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

Date of Order: 11.12.2025 आदेश की तिथि**: 11.12.2025**

Date of Issue: 11.12.2025 जारी किए जाने की तिथि**:** 11.12.2025
DIN: 20251278NW000000FA7D

F.No. S/10-159/2024-25/CC/GRIIAB/NS-I/CAC/JNCH
SCN No. 1548/2024-25/Commr. / Gr IIAB/NSI/CAC/JNCH dtd 02.01.2025

Passed by: Shri Yashodhan Wanage
पारितकर्ता: श्री. यशोधन वनगे
Principal Commissioner of Customs (NS-I), JNCH, Nhava Sheva
प्रधानआयुक्त, सीमाशुल्क (एनएस-**1**), जेएनसीएच, न्हावाशेवा

Order No.: 291 /2025-26 /Pr. Commr/NS-I /CAC /JNCH

आदेशसं. : **291/2025-26**/प्र. आयुक्त/एनएस-1/ सीएसी/जेएनसीएच
Name of Party/Noticee: M/s Genetek Lifesciences Private Limited (IEC- 5013000319), M/s Skylink Freight Forwarders Private Limited and M/s Exim Transtrade (India) Pvt. Ltd.

पक्षकार (पार्टी)/ नोटिसी का नाम: मेसर्स जेनेटेक लाइफसाइंसेज प्राइवेट लिमिटेड (आईईसी- **5013000319),** मेसर्स स्काईलिंक फ्रेट फॉरवर्डर्स प्राइवेट लिमिटेड और मेसर्स एक्जिम ट्रांसट्रेड (इंडिया) प्राइवेट लिमिटेड।

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

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

2. इस आदेश से व्यथित कोई भी व्यक्ति सीमा शुल्क अधिनियम १९६२ की धारा १२९ (ए (के तहत इस आदेश के विरुद्ध सीईएसटीएटी, पश्चिमी प्रादेशिक न्यायपीठ (वेस्ट रीज़नल बेंच(, ३४, पी. डी. मेलो रोड, मस्जिद (पूर्व), मुंबई– ४००००९ को अपील कर सकता है, जो उक्त अधिकरण के सहायक रजिस्ट्रार को संबोधित होगी।

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

3. अपील दाखिल करने संबंधी मुख्य मुद्दे:-

Form - Form No. CA-3in quadruplicate and four copies of the order appealed against (at least one of which should be certified copy).

फार्म - फार्म न. सीए - ३, चार प्रतियों में तथा उस आदेश की चार प्रतियाँ, जिसके खिलाफ अपील की गयी है (इन चार प्रतियों में से कम से कम एक प्रति प्रमाणित होनी चाहिए)

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

समय सीमा – इस आदेश की सूचना की तारीख से ३ महीने के भीतर

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 माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम ५ लाख रुपये या उससे कम है।

(b)Rs. Five Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 5 Lakh but not exceeding Rs. 50 lakhs.

(ख) पाँच हजार रुपये –जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति कीरकम 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 माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति कीरकम 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 ड्राफ्टजो राष्ट्रीयकृत बैंक द्वारा सहायक रजिस्ट्रार, सीईएसटीएटी, मुंबई के पक्ष में जारी किया गया हो तथा मुंबई में देय हो।

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

सामान्य - विधि के उपबंधों के लिए तथा ऊपर यथा संदर्भित एवं अन्य संबंधित मामलों के लिए, सीमा शुल्क अधिनियम, १९६२, सीमाशुल्कअपील (नियम, १९८२, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकरअपील 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.

इस आदेश के विरुद्ध अपील करने के इच्छुक किसी भी व्यक्ति को, अपील लंबित रहने तक, मांगे गए शुल्क या लगाए गए जुर्माने का 7.5% जमा करना होगा तथा अपील के साथ ऐसे भुगतान का प्रमाण प्रस्तुत करना होगा, अन्यथा अपील सीमा शुल्क अधिनियम 1962 की धारा 129 के प्रावधानों का अनुपालन न करने के कारण अस्वीकृत की जा सकेगी

1. BRIEF FACTS OF THE CASE:

1.1 M/s. Gentek Lifesciences Pvt. Ltd. (IEC:- 5013000319) (hereinafter referred to as the importer/ Noticee) imported consignment/s of "Iohexol USP & Iopamidol USP under CTH 30039090 & 29242990" vide Bill of Entries as mentioned in Annexure A to the Show cause Notice and availed benefit of exemption of customs Notification no. 50/2017 dated 30.06.2017 under Sr.No.167(A) alongwith IGST paid @5% (Schedule I of IGST Notification no. 01/2017 under Sr.No. 180 for the said consignments.

1 .2 The importer has imported consignment/s of "Iohexol USP & Iopamidol USP under CTH 30039090 & 29242990 with packing of 25 Kgs/Drum and availed benefit of Sr.No. 167(A) of customs Notification no. 50/2017 dated 30.06.2017 (as amended) alongwith IGST paid @ 5% (Schedule I of IGST Notification no. 01/2017 under S.N. 180) for the said consignment. Exemption of Sr.No.167(A) of the Customs Notification no. 50/2017 dated 30.06.2017 (as amended) is applicable to Chapter 28, 29, 30, 38 for Life saving drugs/medicines including their salts and esters and diagnostic test kits specified in List 4 &Iohexol (S.N.55) & Iopamidol (Sr. No. 54) is specified in the list 4, appended to Sr.No. 167(A).

1.3 Relevant portion of the customs exemption notification no. 50/2017 dated 30.06.2017 claimed by the importer is mentioned below:

"In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and sub-section (12) of section 3, of Customs Tariff Act, 1975 (51 of 1975), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2012-Customs, dated the 17th March, 2012 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 185 (E) dated the 17th March, 2012, except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is, necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below or column (3) of the, said Table read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the said Customs Tariff Act, as are specified in the corresponding entry in column (2) of the said Table, when imported into india:-

a. from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the standard rate specified in the corresponding entry in column(4) of the said Table; and
b. from so much of integrated tax leviable there on under sub section (7) of section 3 of said Customs Tariff Act, read with section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) as is in excess of the amount calculated at the rate specified in the corresponding entry in column (5) of the said Table,

subject to any of the conditions, specified in the Annexure to this notification, the condition number of which is mentioned in the corresponding entry in column(6) of the said Table:

Table

Sr. No.	Chapter or Heading or sub- heading or tariff item	Description of goods	Standard rate	Integrated Goods and Services Tax	Condition No.	Amended By Notification No.
(1)	(2)	(3)	(4)	(5)	(6)	
167	28, 29 ,30 Or 38	The following goods, namely:- Provided that nothing contained in this Sr. No. shall have effect after the 31st March, 2025				(1) Proviso Inserted By 02/2023Dt. 01-02-23
		(A)Life saving drugs/medicines including their salts and esters and diagnostic test kits specified in List 4.	Nil	-	-	
		(B) Bulk drugs used in the manufacture of life saving drugs or medicines at (A)	Nil	-	9	

Condition no.	Condition	
9	If the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022	Substituted By 2/2023 Dt. 01-02-23

1.4 The importer's intention was to avail S.N. 167(A) of Customs Notification 50/2017 dated 30.06.2017 {as amended) by declaring it as "Lifesaving drugs/medicines including their salts and esters and diagnostic test kits specified in List 4" to avoid the Condition no. 9 of Sr.No.167(B), which mandates the procedure set out in the Import of Goods at Concessional Rate of Duty (IGCRD)Rules, 2017/2022. Further, the two entries under the same Serial Number, in the instant case, Sr. No. 167(A) and Sr. No. l67 (B) of the Customs Notification No. 50/2017 represent different approaches to achieving the same ultimate goal of ensuring the availability of lifesaving drugs or medicines including their salts and esters and diagnostic test kits specified in List 4 at affordable prices by offering customs duty exemptions i.e. both entries work toward the same ultimate aim but through different methods or pathways:

1.4.1 Whereas, the overall purpose of both Sr.No.167 (A) and 167 (B) is to reduce the cost and enhance the availability of critical, lifesaving medicines by Reducing customs duties on finished life Saving drugs and diagnostic kits under Sr. No. 167 (A) & Reducing customs duties on bulk drugs (APIs) under Sr. No. 167(B) that are used to manufacture these life saving drugs. It appears that both entries aim to make these drugs more affordable for the health care system and ultimately for patients by two Different Methods to Achieve the Same Goal:

1.4.2 Sr.No.167 (A)-For Finished Drugs:
Objective: Directly reduce the cost of importing finished, ready-to use lifesaving medicines and diagnostic kits.

Method: Finished drugs and diagnostic kits (as listed in List 4) are exempt from customs duties when imported, making them cheaper for immediate use in healthcare.

Target Products: Fully formulated, packaged, and ready-to administer medicines that can go straight to hospitals, pharmacies, or patients without any further manufacturing.

Example: An antiretroviral drug imported as finished tablets for immediate distribution would be exempt from customs duties under 167(A).

1.4.3 Sr.No.167 (B)-For Bulk Drugs (APIs) - Used in Manufacturing:

Objective: Support local manufacturing of lifesaving drugs by reducing the cost of importing raw materials (APIs), used in the manufacturing of life saving drugs or medicines mentioned in the said List 4. Method: Exempting bulk drugs (APIs) used to manufacture the finished drugs listed under 167(A) from customs duties.

Target Products: Active Pharmaceutical Ingredients (APIs) that are imported in bulk and require further processing or formulation into finished drugs. These APIs are essential raw materials for local manufacturers to produce lifesaving drugs.

Example: Iohexol & Iopamidol, an API, is imported to be further formulated into diagnostic contrast agents. The Iohexol & Iopamidol would be classified under 167(B) as it is not yet in its finished, patient-ready form.

In view of above, it indicated that Sr. No. 167(A) aimed at facilitating the immediate availability of life saving drugs by importing the final product, while Sr. No. 167(B) aimed at promoting domestic pharmaceutical manufacturing by lowering the costs of importing the necessary raw materials(APIs) for local production of these lifesaving drugs.

1.5 Further, the List 4 to Sr.No. 167(A) of Customs Notification 50/2017 dated 30.06.2017 (as amended) indicated that the List primarily includes finished drugs rather than bulk drugs (APIs). In this regard, following Indicators may be observed:

i. Specific Drug Names: Items listed are typically administered to patients in their final dosage forms, such as injections, infusions, or oral formulations.

ii. Customs Notification Context: The context of customs notifications like this one typically involves the importation of finished pharmaceutical products that are intended for immediate use in medical settings, rather than bulk drugs that would require further manufacturing or formulation.

1.6 In view of the above, it strongly suggested that the List 4 of the Customs Notification No. 50/2017 (as amended) predominantly focuses on finished drugs rather than bulk drugs. These finished drugs are likely subject to specific customs duty exemptions or reductions to facilitate their import into India for direct clinical use.

1.7 Further, the contention being made-that because the definition of "drugs" under the Drugs and Cosmetics Act, 1940, covers both bulk drugs (APls) and finished medicines, therefore bulk drugs should be included in List 4 of the Customs Notification 50/2017 (as amended)-needs to be carefully examined in the context of the specific purpose and language of the customs notification. In this regard following points may be considered:

(i) Purpose of the List 4 Medicines:

Sr.No.167 of Customs Notifications No. 50/2017 dated 30.06.2017 (as amended) appears to grant specific benefits, such as customs duty exemptions or reductions, to encourage the import of critical or life-saving drugs in their finished form. These lists are typically focused on products that are ready for clinical use to ensure their immediate availability in the healthcare system.

List 4 specifically enumerates drugs that are considered essential or important for public health, and these are usually finished products that can be directly administered to patients.

(ii) Bulk Drugs vs Finished Products:

Bulk Drugs (APls): While the definition of "drugs" under the Act does include bulk drugs, these substances generally require further processing or formulation before they can be administered to patients. The intent of the customs notification list appears to prioritize finished products that do not require additional processing.

Finished Products: These are ready-to-use forms, such as tablets, injections, or solutions, which have undergone all necessary manufacturing steps and are immediately available for treatment purpose.

(iii) Legislative Intent and Interpretation:

Customs Policy: The inclusion of items in specific lists like List 4 is a policy decision aimed at achieving certain public health outcomes. The customs authorities may intend to distinguish between bulk drugs, which are raw materials, and finished drugs, which are the end products, when applying duty exemptions.

Interpretation: Just because the Drugs and Cosmetics Act, 1940 covers both bulk and finished drugs under the term "drug" does not automatically mean that bulk drugs should be

included in lists intended for finished drugs. The specific language and purpose of the customs notification take precedence.

(iv) Implications for Bulk Drugs:

If bulk drugs were to be included in List 4, it would potentially open the door for different customs treatment for APIs, which might not align with the policy objectives of the notification. The notification might be structured to ensure that duty benefits are extended only to those products that are immediately usable in healthcare settings, which typically means finished drugs rather than bulk drugs.

Accordingly. the inclusion of a substance in List 4 of the customs notification 50/2017 (as amended) likely depends on whether it is intended to be used directly in healthcare settings (i.e., as a finished drug). While the Drugs and Cosmetics Act, 1940 does cover both bulk and finished drugs under the broader definition of "drugs," this does not necessarily imply that bulk drugs should be included in a list that is focused on finished medicines.

1.8 As the terms "Medicine" or "Drugs" are not defined under Customs Act, 1962 & Customs Tariff Act, 1975. In this regard, reference may be taken from Drugs and Cosmetics Act, 1940. Section 3(b) of the Drugs and Cosmetics Act, 1940 defines "drug" in the following terms:

a. "Drug" includes-
   i. All medicines for internal or external use of human beings or animals and all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of any disease or disorder in human beings or animals, including preparations applied on human body for the purpose of repelling insects like mosquitoes;

The Drugs and Cosmetics Act, 1940 defines "Drugs" includes finished as well as bulk drugs both, though it does not define bulk drugs explicitly.

b. As the term "Bulk Drugs" is not defined under Customs Act, 1962 & Customs Tariff Act, 1975. In this regard, reference may be taken from Drug (Price Control) Order, 2013. In the said Order, Bulk Drugs is defined as,

"Active Pharmaceutical Ingredients or Bulk Drug" means any pharmaceutical, chemical, biological or plant product including its salts, esters, isomers, analogues and derivatives, conforming to standards specified in the Drugs and Cosmetics Act,1940 (23of 1940) and which is used as such or as an ingredient in any formulation.

&

"formulation" means a medicine processed out of or containing one or more drugs with or without use of any pharmaceuticalaids, for internal or external use for or in the diagnosis, treatment, mitigation or prevention of disease and, but shall not include -

i. any medicine included in any bonafide Ayurvedic (including Sidha) or Unani (Tibb) systems of medicines;
ii. any medicine included in the Homeopathic system of medicine; and
iii. any substance to which the provisions of the Drugs and Cosmetics Act, 1940 (23 of 1940) do not apply.

1.9 In view of above, it was clear that the imported goods qualify as "Bulk Drugs" under S.N. 167(B) of Customs Notification 50/2017 dated 30.06.2017 (as amended) rather than 167 (A) of Customs Notification 50/2017 dated 30.06.2017 (as amended). Therefore, the Importer is not eligible for exemption under Sr.No.167(A) of Customs Notification 50/2017 dated 30.06.2017 (as amended) wrongly availed by them. Further, the importer is also not eligible for exemption under S.N. 167(B) of Customs Notification 50/2017 dated 30.06.2017 (as amended) as they have not followed the requirements of condition 9 which mandates following the procedure set out in IGCRD, 2017/2022.

1.10 It was also observed that the importer has claimed IGST rate on the imported goods @ 5% as per Sr.No.180 of Schedule-I of IGST Levy Notification No. 01/2017-lntegrated Tax (Rate) dated 28.06.2017 (as amended). In this regard, relevant portion of the IGST rate on the imported items claimed by the importer is tabled below:

Schedule-I

S.No.	Chapter/ Heading/ Sub-Heading/ Tariff item	Description of goods	IGST rate
180	30 or any chapter	Drugs or medicines including their salts and eaters and diagnostic testkit, specified in List I appended to this Schedule	5

List I of Sr.No.180 appended to Schedule I of the said Notification is as under:

(S.N.176) Iopamidol
(S.N.177) lohexol
Indium(III) in bleomycin
Indium l13 Sterile generator and elution accessories
Indium113inbrainscanningkit
Indium113 in liver scanning kit

1.11 However, it was observed that the imported goods are "Bulk Drugs" rather than "Drugs or medicines including their salts and eaters and diagnostic test kit" as discussed above. Instead, the imported item qualifies under Sr.No. 40 of Schedule-III of IGST Levy Notification No.01/2017- Integrated Tax (Rate) dated 28.06.2017 (as amended). In this regard, relevant portion of the IGST rate on the imported items is tabled below:

Schedule-III

S.No	**Chapter/ Heading/ Sub- Heading/ Tariff item**	**Description of goods**	**IGST rate**
40	29	All organic chemicals other than giberellic acid	18

1.12 To determine whether List 1 under Schedule I of IGST Act, 2017 contains finished drugs or medicines or otherwise, there are several indicators that suggest this interpretation. In this regard, following key indicators may be observed:

i. Reference to "Drugs or Medicines-

Terminology- The language used in the schedule typically refers to "drugs or medicines" which commonly implies products that are in their final form, ready for patient administration. These are products that have completed all stages of manufacturing, including formulation, packaging, and quality control.

ii. Inclusion of Salts, Esters, and Diagnostic Kits-

Finished Products: The inclusion of "salts and esters" alongside "drugs or medicines" suggests that these are specific active forms of drugs that are already incorporated into their final dosage forms.

Diagnostic Kits: The mention of diagnostic kits further supports that List1 is meant for products used directly in health care settings, which are typically finished and ready to use.

iii. Lower IGST Rate (5%):

Facilitation of Access: The 5% IGST rate is generally reserved for essential or life-saving medicines, which are ready for distribution to patients. The lower tax rate helps reduce the cost of these critical drugs to make them more accessible.

iv. Context and Structure of Schedule I:

Finished Goods Focus: Schedule I, in general, focuses on goods that are in their final usable form. For example:

1. **Vaccines** (e.g., BCG vaccine, MMR vaccine, Pneumococcal vaccines, etc.)
2. **Injectable Solutions** (e.g., Amikacin injection, Clindamycin injection, Eptifibatide injection, etc.)
3. **Oral Tablets/Capsules**(e.g., Baclofen, Methotrexate,etc.)
4. **Diagnostic Kits**(e.g., Troponin-T testkit, HIV antibody testkits,etc.)
5. **Monoclonal antibodies** (e.g. like Bevacizumab, Daclizumab, etc.)
6. **Combination Products** (e.g. DTaP- IPV Hib combined vaccine, Ticarcillini Disodium and Potassium Clavulanate combination etc.)

v. The structure of this schedule often distinguishes between bulk substances (which might fall under different schedules with higher IGST rates) and finished products.

vi. Regulatory Context:

Healthcare Priority: Regulatory frameworks often prioritize finished drugs and essential medicines in specific lists to ensure they are available at reduced tax rates. This prioritization typically does not extend to raw materials or bulk drugs, which require further processing.

Accordingly, it appeared that List 1 under Schedule I is intended to cover finished drugs or medicines rather than bulk drugs (APIs). Therefore, the lower IGST rate of 5% should be applicable on these products as they are in their final, patient-ready form. Further Bulk drugs,

on the other hand, would typically attract IGST rate of 18% under Schedule III of IGST Act, 2017.

1.13 Further in a similar matter, an application for Advance Rulings was filed by the applicant M/s Sterling Bio tech Ltd, Vadodara before Gujarat Authority of Advance Rulings, Ahmadabad**.** The applicant has submitted that they are manufacturing bulk drugs namely Danuorubic in, Epirubicin, Idarubicin and Zoledronin Acid and supplying presently under general heading at Sr.No. 40 covered under chapter 29 of Schedule-III of the NotificationNo.01/2017-Ct(rate)dated 28.06.2017 as well as State NotificationandIntegrated Tax Notification. The applicant further submitted that description of four bulk drugs as stated above specifically not mentioned at Sr.No.40 of Chapter 29 of Schedule-III of Notification No.01/2017-CT(Rate) dated 28.06.2017. However, specific reference is made about the said four bulk drugs in List1 appended to Schedule I which are covered as drugs or medicine including their salts and esters at Sr. No. 180 of the Schedule I of the NotificationNo.01/2017-CT(Rate) dated 28.06.2017.

In this regard, the applicants sought for the Advance Ruling in respect of the following question:

"*Whether the applicant is eligible to claim the benefit of lower rate of 5% {COST- 2.5% +SGST-2.5%}under Sr. No. 180 of Schedule I of the rate schedule for goods under Not.No.01/2017-CT (Rate) dated 28.06.2017 as well as of State Tax Notification*. "

As per Advance Rulings no.GUJ/GAAR/R/54/2020 dated 30.07.2020 passed by the Gujarat Authority of Advance Rulings, Ahmadabad denied the benefit of lower rate of 5% under S.N.180 of Schedule I in terms of above advance rulings which is squarely applicable in the instant case.

In view of the above, it is clear that the applicable IGST rate on the imported items should be 18% as per Sr.No.40 of Schedule-III of IGST Levy Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017 (as amended).

1.14 Accordingly, a Consultative Letter No. 519/2024-25/C- 2 vide F.No.: CADT/CIR/ADT/ThBA/533/2024-DC/AC-III dated 03.12.2024 was issued to the importer for payment of short levied duty alongwith applicable interest and penalty. Vide the aforementioned Consultative letter dated 03.12.2024, the Importer was advised to pay the Differential duty alongwith applicable interest and penalty within 15 days of the receipt of the consultative letter in terms of Section 28(4) of the Customs Act 1962. The importer was further advised to avail the benefit of lower penalty in terms of Section 28(5) of the Customs Act, 1962, by early payment of short paid duty and interest alongwith penalty @ 15%.

1.15 In response to aforesaid consultative letter, the importer has submitted its reply vide their letter dated 07.12.2024 as below:

1.15.1 The goods are explicitly covered under the Customs Notification as well as the Integrated Goods and Services Tax(IGST) Notification NO. 01/2017 and Union Government of India, has imposed NIL rate of Customs duty on life-saving drugs, as outlined in List 4 of

the Customs Tariff.Sr. No. 167(A) of Customs Notification NO. 50/2017 dated 30.06.2017, applies to Chapters 28, 29, 30 and 38, covering life-saving drugs, medicines their salts, esters and diagnostic test kits as specified in List 4, notably, Iohexol (Sr. No. 55) and Iopamidol (Sr. No. 54) are included within this list.

1.15.2 The notification prescribes the following conditions regarding the importation of drugs at the concessional (nil duty) rate:-

- Sr. No. 167(A): Rate of duty: 0.00% (for life saving drugs, medicines, including their salts, esters and diagnostic test kits specified in list-4- (No condition attached).As per definition of Drug by DPCO Act, Drug include both Bulk Drugs and Drug, hence import of Iohexol & Iopamidol qualifies for clearance under Sr. No. 167(A)
- Sr. No. 167(B): Rate of duty: 0.00% (for bulk drugs used in the manufacture of life-saving drugs or medicines as per (A)-Conditions No.9: The importer must adhere to the prescribed procedural requirements for importing goods under the concessional rate of duty.

1.15.3 The legal precedent established in the M/s Hetero Drugs Ltd. vs Commissioner of Customs (Airport), Chennai (Appeal No. C/148/2007) before Hon'ble CESTAT, Chennai case as well as in M/s Bicon Ltd. v/s CC Chennai (Final Order No. 42065/2017 dt. 13.09.2017) before Hon'ble CESTAT, Chennai case supports the view that Condition attached to Sr. No. 80(B) of Notification NO. 20/2002-Cus dated 01.03.2002 being a procedural one, non-compliance cannot be ground for denying the benefit especially because the entry drug in Sr. No. 80(A) does not have any condition attached to it.

1.15.4 Imported Goods Iopamidol USP & Iohexol USP are rightfully classified and cleared under CTH 30039090 & 29242990, the applicable IGST rate under both the classification for import clearance of Iohexol and Iopamidol is 5% which is clearly outlined under Sr. No. 180 of Schedule-I of the IGST Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017

1.15.5 The DPCO Act Provides a clear and comprehensive definition of "Drugs" encompassing both bulk drugs (Chapter 29) and formulations (Chapter 30) .

1.15.6 IGST Rate of 5% for the import of Iohexol USP and Iopamidol USP or on similar products, under the same tariff headings have consistently been allowed to claim the benefit of the 5% IGST rate.

1.15.7 The ruling by the Advanced Ruling Authority, Ahmadabad which denied the 5% IGST rate on Sterling Biotech's products, was not implementable for two reasons:

- Sterling Biotech could not sell the products, as the company was already incurring losses before it even began its operations.
- Due to financial difficulties, Sterling Biotech was forced to shut down, which prevented them from challenging the ARA's decision.

1.15.8 The ARA's decision to deny the 5% IGST rate in the case of Sterling Biotech appears flawed and unimplementable, as it overlooks the clear legal definition of "drug." The Drugs (Price Control) Order (DPCO) Act of 1979 explicitly defines "drug," which includes "bulk drug". Since the definition of bulk drug is unambiguous and well- established in the Act, no further interpretation is necessary.

1.15.9 Bulk packing does not affect the eligibility for the exemption or the IGST rate on lifesaving drugs. The goods are still classified as drugs (bulk drugs) used in the production of lifesaving drugs, medicines and diagnostic test kits and their classification under the relevant customs and IGST notifications remains valid and IGST levied on such imports is always 5% and not 18% based on item's classification as Drug under the definition of drugs which is inclusive of bulk drugs as per the DPCO Act 1979 in accordance with relevant notifications.

1.16 Importer's submissions were countered in the following ways:

1.16.1 Though BCD is Nil for Sr. No. 167(A) & is also Nil for Sr.No.167 (B) of the Customs Notification No. 50/2017 dated 30.06.2017 but subject to conditions set out in the Import of Goods at Concessional Rate of Duty (IGCR) Rules, 2017/2022, the importer is not eligible for the Sr.No.167(A) of the aforesaid Notification. As the importer is importing bulk drugs. On the other side, the importer is also not eligible for the Sr.No.167(B) of the aforesaid Notification as the importer has not followed the procedure that mandate to follow conditions set out in the Import of Goods at Concessional Rate of Duty (IGCR)Rules, 2017/2022.

1.16.2 The importer stated that notification itself considers "Iohexol & Iopamidol" as drug only. In this regard, it appears that the List 4 of the Customs Notification No.50/2017 (as amended) predominantly covers finished drugs rather than bulk drugs. These finished drugs are likely subject to reduced customs duty to facilitate their import into India for direct clinical use. The importer is not eligible for the Sr.No.167(A) of the aforesaid Notification as the importer is importing bulk drugs in bulk 25Kgs packages.

1.16.3 It appeared that Sr.No. 167(A) ofthe Notification 50/2017 is aimed at facilitating theimmediate availability of lifesaving drugs by importing the final product, while Sr.No.167(B) of the Notification 50/2017 is aimedatpromoting domestic pharmaceutical manufacturing by lowering the costs of importing the necessary raw materials (APIs) for local production of the life saving drugs. In the instant case, the importer is not eligible for the Sr.No. 167(A) of the aforesaid Notification, as the importer is importing bulk drugs. Since the goods imported are not readily usable they cannot be treated as goods of similar nature to that of readily usable drugs, the importer is not eligible to claim the benefit of an entry of Sr. No. 167(A) of Customs Notification 50/2017.

1.16.4 As regards issue of IGST, it was found that List 1 under Schedule –I of IGST Act, 2017, is intended to cover finished drugs or medicines rather than bulk drugs (APIs). Therefore, the lower IGST rate of 5% should be applicable on these products as they are in their final, patient-ready form. Further Bulk drugs, on the other hand, would typically attract IGST rate of 18% under Schedule-III of IGST Act, 2017. In the instant case, as the importer is importing "Iohexol & Iopamidol" bulk drugs, therefore the imported goods would typically attract IGST rate of 18% under Schedule III of IGST Act, 2017.

1.17 The importer classified the same imported goods under 02 different CTH 29242990 & 30039090 at different times.It appeared that Chapter 29 of the Customs Tariff Act, 1975 covered organic chemicals, including APIs and bulk drugs. This classification is specifically for the raw or bulk form of chemical compounds used in various industries, including

pharmaceuticals. While for finished pharmaceutical products, such as Iohexol & Iopamidol in injectable form, the classification would fall under Chapter 30.Chapter 29 covers chemical compounds used as Active Pharmaceutical Ingredients (APIs) but not in finished dosage forms. This classification is used for bulk drugs or Active Pharmaceutical Ingredients (APIs) that are used in the manufacturing of finished pharmaceutical products.In view of the above, it indicated that the imported goods i.e. Iohexol USP and Iopamidol USP maybe classified correctly under "Others" of Heading 2924 i.e. HSN 29242990.

1.18 Further data retrieved from 01.01.2020 to 03.08.2024 for the Bills of Entry filed by the Importer in INNSA1 for the import of "Iohexol & Iopamidol", It was found that the importer has cleared total 39 bill of Entries having Total Assessable Value of Rs. 82,21,81,197/- and total differential duty foregone (BCD @ 7.5% + SWS @ 10% of BCD + Differential IGST) is Rs. 18,81,67,566/- as per the Annexure-A attached herewith.

1.19 Accordingly, Show Cause Notice bearing no. 1548/2024-25/Commr./NS-I/Gr.2AB/CAC/JNCH dated 02.01.2025 was issued to M/s. Genetek Lifesciences Private Limited seeking as to why:

1.19.1 Imported goods Iohexol and Iopamidol as per Annexure A attached should not be classified under CTH 29242990.

1.19.2 Customs duty Exemption under S.N. 167(A) of Customs Notification no. 50/2017 dated 30.06.2017 (as amended) for the subject goods should not be rejected.

1.19.3 The IGST rate claimed under Schedule-I, Sr. No. 180 of IGST levy Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 for the subject goods should not be rejected and IGST rate under Schedule III-Sr. No. 40 of said notification should not be levied.

1.19.4 Differential duty amount of Rs. 18,81,67,566/- (Rupees Eighteen Crore Eighty One Lacs Sixty Seven Thousand Five Hundred Sixty Six only) with respect to the items covered under Bill of entries as mentioned in Annexure-A of this notice should not be demanded under Section 28(4)of the Customs Act, 1962 along with applicable interest as per Section 28AA of the Customs Act,1962

1.19.5 The subject goods as detailed in Annexure-A of the notice having a total assessable value of Rs. 82,21,81,197/-(Rupees Eighty Two Crore Twenty one Lac Eighty one Thousand one Hundred Ninety Seven only) should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962.

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

1.19.7 Penalty should not be imposed on the importer under Section 114AA of the Customs Act, 1962.

1.19.8 Penalty should not be imposed on the importer under Section 117 of the Customs Act, 1962.

1.20 Show Cause Notice was also issued toCustom Brokers M/s. Skylink Freight Forwarders Private (AAFCS1941NCH004) and M/s Exim Transtrade (India) Private Limited (AAACE8663LCH001) seeking as to why penalty should not be imposed on the them under Section 114AA and Section 117 of the Customs Act, 1962.

WRITTEN SUBMISSIONS

2. M/s. Gentek Lifesciences Private Limited gave written submissions vide their letter dated 25.06.2025, wherein they *inter-alia* stated as below:

2.1 The Noticees have been regularly importing various APIs required for their manufacturing activity. All APIs imported by the Noticees have the requisite certificate / licence / permission from Central Drug Standard Control Organization (hereinafter referred to as "CDSCO"). They have obtained a valid "licence to import drugs (excluding those specified in Schedule X) to the Drugs and Cosmetic Rules, 1945" bearing Number IL/BD-011486 BD-631 dated 14.12.2021 and License Number IL/BD-012925 RC/BD-002080 dated 23.01.2023 in Form 10 read with Rule 23 and 27 of the Drugs and Cosmetic Rules, 1945 for import of Iohexol USP and Iopamidol USP respectively. It is pertinent to note that Form 10 is the requisite license for import of drugs including the bulk drugs such as Iohexol USP and Iohexol USP imported by the Noticees. Furthermore, the Noticees also obtained a Registration Certificate for import of drugs into India in Form 41 for import Iohexol USP, Iopamidol USP, Levofloxacin Hemihydrate IP, and Iodixanol USP vide Registration Certificate No. RC/BD-002080 dated 12.03.2020 (enclosed as Annexure-2B). This also signifies that a bulk drug like IOHEXOL USP is considered a drug for the purpose of the Drugs and Cosmetics Law in India.

2.2 During the disputed period, the imported goods were classified by the Noticees under Heading 30.03 and more specifically under "others" under Tariff Item 3003 90 90. Subsequently, in line with the prevailing industry practices and interpretations, the classification was placed under Chapter 29 under Tariff Item 2924 29 90.

2.3 The exemption benefit under Sl. No. 167(A) of Notification No. 50/2017-Customs dated 30.06.2017 was available in respect of all the "lifesaving drugs/medicines including their salts and esters and diagnostic test kits specified in List 4" classifiable under Chapter 28, 29, 30 or 38 of the First Schedule to Customs Tariff Act, 1975. The imported goods being lifesaving drugs specified under Sl. No. 54 (Iopamidol) and Sl. No. 55 (Iohexol) of List 4 of Notification No. 50/2017, the said imported goods irrespective of their classification under Chapter 29 or 30 of the First Schedule to Customs Tariff Act are eligible to avail exemption benefit of Sl. No. 167(A) of Notification No. 50/2017. Accordingly, the Noticees availed the benefit of 167(A) of Notification No. 50/2017 on import of the said goods.

2.4 Prior to the introduction of GST, the Noticees imported Iohexol USP and Iopamidol USP by claiming benefit under Sl. No. 148A of Notification No. 12/2012. After the introduction of GST, Notification No. 50/17-Cus. dated 30.06.2017 was issued in supersession of Notification No. 12/2012-Cus. dated 17.03.2012.5.3. Post introduction

of GST, Noticees imported Iohexol USP and Iopamidol USP in terms of Sl. No. 167(A) of Notification No. 50/2017 read with Notification No.68/2017-Cus. (NT).

2.5 The present SCN is vague and cryptic and the SCN has just made bald allegations.The SCN has failed to give any clear reason or evidence to support its allegations that the imported goods are eligible for benefit under Sl. No. 167(B) of Notification No. 50/2017 and not 167(A) of Notification No. 50/2017. The SCN has not provided any literature or reasoning stating that "Iohexol USP" and "Iopamidol USP" are not eligible for the concessional rate of duty under Sl. No. 167(A) of Notification No. 50/2017. They relied upon the judgment in case of Electronik Lab Vs. CC – 2005 (187) ELT 362 wherein Tribunal set aside the penalty on the ground that the same cannot be imposed based on presumptions and assumptions. The Hon'ble Tribunal further held that such presumptions and assumptions, however strong, cannot be a substitute for evidence.

2.6 The SCN served does not bear any signature of the Ld. Commissioner and merely states that it is signed on 02.01.2025 at 15:48:50 minutes, however, without bearing any physical signature. Further, the signature status as "signed by Dhirendra Singh Garbyal date: 02-01-2025 15:48:50" appears to be text typed out and is not the digital signature.

2.7 With regard to their eligibility for Serial no. 167A of the impugned Notificaiton, they stated that the term "drug" includes bulk drug and formulation as per Drugs (Prices Control) Order, 1995. Hence, the imported goods are a drug.Notification No. 50/2017 recognizes the items specified in List No. 4 as drugs or medicines. Therefore, if an item is specified in List No. 4 appended to the said Notification, then they are drugs or medicines. Notification No. 50/2017 has not defined bulk drug.The term 'drug' includes 'bulk drug' in terms of Drug (Price Control) Order, 1995. The said Order defines the terms 'bulk drug' and 'drug' as under:

"(i) "bulk drug" means any pharmaceutical, chemical, biological or plant product including its salts, esters, stereo-isomers and derivatives, conforming to pharmacopoeial or other standards specified in the Second Schedule to the Drugs and Cosmetics Act, 1940 (23 of 1940), and which is used as used or as an ingredient in any formulation;"

(ii) "drug" includes –

(a) all medicines for internal or external use of human beings or animals and all substances intended to be used for, or in the diagnosis treatment, mitigation, or prevention of any disease or disorder in human beings or animals, including preparations applied on human body for the purpose of repelling insects like mosquitoes;

(b) such substances, intended to affect the structure or any function of the human or animal body or intended to be used for the destruction of vermin or insects which cause disease in human beings or animals, as may be specified from time to time by the Government by Notification in the Official gazette; and

(c) bulk drugs and formulations;"

From the above, it is clear that drugs are inclusive of 'bulk drugs' under the Drug (Price Control) Order, 1995.

2.8 Subsequently, the Drug (Price Control) Order, 1995 was subsumed by Drug (Price Control) Order, 2013 and the definition of the term 'drugs' which formed part of the Drug (Price Control) Order, 1995 was done away with as 'drug' was defined in the Drugs and Cosmetics Act, 1940. Clause 2(2) of the 2013 Order reads as follows:

"All other words and expressions used herein and not defined but defined in the Act or the Drugs and Cosmetics Act, 1940 (23 of 1940) shall have the meanings respectively assigned to them in the said Acts."
Section 3(b) of the Drugs and Cosmetics Act, 1940 which provides the definition of the term "drugs." The relevant portion of the said definition is extracted hereunder:
"(b) "drug" includes-
…
(iii) all substances intended for use as components of a drug including empty gelatin capsules; and
…"

Accordingly, it can be said that since bulk drugs are used in the formulations to make drugs and act as active components / API of a medication that provide the intended therapeutic effect; bulk drugs can be considered as intended to be used as a component of a drug. Hence, it can be concluded that 'drugs' as defined in the Drugs and Cosmetics Act, 1940 include bulk drugs. Thus, even if the imported goods are treated as a bulk drug for the reason that it is used in the manufacture of medicines or formulation, for the purpose of the Notification, it would be treated as drugs and hence are covered by Sl. No. 167(A) of Notification No. 50/2017. Therefore, Iohexol USP and Iopamidol USP are covered by Sl. No. 167(A) of Notification No. 50/2017, even if Iohexol USP and Iopamidol USP are treated as a bulk drug.

2.9 The goods specified in Sl. No. 167(B) of Notification No. 50/2017 are bulk drugs used in the manufacture of drugs or medicines at (A) above. Apart from the various items mentioned in List 4 of the Notification No. 50/2017 there may be other drugs, which may be used for manufacture of medicines or drugs, which are not covered under Sl. No. 167(A). Therefore, those drugs which are not covered under Sl. No. 167(A) of Notification No. 50/2017, are covered under Sl. No. 167(B), if they are used in the manufacture of drugs specified Sl. No. 167(A) of Notification No. 50/2017. As the imported goods fall under Sl. No. 167(A) of Notification No. 50/2017, there is no need for the Noticees to follow the procedure prescribed in IGCRD Rules. Procedural compliance under these rules is mandatory condition for clause (B) and not for clause (A).

2.10 The present issue has been settled in favour of the Noticees by the decision of the Hon'ble Tribunal (Mumbai Bench) rendered in the case of Burroughs Wellcome (India) Limited Vs. CCE – 2007 (216) ELT 522. They further relied upon judgments of CESTAT in cases of Cipla Limited Vs. CC, Chennai – 2007 (218) ELT 547 (Tri. - Chennai), Astrix Laboratories Ltd. Vs Commissioner – 2009 (233) ELT 372 (T) and Aurobindo Pharma Ltd. Vs CCE, Hyderabad – 2009 (247) ELT 206 (Tri-Bang), Hetero Drugs Ltd. Vs. CC (Airport) – 2017 (9) TMI 1275-CESTAT Chennai and M/s Biocon Ltd. Vs. CC –2017 (9) TMI 1468, Shri Baser Vs. CCEx& St – 2024 (12) TMI 270.

2.11 With regard to the mention of legislative intent and interpretation of the customs policy in respect of Sl. No. 167 of Notification No. 50/2017, and applicability of the goods to finished goods, they submitted that it is a settled principle that benefit of any Notification has to be extended by giving a plain meaning to the description without resorting to intent or interpretation of such notifications/ circulars etc. They relied upon the judgment in case of HemrajGordhandas Vs. HH. Dave - 1978 (2) ELT (350),BaidyanathAyurved Vs. Excise Commissioner - 1999 (110) ELT 363 (SC), Sales Tax Commissioner Vs. Modi Sugar Mills - AIR 1961 SC 1047, ALD Automotive Vs. CTO - 2018 (364) ELT 3 (SC) etc. Based on the above discussion it is submitted that once from the plain reading of the exemption entries, the impugned goods are covered under Sl. No. 167(A); there is no room for further intendment or contextual reading that is required to interpret the entries. On a strict interpretation, the subject goods are covered by the exemption entries since these are lifesaving drugs/ medicines under List 4.

2.12 In the present case, Sl. No. 167(A) of Notification No. 50/2017 grants benefit clearly irrespective of whether the goods are classifiable under Chapter 29 or 30 as long as the goods imported are "Lifesaving drugs /medicines including their salts and esters and diagnostic test kits specified in List 4." Therefore, in the present case, irrespective of the fact that the subject goods are classifiable under Chapter 29 or 30 of the First Schedule to Customs Tariff Act, 1975, the benefit under the Notification has been appropriately claimed by them, since the subject goods are lifesaving drugs specified under Sl. No. 54 (Iopamidol) and Sl. No. 55 (Iohexol) of List 4 of Notification No. 50/2017. They relied upon judgment in case of High Energy Batteries Vs. CC - 2002 (142) ELT 266, wherein it was held that when the Notification does not require the items to fall with Chapter 88, insistence on the same to classify these as parts of aircraft is unsustainable since the Notification only required that the items are parts of aeroplanes irrespective of the chapter in which they fall. They further relied upon judgment in case of Hindustan Aeronautics Vs. CC – 2019 (370) ELT 699 (Tri - Bang), Industrial Perforation Vs. CCE – 2020 (371) ELT 604 (Tri-Cal), CCE & ST Vs. Amrutha International - 2018 (12) TMI 6 – CESTAT HYDERABAD etc.

2.13 They stated that they can provide co-relation of the imported Iohexol USP and Iopamidol USP used in the manufacture of the contrast media. They enclosed the data pertaining to correlation of the consumption of the imported goods into the formulations manufactured by the them with their submissions. Accordingly, they submitted that any perceived contravention of Condition No. 9 of Notification No. 50/2017 is merely procedural and should not impact the Noticees entitlement to the concessional benefit. They relied upon judgment in case of Hetero Drugs Ltd. (referred supra) wherein it was held that the condition attached to Sl. No. 80 (B) of Notification No. 21/2002-Cus dated 01.03.2002 being a procedural one, non-compliance cannot be a ground for denying benefit especially because drug in Sl.No.80 (A) does not have any conditions attached to it. Thus, without prejudice even if the imported goods are eligible for benefit under Sl. No. 167(B) of Notification No. 50/2017, no BCD shall be applicable on such imported goods.

2.14 They submitted that in cases where more than one exemption available in respect of the imported goods, the importer-assessee/Noticees can choose any one of the exemptions

which is beneficial to him. They relied upon judgment in case of HCL Ltd. Vs. Collector of Customs - 2001 (130) ELT 405 (SC), Share Medical Care Vs. UOI – 2007 (209) ELT 321 (SC), CCE Vs. Maruthi Foam – 1996(85) RLT 157 (T), ABB Ltd Vs. CCE- 2009(92) RLT 665 (L.B.). Both Sl. No. 167(A) and Sl. No. 167(B) of Notification No. 50/2017 prescribe nil rate of duty. The importation of life saving drugs specified in List 4 whether they are imported in bulk form or not are all subject to nil customs duty. Consequently, any failure to comply with Condition No. 9 of Notification No. 50/2017 does not result in any financial loss to the Government revenue. There is no financial detriment to the government in either case.

2.15 Sl. No. 180 of Schedule I of Notification No. 01/2017 prescribes IGST @5% on drugs or medicines including their salts and esters and diagnostic test kits, specified in List 1 appended to the Schedule when classifiable under Chapter 30 or any chapter. Sl. No. 176 appended to Schedule I covers Iopamidol and Sl. No. 177 covers Iohexol. Further, Sl. No. 40 of Schedule III of Notification No. 01/2017 prescribes IGST @ 18% in respect of all organic chemicals other than gibberellic acid classifiable under Chapter 29 of the First Schedule to Customs Tariff Act, 1975. For the reasons mentioned in submissions above, the imported goods are drugs for the purposes of Notification No. 01/2017.Therefore, the imported goods are specifically covered under Sl. No. 180 of Notification No. 01/2017 and are eligible for IGST @5% on the said goods.

2.16 SCN places reliance on the Gujarat Advance Ruling in M/s Sterling Biotech Ltd. bearing Advance Ruling No. GUJ/GAAR/R/54/2020. They submitted that the Advance Rulings under the GST law are binding only on the applicant who sought the ruling and in relation to the specific transaction that was subject matter of the ruling. The Advance Rulings are issued by specific authorities and are only binding within their jurisdiction for that applicant. The present case clearly involves a different taxpayer and transaction, rendering the said Advance Ruling relied in the SCN inapplicable. Further, applying such a ruling to the present case without any independent adjudication, is erroneous. Further, the courts in various cases have consistently held that advance rulings do not constitute general precedents or a precedent for other taxpayers. The reliance placed by the Ld. Commissioner on the said Advance Ruling to the present case to levy IGST @5% has no legal basis and is legally unsustainable. Furthermore, they submitted that the said Advance Ruling was never appealed by M/s Sterling Biotech since the Company was no longer in operation shortly after the issuance of the Advance Ruling.

2.17 Even if the Noticees would have paid IGST instead of availing the exemption benefit at the time of importation, the same would be available as credit to the Noticees. When the finished goods such as Iohexol Injection (Optiscan), Iopamidol Injection (Optivist), etc. manufactured using imported goods would be cleared on the payment of CGST/SGST, credit of IGST paid at the time of import would be available to the Noticees as credit. Therefore, if the Noticees had paid IGST, the Noticees would have taken credit of the same and would have paid that much lesser CGST/SGST on the finished products cleared by them.They relied upon judgment in case of CCE & C (Appeals) Vs. Narayan Polyplast – 2005 (179) ELT 20 (SC), CCE Vs. Narmada Chematur– 2005 (179) ELT 276 (SC), CCE Vs. Textile Corporation - 2008 (231) ELT 195 (SC) etc.

2.18 They submitted that SCN cannot be issued under Section 28(4) of the Customs Act in the instant case since the instant case is not that of short levy, non-levy, refund, etc. as the Noticees correctly classified the imported goods and availed the exemption benefit under Sl. No. 167(A) of Notification No. 50/2017. Therefore, the demand for differential duty in respect of goods imported till 01.02.2023 is completely barred by limitation. In matters of availment of benefit under exemption notification, extended period of limitation is not invocable. They relied upon judgment in case of Northern Plastic Vs. CC – 1998 (101) ELT 549 (SC).The extended period is not invokable in the present case since no mis-declaration, wilful suppression or mis-statement of facts can be alleged. With respect to the consignments in dispute, the goods for which duty is demanded, were assessed by officers as well as under the RMS and cleared for home consumption. The goods were correctly described and accordingly, the appropriate exemption benefit was availed. The invoices and other import documents submitted along with the bills of entry clearly declare true and correct information regarding the nature of these goods. Further, several of the consignments which are in dispute were subjected to regular assessment procedure of examination and verification by the customs officers before grant of out-of-charge.They relied upon judgment in case of Cosmic Dye Chemical Vs. CCE, Bombay – (1995) 6 SCC 117, CCE, Aurangabad Vs. Bajaj Auto Limited – 2010 (260) ELT 17 (SC) etc. In the present case, the SCN has not shown or even referred to any conscious or intentional act of collusion, wilful mis-statement or suppression of fact on the part of the Noticees.

2.19 They submitted that the question of levy of interest arises only if the demand of duty is sustainable. As the demand of duty is not sustainable, therefore, the question of levy of any interest under Section 28AA on such duty would not arise.

2.20 They submitted that confiscation provisions under Sections 111 of the Customs Act can be pressed into service only in cases where the assessee has acted with a mala fide intention, and it is proved beyond doubt that there was mens rea on part of the assessee. Bonafide conduct on part of the assessee does not entail the goods liable to confiscation. They relied upon judgment in case of Allseas Marine Contractors Vs. CC - 2011 (272) ELT 619 (Tri. -Del.), Sutures India Vs. CC - 2009 (245) ELT 596 (Tri. -Bang). The only dispute in the present case is regarding the classification adopted and consequent availment of exemption benefit. The invoices and other import documents submitted along with the bills of entry clearly declared the true value, exemption notification, etc. at the time of import. It is submitted that classification of imported goods and eligibility to exemption notifications was not objected by the Department at the time filing of Bills of Entry. It is a well settled position in law, that claiming of an exemption notification does not amount to mis-declaration. They placed reliance on the decision of Supreme Court in Northern Plastic Ltd. vs. CCE -1998 (101) ELT 549 (SC). They relied upon various other judgments in support of their claim that the goods imported by them are not liable for confiscation under Section 111 of the Customs Act, 1962 viz. Ace Kargoways Pvt. Ltd. vs. CC -2003(158) ELT 505, CC Vs. Maruti Udyog Ltd. - 2002 (141) E.L.T. 392, J K Industries Vs. CC - 1996 (88) ELT 41, CC Vs. Gaurav Enterprises - 2006 (193) ELT 532 (Bom.) etc.

2.21 They submitted that penalty under Section 112(a) of the Customs Act is imposable on any person 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. This provision can, therefore, be invoked only against a person whose act or omission rendered the goods liable to confiscation.As submitted in paras above, confiscation provisions under Section 111 of the Customs Act can be pressed into service only in cases where the assessee has acted with mala fide intention, and it is proved beyond doubt that there was mens rea on the part of the assessee. Bona fide conduct on part of the assessee does not entail the goods liable for confiscation. In the instant case, the Noticees have neither done nor omitted to do any act which act or omission has rendered the imported goods liable to confiscation under Section 111(m) of the Customs Act.Since the imported goods are not liable for confiscation under Section 111 of the Customs Act, the penal provisions under Section 112 have been incorrectly proposed to be invoked in the present case. In support of their submissions, the noticee relied upon various judgments viz. Vaishali Developers & Builders Vs. CC Excise - 2016 (9) TMI 1543 – CESTAT N.D., Hindustan Steel Vs. State of Orissa - 1978 (2) ELT (J159), Akbar Badruddin Jiwani Vs. Collector of Customs - 1990 (47) ELT161, Harbhajan Kaur Vs. Collector of Customs - 1991 (56) E.L.T. 273 Tri Del etc.

2.22 The customs department was always aware of the classification adopted and the exemption benefit availed under Sl. No. 167(A) of Notification No. 50/2017 by the Noticee. In fact, the consignments in dispute were examined and no queries were raised by the customs department. The present dispute can be one of legal interpretation and the Noticees have every right to believe that the classification adopted, and the exemption benefit availed by the Noticees is correct. Penalty under Section 114A of the Customs Act can be imposed in cases when the duty has not been paid or short-paid/part-paid by the reason of collusion or any wilful misstatement or suppression of facts. Duty demand is not sustainable in the present case since there has been no suppression or willful mis-statement of facts by the Noticee. The only allegation of classification and incorrect availment of Notification benefit is a matter of bona fide belief.The ingredients of Section 114A of the Customs Act are not satisfied in the instant case. The Noticees has not willfully suppressed or misstated any facts in the instant case, it only availed the benefit of Sl. No. 167(A) of Notification No. 50/2017 and discharged IGST at a lower rate under bona fide belief. In support of their submissions they relied upon the judgment in case of Anand Nishikawa Vs. CCE – (2005) 7 SCC 749, Pushpam Pharmaceuticals Company Vs. CCE – 1995 (78) ELT 401 (SC), Aban Lloyd Offshore Vs. CC – 2006 (200) ELT 370 (SC) etc.

2.23 The present SCN without providing any proper reasons or justification proposes to impose penalty in terms of Section 114AA of the Customs Act.As is evident, knowledge of any declaration, statement or document that is being made or signed or used must be possessed by the person against whom the Section is being invoked. They made bona fide declarations and accordingly, Section 114AA cannot be invoked against them. Penalty under Section 114AA is imposable only in those situations where exports benefits are claimed without exporting the goods and by presenting forged documents. In support of this argument, they placed reliance on the Twenty Seventh Report of the Standing Committee of

Finance and reproduced relevant part of the report. The purpose was to punish those people who avail export benefits from the Indian Exchequer without exporting anything from India. Such cases involve serious criminal intent and it cannot be equated with the cases of duty evasion.However, the SCN has misconstrued the provisions to apply the same in case of declarations, statements and documents which are false and incorrect in material particulars in the business of import of goods for the purpose of the Act. Further, it is to be noted that Section 114AA covers cases of improper exportation from India and not a case where goods are imported into India. They relied upon the judgment in case of CC Vs. Sri Krishna Sounds & Lightings - 2018 (7) TMI 867-CESTAT Chennai, Bosch Chassis Esystems India Ltd. Vs. CC - 2015 (325) ELT 372 (Tri.-Del.).They further stated that no penalty can be imposed under Section 114AA of the Act in the absence of any mala fide on the part of the assessee. In support of their this view, they relied upon the judgment in case of Parag Domestic Appliances Vs. CC – 2017 (10) TMI 812-CESTAT Bangalore, Premax Logistics Vs. CC – 2017 (4) TMI 483-CESTAT Chennai.

2.24 Section 117 of the Customs Act, 1962 is a residuary section under the Customs Act and can be imposed in cases when where no express penalty is elsewhere provided. They submitted that they have never acted with a mala fide intent and the SCN does not give any reasoning or ground on the basis of which penalty has been imposed on the Noticees and that is why recourse to residuary Section 117 has been taken. Therefore, no penalty under section 117 of the Customs Act is imposable on the Noticees.

2.25 SCN proposed to demand and recover differential IGST of Rs.12,03,37,617.2/- (i.e., excess of 13% of IGST) along with interest in terms of Section 28(4) and Section 28AA of the Customs Act. IGST is levied under Section 5 of the Integrated Goods and Services Tax Act, 2017 in terms of Section 3(7) of the Customs Tariff Act, 1975. However, the Customs Tariff Act has limited provisions, and it borrows various provisions from the Customs Act, for implementation of its provisions.Section 3(12) of the Customs Tariff Act, which is the borrowing provision with regard to IGST, does not borrow provision for demand of IGST with interest or penalty from the Customs Act. Therefore, demand of IGST along with interest has been incorrectly proposed to be recovered. Also, penalty has been incorrectly proposed to be imposed on the Noticees so far as the IGST component of the demand is concerned and no interest can be recovered. They submitted that in contradistinction with the wordings of Section 3(8), the provisions of Sections 8B(4A), 8C(5A), 9(7A) & 9A(8) of the Tariff Act, expressly provide for applicability of various provisions of the Customs Act, including inter-alia, the provisions relating to levy of penalty. They submitted that where the Legislature wanted to adopt the provisions of the Customs Act, in respect of offences and penalties, it has been so provided expressly in the relevant provisions. While the Legislature consciously made amendments in these provisions, no amendment was made in Section 3(8) of the Customs Tariff Act. Therefore, non-mention of the provisions relating to offences and penalties in Section 3(8) indicates the clear legislative intent of not invoking the penal provisions of the Customs Act, in respect of Additionally Duty of Customs leviable under Section 3 of the Customs Tariff Act. Therefore, no interest is imposable in the present case on Appellants. They relied upon judgment in case of India Carbon Ltd. Vs. State of Assam - (1997) 6 SCC 479, wherein Hon’ble court relied upon the earlier five-judge bench decision in

the case of J.K. Synthetics Ltd. Vs. CTO - (1994) 4 SCC 276 and held that 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. They relied upon judgment in case of Bajaj Health & Nutrition Pvt. Ltd. Vs. CC, Chennai - 2004 (166) ELT 189, Tonira Pharma Ltd. Vs. Commissioner - 2009 (237) ELT 65 (Tribunal), Siddeshwar Textile Mills Pvt. Ltd. Vs. Commissioner - 2009 (248) ELT 290 (Tri) etc.

2.26 The goods imported by the Noticees were cleared for home consumption on the strength of duly assessed bills of entry and 'Out of Charge' orders issued by the proper officer under the authority of the provisions of Section 17 and Section 47 of the Customs Act. The aforesaid orders (Out of Charge), being quasi-judicial orders, can only be set aside by an order of the competent appellate authority in appellate proceedings. Quasi-judicial orders cannot be sought to be set aside by mere issuance of a show cause notice, which has proposed to declare the goods to be liable for confiscation. They relied upon judgment in case of CCE Kanpur Vs. Flock (India) – 2000 (120) ELT 285 (SC), Priya Blue Industries Vs. CC (Preventive) – 2004 (172) ELT 145 (SC), ITC Limited Vs. CCE, Kolkata IV – 2019 (368) ELT 216 (SC), Jairath International Vs. UOI – 2019 (10) TMI 642 etc.

3. Customs Broker M/s. Skylink Freight Forwarders Pvt. Ltd. gave written submissions vide their letter dated 17.07.2025, wherein they *inter-alia,* stated as below:

3.1 They submitted that the demand has been raised against the Importer and they have filed a detailed reply contesting the duty demand. The SCN further alleges that the noticee have submitted false declaration and by this act omission of the 'Importer' there has been a loss to the government equal to the differential duty. The SCN itself [para 18] state that the importer has availed the benefit of notification. However, there is no allegation whatsoever, on them of any act, of omission. Therefore, the provisions of Section 114AA and 1 17 of the Customs Act, 1962 is not attracted. The noticee was never summoned by the audit officers nor investigated. No statements were recorded and therefore the noticee could not have rendered the goods liable to confiscation without any Cogent evidence. Therefore, the SCN seeking to impose penalty on the noticee under Section 114AA and 117 of the Customs Act, 1962, is bad in law. Further, vide instruction no. 20/2024-Cus. Dated 03.09.2024it has beenstated that Customs Broker should not be made co-noticee in matters 'involvinginterpretation of statute, must be avoided unless the element of abetment of theCustoms Broker in the Investigation is established by the investigatingauthority.' Therefore, in the present case no investigation was done and there isno element of abetment.

3.2 In the present case, 'Iohexol USP &Iopamidol USP' imported by the importer have been correctly described and declared in all the bills of entry and also, the same have in fact been correctly assessed &obtained NOC from drug control India(JNCH Port). Also, in certain cases the goods were examined before out of charge and therefore, are not liable to confiscation. Detailed submissions in this regard have been made in the reply filed by the importer. The noticee requests that the same may be considered as part and parcel of the noticee's submissions. And therefore, as the goods are not liable for confiscation, penalty cannot be imposed under Section 114AA and ll7 of the Customs Act,1962.

3.3 The noticee did not render the goods liable to confiscation, by any of his act(s) and/omission (s). And also, the noticee did not in any manner abet any of the act or omission on the part of the importer or any other person rendering the goods liable to confiscation. Further, no allegation of any abetment has been brought out in the SCN. They were not in any manner involved in thealleged mis classification of goods. They relied upon judgment in case of Syndicate Shipping Services Pvt. Ltd. vs.Commissioner or Customs,2003 (154) E.L.T. 756 (Tri. - Chennai), the Hon'bleChennai Tribunal held that penalty cannot be imposed in the absence of anypositive evidence on records to show that the appellant was an accomplice orabettor. They further relied upon judgment in case of Owens CorningEnterprises (I) P. Ltd. v C.C. (Export), Nhava Sheva reported in 20ll (270)E.L.T. 547 (Tri. - Mumbai), Vivek Joshi vs. Commr.of Cus. (Imports), Nhava Sheva, Mumbai, 200 4(178) E.L.T.526(Tri.-Mumbai).

3.4 They further submitted that job of a CHA is confined to make entries on the basis of the documents provided by the importer and to facilitate proper filing of such documents only. In support of this argument, they placed reliance on the decision of Akanksha Enterprises vs. Commissioner of Customs, Mumbai -1,2006 (203) ELT 125.In the case ofHindustan Steel Ltd. vs. State of Orissa [1978 (2) ELT (J159)(SC)], Hon'ble Supreme Court held that no penalty should be imposed fortechnical or venial breach of legal provisions or where the breach flows from thebona fide belief. Following the above judgment, in the case of Cement MarketingCo. of India Ltd. v. Assistant Commissioner of Sales Tax [1980 (6) ELT 295(SC)], the Hon'ble Supreme Court held that penalty cannot be imposed when anassessee raises a contention of bona fide.The Noticee cannot be held responsible or liablefor penalty if the importer has allegedly mis-declared the facts.Liability can befastened on the noticee only when the noticee has the knowledge or intention tomake any false or incorrect particular. However, no evidence has been relied uponin the SCN to attribute such knowledge, intention or mala fide on the Noticee. Inthis Context they relied on the judgment of the Hon'ble Tribunal in the case ofPrathamesh Shipping P.Ltd. versus Commissioner of Customs, Nhava Shevareported in 2000 (119) E.L.T. 75 (Tribunal).

4. Customs BrokerM/s. Exim Transtrade (India) Pvt. Ltd. gave written submissions vide their letter dated 02.01.2025 wherein they *inter-alia* submitted as below:

4.1 SCN is completely misconceived and unsustainable on both, facts and in law, and is liable to be dropped. The definition of 'Drug' is subject to modification by the Central Governmentthrough notifications in the Official Gazette, following consultation with theDrugs Technical Advisory Board established under Section 5 of the Drugs andCosmetics Act, 1940. The Customs department's assumption that the CentralGovernment included the aforementioned products in List 4 without consultingthe Board is not only baseless but also undermines the legislative intent in its mostunfavourable interpretation.Union of India vs M/s.Swiss Garnier Life Sciences and Union of India vs M/s. Mars Therapeutics andChemicals Ltd (2013 AIR SCW 4113) explicitly distinguishes between thesedefinitions.It clarifies that the definition of a bulk drug consists of two parts:

The first part, 'Base Drug', includes any pharmaceutical, chemical, biological, orplant product.

The second part encompasses salts, esters, stereoisomers, and derivatives of suchbase drugs.Consequently, certain bulk drugs inherently qualify as drugs. Therefore, theCustoms department's erroneous interpretation is arbitrary, unreasonable,discriminatory, and disproportionate.Furthermore, the legality of the interpretation of the impugned notification fallsoutside the jurisdiction of the Customs department unless the exemptionprovisions are ambiguous, and such ambiguity favors the Revenue rather than theassessee, as clarified in para 52 of the Constitution Bench judgmentin Commissioner of Customs (Import) Mumbai vs M/s. Dilip Kumar and Company.

4.2 The reliance placed on the Gujarat Authority for Advance Ruling (AAR) decision in M/s. Sterling Biotech (dated 30th July 2020) is entirely misplaced and irrelevant to the present case. The ruling in M/s. Sterling Biotech was rendered in a specific factual and legal context, which is materially distinct from the circumstances of the present matter.The products in question in M/s. Sterling Biotech (namely, Daunorubicin, Epirubicin, Idarubicin and Zoledronic Acid) required significant synthesis andprocessing to yield the final drug formulations. In contrast, the imported productsin the present case/ Iopamidol and Iohexol, do not undergo any significantsynthesis or transformation to generate the derived product. This materialdifference in the nature of the products and their processing further underscoresthe inapplicability of the Gujarat AAR ruling.Tbe Gujarat AAR ruling was issued in the context of specific products andprocesses that are entirely distinct from those involved in the present matter. The sole and solitary dependence on the Gujarat AAR ruling in M/s. SterlingBiotech reflects a misguided interpretation of the facts and law applicable to thepresent case. Such reliance has led to erroneous conclusions regarding theclassification of Iopamidol and Iohexol, which are fundamentally different fromthe products considered in the Gujarat AAR ruling.

4.3 It was informed vide letter issued under F. No. VII1(39)/9/C-Bond/IGCRD/Unijules/CDN-1/2018-19 dtd. 23.04.2018 by the Assistant Commissioner,Customs Division Nagpur-I, Customs Commissionerate, Nagpur that the saidgoods i.e. IOEXOL (USP) were included in (a) of Sr. no. 167 in Notification no.50/2017-Cusloms Dtd.30.06.2017 and that the Customs (Import of Goods atConcessional Rate of Duly) Rule, 2017 is not applicable to the said goods. The said notification grants exemption to both drugs packed in less than 25 Kgs packing as well as to bulk drugs (which are regularly being imported by the importer in 25 Kg packing).

4.4 Notification no. 50/2017-Customs was issued after extensive consultation and due diligence by Drug Technical Advisory Board (DTAB) and the Drugs Consultative Committee (DCC) and the Central Drugs Standard Control Organization (CDSCO). Further the notification was formulated in alignment with the Drugs (Price Control) Order, 1995, Drugs and Cosmetics Act, the New Drug Policy and international Pharmacopeia standards. As per definition in Drugs (Prices Control) Order, 1995, 'bulk drug' are also drugs.

4.5 CHA's actions fairly fall under the Common Business Parlance Test.The Supreme Court in M/s. TrutufSafety Glass Industries vs Commissioner ofSales Tax, UP [2007 (7) SCC 24] held that it is settled position in law that whileinterpreting the entry for the purpose of taxation recourse should not be made tothe scientific meaning of the terms or expressions used but to their popularmeaning, that is to say, the meaning attached to them by those dealing in them.There has been never an instance where the CHA used false and incorrectmaterial knowingly or intentionally or misdeclaration of any material ortransaction for unjust enrichment. Hence no penalty can be levied under S.114AAas it squarely is inapplicable to the CHA.

4.6 They relied upon various judicial pronouncements in their support viz. Unichem Laboratories Ltd. Vs Collector of Central Excise, Bombay {(2002) 7 SCC 145, Burroughs Wellcome (I) Ltd & Pfizer Ltd. vs Commissioner of Central Excise & Customs, Mumbai.

PERSONAL HEARING

5.1 Opportunity for personal hearing in the matter was granted to the importer on 01.08.2025 and accordingly, the noticee attended the hearing on the said date through virtual mode. Akhilesh Kangsia, Madhura Khandekar, Nandita Reddy advocates and Mahesh Kshirsagar- representative of M/s. Gentek Lifesciences Pvt. Ltd. appeared on behalf of the Noticee. They reiterated the written submissions made by them as detailed in paras above and also referred upon various case laws. They submitted that in an identical matter, AC/Customs vide their letter dated 24.04.2018 had stated that IGCR, 2017 is not applicable on the IOHEXOL as the same is covered under Serial no. 167A of the notification no. 50/2017-Customs. They further relied and submitted Drug Price Control Order (DPCO) wherein bulk drugs are also covered under the definition of drugs. They submitted that SCNs have conveniently ignored the binding judicial precedents of higher formats which is utter disregard to the principal of judicial discipline. They referred to judgments in case of M/s. BurrighsWellcome (I) Ltd. Vs CCE- 2007 (216) ELT 522,, Cipla Ltd. Vs CC- 2007 (218) ELT 547 (Tri.-Chennai) and Shri Baser Vs CCEx& St- 2024 (12) TMI 270.

5.2 In response to the opportunity for personal hearing granted to Customs Broker M/s. Skylink Freight Forwarders Pvt. Ltd., their representative Mr. ND George, Advocate appeared on their behalf on 13.08.2025 through virtual mode and reiterated their written submissions dated 17.07.2025. He further relied upon the instructions dated 03.09.2024 issued by CBIC and advisory dated 23.10.2024 issued by CCO/JNCH regarding non-imposition of penalty on Customs Broker in case of interpretative matters.

5.3 In response to the opportunity for personal hearing granted to Customs Broker M/s. Exim Transtrade (I) Pvt. Ltd., their representatives Mr. Prasanth Raju and Mr. Jignesh Mota appeared on 13.08.2025 through virtual mode. During the hearing, they reiterated their written submissions dated 02.01.2025 and relied upon the letter of Assistant Commissioner of Customs, Nagpur issued to M/s. Gentek Lifesciences (I) Pvt. Ltd.

DISCUSSIONS AND FINDINGS

6.1 I have carefully gone through the Show Cause Notice, material on record and facts of the case, as well as written and oral submissions made by the Noticee. Accordingly, I proceed to decide the case on merit.

6.2 I find that on the basis of the Post Clearance Audit, it was noticed that M/s. Gentek Life Sciences Pvt. Ltd. had cleared the goods viz. "Iohexol USP and Iopamidol USP" under Tariff Heading 29242990 by paying NIL rate of BCD and IGST @5%. It was noticed that the importer had availed benefits of Notification no. 50/2017-Customs, Serial no. 167A. SCN has alleged that as the goods are not imported as finished product and imported in Bulk quantity, therefore, Serial no. 167(A) of the Notification no. 50/2017-Cus will not be applicable in the matter and Serial no. 167 (B) of the said notification would be applicable on the goods. However, serial no. 167(B) of Notification no. 50/2017-Cus is applicable on the goods subject to the adherence of condition no. 9 of the notification. As per condition no. 9, the importer was required to follow the procedure set out in Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. However, since the importer did not follow the procedure mentioned in Condition no. 9 of the notification, he was not eligible for the same. Therefore, demand of differential duty to the tune of Rs. 18,81,67,566/- was raised on the importer along with consequential penalties. The importer has submitted that as per the definition in Drug Price Control Order, the drugs include bulk drugs and therefore, the goods are eligible for exemption under serial no. 167A of the Notification. They further submitted that the goods are specifically covered under List 4 to the impugned Notification and therefore, are covered by Serial no. 167A of the notification.

6.3 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 the goods viz. IOHEXOL USP & IOPAMIDOL USP are eligible for exemption under Serial no. 167A of Notification No. 50/2017-Cus dated 30.06.2017 or otherwise?

(B) Whether duty amounting to Rs. 18,81,67,566/- is recoverable from the importer under Section 28(4) of the Customs Act, 1962 or otherwise?

7. 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 the goods viz. IOHEXOL USP & IOPAMIDOL USP are eligible for exemption under Serial no. 167A of Notification No. 50/2017-Cus dated 30.06.2017 or otherwise?

7.1 I find that M/s. Gentek Life Sciences Pvt. Ltd. has imported the product IOHEXOL USP and IOPAMIDOL USP by availing benefit of exemption Notification no. 50/2017-Customs dated 30.06.2017, Serial no. 167A. However, the department has alleged that the goods are eligible for benefits under Serial no. 167B of the said notification subject to the adherence of condition no. 9 of the notification. SCN alleges that the subject goods were

imported in bulk quantity and are not finished product,hence, the concessional rate is applicable on the imported goods under Sl. No. 167(B) of Notification No. 50/2017 subject to fulfilment of its conditions. It alleges that, Sl. No. 167(A) of Notification No. 50/2017 is not applicable for bulk drugs. The relevant portion of the said Notification is extracted hereunder:

Sr. No.	Chapter or Heading or sub- heading or tariff item	Description of goods	Standard rate	Integrated Goods and Services Tax	Condition No.	Amended By Notification No.
(1)	(2)	(3)	(4)	(5)	(6)	
167	28, 29 ,30 Or 38	The following goods, namely:-				
		(A)Life saving drugs/medicines including their salts and esters and diagnostic test kits specified in List 4.	Nil	-	-	
		(B) Bulk drugs used in the manufacture of life saving drugs or medicines at (A)	Nil	-	9	

Condition no. 9 of the notification is as below:
"If the importer follows the procedure set out in Customs (Import of goods at concessional rate of duty) Rules, 2017".

7.2 I find that the notice has alleged that the subject goods are imported in Bulk quantity and therefore they are bulk drugs. I find that 'Bulk drugs" is not defined in Customs Act, 1962 or the rules & regulations framed thereunder. Therefore, the definition of the same are required to be drawn from the relevant legal provisions applicable to the drugs. I find that the drugs and medicines are governed by Drugs and Cosmetics Act and the definition of drugs & Bulk Drugs are mentioned under Drugs (Price Control) Order, 1995 and the drug is defined as under:

"*(i) "bulk drug" means any pharmaceutical, chemical, biological or plant product including its salts, esters, stereo-isomers and derivatives, conforming to pharmacopoeial or other standards specified in the Second Schedule to the Drugs and Cosmetics Act, 1940 (23 of 1940), and which is used as such or as an ingredient in any formulation".*

(ii) "drug" includes –

(a) all medicines for internal or external use of human beings or animals and all substances intended to be used for, or in the diagnosis treatment, mitigation, or prevention of any

disease or disorder in human beings or animals, including preparations applied on human body for the purpose of repelling insects like mosquitoes;

(b) such substances, intended to affect the structure or any function of the human or animal body or intended to be used for the destruction of vermin or insects which cause disease in human beings or animals, as may be specified from time to time by the Government by Notification in the Official gazette; and

(c) bulk drugs and formulations;"

I find that the same definition of Bulk drug or active pharmaceutical ingredient has been included in Section 2(1)(b) of The Drugs (Price Control) Order, 2013 also. Further, drug has been defined under Section 3(b) of the Drugs and Cosmetics Act, 1940 which defined drugs as under:

"drug" includes—(i)all medicines for internal or external use of human beings or animals and all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of any disease or disorder in human beings or animals, including preparations applied on human body for the purpose of repelling insects like mosquitoes;

(ii)such substances (other than food) intended to affect the structure or any function of the human body or intended to be used for the destruction of vermin or insects which cause disease in human beings or animals, as may be specified from time to time by the Central Government by notification in the Official Gazette;

(iii)all substances intended for use as components of a drug including empty gelatincapsules; ……."

7.3 From the definitions mentioned hereinabove, I find that the drugs include bulk drugs as per Section 2(1)(b) of The Drugs (Price Control) Order, 2013. Also, as per Section 3(b)(iii) of the Drugs and Cosmetics Act, 1940, drugs include all substances intended for use as components of a drug. Therefore, the bulk drugs which are used as an ingredient in formulations to make drugs are squarely covered within the definition of drug in accordance with the Drugs and Cosmetics Act, 1940.

7.4 As discussed in paras *supra,* drugs cover bulk drugs also. Accordingly, wherever bulk drugs are mentioned in above Notification, the benefits as applicable to 'drugs' shall also be applicable to 'bulk drugs'. Further, I find that the noticee has given submissions that for the import of the impugned item i.e. IOHEXOL& IOPAMIDOL, they had procured 'Licences to import Drugs' from the competent authorities which also shows that even though the item imported by the noticee is alleged to be bulk drug in the Show Cause Notice, however, licence to import drugs issued to them, also brings out that the item imported by the noticee is nothing but drug.

7.5 I find that the Notice has proposed to demand the differential duty under the pretext that the impugned goods are imported in bulk quantity and not the finished product; hence, they are bulk drug and therefore, serial no. 167A of the said notification is not applicable on the same. I find that the Show Cause Notice has wrongly interpreted that the drugs which are

imported in bulk quantity will be considered as bulk drugs. As discussed in detail in aforementioned paras, bulk drugs have been clearly defined in the Drug (Price Control Order), 2013 as any pharmaceutical product or its salts which are used as such or as an ingredient for formulation of the drugs and nowhere it mentions or even indicates that drugs imported in bulk quantity would be considered as bulk drug. Therefore, I find that the interpretation made in the notice that the drugs imported in bulk quantity would be considered as bulk drugs is flawed and unsustainable, more so when the bulk drugs have been clearly defined in the relevant legal provisions.

7.6 Moreover, I find that Serial no. 167A of Notification no. 50/2017-Customs dated 30.06.2017 is applicable for the Life Saving Drugs/Medicines specified in List 4 to the notification. I further find that the impugned product i.e. IOHEXOL is specifically mentioned at Serial no. 55 of List 4 of the impugned notification and IOPAMIDOL is mentioned at Serial no. 54 of List. I find that Serial no. 167A is applicable not only for the drugs/medicines but also their salts & esters, therefore, even though the goods viz. IOHEXOL and IOPAMIDOL are imported in bulk quantity, since the same is specifically covered under Serial no. 54 &55 of List 4 of the notification and are therefore, eligible for benefits of exemption notification no. 50/2017-Customs under Serial no. 167A. It is clear that when the exemption notification clearly grants benefit to 'all life Saving drugs/medicines including their salts, esters and diagnostic kits specified in List 4' irrespective of the classification under Chapter 29, 30, no further restriction can be supplied to restrict the usage of the benefit. I also observe that notification nowhere restricts benefit of Serial no. 167A for a drug specified in List 4 just because it is imported in bulk quantity. I find that the notice has alleged that the goods imported by the noticee are covered under chapter 29 of First Schedule of Customs tariff and thus not eligible for notification. In this regard, I find that the notification has covered all the goods within the description mentioned therein which are imported under chapter 28, 29, 30, or 38. As the goods imported under Chapter 29 are also eligible for exemption notification if they fulfil other conditions, the goods imported by the noticee even if considered under Chapter 29 of the notification, the same stands eligible for the benefits under the said notification.

7.7 I find that the notice has taken an interpretation of the impugned notification that the benefit of Serial no. 167A is applicable only to the finished products and if the benefit is extended to bulk drugs, it would potentially open the door for different customs treatment for APIs. I find that the notification nowhere has mentioned that the benefit under Serial no. 167A can be extended only to the finished products and not to the goods imported in bulk quantity. I find that the notification has categorically mentioned the list of the products to which benefit of NIL rate of duty can be extended and such goods are mentioned in List 4 to the notification. Had the intention of the notification been to provide exemption benefit only to the finished products, it would have explicitly mentioned the same as a condition as done in case of Serial no. 167B. I find that the notification has covered all the life saving drugs/medicines including their salts which are specified in List 4. As the goods imported by M/s. Gentek Lifesciences are specifically covered under Serial no. 54 &55 of the List and as discussed in detail in paras *supra*, the goods are covered within the ambit of definition of 'Drugs', therefore, the impugned goods are eligible for benefit of NIL rate of duty.

7.8 I find that the notice has mentioned that the items of List 4 mentions only finished goods. I find that the stance taken in the notice is contradictory in itself, as the goods imported by the noticee are covered under List 4 of the notification and it is alleged in the notice that the said goods are not finished products. I find that the inclusion of drugs/medicines in List 4 of the notification is not related to the same being finished product or otherwise. I find that the Notification is unambiguous in its categorization and classification of products, including IOPAMIDOL and IOHEXOL, under the relevant entries. There is no justification for reinterpretation when the legislative intent is clear. The notice's contention that the exemption is available only to finished goods is not tenable in law. Nowhere does the notification stipulate such a condition. On the contrary, the language of Serial no. 167A clearly states that "drugs/medicines" mentioned in List 4 are eligible for the duty exemption benefit. I find that the goods under import are specifically mentioned in List 4 of the notification and the presence of the goods in List 4 clearly indicates the legislative intent to allow exemption on their import. I find that it is a settled principle of statutory interpretation that when the text of the notification is clear and unambiguous, no external aids or restrictive interpretations should be resorted to. I find that plethora of judgments have emphasized that a beneficial notification promoting a particular industry or public policy should not be interpreted in a restrictive manner unless explicitly stated, more so, where goods are specifically listed. I rely upon judgment in case of Commissioner of Customs Import (Mumbai) Vs Konan Synthetic Fibres Ltd. {2012-TIOL 29 SC CUS} wherein Hon'ble Apex court held that beneficial notifications should be given a liberal interpretation, especially where their purpose is to promote or encourage certain activities. The Court reiterated that while the eligibility criteria must be strictly met, once eligibility is established, the notification must be construed so as to advance its purpose rather than defeat it.

7.9 I also find that the Show Cause Notice makes bare allegation without substantiating or relying upon any documents or evidences in support of their claim that the drugs imported in bulk quantity would be considered as bulk drugs. Therefore, I find that conjoint reading of definition of drug/bulk drug along with serial no. 167A of the notification made it adequately clear that the drug even if imported in the form of bulk quantity will be eligible for the benefits of the exemption notification no. 50/2017-Customs, serial no. 167A.

7.10 I find that serial no. 167B of the impugned notification covers the pharmaceutical products which are not mentioned in List 4 to the Notification but which are used as an ingredient for the manufacturing of the products of List 4. Apart from the various items mentioned in List 4 of the Notification No. 50/2017 there may be other drugs, which may be used for manufacture of medicines or drugs covered under List 4. Therefore, those drugs which are not covered under Sl. No. 167A of the Notification No. 50/2017, are covered under Sl. No. 167B, if they are used in the manufacture of drugs specified in List 4. In the instant case, the goods imported by the noticee are specifically mentioned at serial no. 54 &55 of List 4 and imported as drugs with appropriate licences. Therefore, I am of the considered opinion that the goods imported by M/s. Gentek Life Sciences Pvt. Ltd. i.e. Iohexol & Iopadimolin bulk quantity have to be treated as a drug and the same is eligible for benefits of Serial no. 167A of the exemption Notification no. 50/2017-Customs.

7.11 Even if it is assumed that the goods imported by the noticee are bulk drugs and covered under Serial no. 167B of the impugned notification, in that case also, the noticee becomes eligible for both serial no. 167A as well as 167B. In this regard, I find that it is a settled law that if two entries in an exemption notification are applicable to the given goods, then the importer can legitimately claim under the more advantageous entry. In this regard, I rely upon judgment of Hon'ble Supreme Court in case of HCL Limited Vs Collector of Customs {2001 (130) ELT 405 SC} vide which it was held that where there are two exemption notifications that cover the goods in question, the assessee is entitled to the benefit of that exemption notification which gives him greater relief, regardless of the fact that that notification is general in its terms and the other notification is more specific to the goods. Similar stance was taken by Hon'ble Apex Court in case of Share Medical Case Vs UOI {2007 (209) ELT 321 (SC)} and Collector of Central Excise, Baroda Vs Indian Petro Chemicals {1997 (92) E.L.T. 13 SC}. In case of Indian Petro Chemicals supra the hon'ble court held as under:

"We have read the judgment and order of the Customs, Excise and Gold (Control) Appellate Tribunal under appeal. It came to the conclusion that two exemption notifications were applicable and gave to the assessee the benefit of that notification which was more beneficial to it. Having read the judgment and order and heard learned counsel, we see no good reason to interfere with the judgment and order under appeal. The appeal is dismissed."

7.12 I find that after implementation of GST one of the importers had filed an application before the jurisdictional Customs Officer, Nagpur to comply with Customs (Import of goods at Concessional Rate of Duty) Rules with respect to the identical products viz. IOHEXOL USP. However, Assistant Commissioner of Customs, Nagpur Customs vide their letter dated 24.04.2018 informed them that the goods i.e. IOHEXOL USP are included in (A) of Serial no. 167 of Notification no. 50/2017-Customs and the Customs (Import of goods at Concessional Rate of Duty) Rules, 2017 are not applicable on them. Assistant Commissioner, Customs Division-I, Customs Commissionerate, Nagpur vide his letter F. No. VIII(39)/11/IGCRD/Return Doct./CDN-1/2018-99 dated 24.04.2018 stated as below:

"Goods i.e. (IOHEXOL USP) are included in (a) of Sr. no. 167 in Notification no. 50/2017-Customs dated 30.06.2017. The Customs, (Import of Goods at Concessional Rate of Duty), Rule 2017 is not applicable for Goods namely IOHEXOL USP as there is no condition in Notification no. 50/2017-Customs dated 30.06.2017 regarding following the procedure as per the Customs, (Import of Goods at Concessional Rate of Duty), Rule 2017 which come in force on 01.07.2017 vide Notification no. 68/2017-Customs (N.T.)".

7.13 I further find that the Office of the Pr. Commissioner of Customs (Preventive), Nhava Sheva Preventive Unit, R&I, Mumbai had also initiated investigation in the identical matter of eligibility of serial no. 167A of Notification no. 50/2017-Customs for import of IOHEXOL against another importer. In that case, the investigating agency found that the importer had correctly availed the notification benefit and issued a letter to the importer to that effect. Relevant part of the said letter dated 15.03.2024 of Preventive Unit is as follows:

"*It is to inform that as per S.No. 167(A) of Notification No. 50/2017-Cus dated 30.06.2017 as amended, provides exemption in respect of import of Lifesaving drugs/medicines including their salts and esters and diagnostic test kits specified in List 4. List 4 to notification no. 50/2017-Cus contains the various Drugs/Medicines, Iohexol by name and description appear in List 4 at item no. 55. Further, definition of life saving drugs has not been given in the notification.*

Further, on the basis of the literature available on the internet and provided by the importer in this case, it appears that importer has availed the correct notification benefit….."

7.14 Moreover, I also find that the Commissioner of Customs, NS-1, JNCH, Nhava Sheva has also taken an identical position in Order-in-Original no. 100/2018-19/Commr./NS-I/JNCH dated 31.01.2019 in case of M/s. Abil Chempharma & 49 others wherein it was held that the goods were eligible for the benefits of Notification under serial no. 167A as it is applicable at the moment. Relevant part of the order is as below:

"……..9. In view of the aforesaid, only logical conclusion that can be drawn in the present proceedings is that goods classifiable under Chapter 28,29 and 30 of the tariff, if specified in the List 3 of the Notification no. 12/2017-Cus., would remain eligible for the exemption provided under Sr. no. 147(A) of that notification as well as that provided under sr. no. 108(A) of the Notification No. 12/2012-CE dated 17.03.2012. the fact that such goods are bulk drugs and not formulations would not have any effect on the eligibility for the benefits extended under the said exemption notifications. Therefore, the proposals contained in the Show Cause Notices listed in table annexed to this order fail on merits. Therefore, I do not consider it necessary to dwell on the issue of limitation. The proceedings initiated vide the aforementioned show cause notices stands concluded."

7.15 I find that the benefits from duties of Customs as available under serial no. 167A and 167B is not unprecedented and such notifications were in existence & available to the importers earlier also vide different notification numbers. However, the conditions of the notifications have been identical as in the instant case. I find that the matter at hand is not *Res Integra* and has already been settled by various judicial forums. I find that in case of BurroghsWellcome (I) Ltd. {2007 (216) ELT 522 (Tri.-Mumbai)} Hon'ble CESTAT, Mumbai has passed an order wherein identical matter was raised. At the relevant period, Serial no. 43 of Notification no. 11/1997 was under dispute which is similar to notification no. 50/2017- in question. Hon'ble Tribunal held as under:

"*……..However, in the instant case, we find that the phrase "life saving drugs" has not been defined either in the notification or in the Drugs (Prices Control) Order. Moreover, "drugs" have been defined to include "bulk drugs". As such life saving drugs can also include "bulk drugs". Accordingly, we are of the view that even though the appellants had earlier claimed exemption for the impugned goods stating these to be bulk drugs, they cannot be precluded from claiming the exemption for life saving drugs in respect of the very same impugned goods as no further verification is required to be made at the original stage. Moreover, we also find that both the impugned goods are specifically listed in List 2 annexed*

to the notification as required under serial No. 43(A). Such specific inclusion does not require any further verification to be done at the original level.

13. We also find that by not defining the life saving drugs in the relevant notifications, the intention of the Government is to give as a wider coverage to the term as possible and the same is borne out in the Budget Circular for the year 1995 which, in Paragraph 23.1, says that life saving drugs are being exempted under the generic description and without any reference to forms.

14. In view of our findings as above, we hold that the impugned goods in respect of both the appellants being specified in List 2 to the relevant notifications, are entitled to exemption from basic and additional customs duty under serial No. 43(A) under Notification 11/97 and under similar provisions in the successor notifications during the relevant time……"

7.16 I find that similar view was taken by Hon'ble CESTAT, Chennai in case of Cipla Limited Vs CC, Chennai {2007 (218) ELT 547 (Tri.- Chennai)}wherein the Hon'ble Tribunal held that even though the items imported by Cipla are used in the manufacture of drugs or medicines, the imported items itself being specified in List 3, the same would be covered by Sl. No.80 (A) of the Customs Notification No. 21/2002 and Sl. No. 47A of Notification No. 4/2006 and therefore would be wholly exempt from the Basic Customs Duty and CVD. For this purpose, the Tribunal referred to and relied upon the decision of Tribunal, Mumbai Bench, in the case of Burroughs Welcome (India) Limited, referred above. Relevant portion of the above decision reads as under:

"……4. M/s. Burroughs Wellcome (I) Ltd. had imported Polymyxin B Sulphate and used the same along with some other ingredients in the manufacture of Neosporin. M/s. Pfizer Ltd. had imported Cefoperazone Sodium and used the same for manufacture of Cefoperazone Sodium Injections. The issue before the Tribunal was whether the above parties were eligible for the benefit of exemption from payment of CVD on the items imported by them, under Sl. No. 43 (A) of Notification No. 11/97-CE and under the corresponding entries of successor Notifications. It was not in dispute that the imported items figured in List 2 appended to Sl. No. 43 (A) of the above Notification. While the Revenue classified the goods as 'bulk drugs' under Sl. No. 43(B), the assessees classified them as life saving drugs under Sl. No. 43 (A). 'The Tribunal accepted the assessees contention and held that the drugs imported by them were to be categorized under Sl. No. 43(A) inasmuch as they found mention in List 2. It was further held that, as Sl. No. 43 (A) was more beneficial than 43 (B), the assessee was not precluded from claiming such benefit at a later stage. It is settled law that, where two exemption Notifications are applicable to a given goods which is otherwise chargeable to duty, the assessee is entitled to avail the benefit of that Notification which is more beneficial vide Indian Oil Corporation Ltd. v. CCE - 1991 (53) 347 (Tribunal), CCE v. Indian Petrochemicals - 1997 (92) E.L.T. 13 (S.C.) and H.C.L. Ltd. v. CC - 2001 (130) E.L.T. 405 (S.C.). Applying the same principle, we hold the view that, if two entries in an Exemption Notification are applicable to a given goods, the assessee can legitimately claim under the

more advantageous entry. Therefore, we are inclined to follow, with approval, the view taken by the co-ordinate Bench in the case of Burroughs Wellcome (I) Ltd .& Pfizer Ltd.

5. In the instant case, admittedly, the 'bulk drugs' imported by the appellants were specifically mentioned in List 3 appended to Sl. No. 80(A) of Customs Notification No. 21/02 and are liable to be considered as 'drugs' mentioned at 80(A). It is beyond doubt that 'bulk drugs' are also 'drugs'. They are so defined under the Drugs (Prices Control) Order, 1995 also. The imported goods, which are specified in List 3, must fall within the coverage of 'drugs specified in List 3' and consequently the benefit of Sl. No. 80(A) would be admissible to them in relation to BCD. It would follow that, insofar as CVD is concerned, the benefit of Sl. No. 47(A) of the Central Excise Notification would be available to the goods. We have taken this view upon strict interpretation of the language used in the description of goods under the relevant entries of the Notification, in terms of the Apex Court's ruling in Gujarat State Fertilisers Co. v. CCE - 1997 (91) E.L.T. 3 (S.C.) and other cases cited by learned DR. In the result, all the appeals filed against the appellate Commissioner's order on merits are bound to succeed……."

7.17 I find that similar view was taken by CESTAT, Bangalore in case of Astrix Laboratories Ltd. Vs CC, Hyderabad-I {2009 (233) ELT 372 (Tri.-Bangalore)}. Relevant part of the order is as below:

***"……..5.1** In the case of M/s. Burroughs Wellcome (I) Ltd. (supra), the question was as to whether the bulk drugs Polymyxin B Sulphate for use in the manufacture of Neosporin would be entitled to the benefit of the exemption under Sl. No. 43 of the Notification No. 11/97 was considered. Sl. No. 43 of the said Notification in Clause (A) specified nil rate of duty for life saving drugs is specified in List - 2 to the Notification. Clause (B) of Sl. No. 43 of the Notification No. 11/97 specified nil rate of duty for bulk drugs used in the manufacture of life saving drugs or medicines at Clause (A) of Sl. No. 43. However, for availing the benefit under Sl. No. 43(B), the procedure prescribed under the Customs (Import of Goods at Concessional Rate of Duty for manufacture of Excisable Goods) Rules, 1996 is to be followed. This has been followed and there is no denial of the same. In view of this position, the ratio of the judgment cited supra would also apply to the facts of this case, as the facts were similar and the benefit of the Notification was given.*

5.2 It is further seen that Nevirapine is specifically mentioned in List-3 of the Notification No. 21/2002-Cus., hence, it is a drug covered under Sl. No. 47(A) of Notification No. 4/2006-C.E. dated 1-3-2006. It is also seen that all drugs or medicines including their salts and esters and diagnostic test kits which are specified in List-3 of List-4 of the Notification No. 21/2002-Cus., dated 1-3-2002 are exempted, when they are manufactured in India. Thus, both the items find a specific entry in Sl. No. 117 and 118 respectively of List-3 of Notification No. 21/2002-Cus., dated 1-3-2002. Therefore, the term "drug" has to be considered to include bulk drug and formulation as per Drugs (Prices Control) Order, 1995 and hence, both the items being bulk drugs are entitled for the benefit of the Notification. The impugned orders are not correct and legal and hence, they are set aside by allowing these appeals."

7.18 I find that the SCN has proposed to impose IGST @18% only because the goods, alleged to be not eligible for Serial no. 167A of Notification no. 50/2017-Customs dated 30.06.2017 and are imported as bulk drug. I find that goods imported by M/s. Gentek Life Sciences Pvt. Ltd. are governed by IGST Notification no. 01/2017-IGST as amended for applicability of IGST duty on the same. I find that the 'drugs or medicines including their salts and esters & diagnostic kits, of Chapter 30 or any other chapter & specified in List 1 appended to schedule of the notification' are covered under Serial no. 180 of Schedule-I of the said notification i.e. 01/2017-Integrated Tax (Rate). I find that the item IOPADIMOL &IOHEXOL &has been specifically covered at serial no. 176 &177 of List 1 of Schedule-I and therefore, IGST@ 5% is applicable on the said goods which has been duly paid by the importer in the Bills of Entry as detailed in Annexure-I to the notice.

7.19 I find that the notice has relied upon the Advance Ruling in case of M/s. Sterling Biotech Limited, Vadodra and has stated that the said advance ruling is applicable in the instant case also. I find that the applicability of Advance Rulings is governed by Section 28J of the Customs Act, 1962. I find that as per provisions of Section 28J of the Act, *ibid.* the advance ruling pronounced by the authority is applicable only on the applicant who sought it and on the jurisdictional authorities in respect of the applicant. However, I find that the noticee in the instant caseis different from the applicant in case of ruling relied upon the in the notice and also the competent authority who passed the ruling is from different jurisdiction vis-à-vis jurisdiction wherein impugned goods are imported. I also find that the reliance on the said advance ruling in case of M/s. Sterling Biotech Limited, Vadodra cannot be made as the impugned goods are specifically mentioned in List 1 to Schedule-I of the IGST Notification. Also,in the identical issues plethora of judgments have been issued by various Tribunal authorities wherein the benefit of exemption was granted to the respective companies on the ground that the goods are specifically covered by the notifications. Also, as detailed in paras above, thenotification is unambiguous regarding its applicability on the goods mentioned in the list attached to it and the notice's contention that the exemption is available only to finished goods is not tenable in law as nowhere does the notification stipulate such a condition. Accordingly, I am of the considered opinion that IGST @ 5% is applicable on the impugned goods imported by M/s. Gentek Lifesciences Pvt. Ltd. as the same are squarely covered in List 1 to Schedule-I of the IGST Notification 01/2017-IGST.

7.20 In view of the above, I am of the considered opinion that the demand of differential duty amounting to Rs. 18,81,67,566/- as demanded from the importer is not sustainable as the noticee has rightly availed the benefits of the exemption notification no. 50/2017-Cus, Serial no. 167A and has correctly paid IGST under Schedule I of the IGST notification. As the demand of differential duty is not sustainable, therefore, the interest on duty also cannot be demanded.

7.21 In view of the aforesaid discussions and findings, as the noticee has rightly availed serial no. 167A of the notification no. 50/2017-Customs and Serial no. 180 of IGST notification no. 01/2017-IGST. Therefore, there is no mis-declaration on part of the noticee in that regard and the goods are not found to be liable for confiscation under Section 111(m) of the Customs Act, 1962 as proposed in the notice.

7.22 I find that the importer has rightly availed the notifications benefit and there has been no shortfall of duty and accordingly, the goods are also not liable for confiscation. Therefore, the penalty under Section 112, 114A and 117 of the Customs Act, 1962 on the importer are not sustainable and are liable to be set aside.

7.23 As there has been no short-levy of duty and the impugned goods have been imported properly, the penalties imposed on the Customs Brokers M/s. Skylink Freight Forwarders Private and M/s. Exim transtrade (India) Pvt. Ltd. Under Sections 114AA and 117 of the Act *ibid* are also liable to be set aside.

8. In view above, I pass the following order:

ORDER

8.1 I order that the demand for differential duty amounting to Rs. 18,81,67,566 /- from the importer M/s. Gentek Life Sciences Pvt. Ltd. under Section 28(4) of the Customs Act, 1962, is not sustainable and is hereby dropped.

8.2 I order that the proposal to levy interest under Section 28AA of the Customs Act, 1962, is dropped, as the principal demand does not survive.

8.3 I order that the proposal to confiscate the goods covered under the Bills of Entry listed in Annexure-A of the SCN under Section 111(m) of the Customs Act, 1962, is not maintainable and is hereby dropped.

8.4 I order that the proposal to impose penalties on M/s Gentek Lifesciences Pvt. Ltd. under Sections 112(a), 114A, 114AA and /or 117 of the Customs Act, 1962, is not warranted and is hereby dropped.

8.5 I order that the proposal to impose penalties on Customs brokers M/s. Skylink Freight Forwarders Private and M/s. Exim Transtrade (India) Pvt. Ltd. under Sections 114AA and/or 117 of the Customs Act, 1962, is not warranted and is hereby dropped.

8.6 I order that the Show Cause Notice No. 1548/2024-25/Commr/NS-I/Gr.II(AB)/CAC/JNCH dated 02.01.205 is hereby dropped in its entirety.

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

Digitally signed by
Yashodhan Arvind Wanage
Date: 11-12-2025
15:46:42

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

To,

1. **M/s Genetek Lifesciences Private Limited,**
   Plot No. 10, 2nd Floor, Chartered Square,
   Siraspeth, Samrat Ashok Square, Nagpur - 440009.
   Email: biogenetek@gmail.com, geneteklife.wardha@gmail.com

2. **M/s Skylink Freight Forwarders Private Limited,**
   508 Windfall building, Sahar Plaza Complex,
   Andheri Kurla Road, J.B, Nagar Road,
   Chakala- 400059.
   Mail id: info@skylinkffpl.com,

3. **M/s Exim Transtrade (India) Pvt. Ltd.**
   201, Marathon Maxima, L.B.S. Marg,
   Mulund, West- 400080.
   Mail Id: mail@exin.ws,

Copy to:-

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