ayushi Agrawal gave written submissions vide e-mail dated 12.08.2025. The said written submissions were identical to the submissions made on behalf of M/s. Eternis Fine Chemicals and as detailed in Para 3 above. They submitted death certificate in respect of Noticee No. 02 i.e. Mr. S. N. Sanwal.

### **DISCUSSION AND FINDINGS**

**5.1** 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 merits.

**5.2** I find that the subject Show Cause Notice was issued on 01.01.2005. I find that as per records available in file, original case file S/10-409/204 Gr VII JNCH was not traceable. However, as the Writ Petition No. 15717/2022 was filed by M/s. Eternis Fine Chemicals against the said Show Cause Notice on grounds of inordinate delay, the file was reconstructed and adjudication proceedings were initiated in the matter.

**5.3** I find that the Noticee No. 1 i.e. Eternis Fine Chemicals (Earlier known as Atlas Fine Chemicals) had filed a Writ Petition no. 15717/2022 before Hon'ble Bombay High Court on grounds of inordinate delay in adjudication. However, as per the orders available on the Court's website, it appears that the Hon'ble Court has not granted any stay in the matter and has not barred the adjudicating authority to decide the matter and accordingly, I am deciding the case on merits on the basis of available records and submissions made by the noticees.

**5.4** In terms of principle of natural justice, opportunity for personal hearing was granted to the noticees 15.04.2025, 30.04.2025 & 29.07.2025. I find that in the instant case, in compliance of provisions of Section 122A of the Customs Act, 1962 and in terms of the principle of natural justice, three Personal Hearings (PHs) were granted to the Noticees and PH intimation letters were issued at the registered address mentioned in the show cause notice via speed-post. In response to the same, authorized representative of the noticees appeared for hearing through virtual mode. 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 Noticees.

**5.5** I find that an intelligence was developed that Atlas Fine Chemicals (now known as Eternis Fine Chemicals) was engaged in clandestine removal of Coumarin and accordingly, a vehicle was intercepted and offended goods were seized from it. Further, the offended goods were also seized from the transporter's godown. During the course of investigation initiated against AFC, it was revealed that AFC mainly manufactured Coumarin from two independent process, first from the indigenous raw material and second from the 1,2 Benzopyrone imported from China. AFC exported the Coumarin manufactured out of the said imported material under the advance license scheme. AFC submitted the details of manufacturing process for obtaining Coumarin from the imported material and claimed 17.36% as process loss and further claimed the utilization of certain indigenous raw material in the said process. During the investigation it was however revealed that the imported material i.e. 1-2 Benzopyrone was nothing but Coumarin and no manufacturing process as claimed by AFC was ever carried out in respect of the imported material i.e. 1,2 Benzopyrone. It was revealed in the investigation that AFC obtained more quantity of Coumarin than actually shown in the statutory record by claiming excess process loss and also removed some quantity of this excess production clandestinely without payment of Central Excise duty and remaining quantity of Coumarin was shown as if manufactured from indigenous raw material. Accordingly, it appeared that AFC had diverted Coumarin obtained from Customs duty free imported raw material i.e. 1,2 Benzopyrone in the domestic market in violation of the provisions of the Customs Act, 1962. Accordingly, it was found that AFC had evaded total Customs duty to the tune of Rs. 2,67,29,485.77. In view of the above, the demand cum show cause was issued to AFC demanding aforementioned differential duty along with applicable interest and consequential penalties on the noticees. Show Cause Notice bearing F.No. V (29)15-53/Adj/2004 dt. 16.09.2004 was also issued under Central Excise Act and Rules by the Commissioner Central Excise, Nasik for the violation of the Central Excise Act and the Central Excise Duty.

**5.6** I find that the Noticee has denied the allegations made in the SCN and in their defence they stated that based on the allegations mentioned in the SCN, excise department had also issued SCN which was set aside by Hon'ble CESTAT vide order A/91672-91681/2017 dated 29.12.2017 by holding that the process loss while converting 1,2 Benzopyrone into Coumarin is over 17% as declared by the company and there is no clandestine removal as alleged by the department, furthermore, the company had rightly availed credit on inputs. The noticee further submitted that there is inordinate delay in the adjudication proceedings and the Show Cause Notice shall be dropped on this point.

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

- A. Whether Show Cause Notice dated 01.01.2005 can be adjudicated after the delay of 20 years or otherwise?
- B. Whether the imported material i.e. 1,2 Benzopyrone was illegally diverted to the domestic market by clandestinely removing the same or otherwise?
- C. Whether the Customs duty amounting to Rs. 2,46,41,881/- (Rupees Two Crore forty six lakhs forty one thousand eight hundred eighty One Only) as detailed in Annexure - B & B-I to the notice, should be recovered from the importer i.e. M/s. Atlas Fine Chemicals (now known as Eternis Fine Chemicals) by invoking extended period available under the proviso to Section 28(1) of the Customs Act, 1962 or otherwise?

D. Whether the interest as applicable on amount of total Customs duty of Rs. 2,46,41,881/- (Rupees Two Crore forty six lakhs forty one thousand eight hundred eighty One Only) should be recovered from the importer under the provisions of Section 28(1), read with Section 28AB of the Customs Act, 1962 or otherwise?

E. Whether penalty should be imposed on the noticees under the provisions of Section, 112(a)/112(b) read with Section 114A of the Customs Act 1962 or otherwise?

**5.8** 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 Show Cause Notice dated 01.01.2005 can be adjudicated after the delay of 20 years or otherwise?**

**6.1** I find that the Show Cause Notice was issued to the noticees in the year 2005 and therefore would be governed by the provisions of Section 28 applicable at that time. Relevant provisions of Section, as it stood on the relevant date are reproduced below:

*SECTION 28. Notice for payment of duties, interest etc. When any duty has not been levied or has been short-levied or -*

*(1) erroneously refunded, or when any interest payable has not been paid, part paid or erroneously refunded, the proper officer may, -*

*(a) in the case of any import made by any individual for his personal use or by Government or by any educational, research or charitable institution or hospital, within one year;*

*(b) in any other case, within six months,*

*from the relevant date, serve notice on the person chargeable with the duty or interest which has not been levied or charged or which has been so short-levied or part 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:*

*Provided that where any duty has not been levied or has been short-levied or the interest has not been charged 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 by the importer or the exporter or the agent or employee of the importer or exporter, the provisions of this sub-section shall have effect as if for the words "one year" and "six months", the words "five years" were substituted.*

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*(2A) Where any notice has been served on a person under subsection (1), the proper officer, -*

*(i) in case any duty has not been levied or has been short-levied, or the interest has not been 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, where it is possible to do so, shall determine the amount of such duty or the interest, within a period of one year; and*

*(ii) in any other case, where it is possible to do so, shall determine the amount of duty which has not been levied or has been short-levied or erroneously refunded or the interest payable which has not been paid, part paid or erroneously refunded, within a period of six months,*

*from the date of service of the notice on the person under subsection (1).*

As per Section 28, as it existed during the material time, a time limit of one year was specified for adjudication of the Show Cause Notice "where it is possible to do so". It therefore appears

that the adjudication proceedings in this case are not hit by the limitation of time. Explanation 4 to section 28 of the Customs Act, 1962 was also inserted by the Finance Act, 2018, which clarified that the Show Cause Notices issued prior to the date on which Finance Bill, 2018 received the assent of the President shall continue to be governed by the provisions of unamended Section 28 of the Customs Act. To provide more clarity, Explanation 4 was amended, retrospectively w.e.f. 29.03.2018, vide the Finance Act, 2020. The explanation 4 to Section 28(9) of the Customs Act which was inserted vide Finance Act 2018 (as amended vide amendment Act 2020) specifically provides that:

*“notwithstanding anything to the contrary contained in any judgment, decree or order of the Appellate Tribunal or any Court or in any other provision of this Act or the rules or regulations made thereunder, or in any other law for the time being in force, in cases where notice has been issued for non- levy, short-levy, non-payment, short-payment or erroneous refund, prior to the 29th day of March, 2018, being the date of commencement of the Finance Act, 2018 (13 of 2018), such notice shall continue to be governed by the provisions of section 28 as it stood immediately before such date.”*

Therefore, the intention of the legislation is clear that the show cause notices which were issued prior to coming into force of the Finance Act, 2018 were required to be governed by un-amended section 28 of the Customs Act.

**6.2** I find that in the matter of Siddhi Vinayak Syntex Pvt Ltd Vs UOI (2017(352) ELT455) Hon'ble Gujarat High Court has clearly stated that when legislature has used this expression "Where it is possible to do so", it meant that if in the ordinary course it was possible to determine the amount of duty within the specified time frame, it should be so done. However, the court further clarified that the legislature itself had wisely not prescribed a time limit and has specified such time limit where it is possible to do so, for the reason that the adjudicating authority for several reasons may not be in a position to decide the matter within the specified time frame. I further draw strength from the judgment of Hon'ble Bombay High Court in the matter of Godrei & Boyce Mfg. Co. Ltd Vs UOI (WPL/21447 of 2022) wherein Hon'ble court has unequivocally held that where the statute does not prescribes a time limit for adjudication, a show cause notice must be adjudicated within reasonable time and what constitutes 'reasonable time' is flexible & would depend on the facts and circumstances of each case, in the instant case adjudicating authority was prevented by sufficient case in deciding the case on account Change of adjudicating authority & Commissionerate. Furthermore, in the matter of Commissioner, GST & Central Excise, Commissionerate II & Others Vs M/s Swati Menthol & Allied Chemicals Ltd & Anr. Civil Appeal No. 4320 of 2023 @ SPLO No. 20072/2021, the Hon'ble supreme court held that the proceedings which were commenced by virtue of the two show cause notices have not been concluded although over a decade has passed. The said matter was remanded to the Commissioner of GST (adjudicating authority) with a direction to conclude the proceedings within a certain specific period. I view of the above facts and judgments, I find that the matter can be rightfully taken for the purpose of adjudication.

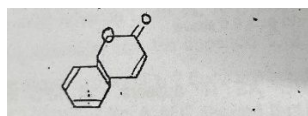
**B. Whether the imported material i.e. 1,2 Benzopyrone was illegally diverted to the domestic market by clandestinely removing the same or otherwise?**

**7.1** I find that the importer M/s. Atlas Fine Chemicals (now known as Eternis Fine Chemicals) had imported duty free 10,51,400 Kgs. of 1,2 Benzopyrone through J.N.P.T. port, Raigad and manufactured / exported 8,68,876.96 kgs of Coumarin from the said material during the period from January 2000 to October 2004 as detailed in the notice. AFC imported the said goods under Advance Licence. Section 12 of the Customs Act, 1962 mainly stipulates that duties of Customs shall be levied on goods imported into India. The Central Government exempted the materials imported into India against an advance licence from the whole duty of Customs under Customs Notification Nos. 30/97 dated 01.04.97, 31/97 dated 01.04.97, 50/2000 dated 27.04.2000, 51/2000 dated 27.04.2000 and 43/2002 dated 19.04.2002, subject to one of the condition that the exempt materials are utilized for the manufacture of final goods and no portion of such materials shall be loaned, transferred, sold or disposed off in any manner; that the exempt

materials shall not be disposed off or utilized in any manner except for utilization in discharge of export obligation; that the said licence and the materials shall not be transferred or sold. AFC claimed to have incurred 17.36% as a process loss in the process to obtain Coumarin from 1,2 Benzopyrone. However, the intelligence was received by the officers that while obtaining the Coumarin from 1,2 Benzopyrone no such process loss up to 17.36 % was occurred and the process loss maximum up to 3% was occurred during the said process. Intelligence was collected that AFC were engaged in clandestine removal of Coumarin. On the basis of intelligence, the vehicle was intercepted and offended goods were seized from the vehicle. The offended goods were also seized from the transporter's godown. Searches were conducted at several places and several incriminating documents were recovered.

**7.2** I find that during the course of investigation it was revealed that AFC mainly manufactured Coumarin from two independent process, first from the indigenous raw material viz. Phenol & other inputs (called as Phenol route) and second from the 1,2 Benzopyrone imported from China (called as Benzopyrone route). AFC exported the Coumarin manufactured out of the said imported material under the advance license scheme. I find that the investigation revealed that the imported material i.e. 1-2 Benzopyrone is nothing but Coumarin may be with small impurities. The description of Coumarin and chemical formula as given in "Merck Index; 10<sup>th</sup> Edition, page No. 2548" is as below:

"Coumarin-2H-1-Benzopyrone-2-one; 1-2 Benzopyrone; Cis-a-Coumarinic acid lactone; Coumarin; Coumarinic anhydride; tonka bean camphor. C<sub>9</sub>H<sub>6</sub>O<sub>2</sub>".



I find that from above description and chemical formula it is established that 1-2 Benzopyrone is nothing but Coumarin. I find that 1-2 Benzopyrone is the chemical name of the product and which is commercially known as Coumarin. The physical/chemical properties, chemical formula of Coumarin and 1-2 Benzopyrone are one and the same it therefore appears that no chemical process is required to obtain Coumarin from Coumarin itself i.e. from 1-2 Benzopyrone. Further, I find that assay reports received from the foreign supplier by AFC and as confirmed by AFC vide their letter-dated 26.07.04 showed that the purity of product ranges from 97 % to 99.6 %. It therefore appeared that 1-2 Benzopyrone imported by AFC was pure and there were no huge impurities as such. It is further revealed that no manufacturing process as claimed by AFC was ever carried out in respect of Coumarin obtained from Benzopyrone route. AFC obtained more quantity of Coumarin than actually shown in the statutory record by claiming excess process loss. AFC further removed some quantity of this excess production clandestinely without payment of Central Excise duty and remaining quantity of Coumarin was shown as if manufactured from indigenous raw material (from Phenol route). Simultaneously AFC had raised and utilized Modvat/Cenvat credit under Central Excise Act and Rules, on the inputs claimed to be utilized in the manufacturing of Coumarin from imported material. The partial quantity of Coumarin was shown as manufactured from Phenol route and accordingly credit was availed and utilized on all those inputs supposedly utilized in the manufacture of Coumarin by this route.

**7.3** With regard to the diversion of the imported goods to the domestic market, I find that the SCN has relied upon various incriminating documents. The investigation revealed E-mail message sent by Shri S.N. Sanwal from USA to Mrs. H. A. Lakhapatwalla (HAL) on May 2003, 23.05.2003, 31.05.2003, 11.06.2003, and 19.06.2003 reads as follows:

"If you are getting a new B/L without word 'Coumarin' by K-line Bombay, which has no word 'Coumarin', then the problem is solved. If not, then send B/L back to our supplier today so that it can come back sooner. Supplier is agreeing to give us a new B/L from China."

"I am happy to receive your E-mail on K-Line. But please be sure that word 'Coumarin' is removed completely. No doubts. Confirm this."

This message in response to Mrs. Lakhapatwalla's E-mail that

"Sir, please note K-Line Mumbai has amended the B/L by blacking the word Coumarin. Shankar can start processing the documents on the basis of faxed copies of invoices, but ultimately he will require the original copies of invoices."

"Import of 17 MT is of extremely good quality and need only drying for 3 hours. Hence it saves washing time. We will get 5MT production per day by drying this BP (I.e. Benzopyrone). Mhetre has already reported this to you."

"The quality of product going exports is very important. Therefore, please advice if material from Jiangsu 14.5 MT that has come previously, if need be wash it second time. But be sure all BP (Benzopyrone) odour is gone. Has this been done?"

Same thing for this 12MT that you received. Please wash it twice if needed. Next shipment to Phoenix leaving by next week has to be of good quality, all 15MT."

**7.4.1** I find that the production supervisor Mr. R.P. Menon who was also in-charge of whole plant of AFC in his statement stated that during his service several tonnes of 1-2 Benzopyrone was received at the Sinnar plant. He further acknowledged that the imported item i.e. 1-2 Benzopyrone itself was Coumarin and the question of any chemical reaction did not arise; that generally the imported material had some foreign odour which could be removed by drying. I find that the production supervisor in his statement had admitted that the process chart shown to him was totally wrong and only drying was done to remove the foreign odour and drying process only negligible loss had occurred and handling loss was there during loading and unloading the material from dryer and it was in the range of 0.5% to 1%.

**7.4.2** I find that Shri Avinash P. More the Production Officer of AFC had also explained in his statement that the Coumarin was produced from 1-2 Benzopyrone which was imported and the treatment given was purification by dissolving in hot water and recrystallisation. He further stated that they were using Methanol occasionally for purification depending on the existence of smell of 1-2 Benzopyrone and after that centrifuging and drying was conducted to remove the smell of impurity. He further stated in his statement that in the process of obtaining Coumarin from imported 1-2 Benzopyrone process loss was around 3% which included the handling loss.

**7.4.3** I find that the General Manager (Technical of AFC) Dr. A.R. Sawale explained in his statement that they had dried 1,2 Benzopyrone in the factory to remove the impurities of acetic acid, which was contained in the product in very small quantity. He further stated that the drying process was carried out by using fans or in dryer at 50-52°C and the product arise after this drying process was pure 1-2 Benzopyrone, commercially known as Coumarin. He also stated that there was no bi-product or waste arise during this process and no inputs other than 1-2 Benzopyrone were used during the process. He further stated that there was loss at 2% to 3% of the material during the process.

**7.5.1** I find that AFC had clandestinely removed 500 Kgs of Coumarin from the premises and the said goods were seized as detailed in paras *supra*. I find that AFC vide their letter dt. 16-2-2004, communicated that the goods under seizure belong to them and were Coumarin and the said goods were cleared from their factory inadvertently on 23.01.2004 without payment of duty. They subsequently paid duty of Rs.36000/- @ 16% on the said goods by TR 6 challan No. 7 dated 07.02.2004. With regard to the seized goods, it was noticed that the goods shown in the delivery challan were "Sodium Sulphate and Organic Acid" however in fact the goods, which were seized, was Coumarin. Even though the goods were consigned by AFC Sinnar, the name of the consignor and consignee on the lorry receipts were shown as Mihir Enterprises and Mak Aromas. No delivery challans / invoice of M/s AFC was found along with the goods. It was found that AFC were removing Coumarin from time to time under delivery challans of either Mihir Enterprises, Adarsh Aromas or MAK Aromas and showing therein the goods as Sodium Sulphate / Organic Acid. AFC were getting prepared lorry receipts for transport of Coumarin under the guise of Sodium Sulphate/Organic Acid from Nashik to Bhiwandi showing the consignor and consignee as one and the same person either in the name of Mihir Enterprises, Adarsh Aromas or MAK Aromas. The copies of lorry receipts in the names of M/s MAK Aromas, Mihir Enterprises, and Adarsh Aromas and delivery challans were also found during the search of office premises of AFC and from the residence of Mrs. H.A. Lakhpatwala.

**7.5.2** Shri Natwarlal Hiraji Bathia, Proprietor of Adarsh Aromas, Mumbai, on perusal of delivery challan and lorry receipt seized from residential premises of H.A. Lakhpatwala, explained in his statement that the name of his company was being misused, as they had never issued such documents. He has however not stated to have received Sodium Sulphate or Organic acid under those lorry receipts as claimed by AFC.

**7.5.3** Shri Makrand Prabhakar Ghate, Manager of MAK Aromas, on perusal of lorry receipts of Sai Roadways explained in his statement that all the LR were in favour of MAK Aromas and the material had been received from AFC Sinnar. He further stated that on the strength of such lorry receipts he would take delivery of the goods from Bhiwandi godown of Sai Roadways, that the material was then delivered to brokers at Bhiwandi and he would get his commission of Rs.10 per Kg. On perusal of lorry receipts of Sai Roadways he stated that he received, Coumarin from AFC and the sale proceeds of the Coumarin were handed over to Mrs. Lakhpatwala in cash @ Rs.450/- per Kgs.

**7.5.4** Shri Jaimin Uday Thakere, stated in his statement that he worked as commission agent in respect of Coumarin received from AFC under lorry receipts and delivery challans of M/s Mihir Enterprises which was a fictitious firm which facilitated AFC to accommodate their consignments cleared without payment of duty. He further stated in March 2002 he met Mr. Sanwal and in the meeting it was decided that AFC would clear Coumarin from their factory without preparing Central Excise invoice and without discharging Central Excise duty on the same and it was also decided that it would be responsibility of AFC to send the consignment through Sai Roadways Sinnar up to Bhiwandi and from Bhiwandi it would be responsibility of purchaser to lift the same with his help. He further stated that as per the understanding whenever the consignments of Coumarin cleared from the factory without payment of duty had to be sent to Bhiwandi under LR/delivery challan prepared mentioning M/s Mihir Enterprises as consignor and consignee. He further stated that to camouflage the identity of Coumarin the LR/delivery challan used to bear the description of the product as Sodium Sulphate or Organic acid and the fictitious name of M/s Mihir Enterprises was decided by Shri Sanwal. He further admitted in his statement that it was his responsibility to collect cash towards sale of clandestinely removed Coumarin from AFC without payment of duty and the cash amount so collected was handed over to Mrs. Lakhpatwala periodically within a period of 5 days after sale of Coumarin during her visit to Mumbai.

**7.5.5** Shri Arun Madhav Naphade, Senior Accountant of AFC explained in his statement that as per the directions of Mrs. Lakhpatwala he used to make payments in cash to Mr. Vilas Darade of Sai Roadways Sinnar in the names of M/s MAK Aromas, M/s Mihir Enterprises and M/s Adarsh Aromas.

**7.5.6** Shri Alok Kumar T, Singh, the excise and despatch officer of AFC stated in his statement that in connection of lorry receipts of MAK Aromas, Mihir Enterprises and Adarsh Aromas no excise gate passes were prepared and only delivery challans in the name of MAK Aromas were prepared at Nashik Road Office as consignor and consigned to Self. He further admitted that goods were described on these delivery challans as Sodium Sulphate instead of Coumarin whereas actual despatch was of Coumarin to MAK Aromas, Mihir Enterprises and Adarsh Aromas. He further admitted that no records were maintained at Sinnar factory & only LR copy of despatches were maintained at Nashik Road office by Mrs. H. A. Lakhapatwalla in respect of MAK Aromas, Mihir Enterprises and Adarsh Aromas. He further explained that after the process of drying the imported material, whatever quantity of Coumarin was obtained was in fact higher than the quantity accounted for in RG 1 and Annexure 21 and the excess Coumarin being obtained out of this was sold in the market without payment of duty through MAK, Mihir and Adarsh Aromas and the balance of excess stock was shown in RG1 register as a production from local raw material. He further explained that no manufacturing process as explained by Mr. Sanwal was being carried out in the factory during the period.

**7.5.7** Shri R.P. Menon, the Production Superintendent of AFC explained in his statement that during his service no Sodium Sulphate, was recovered. Also, Dr. A. R. Sawale, the General Manager (Technical and R&D) explained in his statement that there was no facility/plant to recover the Sodium Sulphate and Boric acid separately from the wastage till he was in service. Shri A.T. Singh, Despatch and Excise in charge of AFC, explained in his statement that Sodium

Sulphate was not manufactured or stored in the factory. These statements show that Sodium Sulphate was not obtained /collected from the wastage by AFC.

**7.6** In view of the aforementioned documents and statements recovered during the investigation and mentioned in the Notice, I find that the importer M/s. Atlas Fine Chemicals (now known as Eternis Fine Chemicals) has imported Coumarin as 1,2 Benzopyrone under Advance licence scheme by showing 17.36% as process loss, whereas the actual loss was not as claimed by the importer. I find that various persons involved in the instant business and dealing with the Coumarin had admitted and explained in detail the modus operandi adopted by AFC regarding diversion of the imported goods to domestic market. It has been categorically admitted by various persons as detailed hereinabove in their respective statements that the dutiable goods were diverted to the domestic market using fictitious firms and without payment of applicable duties. I find that the government exempted the materials imported into India against advance licence from the whole duty of Customs subject to the condition that the exempted materials are utilized for the manufacture of final goods and no portion of such materials shall be loaned, transferred, sold or disposed off in any manner. However, AFC devised a modus operandi and diverted the imported goods to the domestic market in violation of the conditions imposed by the said exemption notifications. I find that the goods imported by AFC i.e. 1, 2 Benzopyrone was actually Coumarin only which the importer was seemingly showing as the finished product. Only process conducted by AFC was drying to get rid of the smell and the loss occurred in the said drying process was not 17.36% as claimed by the importer. I find that AFC imported total 10,51,400 Kgs of 1,2 Benzopyrone without payment of Customs duty under Advance Licenses. Out of the said quantity AFC utilized 1,50,981.04 Kgs. of 1,2 Benzopyrone for manufacture of un-accounted Coumarin, which was partially cleared clandestinely & partially cleared as domestic production (i.e. as if manufactured out of indigenous raw material from Phenol route). This 1,50,981.04 Kgs of 1,2 Benzopyrone procured & imported by AFC was utilized for the purpose otherwise than the purpose for which it was permitted. This import of 1,50,981.04 Kgs. of 1,2 Benzopyrone was therefore illegal, without authority of law & without payment of Customs Duty and in violation of section 12 of the Customs Act, 1962. Out of 10,51,400 Kgs of 1,2 Benzopyrone imported by AFC under Advance Licenses 1,50,981.04 Kgs. of 1,2 Benzopyrone was not required / utilized by them to meet the export obligation under the said licenses. The quantity of Coumarin cleared clandestinely without payment of duty & the quantity of Coumarin cleared as domestic production, was apparently disposed off by AFC in violation of condition of Notification No. 30/97 Cus. 31/97. Cus. both dated 01-4-1997; 50/2000 Cus., 51/2000 both dated 27-04-2000 & 43/2002 Cus. dated 19-04-2002.

**7.7** During the course of investigation, it was also revealed that during the period, United States of America had imposed Anti-Dumping Duty on all forms of Coumarin of Chinese origin and accordingly, the imported devised a well knitted scheme to import Coumarin under Advance Licence scheme by declaring the same as 1,2 Benzopyrone. However, after importing no further manufacturing process was conducted on the imported goods other than washing and drying. And, thereafter, the goods were exported to USA to avoid the Antidumping duty. It also came on record that AFC imported goods from their sister concern companies i.e. Aims Impex (P) Ltd. and Monolith Chemicals (P) Ltd. Using this modus operandi AFC in fact exported the Chinese Coumarin by depicting the same as Indian goods and the goods were shown to be exported in accordance with Advance Licence scheme even though no manufacturing process was ever carried during the whole process other than washing and drying. I find that Chairman and Managing Director Mr. S. N. Sanwal had sent an e-mail to the General Manager of the company i.e. Mrs. H.A. Lakhpatwala to remove the phrase Coumarin from the import documents i.e. bill of Lading. I find that the Bill of Lading were amended to the extend that the word Coumarin was blackened to hide the original identity of the goods. Further, it is also categorically mentioned in the e-mail/fax as detailed in Para 1.10 above that the imported item i.e. Coumarin was of extremely goods quality and need only drying of 3 hours which corroborated with the statements tendered by various persons involved in the business. Above messages clearly established that the material which was imported by AFC was nothing but Coumarin with some odour and the said impurities were removed by the process of washing & drying.

**7.8** I find that AFC had submitted input-output ratio before the advance licence committee by showing false and incorrect manufacturing process as AFC claimed abnormal loss on the

manufacturing process. I find that Table-A mentioned in para 1.16 above clearly brings out the fact that the process loss of 17.36% claimed by the importer was false and incorrect. In column no. 7 of the said Table-A above, total quantity on inputs required for both the routes (i.e. Phenol and Benzopyrone route) is mentioned which was found to be more than the actual consumption of the said inputs as per their Register (i.e. RG-23A Pt.1 which was the register for accounting the inputs). It can be seen that as per the formula submitted by AFC, the quantity required for manufacture of Coumarin is far more than the quantity actually shown as consumed in their statutory records. This showed that no manufacturing process as declared by AFC was carried out for manufacture of Coumarin from 1,2-Benzopyrone as no sufficient inputs as claimed by AFC were available in stock with them.

**7.9** I find that AFC had imported 1,2 Benzopyrone and manufactured and exported the Coumarin from the said material during the period from September 1999 to October 2004 (as detailed in annexure B to the notice). AFC submitted the manufacturing process and flow chart wherein they claimed to have utilized caustic soda, sulphuric Acid, toluene and methanol in the process to obtain Coumarin from 1-2 Benzopyrone, I find that while obtaining Coumarin from 1,2 Benzopyrone no such process was ever carried by AFC and the importer only carried out washing & drying of 1-2 Benzopyrone to obtain Coumarin. Therefore, I am of the considered opinion that AFC never used Caustic Soda, Toluene, methanol and Sulphuric acid in the process to obtain Coumarin. I find that AFC had imported 10,51,400 Kgs of 1, 2 Benzopyrone duty free through JNPT Port and manufactured & exported 8,68,876.96 Kgs of Coumarin from the said material during the period from January 2000 to October 2004. However, AFC in fact manufactured 10,19,858 Kgs of Coumarin but accounted for 8,68,876.96 Kgs of Coumarin by showing the process loss of 17.36% instead of 3%. AFC therefore appears to have not accounted for this excess production of 1,50,981.04 Kgs {10,19,858 - 8,68,876.96} of Coumarin and the importer disposed off the said non-accounted quantity of Coumarin partially by clandestine removal and partially by clearing it in domestic market on payment of Central Excise Duty as if manufactured from Indigenous raw material from Phenol route.

**7.10** I find that the importer M/s. Atlas Fine Chemicals (Now known as Eternis Fine Chemicals) has heavily relied upon the judgment of Hon'ble CESTAT, Mumbai wherein vide Final Order no. A/91672-91681/2017 dated 29.12.2017, Hon'ble Tribunal had dropped the proceedings against them and decided the matter in their favour. I find that AFC had in their written submissions has submitted that the said order of CESTAT has been accepted by the department. On the basis of the above facts and evidences, as mentioned in paras *supra*, Central Excise, Nashik had also issued Show Cause Notice to M/s. Atlas Fine Chemicals demanding Central Excise Duty and consequential penalties. On the basis of the said notice, Order-in-Original was passed by the competent authority of Central Excise and the demand was confirmed against M/s. Atlas Fine Chemicals along with consequential penalties on the noticees. I find that the Tribunal has mainly dropped the order of Central Excise authority on the pretext that the statements of various persons involved in the matter cannot be relied upon as during Cross-examination, said persons have either retracted their statements or did not appear for cross-examination. In this regard, I find that complete modus operandi was unravelled by the investigating agency not only on the basis of the statements of the concerned persons but also by seizing 500 Kgs of Coumarin which was clandestinely removed by AFC. Also, the said seized goods were removed from the factory premises on the basis of mis-declaration of the description of the goods as well as the fictitious names of the firms were used to hoodwink the authorities. The said fact of mis-declaration was admitted by the importer and differential duty along with interest was duly paid by them. Furthermore, the said fact was upheld by Hon'ble Tribunal in their aforementioned order. I find that on the basis of the above seizure, investigation was initiated against the importer and various documents were recovered. As detailed in paras *supra*, various e-mails and fax messages were recovered during the investigation which depicted that Mr. S.N. Sanwal had made clear directions omit the word Coumarin from the import documents i.e. Bill of Lading. I find that the Hon'ble Tribunal has not considered the said e-mail and fax messages while deciding the case. Also, I find that in the case at hand, none of the noticees have asked for the cross-examination of any of the persons involved in the matter. Therefore, the cross-examination of the persons during separate adjudication proceedings cannot be considered. I find that in the instant case, various brokers involved neither retracted their statements, nor they

appeared for cross-examination and the said fact is also mentioned in the Tribunal order. I find that the statement of these brokers was extremely crucial in the instate case as they clearly brought out the modus operandi that fictitious firms were used by AFC to divert Coumarin to domestic market, also, wrong description of the goods was mentioned on the packages to misguide the authorities. They further admitted that they paid the amount in cash to Mrs. H.A. Lakhpatwala. The said statement was never retracted by the brokers involved. Just because, the persons did not appear for cross-examination did not make the statements invalid, more so when the said statements were never retracted. In this regard, I find that the evidences collected during recording of statement is a material and admissible evidence. Further, in the case of Naresh J. Shukawani Vs Union of India [1996 (83) ELT. 258 (SC)] it was observed by the Hon'ble Apex Court that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973 and therefore, it is a material piece of evidence collected by the officials. It was further stated by the Hon'ble Court that if such a statement incriminates the accused, inculcating him in the contravention of the provisions of the Act, it can be considered as substantive evidence to connect the accused with the contravention of the provisions of this Act. I find that it is a settled law that the statements recorded under the Customs Act is relevant and admissible evidence as held in umpteen number of legal pronouncements till date. The person summoned is bound to state the truth thus there is a strong presumption of truthfulness of the statements recorded under the Act. This fairly establishes the case of the department. It has been held it is an effective tool in the hands of Customs to collect evidences in the form of voluntary statements. The Hon'ble Courts in various judicial pronouncements have further strengthened the validity of this enabling provision and it has been affirmed that statement given before Customs officers is a material piece of evidence and certainly can be used as substantive evidence. Further, these Statements are not hit by bar of admissibility under either Section 25 of the Evidence Act, 1872 or Article 20(3) of the Constitution of India and is presumed to be truthful. A few of the legal citations relied upon by me in the support of the above are referred below:

- Asst. Collector of Central Excise, Rajamundry v. M/s. Duncan Agro India Ltd. reported in 2000 (120) E.L.T. 280 (S.C.): Statement recorded by a Customs Officer under Section 108 is a valid evidence.
- In 1996 (83) ELT. 258 (S.C.) in the case of Shri Naresh J. Sukawani v. Union of India:

Hon'ble Supreme Court in the case of Kanhailal Vs. UOI, 2008 (1) Scale 165 observed:

"The law involved in deciding this appeal has been considered by this court from as far back as in 1963 in Pyare Lal Bhargava's case (1963) Supp. 1 SCR 689. The consistent view which has been taken with regard to confessions made under provisions of section 67 of the NDPS Act and other criminal enactments, such as the Customs Act, 1962, has been that such statements may be treated as confessions for the purpose of Section 27 of the Indian Evidence Act. The Apex Court in the case Hazari Singh V/s: Union of India reported in 110 E.L.T. 406, and case of Surjeet Singh Chhabra V/s. Union of India & Others reported in 1997 (1) S.C.C. 508 has held that the confessional statement made before the Customs Officer even though retracted, is an admissible and binding on the person. Going by the ratio of the above decisions, I am of the considered view that the oral evidences in the form of statements of various persons involved which were documented are acceptable and a credible evidence to support the allegations levelled in the SCN against noticees and constitutes a valid and sound proof. In view of the above pronouncements, I find that placing reliance upon statements is correct and legal and these evidences proved the offence of the noticees and constitute material piece of evidence. In view of the above, I am of the considered opinion that M/s. Atlas Fine Chemicals (now known as Eternis Fine Chemicals) diverted the goods to the domestic market in violation to the various notification as stipulated above.

**C. Whether the Customs duty amounting to Rs. 2,46,41,881/- (Rupees Two Crore forty six lakhs forty one thousand eight hundred eighty One Only) as detailed in Annexure - B & B-I to the notice, should be recovered from the importer i.e. M/s. Atlas Fine Chemicals (now known as Eternis Fine Chemicals) by invoking extended period available under the proviso to Section 28(1) of the Customs Act, 1962 or otherwise?**

**8.** After having determined the eligibility of the notification of the subject goods, it is imperative to determine whether the demand of differential Customs duty as per the proviso to Section 28(1) of the Customs Act, 1962, in the subject SCN is sustainable or otherwise. The relevant legal provision is as under:

*SECTION 28. Notice for payment of duties, interest etc. When any duty has not been levied or has been short-levied or -*

*(1) erroneously refunded, or when any interest payable has not been paid, part paid or erroneously refunded, the proper officer may, -*

*(a) in the case of any import made by any individual for his personal use or by Government or by any educational, research or charitable institution or hospital, within one year;*

*(b) in any other case, within six months,*

*from the relevant date, serve notice on the person chargeable with the duty or interest which has not been levied or charged or which has been so short-levied or part 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:*

*Provided that where any duty has not been levied or has been short-levied or the interest has not been charged 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 by the importer or the exporter or the agent or employee of the importer or exporter, the provisions of this sub-section shall have effect as if for the words "one year" and "six months", the words "five years" were substituted.*

**8.1** I find that the importer had evaded the payment of correct duties of Customs by showing illegal and improper process loss of 17.36% whereas actual loss was miniscule i.e. maximum 3% and that too because of washing and drying. I find that the importer M/s. Atlas Fine Chemicals submitted flow chart and manufacturing process even though no such process was carried out by the company. I find that the importer M/s. Atlas Fine Chemicals (now known as Eternis Fine Chemicals) did not do any manufacturing process and showed excessive process loss and accordingly, imported the product Coumarin more than what was required to fulfil the obligation under Advance Licence scheme. The importer made wilful misstatement by giving wrong declaration which resulted in non-accounted production of Coumarin and which led to evasion of payment of proper duties of Customs. I find that the importer colluded with various persons and diverted the excessive Coumarin to the domestic market by mis-declaring the product and on the strength of fictitious firms. This clearly shows that the importer intentionally misstated the facts and colluded with various persons to evade payment of proper duties of Customs by diverting the goods to the domestic market in violation of the Conditions imposed by various notification of advance licence as detailed in paras *supra*. 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.

**8.2** In the instant case, as explained in paras *supra*, the importer has wilfully suppressed the facts in the import of impugned goods and diverted the goods to the domestic market, 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, extended period as detailed in proviso to Section 28(1) as prevailing at the relevant period, is applicable in this case and the duty, so evaded, is recoverable from the importer M/s. Atlas Fine Chemicals (Now known as Eternis Fine Chemicals).

**8.3** 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 proviso to Section 28(1) of the Customs Act, 1962 as applicable during the relevant period, 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;*

**8.4** Accordingly, the differential duty amounting to Rs. 2,46,41,881/- (Rupees Two Crore Forty Six Lakh Forty One Thousand Eight Hundred Eight One Only) on 1,2 Benzopyrone imported & illegally diverted to the local market as Coumarin is liable to be paid & recovered from the noticee M/s. Atlas Fine Chemicals (now known as Eternis Fine Chemicals) as detailed in Annexure-B & B-1 to the notice in terms of proviso to Section 28(1) of the Customs Act, 1962 as applicable during the relevant period.

**D. Whether the interest as applicable on amount of total Customs duty of Rs. 2,46,41,881/- (Rupees Two Crore forty six lakhs forty one thousand eight hundred eighty One Only) should be recovered from the importer under the provisions of Section 28(1), read with Section 28AB of the Customs Act, 1962 or otherwise?**

**9.** 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 28AB & Section 28AA (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.

**9.1** Under Section 28AA/28AB 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.

**9.2** 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/28AB of the Customs Act, 1962.

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.

**9.3** 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 28AB/28AA of the Customs Act, 1962 (as applicable during the relevant period) on the differential duty of Rs. 2,46,41,881/- as detailed in Annexure-B & B-1 to the notice.

**E. Whether penalty should be imposed on the noticees under the provisions of Section, 112(a)/112(b) read with Section 114A of the Customs Act 1962 or otherwise?**

**10.1** I find that the Notice has proposed to imposed penalty under Section 112 (a). 112 (b) read with Section 114 of the Customs Act, 1962. 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 (8) 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.***

**10.2** It is a settled law that fraud and justice never dwell together (Fraus et 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 1 : 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."*

**10.3** 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. Atlas Fine Chemicals (now M/s. Eternis Fine Chemicals). I note that as discussed in paras *supra*, AFC did not account for the entire quantity of the goods manufactured by them out of the imported item 1,2 Benzopyrone and diverted the same to the domestic market with clear intention to evasion of payment of proper duties of Customs. In view of the provisions discussed above, I find that the proper duty had not been paid by AFC by reasons of collusion, 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, 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, therefore, the importer i.e. AFC is also liable for penal action under Section 114A of the Customs Act, 1962. Accordingly, I hold that M/s. Atlas Fine Chemicals (now Eternis Fine Chemicals) is liable for penalty under Section 114A of the Customs Act, 1962. However, in terms of fifth proviso to Section 114A, no penalty is liable to be imposed on M/s. Atlas Fine Chemicals under Section 112 *ibid*, of the Customs Act, 1962.

**10.4.1** I find that the Notice has proposed penalty under Section 112(a) or Section 112(b) of the Customs Act, 1962 on the co-noticees Shri S. N. Sanwal, Shri Anand Shiv Narayan Sanwal, Mrs. Laxmi Sanwal, Miss Indu Sanwal, Smt. Gopi Sanwal, Shri Omprakash Bhutada and Mrs. H. A.

Lakhpatwala. As per Section 112 of the Customs Act, 1962, a person who in relation to any goods, does or omits to do any act of in any manner deal with the said goods, which they reason to believe are liable for confiscation under Section 111 of the Customs Act, 1962. Accordingly, to invoke penalty under Section 112 of the Customs Act, 1962, firstly it has to be ascertained whether the goods imported by AFC are liable for confiscation under Section 111 of the Customs Act, 1962 or otherwise. As discussed in detail in paras *supra* and findings herein above, AFC illegally diverted the impugned goods to the domestic market which were imported under Advance licence in violation of the conditions laid down in Customs Notification no. 30/97, 37/97 dated 01.04.1997, 50/2000, 51/2000 dated 27.04.2000 and 43/2002 dated 19.04.2002 as the importer was not legally permitted to divert the raw material or the products obtained from such imported material to the domestic market.

**10.4.2** I find that as per Section 111(o) of the Customs Act, 1962, any goods exempted, subject to any condition, from duty under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer. As discussed in detail in paras above, no sanction was granted by any officer for diversion of the imported goods to the domestic market. However, the noticee diverted the same by way of collusion, wilful mis-statement & suppression of the facts. The importer showed process loss of 17.36% of the imported goods, even though there was maximum loss of 3% in the manufacturing of final product and that is also due to washing and drying process only. Accordingly, I find that the quantity of the imported item which was shown as excess process loss i.e. 14.36% (17.36% claimed – 3% actual loss) is liable to be confiscated under Section of the Customs Act, 1962. I find that the 1,50,981.04 Kgs of 1,2 Benzopyrone imported by AFC as detailed in Column 10 of Annexure-B(I) to the notice valued at Rs. 4,29,37,668/- is liable to be confiscated under Section 111(o) of the Customs Act, 1962.

**10.4.2** I find that Section 111 of the Customs Act, 1962 has not been invoked in the Show Cause Notice. However, I find that various judicial forums in plethora of judgments have pronounced that mention of wrong provision of law or non-mention of proper law is not of importance so long as the show case notice clearly reveals and brings out the substance of the allegations and the omissions and breaches of the person being charged. A few of these case laws are mentioned below-

- Five Judge Bench of the Supreme Court in the case of Union of India v. Tulsiram Patel, (1985) 3 SCC 398, in the decision dated 11.07.1985, which held that, "Further, even the mention of a wrong provision or the omission to mention the provision which contains the source of power will not invalidate an order/notice where source of such power exists."
- Hon'ble CESTAT, Principle Bench Delhi, in case of M/s. Jagson International Ltd Vs Commr. of Customs, reported in 2006 (199) E.L.T.553 (Tri. - Del.) held that, "Non-mention of statutory provision when not fatal - Confiscation - When sufficient averment in Show Cause Notice so as to bring in penal provision, which was not mentioned in the Show Cause Notice, and specific allegations of clearance without payment of duty and contraventions of provisions made out, and requisite ingredients of provision set out in Show Cause Notice, then non-mention of relevant provision not fatal - Confiscation upheld - Section 111 of Customs Act, 1962. [para 10.3]". The decision of Hon'ble CESTAT has been upheld by Hon'ble Supreme Court in the same case reported in 2015 (323) E.L.T. 243 (S.C.)
- Hon'ble High Court of Delhi in case of M/s. Supercom India Ltd. Vs D.G.F.T., Ministry of Commerce reported in 2003 (160) E.L.T. 69 (Del.) held that, "Non-mentioning of a provision or mention of a wrong provision not fatal to Show Cause Notice and cannot render the same otiose."
- Hon'ble Supreme Court in case of M/s. Fortune Impex Vs Commissioner of Customs Kolkata reported in 2004 (167) E.L.T. A134 (S.C.) held that, "Non-mention of the particular section of Customs Act, 1962 would not vitiate the proceedings particularly when allegation and charges against all the appellants were mentioned in clear terms in the Show Cause Notice".

In the instant case, it has been adequately brought out in the notice that the goods were illegally diverted to domestic market and were imported in violation of various conditions laid down under the Advance Licences issued vide aforementioned relevant notifications. Accordingly, I am of the considered opinion that even though Section 111 of the Act, *ibid.* has not been mentioned & invoked in the notice, the same is applicable in the matter at the goods valued at Rs. 4,29,37,668/- (as detailed in Annexure B-1) is liable for confiscation under Section 111(o) of the Customs Act, 1962.

**10.4.3** 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 undischarged 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. ‘*

**10.4.4** In view of the fraud and intentional diversion of the goods to the domestic market, the goods having assessable value of Rs. 4,29,37,668/- (as detailed in Annexure B-1) are liable for confiscation under Section 111(o) of the Customs Act, 1962.

**10.4.5** The subject imported goods as detailed in Annexure-B &B-I to the notice, 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).”*

**10.4.6** 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 Fertilchem 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.

**10.4.7** I 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.”*

**10.4.8** 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.

**10.4.9** In view of above facts, findings and legal provisions, I find that it is an admitted fact with documentary evidences that the importers had diverted the imported goods to the domestic market in violation to the conditions laid down under Customs notification no. 30/97, 31/97 dated 01.04.1997, 50/2000, 51/2000 dated 27.04.2000 and 43/2002 dated 19.04.2002 and as per the conditions of the advance licence. 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 liable to confiscation under Section 111(o) of the Customs Act, 1962. Accordingly, I observe that the present case is also merits imposition of Redemption Fine, regardless of the physical availability, once the goods are held liable for confiscation.

**10.5** I find that Shri S. N. Sanwal was the Chairman and Managing Director of AFC and was the main functionary under whose directions and guidance AFC evaded the Customs duty to the tune of Rs. 2,46,41,880/-. Mr. S.N. Sanwal is the main person who directly dealt and managed the diversion of the goods in an illegal manner. The e-mail correspondence made by Shri S.N.

Sanwal from USA with Mrs. H.A. Lakhpatwalla as detailed in para 1.10 above, clearly depicts his knowledge and involvement in the evasion of duty. Also, as detailed in para 1.19.9 above, Mr. Sanwal in discussion with one Mr. Jaimin Thakore decided to clear Coumarin clandestinely and without payment of applicable duties. Mr. Sanwal also came up with idea of making some fictitious firm which was subsequently used for diversion & clandestine removal of the imported goods. Also, Mr. Sanwal submitted flawed manufacturing flow chart to the applicable authorities and made willful mis-statement with the clear intention to evade payment of proper duties of Customs. Accordingly, I find that Mr. S. N. Sanwal was the key person in the illegal diversion and clandestine removal of the goods to the domestic market and therefore, due to his acts of omissions & commission, he is liable for penal action under Section 112(a) of the Customs Act, 1962.

**10.6** I find that co-noticees i.e. Mr. Anand Sanwal- son of Shri S.N. Sanwal (Noticee no. 3), Smt. Laxmi Sanwal- Wife of Shri S.N. Sanwal (Noticee No. 4), Ms. Indu Sanwal- Daughter of Shri S.N. Sanwal (Noticee No. 5), Smt. Gopi Sanwal- Mother of Shri S.N. Sanwal (Noticee no. 6) and Shri Omprakash Bhatuda (Noticee no. 7) are all directors in the company M/s. Atlas Fine Chemicals (now M/s. Eternis Fine Chemicals) are the beneficiaries of the activities carried out by AFC by way of diverting and clandestine removal of the goods to the domestic market leading to evasion of duty to the tune of Rs. 2,46,41,880/-. I find that activities of diversion of goods and illegal removal of the goods was carried out over a long period of time and it is not possible for AFC to evade duty by such a modus operandi without the knowledge of its directors, more so when even the employees working in the firm were also aware that no manufacturing procedure was conducted at their factory premises and only washing & drying procedure was accomplished. I find that co-noticees have dealt with the goods in their capacity as the directors of the company and are therefore, liable for penal action under Section 112(b) of the Customs Act, 1962.

**10.7** I find that Mrs. H.A. Lakhpatwalla, the General Manager of M/s. Atlas Fine Chemicals (now M/s. Eternis Fine Chemicals) also played key role in the modus operandi devised by them to divert & clandestinely removal of the imported goods to the domestic market leading to evasion of duties of Customs. I find that search was conducted at the premises of Mrs. H.A. Lakhpatwalla and various incriminating documents were recovered from there. As detailed in para 1.19.7 and 1.19.8 above, documents viz. delivery challans & lorry receipts retrieved from the premises of Mrs. Lakhpatwalla were confronted with Shri Natwarlal Hiraji Bathia, Proprietor of Adarsh Aromas who stated that his company's name was used fraudulently. Also, Shri Makrand Prabhakar Ghate, Manager of MAK Aromas admitted that he used to handover the sale proceeds of the Coumarin to Mrs. Lakhpatwala in cash which was actually removed from their factory in clandestine manner. Furthermore, e-mail correspondence with Shri S.N. Sanwal also showed her involvement in illegal diversion & clandestine removal of the goods to evade payment of proper duties of Customs. Accordingly, I find that Mrs. H. A. Lakhpatwalla was the key person in the illegal diversion and clandestine removal of the goods to the domestic market and therefore, due to her acts of omissions & commission, she is liable for penal action under Section 112(a) of the Customs Act, 1962.

**10.8** I find that during the personal hearing on 29.07.2025, Ms. Ayushi Agrawal submitted that Noticee No. 2 i.e. Shri S. N. Sanwal and Noticee No. 6 i.e. Smt. Gopi Sanwal have expired. However, they could only submit death certificate bearing no. D-2017:27-90267-000580 dated 19.04.2017 in respect of Shri S.N. Sanwal. I find that it has been held by various judicial forums that once the person on whom the penalty has been proposed, is dead, then penalty proceedings cannot be initiated against the same. In this regard, I rely upon the judgment of Hon'ble CESTAT, Mumbai in case of Bharati Mulchand Chheda vs Commissioner Of C. Ex., Mumbai-V {2016 (336) E.L.T. 93 (Tri. - Mumbai)}. Relevant part of the order is reproduced below:

*“.....6. We find that the learned Commissioner was aware of the fact while passing the impugned order that the proprietor of M/s. Canan Domestic Appliances had already expired on 12-11-2003 whereas the impugned order was passed on 29-9-2006. In fact this case was remanded by the Tribunal vide its order dated 15-2-2005 setting aside the order of the Commissioner of Central Excise and remanding the matter for de novo adjudication. Even at*

*that time the proprietor was no more, but in spite of this, the learned Commissioner passed the impugned order against the dead person who was the sole proprietor of M/s. Canan Domestic Appliances, which is against the settled position of law as held by various decisions of the Tribunal cited above. We are of the considered opinion that once the factum of death of the sole proprietor has come to the knowledge of the learned Commissioner, the learned Commissioner should have dropped the proceedings rather than passing the impugned order, but he chose to pass the impugned order against the dead person, which is not sustainable in law.*

*7. Therefore, keeping in view the facts and circumstances and the decisions cited by the appellant, we set aside the impugned order by allowing the appeal of the appellant with consequential relief, if any."*

In view of the above, I find that no penalty can be imposed on Shri S.N. Sanwal, however, as no proof of death has been produced in respect of noticee no. 6, therefore, I upheld the penalty on her for the reasons detailed hereinabove.

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

#### **ORDER**

**11.1** I confirmed the demand of Customs duty of Rs. 2,46,41,880.28 (Rupees Two Crore forty six lakh forty one thousand eight hundred eighty and Paise twenty eight only) on 1,2 Benzopyrone imported illegally and contained in Coumarin removed clandestinely without payment of duty and diverted to local market as if the Coumarin was manufactured from indigenous material, as detailed in Annexure-B & B-1 to the notice and order that the same shall be recovered from M/s. Atlas Fine Chemicals (now known as M/e. Eternis Fine Chemicals) by invoking extended period as per proviso to Section 28(1) of the Customs Act, 1962, applicable during the period along with applicable interest under Section 28AB of the Customs Act, 1962.

**11.2** Even though the goods are not physically available, I order to confiscate 1,50,981.04 Kgs of 1,2 Benzopyrone valued at Rs. 4,29,37,668/- contained in Coumarin obtained by showing excess process loss as detailed in Annexure- B & B1 to the notice under Section 111(o) of the Customs Act, 1962. However, I give an option to the importer to redeem the said goods on payment of Redemption fine of Rs. 21,50,000/- (Rupees Twenty One Lakh Fifty Thousand only) under Section 125(1) of the Customs Act, 1962.

**11.3** I impose a penalty equal to demanded duty of Rs. 2,46,41,880.28 (Rupees Two Crore forty six lakh forty one thousand eight hundred eighty and Paise twenty eight only) along with the applicable interest thereon, on the importer M/s. Atlas Fine Chemicals (now known as M/s. Eternis Fine Chemicals) under Section 114A of the Customs Act, 1962.

**11.4** I impose a penalty of Rs. 18,00,000/- on Shri Anand Shiv Narayan Sanwal under Section 112(b) of the Customs Act, 1962.

**11.5** I impose a penalty of Rs. 18,00,000/- on Mrs. Laxmi Sanwal under Section 112(b) of the Customs Act, 1962.

**11.6** I impose a penalty of Rs. 18,00,000/- on Ms. Indu Sanwal under Section 112(b) of the Customs Act, 1962.

**11.7** I impose a penalty of Rs. 18,00,000/- on Smt. Gopi Sanwal under Section 112(b) of the Customs Act, 1962.

**11.8** I impose a penalty of Rs. 18,00,000/- on Shri Om Prakash Bhutada under Section 112(b) of the Customs Act, 1962.

**11.9** I impose a penalty of Rs. 24,00,000/- on Mrs. H.A. Lakhpatwalla under Section 112(a) of the Customs Act, 1962.

**11.10** I refrain from imposing penalty on Shri S.N. Sanwal as he has expired.

**12.** 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.

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

To:

1. Eternis Fine Chemicals Ltd.  
(Formerly known as M/s. Atlas Fine Chemicals Pvt. Ltd.)  
1004, Peninsula Tower,  
Peninsula Corporate Park,  
Lower Parel, Mumbai- 400013
2. Eternis Fine Chemicals Ltd.  
(Formerly known as M/s. Atlas Fine Chemicals Pvt. Ltd.)  
948/2, STICE, Sinnar- 422103.
3. Shri S. N.Sanwal,  
Chairman & Managing Director,  
Eternis Fine Chemicals Ltd. (Formerly known as M/s. Atlas Fine  
Chemicals Pvt. Ltd.),  
9 & 10, Dehbanu Mansion, Nasik Pune Road,  
Nasik Road- 422101.
4. Anand Shiv Narayan Sanwal, Director,  
Eternis Fine Chemicals Ltd. (Formerly known as M/s. Atlas Fine  
Chemicals Pvt. Ltd.),  
9 & 10, Dehbanu Mansion, Nasik Pune Road,  
Nasik Road- 422101.
5. Mrs. Laxmi Sanwal, Director,  
Eternis Fine Chemicals Ltd. (Formerly known as M/s. Atlas Fine  
Chemicals Pvt. Ltd.),  
9 & 10, Dehbanu Mansion, Nasik Pune Road,  
Nasik Road- 422101.
6. Ms. Indu Sanwal, Director,  
Eternis Fine Chemicals Ltd. (Formerly known as M/s. Atlas Fine  
Chemicals Pvt. Ltd.),  
9 & 10, Dehbanu Mansion, Nasik Pune Road,  
Nasik Road- 422101.
7. Smt. Gopi Sanwal, Director,  
Eternis Fine Chemicals Ltd. (Formerly known as M/s. Atlas Fine  
Chemicals Pvt. Ltd.),  
9 & 10, Dehbanu Mansion, Nasik Pune Road,  
Nasik Road- 422101.
8. Shri. Omprakash Bhutada, Director,  
Eternis Fine Chemicals Ltd. (Formerly known as M/s. Atlas Fine  
Chemicals Pvt. Ltd.),  
9 & 10, Dehbanu Mansion, Nasik Pune Road,  
Nasik Road- 422101.
9. Shri Om Prakash Bhatuda, Director,  
Eternis Fine Chemicals (Formerly known as M/s. Atlas Fine Chemicals)  
01- B Wing, Jay-Vijay Society,  
Bhangar Nagar, Goregaon (West),  
Mumbai - 400 090.
10. Mrs. H.A. Lakhapatwalla,  
General Manager, Eternis Fine Chemicals  
(Formerly known as M/s. Atlas Fine

Chemicals Pvt. Ltd.),  
9 & 10, Dehbanu Mansion, Nasik Pune  
Road, - Nasik Road-422 101

Copy to:

1. The Additional Commissioner of Customs, Group II(A-B), JNCH.
2. AC/DC, Chief Commissioner's Office, JNCH
3. AC/DC, Centralized Revenue Recovery Cell, JNCH
4. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
5. Superintendent EDI- For uploading on website
6. Office Copy