



सीमा शुल्क आयुक्त का कार्यालय, एनएस-III
OFFICE OF THE COMMISSIONER OF CUSTOMS, NS-III
केंद्रीकृत अधिनिर्णयन प्रकोष्ठ, जवाहरलाल नेहरू सीमा शुल्क भवन
CENTRALIZED ADJUDICATION CELL, JAWAHARLAL NEHRU CUSTOM HOUSE,
न्हावा शेवा, तालुका-उरण, जिला- रायगढ़, महाराष्ट्र -400 707
NHAVA SHEVA, TALUKA-URAN, DIST- RAIGAD, MAHARASHTRA-400707

File No: S/10-06/2023-24/CC/NS-I/CAC/JNCH

Date : 10.10.2025

SCN No: 2528/2022-23/Commr./NS-I/CAC/JNCH dated 28.03.2023

DIN	:	20251078NX0000888A2F
आदेश की तिथि	:	09.10.2025
Date of Order		
जारी किए जाने की तिथि	:	10.10.2025
Date of Issue		
आदेश सं.		227/2025-26/आयुक्त/एनएस-III/ सीएसी/जेएनसीएच
Order No.	:	227/2025-26 /Commr./NS-III /CAC/JNCH
पारितकर्ता		श्री विजय रिशी
Passed by		SH. VIJAY RISI
	:	आयुक्त, सीमाशुल्क (एनएस-3), जेएनसीएच, न्हावा शेवा
		Commissioner of Customs (NS-III), JNCH, Nhava Sheva
पक्षकार (पार्टी)/ नोटिसी का नाम		मेसर्स फर्मेन्टा बायोटेक लिमिटेड।
Name of Party/ Noticee	:	M/s. Fermenta Biotech Limited.

मूलआदेश

ORDER-IN-ORIGINAL

1. इस आदेश की मूल प्रति की प्रतिलिपि जिस व्यक्तिको जारी की जाती है, उसके उपयोग के लिए निःशुल्क दी जाती है।

The copy of this order in original is granted free of charge for the use of the person to whom it is issued.

2. इस आदेश से व्यथित कोई भी व्यक्ति सीमाशुल्क अधिनियम १९६२ की धारा १२९(ए) (के तहत इस आदेश के विरुद्ध सी ई एस टी ए टी, पश्चिमी प्रादेशिक न्यायपीठ (वेस्ट रीज़नल बेंच, ३४, पी .डी .मेलोरोड, मस्जिद (पूर्व), मुंबई- ४०० ००९ को अपील कर सकता है, जो उक्तअधिकरण के सहायक रजिस्ट्रार को संबोधित होगी।

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.

3. अपील दाखिल करने संबंधी मुख्य मुद्दे:-

Main points in relation to filing an appeal:-

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

	Form No. CA3 in quadruplicate and four copies of the order appealed against (at least one of which should be certified copy)
समय सीमा	: इस आदेश की सूचना की तारीख से ३ महीने के भीतर
Time Limit	Within 3 months from the date of communication of this order.
फीस	: (क) एक हजार रुपये-जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्तिकी रकम ५ लाख रुपये या उस से कम है।
Fee	(a) Rs. One Thousand - Where amount of duty & interest demanded & penalty imposed is Rs. 5 Lakh or less. (ख) पाँच हजार रुपये- जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्तिकी रकम ५ लाख रुपये से अधिक परंतु ५० लाख रुपये से कम है। (b) Rs. Five Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 5 Lakh but not exceeding Rs. 50 lakh (ग) दस हजार रुपये-जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्तिकी रकम ५० लाख रुपये से अधिक है। (c) Rs. Ten Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 50 Lakh.
भुगतान की रीति	: क्रॉस बैंक ड्राफ्ट, जो राष्ट्रीयकृत बैंक द्वारा सहायक रजिस्ट्रार, सी ई एस टी ए टी, मुंबई के पक्षमें जारी किया गया हो तथा मुंबई में देय हो।
Mode of Payment	A crossed Bank draft, in favour of the Asstt. Registrar, CESTAT, Mumbai payable at Mumbai from a nationalized Bank.
सामान्य	: विधि के उपबंधों के लिए तथा ऊपर यथा संदर्भित एवं अन्य संबंधित मामलों के लिए, सीमाशुल्क अधिनियम, १९९२, सीमाशुल्क (अपील) नियम, १९८२ सीमाशुल्क, उत्पादन शुल्क एवं सेवा कर अपील अधिकरण (प्रक्रिया) नियम, १९८२ का संदर्भ लिया जाए।
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.

4. इस आदेश के विरुद्ध अपील करने के लिए इच्छुक व्यक्ति अपील अनिर्णीत रहने तक उस में माँगे गये शुल्क अथवा उद्गृहीत शास्ति का ७.५ % जमा करेगा और ऐसे भुगतान का प्रमाण प्रस्तुत करेगा, ऐसा न किये जाने पर अपील सीमाशुल्क अधिनियम, १९६२ की धारा १२८ के उपबंधों की अनुपालना न किये जाने के लिए नामंजूर किये जाने की दायी होगी ।
- 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.

The proceedings of the present case emanate out of Show Cause Notice No.2528/2022-23/Commr/NS-1/CAC/JNCH dated 28.03.2023 (hereinafter called in short as “SCN”), issued by the Commissioner of Customs, NS-III, JNCH, Mumbai Customs Zone-II to following Noticee(s):-

- (i) **M/s. Fermenta Biotech Limited**, A-1501, Thane one, DIL Complex, GHOD Bunder Road, Majiwada, Thane West, Maharashtra – 400610 (hereinafter referred to as “**Noticee No.1 or Importer**”);
- (ii) **Shri Amol Narayan Lone**, S/o Shri Narayan Lone, Business and Finance Controller, of M/s. Fermenta Biotech Limited (hereinafter referred to as “**Noticee No.2**”); and
- (iii) **Shri Arun Balkrishna Khedwal**, S/o Shri Balakrishna Khedwal, General Manager (Supply Chain), M/s. Fermenta Biotech Limited, A-1501, Thane one, DIL Complex, GHOD Bunder Road, Majiwada, Thane West, Maharashtra – 400610 (hereinafter referred to as “**Noticee No.3**”).

BRIEF FACTS OF THE CASE

M/s. Fermenta Biotech Ltd, A-1501, DIL Complex, Majiwada, Ghodbunder Road, Thane, Maharashtra-400610, are registered with Mumbai RA of DGFT as manufacturer exporters with Importer Exporter Code (IEC) Number 0388076381. The said address of the firm is the one of the addresses mentioned in the IEC. M/s. Fermenta Biotech Ltd. are having units at different locations in India as well as abroad. Vitamin D3 is one of the major pharmaceutical products being manufactured by M/s. Fermenta Biotech Ltd.

1.1 Intelligence developed by the Officers of Directorate of Revenue Intelligence, Mangalore Regional Unit, Mangalore (hereinafter referred to as ‘DRI’) indicated that M/s. Fermenta Biotech Ltd, A-1501, DIL Complex, Majiwada, Ghodbunder Road, Thane, Maharashtra-400610, holders of IEC No. 0388076381 have imported Fat Detox FOC-27 (Fish Body Oil Crude) falling under CTH 15042010 availing benefit of concessional rate of duty provided under notification No. 018/ 2015 Cus. dated 01.04.2015 in pursuant to advance authorization scheme provided vide chapter 4 of Foreign Trade Policy 2015-2020. The importation of raw materials or inputs without payment of customs duty under the advance authorization scheme is allowed only to an “actual user”, i.e., by the importer himself on the condition that the resultant goods manufactured from the duty-free raw material will be exported. Intelligence gathered indicated that M/s. Fermenta Biotech Ltd. have violated the conditions prescribed in the advance authorisation and notification No. 018/2015 Cus. dated 01.04.2015 during the relevant period, thereby the importer has violated/mis-used the provisions of advance authorisation scheme in order to procure the inputs duty free.

1.2 Intelligence gathered also revealed that M/s. Fermenta Biotech Ltd., have imported subject goods on the basis of self-declaration as per Para 4.07 of Hand Book of Procedures 2015-2020, and applied for the norms committee of DGFT, for fixing the norms. However, as per the minutes of Meeting of Norms Committee hosted on the DGFT website, the committee has rejected their case (Meeting date 29.11.2019) citing that, “the import item – DETOX FOC-27 Fish Body Oil having ITC 15042010 comes under chapter 15 and as per Para 4.11 (A) (i) of the Foreign Trade Policy 2015-2020, all vegetable/edible oils classified under Chapter 15 of ITC (HS) are ineligible for import on self-declaration basis...”. Subsequently another meeting of the Norms Committee dated 17.12.2021 has also decided to withdraw the case.

2. SEARCH AND MAHAZAR

2.1 Pursuant to the said intelligence, the office premises of M/s. Fermenta Biotech Ltd, situated at A-1501, DIL Complex, Majiwada, Ghodbunder Road, Thane, Maharashtra - 400610 were searched under Panchanama on 12.04.2022 and the documents relevant to the enquiry were taken over for further investigation under the provisions of the Customs Act, 1962. During the mahazar proceedings Shri Arun Balkrishna Khedwal, General Manager (Supply Chain) of M/s. Fermenta Biotech Limited, explained the imports effected by their company utilising the Advance

Authorisation, to the officers as well as to the panchas. On being informed by the officers that the Norms Committee of DGFT has rejected their request for fixation of norms and posted the same as such on DGFT website, but Shri. Arun Balkrishna Khedwal replied that they were unaware of the rejection and the management has decided that they are ready to make the payment of the differential Customs duty.

2.2 Preliminary verification of the documents revealed that M/s. Fermenta Biotech Ltd., were issued the following Advance Authorisation for the import of “**DETOX FOC-27 FISH BODY OIL CRUDE**” under CTH 15042010 and the item to be exported under the said authorisation was “**CHOLESTEROL**”. Data in respect of subject advance authorisation license along with the goods to be imported and exported are given as under:-

Details of Advance authorization, including goods to be imported and exported with value						
No. and date/Port of Registration/ Issued By	Items to be imported duty free under authorization			Item to be exported duty free under authorization		
	Description of Goods	Quantity (Kg)	CIF value (Rs.)	Description of Goods	Quantity (Kg)	FOB value (Rs.)
0310832316 dt 18.10.2019/ Nhava Sheva sea port - INNSA1/ DGFT, Mumbai	DETOX FOC-27 FISH BODY OIL CRUDE	200,000	70,707,000	CHOLESTEROL (IT CHS Code: 29061310)	42,000	133,150,500

2.3 Against the said advance authorization, the details of the goods imported with quantity, value and duty saved amount by the importer M/s. Fermenta Biotech Ltd., are as detailed below:

Advance authorization no.	Item description	Quantity imported (in kgs)	Assessable value (in Rs.)	Duty foregone/duty saved (in Rs.)
0310832316 dt 18.10.2019	DETOX FOC-27 FISH BODY OIL CRUDE	21840	10990106	5380756
		21670	7799033	3818407
		20530	7500000	3672000
		64040	26289139	12871163

3. RECORDING OF STATEMENTS

3.1 Based on the preliminary analysis of documents, statements of the following concerned officials of M/s Fermenta Biotech Ltd. were recorded under the provisions of section 108 of the Customs Act, 1962.

3.2 Shri Arun Balkrishna Khedwal, Son of Balakrishna Khedwal, General Manager (Supply Chain), in his statement dated 12.04.2022 recorded under Section 108 of the Customs Act, 1962 stated, inter alia: -

➤ that, M/s. Fermenta Biotech Private Limited is a Public Limited firm and registered with Mumbai RA as manufacturer exporters and having IEC No: 0388076381, obtained on 01/04/1989 from DGFT Mumbai and are having their corporate office at A-1501, Thane One, DIL Complex, Ghodbunder Road, Majiwada, Thane West, Thane, Maharashtra, 400610; that the firm has totally eight branches in Gujarat, Maharashtra, Andhra Pradesh and at Himachal Pradesh.

➤ that, he is the General Manager (Supply Chain) of M/s. Fermenta Biotech Private Limited and his responsibilities include Production, Planning, Logistics and Exim operations.

➤ that he has perused the mahazar drawn at the premises of M/s. Fermenta Biotech Limited by the officers of DRI on 12.04.2022 and has put his signature on the same as a token of having seen the same; that, he also confirmed that, he was present throughout the mahazar proceedings and confirm the correctness of the same.

➤ to a question as to whether they have imported Crude fish body oil under advance authorisation availing exemptions from the customs duties and to give the full details of the said advance authorisation, like, advance authorisation number, issuing authority, port of registration of the said advance authorisation and conditions prescribed therein, he has stated that they require cholesterol for their manufacturing unit at Bharuch, Gujarat for export purpose; that, for the said purpose, they have decided to import crude fish body oil from Chile; that, they came to know that crude fish body oil is restricted and can be imported only under the license of DGFT; that, hence, they decided to import crude fish body oil under advance authorisation; that, they were not having manufacturing facility of cholesterol and hence, they approached M/s. D.K. Biopharma Private Limited, Plot No. 15, 16 & 21/12 & 21/13, Morivali MIDC Ambarnath West, Maharashtra, 421501 and signed a Confidentiality agreement (CDA) with them for manufacture of cholesterol; that, they have obtained following advance license for import of crude fish body oil and has submitted a copy of the said advance authorisation : -

Advance authorisation no. and date	Details of goods to be imported as per the advance authorisation	Description of goods to be exported under the advance authorisation	Port of registration	Issued by
0310832316 dated 18.10.2019	Detox FOC-27 (Fish Body Oil Crude)	CHOLESTEROL	Nhava Sheva sea port - INNSA1	DGFT, Mumbai

➤ on being asked to furnish the details of imports effected by M/s. Fermenta Biotech Limited, under the above Advance authorisation so far and also the procedure involved in it, he has stated that they have obtained one Advance authorisation in the name of M/s. Fermenta Biotech Limited from DGFT during the year 2019, for import of FAT ACID DETOX FOC-27 (FISH BODY OIL CRUDE) for the purpose of manufacture of Cholesterol; that, under the said advance authorisation, they have imported three consignments of fish body oil crude through Nhava Sheva port during the year 2019 as detailed below:-

Advance Authorization No.	Bill of Entry no. and date	Item description	Quantity Imported (kg)	Assessable Value (Rs.)	Duty Foregone/Duty saved (Rs.)
0310832316 dt 18.10.2019	5439726 dated 25.10.2019	DETOX FOC-27 (FISH BODY OIL CRUDE)	21,840	10,990,106	5,380,756
	5456322 dated 26.10.2019		21,670	7,799,033	3,818,407
	5944627 dated 04.12.2019		20,530	7,500,000	3,672,000
Total			64,040	26,289,139	12,871,163

➤ regarding, fulfilment of the export obligation, he has stated that, they have supplied the said imported goods to M/s. D.K. Bio Pharma Private Limited, who is their supporting manufacturer, which is also reflected in the advance authorisation issued by DGFT, who have manufactured cholesterol, which was exported to the SEZ unit of M/s. Fermenta Private Limited situated in Dahej SEZ at Bharuch, Gujarat; that, at Dahej further value addition was achieved by way of blending which was then exported to different countries; that, thus, they have fulfilled the export obligation.

- on being pointing out that in all the three imports the goods crude fish body oil was initially purchased by M/s. D.K. Bio Pharma Pvt Ltd, who in turn sold the goods to them on high sea sales basis and after purchase they have moved the goods to the premises of M/s. D.K. Bio Pharma Pvt Ltd for manufacture of cholesterol, who in turn supplied the same to their SEZ unit and these transactions appears to be a modus operandi in order to avail duty concessions, he has stated that, post product launch, the bigger global customers started asking for goods, hence to maintain the quality standards and brand, entire transactions was designed that way.
- that the imported fish oil is exclusively used for the manufacture of cholesterol; that the crude oil stream is available only in Chile and the cholesterol content is very high compared to domestic supplies; that they are not manufacturing out of the imported crude fish oil, as they do not have any manufacturing unit; that, they are having CDA with M/s. DK Bio Pharma for manufacture of cholesterol out of the imported crude fish body oil.
- regarding the procedures adopted by them at the time of obtaining the above Advance authorisation and the procedure involved in it, he has stated that as per the export-import policy, crude fish oil is restricted for import and can be imported only under the license issued by DGFT; that, hence, initially they have applied for the advance authorisation from DGFT and got the advance authorisation license under self-declaration basis; that, later they came to know that the crude fish body oil intended for import for the purpose of export of Cholesterol were not notified by the DGFT norms committee and they should apply to the norms committee for fixation of the norms; that, hence, subsequently, they have applied to the norms committee of the DGFT for fixing the norms for the same; that, they were not aware of the status of the decision of norms committee till it was informed by DRI officials of its rejection.
- on being asked about the life span (expiry period) of the imported crude fish body oil, he has stated that the product is very stable, in the past product was stored in ISO tank at ambient temperature for 4 to 5 months; that, there was no impact on quality; that the product has shelf life of 2 years.
- regarding the fact of complying with the order of the Norms Committee consequent to rejection of their application field in this regard and the action taken by them to discharge their liability towards Customs Duties, he has stated that, they were not aware of the rejection by the norms committee till it was appraised to them and they came to know about the same in the meeting at D. K Biopharma; that, they feel that they missed following it due to unavoidable circumstances and later on due to Covid pandemic.
- on being asked about their liability to pay the entire duty foregone in respect of three imports effected through Nhava Sheva port under the above advance authorisation license after DGFT rejection vide its meeting dated 18.10.2019 and 17.12.2021 he stated that, he agree with the said view point; that, as per the foreign trade policy, they will evaluate this and whatever the liabilities/import duty is payable by them, they agree to pay the entire duty involved along with interest; that, as a token of their commitment, they have drawn one demand draft bearing no. 43853161 dated 12.04.2022 of Union Bank of India for Rs. 30 lakhs and that they commit to pay the balance due amount within 30 days.
- on being asked about the duty demand notice received by them from the Nhava Sheva Customs to pay the duty foregone amount in respect of the above advance authorisation and their reply not mentioning about the rejection of their advance authorisation by the norms committee of DGFT thus suppressing the facts before the Customs department, he has stated that, they have received the mentioned letter from JNPT Port on 21st March-2022 (dated 07.03.2022); that they have submitted the response of the same on 24th March-2022 and

copy for reference is submitted; that they were not aware about the norms rejection while responding to the authorities.

➤ that their agent who is handling the DGFT related affairs and they themselves missed to follow up the issue, once norms committee of DGFT rejected their application initially on 29.11.2019 and again on 17.12.2021.

➤ regarding the current practice, he has stated that they are importing crude fish body oil through their SEZ unit Bharuch and after import through Nhava Sheva port, the imported crude fish body oil is transported to their SEZ Bharuch unit where it will be tested for quality and other parameters and from there the said crude fish body oil is transported to M/s. DK Bio Pharma Private Limited for manufacture of cholesterol and the Cholesterol is transported again to their SEZ unit for further processing.

➤ regarding the terms of the job-work Order between them and M/s DK Biopharma Pvt Ltd., he has stated that, they have signed the CDA with M/s DK Biopharma Pvt Ltd and that they have taken permission from SEZ to send the goods on job work and furnished a copy [copy of Mutual Confidentiality Agreement between M/s. Fermenta Biotech Ltd. and M/s. DK Pharmalabs dated 09.06.2017].

➤ on being asked about the 3 modes of transaction adopted by them - initially the FOC was imported by M/s DK Pharma and M/s DK Biopharma, subsequently they themselves imported the goods under their own licenses under HSS basis from M/s DK Biopharma Pvt Ltd and presently they are importing the goods through their SEZ unit and supplying the same to DK Biopharma Pvt Ltd on job work basis – is arrangements done solely to bypass customs duties, he has stated that, it's not and that there was no intention to bypass custom duties; that, the initial transactions were designed looking at smaller market share, but when the product sales has picked up, they changed the modus of operandi; that, post product launch the bigger global customers started asking for goods, hence to maintain the quality standards and brand entire transactions were designed in that way.

➤ as regards the transactions pertaining to the import of FOC Crude covered under the three Advance Licenses - 2 by M/s DK Pharma Lab and M/s DK Biopharma and one by M/s FBL - appears to be transactions between 'related' parties, he has stated that M/s DK Pharma Lab, M/s DK Biopharma and M/s FBL are separate legal entities and with different management team members.

3.3 Shri Amol Narayan Lone, Son of Narayan Lone, Business and Finance Controller of M/s. Fermenta Biotech Limited, in his statement dated 12.04.2022 recorded under Section 108 of the Customs Act, 1962 stated, inter alia that: -

➤ that, he has joined the services of M/s. Fermenta Biotech Limited during the year 2016 as Finance Controller and presently he is holding the post of Business and Finance Controller since last one and half year; that, as in charge of Business and Finance Controller his responsibilities include looking after the finances of the company.

➤ that, M/s. Fermenta Biotech Limited is a Public Limited company and registered with Mumbai RA as manufacturer exporters and having IEC NO: 0388076381 which was obtained on 01.04.1989 from DGFT Mumbai; that, they are having corporate office at A-1501, Thane One, DIL Complex, Ghodbunder Road, Majiwada, Thane West, Thane, Maharashtra, 400610 and that the company has units in Gujarat, Maharashtra, Andhra Pradesh and at Himachal Pradesh.

- that, he has perused the mahazar drawn at the premises of M/s. Fermenta Biotech Limited by the officers of DRI on 12.04.2022 and has put his signature on the same as a token of having seen the same.
- that, he has perused the statement dated 12.04.2022 of Shri. Arun Balakrishna Khedwal, General Manager (Supply Chain) of M/s. Fermenta Biotech Limited by the officers of DRI and has put his dated signature on the same as a token of having seen the same and that, he does agree with the contents of the same.
- that, they have their manufacturing units located at 8 places in India and 2 offices outside India at Germany and USA respectively; that, in India, they have their manufacturing facilities at Baruch - Gujrat, Mandi – Himachal Pradesh, Thane – Maharashtra, Nellore – Andhra Pradesh; that, they have their corporate office at DIL, Ghodbunder Road, Thane, Maharashtra where Accounts Section of the company, which takes care of all units is situated; that, out of the 8 units, 1 situated in Dahej is SEZ unit I, situated in Mumbai is FTWZ and remaining others are DTA manufacturing units; that, Vitamin D3 is one of the major pharmaceutical products being manufactured by them at their facility at Baruch, Gujrat, SEZ unit; that, they are the only one company in India which is into manufacture of this product, which is in high demand, since Vitamin D3 deficiency is considered to be one of the major health issues in majority of human beings at the present time.
- as regards their decision to import fish body oil crude under advance authorisation availing exemptions from the customs duties, he has stated that Cholesterol is the major raw material required for the manufacture of Vitamin D3 or Cholecalciferol, which is one of the major pharmaceutical products manufactured by their company; that, they used to supply about 80 % of Vitamin D3 manufactured by them to various pharmaceutical companies all over the world; that, Fish Body Oil Crude (FOC) is one of the sources of Cholesterol; that, the fish body oil crude supplied by M/s. Golden Omega, Chile has cholesterol content which is very high compared to domestic supplies and hence preferred by them for production of Cholesterol; that, they had made an arrangement with D.K. Pharma Lab/D.K. Bio Pharma Pvt. Ltd. in getting them the Fish Body Oil Crude for manufacturing and supplying them with Cholesterol for their use in the manufacture of intermediate of Vitamin D3; that, hence, they have decided to import Fish Body Oil Crude, specifically from M/s. Golden Omega, Chile; that, it is noticed that the same falling under CTH 1504 are restricted for import as per DGFT guidelines and can be imported under an Advance Authorisation; that's why they have decided to import FOC under Advance Authorisation and that the decision in this regard is taken by management of Fermenta Biotech Limited.
- that, the details of imports done by M/s. Fermenta Biotech Limited, under Advance authorisations so far are as stated by Shri. Arun Balakrishna Khedwal, their General Manager (Supply chain) in his statement dated 12.04.2022 recorded by DRI.
- as regards, where the imported Fish Body Oil Crude is used by M/s. Fermenta Biotech Limited, he has stated that, they had made a job work agreement with M/s. D.K. Bio Pharma Pvt. Ltd. wherein they supply the imported Fish Body Oil Crude to them and in turn they process the same to extract Cholesterol and supply to them in the desired form as per technology transfer; that, at their end they do Quality Checks, perform final stage manufacturing and do packing in the customer desired packing format to export the same and he is furnishing a copy of the job work order/ purchase order.
- replying to a specific question as to whether they have made any agreement with M/s. D.K. Bio Pharma Pvt. Ltd., apart from the job work order regarding getting them imported Fish Body Oil Crude (FOC), procuring the cholesterol manufactured by them and compensating them for the expenses incurred on these aspects, he has stated that, since they were not having manufacturing facility for cholesterol at their business premises, they

approached M/s. D.K. Bio Pharma Private Limited, Plot No 15,16 & 21/12 & 21/13, MIDC, Morivali, Ambarnath West, Maharashtra, 421501 and signed a Confidentiality Agreement (CDA) with them for manufacture of cholesterol; that, accordingly, they have obtained following advance license for import of crude fish body oil:

Advance authorisation no. and date	Details of goods to be imported as per the advance authorisation	Description of goods to be exported under the advance authorisation	Port of registration	Issued by
0310832316 dated 18.10.2019	DETOX FOC-27 (FISH BODY OIL CRUDE)	Cholesterol	Nhava Sheva sea port -innsa1	DGFT, Mumbai

➤ that, copy of the above advance authorisation has been furnished by Shri. Arun Balakrishna Khedwal, their General Manager (Supply Chain).

➤ that, they have obtained one Advance Authorisation in the name of M/s. Fermenta Biotech Limited from DGFT during the year 2019, for import of Fat Acid Detox Foc-27 (Fish Body Oil Crude) for the purpose of manufacture of Cholesterol; that, under the said advance authorisation, they have imported three consignment of fish body oil crude through Nhava Sheva port during the year 2019 as detailed below: -

Sl. No.	Bill of entry no. and date	Description of the goods	Assessable value	Duty foregone
1	5439726 dated 25.10.2019	DETOX FOC -27 (FISH BODY OIL CRUDE)	10990106	5380756
2	5456322 dated 26.10.2019	DETOX FOC -27 (FISH BODY OIL CRUDE)	7799033	3818407
3	5944627 dated 04.12.2019	DETOX FOC -27 (FISH BODY OIL CRUDE)	7500000	3672000

➤ that, regarding fulfilment of the export obligation they have supplied the imported goods to M/s. D.K. Bio Pharma Private Limited, who is their supporting manufacturer (which is also reflected in the advance authorisation issued by DGFT), who have manufactured cholesterol, which was exported to the SEZ unit of M/s. Fermenta Private Limited situated in Dahej at Bharuch, Gujarat; that, at Dahej it was further processed by way of blending resulting in value addition which was exported to different countries and thus, they have fulfilled the export obligation.

➤ that, regarding the documents recovered from their unit showing that all the imported crude fish body oil was initially purchased by M/s. DK Bio Pharma Pvt Ltd, who in turn sold the goods to them on high sea sales basis and after purchase they have moved the same goods to the premises of M/s. D.K. Bio Pharma Pvt Ltd for manufacture of cholesterol, who in turn supplied the same to their SEZ unit, which transactions appears to be a modus to avail duty concessions he has stated that, post product launch the bigger global customers started asking for goods, hence, to maintain the quality standards and brand, entire transactions were designed in this way and that, they have done nothing to circumvent the requirement of law.

➤ as regards the procedures adopted by them at the time of obtaining the above Advance authorisation he has stated that, as per the export-import policy, crude fish oil is restricted for import and can be imported only under the license issued by DGFT; that, hence, initially they have applied for the advance authorisation from DGFT and got the advance authorisation license under self-declaration basis; that, later they came to know that the crude fish body oil intended for import for the purpose of export of Cholesterol were not notified by the DGFT norms committee and that they should apply to the norms committee for fixation of the norms; that, subsequently, they have applied to the norms committee of the

DGFT for fixing the norms for the same; that, they were not aware of the status of the decision of norms committee of rejecting their application for fixation of norms till it was informed by DRI officials.

➤ that, regarding the life span (expiry period) for the imported crude fish body oil, the product is very stable, in the past product was stored in ISO tank at ambient temperature for 4 to 5 months, there was no impact on quality; that, the product has shelf life of 2 years and attached the sample COA.

➤ answering the question as to whether they complied with the order of the Norms Committee, consequent to rejection of their application and the action taken to discharge their liability towards Customs Duties, Shri. Amol Narayan Lone has stated that they were not aware of the rejection by the norms committee till DRI appraised them about it and that they missed following it due to unavoidable circumstances and later due to Covid pandemic situation.

➤ agreeing with the view of the Department that consequent to DGFT twice rejecting the above advance authorisation vide its meeting dated 18.10.2019 and 17.12.2021 M/s. Fermenta Biotech Limited are liable to pay the entire duty foregone in respect of three import consignments effected through Nhava Sheva port under the above advance authorisation license, Shri. Amol Narayan Lone has stated that, as per the foreign trade policy, they agree to evaluate the situation and whatever the liabilities/import duty is payable by them, they agree to pay the entire duty involved along with interest and as a token of their commitment, they have drawn one demand draft bearing no. 43853161 dated 12.04.2022 of Union Bank of India for Rs. 30 lakhs (Rs Thirty Lacs Only) and that they commit to pay the balance due amount within 30 days.

➤ that, presently they are importing crude fish body oil through their SEZ unit at Dahej SEZ at Bharuch; that, after import through Nhava Sheva port, the imported crude fish body oil will be transported to their SEZ Bharuch unit where it will be tested for quality and other parameters and from there, said crude fish body oil will be transported to M/s. DK Bio Pharma Private Limited for manufacture of cholesterol and the Cholesterol will be transported again to their SEZ unit for further processing.

➤ that, regarding letter dated 07.03.2022 from the DEEC Monitoring Cell of Jawaharlal Nehru Custom House asking them to produce the EODC/Redemption letter in respect of the advance license No. 0310832316, they have furnished response vide their letter dated 22.03.2022, bringing to notice the fact that they have applied to DGFT for extension of the Export Obligation Period (EOP) as also for rectification of norms and seeking for granting time up to 30.09.2022 since the DGFT process may take at least 6 months' time.

➤ replying to the specific question as to why they have not informed the Customs about rejection of their advance authorisation by the DGFT norms committee and kept them in the dark, Shri. Amol Narayan Lone stated that they received letter from Customs department on 21st March 2022 (dated 7th March 2022) and they studied that letter and responded to the letter on 24th March 2022 with their comments; that they were not aware about the rejections of norms while responding to the Authorities and enclosed copy of the letter.

3.4 As can be seen from the statements above, the importer submitted a demand draft dated 12.04.2022 for Rs. 30.00 lakhs bearing no. 853161 towards their duty liability on the imports made under the Advance Authorization, payable to Commissioner of Customs, Nhava Sheva as per the port of import vide their letter dated 12.04.2022 and the same was credited into the government account at Jawaharlal Nehru Custom House, Nhava Sheva vide Challan No. HC-88 dated 13.04.2022.

3.5 On verification of the documents collected from the premises of M/s. Fermenta Biotech Ltd. under Panchanama dated 12.04.2022 it is noticed that, in the Shipping Bills the consignor address is that of M/s. Fermenta Biotech Limited, A-1501, Thane One, DIL Complex, Ghodbunder Road, Majiwada, Thane West, Maharashtra – 400610, which is in contradiction to the facts contained in the statements of Shri. Arun Balkrishna Khedwal and Shri. Amol Narayan Lone that the Cholesterol manufactured by M/s. DK Biopharma Private Limited from the imported Fish Body Oil Crude is exported to the SEZ unit of M/s. Fermenta Private Limited situated in Dahez SEZ at Bharuch, Gujarat and at Dahej it was further value addition by way of blending which was then exported to different countries. Hence, in order to ascertain the factual position, it was decided to proceed for further investigation and accordingly summons dated 13.05.2022 were issued to S/Shri Amol Narayan Lone, Business and Finance Controller of M/s. Fermenta Biotech Ltd. and also to Shri Arun Balkrishna Khedwal, General Manager – Supply Chain of M/s. Fermenta Biotech Limited with a direction to appear before the DRI officials on 13.05.2022.

3.6 Both Shri. Amol Narayan Lone, Business and Finance Controller of M/s. Fermenta Biotech Ltd. and also Shri Arun Balkrishna Khedwal, General Manager – Supply Chain of M/s. Fermenta Biotech Limited appeared before the DRI officials on 19.05.2022. Further statements of Shri Amol Narayan Lone, Business and Finance Controller of M/s. Fermenta Biotech Ltd. and also Shri Arun Balkrishna Khedwal, General Manager – Supply Chain of M/s. Fermenta Biotech Limited were recorded by the Officers of DRI.

4. FURTHER STATEMENTS RECORDED UNDER SECTION 108 OF THE CUSTOMS ACT, 1962.

4.1 Both Shri. Amol Narayan Lone, Business and Finance Controller of M/s. Fermenta Biotech Ltd. and also Shri Arun Balkrishna Khedwal, General Manager – Supply Chain of M/s. Fermenta Biotech Limited appeared before the DRI officials on 19.05.2022. Shri Arun Balkrishna Khedwal, in his further statement *inter-alia* stated, among other things that: -

- that, he would like to further state that they have supplied the imported goods to M/s. D.K. Biopharma Private Limited, who is their supporting manufacturer -which is also reflected in the advance authorisation issued by DGFT, who have manufactured cholesterol aqua which was transported to their warehouse situated at Mumbai and subsequently exported by them through Mumbai ACC.
- on being pointing out that, in his statement dated 12.04.2022, he has stated that the goods manufactured by M/s. DK Biopharma Private Limited was exported to the SEZ unit of M/s. Fermenta Biotech Limited situated in Dahej SEZ at Bharuch, Gujarat and that, at Dahej it was further processed by way of blending resulting in value addition, which was exported to different countries, he has reiterated that in respect of above advance authorisation, they have supplied the said imported goods to M/s. D.K. Biopharma Private Limited, who is their supporting manufacturer, who have manufactured cholesterol aqua in their manufacturing premises, which was transported to their warehouse situated at Mumbai and subsequently exported by them through Mumbai ACC; that, in fact, in respect of advance authorization procured by M/s. DK Biopharma Private Limited, the cholesterol aqua manufactured by them was exported to the SEZ unit of M/s. Fermenta Biotech Limited situated in Dahez SEZ at Bharuch, Gujarat; that, at Dahej it was further processed by way of blending resulting in value addition which was exported to different countries; that, however, the further processing was based on customer requirements; that, in this case, as further blending and processing was not required as per the customer requirement, they have exported the resultant cholesterol manufactured by M/s. DK Biopharma Private Limited without bringing it to their Dahej unit.
- on being asked to explain in detail about the processes being done at their Dahej Unit on the cholesterol aqua manufactured and supplied by M/s. D.K. Biopharma Pvt. Ltd., Shri.

Arun Balkrishna Khedwal has stated that, Cholesterol aqua manufactured by M/s. DK Biopharma Private Limited is of 92 to 94% potency; that, to dilute the said potency to 91%, further manufacturing process is being done at their Dahej unit, viz., manufactured cholesterol is diluted to customers requirement by way of further adding calcium carbonate; that, after that further blending and packaging of the goods is being carried out at their Dahej unit before final export and has undertaken to produce a Chartered Engineers certificate confirming the processes being carried out at their Dahej SEZ unit.

➤ on being asked to provide a brief note on the manufacture activities under taken in respect of imported crude fish body oil from the stage of import to final product manufacturing till export of the said goods for fulfilling export obligation under the above advance authorization, Shri. Arun Balkrishna Khedwal has stated that, initially the crude fish body oil was being imported from the supplier M/s. GOLDEN OMEGA S.A., Chile by M/s. DK Biopharma Private Limited; that, they have purchased the said crude fish body oil from M/s. DK Biopharma Private Limited as they were having advance authorization license issued by DGFT which allows them to procure the imported crude fish body oil without payment of duty; that, as they do not have facility to manufacture Cholesterol Aqua, they have signed a Confidentiality Agreement (CDA) with M/s. DK Biopharma Private Limited for manufacture of cholesterol; that, M/s. DK Biopharma Private Limited are also their supporting manufacturer in the advance authorization issued to them; that, after import, the crude fish body oil is directly transported from the port of import to the manufacturing unit of M/s. DK Biopharma Private Limited situated at Plot No.15, 16, 21/12 & 21/13 MIDC, Morivali, Ambernath, Thane, Maharashtra – 421501, by their customs brokers; that, after receipt of cargo at this unit, quality testing parameters are carried out at M/s. DK Biopharma Private Limited and then the cargo is released for manufacturing purpose; that, they have been informed by them (M/s. DK Biopharma Private Limited) that due to lack of facility and short capacity, they used to send the part cargo to another entity M/s. DK Pharma Chem situated at F-32, Maharashtra Industrial Development Corporation, Badlapur, Maharashtra 421503, which is about 4 to 5 kms from this unit for the purpose of manufacturing; that, this exercise of transferring the cargo is done after quality testing; that, the cargo sent to DK Pharma Chem will be processed there up to CST crude wet and then it will be sent back to M/s. DK Bio pharma where after purification, drying and packing the resultant product Cholesterol Aqua is transferred to their warehouse situated at Mumbai; that, they used to file shipping bill subsequently for export of this cholesterol aqua so as to fulfil the export obligation.

➤ on being asked whether Shri. Rakesh Bakshi, Managing Director of M/s. DK Biopharma Private Limited have informed them about the lack of facility and short capacity at their manufacturing unit, part quantity of the imported Fish Body Oil Crude is sent to M/s. DK Pharma Chem situated at F-32, Maharashtra Industrial Development Corporation, Badlapur, Maharashtra 421503 for processing under job work, Shri Arun Balkrishna Khedwal has stated that they were informed and they were taken into confidence before sending the imported Fish Body Oil Crude to M/s. DK Pharma Chem situated at F-32, Maharashtra Industrial Development Corporation, Badlapur, Maharashtra 421503 for processing under job work; that they were informed that necessary machinery to extract cholesterol from fish body oil crude is available at M/s. DK Pharma Chem, which is also managed by Shri. Rakesh Bakshi.

➤ on pointing out the contradiction in his statement that, when the cholesterol aqua manufactured by M/s. DK Biopharma Private Limited from crude fish body oil imported by them, further processing is required for which they used to transfer the manufactured cholesterol aqua to your Dahej SEZ unit and however they are directly exporting the cholesterol aqua manufactured by M/s. DK Biopharma Private Limited after bringing to their warehouse and asking to confirm whether any further activities are being carried out in respect of cholesterol aqua manufactured by DK Biopharma Private Limited at their Dahej

unit, Shri. Arun Balkrishna Khedwal reiterated that Cholesterol aqua manufactured by M/s. DK Biopharma private limited is of 92 to 94% potency; that, the Cholesterol Aqua manufactured in respect of import under advance authorisation in respect of DK Biopharma Private Limited require further dilution as per customer requirement; that, in respect of material supplied to customers manufactured from import under Fermenta further dilution was not required; that, hence, it was not transferred to their Dahej unit.

➤ on being asked to give the date of transferring the goods i.e., date of receipt of cargo at DK Biopharma, date of transfer on completion of work to M/s. Fermenta and date of export by M/s. Fermenta on a sequential manner, Shri Arun Balkrishna Khedwal has furnished the details as under:

Bill of entry no. and date	Qty imported	Date of receipt at the manufacturing premises	Date of transfer from the manufacturing premises to M/s. Fermenta	Date of export	
				Date	Qty exported
5439726 dated 25.10.2019	21840	03.08.2020	24.02.2021	23.06.2021	2500
5456322 dated 26.10.2019	21670	03.09.2020	11.03.2021	29.06.2021	2500
5944627 dated 04.12.2019	20530	07.10.2020	11.03.2021	06.07.2021	2500
				12.07.2021	2500
				16.07.2021	2480

➤ on being asked to provide the details of import and export done by them under the above referred advance authorizations, Shri. Arun Balkrishna Khedwal has furnished the details as under:

Advance authorisation no. And date	Total imports (in kgs)	Total exports (in kgs)
0310832316 dated 18.10.2019	64040	12480

➤ that, they were aware that the crude fish body oil was restricted for import and that's the reason they have opted for import under advance authorisation.

➤ on showing him the extract of the following:

As per notification No. 08(RE-2010)/2009-2014, New Delhi, dated 8 October, 2010 issued by DGFT import of fish body oil crude under CTH 15042010 is restricted.

As per Para 2.08 of foreign trade policy 2015-2020, "Any goods/service, the export or import of which is 'Restricted' may be exported or imported only in Procedures prescribed in a Notification/Public Notice issued in this regard"

As per Para 2.50 of Hand Book of Procedures 2015-2020, "An application for import or export of items mentioned as 'Restricted' in ITC (HS) may be made to RA, with a copy to DGFT Hqrs in ANF 2M alongwith documents prescribed therein".

As per Para 2.51 (a) of Hand Book of Procedures 2015-2020, "(a) Restricted item Authorisation may be granted by DGFT or any other RA authorised by him in this behalf. DGFT / RA may take assistance and advice of a Facilitation Committee while granting authorisation. The Assistance of technical authorities may also be taken by seeking their

comments in writing. Facilitation Committee will consist of representatives of Technical Authorities and Departments / Ministries concerned”.

As per “Import Licensing Procedures” for import of “Restricted Items” in India, ‘an application for import of such restricted items may be made to the Directorate of General of Foreign Trade (DGFT) WEBSITE. Import authorisation for restricted items are issued after due consideration of the EXIM Facilitation Committee (EFC) which is constituted by members from concerned authorities of the Government of India’.

and hence it appears that the Restricted Import Items are those items that are not freely importable; require a ‘import license for restricted list of import items’ from DGFT and can only be imported after having the Restricted Import License issued by DGFT and on being asked whether they have applied for permission to import ‘fish body oil crude’ (which is a restricted one for import) from DGFT in ANF 2M and obtained ‘Restricted Import License’ for import of crude fish body oil and to provide the details thereof, Shri. Arun Balkrishna Khedwal has stated that, even though they were aware that crude fish body oil is a restricted goods for import as per foreign trade policy, they were of the opinion that as they are importing the goods under advance authorization, no separate license is required; that, hence they have not applied for permission to import ‘fish body oil crude’ from DGFT in ANF 2M and not obtained separate ‘Restricted Import License’ for import of crude fish body oil.

➤ that they were aware that the crude fish body oil was restricted, however, to the best of his knowledge, they have not declared the same to DGFT at the time of applying advance authorization, as there is no provision in on line portal to declare the same.

➤ In the light of the following conditions:

As per Para 4.16 of foreign trade policy 2015-2020, “advance authorisation and /or material imported under Advance Authorisation shall be subject to ‘actual user’ condition. The same shall not be transferable even after completion of export obligation’.

As per notification No. 018/2015 – customs dated 01.04.2015, the materials imported under advance authorization shall not be transferred or sold.

on being pointed out, as per his answer to question no. 4 above, due to lack of facility and short capacity, M/s. D.K. Biopharma Pvt. Ltd. use to send the cargo to another entity M/s. DK Pharma Chem situated at F-32, Maharashtra Industrial Development Corporation, Badlapur, Maharashtra 421503, which is about 4 to 5 kms from this unit for the purpose of manufacturing, Shri. Arun Balkrishna Khedwal has stated that they were not aware of the said provision; that, he would also like to state that M/s. DK Biopharma Private Limited have informed them about their arrangement of transferring the imported goods under job work to another entity namely, M/s. DK Pharma Chem; that, since everything is done under job work provisions, they are of the opinion that they have followed ‘actual user’ condition prescribed at Para 4.16 of foreign trade policy and there is no violation of conditions prescribed in notification No. 018/2015 – Customs dated 01.04.2015; that, in this regard, he once again reiterate that M/s. DK Pharma Chem were only undertaking job work assigned by M/s. DK Biopharma Private Limited; that, after processing of crude fish body oil and manufacture of CST crude wet on job work basis, M/s. D K Pharma Chem has returned the said goods to M/s. DK Biopharma Private Limited, where after purification, drying and packing, it was returned to M/s. Fermenta Biotech Limited and M/s. Fermenta Biotech Limited were filing shipping bill for export of the final product and that, they are of the opinion that notification No. 18/2015 permits transfer of goods on job work.

- that, as they are star exporters, they were exempted from furnishing the bank guarantee to the customs authorities at the time of import of crude fish body oil under advance authorization.
- on being asked whether they agree that the goods imported duty free by M/s. Fermenta Biotech Limited was diverted/transferred by their supporting manufacturer to another entity M/s. DK Pharma Chem for job work, in violation of conditions prescribed in Advance Authorization scheme, Shri. Arun Balkrishna Khedwal has stated that, due to lack of facility and short capacity, M/s. DK Biopharma Private Limited, who is their supporting manufacturer as per the advance authorisation issued to them, used to transfer the imported duty-free crude fish body oil to M/s. DK Pharma Chem for processing on job work basis; that, neither they nor M/s. DK Biopharma Private Limited, have sold the goods in domestic tariff area (DTA), it is only on the basis of job work; that, after the process, the said goods have been transferred back to M/s. DK Biopharma Private Limited under proper job work challan for further processing and transferred to M/s. Fermenta Biotech Limited for final export; that, hence, they were of the opinion that there was no violation of conditions prescribed in Advance Authorization scheme.
- on being asked to peruse the advance authorisation No. 0310832316 dated 18.10.2019 issued by DGFT, Mumbai and the below referred conditions prescribed in the condition sheet of the said authorisation:

Condition Sheet:

Authorization Holder shall export/supply the product as per the quantity and value specified in the Table at Sl. No. 1 within a period prescribed under paragraph 4.22 of the foreign trade policy 2015-2020.

The export obligation shall be fulfilled by the Authorization Holder as per the terms and conditions specified in the Foreign Trade Policy 2015-20 and the Hand Book of Procedures 2015-20 and other guidelines issued by the Director General of Foreign Trade from time to time. (As per which period of export obligation under advance authorization shall be 18 months from the date of issue of the authorization).

The exempt goods imported against the authorization shall only be utilized in accordance with the provisions of paragraph 4.16 of the Foreign Trade Policy;

Authorisation Holder shall abide by the instructions contained in Paragraph 4.21 of the Handbook of Procedures 2015-20, as the case may be, for maintenance of a true and proper account of consumption and utilization of inputs and furnish returns to the concerned Regional Authority.

Authorisation holder shall comply with the provisions of paragraph 4.10 and paragraph 4.35 of the Handbook of Procedures 2015-2020, as amended from time to time, with regard to transfer of any material from one unit of the authorisation holder to any other unit of the authorisation holder included in the IEC or to the supporting manufacturer/jobber.

and to offer his comments, Shri. Arun Balkrishna Khedwal, perused the copy of the advance authorization No. 0310832316 dated 18.10.2019 issued by DGFT, Mumbai issued in favour of their company and affixed his signature as a token of having seen the same and stated that they have utilised their entire import product for the manufacture of 'Cholesterol Aqua'; that, as the norms committee has not yet fixed the norms, it is difficult to comment now on the aspect of fulfilment of export obligation; that, there is slight short fall in the export product as compared to the prescribed export in the advance authorisation which was obtained by them on self-declaration basis; that, it is due to difference in the cholesterol content in the import product which is varying from 25 to 30%; that, they felt that, they were able to achieve the maximum possible yield and accordingly could export maximum possible quantity; that,

though their supporting manufacturer have transferred the goods to M/s. DK Pharma Chem, it is only on job work basis and not on sale basis and that, they were having only one import item and as such the imported goods were accounted.

➤ further, on being asked to peruse the following conditions referred in the notification No. 018/2015 -customs dated 01.04.2015 issued by the Government of India, Ministry of Finance, New Delhi regarding import of materials under advance authorisation:

Conditions:

that in respect of imports made before the discharge of export obligation in full, the importer at the time of clearance of the imported materials executes a bond with such surety or security and in such form and for such sum as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself, to use the imported materials in his factory or in the factory of his supporting manufacturer for the manufacture of dutiable goods.....

that the importer produces evidence of discharge of export obligation to the satisfaction of the Deputy Commissioner or Assistant Commissioner of Customs, as the case may be, within a period of sixty days of the export of period allowed for fulfilment of export obligation.

that the said authorization shall not be transferred and the said materials shall not be transferred or sold.

and on being asked to offer his comments, Shri. Arun Balkrishna Khedwal has perused the copy of the notification No. 018/2015 -customs dated 01.04.2015 issued by the Government of India, Ministry of Finance, New Delhi regarding import of materials under advance authorisation and affixed his signature as a token of having seen the same and stated that, as per the requirement, they have executed bond with the Customs authorities at the port of import; that, they were exempted from providing Bank Guarantee; that, as there are some issues pending with the DGFT, they could not submit evidence of discharge of export obligation to the Customs within the stipulated period; that, as regards the materials transferred to M/s. DK Pharma Chem by their supporting manufacturer M/s. DK Biopharma Private Limited, he would like to state that it was on job work basis and they have not sold any material in DTA.

➤ on being asked to peruse the following extracts of the Chapter 4 of the foreign trade policy 2015-2020:

4.03 Advance Authorisation

(b) Advance Authorisation is issued for inputs in relation to resultant product, on the following basis:

(i) As per Standard Input Output Norms (SION) notified (available in Hand Book of Procedures);

OR

(ii) On the basis of self-declaration as per paragraph 4.07 of Handbook of Procedures.

OR

(iii) Applicant specific prior fixation of norm by the Norms Committee

OR

(iv) On the basis of Self Ratification Scheme in terms of Para 4.07A of Foreign Trade Policy.

4.16 Actual User Condition for Advance Authorization

(i) Advance Authorization and / or material imported under Advance Authorisation shall be subject to 'Actual User' condition. The same shall not be transferable even after completion of export obligation. However, Authorisation holder will have option to dispose of product manufactured out of duty-free input once export obligation is completed.

and to offer his comments, Shri. Arun Balkrishna Khedwal has perused the extract of the chapter 4 of the foreign trade policy 2015-2020 produced before him and affixed his signature as a token of having seen the same and stated that, as SION norms was not available to the export product “Cholesterol Aqua” for the import product “crude fish body oil”, they have applied for advance authorisation on the basis of ‘No-norms’ as per paragraph 4.07 of Handbook of Procedures and subsequently applied for norms committee for fixation of norms on 17.07.2019; that, they have also followed actual user condition as the imported goods after manufacture of resultant product has been exported from their premises only.

➤ on being asked to peruse the following extracts of the Chapter 4 of the Hand book of procedures 2015-2020:

4.04 Advance Authorization Applicant shall file application online in ANF 4A. Same form is applicable where Standard Input Output Norms (SION) have been notified or on the basis of adhoc norms or on self-declaration basis as per paragraph 4.07 of Hand Book of Procedures.

4.06 Fixation of Norms

(i) In case where norms have not been notified or where applicant wants to get the ad-hoc norms fixed before making an application for Advance Authorisation, application in ANF 4B, along with prescribed documents, shall be uploaded online to concerned Norms Committee (NC) in DGFT headquarters for fixation of SION/Adhoc norm.

.....

(iii) The decisions of Norms Committees shall be available on the website of DGFT (<http://DGFT.gov.in>) periodically and the applicants shall update themselves the status of norms fixation in respect of Authorisation obtained by them

4.07 Self-Declared Authorisations where SION does not exist

(i) Regional Authority may also issue Advance Authorisation where there is no SION/valid Ad hoc Norms for an export product or where SION / Ad hoc norms have been notified / published but exporter intends to use additional inputs in the manufacturing process, based on self-declaration by applicant. Wastage so claimed shall be subject to wastage norms as decided by Norms Committee. The applicant shall submit an undertaking to abide by decision of Norms Committee. The provisions in this regard are given in paragraph 4.03 and 4.11 of FTP.

(ii) In case of revision / rejection, applicant shall pay duty and interest as notified by DoR within thirty days from the date of hosting of Norms Committee decision on DGFT website.

4.15 Undertaking

Applicant shall give an undertaking that he shall abide by norms fixed by Norms Committee and accordingly take following actions without any demur:

(ii) In case application is rejected by Norms Committee, authorization holder shall pay duty saved amount along with interest on inputs, as applicable as notified by DoR.

and to offer his comments, Shri. Arun Balkrishna Khedwal has stated that, he has perused the extract of the Chapter 4 of the Hand book of procedures 2015-2020 produced before him and affixed his signature as a token of having seen the same and stated that, he once again reiterate that as SION norms was not available to the export product “Cholesterol Aqua” for the import product “crude fish body oil”, they have applied for advance authorisation on the basis of ‘No-norms’ as per paragraph 4.07 of Handbook of Procedures and subsequently filed application for norms committee for fixation of norms in ANF 4A, along with prescribed documents on 17.07.2019 and 10.05.2022; that, even though their application was rejected by the norms committee of DGFT twice, now they would like to prefer appeal against the said decision.

➤ that they have applied to DGFT for obtaining advance authorisation under 'no- norms basis' i.e., on self-declaration basis as provided under Para 4.07 of HBP; that, after obtaining the advance authorisation, they have approached the norms committee for fixation of norms; that, however, norms committee vide its meeting dated 29.11.2019 have rejected their application.

➤ on being asked to peruse the following extracts of the norms committee meeting hosted on the DGFT Website vide its Meet No/Date:10/82-ALC4/2019 dated 29.11.2019 in respect of their advance authorisation no. 0310832316 dated 18.10.2019:

"The Committee considered the case as per agenda and it was observed that the import item – DETOX FOC-27 Fish Body Oil Crude having ITC HS – 15042010 comes under Chapter 15 and as per Para 4.11(A)(i) of the FTP 2015-20, all vegetable/edible oils classified under Chapter 15 of ITC (HS) are ineligible for import on self-declaration basis under Para 4.07 of the FTP. In view of above, the Committee decided to reject the case"

and the action taken by them, Shri. Arun Balkrishna Khedwal has perused the extracts of the norms committee meeting produced before him and affixed his signature as a token of having seen the same and stated that, he agreed that the norms committee has rejected the application submitted for fixation of the norms that they have filed the appeal on 10.05.2022 requesting them to reconsider the decision.

➤ on being pointing out that DGFT vide its meeting dated 29.11.2019 has rejected their application for fixation of norms and instead of paying the duty saved amount along with interest thereon as per Para 4.07 (ii) of the Hand Book of Procedures, which mandates that "in case of revision/rejection, applicant shall pay duty and interest as notified by DoR within thirty days from the date of hosting of Norms Committee Decision on DGFT website", they have preferred appeal only after DRI initiated investigations which shows the malafide intentions, Shri. Arun Balkrishna Khedwal has stated that, as per Para 4.07 of Hand Book of Procedures, there is no time limit for the representation and accordingly, they have filed representation after payment of composition fee of Rs. 5,000/-.

➤ to a question, whether they have informed the DGFT that DRI has initiated investigation regarding irregularities in the import of fish body oil crude under advance authorisation, he has answered in the negative, stating that they do not have direct access to DGFT to inform the above.

➤ that, the address of the norms committee where they have submitted application for review is Directorate General of Foreign Trade, Udyog Bhawan, H-Wing, Gate, No.2, Maulana Azad Rd, New Delhi, Delhi 110001.

4.2 Shri Amol Narayan Lone, S/o. Narayan Lone, Business and Finance Controller, M/s. Fermenta Biotech Limited, A-1501, Thane One, DIL Complex, Ghodbunder Road, Majiwada, Thane West, Maharashtra – 400610, in his further statement dated 19.05.2022 given under Section 108 of the Customs Act, 1962, has reiterated the submissions made in his statement dated 12.04.2022 and inter alia stated further;

➤ that, he has perused the statement dated 19.05.2022 of Shri. Arun Balakrishna Khedwal, General Manager (Supply Chain) of M/s. Fermenta Biotech Limited by the officers of DRI and put his dated signature on the same as a token of having seen the same; that, he does agree with the details stated by Shri. Arun Balakrishna Khedwal in his statement and contents of the same.

➤ on being asked whether they have complied with the order of the Norms Committee and consequent to rejection of their application by the norms committee twice, what action

was taken by them to discharge their liability towards Customs Duties, Shri. Amol Narayan Lone has stated that, they have preferred representation before the norms committee as provided under Para 4.17 of the Hand book of procedures 2015-2020 on 10.05.2022; that, as per Para 4.17 of Hand Book of Procedures, there is no time limit for the representation and accordingly, they have filed representation after payment of composition fee of Rs. 5,000/-.

➤ on being informed that, Shri Arun Khedwal, General Manager of their firm in his statement dated 19.05.2022 admitted that they have not informed to the DGFT that DRI has initiated investigation regarding irregularities in the import of fish body oil crude under advance authorisation and on being asked why they have suppressed the said facts when the DRI has initiated investigation on 12.04.2022 itself, he has stated that, in the applications filed with the DGFT, there is no provision in the application form which mandates them to intimate the above.

➤ on being asked whether he agree that as (i) DGFT has rejected their application for norms fixation twice on 29.11.2019 and on 17.12.2021; (ii) the imported goods have been transferred for job work to M/s. DK Pharma Chem by their supporting manufacturer, violating the conditions prescribed in the foreign trade policy, notification No. 018/2015 dated 01.04.2015, conditions prescribed in the advance authorisation, thereby their company is liable to pay the duty foregone/duty saved amount in respect of their advance authorisation, Shri. Amol Narayan Lone has stated that, as regards the rejection of their application by DGFT, they have submitted their representation on 10.05.2022 requesting to reconsider; that, with regards to transfer of goods for job work to M/s. DK Pharma Chem they were of the view that it is permissible; that, however, their legal team is studying the issue; that, as a token of their commitment, they have already deposited Rs. 30 lakhs (Rs Thirty Lacs Only); that, since they preferred their representation with dgft with a request to reconsider the decision, they are awaiting the said decision for taking a final call.

4.3 On-going through the documents collected from M/s. Fermenta Biotech Limited, it was observed that in respect of advance authorisation No. 0310832316 dated 18.10.2019, period of shipment (Export Obligation Period) mentioned therein is 18 months, which stands at 17.04.2021. However, it is seen that their first import is on 23.06.2021, which is beyond the stipulated export obligation period. The importer, vide their letter dated 07.04.2021 have sought for pro-rata reduction in quantity and CIF & FOB value of Advance License and also extension of Export Obligation period for six months, i.e., up to 18.10.2021. No extension is seen to have been granted by DGFT. Further, it is also noticed that, the DGFT vide Notification No. 28/2015-2020 dated 23.09.2021 have made the following amendments in the Hand Book of Procedures 2015-20:

“2. The following sub-para is added after Sub para 4.42(i) of HBP:

“4.42 (j):

a. For Advance Authorisations, where original or extended Export Obligation (EO) period is expiring during the period between 01.08.2020 and 31.07.2021, the Export Obligation period would be extended till 31.12.2021 without any composition fee. However, this extension is subject to 5% additional export obligation in value terms (in free Foreign Exchange) on the balance Export Obligation on the date of expiry of the original/extended export obligation period.”

4.4 As assured M/s. Fermenta Biotech vide letter dated 26.05.2022 furnished a flow chart of Cholesterol duly certified by a chartered Engineer.

5. LEGAL PROVISIONS:

5.1 The Policy and Procedural aspects of Advance Authorisation Scheme have been elaborated under Chapter 4 of Foreign Trade Policy 2015-2020 and Handbook of Procedures 2015-2020 (hereinafter referred as FTP). The importer has availed the benefit of exemption extended by

notification No. 018/2015-Customs, dated 01.04.2015, and did not pay any Customs duty on such input materials at the time of import and ***one of the important conditions referred in the said notification is that the goods imported under said authorization shall not be transferred and the said materials shall not be transferred or sold.*** Further, the relevant provisions of the law relating to import of goods in general, the policy and rules relating to imports, the liability of the goods to confiscation and the persons concerned to penalty for violation of import conditions have been elaborated under Customs Act, 1962 and the laws for the time being in force which are summarised below: - (Copies placed as **RUDs 15 & 16**)

I. Foreign Trade Policy 2015-2020:

2.01 Exports and Imports- 'Free', unless regulated

(a) Exports and Imports shall be 'Free' except when regulated by way of 'prohibition', 'restriction' or 'exclusive trading through STE..... The list of 'prohibited', 'restricted' items can be viewed by clicking on 'Downloads' at <http://dgft.gov.in>.

2.08 Export/ Import of Restricted Goods/ Services:

“Any goods/service, the export or import of which is 'Restricted' may be exported or imported only in accordance with an Authorisation /Permission or in accordance with the Procedures prescribed in a Notification /Public Notice issued in this regard”.

2.10 Actual User Condition

Goods which are importable freely without any 'Restriction' may be imported by any person. However, if such imports require an Authorisation, actual user alone may import such goods unless actual user condition is specifically dispensed with by DGFT.

4.03 Advance Authorisation

(a) Advance Authorisation is issued to allow duty free import of input, which is physically incorporated in export product (making normal allowance for wastage). In addition, fuel, oil, catalyst which is consumed/ utilized in the process of production of export product, may also be allowed.

(b) Advance Authorisation is issued for inputs in relation to resultant product, on the following basis:

- (i) As per Standard Input Output Norms (SION) notified (available in Hand Book of Procedures); OR
- (ii) On the basis of self-declaration as per paragraph 4.07 of Handbook of Procedures; OR
- (iii) Applicant specific prior fixation of norm by the Norms Committee; OR
- (iv) On the basis of Self Ratification Scheme in terms of Para 4.07A of Foreign Trade Policy.

4.11 Ineligible categories of import on self-declaration basis

(a) Import of following products shall not be permissible on self-declaration basis:

- (i) All vegetable /edible oils classified under Chapter 15 and all types of oil seeds classified under Chapter 12 of ITC (HS) book;

4.14 Details of Duties exempted:

Imports under Advance Authorisation are exempted from payment of Basic Customs Duty, Additional Customs Duty, Education Cess, Antidumping Duty, Countervailing Duty, Safeguard Duty, Transition Product Specific Safeguard Duty, wherever applicable.

4.16 Actual User Condition for Advance Authorisation

(i) Advance Authorisation and/ or material imported under Advance Authorisation shall be subject to 'Actual User' condition. The same shall not be transferable even after completion of export obligation. However, Authorisation holder will have option to dispose of product manufactured out of duty-free input once export obligation is completed.

4.22 Export Obligation Period and its Extension:

Period for fulfillment of export obligation and its extension under Advance Authorisation shall be as prescribed in Handbook of Procedures.

Definitions

9.22 "Export Obligation" means obligation to export product or products covered by Authorisation or permission in terms of quantity, value or both, as may be prescribed or specified by Regional or competent authority.

9.47 "Restricted" is a term indicating the import or export policy of an item, which can be imported into the country or exported outside, only after obtaining an Authorisation from the offices of DGFT.

II. Hand Book of Procedures 2015-20**2.18 Validity of Authorisation/License for import/export**

(b) export obligation period of an Authorisation must be valid on the date of export.

2.50 Import of Restricted Items

"An application for grant of an Authorisation for import or export of items mentioned as 'Restricted' in ITC (HS) may be made to RA, with a copy to DGFT Hqrs in ANF 2M along with documents prescribed therein".

2.51 EXIM Facilitation Committee

"(a) Restricted item Authorisation may be granted by DGFT or any other RA authorised by him in this behalf. DGFT / RA may take assistance and advice of a Facilitation Committee while granting authorisation. The Assistance of technical authorities may also be taken by seeking their comments in writing. Facilitation Committee will consist of representatives of Technical Authorities and Departments/ Ministries concerned".

(b) "import authorisation for a restricted item, if so, directed by the competent authority, shall be issued for import through one of the sea ports.... all imports against the said authorisation shall be made only through that port, unless the authorisation holder obtains permission from customs authority concerned to import through any other specified port".

4.04 Advance Authorisation

Advance Authorization Applicant shall file application online in ANF 4A. Same form is applicable where Standard Input Output Norms (SION) have been notified or on the basis of adhoc norms or on self-declaration basis as per paragraph 4.07 of Hand Book of Procedures.

4.06 Fixation of Norms

- (i) In case where norms have not been notified or where applicant wants to get the ad-hoc norms fixed before making an application for Advance Authorisation, application in ANF 4B, along with prescribed documents, shall be uploaded online to concerned Norms Committee (NC) in DGFT headquarters for fixation of SION/Adhoc norm.
- (ii) An applicant shall indicate a valid email address for communication purpose and to ensure that this email address is active.
- (iii) The decisions of Norms Committees shall be available on the website of DGFT (<http://dgft.gov.in>) periodically and the applicants shall update themselves the status of norms fixation in respect of Authorisation obtained by them.

4.07 Self-Declared Authorizations where SION does not exist

- (i) Regional Authority may also issue Advance Authorisation where there is no SION/ valid Ad hoc Norms for an export product or where SION/ Ad hoc norms have been notified/ published but exporter intends to use additional inputs in the manufacturing process, based on self-declaration by applicant. Wastage so claimed shall be subject to wastage norms as decided by Norms Committee. The applicant shall submit an undertaking to abide by decision of Norms Committee. The provisions in this regard are given in paragraph 4.03 and 4.11 of FTP.
- (ii) In case of revision / rejection, applicant shall pay duty and interest as notified by DoR within thirty days from the date of hosting of Norms Committee decision on DGFT website.

4.10 Advance Authorisation for applicants with multiple units

- (i) Transfer of any duty-free material imported or procured against Advance Authorisation from one unit of a company to another unit for manufacturing purpose shall be done with prior intimation to jurisdictional Customs Authority. Benefit of CENVAT shall not be claimed on such transferred input.
- (v) Imported duty free inputs can be taken from the port / domestic supplier's premises to the factory or the premises of the authorization / co-authorisation holder or the factory of the supporting manufacturer (whose name is endorsed in the authorization or allowed by the Jurisdictional Customs authority).

4.15 Undertaking

Applicant shall give an undertaking that he shall abide by norms fixed by Norms Committee and accordingly take following actions without any demur:

- (ii) In case application is rejected by Norms Committee, authorization holder shall pay duty saved amount along with interest on inputs, as applicable as notified by DoR.

4.17 Time Limit for Representation

Applicant may file representation against the decision of the Norms Committee with regard to the fixation of norms within a period of 90 days from the date of hosting of decision on DGFT website. Representation beyond 90 days shall be subject to payment of composition fee of Rs.5000/-.

4.35 Facility of Supporting Manufacturer/Jobber/co-licensee

- (a) Imported material may be used in any unit of holder of Advance Authorisation subject to condition of paragraph 4.10 of this Handbook or jobber/ supporting manufacturer provided same is endorsed on authorisation by Regional Authority. If applicant desires to have name of any

manufacturer or jobber added to authorisation, he may apply. Such endorsement shall be mandatory where prior import before export is a condition for availing Advance Authorisation scheme and authorisation holder desires to have material processed through any other manufacturer or jobber.

4.42 Export Obligation (EO) Period and its Extension:

(a) Period for fulfilment of export obligation under Advance Authorisation shall be 18 months from the date of issue of authorisation. Period of EO fulfilment under an Advance Authorisation shall commence from date of issue of Authorisation, unless otherwise specified.

(e) Regional Authority may consider a request of Advance Authorisation holder for one extension of EO period upto six months from the date of expiry of EO period subject to payment of composition fee of 0.5% of the shortfall in EO. Authorisation holder will have to submit a self-declaration to RA stating that unutilised imported/domestically procured inputs are available with the applicant.

(f) Request for further extension of six months after first extension can be considered by Regional Authority, provided Authorisation holder has fulfilled minimum 50% export obligation in quantity as well as in value, on pro-rata basis. This will be subject to payment of composition fee @ 0.5% per month on unfulfilled FOB value of export obligation. No further extension shall be allowed by Regional Authority. This provision shall also be applicable to Advance Authorisations issued during FTP 2009-2014. However, only two extensions of six months each as mentioned above can be allowed subject to payment of composition fee and under no circumstance Regional Authority shall allow any extension beyond 12 months from date of expiry of EO period. At the time of filing application for second EO extension, the Authorisation holder will have to submit a self-declaration to RA stating that unutilised imported/domestically procured inputs are available with the applicant.

4.51 Maintenance of Proper Accounts

Every Advance Authorisation holder shall maintain a true and proper account of consumption and utilisation of duty free imported/ domestically procured goods against each authorisation as prescribed in Appendix 4H or 4I, as applicable.

III. Condition Sheet in the advance authorisation No. 0310832316 dated 18.10.2019 issued to M/s. Fermenta Biotech Limited by DGFT, Mumbai (relevant points only).

1. The authorisation holder shall export to or import from any country other than specified on the Authorisation or Paragraph 2.02 of the Hand Book of Procedures 2015-2020
2. Authorisation Holder shall export/supply the product(s) as per the quantity (ies) and value (s) specified in the Table at Serial no. 1 above within a period prescribed under Paragraph 4.22 of the Foreign Trade Policy 2015-2020
3. Foreign Exchange remittance against this Authorisation shall be governed by the instructions issued by the Reserve Bank of India from time to time.
4. The Export obligation shall be fulfilled by the authorisation holder as per the terms and conditions specified in the Foreign Trade Policy 2015-20 and the Handbook of Procedures 2015-20 and other guidelines issued by the DGFT from time to time.
-
5. The exempt goods imported against this Authorisation shall only be utilised in accordance with the provisions of Paragraph 4.12 and 4.16 of the Foreign Trade Policy 2015-2020 and other provisions and the relevant Customs Notification {Customs Notification 18/2015 dated 1.4.15 (for physical exports)
6. Authorisation Holder shall abide by the instructions contained in Paragraph 4.21 of the Handbook of Procedures 2015-20, as the case may be, for maintenance of a true and proper account of the consumption and utilisation of inputs and furnish returns to the concerned

Regional Authority as per the provisions of the foreign Trade Policy 2015-2020 and the procedure laid thereunder.

7.

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11.

12. Import and Export of items prohibited/Restricted/Reserved for State Trading Enterprises shall be governed by the provisions contained in Paragraph 4.18 of the Foreign Trade Policy 2015-2020.

IV. Customs Notification No. 018/2015-Cus dated 01.04.2015

The Central Board of Excise and Customs (CBEC) issued customs notification No. 018/2015-Cus dated 01.04.2015, to enable the Advance Licence (authorization) holders to clear the imported capital goods at concessional rate of duty. As per the said notification,

(i) materials imported into India against a valid advance authorization issued by the Regional Authority in terms of paragraph 4.03 of the Foreign Trade Policy from the whole of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 and from the whole of the additional duty, safeguard duty, etc.

(ii) that the said authorisation bears, -

(a) the name and address of the importer and the supporting manufacture in cases where the authorisation has been issued to a merchant exporter;

(iii) that in respect of imports made before the discharge of export obligation in full, the importer at the time of clearance of the imported materials executes a bond with such surety or security and in such form and for such sum as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself, to use the imported materials in his factory or in the factory of his supporting manufacturer for the manufacture of dutiable goods...

(iv) That the export obligation as specified in the said authorisation (both in value and quantity terms) is discharged within the period specified in the said authorisation or within such extended period as may be granted by the Regional Authority by exporting resultant products, manufactured in India which are specified in the said authorisation;

(v) that the importer produces evidence of discharge of export obligation to the satisfaction of the Deputy Commissioner or Assistant Commissioner of Customs, as the case may be, within a period of sixty days of the export of period allowed for fulfilment of export obligation.

(vi) that the said authorization shall not be transferred and the said materials shall not be transferred or sold.

V. Customs Act, 1962:

(i) Section 46: Entry of goods on importation. –

(1) The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting electronically to the proper officer a bill of entry for home consumption or warehousing in the prescribed form:

Provided that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

...

(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, relating to the imported goods.

(ii) As per Section 111(d) of Customs Act, 1962.

Any goods which are imported or attempted to be imported or are brought within the Indian Customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force, shall be liable to confiscation;

(iii) As per Section 111(o) of Customs Act, 1962.

Any goods exempted subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer, shall be liable to confiscation;

(iv) Section 112; As per section 112, any person

(a) who in relating to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111 or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111, is liable for penal action under Section 112(i) and (ii) of the Customs Act, 1962.

(v) Section 143 of the Customs Act, 1962: Power to allow import or export on execution of bonds in certain cases. –

(1) Where this Act or any other law requires anything to be done before a person can import or export any goods or clear any goods from the control of officers of customs and the ¹[Assistant Commissioner of Customs or Deputy Commissioner of Customs] is satisfied that having regard to the circumstances of the case, such thing cannot be done before such import, export or clearance without detriment to that person, the ¹[Assistant Commissioner of Customs or Deputy Commissioner of Customs] may, notwithstanding anything contained in this Act or such other law, grant leave for such import, export or clearance on the person executing a bond in such amount, with such surety or security and subject to such conditions as the ¹[Assistant Commissioner of Customs or Deputy Commissioner of Customs] approves, for the doing of that thing within such time after the import, export or clearance as may be specified in the bond.

(2) If the thing is done within the time specified in the bond, the ¹[Assistant Commissioner of Customs or Deputy Commissioner of Customs] shall cancel the bond as discharged in full and shall, on demand, deliver it, so cancelled, to the person who has executed or who is entitled to receive it; and in such a case that person shall not be liable to any penalty provided in this Act or, as the case may be, in such other law for the contravention of the provisions thereof relating to the doing of that thing.

(3) If the thing is not done within the time specified in the bond, the ¹ [Assistant Commissioner of Customs or Deputy Commissioner of Customs] shall, without prejudice to any other action that may be taken under this Act or any other law for the time being in force, be entitled to proceed upon the bond in accordance with law.

VI. The Integrated Goods and Services Tax Act, 2017

Section 5(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent, as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person:

Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.

6. SCRUTINY AND ANALYSIS OF EVIDENCES AND LEGAL PROVISIONS:

6.1 From the documents collected/ received during investigation, it is found that M/s. Fermenta Biotech Ltd, A-1501, DIL Complex, Majiwada, Ghodbunder Road, Thane, Maharashtra-400610 have obtained one Advance Authorisation bearing No. 0310832316 dated 18.10.2019 from DGFT, Mumbai in terms of the Foreign Trade Policy in force, under self-declaration basis, for duty free import of DETOX FOC-27 (Fish Body Oil Crude) as per conditions of notification No. 018/2015-cus dated 01.04.2015 read with Foreign Trade Policy in force, with an obligation to export Cholesterol using the duty free imported materials. It is also noted from the statements of Shri Anun Balkrishna Khedwal, General Manager (Supply Chain) of M/s. Fermenta Biotech Limited, corroborated by the statements of Shri. Amol Narayan Lone, Business and Finance Controller of M/s. Fermenta Biotech Limited and also from the verification of documents that the imported DETOX FOC-27 (Fish Body Oil Crude) were transported to the premises of their declared supporting manufacturer M/s. D.K. Biopharma Private Limited, Plot No 15,16 & 21/12 & 21/13, Morivali MIDC Ambarnath West, Maharashtra, 421501 for processing and manufacture of the intended final product cholesterol.

A. Issue of rejection by Norms Committee

6.2 Advance Authorisations are issued by the Directorate General of Foreign Trade (DGFT) to importers for import of mainly various raw materials without payment of Customs Duty and the said export promotional scheme is governed by Chapter 4 of the Foreign Trade Policy (2015-20) and corresponding Chapter 4 of the Hand Book of Procedures (2015-20), Volume I & II. Para 4.03 of the Foreign Trade Policy allows duty free inputs which are to be physically incorporated in the export products and prescribed procedures for this, as under:

- Advance Authorisation is issued for inputs in relation to resultant product, on the following basis:
 - (i) As per Standard Input Output Norms (SION) notified (available in Hand Book of Procedures); OR
 - (ii) On the basis of self-declaration as per paragraph 4.07 of Handbook of Procedures; OR
 - (iii) Applicant specific prior fixation of norm by the Norms Committee; OR

(iv) On the basis of Self Ratification Scheme in terms of Para 4.07A of Foreign Trade Policy.

6.3 In the instant case, it is observed that norms have not been notified by the DGFT in respect of export of cholesterol manufactured out of the imported crude fish body oil. As per para 4.07 of Hand Book of Procedures, Regional Authority may also issue Advance Authorisation where there is no SION/valid adhoc norms for an export product on the basis of self-declaration by the applicant. However, in case of revision/rejection by the Norms Committee, the applicant shall pay duty and interest as notified by DoR within thirty days from the date of hosting of Norms Committee decision on DGFT website. M/s. Fermenta Biotech Limited, have obtained the subject advance authorisation under self-declaration basis as per paragraph 4.07 of Hand Book of Procedures and filed application with the DGFT for fixation of SION/ adhoc norms after getting the advance authorisation to get the ad-hoc norms in ANF 4A, along with prescribed documents, to the concerned Norms Committee (NC) in DGFT Headquarters. The details of the advance authorisation obtained by them are as under: -

Advance authorisation no. and date	Details of goods to be imported as per the advance authorisation	Description of goods to be exported under the advance authorisation	Port of registration	Issued by
0310832316 dated 18.10.2019	DETOX FOC-27 (FISH BODY OIL CRUDE)	Cholesterol	Nhava Sheva sea port -INNSA1	DGFT, Mumbai

6.4 M/s. Fermenta Biotech Limited have utilised the said advance authorisation obtained by them for duty free clearance of different quantities of crude fish body oil imported under 03 different Bills of Entry as detailed below through Nhava Sheva Port (innsa1).

Advance authorization License no. & date	Import data					
	B.E. No. and date	Qty imported (in Kgs)	Supplier	Place of import	assessable value	Duty foregone
0310832316 dated 18.10.2019	5439726 dated 25.10.2019	21840	M/s. GOLDEN OMEGA S.A., Chile	Nhava Sheva port (innsa1)	10990106	5380756
	5456322 dated 26.10.2019	21670			7799033	3818407
	5944627 dated 04.12.2019	20530			7500000	3672000
TOTAL		64040			26289139	12871163

6.5 The application for the fixation of norms in terms of paragraph 4.07 of Hand Book of Procedures was dealt by the norms committee and the proceedings are recorded in the minutes of meeting Meet No. 10/82-ALC4/ 2019 dated 29.11.2019 at Sl. No. 183 – Case No. 172/10/82-ALC4/2019 - pertaining to M/s. Fermenta Biotech Limited. The Norms Committee of the DGFT in its meeting has rejected the application filed by M/s. Fermenta Biotech Limited in respect of their above advance authorization with the Decision **“the committee considered the case as per online generated agenda and it was observed that the import item – DETOX FOC - 27 Fish Body Oil Crude having ITC HS -15042010 comes under Chapter 15 and as per para 4.11 (A) (i) of the FTP 2015-20, all vegetable/edible oils classified under Chapter 15 of ITC (HS) are ineligible for import on self-declaration basis under para 4.07 of the FTP. In view of the above, the Committee decided to reject the case”**. Further, the subject Advance Authorisation finds mention in the DGFT Minutes of the Norms Committee – III in its Meeting N. NC/3/MEET/Dec/2021-22/12 dated 17.12.2021, where the Committee decision is mentioned as **“The Committee considered the case as per agenda and it was observed that in the DGFT Back Office Portal, the firm has enclosed a copy of 4.07 application for fixation of adhoc norms against Advance Authorization No. 0310832316 dated 18.10.2019 (Hqrs. F. No. 01/82/050/00746/AM20/DES-III), however Norms Committee-3 in its Meeting No. 10/82-ALC4/2019 dated 29.11.2019 has**

already rejected the request of firm for fixation of adhoc norms against Advance Authorization No. 0310832316 dated 18.10.2019. Further it was also observed that this case has come up in the portal due to some technical error. Hence, the Committee decided to withdraw the case.”. This was hosted in the web site of DGFT.

6.6 The firm appeared to have not preferred any appeal before the norms committee in respect of their application as per provided under para 4.17 of Hand Book of Procedures 2015-2020 which states that “Applicant may file representation against the decision of the Norms Committee with regard to the fixation of norms within a period of 90 days from the date of hosting of decision on DGFT website. Representation beyond 90 days shall be subject to payment of composition fee of Rs. 5000/-”. Hence, it appeared that the issue has reached finality since the importers have not opted for appeal as per the provisions available in the Foreign Trade Policy/ Hand Book of Procedures 2015-2020 and bound to pay the duty foregone in the above imports as per para 4.07 (ii) of Hand Book of Procedures 2015-2020 which stipulates that “in case of revision/rejection, applicant shall pay duty and interest as notified by DoR within thirty days from the date of hosting of Norms Committee decision on DGFT website”. Even though the decision of the norms committee on the appeal filed by the importers was hosted on 29.11.2019, till the day of visit of DRI Officials on 12.04.2022, after a lapse of nearly 2 ½ years, the firm has failed to honour the decision of the norms committee or to adhere to the declaration given by them at the time of applying to the norms committee nor any correspondence has been made with the DGFT or jurisdictional customs Commissionerate which proves their malafide intention. In view of the above, it appears that the importers are liable to pay the total amount of duty forgone/duty saved amount in respect of their import under the subject advance authorisation, which works out to **Rs. 1,28,71,163/-**, along with applicable interest in respect of imports of crude fish body oil made under above referred three bills of entry.

6.7 Whereas it further appears that notwithstanding the above, the importers have failed to fulfil multiple conditions laid out in the FTP 2015-2020 and the Handbook of Procedures, conditions specified in the notification No. 018/2015-customs dated 01.04.2015 and in the advance authorisation granted to them, which are detailed below: -

B. Transfer Of Goods to another Entity for Manufacturing on Job Work Basis:

6.8 In his statement dated 19.05.2022, Shri. Arun Balakrishna Khedwal, General Manager – Supply Chain of M/s. Fermenta Biotech Limited, answering a specific question has stated as under:

“Q No. 4: Please provide a brief note on the manufacture activities under taken in respect of imported crude fish body oil from the stage of import to final product manufacturing till export of the said goods for fulfilling export obligation under the above advance authorization.

Ans: Initially the crude fish body oil was being imported from the supplier M/s. GOLDEN OMEGA S.A., Chile by M/s. DK Biopharma Private Limited. We have purchased the said crude fish body oil from M/s. DK Biopharma Private Limited as we were having advance authorization license issued by DGFT which allows us to procure the imported crude fish body oil without payment of duty. As we do not have facility to manufacture Cholesterol Aqua, we have signed a Confidentiality Agreement (CDA) with M/s. DK Biopharma Private Limited for manufacture of cholesterol. They are also our supporting manufacturer in the advance authorization issued to us. After import, the crude fish body oil was directly transported from the port of import to the manufacturing unit of M/s. DK Biopharma Private Limited situated at Plot No.15, 16, 21/12 & 21/13 MIDC, Morivali, Ambarnath, Thane, Maharashtra – 421501, by our customs brokers. After receipt of cargo at this unit, quality testing parameters are carried out at M/s. DK Biopharma Private Limited and then the cargo is released for manufacturing purpose. However, we have been informed by them that due to lack of facility and short capacity, they used to send the part cargo to another entity M/s. DK Pharma Chem situated at F-32, Maharashtra Industrial Development Corporation, Badlapur, Maharashtra 421503, which is about 4 to 5 kms from this unit for the purpose of manufacturing. This exercise of transferring the cargo is done after quality testing. The cargo sent to DK Pharma Chem will be processed there upto CST crude wet and then it will be sent back to M/s. DK Bio

pharma where after purification, drying and packing the resultant product Cholesterol Aqua is transferred to our warehouse situated at Mumbai. We used to file shipping bill subsequently for export of this cholesterol aqua so as to fulfill the export obligation.

Q No. 5: Shri. Rakesh Bakshi, Managing Director of M/s. DK Biopharma Private Limited has informed that, due to lack of facility and short capacity at their manufacturing unit, part quantity of the imported Fish Body Oil Crude is sent to M/s. DK Pharma Chem situated at F-32, Maharashtra Industrial Development Corporation, Badlapur, Maharashtra 421503 for processing under job work. Did this happen with your approval? What are the processes carried out at DK Pharma Chem and what machinery is available there for carrying out the processes?

Ans: Yes, Shri. Rakesh Bakshi, Managing Director of M/s. DK Biopharma Private Limited have informed us the same and taken us into confidence before sending the imported Fish Body Oil Crude to M/s. DK Pharma Chem situated at F-32, Maharashtra Industrial Development Corporation, Badlapur, Maharashtra 421503 for processing under job work. We were informed that necessary machinery to extract cholesterol from fish body oil crude is available at M/s. DK Pharma Chem, which is also managed by Shri. Rakesh Bakshi.

Further, on drawing his attention to the relevant provisions of FTP, Shri. Arun Balakrishna Khedwal, has stated as under:

“Q No. 12: As per para 4.16 of foreign trade policy 2015-2020, ‘advance authorisation and /or material imported under Advance Authorisation shall be subject to ‘actual user’ condition. The same shall not be transferable even after completion of export obligation’. Further, as per notification No. 018/2015 – customs dated 01.04.2015, the materials imported under advance authorization shall not be transferred or sold. However, as per your answer to question no. 4 above, due to lack of facility and short capacity, M/s. D.K. Biopharma Pvt. Ltd. used to send the cargo to another entity M/s. DK Pharma Chem situated at F-32, Maharashtra Industrial Development Corporation, Badlapur, Maharashtra 421503, which is about 4 to 5 kms from this unit for the purpose of manufacturing. Please comment.

Ans: I would like to state that we were not aware of the said provision. I would also like to state that M/s. DK Biopharma Private Limited have informed us about their arrangement of transferring the imported goods under job work to another entity namely, M/s. DK Pharma chem. However, since everything is done under job work provisions, we are of the opinion that we have followed ‘actual user’ condition prescribed at para 4.16 of foreign trade policy and there is no violation of conditions prescribed in notification No. 018/2015 – customs dated 01.04.2015. In this regard, I once again reiterate that M/s. DK Pharma Chem were only undertaking job work assigned by M/s. DK Biopharma Private Limited. After processing of crude fish body oil and manufacture of CST crude wet on job work basis, M/s. D K Pharma Chem has returned the said goods to M/s. DK Biopharma Private Limited, where after purification, drying and packing, it was returned to M/s. Fermenta Biotech Limited and we at M/s. Fermenta Biotech Limited were filing shipping bill for export of the final product. Further, we are of the opinion that notification No. 18/2015 permits transfer of goods on job work.

Q. No. 14: Do you agree that the goods imported duty free by M/s. Fermenta Biotech Limited was diverted/ transferred by your supporting manufacturer to another entity M/s. DK Pharma Chem for job work, in violation of conditions prescribed in Advance Authorization scheme.

Ans: Due to lack of facility and short capacity, M/s. DK Biopharma Private Limited, who is our supporting manufacturer as per the advance authorisation issued to us, used to transfer the imported duty-free crude fish body oil to M/s. DK Pharma Chem for processing on job work basis. However, neither we nor M/s. DK Biopharma Private Limited, have sold the goods in domestic tariff area (DTA), it is only on the basis of job work. After the process, the said goods have been transferred back to M/s. DK Biopharma Private Limited under proper job work challan for further processing and transferred to M/s. Fermenta Biotech Limited for final export. Hence, we are of the opinion that there was no violation of conditions prescribed in Advance Authorization scheme.”

6.9 On being shown the statement dated 19.05.2022 of Shri. Arun Balakrishna Khedwal, Shri. Amol Narayan Lone, Business and Finance Controller of M/s. Fermenta Biotech Limited, agreed with the details stated by Shri. Arun Balakrishna Khedwal.

6.10 Thus, it can be seen from the above that both Shri Arun Khedwal and Shri. Amol Narayan Lone, in principle have agreed that they are aware that M/s. DK Biopharma Private Limited, their supporting manufacturer is regularly transferring the goods to another unit by name M/s. DK Pharma Chem, which is clear violation of conditions prescribed. Para 4.16 of Foreign Trade Policy, Para 4.35 and 4.10 of Hand Book of Procedures, Notification No. 018/2015 – Customs dated 01.04.2015, conditions sheet attached to their advance authorisation all very clearly states that the imported goods cannot be transferred to another unit even for job work unless it is mentioned in the relevant advance authorisation. Para 4.16 of Foreign Trade Policy restricts use of such duty-free imported goods and stipulates that such import will be subject to actual user condition. It further demands that even after fulfilment of the export obligations, such goods remaining cannot be transferred. Para 4.35 of the foreign trade policy stipulates that imported material may be used in any unit of holder of Advance Authorisation subject to condition of paragraph 4.10 of this Handbook or jobber/supporting manufacturer provided same is endorsed on authorisation by Regional Authority. If applicant desires to have name of any manufacturer or jobber added to authorisation, he may apply. Such endorsement **shall be mandatory** where prior import before export is a condition for availing Advance Authorisation scheme and authorisation holder desires to have material processed through any other manufacturer or jobber. Para 4.10 of the HBP clearly states that Transfer of any duty-free material imported or procured against Advance Authorisation from one unit of a company to another unit for manufacturing purpose shall be done with prior intimation to jurisdictional Customs Authority. In the case of subject advance authorisation, it is an admitted fact that, the supporting manufacturer of the importers have transferred the duty-free import goods to another manufacturing unit violating these conditions, with the knowledge of the importers. Further, condition no. (x) of the Notfn. No. 018/2015 – Cus. dated 01.04.2015, prohibits any transfer or sale of the goods imported by availing benefit of the said notification. In this regard, relevant instructions are reproduced once again: -

Para 4.16 of FTP: Actual User Condition for Advance Authorisation

(i) Advance Authorisation and/ or material imported under Advance Authorisation shall be subject to ‘Actual User’ condition. **The same shall not be transferable even after completion of export obligation.** However, Authorisation holder will have option to dispose of product manufactured out of duty-free input once export obligation is completed.

4.10 of HBP: Advance Authorisation for applicants with multiple units

(i) **Transfer of any duty-free material imported or procured against Advance Authorisation from one unit of a company to another unit for manufacturing purpose shall be done with prior intimation to jurisdictional Customs Authority.** Benefit of CENVAT shall not be claimed on such transferred input.

4.35 of HBP: Facility of Supporting Manufacturer/Jobber/co-licensee

(a) Imported material may be used in any unit of holder of Advance Authorisation subject to condition of paragraph 4.10 of this Handbook **or jobber/supporting manufacturer provided same is endorsed on authorisation by Regional Authority.** If applicant desires to have name of any manufacturer or jobber added to authorisation, he may apply. Such endorsement shall be mandatory where prior import before export is a condition for availing Advance Authorisation scheme and authorisation holder desires to have material processed through any other manufacturer or jobber.

Condition Sheet of advance authorization, relating to transfer of materials:

1. *Authorisation* Holder shall export/supply the product(s) as per the quantity (ies) and value(s) specified in the Table at Serial 1 above within a period prescribed under Paragraph 4.22 of the Foreign Trade Policy 2015-2020.

6. *The exempt goods imported against the authorisation shall only be utilised in accordance with the provisions of paragraph 4.12 and paragraph 4.16 of the Foreign Trade Policy 2015-2020 and other provisions and the relevant Customs Notification [Customs Notification No. 18/2015 dated 1.4.15 (for physical exports), as the case may be as amended from time to time;*

12. *The authorisation holder to comply with the provisions of paragraph 4.10 and paragraph 4.35 of the Hand book of Procedures 2015-2020, as amended from time to time, **with regard to transfer of any material** from one unit of the authorisation holder to any other unit of the authorisation holder included in the IEC or to the supporting manufacturer.*

13. *. Import and Export of items prohibited/Restricted/Reserved for State Trading Enterprises shall be governed by the provisions contained in Paragraph 4.18 of the Foreign Trade Policy 2015-2020.*

15. *All conditions of the Foreign Trade Policy 2015-2020 and the Handbook of Procedures 2015-2020 and the ITC (HS) Classification Book as amended shall be applicable unless specifically dispensed with against this Authorisation.*

Notfn. No. 018/2015 – Cus. dated 01.04.2015: (x) that the said authorization shall not be transferred and the said **materials shall not be transferred** or sold.

6.11 It is evident from the above facts that there was clear violation of the conditions of the Advance Authorization, Hand book of Procedures, Customs notification and Foreign Trade Policy by M/s. Fermenta Biotech Limited, hence they are liable to pay the duty foregone/ duty saved amount in respect of the subject advance authorisation along with interest as per the extant legal provisions.

C. Issue of non-fulfilment of export obligation:

6.12 Para 4.44 of the Hand Book of Procedures (2015-20), requires an importer to fulfil export obligation under an Advance Authorisation within a period of 18 months from the date of issue of Authorisation, unless and until they were given opportunity by the Directorate General of Foreign Trade for extended time for such fulfilment of export obligation. Also, the Hand book Procedures and para (ix) of the notification No. 018/2015 – Cus. dated 01.04.2015, makes it mandatory on the part of the authorisation holder to submit requisite evidence in support of discharge of export obligation in accordance with the law within a period of sixty days from the date of expiry of export obligation. Further, sub para (d) of para 4.49 of the Hand Book of Procedures 2015-20 demands that if export obligation is not fulfilled in terms of both quantity and value, the authorisation holder shall, towards regularization, pay to Customs authorities, customs duty on unutilised value of imported/indigenously procured material along with interest as notified, which implies that the authorisation holder is legally duty bound to pay the Customs duty for non-fulfilment of export obligation. However, the importer did not pay any Customs duty, whatsoever, in respect of unfulfilled export obligation. Whereas it further appears that, M/s. Fermenta Biotech Limited have failed to fulfil the export obligation fully in respect of their advance authorisation 0310832316 dated 18.10.2019 as detailed below: -

Advance authorisation no.	Qty imported (in Kgs.)	Total assessable value	Duty foregone in the import	Qty exported
0310832316 dated 18.10.2019	64040	26289139	12871163	12480

6.13 As per the above advance authorisation, the export quantity prescribed is 42000 kgs of cholesterol against import of 200000 kgs of crude fish body oil, i.e, the importers have to account for export of exactly 21% of imported goods. However, as per the data provided by the importers the

quantity exported in respect of the advance authorisation 0310832316 dated 18.10.2019 is less and is as under:

Import		Export	
Bill of entry no. and date	Qty imported (in kgs)	S.B. No. and date	Qty exported (in kgs)
5439726 dated 25.10.2019	21840	23.06.2021	2500
5456322 dated 26.10.2019	21670	29.06.2021	2500
5944627 dated 04.12.2019	20530	06.07.2021	2500
		12.07.2021	2500
		16.07.2021	2480
	64040		12480

6.14 Thus, the firm has exported only 19.49% of cholesterol on the import of 104090 kgs of crude fish body oil as against 21% prescribed in the advance authorisation, i.e., the firm should have exported 13448.40 kgs of cholesterol for import of 64040 kgs of crude fish body oil, but they have exported only 12480 Kgs of cholesterol. Shri Amol Narayan Lone and shri. Arun Balakrishna Khedwal of M/s. Fermenta Biotech Ltd in their statements have admitted the slight shortfall in their export by stating that the same was due to difference in the cholesterol content in the import product which is varying from 25 to 30%, resulting in the shortfall. However, they could not produce any supporting documents in this regard. Hence, it appears that the firm has not accounted for the entire production for the export purpose. In view of this, they are liable to pay the duty foregone/duty saved amount in respect of this short fall in export which works out to Rs. 1,94,635/-, as under: -

Quantity required for export of 12480 kgs of cholesterol as per the advance authorisation	59428.57 kgs.
Imported quantity not utilised for the export quantity in terms of the advance authorisation	968.40 kgs.
Duty foregone in the import of 64040 kgs of crude fish body oil	12871163
Proportionate duty foregone in the import of 968.40 kgs of crude fish body oil	1,94,635/-

6.15 Notwithstanding the above, it appears that the entire duty foregone/ duty saved amount in respect of the advance authorisation license 0310832316 dated 18.10.2019 is payable as the export of cholesterol in respect of their import was done by them after the period prescribed in the advance authorisation, as amended, as detailed below: -

6.16 The Export Obligation Period in respect of the advance authorisation No. 0310832316 dated 18.10.2019 is 18 months i.e., upto 17.04.2021, i.e., they should have exported the entire quantity specified in the advance authorisation on or before 17.04.2021. However, their first export was on 23.06.2021 and last export was on 16.07.2021. It is seen from the documents furnished by the importers that they have initially applied for first extension of six months for completing the export obligation upto 18.10.2022 vide their letter dated 07.04.2021 since they could not export any goods within the stipulated period of 18 months from the date of advance authorisation. However, there is no documentary proof to show that the DGFT has considered their application for grant of extension. It is pertinent to note that, considering the Covid situation, DGFT vide Notification No. 28/2015-2020 dated 23.09.2021 has granted one-time automatic extension of Export Obligation Period, in respect of those Advance Authorisations, where the Export Obligation period is expiring between 01.08.2020 and 31.07.2021 with a condition that, the same will be subject to 5% additional export obligation in value terms on the balance Export Obligation on the date of expiry of the original/extended export obligation period. Since the Export Obligation period of the importer is falling within the stipulated time period, the benefit of the said Notification can be extended to them, for which 5% additional export obligation in value terms need to be achieved by them.

Item to be exported duty free under authorization						
Description of Goods	Quantity (Kgs)	FOB value (Rs.)	Quantity Exported (Kgs)	Pro-rata FOB Value to be achieved	5% additional export obligation in value terms	Total FOB Value to be achieved
CHOLESTEROL (IT CHS Code: 29061310)	42000	133150500	12480	39564720	1978236	41542956

However, it is noted that the FOB value of the exports under 5 Shipping Bills by M/s. Fermenta Biotech Ltd was Rs. 6,48,95,998/- which is in excess of the total FOB value to be achieved as per the relaxation extended by DGFT vide Notification No. 28/2015-2020 dated 23.09.2021.

D. Import Goods Being Restricted Require Separate Restricted Goods License:

6.17 Under section 11 of the Customs Act, the Central Government has the power to issue notification under which export or import of any goods can be declared as prohibited. The prohibition can either be absolute or conditional.

6.18 The Restricted Import Items are those items that are not freely importable; require the import license/Authorization/ permission from DGFT. Restricted items can be imported only after obtaining an import license from the relevant regional licensing authority. In this regard, the procedures for import of restricted items are enumerated in the foreign trade policy which is briefly detailed as below: -

- (i) As per notification No. 08 (RE-2010)/ 2009-2014, New Delhi, dated 8th October, 2010 issued by DGFT, import of fish body oil crude under CTH 15042010 is restricted.
- (ii) As per para 2.08 of foreign trade policy 2015-2020, “Any goods/ service, the export or import of which is ‘Restricted’ may be exported or imported only in Procedures prescribed in a Notification/Public Notice issued in this regard”
- (iii) As per para 2.50 of Hand Book of Procedures 2015-2020, “An application for grant of an Authorisation for import or export of items mentioned as ‘Restricted’ in ITC (HS) may be made to RA, with a copy to DGFT Hqrs in ANF 2M along with documents prescribed therein”.
- (iv) As per para 2.51 (a) of Hand Book of Procedures 2015-2020, “(a) Restricted item Authorisation may be granted by DGFT or any other RA authorised by him in this behalf. DGFT/ RA may take assistance and advice of a Facilitation Committee while granting authorisation. The Assistance of technical authorities may also be taken by seeking their comments in writing. Facilitation Committee will consist of representatives of Technical Authorities and Departments/ Ministries concerned”.
- (v) As per para 2.51 (b) Import authorisations for a restricted item, if so, directed by the competent authority, shall be issued for import through one of the sea ports or air ports or ICDs or LCS, as per the option indicated, in writing, by the applicant. Authorisation holder shall register the import authorisation at the port specified in the Authorisation and thereafter all imports against said authorisation shall be made only through that port, unless the authorisation holder obtains permission from customs authority concerned to import through any other specified port.
- (vi) Further, as per “Import Licensing Procedures” for import of “Restricted Items” in India, ‘an application for import of such restricted items may be made to the Directorate of General of Foreign Trade (DGFT) WEBSITE. Import authorisation for restricted items are issued after due consideration of the EXIM Facilitation Committee (EFC) which is constituted by members from concerned authorities of the Government of India’

6.19 From the above, it appears that the Restricted Import Items are those items that are not freely importable and require a ‘import license’ for import from DGFT and can only be imported after having the Restricted Import License issued by DGFT. However, the importer has failed to obtain necessary import license form DGFT for import of crude fish body oil. The importers in their statement have also admitted that they have not declared with the DGFT that the item under import are restricted goods.

6.20 The importers have submitted documents establishing that they have exported ‘cholesterol’ in respect of their import authorisation No. 0310832316 dated 18.10.2019. The details of import and export as per the documents submitted by them are as under: -

Advance authorisation no.	Qty imported (in Kgs.)	Total assessable value	Duty foregone in the import	Qty exported
0310832316 dated 18.10.2019	64040	26289139	12871163	12480

6.21 Export data as per the documents submitted by M/s. Fermenta Biotech Limited in respect of Advance authorisation No. 0310832316 dated 18.10.2019 are as under: -

Sl. No.	SB No.	SB Date	Qty	Amount (in Rs.)	Amount (in USD)
1	2616739	23.06.2021	2500	13075009.47	179478.51
2	2757332	29.06.2021	2500	13059409.47	179264.37
3	2922768	06.07.2021	2500	12950585.12	175959.04
4	3050041	12.07.2021	2500	12950585.12	175959.04
5	3178034	16.07.2021	2480	12860408.64	174496.73
	TOTAL		12480	64895997.82	885157.69

6.22 However, it appears the same cannot be counted towards the fulfilment of their export obligations for the following reasons –

a) As detailed in para 7.5 above, the Norms Committee of the DGFT has rejected their application for fixation of norms in respect of the subject advance authorisation. This renders the advance authorisation ab-initio null and void and hence they are not eligible for any duty-free import of goods.

b) The importers have failed to fulfil the “Actual User” condition as stipulated under para 4.16 of the policy which specifies that the duty-free imported inputs shall not be transferable even after completion of export obligation. However, Authorisation holder will have option to dispose of product manufactured out of duty-free input once export obligation is completed. During the search of their premises on 12.04.2022 and subsequent investigation, it was observed that the supporting manufacturer of M/s. Fermenta Biotech Limited i.e., M/s. D.K. Biopharma Pvt. Ltd. were regularly transferring the imported duty-free goods to another entity M/s. DK Pharma Chem for job work, with the knowledge of the importer. However, neither the DGFT has endorsed the name of the said firm in the advance authorisation issued for the purpose of manufacturing, nor they have intimated/obtained permission from the Customs authorities as discussed in earlier paras for sending the goods imported against the subject Advance Authorisation for job work. When questioned about the same, the importers during their statements recorded under Section 108 of the Customs Act have admitted this, however, stating that since it is for the purpose of job work, in their opinion it is permissible.

c) The notification No. 18/2015-Cus dated 01.04.2015 exempts materials imported against a valid Advance Authorisation issued by the Regional Authority of DGFT in terms of paragraph 4.03 of the Foreign Trade Policy. The important conditions for duty free import of goods under Advance Authorization are that the said authorization shall not be transferred and the said materials shall not be transferred or sold. Further, the importer at the time of clearance of the imported materials should execute a bond with such surety or security and in such form and for such sum as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself to pay on demand an amount equal to the duty leviable, but for the exemption contained herein, on the imported materials in respect of which the conditions specified in this notification are not complied with, together with interest at the rate of fifteen per cent per annum from the date of clearance of the said materials. It appears that the importers have failed to fulfil the conditions specified therein and as such they are not eligible for the benefit of duty exemption provided by the said notification.

d) It is also observed that the condition sheet to the Advance Authorisation obtained and utilized by M/s Fermenta Biotech Limited, prescribes, among other conditions, that:

1. Authorisation Holder shall export/supply the product(s) as per the quantity (ies) and value(s) specified in the Table at Serial 1 above within a period prescribed under Paragraph 4.22 of the Foreign Trade Policy 2015-2020.

6. The exempt goods imported against the authorisation shall only be utilised in accordance with the provisions of paragraph 4.12 and paragraph 4.16 of the Foreign Trade Policy 2015-2020 and other provisions and the relevant Customs Notification [Customs Notification No. 18/2015 dated 1.4.15 (for physical exports)], as the case may be as amended from time to time;

*12. The authorisation holder to comply with the provisions of paragraph 4.10 and paragraph 4.35 of the Hand book of Procedures 2015-2020, as amended from time to time, **with regard to transfer of any material** from one unit of the authorisation holder to any other unit of the authorisation holder included in the IEC or to the supporting manufacturer.*

15. All conditions of the Foreign Trade Policy 2015-2020 and the Handbook of Procedures 2015-2020 and the ITC (HS) Classification Book as amended shall be applicable unless specifically dispensed with against this Authorisation.

6.23 It appears that in view of the discussions in earlier paras, the importers have failed to fulfil the conditions specified therein and as such also they are not eligible for the benefit of duty exemption provided by the said advance authorisation issued by the DGFT. It also appears that they have violated the “Actual User” condition and have diverted the imported goods before fulfilling their export obligation.

6.24 Section 143 of the Customs Act, 1962, provides for execution of Bonds under certain circumstances where this Act or such other law, grant leave for import, export or clearance of goods on the person executing a bond subject to conditions as approved by the competent authority. In case of exemption that requires fulfilment of post-import conditions over a period of time, law makes such execution of Bond mandatory which makes the importer/exporter duty bound to pay amount of duty benefit availed with appropriate interest, in case of failure on the part of the importer/exporter to comply with such conditions. Further, as per condition (iv) of the customs notification No. 018/2015-Cus dated 01.04.2015, in respect of imports made before the discharge of export obligation in full, the importer at the time of clearance of the imported materials executes a bond with such surety or security and in such form and for such sum as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself, to pay on demand an amount equal to the duty leviable, but for the exemption contained therein, on the imported materials in respect of which the conditions specified in this notification are not complied with, together with interest at the rate of fifteen percent per annum from the date of

clearance of the said materials; In the instance case, the importers have stated that being star exporters, they were exempted from furnishing the bank guarantee.

6.25 The importer also undertook to comply with the conditions of the notification as well as the provisions of Foreign Trade Policy, as amended from time to time. It appears that they failed to observe such conditions and even after such failure, did not pay the amount of Customs duty and interest in terms of the conditions of the Policy, notification as well as the bond executed by them. As a result, they are liable to pay the entire duty forgone/duty saved amount of Rs. 1,28,71,163/-.

6.26 With the introduction of self-assessment under the Customs Act, more faith is bestowed on the importer, as the practice of routine assessment, concurrent audit and examination has been dispensed with. As a part of self-assessment by the importer, it was duty of the importer to present correct facts and declare to the Customs authority about their inability to fulfil export obligation and also, they should have volunteered to pay duty, the moment statutory 60 days from the expiry of the EO period was over. However, contrary to this, they availed benefit of the subject notification for the subject goods but did not comply with the conditions laid down in the exemption notification. It appears that only because of the vigilance and detailed scrutiny of the documents by the officers of DRI, the leakage of revenue could come to light. The importer did not come forward to pay such duty voluntarily on their own. But for the intervention of DRI, it appears that the said duty evasion would have remained undetected due to suppression of facts by the importer.

6.27 Until the investigation was taken up DRI, Mangalore, the importers M/s. Fermenta Biotech Ltd. did not even come forth to pay the Customs duty in respect of impugned Advance authorisation despite the fact that the norms committee of DGFT have rejected their application. It is evident that it was within the knowledge of the importers that they failed to comply with the conditions of Notification No. 18/2015-Cus dated 01.04.2015, as amended, but still they did not disclose the same to the Customs authority and did not pay the duty saved on these goods at the time of import. M/s. Fermenta Biotech Limited grossly failed to comply with the legal provisions laid down under the notification and the Policy and suppressed the fact of such failure by not submitting documents before the Customs authority. This is fortified from the fact that, even while responding to the letter F. No. S/26-MISC-310/2020-21 DMC JNCH dated 07.03.2022 issued by the DEEC Monitoring Cell of JNCH, they have not bothered to check the status of their application for fixation of norm from the DGFT Website but only stated in their reply that they have applied to DGFT for extension of Export Obligation Period as also for ratification of norms. Even though they themselves have stated in the said letter that they have fulfilled only 92% of the export obligation, they have not come forward to make payment of the duty foregone on the non-fulfilled quantity. This clearly indicates their malafide intent of evading duty of Customs.

7. FINDINGS OF INVESTIGATION IN BRIEF:

7.1 From the facts and discussions herein above, it appears that: -

(i) M/s. Fermenta Biotech Limited had imported “crude fish body oil” falling under Customs Tariff Heading 15042010, vide 03 bills of entry without payment of duty of Customs under advance authorisation number 0310832316 dated 18.10.2019. The importers have availed benefit of exemption extended by notification No. 018/2015 dated 01.04.2015, as amended.

(ii) M/s. Fermenta Biotech Limited is the firm behind the import of crude fish oil. However, since they did not have the manufacturing facility to process the imported crude fish oil, they entered into an agreement with M/s. D.K. Biopharma Pvt. Ltd. for the manufacture of cholesterol. M/s. Fermenta Biotech Ltd. have entered into a CDA (Mutual Confidential Agreement) with M/s. D.K. Biopharma Pvt. Ltd., in this regard.

(iii) The importers had applied to DGFT for obtaining advance authorisation under 'no-norms' basis, i.e., on self-declaration basis as provided under para 4.07 of HBP. After obtaining the advance authorisation, the importers approached the norms committee for fixation of norms. However, norms committee vide its meeting dated 29.11.2019 have rejected the said applications. But, M/s. Fermenta Biotech limited has not initiated any correspondence/action with DGFT/customs authorities or paid the duty saved amount till DRI initiated the investigations.

(iv) The supporting manufacturer of the importer, M/s. D.K. Biopharma Pvt. Ltd. to whom the imported goods were transferred for manufacture of cholesterol, used to transfer the imported duty-free goods to another entity M/s. DK Pharma Chem on job work basis. The goods sent to M/s. DK Pharma Chem will be processed there and then it will be sent back to M/s. DK Bio pharma Pvt. Ltd., in contravention to the provisions contained in Customs Notification 018/2015 – Cus dated 01.04.2015, Para 4.16 of the Foreign Trade Policy, para 4.35 of HBP / 4.10 of Handbook of Procedure and the conditions prescribed in the advance authorisation.

(v) Further, the importers neither got endorsed the name of the job work unit in their advance authorisation which is mandatory to avail duty free concession nor intimated to the jurisdiction customs authority regarding transfer of imported duty-free material.

(vi) Condition (viii) of the notification No. 018/2015 -customs dated 01.04.2015, as amended, require an importer to discharge the export obligation as specified in the Authorisation both in terms of value and quantity within the specified period as specified in the Authorisation or within the extended period as may be granted by the Regional Authority of DGFT by exporting resultant products manufactured out of the duty-free materials imported.

(vii) Condition (ix) of the Notification No. 018/2015 -customs dated 01.04.2015, required an importer to produce evidence of discharge of export obligation to the satisfaction of the Customs authority within a period of sixty day of the expiry of period allowed for fulfilment of export obligation. Failure to that led to outright violation of the conditions of the notification read with Policy in force rendering goods, so imported, duty free, liable for confiscation under section 111 (o) of the Customs Act, 1962.

(viii) Such non-payment of duty of Customs, interest on the said amount of duty not paid becomes payable from the said importers under the conditions of Bond executed at the port of import at the time of clearance of imported goods under the said notification.

(ix) Under Chapter II of the Foreign Trade Policy, it was stated that exports and imports shall be free, except when regulated and that such regulation would be as per the Foreign Trade Policy. As per notification No. 08(RE-2010)/ 2009-2014, New Delhi, 8th October, 2010 issued by DGFT import of fish body oil crude under CTH 15042010 is restricted. As per para 2.08 of foreign trade policy 2015-2020, "Any goods/ service, the export or import of which is 'Restricted' may be exported or imported only in Procedures prescribed in a Notification/Public Notice issued in this regard".

(x) In the instant case as the importer failed to obtain the "license for import of restricted goods" from DGFT (in accordance with Hand Book of Procedures 2015-2020), the imported goods should be held as prohibited under Sub-Section (u) of Section 11 of the Customs Act read with Sub-Section (3) of Section 3 and 11 of Foreign Trade (Development and Regulation) Act, 1992 and Rules and Orders issued thereunder read with Foreign Trade Policy.

(xi) Neither the policy nor the customs notification nor the conditions attached to the advance authorisation allow diversion of the duty-free materials as such unless export obligation in respect of the subject advance authorisation under which such goods were imported duty free, have been fulfilled to the satisfaction of the Customs and DGFT authorities.

(xii) Thus, the importers by their deliberate actions in omitting to abide by the provisions of the Foreign Trade Policy read with Hand Book of Procedures have grossly failed to comply with the **mandatory and essential** conditions of the notification and imported goods duty free by availing undue benefit of the same. This has led to contravention of the provisions of the notification No. 18/2015 dated 01.04.2015, which appears to have rendered the goods liable to confiscation under Section 111 (d) and 111(o) of the Customs Act, 1962. Further, these acts appear to have made M/s. Fermenta Biotech Limited liable for penalty under Section 112(a) and 112(b) of the Customs Act, 1962.

8. CONFISCATION OF GOODS AND PENALTY

8.1 Whereas it appears that M/s. Fermenta Biotech Limited have failed to comply with the conditions of the notification wherein they availed the benefit of duty-free import under Advance Authorization scheme under notification Nos. 18/2015-Cus dated 01.04.2015. The non-fulfillment of the conditions laid out in the Foreign Trade Policy 2015-2020, the Handbook of procedures 2015-2020, Notification No 18/2015-Cus dated 01.04.2015 and also the conditions prescribed in the Advance Authorisation issued by the competent Regional Authority of the DGFT itself is detailed in para 6 above has led to contravention of the provisions incorporated therein. Both para 4.44 of the Hand Book of Procedures (2015-20), Volume -I, as well as Condition No. (ix) of the notification No. 18/2015 -Cus dated 01.04.2015, as amended, have made it mandatory on the part of the importer to discharge their export liability within the stipulated period. Further, as per Para 4.07(ii) of the Handbook of Procedures mandates that 'in case of rejection, applicant shall pay duty and interest as notified by DoR within thirty days from the date of hosting of norms committee decision on DGFT website'. Therefore, it appears that due to the non-fulfilment of conditions and contravention of the provisions prescribed for the purpose of duty exemption, the goods imported i.e., 64040 kgs of FAT DETOX FOC-27 (fish body oil crude) valued at Rs. 2,62,89,139/- imported by M/s Fermenta Biotech Limited by utilising the advance authorisation No. 0310832316 dated 18.10.2019 under 3 bills of entry as detailed in Annexure 'A' to this notice, are liable to confiscation under Section 111(d) and 111(o) of the Customs Act, 1962.

Section 112 of the Customs Act, 1962 stipulates that where "Any person,

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111 also be liable to pay a penalty so determined.

8.2 Whereas it appears that M/s DK Biopharma Private Limited, the supporting manufacturer in this case, have transferred substantial quantity of imported crude fish body oil to another entity namely, M/s. DK Pharma Chem, albeit on job work basis. Para 4.10 and 4.35 of Hand book procedures, conditions laid down in the conditions sheet attached to the advance authorisations issued to them, Customs notification No. 018/2015 –customs dated 01.04.2015 all clearly states that the goods imported under advance authorisation shall not be transferred or sold unless it is mentioned in the said advance authorisation, which clearly violates the actual user condition prescribed under the advance authorisation scheme. However, the importers in their statement admitted that they were informed by their supporting manufacturer regarding transfer of the

imported goods to M/s. DK Pharma Chem for job work. Further, the norms committee has rejected their application for fixation of the norms, well before 2 years of initiation of the investigation by DRI. All these days they have kept quiet which shows the intention of the importers. Para 4.07(ii) of the Handbook of Procedures mandates that 'in case of rejection, applicant shall pay duty and interest as notified by DoR within thirty days from the date of hosting of norms committee decision on DGFT website'. At no point of time have they tried to bring this to the knowledge of the concerned authorities and rectify the probable short payment of Customs duties. From the above it appears that M/s Fermenta Biotech Limited intentionally and knowingly concerned itself in improper importation of goods and violated conditions prescribed in the advance authorisations. Consequent to the duty evasion as detailed above, M/s Fermenta Biotech Limited have rendered the goods imported duty free liable for confiscation under 111(d) and 111(o) of the Customs Act, 1962. Further, M/s Fermenta Biotech Limited appears liable for penalty under Section 112(a) and 112(b) of the Customs Act, 1962, in relation to the said goods.

8.3 Further, as per foreign trade policy, goods under CTH 15042010 is "restricted" for import. The goods imported by M/s Fermenta Biotech Limited, 'fish body oil crude' are restricted one as per the foreign trade policy. The importers have imported these restricted goods without obtaining 'license for restricted goods' as stipulated in foreign trade policy. Hence, the 'crude fish body oil' under import are liable to held as 'prohibited' under sub-section (u) of section 11 of the Customs Act, 1962 read with Foreign Trade (Development and Regulation) Act, 1992 and Rules and Orders issued thereunder. In view of this, the goods under import are also liable for confiscation as provided under Section 111(d) of the Customs Act, 1962.

8.4 Thus, in view of the conditions of the notifications and bonds executed, M/s. Fermenta Biotech Limited was duty bound to pay back the duty saved amount on imports as they violated various conditions of notifications. However, they have not come forward to pay back the duty even after the norms committee rejected their application and also, they could not fulfil the export obligation fully. Therefore, the duty saved is recoverable from M/s. Fermenta Biotech Limited along with interest in terms of notification number 18/2015-Cus. dated 01.04.2015 read with Section 143(3) of Customs Act, 1962.

9. ROLE PLAYED BY DIFFERENT PERSONS IN DUTY EVASION: -

9.1 **Shri Amol Narayan Lone, S/o. Narayan Lone, Business and Finance Controller of M/s. Fermenta Biotech Limited:** From the voluntary submissions in statements of Shri Amol Narayan Lone recorded on 12.04.2021 and 19.05.2022, from the statement of Shri Arun Balkrishna Khedwal, General Manager (Supply Chain) of M/s. Fermenta Biotech Limited, recorded under Section 108 of the Customs Act, 1962 and other evidences/documents recovered during the investigations, it is noticed that –

- Shri Amol Narayan Lone is aware of the import of duty-free materials under advance authorisation for export of cholesterol;
- He is aware that their company have applied with the norms committee for fixation of norms for their export in respect of the imported materials as norms have not been notified by the DGFT for import of crude fish body oil for the export of cholesterol;
- He is aware that the norms committee has rejected their application for fixation of norms;
- He is also aware that they could not export the prescribed quantity in respect of their advance authorisation number 0310832316 dated 18.10.2019;
- He was aware of the transfer of imported duty-free goods on job work basis by their supporting manufacturer M/s. D.K. Biopharma Pvt. Ltd. to M/s. DK Pharma chem., without intimating/taking permission from DGFT and Customs authorities and without getting the facts endorsed in the advance authorisation;
- Even though he is aware that they could not export the prescribed quantity in respect of their advance authorisation number 0310832316 dated 18.10.2019, he failed to intimate

the said fact to either DGFT or Customs authorities and also failed to make the payment in respect of duty foregone involved in the said shortfall;

- He is the Business and Finance Controller of the Company and responsible for all the decisions taken by the company.

9.2 From the above, it appears that Shri Amol Narayan Lone, Business and Finance Controller of M/s. Fermenta Biotech Limited, is the main person responsible for the import of 'crude fish body oil' under the advance authorization scheme. He is aware of the procedures related to import under concessional rate of duty under the advance authorization scheme. He knows they have not fulfilled the export obligation as stipulated in the advance authorisation read with relevant notification and foreign trade policy in respect of their first import under advance authorization number 0310832316 dated 18.10.2019. He was aware of the transfer of goods on job work basis to M/s. DK Pharma Chem by their supporting manufacturer M/s. DK Biopharma Ltd. Further, the importer being into the import export field for a long period, Shri. Amol Narayan Lone holding an important position in the importer firm, has not made any efforts to ascertain the status of their application for fixation of norms made to DGFT and has taken the stand that they missed to notice the fact of rejection of their application by DGFT way back in 29.11.2019 which is hosted in their web site, which is not acceptable. At no point of time, did he or any of his sub-ordinates made any effort to bring to the notice of the concerned authorities about their inability to fulfil the export obligation and take necessary corrective measures towards payment of duties. His deliberate actions in omitting to abide by the provisions of the Foreign Trade Policy read with Hand Book of Procedures, with an intent to evade the customs duties resulted loss of govt revenue due to non-payment of Customs duties. Therefore, it appears, Shri Amol Narayan Lone, Business and Finance Controller of M/s. Fermenta Biotech Limited and the main decision taking authority of the firm, during the period under consideration is liable for penal action under Section 112(a) and 112(b) of the Customs Act for rendering the imported goods liable for confiscation under Section 111 (d) and 111(o) of Customs Act, 1962.

9.3 **Shri Arun Balkrishna Khedwal, Son of Balakrishna Khedwal, General Manager (Supply Chain) of M/s. Fermenta Biotech Limited:** From the voluntary submissions in statements of Shri Arun Balkrishna Khedwal recorded on 12.04.2021 and 19.05.2022, from the statement of Shri Amol Narayan Lone, Business and Finance Controller of M/s. Fermenta Biotech Limited, recorded under Section 108 of the Customs Act, 1962 and other evidences/documents recovered during the investigations, it is noticed that –

- Shri Arun Balkrishna Khedwal is aware of the import of duty-free materials under advance authorisation for export of cholesterol;
- He is aware that their company have applied with the norms committee for fixation of norms for their export in respect of the imported materials as norms have not been notified by the DGFT for import of crude fish body oil for the export of cholesterol;
- He is aware that the norms committee has rejected their application for fixation of norms;
- He is also aware that they could not export the prescribed quantity in respect of their advance authorisation number 0310832316 dated 18.10.2019;
- He was aware of the transfer of imported duty-free goods on job work basis by their supporting manufacturer M/s. D.K. Biopharma Pvt. Ltd. to M/s. DK Pharma chem., without intimating/taking permission from DGFT and customs authorities and without getting the facts endorsed in the advance authorisation;
- Even though he is aware that they could not export the prescribed quantity in respect of their advance authorisation number 0310832316 dated 18.10.2019, he failed to intimate the said fact to either DGFT or Customs authorities and also failed to make the payment in respect of duty foregone involved in the said shortfall;
- He being the General Manager (Supply Chain) of the Company and responsible for Production planning, Logistics and Exim operations, is directly connected to the transactions related to the import under Advance Authorisation.

9.4 From the above, it appears that Shri. Arun Balkrishna Khedwal, General Manager (Supply Chain) of M/s. Fermenta Biotech Limited, is one of the persons responsible for the import of ‘crude fish body oil’ under the advance authorization scheme. He is aware of the procedures related to import under concessional rate of duty under the advance authorization scheme. He knows they have not fulfilled the export obligation as stipulated in the advance authorisation read with relevant notification and foreign trade policy in respect of their first import under advance authorization number 0310832316 dated 18.10.2019. He was aware of the transfer of goods on job work basis to M/s. DK Pharma Chem. Further, Shri. Arun Balkrishna Khedwal directly dealing with the imports for his firm who is well aware of the procedures related to Advance Authorisation, has not made any sincere efforts to ascertain the status of their application for fixation of norms made to DGFT and has taken the stand that they missed to notice the fact of rejection of their application by DGFT way back in 29.11.2019 which is hosted in their web site, does not auger well for the position he holds. At no point of time, did he or any of his sub-ordinates made any effort to bring to the notice of the concerned authorities about their inability to fulfil the export obligation and take necessary corrective measures towards payment of duties. His deliberate actions in omitting to abide by the provisions of the Foreign Trade Policy read with Hand Book of Procedures, with an intent to evade the customs duties resulted loss of govt revenue due to non-payment of Customs duties. Therefore, it appears, Shri Arun Balkrishna Khedwal, General Manager (Supply Chain) of M/s. Fermenta Biotech Limited and the person involved in the decision taking in their firm, during the period under consideration is liable for penal action under Section 112(a) and 112(b) of the Customs Act for rendering the imported goods liable for confiscation under Section 111 (d) and 111(o) of Customs Act, 1962.

10. QUANTIFICATION AND PAYMENT OF DUTY

10.1 M/s. Fermenta Biotech Limited have been issued one advance authorisation bearing No. 0310832316 dated 18.10.2019 for import of Fish Body Oil Crude. In respect of the said advance authorisation, goods were imported through Nhava Sheva Port (innsal) covered under three bills of entry, as detailed in the enclosed worksheet.

10.2 Thus, the total customs duty forgone/ duty saved amount by the importers M/s. Fermenta Biotech Limited in respect of their imports through Nhava Sheva Port is Rs. **1,28,71,163/-** (Rupees One crore twenty-eight lakhs seventy-one thousand one hundred and sixty-three only). Though they have exported certain quantities of “cholesterol” said to be manufactured out of the imported “fish body oil crude”, owing to the reasons detailed in the preceding paragraphs, it appears that the same cannot be counted for the purpose of fulfilment of their export obligation and are liable to pay the entire amount of Customs duty forgone of Rs. 1,28,71,163/- along with applicable interest. Accordingly, a worksheet showing the duty forgone in respect of imports under the subject advance authorisation, has been calculated and detailed in Annexure A to this notice as mentioned above. It appears that the same is liable to be recovered from them for violations of conditions prescribed in the Customs notification No. 18/2015 and Advance Authorisation issued to them read with the relevant provisions of foreign trade policy, along with applicable interest.

10.3 During the course of initial investigation, the importers have voluntarily paid an amount of Rs. 30,00,000/- (Rupees Thirty lakhs only) to prove their bonafide. The said amount has been credited to the government account, adjusted towards their liability in respect of imports through Nhava Sheva, as detailed below: -

Port of import	Total value of the imported goods (in Rs.)	Total duty forgone/ duty saved amount (in Rs.)	Total duty paid consequent on DRI investigation (in Rs.)	Balance duty payable (in Rs.)
Nhava Sheva Sea Port (innsal)	2,62,89,139/-	1,28,71,163/-	30,00,000/-	98,71,163/-

10.4 The details of the duty paid by them as per the TR 6 challans received are as under: -

Sl. No .	Port of import	Demand draft no. and date	Amount paid (Rs.)		TR6 Challan No	Date of credit to the Bank
			Duty	Interest		
2	Nava Sheva sea port (inns11)	Demand Draft No. 43853161 dated 12.04.2022 issued by Union Bank, Ghod Bunder Road, Thane, Mumbai	3000000	0	HC-88,	13.04.2022

10.5 It appears from the above discussion that consequent to duty evasion as detailed above, M/s. Fermenta Biotech Limited appeared to have rendered these goods cleared at Nhava Sheva Port, liable for confiscation. In the light of the foregoing facts it appears that they have rendered,

- (i) the imported goods (as detailed in Annexure 'A' enclosed) liable for confiscation under Section 111 (d) and 111(o) of the Customs Act 1962;
- (ii) themselves liable to pay a total duty foregone amount of Rs. 1,28,71,163/- (Rupees One crore twenty-eight lakhs seventy-one thousand one hundred and sixty-three only), on the goods imported by them as detailed in the Annexure A, in terms of bond executed by them under Section 143(3) of the Customs Act, 1962 read with Section 5(1) of the IGST Act;
- (iii) rendered themselves liable to pay interest, at the appropriate rate, on the differential duty as above, in terms of bond executed by them Section 143(3) of the Customs Act, 1962;
- (iv) rendered themselves liable for Penalty under Section 112(a) and 112(b) of the Customs Act, 1962, for rendering the goods imported by them liable for confiscation under Section 111(d) and 111(o) of the Customs Act, 1962.
- (v) rendered themselves liable for action as per the LUT bond executed by them, against the consignments imported duty free under advance authorisation in terms of Section 143(3) of the Customs Act, 1962 read with notification No. 18/2015-customs dated 01.04.2015.

11. Accordingly, M/s. Fermenta Biotech Limited, A-1501, Thane One, DIL Complex, Ghodbunder Road, Majiwada, Thane West, Maharashtra – 400610 was called upon to show cause, in writing, within 30 days from the date of receipt of this notice, to the Principal Commissioner/Commissioner of Customs, NS-I, Jawaharlal Nehru Customs House, Nhava Sheva, Tal-Uran, Dist-Raigad, Maharashtra-400707, as to why:-

- i. the goods i.e., 64040 kgs of imported FAT DETOX FOC-27 (fish body oil crude) valued at Rs. 2,62,89,139/- imported by utilising the advance authorisation No. 0310832316 dated 18.10.2019 under 03 bills of entry as detailed in **Annexure-A** to this notice, through Nhava Sheva Sea Port, should not be held liable for confiscation under Section 111(d) and 111(o) of the Customs Act, 1962, for being imported under the exemption notification No. 18/2015-cus dated 01.04.2015, without observing various conditions laid down under the said notification as well as for contraventions of the provisions of the Foreign Trade Policy (2015-2020) read with the Hand Book of Procedures 2015-2020;
- ii. duty concession availed by them, under 03 bills of entry as detailed in **Annexure A** to this notice, should not be denied and total Customs duty of **Rs. 1,28,71,163/- (Rupees One crore twenty eight lakhs seventy one thousand one hundred and sixty three only)**, forgone/saved on the said imports, should not be demanded and recovered from them along with applicable interest, in terms of conditions specified in the Notification No. 18/2015 -Cus dated 01.04.2015 and relevant paras of Foreign Trade Policy 2015-2020 and Hand Book of Procedures 2015-2020, the conditions specified in the advance authorisation license issued to them and in terms of the bond furnished by them read with Section 143(3) of the Customs Act, 1962;

- iii. the amount of **Rs. 30,00,000/- (Rupees Thirty Lakhs only)**, voluntarily deposited by M/s Fermenta Biotech Limited as detailed in para 10.4 above, should not be appropriated against the liabilities at (ii) above and balance amount should not be recovered from them as detailed in para 10.3 above;
- iv. penalty should not be imposed upon them under Section 112(a) and 112(b) of the Customs Act, 1962, for improper importation of goods availing exemption of notification and without observance of the conditions set out in the notification as elaborated above resulting in non-payment of duty, which rendered the goods liable to confiscation under Section 111(d) and 111(o) of the Customs Act, 1962.

11.1 Also, Shri Amol Narayan Lone, S/o. Narayan Lone, Business and Finance Controller, M/s. Fermenta Biotech Limited, was called upon to show cause, in writing, within 30 days from the date of receipt of this notice, to the Principal Commissioner/Commissioner of Customs, NS-I, Jawaharlal Nehru Customs House, Nhava Sheva, Tal-Uran, Dist-Raigad, Maharashtra-400707, as to why:-

- i. Penalty should not be imposed upon Shri Amol Narayan Lone S/o Shri Narayan Lone, Business and Finance Controller, M/s. Fermenta Biotech Limited, under Section 112(a) and 112(b) of the Customs Act, 1962.

11.2 Further, Shri Arun Balkrishna Khedwal, General Manager (Supply Chain), M/s. Fermenta Biotech Limited was called upon to show cause, in writing, within 30 days from the date of receipt of this notice, to the Principal Commissioner/Commissioner of Customs, NS-I, Jawaharlal Nehru Customs House, Nhava Sheva, Tal-Uran, Dist-Raigad, Maharashtra-400707, as to why:-

- i. Penalty should not be imposed upon Shri Arun Balkrishna Khedwal, S/o Shri Balakrishna Khedwal, General Manager (Supply Chain), M/s. Fermenta Biotech Limited, under Section 112(a) and 112(b) of the Customs Act, 1962.

DEFENCE's REPLY

12. The Noticee No.1 vide letter dated 15.09.2023 submitted written submission to the SCN. The Noticee No.1 in his written submission has inter-alia submitted as follows:-

"A. It is settled preposition of Law after the redemption of the Advance Authorization demand of the Customs Duty is untenable.

A1 In case of our client the Bond which was executed while import under the Advance Authorization Scheme all the conditions stands complied once the DGFT has issued the Redemption.

A2 The Hon'ble Bombay High Court has categorically held that once the redemption is granted nothing would survive of adjudication.

A3 In support of the aforesaid contention the reliance is placed on the following Judgments:

- (a) Welspun Corp. Ltd. Vs. UOI 2018 (13) G.S.T.L 302 (Bom.);***
- (b) Arjuna Natural Extracts Ltd. Vs. CC. Cochin (Tri.-Bang.) 2021 (378) E.L.T. 187;***
- (c) Hetero Labs Ltd. Vs. Asst. CC Chennai 2019 (370) E.L.T. 234;***
- (d) Alca Technologies Vs. C.C. Nhava Sheva-IV 2019 (369) E.L.T 1447 (Tri.-Mumbai)***

B. It is settled preposition of law that for the execution of Bond under Section 143(3) of Customs Act, 1962 presupposes the thing not done within time specified in the Bond.

B1. In case of our client, the Export obligation has been complied qua the Advance Authorization No.0310832316 dated 18.10.2019 under which Fish Body crude oil was imported vide 3 Bills of Entr and the exemption from payment of duty to the extent of Rs.1,28,71,163/-, was obtained by executing the impugned bond on 18.10.2019.

B2 *The Advance Authorization No.0310832316 dated 18.10.2019 stipulates the period of 18 months therefore, the shipment was due on 18.04.2021 and the extension was permitted by DGFT.*

B3 *Accordingly, the export was completed within time period and accordingly, the DGFT has redeemed the Authorization on 28.01.2023 and our client has paid the duty on excess utilization of quantity of 14120kg along with interest on 03.11.2022 by following para 4.49 of Handbook of procedure 2015-2022. The said procedure contemplates a regularization of bond fide default.*

B4 *In view of this factual matrix the demand invoking the bond is untenable since the bond itself contemplates in para 5 at page 3 as under “if each and every one of the above condition is duly complied with us the obligor i.e. importer, the above written bond shall be void and will have no effect.*

B5 *In view of this the demand based on the bond under section 143(3) of the Customs Act, 1962 is untenable. Sub section (3) inter-alia also contemplates its applicability only if the thing is not done. Whereas, in case of our client things have been done to the satisfaction of DGFT and therefore, the authorization has been redeemed. The period for the purpose of compliance of export obligation has been extended till 31.12.2021 and our client has completed all the export obligation on 16.07.2021. Therefore, there is nothing to be done to attract subsection 3 of section 143 of the Customs Act. 1962.*

B6 *In support of the aforesaid contention the reliance is placed on the following judgments:*

- a) *Commr. CC Goods & ST Alwar Vs Continental Engines Ltd 2018 (359) ELT E.L.T 358 (Raj.);*
- b) *PSL Ltd. V/s. CC. Kandla 2015 (328) E.L.T 177 (Tri-Ahmd)*
- c) *Vadhav Agro Industries V/s. CC Air cargo export New Delhi 2023 (384) E.LT 372 (Tri-Del).*

C. The cause of excess consumption of imported raw material beyond the norms cannot give raise for initiation of any proceedings.

C1. *In case of our client, there is excess consumption of the imported raw material which has been informed by our client on his own vide its letter dated 04.07.2022 to the Additional Director DGFT.*

C2. *As per the said calculation for the excess consumption of import quantity than eligible consumption to the extent of 14120 kg the exemption availed on the custom duty to the tune of Rs. 25,25,506/- along with interest amounting to Rs. 8,96,727/- has been paid on 31.11.2022.*

C3. *Thus, the acceptance of the aforesaid excess consumption by DGFT in the redemption of authorization dated 28.01.2023.*

C4. *In the impugned Show Cause Notice the said amount is contemplated to be appropriated is contrary to the settled law on the issue of excess consumption in absence of any allegation of diversion.*

C5 *In view of this the proposal of appropriation of the said amount is untenable on two counts one since our client has paid the duty which was forgone and which has been accepted by DGFT in the redemption and thereby regulated in terms of para 4.49 of Hand book of procedures secondly as per the settled law by the decision of Hon'ble Madras High Court the excess consumption beyond the norms is not sufficient for initiation of proceedings under the Customs Act. In support of this contention reliance is placed on the following judgments: (a) IOCEE Exports Ltd. V/s. CCE, Chennai – II, 2021 (376) E.L.T 311 (Mad); (b) Goodluck Garments Pvt. Ltd. Vs. CC Ex & Cus-Surat-II 2019 (365) E.L.T 893 (Guj.);*

D. The goods are not liable for confiscation under Section 111(d) and Section 111(o) of the Customs Act, 1962.

D1 In case of our client, the allegation that the goods are prohibited under sub-section (d) of Section 111 is not only erroneous but exhibits total non-application of mind.

D2 It is admitted fact in the impugned SCN that the goods were imported under the Advance Authorization issued by DGFT.

D3 As per the policy the impugned goods which are imported i.e. Fish Body Crude Oil is a restricted item and not prohibited.

D4 In view of this, since it is restricted item is has been allowed to be imported under Advance Authorization Scheme.

D5 The said Advance Authorization has been redeemed with due satisfaction of DGFT Authorities qua the export obligation.

D6 In view of this, the goods are not liable for confiscation and in support of the said contention reliance is placed on the following judgment:-

(a) Hindustan Unliver Ltd. V/s. CC Commissioner of Customs EP 2012 (278) E.L.T 618 (Tri. Bom)

(b) Affirmed by Bombay High Court in Commissioner of Customs EP V/s Hindustan Unliver Ltd. 2012 (285) E.L.T 500 (Bom).

E. The provision of Section 111(o) is not applicable to our clients case.

E1 The provisions of section 111(o) inter-alia contemplates "if the goods are imported subject to any condition and if the condition is not fulfilled than only the goods are liable for confiscation".

E2 In case of our client, the goods were imported under Advance authorization on self-declaration pending the fixation of norms.

E3 The norms were finally fixed vide minutes of meeting dated 22.05.2022 with the clause of ratification. The rectification of earlier minutes implied that the said rectification is applicable retrospectively.

E4 The second condition was of meeting the export obligation under the Advance Authorization. The same is complied and authorization is redeemed.

E5 The excess consumption of raw material qua the norms was pardoned by DGFT on restriction of payment of customs duty for which exemption was availed along with interest.

E6 In this factual matrix when the conditions are compiled impugned goods are not liable for confiscation under Section 111(o) of the Customs Act, 1962.

E7 In support of this aforesaid contention reliance is placed on the following judgments:-

(a) Hindustant Uniliver Ltd. V/s. CC Commissioner of Customs EP 2012 (278) E.L.T 618 (Tri. Bom) affirmed by Bombay High Court in Commissioner of Customs EP V/s. Hindustan Uniliver Ltd. 2012 (285) E.L.T 500 (Bom)

(b) CC. Bangalore V/s. Motorola India Ltd. 2021 (376) E.L.T 28(Kar)

(c) Rajkamal Textiles V/s. CC, Tuticorin 2018 (362) E.L.T 216 (Mad)

F. It is settled preposition of law when the goods are not available for confiscation provisions of section 111 for confiscation cannot be attracted.

F1 The goods were allowed to be cleared and therefore, the goods were not available for confiscation. In such situation as per the decisions in the following cases the confiscation is not permitted:-

- (a) Hitech Engineers V/s. CC (ACC & Import) Mumbai 2019 (365) E.L.T 572 (Tri.-Mum)*
- (b) Quippo Energy Pvt. Ltd. V/s CC Ex & ST Ahmedabad 2016 (331) E.L.E 617 (Tri.-Ahmd)*

G. Penalty under Section 112(a) and 112(b) of the Customs Act, 1962 are not imposable.

G1 In case of our client the provisions of Section 112(a) inter-alia contemplates that the penalty is imposable only if goods are rendered for confiscation under Section 111. Whereas as explained hereinabove, the goods are not liable for confiscation and therefore, the penalty is not imposable. In support of this contention the reliance is placed on the following judgments:-

- (a) Jindal Waterway Ltd. V/s. CC Export – Nhava Sheva 2019 (370) E.L.T 1451 (Tri. Mum);*
- (b) Agarwal Industries Corporation Ltd. V/s. CC, Mangalore 2020 (373) E.L.T 280 (Tri. Bang)*
- (c) Baby Marine Sea Food retail Pvt. Ltd. V/s. CC cochin 2021 (377) E.L.T 872 (Tri. Bang).*

In view of the aforesaid factual and legal submission, we hereby pray to drop the proceedings initiated under the impugned Show Cause Notice. In case you desirous to adjudicate the same, we pray for personal hearing in the interest of natural justice in terms of Section 112(A) of the Customs Act, 1962”

Further, Noticee No.1 vide written submission dated 10.09.2025, has inter-alia submitted as follows:

“1. It is settled law that after redemption of Advance Authorization duty cannot be demanded

1.1. The Hon`ble High court of Bombay in case of welspun corporation Ltd., reported 2018 (13) GSTL 302 has specifically held in para 7 to 10 that nothing survives for the adjudication.

1.2 Further, the Hon`ble High Court of Telangana in case of Hetero Labs Ltd., reported in 2019 (370) E.L.T. 234 has specifically held in Para 18 that before issuance of Show Cause Notice, customs authorities ought to have checked with DGFT Authorities and has held that having redemption granted by the DGFT authorities, nothing survives to demand. In case of my client the redemption certificate copy is marked to Show Cause issuing authority, please refer attached Redemption Letter dated 20.01.2023 which is also marked to Commissioner Customs, Nhava Sheva (Copy enclosed). Whereas the impugned Show Cause Notice is issued on 28.03.2023, that means three months earlier to the issuance of Show Cause Notice the Authorities are aware of having Redemption Letter received by my client. Hence, the impugned demand issued subsequent to the redemption letter will not survive.

1.3 Thus, the impugned Show Cause Notice demanding the foregone Customs Duty is not sustainable in the light of Redemption Certificate dated 20.01.2023 in which there is a remark as under:

“Firm has paid customs duty with Interest on imports as noted by Customs on debt sheet of Authorization. The case has been regularized in terms of Para 4.49 of Handbook of Procedures 2015- 2020”

2. It is settled preposition of law that if the Show Cause Notice is suffering from vice of double taxation than said Show Cause Notice is untenable in law.

2.1. In case of my client, as explained herein above the deficiency of import duty is paid and thereafter redemption cum regularization in terms of 4.49 of Handbook of Procedures 2015-2020 is notified in the Redemption letter dated 20.01.2023 which is prior to the issuance of Show Cause Notice.

2.2. Thus, after having paid the Custom Duty while regularizing the redemption letter much prior to the issuance of Show Cause Notice dated 28.03.2023 than the impugned Show Cause Notice is suffering from vice of double taxation and therefore untenable in the light of Following judgment:

a. COMMR. OF CUS. (AIRPORT & CARGO), CHENNAI v/s TITAN INDUSTRIES IJTD. 2017 (352) E.L.T. 372 (Tri. -Chennai)

b. J.B. MANGHARAM F'OODS IJTD. v/s CCEX., INDORE 2016 (332) E.L.T. 732 (Tri. -Del.)

c. BHARAT SANCHAR NIGAM LTD. v/s UNION OF INDIA 2006 (2) S.T.R.161 (S.C.)

In view of the aforesaid submissions in addition to Reply to Show Cause Notice this Hon'ble Authority is hereby prayed to drop the proceedings under this Show Cause Notice. "

12.1 The Noticee No.2 vide letter dated 14.09.2023 submitted written submission to the SCN. The Noticee No.2 in his written submission has inter-alia submitted as follows:-

- (1) " *Mr. Amol Narayan Lone, is working as a Business and Finance Controller in M/s. Fermenta Biotech Ltd, situated at A-1501, DIL Complex, Majiwada, Ghodbunder Road, Thane, Maharashtra-400610. The role of our client was limited to look after the finance of the company. The said Company is registered with Mumbai Regional Authority of DGFT as "manufacturer exporters" with Importer Exporter Code (IEC) Number 0388076381 obtained on 01.04.1989 and is engaged in the manufacture of Vitamin D3 amongst other pharmaceutical products. One of the major pharmaceutical products being manufactured by M/s. Fermenta Biotech Ltd is Vitamin D3, at Bharuch, Gujarat SEZ Unit, and for its manufacture, cholesterol is the major raw material required. One of the sources of Cholesterol is Fish Body Crude Oil, which is supplied by M/s. Golden Omega, Chile. M/s. Fermenta Biotech Ltd obtained the Advance Authorization No 031083216 dated 18.19.2019 under self declaration basis for import of "DETOX FOC-27 FISH BODY OIL CRUDE9' under CTH 15042010 and the item to be exported under the said act authorization was CHOLESTEROL'. M/s. Fermenta Biotech Ltd was not having the facility to manufacture the cholesterol, hence the said company had declared M/s. D. K. Bio Pharma Pvt. Ltd. as their supporting manufacture in the impugned advance authorization issued by DGFT to work as a job worker for M/s. Fermenta Biotech Ltd*
- (2) *It is submitted that as per the said authorization the export obligation should have been completed within a period of 18 months i.e. on and before 10.04.2021. However, the same was not complied with therefore the company sought extension which was granted for the period of 6 months vide letter dated 07.04.2021. Thereafter, the export obligation was compiled on 16.07.2021.*
- (3) *That M/s. Fermenta Biotech Ltd had applied to the DGFT norms committee for fixation of the norms, which was initially rejected by the norms committee but subsequently vide meeting dated 27.05.2022 the said norms were ratified. In view of the aforesaid ratification by DGFT norms committee M/s. Fermenta Biotech Ltd had applied for redemption of said advance license vide application dated 04.07.2022 along with the relevant documents.*
- (4) *That M/s. Fermenta Biotech Ltd while applying for redemption of said license calculated the Customs Duty of Rs. 2525506.09/- being duty foregone on the excess quantity of raw material imported and paid the same along with interest of Rs. 896727.64/- with the Customs Department.*
- (5) *In view of the aforesaid the DGFT issued the redemption cum regularization letter dated 28.01.2023 with respect to impugned advance authorization No. 0310832316 dated*

18.10.2019. Copy of the said redemption has also been marked to the office of the commissioner of Custom (INNS AI) Nhava Sheva Seva.

(6) It is submitted that despite of redemption of advance authorization the department issued the impugned Show Cause Notice No 2528/22-23/COMMR/NS-I/CAC/JNCH dated 28.03.2023 proposing the confiscation of imported raw material U/s. 112 of Customs Act as well as demanding duty of Rs. 1,28,71,163/- by alleging that M/s. Fermenta Biotech Ltd has not fulfilled the export obligation as contemplated by the impugned advance authorization. The said Show Cause Notice also proposed to impose penalty on our client being the finance controller under Section 112(a) and 112(b) of the Customs Act, 1962. The said Show Cause Notice becomes infructuous as the impugned advance authorization has been duly redeemed by the competent authority i.e. DGFT by endorsing fulfilment of export obligation.

A. It is settled proportion of law that, once DGFT has redeemed and regularized the Advance Authorization the issuance of Show Cause Notice demanding Customs Duty and thereby proposal to impose penalty on our client is not tenable.

A1. The company in which our client is working i.e. M/s. Fermenta Biotech Ltd had obtained the advance authorization on the basis of self-declaration. The said company had also applied to the DGFT norms committee for the purpose of fixation of norms since the impugned imported raw material i.e., fish body oil crude is restricted item as per foreign trade policy. Whereas, without considering the outcome of the application filed for ratification of norms for import of impugned raw material, the department issued the impugned Show Cause Notice demanding duty foregone on the goods imported under the said advance authorization by alleging non fulfilment of export obligation and contravention of provisions of Foreign Trade Policy and Hand Book of Procedures.

A2 Further, on the basis of the ratification M/s. Fennenta Biotech Ltd complied with all the procedural aspects for the purpose of redemption and regularization of the said advance authorization; accordingly M/s. Fermenta Biotech Ltd is in receipt of Redemption cum Regularization Certificate dated 20.01.2023 much prior to issuance of present Show Cause Notice on 28.03.2023. Thus, it is submitted that when the competent authority i.e., DGFT has already adjudicated the export obligation in favour of M/s. Fennenta Biotech Ltd the issuance of impugned Show Cause Notice on the ground of non-fulfillment of export obligation is void and hence, needs to be set aside in light of following judgements:

- (a) Welspun Corp. Ltd. Vs. UOI 2018(13) G.S.T.L 302 (Bom.)
- (b) Hetero Labs Ltd. Vs Asst. CC Chennai 2019 (370) E.L.T. 234
- (c) Arjuna natural Extracts Ltd. VS. CC. Cochin (Tri.- Bang.) 2021 (3 78)E.L.T. 18 7.
- (d) Alca Technologies Vs. C.C. Nhava Sheva-IV 2019(369) E.L.T. 1447 (Tri. - Mumbai)

B. It is settled preposition of law that once the imported raw material is consumed in the manufacture of Finished product and exported then such raw material cannot be confiscated under section 111(d) and 111(o) of the Customs Act.

B1. In case of Fermenta admittedly the imported raw material is used in the manufacture of finished product i.e. cholesterol and has been exported. Further, the DGFT has also confirmed the same by way of issuance of Redemption cum Regularization Letter dated 20.01.2023, w.r.t. impugned Advance Authorisation. In view of the aforesaid it is submitted that when the DGFT redeemed the Advance Authorisation after satisfaction with the compliance of terms and conditions of Foreign Trade Policy and Exemption Notification No. 18/2015-Cus dated 01.04.2015. Therefore, the allegations made in the impugned Show Cause Notice w.r.t. contravention of FTP and the terms and conditions of said Exemption Notification does not survive and thereby the impugned Show Cause Notice becomes infructuous. It is submitted that admittedly the impugned Show Cause Notice is issued after receipt of redemption letter from the DGFT and without considering the same. It is submitted that the Section 111(d) and section 111(o) of the Custom Act 1962, contemplates confiscation of goods in case of goods imported by non-observing the prohibitions imposed by or under

this Act or by non-observing conditions sanctioned by proper officer. Whereas, in present case the raw materials were imported under valid Advance Authorisation and were used in the manufacturer of finished product for export on realization of Foreign Exchange. Further, the procedural aspects w.r.t. compliance of Advance Authorisation has been regularized by the competent authority i.e., DGFT vide Redemption cum Regularization Letter dated 20.01.2023.

B2 In view of the aforesaid it is submitted that there is no contravention or non-observation as contemplated under section 111(d) and 111(o) of Customs Act, 1962 and therefore, proposal for confiscation of raw material imported by utilizing impugned Advance Authorisation is not sustainable in the light of following judgments:

(a) Hindustan Unliver Ltd V/s. CC Commissioner of Customs EP 2012 (278) E.L.T618(Tri-Bom) Affirmed by Bombay High Court in Commissioner of Customs EP v/S Hindustan Unliver Ltd 2012(285) E.L.T 500 (Bom);

C. It is a settled preposition of law that Penalty under Section 112(a) and 112(b) of the Customs Act, 1962 is not sustainable in absences of imported goods which are liable to be confiscated under Section 111 of the Customs Act, 1962

C1 In case of our Client, the allegations mentioned in the impugned Show Cause Notice is that our client being the business and finance controller of M/s Fermenta Biotex Ltd is the main person responsible for the import of Crude Fish Body Oil under impugned Advance Authorisation by M/s. Fermenta.

C2 It is submitted that the raw material which was duly imported under valid Advance Authorisation has been used in the manufacture of export goods. This fact is verified by the DGF1 and thereby the Redemption cum Regularization Letter dated 20.01.2023 was issued to M/s. Fermenta. Thu, it I submitted that after the issuance of Redemption Letter, the terms and conditions w.r.t impugned Advance Authorization was fulfilled and thereby the importer has satisfied the conditions of the bond. Therefore, the imported raw materials are not liable for confiscation since, there was no violation of conditions of Advance Authorisation and thereby no penalty can be imposed under section 112(a) and 112 (b) of Custom Act, 1962. In support of this contention reliance is placed on the following judgments:

(a) Jindal waterway Ltd V/s. CC Export- Nhava Sheva 2019 (370) E.L.T 1451 (Tri-Mum)

(b) Agarwal industries Corporation Ltd V/s. CC, Mangalore 2020 (3 73) E.L.T 280 (Tri-Bang)

(c) Baby Marine Sea Food retail Pvt Ltd V/s CC Cochin 2021 (3 77) E.L.T 8 72 (Tri-Bang)

In view of the aforesaid facts and legal submissions, this Hon'ble Authority is hereby pray to set aside the impugned Show Cause Notice and thereby confer justice in the hands of our Client. The opportunity of Personal Hearing may please be granted before the Adjudication of the impugned Show Cause Notice."

Further, Noticee No.2 vide written synopsis dated 09.09.2025, has inter-alia submitted as follows:

"1.The issue involved in the present Show Cause Notice is whether penalty under Section 112(a) and Section 112 (b) of the Customs Act, 1962 should be imposed on my client or not.

2. My client is working as a Business and Finance Controller in M/s. Fermenta Biotech Ltd and the main role of my client is only limited to looking after the Finance of the Company.

3. The impugned Show Cause Notice is issued to my client alleging that my client was the main person responsible for the import of "Crude Fish Body Oil" under Advance Authorization Scheme and that my client was aware that the export obligation under the said scheme was not complied by M/s. Fermenta Biotech Ltd . It was further alleged that the SION Norms was rejected by the concerned Authority and despite of this my client failed to take corrective measures towards payment of duty and thereby deliberately omitted to follow the provisions of Foreign Trade Policy and Hand Book of Procedures with the intention to evade Customs Duty.

4. It is hereby submitted that the entire allegations of the department is based on a misconceived facts that M/s. Fermenta Biotech Ltd failed to fulfill the export obligation and that the SION norms was rejected by the Norm Committee this misconceived facts stands negated as the export obligations was in fact complied with by M/s. Fermenta Biotech Ltd on 16.07.2021 further, in order to ratify the Norms the Company applied for redemption of Advance Authorization License on 04.07.2022 which was accepted by the DGFT office after payment of the requisite Customs Duty along with interest. This fact has been completely ignored by the department in the impugned Show Cause Notice.

5. Further, the imported goods are not liable for confiscation under section 111 of Customs Act, 1962 as the imported raw material i.e. Crude Fish Body Oil was in fact used to manufacture the final product which is Cholesterol which has been exported by M/s. Fermenta Biotech Ltd. This fact has also been confirmed by the DGFT as DGFT have verified all these aspects before issuance of the redemption cum regularization certificate. Hence, there is no contravention of section 111(d) and section 111(o) of the Customs Act, 1962 as alleged in the impugned Show Cause Notice. Therefore, penalty under section 112(a) and 112(b) of the Customs Act, 1962 cannot be imposed on my client. In support of this contention reliance is placed on the following judgments:

- a) Welspun Corp. Ltd V/s. UOI 2018 (13) G.S.T.L. 302 (Bom.)
- b) Hetero Labs Ltd. V/s Asstt. CC, Chennai 2019 (370) E.L.T. 234 (Telangana)
- c) Arjuna Natural Extracts Ltd. V/s CC, Cochin 2021 (378) E.L.T. 187 (Tri. - Bang.)
- d) Alca Technologies V/s CC, Nhava Sheva-IV 2019 (369) E.L.T. 1447 (Tri. - Mumbai)
- e) Hindustan Unilever Ltd. V/S CC (Export Promotion), Mumbai 2012 (278) E.L.T. 618 (Tri. - Mumbai)
- f) CC (EP) V/s Hindustan Unilever Ltd. 2012 (285) E.L.T. 500 (Bom.)
- g) Jindal Waterways Ltd. V/s CC, (Export), Nhava Sheva 2019 (370) E.L.T. 1451 (Tri. - Mumbai)
- h) Agarwal Industrial Corporation Ltd. V/s. CC, Mangalore 2020 (373) E.L.T. 280 (Tri. - Bang.)
- i) Baby Marine Seafood Retail Pvt. Ltd. V/S CC, Cochin 2021 (377) E.L.T. 872 (Tri. - Bang.)

In view of the above submissions in addition to the reply dated 14.09.2023, I pray before this Hon'ble Adjudicating Authority to kindly drop the impugned Show Cause Notice and confer justice to my client at your hands."

12.2 The Noticee No.3 vide letter dated 14.09.2023 submitted written submission to the SCN. The Noticee No.3 in his written submission has inter-alia submitted as follows:-

“(1) Mr. Arun Balkrishna Khedwal, General Manger (Supply Chain) of M/s. Fermenta Biotech Ltd, which is situated at A-1501, DIL Complex, Majiwada, Ghodbunder Road, Thane, Maharashtra-400610 (hereinafter referred as 'Fermenta'). The said Company is registered with DGFT (Mumbai RA) as “manufacturer exporters” and obtained IEC No. 0388076381 on 01.04.1989 and is engaged in the manufacture of Vitamin D3 amongst other pharmaceutical products. One of the major pharmaceutical products being manufactured by Fermenta is Vitamin D3 at Bharuch, Gujarat SEZ Unit, and for its manufacture, cholesterol is the major raw material required. One of the sources of Cholesterol is Fish Body Crude Oil, which is supplied by M/s. Golden Omega, Chile.

(2) that M/s. Fermenta obtained the advance authorization (under self-declaration basis) for import of “DETOX FOC- 27 FISH BODY OIL CRUDE” under CTH 15042010 and the item to be exported under the said advance authorization was - CHOLESTEROL’. The details of said advance authorization is as under:

No. and date	Items to be imported duty free under authorization			Item to be exported duty free under authorization		
	description of goods	Quantity (Kgs)	CIF Value (Rs)	Description of Goods in (Kgs)	Quantity (Kgs)	FOB value (Rs.)

0310832316 dated 18.10.2019	[detox foc- 27 FISH BODY OIL CRUDE	200000	70707000	CHOLESTEROL (IT CHS code: 29061310)	42000	133150500
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Against the said advance authorization M/s. Fermenta imported the said raw material as detailed hereunder:

<i>Advance authorization No.</i>	<i>Item description</i>	<i>Bill of Entry- No. and date</i>	<i>Quantity imported (Kgs.)</i>	<i>Assessable value (Rs.)</i>	<i>Duty foregone/duty saved (Rs.)</i>
<i>0310832316 dated 18.10.2019</i>	<i>DETOX FOC- 27 FISH BODY OIL CRUDE</i>	<i>5439726 dated 25.10.19</i>	<i>21840</i>	<i>10990106</i>	<i>5380756</i>
		<i>5456322 dated 26.10.19</i>	<i>21670</i>	<i>7799033</i>	<i>3818407</i>
		<i>5944627 dated 04.12.19</i>	<i>20530</i>	<i>7500000</i>	<i>3672000</i>
<i>Total</i>			<i>64040</i>	<i>26289139</i>	<i>12871163</i>

- (3) *That, the Fermenta was not having the facility to manufacture the cholesterol; hence the Fermenta had declared M/s. D. K. Bio Pharma Pvt. Ltd. as their supporting manufacture in the impugned advance authorization issued by DGFT. Therefore, after receipt of said raw material the same was sent to manufacturing plant of M/s. D. K. Bio Pharma Pvt. Ltd., for the purpose of manufacture of cholesterol in terms of Confidentiality Agreement dated 09.06.2017 entered by M/s. Fermenta with D.K. Bio Pharma. Thereafter said D.K. Bio Pharma Pvt. Ltd. send said manufactured cholesterol to the SEZ Unit of Fermenta at Bharuch on job work basis. After receipt of said manufactured cholesterol the same was exported by the Fermenta to the different countries and towards the compliance of export obligation the export obligation.*
- (4) *It is submitted that as per the said authorization the export obligation should have been completed within a period of 18 months i.e. on and before 10.04,2021, whereas due to the innovative product and delay in first batch of production M/s. Fermenta could not complete proportionate export obligation during the period and therefore has sought the extension further Six Months for the same from DGFT vide letter dated 07.04.2021 and has also requested pro-rata reduction in Quantity and CIF and FOB Values of advance license.*
- (5) *It is submitted that the DGFT vide its Notification No. 28/2015-2020 dated 23.09.2021 suo moto extended the export obligation period for Advance Authorisation period till 31 12.2021. Thus, in case of Fermenta the period of export option which was expiring on >0.04.2021 go. sx.cn« upto 31.12.2021 automatically.*
- (6) *M/s. Fermenta got its final product i.e., the Cholesterol manufactured out of the entire quantity of imported raw material from its supporting manufacturer M/s. D. K. Bio Pharma Pvt. Ltd. (as declared in Advance Authorization) and after receipt of final product has exported the same in compliance of export obligation. The details of the export are as under:*

<i>Shipping Bill No.</i>	<i>Shipping Bill Date</i>	<i>Invoice Date</i>	<i>Qty (Kgs)</i>	<i>Amt.(INR)</i>
2616739	23-06-21	21-06-21	2500	1,42,05,750/-
2757332	29-06-21	28-06-21	2500	1,42,05,750/-
2922768	06-07-21	05-07-21	2500	1,43,52,000/-
3050041	12-07-21	09-07-21	2500	1,43,52,000/-
3178034	16-07-21	16-07-21	2480	1,42,56,528/-
	<i>Total</i>		12,480	7,13,72,028/-

- (7) Accordingly, M/s. Fermenta has complied with the condition of export obligation within the stipulated period (as extended by Notification No. 28/2015-2020 dated 23.09.2021).
- (8) In the meanwhile, M/s. Fermenta is in receipt of notice dated 07.03.2022 from the office of the commissioner of Customs (N.S.II), JNCH Mumbai directing them to produce EODC / redemption letter issued by DGFT with respect to impugned advance license or to pay amount to duty foregone along with interest as applicable.
- (9) In response to the said notice M/s. Fermenta vide their letter dated 22.03.2022 replied to the said letter and thereby reported the quantum of export obligation and further informed that they have applied for the extension of period of export obligation (EOP) and also applied for ratification of norms to the DGFT. In support of said submissions, M/s. Fermenta had enclosed the statement of export, statement of import and application for extension of EOP. In view of the said reply, M/s. Fermenta sought further period of 6 months for approval to be obtained from DGFT.
- (10) It is submitted that M/s. Fermenta has applied for Advance Authorisation on self-declaration basis as the import of Crude Fish Body Oil does not fall under the exceptions prescribed under para 4.11 of FTP. Further, since no norms were fixed by DGFT for import of Crude Fish Body Oil to manufacture Cholesterol; M/s. Fermenta had applied for fixation of norms to the norms committee of DGFT which was rejected initially but in the subsequent meeting held on 27.05.2022 norms committee please to ratify the ad hoc norms under para 4.07 of HBP / Vol. 1. The minutes of said meeting dated 27.05.2022, are enclosed herewith. The relevant extract of said ad hoc norms is as under:

<i>I Export product</i>	<i>Quantity</i>	<i>Is., No.</i>	<i>I Import Items</i>	<i>Qty-</i>
Cholesterol (Assay by GC not less than 91.0%)	1 Kg	1	Detox FOC - 27 (fish body oil crude) (Non - edible grade, FFA content not less than 20%)	4.00 Kg.

- (11) In view of the aforesaid ratification issued by DGFT norms committee M/s. Fermenta had applied for redemption of said advance license to the Additional Director of the DGFT vide its application dated 04.07.2022 along with the relevant documents. The copy of said application is enclosed herewith.
- (12) In the said application it was submitted that as per ratification of Ad Hoc norms fixed by norms committee of DGFT there was excess import of raw material to the tune of 14,120 Kg. as against the eligible qty of raw material of 49 920 Kg viz-a-viz actual quantity of 64,040 Kg.

Export Qty = 12,480 Kg.

Eligible RM Qty = 49,920 Kg. (12480 Kg. X 4 Kg.)

Imported RM Qty = 64,040 Kg.

Excess Import of RM Qty. = 14,120 Kg. (64040 Kg- 49920 Kg.)

- (13) *It is submitted that the raw material imported under the impugned advance license was the pilot project being innovative product and therefore, at initial stage the consumption of raw material could not be ascertained. Considering the norms fixed by DGFT Committee; in compliance of the same M/s. Fermenta had calculated the Customs Duty of Rs. 25,25,506.09/- being duty foregone on the excess qty of raw material imported and paid the same along with interest of Rs. 8,96,727.64/- (in total Rs. 34,22,234/-) with the Customs Department. The said amount includes the Demand Draft of Rs. 30,00,000/- tendered by Fermenta at the instance of DRI officers. (The working of said duty along with copy of challan is enclosed herewith.)*
- (14) *In view of the aforesaid and being satisfied with the realization of foreign exchange; DGFT issued the Redemption cum Regularization Letter dated 20.01.2023 with respect to impugned Advance Authorization No. 0310832316 dated 18.10.2019. Copy of the said redemption has also been marked to the office of the commissioner of Custom (INNSAI) Nhava Sheva Sea. (Copy of the said redemption cum regularization letter dated 20.01.2023 is enclosed herewith.)*
- (15) *It is submitted that despite of receipt of copy of redemption letter with respect to impugned advance authorization from DGFT; the Custom Department issued impugned Show Cause Notice on 28.03.2023. In the said Show Cause Notice it has proposed to confiscate the quantity of imported raw material by invoking the provisions of Section 111(d) and 111 (o) of Customs Act as well as demanded the amount of duty foregone equivalent to Rs. 1,28,71,163/-. In the said Show Cause Notice it was alleged that M/s. Fermenta has not fulfilled the export obligation as contemplated by the impugned advance authorization. Further, the said Show Cause Notice also contemplates imposition of penalty on our Client under Section 112(a) and 112(b) being a responsible person for the acts and omission of M/s. Fermenta.*

Submission

- A. It is settled proportion of law that, once DGFT has redeemed and regularized the Advance Authorization then Customs Department is precluded from issuance of Show Cause Notice demanding duty on the grounds of non-fulfillment of export obligation and contravention of terms and conditions of Advance Authorization.***
- A1 M/s. Fermenta has obtained the advance authorization based on self-declaration and has also applied to the DGFT norms committee for the purpose of fixations of norms. Whereas, without considering the output of the application filed for ratification of norms for import of impugned raw material, the department issued the impugned show cause notice demanding duty foregone on the goods imported under the said advance authorization by alleging non fulfillment of export obligation and contravention of provisions of Foreign Trade Policy and Hand Book of Procedures.***
- A2 It is submitted that admittedly the imported raw material is used by Fermenta through supporting manufacturer as mentioned in the advance authorization in manufacture of finished goods i.e. Cholesterol which was exported by Fermenta and has realized the foreign exchange. The allegation made in impugned show cause notice with respect to rejection of application by norms fixation committee of DGFT and thereby rendering impugned advance license to the nullity is contrary to the facts as the DGFT norms committee has ratify the norms by fixing Ad Hoc norms during their meeting dated 27.05.2022. Further, on the basis during their meeting dated 27.05.2022. Further, on the basis of the ratification M/s. Fermenta has complied with all the procedural aspects for the purpose of redemption and regularization of the said advance authorization;***

accordingly, M/s. Fermenta is in receipt of Redemption cum Regularization Certificate dated 20.01.2023 much prior to issuance of present Show Cause Notice on 28.03.2023.

A3 Thus, it is submitted that when the competent authority i.e. DGFT has already adjudicated the export obligation in favour of M/s. Fermenta then the issuance of impugned Show Cause Notice on the ground of non-fulfillment of export obligation become infructuous and hence, needs to be set aside in light of following judgements:-

- (a) *Arjuna Natural Extracts Limited Vs. CC 2021 (378) E.L.T 187 (Tri. – Bangalore)*
- (b) *ALCA Technologies vs CC 2019 (369) E.L.T. 1447 (Tri. - Mumbai)*
- (c) *Hetero Labs Limited vs Assistant Commissioner 2019 (370) E.L.T. 234 (Telengana)*

B. It is settled preposition of law that once the imported raw material is consumed in the manufacture of finished product and exported then such raw material cannot be confiscated under section 111(d) and 111(o) of the Customs Act.

B1. In case of Fermenta admittedly the imported raw material is used in the manufacture of finished product i.e. cholesterol and has been exported. Further, the DGFT has also confirmed the same by way of issuance of Redemption cum Regularization Letter dated 20.01.2023, w.r.t. impugned Advance Authorisation. In view of the aforesaid it is submitted that when the DGFT redeemed the Advance Authorisation after satisfaction with the compliance of terms and conditions of Foreign Trade Policy and Exemption Notification No. 18/2015-Cus dated 01.04.2015. Therefore, the allegations made in the impugned Show Cause Notice w.r.t contravention of FTP and the terms and conditions of said Exemption Notification does not survive and thereby the impugned Show Cause Notice becomes infructuous. It is submitted that admittedly the impugned SCN is issued after receipt of redemption letter from the DGFT and without considering the same. It is submitted that the Section 111(d) and section 111(o) of the Custom Act 1962, contemplates confiscation of goods in case of goods imported by non-observing the prohibitions imposed by or under this Act or by non-observing conditions sanctioned by proper officer. Whereas, in present case the raw materials were imported under valid Advance Authorisation and were used in the manufacturer of finished product for export on realization of Foreign Exchange. Further, the procedural aspects w.r.t. compliance of Advance Authorisation has been regularized by the competent authority i.e., DGFT vide Redemption cum Regularization Letter dated 20.01.2023. In view of the aforesaid it is submitted that there is no contravention or non-observation as contemplated under section 111(d) and 111(o) of Customs Act, 1962 and therefore, proposal for confiscation of raw material imported by utilizing impugned Advance Authorisation is not sustainable in the light of following judgments:

Hindustan Unliver Ltd vs. CC Commissioner of Customs EP 2012 (278) E.L.T618 (Tri-Bom) Affirmed by Bombay High Court in Commissioner of Customs EP vs Hindustan Unliver Ltd 2012 (285) E.L.T 500 (Bom).

C. It is settled preposition of law that no penalty is imposable under Section 112(a) and 112(b) of the Customs Act, when no goods are liable for confiscation under Section 111 of the Customs Act, 1962.

C1. In case of our Client, it is alleged that he is responsible person for the import of Crude Fish Body Oil under impugned Advance Authorisation by M/s. Fermenta. Further, it is also alleged that the said Advance Authorization was wrongly utilized by M/s. Fermenta for imposition of raw material and thereby said imported raw material is liable for confiscation.

C2 In this regard, in the previously mentioned para it is submitted that the imported raw material is duly imported under valid Advance Authorisation and has been used in the manufacture of export goods. The said fact has been endorsed by the DGFT by issuing the Redemption cum Regularization Letter dated 20.01.2023. Thus, it is submitted that after the issuance of Redemption Letter, the terms and conditions w.r.t. impugned Advance Authorization stands fulfilled and thereby the importer gets

himself exonerated from the conditions of bond. Therefore, the imported raw materials are not liable for confiscation since, there was no violation of conditions of Advance Authorisation and thereby no penalty can be imposed under section 112 of custom Act, 1962. In view of the aforesaid it is submitted that in the absence of fulfillment of the pre-condition of confiscation of imported raw material no penalty under section 112 of Custom Act 1962, is imposable. In support of the above contention, the reliance is placed on the following judgment:

- a) Jindal waterway Ltd V/s. CC Export- Nhava Sheva 2019 (370) E.L.T 1451 (Tri.-Mum)*
- b) Agarwal Industries Corporation Ltd. V/s CC, Mangalore 2020 (373) E.L.T 280 (Tri. Bang)*
- c) Baby Marine Sea Food retail Pvt. Ltd. V/s. CC Cochin 2021 (337) E.L.T 872 (Tri-Bang)."*

RECORDS OF PERSONAL HEARING

13. In order to follow principle of natural justice, an opportunity of personal hearing was granted to Noticee on 20.01.2025 & 13.08.2025 vide this office letter dated 07.01.2025 & 01.08.2025. Noticee did not avail the opportunity of Personal Hearing. Further, an opportunity of personal hearing was granted to Noticee on 09.09.2025 vide this office letter dated 29.08.2025. However, the same could not be held due to some technical glitch in Virtual Hearing. Accordingly, Noticees requested to fix the personal hearing on the next date **i.e. 10.09.2025**. Advocate Shri H.G. Dharmadhikari on behalf of Noticee No. 01- M/s. Fermenta Biotech Limited, Advocate Ms. Marilyn Alvares on behalf of Noticee No 02- Sh. Amol Narayan Lone and Advocate Sh. D.A. Bhalerao on behalf of NoticeeNo03- Shri. Arun Khedwal appeared before this adjudicating authority (virtually) on 10.09.2025.

13.1 Advocate Shri H.G. Dharmadhikari on behalf of Noticee No. 01, M/s. Fermenta Biotech Limited appeared before this adjudicating authority (virtually) on 10.09.2025 and submitted as follows: -

- *"Written submission dated 15.09.2023 & 10.09.2025 to be taken on record.*
- *Noticee has received the Redemption Certificate from the DGFT as per Par 4.49 of Hand Book of Procedure regarding the advance authorization.*
- *He submitted that, the copies of Customs Duty payment Challans regarding the Redemption Certificate shall be submitted by today.*
- *That he had already submitted the copies of the Redemption Certificate along with Challans in the year 2023 to Customs Department. Adjudicating authority asked him to submit the copy of receipt received from the Customs Dept regarding submission of Redemption certificate and Challans, to which Shri H.G. Dharmadhikari, submitted that the same shall be by submitted today.*
- *That, in view of above submissions and if no demand of Customs Duty is left over, the demand in Show Cause Notice against Noticee No 01, may be dropped.*
Nothing further to add."

13.1.1 However, it is noticed that the Noticee No. 01 did not provided the copy of receipt received from the Customs Dept regarding submission of Redemption certificate and Challans. A reminder was sent to the Noticee, vide email dated, still, Noticee fail to submit the same.

13.2 Advocate Ms. Marilyn Alvares on behalf of Noticee No 02- Sh. Amol Narayan Lone, appeared before this adjudicating authority (virtually) on 10.09.2025 and submitted as follows: -

- *" Written submission dated 14.09.2023 & 09.09.2025 and caselaw complication to be taken on record.*

- *Ld. Counsel contended that, if the demand is dropped against the Noticee No. 1 of the Show Cause Notice, then no action can be taken against Noticee No 02.*
- *Even if the demand is not dropped against Noticee No. 01, Noticee No 02 has not violated any provisions of the Customs Act, as he is only an employee of the Noticee No 01 and not director or partner of the M/s. Fermanta Biotech Ltd (IEC: 0388076381). That, Noticee No 02 is Business and finance Controller of M/s. Fermanta Biotech Ltd and is not the main person responsible for taking decisions of the company and therefore , no penalty can be imposed on Noticee No 02, under section 112 (a) and or 112 (b) of the Customs Act 1962.*
- *That, on the basis of above submissions, proceedings against Noticee No 02 should be dropped.*
Nothing further to add."

13.3 Advocate Sh. D.A. Bhalerao on behalf of NoticeeNo03- Shri. Arun Khedwal, appeared before this adjudicating authority (virtually) on 10.09.2025 and submitted as follows: -

- *"Written submission dated 14.09.2023 a 09.09.2025 to be taken on record.*
- *That Noticee No. 01, M/s. Fermenta Biotech Ltd applied before Norms Committee to re-work the input and output norms w.r.t. to Advance Authorization issued.*
- *Noticee No. 01 have been issued redemption certificate by the DGTF as per Para 4.49 of Hand Book of Procedure and remaining duty is paid.*
- *That he has submitted Challans of Customs Duty payment with respect to Redemption Certificate issued by the DGFT*
- *That in view of the above submissions, proceeding against Noticee No. 03 may be dropped.*
Nothing further to add."

DISCUSSION AND FINDINGS

14. I have carefully gone through the Show Cause Notice (SCN), the applicable legal provisions, defense submissions, material on record and facts of the case. Before going into the merits of the case, I would like to discuss whether the case has reached finality for adjudication.

PRINCIPLE OF NATURAL JUSTICE

15. Before going into the merits of the case, I observe that in the instant case, in compliance of the provisions of Section 28(8) the Customs Act, 1962 and in terms of the principle of natural justice, personal hearing opportunity was granted to the Noticee(s) and **Personal Hearing was attended by the authorized representative of the Noticee(s) on 10.09.2025.**

. The Authorized Representatives of Noticee(s) reiterated their written submissions and confirmed that nothing more they want to add to their submissions. Moreover, as per the provisions of Section 28(9) of the Customs Act, 1962, this adjudicating authority is under strict legal obligation to complete the adjudication proceedings within a time bound manner. I thus find that the principle of natural justice has been followed and I can proceed ahead with the adjudication process. I also refer to the following case laws on this aspect-

- Sumit Wool Processors Vs. CC, Nhava Sheva [2014 (312) E.L.T. 401 (Tri. - Mumbai)]
- Modipon Ltd. vs. CCE, Meerut [reported in 2002 (144) ELT 267 (All.)]

FRAMING OF ISSUES

16. Pursuant to a meticulous examination of the Show Cause Notice and a thorough review of the case records, the following pivotal issues have been identified as requisite for determination and adjudication:

- A.** As to whether the Noticee contravened the conditions of FTP, HBP, Advance Authorisation No. 0310832316 dated 18.10.2019 and Notification No. 18/2015-Cus., dated 01.04.2015, thereby rendering the benefit of exemption inadmissible.
- B.** As to whether the subsequent ratification of norms and issuance of redemption-cum-regularisation letter by DGFT absolves the Noticee of non-compliance of conditions of Customs Notification and consequent duty liability.
- C.** As to whether duty foregone of Rs.1,28,71,163/- along with interest is recoverable under the provisions of the Notification No. 18/2015-Cus dated 01.04.2015 and relevant Paras of Foreign Trade Policy 2015-2020 and Hand Book of Procedures 2015-2020, the conditions specified in the advance authorisation license issued to them and in terms of the bond furnished by them read with Section 143(3) of the Customs Act, 1962;
- D.** As to whether the imported goods are liable for confiscation under Sections 111(d) and 111(o) of the Customs Act, 1962.
- E.** As to whether penalties are imposable on M/s. Fermenta Biotech Ltd. under Section 112(a) and/or 112(b), and on the co-noticees under Section 112(a) and/or 112(b) of the Customs Act, 1962.

A. NOW I TAKE THE FIRST QUESTION/ISSUE, WHETHER THE NOTICEE NO. 1 CONTRAVENED FTP, HBP, THE CONDITIONS OF ADVANCE AUTHORISATION NO. 0310832316 DATED 18.10.2019 AND NOTIFICATION NO. 18/2015-CUS., DATED 01.04.2015, THEREBY RENDERING THE BENEFIT OF EXEMPTION INADMISSIBLE.

VIOLATION OF ACTUAL USER CONDITION BY DIVERSION OF GOODS TO ANOTHER ENTITY FOR MANUFACTURING ON JOB WORK BASIS:

In the Show Cause Notice it is alleged that Importer contravened FTP, HBP, the conditions of Advance Authorisation No. 0310832316 dated 18.10.2019 and Notification No. 18/2015-Cus., dated 01.04.2015, by diversion of goods to M/s. DK Pharma Chem, thereby not adhering to Actual User Condition. In order to examine the same, I now proceed to examine the records before me, the Statements of Sh. Arun Balakrishna Khedwal, & Sh. Amol Narayan Lone, legal provisions in this regards.

STATEMENTS ON RECORD

17. I observe that in their voluntary statement dated 19.05.2022 recorded by DRI official under section 108 of Customs act, 1962, Shri. Arun Balakrishna Khedwal, General Manager – Supply Chain of M/s. Fermenta Biotech Limited, corroborated by Shri. Amol Narayan Lone, Business and Finance Controller of M/s. Fermenta Biotech Limited in his voluntary statement dated 19.05.2022 recorded by DRI official under section 108 ibid, answering a specific question has stated as under:

“Q No. 4: Please provide a brief note on the manufacture activities under taken in respect of imported crude fish body oil from the stage of import to final product manufacturing till export of the said goods for fulfilling export obligation under the above advance authorization.

Ans: Initially the crude fish body oil was being imported from the supplier M/s. GOLDEN OMEGA S.A., Chile by M/s. DK Biopharma Private Limited. We have purchased the said crude fish body oil

from M/s. DK Biopharma Private Limited as we were having advance authorization license issued by DGFT which allows us to procure the imported crude fish body oil without payment of duty. As we do not have facility to manufacture Cholesterol Aqua, we have signed a Confidentiality Agreement (CDA) with M/s. DK Biopharma Private Limited for manufacture of cholesterol. They are also our supporting manufacturer in the advance authorization issued to us. After import, the crude fish body oil was directly transported from the port of import to the manufacturing unit of M/s. DK Biopharma Private Limited situated at Plot No.15, 16, 21/12 & 21/13 MIDC, Morivali, Ambernath, Thane, Maharashtra – 421501, by our customs brokers. After receipt of cargo at this unit, quality testing parameters are carried out at M/s. DK Biopharma Private Limited and then the cargo is released for manufacturing purpose. **However, we have been informed by them that due to lack of facility and short capacity, they used to send the part cargo to another entity M/s. DK Pharma Chem situated at F-32, Maharashtra Industrial Development Corporation, Badlapur, Maharashtra 421503, which is about 4 to 5 kms from this unit for the purpose of manufacturing. This exercise of transferring the cargo is done after quality testing. The cargo sent to DK Pharma Chem will be processed there upto CST crude wet and then it will be sent back to M/s. DK Biopharma where after purification, drying and packing the resultant product Cholesterol Aqua is transferred to our warehouse situated at Mumbai.** We used to file shipping bill subsequently for export of this cholesterol aqua so as to fulfill the export obligation.

Q No. 5: Shri. Rakesh Bakshi, Managing Director of M/s. DK Biopharma Private Limited has informed that, due to lack of facility and short capacity at their manufacturing unit, part quantity of the imported Fish Body Oil Crude is sent to M/s. DK Pharma Chem situated at F-32, Maharashtra Industrial Development Corporation, Badlapur, Maharashtra 421503 for processing under job work. Did this happen with your approval? What are the processes carried out at DK Pharma Chem and what machinery is available there for carrying out the processes?

Ans: Yes, Shri. Rakesh Bakshi, Managing Director of M/s. DK Biopharma Private Limited have informed us the same and taken us into confidence before sending the imported Fish Body Oil Crude to M/s. DK Pharma Chem situated at F-32, Maharashtra Industrial Development Corporation, Badlapur, Maharashtra 421503 for processing under job work. We were informed that necessary machinery to extract cholesterol from fish body oil crude is available at M/s. DK Pharma Chem, which is also managed by Shri. Rakesh Bakshi.

Further, on drawing his attention to the relevant provisions of FTP, Shri. Arun Balakrishna Khedwal, has stated as under:

“Q No. 12: As per para 4.16 of foreign trade policy 2015-2020, “advance authorisation and /or material imported under Advance Authorisation shall be subject to ‘actual user’ condition. The same shall not be transferable even after completion of export obligation’. Further, as per notification No. 018/2015 – customs dated 01.04.2015, the materials imported under advance authorization shall not be transferred or sold. However, as per your answer to question no. 4 above, due to lack of facility and short capacity, M/s. D.K. Biopharma Pvt. Ltd. used to send the cargo to another entity M/s. DK Pharma Chem situated at F-32, Maharashtra Industrial Development Corporation, Badlapur, Maharashtra 421503, which is about 4 to 5 kms from this unit for the purpose of manufacturing. Please comment.

Ans: I would like to state that we were not aware of the said provision. I would also like to state that **M/s. DK Biopharma Private Limited have informed us about their arrangement of transferring the imported goods under job work to another entity namely, M/s. DK Pharma chem.** However, since everything is done under job work provisions, we are of the opinion that we have followed ‘actual user’ condition prescribed at para 4.16 of foreign trade policy and there is no violation of conditions prescribed in notification No. 018/2015 – customs dated 01.04.2015. In this regard, I once again reiterate that M/s. DK Pharma Chem were only undertaking job work assigned by M/s. DK Biopharma Private Limited. After processing of crude fish body oil and manufacture of CST crude wet on job work basis, M/s. D K Pharma Chem has returned the said goods to M/s. DK Biopharma Private Limited, where after purification, drying and packing, it was returned to M/s. Fermenta Biotech Limited and we at M/s. Fermenta Biotech Limited were filing shipping bill for export of the final product. Further, we are of the opinion that notification No. 18/2015 permits transfer of goods on job work.

Q. No. 14: Do you agree that the goods imported duty free by M/s. Fermenta Biotech Limited was diverted/ transferred by your supporting manufacturer to another entity M/s. DK Pharma Chem for job work, in violation of conditions prescribed in Advance Authorization scheme.

Ans: Due to lack of facility and short capacity, M/s. DK Biopharma Private Limited, who is our supporting manufacturer as per the advance authorisation issued to us, used to transfer the imported duty-free crude fish body oil to M/s. DK Pharma Chem for processing on job work basis. However, neither we nor M/s. DK Biopharma Private Limited, have sold the goods in domestic tariff area (DTA), it is only on the basis of job work. After the process, the said goods have been transferred back to M/s. DK Biopharma Private Limited under proper job work challan for further processing and transferred to M/s. Fermenta Biotech Limited for final export. Hence, we are of the opinion that there was no violation of conditions prescribed in Advance Authorization scheme.”

17.1 From the foregoing, it is observed that Shri. Arun Balakrishna Khedwal, General Manager – Supply Chain of M/s. Fermenta Biotech Limited in his voluntary statement dated 19.05.2022 recorded by DRI officials under section 108 of Customs act, 1962, and corroborated by Shri Amol Narayan Lone, Business and Finance Controller of M/s. Fermenta Biotech Limited in his voluntary statement dated 19.05.2022 recorded by DRI official under section 108 ibid, has submitted that:

M/s. Fermenta Biotech Limited imported crude fish body oil from the supplier M/s. Golden Omega S.A., Chile, through M/s. DK Biopharma Private Limited. The said crude fish body oil was procured & imported by M/s. Fermenta Biotech Limited from M/s. DK Biopharma Private Limited by availing the benefit of an Advance Authorisation issued by DGFT, thereby importing the goods without payment of duty.

That, M/s. Fermenta Biotech Limited does not possess the facility to manufacture Cholesterol Aqua from Fish Body Oil Crude and, therefore, entered into a Confidentiality Agreement (CDA) with M/s. DK Biopharma Private Limited for the manufacturing of cholesterol. M/s. DK Biopharma Private Limited has been designated as the supporting manufacturer under the said Advance Authorisation issued by DGFT.

Upon import, the crude fish body oil was transported directly from the port of import to the manufacturing facility of M/s. DK Biopharma Private Limited, located at Plot No. 15, 16, 21/12 & 21/13, MIDC, Morivali, Ambernath, Thane, Maharashtra – 421501.

However, with the consent of M/s. Fermenta Biotech Limited, the imported crude fish body oil was sent by M/s. DK Biopharma Private Limited to M/s. DK Pharma Chem-located at F-32, MIDC, Badlapur, Maharashtra – 421503 (approximately 4–5 km from the main unit), on a job work basis, due to capacity constraints and the absence of specific facilities at DK Biopharma’s unit.

After initial processing at M/s. DK Pharma Chem, the goods were returned to M/s. DK Biopharma Private Limited under proper job work challans for further processing. Subsequently, the processed goods were transferred to M/s. Fermenta Biotech Limited for final export.

17.2 I observe that Noticee No. 01, M/s. Fermenta Biotech Limited, has not challenged the above facts in its reply to Show Cause Notice, written submissions or during the personal hearing; therefore, the facts attains finality.

LEGAL PROVISIONS

17.3 I observe that, as per Para 4.16 of the Foreign Trade Policy, Paras 4.35 and 4.10 of the Handbook of Procedures, Notification No. 018/2015–Customs dated 01.04.2015, and the conditions sheet attached to the Advance Authorization, the imported goods cannot be transferred to another unit—even for job work—unless jobber/ supporting manufacturer name is endorsed on authorisation by Regional Authority. This endorsement is **mandatory** where prior import before export is a

condition for availing Advance Authorisation scheme and authorisation holder desires to have material processed through any other manufacturer or jobber.

Para 4.16 of Foreign Trade Policy restricts use of such duty-free imported goods against Advance Authorisation and stipulates that such import will be subject to actual user condition. It further demands that even after fulfillment of the export obligations, such goods remaining cannot be transferred.

Para 4.10 of the Hand Book of Procedure clearly states that Transfer of any duty-free material imported or procured against Advance Authorisation from one unit of a company to another unit for manufacturing purpose shall be done with prior intimation to jurisdictional Customs Authority.

Para 4.35 of the Hand Book of Procedure stipulates that imported material may be used in any unit of holder of Advance Authorisation subject to condition of paragraph 4.10 of this Handbook or jobber/ supporting manufacturer provided same is endorsed on authorisation by Regional Authority. If applicant desires to have name of any manufacturer or jobber added to authorisation, he may apply. Such endorsement **shall be mandatory** where prior import before export is a condition for availing Advance Authorisation scheme and authorisation holder desires to have material processed through any other manufacturer or jobber.

Condition Sheet of advance authorization, relating to transfer of materials:

2. *Authorisation Holder shall export/supply the product(s) as per the quantity (ies) and value(s) specified in the Table at Serial 1 above within a period prescribed under Paragraph 4.22 of the Foreign Trade Policy 2015-2020.*

6. *The exempt goods imported against the authorisation shall only be utilised in accordance with the provisions of paragraph 4.12 and paragraph 4.16 of the Foreign Trade Policy 2015-2020 and other provisions and the relevant Customs Notification [Customs Notification No. 18/2015 dated 1.4.15 (for physical exports), as the case may be as amended from time to time;*

14. *The authorisation holder to comply with the provisions of paragraph 4.10 and paragraph 4.35 of the Hand book of Procedures 2015-2020, as amended from time to time, with regard to transfer of any material from one unit of the authorisation holder to any other unit of the authorisation holder included in the IEC or to the supporting manufacturer.*

15. *Import and Export of items prohibited/Restricted/Reserved for State Trading Enterprises shall be governed by the provisions contained in Paragraph 4.18 of the Foreign Trade Policy 2015-2020.*

16. *All conditions of the Foreign Trade Policy 2015-2020 and the Handbook of Procedures 2015-2020 and the ITC (HS) Classification Book as amended shall be applicable unless specifically dispensed with against this Authorisation.*

Further, condition no. (x) of the Notfn. No. 018/2015 – Cus. dated 01.04.2015, prohibits any transfer or sale of the goods imported by availing benefit of the said notification.

17.4 In view of the above, I find that M/s. Fermenta Biotech Limited imported crude fish body oil from the supplier M/s. Golden Omega S.A., Chile, through M/s. DK Biopharma Private Limited. The said crude fish body oil was procured & imported by M/s. Fermenta Biotech Limited from M/s. DK Biopharma Private Limited by availing the benefit of an Advance Authorisation licence issued by DGFT, thereby importing the goods without payment of duty. That, M/s. Fermenta Biotech Limited does not possess the facility to manufacture Cholesterol Aqua from Fish Body Oil Crude and, therefore, entered into a Confidentiality Agreement (CDA) with M/s. DK Biopharma Private Limited for the manufacturing of cholesterol. M/s. DK Biopharma Private Limited has been designated as the supporting manufacturer under the said Advance Authorisation issued by DGFT.

Upon import, the crude fish body oil was transported directly from the port of import to the manufacturing facility of M/s. DK Biopharma Private Limited, located at Plot No. 15, 16, 21/12 & 21/13, MIDC, Morivali, Ambernath, Thane, Maharashtra – 421501. However, with the consent of M/s. Fermenta Biotech Limited, the imported crude fish body oil was sent by M/s. DK Biopharma Private Limited to M/s. DK Pharma Chem—also managed by Shri Rakesh Bakshi, Managing Director of M/s. DK Biopharma Private Limited—located at F-32, MIDC, Badlapur, Maharashtra – 421503 (approximately 4–5 km from the main unit), on a job work basis, due to capacity constraints and the absence of specific facilities at DK Biopharma’s unit. After initial processing at M/s. DK Pharma Chem, the goods were returned to M/s. DK Biopharma Private Limited under proper job work challans for further processing. Subsequently, the processed goods were transferred to M/s. Fermenta Biotech Limited for final export.

I find that Noticee No. 01, M/s. Fermenta Biotech Limited, has not challenged the above facts in its written submissions or during the personal hearing; therefore, the facts attain finality.

Further, it is noted that, both Shri Arun Khedwal and Shri. Amol Narayan Lone, have agreed that they are aware that M/s. DK Biopharma Private Limited, their supporting manufacturer, is regularly transferring the goods to another unit by name M/s. DK Pharma Chem, in clear violation of conditions prescribed. Para 4.16 of Foreign Trade Policy, Para 4.35 and 4.10 of Hand Book of Procedures, Notification No. 018/2015 – Customs dated 01.04.2015, conditions sheet attached to their advance authorization, which clearly states that the imported goods cannot be transferred to another unit even for job work unless it is mentioned in the relevant advance authorisation. In fact, it is with the prior consent of M/s. Fermenta Biotech Limited, M/s. DK Biopharma Private Limited was transferring the imported goods to M/s. DK Pharma Chem for processing and job work. I find that, Para 4.16 of Foreign Trade Policy restricts use of such duty-free imported goods and stipulates that such import will be subject to actual user condition. It further demands that even after fulfillment of the export obligations, such goods remaining cannot be transferred. Para 4.35 of the foreign trade policy stipulates that imported material may be used in any unit of holder of Advance Authorisation subject to condition of paragraph 4.10 of this Handbook or jobber/ supporting manufacturer provided same is endorsed on authorisation by Regional Authority. If applicant desires to have name of any manufacturer or jobber added to authorisation, he may apply. Such endorsement shall be mandatory where prior import before export is a condition for availing Advance Authorisation scheme and authorisation holder desires to have material processed through any other manufacturer or jobber. Para 4.10 of the HBP clearly states that Transfer of any duty-free material imported or procured against Advance Authorisation from one unit of a company to another unit for manufacturing purpose shall be done with prior intimation to jurisdictional Customs Authority. In the case of subject advance authorisation, it is an admitted fact that, the supporting manufacturer of the importers have transferred the duty-free import goods to another manufacturing unit violating these conditions, with the knowledge of the importers. Further, condition no. (x) of the Notfn. No. 018/2015 – Cus. dated 01.04.2015, prohibits any transfer or sale of the goods imported by availing benefit of the said notification.

17.5 To summarise, the importers have failed to fulfill the “**Actual User**” condition as stipulated under **Para 4.16 of the Foreign Trade Policy** which states that material imported under Advance Authorisation shall not be transferable even after completion of export obligation. Further, as per **4.35 (HBP) regarding Facility of Supporting Manufacturer/ Jobber/co- licensee, which states that Imported material may be used in any unit of holder of Advance Authorisation or jobber / supporting manufacturer provided same is endorsed on authorisation by Regional Authority. If applicant desires to have name of any manufacturer or jobber added to authorisation, he may apply. Such endorsement shall be mandatory where prior import before export is a condition for availing Advance Authorisation scheme and authorisation holder desires to have material processed through any other manufacturer or jobber.** Further, as per **Para 4.10 of the Hand Book of Procedure** Transfer of any duty-free material imported or procured against Advance Authorisation from one unit of a company to another unit for manufacturing purpose shall be done with prior intimation to jurisdictional Customs Authority. Further, **Condition Sheet of the Advance Authorisation** clearly mentions that the license holder/importer must comply with the above

provisions of the Foreign Trade Policy and the Handbook of Procedures. It is also pertinent to mention that **Notification No. 18/ 2015 – Customs, dated 01.04.2015 under Sr. No x, stipulates that the said materials shall not be transferred or sold and can only be transferred to a job worker for processing after intimation/approval from Jurisdictional Customs Authority permitting transfer of materials for job work. Further, as per Sr. No. ii (a), authorisation shall bears the name and address of the importer and the supporting manufacturer in cases where the authorisation has been issued to a merchant exporter.** That, during searches at the premises of the Importer M/s. Fermenta Biotech Ltd. on 12.04.2022 and subsequent investigation by DRI officials and voluntary statements of Sh. Arun Khodwal & Sh. Amol Narayan Lone dated 12.04.2022 & 19.05.2022, recorded by DRI officials under section 108 of Customs Act, 1962, I find that the supporting manufacturer of M/s. Fermenta Biotech Limited i.e., M/s. D.K. Biopharma Pvt. Ltd. **did not had the required capacity and facility/machinery to undertake the job work and was instead regularly transferring the imported duty-free goods to another entity M/s. DK Pharma Chem for job work, with the prior-consent & full knowledge of the importer.** However, **neither** M/s. Fermenta Biotech Ltd. approached the DGFT for adding or endorsing the name of the firm **M/s. DK Pharma Chem** in the advance authorisation, as supporting manufacturer for job work, **nor** it has intimated/obtained permission from the Customs authorities for sending the goods imported against the subject Advance Authorisation for job work to **M/s. DK Pharma Chem.** **Such endorsement is mandatory where prior import before export is a condition for availing Advance Authorisation scheme and authorisation holder desires to have material processed through any other manufacturer or jobber & cases where the authorisation has been issued to a merchant exporter.** Therefore importer M/s. Fermenta Biotech Limited is in violation the mandatory and essential conditions of Foreign Trade Policy, Hand Book of Procedure & Customs Notification No. 18/2015 dated 01.04.2015 and **rendered exemption of duty benefit inadmissible.**

17.6 From the foregoing, I find that the importer by their deliberate actions in omitting to abide by the mandatory and essential conditions/ provisions of the Foreign Trade Policy read with Hand Book of Procedures have grossly failed to comply with the **mandatory and essential** of the Advance Authorization & notification and imported restricted goods duty free by availing undue benefit of the same. Importer has clearly violated **Actual User condition** and diverted goods to an altogether new entity **M/s. DK Pharma Chem**, not endorsed on the Advance Authorisation. Importer has **neither** got the name of M/s. DK Pharma Chem, endorsed as jobber/supporting manufacturer on authorisation by Regional Authority, DGFT **nor** intimated the concerned Customs Authority. I observe that this condition is substantial and crucial for availing the exemption benefit under the Advance Authorisation Scheme and the aforementioned Customs Notification.

This has also led to contravention of the provisions of the notification No. 18/2015 dated 01.04.2015. In this regard, on 30 July 2018, the constitution bench of the Supreme Court of India (Court), in Commissioner of Customs (Import), Mumbai (Appellant) v/s. Dilip Kumar and Company & Ors. (Respondent) [Civil Appeal No. 3327 OF 2007], has pronounced the principles for the interpretation of exemption notifications in taxation statutes in the following manner: -

“52.To sum up, we answer the reference holding as under

(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.

(3) The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export Case (supra) stands overruled.”

Therefore, i find that mandatory and essential conditions prescribed under the Foreign Trade Policy (FTP), Handbook of Procedures (HBP), Condition Sheet of the Advance Authorisation, and Customs Notification No. 18/2015 dated 01.04.2015 relating to the imported goods has been wilfully violation

by the importer, & therefore has rendered the exemption benefits claimed under the Advance Authorisation and Customs Notification 18/2015 dated 01.04.2015 null and void.

B. NOW, I TAKE UP THE ISSUE, AS TO WHETHER THE SUBSEQUENT RATIFICATION OF NORMS AND ISSUANCE OF REDEMPTION-CUM-REGULARISATION LETTER BY DGFT ABSOLVES THE NOTICEE NO. 01 OF NON-COMPLIANCE OF CONDITIONS OF CUSTOMS NOTIFICATION AND CONSEQUENT DUTY LIABILITY.

The Noticee No.1, vide its submission dated 15.09.2023 & 10.09.2025 and submission during Personal Hearing held on 10.09.2025 strongly relies on the fact that DGFT has issued a Redemption-cum-Regularisation Letter dated 20.01.2023 after ratifying the norms on 27.05.2022. They submit that once DGFT has accepted that the Export Obligation (EO) has been fulfilled, Customs cannot raise a demand. They also submit that their exports have been physically verified and that there is no diversion or misuse.

In order to examine the same, i now proceed sequentially to look in to the matter of Rejection/Ratification of Norms by Norms Committee first and thereafter the Issuance of Redemption cum Regularisation Certificate by RA DGFT, Mumbai, and the calculation of duty liability.

ISSUE OF REJECTION & SUBSIQUENT RATIFICATION BY THE NORMS COMMITTEE, DGFT

18. In the instant case, it is observed that norms have not been notified by the DGFT in respect of export of '*Cholesterol*' manufactured out of the imported '*Fish body oil (Crude)*'. M/s. Fermenta Biotech Limited, have obtained the advance authorisation 0310832316 dated **18.10.2019** under self-declaration basis as per paragraph 4.07 of Hand Book of Procedures and thereafter, filed an application with the Norms Committee (NC) in DGFT for fixation of SION/ adhoc norms. The details of the advance authorisation obtained by them are as under: -

Advance Authorisation No. and Date	Details of goods to be imported as per the Advance Authorisation	Description of goods to be exported under the Advance Authorisation	Port of registration	Issued by
0310832316 dated 18.10.2019	DETOX FOC-27 (FISH BODY OIL CRUDE)	Cholesterol	Nhava Sheva sea port - INNSA1	DGFT, Mumbai

M/s. Fermenta Biotech Limited have utilised the said advance authorisation, for duty free clearance of different quantities of crude fish body oil imported under 03 (three) Bills of Entry as detailed below through Nhava Sheva Port (INNSA1).

Import data						
Advance Authorization License no. & Date	B.E. No. and Date	Qty imported (in Kgs)	Supplier	Place of import	Assessable value (Rs.)	Duty foregone (Rs.)
0310832316 dated 18.10.2019	5439726 dated 25.10.2019	21840	M/s. GOLDEN OMEGA S.A., Chile	Nhava Sheva port (innsa1)	10990106	5380756
	5456322 dated 26.10.2019	21670			7799033	3818407
	5944627 dated	20530			7500000	3672000

	04.12.2019					
TOTAL		64,040			2,62,89,139	1,28,71,163

18.1 I observe that, the application for the fixation of norms in terms of paragraph 4.07 of Hand Book of Procedures was dealt by the Norms Committee and the proceedings are recorded in the Minutes of Meeting Meet No. 10/82-ALC4/ 2019 dated 29.11.2019 at Sl. No. 183 – Case No. 172/10/82-ALC4/2019 - pertaining to M/s. Fermenta Biotech Limited. Relevant extract is reproduced as follows:

183	Case No.:172/10/82-ALC4/2019	Party Name:FERMENTA BIOTECH LIMITED	Meet No/Date:10/82-ALC4/2019 29.11.2019	Status: Rejected
	HQ File :01/82/050/00746/AM20/	RLA File :03/94/040/00553/AM20/	Lic.No/Date:0310832316 18.10.2019	
	Decision: The Committee considered the case as per online generated agenda and it was observed that the import item –DETOX FOC-27 Fish Body Oil Crude having ITC HS – 15042010 comes under Chapter 15 and as per para 4.11 (A) (i) of the FTP 2015-20 , all vegetable / edible oils classified under Chapter 15 of ITC (HS) are ineligible for import on self- declaration basis under para 4.07 of the FTP. In view of above, the Committee decided to reject the case.			

I observe that the Norms Committee of the DGFT in its meeting has rejected the application filed by M/s. Fermenta Biotech Limited in respect of their above advance authorization with the following Decision:

“The Committee considered the case as per online generated agenda and it was observed that the import item – DETOX FOC - 27 Fish Body Oil Crude having ITC HS -15042010 comes under Chapter 15 and as per para 4.11 (A) (i) of the FTP 2015-20, all vegetable/edible oils classified under Chapter 15 of ITC (HS) are ineligible for import on self-declaration basis under para 4.07 of the FTP. In view of the above, the Committee decided to reject the case”.

18.1.1 Further, the subject Advance Authorisation finds mention in the DGFT Minutes of the Norms Committee- III in its Meeting No. NC/3/MEET/Dec/2021-22/12 dated 17.12.2021, relevant extract is reproduced as follows:

Case No.	9 / NC/3/MEET/Dec/202122/12
Case Status	Case Approved
Party Name	FERMENTA BIOTECH LIMITED

This document has been digitally signed by AJAY KUMAR, Deputy Director,DGFT(HQ) on 21-Jan-2022.

Signature Not Verified
Digitally Signed
Name: Ajay Kumar (Deputy Director)
Date: 21-Jan-2022 12:16:20
Reason: AJAY.DWIVAN88@GOV.IN
Location: DGFT(HQ)

Meeting Number and Date	NC/ 3/ MEET/ Dec/ 202122/ 12 and 17/12/2021	UDIN00217773AM22
HQ File Number	HQRNORM APPLY 00027621AM22	
RA File Number	NA	
Licence No and Date	NA	
Norms Committee Decision: The Committee considered the case as per agenda and it was observed that in the DGFT Back Office Portal, the firm has enclosed a copy of 4.07 application for fixation of adhoc norms against Advance Authorization No. 0310832316 dated 18.10.2019 (Hqrs. F. No. 01/82/050/00746/AM20/DES-III), however Norms Committee-3 in its Meeting No. 10/82-ALC4/2019 dated 29.11.2019 has already rejected the request of firm for fixation of adhoc norms against Advance Authorization No. 0310832316 dated 18.10.2019. Further it was also observed that this case has come up in the portal due to some technical error. Hence, the Committee decided to withdraw the case.		

I further observe that the Norms Committee of the DGFT in its meeting dated 17.12.2021 has again rejected the application filed by M/s. Fermenta Biotech Limited in respect of their above advance authorization with the following Decision:

“The Committee considered the case as per agenda and it was observed that in the DGFT Back Office Portal, the firm has enclosed a copy of 4.07 application for fixation of adhoc norms against Advance Authorization No. 0310832316 dated 18.10.2019 (Hqrs. F. No. 01/82/050/00746/AM20/DES-III), however Norms Committee-3 in its Meeting No. 10/82-ALC4/2019 dated 29.11.2019 has already rejected the request of firm for fixation of adhoc norms against Advance Authorization No. 0310832316 dated 18.10.2019. Further it was also observed that this case has come up in the portal due to some technical error. Hence, the Committee decided to withdraw the case.”

18.1.2 I also observe that the decisions of Norms Committee dated 29.11.2019 & further dated 17.12.2021 are hosted on the web site of DGFT: <https://www.dgft.gov.in>

18.2 I observe that, as per Para 4.17 of Hand Book of Procedures 2015-2020, an Applicant may file representation against the decision of the Norms Committee with regard to the fixation of norms within a period of 90 days from the date of hosting of decision on DGFT website. Representation beyond 90 days shall be subject to payment of composition fee of Rs. 5000/-. It is also observed that in there voluntary statements dated 12.04.2022 & 19.05.2022, recorded under section 108 of Customs Act 1962, Sh. Arun Balakrishna Khedwal, General Manager-Supply Chain of M/s. Fermenta Biotech Limited & Sh. Amol Narayan Lone, Business and Finance Controller of M/s. Fermenta Biotech Limited, have submitted that Noticee No. 01, M/s. Fermenta Biotech Limited has not filed an appeal against the sad decision of Norms Committee dated 29.11.2019 & further dated 17.12.2021.

18.2.1 Relevant portion of the statements are reproduced as follows:

A) Shri Arun Balkrishna Khedwal, Son of Balakrishna Khedwal, General Manager (Supply Chain), in his statement dated 12.04.2022 recorded under Section 108 of the Customs Act, 1962 stated, inter alia: -

- that, he is the General Manager (Supply Chain) of M/s. Fermenta Biotech Private Limited and his responsibilities include Production, Planning, Logistics and Exim operations.
- regarding the procedures adopted by them at the time of obtaining the above Advance authorisation and the procedure involved in it, he has stated that as per the export-import policy, crude fish oil is restricted for import and can be imported only under the license issued by DGFT; that, hence, initially they have applied for the advance authorisation from DGFT and got the advance authorisation license under self-declaration basis; that, later they came to know that the crude fish body oil intended for import for the purpose of export of Cholesterol were not notified by the DGFT norms committee and they should apply to the norms committee for fixation of the norms; that, hence, subsequently, they have applied to the norms committee of the DGFT for fixing the norms for the same; that, they were not aware of the status of the decision of norms committee till it was informed by DRI officials of its rejection.
- regarding the fact of complying with the order of the Norms Committee consequent to rejection of their application field in this regard and the action taken by them to discharge their liability towards Customs Duties, he has stated that, they were not aware of the rejection by the norms committee till it was appraised to them and they came to know about the same in the meeting at D. K Biopharma; that, they feel that they missed following it due to unavoidable circumstances and later on due to Covid pandemic.
- on being asked about the duty demand notice received by them from the Nhava Sheva Customs to pay the duty foregone amount in respect of the above advance authorisation and their reply not mentioning about the rejection of their advance authorisation by the norms committee of DGFT thus suppressing the facts before the Customs department, he has stated that, they have received the mentioned letter from JNPT Port on 21st March-2022 (dated

07.03.2022); that they have submitted the response of the same on 24th March-2022 and copy for reference is submitted; that they were not aware about the norms rejection while responding to the authorities.

➤ that their agent who is handling the DGFT related affairs and they themselves missed to follow up the issue, once norms committee of DGFT rejected their application initially on 29.11.2019 and again on 17.12.2021.

B) Shri Amol Narayan Lone, Son of Narayan Lone, Business and Finance Controller of M/s. Fermenta Biotech Limited, in his statement dated 12.04.2022 recorded under Section 108 of the Customs Act, 1962 stated, inter alia that: -

➤ that, he has joined the services of M/s. Fermenta Biotech Limited during the year 2016 as Finance Controller and presently he is holding the post of Business and Finance Controller since last one and half year; that, as in charge of Business and Finance Controller his responsibilities include looking after the finances of the company.

➤ that, he has perused the statement dated 12.04.2022 of Shri. Arun Balakrishna Khedwal, General Manager (Supply Chain) of M/s. Fermenta Biotech Limited by the officers of DRI and has put his dated signature on the same as a token of having seen the same and that, he does agree with the contents of the same.

➤ as regards the procedures adopted by them at the time of obtaining the above Advance authorisation he has stated that, as per the export-import policy, crude fish oil is restricted for import and can be imported only under the license issued by DGFT; that, hence, initially they have applied for the advance authorisation from DGFT and got the advance authorisation license under self-declaration basis; that, later they came to know that the crude fish body oil intended for import for the purpose of export of Cholesterol were not notified by the DGFT norms committee and that they should apply to the norms committee for fixation of the norms; that, subsequently, they have applied to the norms committee of the DGFT for fixing the norms for the same; that, they were not aware of the status of the decision of norms committee of rejecting their application for fixation of norms till it was informed by DRI officials.

➤ answering the question as to whether they complied with the order of the Norms Committee, consequent to rejection of their application and the action taken to discharge their liability towards Customs Duties, Shri. Amol Narayan Lone has stated that they were not aware of the rejection by the norms committee till DRI appraised them about it and that they missed following it due to unavoidable circumstances and later due to Covid pandemic situation.

➤ that, regarding letter dated 07.03.2022 from the DEEC Monitoring Cell of Jawaharlal Nehru Custom House asking them to produce the EODC/Redemption letter in respect of the advance license No. 0310832316, they have furnished response vide their letter dated 22.03.2022, bringing to notice the fact that they have applied to DGFT for extension of the Export Obligation Period (EOP) as also for rectification of norms and seeking for granting time up to 30.09.2022 since the DGFT process may take at least 6 months' time.

➤ replying to the specific question as to why they have not informed the Customs about rejection of their advance authorisation by the DGFT norms committee and kept them in the dark, Shri. Amol Narayan Lone stated that they received letter from Customs department on 21st March 2022 (dated 7th March 2022) and they studied that letter and responded to the letter on 24th March 2022 with their comments; that they were not aware about the rejections of norms while responding to the Authorities and enclosed copy of the letter.

C) Shri Arun Balkrishna Khedwal, General Manager – Supply Chain of M/s. Fermenta Biotech Limited in his further statement recorded by DRI officials under section 108 of Customs Act 1962, on 19.05.2022 *inter-alia* stated, among other things that: -

➤ that, they were aware that the crude fish body oil was restricted for import and that's the reason they have opted for import under advance authorisation.

➤ on being asked to peruse the following extracts of the Chapter 4 of the foreign trade policy 2015-2020:

4.03 Advance Authorisation

(b) Advance Authorisation is issued for inputs in relation to resultant product, on the following basis:

(i) As per Standard Input Output Norms (SION) notified (available in Hand Book of Procedures);

OR

(ii) On the basis of self-declaration as per paragraph 4.07 of Handbook of Procedures.

OR

(iii) Applicant specific prior fixation of norm by the Norms Committee

OR

(iv) On the basis of Self Ratification Scheme in terms of Para 4.07A of Foreign Trade Policy.

4.16 Actual User Condition for Advance Authorization

(i) Advance Authorization and / or material imported under Advance Authorisation shall be subject to 'Actual User' condition. The same shall not be transferable even after completion of export obligation. However, Authorisation holder will have option to dispose of product manufactured out of duty-free input once export obligation is completed.

and to offer his comments, Shri. Arun Balkrishna Khedwal has perused the extract of the chapter 4 of the foreign trade policy 2015-2020 produced before him and affixed his signature as a token of having seen the same and stated that, as SION norms was not available to the export product "Cholesterol Aqua" for the import product "crude fish body oil", they have applied for advance authorisation on the basis of 'No-norms' as per paragraph 4.07 of Handbook of Procedures and subsequently applied for norms committee for fixation of norms on 17.07.2019; that, they have also followed actual user condition as the imported goods after manufacture of resultant product has been exported from their premises only.

➤ on being asked to peruse the following extracts of the Chapter 4 of the Hand book of procedures 2015-2020:

4.04 Advance Authorization Applicant shall file application online in ANF 4A. Same form is applicable where Standard Input Output Norms (SION) have been notified or on the basis of adhoc norms or on self-declaration basis as per paragraph 4.07 of Hand Book of Procedures.

4.06 Fixation of Norms

(i) In case where norms have not been notified or where applicant wants to get the ad-hoc norms fixed before making an application for Advance Authorisation, application in ANF 4B, along with prescribed documents, shall be uploaded online to concerned Norms Committee (NC) in DGFT headquarters for fixation of SION/Adhoc norm.

.....

(iii) The decisions of Norms Committees shall be available on the website of DGFT (<http://DGFT.gov.in>) periodically and the applicants shall update themselves the status of norms fixation in respect of Authorisation obtained by them

4.07 Self-Declared Authorisations where SION does not exist

(i) Regional Authority may also issue Advance Authorisation where there is no SION/valid Ad hoc Norms for an export product or where SION / Ad hoc norms have been notified / published but exporter intends to use additional inputs in the manufacturing process, based on self-declaration by applicant. Wastage so claimed shall be subject to wastage norms as decided by Norms Committee. The applicant shall submit an undertaking to abide by

decision of Norms Committee. The provisions in this regard are given in paragraph 4.03 and 4.11 of FTP.

(ii) In case of revision / rejection, applicant shall pay duty and interest as notified by DoR within thirty days from the date of hosting of Norms Committee decision on DGFT website.

4.15 Undertaking

Applicant shall give an undertaking that he shall abide by norms fixed by Norms Committee and accordingly take following actions without any demur:

(ii) In case application is rejected by Norms Committee, authorization holder shall pay duty saved amount along with interest on inputs, as applicable as notified by DoR.

and to offer his comments, Shri. Arun Balkrishna Khedwal has stated that, he has perused the extract of the Chapter 4 of the Hand book of procedures 2015-2020 produced before him and affixed his signature as a token of having seen the same and stated that, he once again reiterate that as SION norms was not available to the export product "Cholesterol Aqua" for the import product "crude fish body oil", they have applied for advance authorisation on the basis of 'No-norms' as per paragraph 4.07 of Handbook of Procedures and subsequently filed application for norms committee for fixation of norms in ANF 4A, along with prescribed documents on 17.07.2019 and 10.05.2022; that, even though their application was rejected by the norms committee of DGFT twice, now they would like to prefer appeal against the said decision.

➤ that they have applied to DGFT for obtaining advance authorisation under 'no- norms basis' ie., on self-declaration basis as provided under para 4.07 of HBP; that, after obtaining the advance authorisation, they have approached the norms committee for fixation of norms; that, however, norms committee vide its meeting dated 29.11.2019 have rejected their application.

➤ on being asked to peruse the following extracts of the norms committee meeting hosted on the DGFT Website vide its Meet No/Date:10/82-ALC4/2019 dated 29.11.2019 in respect of their advance authorisation no. 0310832316 dated 18.10.2019:

"The Committee considered the case as per agenda and it was observed that the import item – DETOX FOC-27 Fish Body Oil Crude having ITC HS – 15042010 comes under Chapter 15 and as per para 4.11(A)(i) of the FTP 2015-20, all vegetable/edible oils classified under Chapter 15 of ITC (HS) are ineligible for import on self-declaration basis under para 4.07 of the FTP. In view of above, the Committee decided to reject the case"

and the action taken by them, Shri. Arun Balkrishna Khedwal has perused the extracts of the norms committee meeting produced before him and affixed his signature as a token of having seen the same and stated that, he agreed that the norms committee has rejected the application submitted for fixation of the norms that they have filed the appeal on 10.05.2022 requesting them to reconsider the decision.

➤ on being pointing out that DGFT vide its meeting dated 29.11.2019 has rejected their application for fixation of norms and instead of paying the duty saved amount along with interest thereon as per para 4.07 (ii) of the Hand Book of Procedures, which mandates that "in case of revision/rejection, applicant shall pay duty and interest as notified by DoR within thirty days from the date of hosting of Norms Committee Decision on DGFT website", they have preferred appeal only after DRI initiated investigations which shows the malafide intentions, Shri. Arun Balkrishna Khedwal has stated that, as per Para 4.07 of Hand Book of Procedures, there is no time limit for the representation and accordingly, they have filed representation after payment of composition fee of Rs. 5,000/-.

➤ to a question, whether they have informed the DGFT that DRI has initiated investigation regarding irregularities in the import of fish body oil crude under advance authorisation, he has answered in the negative, stating that they do not have direct access to DGFT to inform the above.

➤ that, the address of the norms committee where they have submitted application for review is Directorate General of Foreign Trade, Udyog Bhawan, H-Wing, Gate, No.2, Maulana Azad Rd, New Delhi, Delhi 110001.

D) Shri Amol Narayan Lone, Business and Finance Controller, M/s. Fermenta Biotech Limited M/s. Fermenta Biotech Limited in his further statement recorded by DRI officials under section 108 of Customs Act 1962, on 19.05.2022 *inter-alia* stated, among other things that: -

➤ that, he has perused the statement dated 19.05.2022 of Shri. Arun Balakrishna Khedwal, General Manager (Supply Chain) of M/s. Fermenta Biotech Limited by the officers of DRI and put his dated signature on the same as a token of having seen the same; that, he does agree with the details stated by Shri. Arun Balakrishna Khedwal in his statement and contents of the same.

➤ on being asked whether they have complied with the order of the Norms Committee and consequent to rejection of their application by the norms committee twice, what action was taken by them to discharge their liability towards Customs Duties, Shri. Amol Narayan Lone has stated that, they have preferred representation before the norms committee as provided under para 4.17 of the Hand book of procedures 2015-2020 on 10.05.2022; that, as per Para 4.17 of Hand Book of Procedures, there is no time limit for the representation and accordingly, they have filed representation after payment of composition fee of Rs. 5,000/-.

➤ on being informed that, Shri Arun Khedwal, General Manager of their firm in his statement dated 19.05.2022 admitted that they have not informed to the DGFT that DRI has initiated investigation regarding irregularities in the import of fish body oil crude under advance authorisation and on being asked why they have suppressed the said facts when the DRI has initiated investigation on 12.04.2022 itself, he has stated that, in the applications filed with the DGFT, there is no provision in the application form which mandates them to intimate the above.

➤ on being asked whether he agree that as (i) DGFT has rejected their application for norms fixation twice on 29.11.2019 and on 17.12.2021; (ii) the imported goods have been transferred for job work to M/s. DK Pharma chem by their supporting manufacturer, violating the conditions prescribed in the foreign trade policy, notification No. 018/2015 dated 01.04.2015, conditions prescribed in the advance authorisation, thereby their company is liable to pay the duty foregone/duty saved amount in respect of their advance authorisation, Shri. Amol Narayan Lone has stated that, as regards the rejection of their application by DGFT, they have submitted their representation on 10.05.2022 requesting to reconsider; that, with regards to transfer of goods for job work to M/s. DK Pharma chem they were of the view that it is permissible; that, however, their legal team is studying the issue; that, as a token of their commitment, they have already deposited Rs. 30 lakhs (Rs Thirty Lacs Only); that, since they preferred their representation with dgft with a request to reconsider the decision, they are awaiting the said decision for taking a final call.

18.3 From the foregoing, I observe that Sh. Arun Balkrishna Khedwal, General Manager – Supply Chain of M/s. Fermenta Biotech Limited in his voluntary statement dated 12.04.2022 & 19.05.2022 recorded by DRI officers under Section 108 of Customs Act, 1962, submitted that the as per the export-import policy ‘Fish Body Oil (Crude)’ is restricted for import and can be imported only under the license/ advance authorisation issued by DGFT. That, they have applied for the advance authorisation from DGFT and received advance authorisation license under self-declaration basis as per Para 4.07 of f Handbook of Procedures; that, SION norms for import of “crude fish body oil” for the purpose of export of “Cholesterol Aqua” were not notified by the DGFT norms committee, that, they have applied to the norms committee of the DGFT for fixing the norms;

That, they were not aware of rejection of their application by norms committee decision dated 29.11.2019 till it was informed by DRI officials of its rejection; that, they missed it due to unavoidable circumstances and later on due to Covid pandemic; that their agent handling the DGFT related affairs and they themselves missed to follow up the issue, once norms committee of DGFT rejected their application initially on 29.11.2019 and again on 17.12.2021.

That, they have received the duty demand notice from the Nhava Sheva Customs to pay the duty foregone amount in respect of the above advance authorisation from JNPT Port on 21st March-2022 (dated 07.03.2022); that they have submitted the response of the same on 24th March-2022, that they were not aware about the norms rejection while responding to the authorities.

That, he agreed that the norms committee has rejected the application submitted for fixation of the norms that they have filed the appeal on 10.05.2022 requesting them to reconsider the decision; that, as per Para 4.07 of Hand Book of Procedures, there is no time limit for the representation and accordingly, they have filed representation after payment of composition fee of Rs. 5,000/-.

That, they have not informed the DGFT that DRI has initiated investigation regarding irregularities in the import of fish body oil crude under advance authorisation, as they do not have direct access to DGFT to inform the above; that, the address of the norms committee where they have submitted application for review is Directorate General of Foreign Trade, Udyog Bhawan, H-Wing, Gate, No.2, Maulana Azad Rd, New Delhi, Delhi 110001.

18.3.1 I further observe that Sh. Amol Narayan Lone, Business and Finance Controller of M/s. Fermenta Biotech Limited in his voluntary statement dated 12.04.2022 & 19.05.2022 recorded by DRI officers under Section 108 of Customs Act, 1962, submitted that he corroborates the submissions of Sh. Arun Balkrishna Khedwal, General Manager- Supply Chain of M/s. Fermenta Biotech Limited in his voluntary statement dated 12.04.2022 & 19.05.2022 recorded by DRI officers under Section 108 of Customs Act, 1962 and re-iterated the same.

That, in reply to letter dated 07.03.2022 received from the DEEC Monitoring Cell of Jawaharlal Nehru Custom House asking them to produce the EODC/Redemption letter in respect of the advance license No. 0310832316, they have furnished response vide their letter dated 22.03.2022, bringing to notice the fact that they have applied to DGFT for extension of the Export Obligation Period (EOP) as also for rectification of norms and seeking for granting time up to 30.09.2022 since the DGFT process may take at least 6 months' time; that they received letter from Customs department on 21st March 2022 (dated 7th March 2022) and they studied that letter and responded to the letter on 24th March 2022 with their comments; that they were not aware about the rejections of norms while responding to the Authorities and enclosed copy of the letter.

That, in furtherance to rejection of their application for norms fixation twice by DGFT on 29.11.2019 and on 17.12.2021, they have preferred representation before the norms committee as provided under Para 4.17 of the Hand book of procedures 2015-2020 on 10.05.2022; that, as per Para 4.17 of Hand Book of Procedures, there is no time limit for the representation and accordingly, they have filed representation after payment of composition fee of Rs. 5,000/-; that, they have not informed the DGFT that DRI has initiated investigation on 12.04.2022 regarding irregularities in the import of fish body oil crude under advance authorisation, as there is no provision in the application form which mandates them to intimate the same.

18.4 I observe that Noticee No 01, M/s. Ferment Bio tech Limited, in its written submission dated 15.09.2023 has *inter alia* submitted that, the goods were imported under Advance authorization on self-declaration pending the fixation of norms. Further, the norms were finally fixed by Norms Committee, DGFT, vide minutes of meeting dated 27.05.2022 with the clause of ratification. The rectification of earlier minutes implied that the said rectification is applicable retrospectively. Said fixation of norms and minutes of meeting dated 27.05.2022 are reproduced below as follows:

Case No.	A-07			
Meeting No.	NC/3/MEET/May/202223/3			
Date	27/05/2022			
Firm's Name	M/s Fermenta Biotech Limited (Formerly known as M/s DIL Limited)			
HQ F. No.	01/82/050/00746/AM20/DES-III			
RLA F. No.	03/94/040/00553/AM20			
Advance Authorization No. and Date	0310832316 dated 18.10.2019			
Subject	Request of M/s Fermenta Biotech Limited for fixation of adhoc norms against Advance Authorization No. 0310832316 dated 18.10.2019			
Decision: Shri Arun Khedwal - GM Supply Chain Management, Shri Amol Lone Business Finance Controller and Shri Srinath Trivikram - Senior Group leader; attended the Personal Hearing and explained their case. The Committee after deliberation; decided to ratify adhoc norms under Para 4.07 of HBP Vol. I as per details given below or as applied by the firm, whichever is less:				
Export product	Qty.	Sl. No.	Import items	Qty.
CHOLESTEROL (Assay by GC not less than 91.0%)	1 kg	1	DETOX FOC-27 (FISH BODY OIL CRUDE) (Non – edible grade, FFA content not less than 20%)	4.00 kg

RA concerned may take further necessary action as per above decision of NC.

18.4.1 The decision portion of the said meeting dated 27.05.2022 wrt Request of M/s Fermenta Biotech Limited for fixation of adhoc norms against Advance Authorization No. 0310832316 dated 18.10.2019 is as follows:

“Decision: Shri Arun Khedwal - GM Supply Chain Management, Shri Amol Lone Business Finance Controller and Shri Srinath Trivikram - Senior Group leader; attended the Personal Hearing and explained their case. The Committee after deliberation; decided to ratify adhoc norms under Para 4.07 of HBP Vol. I as per details given below or as applied by the firm, whichever is less”

18.4.2 It is observed that Personal Hearing opportunity was provided to Noticee No 01, M/s. Fermenta Biotech Limited, and the same was attended by Shri Arun Khedwal - GM Supply Chain Management, Shri Amol Lone Business Finance Controller and Shri Srinath Trivikram - Senior Group leader.

I further observe the Minutes of the said meeting, which are available on DGFT website <https://www.dgft.gov.in>, as follows:

Government of India
Ministry of Commerce and Industry
Department of Commerce
DIRECTORATE GENERAL OF FOREIGN TRADE

Meeting No - NC/3/MEET/May/202223/3

Meeting Date - 27/05/2022

Minutes of the Norms Committee – 3 Meeting No. NC/3/MEET/May/202223/3 dated 27/05/2022, actually held on 22.06.2022 held under the Chairmanship of Dr. Amiya Chandra, Addl. DGFT for considering the cases/issues under Duty Exemption Scheme (Chapter-4) of Foreign Trade Policy, 2015-20 pertaining to Chemical and Allied products falling under Chapter 29 and 30.

Following members were present in the Meeting:

Sl. No.	Name & Designation	Department
1	Shri Shaish Kumar, Technical – 1	Consultant
2	Shri D.N. Mathur, Technical – 2	Consultant
In attendance		
1	Shri Ajay Kumar, Deputy Director	DGFT

2. The Norms Committee has taken decision only with respect to technical aspect/wastage norms. While redeeming the application, RAs should check that the applicant has fulfilled all requirements as prescribed in policy/procedure including those in policy circulars issued from time to time or any other provisions under FTP/HBP for issuance of Advance Authorization and regularization of the case.

The committee went through the Minutes of earlier Meeting No. NC/3/MEET/Apr/202223/1 dated 29/04/2022, was actually held on 10.05.2022.

1

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It is noticed that the Norms Committee has taken decision only with respect to technical aspect/wastage norms. Whereas, while redeeming the application, respective RAs should check, whether the applicant has fulfilled all requirements as prescribed in policy/procedure including those in policy circulars issued from time to time or any other provisions under FTP/HBP for issuance of Advance Authorization and regularization of the case.

18.5 Relevant Legal Provision regarding Advance authorisation as per FTP, HBP, are as follows:

18.5.1 I observe that Advance Authorisations are issued by the Directorate General of Foreign Trade (DGFT) to importers for import of various raw materials without payment of Customs Duty and the said export promotional scheme is governed by Chapter 4 of the Foreign Trade Policy (2015-20) and corresponding Chapter 4 of the Hand Book of Procedures (2015-20), Volume I & II.

18.5.2 Para 4.03 of the Foreign Trade Policy allows duty free inputs which are to be physically incorporated in the export products and prescribed procedures for this, as under:

Advance Authorisation is issued for inputs in relation to resultant product, on the following basis:

- (i) As per Standard Input Output Norms (SION) notified (available in Hand Book of Procedures); OR
- (ii) **On the basis of self-declaration as per paragraph 4.07 of Handbook of Procedures;** OR
- (iii) Applicant specific prior fixation of norm by the Norms Committee; OR
- (iv) On the basis of Self Ratification Scheme in terms of Para 4.07A of Foreign Trade Policy.

18.5.3 I, further observe that, as per **Para 4.07 of Hand Book of Procedures**, Regional Authority may issue Advance Authorisation where there is no SION/valid adhoc norms for an export product on the basis of self-declaration by the applicant. However, as per Para 4.11 (A) (i) of the FTP 2015-20, all vegetable/edible oils classified under Chapter 15 of ITC (HS) are ineligible for import on self-declaration basis under Para 4.07 of the FTP. In case of revision/rejection by the Norms Committee, the applicant shall pay duty and interest as notified by DoR within thirty days from the date of hosting of Norms Committee decision on DGFT website.

18.5.4 However, as per **Para 4.17 of Hand Book of Procedures 2015-2020**, an Applicant may file representation against the decision of the Norms Committee with regard to the fixation of norms within a period of 90 days from the date of hosting of decision on DGFT website and Representation beyond 90 days shall be subject to payment of composition fee of Rs. 5000/-.

18.6 In view of the above, I find that norms have not been notified by the DGFT with respect to the export of 'Cholesterol' manufactured from imported 'Fish Body Oil (Crude)'. M/s Fermenta Biotech Limited obtained Advance Authorisation No. 0310832316 dated 18.10.2019 under the self-declaration basis, as per Paragraph 4.07 of the Handbook of Procedures. It is observed that the 'Fish Body Oil (Crude)' is covered under CTH 1504.2010, of Customs Tariff Act, 1975. That, as per Para 4.11 (A) (i) of the FTP 2015-20, all vegetable/edible oils classified under Chapter 15 of ITC (HS) are ineligible for import on self-declaration basis under Para 4.07 of the FTP.

Subsequently, M/s Fermenta Biotech Limited filed an application with the DGFT for fixation of Standard Input Output Norms (SION)/ad-hoc norms before the concerned Norms Committee (NC) at DGFT Headquarters. M/s Fermenta Biotech Limited utilized the said Advance Authorisation for duty-free clearance of crude fish body oil under three different Bills of Entry, totaling 64,040 Kgs, with an assessable value of ₹2,62,89,139 and a duty forgone amounting to ₹1,28,71,163.

I also find that the Norms Committee of the DGFT, in its meetings held on 29.11.2019 and 17.12.2021, rejected the application filed by M/s Fermenta Biotech Limited in respect of the above Advance Authorisation. The decisions of the Norms Committee dated 29.11.2019 and 17.12.2021 were duly hosted on the DGFT website. However, M/s Fermenta Biotech Limited did not file any appeal against these decisions.

Further, I find that as per **Para 4.07 of Hand Book of Procedures**, in case of revision or rejection by the Norms Committee, the applicant is **required to pay the duty and interest, as notified by the Department of Revenue (DoR), within thirty days** from the date of hosting of the Norms

Committee's decision on the DGFT website. However, Noticee No. 01 failed to deposit the said duty and interest with the DoR and willfully violated the same.

Also that, Noticee No. 01 received a duty demand notice from Nhava Sheva Customs, dated 07.03.2022 (received on 21.03.2022), requiring payment of the duty foregone under the aforementioned Advance Authorisation. Despite this, they suppressed the Norms Committee's decisions dated 29.11.2019 and 17.12.2021 regarding rejection of their application, from the Customs authorities.

Although the decision of the Norms Committee was hosted as early as 29.11.2019, M/s Fermenta Biotech Limited did not take any action to comply with the same. Until the visit of DRI officials on 12.04.2022—after a lapse of nearly two and a half years—the firm failed to either honor the Norms Committee's decisions, uphold the declarations made during the application process, or engage in any correspondence with the DGFT or the jurisdictional Customs Commissionerate. This conduct indicates a clear malafide intention.

Subsequently, on 10.05.2022, Noticee No. 01 submitted a representation before the Norms Committee under Para 4.17 of the Handbook of Procedures 2015–2020. Norms Committee in its Meeting No. NC/3/MEET/May/202223/3 dated 27.05.2022 in Case No. A-07, has decided to ratify the adhoc norms under Para 4.07 of HBP Vol, for Advance Authorization No. 0310832316 dated 18.10.2019. Personal Hearing in the case was attended by: Shri Arun Khedwal - GM Supply Chain Management, Shri Amol Lone Business Finance Controller and Shri Srinath Trivikram - Senior Group leader; on behalf of Noticee No. 0.

It is also noticed that the Norms Committee has taken decision only with respect to technical aspect/wastage norms. Whereas, while redeeming the application, respective RAs is required to check, whether the applicant has fulfilled all requirements as prescribed in policy/procedure including those in policy circulars issued from time to time or any other provisions under FTP/HBP for issuance of Advance Authorization and regularization of the case.

I find that Noticee No. 01 failed to disclose to Norms Committee, DGFT, that an investigation had already been initiated by the Directorate of Revenue Intelligence (DRI) on 12.04.2022 concerning violation of **mandatory and essential** condition of Foreign Trade Policy (FTP), Handbook of Procedures (HBP), Condition Sheet of Advance Authorisation, Customs Notification No. 18/2015-Cus dated 01.04.2015 regarding import of crude fish body oil under the Advance Authorisation No. 0310832316 dated 18.10.2019. **Therefore, RA, DGFT Mumbai shall verify the compliance of requirements as prescribed in policy/procedure, policy circulars, or any other provisions under FTP/HBP for issuance of Advance Authorization and regularization of the case.**

Therefore, I now proceed to examine whether the RA DGFT, Mumbai has penalized the importer for violation of conditions of FTP, HBP and related policy/procedure, policy circulars, or any other provisions- governing the Advance Authorization scheme.

THE ISSUANCE OF REDEPTION CUM REGULARIZATION CERTIFICATE BY DGFT AND ISSUE OF NON-FULFILMENT OF EXPORT OBLIGATION:

19. I observe that the Show Cause Notice (SCN) alleges that Noticee No. 01 has not fulfilled its Export Obligation with respect to the prescribed quantity of exported goods vis-à-vis quantity of imported raw materials; however importer has achieved the target in respect of FOB value of foreign currency to be realized for the exports. Further, it is also alleged that exported goods should not be counted towards fulfillment of Export obligation on following basis:

- a) That, the Norms Committee of the DGFT has rejected the application for fixation of norms in respect of the subject advance authorisation. This renders the advance

- authorisation ab-initio null and void and therefore importer is not eligible for any duty-free import of goods.
- b) That, the importers have failed to fulfill the “**Actual User**” condition as stipulated under **Para 4.16 of the Foreign Trade Policy**. That, during the on 12.04.2022 and subsequent investigation, it was observed that the supporting manufacturer of M/s. Fermenta Biotech Limited i.e., M/s. D.K. Biopharma Pvt. Ltd. were regularly **transferring the imported duty-free goods to another entity M/s. DK Pharma Chem** for job work, with the knowledge of the importer. However, neither the DGFT has endorsed the name of the said firm in the advance authorisation issued for the purpose of manufacturing, nor M/s. Fermenta Biotech Ltd. have intimated/obtained permission from the Customs authorities for sending the goods imported against the subject Advance Authorisation for job work.
 - c) That, the notification No. 18/2015-Cus dated 01.04.2015 exempts materials imported against a valid Advance Authorisation issued by the Regional Authority of DGFT in terms of paragraph 4.03 of the Foreign Trade Policy. The important conditions for duty free import of goods under Advance Authorization are that the said authorization shall not be transferred and the said materials shall not be transferred or sold. Whereas it appeared that the importers have failed to fulfill the conditions specified therein and as such the importer is not eligible for the benefit of duty exemption provided by the said notification.
 - d) That, the condition sheet to the Advance Authorisation obtained and utilized by M/s Fermenta Biotech Limited, prescribes, among other conditions, that:

“1. Authorisation Holder shall export/supply the product(s) as per the quantity (ies) and value(s) specified in the Table at Serial 1 above within a period prescribed under Paragraph 4.22 of the Foreign Trade Policy 2015-2020.

6. The exempt goods imported against the authorisation shall only be utilised in accordance with the provisions of paragraph 4.12 and paragraph 4.16 of the Foreign Trade Policy 2015-2020 and other provisions and the relevant Customs Notification [Customs Notification No. 18/2015 dated 1.4.15 (for physical exports), as the case may be as amended from time to time;

*12. The authorisation holder to comply with the provisions of paragraph 4.10 and paragraph 4.35 of the Hand book of Procedures 2015-2020, as amended from time to time, **with regard to transfer of any material** from one unit of the authorisation holder to any other unit of the authorisation holder included in the IEC or to the supporting manufacturer.*

15. All conditions of the Foreign Trade Policy 2015-2020 and the Handbook of Procedures 2015-2020 and the ITC (HS) Classification Book as amended shall be applicable unless specifically dispensed with against this Authorisation.”

19.1 I observe that the Noticee No 01, M/s. Fermenta Biotech Ltd. through written submissions dated 10.09.2023 and 15.09.2023, as well as submissions made during the personal hearing held on 10.09.2025, has contended that the Export Obligation under the said Advance Authorisation (AA) has been discharged. Noticee No. 01 has submitted a Redemption cum Regularisation letter dated 20.01.2023 issued by the Regional Authority, DGFT Mumbai, along with copies of challans dated 13.04.2022 and 14.11.2022 for amounts of Rs. 30,00,000 and Rs. 4,22,234 respectively. Copy of Redemption cum Regularization letter dated 20.01.2023, is reproduced as follows:

Government of India
Ministry of Commerce and Industry
O/o Additional Director General of Foreign Trade
CGO Office, New Building, SE wing New Marine Lines, Churchgate Mumbai Maharashtra -400020

REDEMPTION CUM REGULARISATION LETTER

TO,
M/s FERMENTA BIOTECH LIMITED
A-1501, THANE ONE, DIL COMPLEX GHO
DBUNDER ROAD,
MAJIWADA THANE WEST, MAHARASHTRA-400610

SUBJECT: REDEMPTION CUM REGULARISATION LETTER in respect of Advance
Authorisation NO. 0310832316 DATED : 18.10.2019

This REDEMPTION CUM REGULARISATION Sheet is issued against the Authorisation No :
0310832316 Dated : 18.10.2019 issued by this office. The Custom Authorities and Licencee are
requested not to make any endorsement on this Sheet.

The FOB Value of Licence fixed/calculated to be read as Rs. 173,150,500.00 / 65,041,144.57 and Foreign
Currency as. 1,890,000.00 / 885,157.72 (US Dollars)

The CIF Value of Licence Issued/Utilised to be read as Rs. 70,707,000.00 / 26,289,139.28 and Foreign
Currency as. 980,000.00 / 392,970.23 (US Dollars)

Firm has paid custom duty with interest on imports as noted by customs on debit sheet of
Authorisation. The Case has been regularised in terms of Para 4.49 of Handbook of procedures
2015-2020.

This EO Discharge/Redemption Certificate is issued without prejudice and will not preclude Custom
Authority to take action against the licensee at any stage, in case any sort of misdeclaration,
misrepresentation or misuse of the scheme is noticed.

Place: Mumbai
Date: 20.01.2023

(BEENA JOHNSON)
Foreign Trade Development Officer

ADDITIONAL SHEET ATTACHED TO Authorisation No. 0310832316 DATED : 18.10.2019 FOR
REDEMPTION (Issued from File Number : 03/94/040/00553/AM20/ Dated : 13.10.2019)

Issued from File Number 03/94/165/00301/AM23/ dated 18.10.2019

Copy To : 1. Commissioner customs, (INNSA1) Nhava Sheva Sea

Place: Mumbai
Date: 20.01.2023

(BEENA JOHNSON)
Foreign Trade Development Officer

I observe that the Redemption cum Regularization letter dated 20.01.2023 clearly stated that the case is regularized in terms of Para 4.49 of Handbook of procedures 2015-20, which provides for Regularization of Bonafide Default. Further, it endorses as follows:

“This EO Discharge/Redemption Certificate is issued without prejudice and will not preclude Custom Authority to take action against the licensee at any stage, in case any sort of misdeclaration, misrepresentation or misuse of the scheme is noticed.”

19.1.1 Further, the Noticee No 03, has provided the duty calculation sheet for Rs. 34,22,234/-, according to which importer has paid duty of **Rs. 25,25,205.09** and interest of **Rs. 8,96,727.64**, for non fulfillment of Export Obligation and excess imports of Crude fish body Oil, as follows:

FERMENTA BIOTECH LIMITED		
LIC NO 0310832316 DT 18.10.2019		
DATE		4-Dec-19
BE NO		5944627
Excess Qty	KGS	14120.000
Description	FAT DETOX	
A V. as per B/E (A)		7500000.00
New Qty of B/E (B)	KGS	20530.00
Excess Qty. (C)		14120.000
A V. of excess qty (A/B x C)		9158304.92
BCD	30	1547491.48
CVD	0	0.00
Cess	0	0.00
EDU CESS	0	0.00
HIED CESS	0	0.00
CUSE CESS	0	0.00
CUSHIE CESS	0	0.00
ADL DUTY	0	0.00
ANTI DUMP DUTY	0	0.00
SWS	10	154749.15
IGST	12	823265.47
TOTAL DUTY		2525506.09
	No. of Days	864
15-Apr-22		896727.64
15-Apr-22		
DUTY PLUS		3422234
INTEREST UPTO		
15-Apr-22		

19.2 I observe that the present status of the subject Advance authorization no. 0310832316 dt 18.10.2019 issued to M/s Fermenta Biotech Ltd. , is being shown as ‘Closed’, as follows:

View Authorisation / Transmission Details

IEC : 2288003359		Firm Name : FERMENTA BIOTECH LIMITED		Firm Address (on Authorisation): A-1501, THANE ONE, DIL COMPLEX,GHODBUNDER ROAD, MAJIWADA,THANE WEST,400610			
Original File Number 018205000746AM20		Original File Date : Sun Oct 13 00:00:00 IST 2019		Authorisation Type: 3-Advance Authorisation		Custom Notification Number : 18/2015-Cus dated 14-2015-Advance Authorisation for Physical Exports	
Authorisation Number : 0310832316		Date of Issue of Authorisation : 18/10/2019		Issued By :		Date of Expiry :	
FOB : 13,31,50,500.00				CIF : 7,07,07,000.00			
Duty Saved:				Port Code: JNCH, NHAVA SHEVA, TAL:URAN, DIST-RAIGAD-400707		Authorization Status: Closed	
Authorisation Life-Cycle							
File Date		File Number		Action		RA office	
18/10/2020		-		Import Validity Expired		RA MUMBAI	
18/04/2021		-		EO expired		RA MUMBAI	
21/04/2021		03AB04001176AM22		Authorisation Amended		RA MUMBAI	
17/07/2023		03AF04012551AM23		Authorisation Closed		RA MUMBAI	
Last Transmission Status : Ack Success				Last Response Date: 2024-02-12 21:42:31.0			
Transmission Details							
File Number	Action / Process Name	DGFT File Number	Custom File Number	Date and Time of Transmission from DGFT	Date and Time of Response from Customs	Response From Customs	Acceptance/ Rejection Code
	Bill of Entry		16079381602.LIC	14/12/2020 14:59:21	14/12/2020 14:59:22	Ack Success	SUCCESS- Total Bill of Entry Received from CBIC -5
03AF04012551AM23	AAA Closure / EODC Status Updation	03AF04012551AM23	23CBEO172861.LIC	17/07/2023 17:20:33	12/02/2024 21:42:31	Ack Success	Record is accepted
03AB04001176AM22	Amendments to Advance Authorisation	03AB04001176AM22	INNSA1210420211.LIC	21/04/2021 09:07:49	21/04/2021 10:11:47	Ack Success	00 - No error,

19.3 I observe that the Norms Committee, DGFT, has ratified the Norms for the subject Advance authorization, as follows:

Case No.	A-07			
Meeting No.	NC/3/MEET/May/202223/3			
Date	27/05/2022			
Firm's Name	M/s Fermenta Biotech Limited (Formerly known as M/s DIL Limited)			
HQ F. No.	01/82/050/00746/AM20/DES-III			
RLA F. No.	03/94/040/00553/AM20			
Advance Authorization No. and Date	0310832316 dated 18.10.2019			
Subject	Request of M/s Fermenta Biotech Limited for fixation of adhoc norms against Advance Authorization No. 0310832316 dated 18.10.2019			
Decision: Shri Arun Khedwal - GM Supply Chain Management, Shri Amol Lone Business Finance Controller and Shri Srinath Trivikram - Senior Group leader; attended the Personal Hearing and explained their case. The Committee after deliberation; decided to ratify adhoc norms under Para 4.07 of HBP Vol. I as per details given below or as applied by the firm, whichever is less:				
Export product	Qty.	Sl. No.	Import items	Qty.
CHOLESTEROL (Assay by GC not less than 91.0%)	1 kg	1	DETOX FOC-27 (FISH BODY OIL CRUDE) (Non – edible grade, FFA content not less than 20%)	4.00 kg
RA concerned may take further necessary action as per above decision of NC.				

Whereas, import and export qty of raw material and finished goods, as per advance authorisation dated 18.10.2019 are as follows:

No. and date/Port of Registration/ Issued By	Items to be imported duty free under authorization			Item to be exported duty free under authorization		
	Description of Goods	Quantity (Kgs)	CIF value (Rs.)	Description of Goods	Quantity (Kgs)	FOB value (Rs.)
0310832316 dt 18.10.2019/ Nhava Sheva sea port - INNSA1/ DGFT, Mumbai	DETOX FOC-27 FISH BODY OIL CRUDE	200,000	70,707,000	CHOLESTEROL (IT CHS Code: 29061310)	42,000	133,150,500

Therefore, it is noticed that as per the above advance authorisation, the export quantity prescribed is 42000 kgs of cholesterol against import of 200000 kgs of crude fish body oil, i.e. the importers have to account for export of exactly 21% of imported goods. Whereas, as per ratified norms, the export obligation has been set at export of exactly 25% of imported goods.

19.4 I now proceed to calculate the export obligation of the importer as per the ratified norms. It is explicitly clarified that this exercise is undertaken solely for the purpose of computing export obligations in accordance with the Norms Committee's decision dated 27.05.2022. This should not, in any manner, be construed as a finding by this adjudicating authority amounting to post-facto ratification of violations of the mandatory conditions prescribed under the Foreign Trade Policy (FTP), Handbook of Procedures (HBP), and Customs Notification No. 18/2015 dated 01.04.2015, by virtue of the said decision of Norms Committee's or the Redemption-cum-Regularization Letter dated 22.01.2023 issued by the DGFT.

19.4.1 Export Obligation of the importer as per norms ratified by Norms Committee in its Meeting No. NC/3/MEET/May/202223/3 dated 27.05.2022 in Case No. A-07, under Para 4.07 of HBP Vol. I, for Advance Authorization No. 0310832316 dated 18.10.2019:-

Details of Import and Exports utilizing subject Advance Authorization, is as follows:

Import		Export	
Bill of Entry No. & Date	Qty imported (in kgs)	Shipping Bill No. & Date	Qty exported (in kgs)
5439726 dated 25.10.2019	21840	23.06.2021	2500
5456322 dated 26.10.2019	21670	29.06.2021	2500
5944627 dated 04.12.2019	20530	06.07.2021	2500
		12.07.2021	2500
		16.07.2021	2480
Total	64040		12480

It has been observed that the importer has exported only **12,480 Kg** of Cholesterol Aqua against the import of **64,040 Kg** of crude fish body oil. However, as per the ratified norms, the importer was required to export **16,010 Kg** of Cholesterol Aqua. This results in a shortfall of **3,530 Kg**. Accordingly, the export obligation corresponding to the import of **14,120 Kg** of crude fish body oil remains unfulfilled.

Duty foregone against imports under the subject Advance Authorization is as follows:

Sl. No.	Bill of Entry No. and Date	Description of the goods	Quantity imported (kg)	Assessable value (Rs.)	Duty foregone (Rs.)
1	5439726 dated 25.10.2019	DETOX FOC -27 (FISH BODY OIL CRUDE)	21,840	10,990,106	5,380,756
2	5456322 dated 26.10.2019	DETOX FOC -27 (FISH BODY OIL CRUDE)	21,670	7,799,033	3,818,407

3	5944627 dated 04.12.2019	DETOX FOC -27 (FISH BODY OIL CRUDE)	20,530	7,500,000	3,672,000
		TOTAL	64,040	26,289,139	12,871,163

Advance Authorisation No.	Qty imported (in Kgs.)	Total assessable value (Rs.)	Duty foregone in the import (Rs.)	Qty exported (in Kgs.)
0310832316 dated 18.10.2019	64040	26289139	12871163	12480

Accordingly, on pro rata basis, importer is liable to pay **Rs. 28,37,927/- and interest** for duty foregone on import of excess/ un-utilized goods, 14120Kgs of Crude Fish Body Oil, as per ratified norms.

19.4.2 I observe that the Export Obligation Period in respect of the advance authorisation No. 0310832316 dated 18.10.2019 is 18 months i.e., up to 17.04.2021, i.e., importer is required to export the entire quantity specified in the advance authorisation on or before 17.04.2021. However, importer's 1st export was on 23.06.2021 and last export was on 16.07.2021. Details of Shipping Bills are as follows:

Export	
S.B. No. and date	Qty exported (in kgs)
23.06.2021	2500
29.06.2021	2500
06.07.2021	2500
12.07.2021	2500
16.07.2021	2480
Total	12480

Whereas, importers vide letter dated 07.04.2021 has applied for first extension of six months for completing the export obligation i.e. up to 18.10.2022, as they could not export any goods within the stipulated period of 18 months from the date of advance authorisation. However, during investigation, they could not produce any documentary proof that the DGFT has considered their application for grant of extension. However, considering the Covid situation, DGFT vide Notification No. 28/2015-2020 dated 23.09.2021 has granted one-time automatic extension of Export Obligation Period, in respect of those Advance Authorisations, where the Export Obligation period was expiring between 01.08.2020 and 31.07.2021 with a condition that, the same will be subject to 5% additional export obligation in value terms on the balance Export Obligation on the date of expiry of the original/extended export obligation period.

Item to be exported duty free under authorization			Actual Export and its corresponding FOB value Calculation			
Description of Goods	Quantit y (Kgs)	FOB value (Rs.)	Quantit y Expor ted (Kgs)	Pro-rata FOB Value to be achieved (Rs.)	5% additional export obligation in value terms, on account of Ntn No. 28/2015- 2020 dated 23.09.2021 (Rs.)	Revised FOB Value to be achieved (Rs.)
CHOLESTEROL (IT CHS Code: 29061310)	42000	1,31,50,500	12480	3,95,64,72 0	19,78,236	4,15,42,956

I observe that the FOB value of the exports under 5 Shipping Bills by M/s. Fermenta Biotech Ltd was Rs. 6,48,95,998/- which is in excess to Rs. 4,15,42,956/- of the revised FOB value to be achieved as per the relaxation extended by DGFT vide Notification No. 28/2015-2020 dated 23.09.2021.

Although due to default being not bonafide and importer has violated the Actual User Condition, the Redemption issued by RA DGFT, Mumbai is Null & Void, despite the importer's claim of fulfilling the export obligation.

19.5 I observe that, as per Minutes of the Norms Committee 3 Meeting No. NC/3/MEET/May/202223/3 dated 27/05/2022, actually held on 22.06.2022, it is clearly mentioned that the **Norms Committee has taken decision only with respect to technical aspect/ wastage norms**. Whereas, **while redeeming the application, respective RAs should check, whether the applicant has fulfilled all requirements as prescribed in policy/procedure including those in policy circulars issued from time to time or any other provisions under FTP/HBP for issuance of Advance Authorization and regularization of the case.**

19.5.1 I, further observe that the RA DGFT, Mumbai has issued Redemption cum Regularization letter dated 20.01.2023. That, the Importer's case is regularized in terms of Para 4.49 of Handbook of procedures 2015-20, which provides for Regularization of Bonafide Default.

Para 4.49 of Hand Book of Procedure provides for Regularisation of Bonafide Default, in following cases:

- i. **If EO is fulfilled in terms of value, but there is a shortfall in terms of quantity,**
- ii. If the EO is fulfilled in quantity but there is shortfall in value,
- iii. If EO is not fulfilled both in terms of quantity and value,
- iv. In case an exporter is unable to complete EO undertaken in full and he has not made any import under Authorisation,

19.5.2 Therefore, based on the material and facts on record before this adjudicating authority, I find that the importer's case was actually not regularized by RA DGFT, Mumbai, after considering the violation of conditions under FTP, HBP, the Condition Sheet to Advance Authorization, and Customs Notification 18/2015 dated 01.04.2015, as mandated by the Norms Committee to RA DGFT, Mumbai. Instead, RA DGFT closed the case only after verifying duty payment on account of the shortfall in Export Obligation in terms of quantity, as per Para 4.49 of HBP. I also find that the importer has not submitted any document or evidence before this adjudicating authority to prove that they informed RA DGFT, Mumbai that DRI had already initiated an investigation on 12.04.2022 regarding violations of FTP, HBP, and Customs Notification No. 18/2015-20 dated 01.04.2015 concerning imported goods under Advance Authorization. **Therefore, I find that the Redemption cum Regularization letter dated 20.01.2023 was obtained through fraud, willful suppression of facts, and misdeclaration, and is accordingly held ab initio null and void.**

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

"31. 'Fraud' as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be

perpetuated or saved by the application of any equitable doctrine including res judicata. (Ram Chandra Singh v. Savitri Devi and Ors.[2003 (8) SCC 319].

32. "Fraud" and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. Principle Bench of Tribunal at New Delhi extensively dealt with the issue of Fraud while delivering judgment in *Samsung Electronics India Ltd. Vs commissioner of Customs, New Delhi* reported in 2014(307)ELT 160(Tri. Del). In *Samsung* case, Hon'ble Tribunal held as under.

"If a party makes representations which he knows to be false and injury ensues there from although the motive from which the representations proceeded may not have been bad is considered to be fraud in the eyes of law. It is also well settled that misrepresentation itself amounts to fraud when that results in deceiving and leading a man into damage by wilfully or recklessly causing him to believe on falsehood. Of course, innocent misrepresentation may give reason to claim relief against fraud. In the case of *Commissioner of Customs, Kandla vs. Essar Oil Ltd. - 2004 (172) E.L.T. 433 (S.C.)* it has been held that by "fraud" is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill-will towards the other is immaterial. "Fraud" involves two elements, deceit and injury to the deceived.

Undue advantage obtained by the deceiver will almost always cause loss or detriment to the deceived. Similarly a "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (Ref: *S.P. Chengalvaraya Naidu v. Jagannath* [1994 (1) SCC 1: AIR 1994 S.C. 853]. It is said to be made when it appears that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly and carelessly whether it be true or false [Ref :*RoshanDeenv. PreetiLal* [(2002) 1 SCC 100], *Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education* [(2003) 8 SCC 311], *Ram Chandra Singh's case* (supra) and *Ashok Leyland Ltd. v. State of T.N. and Another* [(2004) 3 SCC 1].

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

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

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

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

19.5.3 I also find that the duty liability on account of shortfall in export obligation is also not properly calculated and paid by the importer for obtaining Redemption cum Regularization letter dated 20.01.2023 by RA DGFT, Mumbai, as elaborated in Para 19.4 supra. Duty forgone for unutilized imported goods amounts to **Rs. 28,37,927/- and interest**, whereas importer has only paid duty of **Rs. 25,25,205.09** and interest of **Rs. 8,96,727.64**.

19.6 In any case, Importer has clearly violated **Actual User Condition** and diverted goods to an altogether new entity not endorsed on the Advance Authorization, and has *neither* intimated the same to DGFT *nor* got approval from the concerned Customs Authority. I reiterate my findings in Paragraphs 18 supra, as the same are mutatis mutandis applicable to the present issue. It is already held that the importers have failed to fulfill the “**Actual User**” condition as stipulated under **Para 4.16 of the Foreign Trade Policy** which states that material imported under Advance Authorisation shall not be transferable even after completion of export obligation. Further, as per **4.35 (HBP) regarding Facility of Supporting Manufacturer/ Jobber/co- licensee, which states that Imported material may be used in any unit of holder of Advance Authorisation or jobber / supporting manufacturer provided same is endorsed on authorisation by Regional Authority. If applicant desires to have name of any manufacturer or jobber added to authorisation, he may apply. Such endorsement shall be mandatory where prior import before export is a condition for availing Advance Authorisation scheme and authorisation holder desires to have material processed through any other manufacturer or jobber.** Further, as per **Para 4.10 of the Hand Book of Procedure** Transfer of any duty-free material imported or procured against Advance Authorisation from one unit of a company to another unit for manufacturing purpose shall be done with prior intimation to jurisdictional Customs Authority. Further, **Condition Sheet of the Advance Authorisation** clearly mentions that the license holder/importer must comply with the above provisions of the Foreign Trade Policy and the Handbook of Procedures. It is also pertinent to mention that **Notification No. 18/ 2015 – Customs, dated 01.04.2015 under Sr. No x, stipulates that the said materials shall not be transferred or sold and can only be transferred to a job worker for processing after intimation/approval from Jurisdictional Customs Authority permitting transfer of materials for job work. Further, as per Sr. No. ii (a), authorisation shall bears the name and address of the importer and the supporting manufacturer in cases where the authorisation has been issued to a merchant exporter.** That, during searches at the premises of the Importer M/s. Fermenta Biotech Ltd. on 12.04.2022 and subsequent investigation by DRI officials and voluntary statements of Sh. Arun Khodwal & Sh. Amol Narayan Lone dated 12.04.2022 & 19.05.2022, recorded by DRI officials under section 108 of Customs Act, 1962, I find that the supporting manufacturer of M/s. Fermenta Biotech Limited i.e., M/s. D.K. Biopharma Pvt. Ltd. **did not had the required capacity and facility/machinery to undertake the job work** and was instead regularly transferring the imported duty-free goods to another entity **M/s. DK Pharma Chem for job work, with the prior-consent & full knowledge of the importer.** However, *neither* M/s. Fermenta Biotech Ltd. approached the DGFT for adding or endorsing the name of the firm **M/s. DK Pharma Chem** in the advance authorisation, as supporting manufacturer for job work, *nor* it has intimated/obtained permission from the Customs authorities for sending the goods imported against the subject Advance Authorisation for job work to **M/s. DK Pharma Chem.** **Such endorsement is mandatory where prior import before export is a condition for availing Advance Authorisation scheme and authorisation holder desires to have material processed through any other manufacturer or jobber & cases where the authorisation has been issued to a merchant exporter.** Therefore importer M/s. Fermenta Biotech Limited is in violation the mandatory and essential conditions of Foreign Trade Policy, Hand Book of Procedure & Customs Notification No. 18/2015 dated 01.04.2015 and **rendered exemption of duty benefit inadmissible.**

I find that the importer by their deliberate actions in omitting to abide by the mandatory and essential conditions/ provisions of the Foreign Trade Policy read with Hand Book of Procedures have grossly failed to comply with the **mandatory and essential** conditions of the Advance Authorization & notification and imported restricted goods duty free by availing undue benefit of the same. Importer has clearly violated **Actual User condition** and diverted goods to an altogether new entity **M/s. DK Pharma Chem**, not endorsed on the Advance Authorisation. Importer has *neither* got the name of M/s. DK Pharma Chem, endorsed as jobber/supporting manufacturer on authorisation by Regional

Authority, DGFT *nor* intimated the concerned Customs Authority. I observe that this condition is substantial and crucial for availing the exemption benefit under the Advance Authorisation Scheme and the aforementioned Customs Notification.

19.7 The importer's contention is that, since the DGFT has ratified the norms and subsequently issued the Redemption-cum-Regularisation Letter dated 20.01.2023, the importer is also deemed to be redeemed of the violations of the conditions under Customs Notification No. 18/2015 dated 01.04.2015. In order to examine this claim, I observe that this argument requires examination of the legal interface between DGFT and Customs, which is discussed in the following Paras.

19.8 The Advance Authorisation is issued under the Foreign Trade (Development & Regulation) Act, 1992 and administered by DGFT. Whereas, Customs duty exemption is granted under Section 25(1) of the Customs Act, 1962 via Notification No. 18/2015-Cus dated 01.04.2025. Both operate in separate statutory fields.

a) FTDR Act, 1992 empowers the Central Government to make policy for promoting foreign trade. Under Section 5 of the FTDR Act, the Government formulates the Foreign Trade Policy (FTP). DGFT is the implementing authority of the FTP. It operates under the Ministry of Commerce & Industry. Advance Authorisation is issued under the FTP by DGFT, allowing duty-free import of inputs used in the manufacture of export products. Para 4.03 of FTP 2015–20 (or relevant FTP) details the scheme. The Advance Authorisation itself does not grant exemption from customs duties. It merely makes the importer eligible to seek such exemption, which is operationalised through customs notifications.

b) Whereas, the Customs Act, 1962 governs import and export duties. Section 25(1) of the Customs Act allows the Central Government to exempt goods (generally or conditionally) by notification in the Official Gazette. Customs Notification No. 18/2015-Cus dated 01.04.2015 is issued under Section 25(1) of the Customs Act. This notification grants duty exemption for goods imported under a valid Advance Authorisation. The exemption is conditional — subject to fulfillment of conditions like:

- Actual user condition
- Use of imported goods in manufacture of export product
- Fulfillment of export obligation, etc.

Customs authorities are responsible for verifying whether those conditions are fulfilled. The power to deny exemption lies with Customs — not DGFT

c) Separate Statutory Fields:

The DGFT and Customs operate in distinct statutory domains. An authorisation under one Act does not automatically bind decisions under another, unless explicitly provided.

d) Conditional Exemption Notifications:

Under Section 25(1) of the Customs Act, any exemption is subject to the conditions specified in the notification. These are strictly interpreted by courts. If an importer violates the conditions of Notification No. 18/2015-Cus (e.g. fails to meet export obligation), Customs can deny exemption, even if DGFT has not cancelled the authorisation.

e) To summarize:

- Advance Authorisation is a policy facilitation tool under the FTDR Act and managed by DGFT.

- Duty exemption is granted independently under Section 25(1) of the Customs Act, via notifications like 18/2015-Cus.
- These operate in separate statutory domains, and compliance under one does not ensure compliance under the other.
- Customs authorities are fully empowered to enforce conditions under the Customs Act, even if DGFT has issued or endorsed the Advance Authorisation.

19.9 In this regard, it is pertinent to quote Para 4.50 of the Handbook of Procedures under FTP 2015-20 which is as follows: 4.50 (g) ***“Payment of duty, interest and any dues for regularisation shall, however, be without prejudice to any other action that may be taken by Customs Authorities at any stage under Customs Act, 1962.”***

This explicitly clarifies that DGFT redemption does not take away the jurisdiction of Customs.

19.10 Further, I observe that the Redemption-cum-Regularisation Letter dated 20.01.2023 endorses as follows: ***“This EO Discharge/Redemption Certificate is issued without prejudice and will not preclude Custom Authority to take action against the licensee at any stage, in case any sort of misdeclaration, misrepresentation or misuse of the scheme is noticed.”***

19.11 In view of the foregoing, I find that Para 4.50 HBP & the endorsement on the Redemption-cum-Regularisation Letter clearly indicates that any approval, order, decision, redemption or regularization by DGFT does not precludes Customs Authorities to take action in the case of violation of the Customs Notification and provisions of Customs Act 1962. Further, to strengthen this view point, I rely on the following case laws:

- a) **Commissioner Of Customs, Hyderabad *Versus* Pennar Industries Ltd/ 2015 (322) E.L.T. 402 (S.C.) [31-07-2015]**
- b) **Sheshank Sea Foods Pvt. Ltd. *Versus* Union Of India/ 1996 (88) E.L.T. 626 (S.C.) [19-11-1996]**

In the case of Commissioner Of Customs, Hyderabad *Versus* Pennar Industries Ltd/ 2015 (322) E.L.T. 402 (S.C.) [31-07-2015], Hon’ble apex court has held that: - DGFT orders are not binding on Customs authorities for taking action taken under Customs Act, 1962 - Where conditions of exemption notification were not fulfilled and law required strict compliance thereof, importer was liable to pay import duty which was payable, but for benefit of exemption Notification No. 30/1997-Cus. obtained by them.

Further, vide above judgment, Hon’ble Supreme Court has upheld its decision in the case of Sheshank Sea Foods Pvt. Ltd. *Versus* Union Of India/ 1996 (88) E.L.T. 626 (S.C.) [19-11-1996], wherein it is already held that Section 111(o) of the Customs Act provides for confiscation of exempted goods when condition of exemption not observed - Jurisdiction of licensing authority to investigate the violation of condition of import licence does not preclude - Jurisdiction of Customs authorities to take action when the condition of exemption is violated and the exempted goods diverted for domestic sale etc. - Breach of the terms of exemption also a breach of the condition of import licence - Challenge to powers of Customs authorities search and seize turned down - Sections 110 and 124 of the Customs Act, 1962.

19.12 In view of the foregoing Paras, I find that the FTP 2015-20, HBP & Redemption-cum-Regularisation Letter issued by DGFT does not in any manner precludes or stops this adjudicating authority from taking action in the case of violation of conditions of Customs Notification 18/2015 dated 01.04.2015. Same is upheld by Apex Court in numerous judgments wherein it is held that Jurisdiction of licensing authority to investigate the violation of condition of import licence does not preclude - Jurisdiction of Customs authorities to take action when the condition of exemption is violated. Further it is also held that DGFT orders are not binding on Customs authorities for taking

action taken under Customs Act, 1962 - Where conditions of exemption notification were not fulfilled and law required strict compliance thereof, importer was liable to pay import duty which was payable, but for benefit of exemption Notification obtained by them.

19.13 Therefore, I find that the subsequent redemption letter of 20.01.2023 is a post-facto event. Regularization of the importers case under Para 4.49 of HBP, merely signifies that DGFT has accepted proof of exports and closed the license from their side, after payment of Customs Duty on the shortfall of Export Obligation, for the purpose of FTP. It does not retrospectively make the imported goods compliant with Customs notification conditions. The Customs duty liability arises the moment mandatory and essential conditions/ provisions are breached, and it survives regardless of later regularization by DGFT. Noticee No. 01 has violated the '**Actual User**' condition and has diverted the imported goods before fulfilling the corresponding export obligation. I observe that this condition is substantial and crucial for import of restricted goods by availing the exemption benefit under the Customs Notification. No. 18/2015 dated 01.04.2015. In the case in hand, the importers by their deliberate actions in omitting to abide by the mandatory and essential conditions of the Customs notification 18/2015 dated 01.04.2015 and imported restricted goods duty free by availing undue benefit of the same and non-compliance of the same has rendered the exemption of duty benefit inadmissible.

In this regard, on 30 July 2018, the constitution bench of the Supreme Court of India (Court), in Commissioner of Customs (Import), Mumbai (Appellant) v/s. Dilip Kumar and Company & Ors. (Respondent) [Civil Appeal No. 3327 OF 2007], has pronounced the principles for the interpretation of exemption notifications in taxation statutes in the following manner: -

“52. To sum up, we answer the reference holding as under

(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.

(3) The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export Case (supra) stands overruled.”

Therefore, I find that mandatory and essential conditions prescribed under the Foreign Trade Policy (FTP), Handbook of Procedures (HBP), Condition Sheet of the Advance Authorisation, and Customs Notification No. 18/2015 dated 01.04.2015 relating to the imported goods has been wilfully violation by the importer, & therefore has rendered the exemption benefits claimed under the Advance Authorisation and Customs Notification 18/2015 dated 01.04.2015 null and void.

19.14 In view of the above, I find that the question of fulfilment of Export Obligation is secondary to the fulfilment of mandatory and essential conditions prescribed under the Foreign Trade Policy (FTP), Handbook of Procedures (HBP), Condition Sheet of the Advance Authorisation, and Customs Notification No. 18/2015 dated 01.04.2015 relating to the imported goods, which in the present case, has been wilfully violation by the importer, & therefore has render the exemption benefits claimed under the Advance Authorisation and Customs Notification null and void.

19.15 In view of the foregoing discussions and findings, I am of the considered view that the subsequent ratification of norms and issuance of redemption-cum-regularisation letter by DGFT does not absolves the Noticee of non-compliance of conditions of Customs Notification and consequent duty liability. That the export of finished goods—Cholesterol Aqua—cannot be counted towards the fulfillment of the Export Obligation under Advance Authorisation No. 0310832316 dated 18.10.2019 and importer is liable for duty payment of Rs. 12,871,163 (along with interest) on imports of 64040 Kg of crude fish body oil.

C. NOW I TAKE THE QUESTION/ISSUE, WHETHER DUTY FOREGONE OF RS.1,28,71,163/- ALONG WITH INTEREST IS RECOVERABLE UNDER THE PROVISIONS OF THE NOTIFICATION NO. 18/2015 -CUS DATED 01.04.2015 AND RELEVANT PARAS OF FOREIGN TRADE POLICY 2015-2020 AND HAND BOOK OF PROCEDURES 2015-2020, THE CONDITIONS SPECIFIED IN THE ADVANCE AUTHORISATION LICENSE ISSUED TO THEM AND IN TERMS OF THE BOND FURNISHED BY THEM READ WITH SECTION 143(3) OF THE CUSTOMS ACT, 1962.

20. I observe that, the SCN alleges that on account of violations of condition of Foreign Trade Policy (FTP), Handbook of Procedures (HBP), Condition Sheet of Advance Authorisation, Customs Notification No. 18/2015-Cus dated 01.04.2015 regarding imported crude fish body oil under the Advance Authorisation No. 0310832316 dated 18.10.2019, duty exemption benefit under Advance Authorisation No. 0310832316 dated 18.10.2019 read with Customs Notification No. 18/2015-Cus dated 01.04.2015 are not eligible and same appeared to be recovered in terms of section 143 of the Customs Act, 1962.

20.1 I reiterate my findings in Paragraphs 17, 18 & 19 supra, as the same are *mutatis mutandis* applicable to the present issue. I find that the importer has wilfully violated the **Actual User Condition**, and thereby not followed the provisions of FTP, HBP & mandatory and essential conditions of Customs Notification No. 18/2015-20 dated 01.04.2015. Further, FTP 2015-20, HBP & Redemption-cum-Regularisation Letter issued by DGFT does not in any manner precludes or stops Customs Authorities & this adjudicating authority from taking action in the case of violation of conditions of Customs Notification 18/2015 dated 01.04.2015. Same is upheld by Apex Court in numerous judgments wherein it is held that Jurisdiction of licensing authority to investigate the violation of condition of import licence does not preclude - Jurisdiction of Customs authorities to take action when the condition of exemption is violated. Further it is also held that DGFT orders are not binding on Customs authorities for taking action taken under Customs Act, 1962 - Where conditions of exemption notification were not fulfilled and law required strict compliance thereof, importer was liable to pay import duty which was payable, but for benefit of exemption Notification No. 30/1997-Cus. obtained by them.

20.2 In view of the foregoing, i find that the question of fulfilment of Export Obligation is secondary to the fulfilment of mandatory and essential conditions prescribed under the Foreign Trade Policy (FTP), Handbook of Procedures (HBP), Condition Sheet of the Advance Authorisation, and Customs Notification No. 18/2015 dated 01.04.2015 relating to the import of goods, which in the present case, has been wilfully violation by the importer, & therefore has render the exemption benefits claimed under the Advance Authorisation and Customs Notification null and void. Therefore, quantity of goods-Cholestrol Aqua- (14,120Kgs) already exported by the importer cannot be counted towards the fulfilment of its Export Obligation under Advance Authorisation No. 0310832316 dated 18.10.2019 and same is recoverable in terms of section 143 of Customs Act.

ENFORCEMENT OF BOND UNDER SECTION 143 OF CUSTOMS ACT, 1962.

20.3 Section 143 of the Customs Act, 1962, provides for execution of Bonds under certain circumstances where Customs Act 1962 or such other law, grant leave for import, export or clearance of goods on the person executing a bond subject to conditions as approved by the competent authority. In case of exemption that requires fulfilment of post-import conditions over a period of time, law makes such execution of Bond mandatory which makes the importer/exporter duty bound to pay amount of duty benefit availed with appropriate interest, in case of failure on the part of the importer/exporter to comply with such conditions.

Further, as per condition (iv) of the customs notification No. 018/2015-Cus dated 01.04.2015, in respect of imports made before the discharge of export obligation in full, the importer at the time of clearance of the imported materials executes a bond with such surety or security and in such form and for such sum as may be specified by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, binding himself, to pay on demand an amount equal

to the duty leviable, but for the exemption contained therein, on the imported materials in respect of which the conditions specified in this notification are not complied with, together with interest at the rate of fifteen percent per annum from the date of clearance of the said materials; In the instance case, the importers have stated that being star exporters, they were exempted from furnishing the bank guarantee.

20.4 Section 143 of the Customs Act, 1962, is reproduced below, as follows:

“Section 143 of the Customs Act, 1962: Power to allow import or export on execution of bonds in certain cases. –

(1) Where this Act or any other law requires anything to be done before a person can import or export any goods or clear any goods from the control of officers of customs and the ¹ [Assistant Commissioner of Customs or Deputy Commissioner of Customs] is satisfied that having regard to the circumstances of the case, such thing cannot be done before such import, export or clearance without detriment to that person, the ¹ [Assistant Commissioner of Customs or Deputy Commissioner of Customs] may, notwithstanding anything contained in this Act or such other law, grant leave for such import, export or clearance on the person executing a bond in such amount, with such surety or security and subject to such conditions as the ¹ [Assistant Commissioner of Customs or Deputy Commissioner of Customs] approves, for the doing of that thing within such time after the import, export or clearance as may be specified in the bond.

(2) If the thing is done within the time specified in the bond, the ¹ [Assistant Commissioner of Customs or Deputy Commissioner of Customs] shall cancel the bond as discharged in full and shall, on demand, deliver it, so cancelled, to the person who has executed or who is entitled to receive it; and in such a case that person shall not be liable to any penalty provided in this Act or, as the case may be, in such other law for the contravention of the provisions thereof relating to the doing of that thing.

(3) If the thing is not done within the time specified in the bond, the ¹ [Assistant Commissioner of Customs or Deputy Commissioner of Customs] shall, without prejudice to any other action that may be taken under this Act or any other law for the time being in force, be entitled to proceed upon the bond in accordance with law.”

20.4.1 Further the conditions of the Bond are as follows:

“.....WHEREAS we the obligors have imported and / or intend to import goods listed in Annexure I, availing customs duty exemption in terms of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 018/2015 dated 01.04.2015 (hereinafter referred to as said notification) under the Advance Authorisation No. 0310832316 dated 18.10.2019 (hereinafter referred to as the licence) for the Import of goods mentioned therein on the terms and conditions specified in the said Notification and Licence.

WHEREAS we the obligor(s) are manufacturer exporter holding IEM registration No 4765/SIA/IMO/2005 dated 10.10.2005, with the Government of India, Ministry of Commerce & Industry.

WHEREAS we the obligors have undertaken to fulfill the export obligation as specified in the said notification and the licence and to produce evidence of having so fulfilled the export obligation within 30 days from the expiry of the specified Export obligation period to the satisfaction of the Government.

NOW THE CONDITIONS OF THIS BOND ARE THAT:

1. We the obligors shall fulfill all the conditions of the said notification and shall observe of comply with all its terms and conditions.

2. We the obligors shall observe all the terms and Conditions specified in the licence.

3. We the obligors shall fulfill the export obligation as specified in the said notification and the licence and shall produce evidence of having so fulfilled the export obligation within 30 days from the expiry of the specified export obligation period to the satisfaction of the Government.

4. In the event of our failure to fulfill full or part of the export obligation as specified in the said notification and the licence, we the obligors hereby undertake to pay the Customs Duty but for the exemption and also interest @ 18% per annum, thereon forthwith and without any demur, to the Government.

5. The interest and other charges as applicable will be paid by the authorization holder incase of non compliance of the conditions of the notifications under the above mentioned scheme.

6. We, the obligors, shall comply with the conditions and limitations stipulated in the said Import and Export Policy/Foreign Trade Policy as amended from time to time.

7. We, the obligors shall not change the name and style under which we, the obligors, are doing business or change the location of the manufacturing premises except with the written permission of the Government.

If each and every one of the above condition is duly complied with by us, the obligor (s), the above written bond shall be void and will have no effect, otherwise the same remain in full force effect and virtue.....”

20.5 In view of the above, and in accordance with Section 143(3) of the Customs Act, 1962, read with the terms of the Bond, it is mandatory for the importer to comply with the conditions of the Bond while discharging the export obligation.

I find that the terms and conditions of the Bond mandate compliance with the following:

- (i) the conditions stipulated in Customs Notification No. 018/2015 dated 01.04.2015;
- (ii) the terms and conditions specified in Advance Authorisation No. 0310832316 dated 18.10.2019;
- (iii) the conditions and limitations laid down in the Import and Export Policy/Foreign Trade Policy, as amended from time to time;
- (iv) fulfilment of the export obligation as prescribed under the said Notification and Authorisation. etc.

Accordingly, while discharging the export obligation, the importer is mandatorily required to comply with:

- i) the conditions of Customs Notification No. 018/2015 dated 01.04.2015;
- ii) the terms and conditions of Advance Authorisation No. 0310832316 dated 18.10.2019; and
- iii) the applicable provisions of the Import and Export Policy/Foreign Trade Policy (as amended).

In other words, any exports made in violation of the above conditions shall not be counted towards fulfilment of the export obligation under Customs Notification No. 018/2015 dated 01.04.2015 and Advance Authorisation No. 0310832316. Accordingly, in terms of Section 143(3) of the Customs Act, the importer shall be liable to pay the applicable customs duty.

Since, the importer has wilfully violated the Actual User Condition, and thereby has not followed the provisions of FTP, HBP, conditions of Advance Authorisation and mandatory & essential conditions of Customs Notification No. 18/2015-20 dated 01.04.2015, therefore, quantity of goods –Cholestrol Aqua- 14120Kgs, already exported by the importer cannot be counted towards the fulfilment of its Export Obligation under Advance Authorisation No. 0310832316 dated 18.10.2019 and same is recoverable in terms of section 143 of Customs Act.

20.6 I observe that the Noticee No. 03, vide submission dated 10.09.2025 has also provided a copy of cancelled LUT bond executed as per the conditions of Notification No. 18/2015 dated 01.04.2025. Copy of the same is reproduced below:

Directorate General of Foreign Trade

(This is a system generated Authorisation/License/Script issued to the applicant. No Authorization on security paper is required to be issued. It may be used for information purpose only.)

LICENCE/AUTHORISATION/SCRIPT : (Advance)

Name of Office issuing Authorisation	O/o Additional Director General of Foreign Trade CGO Office, New Building, SE wing New Marine Lines, Churchgate Mumbai-400020
Name	FERMENTA BIOTECH LIMITED
Address of Applicant	A-1501, THANE ONE, DIL COMPLEX GHODBUNDER ROAD, MAJIWADA THANE WEST, MAHARASHTRA, PIN-400610
IEC	2288003359
Exporter Type	Manufacturer Exporter
Exporter Status	Two Star Export house
Transferable/Actual User	Actual User
File Number	03/94/040/00553/AN/20/
Licence/Authorisation/Script No. and Date of Issue	0310832316 Dated 18.10.2019
FOB Value (In Rs.)/(In US\$)	133,150,500.00 / 1890000.00
CIF in Rs.	70,707,000.00 (Indian Rupees Seven Crore Seven Lakh Seven Thousand only)
CIF in FFE	980,000.00(US Dollars Nine Lakh Eighty Thousand only)
Port of Registration	Nhava Sheva Sea (INNSA1)
Period of Shipment (Export Obligation Period)	18 Months
Validity of Authorisation / Script for Import	18.10.2020
Custom Notification Number & Date	018/2015 Dated : 01.04.2015
Currency Area	GCA
Utilization/Transferability	Conditions in terms of paragraph 2.02 of HEP, 2015-20

BOND / BG CANCELLED

DC/DMC

45,869,048

As requisited one time bond for Rs. 45,869,048

(Rs. 45,869,048) and Bank Guarantee for Rs. 45,869,048

with date of expiry has been executed by the imports

with this Customs House (JNCH, Nhava Sheva) is

fully cover the duty foregone under

Licence No. 0310832316 dated 18.10.2019

The same has been accepted by this office.

DC/DMC

Bond No- 2001653009

10 ALERT

डी. डी. तलेकर
D. D. TALEKAR
अधिकारी

20.7 Further based on the material and facts on record before this adjudicating authority, I find that the importer has not produced any document or any other evidence whereby it has informed the Dy. Commissioner, DMC, JNCH about the fact that the DRI has already initiated investigation on 12.04.2022 regarding the violation of conditions of FTP, HBP, conditions of Advance Authorisation and Customs Notification No. 18/2015-20 dated 01.04.2015 regarding imported goods, imported vide Advance Authorisation No. 0310832316 dated 18.10.2019 and therefore got LUT Bond No. 2001653009 cancelled by fraud, willful-suppression of facts and mis-declaration.

20.7.1 In view of the foregoing, it is observed that, it is a settled law that fraud and justice never dwell together (Fraus et Jus nunquam cohabitant). Lord Denning had observed that “no judgement of a court, no order of a minister can be allowed to stand if it has been obtained by fraud, for, fraud unravels everything” there are numerous judicial pronouncements wherein it has been held that no court would allow getting any advantage which was obtained by fraud. The Hon’ble Supreme Court in case of CC, Kandla vs. Essar Oils Ltd. reported as 2004 (172) ELT 433 SC at Para’s 31 and 32 held as follows:

“31. “*Fraud*” as is well known vitiates every solemn act. *Fraud* and justice never dwell together. *Fraud* is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. **It is also well settled that misrepresentation itself amounts to fraud.** Indeed, innocent misrepresentation may also give reason to claim relief against fraud. **A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood.** It is a fraud in law if a party makes representations, which he knows to be false, although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. *Fraud* and *deception* are synonymous. Although in a given case a *deception* may not amount to *fraud*, *fraud* is anathema to all equitable principles and any affair tainted with *fraud* cannot be perpetuated or saved by the application of any equitable doctrine including *res judicata*. (Ram Chandra Singh v. Savitri Devi and Ors. [2003 (8) SCC 319].

32. "Fraud" and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. Principle Bench of Tribunal at New Delhi extensively dealt with the issue of Fraud while delivering judgment in *Samsung Electronics India Ltd. Vs commissioner of Customs, New Delhi* reported in 2014(307)ELT 160(Tri. Del). In *Samsung* case, Hon'ble Tribunal held as under.

"If a party makes representations which he knows to be false and injury ensues there from although the motive from which the representations proceeded may not have been bad is considered to be fraud in the eyes of law. It is also well settled that misrepresentation itself amounts to fraud when that results in deceiving and leading a man into damage by wilfully or recklessly causing him to believe on falsehood. Of course, innocent misrepresentation may give reason to claim relief against fraud. In the case of Commissioner of Customs, Kandla vs. Essar Oil Ltd. - 2004 (172) E.L.T. 433 (S.C.) it has been held that by "fraud" is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill-will towards the other is immaterial. "Fraud" involves two elements, deceit and injury to the deceived.

Undue advantage obtained by the deceiver will almost always cause loss or detriment to the deceived. Similarly a "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (Ref: S.P. Chengalvaraya Naidu v. Jagannath [1994 (1) SCC 1: AIR 1994 S.C. 853]. It is said to be made when it appears that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly and carelessly whether it be true or false [Ref :RoshanDeenv. PreetiLal [(2002) 1 SCC 100], Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education [(2003) 8 SCC 311], Ram Chandra Singh's case (supra) and Ashok Leyland Ltd. v. State of T.N. and Another [(2004) 3 SCC 1].

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

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

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

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

Therefore I hold the cancellation of LUT Bond No. 2001653009 submitted by the importer M/s. Fermenta Biotech Limited against Advance Authorisation No. 0310832316 dated 18.10.2019, *ab initio null and void*, as the cancelation is secured by way of fraud, willful-misdeclaration, mis-representation and suppression of facts. Accordingly, I hereby enforce the

said Bond & demand duty foregone Rs. 1,28,71,163/- and interest from the importer, under section 143(3) of Customs Act, 1962.

QUANTIFICATION AND PAYMENT OF DUTY

20.8 M/s. Fermenta Biotech Ltd, (0388076381) has imported following goods utilizing the Advance Authorization No. 0310832316 dt 18.10.2019 and by availing benefit of duty exemption extended by notification No. 018/2015-Customs, dated 01.04.2015:

Sl. No.	Bill of Entry No. and Date	Description of the goods	Quantity imported (kg)	Assessable value (Rs.)	Duty foregone (Rs.)
1	5439726 dated 25.10.2019	DETOX FOC -27 (FISH BODY OIL CRUDE)	21,840	10,990,106	5,380,756
2	5456322 dated 26.10.2019	DETOX FOC -27 (FISH BODY OIL CRUDE)	21,670	7,799,033	3,818,407
3	5944627 dated 04.12.2019	DETOX FOC -27 (FISH BODY OIL CRUDE)	20,530	7,500,000	3,672,000
		TOTAL	64,040	26,289,139	12,871,163

20.9 Thus, the total customs duty forgone/ duty saved amount by the importer M/s. Fermenta Biotech Limited in respect of their imports through Nhava Sheva Port is **Rs. 1,28,71,163/- (Rupees One crore twenty-eight lakhs seventy-one thousand one hundred and sixty-three only)**. I find that the same is liable to be recovered from the Importer along with applicable interest, for violations of conditions prescribed in the Customs Notification No. 18/2015 and Advance Authorisation issued to them read with the relevant provisions of Foreign Trade Policy, Hand Book of Procedures.

20.10 I find that the importer M/s. Fermenta Biotech Limited have exported certain quantities of “cholesterol” said to be manufactured out of the imported “fish body oil crude” utilizing Advance Authorization No. 0310832316 dt 18.10.2019, however, owing to wilful violation of Actual User Conditions, as detailed in the **Para 19 supra**, I find that the same cannot be counted for the purpose of fulfilment of their export obligation and is therefore liable to pay the entire amount of Customs duty forgone of **Rs. 1,28,71,163/-** along with applicable interest.

20.11 I observe that, during the course of initial investigation and later on during the course to obtain Redemption-cum-regularisation letter from DGFT the importer/Noticee No. 01 has voluntarily paid an amount of **Rs. 30,00,000/- (Rupees Thirty lakhs only)** and **Rs. 4,22,234/- (Rupees Four lakh twenty two thousand two hundred thirty four Only)**, respectively.

The details of the duty paid by them as per the TR 6 Challans received are as under: -

Demand draft no. and date	Amount paid (Rs.)		TR6 Challan No	Date of credit to the Bank
	Duty	Interest		
Demand Draft No. 43853161 dated 12.04.2022 issued by Union Bank of India, Ghod Bunder Road, Thane, Mumbai	3000000	0	HC-88,	13.04.2022
Demand Draft No. 853357 dated 11.11.2022 issued by Union Bank of India	0	4,22,234	HC-981	14.11.2022

20.12 I find that the said amount has been credited to the government account and to be adjusted towards their liability in respect of imports through Nhava Sheva, as detailed below: -

Port of import	Total value of the imported goods (in Rs.)	Total duty forgone/ duty saved amount (in Rs.)	Total duty paid consequent on DRI investigation (in Rs.)	Balance duty payable (in Rs.)
Nhava Sheva Sea	2,62,89,139/-	1,28,71,163/-	34,22,234/-	94,48,929/-

Port (innsa1)				
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D. NOW I TAKE THE NEXT QUESTION/ISSUE, AS TO WHETHER THE IMPORTED GOODS ARE LIABLE FOR CONFISCATION UNDER SECTIONS 111(D) AND 111(O) OF THE CUSTOMS ACT, 1962.

I observe that, it is alleged in the SCN that the importer has not obtained the License for import of restricted goods for the import of Crude Fish Body Oil and has therefore imported the same in violation of EXIM policy. Further, that the SCN proposes confiscation of the imported goods under Sections 111(d) and 111(o) of the Customs Act, 1962 on the ground that they were imported contrary to law and in violation of the conditions of the exemption notification.

Accordingly, I proceed to examine the material on records- whether the imported goods are restricted, the statement of Sh. Arun Balakrishna Khedwal, General Manager – Supply Chain of M/s. Fermenta Biotech Limited, & Shri. Amol Narayan Lone, Business and Finance Controller of M/s. Fermenta Biotech Limited, along with relevant legal provisions governing the import of restricted goods, violation of conditions of the exemption notification and then the conclusion thereof.

21. I observe that the Noticee No. 01, M/s. Fermenta Biotech Ltd, (0388076381) has imported following goods utilizing the Advance Authorization No. 0310832316 dt 18.10.2019 and by availing benefit of duty exemption extended by notification No. 018/2015-Customs, dated 01.04.2015:

Sl. No.	Bill of Entry No. and Date	Description of the goods	Quantity imported (kg)	Assessable value (Rs.)	Duty foregone (Rs.)
1	5439726 dated 25.10.2019	DETOX FOC -27 (FISH BODY OIL CRUDE)	21,840	10,990,106	5,380,756
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3	5944627 dated 04.12.2019	DETOX FOC -27 (FISH BODY OIL CRUDE)	20,530	7,500,000	3,672,000
		TOTAL	64,040	26,289,139	12,871,163

Details of the Advance Authorization No. 0310832316 dt 18.10.2019, is as follows:

No. and date/Port of Registration/ Issued By	Items to be imported duty free under authorization			Item to be exported duty free under authorization		
	Description of Goods	Quantity (Kgs)	CIF value (Rs.)	Description of Goods	Quantity (Kgs)	FOB value (Rs.)
0310832316 dt 18.10.2019/ Nhava Sheva sea port -INNSA1/ DGFT, Mumbai	DETOX FOC-27 FISH BODY OIL CRUDE	200,000	70,707,000	CHOLESTEROL (IT CHS Code: 29061310)	42,000	133,150,500

21.1 Customs classification and import policy of the imported goods i.e. ‘DETOX FOC-27 FISH BODY OIL CRUDE’ is as follows:

1504	FATS AND OILS AND THEIR FRACTIONS, OF FISH OR MARINE MAMMALS, WHETHER OR NOT REFINED, BUT NOT CHEMICALLY MODIFIED				
1504 10	-	<i>Fish liver oils and their fractions:</i>			
1504 10 10	---	Cod liver oil	kg.	30%	-
	---	<i>Other :</i>			
1504 10 91	----	Squid liver oil	kg.	30%	-
1504 10 99	----	Other	kg.	30%	-
1504 20	-	<i>Fats and oils and their fractions of fish, other than liver oils :</i>			
1504 20 10	---	Fish body oil	kg.	30%	-
1504 20 20	---	Fish lipid oil	kg.	30%	-
1504 20 30	---	Sperm oil	kg.	30%	-

21.2 I observe that under section 11 of the Customs Act 1962, the Central Government has the power to issue notification under which export or import of any goods can be declared as prohibited. The prohibition can either be absolute or conditional. Further, as per notification No. 08 (RE-2010)/2009-2014, New Delhi, dated 8th October, 2010 issued by DGFT, import of fish body oil crude under CTH 15042010 is restricted.

“Notification No. 08(RE-2010)/2009-2014, New Delhi, The 8th October, 2010

Subject: Import policy of fish body oil.

S.O.(E) In exercise of the powers conferred by Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 read with Para 2.1 of the Foreign Trade Policy, 2009-2014, the Central Government hereby makes the following amendments in the Schedule 1 (Imports) of the ITC (HS) Classifications of Export and Import Items :

2. Existing policy (prior to this amendment) as available at page 79 of ITC (HS) Classifications of Export and Import Items is extracted below:

Exim Code	Item description	Policy	Policy conditions
1504 20 10	Fish Body Oil	Prohibited	Not permitted to be imported
1504 20 20	Fish Lipid Oil	Free	Import subject to Licensing Note No. (5) of the Chapter.

3. After amendment the entries would read as below:

Exim Code	Item description	Policy	Policy conditions
1504 20 10	Fish Body Oil (Crude)	Restricted	
1504 20 20	Fish Body Oil (Refined) having following quality parameters : (i) Free fatty Acids : <0.10% (as Oleic Acid) (ii) Moisture : <0.5% (iii) Peroxide value (PV) : <10 milli equivalent/kg of oil (iv) Eicosapentaenoic Acid EPA + Docosapentaenoic Acid DHA : 5-15% by weight (v) Trans fat : <0.1%	Free	

4. Import Licensing Note No. (5) at the end of Chapter 15 stands deleted because it has been incorporated in the column 2 above.”

In view of above, I find that the Fish Body Oil (Crude) merit classification 1504.2010 & its import is restricted.

21.3 I observe that in his voluntary statement dated 12.04.2022 & 19.05.2022 recorded by DRI official under section 108 of Customs act, 1962, Shri. Arun Balakrishna Khedwal, General Manager

– Supply Chain of M/s. Fermenta Biotech Limited, corroborated by Shri. Amol Narayan Lone, Business and Finance Controller of M/s. Fermenta Biotech Limited in his voluntary statement dated 19.05.2022 recorded by DRI official under section 108 *ibid*, has *inter alia* submitted as follows:

- regarding the procedures adopted by them at the time of obtaining the above Advance authorisation and the procedure involved in it, he has stated that **as per the export-import policy, crude fish oil is restricted for import and can be imported only under the license issued by DGFT; that, hence, initially they have applied for the advance authorisation from DGFT** and got the advance authorisation license under self-declaration basis; that, later they came to know that the crude fish body oil intended for import for the purpose of export of Cholesterol were not notified by the DGFT norms committee and they should apply to the norms committee for fixation of the norms; that, hence, subsequently, they have applied to the norms committee of the DGFT for fixing the norms for the same; that, they were not aware of the status of the decision of norms committee till it was informed by DRI officials of its rejection.
- that, **they were aware that the crude fish body oil was restricted for import and that's the reason they have opted for import under advance authorisation.**
- that they were aware that the crude fish body oil was restricted, however, to the best of his knowledge, **they have not declared the same to DGFT at the time of applying advance authorization, as there is no provision in on line portal to declare the same.**
- and hence it appears that the Restricted Import Items are those items that are not freely importable; require a 'import license for restricted list of import items' from DGFT and can only be imported after having the Restricted Import License issued by DGFT and on being asked whether they have applied for permission to import 'fish body oil crude' (which is a restricted one for import) from DGFT in ANF 2M and obtained 'Restricted Import License' for import of crude fish body oil and to provide the details thereof, Shri. Arun Balkrishna Khedwal has stated that, **even though they were aware that crude fish body oil is a restricted goods for import as per foreign trade policy, they were of the opinion that as they are importing the goods under advance authorization, no separate license is required; that, hence they have not applied for permission to import 'fish body oil crude' from DGFT in ANF 2M and not obtained separate 'Restricted Import License' for import of crude fish body oil.**

21.4 From the foregoing, I observe that both Shri. Arun Balakrishna Khedwal & Sh. Amol Narayan Lone, knew that as per the export-import policy, crude fish oil is restricted for import and can be imported under the license issued by DGFT; that, hence, they have applied for the advance authorisation from DGFT; that, they have not declared the same to DGFT at the time of applying advance authorization, as there is no provision in on line portal to declare the same; that, even though they were aware that crude fish body oil is a restricted goods for import as per foreign trade policy, they were of the opinion that as they are importing the goods under advance authorization, no separate license is required; that, hence they have not applied for permission to import 'fish body oil crude' from DGFT in ANF 2M and not obtained separate 'Restricted Import License' for import of crude fish body oil.

21.5 I observe that, the procedures for import of restricted items are enumerated in the **Foreign Trade Policy & Hand Book of Procedures**, which are reproduced as follows:-

- (i) **As per para 2.01 of foreign trade policy 2015-2020, “ Exports and Imports shall be ‘Free’ except when regulated by way of ‘prohibition’, ‘restriction’ or ‘exclusive trading through STE..... The list of ‘prohibited’, ‘restricted’ items can be viewed by clicking on ‘Downloads’ at <http://dgft.gov.in>. ”**
- (ii) **As per para 2.08 of foreign trade policy 2015-2020, “Any goods/ service, the export or import of which is ‘Restricted’ may be exported or imported only in Procedures prescribed in a Notification/Public Notice issued in this regard”**

- (iii) **As per para 2.50 of Hand Book of Procedures 2015-2020**, *“An application for grant of an Authorisation for import or export of items mentioned as ‘Restricted’ in ITC (HS) may be made to RA, with a copy to DGFT Hqrs in ANF 2M along with documents prescribed therein”.*
- (iv) **As per para 2.51 (a) of Hand Book of Procedures 2015-2020**, *“(a) Restricted item Authorisation may be granted by DGFT or any other RA authorised by him in this behalf. DGFT/ RA may take assistance and advice of a Facilitation Committee while granting authorisation. The Assistance of technical authorities may also be taken by seeking their comments in writing. Facilitation Committee will consist of representatives of Technical Authorities and Departments/ Ministries concerned”.*
- (v) **As per para 2.51 (b)** *“Import authorisations for a restricted item, if so, directed by the competent authority, shall be issued for import through one of the sea ports or air ports or ICDs or LCS, as per the option indicated, in writing, by the applicant. Authorisation holder shall register the import authorisation at the port specified in the Authorisation and thereafter all imports against said authorisation shall be made only through that port, unless the authorisation holder obtains permission from customs authority concerned to import through any other specified port.”*
- (vi) **Further, as per “Import Licensing Procedures” for import of “Restricted Items” in India**, *“an application for import of such restricted items may be made to the Directorate of General of Foreign Trade (DGFT) WEBSITE. Import authorisation for restricted items are issued after due consideration of the EXIM Facilitation Committee (EFC) which is constituted by members from concerned authorities of the Government of India”*

From the above, it is noticed that the Restricted Import Items are those items that are not freely importable and require an Authorisation /Permission for import from DGFT.

21.6 I further observe the provisions relating to the import of ‘Restricted goods’ under Chapter 4 of the Foreign Trade Policy (FTP), as well as the definition of ‘Prohibited goods’ as per the Customs Act, as follows

“4.18 Importability / Exportability of items that are Prohibited/Restricted/ STE:-

(i) No export or import of an item shall be allowed under Advance Authorisation / DFIA if the item is prohibited for exports or imports respectively. Export of a prohibited item may be allowed under Advance Authorisation provided it is separately so notified, subject to the conditions given therein.

....

*(iv) Import of **restricted items** shall be allowed under Advance Authorisation/ DFIA.”*

Further, section 2 (33) of Customs Act 1962, defines ‘Prohibited goods’, as follows:-

"prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;

21.7. From forgoing, I observe that Para 4.18 (iv) allows Import of restricted items shall be allowed under Advance Authorisation/ DFIA, however, Para 4.18 (i) does not allows import of Prohibited goods. Further, as per, section 2 (33) of Customs Act 1962, a Restricted goods becomes Prohibited, if conditions subject to which the goods are permitted to be imported or have not been complied with.

21.8 From the foregoing, i find that Import of crude fish body oil under CTH 15042010 is restricted as per DGFT Notification No. 08 (RE-2010)/2009-2014 dated 8th October 2010. That, the Restricted Import Items are not freely importable and require an Authorisation /Permission for import from DGFT. That, under FTP under Chaper-4, for Advance Authorisation, vide Para 4.18 (iv) allows Import of restricted items under Advance Authorisation/ DFIA, however, Para 4.18 (i) does not allows import of Prohibited goods. Further, as per, section 2 (33) of Customs Act 1962, a

Restricted goods becomes Prohibited, if conditions subject to which the goods are permitted to be imported or have not been complied with.

21.8.1 That, Shri. Arun Balakrishna Khedwal, General Manager – Supply Chain of M/s. Fermenta Biotech Limited, & Shri. Amol Narayan Lone, Business and Finance Controller of M/s. Fermenta Biotech Limited, were aware that about the restriction and also knew that as per the Export-Import Policy, the item could only be imported with an advance license issued by DGFT. Therefore, they applied for an Advance Authorisation. However, they did not submit an application in ANF 2M or obtain a separate ‘Restricted Import License’ for the import of crude fish body oil.

21.8.2 That, the Importer has wilfully violated the condition of Foreign Trade Policy (FTP), Handbook of Procedures (HBP), Condition Sheet of Advance Authorisation, Customs Notification No. 18/2015-Cus dated 01.04.2015 regarding imported crude fish body oil under the Advance Authorisation No. 0310832316 dated 18.10.2019. In this regard, I reiterate my findings in **Para 17** supra, as the same are *mutatis mutandis* applicable to the present issue. That, the importers have failed to fulfill the “**Actual User**” condition as stipulated under **Para 4.16 of the Foreign Trade Policy** which states that material imported under Advance Authorisation shall not be transferable even after completion of export obligation. Further, as per **4.35 (HBP) regarding Facility of Supporting Manufacturer/ Jobber/co- licensee, which states that Imported material may be used in any unit of holder of Advance Authorisation or jobber / supporting manufacturer provided same is endorsed on authorisation by Regional Authority. If applicant desires to have name of any manufacturer or jobber added to authorisation, he may apply. Such endorsement shall be mandatory where prior import before export is a condition for availing Advance Authorisation scheme and authorisation holder desires to have material processed through any other manufacturer or jobber.** Further, as per **Para 4.10 of the Hand Book of Procedure** Transfer of any duty-free material imported or procured against Advance Authorisation from one unit of a company to another unit for manufacturing purpose shall be done with prior intimation to jurisdictional Customs Authority. Further, **Condition Sheet of the Advance Authorisation** clearly mentions that the license holder/importer must comply with the above provisions of the Foreign Trade Policy and the Handbook of Procedures. It is also pertinent to mention that **Notification No. 18/ 2015 – Customs, dated 01.04.2015 under Sr. No x, stipulates that the said materials shall not be transferred or sold and can only be transferred to a job worker for processing after intimation/approval from Jurisdictional Customs Authority permitting transfer of materials for job work. Further, as per Sr. No. ii (a), authorisation shall bears the name and address of the importer and the supporting manufacturer in cases where the authorisation has been issued to a merchant exporter.** That, during searches at the premises of the Importer M/s. Fermenta Biotech Ltd. on 12.04.2022 and subsequent investigation by DRI officials and voluntary statements of Sh. Arun Khodwal & Sh. Amol Narayan Lone dated 12.04.2022 & 19.05.2022, recorded by DRI officials under section 108 of Customs Act, 1962, I find that the supporting manufacturer of M/s. Fermenta Biotech Limited i.e., M/s. D.K. Biopharma Pvt. Ltd. **did not had the required capacity and facility/machinery to undertake the job work** and was instead regularly **transferring the imported duty-free goods to another entity M/s. DK Pharma Chem for job work, with the prior-consent & full knowledge of the importer.** However, **neither** M/s. Fermenta Biotech Ltd. approached the DGFT for adding or endorsing the name of the firm **M/s. DK Pharma Chem** in the advance authorisation, as supporting manufacturer for job work, **nor** it has intimated/obtained permission from the Customs authorities for sending the goods imported against the subject Advance Authorisation for job work to **M/s. DK Pharma Chem. Such endorsement is mandatory where prior import before export is a condition for availing Advance Authorisation scheme and authorisation holder desires to have material processed through any other manufacturer or jobber & cases where the authorisation has been issued to a merchant exporter.** Therefore importer M/s. Fermenta Biotech Limited is in violation the mandatory and essential conditions of Foreign Trade Policy, Hand Book of Procedure & Customs Notification No. 18/2015 dated 01.04.2015 and **rendered exemption of duty benefit inadmissible.**

21.8.3 In view of the foregoing, I find that the importer has wilfully violated the mandatory and essential conditions of Customs Notification No. 18/2015 dated 01.04.2015 and, therefore, the benefit of import of restricted goods under Advance Authorisation can't be extended to the imported goods- crude fish body oil.

21.9 The Section 111(d) and 111(o) of the Customs Act, 1962 is reproduced below:-

“SECTION 111. Confiscation of improperly imported goods, etc. —

The following goods brought from a place outside India shall be liable to confiscation: —

- (d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, **contrary to any prohibition imposed** by or under this Act or any other law for the time being in force;*
- (o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the **condition is not observed** unless the non-observance of the condition was sanctioned by the proper officer;”*

21.10 Importer **neither** possesses import licence for restricted goods issued by the DGFT **nor** fulfilled the Actual user conditions- of the Advance Authorisation **nor** fulfilled the mandatory and essential conditions of the Customs Notification No. 018/2015 dated 01.04.2015, and therefore rendered imported goods liable for confiscation under section 111(d) & 111(o), of Customs Act, 1962.

21.10.1 Further, with the prior consent of the importer, M/s. Fermenta Biotech, the imported goods — crude fish body oil — were **removed** from the premises of M/s. DK Biopharma Pvt. Ltd., then **carried over and transferred/deposited** with M/s. DK Pharma Chem for job work. This wilful violation of the provisions of Notification No. 18/2015 -Cus dated 01.04.2015 and relevant Paras of Foreign Trade Policy 2015-2020 and Hand Book of Procedures 2015-2020, the conditions specified in the advance authorisation license and in terms of the bond furnished by the Importer read with Section 143(3) of the Customs Act, 1962, on account of which the impugned goods were liable to confiscation under Section 111(d) and 111(o) of the Customs Act, 1962.

21.11 However, I observe that the goods imported vide bills of entry as detailed above are not available for confiscation. I rely upon the order of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) wherein the Hon'ble Madras High Court held in Para 23 of the judgment as below:

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

21.12 I further observe that the above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad), has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.) and the same have not been challenged by any of the parties in operation. I also observe that any goods improperly imported as provided in any sub-section of Section 111 of the Customs Act, 1962 are liable to confiscation and merely because the importer was not caught at the time of clearance of the imported goods, can't be given differential treatment.

21.13 In view of the above, I find that the decision of the Hon'ble Madras High Court in the case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), which has been passed after observing the decision of Hon'ble Bombay High Court in case of M/s Finesse Creations Inc. reported vide 2009 (248) ELT 122 (Bom)-upheld by Hon'ble Supreme Court in 2010(255) ELT A. 120(SC), is squarely applicable in the present case. Accordingly, I find that the present case also merits the imposition of a Redemption Fine.

E. NOW, I TAKE UP THE NEXT ISSUE- WHETHER PENALTIES ARE IMPOSABLE ON M/S. FERMENTA BIOTECH LTD. UNDER SECTION 112(A) AND/OR 112(B), AND ON THE CO-NOTICEES UNDER SECTION 112(A) AND/OR 112(B) OF THE CUSTOMS ACT, 1962.

I observe that the SCN proposed penalties on M/s. Fermenta Biotech Ltd. under Section 112 (a) and/or 114A and on the co-Noticee(s) under Section 112(a) of the Customs Act, 1962.

22. The Section 112 and 114A are reproduced below:-

“Section 112. Penalty for improper importation of goods, etc. — Any person,

*(a) who, in relation to any goods, **does or omits to do** any act which act or **omission** would render such goods liable to confiscation under section 111, or **abets** the doing or omission of such an act, or*

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding the value of the goods or five thousand rupees], whichever is the greater;

[(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:

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

ROLE OF NOTICEE NO. 1:-

22.1 In the present case, I re-iterate my finds at Para 17 to Para 21, supra, as *they mutatis-mutandis* applicable to the issue before me.

- (i) Importer/ Noitcee No 01 M/s. Fermenta Biotech Limited imported crude fish body oil from the supplier M/s. Golden Omega S.A., Chile, through M/s. DK Biopharma Private Limited. The said crude fish body oil was procured & imported by M/s. Fermenta Biotech Limited

from M/s. DK Biopharma Private Limited by availing the benefit of an Advance Authorisation licence issued by DGFT, thereby importing the goods without payment of duty.

- (ii) That, M/s. Fermenta Biotech Limited does not possess the facility to manufacture Cholesterol Aqua from Fish Body Oil Crude and, therefore, entered into a Confidentiality Agreement (CDA) with M/s. DK Biopharma Private Limited for the manufacturing of cholesterol. M/s. DK Biopharma Private Limited has been designated as the supporting manufacturer under the said Advance Authorisation issued by DGFT.
- (iii) Upon import, the crude fish body oil was transported from the port of import to the manufacturing facility of M/s. DK Biopharma Private Limited, located at Plot No. 15, 16, 21/12 & 21/13, MIDC, Morivali, Ambernath, Thane, Maharashtra – 421501. However, with the consent of M/s. Fermenta Biotech Limited, the imported crude fish body oil was sent by M/s. DK Biopharma Private Limited to M/s. DK Pharma Chem, located at F-32, MIDC, Badlapur, Maharashtra – 421503 (approximately 4–5 km from the main unit), on a job work basis, due to capacity constraints and the absence of specific facilities at DK Biopharma's unit. After initial processing at M/s. DK Pharma Chem, the goods were returned to M/s. DK Biopharma Private Limited under proper job work challans for further processing. Subsequently, the processed goods were transferred to M/s. Fermenta Biotech Limited for final export.
- (iv) **Both Shri Arun Khedwal and Shri. Amol Narayan Lone, have agreed that they are aware that M/s. DK Biopharma Private Limited, their supporting manufacturer, is regularly transferring the goods to another unit by name M/s. DK Pharma Chem, in clear violation of conditions prescribed. Para 4.16 of Foreign Trade Policy, Para 4.35 and 4.10 of Hand Book of Procedures, Notification No. 018/2015 – Customs dated 01.04.2015, conditions sheet attached to their advance authorization, which clearly states that the imported goods cannot be transferred to another unit even for job work unless it is mentioned in the relevant advance authorisation. In fact, it is with the prior consent of M/s. Fermenta Biotech Limited, M/s. DK Biopharma Private Limited was transferring the imported goods to M/s. DK Pharma Chem for processing and job work.**
- (v) That, Para 4.16 of Foreign Trade Policy restricts use of such duty-free imported goods and stipulates that such import will be subject to actual user condition. It further demands that even after fulfilment of the export obligations, such goods remaining cannot be transferred. Para 4.35 of the foreign trade policy stipulates that imported material may be used in any unit of holder of Advance Authorisation subject to condition of paragraph 4.10 of this Handbook or jobber/ supporting manufacturer provided same is endorsed on authorisation by Regional Authority. If applicant desires to have name of any manufacturer or jobber added to authorisation, he may apply. Such endorsement shall be mandatory where prior import before export is a condition for availing Advance Authorisation scheme and authorisation holder desires to have material processed through any other manufacturer or jobber. Para 4.10 of the HBP clearly states that Transfer of any duty-free material imported or procured against Advance Authorisation from one unit of a company to another unit for manufacturing purpose shall be done with prior intimation to jurisdictional Customs Authority. In the case of subject advance authorisation, it is an admitted fact that, the supporting manufacturer of the importers have transferred the duty-free import goods to another manufacturing unit violating these conditions, with the knowledge of the importers. Further, condition no. (x) of the Notfn. No. 018/2015 – Cus. dated 01.04.2015, prohibits any transfer or sale of the goods imported by availing benefit of the said notification.
- (vi) To summarise, the importers have failed to fulfill the “Actual User” condition as stipulated under **Para 4.16 of the Foreign Trade Policy** which states that material imported under Advance Authorisation shall not be transferable even after completion of export obligation. Further, as per **4.35 (HBP) regarding Facility of Supporting Manufacturer/ Jobber/co-licensee, which states that Imported material may be used in any unit of holder of Advance Authorisation or jobber / supporting manufacturer provided same is endorsed**

on authorisation by Regional Authority. If applicant desires to have name of any manufacturer or jobber added to authorisation, he may apply. Such endorsement shall be mandatory where prior import before export is a condition for availing Advance Authorisation scheme and authorisation holder desires to have material processed through any other manufacturer or jobber. Further, as per **Para 4.10 of the Hand Book of Procedure** Transfer of any duty-free material imported or procured against Advance Authorisation from one unit of a company to another unit for manufacturing purpose shall be done with prior intimation to jurisdictional Customs Authority. Further, **Condition Sheet of the Advance Authorisation** clearly mentions that the license holder/importer must comply with the above provisions of the Foreign Trade Policy and the Handbook of Procedures. It is also pertinent to mention that **Notification No. 18/ 2015 – Customs, dated 01.04.2015 under Sr. No x, stipulates that the said materials shall not be transferred or sold and can only be transferred to a job worker for processing after intimation/approval from Jurisdictional Customs Authority permitting transfer of materials for job work. Further, as per Sr. No. ii (a), authorisation shall bears the name and address of the importer and the supporting manufacturer in cases where the authorisation has been issued to a merchant exporter.** That, during searches at the premises of the Importer M/s. Fermenta Biotech Ltd. on 12.04.2022 and subsequent investigation by DRI officials and voluntary statements of Sh. Arun Khodwal & Sh. Amol Narayan Lone dated 12.04.2022 & 19.05.2022, recorded by DRI officials under section 108 of Customs Act, 1962, I find that the supporting manufacturer of M/s. Fermenta Biotech Limited i.e., M/s. D.K. Biopharma Pvt. Ltd. **did not had the required capacity and facility/machinery to undertake the job work** and was instead regularly transferring the imported duty-free goods to another entity **M/s. DK Pharma Chem for job work, with the prior-consent & full knowledge of the importer.** However, **neither** M/s. Fermenta Biotech Ltd. approached the DGFT for adding or endorsing the name of the firm **M/s. DK Pharma Chem** in the advance authorisation, as supporting manufacturer for job work, **nor** it has intimated/obtained permission from the Customs authorities for sending the goods imported against the subject Advance Authorisation for job work to **M/s. DK Pharma Chem. Such endorsement is mandatory where prior import before export is a condition for availing Advance Authorisation scheme and authorisation holder desires to have material processed through any other manufacturer or jobber & cases where the authorisation has been issued to a merchant exporter.** Therefore importer M/s. Fermenta Biotech Limited is in violation the mandatory and essential conditions of Foreign Trade Policy, Hand Book of Procedure & Customs Notification No. 18/2015 dated 01.04.2015 and **rendered exemption of duty benefit inadmissible.**

- (vii) That the FTP 2015-20, HBP & Redemption-cum-Regularisation Letter dated 20.01.2023 issued by DGFT does not in any manner precludes or stops this adjudicating authority from taking action in the case of violation of conditions of Customs Notification 18/2015 dated 01.04.2015. Same is upheld by Apex Court in numerous judgments wherein it is held that Jurisdiction of licensing authority to investigate the violation of condition of import licence does not preclude - Jurisdiction of Customs authorities to take action when the condition of exemption is violated. Further it is also held that DGFT orders are not binding on Customs authorities for taking action taken under Customs Act, 1962 - Where conditions of exemption notification were not fulfilled and law required strict compliance thereof, importer was liable to pay import duty which was payable, but for benefit of exemption Notification obtained by them.
- (viii) That the importer by their deliberate actions in omitting to abide by the mandatory and essential conditions/ provisions of the Foreign Trade Policy read with Hand Book of Procedures have grossly failed to comply with the **mandatory and essential** conditions of the Advance Authorization & notification and imported restricted goods duty free by availing undue benefit of the same. Importer has clearly violated **Actual User condition** and diverted goods to an altogether new entity **M/s. DK Pharma Chem.,** not endorsed on the Advance Authorisation. Importer has **neither** got the name of M/s. DK Pharma Chem., endorsed as jobber/supporting manufacturer on authorisation by Regional Authority, DGFT **nor** intimated

the concerned Customs Authority. I observe that this condition is **mandatory and essential** condition for availing the exemption benefit under the Advance Authorisation Scheme and the aforementioned Customs Notification and has been wilfully violation by the importer, & therefore has render the exemption benefits claimed under the Advance Authorisation and Customs Notification 18/2015 dated 01.04.2015 null and void, **and accordingly rendered the imported goods liable for confiscation under section 111 (o) of the Customs ACT, 1962.**

- (ix) **That Import of crude fish body oil under CTH 15042010 is restricted** as per DGFT Notification No. 08 (RE-2010)/2009-2014 dated 8th October 2010. That, the Restricted Import Items are not freely importable and require an Authorisation /Permission for import from DGFT. That, under FTP under Chaper-4, for Advance Authorisation, vide Para 4.18 (iv) allows Import of restricted items under Advance Authorisation/ DFIA, however, Para 4.18 (i) does not allows import of Prohibited goods. Further, as per, section 2 (33) of Customs Act 1962, a Restricted goods becomes Prohibited, if conditions subject to which the goods are permitted to be imported or have not been complied with. That, Shri. Arun Balakrishna Khedwal, General Manager – Supply Chain of M/s. Fermenta Biotech Limited, & Shri. Amol Narayan Lone, Business and Finance Controller of M/s. Fermenta Biotech Limited, were aware that about the restriction and also knew that as per the Export-Import Policy, the item could only be imported with an advance license issued by DGFT. Therefore, they applied for an Advance Authorisation. However, they did not submit an application in ANF 2M or obtain a separate ‘Restricted Import License’ for the import of crude fish body oil.
- (x) That the importer has wilfully violated the mandatory and essential conditions of Customs Notification No. 18/2015 dated 01.04.2015 and, therefore, the benefit of import of restricted goods under Advance Authorization can’t be extended to the imported goods- crude fish body oil. Since, importer does not possess a import licence issued by the DGFT for import of restricted goods; **therefore, importer has rendered the imported goods also liable for confiscation under section 111(d) of Customs Act, 1962.**

22.1.1 Noticee No 01, vide Personal Hearing and written submissions has submitted that Noticee No. 01 have been issued redemption certificate by the DGTF as per Para 4.49 of Hand Book of Procedure and remaining duty is paid and therefore should not be penalized. Noticee also undertook to submit the copy of receipt received from the Customs Dept regarding submission of Redemption certificate and Challans, however, despite reminders, same is not submitted by the Noticee.

22.1.2 I re-iterate my finds at **Para 19 supra**, as they mutatis-mutandis applicable to the issue before me. I find that the FTP 2015-20, HBP & Redemption-cum-Regularisation Letter issued by DGFT does not in any manner precludes or stops this adjudicating authority from taking action in the case of violation of conditions of Customs Notification 18/2015 dated 01.04.2015. Same is upheld by Apex Court in numerous judgments wherein it is held that Jurisdiction of licensing authority to investigate the violation of condition of import licence does not preclude - Jurisdiction of Customs authorities to take action when the condition of exemption is violated. Further it is also held that DGFT orders are not binding on Customs authorities for taking action taken under Customs Act, 1962 - Where conditions of exemption notification were not fulfilled and law required strict compliance thereof, importer was liable to pay import duty which was payable, but for benefit of exemption Notification obtained by them.

Further, the importer’s case was actually not regularized by RA DGFT, Mumbai, after considering the violation of conditions under FTP, HBP, the Condition Sheet to Advance Authorization, and Customs Notification 18/2015 dated 01.04.2015, as mandated by the Norms Committee to RA DGFT, Mumbai. Instead, RA DGFT closed the case only after verifying duty payment on account of the shortfall in Export Obligation in terms of quantity, as per Para 4.49 of HBP. I also find that the importer has not submitted any document or evidence before this adjudicating authority to prove that they informed RA DGFT, Mumbai that DRI had already initiated an investigation on 12.04.2022

regarding violations of FTP, HBP, and Customs Notification No. 18/2015-20 dated 01.04.2015 concerning imported goods under Advance Authorization. **Therefore, I find that the Redemption cum Regularization letter dated 20.01.2023 was obtained through fraud, willful suppression of facts, and misdeclaration, and is accordingly held ab initio null and void.**

22.1.3 Therefore, it is evident that the goods imported vide Bills of Entry, as detailed in Para 20 supra, were imported in violation of provisions of Notification No. 18/2015 -Cus dated 01.04.2015 and relevant Paras of Foreign Trade Policy 2015-2020 and Hand Book of Procedures 2015-2020, the conditions specified in the advance authorisation license issued to them and in terms of the bond furnished by them read with Section 143(3) of the Customs Act, 1962, on account of which these impugned goods were liable to confiscation under Section 111(d) and 111(o) of the Customs Act, 1962. Therefore, I find a case has been made out for imposition of penalty on Noticee No. 1, under Section 112(a)(i) of the Customs Act, 1962.

22.1.4 Further, with the prior consent of the importer, M/s. Fermenta Biotech, the imported goods — crude fish body oil — were **removed** from the premises of M/s. DK Biopharma Pvt. Ltd., then **carried over and transferred/deposited** with M/s. DK Pharma Chem for job work. This wilful violation of the provisions of Notification No. 18/2015 -Cus dated 01.04.2015 and relevant Paras of Foreign Trade Policy 2015-2020 and Hand Book of Procedures 2015-2020, the conditions specified in the advance authorisation license issued to them and in terms of the bond furnished by them read with Section 143(3) of the Customs Act, 1962, on account of which these impugned goods were liable to confiscation under Section 111(d) and 111(o) of the Customs Act, 1962. As per Section 112(b) *ibid*, “*any person who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable...*”, Therefore, I find a fit case has been made out for imposition of penalty on Noticee No. 1, under Section 112(b)(i) of the Customs Act, 1962.

ROLE OF NOTICEE NO. 2:-

22.2 From the voluntary submissions in statements of Shri Amol Narayan Lone dated 12.04.2021 and 19.05.2022, recorded under Section 108 of the Customs Act, 1962 and other evidences/documents recovered during the investigations, it is observed that –

- He was the Business and Finance Controller of the Company and responsible for key decisions taken by the company and was directly connected to the transactions related to the import under Advance Authorisation.
- He was aware of the import of restricted goods- crude fish oil- duty-free under the advance authorisation for export of cholesterol;
- **He was aware of that import license for restricted goods has not been applied with DGFT for import of restricted goods- crude fish oil;**
- He was aware that their company have applied with the norms committee for fixation of norms for their export in respect of the imported materials as norms have not been notified by the DGFT for import of crude fish body oil for the export of cholesterol;
- He was aware that the norms committee has rejected their application for fixation of norms;
- **He was aware of prior consent of M/s. Fermenta Biotech Pvt. Ltd. for the transfer of imported duty-free goods on job work basis by the supporting manufacturer M/s. D.K. Biopharma Pvt. Ltd. to M/s. DK Pharma Chem., without intimating/taking permission from DGFT and Customs authorities and without getting the facts endorsed in the advance authorisation;**
- He was also aware about appeal filed before Norms Committee dated 10.05.2022 for ratification of Norms.

[illegible]

12

We, as a Licence Holder have not defaulted on the export obligation in respect of any Advance Licence issued to us in the past three years.

The Bond/BG exempted shall stand withdrawn if DGFT or Customs come across default in the export obligation against Advance Licence issued.

We Mrs. Fermenta Biotech Ltd. have executed Bond and undertake to make good the Government revenue and applicable interest in case of any default. We shall keep the LUT Bond and BG (in case submitted) alive for entire period of Export Obligation and further state that we will get LUT Bond and BG (in case submitted) renewed till the Export Obligation is over.

The aforesaid paras are true and correct as per records of the company.

In witness here of these present have signed this day 18th October, 2019.

FERMENTA BIOTECH LIMITED

Authorized Signatories

ATTESTED

G. H. SHUKLA,
NOTARY GREATER MUMBAI
Jagdish Bhawan, Ground Floor,
Gangpatrao Kadam Marg, Lower Park,
MUMBAI - 400 013

19 OCT 2019

NOTARY
Name: G. H. Shukla
Area: Greater Mumbai
Reg. No. 12/184
G.D. OF MAHARASHTRA

भारतीय न्यायिक
भारत INDIA
FIVE HUNDRED
INDIA NON JUDICIAL

महाराष्ट्र MAHARASHTRA 2019 AT 790482
23 OCT 2019
उप कोषागार कार्यालय, उल्हासवाड
मुंबई पुरवठा विभाग
23 OCT 2019
उप कोषागार कार्यालय, उल्हासवाड
3/10/19

High Seas Sale Agreement
This Deed of Agreement is executed on 17th October, 2019 between
WHEREAS M/s. D.K. Bio Pharma Pvt. Ltd., 15, 16-21/12 & 21/13 Morivali MIDC, Ambarnath West, Thane 421501, INDIA, hereinafter called the "Seller", which expression shall mean and include its successors and assignees etc., on one part
AND
M/s. Fermenta Biotech Ltd., having its office at A-1501, Thane One, DIL Complex, Majiwada, Ghodhunder Road, Thane (W) 400610, Maharashtra, INDIA, hereinafter called the "Buyer" which expression shall mean and include its successors and assignees etc., on the part.

Authorised Signatory
Authorised Signatory

WHEREAS the Seller, has placed an order to buy certain goods from M/s. Golden Omega S.A., Av. Apoquindo 5550, Of. 701-A, Piso 7, Las Condes, Santiago, Chile hereinafter called the "Foreign Supplier", hereby agrees to sell the said goods to the Buyer on the High Seas.

Details of the Agreement:

- Name and Address of the Buyer : M/s. Fermenta Biotech Ltd.
Office: A-1501, Thane One, DIL Complex
Ghodhunder Road, Thane (W) 400610
- Name and Address of the Seller : M/s. D.K. Bio Pharma Pvt. Ltd.
Plot No. 15, 16, 21/12 & 21/13, Morivali MIDC
Ambarnath West, Thane 421501, INDIA
- Details of the Foreign Supplier : M/s. Golden Omega S.A.
Av. Apoquindo 5550, Of. 701-A, Piso 7
Las Condes, Santiago, Chile
- Description of Goods/Equipment : FAT DETOX FOC-27 (FISH BODY OIL CRUDE)
- Buyer's Purchase Order No. : 4108055 Dated 14.10.2019
- Sale Invoice No. : DK8/U-1/003/19-20 Dated 17.10.2019
- Shipment details : 969156912 dated 30.08.2019
No. of Packages: 1 No. ISO Tank
Gross Weight : 21840.00 Kgs
Sales Price : INR 10,990,106.40

By transfer of Delivery Order against the BL No. 969156912 dated 30.08.2019 all the rights and title to the goods will be transferred by the seller to the buyer by endorsing the HAWB/Bill of lading/Delivery Order in favor of the buyer before the said goods cross the frontiers/Custom barriers of India.

8. Customs Duty and Clearance:
In view of the disposal of goods/equipment on High Sea Sales basis and transfer of title by the Seller in favor of the buyer, it is the buyer who is responsible for bearing the custom duties.

9. Insurance:
The Seller has already covered Insurance from Origin Shipment Port to Destination Port.

10. Sales tax:
Sales Tax is not applicable for goods transacted for sale on High Seas Sale Basis u/s 5(2) of the CST Act.

11. Payment:
Payment for goods being sold by the Seller to the Buyer on the High Sea Sales basis will be made as per Seller's Invoice and as per the terms and conditions of the Buyer's Purchase Order.

Authorised Signatory
Authorised Signatory

238

Fermenta Biotech Limited.
CIN : U99999MH1986PLC134221
Regd. Office: A-1501, Thane One, DIL Complex, Ghodhunder Road, Majiwada, Thane (W) - 400 610, Maharashtra, India.
Tel. : +91-22-4796 0688 • Fax. : +91-22-6798 0899
Email : info@fermentabiotech.com, Website : www.fermentabiotech.com

23rd October, 2019

To,
The Deputy Commissioner of Customs
Import Dept., Jawaharal Nehru Custom House
Nhava Sheva

Respected Sir,

Sub: High Seas purchase of 21670 kgs. Fat Detox FOC-27 (Fish Body Oil Crude)
vide BL No. 969394789 dated 12.08.2019

We would like to inform you goodseelves that the above consignment is being purchased by us from D.K. Bio Pharma Pvt. Ltd., Plot No. 15, 16, 21/12 & 21/13 Morivali MIDC, Ambarnath West, Thane 421501 under High Seas Agreement and Advance Authorisation.

We therefore request your goodseelves to allow us clear this consignment and oblige.

Thanking You,

Yours Faithfully
For Fermenta Biotech Ltd.

Authorised Signatory

Factory: Village Takoli, P.O. Nagwan,
Dist. Mandi - 175 121, Himachal Pradesh, India.
Tel. : +91-1905-287246 / 45 / 49
Fax : +91-1905-287250
Email : info@fermentabiotech.com
Website : www.fermentabiotech.com

Factory: Z - 109 B & C, SEZ II, Dahel,
Taluka - Vagada, Dist. Bharuch - 392 130,
Gujarat, India
Tel : +91-2641-291440 / 444
Email : info@fermentabiotech.com
Website : www.fermentabiotech.com

MAERSK LINE

BILL OF LADING FOR OCEAN TRANSPORT
OR MULTIMODAL TRANSPORT

Golden Omega S.A.
Av. Apoquindo 5550 Of. 701-A Piso 7,
Las Condes, Santiago - Chile
TAX ID: 76044336-0

969394789

294829706

1 Container Sold to Contain 1 liquid bulk

21670.000 KGS

25.0000 CBM

13CTANKS WITH:
21.67 TONS OF FAT DETOX FOC-27 (Not less than 25% Cholesterol content)
(FISH BODY OIL CRUDE). Order No. PO/5004/19-20.

ORIGINAL

SHIPPER'S LOAD, STOW, WEIGHT AND COUNT

FREIGHT PREPAID

For India GST purposes, since destination country as per this document is India and for import into India, Maersk Line India Pvt Ltd office located either in the same State or the nearest State with respect to the above referenced cargo drop-off location shall be the billing office to the Indian customer.

ALSO NOTIFY: Cel Logistics PVT LTD.

From's Charges	Rate	Unit	Currency	Amount	Notes
Basic Ocean Freight	880.00	Per Container	USD	880.00	
Documentation Fee - Destination	4700.00	Per Container	INR	4700.00	
Emergency Risk Surcharge	7325.00	Per Container	INR	7325.00	
Documentation Fee - Origin	85.00	Per Container	USD	85.00	
Terminal Handling Service - Origin	125.00	Per Container	USD	125.00	

1 container

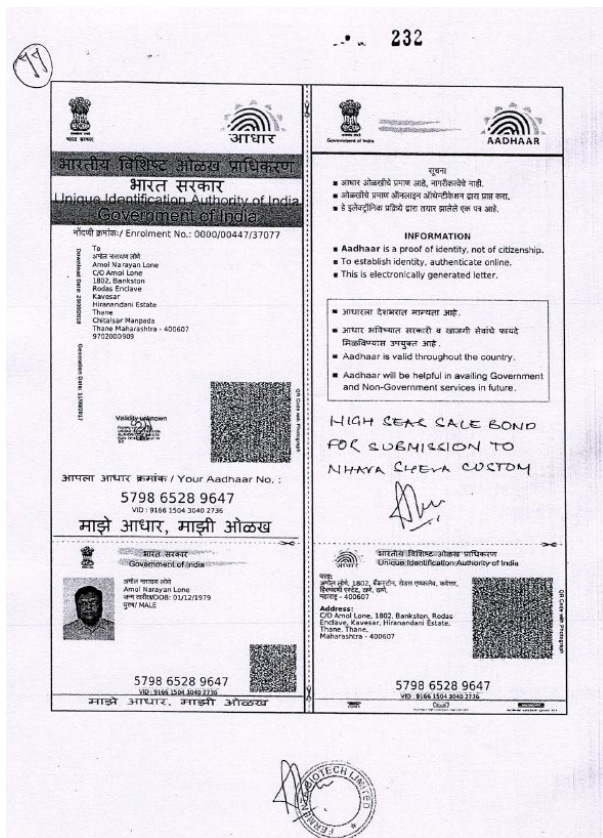
2019-08-12

2019-08-08

D K BIOPHARMA PVT.LTD.

Authorised Signatory

MAERSK CHILE S.A.



Case No.	A-07		
Meeting No.	NC/3/MEET/May/202223/3		
Date	27/05/2022		
Firm's Name	M/s Fermenta Biotech Limited (Formerly known as M/s DIL Limited)		
HQ F. No.	01/82/050/00746/AM20/DES-III		
RLA F. No.	03/94/040/00553/AM20		
Advance Authorization No. and Date	0310832316 dated 18.10.2019		
Subject	Request of M/s Fermenta Biotech Limited for fixation of adhoc norms against Advance Authorization No. 0310832316 dated 18.10.2019		
Decision: Shri Arun Khedwal - GM Supply Chain Management, Shri Amol Lone Business Finance Controller and Shri Srinath Trivikram - Senior Group leader; attended the Personal Hearing and explained their case. The Committee after deliberation; decided to ratify adhoc norms under Para 4.07 of HBP Vol. I as per details given below or as applied by the firm, whichever is less:			

Export product	Qty.	Sl. No.	Import items	Qty.
CHOLESTEROL (Assay by GC not less than 91.0%)	1 kg	1	DETOX FOC-27 (FISH BODY OIL CRUDE) (Non – edible grade, FFA content not less than 20%)	4.00 kg

RA concerned may take further necessary action as per above decision of NC.

22.3 I re-iterate my finds at Para 17 to Para 21, supra, as they mutatis-mutandis applicable to the issue before me. I find that Shri Amol Narayan Lone, Business and Finance Controller of M/s. Fermenta Biotech Limited, is key person responsible for the import of restricted goods- ‘crude fish body oil’ under the advance authorization scheme. He was aware of the procedures related to import of restricted goods under concessional rate of duty under the advance authorization scheme. He was aware of the transfer of goods on job work basis to M/s. DK Pharma Chem. by their supporting manufacturer M/s. DK Biopharma Ltd with the prior consent of M/s. Fermenta Biotech Limited. He was also aware that import of - Crude fish body oil is restricted under EXIM policy, and Import License for Restricted goods from DGFT was not applied for. I also find that Sh. Amol Narayan Lone is actively involved in the import-export related transaction of the importer/ Noticee No.01 under the advance authorization. Sh. Amol Lone has **executed the High Sea Sales Agreement** regarding the imported goods under Advance Authorization. Sh. Amol Lone has **also executed the LUT Bond & declaration** with the Customs as per Notification No. 18/2015 dated 01.04.2015 regarding Advance Authorization. Further, Sh. Amol Lone, along with Sh. Anil Khwedwal has **attended the Personal Hearing dated 27.05.2022 before Norms Committee of DGFT**, on behalf of the importer/ Noticee No. 01 for ratification of Norms for imported goods under Advance Authorization.

Further, the importer being into the import-export field for a long period, Shri. Amol Narayan Lone holding an important position in the importer firm has *neither* made any efforts to get the name of M/s. DK Pharma Chem, endorsed as jobber/supporting manufacturer on authorisation by Regional Authority, DGFT *nor* did he intimated the Customs Authority regarding the transfer of the imported goods to M/s. DK Pharma Chem. I find that, *neither* he, *nor* his sub-ordinates made any effort to obtain Import License for Restricted goods from DGFT. His deliberate actions in omitting to abide by the **mandatory and essential** provisions of the Foreign Trade Policy read with Hand Book of Procedures, Condition to advance authorisation No. 0310832316 dated 18.10.2019 and Customs Notification No. 18/2015 dated 01.04.2015, has devoid the imported goods of benefit of notification No 18/2015 dated 01.04.2015 and has rendered the goods –crude fish body oil- imported by Noticee No. 01 M/s. Fermenta Biotech Limited, liable for confiscation under section 111 (d) and 111 (o) of the Customs Act, 1962.

22.4 Noticee No 02, vide Personal Hearing and written submissions has submitted that he has not violated any provisions of the Customs Act, as he is only an employee of the Noticee No 01 and not director or partner of the M/s. Fermanta Biotech Ltd. That, Noticee No 02 is Business and finance

Controller of M/s. Fermenta Biotech Ltd and is not the main person responsible for taking decisions of the company and therefore, no penalty can be imposed on Noticee No 02, under section 112 (a) and or 112 (b) of the Customs Act 1962.

22.5 I find that the statute is clear on this point. As per Section 112(a) of the Customs Act, 1962, any person who, in relation to any goods, does or omits to do any act that renders the goods liable to confiscation under Section 111, **or abets such act or omission**, is liable to a penalty. **Therefore, not only the principal offender, but also any person who assists or abets in the violation of the provisions of the Customs Act, 1962, is equally liable to penalty.**

Noticee No. 01, being a company/legal entity, and Shri Amol Lone, being its Business and Finance Controller, is vested with the legal responsibility to conduct the business of Noticee No. 01 in compliance with the law of the land. Therefore, as per the provisions of Section 112(a) of the Customs Act, 1962, any violation of legal provisions by Shri Amol Lone that renders Noticee No. 01 liable to penal action also makes Shri Lone liable for penal action for violation of the Act, by way of abetment.

I find that the Noticee No 02- Shri Amol Narayan Lone, Business and Finance Controller of M/s. Fermenta Biotech Limited, being the key person responsible for implementation, execution and compliance of mandatory and essential conditions of FTP, HBP, conditions to advance authorization and Customs Notification No. 18/2015 dated 01.04.2015, regarding imported restricted goods- 'crude fish body oil', during the period under consideration has abetted the violations of the Customs Act, 1962 by the Noticee No. 01- M/s. Fermenta Biotech Limited & is therefore liable for penal action under Section 112(a)(i) of the Customs Act for rendering the imported goods liable for confiscation under Section 111 (d) and 111(o) of Customs Act, 1962.

22.5.1 Further, with the prior consent of the importer, M/s. Fermenta Biotech, the imported goods — crude fish body oil — were **removed** from the premises of M/s. DK Biopharma Pvt. Ltd., then **carried over and transferred/deposited** with M/s. DK Pharma Chem for job work. Shri Amol Narayan Lone, Business and Finance Controller of M/s. Fermenta Biotech Limited, being the key person responsible for implementation, execution and compliance of mandatory and essential conditions of FTP, HBP, conditions to advance authorization and Customs Notification No. 18/2015 dated 01.04.2015, regarding imported restricted goods- 'crude fish body oil' **was well aware of prior consent of M/s. Fermenta Biotech Pvt. Ltd. for the transfer of imported duty-free goods on job work basis by the supporting manufacturer M/s. D.K. Biopharma Pvt. Ltd. to M/s. DK Pharma Chem.** This wilful violation of the provisions of Notification No. 18/2015 -Cus dated 01.04.2015 and relevant Paras of Foreign Trade Policy 2015-2020 and Hand Book of Procedures 2015-2020, the conditions specified in the advance authorisation license and in terms of the bond furnished by the importer read with Section 143(3) of the Customs Act, 1962, on account of which the impugned goods were liable to confiscation under Section 111(d) and 111(o) of the Customs Act, 1962. As per Section 112(b) *ibid*, *"any person who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable....."*, Therefore, I find a fit case has been made out for imposition of penalty on Noticee No. 2, under Section 112(b)(i) of the Customs Act, 1962.

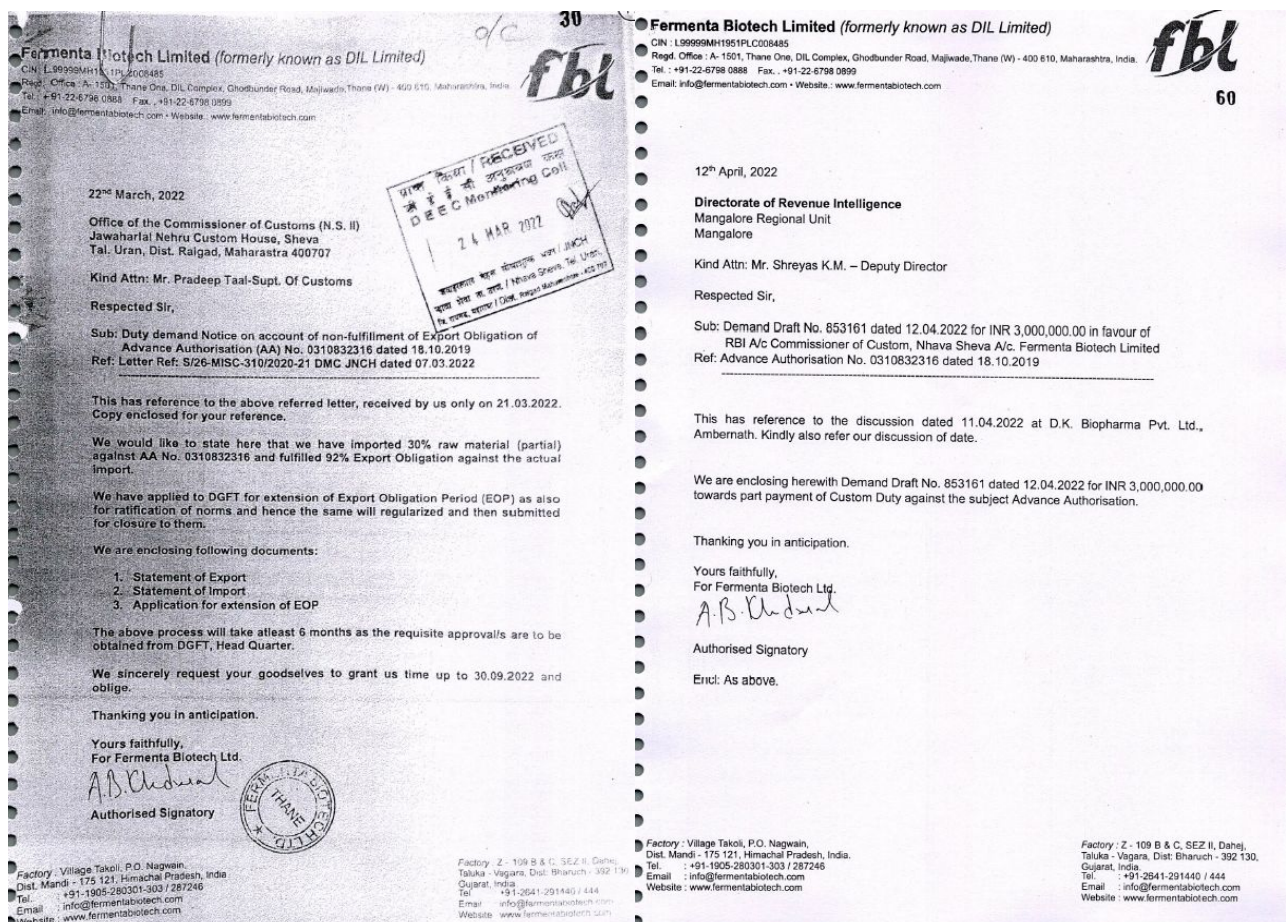
ROLE OF NOTICEE NO. 3:-

22.6 From the voluntary submissions in statements of Shri Arun Balkrishna Khedwal dated 12.04.2021 and 19.05.2022, recorded under Section 108 of the Customs Act, 1962 and other evidences/documents recovered during the investigations, it is observed that:-

- He being the General Manager (Supply Chain) of the Company was responsible for Production planning, Logistics and Exim operations and was also directly connected to the transactions related to the import under Advance Authorisation.

- He was aware of the import of restricted goods- crude fish oil- duty-free under the advance authorisation for export of cholesterol;
- He was aware that import license for restricted goods has not been applied with DGFT for import of restricted goods- crude fish oil;
- He was aware that their company have applied with the norms committee for fixation of norms for their export in respect of the imported materials as norms have not been notified by the DGFT for import of crude fish body oil for the export of cholesterol;
- He was aware that the norms committee has rejected their application for fixation of norms;
- He was aware of prior consent of M/s. Fermenta Biotech Pvt. Ltd. for the transfer of imported duty-free goods on job work basis by the supporting manufacturer M/s. D.K. Biopharma Pvt. Ltd. to M/s. DK Pharma Chem., without intimating/taking permission from DGFT and Customs authorities and without getting the facts endorsed in the advance authorisation;
- He was also aware about appeal filed before Norms Committee dated 10.05.2022 for ratification of Norms.

22.6.1 I further observe that Sh. Arun Balkrishna Khedwal is actively involved in the import-export related transaction of the importer/ Noticee No.01 under the Advance Authrization. Sh. Khedwal has **signed the reply letter to JNCH Customs letter regarding payment of duty on non-fulfillment of export obligation**. Further, it is observed that Sh. Anil Khwedwal, along with Sh. Amol Lone has **attended the Personal Hearing dated 27.05.2022 before Norms Committee of DGFT**, on behalf of the importer/ Noticee No. 01. Sh. Khedwal has **also signed the application to RA DGFT, Mumbai for securing EODC/ Redemption cum Regularization letter dated 20.01.2023** from DGFT. Screenshot of these documents, is re-produced below as follows:



Case No.	A-07			
Meeting No.	NC/3/MEET/May/202223/3			
Date	27/05/2022			
Firm's Name	M/s Fermenta Biotech Limited (Formerly known as M/s DIL Limited)			
HQ F. No.	01/82/050/00746/AM20/DES-III			
RLA F. No.	03/94/040/00553/AM20			
Advance Authorization No. and Date	0310832316 dated 18.10.2019			
Subject	Request of M/s Fermenta Biotech Limited for fixation of adhoc norms against Advance Authorization No. 0310832316 dated 18.10.2019			
Decision: Shri Arun Khedwal - GM Supply Chain Management, Shri Amol Lone Business Finance Controller and Shri Srinath Trivikram - Senior Group leader; attended the Personal Hearing and explained their case. The Committee after deliberation; decided to ratify adhoc norms under Para 4.07 of HBP Vol. I as per details given below or as applied by the firm, whichever is less:				
Export product	Qty.	Sl. No.	Import items	Qty.
CHOLESTEROL (Assay by GC not less than 91.0%)	1 kg	1	DETOX FOC-27 (FISH BODY OIL CRUDE) (Non – edible grade, FFA content not less than 20%)	4.00 kg
RA concerned may take further necessary action as per above decision of NC.				

Fermenta Biotech Limited (formerly known as DIL Limited)
CIN : L99999MH1951PLC008485
Regd. Office: A-1501, Thane One, DIL Complex, Ghodbunder Road, Majiwade, Thane (W) - 400 610, Maharashtra, India.
Tel. : +91-22-4798 0888 Fax. : +91-22-4798 0899
Email: info@fermentabiotech.com • Website: www.fermentabiotech.com

Fermenta Biotech Limited (formerly known as DIL Limited)
CIN : L99999MH1951PLC008485
Regd. Office: A-1501, Thane One, DIL Complex, Ghodbunder Road, Majiwade, Thane (W) - 400 610, Maharashtra, India.
Tel. : +91-22-4798 0888 Fax. : +91-22-4798 0899
Email: info@fermentabiotech.com • Website: www.fermentabiotech.com

E-BRC

Please note that we have submitted E-BRC against All Shipping Bill. Since the E-BRC does not show the Value in Indian Rupees, we have calculated the Indian Rupees as per monthly exchange Rates published by The Central Board of Indirect Tax and Customs (CBIC).

We are enclosing herewith Declaration under Para 4.16 (ii) of FTP 2015-2020 attested by The Chartered Accountant. (Attached to Statement of Exports).

We are enclosing herewith Declaration as per Public Notice No. 21/2012 Dated 09.10.2012.

We are enclosing herewith Declaration as per P.N.35 (RE-2013)/2009-2014.

We are enclosing herewith Declaration in terms of Notification No. 19/17.08.2021

We are sending herewith 5 copies of No Bond Certificate with request you to kindly return the same duly attested by you, as The Customs Authority requires the same.

Since the complete documents are furnished, we shall be grateful if you will kindly issue us Redemption/Bond Wavier and return the said Authorisation duly endorsed.

Your early action will be appreciated.

Thanking you,

Yours faithfully

For Fermenta Biotech Ltd.
Arun Khedwal
General Manager-SCM

End: As above

Ref No. 22/05/0095

To,
Addl. Director General of Foreign Trade
New CGO Building
Churchgate
Mumbai 400 020.

Date: 04.07.2022

Dear Sir,

REC No: 0388076381

- Sub: 1. Ratification.
2. Redemption/Bond Waiver against Advance Authorisation No. 0310832316 Dtd. 18.10.2019.
3. As per Trade Notice No. 28/2021-2022 We are submitting herewith EODC / Redemption Application Manually.

Ref. No. 03/94/040/00553/AM20

We wish to submit herewith our application on the above subject along with following documents:

1. Online Licence No.0310832316 Dtd 18.10.2019 in along with its relevant enclosure
2. Statement of Exports. (Certified by C.A.)
3. Statement of Imports. (Certified by C.A.)
4. Copy of E-BRC (Total No.05).
5. Online Shipping Bill, along with Photo Copy of Invoice. (Total Nos. 05).
6. No Bond Certificate.
7. Appendix-4H.
8. Application in ANF-4F.
9. Application in ANF-4D.
10. Declaration under Para 4.16 (ii) of FTP 2015-2020 attested by The Chartered Accountant. (Attached to Statement of Export).
11. Declaration as per Public Notice 21/2012 Dated 09.10.2012.
12. Declaration as per P.N.35 (RE-2013)/2009-2014.
13. Declaration in terms of Notification No. 19/17.08.2021
14. Bill of Entry (Total No. 03)
15. Working Sheet of Export and Import.
16. RLA File No. 03/94/040/00553/AM20 & Case no. A-70 Meet no. NC/3/MEET/May/202223/3 DTD. 27/05/2022.

Factory : Village Takoli, P.O. Nagwain,
Dist. Mandi - 175 121, Himachal Pradesh, India.
Tel. : +91-1905-280301-303 / 287246
Email : info@fermentabiotech.com
Website : www.fermentabiotech.com



Factory : Z - 109 B & C, SEZ II, Dahel,
Taluka - Vengara, Dist. Bhavnagar - 392 101,
Gujarat, India.
Tel. : +91-7941-291440 / 444
Email : info@fermentabiotech.com
Website : www.fermentabiotech.com

Factory : Village Takoli, P.O. Nagwain,
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Factory : Z - 109 B & C, SEZ II, Dahel,
Taluka - Vengara, Dist. Bhavnagar - 392
Gujarat, India.
Tel. : +91-7941-291440 / 444
Email : info@fermentabiotech.com
Website : www.fermentabiotech.com

22.7 I re-iterate my finds at Para 17 to Para 21, supra, as they mutatis-mutandis applicable to the issue before me. I find that that Shri. Arun Balkrishna Khedwal, General Manager (Supply Chain) of M/s. Fermenta Biotech Limited, was also responsible for implementation, execution and compliance of mandatory and essential conditions of FTP, HBP, conditions to advance authorization and Customs Notification No. 18/2015 dated 01.04.2015, regarding imported restricted goods- ‘crude fish body oil’, along with Sh. Amol Lone. He is aware of the procedures related to import of restricted foods under concessional rate of duty under the advance authorization scheme. He was aware of the transfer of imported goods on job work basis to M/s. DK Pharma Chem. by their supporting manufacturer M/s. DK Biopharma Ltd, with prior consent of M/s. Fermenta Biotech Limited. He was also aware that import of - Crude fish body oil is restricted under EXIM policy, and Import License for Restricted goods from DGFT was not applied for.

Further, Shri. Arun Balkrishna Khedwal dealing with the imports for his firm & being well aware of the procedures related to Advance Authorisation, has **neither** made any sincere efforts to get the name of M/s. DK Pharma Chem, endorsed as jobber/supporting manufacturer on authorisation by Regional Authority, DGFT, **nor** did he intimated the Customs Authority regarding the transfer of the imported goods to M/s. DK Pharma Chem. I find that, **neither** he, **nor** his sub-ordinates made any effort to obtain Import License for Restricted goods from DGFT. His deliberate actions in omitting to abide by the **mandatory and essential** provisions of the Foreign Trade Policy read with Hand Book of Procedures, Condition to advance authorisation No. 0310832316 dated 18.10.2019 and

Customs Notification No. 18/2015 dated 01.04.2015, has devoid the imported goods of benefit of notification No 18/2015 dated 01.04.2015 and has rendered the goods –crude fish body oil- imported by Noticee No. 01 M/s. Fermenta Biotech Limited, liable for confiscation under section 111 (d) and 111 (o) of the Customs Act, 1962.

22.8 Noticee No 03, vide Personal Hearing and written submissions has submitted that Noticee No. 01 have been issued redemption certificate by the DGTF as per Para 4.49 of Hand Book of Procedure and remaining duty is paid and therefore should not be penalized.

22.8.1 I re-iterate my finds at **Para 19 supra**, as they mutatis-mutandis applicable to the issue before me. I find that the FTP 2015-20, HBP & Redemption-cum-Regularisation Letter issued by DGFT does not in any manner precludes or stops this adjudicating authority from taking action in the case of violation of conditions of Customs Notification 18/2015 dated 01.04.2015. Same is upheld by Apex Court in numerous judgments wherein it is held that Jurisdiction of licensing authority to investigate the violation of condition of import licence does not preclude - Jurisdiction of Customs authorities to take action when the condition of exemption is violated. Further it is also held that DGFT orders are not binding on Customs authorities for taking action taken under Customs Act, 1962 - Where conditions of exemption notification were not fulfilled and law required strict compliance thereof, importer was liable to pay import duty which was payable, but for benefit of exemption Notification obtained by them.

Further, the importer's case was actually not regularized by RA DGFT, Mumbai, after considering the violation of conditions under FTP, HBP, the Condition Sheet to Advance Authorization, and Customs Notification 18/2015 dated 01.04.2015, as mandated by the Norms Committee to RA DGFT, Mumbai. Instead, RA DGFT closed the case only after verifying duty payment on account of the shortfall in Export Obligation in terms of quantity, as per Para 4.49 of HBP. I also find that the importer has not submitted any document or evidence before this adjudicating authority to prove that they informed RA DGFT, Mumbai that DRI had already initiated an investigation on 12.04.2022 regarding violations of FTP, HBP, and Customs Notification No. 18/2015-20 dated 01.04.2015 concerning imported goods under Advance Authorization. **Therefore, I find that the Redemption cum Regularization letter dated 20.01.2023 was obtained through fraud, willful suppression of facts, and misdeclaration, and is accordingly held ab initio null and void.**

22.9 I find that as per Section 112(a) of the Customs Act, 1962, any person who, in relation to any goods, does or omits to do any act which renders the goods liable to confiscation under Section 111, or abets such act or omission, is liable to a penalty. **Therefore, not only the principal offender, but also any person who assists or abets in the violation of the provisions of the Customs Act, 1962, is equally liable to penalty.**

Noticee No. 01, being a company/legal entity, and Shri Arun Balkrishna Khedwal, being its General Manager (Supply Chain), is vested with the legal responsibility to conduct the business of Noticee No. 01 in compliance with the law of the land. Therefore, as per the provisions of Section 112(a) of the Customs Act, 1962, any violation of legal provisions by Shri Arun Balkrishna Khedwal that renders Noticee No. 01 liable to penal action also makes Shri Khedwal liable for penal action for violation of the Act, by way of abetment.

I find that the Noticee No 03- Shri Arun Balkrishna Khedwal, General Manager (Supply Chain) of M/s. Fermenta Biotech Limited during the period under consideration has abetted the violations of the Customs Act, 1962 by the Noticee No. 01- M/s. Fermenta Biotech Limited & is therefore liable for penal action under Section 112(a)(i) of the Customs Act for rendering the imported goods liable for confiscation under Section 111 (d) and 111(o) of Customs Act, 1962.

22.9.1 Further, with the prior consent of the importer, M/s. Fermenta Biotech, the imported goods — crude fish body oil — were **removed** from the premises of M/s. DK Biopharma Pvt. Ltd., then **carried over and transferred/deposited** with M/s. DK Pharma Chem for job work. **Sh. Arun**

Balkrishna Khedwal, General Manager (Supply Chain) of M/s. Fermenta Biotech Limited, was also responsible for implementation, execution and compliance of mandatory and essential conditions of FTP, HBP, conditions to advance authorization and Customs Notification No. 18/2015 dated 01.04.2015, regarding imported restricted goods- 'crude fish body oil, along with Sh. Amol Lone **and was well aware of prior consent of M/s. Fermenta Biotech Pvt. Ltd. for the transfer of imported duty-free goods on job work basis by the supporting manufacturer M/s. D.K. Biopharma Pvt. Ltd. to M/s. DK Pharma Chem.** This wilful violation of the provisions of Notification No. 18/2015 -Cus dated 01.04.2015 and relevant Paras of Foreign Trade Policy 2015-2020 and Hand Book of Procedures 2015-2020, the conditions specified in the advance authorisation license and in terms of the bond furnished by the importer read with Section 143(3) of the Customs Act, 1962, on account of which the impugned goods were liable to confiscation under Section 111(d) and 111(o) of the Customs Act, 1962. As per Section 112(b) *ibid*, “*any person who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable.....*”, Therefore, I find a fit case has been made out for imposition of penalty on Noticee No. 3, under Section 112(b) (i) of the Customs Act, 1962.

23. In view of the foregoing discussion and findings, I pass the following order: -

ORDER

- (i) I hold the goods i.e., 64040 kgs of imported FAT DETOX FOC-27 (fish body oil crude) valued at **Rs. 2,62,89,139/-** imported by utilising the advance authorisation No. 0310832316 dated 18.10.2019 under 03 bills of entry as detailed in **Para 20 supra**, through Nhava Sheva Sea Port, liable for confiscation under Section 111(d) and 111(o) of the Customs Act, 1962, for being imported under the exemption notification No. 18/2015-cus dated 01.04.2015, without observing various conditions laid down under the said notification as well as for contraventions of the provisions of the Foreign Trade Policy (2015-2020) read with the Hand Book of Procedures 2015-2020; Accordingly, I impose a redemption fine of **Rs. 70,00,000/- (Rupees Seventy lakh only)** under Section 125(1) of the Customs Act, 1962.
- (ii) I deny duty concession availed by the Importer, under 03 bills of entry as detailed in **Para 20 supra**, and demand Customs duty of **Rs. 1,28,71,163/- (Rupees One crore twenty eight lakhs seventy one thousand one hundred and sixty three only)** forgone/saved along with applicable interest, in terms of conditions specified in the Notification No. 18/2015 -Cus dated 01.04.2015 and provisions of Foreign Trade Policy 2015-2020 and Hand Book of Procedures 2015-2020, the conditions specified in the advance authorisation license and in terms of the bond furnished by the importer, read with Section 143(3) of the Customs Act, 1962;
- (iii) I order appropriation of **Rs. 30,00,000/- (Rupees Thirty Lakhs only)**, voluntarily deposited by M/s Fermenta Biotech Limited & **Rs. 4,22,234/- (Rupees Four lakh twenty two thousand two hundred thirty four Only)** as per **Para 20 supra** against the liabilities at (ii) above and order balance amount be recovered from the importer as detailed in **Para 20 supra**.
- (iv) I impose a penalty of **Rs. 27,00,000/- (Rupees Twenty seven lakh only)** on M/s. Fermenta Biotech Ltd., under Section 112(a)(i) & a penalty of **Rs. 27,00,000/- (Rupees Twenty seven lakh only)** on M/s. Fermenta Biotech Ltd., under Section 112(b)(i) of the Customs Act, 1962 for improper importation of goods availing exemption of notification and without observance of the conditions set out in the notification as elaborated above resulting in non-payment of duty, which rendered the goods liable to confiscation under Section 111(d) and 111(o) of the Customs Act, 1962.

(v) I impose a penalty of **Rs. 27,00,000/- (Rupees Twenty seven lakh only)** under Section 112(a)(i) of the Customs Act, 1962 & a penalty of **Rs. 27,00,000/- (Rupees Twenty seven lakh only)** under Section 112(b)(i) ibid on Noticee No. 2 i.e. Shri Amol Narayan Lone S/o Shri Narayan Lone, Business and Finance Controller, M/s. Fermenta Biotech Limited,

(vi) I impose a penalty of **Rs. 27,00,000/- (Rupees Twenty seven lakh only)** under Section 112(a)(i) of the Customs Act, 1962 & a penalty of **Rs. 27,00,000/- (Rupees Twenty seven lakh only)** under Section 112(b)(i) ibid on Noticee No. 3 i.e. Shri Arun Balkrishna Khedwal, S/o Shri Balakrishna Khedwal, General Manager (Supply Chain), M/s. Fermenta Biotech Limited,

**Digitally signed by
Vijay Risi**

**Date: 09-10-2025
18:24:21**

(VIJAY RISI)

Commissioner of Customs,
NS-III, JNCH, Nhava Sheva.

Regd. AD/Speed Post

1. M/s. Fermenta Biotech Limited,
A-1501, Thane one,
DIL Complex, GHOD Bunder Road,
Majiwada, Thane West,
Maharashtra – 400610.
2. Shri Amol Narayan Lone,
S/o Shri Narayan Lone,
Business and Finance Controller,
M/s. Fermenta Biotech Limited,
A-1501, Thane One, DIL Complex,
Ghodbunder Road, Majiwada,
Thane West, Maharashtra – 400610.
3. Shri Arun Balkrishna Khedwal,
S/o Shri Balakrishna Khedwal,
General Manager (Supply Chain),
M/s. Fermenta Biotech Limited,
A-1501, Thane one, DIL Complex,
GHOD Bunder Road, Majiwada,
Thane West, Maharashtra – 400610.

Copy to:

- i. The Asst. /Dy. Commissioner of Customs, Chief Commissioner's Office, JNCH
- ii. The Additional Director, Directorate of Revenue Intelligence, Bangalore Zonal Unit, No. 8(P)2, Stage-1, 3rd Block, Opposite BDA Complex, H.B.R layout, Kalyan Nagar, Post Bengaluru- 560 043.
- iii. Additional Director General of Foreign Trade, CGO Office, New Building, SE Wing, New Marine Lines, Mumbai Zonal Office, 48, Vitthaldas Thackersey Marg, Churchgate, Mumbai-400020.
- iv. The Asst. /Dy. Commissioner of Customs, Centralized Revenue Recovery Cell, JNCH
- v. The Asst. /Dy. Commissioner of Customs, Group-I, JNCH
- vi. The Asst. /Dy. Commissioner of Customs (CAC), JNCH: For uploading on CARMA Portal.
- vii. The Asst. /Dy. Commissioner of Customs, EDI, JNCH: For display on JNCH Website.
- viii. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
- ix. Office Copy.