F.No. S/10-096/2024-25/COMMR./GR. 2(C-F)/NS-I/CAC/JNCH
SCN No. 1014/2024-25/Commr/NS-I/CAC/JNCH dtd 30.08.2024

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

DIN: 20251078NW000000C14D

Date of Order: 09.10.2025
Date of Issue: 13.10.2025

F.No. S/10-096/2024-25/Commr/NS-I/Gr. II(C-F)/NS-I/CAC/JNCH
SCN No. 1014/2024-25/Commr/NS-I/CAC/JNCH dtd 30.08.2024

आदेशकीतिथि: **09.10.2025**
जारीकिएजानेकीतिथि: **13.10.2025**

Passed by: Shri Yashodhan Wanage
पारितकर्ता: श्री. यशोधन वनगे
Principal Commissioner of Customs (NS-I), JNCH, Nhava Sheva
प्रधान आयुक्त, सीमाशुल्क (एनएस-**1**), जेएनसीएच, न्हावाशेवा
Order No.: 223/2025-26 /Pr. Commr/NS-I /CAC /JNCH

आदेशसं. : **223/2025-26**/प्र. आयुक्त/एनएस-1/ सीएसी/जेएनसीएच
Name of Party/Noticee: M/s Dai Ichi Karkaria Limited (IEC: 0388004011)
पक्षकार (पार्टी)/ नोटिसीकानाम: मेसर्स डाई इचि कारख़ाना लिमिटेड (आईईसी: **0388004011)**

ORDER-IN-ORIGINAL
मूलआदेश

1. The copy of this order in original is granted free of charge for the use of the person to whom it is issued.
1. इसआदेशकीमूलप्रतिकीप्रतिलिपिजिसव्यक्तिकोजारीकीजातीहै, उसकेउपयोगकेलिएनि:शुल्कदीजातीहै।

2. Any Person aggrieved by this order can file an Appeal against this order to CESTAT, West Regional Bench, 34, P D Mello Road, Masjid (East), Mumbai - 400009 addressed to the Assistant Registrar of the said Tribunal under Section 129 A of the Customs Act, 1962.
2.इसआदेशसेव्यथितकोईभीव्यक्तिसीमाशुल्कअधिनियम१९६२कीधारा१२९(ए) केतहतइसआदेशकेविरुद्धसीईएसटीएटी, पश्चिमीप्रादेशिकन्यायपीठ (वेस्टरीज़नलबेंच), ३४, पी. डी. मेलोरोड, मस्जिद (पूर्व), मुंबई– ४००००९कोअपीलकरसकताहै, जोउक्तअधिकरणकेसहायकरजिस्ट्रारकोसंबोधितहोगी।

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

Form - Form No. CA3 in quadruplicate and four copies of the order appealed against (at least one of which should be certified copy).

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

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

समयसीमा- इसआदेशकीसूचनाकीतारीखसे३महीनेकेभीतर

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

फीस- (क(एकहजाररुपये–जहाँमाँगेगयेशुल्कएवंब्याजकीतथालगायीगयीशास्तिकीरकम५लाखरुपयेयाउससेकमहै।

(b) Rs. Five Thousand - Where amount of duty &Page 2 of 30
interest demanded & penalty imposed is more than Rs. 5 Lakh but not exceeding Rs. 50 lakh.

(ख(पाँचहजाररुपये– जहाँमाँगेगयेशुल्कएवंब्याजकीतथालगायीगयीशास्तिकीरकम५लाखरुपयेसेअधिकपरंतु५०लाखरुपयेसेकमहै।

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

(ग(दसहजाररुपये–जहाँमाँगेगयेशुल्कएवंब्याजकीतथालगायीगयीशास्तिकीरकम५०लाखरुपयेसेअधिकहै।

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

भुगतानकीरीति– क्रॉसबैंकड्राफ्ट, जोराष्ट्रीयकृतबैंकद्वारासहायकरजिस्ट्रार, सीईएसटीएटी, मुंबईकेपक्षमेंजारीकियागयाहोतथामुंबईमेंदेयहो।

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

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

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

5.इसआदेशकेविरुद्धअपीलकरनेकेलिएइच्छुकव्यक्तिअपीलअनिर्णीतरहनेतकउसमेंमाँगेगयेशुल्कअथवाउद्गृहीतशास्तिका७.५ %
जमाकरेगाऔरऐसेभुगतानकाप्रमाणप्रस्तुतकरेगा, ऐसानकियेजानेपरअपीलसीमाशुल्कअधिनियम,
१९६२कीधारा१२८केउपबंधोंकीअनुपालननानकियेजानेकेलिएनामंजूरकियेजानेकीदायीहोगी।

1. BRIEF FACTS OF THE CASE

1.1 The importer, M/s DAI ICHI KARKARIA LIMITED (IEC-0388004011) having office address at Liberty Building Sir Vithaldas Thackersey Marg, New Marine Lines Mumbai- 400020 (hereinafter referred to as importer) had filed various Bills of Entry, details are tabulated in attached Annexure-A for the clearance of imported goods declared under CTH 29051700, 29051990, 38237020 and 38237090 through their Customs Brokers i.e. SUNNY & CO. (AADPP1575ECH001) and R CARGO LOGISTICS SERVICES (ABDFR3295CCH001). The goods under subject Bills of Entry were imported by the importer under lower/Nil rate of ADD, subject to certain conditions as mentioned in the Notification No. 28/2018-Customs (ADD) dated 25.05.2018 including producer, exporter, country of origin, country of export etc. The analysis of the import data revealed that the importer had mis used the above notification in order to avail the benefit of lower duty rate.

1.2 The importer had imported the goods falling under CTH 29051700, 29051990, 38237020 and 38237090 without paying the true applicable Anti-Dumping Duty as per the Notification No. 28/2018-Customs (ADD) dated 25.05.2018, further amended vide Notification No 48/2018 dated 25.09.2018. The extract of the said notification is given below: -

TABLE-I

S. No.	Sub-headings	Description of goods	County of origin	County of export	Producer	Exporter	Amount	Unit	Currency
1	2	3	4	5	6	7	8	9	10
1	290517, 290519, 382370	All types of Saturated Fatty Alcohols excluding Capryl Alcohols (C8) and Decyl Alcohols (C10) and blends of C8 and C10	Indonesia	Singapore	M/s PT Eco green Oleochemicals	M/s Eco green Oleochemicals (Singapore) Pte Ltd.	NIL	MT	USD
2	290517, 290519, 382370	-do-	Indonesia	Indonesia	M/s PT Musim Mas	M/s Inter-Continental Oils & Fats Pte Ltd, Singapore	7.1	MT	USD
3	290517, 290519, 382370	-do-	Indonesia	Indonesia	M/s PT Wilmar Nabati	M/s Wilmar Trading Pte Ltd., Singapore	52.23	MT	USD
4	290517, 290519, 382370	-do-	Indonesia	Indonesia	Any combination other than Sl. Nos.	Any combination other than Sl. Nos. 1, 2 & 3	92.23	MT	USD

					1, 2 & 3				
5	2905 17, 2905 19, 3823 70	-do-	Indonesia	Any	Any	Any	92.23	MT	USD
6	2905 17, 2905 19, 3823 70	-do-	Any country other than those subject to antidumping duty	Indonesia	Any	Any	92.23	MT	USD
7	2905 17, 2905 19, 3823 70	-do-	Malaysia	Malaysia	M/s FPG Oleochemicals Sdh Bhd	M/s Procter & Gamble International Operations SA, Singapor	17.64	MT	USD
8	2905 17, 2905 19, 3823 70	-do-	Malaysia	Malaysia	M/s KL - Kepong Oleomas Sdn Bhd	M/s KL - Kepong Oleomas Sdn Bhd	NIL	MT	USD
9	2905 17, 2905 19, 3823 70	-do-	Malaysia	Malaysia	Any combination other than Sl. Nos. 7 & 8	Any combination other than Sl. Nos. 7 & 8	37.64	MT	USD
10	2905 17, 2905 19, 3823 70	-do-	Malaysia	Any Country	Any	Any	37.64	MT	USD
11	2905 17, 2905 19, 3823 70	-do-	Any country other than those subject	Malaysia	Any	Any	37.64	MT	USD

			to antidumping duty						
12	290517, 290519, 382370	-do-	Thailand	Thailand	M/s Thai Fatty Alcohols Co. Ltd.	M/s Thai Fatty Alcohols Co. Ltd.	NIL	MT	USD
13	290517, 290519, 382370	-do-	Thailand	Thailand	Any combination other than Sl. No. 12	Any combination other than Sl. No. 12	22.5	MT	USD
14	290517, 290519, 382370	-do-	Any country other than country of origin	Thailand	Any	Any	22.5	MT	USD
15	290517, 290519, 382370	-do-	Thailand	Any country	Any	Any	22.5	MT	USD

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

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

Thus, it appears that the importer is required to pay ADD as per the said notification. However, the importer had not paid the ADD.

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

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

Now Therefore, in exercise of the powers conferred by sub-rule (2) of rule 22 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Central

Government, after considering the aforesaid recommendation of the designated authority, hereby orders that pending the outcome of the said review by the designated authority, the subject goods, when originating in or exported from the subject country by M/s. PT. Energi Sejahtera Mas (Producer) Indonesia and through M/s. Sinarmas Cepsa Pte Ltd (Exporter/trader), Singapore and imported into India, shall be subjected to provisional assessment till the review is completed.

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

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

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

TABLE-II

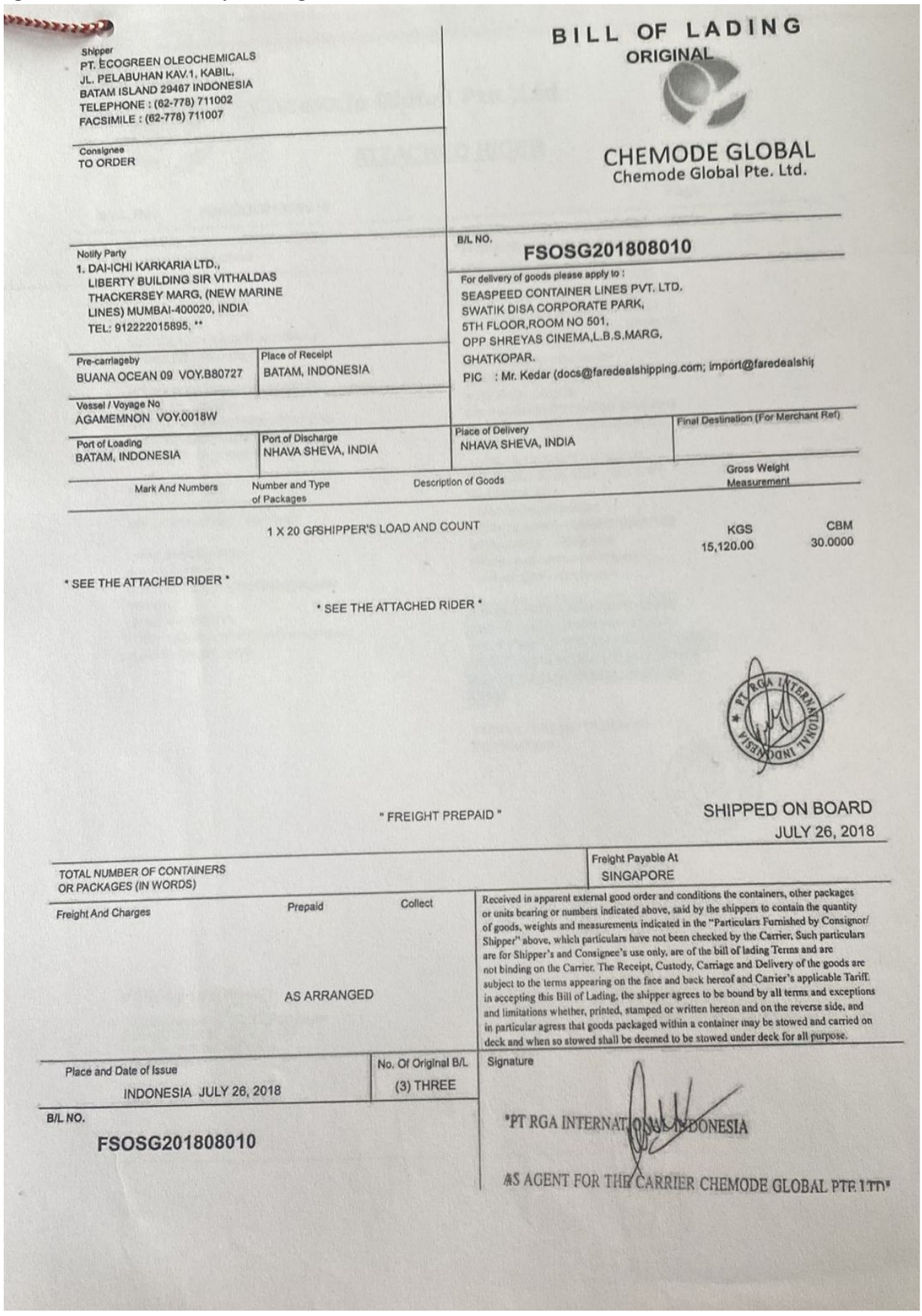
S.No.	Sub-headings	Description of goods	County of origin	County of export	Producer	Exporter	Amount	Unit	Currency
1	2	3	4	5	6	7	8	9	10
16	2905 17, 2905 19, 3823 70	-do-	Indonesia	Any country including Indonesia	PT. ENERGI SEJAHTERA MAS	Sinarmas CEPSA Pte. Ltd.	51.64	MT	USD

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

1.5 The Anti-dumping duty levied on the import vide Notification No. 28/2018-Customs (ADD) dated 25.05.2018, further amended vide Notification No 48/2018 dated 25.09.2018 was applicable to subject Bills of Entry, but applicable Anti- dumping duty was not paid for the said Bills of Entry by the importer.

Further, during the investigation, it was seen that the importer had opted the benefit of S.No. 1 of Notification 28/2018-Customs (Nil Anti-Dumping) as shown in Table-I for various consignments under the condition that the Producer is "PT Ecogreen Oleochemicals" & Exporter is "Ecogreen Oleochemicals (Singapore) Pte Ltd" along with other mentioned conditions in the said notification. On scrutiny of the relevant documents, it is seen that the goods have not been exported from Singapore, but the same have been transshipped at Singapore. The details mentioned on the Bill of Lading for these consignments clearly indicated that the goods were for

"Transhipment at Singapore on Vessel - Shipped on Board on Pre-Carriage Vessel at Batam, Indonesia,". This also indicated that there is no 'Export Declaration/ Bill of Export/Shipping Bill' presented at Singapore, Thus the mandatory condition of country of export as Singapore is not being fulfilled by the Exporter. Consequently, it appears that the importer inappropriately claimed the benefit of S.No. 1 of Notification 28/2018-Customs.Copy of one such Bill of Lading uploaded in e-sanchit by the importer is as below:



BILL OF LADING
ORIGINAL

CHEMODE GLOBAL
Chemode Global Pte. Ltd.

Shipper
PT. ECOGREEN OLEOCHEMICALS
JL. PELABUHAN KAV.1, KABIL,
BATAM ISLAND 29467 INDONESIA
TELEPHONE : (62-778) 711002
FACSIMILE : (62-778) 711007

Consignee
TO ORDER

Notify Party
1. DAI-ICHI KARKARIA LTD.,
LIBERTY BUILDING SIR VITHALDAS
THACKERSEY MARG, (NEW MARINE
LINES) MUMBAI-400020, INDIA
TEL: 912222015895, **

B/L NO.
FSOSG201808010

For delivery of goods please apply to :
SEASPEED CONTAINER LINES PVT. LTD.
SWATIK DISA CORPORATE PARK,
5TH FLOOR,ROOM NO 501,
OPP SHREYAS CINEMA,L.B.S.MARG,
GHATKOPAR.
PIC : Mr. Kedar (docs@faredealshipping.com; import@faredealshi

Pre-carriageby	Place of Receipt
BUANA OCEAN 09 VOY.B80727	BATAM, INDONESIA

Vessel / Voyage No
AGAMEMNON VOY.0018W

Port of Loading	Port of Discharge	Place of Delivery	Final Destination (For Merchant Ref)
BATAM, INDONESIA	NHAVA SHEVA, INDIA	NHAVA SHEVA, INDIA	

Mark And Numbers	Number and Type of Packages	Description of Goods	Gross Weight	Measurement
	1 X 20 GP	SHIPPER'S LOAD AND COUNT	KGS 15,120.00	CBM 30.0000

* SEE THE ATTACHED RIDER *

* SEE THE ATTACHED RIDER *

PT RGA INTERNATIONAL INDONESIA

" FREIGHT PREPAID "

SHIPPED ON BOARD
JULY 26, 2018

TOTAL NUMBER OF CONTAINERS OR PACKAGES (IN WORDS)

Freight Payable At
SINGAPORE

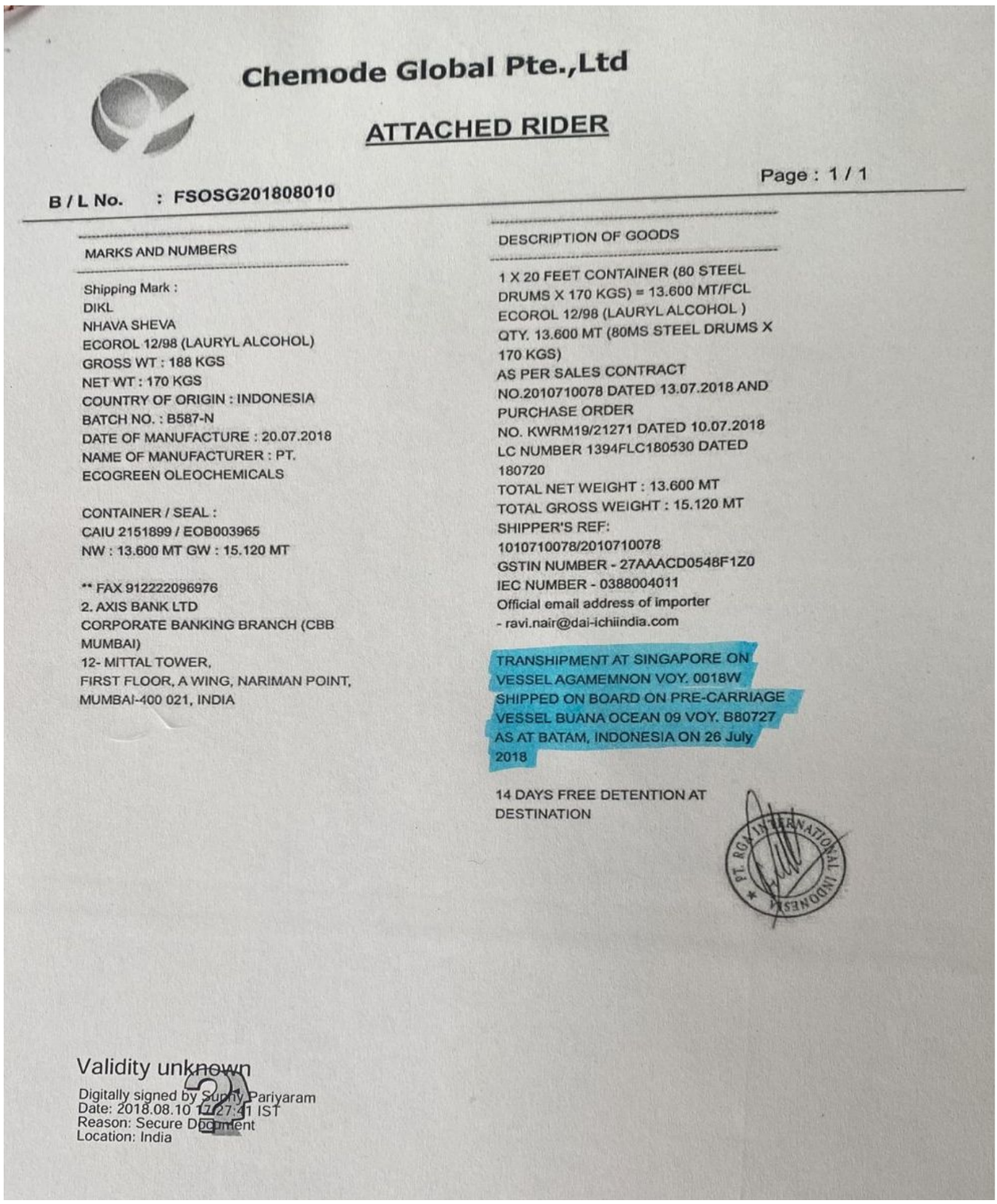
Freight And Charges — Prepaid — Collect
AS ARRANGED

Received in apparent external good order and conditions the containers, other packages or units bearing or numbers indicated above, said by the shippers to contain the quantity of goods, weights and measurements indicated in the "Particulars Furnished by Consignor/ Shipper" above, which particulars have not been checked by the Carrier, Such particulars are for Shipper's and Consignee's use only, are of the bill of lading Terms and are not binding on the Carrier. The Receipt, Custody, Carriage and Delivery of the goods are subject to the terms appearing on the face and back hereof and Carrier's applicable Tariff. in accepting this Bill of Lading, the shipper agrees to be bound by all terms and exceptions and limitations whether, printed, stamped or written hereon and on the reverse side, and in particular agress that goods packaged within a container may be stowed and carried on deck and when so stowed shall be deemed to be stowed under deck for all purpose.

Place and Date of Issue	No. Of Original B/L
INDONESIA JULY 26, 2018	(3) THREE

Signature
*PT RGA INTERNATIONAL INDONESIA
AS AGENT FOR THE CARRIER CHEMODE GLOBAL PTE LTD*

B/L NO.
FSOSG201808010



Chemode Global Pte.,Ltd

ATTACHED RIDER

B / L No. : FSOSG201808010 Page : 1 / 1

MARKS AND NUMBERS

Shipping Mark :
DIKL
NHAVA SHEVA
ECOROL 12/98 (LAURYL ALCOHOL)
GROSS WT : 188 KGS
NET WT : 170 KGS
COUNTRY OF ORIGIN : INDONESIA
BATCH NO. : B587-N
DATE OF MANUFACTURE : 20.07.2018
NAME OF MANUFACTURER : PT. ECOGREEN OLEOCHEMICALS

CONTAINER / SEAL :
CAIU 2151899 / EOB003965
NW : 13.600 MT GW : 15.120 MT

** FAX 912222096976
2. AXIS BANK LTD
CORPORATE BANKING BRANCH (CBB MUMBAI)
12- MITTAL TOWER,
FIRST FLOOR, A WING, NARIMAN POINT,
MUMBAI-400 021, INDIA

DESCRIPTION OF GOODS

1 X 20 FEET CONTAINER (80 STEEL DRUMS X 170 KGS) = 13.600 MT/FCL
ECOROL 12/98 (LAURYL ALCOHOL)
QTY. 13.600 MT (80MS STEEL DRUMS X 170 KGS)
AS PER SALES CONTRACT NO.2010710078 DATED 13.07.2018 AND PURCHASE ORDER
NO. KWRM19/21271 DATED 10.07.2018
LC NUMBER 1394FLC180530 DATED 180720
TOTAL NET WEIGHT : 13.600 MT
TOTAL GROSS WEIGHT : 15.120 MT
SHIPPER'S REF:
1010710078/2010710078
GSTIN NUMBER - 27AAACD0548F1Z0
IEC NUMBER - 0388004011
Official email address of importer - ravi.nair@dai-ichiindia.com

TRANSHIPMENT AT SINGAPORE ON VESSEL AGAMEMNON VOY. 0018W SHIPPED ON BOARD ON PRE-CARRIAGE VESSEL BUANA OCEAN 09 VOY. B80727 AS AT BATAM, INDONESIA ON 26 July 2018

14 DAYS FREE DETENTION AT DESTINATION

PT. ROM INTERNATIONAL INDONESIA

Validity unknown
Digitally signed by Sunil Pariyaram
Date: 2018.08.10 12:27:41 IST
Reason: Secure Document
Location: India

1.6 Also, the importer had imported the goods from other Suppliers (ECOGREEN OLEOCHEMICALS (SINGAPORE)Pte. ltd without paying the applicable Anti-Dumping Duty as per the ADD notification. The amount of Anti-Dumping Duty payable is calculated and is mentioned in the attached Annexure-A.

5. RELEVANT PROVISIONS OF THE LAW IN SO FAR AS THEY APPLY TO THIS CASE ARE AS BELOW:

The relevant legal provisions, in so far as they relate to the facts and circumstances of the subject imports, are as under;

A. Section 17: - Assessment of Duty

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self- assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such

goods.
(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification issued therefor under this Act and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re- assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

B. Section 28 (4): Notice for payment of duties, interest etc
Where any duty has not been [levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of, -
Collusion: or
Any wilful mis-statement: or
Suppression of facts
by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been [so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

(C)Section 28AA. Interest on delayed payment of duty. -

(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

D. Section 46. Entry of goods on importation. –
(4A) The importer who presents a bill of entry shall ensure the following namely:
The accuracy and completeness of the information given therein;
The authenticity and validity of any document supporting it; and
Compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

E. Section 111. Confiscation of improperly imported goods, etc.
(m) *any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54;*

F. 114A: Penalty for short-levy or non-levy of duty in certain cases:
Where the duty has not been levied or has not been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall, also be liable to pay a penalty equal to the duty or interest so determined.

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

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

1.7 Whereas, consequent upon amendment to the section 17 of the Customs Act, 1962 vide the Finance Act, 2011, "self-assessment" has been introduced effective from 08.04.2011 which provides for self-assessment of duty on imported goods by the importer himself by filing Bill of Entry, in electronic form. Section 46 of the Customs Act, 1962 makes it mandatory for the importer to make entry for the imported goods by presenting the Bill of Entry electronically to the Proper Officer. As per Regulation 4 of the Bill of Entry (Electronic Declaration) Regulation 2011 (issued under Section 157 read with Section 46 of the Customs Act, 1962) the Bill of entry has be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the Service Centre, a Bill of Entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under self-assessment, it is the importer who has to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption claimed, if any, in respect of the imported goods while presenting the Bill of Entry. Thus, with the introduction of self- assessment vide Finance Act, 2011 in terms of Section 17 and Section 46 of the Customs Act, 1962, it is the added and enhanced responsibility of the importer to declare true and correct declaration in all aspects including levy of correct duty.

1.8 INVESTIGATION FINDINGS:-

1.8.1 The Anti-dumping duty vide Notification 28/2018-Customs (ADD) dated 25.05.2018, further amended vide Notification No 48/2018 dated 25.09.2018 was leviable on the import of the Saturated Fatty Alcohol goods originating from Indonesia, Malaysia & Thailand and imported into India with effect from 25.05.2018. Hence, the importer M/s DAI ICHI KARKARIA LIMITED (IEC-0388004011) had not paid the differential Anti-dumping duty amounting to Rs. 50,16,430/- & IGST on not paid Anti-dumping Duty amounting to Rs 9,02,957/- as explained in the preceding paras.

1.9 As per section 46(4) the importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any and such other documents relating to the imported goods as may be prescribed. In the instant case, the importer has not declared the truth of the contents in the bill of entry and hence the not paid the applicable Anti-dumping duty and IGST. Since such Anti-dumping duty and IGST appears to have arisen due to suppression and willful misstatement by the importer, the demand for differential duty is invokable under the extended period as per the provisions of Section 28 (4) of the Customs Act, 1962.

1.10 From the above investigation, it appears that the said goods have been imported by the importer by not paying applicable Anti-dumping duty leviable under Notification 28/2018-Customs (ADD) dated 25.05.2018, further amended vide Notification No 48/2018 dated 25.09.2018 which resulted into short payment of Anti-dumping duty of Rs. 50,16,430/- & IGST on not paid Anti-dumping Duty amounting to Rs. 9,02,957/- (total amounting to Rs. 59,19,387/-). Accordingly, M/s DAI ICHI KARKARIA LIMITED has committed these infirmities with a view to resort to evasion of duty with malafide intention to defraud the exchequer of its rightful duty thereby clearly attracting the penal provisions of Section 114A of

the Customs Act, 1962 as well.

1.11 This act of willful mis-declaration by the importer it appears that the said goods have been imported by the importer by not paying applicable Anti-dumping duty leviable under Notification 28/2018-Customs (ADD) dated 25.05.2018 which resulted into short payment of **Anti-dumping duty of Rs. 50,16,430/- & IGST on not paid Anti-dumping Duty amounting to Rs 9,02,957/- (total duty amounting to Rs 59,19,387/-**), liable for confiscation in terms of provisions of Section 111 (m) of the Customs Act, 1962.

1.12 This act of commission and omission, of mis-declaration of the goods, has rendered the subject goods liable to confiscation in terms of provisions of Section 111(m) of the Customs Act, 1962, consequently, rendered the Importer liable for penal action in terms of provisions of Section 112(a) of the Customs Act, 1962.

1.13 The importer had knowingly and intentionally made, used declarations and documents which are false and incorrect during the import transaction under Customs Act, 1962 with the department with an intention to evade Customs duty thereby rendering themselves liable for penalty under Section 114AA of the Customs Act, 1962.

1.14 Now, therefore in terms of Section 124 read with Section 28(4) of the Customs Act, 1962, M/s DAI ICHI KARKARIA LIMITED (IEC-388004011) having office address at Liberty Building Sir Vithaldas Thackersey Marg, New Marine Lines Mumbai- 400020, is hereby called upon to Show Cause to the **Commissioner of Customs, NS-I, JNCH,** Nhava-Sheva, Taluka-Uran, District-Raigad, Maharashtra-400707, within 30 days of receipt of this notice, as to why:-

a) The Anti-dumping duty vide Notification 28/2018-Customs (ADD) dated 25.05.2018 should not be levied on the import of the goods "Saturated Fatty Alcohol" imported against the Bills of Entry, as tabulated in attached Annexure-A of this Show Cause Notice.
b) The differential **Anti-dumping duty of Rs. 50,16,430/- & IGST on not paid Anti-dumping Duty amounting to Rs 9,02,957/- (total duty amounting to Rs 59,19,387/-)** as explained in the preceding paras should not be demanded and recovered as per section 28(4) of the Customs Act, 1962, and accordingly, the applicable interest against the same should not be demanded and recovered under section 28AA of the Customs Act, 1962.
c) The goods covered under the Bills of Entry as tabulated in attached Annexure-A of this Show Cause Notice should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962.
d) Penalty should not be imposed on M/s DAI ICHI KARKARIA LIMITED under the provisions of Sections 112(a) and/or 114A, and/or 114AA of the Customs Act, 1962.

2. WRITTEN SUBMISSIONS OF THE NOTICEE

The importer, M/s Dai Ichi Karkaria Ltd (IEC – 0388004011) has made the following submissions vide email dated 25.07.2025:

2.1 The imports in dispute as alleged in the SCN in question pertain to the period from 03.09.2019 to 14.04.2023.

2.2 The following amounts are involved in the impugned SCN:

- Anti-dumping duty ('**ADD**') of **Rs. 50,15,430**
- Integrated Goods and services tax ('**IGST**') of **Rs. 9,02,957**
- **Interest under Section 28AA** of the Customs Act, 1962
- **Confiscation of goods under Section 111(m)** of the Customs Act, 1962
- **Penalty under Section 112(a) and/or 114A and/or 114AA** of the Customs Act, 1962

2.3 The controversy at hand is whether the Noticee has short paid ADD and IGST on the import of Saturated Fatty Alcohols ('SFA') from Indonesia and transshipped through Singapore. The Noticee had claimed benefit of nil rate of ADD in terms of Sr. no. 1 of Notification No. 28/2018- Customs (ADD) dated 25.05.2018, whereas the show cause notice ('SCN') and Customs Department have alleged that the Noticee is liable for higher ADD in terms of Sr. no. 5 of the Notification No. 28/2018 - Customs (ADD) dated 25.05.2018, in view of the observation that the goods were only transshipped at Singapore and the goods (SFA) was not exported from Country of Export i.e. Singapore.

2.4 In this context, the Noticee has filed its submissions-reply, which is on record. The Noticee through its Authorized Representative had attended the personal hearing (on 16.07.2025) granted by your goodselves where at the case and issues were explained and submissions advanced as to why the Noticee was not liable for ADD, IGST and consequently interest and furthermore why the Noticee was not liable to be visited with any penalties and the goods should not be confiscated. As allowed by your goodselves, synopsis of the submissions and various documents that evidence that the goods were shipped from the Country of Export i.e. Singapore are now filed, which please acknowledge. It cannot be emphasized enough that the Synopsis must be read along with the reply - submissions dated 07.11.2024 (filed on 08.11.2024).

2.5 The Noticee submits that the imports of SFA by it from Singapore (Country of Export) which were manufactured by Indonesia (Country of manufacturer) are assessable at nil ADD and not ADD of Rs. 92.23 per mt. tonne, as alleged in the SCN, in view of submissions made, including the points hereunder.

2.6 ADD has been proposed/recommended by the Ministry of Commerce, Government of India after calling for documents and information from various parties including suppliers in question, investigations, personal hearings and consideration of submissions by all parties concerned. It is only at consequence of these proceedings by the Directorate General of Anti-Dumping & Allied Duties which culminated in Final Findings dated 23.04.2018 vide Notification No. 14/51/2016-DGAD wherein the recommendation was for nil ADD for SFA manufactured in Indonesia by PT Ecogreen Oleochemicals and shipped via Ecogreen Singapore (Oleochemicals) Pte. Ltd., Singapore. The copy of Notification No. 14/51/2016-DGAD dated 23.04.2018 is attached herewith as **Exhibit 1**. Paras. 29 to 31 of this Final Findings amply reveal that the recommendation for nil AAD was based upon the fact that PT Ecogreen Oleochemicals manufactured the SFA in Indonesia and, then ordinarily shipped via Singapore, after the goods were held in Singapore for a period ranging from 4 to 22 days. The Bill of Lading filed by Singapore provides for date when the goods leave Indonesia and date when the goods leave Singapore for ultimate export to India, thus evidencing that the goods are held in Singapore for period ranging from 04 to 22 days. The details of the same are attached herewith as **Exhibit 2**.

2.7 The Noticee also submits that the invoice issued by the Ecogreen Oleochemicals (Singapore) Pte. Ltd. on Dai Ichi Karkaria Limited (Noticee) states that SFA is sold on INCOTERMS - CIF, Nhava Sheva and the invoice issued by PT Ecogreen Oleochemicals, Indonesia on Ecogreen Oleochemicals (Singapore) Pte. Ltd. (Singapore) that SFA is sold on INCOTERMS - EXW BATAM. This fact showcases that INCOTERMS are different for both legs of the transactions and there was actual loading and unloading in Singapore for in respect to export the goods to India. We are submitting herewith a copy of BOE's and trail of the following documents as **Exhibit 3 (1 to 21)**:

- Invoice from Ecogreen Oleochemicals (Singapore) Pte. Ltd. on Dai Ichi Karkaria Limited, India (Noticee);
- Bill of Lading filed by from Ecogreen Oleochemicals (Singapore) Pte. Ltd., Singapore;

- Packing list prepared by Ecogreen Oleochemicals (Singapore) Pte. Ltd., Singapore;
- Marine insurance taken by Ecogreen Oleochemicals (Singapore) Pte. Ltd., Singapore;
- Certificate of Origin filed by PT Ecogreen Oleochemicals, Indonesia;
- Letter of Credit undertaken by Dai Ichi Karkaria Limited, India (Noticee) with beneficiary as Ecogreen Oleochemicals (Singapore) Pte. Ltd, Singapore;
- Customs documents of Indonesia filed by PT Ecogreen Oleochemicals, Indonesia for transfer of goods from Indonesia to Singapore;
- Invoice of PT Ecogreen Oleochemicals, Indonesia;
- Sales contract executed between Dai Ichi Karkaria Limited, India (Noticee) and Ecogreen Oleochemicals (Singapore) Pte. Ltd, Singapore;
- Purchase order raised by Dai Ichi Karkaria Limited, India (Noticee) on Ecogreen Oleochemicals (Singapore) Pte. Ltd, Singapore.

2.8 Consequent to the above recommendation of Ministry of Commerce, Government of India, the Ministry of Finance, Government of India, issued Notification No. 28/2018 – Customs (ADD) dated 25.05.2018 whereby it notified the rates as recommended by the Ministry of Commerce, Government of India. The copy of the said notification is attached herewith as **Exhibit 4**.

2.9 The Ministry of Commerce, on 02.02.2023, after having undertaken a sunset review of the levy of ADD, issued its report in Notification with case no. AD(SSR)-01/2022 dated 02.02.0223 and recommended for continuation of nil rate of ADD on imports of SFA where manufacturer is PT Ecogreen Oleochemicals and SFA are exported through Country of Export – Singapore by 'Ecogreen Oleochemicals (Singapore) Pte. Ltd.'. It is highlighted that these recommendations did away with the **Country of Export to be 'Singapore'** (i.e. column no. 5 of Notification No. 28/2018 – Customs (ADD) dated 25.05.2018 and Final Findings Notification No. 14/51/2016-DGAD dated 23.04.2018) and changed the **Country of Export to 'Any country including Indonesia'.** The copy of Final Findings dated 02.02.2023 is attached herewith as **Exhibit 5**.

2.10 The above facts, events and notifications adequately emphasize that it was in common knowledge and in the open, that the SFA manufactured in Indonesia (by PT Ecogreen Oleochemicals) were exported to India after transshipping SFA to Singapore where Ecogreen Oleochemicals (Singapore) Pte. Ltd. exports to India. These facts were recorded in the Final Findings dated 23.04.2018 vide Notification No. 14/51/2016-DGAD and consequentially Notification No. 28/2018 – Customs (ADD) dated 25.05.2018. There is no suppression whatsoever on part of any of the parties, on the contrary there is adequate and more disclosure not only about modus operandi but also about all other aspects including commercial terms between the transacting parties. It is therefore submitted that where the supply of SFA was by PT Ecogreen Oleochemicals (manufacturer), Indonesia to Ecogreen Oleochemicals (Singapore) Pte. Ltd., Singapore for ultimate shipment to India, this arrangement and all the transactions following this arrangement are to be assessed to nil ADD in terms of Sr. No. 1 of Notification No. 28/2018 – Customs (ADD) dated 25.05.2018.

2.11 The Noticee also submitted that even if any other S. No. of the Custom ADD notification is relevant for purposes of levy of ADD, the specific one in the present context is the one given at S. No. 1 where the parameters are fully satisfied as explained in the table in paragraph 23 above and which can be cross verified with the trail of documents including invoice, sales contract, BL, L/C, insurance certificate, etc. already submitted herewith as Exhibit 1. The SCN merely levied a bald allegation of goods merely having been transshipped and not exported from Singapore.

2.12 Separately, in terms of Section 9A of the Customs Tariff Act, 1975 which concerns - ADD on dumped articles, the proviso in the Explanation is apposite, and is reproduced here:

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

2.12.1 It is submitted that the very levy provision itself contemplates transshipment through a Country of Export in as much as the terms are used jointly, and therefore there would be no gainsay in the allegation that Singapore is a only transshipment port and not the Country of Export. It is submitted that such an allegation runs contrary to architecture and Section 9A of the Customs Tariff Act, 1975, which is the levy provision for ADD in India.

2.12.2 The SCN wholly fails to consider the commercial aspects and situations in the real world and proceeds on an obtuse concept that Singapore is the transshipment port, but not the Country of Export. It is submitted that the term transshipment means 'goods are shipped through an intermediate port', which in this case is Singapore, where at the goods were ordinarily held anywhere between 4-22 days.

2.12.3 There is another aspect that export was undertaken in this manner, i.e. loaded at BATAM port in Indonesia on feeder vessel, which port could not dock large vessels and, the SFA was carried on such feeder vessel to Singapore from where (after typical holding period of 4-22 days) the goods were shipped to India from Singapore on a other vessel, which is known as mother vessel, and this larger vessel that calls on the Indian port. The SCN has grossly overlooked these facets and facts and without any foundation alleged that the goods were not from the Country of Export i.e. Singapore.

2.12.4 The Noticee also highlights that all transactions in question invariably involved an invoice from Indonesia (PT Ecogreen Oleochemicals) issued on Ecogreen Oleochemicals (Singapore) Pte. Ltd, Singapore and further invoice from Ecogreen Oleochemicals (Singapore) Pte. Ltd., Singapore to Dai Ichi Karkaria Limited, India (Noticee). In the second leg of all these transactions, insurance was always obtained by the Singapore entity (since these were on CIF basis), the banking documents i.e. Letter of Credit (L/C) showcase the fact that the goods were shipped from Singapore and was opened by Dai Ichi Karkaria Limited, India (Noticee) in favor of Ecogreen Oleochemicals (Singapore) Pte. Ltd., Singapore. Further payments were made by Dai Ichi Karkaria Limited, India (Noticee) to Ecogreen Oleochemicals (Singapore) Pte. Ltd., Singapore via ordinary banking channels through the authorized dealers. All these facts and aspects underline the position that goods were exported by Ecogreen Oleochemicals (Singapore) Pte. Ltd. from Singapore (Country of Export) to India where they were imported. The allegation that goods were merely transshipped at Singapore and not exported from there is contrary to facts and law and is a misdirected view.

2.12.5 It is also submitted that the appraising officer when clearing the goods for import in India was provided these documents as required by them and after due verification and scrutiny, the Certificate of Origin were accepted, and the goods were granted out of charge/permitted. Therefore, it is submitted that afterthought in the SCN that the goods were merely transshipped in Singapore is of inconsequential and, has no basis in law and fact.

2.12.6 The Noticee relies on the following two judgements which help underscore that the goods were exported from Singapore and so, the Country of Export should be regarded as Singapore, thereby satisfying the requirement of Sr. no. 1 of Notification No. 28/2018 – Customs (ADD) dated 25.05.2018.

Name and citation	Ratio of the judgement
Tata Chemicals Ltd. Vs. CC, Visakhapatnam - 2017 (7) TMI 269 Tri. Hyderabad	Goods flow: Manufactured in Kenya > Exported directly to India. Invoice flow: Purchase order issued on Singapore > Invoice issued by Singapore > Bill of Lading filed by Singapore. Held: Country of Export is Singapore even when the country actually exporting is Kenya
Borax Morarji Ltd. Vs. Designated Authority - 2007 (215) E.L.T. 33 (Tri. - Del.)	Goods flow: Manufactured in Turkey > Exported directly to India. Invoice flow: Sales contract executed between Singapore and India > Invoice issued by Singapore on India Held: Country of Export is Singapore even when the country actually exporting is Turkey

2.13 The Noticee also relies on the Certificate of Origin, as issued by Indonesia where the Issuing jurisdiction is Indonesia and under the ASEAN India Free Trade Agreement, the box 7 reveals that Ecogreen Oleochemicals (Singapore) Pte. Ltd is the importing country and box 13 shows it as 'third country invoicing' and as per Section 3 in Part b to the question - 'Has the consignment being directly shipped from Certificate of Origin?' the response filed by the manufacturer exporter – '**Yes, Consignment has shipped from Indonesia to India with transshipment in Singapore'**. In terms of Rule 22 of Notification No. 189/2009 – Customs (N.T.) dated 31.12.2009, the Customs Authority in importing jurisdiction ('India') shall have to accept the Certificate of Origin where the sales invoice is issued either by a company located in 3rd country (in this case – PT Ecogreen Oleochemicals, Indonesia) or an AIFTA member exported for the account of the said company (in this case – Ecogreen Oleochemicals (Singapore) Pte. Ltd., Singapore). When the assessment of goods at the import point after due verification has accepted the Certificate of Origin wherein all these facts especially that the goods were transshipped from Singapore, which is also Country of Export, was accepted, it would be a violation and cause violence to the ASEAN India Free Trade Agreement, which is stipulated in Notification No. 189/2009-Customs (N.T.) dated 31.12.2009. The copy of Notification No. 189/2009-Customs (N.T.) dated 31.12.2009 is attached herewith as **Exhibit 6**.

Bar of limitation

2.14 As submitted above, there is no suppression or wilful misstatement as all the facts were known to all the parties and Governmental agencies and thus extended period i.e. 5 years cannot be invoked in this case. Thus, the normal period of limitation i.e. 2 years period. The demand of additional ADD of Rs. 41,25,063.95 and IGST of Rs. 7,42,511.51 is not legally maintainable for the list of 42 BOE's attached herewith as **Exhibit 7**.

2.15 Without prejudice to above, even if extended period of limitation is invoked, the period of 5 years starts from the date of issuance of SCN (see ***Mathania Fabrics Vs. CCE, Jaipur - 2008 (221) E.L.T. 481 (S.C.)***; in the current case, the demand could only go up to 29.09.2019. Hence, it is submitted that the demand of additional ADD of Rs. 2,22,463.19 and IGST of Rs. 40,043.37 proposed for the bills of entry filed prior to 29.09.2019 are not

legally maintainable, being beyond the period of limitation. The list of said BOE's are attached herewith as **Exhibit 8**.

2.16 The SCN proposes confiscation of goods under Section 111(m) of the Customs Act 1962. It is submitted that the proposed confiscation of the imported goods in terms of Section 111(m) of the Customs Act, 1962 is grossly erroneous, contrary to the settled position in law, and is legally unsustainable for the following reasons:

- The SCN is not specific, since it does not identify the portion of the clause (m) of Section 111 of the Customs Act, 1962 in terms of which confiscation is to be ordered.
- The SCN has not pointed out how the imported goods do not correspond to value or any other particulars with the entry made in customs.
- Referring to the mis-declaration with reference to transshipment, it is to be noted that the transshipment covered in this section is related to transshipment in India, which is not applicable to the Noticee; since transshipment occurred in Singapore.

Interest

2.17 It has already been submitted above that the Noticee was not required to pay ADD as it fulfills the criteria provided in Custom ADD Notification. Therefore, it is submitted when there is no ADD, then the demand of interest under Section 28AA of the Customs Act, 1962 is not sustainable.

Penalty under Section 112(a) of the Customs Act, 1962

2.18 As submitted in the aforesaid paragraphs, that the goods are not liable for confiscation, the penalty under Section 112(a) of the Customs Act, 1962 cannot be imposed. Further, the SCN nowhere mentions the exact clause under which penalty under Section 112(a) of the Customs Act, 1962 is levied. Hence, it is submitted that penalty cannot be imposed.

Penalty under Section 114A of the Customs Act, 1962

2.19 It is submitted that proviso to Section 114A of the Customs Act, 1962 states that is the penalty is levied under Section 112 of the Customs Act, 1962, penalty cannot be levied under Section 114A of the Customs Act, 1962. Further, as it submitted above, there is no case at hand of wilful mis-statement or suppression on part of the Noticee, to impose a penalty on it, rather, all relevant facts were known to the Customs authorities. Hence, the penalty under Section 114A cannot validly be imposed on the Noticee.

Penalty under Section 114AA of the Customs Act, 1962

2.20 It is submitted that the wordings used in Section 114AA of the Customs Act, 1962, the penalty under the said Section is leviable only in those cases where the material facts / particulars submitted by a person are incorrect and false and that such submissions are made knowingly and intentionally to contravene the provisions of the Customs Act. The Noticee has not committed any such offence. The SCN, it is submitted, fails to highlight as to the transgression committed by the Noticee. Thus, no case is made out for imposition of penalty under this provision.

3.RECORDS OF PERSONAL HEARING

Following the principles of natural justice and in terms of Section 28(8) read with Section 122A of the Customs Act, 1962, the Noticee was granted opportunities for personal hearing (PH). A date-wise record of personal hearings is as under:

3.1 Shri Ranjeet Mahtani, referred to the final findings and relevant notification of Ministry of Commerce ('MOC'), to explain that the nil rate of ADD was proposed by Ministry of Commerce, after full disclosure and investigations. It was further submitted that there has been

no change in facts or transaction model between the period covered under the investigation/sunset review and the current import methodology, thereby justifying the continued applicability of the nil rate. They also referred to sunset review findings of 02.02.2023 and highlighted it was recommended that the Country of Export be changed from "Singapore" to "Any country including Indonesia", thereby, showcasing that Country of Export is an irrelevant aspect of the matter.

3.2 They explained that it is well known fact that Indonesia and specifically BATAM port cannot handle large vessels and, so the mother vessels docks in Singapore, through which country/ jurisdiction, trade and commerce is carried out. This is effectively done by moving the cargo in feeder vessels to Singapore, where the goods typically are held for a period between 1 to 7 days. It is notable that in the present case, that in respect of each of the imports, as can be verified, there were two vessels, one for carriage between Indonesia and Singapore and a second vessel for carriage between Singapore and India, and this showcases why transshipment was imperative and took place in Singapore. The term 'transshipment' was explained, and it was submitted that the goods went through the intermediate port, in this case also due to commercial exigencies.

2.

3.3 They referred to the proviso to Section 9A of the Customs Tariff Act, 1975, (which concerns imposing of Anti-dumping duty on import goods) and highlighted that the proviso explains that Country of Export is the transshipment country due to use of the words "...merely transshipped through the Country of Export or …".

3.4 Shri. Mahtani referred to the following judicial pronouncements to clarify the meaning of "exporter" and "Country of Export":

- *Tata Chemicals Ltd. vs. CC, Visakhapatnam – 2017 (7) TMI 269 (Tri. – Hyderabad)*
- *Borax Morarji Ltd. vs. Designated Authority – 2007 (215) E.L.T. 33 (Tri. – Del.)*

It was submitted that in the present case, Singapore is the Country of Export, where from goods were loaded on the mother vessel and shipped to India, notwithstanding the fact that transshipment took place there. It was re-iterated that goods were brought there on feeder vessel, and shipped to India on a mother vessel, usually with a time lag of 1-7 days of goods being in Singapore. It was submitted these precedents support the view that another jurisdiction (distinct from manufacturer) can be the exporter of goods.

3.5 It was emphasized that Invoice, Bill of Lading, Packing List, Certificate of Origin, Insurance Certificate, Sales Contract, Purchase Order, Letter of Credit all amply reveal the Country of Export is Singapore. It was contended that required documents were produced during clearance of the documents. Two (2) sample Bills of Entry (BOEs) – **BOE No. 4336218** and **BOE No. 2045119** – were presented, along with complete sets of supporting documents (Invoice, Bill of Lading, Packing List, Certificate of Origin, Insurance Certificate, Sales Contract, Purchase Order, Letter of Credit). The bill of lading in case of BOE no. 4336218 was referred to counter the allegation in the SCN (para. 3) that no bill of lading etc. was presented in Singapore.

3.6 Given that the issue under consideration is interpretational in nature, extended period cannot be invoked. However, there was complete and full disclosure by the parties and all government agencies were well aware of the modus operandi of these imports. Thus, there was no form or manner of suppression.

3.7 Thus, they contended that nil ADD was due in this case (Sr. No. 1 of Notification no 28/2018 dated 25.05.2018) and dues as proposed in the SCN were incorrect and unfounded.

3.8 Further, as explained above, as there is no ADD payable, no interest and penalty shall be levied.

3.9 They also submitted why goods cannot be confiscated under Section 111(m) as is proposed in the SCN and the penalties under section 112, 114A and 114AA of the Customs Act, 1962 should not be imposed.

3.10 Given the above, Shri. Mahtani concluded that the SCN is unsustainable and so SCN should be dropped and the demand along with interest and penalty should not be confirmed in this case.

3.11 They agreed to file synopsis, compilation of documents referred to, invoices issued by Indonesian entity on the Singapore entity by 25.07.2025.

4. DISCUSSION AND FINDINGS

4.1 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.

4.2 The adjudicating authority has to take the views/objections of the noticee on board and consider before passing the order. In the instant case, the personal hearing was granted to the noticees on 09.07.2025 by the Adjudicating Authority which was not attended by the Noticee. One more opportunity of personal hearing was given to the noticee on 16.07.2025 which was attended by Shri Ranjeet Mahtani, Advocate, Dhruva Advisors LLP, and Ms Nazira Mandlik, AGM, Import & Export of on behalf of M/s Dai Ichi Karkaria Ltd. The recordings of the personal hearing are placed in para 3 of this order.

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

4.4 The present proceedings emanate from Show Cause Notice No. 1014/2024-25/COMMR/NS-I/CAC/JNCH dated 10.09.2024 to M/s Dai Ichi Karkaria Ltd, alleging wrongful availment of exemption from Anti-Dumping Duty (ADD) on imports of 'Saturated Fatty Alcohols' under various Bills of Entry by mis-declaring the country of export as Singapore. The SCN alleges that the importer inappropriately claimed benefit of Sr. No. 1 of Notification No. 28/2018-Customs (ADD) dated 25.05.2018 (NIL ADD) though the goods were actually shipped from Batam, Indonesia and merely transshipped at Singapore, without any export declaration being filed there. The SCN contends that the goods fall under Sr. No. 6 of the said Notification attracting ADD at the rate of USD 92.23 per MT, and accordingly, differential ADD amounting to **₹50,16,430/-** along with IGST of **₹9,02,957/-** (totaling **₹59,19,387/-**) is recoverable under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA. The SCN further proposes holding the goods liable for confiscation under Section 111(m) of the Act, and seeks imposition of penalties upon M/s Dai Ichi Karkaria Ltd under Sections 112(a), 114A and 114AA of the Customs Act, 1962.

4.5 I find that the importer, M/s Dai Ichi Karkaria Ltd, has contended that the exemption from Anti-Dumping Duty (ADD) under Sr. No. 1 of Notification No. 28/2018-Customs (ADD) was rightly claimed, as the consignments were produced by M/s. PT Ecogreen Oleochemicals, Indonesia and exported through their related entity, M/s Ecogreen Oleochemicals (Singapore) Pte. Ltd. The importer has submitted that Ecogreen Singapore was the actual exporter in terms of international trade practice, since invoices and packing lists were issued by them and remittances

were made to them. It has been argued that third-country invoicing is a well recognized practice in international trade and duly accepted under the Anti-Dumping investigation findings of the Directorate General of Anti-Dumping (DGAD), which specifically recorded exports from PT Ecogreen Indonesia through Ecogreen Singapore. The importer has further relied upon the subsequent Sunset Review, wherein PT Ecogreen Indonesia was granted NIL ADD irrespective of the country of export, to contend that the policy intent was to exempt their imports from duty. It has denied any misdeclaration, asserting that the country of origin was correctly declared as Indonesia, the exporter as Ecogreen Singapore, and the port of loading as Singapore in line with shipping practice. The importer has also placed reliance on judicial precedents to argue that differences in interpretation of exemption notifications cannot be treated as willful misstatement or suppression. Accordingly, the importer has prayed for dropping of the demand, interest, penalty, and confiscation proposed in the Show Cause Notice.

4.6 I have carefully gone through the records of the case, the allegations made in the Show Cause Notice and the written and oral submissions made by the importer. The issue for determination is whether the importer, M/s Dai Ichi Karkaria Ltd, was eligible to claim exemption from Anti-Dumping Duty (ADD) under Sr. No. 1 of Notification No. 28/2018 Customs (ADD) dated 25.05.2018, in respect of consignments of 'Saturated Fatty Alcohols' produced by M/s PT Ecogreen Oleochemicals, Indonesia and invoiced by M/s Ecogreen Oleochemicals (Singapore) Pte. Ltd. The department has alleged that since no export declaration was filed at Singapore and the consignments were merely transshipped through Singapore, the benefit of the said notification was not available, and consequently, the imports were liable to ADD under Sr. No. 6 of the notification. On the other hand, the importer has argued that Ecogreen Singapore was the actual exporter in terms of international trade practice, that DGAD's Final Findings recognized such exports through Singapore, and that in any case, subsequent Sunset Review has clarified that PT Ecogreen Indonesia attracts NIL ADD irrespective of the country of export. Therefore, the demand of ADD along with interest and the proposals for confiscation and penalties are liable to be dropped.

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

A. Whether or not the goods "Saturated Fatty Alcohols" imported under the Bills of Entry mentioned in Annexure-A of the SCN are rightly liable for imposition of Anti-Dumping Duty under Serial No. 1 of Notification No. 28/2018-Customs (ADD) dated 25.05.2018, attracting NIL rate of ADD, or under Serial No. 6 of the said Notification, attracting ADD @ USD 92.23 per MT.

B. Whether or not the differential Anti-Dumping Duty of ₹50,16,430/- and IGST thereon of ₹9,02,957/- (totaling ₹59,19,387/-) is recoverable from the importer, M/s Dai Ichi Karkaria Ltd Pvt. Ltd. under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA.

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

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

4.8 After having framed the substantive issues raised in the SCN which are required to be decided, I now proceed to examine each of the issues individually for detailed analysis based on the facts and circumstances mentioned in the SCN; provision of the Customs Act, 1962; nuances of various judicial pronouncements, as well as Noticee's oral and written submissions and documents / evidences available on record.

A. Whether or not the goods "Saturated Fatty Alcohols" imported under the Bills of Entry mentioned in Annexure-A of the SCN are rightly liable for imposition of Anti-Dumping Duty under Serial No. 1 of Notification No. 28/2018-Customs (ADD) dated 25.05.2018, attracting NIL rate of ADD, or under Serial No. 6 of the said Notification, attracting ADD @ USD 92.23 per MT.

4.9 I find that in respect of the consignments under dispute, the Noticee's submission that the goods were produced by M/s PT Ecogreen Oleochemicals, Indonesia and exported through M/s. Ecogreen Oleochemicals (Singapore) Pte. Ltd., thereby attracting NIL ADD under Serial No. 1 of Notification No. 28/2018-Customs (ADD), is borne out from the records. The import documents on file, including the commercial invoices, packing lists, purchase order, insurance certificate, sales order and Certificates of Origin, clearly establish Indonesia as the country of origin, PT Ecogreen Oleochemicals as the producer, and Ecogreen Singapore as the exporter. The Bills of Lading further confirm that the consignments were first shipped from Batam, Indonesia on feeder vessels, and subsequently loaded onto mother vessels at Singapore, thus identifying Singapore as the port of loading.

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

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

4.12 I also take note of the findings of the Designated Authority in the Sunset Review vide Final Findings Notification No. 7/01/2022-DGTR dated 02.02.2023, wherein it was categorically recorded that exports made by M/s. PT Ecogreen Oleochemicals, Indonesia attract a NIL rate of anti-dumping duty, irrespective of the country of export. This clarification from the authority which originally conducted the anti-dumping investigation leaves no ambiguity as to the policy intent. It is evident that the exemption was producer-specific and not meant to be restricted or denied merely because the goods were routed through or transshipped at Singapore. Accordingly, the reliance placed in the SCN on procedural aspects such as non-filing of a shipping bill at Singapore is of no consequence, as the binding clarification of the Designated Authority leaves no scope for denying the NIL duty benefit to PT Ecogreen's exports. Para 146 of Sunset Review vide Final Findings Notification No. 7/01/2022-DGTR dated 02.02.2023 is quoted below for reference:-

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

DUTY TABLE

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

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

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

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

Explanation. For the purposes of this section, -

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

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

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

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

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

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

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

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

(1A) Where the Central Government, on such inquiry as it may consider necessary, is of the

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

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

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

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

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

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

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

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

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

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

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

Explanation. - For the purposes of this section,-

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

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

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

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

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

shall be payable at such rate and from such date as may be specified in the notification.
(4) The anti-dumping duty chargeable under this section shall be in addition to any other duty imposed under this Act or any other law for the time being in force.
(5) The anti-dumping duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition:
Provided that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period 8 [upto five years] and such further period shall commence from the date of order of such extension :
Provided further that where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the anti-dumping duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year.
Provided also that if the said duty is revoked temporarily, the period of such revocation shall not exceed one year at a time.
(6) The margin of dumping as referred to in sub-section (1) or sub-section (2) shall, from time to time, be ascertained and determined by the Central Government, after such inquiry as it may consider necessary and the Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner in which articles liable for any anti-dumping duty under this section may be identified, and for the manner in which the export price and the normal value of, and the margin of dumping in relation to, such articles may be determined and for the assessment and collection of such anti-dumping duty.
(6A) The margin of dumping in relation to an article, exported by an exporter or producer, under inquiry under sub-section (6) shall be determined on the basis of records concerning normal value and export price maintained, and information provided, by such exporter or producer:
Provided that where an exporter or producer fails to provide such records or information, the margin of dumping for such exporter or producer shall be determined on the basis of facts available.
(7) Every notification issued under this section shall, as soon as may be after it is issued, be laid before each House of Parliament.
(8) The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.]
Section 9B. No levy under section 9 or section 9A in certain cases. -
(1) Notwithstanding anything contained in section 9 or section 9A, -
(a) no article shall be subjected to both countervailing duty and anti-dumping duty to compensate for the same situation of dumping or export subsidization;
(b) the Central Government shall not levy any countervailing duty or anti-dumping duty -
(i) under section 9 or section 9A by reasons of exemption of such articles from duties or taxes borne by the like article when meant for consumption in the country of origin or exportation or by reasons of refund of such duties or taxes;
(ii) under sub-section (1) of each of these sections, on the import into India of any article from a member country of the World Trade Organisation or from a country with whom Government of India has a most favoured nation agreement (hereinafter referred as a specified country), unless in accordance with the rules made under sub-section (2) of this section, a determination has been made that import of such article into India causes or threatens material injury to any established industry in India or materially retards the establishment of any industry in India; and
(iii) under sub-section (2) of each of these sections, on import into India of any article from the specified countries unless in accordance with the rules made under sub-section (2) of this section, a preliminary findings has been made of subsidy or dumping and consequent injury to domestic industry; and a further determination has also been made that a duty is necessary to

prevent injury being caused during the investigation:
Provided that nothing contained in sub-clauses (ii) and (iii) of clause (b) shall apply if a countervailing duty or an anti-dumping duty has been imposed on any article to prevent injury or threat of an injury to the domestic industry of a third country exporting the like articles to India;
(c) the Central Government may not levy –
(i) any countervailing duty under section 9, at any time, upon receipt of satisfactory voluntary undertakings from the Government of the exporting country or territory agreeing to eliminate or limit the subsidy or take other measures concerning its effect, or the exporter agreeing to revise the price of the article and if the Central Government is satisfied that the injurious effect of the subsidy is eliminated thereby;
(ii) any anti-dumping duty under section 9A, at any time, upon receipt of satisfactory voluntary undertaking from any exporter to revise its prices or to cease exports to the area in question at dumped price and if the Central Government is satisfied that the injurious effect of dumping is eliminated by such action.
(2) The Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner in which any investigation may be made for the purposes of this section, the factors to which regard shall be at in any such investigation and for all matters connected with such investigation."

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

4.15 I also note the mandate of Section 9B(1)(b)(iii) of the Customs Tariff Act, 1975, which categorically stipulates that no anti-dumping duty shall be levied on imports from a country unless two specific preconditions are met:
1. A **preliminary finding** of dumping or subsidy and the consequent injury to the domestic industry; and
2. A **further determination** that imposition of such duty is necessary to prevent injury during the pendency of investigation.

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

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

Section 9A read with 9B(b)(iii)", as the goods in question stood excluded under the Final Findings. Para 12 to 14 of the said judgement is quoted below:-

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

"(vii) Clad with compatible non-clad Aluminium Foil : Clad with compatible non-clad Aluminium Foil is a corrosion-resistant aluminium sheet formed from aluminium surface layers metallurgically bonded to high-strength aluminium alloy core material for use in engine cooling and air conditioner systems in automotive industry; such as radiator, condenser, evaporator, intercooler, oil cooler and heater."

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

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

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

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

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

4.19 Therefore, any denial of benefit on the basis of objections relating to exporter-of-record or transshipment would amount to re-interpreting or overriding the DA's binding determinations, which is impermissible under Section 9A, Section 9B, and the ratio laid down by the Hon'ble Bombay High Court. Consequently, I hold that the demand of ADD proposed in the SCN is unsustainable in law.

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

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

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

4.22 I find that the Department's position appears to be based on a narrow interpretation of the term "exported from Singapore," focusing on the physical movement of goods from Batam to Singapore via feeder vessel rather than the legal and commercial role of the exporter. However, this stance seems inconsistent with the Designated Authority's findings and the intent of Notification No. 28/2018-Customs (ADD) for the following reasons:

4.22.1 In international trade and anti-dumping investigations, the "exporter" is typically the entity responsible for the commercial transaction and export documentation, not necessarily the entity at the port of physical shipment. Here, M/s Ecogreen Oleochemicals (Singapore) Pte Ltd is clearly identified as the exporter in the Certificates of Origin and other documents, and it handles the commercial export to India. The Designated Authority explicitly recognized this role in its findings.

4.22.2 The definition of transhipment as provided in S.B Sarkar's 'Words and Phrases of Central Excise and Customs' is reproduced below:
"Transship, or Trans-shipment means to transfer from one ship or conveyance to another. Transshipment of imported goods without payment of duty is provided for in Section 54 of the Customs Act, 1962."

Further, the term transshipment has been defined under Chapter 2, International Convention on the Simplification and Harmonization Of Customs Procedures (Kyoto Convention) as follows:
""transhipment" means the Customs procedure under which goods are transferred under Customs control from the importing means of transport to the exporting means of transport within the area of one Customs office which is the office of both importation and exportation."

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

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

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

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

4.22.6 The Certificates of Origin, Bills of Lading, Purchase Order, Insurance Certificate, Sales Order and payment remittances all align with the requirements of Serial No. 1. The Department's contention that the goods were not exported from Singapore lacks support and is not sustainable, as the documentation clearly establishes M/s Ecogreen Oleochemicals (Singapore) Pte Ltd as the exporter, with Singapore as the port of loading for the main vessel.

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

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

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

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

4.25.1 Further, the SCN overlooks the fact that the Designated Authority, in its Final Findings as well as the Sunset Review, has already examined the export channel of PT Ecogreen Indonesia through Ecogreen Singapore and granted NIL ADD to this producer–exporter combination. The very foundation of the Serial No.1 of the Notification rests on these findings,

and the SCN has failed to show how the importer's claim falls outside their scope. In fact, all the documents relied upon—Certificates of Origin, Bills of Lading, commercial invoices, and payment remittances support the importer's stand that the goods originated in Indonesia and were exported through Ecogreen, Singapore.

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

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

B. Whether or not the differential Anti-Dumping Duty of ₹50,16,430/- and IGST thereon of ₹9,02,957/- (totalling ₹59,19,387/-) is recoverable from the importer, M/s Dai Ichi Karkaria Ltd under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA.

4.27 Since the goods were rightly covered under Serial No. 1 and no ADD was leviable, the consequential IGST on ADD also does not arise. As there has been no short-levy or short-payment of duty, the demand proposed under Section 28(4) of the Customs Act, 1962 is unsustainable. Once the very basis of the demand is found to be incorrect, the question of recovery of the alleged differential duty, along with interest under Section 28AA, does not survive.

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

4.28 In view of the detailed analysis undertaken in the foregoing paragraphs, I hold that the imports made by the noticee were fully covered by Serial No. 1 of Notification No. 28/2018-Customs (ADD) dated 25.05.2018, as the goods were produced by M/s PT Ecogreen Oleochemicals, Indonesia and exported through M/s Ecogreen Oleochemicals (Singapore) Pte. Ltd., a fact duly corroborated by commercial invoices, Certificates of Origin, Bills of Lading and other import documents. I also take note of the Designated Authority's Final Findings as well as the subsequent Sunset Review findings, both of which establish beyond doubt that exports of Saturated Fatty Alcohols produced by M/s PT Ecogreen Oleochemicals, Indonesia and exported by M/s Ecogreen Oleochemicals (Singapore) Pte. Ltd. were expressly covered by the finding of the Designated Authority and were intended to be granted NIL ADD, irrespective of procedural aspects concerning routing or transshipment. Consequently, I find that there was no mis-declaration, suppression or misstatement of facts on the part of the noticee. The goods have been correctly assessed at the time of import and are, therefore, not liable to confiscation under Section 111(m) of the Customs Act, 1962. The proposal for confiscation in the Show Cause Notice is, accordingly, held to be unsustainable.

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

4.29 I find that the proposals for penalty in the SCN flow from the allegation that the importer deliberately misdeclared the country of export and wrongly availed the benefit of NIL ADD under Serial No. 1 of Notification No. 28/2018-Cus (ADD), thereby rendering the goods liable to

confiscation and the importer liable to penalty under Sections 112(a), 114A and 114AA of the Customs Act, 1962.

4.29.1 However, as already discussed under Issues A to C, the goods were correctly declared as to their country of origin, exporter, and port of loading, and the benefit of NIL ADD was rightly available to the Noticee under Serial No. 1 of the Notification. No misdeclaration, suppression of facts, or submission of false or forged documents has been established. It is well settled that penalties under Sections 112(a), 114A and 114AA can only be imposed where there is clear evidence of mens rea or deliberate intent to evade duty.

4.29.2 In light of these findings, I hold that penalties proposed under Sections 112(a), 114A and 114AA of the Customs Act, 1962 are not sustainable and are therefore liable to be set aside.

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

ORDER

i. I order that the demand for differential Anti-Dumping Duty of **Rs. 50,16,430/-** and IGST on not paid Anti-dumping Duty amounting to **Rs. 9,02,957/-** (total amounting to **Rs 59,19,387/-**) under Section 28(4) of the Customs Act, 1962, is not sustainable and is hereby dropped.

ii. 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.

iii. 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.

iv. I order that the proposal to impose penalties on M/s Dai Ichi Karkaria Ltd under Sections 112(a), 114A, and/or 114AA of the Customs Act, 1962, is not warranted and is hereby dropped.

v. I order that the Show Cause Notice No. 1065/2024-25/COMMR/NS-I/Gr. II(C-F)/CAC/JNCH dt 10.09.2024 is hereby dropped in its entirety.

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: 09-10-2025
18:37:55

(यशोधन वनगे **/Yashodhan Wanage)**
प्रधान आयुक्त **,**सीमा शुल्क**/ Pr. Commissioner of Customs**
एनएस**-I,** जेएनसीएच **/ NS-I, JNCH**

To,

1) M/s Dai Ichi Karkaria Limited (IEC – 0388004011),
Liberty Building, Sir Vithaldas Thackersey Marg,
New Marine Lines, Mumbai – 400020.

Copy to:

1. The Addl. Commissioner of Customs, Group II(C-F), JNCH
2. AC/DC, SIIB(I), JNCH
3. AC/DC, Chief Commissioner's Office, JNCH
4. AC/DC, Centralized Revenue Recovery Cell, JNCH
5. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board
6. Office Copy