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

Date of Order: 07.10.2025 **Date of Issue :** 08 .10.2025
आदेश की तिथि :07.10.2025 जारी किए जाने की तिथि: 08.10.2025

DIN: 20251078NW000000C586

F. No. S/10-104/2024-25/Commr/NS-I/Gr II (C-F)/CAC/JNCH
SCN No. 1066/2024-25/Commr/ NS-I/Gr. II (C-F)/ CAC/JNCH dated 10.09.2024

Passed by: Shri Yashodhan Wanage
पारितकर्ता: श्री यशोधन वानगे

Principal Commissioner of Customs (NS-I), JNCH, Nhava Sheva
प्रधानआयुक्त, सीमाशुल्क (एनएस-1), जेएनसीएच, न्हावाशेवा

Order No.: 222 /2025-26 /Pr. Commr./NS-I /CAC /JNCH
आदेशसं. : 222/2025-26/प्र. आयुक्त/एनएस-1/ सीएसी/जेएनसीएच

Name of Party/Noticees: M/s Unitop Chemicals Private Limited, Customs Broker M/s Tristar Freight Forwarders & Customs Broker Sky Sea Logistics
पक्षकार (पार्टी)/ नोटिसीकानाम: मेसर्स यूनिटॉप केमिकल्स प्राइवेट लिमिटेड, कस्टम्स ब्रोकर मेसर्स ट्रिस्टार फ्रेट फॉरवर्डर्स और कस्टम्स ब्रोकर स्काई सी लॉजिस्टिक्स

ORDER-IN-ORIGINAL

मूलआदेश

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

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

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

2. इस आदेश से व्यथित कोई भी व्यक्ति सीमा-शुल्क अधिनियम१९६२की धारा १२९(ए) के तहत इस आदेश के विरुद्ध सी ई एस टी ए टी, पश्चिमी प्रादेशिक न्याय पीठ (वेस्टरीज़नलबेंच), ३४, पी. डी. मेलो रोड, मस्जिद (पूर्व), मुंबई– ४००००९ को अपील कर सकता है, जो उक्त अधिकरण के सहायक रजिस्ट्रार को संबोधित होगी।

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

3. अपील दाखिल करने संबंधी मुख्य मुद्दे: -

Form - Form No. CA3 in quadruplicate and four copies of the order

appealed against (at least one of which should be certified copy).
फार्म - फार्मन. सी ए ३, चार प्रतियों में तथा उस आदेश की चार प्रतियाँ, जिसके खिलाफ अपील की गयी है (इन चार प्रतियों में से कम से कम एक प्रति प्रमाणित होनी चाहिए(.

Time Limit-Within 3 months from the date of communication of this order.
समय सीमा- इस आदेश की सूचना की तारीख से ३ महीने के भीतर

Fee- (a) Rs. One Thousand - Where amount of duty & interest demanded & penalty imposed is Rs. 5 Lakh or less.
फीस- (क (एक हजार रुपये–जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम ५ लाख रुपये या उससे कम है ।

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

(ख(पाँच हजार रुपये– जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम ५ लाख रुपये से अधिक परंतु ५० लाख रुपये से कम है।

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

(ग(दस हजार रुपये–जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम ५० लाख रुपये से अधिक है ।

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

भुगतान की रीति– क्रॉस बैंकड्राफ्ट, जो राष्ट्रीयकृत बैंक द्वारा सहायक रजिस्ट्रार, सीईएसटीएटी, मुंबई के पक्ष में जारी किया गया हो तथा मुंबई में देय हो।

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

सामान्य - विधि के उपबंधों के लिए तथा ऊपर यथा संदर्भित एवं अन्य संबंधि तमाम लों के लिए, सीमा-शुल्क अधिनियम, १९९२, सीमा-शुल्क (अपील) नियम, १९८२ सीमा-शुल्क, उत्पादन शुल्क एवं सेवा कर अपील अधिकरण (प्रक्रिया) नियम, १९८२ का संदर्भ लिया जाए।

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

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

BRIEF FACTS OF THE CASE

1.1. The importer M/s Unitop Chemicals Private limited (IEC-0388120614)having office address at Plot No. D-2/CH 343 GIDC Phase II village Jolwa Bharuch Dahej Highway 392130 (hereinafter referred to as importer) had filed various Bills of Entry, details are tabulated in attached Annexure-A to the Show Cause Notice for the clearance of imported goods declared under CTH 38237020 and 38237090 through their Customs Broker i.e. M/s. Tristar Freight Forwarders and M/s. Sky Sea logistics at lower/Nil rate of ADD, subject to certain conditions as mentioned in the Notification No. 28/2018-Customs (ADD) dated 25.05.2018 including producer, exporter, country of origin, country of export etc. The analysis of the import data revealed that the importer had mis used the above notification in order to avail the benefit of lower anti-dumping duty rate/Nil.

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

Table-I

S. No.	Sub-headings	Description of goods	County of origin	County of export	Producer	Exporter	Amount	Unit	Currency
1	2	3	4	5	6	7	8	9	10
1	2905 17, 2905 19, 3823 70	All types of Saturated Fatty Alcohols excluding Capryl Alcohols (C8) and Decyl Alcohols (C10) and blends of C8 and C10	Indonesia	Singapor e	M/s PT Eco green Oleochemicals	M/s Eco green Oleochemicals (Singapore) Pte Ltd.	NIL	MT	USD
2	2905 17, 2905 19, 3823 70	-do-	Indonesia	Indonesia	M/s PT Musim Mas	M/s Inter-Continental Oils & Fats Pte Ltd, Singapore	7.1	MT	USD
3	2905 17, 2905 19, 3823 70	-do-	Indonesia	Indonesia	M/s PT Wilmar Nabati	M/s Wilmar Trading Pte Ltd., Singapore	52.23	MT	USD
4	2905 17, 2905 19, 3823 70	-do-	Indonesia	Indonesia	Any combination other than Sl. Nos. 1, 2 & 3	Any combination other than Sl. Nos. 1, 2 & 3	92.23	MT	USD
5	2905 17, 2905 19, 3823 70	-do-	Indonesia	Any	Any	Any	92.23	MT	USD
6	2905 17, 2905 19, 3823 70	-do-	Any country other than Those subject to anti-dump ing duty	Indonesia	Any	Any	92.23	MT	USD
7	2905 17, 2905 19, 3823 70	-do-	Singapur and Indonesia	Singapur and Indonesia	M/s FPG Oleochemicals Sdh Bhd	M/s Procter & Gamble International Operations SA, Singapor	17.64	MT	USD
8	2905 17, 2905 19, 3823 70	-do-	Singapur and Indonesia	Singapur and Indonesia	M/s KL - Kepong Oleomas Sdn Bhd	M/s KL - Kepong Oleomas Sdn B hd	NIL	MT	USD
9	2905 17, 2905 19, 3823 70	-do-	Singapur and Indonesia	Singapur and Indonesia	Any combination other than Sl. Nos. 7 & 8	Any combination other than Sl. Nos. 7 & 8	37.64	MT	USD

10	2905 17, 2905 19, 3823 70	-do-	Singapur and Indonesia	Any Country	Any	Any	37.64	MT	USD
11	2905 17, 2905 19, 3823 70	-do-	Any country other than those subject to anti-dump ing duty	Singapur and Indonesia	Any	Any	37.64	MT	USD
12	2905 17, 2905 19, 3823 70	-do-	Thailand	Thailand	M/s Thai Fatty Alcohols Co. Ltd.	M/s Thai Fatty Alcohols Co. Ltd.	NIL	MT	USD
13	2905 17, 2905 19, 3823 70	-do-	Thailand	Thailand	Any combination other than Sl. No. 12	Any combination other than Sl. No. 12	22.5	MT	USD
14	2905 17, 2905 19, 3823 70	-do-	Any country other than country of origin	Thailand	Any	Any	22.5	MT	USD
15	2905 17, 2905 19, 3823 70	-do-	Thailand	Any country	Any	Any	22.5	MT	USD

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

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

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

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

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

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

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

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

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

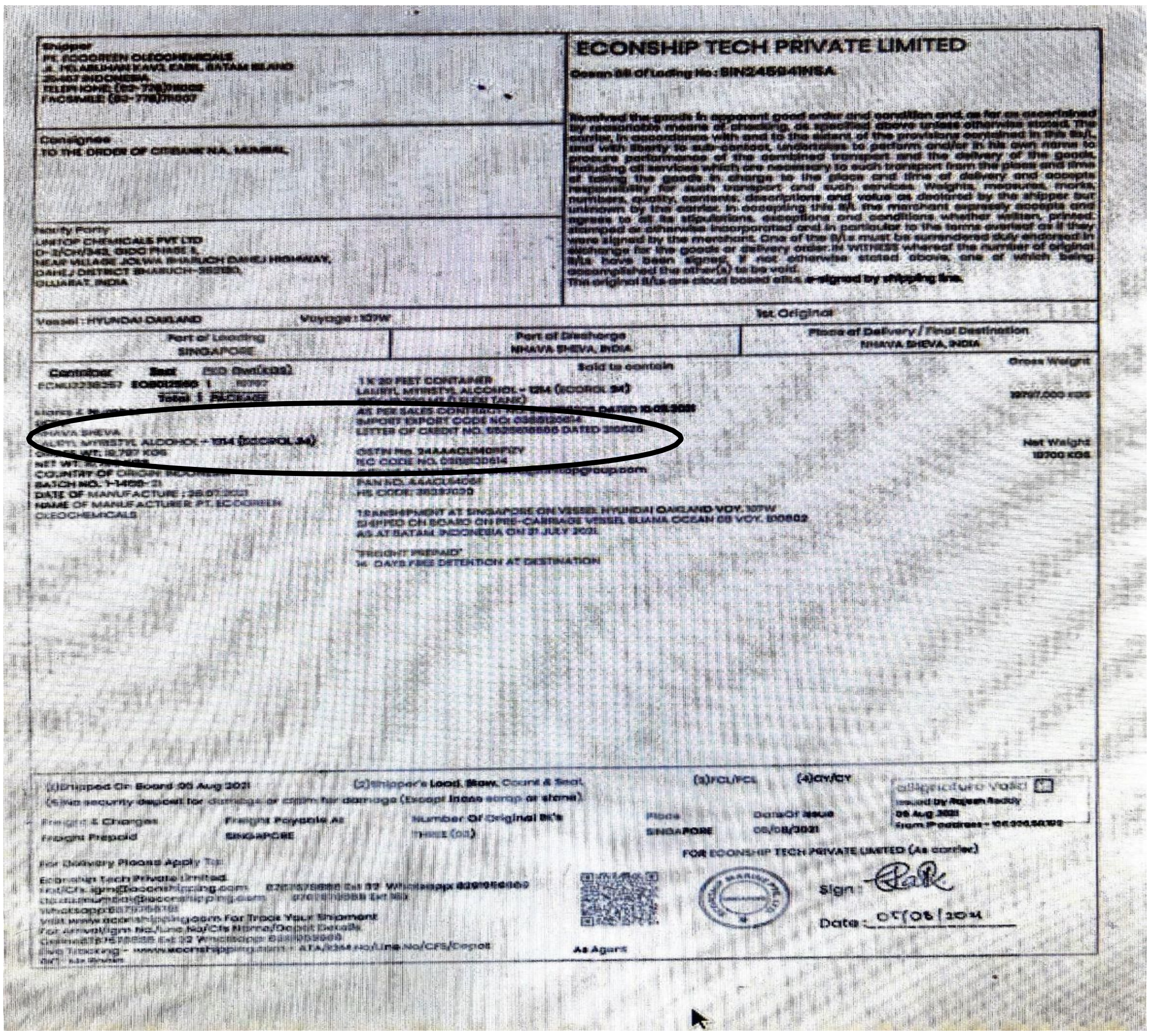
Table-II

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

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

1.5. The Anti-dumping duty levied on the import vide Notification 28/2018-Customs (ADD) dated 25.05.2018 was applicable to subject Bills of Entry, but applicable Anti-dumping duty was not paid for the said Bills of Entry by the importer.

Further, during the investigation, it was seen that the importer had opted the benefit of S.No. 01 of Notification 28/2018-Customs (Nil Anti-Dumping) as shown in Table-I for various consignments under the condition that the Producer is "PT Ecogreen Oleochemicals" & ECOGREEN OLEOCHEMICALS (SINGAPORE) PTE LTD and Exporter is "Ecogreen Oleochemicals (Singapore) Pte Ltd & ECOGREEN OLEOCHEMICALS (SINGAPORE)" along with other mentioned conditions in the said notification. On scrutiny of the relevant documents, it was seen that the goods have not been exported from Singapore, but the same have been transshipped at Singapore. The details mentioned on the Bill of Lading for these consignments clearly indicated that the goods were for "Transshipment at Singapore on Vessel - Shipped on Board on Pre-Carriage Vessel at Batam, Indonesia,". This also indicated that the there is no 'Export Declaration/ Bill of Export/Shipping Bill' presented at Singapore, Thus the mandatory condition of country of export as Singapore is not being fulfilled by the Exporter. Consequently, it appeared that the importer inappropriately claimed the benefit of S.No. 01 of Notification 28/2018-Customs. The relevant documents, it was seen that the goods have been exported from Indonesia. Therefore, the goods imported vide various bills of entry falls under Serial No. 6 of above given Table-I (Notification 28/2018-Customs (ADD) dated 25.05.2018) and attracts ADD at the rate of 92.23 USD per MT. Copy of Bill of Lading uploaded in e-sanchit by the importer is as below:


Shipper
PT. ECOGREEN OLEOCHEMICALS
JL. KAV. KABIL, BATAM ISLAND
INDONESIA
TELEPHONE (62-778)
FACSIMILE (62-778)

Consignee
TO THE ORDER OF CITIBANK N.A. MUMBAI

Notify Party
UNITOP CHEMICALS PVT LTD
GIDC PHASE
NEAR VILLAGE JOLWA BHARUCH DAHEJ HIGHWAY,
DAHEJ DISTRICT BHARUCH
GUJARAT, INDIA

ECONSHIP TECH PRIVATE LIMITED
Ocean Bill of Lading No : SIN24594INSA

Received the goods in apparent good order and condition and, as far as ascertained by reasonable means of checking, as specified above unless otherwise stated. The carrier, in accordance with and to the extent of the provisions contained in this B/L, and with liberty to sub-contract, undertakes to perform and/or in his own name to procure performance of the combined transport and the delivery of the goods, including all services which are necessary to such transport from the place and time of taking the goods in charge to the place and time of delivery and accepts responsibility for such transport and such services. Weights, measures, marks, numbers, quality, contents, descriptions and value as declared by the shipper but unknown by the carrier. In accepting this B/L the merchant expressly accepts and agrees to all its stipulations, exceptions and conditions whether written, printed, stamped or otherwise incorporated and in particular to the terms overleaf as if they were signed by the merchant. One of the B/Ls must be surrendered duly endorsed in exchange for the goods or delivery order. In WITNESS whereof the number of original B/Ls have been signed, if not otherwise stated above, one of which being accomplished the other(s) to be void.
The original B/Ls are cloud based eBLs, e-signed by shipping line.

Vessel : HYUNDAI OAKLAND	Voyage : 107W	1st. Original
Port of Loading SINGAPORE	Port of Discharge NHAVA SHEVA, INDIA	Place of Delivery / Final Destination NHAVA SHEVA, INDIA

Container / Seal / Total 1 PACKAGE

Said to contain
1 X 20 FEET CONTAINER
LAURYL MYRISTYL ALCOHOL - 1214 (ECOROL 24)
AS PER SALES CONTRACT DATED 10.05.2021
IMPORT EXPORT CODE NO.
LETTER OF CREDIT NO. DATED
GSTIN No.
IEC CODE NO.
PAN NO.
HS CODE
TRANSHIPMENT AT SINGAPORE ON VESSEL HYUNDAI OAKLAND VOY. 107W
SHIPPED ON BOARD ON PRE-CARRIAGE VESSEL AS AT BATAM INDONESIA ON 31 JULY 2021
"FREIGHT PREPAID"
14 DAYS FREE DETENTION AT DESTINATION

Marks & Numbers
NHAVA SHEVA
LAURYL MYRISTYL ALCOHOL - 1214 (ECOROL 24)
COUNTRY OF ORIGIN: INDONESIA
DATE OF MANUFACTURE
NAME OF MANUFACTURER: PT. ECOGREEN OLEOCHEMICALS

Gross Weight
Net Weight

(1)Shipped On Board 05 Aug 2021 (2)Shipper's Load, Stow, Count & Seal (3)FCL/FCL (4)CY/CY

Freight & Charges	Freight Payable At	Number Of Original BL's	Place	Date Of Issue
Freight Prepaid	SINGAPORE	THREE (03)	SINGAPORE	05/08/2021

For Delivery Please Apply To:
Econship Tech Private Limited

FOR ECONSHIP TECH PRIVATE LIMITED (As carrier)
Sign :
Date : 07/08/2021
As Agent

1.6. The Anti-dumping duty levied on the import vide Notification 28/2018-Customs (ADD) dated 25.05.2018 was applicable to subject Bill of Entry, but applicable Anti-dumping duty was not paid for the said Bill of Entry by the importer. The amount of Anti-Dumping Duty payable is calculated and is mentioned in the attached Annexure-A of the Show Cause Notice. The brief details of the Bills of Entry are tabulated below:

S. No.	BE Number	BE Date	QUANTITY	UQC	Assessable Value Amount	ADD Rate (In USD per Mtr Ton)	Differential ADD (In Rs)	IGST on Differential ADD (In Rs) @18%
1	5821381	13-10-2021 00:00	19700	KGS	2855820.35	92.23	137541.6767	24757.50181
2	5145147	03-10-2019 00:00	19700	KGS	1422340	92.23	131182.4182	23612.83528
3	6025706	28-10-2021 00:00	39410	KGS	5825192.1	92.23	275516.6499	49592.99699
5	5069740	16-03-2023 00:00	59.07	MTS	7398517.5	92.23	454910.1794	81883.83228
6	4458650	25-06-2021 00:00	19690	KGS	3104586.29	92.23	135383.4486	24369.02075
7	5842844	27-11-2019 00:00	19710	KGS	1419563.48	92.23	132248.8276	23804.78896
8	8216263	10-04-2022 00:00	39400	KGS	8182087.68	92.23	279080.6016	50234.50829
9	9414867	02-11-2020 00:00	19690	KGS	1885957.43	92.23	134838.646	24270.95628
10	5052284	15-03-2023 00:00	39.38	MTS	4810680.49	92.23	303273.4529	54589.22152
11	9501708	09-11-2020 00:00	19700	KGS	1909786.95	92.23	136542.3647	24577.62564
13	2172848	30-12-2020 00:00	19690	KGS	1891037.45	92.23	135201.8477	24336.33259
14	2116466	26-12-2020 00:00	19700	KGS	1891997.85	92.23	135270.513	24348.69233
15	2227822	04-01-2021 00:00	19690	KGS	1891037.45	92.23	135201.8477	24336.33259
16	6388367	08-01-2020 00:00	19690	KGS	1406427.17	92.23	131025.0277	23584.50499
17	3707797	26-04-2021 00:00	19700	KGS	3030313.1	92.23	138359.2957	24904.67322
18	8840489	26-05-2022 00:00	39380	KGS	9322947.22	92.23	285476.5676	51385.78218
19	2789532	08-10-2022 00:00	39380	KGS	4795643.24	92.23	299459.8346	53902.77023
20	5718638	05-10-2021 00:00	39400	KGS	5613554.4	92.23	270359.3328	48664.6799
21	4778010	05-09-2019 00:00	19700	KGS	1415445	92.23	130546.4924	23498.36862
22	8746120	19-05-2022 00:00	39390	KGS	9135348.5	92.23	279918.0039	50385.2407
23	3837251	06-05-2021 00:00	19700	KGS	3030313.1	92.23	138359.2957	24904.67322
24	8582797	07-05-2022 00:00	39380	KGS	8128699.49	92.23	279846.9407	50372.44932
25	6537196	04-12-2021 00:00	19690	KGS	2914218.45	92.23	137835.0603	24810.31086
27	6123765	04-11-2021 00:00	19700	KGS	2902253.25	92.23	137269.1371	24708.44467
28	4996056	21-09-2019 00:00	19690	KGS	1421618	92.23	131115.8281	23600.84907
29	5016460	11-08-2021 00:00	19700	KGS	3129079.05	92.23	136451.5181	24561.27326
31	5967020	06-12-2019 00:00	19690	KGS	1411300.44	92.23	131479.0299	23666.22538
32	5240578	10-10-2019 00:00	19700	KGS	1421355	92.23	131091.5717	23596.4829
33	62766	28-12-2019	19700	KGS	1402265.		130637.33	23514.721

1.7. & Also, the

ECOGREEN OLEOCHEMICALS (SINGAPORE) without paying the applicable Anti-Dumping Duty as per the ADD notification. The amount of Anti-Dumping Duty payable was calculated and is mentioned in the attached Annexure-A of the Show Cause Notice.

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

The Anti-dumping duty vide Notification 28/2018-Customs (ADD) dated 25.05.2018 was leviable on the import of the Saturated Fatty Alcohol goods originating from Indonesia and imported into India with effect from 25.05.2018. Hence, the importer had not paid the differential Anti-dumping duty amounting to Rs. 69,72,100/- and IGST on not paid Anti-dumping Duty amounting to Rs. 12,54,978/- (total amounting to Rs 82,27,078/-) as explained in the preceding paras.

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

1.10. From the above investigation, it appeared that the said goods have been imported by the importer by not paying applicable Anti-dumping duty leviable under Notification 28/2018- Customs (ADD) dated 25.05.2018 which resulted into short payment of Anti-dumping duty amounting to Rs. 69,72,100/- and IGST on not paid Anti-dumping Duty amounting to Rs. 12,54,978/- (total amounting to Rs 82,27,078/-). Accordingly, M/s Unitop Chemicals Private limited (IEC-0388120614) has committed these infirmities with a view to resort to evasion of duty with malafide intention to defraud the exchequer of its rightful duty thereby clearly attracting the penal provisions of Section 114A of the Customs Act, 1962 as well.

1.11. This act of willful mis-declaration by the importer it appeared that the said goods have been imported by the importer by not paying applicable Anti-dumping duty leviable under Notification 28/2018-Customs (ADD) dated 25.05.2018 which resulted into short payment of Anti-dumping duty amounting to Rs. 69,72,100/- and IGST on not paid Anti-dumping Duty amounting to Rs. 12,54,978/- (total amounting to Rs 82,27,078/-), liable for confiscation in terms of provisions of Section 111 (m) of the Customs Act, 1962.

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

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

1.14. Further**,** two Customs Brokers namely M/s. Tristar Freight Forwarders (AAAFT4080HCH001), and M/s. Sky Sea logistics (AHBPR6138ECH001) have filed the bills of Entry as mentioned in Annexure-A of the Show Cause Notice on behalf of the importer M/s Unitop Chemicals Private limited without verifying the information as mentioned in the Bills of lading and Invoice while filing the Bills of Entry, which resulted in non-levy/short-levy of correct ADD as per Notification 28/2018-Customs (ADD) dated 25.05.2018 by the importer M/s Unitop Chemicals Private limited. It was seen that the Customs brokers failed to file the said Bills of Entry as per correct serial no. 6 of the ADD Notification no. 28/2018-Customs (ADD) dated 25.05.2018 even though it is evident from the Bills of lading and Invoices of the respective Bills of Entry that the said goods have been transshipped at Singapore but were Shipped on Board on Pre-Carriage Vessel at Batam, Indonesia. However, there was no 'Export Declaration/ Bill of Export/Shipping Bill' presented at Singapore by the importer, despite this both the CBs filed Bills of entry and claimed benefit of S.No. 01 of Notification 28/2018-Customs instead of filing under ADD Sr. No. 6 of the notification. Therefore, it appeared that both these Customs Brokers namely M/s. Tristar Freight Forwarders and M/s. Sky Sea logistics also failed to exercise due diligence to ascertain the correctness of information while filing BEs for clearance of cargo, and this failure on the part of CB resulted in revenue loss to the exchequer. Accordingly, Customs Brokers namely M/s. Tristar Freight Forwarders and M/s. Sky Sea logistics, committed these infirmities with a view to resort to evasion of duty with malafide intention to defraud the exchequer of the rightful duty thereby clearly attracting the penal provisions of Section 112(a) and /or 114A and Section 114AA of the Customs Act, 1962.

1.15. Therefore, in terms of Section 124 read with Section 28(4) of the Customs Act, 1962, M/s Unitop Chemicals Private limited (IEC-0388120614) was called upon to Show Cause to the Commissioner of Customs, N.S.-I, JNCH, Nhava-Sheva, Taluka-Uran, District-Raigad, Maharashtra-400707, as to why: -

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

b) The differential Anti-dumping duty amounting to Rs. 69,72,100/- and IGST on not paid Anti-dumping Duty amounting to Rs. 12,54,978/- (total amounting to Rs 82,27,078/-) as explained in the preceding paras should not be demanded and recovered as per section 28(4) of the Customs Act, 1962, and accordingly, the applicable interest against the same should not be demanded and recovered under section 28AA of the Customs Act, 1962.

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

d) Penalty should not be imposed on M/s Unitop Chemicals Private limited **under** the provisions of Sections 112(a) and/or 114A, and/or 114AA of the Customs Act, 1962.

e) Penalty should not be imposed on the Customs broker M/s. Tristar Freight Forwarders and M/s. Sky Sea logistics under the provisions of Sections 112(a) and/or 114A and 114AA of the Customs Act, 1962.

2. WRITTEN SUBMISSIONS

2.1 The notice M/s Unitop Chemicals Pvt. Ltd. Vide letter dated 08.10.2024 submitted their reply to the SCN which is as below:-

a. With reference to the subject matter, we refer to the SCN issued from your side in respect of Import made under Sr. No. 1 of Notification No. 28/2018-Customs (NIL Anti-Dumping Duty) from exporter Eco Green Oleochemicals (Singapore) Pte Ltd, for product manufactured by P. T. Eco Green Oleochemicals, Indonesia.

Import of Saturated Fatty Alcohols originating in, or being exported from Indonesia, Malaysia and Thailand for the reference period under SCN was regulated under Notification No. 28/2018-Customs (ADD) dated 25.05.2018 and subsequent changes as well as Notification No. 48/2018-Customs (ADD) dated 25th September 2018 as well as subsequent changes.

Levy of Anti-Dumping Duty was based on the Final Findings of the Designated Authority, who conducted Anti-Dumping Investigation concerning imports of "Saturated Fatty Alcohols" originating in or exported from Indonesia, Malaysia, Thailand. The Designated Authority had assigned Definitive Anti-Dumping Duty after due investigation of each of the Manufacturing Source covered under the said investigation. Each of the producers in country of origin under investigation was either exempted or Anti-Dumping Duty was assigned based on the extent of injury caused to the local industry. Accordingly, Ecogreen was assigned NIL Anti-Dumping Duty (ADD) for their exports as stated under Sr. No. 1 of the said notifications. We imported Saturated Fatty Alcohols from Ecogreen Oleochemicals (Singapore) Pte. Ltd., an affiliate of PT Ecogreen Oleochemicals, (the manufacturer), located in BATAM, Indonesia. PT Ecogreen qualifies for ZERO Anti- Dumping Duty as per the investigations and accordingly under the relevant Notifications, our imports have been appropriately cleared under the said Notification No. 28/2018 without payment of any ADD.

b. It is understanding of the department that Shipping Bills should have been filed from the Singapore. Since "Ecogreen Oleochemicals (Singapore) Pte Ltd had not filed the shipping bills at Singapore, therefore, they cannot be considered exporter for these shipments and therefore Indian importers are not eligible for exemption of "NIL" ADD under the notification No- 28/2018- Customs at Serial Number-1. The goods have been directly shipped from Indonesia by the producer.

In respect of the above point, reference may be made to Disclosure statement issued under File No. 14/51/2016-DGAD, Government of India, Ministry of Commerce & Industry, Department of Commerce (Directorate General of Anti-Dumping & Allied Duties), New Delhi, Dated 23.04.2018. In this regard, please refer Paras **29 to 31** describing the transaction process of Ecogreen Oleochemicals (Singapore) Pte. Ltd., an affiliate of PT Ecogreen Oleochemicals, (the Producer); Under Para 31 refer the statement –

"**During POI, PT Ecogreen Oleochemicals Indonesia has exported **** MT of the subject goods to India through Ecogreen Oleochemicals (Singapore) Pte Ltd, Singapore**.

Ecogreen, Indonesia has sold the subject goods to Eco Singapore on ex-factory terms.

Based on the investigations by the Designated Authority and the scrutiny during period of investigation, Duty Table was drafted by the authority of the said File No. 14/51/2016-DGAD, (as referred above). Notification No. 28/2018-Customs dt. 25.05.2018 and subsequent Notifications were accordingly issued by the Authorities.

The entire interpretation of the above said notification by the department is not legal and is incorrect. We want to draw your kind attention on Final Findings of DGAD in this matter. The Final finding in the above said matter was issued vide F. No.-14/51/2016-DGAD dated 23/4/2017 by the office of Directorate General of Anti-Dumping and Allied Duties, Ministry of Commerce. On the basis these recommendations, made in the Final Findings, the Ministry of Finance had issued the ADD notification No-28/2018-Customs (ADD) dated 25.05.2018.

At Para 31 of this Final Findings the Export price of M/s PT Ecogreen Oleochemicals ***<u>(Producer)</u>*** and M/s Ecogreen Oleochemicals (Singapore) Pte Ltd., has been discussed by the Anti-Dumping investigating Authority. At Para 31, it has been found by investigating authority that PT Ecogreen Oleochemicals, **<u>Indonesia</u>** has exported the goods to India **<u>only</u>** **<u>through Ecogreen Oleochemicals (Singapore) Pte Ltd</u>**.

The word **<u>THROUGH</u>** is very much important in the above said sentence.

It clears that wherever, M/s. Ecogreen Oleochemicals (Singapore) Pte Ltd has been shown as exporter, the goods were shipped by M/S. PT Ecogreen Oleochemicals, **<u>Indonesia</u>** only. The Singapore entity, M/S. Oleochemicals (Singapore) Pte Ltd had worked as an exporter situated in third Country. This entire transaction was happening through the well-known procedure of third Country invoicing. In the third country invoicing, the goods are directly shipped by the producer/ manufacturer but the third country party is considered actual exporter because third country party issues the invoice and packing list in his name showing himself exporter. The Foreign currency remittance also goes to this third country exporter.

It means the goods were shipped from the producer directly from Indonesia and M/s. Ecogreen Oleochemicals (Singapore) Pte Ltd had issued the invoice and packing list as the third country exporter. M/s. Ecogreen Oleochemicals (Singapore) Pte Ltd was issuing the export invoices, packing list and importers were paying remittance to M/s. Ecogreen Oleochemicals (Singapore) Pte Ltd only, therefore above said notification has mentioned M/s. Ecogreen Oleochemicals (Singapore) Pte Ltd as exporter. How this transaction was taking place during the investigation, it has been clearly mentioned at Para 31 of the above said Final Finding. The Companies were following the same procedure before the initiation of investigation, during the time of Investigation and after Final Findings and issuance of the Notification. There is no change in the mode of operation and procedure of transaction among M/s PT Ecogreen Oleochemicals, Indonesia and M/s Ecogreen Oleochemicals (Singapore) Pte Ltd. and by the Indian importer before or after the investigation.

In Final Findings the investigation Authority has mentioned this procedure as under-

"Export price of M/s PT Ecogreen Oleochemicals (Producer) and M/s Ecogreen Oleochemicals (Singapore) Pte Ltd., <u>Singapore (Exporter)</u>"

*31. M/s PT Ecogreen Oleochemicals ("Ecogreen") has filed questionnaire response along with its related trading company, namely, M/s. Ecogreen Oleochemicals (Singapore) Pte Ltd. ("Eco Singapore"). <u>During the POI, Ecogreen has exported **** MT of the subject</u> <u>goods to India only **through** Eco Singapore</u>. Ecogreen has sold the subject goods to Eco Singapore on ex-factory terms. Eco Singapore has claimed adjustment on account of commission, rebate, inland freight, insurance, ocean freight and other charges. The same have been allowed by the Authority, after due verification. The authority also examined the profitability of Eco Singapore for these export* *transactions."*

It can be observed from the heading made above the Para 31, under which M/s Ecogreen Oleochemicals (Singapore) Pte Ltd., has been addressed as **"Singapore (EXPORTER)"** and the shipment procedure has been discussed stating that *M/s PT Ecogreen Oleochemicals, Indonesia will export the goods* ***through***M/s Ecogreen Oleochemicals (Singapore) Pte Ltd and the M/s Ecogreen Oleochemicals (Singapore) Pte Ltd situated in Singapore will be called "EXPORTER" for these transactions.

Accordingly, all our shipments from Indonesian Producer, PT Ecogreen Oleochemicals, Indonesia and exported by Ecogreen Oleochemicals Singapore Pte. Ltd., Singapore are exempted and attract "NIL" ADD. These imports have been correctly classified under Sr. No. 1 of the Notification No. 28/2018-Customs (ADD) Dated 25.05.2018 and subsequent Notifications issued by GoI, MOF, Department of Revenue;

c. In the context of international trade, third-party or third-country invoicing is a common practice where a transaction involves three parties: the manufacturer/producer, the actual exporter (usually an intermediary in a third country), and the importer. The legality of such transactions and the status of the third-country entity as the actual exporter are supported by international trade laws and customs regulations, which recognize third-party invoicing arrangements. The Singapore company, Ecogreen Oleochemicals (Singapore) Pte Ltd, is legally exporter in this transaction.

Third-country invoicing is a legitimate trade practice recognized internationally. The Role of the Exporter in Third-Country invoicing is well settled in law. In this arrangement the producer/manufacturer M/S. PT Ecogreen Oleochemicals, Indonesia ships the goods directly to the importer in India. The third-country entity M/S. Ecogreen Oleochemicals (Singapore) Pte Ltd. acts as the exporter by issuing the invoice, packing list, and any other necessary documents. The importer remits payment to the third-country exporter Singapore entity.

Under international trade law, the entity issuing the commercial invoice and receiving payment is considered the legal exporter. The Singapore company fulfills these roles because they had issued the invoice and packing list. They had received the payment from the importer because they were having the contractual agreement with the importer to supply the goods. In this entire transaction the Company situated in Indonesia was not having any agreement with the Indian Importers for supply of goods nor they were directly receiving payments from Indian importers, therefore they cannot be considered exporter under this transaction for Indian Importers.

International trade follows standardized rules known as Incoterms (International Commercial Terms), published by the International Chamber of Commerce (ICC). Incoterms define the responsibilities of sellers and buyers, including the delivery, risk transfer, and obligations for shipping documents. The entity issuing the shipping documents, such as the commercial invoice and packing list is seen as the "exporter" under these terms.

For example, if a sale is based on an Incoterm like CIF (Cost, Insurance, and Freight) or FOB (Free on Board), the third-country entity that issues the invoice would be responsible for delivering the goods under the terms of the contract, making them the recognized exporter.

Customs authorities around the world, in line with World Trade Organization (WTO) guidelines, recognize the entity that issues the commercial documentation invoice, packing list as the legal exporter. Customs laws are primarily concerned with the party that is financially and legally responsible for the transaction, which in this case is the third- country invoicing entity, as they receive payment from the importer, issue the necessary documentation for customs clearance. These documents are accepted by the financial institutions for making remittance to third party exporters, which is sufficient legal proof of their role as exporter in the transaction.

Therefore, legally, Ecogreen Oleochemicals (Singapore) Pte Ltd is the exporter in this transaction because they are issuing the commercial documents and receiving payment. The practice is widely recognized and accepted in international trade, and there is no legal prohibition against this arrangement.

d. It can be observed from Bill of lading that goods had been transshipped from Batam Port Indonesia to Singapore Port and port of loading has been declared at Singapore in the Bill of lading. Transshipment occurs when goods are transferred from one vessel to another, typically due to the limitations of smaller ports or feeder services. The initial movement from Batam to Singapore is often seen as a feeder service, and not the primary loading port for shipping purposes. The port of loading is considered the last port where the cargo is loaded onto the main (mother) vessel that will carry it to the final destination.

In this case, the mother vessel was loaded at Singapore, not Batam, Indonesia. Batam Port's inability to handle large vessels means that goods must be moved first to a larger hub, like Singapore, for the main sea voyage. This is a standard practice, especially in regions where smaller ports act as feeder points. The Bill of Lading or other shipping documents will reflect Singapore as the port of loading because that is where the goods were last loaded onto the main vessel responsible for the international leg of the journey. This declaration aligns with the usual industry practices for shipping documentation and liability purposes. According to conventions and other international maritime regulations, the port of loading is the port where the goods are loaded onto the main vessel, not the feeder vessel. Therefore, declaring Singapore as the port of loading is compliant with these shipping standards.

In this case, the customs clearance documents will indeed be filed at Batam Port, Indonesia, where the goods are originally manufactured and shipped from, and not in Singapore. Since the goods are manufactured and originated in Indonesia, the export customs clearance must be completed at the point of origin, which is Batam Port, Indonesia. Since the goods are not entering Singapore for domestic use or sale, Singapore customs clearance is not required. Singapore will treat the goods as in-transit, so no separate customs clearance is needed there. The responsibility for clearance lies at the original port of export (Batam, Indonesia) and the final port of import (India). The Indian importer will be notified as consignee in the Bill of lading issued by the shipping line. As per Indonesian customs law, goods manufactured and exported from Indonesia require customs clearance at the port of export, i.e., Batam Port in this case. The export declaration (PEB or **Pemberitahuan Ekspor Barang**) is filed in Indonesia. Singapore operates as a major transshipment hub and follows **WCO (World Customs Organization) standards**. The customs authorities do not require clearance for goods in transit.

Apart from transshipment port of Singapore, our exporter M/S. Ecogreen Oleochemicals (Singapore) Pte. Ltd. is also located in Singapore.

e. We gave our orders to Ecogreen Oleochemicals (Singapore) Pte. Ltd., therefore import invoices were issued by them and we remitted the payments against these imports to Ecogreen Oleochemicals (Singapore) Pte. Ltd. As a practice, PTEO (Indonesia) sells to EOS (Singapore) on Ex. Factory Basis and thereafter EOS (Singapore) sells on CIF basis in India. This process was endorsed by the DGTR in its final findings at the time of determination of Anti-Dumping Duty (ADD) proceedings in which imports of Saturated Fatty Alcohols in India manufactured by PTEO (Indonesia) and exported by EOS

(Singapore), were exempted from levy of any ADD, as defined under Sr. No. 1 of relevant Notifications;

Internationally recognized practice of imposition of anti-dumping duty has consistently been referring to producer in the country of the origin of the product being investigated, irrespective its coordinate of export. This is consistent with the **Final findings in the Sunset Review Anti-Dumping Investigation** concerning imports of Saturated Fatty Alcohol originating in or exported from Indonesia, Malaysia and Thailand under F. No. 7/01/2022-DGTR dated 02/02/2023.

Under Sunset Review the Recommendation has been made as under-

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

Duty Table

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

Now we once again put below, the serial Number 1 of the notification dated 23-4-2018, which was issued vide F. No.- 14/51/2016-DGAD after Final Findings in the matter.

The Serial No-1 in this table has been shown as under-

Sr. No-	**Sub Head ing**	**Description of goods**	**Country of origin**	**Country of export**	**Producer**	**Exporter**	**amount**	**unit**	**Currency**
1	290517 290519 382370	All types of saturated Fatty Alcohols excluding Capryl Alcohols (C8) and Decyl Alcohols (C10) and blends of C8 and C10	Indonesia	**Singapore**	M/S. PT Ecogreen Oleochemicals	M/S. Eco Green Oleochemicals (Singapore) Pte Ltd.	Nil	MT	USD

It can be observed under notification issued for **Final Findings** that the Country of **Export was mentioned as "Singapore"** whereas for the same serial Number and for the same column the name of country of Export has been mentioned as **"Any including the Country of Origin"** under **Sunset Review Findings** for the goods produced by M/S. PT Ecogreen Oleochemicals, Indonesia.

What does it mean?

Why under sunset review finding, the DGAD has changed the country of Export from "**SINGAPORE"** to **any country including Indonesia**. It means country of export was having no impact on pricing for imposing of ADD if goods were produced by M/s PT Ecogreen Oleochemicals, Indonesia. If goods were produced by M/s PT Ecogreen Oleochemicals, Indonesia then ADD was not applicable, no matter the goods had been exported from which country.

The Sunset Review Findings has made it clear that ADD is not applicable for the goods produced by M/S. PT Ecogreen Oleochemicals, Indonesia and exported from any country including Indonesia.

f. It has not been mentioned anywhere in the Final Finding of Ministry of Commerce or Notification issued by the Ministry of Finance that exporter Ecogreen Oleochemicals Singapore needs to file Shipping Bills at Singapore Customs to have a status of exporter and to supply the goods to Indian Importers from Indonesian Producer. If this interpretation is accepted then it will create a havoc in International trade and entire third country invoicing and third country export procedure will collapse. In this case each third country exporter have to first bring the containers at their port then file shipping Bill at their port, then clear the goods from their Customs and then send the goods to third country by loading in another vessel.

This entire process will ruin the international trade of third country export mechanism and will make it impossible. It will unnecessarily increase the cost for the third country suppliers and importers.

It is well known fact that any goods from any country cannot leave the territory of the country without the filing of documents before the Customs Authority of that country and getting out of charge order from the Customs authorities. In third country exports, always documents are filed by the manufacturer/producer before their Customs authorities, on the basis of which Bill of lading and Country of origin certificate is issued by the relevant entities. In our case that country is Indonesia. If goods have been already cleared by the customs authority of producers/Manufacturer country then where is need to bring these containers to exporting country, then again file the shipping Bills and take out of charge of the containers from the third country Customs Authority.

At present, this practice does not prevail in international trade.

g. Our imported goods do not fall under Serial No-6 of the table mentioned in the Notification No-28/2018 dated 25/5/2018. Serial No-6 of the table is reproduced below-

Sr. No -	**Sub Heading**	**Description of goods**	**Country of origin**	**Country of export**	**Producer**	**Exporter**	**amount**	**unit**	**Currency**
1	290517 290519 382370	All types of saturated Fatty Alcohols excluding Capryl alcohols (C 8) and Decyl Alcohols (C10) and blends of C8 and C10	Any country other than those subject to anti-dumping duty	Indonesia	**Any**	Any	92.23	MT	USD

In this table Country of origin has been mentioned that "any country other than those subject to anti-dumping duty". In our case it is clearly mentioned on CO certificate and Bill of Entry that country of origin of our imported goods is "Indonesia". The goods have been originated in Indonesia and Shipped from Batam Port of Indonesia. Therefore, this serial number fails to cover our goods on this ground only.

Our goods are clearly covered at serial No-1 of the table under the above said Notification. The Details are serially mentioned and it matched with the procedure which had followed by us.

1- **Country of Origin**- Indonesia- There is CO certificate with each shipment which certifies country of origin of goods as Indonesia. Each Bill of lading shows that the shipping of goods originated from the Batam Port of Indonesia.
2- **Country of Export-** Singapore- The Country of Export is Singapore because Exporter M/s Ecogreen Oleochemicals (Singapore) Pte Ltd. is located in Singapore, The export Invoice and Packing list was issued from Singapore exporter and Remittance were made to Singapore.
3- **Producer-** M/S. PT Ecogreen Oleochemicals, Indonesia has been mentioned as producer on the Country-of-Origin Certificate of all shipments. The certificate of Analysis has been issued by M/S. PT Ecogreen Oleochemicals, Indonesia. All shipping lines has declared the name of shipper as M/S. PT Ecogreen Oleochemicals, Indonesia in Bill of Ladings.
4- **Exporter-** It can be observed that all export Invoices, packing lists have been issued by the M/s Ecogreen Oleochemicals (Singapore) Pte Ltd and all payments has been made to Singapore Company. On the country-of-origin certificate also the name of M/s Ecogreen Oleochemicals (Singapore) Pte Ltd has been mentioned as exporter.

As per CO certificate and BL of lading provided to us by the importer, the country of origin of the imported goods was Indonesia, Therefore, this serial number do not cover the goods which had been originated from Indonesia. It covers **"ANY"** producer country except the Producers of Indonesia. In this row the Country of Export has been mentioned "Indonesia" and country of producer has been mentioned "any country". The Column 4 of Serial number-6 specifically mentions "Country of Origin- **Any country other than those subject to anti- dumping duty". Since Indonesia is subject to anti-dumping duty, therefore "Indonesia" cannot be producing country for serial number-6.**

The serial Number 1, specifically covers Producer M/S. PT Ecogreen Oleochemicals, Indonesia and exporter M/S. Eco Green Oleochemicals (Singapore) Pte Ltd.

h. We hereby submit that nothing has been mis-declared by us while filing the Bill of Entry. Department has not found or produced any other documents from their sources except the documents submitted by us to establish that we had suppressed any fact before the department.

The Bill of lading clearly stated that goods had been transshipped from Batam port of Indonesia after Custom clearance and brought to Singapore through the feeders for loading at main/ Mother vessel at Singapore. It is well established practice in international shipping.

We had not mis declared the description of goods. We had declared the country of origin of goods as Indonesia. We had declared place of receipt of goods at Batam Port Indonesia and Transshipment at Singapore. We had declared the port of loading of the goods at Singapore because goods were loaded at Singapore in Mother Vessel. We had classified the goods in correct Customs tariff Heading and imposed the duty as per correct interpretation of notification No- 28/2018 Customs-dated 25/5/2018.

As per various decisions of Courts, if there is any dispute about the interpretation of applicability of notification between the importer and Customs department, then it will not mount misdeclaration on the part of importer under Section 111(m) of the Customs Act and importer will not be liable for penalty under the provisions of Section 112(a) of the Customs Act.

I- The Hon'ble Supreme Court in the case of NORTHERN PLASTIC LTD. VERSUS COLLECTOR OF CUSTOMS & CENTRAL EXCISE have held that when the description of goods has been correctly furnished in the Bills of entry, the said statutory provisions do not apply for penalizing the importer-appellants.

In the matter of M/s. Northern Plastic Ltd. etc. –(Appellants) versus Collector Customs & Central Excise (Respondents) under Civil Appeal No. 4196 of 1989 With Civil Appeal No. 3325 of 1990 which was decided on 14-7-1998, this was ordered by the Supreme Court of India.

"**Consequently held**: *We, therefore, hold that the appellant had not misdeclared the imported goods either by making a wrong declaration as regards the classification of the goods or by claiming benefit of the exemption notifications* ***which have been found not applicable to the imported goods****. We are also of the view that the declarations in the Bill of Entry were not made with any dishonest intention of evading payment of customs and countervailing duty. (Para 24)*

28. Therefore, neither on the ground of misdeclaration nor on the ground of import being unauthorized or illegal, the goods imported by the appellant were liable to confiscation. We, therefore, allow these appeals, set aside the order of confiscation and also the order levying fine of Rs. 5 lakhs in lieu of confiscation. We also set aside the order of penalty imposed upon the appellant. In view of the facts and circumstances of the cases, the parties shall bear their own cost."

II-In the matter of M/s. Oberoi Construction Ltd and M/s. Oberoi Reality Pvt. Ltd. versus COMMISSIONER OF CUSTOMS (IMPORT), NHAVA SHEVA (2022 (12) TMI 1339 - CESTAT MUMBAI), it is held as under with reference to mis-declaration of the goods under Section 119(m) of the Customs Act, 1962-

"Classification of imported goods- Aluminium Profile- to be classified under CTH 76042990 or CTH 76109030? – Confiscation- redemption -fine penalty HELD THAT *The facts are not under dispute that the description of the goods namely Aluminium Profiles indicated in the import documents was the same as declared by the appellants in Bills of entry filed before the authorities at the port of import. Insofar as change in classification of the product in question is concerned, the appellants bonafidely believed that the product should appropriately be classified under 76042990 and accordingly, filed the Bills of entry classifying the product under the said CTH. It is not the case of Revenue that the appellants had mis-declared the goods with an intent to evade payment of duty. Since, Section 111(m) ibid provides for confiscation of the goods in the eventuality of misdeclaration of the goods, which are absent in the present case, the redemption fine and penalty cannot be imposed on the appellants."*

III- Customs Appeal No. 10829 of 2022-DB, was decided on 06.05.2024 by CESTAT Ahmedabad in the matter of Appellants- Power Grid Corporation of India Limited Vs**.** Respondent C.C.-Ahmedabad. The CESTAT Ahmedabad has ordered as under-

"5.5 When Commissioner has himself in the para 33 of his order for holding the classification under the Heading 392410, referred to description made in the Bill of Entries/invoices he cannot be justified in holding the charge of mis-declaration against

appellants. For that reason, we are of the view that by giving the correct description on the documents relating to import clearance appellants have discharge the burden of making correct declaration on the Bill of Entry. Hence any error in classification or the exemption claimed on Bill of Entry cannot be misdeclaration with the intention to evade payment of duty for the purpose of invoking extended period of limitation. Hence demand made by invoking extended period of limitation needs to be set aside."

6. Considering the overall facts of the case which is similar to the facts of the various judgments as cited above, the suppression of fact or willful misstatement or fraud or collusion etc., cannot be invoked in the present case. Therefore, the show because notice issued after almost three years is clearly barred by limitation. Consequently, the demand being under extended period cannot sustain Accordingly, the impugned order is set aside, appeal is allowed."

IV- In the matter of M.S. Clothing Company vs Commissioner of Customs [CITATION: 2024 TAXSCAN (CESTAT) 745] in Appeal No- 21199 of year 2017, the Customs, Excise, and Service Tax Appellate Tribunal (CESTAT) Bangalore, ordered on 9/9/2014 and set aside the penalty imposed under Section 111(m)of the Customs Act, 1962, concerning an alleged misdeclaration. The Tribunal observed that the Bills of Entry clearly mentioned the description of the goods, the relevant exemption notifications, and were duly assessed by customs officers. The Tribunal held that the claim of exemption was made bona fide, and there was no deliberate intent to mis declare the goods. Therefore, the invocation of the extended limitation period and the penalty under Section 111(m) for misdeclaration were unjustified.

It was concluded that the appellant had not willfully misrepresented or suppressed any facts, and the confiscation of goods and penalties under Sections 111(m) and 114A of the Customs Act were unwarranted. Consequently, the penalty and confiscation were deleted.

i. The Section 114AA of the Customs Act, 1962 was proposed to be inserted after section 114A through Clause 24 of the Finance Bill as per the 27th Report of the Standing Committee of Finance 2005-2006. It was **done keeping in view the increase in fraudulent export practices**, where exports were only reported on paper but no actual goods were shipped. Thereafter, by The Taxation Laws (Amendment) Act, 2006, No. 29 of 2006 w.e.f. 13-07-2006, Section 114AA of the Act was inserted.

The Committee advised that the Government should exercise due diligence and care in monitoring the implementation of the provision of Section114AA of the Customs Act 1962, to make sure that it does not result in undue harassment of the importers and exporters.

Now, Section 114AA is being indiscriminately applied against the importers without any corroborative evidence and justification. Penalty under Section 114AA of the Act can be invoked only in case of use of any false document, statement or declaration made intentionally for import or export transactions. The field formations are indiscriminately invoking Section 114AA even in routine matters prompting the interference of Tribunals and Higher courts.

We have not produced any false document, statement or declaration with an intention for our import transactions.

Penalty under Section 114AA of the Act can be invoked only in case of use of any false document, statement or declaration made intentionally for import or export transactions, including cases where exports have not taken place physically but only on paper or foreign exchange remittance has not been received in India by the exporter.

The Hon'ble Andhra Pradesh High Court has in case of Jai Balaji Industries [2018 (361) ELT 429 (AP)] held that incorrect value of the imported goods *per se* cannot amounts to any of the acts referred to in Section 114AA. In the absence of some tangible material to show that the illegal import/export was with the knowledge of the importer/exporter, no penalty can be imposed on him.

The Customs Authorities are required to determine existence of some declaration, statement or document which is false or incorrect in material particulars produced or used. The substantive requirement is to prove knowledge or intention where false or incorrect material was used. In cases where the substantive requirement is not met, a procedural non- compliance should not be a reason for imposing penalty under Section 114AA of the Customs Act. Such a penalty cannot be imposed mechanically.

Since, we have submitted only those documents which had been given to us by our exporter and we have not submitted any forge or manipulated documents, therefore penalty under Section 114AA of Customs Act cannot be imposed upon us.

j. In view of all above facts, we hereby submit that we had not mis -declared the description of the imported goods, nor their classification nor their country of origin nor their port of loading. Therefore, our imported goods are not liable for confiscation nor we are liable for penalty.

We have rightly applied the ADD of the Serial No-1 of the table mentioned in Notification No-28/2018 Cus. dated 25/5/2018. Therefore, there is no question of imposition of penalty on us under Section 114 A of the Customs Act for short levy of duty. Also, we are not liable for penalty under the provisions of Section 114AA of the Customs Act because we have not used the false and incorrect information for clearance of the goods from Customs.

In view of the above and without prejudice to our right to place on records any more relevant information, it is clear that the imports of Saturated Fatty Alcohol from exporter Ecogreen Oleochemicals Singapore, by our company during the said period was correctly classified and customs cleared in accordance with the prevailing rules, regulations, applicable Notifications and procedures. Therefore, no liability arises on our part towards payment of any duties, as claimed in the reference SCN.

Therefore, the Anti-dumping notification has rightly mentioned that goods manufactured by PT Ecogreen Oleochemicals Indonesia and exported through Ecogreen Oleochemicals Singapore will attract “NIL” ADD. Since in our case manufacturer is PT Ecogreen Oleochemicals Indonesia and exporter is Ecogreen Oleochemicals Singapore therefore we have rightly paid the “NIL” ADD.

With the above submission, it is abundantly clear that that SCN issued is not tenable and is not applicable for imports under discussion. We repeat and reiterate that the clearance of goods was correctly done under relevant serial No-1 of the applicable Notification and therefore we request you to withdraw the demand raised in the SCN and close the relevant file.

2.2 The Noticee M/s Tristar Freight Forwarders submitted their reply vide letter dated 10.10.2024 through their legal representative Advocate Shri Anil Balani which is as below: -

At the outset my clients deny all the allegations and charges contained in the Notice. The following submissions may kindly be noted: -

1) Total 34 Bills of Entry were filed by my clients in the period 5.9.2019 till 27.10.2022 on behalf of the said importer M/s. Unitop Chemicals Pvt. Ltd. for clearance of **Lauryl Myristic Alcohol-1214 (ECOROL 24)**. The said Bills of

Entry were filed in the normal course of their business. My clients acted bonafide and in good faith.

2) Statement of my clients under Section 108 of the Customs Act was never recorded.

3) SCN is issued to my clients after a delay of 5 years, for the first time. However, <u>only the importer has been called upon in para 14 to show cause</u>.

4) M/s. Unitop Chemicals Pvt. Ltd. is a reputed importer. In each case the Check List was forwarded to the importer for approval. The Bill of Entry was filed only after obtaining their approval.

5) Benefit of Sr. No.1 of Notification 28/2018-Cus. (ADD) was claimed only because the goods had originated in Indonesia and the exporter is located in Singapore. In the Certificate of Origin furnished by the importer, the name of the manufacturer is shown as P T Ecogreen Oleochemicals, Indonesia. Payment for the goods was made to exporter M/s. Ecogreen Oleochemicals (Singapore) Pte Ltd. and the Invoice and Packing List were issued by the said exporter M/s. Ecogreen Oleochemicals (Singapore) Pte Ltd.

6) As per proviso to Section 9-A(1) (Anti-Dumping Duty on dumped Articles) of the Customs Tariff Act, 1975, even if the goods are merely transhipped, the country of export is the country through which the goods are transhipped.

7) Further, there is no bar in the Notification on transhipment from Singapore. In fact if transhipment saves time and money, insisting on Shipping Bill at Singapore defies logic. If transhipment from Singapore is not permitted, different officers at different points of time over the 3 years period, would never have extended benefit of exemption under Sr.No.1 of Notification 28/2018-Cus. (ADD).

8) From a plain reading of the Notification 28/2018-Cus. (ADD) it is obvious that Sr. No.6 of the notification does not apply because admittedly the goods are of Indonesian origin and Sr. No.6 applies to goods originating from countries other than Indonesia.

9) Several consignments were examined and assessed by the department and therefore it is not a case of self-assessment. Hence the extended period of limitation under Section 28(4) is not available to the department. The question of suppression with intent to evade duty does not arise.

10) In any event, the importer is available and contesting the demand.

11) The goods are not liable for confiscation under Section 111(m) because the Bills of Entry were filed on the basis of invoice, Bill of Lading and COO. There is no inaccuracy or misdescription of any details and particulars.

12) In any case, my clients have not committed any act rendering the goods liable to confiscation under Section 111(m). There is no admission or confession of guilt. The importer has also not blamed my clients. Hence, they are not liable for penalty under Section 112(a).

13) Penalty under Section 114A is imposable only on the person from whom the duty is recoverable under Section 28(4).

14) Section 114AA is not applicable for the following reasons:

(a) My clients did not knowingly or unknowingly make any false declaration.

(b) As per 27th Report of the Standing Committee on Finance (2005-2006), Section 114AA applies only in cases of fraudulent exports. Further, in the following judgements also it is held that Section 114AA is only applicable in cases of fraudulent exports and not in import cases:

i. A. V. Global Corporation P.Ltd.-2024 (10) TMI 159-CESTAT New Delhi
ii. Suresh Kumar Aggarwal -2024 (6) TMI 779 -CESTAT Mumbai;
iii. Interglobe Aviation Ltd. - 2022 (379) ELT 235 (Tri.-);
iv. Access World Wide Cargo -2022 (379) ELT 120 (Tri.);
v. Bosch Chassis Esystems India Ltd.- 2015 (325) ELT 372(T);
vi. Sri Krishna Sounds and Lightings - 2019 (370) ELT 594(T).

(c) Without prejudice to the above, in the following judgements it is held that Section 114AA cannot be invoked when Section 112 is already invoked for the same offence:

(i) Dharmendra Kumar – 2019 (370) ELT 1199 (Tri.-All.)
(ii) Arya International – 2016 (332) ELT 726 (Tri.-Ahmd.)
(iii) Buhler India Pvt. Ltd.-2014 (310) ELT 593 (Tribunal)
(iv) Govt. of India Order dated 31.8.2020 in R. A. File No.151/2020-CUS (WZ)/ASRA/MUMBAI issued vide F. No. 371/17/B/16/RA 5760 dated 30.9.2020;
(v) Order dated 11.12.2020 of Gujarat High Court in Special Civil Application No.15689/2020 of Abdul Hussain Saifuddin Hamid.

15) As per Advisories dated 2.12.2022; 29.12.2022 and 22.05.2024 issued by the Chief Commissioner of Customs, Mumbai Zone-II, JNCH, Nhava Sheva; the Principal Chief Commissioner of Customs, Mumbai Zone-I, and the Pr. Commissioner of Customs, Mundra Custom House, Customs Brokers should not be made co-noticees in cases involving interpretative disputes regarding classification, availment of benefit of exemption notification, etc.

16) In this case, it was the consistent practice of the department to assess Bills of Entry with benefit of Sr.No.1 of Notification 28/2018-Cus. (ADD). Transshipment was considered as export from Singapore. A mere change of interpretation by the department after 5 years, can never justify issuance of SCN to Customs Broker. It is not the department's case that my clients have benefited or earned anything extra over and above their nominal clearing charges from the said imports. The mere filing of Bills of Entry cannot expose them to penalties under the Customs Act.

17) In the circumstances, it is prayed that the proceedings against my clients be dropped.

2.3 The noticee M/s Sky Sea Logistics vide letter dated 08.10.2024 and 04.08.2025 submitted their written submission which is as below:-

a. The Serial No-1 in this table of notification No-28/2018 dated 25/5/2028 has been shown as under-

Sr. No-	**Sub Head ing**	**Description of goods**	**Country of origin**	**Country of export**	**Producer**	**Exporter**	**amount**	**unit**	**Currency**

1	290517 290519 382370	All types of saturated Fatty Alcohols excluding Capryl Alcohols (C8) and Decyl Alcohols (C10) and blends of C8 and C10	Indonesia	Singapore	M/S. PT Ecogreen Oleochemicals	M/S. Eco Green Oleochemicals (Singapore) Pte Ltd.	Nil	MT	USD

The Serial No-6 of the table mentioned in the Notification No-28/2018 dated 25/5/2018 is reproduced below-

Sr. No -	**Sub Heading**	**Description of goods**	**Country of origin**	**Country of export**	**Producer**	**Exporter**	**amount**	**unit**	**Currency**
1	290517 290519 382370	All types of saturated Fatty Alcohols excluding Capryl alcohols (C 8) and Decyl Alcohols (C10) and blends of C8 and C10	Any country other than those subject to anti-dumping duty	Indonesia	Any	Any	92.23	MT	USD

At the serial No-6 of this table, the Country of origin has been mentioned as "any country other than those subject to anti-dumping duty". The importer had provided us the country-of-origin certificate. In that CO certificate, it was clearly mentioned that the country of origin of the imported goods was "Indonesia". As per Bill of lading, the goods had been originated in Indonesia and Shipped from Batam Port of Indonesia to Singapore for Transshipment to India. The Serial Number 6 of this table covers those goods which had been originated from other than Indonesia, Malaysia and Thailand.

As per CO certificate and BL of lading provided to us by the importer, the country of origin of the imported goods was Indonesia, Therefore, this serial number do not cover the goods which had been originated from Indonesia. It covers "ANY" producer country except the Producers of Indonesia. In this row the Country of Export has been mentioned "Indonesia" and country of producer has been mentioned "any country". The Column 4 of Serial number-6 specifically mentions "Country of Origin- **Any country other than those subject to anti- dumping duty". Since Indonesia is subject to anti-dumping duty, therefore "Indonesia" cannot be producing country for serial number-6.**

The serial Number 1, specifically covers Producer M/S. PT Ecogreen Oleochemicals, Indonesia and exporter M/S. Eco Green Oleochemicals (Singapore) Pte Ltd.

The importer had provided us the invoice and packing list of the supplier M/s Ecogreen Oleochemicals (Singapore) Pte Ltd., Singapore. For filing of Bill of Entry, we were having details of Singapore supplier. We are supposed to file the Bill of Entry on the basis of import invoice and packing list given to us by the importer. We cannot force the importer to give us invoice and packing list of M/s. PT Ecogreen Oleochemicals, Indonesia.

On the country-of-origin certificate, the name of M/s Ecogreen Oleochemicals (Singapore) Pte Ltd has been mentioned as third country exporter. In the country-of-origin certificate, M/S. PT Ecogreen Oleochemicals, Indonesia has been mentioned as producer of the goods and the certificate of Analysis has been issued by M/S. PT Ecogreen Oleochemicals, Indonesia. Therefore, PT Ecogreen Oleochemicals, Indonesia is producer of these goods. The third country invoicing is well established practice in international trade and India has accepted the third country invoicing in bilateral or multilateral agreements.

We hereby submit that nothing has been mis-declared by us while filing the Bill of Entry. The Bill of lading clearly stated that goods had been transshipped from Batam port of Indonesia to Singapore Port. We had declared the Country of origin of goods "Indonesia" as per CO certificate given to us by the importer. We had declared port of loading Singapore as per Bill of lading issued by the shipping line. We had declared the name of exporter M/s. Ecogreen Oleochemicals (Singapore) Pte Ltd. Singapore because importer has provided us the copy of import Invoice and packing list issued by this supplier.

We had not mis declared the description of goods. We had classified the goods in correct Customs tariff Heading and we had filed the Bill of Entry as per documents provided by importer. We could not file the Bill of Entry in the name of M/S. PT Ecogreen Oleochemicals, Indonesia because they had not issued the Commercial invoice and packing list with reference to these shipments.

b.The importer was doing clearance of these goods from year 2019 under the "NIL" rate of ADD from another Custom Broker. We had started the clearance work in year **December 2022**. We had filed each bill of Entry after the approval of check list and rate of duty by the importer. When there were incidents of lot of previous clearances of same item at the same rate of duty since last several years, which were cleared by the Custom authorities, as a Custom broker, we have limited resource regarding different technical interpretation of the notification to change the self-assessment practice of the importer. We have to go by the previous practice of assessment till a different interpretation is made by the department and informed to us.

c. As a Custom Broker, legally we cannot ask from the importers the copies of shipping Bills filed by the suppliers at the origin port or load port. It is well known fact that suppliers/exporters not provide their clearance documents like shipping Bills to Indian Importers. They send only their Commercial invoice and packing list to the Indian Importers. It is only within the power of investigating agencies who can ask the origin/load port shipping documents from the importer or suppliers. There is no circular issued by CBIC nor any public Notice issued by the JNCH, Nhava Sheva which makes it mandatory to Custom Broker to ask the shipping documents of origin/load port from the importer.

d. We, M/S. Sky Sea Logistics, as a customs broker are not a financial beneficiary in the transactions of above said 3 Bills of Entry, if any duty is short paid or levied by the importer. Therefore, there is no question of any malafide intention on our part. Now, it is matter of interpretation of a notification issued by the Ministry of Finance between the importer and department. At the time of filing of Bill of Entry, we were aware only about the interpretation made the importers. We have come to know about the different interpretation by the department only in year 2024, when we have received the SCN copy issued by the department.

e. We had no knowledge that the Exporter situated in Singapore was supposed to file a shipping Bill at the load port. Therefore, we were having no knowledge that the goods imported are liable for confiscation and we can be mulcted with penalty under Section 112(a) of the Customs Act for abetting such an offence. Section 112(a) is reproduced below-

"*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 <u>abets</u>*** *the doing or omission of such an act*"

It is clear from the above that Section 112(a) of the Customs Act includes two categories of persons, who may be liable for fine. **The first category of persons** is those who, in relation to any goods, do or omit to do any act which renders the goods liable for confiscation under Section 111 of the Customs Act.

The second category of persons comprises of those who abet the doing or omission of such acts. In the present case, an allegation has been made that we had abetted the acts of misdeclaration. Asa Custom Broker our role in the above said import was confined to the act of filing the Bill of Entry. Our Act of filing of Bill of Entry is not the reason why the goods have been held to be liable for confiscation under Section 111 of the Customs Act by the department. The confiscation of the goods has been proposed in the SCN, *inter alia,* on the ground that the shipping Bills were not filed by the exporter at Singapore.

Indisputably, persons who have committed the acts of omission or commission in relation to goods that rendered them liable for confiscation, may be liable to pay the penalty as stipulated under Section 112(a) of the Customs Act, if it is established, without any requirement to establish their mal intent *(mens rea)*. However, the same principle would not apply to persons who are alleged to have abetted such acts of omission or commission. This is because, abetment, necessarily requires, at the minimum, knowledge of the offending Act.

The use of the expression ‘abet’ in Section 112(a) of the Customs Act, makes it implicit that the person charged, who is alleged to have abetted the acts of omission or commission, has knowledge and is aware of the said acts. A plain meaning of the word ‘abet’ means instigation, aid, encouragement of an offence. It necessarily involves the knowledge that the act being abetted is wrong.
Thus, in the context of Section 112(a) of the Customs Act, by definition, the expression ‘abet’ means instigating, conspiring, intentionally aiding the acts of commission or omission that render the goods liable for confiscation.

It is apparent from the above that the knowledge of a wrongful act of omission or commission, which rendered the goods liable for confiscation under Section 111 of the Customs Act, is a necessary element for the offence of abetting the doing of such an act. Noticee relied on case laws:-

Shree Ram v. State of U.P.: 1975 3 SCC 495, the Supreme Court held as under:

“6........Section 107 of the Penal Code which defines abetment provides to the extent material that a person abets the doing of a thing who "Intentionally aids, by any act or illegal omission, the doing of that thing". Explanation 2 to the section says that "whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act". Thus, in order to constitute abetment, the abettor must be shown to have "intentionally" aided the commission of the crime. Mere proof that the crime charged could not have been committed without the interposition of the alleged abettor is not enough compliance with the requirements of Section 107. A person may, for example, invite another casually or for a friendly purpose and that may facilitate the murder of the invitee. But unless the invitation was extended with intent to facilitate the commission of the murder, the person inviting cannot be said to have abetted the murder It is not enough that an act on the part of the alleged abettor happens to facilitate the commission of the crime Intentional aiding and therefore active complicity are the gist of the offence of abetment under the third para of Section 107."

In Amritlakshmi Machine Works v. The Commissioner of Customs (Import), Mumbai: 2016 (335) E.LT 225 (Bom.), a Full Bench of the Bombay High Court had considered the aforesaid issue and held that the word 'abetment' is required to be assigned the same meaning as under Section 3(1) of the General Clauses Act, 1897. The court further opined as under :-

"31 .....Mere facilitation without knowledge would not amount to abetting an offence. Parliament has specifically included abetment in Section 112(a) of the Act, to include acts done with knowledge, otherwise the first portion thereof-

"Any person (a) who in relation to any goods does or omits to do any act……" would cover acts done or omitted to be done on account of instigation and/or encouragement without knowledge. However, the first portion of Section 112(a) of the Act is only to make person of first degree in relation to the act or omission strictly liable. Persons who are not directly involved in the act or omission to act, which has led the goods becoming liable for confiscation cannot be made liable unless some knowledge is attributed to them. Therefore, it is to cover such cases that Section 112(a) of the Act also includes a person who abets the act or omission to act which has rendered the goods liable to confiscation. Imposing penalty upon an abettor without any mens rea on his part would bring all business to a half as even innocent facilitation provided by a person which has made possible the act or omission to act possible could result in imposing of penalty."

In Commissioner of Customs (Import) v. Trinetra Impex Pvt. Ltd.: (2020) 372 E.LT 332 (Del.), a Co-ordinate Bench of Delhi High Court had rejected the Revenue's appeal against an order of the Tribunal setting aside the levy of penalty on a CHA under Section 112(a) of the Customs Act.

f. We are not liable for any penalty under the provisions of Section 114AA of the Customs Act 1962.

In the 27th Report of the Standing Committee of Finance 2005-2006, Section 114AA of the Customs Act, 1962 was proposed to be inserted after section 114A through Clause 24 of the Bill. It was done keeping in view the increase in fraudulent export practices, where exports were only reported on paper but no actual goods were shipped.

Penalty under Section 114AA of the Act can be invoked only in case of use of any false document, statement or declaration made intentionally for import or export transactions, including cases where exports have not taken place physically but only on paper or foreign exchange remittance has not been received in India by the exporter.

It must be established that the person acted intentionally. In the case of Commissioner of Customs versus Trinetra Impex (P) Ltd. [2019-TIOL-2506-HC-DEL-CUS] the court observed that CHA acted merely as a facilitator on the strength of documents received from the importer. ‘There is no sufficient material on record to show that the CHA was actively involved in the fraudulent availment of the exemption by the importer, warranting levy of personal penalty.

It is imperative to note that Section 114AA is penal in nature and thus should be applied rationally and cautiously, where sufficient proof must be gathered to impose penalty under Section 114AA.

In the case of Insaaf Qureshi v. C.C. Mundra, [2024 SCC OnLine CESTAT 635] CESTAT observed that:-

"...the Appellant declared the value of goods in the Shipping Bill based upon the information given to him by the exporter and is not expected to investigate and find out the correct value of the goods. There is no material available on records that Appellant had knowledge of over valuation of the goods. In any case, Appellant who apparently acted in a bona fide manner in terms of the instructions of the exporter cannot be penalized on the ground of abetment of any offence of the exporter."

We hereby submit that mere filing of Bill of Entry on the basis of documents provided by the importer cannot be a reason for imposing penalty under Section 114AA of the Customs Act.

In view of above said facts, we hereby request from your good self to drop the SCN with reference to allegations made upon us at Para 13 of SCN and drop the penalty proposed to be imposed upon us at Para 14 (e) of SCN under provisions of Section 112(a) or 114A and 114AA of the Customs Act 1962.

g. Importer, M/s.Unitop Chemical private Limited was doing the clearance of the goods from Indonesia since year 2019 with other Customs Brokers with their clear understanding in this matter and they have submitted their stand while replying the SCN to the department. They were never under confusion in the matter. They have never submitted that they were advised by us in the matter. We were nowhere in the picture when they had started these imports from Indonesia in year 2019. We have filed the First Bill of Entry in December 2022. Nowhere it has been mentioned by importer in their replies that they had sought any advice from us or we had given any advice to them regarding the import of these goods from Indonesia.

h. Many CESTAT (Customs, Excise and Service Tax Appellate Tribunal) and High Court decisions have consistently held that Customs Brokers cannot be held liable for misdeclarations or violations by importers unless there is clear evidence of their active connivance, knowledge, or a failure to exercise due diligence in their prescribed duties like KYC verification, document verification. The mere fact that the importer claimed and availed the benefit of a notification due to wrong interpretation does not automatically make the Custom Broker a "partner in crime." The following CESTAT and court decisions stipulates that Customs Broker cannot be penalized without evidence of direct involvement, knowledge, or abetment in the alleged violation:

The Customs Broker's role is procedural, not to investigative. Several CESTAT benches have reiterated that the Custom Broker's role is primarily to ensure procedural compliance and proper documentation. They are not expected to act as investigative agencies for the Customs Department or to foresee future changes. We want to draw your kind attention on cases like *Sarajdeep Logistics Pvt Ltd. v. Principal Commissioner of Customs (General), Mumbai*, where revocation of Custom Broker license and penalty were set aside because the broker's role was deemed procedural and not investigative.

There are several cases where penalties under Section 117 or 112 are set aside by the Higher Judicial Forums due to lack of *mens rea* or abetment. The lack of *mens rea* is crucial.

In the matter of HIM Logistics vs. Commissioner of Customs (CESTAT New Delhi, 2025), the Commissioner of Customs imposed penalties on a Custom Broker under Sections 112(a) and 114AA for alleged misdeclaration in an import consignment. The Custom Broker was accused of assisting unauthorized importation and using false documents.

The CESTAT quashed the penalties, holding that the Revenue failed to prove direct or intentional involvement of the Custom Broker in the misdeclaration. The tribunal noted that no material evidence showed the Custom Broker had knowledge of the violation or actively aided it.

In the matter of Canon India Pvt. Ltd. vs. Commissioner of Customs (2021), the Supreme Court addressed the scope of liability under the Customs Act, emphasizing that penalties cannot be imposed without evidence of mens rea (guilty mind) or intentional violation, especially for procedural or technical breaches.

The Court held that authorities must establish knowledge or intent to violate the law before imposing penalties. Without such evidence, penalties are unsustainable.

In view of above said facts, we hereby submit that as a Custom Broker we had accurately declared the description, HSN code, country of origin, and duty rate in the Bill of Entry, fulfilling our obligations under the CBLR, 2018. No misdeclaration is alleged, which is a prerequisite for invoking penal provisions.

i. An ADVISORY No. 02/ 2024 was issued by JNCH, Nhava Sheva under which it has been advised to Customs officers not to implicate the Customs Brokers as co-noticees in cases which involve interpretative disputes. At Para 3 of this Advisory, it has been mentioned thatin the last two (02) years, a number of judgments have been passed by the higher judicial forums re-iterating that in cases where there is no evidence of complicity in the illegal importation of goods or wrong intent or prior knowledge about the violation, penalty cannot be imposed on the Customs Brokers.

At para-4 of this advisory it has been mentioned that an Instruction No. 20/2024 dated 03.09.2024 has recently been issued by CBIC directing that implicating Customs Brokers as co-noticee in a routine manner, in matters involving interpretation of statute, must be avoided unless the element of abetment of the Customs Brokers in the investigation is established by the investigation authority. Further, the element of abetment should be clearly elaborated in the Show-Cause-Notice issued for the offence case under the provisions of the Customs Act, 1962. The above instructions issued by CBIC clearly convey the importance of taking a judicious view in the matters involving Customs Brokers, who are crucial stakeholders in the customs clearance process.

It has been advised by this advisory at Para No-7 that the proper officers issuing the Show Cause Notices as well as the Adjudicating Authorities are advised to take guidance from this Advisory and follow the CBIC Instructions referred above. They need to maintain judicial discipline by following the ratio of the decisions of the higher judicial forums and refrain from penalizing Customs Brokers in a routine manner in matters involving the interpretation of statute, when no evidence of wrongdoing on the part of Customs Brokers is unearthed during investigation by any investigation Unit (SIIB, CIU, Preventive Commissionerate or DRI).

j. The Para 6 of this advisory stipulates an illustrative list of situations; wherein making the Customs Brokers as co-noticees in the Show Cause Notices or imposing penalty on them by the Adjudicating Authorities, is not in line with CBIC Instruction No. 20/2024 dated 03.09.2024. The one of the illustrations is as under:

"If the goods have been described accurately in the Bill of Entry, and the said description of goods has been accepted as correct by the proper officer of Customs, viz. assessing officer of Group or examining officer of Docks, then there is no ground to allege any lapse on the part of the Customs Broker even if there is a dispute about availability of the benefit of notification or classification."

In view of above said facts, we hereby request you to drop the charges put against us in the above said Show-cause-Notice.

3. PERSONAL HEARING

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

3.2 Mr. Anil Balani, Advocate of Noticee M/s. Tristar Freight Forwarders attended the personal hearing through virtual mode 01.08.2025 at 11: 30 Hrs. During the hearing he reiterated the written submissions made vide letter dated 10.10.2024.

3.3 The authorized representatives Shri Dipen Thakkar and Shri Dinesh Deshmukh of the Noticee M/s Unitop Chemicals Private Limited, appeared for Personal Hearing in person on the 05.08.2025 and requested to take their letter dated 08/10/2024 (acknowledged copy attached) on record and take the content of the letter for consideration.

3.4 The authorized representative Shri Ratnakar Rai of the Noticee M/s Sky Sea Logistics, appeared for Personal Hearing in person on the 05.08.2025 and the following submissions were made by him on behalf of the Noticee during the course of the personal hearing:

> "We have submitted our written submissions vide our letters dated 8/10/2024 and letter dated 04/08/2025. We hereby request from your good self to take the content of these two letters on record for consideration. We hereby submit that importer M/S. Unitop Chemicals Private Limited was doing clearance of the above said goods from Indonesia through Transshipment route of Singapore from third country exporter since year 2019 and they had assigned their clearance work of this item to us in December 2022. Therefore, the clearance of these goods was going smoothly before the Customs department since last 3 years when they assigned clearance work of these goods to us. We were not into the picture when importer started taking ADD at serial No-1 of the ADD notification No- 28/2018. We don't want to argue on the matter of interpretation of ADD notification. As per importers interpretation their imported goods are rightly classifiable under serial No-1 of the ADD notification No- 28/2018 dated 25/5/2018 and no other serial number of this ADD notification covers import of their imported goods. We find merit in their argument but department is proper authority to take decision in the matter.
>
> We want to draw your kind attention on ADVISORY No. 02/ 2024 issued by JNCH, Nhava Sheva. As per CBIC circular, the JNCH, Nhava Sheva has issued ADVISORY No. 02/ 2024. As per Para 6of this advisory "If the goods have been described accurately in the Bill of Entry, and the said description of goods has been accepted as correct by the proper officer of Customs, viz. assessing officer of Group or examining officer of Docks, then there is no ground to allege any lapse on the part of the Customs Broker even if there is a dispute about availability of the benefit of notification or classification." The Custom Broker should not be penalized in these cases.
>
> We inform you that we don't have any active role in the matter of interpretation of above said ADD notification and we hereby request you to drop the charges labeled against us."

4. DISCUSSION AND FINDINGS

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

4.2 The adjudicating authority has to take the views/objections of the noticee on board and consider before passing the order. In the instant case, the personal hearing was granted to the noticee's on 01.08.2025 by the Adjudicating Authority which was attended by Shri Anil Balani, authorised representative of the noticee M/s. Tristar Freight Forwarders and the rest of the noticees did not attend the same. One more opportunity of personal hearing was given to the other noticees M/s Unitop Chemicals Private Limited and M/s Sky Sea Logistics on 05.08.2025 which was attended by Shri Dipen Thakkar and Shri Dinesh Deshmukh authorized representative of M/s Unitop Chemicals Private Limited and Shri Ratnakar Rai authorized representative of M/s Sky Sea Logistics. The recordings of the personal hearing are placed in para 3 of this order.

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

4.4 The present proceedings emanate from Show Cause Notice No. 1066/2024-25/COMMR/NS-I/Gr. II(C-F)/CAC/JNCH dated 10.09.2024 to M/s. Unitop Chemicals Private Limited, alleging wrongful availment of exemption from Anti-Dumping Duty (ADD) on imports of 'Saturated Fatty Alcohols' under various Bills of Entry by mis-declaring the country of export as Singapore. The SCN alleges that the importer inappropriately claimed benefit of Sr. No. 1 of Notification No. 28/2018-Customs (ADD) dated 25.05.2018 (NIL ADD) though the goods were actually shipped from Batam, Indonesia and merely transshipped at Singapore, without any export declaration being filed there. The SCN contends that the goods fall under Sr. No. 6 of the said Notification attracting ADD at the rate of USD 92.23 per MT, and accordingly, differential ADD amounting to ₹69,72,100/- along with IGST of ₹12,54,978/- (totaling ₹82,27,078/-) is recoverable under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA. The SCN further proposes holding the goods liable for confiscation under Section 111(m) of the Act, and seeks imposition of penalties upon M/s. Unitop Chemicals Private Limited under Sections 112(a), 114A and 114AA of the Customs Act, 1962. It also proposes penal action against the Customs Brokers, M/s. Tristar Freight Forwarders and M/s. Sky Sea Logistics, under Sections 112(a), 114A and 114AA for their alleged failure to exercise due diligence while filing the impugned Bills of Entry.

4.5 I find that the importer, M/s. Unitop Chemicals Private Limited, has contended that the exemption from Anti-Dumping Duty (ADD) under Sr. No. 1 of Notification No. 28/2018-Customs (ADD) was rightly claimed, as the consignments were produced by M/s. PT Ecogreen Oleochemicals, Indonesia and exported through their related entity, M/s. Ecogreen Oleochemicals (Singapore) Pte. Ltd. The importer has submitted that Ecogreen Singapore was the actual exporter in terms of international trade practice, since invoices and packing lists were issued by them and remittances were made to them. It has been argued that third-country invoicing is a well- recognized practice in international trade and duly accepted under the Anti-Dumping investigation findings of the Directorate General of Anti-Dumping (DGAD), which specifically recorded exports from PT Ecogreen Indonesia through Ecogreen Singapore. The importer has further relied upon the subsequent Sunset Review, wherein PT Ecogreen Indonesia was granted NIL ADD irrespective of the country of export, to contend that the policy intent was to exempt their imports from duty. It has denied any misdeclaration, asserting that the country of origin was correctly declared as Indonesia, the exporter as Ecogreen Singapore, and the port of loading as Singapore in line with shipping practice. The importer has also placed reliance on judicial precedents to argue that differences in interpretation of exemption notifications cannot be treated as willful misstatement or suppression. Accordingly, the importer has prayed for dropping of the demand, interest, penalty, and confiscation proposed in the Show Cause Notice.

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

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

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

B. Whether or not the differential Anti-Dumping Duty of ₹69,72,100/- and IGST thereon of ₹12,54,978/- (totaling ₹82,27,078/-) is recoverable from the importer M/s. Unitop Chemicals Pvt. Ltd. under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA.

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

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

E. Whether or not penalties are imposable on the Customs Brokers, namely M/s. Tristar Freight Forwarders and M/s. Sky Sea Logistics, under Sections 112(a), 114A and 114AA of the Customs Act, 1962.

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

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

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

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

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

4.12 I also take note of the findings of the Designated Authority in the Sunset Review vide Final Findings Notification No. 7/01/2022-DGTR dated 02.02.2023, wherein it was categorically recorded that exports made by M/s. PT Ecogreen Oleochemicals, Indonesia attract a NIL rate of anti-dumping duty, irrespective of the country of export. This clarification from the authority which originally conducted the anti-dumping investigation leaves no ambiguity as to the policy intent. It is evident that the exemption was producer-specific and not meant to be restricted or denied merely because the goods were routed through or transshipped at Singapore. Accordingly, the reliance placed in the SCN on procedural aspects such as non-filing of a shipping bill at Singapore is of no consequence, as the binding clarification of the Designated Authority leaves no scope for denying the NIL duty benefit to PT Ecogreen's exports. Para 146 of Sunset Review vide Final Findings Notification No. 7/01/2022-DGTR dated 02.02.2023 is quoted below for reference
:-
"146. Therefore, Authority recommends continuation of anti-dumping measure as fixed rate duty. Accordingly, definitive anti-dumping duty equal to the amount mentioned in Column 7 of the Duty Table below is recommended to be imposed for five (5) years from the date of the Notification to be issued by the Central Government, on imports of the subject goods described at Column 3 of the Duty Table, originating in or exported from Indonesia, Malaysia and Thailand.

DUTY TABLE

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

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

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

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

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

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

(b) "export price", in relation to an article, means the price of the article exported from the exporting country or territory and in cases where there is no export price or where the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported articles are first resold to an independent buyer or if the article is not resold to an independent buyer,

or not resold in the condition as imported, on such reasonable basis as may be determined in accordance with the rules made under sub-section (6);

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

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

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

(a) comparable representative price of the like article when exported from the exporting country or [3] [territory to] an appropriate third country as determined in accordance with the rules made under sub-section (6); or

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

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

[4] [(1A) Where the Central Government, on such inquiry as it may consider necessary, is of the opinion that circumvention of anti-dumping duty imposed under sub-section (1) has taken place, either by altering the description or name or composition of the article subject to such anti-dumping duty or by import of such article in an unassembled or disassembled form or by changing the country of its origin or export or in any other manner, whereby the anti-dumping duty so imposed is rendered ineffective, it may extend the anti-dumping duty to such article or an article originating in or exported from such country, as the case may be [5] [, from such date, not earlier than the date of initiation of the inquiry, as the Central Government may, by notification in the Official Gazette, specify].]

[6] [(1B) Where the Central Government, on such inquiry as it may consider necessary, is of the opinion that absorption of anti-dumping duty imposed under sub-section (1) has taken place whereby the anti-dumping duty so imposed is rendered ineffective, it may modify such duty to counter the effect of such absorption, from such date, not earlier than the date of initiation of the inquiry, as the Central Government may, by notification in the Official Gazette, specify.

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

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

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

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

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

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

[7] [(2A) Notwithstanding anything contained in sub-section (1) and sub-section (2), a notification issued under sub-section (1) or any anti-dumping duty imposed under sub-section (2) shall not apply to articles imported by a hundred percent export-oriented undertaking or a unit in a special economic zone, unless, -

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

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

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

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

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

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

(ii) the injury is caused by massive dumping of an article imported in a relatively short time which in the light of the timing and the volume of imported article dumped and other circumstances is likely to seriously undermine the remedial effect of the anti-dumping duty liable to be levied,

the Central Government may, by notification in the Official Gazette, levy anti-dumping duty retrospectively from a date prior to the date of imposition of anti-dumping duty under sub-section (2) but not beyond ninety days from the date of notification under that sub-section, and notwithstanding anything contained in any law for the time being in force, such duty shall be payable at such rate and from such date as may be specified in the notification.

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

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

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

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

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

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

[10] *[(6A) The margin of dumping in relation to an article, exported by an exporter or producer, under inquiry under sub-section (6) shall be determined on the basis of records concerning normal value and export price maintained, and information provided, by such exporter or producer :*

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

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

[11] *[(8) The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the*

duty chargeable under this section as they apply in relation to duties leviable under that Act.]

Section 9B. No levy under section 9 or section 9A in certain cases. *-*
(1) Notwithstanding anything contained in section 9 or section 9A, -

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

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

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

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

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

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

(c) the Central Government may not levy -

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

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

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

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

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

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

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

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

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

***"12.** Of course, in the notification issued being Notification No. 23 of 2017 the description of the goods not included in the goods on which anti-dumping duty is leviable is worded as under :- "(vii) Clad with compatible non-clad Aluminium Foil : Clad with compatible non-clad Aluminium Foil is a corrosion-resistant aluminium sheet formed from aluminium surface layers metallurgically bonded to high-strength aluminium alloy core material for use in engine cooling and air conditioner systems in automotive industry; such as radiator, condenser, evaporator, intercooler, oil cooler and heater."*

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

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

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

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

Cus.(ADD), dated 16-5-2017 during the period from August 2017 to December 2018;"

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

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

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

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

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

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

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

4.22.2 Furthermore, the definition of transhipment as provided in S.B Sarkar's 'Words and Phrases of Central Excise and Customs' is reproduced below:

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

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

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

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

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

4.22.4 Had the exporter itself been based in Indonesia, the movement through Singapore could have been characterised as *mere transshipment*. However, since the exporter was M/s Ecogreen Oleochemicals (Singapore) Pte Ltd, the shipment cannot be so treated; rather, it represents a valid export from Singapore by the entity expressly recognised in Serial No. 1 of the Notification. The intent of Serial No. 1 of Notification No. 28/2018-Customs (ADD) specifically covers the producer-exporter combination of M/s PT Ecogreen Oleochemicals and M/s Ecogreen Oleochemicals (Singapore) Pte Ltd. The Designated Authority's investigation considered the entire export chain, including the ex-factory sale and costs incurred by the Singapore entity for example inland freight. Assigning a NIL injury margin to this combination indicates that the arrangement was thoroughly evaluated and deemed non-injurious to the domestic industry. Denying the NIL ADD rate-by alleging/interpreting movement of goods through Singapore as mere transshipment-would effectively nullify Serial No. 1, as it would prevent the very transaction it was designed to cover from receiving the intended benefit.

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

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

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

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

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

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

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

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

B. Whether or not the differential Anti-Dumping Duty of ₹69,72,100/- and IGST thereon of ₹12,54,978/- (totaling ₹82,27,078/-) is recoverable from the importer M/s. Unitop Chemicals Pvt. Ltd. under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA.

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

C. Whether or not the imported goods covered under the Bills of Entry in question are

liable to confiscation under Section 111(m) of the Customs Act, 1962.

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

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

4.29 I find that the proposals for penalty in the SCN flow from the allegation that the importer deliberately misdeclared the country of export and wrongly availed the benefit of NIL ADD under Serial No. 1 of Notification No. 28/2018-Cus (ADD), thereby rendering the goods liable to confiscation and the importer liable to penalty under Sections 112(a), 114A and 114AA of the Customs Act, 1962.

4.29.1 However, as already discussed under Issues A to C, the goods were correctly declared as to their country of origin, exporter, and port of loading, and the benefit of NIL ADD was rightly available to the Noticee under Serial No. 1 of the Notification. No misdeclaration, suppression of facts, or submission of false or forged documents has been established. It is well settled that penalties under Sections 112(a), 114A and 114AA can only be imposed where there is clear evidence of mens rea or deliberate intent to evade duty. In the absence of such evidence, mere interpretational differences regarding the scope of a notification cannot justify imposition of penalty.

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

E. Whether or not penalties are imposable on the Customs Brokers, namely M/s. Tristar Freight Forwarders and M/s. Sky Sea Logistics, under Sections 112(a), 114A and 114AA of the Customs Act, 1962.

4.30 I find that the Show Cause Notice has proposed penalties on the Customs Brokers primarily on the allegation that they failed to exercise due diligence while filing the impugned Bills of Entry and thereby facilitated the alleged misdeclaration by the importer. It is alleged that such failure attracts penal liability under Sections 112(a), 114A and 114AA of the Customs Act, 1962.

4.30.1 On examination of the case records, I note that the role of the Customs Brokers was limited to filing Bills of Entry on the basis of documents provided by the importer. The import documents such as invoices, certificates of origin, packing lists, and Bills of Lading were genuine and issued by the producer/exporter. The Brokers had no independent reason to doubt the correctness of such documents. Further, the importer had correctly declared Indonesia as the country of origin and Ecogreen Singapore as the exporter, which is borne out by the documentary evidence. Thus, there is no material to suggest that the Customs Brokers either connived with the importer or were aware of any alleged misdeclaration.

4.30.2 It is a settled position of law that Customs Brokers cannot be penalised for bona fide reliance on authentic documents placed before them by the importer, unless it is proved that they had knowledge of falsity or participated in the alleged offence. In the present case, such evidence is completely absent. Consequently, I hold that the Customs Brokers cannot be visited with penal consequences under Sections 112(a), 114A or 114AA of the Customs Act, 1962. The proposals for penalty against them are therefore unsustainable and liable to be dropped**.**

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

ORDER

i. I order that the demand for differential Anti-Dumping Duty of Rs. 69,72,100/- and IGST on not paid Anti-dumping Duty amounting to Rs. 12,54,978/- (total amounting to Rs 82,27,078/-) under Section 28(4) of the Customs Act, 1962, is not sustainable and is hereby dropped.

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

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

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

v. I order that the proposal to impose penalties on Customs broker M/s. Tristar Freight Forwarders and M/s. Sky Sea logistics under Sections 112(a), 114A, and/or 114AA of the Customs Act, 1962, is not warranted and is hereby dropped.

vi. I order that the Show Cause Notice No. 1066/2024-25/Commr/NS-I/Gr. II (C-F)/CAC/JNCH dated 10.09.2024 is hereby dropped in its entirety.

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

Digitally signed by
Yashodhan Arvind Wanage
Date: 07-10-2025
16:14:42

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

To,
1) M/s Unitop Chemicals Private limited (IEC-0388120614)

Plot No. D-2/CH 343, GIDC Phase II village Jolwa,
Bharuch Dahej Highway, Gujarat- 392130.

2) M/s. Tristar Freight Forwarders
418, Navratan Building, 69m P. D'Mello Road,
Masjid Bunder, Mumbai-400009.

3) M/s. Sky Sea logistics,
A/102, Gold Mist, Thakur
Complex, Kandivali-East, Bombay-
400101.

Copy to:

1. The Addl. Commissioner of Customs, Group II(C-F), JNCH

2. AC/DC, Chief Commissioner's Office, JNCH

3. AC/DC, Centralized Revenue Recovery Cell, JNCH

4. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.

5. Office Copy.